FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/31UB/LSC/2019/0081**
Property	:	**17 Loughland Close, Blaby, Leicester LE8 4PB**
Applicant	:	**Andrew Christopher Ramsbottom & Andrea Lesley Ramsbottom**
Representative	**:**	**Sarah Manning of Summerfield Browne, Solicitors** **Ms Lara MacDonnell of Counsel**
Respondent(landlord)	**:**	**Holding and Management (Solitaire) Limited**
Managing Agent	**:**	**First Port Property Services Ltd**
Representative	**:**	**J B Leitch, Solicitors** **Ms Kimberley Zia of Counsel**
Type of Application	**:**	**to determine the reasonableness and payability of the Service Charges (section 27A Landlord and tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002)** **to determine whether the landlord's costs arising from the of proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985)** **to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002)**
Date of Hearing	**:**	**11th May 2020**
Tribunal	**:**	**Judge J R Morris** **Mrs M Hardman IRRV (Hons) FRICS**
Date of Decision	**:**	**6th July 2020**

DECISION

Decision

1. The Tribunal determines that the Insurance premium of £30 for Terrorism and £948.00 for Buildings to be incurred and incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

2. The Tribunal determines that the Estate Service Charge of £313.19 for the Property to be incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

3. The Tribunal determines that the Estate Service Charge of £287.13 (subject to a credit or an additional payment when the electricity invoice is received and a copy produced to the Applicant) for the Property incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

4. The Tribunal determines that the equitable Service Charge Proportion for the Property is 1/31st of the Aggregate Annual Maintenance Provision attributable to the Estate for the Estate Services set out in the Fifth Schedule.

5. The Tribunal determines that the Administration Charges of £60.00 claimed for each letter sent out requesting payment of the estimated service charges on 13th November 2017 and 14th May 2019 totalling £120.00 are not reasonable and therefore not payable.

6. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

7. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Reasons

Introduction

8. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to whether service and administration charges are reasonable.

9. The Applicant also seeks a determination as to whether the re-apportionment of the Service Charge following the division of the management of the Estate between the Right to Manage Company and the Respondent is necessary and equitable.

10. The Applicant further seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

11. Directions were issued 7th January 2020.

Description of the Development and Property

12. The Tribunal had on 15th April 2014 and 31st January 2019 in relation to two other cases (CAM/31UB/LSC/2012/0067 and CAM/31UB/LIS/2018/0026 respectively) inspected Loughland Close and found as follows:

13. The Estate comprises 31 units comprising three detached blocks containing 21 flats, two semidetached houses and two blocks of four maisonettes (one of which contains "the Property"), together with two bin stores and a bicycle store, ranged around a central parking area, in which each residential unit has one allocated parking space and the remainder are for visitors.

14. The Tribunal found that the buildings on the Estate were modern and, at that time, were in generally fair to good condition. The grounds were in fair condition for the time of year and the grass and shrubs appeared to have been cut during the previous season. The hard landscaping was in good condition as was the car park which was free of litter.

15. The Tribunal found a large area of grass beyond the buildings on the South and East side of the Development which had been fenced off was not a part of the Estate.

16. The Property is a first-floor maisonette in one of the two blocks of four maisonettes. The blocks of maisonettes comprise 2 two-bedroom units on the ground floor and 2 two-bedroom units of the first floor. The block in which the Property is situated is hereinafter referred to as the "Maisonettes".

The Lease

17. A Copy of the Lease dated 24th September 2004 between David Wilson Homes Limited (1) (Developer), Andrew Christopher Ramsbottom and Andrea Lesley Ramsbottom (2) (Lessee) and Holding & Management (Solitaire) Limited (3) (Company) was provided. The Lease is for a term of £125 years from 1st April 2004. The relevant terms are set out below. The party referred to as the "Company" in the Lease is the Respondent and Landlord.

18. The First Schedule describes the Property as a maisonette as follows:

Part 1 – Description of the Maisonette

1. *The Maisonette comprises all those rooms on the first floor of the Building and edged red on Plan No 1 and on the ground floor edged red on Plan No 2 annexed hereto*
2. *The Maisonette includes (for the purpose of obligation as well as grant):*
   - *(i) The floor of the Maisonette (including the joists)*
   - *(ii) The roof of the Building and gutters and downpipes*
   - *(iii) The walls bounding and lying within the maisonette and all windows and doors set therein*
   - *(iv) All conduits which are laid in any part of the Building and serve exclusively the Maisonette but excludes any conduits in the building which do not serve exclusively the Maisonette*

Part II

1. *The Parking Space edged red and marked with the plot number referred to in paragraph 4 of the Particulars to this Lease on Plan 2 annexed hereto*
2. *The Parking Space shall include for the purpose of grant only the macadam surface thereof and any parking post or similar fixture now or at the time hereafter fixed thereon but shall exclude the land below the same*

Part III – Rights granted to the Lessee

These are a number of provisions which enable the Lessee to obtain access to maintain the Maisonette and to use the Estate

19. By reason of the First Schedule the whole of the Property is demised and the Applicants are responsible for its maintenance. The common parts are the Estate which is defined in Item 15 of the Particulars of the Lease as:
The communal gardens visitors parking areas refuse bins storage facility and accesses and paths within the area shown edged yellow on Plan Number 2 annexed hereto but not any accessways or paths within any building

20. The Service Charge Proportion is only payable for the maintenance of the Estate and is defined in Item 14 of the Particulars of the Lease as:
1/31st of the Aggregate Annual Maintenance Provision attributable to the Estate for the Estate Services set out in the Fifth Schedule

21. The Fourth Schedule Part I states how the Proportions may be varied as follows:
If in the opinion of the Company it should at any time become necessary or equitable to do so the Company shall recalculate on an equitable basis the proportions appropriate to the maisonettes and parking spaces in the |building and notify the lessees accordingly and in such case as from the date specified in the notice (which of the avoidance of doubt can be a date prior to the date of the notice) the new proportion notified to the Lessee in respect of the Property shall be substituted for that set out in the Particulars Item 14 and the new proportions notified to the other lessees in respect of the other Maisonettes and parking spaces shall also be substituted for those set out in Clause 1.2 of their leases

22. The Annual Maintenance Provision is defined in clause 1.7 as:
the total of the sums computed in accordance with the Fourth Schedule Part II

23. The relevant part of the Fourth Schedule Part II - Computation of Annual Maintenance Provision states:
2. The Annual Maintenance Provision shall consist of a sum comprising:
(i) The expenditure estimated as likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fifth Schedule together with
(ii) An appropriate amount as a reserve for or towards those of the matter mentioned in the Fifth Schedule as are likely to give rise to expenditure after such maintenance Year being matters which are likely to give rise to either only once during such unexpired term including (without prejudice to the generality of the foregoing) such matters as the decorating of the exterior of the Block the repair of the structure thereof and the repair of the conduits
(iii) A reasonable sum to remunerate the Company for its administrative and management expenses (including a profit element) …
3.
(a) After the end of each Maintenance year the Company shall determine the Maintenance Adjustment calculated as set out in the next following sub-paragraph
(b) The maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2 (i) above shall have exceeded or fallen short of the actual expenditure in the Maintenance year
(c) The Lessee shall be allowed or shall on demand pay as the case may be the proportion of the maintenance Adjustment appropriate to the Maisonette and parking Space
4. …
5. The Company shall arrange for accounts of the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Lessee a summary of such accounts

24. The relevant parts of the Fifth Schedule – Services attributable to the Estate are:

Maintenance of the Grounds

1.

(a) Properly to cultivate and preserve in good order and condition the Communal gardens

(b) To keep the Common Accessway and roads and footpaths and all parking spaces fences screens walls and the communal bin storage comprised in the estate properly repaired maintained and surfaced and (where appropriate) lighted

Payment of costs incurred in management of the Estate

4. To make provision for the payment of all costs and expenses incurred by the Company:

(a) in the running and management of the Estate and the costs and expenses (including Solicitors costs) incurred in the collection of service charges in respect of the Estate and in the enforcement of the covenants and conditions and regulations contained in the leases relating to the parking spaces and the Estate

(b) …

(c) in the determination of the Company's remuneration referred to in paragraph 2(iii) of Part II of the Fourth Schedule

(d) in the preparation and audit of the Service Charge accounts for the Annual Maintenance Provision for the Estate

(e) in the payment of the costs fees and expenses paid to nay Managing Agent appointed by the Company in respect of the Estate

Third Party Insurance

7. To effect insurance against the liability of the Company to third parties and against such other risks and in such amount as the Company shall think fit in respect of the Estate

Other services and expenses

8. To carry out all repairs to any part of the Estate for which the Company may be liable and to provide and supply such other services in relation to the Estate for the benefit of the Lessee and other tenants of properties on the estate

25. The relevant parts of the Third Schedule – Lessee's Covenants are:

2 (b) To pay to the Company on a full indemnity basis all costs and expenses incurred by the Company or the Company's Solicitors in enforcing the payment by the Lessee of any Rent Service Charge Maintenance Adjustment Special Contribution or other monies payable by the Lessee under the terms of this Lease

26. Under clause 3 of the Lease the Lessee covenants:

3.2 In respect of every Maintenance Year to pay the Service Charge to the Company by two equal instalments in advance on the half yearly days

3.3 To pay the Company on demand a due proportion of any Maintenance Adjustment pursuant to paragraph 3 of Part II of the Fourth Schedule

3.7 To repay to the Company on demand fifty per cent of the cost to the Company of insuring the Building in accordance with the covenant on its behalf contained in Clause 4.1(e)

27. Under Clause 4.1(e) the Company covenants to:
Keep the Building insured at all times during the term in the joint names… of the Lessee against loss or damage by fire flood and other risks third party liability and special risks normally insured under a comprehensive policy…

Issues

28. The Tribunal has identified from the Application, Scott Schedule, Statements of Case and Witness Statements the following issues:

Issue 1

29. The Application specifically relates to the reasonableness of the service charges to be incurred and incurred for the year 1st April 2017 to 31st March 2018.

30. The Application related to the reasonableness of the service charges for years 1st April 2018 to 31st March 2019 and 1st April 2019 to 31st March 2020 to be incurred i.e. the reasonableness of the estimated Service Charges. However, it was acknowledged by both parties in the written submissions and at the hearing that no demand had been issued or received for the Service Charges for these years and therefore they were no longer in issue.

Issue 2

31. The re-apportionment of the Service Charge following the division of the management of the Estate between the Right to Manage Company is in issue.

Issue 3

32. The Administration Charges of £60.00 on 13th November 2017 and 14th May 2019 for late payment of Service Charges totalling £120.00 are in issue.

Issue 4

33. An Application was under section 20C for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

Issue 5

34. An Application for an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The Hearing and Further Submissions

35. A telephone hearing was held on 11th May at 10.00 which was attended by Mr Ramsbottom, one of the Applicants, Ms Lara McDonnell of Counsel, representing the Applicants, Ms Kimberley Ziya of Counsel, representing the Respondent and Ms Emma Sutton of First Port, the Managing Agents.

36. The Tribunal was satisfied that it had taken sufficient evidence from the parties both orally and in writing in the statements of case, witness statements and other supporting documents to make a determination in respect of Issues 1, 3, 4 and 5 following the hearing.

37. In respect of Issue 2 the Respondent's Counsel made an oral legal submission at the hearing. However, no written skeleton argument had been submitted and although copies of the authorities were provided and supporting documentation including the accounts for the actual expenditure for the year 1st April 2016 to 31st March 2017 these were not available until the morning of the hearing. As a result, the Applicant did not have an opportunity to prepare a reply and the Tribunal did not have an opportunity to examine and question the points raised. The Tribunal was of the opinion that 2 points were raised which were pertinent to the case and that it was in the interests of both parties that they should be addressed. These were as follows.

Point 1

38. Following the transfer of management of the blocks comprising 21 flats to the Right to Manage Company, the Respondent was left with the management of the maisonettes.

39. The management of the flats included the common parts of the flats together with the structure of the building and the Estate. The management of the maisonettes appears only to relate to the Estate as under the Description of the Maisonette and Parking Space in the First Schedule of the Lease the building and the parking space are wholly demised. Therefore, under the Lease both the Right to Manage Company and the Respondent are responsible for managing the Estate which is defined at paragraph 15 of the Particulars as:

    The communal gardens visitors parking areas refuse bins storage facility and accesses and paths within the area shown yellow on Plan 2 Number 2 annexed hereto but not the accessways within any building.

40. The costs of maintaining the Estate are apportioned under paragraph 14 of the Particulars of the Lease as:

    Service Charge Proportion – 1/31st of the Aggregate Annual Maintenance Provision attributable to the Estate for the Estate Services set out in the Fifth Schedule.

41. The Respondent sought to deal with this shared responsibility by varying the proportions of the service charge payable by the Applicants under Part 1 of the Fourth Schedule of the Lease from 1/31st, being the fraction relating to all the

units of the Estate, to ¼ (25%) of the costs being the fraction relating to the Property as one of the four maisonettes in one of the blocks retained by the Respondent.

42. Ms McDonnell said that this was anomalous as it meant that due to the definition of the Estate at paragraph 15 of the Particulars of the Lease the Applicants were liable for a quarter of all the costs set out in the Fifth Schedule. To change the proportion in the Lease would require a change in the definition of the Estate.

43. Ms Ziya drew attention to Part 2 of the Commonhold and Leasehold Reform Act 2002 which governs the creation and management powers of right to manage companies. She also referred to the Court of Appeal case of *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2013] EWCA Civ 1372, [2013] 1 WLR 988. She noted that the shared responsibility of the Estate between the Right to Manage Company and the Respondent meant that there was dual management of the Estate.

44. It was not clear from the Respondent's submissions how the dual management was divided between the Right to Manage Company and the Respondent in respect of the Service Charge for the Maisonettes.

Point 2

45. In addition Ms Ziya referred to the cases of *Fairman v Cinnamon (Plantation Wharf) Limited* [2018] UKUT 421 (LC) Apportionment *Williams v Aviva Investors Ground Rent* [2020] UKUT 111 (LC) in which *Gater and others v Wellington Real Estate Limited* [2019] UKUT 561 (LC) and *Windermere Marina Village Limited v Wild and Barton* [2014] UKUT 163 (LC) were cited.

46. The Tribunal therefore gave Directions on 12th May 2020 for further submissions on these two points with which the parties complied and are included in the record of their cases below.

Background

47. Until 2013 the Estate was managed as a whole by the Landlord's Agent, First Port. On 18th February 2014 the management of the blocks of flats was transferred to a right to manage company, Loughland Close RTM 2011 Co Ltd (Right to Manage Company). The right to manage company employed Wards Surveyors Limited (Wards) as its managing agent.

48. Neither block of Maisonettes was within the Claim Notice of the Right to Manage Company and therefore the management remained with the Respondent and its managing agent First Port Property Services Ltd (First Port).

49. It is understood from both parties' submissions that for ease of management of the estate, a handover of management to Wards was to be agreed, however this did not happen. There is some doubt as to whether Wards refused to manage the Maisonettes or that the Respondent refused to transfer them to

Wards. The Applicants state in their submissions that they were desirous of the management being transferred to Wards and had been informed by Wards that First Port did not proceed. The Respondents state that it was Wards who did not proceed, allegedly because of the Applicants' arrears. The reasons for the transfer not taking place do not concern the Tribunal. However, there was clearly some discussion between the Respondent, Wards and First Port as to whom should manage the Maisonettes.

Issue 1 – Reasonableness of Service Charges

50. The legislation enables a landlord or tenant to apply for a determination as to whether a service charge "to be incurred" and/or "incurred" is reasonable. A service charge that is "to be incurred" is in this case, an amount that is the estimated or anticipated expenditure for the next year and which is payable in advance. The landlord or its agent will then have funds to draw upon to pay the costs for that year. At the end of the year the actual costs are accounted for and become costs that have been "incurred". Under this Lease, any difference between the costs "to be incurred" and those "incurred" are either a debit, which is to be paid by the tenant, or a credit which is to be put against the service charge costs for the next year.

51. In this case a demand for costs "to be incurred" has been raised for the year in issue but, notwithstanding nearly two years have elapsed since the end of the year in issue, no account has been produced for the costs "incurred". The Tribunal is of the opinion that failure by a landlord to provide an account or evidence of costs "incurred" after such a passage of time and having been required to do so by a tribunal's directions, does not preclude a tribunal from making a determination as to the reasonableness of both costs "to be incurred" and "incurred" based on the evidence that is available.

Applicants' Case

52. The Applicants made a Statement of Case supported by Witness Statements made by each Applicant. The only account of the service charge for the Year 1st April 2017 to 31st March 2018 was an itemised list of anticipated expenditure as follows:

Monitoring Service	£15.00
Insurance – Terrorism	£30.00
Insurance – Buildings	£948.00
Electricity	£80.00
Grounds Maintenance	£350.00
General Repairs	£100.00
Contribution to Reserves	£280.00
Management fees	£620.00
Accounts Preparation Fee	£46.00
Audit Fee	£30.00
Total	£2,499.00
25%	£624.00

53. As stated above it was confirmed that the Estate was managed as a whole by the Landlord's Agent, First Port, until 18th February 2014 when the

management of the blocks of flats was transferred to the Right to Manage Company and Wards were appointed as its managing agent.

54. The Applicants said that they were unaware of the transfer until 2014 when an invoice was received from First Port. The Applicants said that when they asked why the Maisonettes were not included in the transfer, they said they were told that there were insufficient responses received from the residents in the Maisonettes to be included in the Right to Manage Company.

55. The Applicants said that they considered the invoices received following the transfer to be excessive compared with previous invoices, particularly with regard to the Management Fees, and from 2015 disputed the Service Charges with First Port. Notwithstanding the disputed charges the Applicants had paid their service charges up to 30th September 2017 as noted from the copy of the Applicants' account on page 106 of the Bundle. Only the charge of £312.38 is disputed which is for the half year costs.

56. In late 2017 the Applicants said that they were informed by Wards that they had an agreement to take on the management of the Maisonettes effective from January 2018. The Applicants said that following discussions with Gary Cox of First Port he agreed verbally that subsequent invoices would be cancelled as Wards would be taking over the management.

57. The Applicants said that they received no further demands until 22nd May 2019 when a letter was received from First Port recovery demanding £439.93.

58. The Applicants said that they responded on 22nd May 2019 saying that they were not aware that First Port had been re-appointed. Ms Sutton of the Respondent replied on 11th June 2019 as follows:

First Port lost the management of the Estate for 17 to 23 Loughland Close on 1st January 2018 and management was moved to an agent called Wards.

Despite supplying Wards with the full financial handover including funds, they have now advised Estates & Management [the Respondent's Asset Management Company at the time] that they are not managing the estate of the 4 maisonettes. This means that since we lost the site, residents have not been charged and no budgets or accounts have been done in 2018.

Estate & Management would like us to reinstate the management as soon as possible, starting on the 11th February 2019.

59. On 28th June 2019 the Applicants said they received a demand from the Respondent's solicitors for payment.

60. On 4th July 2019 the Applicants requested a detailed breakdown of cost.

61. The Applicants submit that there has been no management of the blocks from January 2017 to the present time. Lawns have not been cut. Wards manage all common areas excluding the Maisonettes. First Port do not manage any supply of services and when the car park area was resurfaced this was done

under the auspices of the Right to Manage Company and organised and administered by Wards and the Applicants were not advised or consulted. The only management carried on by First Port was placing the Insurance.

62. The Applicants stated that they have not received a summary of the actual Service Charge Account for the year ending 31st March 2017.

63. It is submitted that the half yearly charge of £312.38 for the Anticipated Service Charge Expenditure for the latter part of the year 1st April 2017 to 31st March 2018 is excessive.

64. The Applicants said that the annual Service Charge when the lease commenced some 15 years ago was £224.00 and that the Service Charge claimed was a 64% increase over 15 years.

65. In respect of the year 1st April 2017 to 31st March 2018, from January 2018 to 11th February 2019 the Applicants state that no one was managing the Property. Therefore, the service charge for 2017/2018 should reflect these 3 months of non-activity. In an email dated 11th February 2019 Ms Sutton from First Port stated that residents would not be charged for this period.

Respondent's Case

66. Noting that the Application was for a determination of reasonableness for the costs actually incurred for the year ending 31st March 2018 the Tribunal asked Counsel for the Respondent why these had not been prepared some two years after the end of the Maintenance/Service Charge Year and that the Directions had not been complied with in this regard. Counsel for the Respondent submitted that it was entitled to the estimated Service Charge for the year 1st April 2017 to 31st March 2018.

67. The Respondent state the following sums are due:

01/10/2017 – 31/03/2018 Half Yearly Service Charge	£312.38
01/04/2016 – 31/03/2017 Service Charge adjustment	£7.35
13/11/2017	£60.00
14/05/2019	£60.00
Total	£493.73

68. It was conceded that the first 3 months of 2018 there was no Management of the Maisonettes i.e. January, February and March of 2018. Therefore, the charge of £312.38 should be reduced by £38.75 to £273.63.

69. In respect of the Applicants' dissatisfaction with the Service Charges over the 15 years prior to 1st April 2017 the Respondent said that no evidence has been provided. Nevertheless, it is the Respondents position that an increase in costs will naturally occur due to inflation.

70. In response to the Applicant's application in respect of the reasonableness of the Service Charge incurred for the year ending 31st March 2018 the Respondent provided copies of the following invoices:
14/06/17 £1,250.00 Management Fee (93)

29/05/17 £90.00 Solicitor's Fee (94)
14/06/17 £3.00 Land Registry Fee (95)
05/10/17 £180.00 Audit (100)
23/11/2017 to 28/02/2018 Insurance £68.73 + £1.81 = £70.54 (121 – 122)
14/04/18 £3.45 Trust Tax Registration

71. In addition, the Respondent submitted that it was entitled to the estimated Service Charge for the year 1st April 2017 to 31st March 2018.

72. Counsel for the Respondent referred the Tribunal to *Knapper v Francis* [2017] UKUT 3 (LC) (a copy of which was provided in the Respondent's authorities bundle) with regard to the test for reasonableness of estimated service charges. This is that their reasonableness is to be assessed as at the date they are due.

73. In support of its argument that the estimated service charge was reasonable, on the day of the hearing the Respondent submitted the accounts for the year 1st April 2016 to 31st March 2017. These gave the following actual costs for that year as follows:

Monitoring Service	£0
Insurance – Terrorism	£45.12
Insurance – Buildings	£903.78
Electricity	£208.84
Grounds Maintenance	£297.78
General Maintenance	£588.00
Management fees	£604.00
Accounts Preparation Fee	£602.60
Audit Fee	£26.87
Health & Safety	£270.00
Contribution to Reserves	£280.00
Total	£3,409.31
25%	£852.31

74. At the hearing, in support of their argument that the estimated and actual service charges were unreasonable, the Applicants stated that no accounts in relation to the actual expenditure had been provided for the years ending 31st March 2017 or 2018 against which the reasonableness of the estimated charges could be tested and the reasonableness of the actual costs could be assessed. It was said that the first time the Service Charge account for the year ending 31st March 2017 had been seen by the Applicant was on the day of the hearing.

75. In the additional submissions following the hearing, Counsel for the Respondent referred the Tribunal to the case of *Pendra Loweth Management Limited v Mr & Mrs North* [2015] UKUT 91 (LC) that was included in the Respondent's authorities bundle although not specifically mentioned at the hearing.

76. Counsel said that in that case the lessees covenanted under clause 7 of the lease to pay "*a fair and reasonable interim payment*". Under clause 31 of the lease the management company covenanted to deliver the accounts to the

lessees within 90 days of the end of each service charge period. The lessees submitted that the provision of the accounts was a condition precedent to their obligation to pay the estimated service charge. It was held that the lease did not require any budgeting process as a precondition to pay the estimated service charge.

77. At paragraph [41]
Where parties agree that one of them is to be trusted to make an estimate which the other is required to pay, subject to an account being taken at a later date, and the estimate is made in good faith, there seems to me to be little or no scope to challenge the estimate except by relying on s.19(2) of the 1985 Act. Where a service charge is payable before the relevant costs are incurred, s.19(1) provides that no greater amount than is reasonable is so payable; there is therefore a statutory limit on estimated charges, even where they have been estimated in good faith. Where a deliberately inflated estimate has been submitted in bad faith or an entirely arbitrary figure has been chosen the contractual position is likely to be different, and it may be possible to say that, even without regard to the statutory cap on advance payments, the estimate is not payable in full; but that is not this case.

78. At paragraph [50]
Nonetheless, a failure on the part of the Management Company to provide annual certified accounts does not seem to me to suspend the lessee's obligation under cl.10 to pay the Estimated Service Charge on demand. There is simply no connection between the performance by each of the parties of their respective obligations. The obligation to pay the Estimated Charge is not expressed as being subject to the production of the audited accounts, and the Management Company is in a position to make an estimate each year whether or not the accounts are available. There is therefore no practical reason to treat the production of the accounts as a condition of payment.

79. At paragraph [51]
The absence of proper accounts for previous years may, of course, provide grounds for treating the estimate with circumspection or even suspicion; it may make it easier to justify a reduction under s.19(2) on the basis that there is little to suggest the estimate is reasonable; but as a matter of contract the payment of the Estimated Charge is not conditional on the provision of audited accounts.

80. It was submitted that the failure to provide the Service Charge accounts pursuant to paragraph 5 of the 4th Schedule of the Lease is neither a pre-condition for the Applicants to pay the Service Charge under clause 3.2 nor is it relevant to the test of reasonableness under section 19(2) of the Landlord and tenant Act 1985.

Applicant's Reply

81. Counsel for the Applicants objected to the further submission made by the respondent in relation to the estimated service charge and the administration charge as being beyond what the Further Directions required.

82. Counsel confirmed what had been said at the hearing that the Respondent had failed to provide not only the accounts for the year ending 31st March 2018 but also previous year accounts, as required by the Fourth Schedule Part II paragraph 5 of the Lease. It was added that even in the present proceedings, the accounts for the year ending 31st March 2018 have still not been disclosed.

83. Consequently, as regards reference to the *Pendra Loweth Management Ltd* case, it is submitted that it is a relevant consideration to the statutory reasonableness test as set out in section 19(2) *Landlord & Tenant Act 1985* and the Tribunal was referred to paragraph 51 of the judgment in full:

"*The absence of proper accounts for previous years …may make it easier to justify a reduction under s.19(2) on the basis that there is little to suggest the estimate is reasonable.*"

84. Counsel said that not only did the Respondent covenant to provide the Applicant with the Service Charge Accounts and fail to do so, but it was shown from the items of "*Accounts Preparation Fees*" and "*Audit Fees*" included in the Estate costs (pages 88 to 124 of the Bundle) that the Applicant was paying for these accounts.

85. Further, in the context of the current case, unlike in the *Pendra case* where the lessees had agreed that the annual accounts need not be audited, so as to save on the management expense, it was particularly important that year end accounts were provided, as the Applicant's proportionate liability for service charges had been increased unilaterally by the Respondent from 1/31 to 1/4. The Applicant was thus being obliged to pay drastically escalated sums of money based on estimates without being able to ascertain, and/or ultimately query, whether the said charges were reasonable.

86. It was added that, for the avoidance of doubt, it is not the Applicant's position that the provision of the service charge accounts was a contractual pre-condition to the Applicant's liability to pay.

Issue 2 - Service Charge Proportion

Applicants' Case

87. The Applicants questioned the change in the service charge proportion which they said significantly increased the Service Charge making it inequitable particularly with regard to the Management Fee.

88. The Applicant therefore required the Tribunal to determine whether the Service Charge Proportion was necessary and equitable.

89. The Applicants stated that they had no notification of the change in apportionment as required under Part 1 of the Fourth Schedule to the Lease and that the letter of 22nd May 2017 was not received. They said that the only copy they had was that provided by the Respondent in the course of these proceedings.

90. The Applicants said it was not known what the extent of the Estate regarding the Maisonettes was, particularly with regard to Grounds Maintenance and what part of the Estate First Port was now managing.

Respondent's Case

Right to Charge for Estate Services

91. Counsel for the Respondent stated that the Right to Manage Company had acquired the right to manage the 21 flats in the three blocks of the Estate, as the premises (the Premises) identified in its Notice of Claim. By virtue of section 72 of the Commonhold and Leasehold Reform Act 2002 the right to manage only extended to those premises and not to the Maisonettes. However, it does, under section 72, extend to "appurtenant property" which might in this case be shared with the Maisonettes, such as car parks. Under section 90 the rights to manage are acquired on the dates specified in the claim notice and section 96 requires all management functions in respect of the premises to be transferred to the Right to Manage Company. "Management Functions" are defined as being functions with respect to services, repairs, maintenance, insurance and management. The landlord or any other party to the lease (other than a tenant) is not entitled to do anything which the Right to Manage Company is required or is empowered to do under the lease unless an agreement is reached with the Right to Manage Company.

92. Counsel referred the Tribunal to *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372 where the right to manage company premises did not include all the blocks on the estate. It was held that the right to manage company acquired the right to manage the premises and their appurtenant property whether or not that appurtenant property was enjoyed by other blocks which were not part of the premises acquired by the company, paragraphs [14] – [16].

93. Therefore, here, the Right to Manage Company takes over all the Management Functions of the Premises and the Appurtenant Property and the Respondent Landlord is precluded from exercising those functions in respect of the Leaseholders of the Premises. However, the Landlord remains obliged to exercise the Management Functions for those Leaseholders who do not hold Leases of the Premises. Therefore, there is an overlap between the Management Functions of the Right to Manage Company and of the Landlord in respect of the Appurtenant Property which in this case is the Estate.

94. The Right to Manage Company can charge the Leaseholders of the Premises for their share of the services in respect of the Estate and the Respondent Landlord can charge the Leaseholders of the Maisonettes for their share of the services as under clauses 1.7 and 1.8 and Part II of the Fourth Schedule to the Lease.

95. Counsel for the Respondent submitted that the Right to Manage Company's claim would now not be valid following the decision in the Court of Appeal

case in *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2016] 1 WLR 275 which stated that a single right to manage company cannot acquire the right to manage in respect of multiple self-contained blocks of flats. There is no binding authority on the effect of *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* on those companies already in existence although in *St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd* [2014] UKUT 0541 (LC) the view was expressed at paragraph [92] that that "*unless the premises in question premises to which Part 2 of the* [Commonhold and Leasehold Reform] *Act* [2002] *applies by reason of satisfying the conditions in s. 72, none of the provision of the Chapter will have effect in relation to those premises"*. However, Counsel submitted that the Tribunal should for the purposes of the present case accept the Right to Manage Company is responsible for providing services to the leaseholders of the blocks of flats and the Respondent is responsible for providing services to the maisonettes.

96. The Respondent stated that when the Right to Manage Company was established the Service Charge percentage was varied for the Property. There is no provision for re-defining the Estate in the Lease only for varying the Service Charge percentage. The Respondent therefore varied this to 25% (one quarter) for the Property.

Amount of the Charge for Estate Services

97. Counsel said that no express agreement had been reached between the Respondent and the Right to Manage Company as to the allocation of dual function between them. Costs are therefore incurred by the Respondent in respect of the services that it is obliged to provide under the lease to the non-RTM leaseholders in accordance with the Lease as varied under Part I of the Fourth Schedule

Tribunal's Jurisdiction

98. Counsel for the Respondent referred to *Fairman v Cinnamon (Plantation Wharf) Limited* [2018] UKUT 421 (LC) and *Williams v Aviva Investors Ground Rent* [2020] UKUT 111 (LC) which establishes that section 27A(6) of the Landlord and Tenant Act 1985 renders void any provision of a lease that purports to enable the re-calculation of a specified service charge apportionment. However, a provision, such as Part I of the 4th Schedule of the present Lease, that enables the variation of an apportionment where it is "necessary and equitable", or similar wording, is valid and a tribunal may make such recalculation.

99. It was submitted that the Tribunal will in this case need to take account of the Right to Manage Company's liability for service charge costs which reduces the Respondent's ability to claim for service charge costs.

Applicant's Reply

Right to Charge for Estate Services

100. Counsel for the Applicants stated that it is common ground that pursuant to section 97(2) of *Commonhold and Leasehold Reform Act 2002* the Landlord is not entitled to do anything which the Right to Manage Company is required or empowered to do under the Lease. Of course, that does not relate to the Applicant's Lease, as the Right to Manage Company is not empowered to do anything under the same.

101. Further, that the RTM management functions, pursuant to the *Gala Unity v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372; [2013] 1 WLR 988 can extend to "*appurtenant property*", – which can include property not forming part of the RTM claim.

102. Consequently, the Applicant's communal property may be subject to management by the Right to Manage Company, together with the Respondent Landlord who remains responsible for the management of the same under the Applicant's own Lease; thus, dual management.

103. However, pursuant to an email from the Respondent's managing agent, First Port, the Right to Manage Company's managing agent, Wards, stated they were not to undertake any management functions over the Estate serving the Applicant's property, so there may be no dual management.

104. As of 11 June 2019, the Respondent was desirous of First Port taking back management retrospectively, from 11 February 2019 (page 144 of the Bundle).

Amount of the Charge for Estate Services

105. There is clearly confusion over who is responsible for what, what is clear however is that since the RTM claim was made in 2014 and the Respondent provided notice of a change to the Applicant's proportionate liability for service charges from 1/31 to 1/ 4 in May 2014, the management of the Applicant's block has been sporadic, poor and for long periods non-existent (page 22 of the Bundle, paragraphs 23 and 24 of the Witness Statement).

106. Indeed, no express agreement has been reached – as admitted at paragraph 20 of the Respondent's Submissions - between the Right to Manage Company and the Respondent regarding the party's respective responsibilities, as would be desirable in circumstances where there is a potential for dual management.

107. Counsel for the Applicants said that, most importantly and strikingly, the Respondent asserts the RTM claim may not be valid and its submissions are made subject to it validity. Presumably if the RTM Claim is found to be invalid the Respondent would have no submissions to make.

108. Nonetheless, the Respondent submits the potential invalidity should not concern the Tribunal and it should proceed on the basis that it is a valid RTM Claim and thus that the amended proportions are necessary and equitable, as

the Respondent is only providing services for and entitled to claim service charges from 4 of the 31 Estate leaseholders.

109. It is contended that this is a wholly unsustainable position to take, as until the status of the RTM Claim is established the Tribunal cannot be satisfied that any amendment it makes is necessary or equitable, as required by the Variation of Proportions clause of the Lease.

110. Further, even if the RTM Claim is presumed to be valid, it is submitted the present ¼ amendment is inequitable as the Respondent, in practice, may no longer be responsible for the management of those areas of the Estate now managed by the RTM, however under the express terms of the Applicant's Lease the Respondent remains entitled to recover ¼ of the service charges and management fees relating to the same i.e. the entire Estate, as it has not been redefined.

111. Further, to the extent the Right to Manage Company also manages the Applicant's communal/ appurtenant property (dual management), no charges should be reasonably levied by the Respondent for management of the same and/or certainly not to the same extent.

Tribunal's Jurisdiction

112. Counsel for the Applicant said that the Respondent's submissions with regard to the Tribunal's jurisdiction are agreed, such that the Variation of Proportions clause is void only so far as reference is made to the Company/Respondent; the Tribunal should appropriately be substituted for the same (*Fairman v Cinnamon (Plantation Wharf) Limited* [2018] UKUT 421 (LC) and *Williams v Aviva Investors Ground Rent* [2020] UKUT 111 (LC)).

Issue 3 - Administration Charges

113. The Administration Charges of £60.00 were claimed for each letter sent out requesting payment of outstanding estimated service charges on 13th November 2017 and 14th May 2019 totalling £120.00.

Applicant's Case

114. The Applicant submitted that the two £60.00 administration charges are not reasonably incurred for a standard form letter generated following a brief, sporadic review of the accounts. Sporadic, as the fees were rendered some 1.5 years apart, for no apparent reason. Further, the Lease makes no provision for the same.

115. At the hearing the Tribunal, referring to the letters demanding payment in 2017, which had been provided in the Bundle, asked the Applicants whether any of these letters had been received and if so what action, if any, had they taken. The letters were (the figures in brackets refer to the pages of the Bundle):

5th April 2017 Itemised Demand (86 – 88)
22nd September 2017 (90 – 92)
5th October 2017 (96 – 99)
6th November 2017 (101 – 108)
13th November 2017 (109 – 111)
13th November 2017 (112 – 116)
19th November 2017 (117 – 120)

29th March 2019 (128 – 130)
30th April 2019 (131 – 134)
14th May 2019 (135 – 138)
19th May 2019 (139 – 142)
18th June 2019 (143)

116. The Applicants said that they had received the Itemised Demand dated 5th April 2017 and the later demands in 2017. However, because they had paid their service charges up to 30th September 2017 and were told that an agreement had been reached by which Wards were to take over the management from September, the Applicants believed these demands were no longer payable, at least to First Port, and waited for a demand from Wards. Nothing further was received until the letters in 2019 to which the Applicants responded to by emails. Mr Ramsbottom referred the Tribunal to correspondence on pages 144 to 154 of the Bundle.

117. The Applicants said that they had disputed the amount of the Service Charge since 2015 and had received no accounts for the actual costs for the years ending 31st March 2016, 2017 or 2018.

118. The Applicants added that they were aware that there were negotiations taking place between the Right to Manage Company's Agent, Wards, and the Respondent's Agent, First Port, from when the Right to Manage Company was established and the Applicants last service charge payment in September 2017. That these discussions took place has not been disputed by the Respondent as noted by the email of 11th June 2019. In addition, there were oral discussions between the Applicants and employees of Wards and Gary Cox of First Port in the latter part of 2017. The employee of Wards told them that Wards were taking over the management of the Estate and the employee of First Port said that subsequent payments to First Port would not be payable.

Respondent's Case

119. In response to the Tribunal's question as to what the two £60.00 Administration Charges were for, it was stated that the Administration charges were for 'chaser letters' seeking payment for the estimated Service Charges already demanded. It was submitted that the Administration Charges are due on the basis of payment not being made in accordance with Clause 3.2. and that paragraph 2(b) of the Third Schedule of the Lease authorises such charges.

120. In addition, in the further submissions the Respondent made a statement that:
"The first administration charge is applied on the second reminder letter that we send we do not make a fee for the first one. The credit controller will run a report from our system which will identify the accounts which are at each stage of the credit control process. A full review of the account is not made at the second letter stage, only at the point that we instruct solicitors, but they do carry out a brief review prior to sending the letter for example just to make sure there are not any development wide issues etc."

121. The Applicants objected to this further comment but the Tribunal found that it only summarised what was apparent from the correspondence provided in the Bundle.

Issue 4 - Section 20C & Issue 5 - Paragraph 5A of Schedule 11

122. An application was made under section 20C for an order for the limitation of the Respondent's costs in the proceedings in relation to the service charge and for an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

123. Counsel for the Applicant submitted that the Respondent had failed to provide accounts as required by the Lease and the Tribunal's Directions.

124. Counsel for the Respondent submitted that the Respondent was entitled to the estimated service charge and had not acted unreasonably. The Respondent was also entitled to its costs under paragraph 4(a) of the Fifth Schedule of the Lease in respect of reclaiming its costs through the Service Charge and under paragraph 2(b) of the Third Schedule to the Lease in respect of reclaiming its costs against the Applicants specifically.

Decision

Issue 1 – Reasonableness of Service Charges

125. The Tribunal found from the Application Form that the Application was for a determination of the Service Charge costs incurred for the year ending 31st March 2018. However, no accounts for the actual costs incurred had been produced by the Respondent for that period. Instead the Respondent had provided accounts for the actual costs incurred for the year ending 31st March 2017, which also noted the actual costs for the year ending 31st March 2016. It then responded to the Application by stating that the Respondent was entitled to the estimated charge.

126. The Tribunal found that the Respondent approached the matter as if it were the applicant seeking an order for the payment of the estimated charge rather than being the Respondent answering an application for the reasonableness of the service charge, which is in fact the case.

127. In the absence of accounts for the actual costs incurred the Tribunal decided that it should firstly determine the reasonableness of the estimated costs to be incurred as if at the time they were demanded, in accordance with the decision in *Knapper v Francis*. Secondly it did its best to determine the reasonableness of the costs incurred based on the information that it had available.

Service Charge to be incurred for the year ending 31st March 2018

128. Therefore, the Tribunal considered whether each item of the Estimated Service Charge of the year ending 31st March 2018 was reasonable as at the date they are due. It found that the Service Charge had two sets of items. Those relating to the Maisonettes as a building and those relating to the Maisonettes' share of the Estate costs. The items relating to the Maisonettes as a building were the Monitoring Service and the Insurance.

129. No explanation had been given for the Monitoring Service of £15.00. It was noted from the accounts of the actual service charge for the year ending 31st March 2017 (provided on the day of the hearing) that the charge had not been made for either the years ending 31st March 2016 or 2017. The Tribunal therefore determined that it was not reasonable.

130. The insurance payable is not part of the Estate Service Charge but is levied separately under the Lease and is specific to the Maisonettes. No alternative quotations or other evidence was adduced by the Applicants in respect of the Insurance premiums of £30.00 for Terrorism and £948.00 for Buildings. It was noted from the accounts of the actual service charge for the year ending 31st March 2017 that the premiums for Terrorism were £45.12 and for Buildings were £903.78. The account also included the premiums for the year ending 31st March 2016 which were £43.93 for Terrorism and £842.01 for Buildings.

131. The Insurance invoice provided for the period 23rd November 2017 to 28th February 2018 for £70.54 identified the Maisonettes as being the risk address and therefore went to show that the Maisonettes were insured separately from any other building on the Estate.

132. In the absence of evidence to the contrary the Tribunal found that the estimated Insurance premium was reasonable.

133. The remaining items of the estimate comprised the Estate Service Charge as follows:

Electricity	£80.00
Grounds Maintenance	£350.00
General Repairs	£100.00
Contribution to Reserves	£280.00
Management fees	£620.00
Accounts Preparation Fee	£46.00
Audit Fee	£30.00
Total	£1,506.00

134. There are flaws in the accounts presented as estimated and actual costs for the Estate. It is not known whether the Respondent or its Agent has subdivided the Estate and provided services such as grounds maintenance exclusively to the Maisonettes. It is not known whether a separate firm of landscapers were employed for the Ground Maintenance area around the Maisonette block or whether the landscapers for the whole Estate invoice the Maisonettes separately for that area. It is also not known whether there is a separate meter for the electricity to that part of the Estate that serves the Maisonettes. It is also not known whether the services have been provided by the Right to Manage Company and charged to the Respondent who has re-charged to the Applicants.

135. Clearly some services have been provided and therefore the Tribunal is obliged to reach a determination as to the reasonableness of their cost.

136. The Tribunal considered the amounts in the context of a contribution to the Annual Maintenance Provision for the whole Estate, as known by the members of the Tribunal from its previous inspection, excluding any buildings service charge. The Tribunal assessed what was reasonable by dividing the sums by 4 as being the individual contribution of the Leaseholders of the 4 maisonettes and multiplying the result by 31 to obtain the total cost for the Estate. The estimate of the costs for the whole Estate based on the individual charge to each Maisonette Leaseholder are as follows:

Electricity	£620.00
Grounds Maintenance	£2,712.50
General Repairs	£775.00
Contribution to Reserves	£2,170.00
Management Fees	£4,805.00
Accounts Preparation Fee	£356.50
Audit Fee	£232.50
Total	£11,671.50
Estimated Service Charge per unit per annum	£376.50

137. Considering each item, the Tribunal determined from the knowledge and experience of its members that the estimated Electricity, General Repairs, Accountancy Fee and Audit Fees are, in the absence of evidence to the contrary, reasonable.

138. The Grounds Maintenance figure is high for the Estate. The Tribunal found from its knowledge and experience that to maintain the Estate approximately 24 visits (one a fortnight) of one hour would be needed to cut the grass and prune the shrubs and keep the driveways and paths clear. An additional 8 hours for spraying and flushing the drains would be required giving a total of 30 hours. At a cost of £25.00 per hour the Tribunal determined that a reasonable charge is £750.00 per annum and an estimated amount of this sum was reasonable.

139. Taking into account the area of the car park and the cost to resurface it, the reserve contribution of £2,170.00 is reasonable.

140. The Tribunal considered the estimated Management Fees. The Tribunal found that the whole building containing the Maisonettes was demised and there was a separate service charge and management fee for the services to maintain the blocks of flats. Therefore, Management Fees claimed were for the management of the Estate, the collection of the Estate Service Charge, and the collection of the Insurance premium. The Tribunal considered that the accounts preparation fee should also be included in the total cost of management which made the total cost of management for the Estate £5,161.50 being £187.25 per unit. From the knowledge and experience of its members the Tribunal found that the estimated Management Fees of £187.25 per unit to be reasonable and that the Audit Fee is also reasonable.

141. The Tribunal determines that the total Estimated Estate Service Charge for the year ending 31st March 2018 was reasonable as follows:

Electricity	£620.00
Grounds Maintenance	£750.00
General Repairs	£775.00
Contribution to Reserves	£2,170.00
Management Fees	£5,805.00
Audit Fee	£232.50
Total	£10,352.50

142. The Tribunal determines that the Estimated Estate Service Charge for the year ending 31st March 2018 for the Property was reasonable as follows:

Electricity	£20.00
Grounds Maintenance	£24.19
General Repairs	£25.00
Contribution to Reserves	£70.00
Management Fees	£187.25
Audit Fee	£7.50
Total	£313.19

143. The Tribunal finds that both parties agree that there is a contractual obligation upon the Lessee under the Lease to pay the estimated service charge subject to it being reasonable under section 27A of the Landlord and Tenant Act 1985. It also agrees that the payment of the estimated service charge is not dependent upon the production of the accounts of the actual service charge or the reasonableness of that actual service charge.

144. The Tribunal determines the Estate Service Charge of £313.19 for the Property to be incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

Service Charge incurred for the year ending 31st March 2018

145. Having determined the reasonableness of the costs to be incurred for the year ending 31st March 2081, the Tribunal then considered what would be a reasonable amount incurred for that year for each of the items, based on the information available.

Insurance

146. As stated above the Insurance is specific to the Maisonettes and is payable against the building not the Estate. The placing of the Insurance by the Respondent and the obligation to pay the premium by the Applicants are dealt with separately from the Maintenance of the Estate in the Lease, under Clause 4(c) and paragraph 2(b) of the Third Schedule respectively.

147. The Tribunal noted the premium charged in the account for the actual costs for the years 2016 and 2017 and the estimated costs for the year 2018 were:

Year Ending 31st March	Terrorism Premium	Buildings Premium
2016	£43.93	£842.01
2017	£45.12	£903.78
2018	£30.00	£948.00

148. In the absence of evidence, the Tribunal determined that the reasonable amount incurred for the Insurance for the year ending 31st March 2018 is £30.00 for Terrorism and £948.00 for the Building.

Electricity

149. No evidence was adduced with regard to the electricity consumption. The accounts showed that the actual cost for the year ending 31st March 2016 was £80.00 for the 4 Maisonettes which is £620.00 across the Estate; but this rose to £208.84 for the 4 Maisonettes which was £1,618.51 across the Estate in the year ending 31st March 2017.

150. No reasons were given for this increase. From past experience increases of this kind are often due to a hiatus in the utility companies reading meters or sending invoices, sometimes after a change in supplier by the landlord or managing agent. Landlords or their agents will therefore set a figure as an estimate each year which may or may not cover the eventual cost of the invoice when it is received. When this occurs, the Tribunal has agreed the estimated figure subject to a credit or an additional payment when the invoice is received and a copy produced to the Applicant. The Tribunal decided that such an arrangement is appropriate in the present case.

Grounds Maintenance

151. No evidence was adduced by either party as to the Ground Maintenance. The Applicant said that maintenance was sporadic and the Respondent failed to provide any evidence by way of contract or invoice. The Tribunal considered it unlikely that no Grounds Maintenance took place across the Estate in the year ending 31st March 2018 without some protestation by the other contributors to the Estate Service Charge. In the absence of evidence, the Tribunal determines that a total cost incurred across the Estate of £750.00 is reasonable.

General Maintenance

152. No evidence was adduced regarding General Maintenance. These are not standard charges which occur year on year and the amount of which might be anticipated by the Applicant such as electricity or grounds maintenance. Any attempt by the Tribunal to assess the cost based on the previous year would be entirely speculative. It is noted that none were charged in 2016. The Tribunal decided that in the absence of evidence that any costs had been incurred under this head, section 20B of the Landlord and Tenant Act 1985 applied which states that the tenant shall not be liable for costs which were incurred more than 18 months before the demand for payment of the service charge served on the tenant.

Management Fees

153. If the accounts were prepared by an independent firm of accountants the Tribunal would consider a reasonable fee for the whole Estate as being in the region of £350.00 which is £11.29 per unit. In the present case they are part of the managing agent's duties. Therefore, to assess a reasonable management fee including the additional work of preparing/maintaining the accounts the Management Fee and Accounts Preparation Fee should be aggregated and assessed as a whole. These give a total fee across the Estate of £9,351.15 which is £301.65 per unit.

154. The Tribunal therefore determined that the Management Fees including the preparation of accounts as excessive. In the absence of evidence to the contrary the Tribunal found that a reasonable cost incurred is as estimated at £5,805.00 across the Estate which is £166.50 per unit.

155. The parties agreed in the written representations that there had been no management for the first 3 months of 2018 due to the abortive discussions regarding the handing over of the management to Wards. This amounts to a reduction in the sum of £5,805.00 by £1,451.25 which equals £4,353.75 for the whole Estate. This gives a reduced unit cost for the year of £140.44.

156. There is no evidence of any accounts having been produced for audit and therefore the Tribunal decided that this cost was not reasonable.

157. The Tribunal determines that the total reasonable Estate Service Charge incurred for the year ending 31st March 2018 is:

Electricity	£620.00
Grounds Maintenance	£750.00
Contribution to Reserves	£2,170.00
Management Fees £5,805.00 less 3 months	£4,353.75
Total	£9,893.75

158. The Tribunal determines that the unit reasonable Estate Service Charge incurred for the year ending 31st March 2018 is:

Electricity	£20.00
Grounds Maintenance	£24.19
General Repairs	£25.00

Contribution to Reserves	£70.00
Management Fees £187.25 less 3 months	£140.44
Audit Fee	£7.50
Total	£287.13

Summary

159. The Tribunal determines the Insurance premium of £30 for Terrorism and £948.00 for Buildings to be incurred and incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

160. The Tribunal determines the Estate Service Charge of £313.19 for the Property to be incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

161. The Tribunal determines the Estate Service Charge of £287.13 (subject to a credit or an additional payment when the electricity invoice is received and a copy produced to the Applicant) for the Property incurred for the year ending 31st March 2018 to be reasonable and payable by the Applicant to the Respondent.

162. The Tribunal notes that this determination is likely to result in a credit to the Applicants' service charge account.

Issue 2 - Service Charge Proportion

Tribunal's Jurisdiction

163. The parties agreed and the Tribunal concurs that it has jurisdiction to determine the apportionment under the Lease taking into account the wording of Part I of the Fourth Schedule.

164. The Tribunal considers that it has no jurisdiction to make any determination or finding with regard to the validity of the Right to Manage Company. Nor, as is mentioned later, does it consider its decision is affected by such validity.

Right to Charge for Estate Services & Amount of the Service Charge

165. The Estate is clearly defined in the Lease and it is apparent that the Estate Service Charge is contributed to by 31 units or their equivalent. The word "equivalent" is used because although there are 21 flat units in the three blocks they do not contribute equally as they are of different size. However, although the flats may contribute different percentages each block contributes the equivalent of 7 units and all three blocks contribute the equivalent of 21 units to the Maintenance of the Estate.

166. Whether or not the Right to Manage Company is a valid entity does not affect the Applicants' Lease. There is no provision in the Lease for dividing the Estate which has not altered nor has the contribution of 1/31st payable by the Applicant Leaseholders to the Maintenance of the Estate. The extent and the contributions would not alter if there were three right to manage companies

(one for each block of flats, which would accord with the decision in *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2016] 1 WLR 275) or if one or more blocks had a manger appointed on a 'fault' basis.

167. Irrespective of whether the three blocks and the appurtenant property 'ought' to be under the auspices of the Right to Manage Company the de facto situation is that they are. The Estate, is pursuant to section 72(1) and 112(1) of the Commonhold and Leasehold Reform Act 2002, "appurtenant property" as confirmed by the Court of Appeal in *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372 which upheld the decision of the Upper Tribunal in *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2011] UKUT 425 (LC). Therefore, the Estate is managed by two organisations: the Respondent Landlord through its Agent and the Right to Manage Company through its Agent.

168. This could lead to both Right to Manage Company and Respondent Landlord providing and charging for the same services. This point was identified by Sullivan LJ at paragraph 16 of the Court of Appeal decision in *Gala Unity Ltd v Ariadne Road RTM Co Ltd*:

> *16. In my judgment, the wording of section 72(1)(a) is clear: there is no requirement that the appurtenant property should appertain exclusively to the self-contained building which is the subject of the claim to acquire the right to manage. The prospect of dual responsibility for the management of some of the appurtenant property in this and other similar cases is not a happy one. As Mr. McGurk submitted, there is the potential for duplication of management effort and for conflict between the "old" management company and the new RTM company in respect of such appurtenant property, but I am not persuaded that these consequences are so grave, or that the end result is so manifestly absurd, that we would be justified in adding a gloss to words – appurtenant property – which are already defined in the Act. It is always open to the parties, if they wish to avoid duplication and/or conflict, to reach an agreement which would make economic sense for all parties (see paragraph 18 of the President's decision); if they are unable to do so, paragraph 17 of the President's decision suggests a means of resolving disputes arising from dual responsibility for maintenance.*

169. The relevant passages in President George Bartlett QC's judgement are:

> *17. The effect of treating the premises as extending to the land over which tenants of flats in the claim notice buildings have rights is this. Under section 96(2) the RTM company succeeds to the duties of the landlord and the management company, under each lease of a flat in these buildings, in relation to the services to be provided in categories A, B, C, E and F. It owes these duties to the landlord as well as to the tenants (see section 97(1)). Under section 97(4) the tenant's liability to the service charge is owed to the RTM company. The landlord and the management company have no entitlement under any of those leases to carry out such services (including, for instance, maintenance of the*

roadway and gardens), with the exception of category F (insurance): see section 97(2) and (3). But the landlord is still required, and therefore entitled, under the leases of the coach houses to provide the services in categories A, B, C, D and F, including, therefore, maintenance of the of those parts of the Managed Estate over which those tenants have rights; and the tenants of those flats are still liable to pay to the landlord the service charge as provided under their leases. However, it would seem to me that if the landlord and management company continued to provide services in relation to those parts of the estate that the RTM company is obliged to the tenants of the 12 flats in the two blocks to maintain, the cost of such services would not be reasonably incurred and could be disallowed under section 19(1) of the Landlord and Tenant Act 1985.

18. For their part the tenants of the coach houses have indicated that they support the claims of the RTM company; and it clearly makes economic sense, as the LVT said in its decision and Mr McGurk acknowledges, for the estate to be managed as a single whole. In the light of this recognition and the view that I have expressed in the penultimate sentence of the last paragraph, I would hope that agreement can be reached between the RTM company, the landlord and the management company on how that is to be achieved.

170. In the light of the above judgement, the Tribunal finds that the Right to Manage company is entitled and owes a duty to maintain the Estate for the Tenants of the Flats (and to the Respondent Landlord) and the Tenants of the Flats are obliged to contribute to the costs incurred by the Right to Manage Company. The Respondent Landlord is entitled and owes a duty to maintain the Estate for the Tenants of the Maisonettes who are obliged to contribute to the costs incurred by the Respondent. However, it is unreasonable for the Tenants of the Flats and the Tenants of the Maisonettes to pay more for the Estate services just because there are two managers who are unable or unwilling to reach an agreement as to how the Estate is to be managed.

171. In the present case the Tribunal recognises that some Estate services have been provided to the Applicants, presumably by the Respondent, in the form of electricity, grounds maintenance and management. It is not known how these services were provided or how their cost was calculated. The Respondent has merely stated that there is no agreement with the Right to Manage Company. The Tribunal has therefore made its determination by extrapolating the costs provided across the Estate and assessed the reasonableness of the resultant amounts.

172. An agreement will need to be reached if repeated cases of this kind are to be avoided.

173. The Tribunal noted from the accounts that were provided for the year ending 31st March 2017 that they included service charges for properties that are not part of the Estate. Under the Lease the Property is part of the defined Estate and cannot be incorporated into another part of the Development for the purposes of a service charge.

174. The Tribunal determines that the equitable Service Charge Proportion for the Property is 1/31st of the Aggregate Annual Maintenance Provision attributable to the Estate for the Estate Services set out in the Fifth Schedule. The purported change in the Lease under Part I of the Fourth Schedule is not necessary.

Issue 3 - Administration Charges

175. The Administration Charges of £60.00 were claimed for each letter sent out requesting payment of outstanding estimated service charges on 13th November 2017 and 14th May 2019 totalling £120.00.

176. In considering whether the charges are reasonable under paragraph 2 (b) of the Third Schedule to the Lease, the Tribunal found that there was no right to late payment fee under the Lease but that the Respondent was able to claim its costs incurred in collecting and enforcing payment by the Lessee of the Service Charge.

177. In the absence of information regarding hourly rates etc, the charge appeared more like a late payment fee than the cost of a letter. Nevertheless, given that it was a standard charge to the Respondent the Tribunal considered whether the charge was reasonable in the circumstances.

178. The Tribunal accepted the statement of the Applicants (which was not contradicted by the Respondent) that discussions had taken place between Wards and First Port and that they had been given the impression that Wards were to take over the management of the Estate from the latter part of 2017. As mentioned above the Tribunal noted that, in addition to 17 to 23 Loughland Close, the accounts for the year ending 31st March 2017 were prepared for six other parts of the Development retained by the Respondent. The combination of these two facts made it quite credible that the accounts for 2016 and 2017 were sent to the leaseholders of these other parts of the Development and not to the Applicants who were probably seen as coming under the Estate.

179. The Applicants awareness of the discussions between 2015 and 2017, their not having received the accounts for the years 2016 and 2017, their belief that Wards had taken over the management of the Estate and the hiatus between the receipt of the demand in November 2017 and May 2019, all go to show that it was reasonable for the Applicants to believe that they were not required to pay the second demand for the year ending 31st March 2018 without further explanation, which they did not receive. Therefore, the Tribunal determines that the Administration Charge of £120.00 is not payable.

Issue 4 - Section 20C & Issue 5 - Paragraph 5A of Schedule 11

180. The Applicants applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicants also applied for an Order to reduce or extinguish the

Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

181. The first issue is whether the Respondent can claim its costs in respect of these proceedings either through the Service Charge or directly from the Applicants. The Tribunal found that the Respondent can claim its costs in respect of these proceedings either through the Service Charge under paragraph 4 (a) of the Fifth Schedule to the Lease or directly from the Applicants under paragraph 2 (b) of the Third Schedule to the Lease.

182. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The liability under paragraph 4 (a) of the Fifth Schedule might be seen as collective in that a Lessee is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The liability under paragraph 2 (b) of the Third Schedule might be seen as an individual liability whereby the Applicants as Lessees alone bear the Respondent's cost of the proceedings.

183. The Tribunal found that the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.

184. The second issue is whether an Order should be made under the respective legislative provisions.

185. In deciding whether or not it is just and equitable in the circumstances to grant an order under either legislative provisions the Tribunal considered the conduct of the parties and the outcome of the proceedings.

186. With regard to the conduct of the parties, the Application was for a determination of the reasonableness of the actual service charge costs for the year ending 31st March 2018. The Tribunal found, that contrary to the Tribunal's Directions, the Respondent had failed to provide accounts and only a few supporting documents for that year. Instead it only provided accounts for the year ending 31st March 2017 (which also referred to the costs for 2016) on the day of the hearing. The Respondent did not address the issue of reasonableness as the Application required but solely submitted the argument that it was entitled to the estimated service charge without precondition that the actual costs were reasonable as per *Knapper v Francis* [2017] UKUT 3 (LC) and *Pendra Loweth Management Limited v Mr & Mrs North* [2015] UKUT 91 (LC).

187. The Applicants correctly did not dispute this argument and sought to address the issue of reasonableness, but in the absence of evidence which was in the sole purview of the Respondent, were limited as to what submissions they could make.

188. Irrespective of a lack of agreement between the Right to Manage Company and the Respondent, the failure by the Respondent to explain the way the cost of the Estates services was calculated and charged to the Maisonettes in the

absence of such agreement was not helpful to the Applicants and not in the spirit of cooperation with the Tribunal.

189. With regard to the outcome, the estimated Estate Service Charge claimed by the Respondent was £624.00. The Tribunal determines that a reasonable charge for costs to be incurred in respect of the Property and payable by the Applicants was £313.19. The Tribunal determines the reasonable Estate Service Charge incurred in respect of the Property and payable by the Applicants for the year in issue as £287.32. The Applicants are in credit in the sum of £24.68 subject to any adjustment following production of the relevant electricity invoices. Therefore, the outcome justified the Application.

190. Taking into account the Respondent's conduct and the outcome of the Application the Tribunal considers it just and equitable to make:
    (1) an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
    (2) an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

2. Section 18 Landlord and Tenant Act 1985
   (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, improvement 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 of which the service charge is payable.
   (3) for this purpose
      (a) costs include 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 period

3. Section 19 Landlord and Tenant Act 1985
   (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.

4. Section 20B Limitation of Service Charges: time limit on making demands
   (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 the demand for payment of the service charge 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.

5. Section 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.

6. Section 27A Landlord and Tenant Act 1985

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party
(c) has been the subject of a determination by a court

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. Schedule 11 Commonhold and Leasehold Reform Act 2002

1. Meaning of "administration charge"

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) ...

(b) ...

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(d) ...

8. Schedule 11 Commonhold and Leasehold Reform Act 2002

5 A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

9. 20C Landlord and Tenant Act 1985

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.

(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 the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.