FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/24UL/LSC/2019/0031**
Property	**:**	**Flat 5, 131 St Michael's Road, Aldershot, Hampshire GU12 4JW**
Applicant	**:**	**Mr C R D Adam**
Representative	**:**	**In person**
Respondent	**:**	**Enterprise Home Developments LLP**
Representative	**:**	**In person**
Type of Application	**:**	**Liability to pay and reasonableness of service charges**
Tribunal Members	**:**	**Judge Paul Letman**
Date and venue of	**:**	**On paper**
Date of Decision	**:**	**30 August 2019**

DECISION WITH REASONS

Introduction

1. By an application dated 27 February 2019 the Applicant tenant seeks a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') both as to his liability to pay and the reasonableness of the service charges claimed from him by the Respondent landlord. The years in issue are those charged for 2016, 2017, 2018 and the estimated charges for 2019.

2. In addition, the Applicant seeks an order under section 20C of the 1985 Act limiting his liability for payment of landlord's costs as service charge and similarly under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in relation to any liability to pay an 'administration charge in respect of litigation costs' i.e. contractual costs in a lease.

3. By order dated 03 April 2019 the tribunal duly made standard directions for the conduct of the application. These included provision for service by Applicant of a Statement of Case by 29 May 2019 setting out the items and amounts in dispute with reasons and any witness evidence, followed by service by the Respondent of a Statement of Case in response by 26 June 2019 to include copies of all invoices and other documents relied upon, a statement of the relevant provisions of the lease and any legal submissions in support of the claimed sums and any witness evidence. Provision was also made for a reply from the Applicant, if necessary, by 10 July 2019 and preparation of a bundle of documents by him for the purposes of the determination.

4. The above directions having been complied with by the parties to the extent they have thought fit, the matter was duly listed for a paper determination as of 27 August 2019 and this decision made pursuant thereto.

The Inspection

5. For the record and avoidance of doubt no inspection of the subject premises has been made.

The Law

6. As referred to above the present application is made under section 27A of the 1985 Act, which provides as follows:

27A Liability to pay service charges: jurisdiction
(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made…
(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

7. In relation to liability to pay the Applicant has queried compliance with relevant statutory requirements, in particular service of a copy of 'Service Charges – Summary of Tenants' Rights and Obligations.' So far as is relevant in this regard section 21B of the 1985 Act provides as follows:

'***21B Notice to accompany demands for service charges***
(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
(5) Regulations under subsection (2) may make different provision for different purposes.
(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.'

8. Regulations have been promulgated for the purposes of the above provision, see SI 1257 of 2007 which sets out the form and contents of the requisite statement. Notably also, equivalent provision has been made in relation to demands for administration charges (under section 158 of and Schedule 11(4) to the 2002 Act and like accompanying regulations).

9. Further, the present application engages section 19 of the 1985 Act that establishes a statutory test of reasonableness limiting the recovery of relevant costs making up any service charge as follows:

'19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.
(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.'

10. The meaning of reasonably incurred was considered by the Upper Tribunal in the lead case of *Forcelux v Sweetman*, where Mr Francis stated that:

'39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

41. It has to be a question of degree, and whilst the appellant has submitted a well reasoned and, as I have said, in my view correct interpretation of 'reasonably incurred', that cannot be a licence to charge a figure that is out of line with market norm.'

11. Notably, in relation to the costs of major works in that case he accepted that whilst there could be no criticism of the landlord's policies and procedures for appointing contractors, nonetheless he did *'..not see why they [the tenants] should be saddled with a cost that appears from the evidence to be substantially in excess of what could reasonably be construed as a market rate.'*

12. More recently this approach was endorsed by the Court of Appeal in *LB of Hounslow v Waaler* [2017] EWCA Civ 45, where Lord Justice Lewison stated '*In my judgment, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome*.'

13. As to the second limb of section 19, dealing with the standard of services, it is well established by the cases (see *Yorkbrook v Batten* (1985) HLR 25) that where a service has been carried out otherwise than to the relevant standard that does not necessarily mean that no charge is payable. Rather the amount charged should be reduced to reflect the extent to which the service fell short of the requisite standard. Though the charge may of course be diminished to zero where the tenant received no value whatsoever from the services or work for which the service charge has been levied.

14. As regards the application for a section 20C order, the section itself provides as follows:

20C Limitation of service charges: costs of proceedings.
(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application…
(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

15. The relevant case law in relation to section 20C was reviewed by the Deputy President in the Upper Tribunal in *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0519 (LC) at paragraphs 51 to 59. His review began necessarily with reference to the Court of Appeal decision in *Iperion Investments Corporation v Broadwalk House Residents Limited* (1996) 71 P & CR 34 and the well known passages from the judgment of Peter Gibson LJ, before continuing with detailed reference to the decision of the Lands Tribunal (HH Judge Rich QC) in *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000.

16. The Deputy President in *Conway* quoted with apparent approval the following passages from the judgment of HHJ Rich QC in *Doren* relating to the exercise of the 20C discretion:-

"28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.

29. I think that it can be derived from [Iperion] that where a court has power to award costs, and exercises such power, it should also exercise its power under s20C, in order to ensure that its decision on costs is not subverted by the effect of the service charge.

30. Where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an Order under s.20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.

31. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably

and properly incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them.

17. The review in *Conway* continued with reference to *Schilling v Canary Riverside Development PTE Limited* LRX/26/2005 where HHJ Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. Noting that the observations he had made in his earlier decision were intended to be "illustrative, rather than exhaustive" of the matters which needed to be considered, and adding significantly (at paragraph 13) that:

    "The ratio of the decision [in Doren] is "there is no automatic expectation of an Order under s.20C in favour of a successful tenant." So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour."

18. More recently in *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC) His Honour Judge Behrens referred to the decision in *The Jam Factory* [2013] UKUT 0592, which he took to contain a full review of the authorities, and summarised the applicable principles as follows:

    "1. The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.

    2. The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.

    3. Where there is no power to award costs there is no automatic expectation of an order under s 20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.

    4. The power to make an order under s 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.

    5. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income."

19. The tribunal duly relies upon this guidance in its consideration of the Applicant's application for a direction under section 20C and under the equivalent and like worded provision in respect of litigation costs claimed as administration charges at paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The Lease

20. The hearing bundle includes the lease dated 18 July 2016 made between the Applicant and the Respondent of the subject premises at Flat 5, 131 St. Michael, Aldershot ('the Lease'). The lease of each of the other flats is understood to be in

substantially the same form. In so far as is presently relevant the Lease expressly provides as follows:

(a) Under clause 1, Definitions and Interpretation it is provided that in the Lease,

> '1.3 'Annual Expenditure' means
> a. All costs expenses and outgoings incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services and
> b. Any VAT payable on those costs expenses and outgoings
> but excludes any expenditure in respect of any part of the Building for which the Tenant or any other tenant is wholly responsible…
> 1.7 'Financial Year' means the period from 1st January to 31st December in each year
> 1.18 'Provisional Service Charge' means the sum paid on account of Service Charge as computed by reference to the provisions of Part 2 of Schedule 1…
> 1.20 'Rent' means the Rent, the Provisional Service Charge and the Service Charge
> 1.21 'Service Charge' means the Service Charge Proportion of the Annual Expenditure
> 1.22 'Service Charge Proportion' means 20%
> 1.23 'Services' means the services facilities and amenities specified in Schedule 1 Part 1…'

(b) Under clause 3, Tenant's Covenants, the Tenant covenants with the Landlord as follows:
'3.1 to pay the Rents on the days and in the manner set out in this Lease and not to exercise or seek to exercise any right or claim to withhold the Rents…
3.22 to pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors properly and reasonably incurred by the Landlord in relation to or contemplation of or incidental to … 3.22.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease.

(c) Under clause 5, Insurance, the Landlord covenants with the Tenant to insure the Building in accordance with the detailed terms thereof.

(d) Under clause 7, General, the Landlord covenants with the Tenant (subject to payment by the Tenant of the Service Charge), amongst other things, to provide the Services.

(e) Under Schedule 1, Part 1, Services it is provided as follows:

> 'The relevant expenditure to be included in the Services shall comprise all expenditure reasonably incurred or payable in connection with the repair management insurance or maintenance of the Building and the provision of services within the Development and shall include (without prejudice to the generality of the foregoing):-
> 1. The costs of and incidental to the performance of the Landlord's covenants contained in clauses 5 and 7…

3. All reasonable fees charges and expenses payable to the Surveyor, any solicitor, accountant, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management of the Development including the computation and collection of rent … including the costs of preparation of the account of the Service Charge and the collection of service charges and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work
4. To maintain and keep in good and substantial repair and condition and renew or replace when the Main Structure the Common Parts and any Pipes used in common by more than one tenant in the Building…
5. To decorate as often as may be necessary in a good and workmanlike manner the external parts of the Building and the Common Parts
6. To keep the Common Parts (and also external surfaces of the windows in the Building) clean and where appropriate lit…
8. To employ at the Landlord's discretion a firm of managing agents to manage the Building and discharge all proper fees charges and expenses payable to such agents or such other persons who may be managing the Building including the cost of computing and collecting the Service Charge and the creation and maintenance of any website that may be set up to allow tenants to view service charge information and for the avoidance of doubt all legal or other costs incurred by the Landlord in recovering unpaid rent and/or Service Charge from the Tenant is recoverable by the Landlord via the Service Charge…
11. To set aside such sums as the Landlord reasonably requires to meet the future costs that the Landlord reasonably expects to incur in replacing maintaining and renewing those items that the Landlord has covenanted to replace maintain or renew
12. To insure the Building in accordance with the terms of clause 5 and such other parts of the Development as the Landlord may require…
15. To employ such staff or contractors including a concierge as may be reasonably required to carry out all necessary works of maintenance cleaning and repairs and such other duties as are (in the opinion of the Landlord) necessary for the proper running and management of the Building.'

(f) Under Schedule 1, Part 2, Service Charge Provisions it is provided as follows:

'1.2 The Landlord shall as soon as convenient after the end of each Financial Year prepare an account showing the Annual Expenditure for the Financial Year and containing a fair summary of the expenditure referred to in it and upon such account being certified by the Agent it shall be conclusive evidence for the purposes of this Lease of all matters of fact referred to in the account except in case of manifest error…

1.4 The Tenant shall pay for the next and each subsequent Financial Year a provisional sum equal to the Service Charge payable for the previous Financial Year .. increased by 10% or calculated upon an estimate or a reasonable and proper estimate by the Surveyor of what expenditure and of all costs the Annual Expenditure is likely to be for that Financial Year by one payment on or before 31 January preceding that Financial Year ('the Provisional Charge')…

1.5 If the Service Charge for any Financial Year exceeds the provisional sum for that Financial Year the excess shall be due to the Landlord on demand and if

the Service Charge for any Financial Year is less than such provisional sum the overpayment shall be credited to the Tenant against the next payment of the Service Charge…

1.10 For the purposes of the Commonhold and Leasehold Reform Act 2002 the Provisional Service Charge shall be deemed to be accepted, agreed and payable on demand by the Tenant if computed in accordance with paragraph 1.4 above and the Service Charge shall be deemed to be accepted, agreed and payable on demand by the Tenant unless within 21 days of notification of the amount payable the Tenant serves a written notice on the Landlord objecting to the said payment'

21. Notably, although recited, no specific reliance is placed upon clause 1.10 by the Respondent in this matter, and rightly so in the tribunal's view given the terms of section 27A(6) of the 1985 Act also referred to above.

The Contested Charges

22. As mentioned above the Applicant in relation to all years and demands takes as a preliminary point the failure by the Respondent to serve a notice in accordance with section 21B of the 1985 Act i.e. the statement of rights and obligations, as an accompaniment to each demand. The Respondent has not denied that it failed to comply with this statutory requirement. In consequence, the Applicant was not liable to pay each demand for service charge, whether Provisional Service Charge or final Service Charges, when made.

23. However, the effect of non-compliance with section 21B is only suspensory and as and when each demand is re-issued accompanied by the requisite statement, the sums claimed in so far as they are otherwise held (below) to be recoverable will be due and payable. In this regard the tribunal notes of course the attempt to comply by sending a form of statement (omitted from the bundle) under cover letter dated 16 January 2019, but this does not accompany any demands so as to meet the terms of section 21B.

24. By contrast the requirements of sections 47 and 48 of the 1987 Act (under which a tenant is to be provided with the name and address of the landlord and an address for service of notices upon the landlord) can probably be met by service of that information unilaterally, although it is obviously good practice to include this information in each demand when served; see for example, the service charge demand levied by Wildheart Residential Management in relation to Sycamore Court, disclosed by the Respondent (at page 104 of the hearing bundle).

25. Further, and again effectively by way of preliminary issue the Applicant states that prior to early 2019 'Invoices/demands for payment were not accompanied with a projected budget or itemised expenditure certified by the Agent (see Schedule 1, Part 2). The Respondent does not contest this or suggest otherwise. Rather it appears that the Applicant was simply invoiced an amount in each year or half year on account of service charges with any balance/shortfall rolled over rather than demanded separately.

26. Thus in 2016 the Applicant was invoiced the sum of £366.02 on account of service charges, being some irregular percentage of an overall figure of £1,992.90. In 2017 the sum of £800 was demanded on account, being approximately his 20% share under the Lease. In 2018 the sum of £880. In 2019 the Respondent provided a budget for the year in the sum of £4,924.60 and has made an interim demand in the sum of £473 for the first half of the year calculated as 20% of the sum of £4,730. As yet no demands for any excess balancing charges have been made at all (though in theory this could still be done if required).

27. The demands (above) have it seems to the tribunal effectively been made by way of Provisional Service Charge and also accepted as such. Certainly, they have until recently been paid in full by the Applicant. However, whatever the status of these demands, there is no sense now in examining the interims where the year-end figures are available. It is these figures that must now be determinative of the Applicant's liability if any, and these are duly considered below for 2016-2018, followed by the estimated charges for 2019.

Y/E Service Charges 2016

Insurance £682.09 (p.53)

28. The Applicant's Statement of Case requests documentary evidence of this charge. In response the Respondent has produced (p.105) a Certificate of Insurance issued by Holman Underwriting dated 17 May 2016 in the sum of £2,018.00 in respect of the Property, a further unit (Unit 6) at the subject premises and premises at 1 Pickford Street. No breakdown of this charge is provided.

29. The only breakdown provided is for the renewal in 2019, apportioning to the Property the sum of £349.70 out of a total sum of £1,887.98. The renewal also covers the premises at 1 Pickford Street and another at 84-86 Victoria Road, with the premium split £930.42 and £607.86 respectively. In addition, the Respondent has disclosed a Certificate for 2017/18 showing a Buildings Premium (excluding IPT/Policy Fee) for the subject premises in the sum of £292.50 (p.97).

30. In the light of this information the £682.09 allocation in 2016 appears to be incorrect and the charge excessive. No explanation or justification for a higher charge in 2016 than in 2017 or 2019 is advanced by the Respondent. In the circumstances the tribunal determines that in 2016 the charge reasonably incurred was equally the sum of £292.50 (the same as apparently incurred for the Property in 2017).

Cleaning Common Areas £820

31. The Applicant alleges that cleaning is done intermittently and is often less frequent than every 2 weeks. Further, that given the small common areas the cost is excessive. The Applicant relies in his Statement of Case and Reply upon the absence of supporting invoices. For his part he has produced a quotation dated 28 May 2019 from Mini Miracles Cleaning Services Ltd in the sum of £27.00 inclusive for 1.5 hours per fortnight.

32. By its Statement of Case the Respondent maintains that the cleaning is done every 2 weeks and that the £35 per visit charged for this service is reasonable. The Respondent states that 'we use our cleaning operatives for several properties in the Aldershot area and they have proved reliable and efficient.' Nonetheless, it invites the Applicant to take over the service if he wishes, subject to agreement with other lessees.

33. The tribunal notes the absence of evidence as to how the £820 charged is constituted, it is not even a multiple of £35. No records are produced to show that fortnightly visits were made. No time sheets or invoices are produced to show who if anyone actually attended the Property to clean the Common Parts or for how long each visit actually lasted. Importantly also it is not apparent if this is a notional cost or a sum actually incurred or payable by the Respondent to any staff, operative or contractor.

34. This raises a key issue of interpretation of the Lease, whether a notional cost is recoverable at all. The governing words in the opening paragraph of Schedule 1 Part 1 ('The relevant expenditure… shall comprise all expenditure reasonably incurred or payable in connection with…') clearly indicate that recovery is limited to sums actually expended i.e. that are or will be paid out. Further, the specific provision at paragraph 3 entitling the Landlord to an allowance for any management or rent collection work undertaken by an employee, strongly favours the conclusion that on a proper construction of the Lease a notional cost in relation to other services such as cleaning is not recoverable.

35. This interpretation is supported by a number of decisions of the Courts on similar lease terms. In *Gilje v Charlgrove Securities Ltd* [2001] EWCA Civ 1777, the Court of Appeal held that the tenant's obligation to contribute towards 'All monies expended' only covered sums actually paid out and not the notional cost to the landlord of providing a porter's flat in the subject premises. Similarly, the Lands Tribunal in *Hildron v Greenhill* (LRA/120/2006) held that the cost of rent foregone was neither an 'expense' or 'outgoing' and was irrecoverable. Whilst more recently the Upper Tribunal in *Mihovilovic v Leicester CC* [2010] UKUT 22 (LC), held that 'costs and expenses' did not include a charge made by the council itself for self-insuring the subject premises.

36. In the absence of any evidence, therefore, that payments out were actually made by the Respondent to cleaning staff or independent contractors the sum claimed is not recoverable. Further, even if contrary to the interpretation above a notional cost is recoverable, there is in any event no explanation of the sum claimed and how it is calculated. Whilst if it is said it was 'expenditure' there is simply no evidence, no form of contract, time sheets or copy invoices etc., to support the charge made. On any view therefore this item is wholly unsubstantiated and it is rejected accordingly by the tribunal. No allowance is made.

Heating and Lighting £482

37. In his Statement of Case the Applicant points out that there is no heating in the Common Parts and alleges that since the lighting is controlled by motion sensors the amount claimed appears excessive. In this regard again he notes that no utility bills or other evidence of actual charges have been disclosed.

38. The Respondent does not dispute the absence of heating, whilst in relation to lighting it admits that there was a period during which the power to Flat 4 was shared with the communal meter, adding that 'any adjustments to charges will be credited to the reserves fund at the end of the service charge year.'

39. Given that the actual utility charges for 2018 are said to be £119.26, it is plain the charges for 2016, 2017 and estimated for 2018 included Flat 4. There is no proper basis upon which the Applicant should have been charged these sums or why any resulting overpayment should be credited to the reserve fund or for that matter credited to the Tenant against the next payment of the Service Charge (under paragraph 1.5). In the circumstances the tribunal determines that the reasonably incurred amount in 2016 is in the sum of £100.

Common Area Repairs/Maintenance £193

40. The Applicant's Statement of Case alleges that there had been no repainting or maintenance in the Common Parts since he moved to the Property in 2016, with the exception in 2019 of fixing the draught excluder to the front door and the occasional replacement of light bulbs.

41. In response the Respondent lists various maintenance services to the communal areas which it says 'have been provided by our personnel.' In 2016 these are said to have comprised Drain Blockage, £95 and Fire Alarm attendances, £193. The Applicant's reply notes that no invoices are provided nor any explanation of how these charges have been calculated.

42. Again, the issue arises whether the use of its own personnel by the Respondent involves an actual payment to any operative or is instead a notional cost for the work. In either case, however, there is a complete absence of any evidence showing what was done, when, by whom and how the charge is calculated. Indeed, it is not even apparent on what basis the sum in this year is claimed; if it is for repair or maintenance this would appear to duplicate the alarm maintenance charges below.

43. In summary, this claim too is wholly unsubstantiated and the tribunal simply cannot be satisfied that the sum charged is recoverable under the Lease terms at all, let alone whether it was reasonably incurred or not. The tribunal accordingly determines that the sum payable under this head is £nil.

Fire Alarm Maintenance £140

44. The Applicant notes that there has been an intermittent fault with the fire alarm since 2016, which has only recently been rectified in 2019. The Respondent does not appear to contest this, merely disclosing a recent Fire Detection and Alarm System Inspection and Servicing report dated 11/2/2019 from Amtech, stating that the system was overall in satisfactory condition and 'working OK.'

45. Given that this charge relates to the fire alarm it is to be expected that any maintenance would be carried out by a specialist contractor. The absence of any supporting documentation therefore casts serious doubt upon the nature of this

charge, for what it is actually made and how it is calculated. In these circumstances, again there is simply insufficient evidence upon which the tribunal can determine whether the sum claimed is recoverable under the Lease terms or was reasonably incurred.

46. Furthermore, in the case of this charge given that it appears the repair or maintenance work, if such it was, failed to remedy a continuing fault it seems that on any view the relevant work was not carried out to a reasonable standard and in so far as necessary the tribunal so finds. On this further basis the claimed charge also fails to meet the statutory requirements of section 19(1) (above), so as the amount payable under this head must in any event be £nil.

Garden Maintenance £280

47. The Applicant alleges that the said charge is excessive. He describes the garden as a very small L shaped lawn that would take only 15 minutes to mow. There are, he says, no trees, shrubs or other features and only a small flowerbed some 2ft by 3ft. Again, he relies also on the lack of supporting documentation.

48. By its letters dated 14 and 22 February 2019 (pp.92-93 and 89A-B) the Respondent detailed the gardening service as including (i) fortnightly lawn mowing from April to October (ii) additional mow if required in March, November and December (iii) weed spraying and removal (iv) monthly check up in January and February including removal of any debris. This work is apparently outsourced to Cadenza Garden Maintenance (pp.50-52). They appear to charge £40 per month, although in its Statement of Case the Respondent notes that the Applicant has not been able to offer another supplier for less than £20 per visit.

49. The charge levied in 2016 represents 14 visits over the course of the year at £20 per visit. For the small garden described this appears to be reasonable provision at a reasonable price. No lesser number of visits is alleged or contended for by the Applicant nor cheaper rate proposed or evidenced. In the circumstances the tribunal determines that the sum reasonably incurred and recoverable for this service in 2016 is the sum claimed of £280.

External General Maintenance £95

50. The sum claimed is referred to above at paragraph 41 and covers presumably the cost of remedying a blocked drain. On the face of things any such cost would be within the scope of paragraph 4 of Schedule 1, Part 1. However, there is no evidence in support of this charge and again it is unclear whether it is a notional cost or was actually paid to any operative or contractor. There is no evidence of what was done, when, by whom and how the charge is calculated.

51. In the circumstances there is insufficient material available for the tribunal to be satisfied that the sum claimed is recoverable under the Lease or that it was reasonably incurred or not. The tribunal accordingly determines that the sum payable under this head is £nil.

Management and Administration £360

52. No particular point is raised in relation to the management and administration charge in 2016 (see though 2019). There is obviously some management time involved, dealing at the very least with insurance, cleaning and gardening as well as preparation of accounts and demands.

53. Based upon experience the tribunal is in no doubt that a charge of £72 per unit is well within the market norm for premises of this kind. Accordingly, the tribunal determines that the above charge was reasonably incurred and payable (subject of course as with all sums to compliance with section 21B and the other statutory pre-conditions to recovery referred to above).

Y/E Service Charges 2017

54. The charges in issue for 2017 are mostly claimed under the same heads as in 2016 and the points taken by the Applicant and by the Respondent in response are repeated. Much of the reasoning above, therefore, is equally applicable and relied upon below without being set out again in full. Dealing then with the repeated items and commenting upon them only in so far as they are materially different from 2016.

55. *Insurance £352*, the only documentation in support (p.97) indicates a premium of £292.50. No explanation is offered by the Respondent for the difference between this sum and that claimed. In the circumstances the tribunal determines that the sum reasonably incurred and payable is £292.50.

56. *Cleaning Common Areas £960,* for the reasons stated in relation to this head of claim in 2016 the tribunal determines that the sum payable is £nil.

57. *Heating/Lighting £515,* for the reasons stated in relation to this head of claim in 2016 the tribunal determines that the sum payable is £110.

58. *Common Areas Repairs/Maintenance £386,* for the reasons stated in relation to this head of claim in 2016 (save the year specific point regarding duplication) the tribunal determines that the sum payable is £nil.

59. *Fire Alarm Maintenance £190,* for the reasons stated in relation to this head of claim in 2016 the tribunal determines that the sum payable in 2017 is £nil.

60. *Garden Maintenance £420,* no explanation is offered by the Respondent for the escalation in the sum claimed from £280 in 2016 to £420 in 2017. Indeed, not a single document is produced in support of the charges incurred in this year. In the circumstances the tribunal does not accept that any more than £280 was reasonably incurred in respect of this service in 2017.

61. *External General Maintenance £880,* for the reasons stated in relation to this head of claim in 2016 the tribunal determines that the sum payable in 2017 is also £nil.

62. *Management and Administration £660,* again no particular point is taken in relation to these charges by the Applicant and based upon experience the tribunal is again satisfied that the sum claimed at £132 per unit remains within the market norm for this area and type of premises. The tribunal accordingly accepts the sum

claimed as reasonably incurred and payable (subject as above to compliance with statutory pre-conditions).

Contribution to Reserves £600

63. The Lease plainly makes provision for the setting aside of such sums as the Respondent reasonably requires to meet future costs of replacing, maintaining and renewing items within the scope of the landlord's covenants. A reasonable sum by way of reserve is therefore claimable, even though the Respondent's own justification for the sums claimed is wholly mistaken, stating that it is a reserve for unforeseen costs.

64. Given the Victorian vintage and nature of the premises, it is likely that the Respondent will have to incur some major works costs such as roof repairs or other significant external maintenance within the next few years. In these circumstances the collection of £600 toward reserve where none has been demanded previously is plainly justifiable, reasonably incurred and payable and the tribunal so determines.

Y/E Service Charges 2018

65. The year-end service charges claimed for 2018 are again in principle repetitive of previous years and the reasoning above is equally applicable. The tribunal's comments below are limited accordingly to any material differences.

66. *Insurance £346.50*, relevant documentation in support (pp.36-49) from A-plan, independent insurance brokers, indicates a total premium of £1,595.40. The policy covers 3 properties; 1 Pickford, the subject premises, and 84-86 Victoria Road. No breakdown is provided for this year but as noted above the breakdown for 2019 divides the premium £930.42, £349.70 and £607.86 respectively. The figure claimed of £346.50 is out of line with these proportions and unsubstantiated. In the circumstances, applying the 2019 proportions to the 2018 premium, the tribunal determines that the sum reasonably incurred and payable for 2018 is £295.51.

67. *Cleaning Common Areas £1045,* for the reasons stated in relation to cleaning common areas in 2016 and 2017 the tribunal determines that in respect of the claim for communal cleaning in 2018 the sum payable is again £nil. As for the sums claimed for window cleaning (at p.56), whilst flat windows are demised to tenants, cleaning the external surface of those windows is within the scope of the Services for which a service charge can be levied (see paragraph 6 of Schedule 1, Part 1. Nonetheless, again without any adequate explanation of the basis of charge, how these charges are calculated or any substantiation at all the claim for £135 is rejected.

68. *Heating/Lighting £119.26,* the Applicant is entitled to disclosure of all relevant invoices from Respondent for these utility charges (confirming the figures at p.56). Nonetheless, charges are undoubtedly incurred with a supplier and the amount claimed appears reasonable. The tribunal is prepared to accept, therefore, that the sum claimed is genuine and the sum reasonably incurred and payable is £119.26

(although if subsequent disclosure shows that the figure should be less, due credit must be given).

69. *Common Areas Repairs/Maintenance £465,* for the reasons stated in relation to this head of claim in 2016 and 2017 the tribunal determines that the sum payable is £nil.

70. *Fire Alarm Maintenance £390,* for the reasons stated in relation to this head of claim in 2016 and 2017 the tribunal determines that the sum payable in 2018 is also £nil.

71. *Garden Maintenance £445,* no explanation is offered by the Respondent for the escalation in the sum claimed from £280 in 2016 to £445 in 2018. Again, also there is a paucity of documentation, with only a single invoice in the sum of £50 produced in support of the charges incurred in this year. In the circumstances the tribunal does not accept that in 2018 as in previous years, any more than £280 was reasonably incurred in respect of this service.

72. *External General Maintenance £108,* the tribunal notes with some concern that the Respondent's response suggests that a figure of £520 was incurred in this year, although the year end account puts the figure at £108. In any event for the reasons stated in relation to this head of claim in 2016 and 2017 the tribunal determines that the sum payable in 2018 is also £nil.

73. *Management and Administration £1088,* the Applicant takes exception in his Statement of Case to the sharp increase in management charges claimed in 2018. Despite this the Respondent has offered no adequate explanation for the increase or the charges levied at all. The mere assertion in the letter of 14/2/19 that 'approximately 34hrs' was spent does not suffice. In the circumstances the tribunal is not prepared to accept the increase as reasonable. In the tribunal's judgement a reasonable allowance for the purposes of paragraph 3 of Schedule 1, Part 1 is the sum allowed in 2017 above. The tribunal determines accordingly that the sum reasonably incurred and payable is again £660 (subject as above to compliance with statutory pre-conditions).

74. *Contribution to Reserves £200,* in the light of the reasoning above, the tribunal accepts that the provision in 2018 of £200 is reasonable and payable.

Estimated Service Charges 2019

75. In relation to this service charge year the tribunal is only concerned with the estimated service charges (p.57) and half year on account demand (although the Lease provides for a single demand, it no doubt makes practical sense and is fair and reasonable to raise 2x interim demands).

76. Accordingly, in relation to each item the issue is whether the demanded amount satisfies the section 19(2) test (above), that is to say the amount claimed is no greater than is reasonable. Each item of charge is reviewed on this basis in the paragraphs below. In so far as the Respondent may seek to recover any other or greater amounts following preparation of the y/e accounts for 2019 this can of course be the subject of further challenge if appropriate.

77. *Insurance £352.60,* given the renewal schedule (p.102) and the split in premium provided (p.103), the tribunal determines that the sum reasonably incurred and payable for 2019 is, in accordance with that documentation, the sum of £349.70.

78. *Cleaning Common Areas £992,* for the reasons stated in relation to this head of claim in previous years the tribunal determines that the sum payable is £nil.

79. *Utilities £225,* the Respondent has not provided any explanation or evidence to justify the estimate of £225 for 2019. The estimate is nearly twice the incurred charges in 2018. Thus, there is no basis upon which the tribunal can presently accept this estimate as reasonable. By reference to 2018 the tribunal determines that in accordance with section 19(2) a proper and reasonable estimate is in the sum of £120.

80. *Common Areas Repairs/Maintenance £420,* for the reasons stated in relation to this head of claim in previous years the tribunal determines that the sum payable is £nil.

81. *Fire Alarm Maintenance £225,* given the remedying of the fault, the preparation of the report and the apparent intention to outsource maintenance of the alarm to an external contractor, the tribunal accepts that this is a reasonable estimate.

82. *Garden Maintenance £560,* again no explanation is offered by the Respondent for the further escalation in these costs. In the circumstances the tribunal again does not accept that any more than £280 is recoverable on account.

83. *External General Maintenance £620,* given the level of charges in previous years on any view this amount appears excessive. Further, in the absence of any indication that works are to be outsourced the tribunal determines that presently the sum payable is £nil.

84. *Management and Administration £730,* in accordance with the reasoning above in relation to this head of charge in previous years, the tribunal determines that a reasonable estimate in respect of this item is no more than the sum of £660.

85. *Contribution to Reserves £800,* in the light of the reasoning above in respect of Reserve and in the absence of any planned maintenance plan, in the tribunal's judgement a reasonable budgeted sum for this item would be no more than £250.

Late Payment Admin Charges £54 & £96

86. In this regard the tribunal notes that the terms of the Lease expressly provide for the lessee to pay 'all legal or other costs incurred by the Landlord in recovering unpaid rent and/or Service Charge' (see paragraph 7 of Schedule 1, Part 1 above).

87. However, in the light of the determinations above it seems plain that the Applicant has not been and is not in arrears, so as to entitle the Respondent to incur any such costs. Moreover, it does not appear to be the case that the sums claimed are actually incurred costs rather than sums levied by way of penalty, for which there is no

provision under the Lease. In the tribunal's view the sums claimed are not recoverable and it decides accordingly.

Conclusions

88. In accordance with the reasoning above the tribunal duly decides that, subject to compliance with the statutory requirements discussed above, the following sums only are due and payable in respect of the disputed service charges:

(1) Year 2016

	Claimed	Allowed
Insurance	*£682.09*	£292.50
Cleaning Common Areas	*£820*	£nil
Heating/Lighting	*£482*	£100
Common Areas Repairs	*£193*	£nil
Fire Alarm Maintenance	*£140*	£nil
Garden Maintenance	*£280*	£280
External General Maintenance	*£95*	£nil
Management and Admin	*£360*	£360
	£3052.09	£1032.50

(2) Year 2017

	Claimed	Allowed
Insurance	*£352*	£292.50
Cleaning Common Areas	*£960*	£nil
Heating/Lighting	*£515*	£110
Common Areas Repairs	*£386*	£nil
Fire Alarm Maintenance	*£190*	£nil
Garden Maintenance	*£420*	£280
External General Maintenance	*£880*	£nil
Management and Admin	*£660*	£660
Contribution to Reserves	*£600*	£600
	£4,963	£1,942.50

(3) Year 2018

	Claimed	Allowed
Insurance	*£346.50*	£292.50
Cleaning Common Areas	*£1045*	£nil
Utilities	*£119.26*	£119.26
Common Areas Repairs	*£465*	£nil
Fire Alarm Maintenance	*£390*	£nil
Garden Maintenance	*£445*	£280
External General Maintenance	*£108*	£nil
Management and Admin	*£1088*	£660
Contribution to Reserves	*£200*	£200
	£4206.76	£1551.76

(4) Year 2019 (Estimated Budget)

	Budget	Allowed
Insurance	*£352.60*	£349.70
Cleaning Common Areas	*£992*	£nil
Utilities	*£225*	£120

Common Areas Repairs	*£420*	£nil
Fire Alarm Maintenance	*£225*	£225
Garden Maintenance	*£560*	£280
External General Maintenance	*£620*	£nil
Management and Admin	*£730*	£660
Contribution to Reserves	*£800*	£250
Late Payment Admin Charges	*£54 & £96*	£ nil
	£5,074.60	£1,884.70

The Applicant's Service Charge Proportion being 20% in relation to each year as provided under clause 1.22 of the Lease.

Section 20C/Paragraph 5A

89. It is not apparent that the Respondent has incurred any legal costs in relation to this application or what if any other costs the Respondent has incurred or on what basis it may seek to recover these. In any event though, in the light of the principles and case law referred to above (see paragraphs 14 to 19), in the circumstance of this case the tribunal has no hesitation in making the orders sought by the Applicant under both Section 20C and Paragraph 5A.

90. Given the obvious failures by the Respondent to operate the terms of the Lease or comply with statutory requirements, its failure to provide documentation and in many instances any substantiation, explanation or evidence whatsoever in support of the claimed charges and of course the inevitable consequent outcome of the application itself, the tribunal is in no doubt that the making of such orders is just and equitable.

91. The tribunal accordingly directs that all or any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant, and equally under Paragraph 5A makes an order extinguishing the Applicant's liability if any to pay an administration charge in respect of any such costs.

Right to Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein. That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application (a) written reasons for the decision or (b) notification of amended reasons for, correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

Dated as above.