FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UB/LSC/2019/0078**
Property	**:**	**Flat 125, The Cherry Building(s), 125 Addenbrookes Road, Trumpington, Cambridge CB2 9BA**
Applicant	**:**	**Dr Frank Gommer**
Respondent	**:**	**RMB102 Limited**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge Ruth Wayte** **Judge David Wyatt**
Date of decision	**:**	**24 April 2020**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the service charges payable by the Applicant for the 2017/18 service charge year are in the sum of £3,288.75, subject to deduction of the appropriate proportion(s) of the total sum of £10,751.37 which the Respondent, or their previous managing agents, had already agreed to refund to the service charge account.

(2) The tribunal makes no order under Section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**"), or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, or otherwise as to costs.

(3) These decisions are explained in detail below. The relevant legal provisions are set out in the Appendix to this decision.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the 1985 Act as to the amount of service charges payable by the Applicant in respect of the 2017/18 service charge year.

2. The case management directions given by the tribunal on 23 December 2019 directed that this application was to be determined based on the papers to be produced by the parties in their bundles, without a hearing or an inspection, unless by specified dates either party requested a hearing or an inspection. Neither party did so and the Applicant had in his application already agreed to determination of this matter on paper, without the need for a hearing.

3. Pursuant to the directions, the Applicant lodged copies of the bundle of the documents the parties wished the tribunal to consider when determining this application, confirming that this had been agreed with the Respondent. Accordingly, this decision is based on the documents so provided.

The issues

4. The Applicant has referred to other actual or potential disputes about previous and subsequent service charge years, and a claim in the county court in respect of interruption of gas to the relevant estate in 2017. These issues are not the subject of this application, which is limited to the 2017/18 service charge year, as noted in the case management directions.

5. The Applicant asks the tribunal to determine that the Respondent has failed to comply with Sections 21 and 22 of the 1985 Act. As noted in the case management directions, neither of these provisions are within the jurisdiction of the tribunal and, under the current law, they do not affect the payability of service charges under Section 27A of the 1985 Act.

6. The relevant issues for determination are the payability of service charges in respect of the period from 1 September 2017 to 31 August 2018. The 64 issues (some general and some specific) raised by the Applicant in relation to these service charges are dealt with individually below.

7. The Applicant also seeks (for himself and Katarzyna Nurzynska, described in the application form as the joint tenants of the Property) an order for the limitation of the Respondent's costs in these proceedings, under Section 20C of the 1985 Act, and an order to reduce or extinguish liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

8. The Applicant also seeks his litigation costs from the Respondent, including reimbursement of the application fee paid.

9. Having considered all the documents provided, the tribunal has made determinations of the relevant issues, set out below after summaries of the relevant provisions of the Lease and the correspondence.

The Property

10. Based on the details provided by the parties in their bundles:

    (i) the Building (now known as the Cherry Building(s)) is a purpose-built block which shares common facilities, such as a communal heating system, with another block known as Great East Court; and

    (ii) the Property is a two-bedroom flat (Flat 125) in the Building.

11. The Property was originally known as Plot 305 at the Abode. The service charge accounts for the 2017/18 service charge year describe the relevant part of the estate as "*The Cherry Buildings and Great Court East (Abode Phase 1B)*".

12. It appears that the relevant managing agents were SDL Estate Management until 30 June 2018, then APT Property Management Limited from 1 July 2018, and now involve Flaxfields.

13. The Applicant holds a long Lease of the Property which requires the Respondent landlord to provide services and the Applicant leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease are referred to below.

The Lease

14. The Lease is dated 30 September 2013 and has a remaining unexpired term of over 200 years.

15. Under the terms of the Lease:

    (i) the "*Block Communal Areas*" include the parts of the surrounding Block (other than the Building and the flats) laid out as communal areas, gardens, bin and other stores;

    (ii) the "*Building Communal Areas*" include the parts of the Building laid out as communal entrances, accessways, stores, any lifts, communal boilers/Heat Installations and Energy Centre;

(iii) the "*Service Charge*" is the total cost of providing the Services;

(iv) the "*Services*" are set out in the Fifth Schedule to the Lease; and

(v) the "*Service Charge Year*" is the period from 1 September to 31 August.

Covenants to provide Services and pay Service Charges

16. By clause 5 of the Lease, the landlord covenants to carry out the Services appropriate to the Property. By clause 4 of the Lease, the leaseholder covenants with the landlord to pay the "*Proportion*" of:

(i) the Service Charge by two equal instalments in advance on 1 September and 1 March in respect of each Service Charge Year;

(ii) the appropriate "*Service Charge Adjustment*" pursuant to paragraph 3 of the Fourth Schedule; and

(iii) any "*Additional Contribution*", meaning any amount the landlord reasonably considers necessary for any of the purposes set out in the Fifth Schedule for which no provision has been made in the Service Charge and for which no reserve provision has been made under paragraph 2.2 of the Fourth Schedule, levied by the landlord.

17. Under the terms of the lease, the "*Proportion*" means the fair and proper proportion assessed by the landlord, acting reasonably, of the Service Charge attributable to the Services, and different proportions may be assessed for the different types of Services set out in Parts I to III of the Fifth Schedule, as summarised below.

18. Applying Section 27A of the 1985 Act to these provisions, the appropriate proportion(s) are to be determined by the tribunal if they are not agreed by the parties. This is addressed below.

The estimated Service Charge and Service Charge Adjustment

19. By paragraph 2 of the Fourth Schedule, the Service Charge will include:

(i) expenditure estimated as likely to be incurred in the Service Charge Year (paragraph 2.1);

(ii) an appropriate amount as a reserve towards Services likely to arise at intervals of more than a year, including decorating the exterior of the Building, the repair of the structure and the repair of the Conduits (paragraph 2.2); and

(iii) a reasonable sum to remunerate the landlord for its administrative and management expenses in respect of the Building, the Block and the Estate, including a profit element, such sum to be determined, if challenged, by an independent accountant acting as expert (paragraph 2.3).

20. Applying Section 27A of the 1985 Act to these provisions, the appropriate amount as a reserve, and the appropriate amount for management, are to be determined by the tribunal if they are not agreed by the parties.

21. By paragraph 3 of the Fourth Schedule, after each Service Charge Year the landlord shall determine the "*Service Charge Adjustment*" as the amount by which the estimates under paragraph 2 have exceeded or fallen short of the actual expenditure in the Service Charge Year, and the leaseholder shall be credited with or on demand pay the Proportion of the Service Charge Adjustment appropriate to the Property.

The Services

22. The Fifth Schedule sets out the relevant Services, divided into:

(i) "*Part A Services*", set out in Part I, for the Building Communal Areas, including repairs, decoration, electricity, employment of staff, maintaining systems/apparatus and repairing the plant and machinery in the Energy Centre and the Heat Installations;

(ii) "*Part B Services*", set out in Part II, for the Building, including repairs, decoration, employment of staff, collection of the Service Charge, management of the Building, insuring the Building for the full replacement value including three years' loss of rent and fees "*and to have the Tenant and the tenants of the other properties included in the policy as insured persons*", maintaining insurance for third party liabilities, paying sums in respect of any lift, accumulating a reserve fund in respect of the lift and paying interest on loans from a bank or other institution to maintain the service charge fund or, if from the landlord's own funds, interest no more than those chargeable for commercial transactions; and

(iii) "*Part C Services*", set out in Part III, for the Block Communal Areas, including maintenance of accessways and parking areas, furnishing, cleaning, lighting, maintaining Conduits, insuring the Block Communal Areas in the same terms as summarised above and maintaining insurance for third party liabilities.

23. Paragraph 33 of the Third Schedule provides for payment for the supply of "*Heat*" (hot/cold water), with the relevant proportion to be calculated based on the square footage of the Property and paid directly, or, if the landlord so elects, as part of and in addition to the Service Charge.

Service charge for 2017/18

24. The total service charges for 2017/18 were £3,392.73, comprised of estimated service charges of £2,427.10 and balancing service charges of £965.63.

25. The Applicant disputes 64 individual figures which he says have been taken into account in determining these service charges.

26. The headings and examination below use the corresponding numbering (1-64) used by the parties in the schedules, statements of case and further submissions they have provided in respect of each of these points of dispute.

General points in dispute

27. Points (1) to (4) are addressed separately in more detail first in this decision, because some of them overlap with the specific individual sums in points (5) to (64), which are addressed in the schedules which follow.

(1) Replies to pre-contract enquiries

28. First, the Applicant says that the service charge should be limited to the estimate provided by the (then) managing agents, SDL, of £2,073.61 plus an allowance for inflation, which he says should have resulted in a maximum service charge of £2,119 for 2017/18. He claims the charges paid above this estimated figure.

29. The Respondent says, in effect, that the tribunal does not have jurisdiction in respect of the terms of a representation made in replies to enquiries raised by a prospective leaseholder.

30. Generally, the tribunal could only have jurisdiction in respect of such a claim if determination of it is essential to determine the payability of service charges, and only so far as it constitutes a defence to the service charges which the tribunal has been asked to determine.

31. It appears that the Lease of the Property was purchased by the Applicant and his joint tenant on 29 September 2017.

32. The Applicant relies on copies of management information replies dated 29 June 2017 from SDL, which state that the current service charge was £2,073.61, saying that this had been paid up to 31 August 2017 and that they did not anticipate any substantial increase in the service charge over the next 12 months.

33. However, these replies also stated that an inflationary increase of 4-6% could be expected, that the heat recharge had only been paid up to 30 November 2016 and that, since the accounts for 2014/15 had not yet been issued:

> "*We are unable to comment on the year end for August 2015 and would suggest that you consider holding a retention or some other arrangements are made in relation to any balancing charges which may arise. Any balancing charges will be levied against the new owner when and if they are raised*."

34. The Applicant has not explained whether he arranged for a retention or other arrangement to cover or mitigate such balancing charges.

35. In these circumstances, the tribunal is not satisfied that it is essential for it to determine any claim in respect of the replies. If the tribunal was determining such a claim, it would have dismissed it, particularly in view of:

    (i) the information given in the replies, warning of potential balancing and other charges and not committing to the figures asserted by the Applicant; and

    (ii) the fact that no evidence has been produced to show that the relevant statements were wrong based on the information available when they were made.

(2) Agreed refund

36. The Applicant states that the Respondent has through the former managing agents, SDL, agreed to refund £10,751.37 for sums incorrectly charged to leaseholders. The Respondent confirms that this refund has been processed and will be transferred to the current managing agents.

37. This is noted, but is of little use for the purposes of this determination because it does not explain how much of this sum is said to relate to the Applicant or even to the different schedules of expenditure, of which different proportions are charged to the Applicant.

(3) Difference between summary report and reconciliation file

38. The Applicant states that there is an unexplained difference of £3,576.44 between the service charge summary and the detailed list of invoices in the reconciliation files. The Respondent states that the Applicant is using original printouts which will include errors/duplications which have since been corrected in the 2017/18 accounts, and that the printouts will not include accruals or prepayments for the year end.

39. The Applicant has not explained the calculation of this figure, or produced the reconciliation files to which he refers. Further, it appears that this figure may already be included in the agreed refund in point (2) above, or includes sums disputed individually under points (5) to (64) below. The Applicant adds that this sum of £3,576.44 will be sought separately by a residents' association for the entire estate.

40. Accordingly, it is not appropriate to make any separate determination in respect of this figure.

(4) Section 20B of the 1985 Act

41. Again, no separate determination is made in respect of the sum of £20,627 referred to by the Applicant as his point (4) because no calculation has been provided and this figure seems to include sums disputed individually within points (5) to (64) below. However, it is convenient to examine the general issue here to avoid repetition later.

42. The Applicant says (in effect) that relevant costs are not recoverable because they were incurred more than 18 months before they were demanded. That would be the normal effect of Section 20B(1) of the 1985 Act in respect of a demand for a balancing charge in relation to any such costs. The Respondent says that Section 20(B)(1) does not apply because it issued notice under Section 20B(2) for the 2017/18 accounts. The Applicant replies that such notice was invalid. This is examined below.

43. The estimate dated 5 September 2017 and issued by the managing agents for 2017/18 proposed service charge expenditure of £2,427.10. It appears that half of this sum (£1,213.55) was demanded from the former owners of the Property, as the instalment due on 1 September 2017. By invoice dated 28 February 2018, the other instalment due on 1 March 2018 (£1,213.55) was demanded from the Applicant and his joint tenant.

44. By letter dated 11 April 2019, the managing agents sought to give notice under Section 20B(2) of the 1985 Act. The letter notified the Applicant and his joint tenant that:

> "*… costs have been incurred, towards which you will subsequently be required to contribute, under the terms of your lease, by way of a balancing Service Charge.*"
>
> "*… the year-end accounts for 2018 are still with the external auditors and will be issued once received. We currently believe the anticipated overspend for the development to be approximately £26,000.00.*"
>
> "*Your individual contribution (balancing Service Charge) will be confirmed and issued once the accounts are finalised. This*

considers all on account contributions that you have already made throughout the financial year and can result in either an additional amount being required, or a credit balance being applied to your service charge account."

45. The Applicant produces an e-mail (which seems, oddly, to be dated 22 March 2019) to the Respondent saying that this notice is rejected, pointing out amongst other things that the costs in question had not been itemised. In his statements of case and submissions, the Applicant argues (in effect) that the relevant works or services must be listed in such a notice and refers to various authorities, particularly Brent LBC v Shulem B Association Ltd [2011] EWHC 1663 (Ch). He contends that all invoices predating 26 January 2018 are irrecoverable. This appears to have been calculated as about 18 months before service of the subsequent demand for the balancing charges, dated 25 July 2019, which is mentioned below.

46. At first glance, the notice appears to satisfy part of Section 20B(2) (set out in the Appendix to this decision), in that it says that costs had been incurred and that the tenant would subsequently be required under the terms of the Lease to contribute to them by the payment of a balancing service charge.

47. In Brent LBC v Shulem B Association Ltd, Morgan J did observe at paragraph [56] that Section 20B(2) appeared to require the landlord (lessor) to identify the costs which have been incurred. This observation does not necessarily require the lessor to itemise the costs in the notice, because it was made in the context of examining submissions made in that case, finding that the language of Section 20B(2) means that the notice must state "*…that the relevant costs which were incurred more than 18 months before the relevant demand for payment of the service charge have been incurred…*" and concluding [65] that:

> *"the written notification must state a figure for the costs which have been incurred by the lessor. A notice which so states will be valid for the purpose of subsection (2) even if the costs which the lessor later puts forward in a service charge demand are in a lesser amount."*
>
> *"Secondly, the notice for the purposes of subsection (2) must tell the lessee that the lessee will subsequently be required under the terms of his lease to contribute to those costs by the payment of a service charge. It is not necessary for the notice to tell the lessee what proportion of the cost will be passed on to the lessee nor what the resulting service charge demand will be."*

48. However, even if the notice would otherwise be valid, it seems to have fallen into similar errors as the notice in Brent LBC v Shulem B

Association Ltd, because it does not state the actual costs incurred by the landlord. In that case, Morgan J held that:

(i) a notice would be valid if it stated that the landlord had incurred actual costs of a specified figure, even if the landlord added a statement that the landlord might be able to inform the tenant in due course that it had managed to reduce its liability towards those costs; but

(ii) a notice which stated that the landlord had incurred costs, but estimated what those costs would be and gave an indicative figure for the contribution payable by the tenant, did not satisfy the requirement to state a figure for the costs which have been incurred by the landlord.

49. This notice did not purport to state what the actual costs were. It said that (unspecified) costs had been incurred but then talked about the accounts and referred only to an "*anticipated overspend for the development*" of "*approximately £26,000.00*".

50. Even if that reference could be read as a statement that the landlord had incurred additional costs of £26,000, the notice does not satisfy the second requirement, that it tell the tenant that they would subsequently be required under the terms of the Lease to contribute towards these costs by payment of a service charge. It gives that indication to begin with, but then contradicts it by concluding that depending on the contributions made through the year the tenants might be required to pay an additional amount, or might be entitled to a credit to their service charge account.

51. Accordingly, the tribunal determines that the letter dated 11 April 2019 was not a valid notice under Section 20B(2).

52. By a request for payment dated 25 July 2019, balancing charges of £965.63 were demanded for the 2017/18 service charge year, comprising the sums set out in the first table below.

53. In these circumstances:

(i) Section 20B(1) will, in effect, not apply to relevant costs covered by the estimated service charges demanded and paid on account (which were £2,427.10 in respect of the Property, as set out above); and

(ii) applying Section 20B(1), if any of the relevant costs taken into account in determining the amount of the balancing service charges of £965.63 were incurred before about 26 January 2018,

the Applicant and his joint tenant are not liable to pay so much of the service charge as reflects the costs so incurred.

(5) to (64) - Specific points in dispute

54. The landlord appears to have split expenditure into six schedules for different parts of its estate, of which the Applicant and his joint tenant have been asked to pay the following proportions through the service charge:

Schedule	Expenditure	Proportion	Estimated 2017/18 service charge (£)	Balancing charge in 2019 (£)
1	Estate	2.5%	270	72.81
2	1B Great Court East	NA	0	0
3	1B Marker (Cherry) Building	11.4430%	1,410.92	507.88
4	Marker Building	16.67%	108.36	34.04
5	Energy/water equipment	3.81%	596.76	213.02
6	East Court & Marker	3.57%	41.06	137.88
Totals			2,427.10	965.63

55. The Applicant has not challenged these proportions or the allocations of the expenditure under these schedules. Although these allocations appear different from the simpler categories set out in the Lease, the method of calculation of the hot/cold water recharging proportion is set out in the Lease and for all other services it is for the tribunal to determine the appropriate proportion(s) if they are not agreed by the parties, as explained above in the summary of the Lease provisions. Since these proportions and allocations seem to have been agreed by the parties and no further information has been provided about this, the tribunal takes these as appropriate for the purposes of this decision.

56. The Applicant has made his individual points of dispute in six corresponding schedules, with a further schedule in relation to insurance. In examining these below, this decision uses the same format and numbering for ease of reference.

(5) to (20) - Schedule 1 – estate expenditure

No.	Disputed items (£)	Tribunal	Amount (£)
5.	118.81	Reasonable meter cost	No change
6.	1.24	Reasonable meter cost	No change
7.	168.69	Accounting entry which appears to be within estimated service charge; reasonable meter cost	No change
8.	102	Invoice produced and appears to be within estimated service charge; reasonable engineer cost	No change
9.	727.20	Invoice produced; cost reasonable for attendance and production, but dispute about number of fobs handed over	Deduct 200
10.	727.20	Invoice dated 19 January 2018 and does not appear to have been within estimated service charge	Disallowed
11.	266.67	Reasonable ground maintenance cost	No change
12.	266.67	Accounting entry on change of managing agent, Respondent confirms corrected	No change
13.	266.67	As item 12 above	No change
14.	3,518.42	See insurance schedule below (items 55 to 64)	No change
15.	520	Accounting entry for management cost which appears to be within estimated service charge	No change
16.	520	As item 15 above	No change
17.	912	Reasonable cost for standard fire and health and safety risk assessment report produced; appears to be within estimated service charge	No change
18.	17.88	Under the Lease, the Respondent would be entitled to charge interest in some circumstances, but appears to	Disallowed

		be borrowing from a group company and (by e-mail of 1 June 2018) indicated that no interest on a loan of £10,000 would be charged to the service charge account. No proper information has been provided about this interest or on which sums it is being charged.	
19.	133.29	As item 18 above	Disallowed
20.	53.33	As item 18 above	Disallowed
Conclusion		**Deduct £1,131.70 from Schedule 1 expenditure**	

(21) to (25) - Schedule 2 – 1B Great Court East

57. The Applicant has produced a schedule of points in dispute in relation to items of expenditure totalling £1,745.63 under Schedule 2 (as explained above).

58. However, as noted above, no service charge has been made to the Applicant in respect of the costs in this schedule. Accordingly, it is not relevant to the determination of his liability to pay service charges.

(26) to (33) – Schedule 3 – 1B Marker (Cherry) Building

No.	Disputed items (£)	Tribunal	Amount (£)
26.	158.33	Reasonable cost for communal cleaning; not duplicated	No change
27.	377.40	Invoice dated 2016; Respondent indicates SDL have agreed to reimburse this sum	Deduct 377.40
28.	699.77	Reasonable cost for lift work; not duplicated	No change
29.	396.77	Reasonable cost for lift work; not duplicated	No change
30.	87.98	Accounting entry for management cost which appears to be within estimated service charge demands	No change
31.	264	As item 30 above	No change

32.	930	Not duplicated	No change
33.	930	Not duplicated	No change
Conclusion		**Deduct £377.40 from Schedule 3 expenditure**	

(34) – Schedule 4 – Marker Building

59. The only entry in this schedule is a sum of £40 said to have been paid twice and beyond the 18-month period. The Respondent confirms that this is an accounting entry, not a duplicate. Again, it appears to be within the estimated service charge demands. No change is appropriate.

(35) to (52) – Schedule 5 – Energy/water equipment

No.	Disputed items (£)	Tribunal	Amount (£)
35.	30.95	The Respondent states that this cost was not included in the 2017/18 accounts. The Applicant disputes this, saying that the invoice was in the relevant reconciliation file, so would have been charged, without providing a calculation. The Respondent's statement is more credible.	No change
36.	14.08	As item 35 above	No change
37.	273.33	Invoice produced, dated April 2018; reasonable energy cost	No change
38.	535	As item 35 above	No change
39.	37.21	As item 35 above	No change
40.	39.02	As item 35 above	No change
41.	35.54	As item 35 above	No change
42.	552.84	As item 35 above	No change
43.	54.84	Accounting entry which appears to be within estimated service charge demands	No change

44.	120	Invoice is dated September 2017 but appears to be within estimated service charge demands	No change
45.	360	Invoice dated June 2017; Respondent indicates SDL have agreed to reimburse this sum	Deduct 360
46.	665.90	Accounting entry, not duplication	No change
47.	472.50	As item 46 above	No change
48.	588	As item 46 above	No change
49.	483.80	As item 46 above	No change
50.	472.50	As item 46 above	No change
51.	483.80	As item 46 above	No change
52.	357.29	As the Applicant says, this invoice does only seek payment of £179.26. However, it acknowledges that is because £554.06 had been paid on account since the last invoice.	No change
Conclusion		**Deduct £360 from Schedule 5 expenditure**	

(53) to (54) – Schedule 6 – East Court and Marker

No.	Disputed items (£)	Tribunal	Amount (£)
53	16.59	As item 35 above	No change
54.	526.14	The Respondent agrees that this invoice relates to the 2016/17 financial year and this sum will be refunded.	Deduct 526.14
Conclusion		**Deduct £526.14 from Schedule 6 expenditure**	

(55) to (64) – Insurance

60. The Applicant refers to different items of insurance costs, alleges double accounting, states that the premium was reduced from £6,139.72 to £5,262.61 after alternative quotations were obtained by another

leaseholder, states that a lower quotation of £4,498.41 was obtained from Allianz and challenges the practice of putting the landlord's entire property portfolio out to tender for insurance. The individual costs challenged by the Applicant are addressed in the schedule below, although some of these appear to relate to accounting entries rather than actual costs.

61. As to the general points made by the Applicant, the Respondent answers that a major insurance tender exercise was carried out at renewal in 2015 and a new insurer, Zurich, was selected (from a panel including Aviva, Allianz, RSA, Amlin and Travelers) to replace NIG. The same exercise was conducted in 2018 and in each case the Respondent says (in effect) that the brokers advised that Zurich provided the optimum balance of value for money.

September 2017 to March 2018

62. It appears that no alternative quotations were provided by leaseholders in respect of the policies which ran from March 2017 to March 2018. The Applicant alleges that part of this relates to the previous service charge year and that all of it is irrecoverable because it was incurred more than 18 months ago.

63. The Respondent has produced calculations of its apportionments indicating that the relevant parts, not all, of the premia were allocated to the 2017/18 service charge year, as noted at item 14 of the points of dispute above. It appears that, as might be expected, these levels of costs were within the estimated service charge demands.

64. Even considering the premium reduction for the following insurance year, as explained below, based on the information provided about the development and the claims history produced (where it appears that two claims had already been made before March 2017, one in September 2016 and one in February 2017), the insurance cost was reasonably incurred.

March to August 2018

65. The Respondent states that, after renewal of the insurance policies in 2018, a leaseholder submitted two alternative quotes for buildings insurance, based on the claims history of the development, of £5,936 from Aviva and £4,498.41. The Respondent then negotiated with Zurich, who agreed to reduce the premium to £5,262.61 for the period from 25 March 2018 to 24 March 2019.

66. In the circumstances and where it appears that at least three new claims were made before renewal in March 2018 (one in May 2017 and two in January 2018), this premium was reasonably incurred.

Commission

67. In his reply, the Applicant alleges that a commission has been paid by insurers and should be refunded. He did not make that allegation in his points of dispute. He made it only in his reply to the Respondent's answers to his points of dispute, so the Respondent has not had an opportunity to respond to it.

68. The tribunal notes that the bundle includes an e-mail dated 13 January 2020 from the Respondent, answering questions from the Applicant about the insurance arrangements. This e-mail acknowledges that insurers "allow" E&J Capital Partners Ltd (which appears to be associated with the Respondent) a commission for services provided by their in-house insurance department and asserts that this does not change the total cost of insurance because this work would otherwise have to be performed by the insurer or broker.

69. In view of the failure by the Applicant to make this allegation with his other points of dispute, giving the Respondent no opportunity to provide more information about this commission and the justification put forward, the tribunal will for the purposes of this determination accept the explanation given in the e-mail described above as more likely than not to be true.

No.	**Disputed items (£)**	**Tribunal**	**Amount (£)**
55.	Schedule 1, 3,518.42	As explained above; accounting entry for proper apportionment of the 2017 buildings insurance policy.	No change
56.	Schedule 1, 460.16	As explained above; proper apportionment of the 2018 buildings insurance policy.	No change
57.	Schedule 1, 40.39	Reasonable cost for terrorism insurance; proper apportionment.	No change
58.	Schedule 2, 6,601.65	As items 21 to 25 above; costs in Schedule 2 were not charged to the Applicant. Further, this appears to be an accounting entry.	No change
59.	Schedule 2, 3,430.32	As item 58 above	No change
60.	Schedule 2, 301.11	As item 58 above	No change

61.	Schedule 3, 365.08	Reasonable cost for engineering inspection and insurance, which appears to have been within the estimated service charge demands.	No change
62.	Schedule 3, 1,372.13	As explained above; proper apportionment of the 2018 buildings insurance policy.	No change
63.	Schedule 3, 120.44	Reasonable cost for terrorism insurance; proper apportionment.	No change
64.	Schedule 2, 432	As items 21 to 25 above. Further, the Respondent has confirmed that this invoice was not paid and has been cancelled.	No change
Conclusion		**No changes in respect of insurance**	

Summary

70. Accordingly, the adjustments to be made in respect of the service charges payable by the Applicant as a result of the determinations made by the tribunal are as follows:

Schedule	Total cost deduction (£)	Expenditure	Proportion	Adjustment (£)
1	1,131.70	Estate	2.5%	28.29
2	NA	1B Great Court East	NA	NA
3	377.40	1B Marker (Cherry) Building	11.4430%	43.19
4	No change	Marker Building	16.67%	NA
5	360	Energy/water equipment	3.81%	13.72
6	526.14	East Court & Marker	3.57%	18.78
Total				**103.98**

71. The total service charges claimed and apparently paid for 2017/18 were £3,392.73, as explained above. This is to be reduced by £103.98, as calculated above, which leaves a balance of £3,288.75.

72. This level of service charges still appears relatively high for a property of this size, which seems to have been part of a development completed only about seven years ago. The Applicant has made his case on, and documents have been provided about, his points of dispute rather than the other costs incurred, which gives the tribunal limited information with which to assess those other costs. However, it seems this is a relatively complex development with communal heating installations, recharging arrangements and other communal facilities, where higher service charges would be expected.

73. Further, the balance of £3,288.75 is to be reduced further, to reflect the appropriate proportion(s) of the total sum of £10,751.37 which the Respondent, or their previous managing agents, had previously agreed to refund to the service charge account, as noted under point (2) above.

74. In the circumstances and based on the information provided by the parties, the tribunal determines that the service charges payable by the Applicant for the 2017/18 service charge year are in the sum of £3,288.75, subject to deduction of the appropriate proportion(s) of the total sum of £10,751.37 which the Respondent, or their previous managing agents, had previously agreed to refund to the service charge account.

Application under s.20C and para.5A

75. The Applicant applied for an order under Section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the 2002 Act.

76. As to the application under Section 20C of the 1985 Act, the tribunal does not consider it just and equitable to make such an order. There have evidently been problems with accounting/administration by or for the Respondent and other issues over the years; the accounts and other documents produced are difficult to follow and had already been revised once. Further, the Applicant argues (in effect) that the Respondent has been obstructive and he has made serious allegations against them, including suggestions of fraud mixed in with his points of dispute.

77. However, the Applicant has proved none of these serious allegations. He appears to have adopted a rather disproportionate and confrontational approach which has achieved only a very modest adjustment in the service charges for 2017/18. Much of that modest adjustment is comprised of concessions from the Respondent rather than reductions by the tribunal. The more significant reduction, noted under point (2)

above, had already been agreed by the Respondent, or their managing agents.

78. Further, it is important to consider the overall financial consequences that making such an order would have; it would not be just and equitable for the other leaseholders to have to pay any such costs through the service charge if the Applicant and his joint tenant do not.

79. If the Respondent seeks to recover such costs through the service charge and if any of those costs are not payable under the Lease and/or are unreasonable, an application can be made to the tribunal for a determination of the relevant service charges under Section 27A of the 1985 Act.

80. The tribunal does not make an order under paragraph 5A of Schedule 11 to the 2002 Act, for the same initial reasons and because it has not been informed of any particular administration charge in respect of costs incurred by the Respondent in these proceedings before this tribunal.

Application for an order for costs

81. Finally, the Applicant asks the tribunal to order the Respondent to pay his costs, as a litigant in person, under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant refers to authorities and says that the Respondent should pay his costs because the Respondent hindered any out of court agreement, has acted unreasonably and should pay wasted costs.

82. Under Rule 13, in this type of case the tribunal may make an order in respect of costs only: (1) if the Respondent has acted unreasonably in defending or conducting these proceedings; or (2) as a wasted costs order.

83. As to the first option, in deciding whether a party has acted unreasonably, the Upper Tribunal in Willow Court Management Company 1985 Ltd v Alexander [2016] UKUT 0290 cites with approval the judgment of Sir Thomas Bingham MR in Ridehalgh v Horsefield [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

> "*"Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?*".

84. On the information provided to the tribunal and for the same initial reasons given above in relation to the application for an order under Section 20C of the 1985 Act, the tribunal determines that the Respondent has not acted unreasonably in defending or conducting these proceedings.

85. As to the second option, for the purposes of Rule 13, a wasted costs order is an order under Section 29(4) of the Tribunals, Courts and Enforcement Act 2007. In summary, this gives a power to disallow or order a legal or other relevant representative to meet any costs incurred by a party, as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other relevant representative, which it is unreasonable to expect that party to pay. This does not appear to apply in these circumstances. Even if it does, the Applicant has not demonstrated any such improper, unreasonable or negligent act or omission.

86. For the reasons given above, the tribunal does not order the Respondent to pay the Applicant's costs. For the same factual reasons, the tribunal does not order the Respondent to reimburse the application fee incurred by the Applicant.

Name: Judge David Wyatt Date: 24 April 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 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 provisions 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.

Section 27A

(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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(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).

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are

limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months

before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.