



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00FN/LIS/2020/0012**
HMCTS Code : **V:CVPREMOTE**
Subject Property : **Apartment 101
St Georges Mill
11 Humberstone Road
Leicester LE5 3GW**
Applicant : **Catrina Clulow**
Respondent : **Blue Property Investment UK Ltd**
Representative : **Blue Property Management UK Ltd**
Type of Application : **(1) Application under section 27A of
the Landlord and Tenant Act 1985 for
the determination of the reasonableness
and payability of service charges in respect
of the subject property**
**(2) Application under section 20C of the
Landlord and Tenant Act 1985 for an order
for the limitation of costs**
**(3) Application under paragraph 5A of
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 for an order
reducing or extinguishing liability to pay
administration charges in respect of
litigation costs**
Date of Hearing : **3 November 2020**
Tribunal Members : **Deputy Regional Judge Nigel Gravells
Graham Freckelton FRICS**
Date of Decision : **17 November 2020**

DECISION

Introduction

- 1 This is the Decision on an application by the Applicant, Ms Catrina Clulow, the leaseholder of Apartment 101, St Georges Mill, 11 Humberstone Road, Leicester LE5 3GW ('the subject property') under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of services charges in respect of the subject property ('the section 27A application').
- 2 Decisions on two further applications - under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs ('the section 20C application') and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing the Applicants' liability to pay an administration charge in respect of the Respondents' litigation costs ('the paragraph 5A application') - will be made in accordance with Directions issued at the same time as this Decision.
- 3 The Respondent is Blue Property Investment UK Ltd, the freeholder of the subject property, for whom Blue Property Management UK Ltd acts as agent.
- 4 The applications, dated 24 April 2020, were received by the Tribunal on 4 May 2020. Following the issue of initial Directions on 14 May 2020 and 3 July 2020, a (remote) case management conference was held on 29 July 2020. Further Directions were issued on 29 July 2020, 14 September 2020 and 15 September 2020.
- 5 A (remote) hearing was held on 3 November 2020. The participants in the hearing were (i) the Applicant and (ii) Mr S Marlow (Area Property Manager) and Mr M Phillips (Service Charge Collection Manager), both of Blue Property Management UK Ltd, representing the Respondent.

Background

- 6 The subject property is an apartment on the first floor of a converted mill building (St Georges Mill) in the centre of Leicester. The building is divided vertically into three 'phases' or sections, each with its own ground floor entrance; and only on the fourth floor is there internal access across all three phases of the building. The building comprises 96 apartments. The leases of some of the apartments (but not that of the subject property) include a parking space in the car park. There are also two commercial units on the ground floor of the building, which are currently being converted into multiple residential units.
- 7 The Applicant is the leaseholder of the subject property, holding under a lease dated 9 January 2006 for a 125-year term from 1 January 2005. Her title is registered at the Land Registry under title number LT388804.
- 8 The Respondent is the freeholder of the building. Its title is registered at the Land Registry under title number LT314519.
- 9 By clause 6 of, and the Fifth and Sixth Schedules to, the lease, the Respondent covenants to insure the subject property, to carry out repairs and maintenance and to provide associated services. By clause 4 of, and paragraphs 28 and 29 of the Fourth Schedule to, the lease, the Applicant covenants to pay the tenant's proportion of the costs incurred by the Respondent in providing those services (specified in clause 6 of the Particulars of the lease as 0.73 per cent of the 'development service costs').

Payment of the service charge is made, first, by an interim payment in advance and, second, by a balancing payment (or credit) following the preparation of the accounts for the relevant service charge year.

- 10 The Applicant became registered proprietor of the lease of the subject property on 23 January 2012. As part of the acquisition transaction she paid the interim service charge demand for the service charge year 2012. However, she made no further interim or balancing service charge payments until 2019, when, following proceedings in the County Court and the First-tier Tribunal, she was required by Order of the County Court to pay charges for 2012 to 2018 which the Tribunal determined to be reasonable.
- 11 However, having complied with that Order, the Applicant again withheld balancing service charge payments for 2018 and interim payments for 2019 and 2020 when demanded; but she subsequently made two payments - £1000.00 on 21 April 2020 and £1557.15 on 1 September 2020.
- 12 By the section 27A application the Applicant challenges the payability and/or reasonableness of various costs included in the service charge accounts for 2018 and 2019 and in the service charge budget for 2020.

Service charges

Statutory framework

- 13 Section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), so far as material, provides –
 - (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.
- 14 Sections 18 and 19 of the 1985 Act provide –
 - 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.

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Service charge demands

- 15 The service charge costs (as set out in the certified accounts) are £202,790 for 2018 and £295,549 for 2019. The budgeted service charge costs for 2020 are £230,893.
- 16 The Applicant’s proportion of those costs is 0.73 per cent for all heads of expenditure except buildings insurance premium, insurance excess, window cleaning and roof repairs, for which the proportion is 0.6648 per cent. The Applicant’s proportions for 2018, 2019 and 2020 are therefore £1,412.89, £2,067.54 and £1,597.57 respectively.

Heads of expenditure and challenges

- 17 The heads of expenditure challenged by the Applicant are indicated (x) in the table below –

Head of expenditure	2018	2019
Accountancy fees	x	x
Reception service	x	x
Cleaning internal communal	x	x
Electricity	x	x
Fire risk assessment		x
Management charges	x	x
Repairs and maintenance	x	x
Health and safety risk assessment		x
Car park maintenance	x	x
Car park electricity	x	x
Insurance excess	x	x
Window cleaning	x	x
Land Registry fees	x	
Legal/professional fees		x

- 18 No challenges are made in respect of the other heads of expenditure.
- 19 The dispute in relation to the 2020 service charge year is considered separately: see paragraphs 106-108 below.

Reasonableness and payability of service charges: preliminary observations

- 20 In making its determinations the Tribunal took into account, so far as relevant, all written representations of the parties, together with the oral evidence and arguments advanced at the hearing.
- 21 Since the representations of the parties made frequent reference to the Decision of the First-tier Tribunal dated 31 January 2019 (case BIR/00FN/LIS/2018/0055) ('the 2019 Decision'), where appropriate this Decision will also refer to that Decision.

Head of expenditure (1): Accountancy fees

- 22 Responsibility for the service charge accounts appears to be split into three stages. Paragraph 27 of Blue Property Management UK Limited's 'Management Duties' document states –
- To maintain adequate bookkeeping procedures, prepare documentation and instruct the production of Service Charge accounts. The production of the Service Charge accounts will incur an additional accountancy fee.
- 23 The fee charged by Blue Property Management UK Limited for the duties specified in the first sentence of paragraph 27 is part of the management fee included in the service charge accounts and is considered separately.
- 24 In accordance with the second sentence of paragraph 27, in each of the service charge years 2018 and 2019, additional fees were charged by Blue Accounting UK Limited for producing the service charge accounts (£795.00) and by Beaumont Chapman for the accreditation/certification of the accounts (£176.40 (2018) and £210.00 (2019)).
- 25 Taking into account accruals, the net costs included in the service charge accounts were £934.00 in 2018 and £1030.00 in 2019.
- 26 The Applicant noted that in the 2019 Decision the Tribunal reduced the fees chargeable by Blue Accounting UK Limited to reflect various failings during the service charge years 2012-2017.
- 27 However, the Tribunal is satisfied that there is no basis for any such reduction in the accountancy fees for the service charge years 2018 and 2019.
- 28 The Tribunal determines that the net figures included in the service charge accounts for those years are reasonable.

Head of expenditure (2): Reception service

- 29 The costs included in the service charge accounts for the reception service were as follows –
- 2018: £10,872.00
2019: £9,132.00
- 30 The Applicant questioned the costs on a number of grounds.
- 31 First, the Applicant submitted that the Blue Property Management invoices charged for more than the scheduled ten hours per week. The Tribunal agrees that the invoicing is not entirely clear in that each of the twelve invoices is stated to cover a four-week period when in fact it covers a one-month period. However, the Tribunal finds that the total of the twelve

invoices correctly reflects the costs of ten hours per week for the 52 weeks in each year.

- 32 Second, the Applicant queried the overall increase in the costs of the reception service, although she did not specifically argue that the costs were unreasonable nor did she provide any evidence of comparable costs. The Respondent submitted that the hourly rate for the service had been increased following a review of market rates. In the absence of more specific arguments from the Applicant, there is no basis on which the Tribunal can conclude that the costs included in the service charge are unreasonable.
- 33 Third, the Applicant questioned the cost of the contract for the reception telephone (£48.00 per month). She quoted (and provided evidence of) the lower cost (£36.00 per month) of a contract with Vodafone.
- 34 There is no obligation on a landlord to opt for the cheapest available service provider: see *Forcelux Limited v Sweetman* [2001] 2 EGLR 173. However, the Tribunal notes that the invoices for the telephone contract were raised by Blue Property Management and provided no evidence of the charges of the actual service provider. Given that Vodafone is a mainstream provider, the Tribunal is satisfied that the reasonable cost of the reception telephone would be £36.00 per month (inclusive of VAT), a reduction of £12.00 per month.
- 35 The Tribunal therefore determines that the reasonable costs to be included in the service charge accounts for the reception service should be reduced by £144.00 in each of the two service charge years.
- 36 The consequences of those determinations are set out below –

	Reception service costs included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	79.37	78.32	1.05
2019	66.66	65.61	1.05

Head of expenditure (3): Cleaning

- 37 The costs included in the service charge accounts for cleaning of the internal communal areas were as follows –
- 2018: £10,530.00
2019: £11,700.00
- 38 The Applicant submitted that the hourly rates (£20.00 per hour January to June 2018; £25.00 per hour thereafter (both figures exclusive of VAT)) was excessive and unreasonable. She submitted that JayFix Ltd, which she asserted is a competitor of Blue Property Management, had quoted an hourly charge of £15.00 (apparently inclusive of VAT); and that that was a reasonable rate for the period covered by the present application. The Respondent argued that the Applicant had provided no evidence of the JayFix quotation or details of the service. Second, the Respondent argued that the increase in its hourly rate in July 2018 was the first increase in six years and was imposed following a review of market rates. Third, the Respondent argued that the cleaning personnel provided a more

comprehensive service, including a number of caretaking functions (aside from functions carried out by qualified fire and health and safety personnel).

- 39 The Tribunal notes that the Applicant provided no evidence of the JayFix quotation, which in any event the general knowledge and experience of the Tribunal suggests is very low. However, the Tribunal is of the view that the current hourly rate charged by the Respondent is excessive and unreasonable, notwithstanding that the charge also covers some minor caretaking functions. The Tribunal determines that a reasonable hourly rate throughout the period covered by the present application would be £20.00 per hour inclusive of VAT. The Tribunal therefore determines that the reasonable costs to be included in the service charge accounts for cleaning would be £7,800.00 in each of the two service charge years.
- 40 The consequences of those determinations are set out below –

	Cleaning costs included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	76.87	56.94	19.93
2019	85.41	56.94	28.47

Head of expenditure (4): Electricity

- 41 Although the Applicant did not question the overall costs for electricity included in the service charge accounts, she did question the apportionment of those costs between the car park and the remainder of the building since the Applicant is not liable to contribute to costs incurred in relation to the car park.
- 42 There is no separate electricity meter for the car park and the Respondent has made a notional apportionment of £1,000.00 in respect of the car park. Although the Tribunal in the 2019 Decision determined that that was a reasonable apportionment for the service charge years 2012-2017, the Tribunal (and indeed the Respondent) accepts the argument of the Applicant that that figure should be adjusted proportionally to the increase/decrease in total electricity costs in any year.
- 43 The Tribunal therefore determines that in 2018 the costs allocated to the car park (to which the Applicant is not liable to contribute) should be increased - and the costs allocated to the remainder of the building should be decreased – by £66.00. The corresponding adjustment in 2019 should be £73.00.
- 44 The consequences of those determinations are set out below –

	Electricity costs included in Applicant's service charge	Reduced cost to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	80.78	73.00	7.78
2019	81.35	73.52	7.83

Head of expenditure (5): Fire risk and health and safety risk assessments

- 45 In the 2019 Decision the Tribunal determined that the circumstances at St Georges Mill were such that there was no necessity for annual fire risk assessments and health and safety risk assessments and that new risk assessments every three years would be more appropriate. The Tribunal therefore disallowed the costs of the risk assessments in 2013, 2014, 2016 and 2017.
- 46 The Respondent has continued to include the costs of annual risk assessments in the service charge accounts and, while the Applicant accepts the reasonableness of the costs in 2018, relying on the 2019 Decision, she challenges the costs of further risk assessments in 2019.
- 47 Notwithstanding the determination of the Tribunal in the 2019 Decision as to the appropriate frequency of risk assessments, the Tribunal accepts that a change in circumstances may require a reconsideration.
- 48 The Respondent submitted that the redevelopment of the two commercial units at St Georges Mill into multiple residential units justified a new fire risk assessment in 2019, although the Respondent accepted that a new health and safety risk assessment was 'not as important'.
- 49 The Tribunal determines that in the circumstances it was reasonable for the Respondent to incur the cost of a new fire risk assessment in 2019 but that it was unreasonable to incur the cost of a new health and safety risk assessment in 2019. The Tribunal therefore disallows the cost of the latter risk assessment.
- 50 The consequences of those determinations are set out below –

	Fire risk assessment costs included in Applicant's service charge	Costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	5.43	5.43	0.00
2019	5.43	5.43	0.00

	Health and safety risk assessment costs included in Applicant's service charge	Costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	5.43	5.43	0.00
2019	5.43	0.00	5.43

Head of expenditure (6): Management fees

- 51 The management fee included in the service charge accounts for each of the relevant service charge years was £28,200. That equates to an average management fee of £293.75 per unit. However, since the management fee is apportioned among the units in accordance with the percentages stated in the leases, the management fee included in the service charge for the subject property was £205.86 (applying the 0.73 percentage figure).

- 52 The Respondent made a series of criticisms of the standard of management provided by Blue Property Management. In particular, the Respondent submitted that Blue Property –
- (a) failed to repair a window in the subject property;
 - (b) failed to respond (fully) to communications from the Applicant and/or her tenant;
 - (c) failed to respond to the shortcomings identified by the First-tier Tribunal in the 2019 Decision;
 - (d) failed to follow transparent and reliable accounting procedures;
 - (e) continued to include in the service charge accounts costs that are unreasonable and/or not payable by the Applicant.
- 53 The Applicant also argued that the fact that the same parties were before the Tribunal two years after the previous case constituted evidence that Blue Property Management’s service levels had not improved.
- 54 The Applicant asserted that the management fee for a flat that she owns in Maidenhead is £100.00 for a similar level of service.
- 55 The Respondent argued –
- (a) that the Applicant had persistently failed to pay service charge demands between 2012 and 2020;
 - (b) that the Applicant had provided no evidence that she had reported disrepairs to the subject property;
 - (c) that the Applicant had provided no evidence of unanswered communications;
 - (d) that the Applicant had provided no details of the property in Maidenhead or the applicable management agreement;
 - (e) that the management fees charged in respect of the St Georges Mill development and the subject property were commensurate with the work involved and were reasonable given the nature of the development and the services undertaken.
- 56 In determining a reasonable management fee the Tribunal notes the clear preference of the RICS for ‘per unit’ fees.
- 57 Using its general knowledge and experience, the Tribunal determines that the effective per unit management fee of £293.75 included in the service charge accounts is excessive and unreasonable and that a reasonable annual management fee (inclusive of VAT) for each apartment in St Georges Mill would be £200.00.
- 58 The Tribunal is of the view that the management provided by Blue Property Management has improved since the years covered by the 2019 Decision; and comments by the Tribunal, which came too late to be taken into account in 2018, seem to have been taken into account in 2019. The Tribunal finds that there is limited evidence of the alleged failings identified by the Applicant in paragraph 51 (b) and (c) above. Moreover, the Tribunal attaches little weight to the Applicant’s argument that the present application (by just one of 96 leaseholders) is evidence of continued poor management by the Respondent. That said, the Tribunal is of the view

that there remain some management issues to be addressed. The Tribunal continues to question the reasonableness and compatibility with the leases of the Respondent's approach to the costs of repairs and general maintenance. It notes that, although the Tribunal determined that the Applicant is not required to contribute to costs incurred in relation to the car park, and although that determination is reflected in the 2019 accounts, the Respondent made no proactive attempt to reimburse retrospectively costs improperly included in the 2018 accounts. The Respondent waited for the Applicant to make the present application before conceding the issue.

- 59 However, in determining the appropriate reduction to reflect the shortcomings in the management, the Tribunal finds (what the Applicant appeared not to acknowledge) that Blue Property Management has carried out most of its management functions. In the circumstances the Tribunal determines that an appropriate reduction would be 10 per cent.
- 60 The Tribunal therefore determines that a reasonable management fee in the service charge years 2018 and 2019 would be £180.00 per apartment. However, since the management fee is apportioned among the apartments in accordance with the percentages stated in the leases, a reasonable management fee for the subject property in each of the relevant service charge years would be £180.00 x 96 x 0.73 per cent, that is £126.14.
- 61 The consequences of those determinations are set out below –

	Management fee included in Applicant's service charge	Reduced cost to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	205.86	126.14	79.72
2019	205.86	126.14	79.72

Head of expenditure (7): Repairs and maintenance

- 62 The total costs for repairs and maintenance included in the service charge accounts were as follows –
- 2018: £21,774.00
2019: £64,382.00
- 63 The Applicant has analysed the documentation relating to repairs and maintenance in detail. She disputes her liability to contribute to many of the costs on a number of grounds –
- (a) that some costs related to the car parking area in respect of which the Applicant has no liability under the lease;
 - (b) that costs incurred in carrying out works to individual apartments should have been charged back to the relevant leaseholder;
 - (c) that the labour charges for some invoices was excessive and unreasonable;
 - (d) that some costs appeared to be the subject of double billing.
- 64 In the 2019 Decision the Tribunal determined that under the terms of her lease the Applicant is not liable to contribute to costs incurred in respect of the car parking area; and the Respondent has not challenged that

determination. Although the Respondent did not implement the determination until the 2019 service charge year, it conceded that car park costs should be excluded from the Applicant's service charge.

- 65 In the 2019 Decision the Tribunal determined that in some cases it was appropriate for the Respondent to respond to out-of-hours calls from individual leaseholders because the reported issues posed a potential risk of damage beyond the individual apartments. The Tribunal fully accepts that position. However, the Tribunal noted that the Respondent rarely (if ever) invoiced the individual leaseholders for the relevant work but simply included the costs in the service charge. In the view of the Tribunal that approach is incompatible with the lease, which clearly differentiates between repair and maintenance of the apartments, which is the responsibility of individual leaseholders, and repair and maintenance of the common parts, which is the responsibility of the leaseholders collectively through the service charge. In the context of repairs and maintenance the Tribunal has disallowed all costs incurred for work where the matter originated within an apartment.
- 66 In the context of the repairs and maintenance head of expenditure there is a related issue. There are a number of invoices from Blue Property Maintenance for dealing with 'out of hours' telephone calls. Many of these impose high charges for simply taking the calls as well as 'out of hours' labour rates for carrying out the work. In the view of the Tribunal, this practice results in excessive and unreasonable costs. Where costs are incurred for actual work, whether properly charged to an individual leaseholder or to the service charge account, the Tribunal has disallowed the charge for taking the telephone call.
- 67 The Tribunal determined that there were a few instances of double-billing in 2018 and one old invoice.
- 68 In addition to the invoices relating to the car park, the Respondent conceded a number of invoices in 2019.
- 69 The costs disallowed (or conceded) in each service charge year are set out in paragraphs 70-82 below. (Numbers refer to the paginated hearing bundle.)
- 70 The costs disallowed reflect the determination of the Tribunal *on the challenges made by the Applicant*. With the exception of a small number of invoices which were not challenged by the Applicant but which raised identical issues to invoices that were challenged, the Tribunal has treated unchallenged costs as agreed by the Applicant.

Costs disallowed/conceded in 2018

- 71 Car parking costs: 259, 260, 264, 265, 275, 276, 279, 283, 284, 287, 288, 290, 291, 292, 294, 296, 298, 300, 301/2, 303, 308, 314, 315, 316, 317, 318, 319, 320, 321, 322. Total of invoices: £6,391.17; Applicant's proportion: £46.66.
- 72 Work to individual apartments: 258, 266, 267, 268, 270, 273, 274, 281, 282, 285, 293, 295, 297, 299, 309, 310, 326, 328. Total of invoices: £2,062.74; Applicant's proportion: £15.06).
- 73 Out of hours calls: 262, 263, 280, 327. Total of deductions: £400.00; Applicant's proportion: £2.92).

- 74 Excessive labour charges: 262 (part), 263 (part), 280 (part). Total of deductions: £240.00; Applicant's proportion: £1.75).
- 75 Double billing: 272a, 290, 304, 305, 323. Total of invoices: £454.79; Applicant's proportion: £3.32).
- 76 Old invoices: 271. Total of invoices: £348.00; Applicant's proportion: £2.54).
- 77 The total to be deducted from the Applicant's service charge for repairs and maintenance in 2018 is £72.25.

Costs disallowed/conceded in 2019

- 78 Car parking costs: 414, 445/6. Total of invoices: £636.64; Applicant's proportion: £4.65).
- 79 Work to individual apartments: 393/4, 397/8, 404, 405, 406, 407, 408/9, 412/3, 416, 418, 419, 421, 422, 423, 425, 427, 428, 431, 439, 442, 443, 444, 449/50. Total of invoices: £8,210.64; Applicant's proportion: £59.94).
- 80 Out of hours calls: 402, 403, 410, 411. Total of deductions: £240.00; Applicant's proportion: £1.75.
- 81 Excessive charges: 403 (part), 411 (part). Total of deductions: £120.00; Applicant's proportion: £0.88.
- 82 Other concessions by the Respondent: 399/400, 415, 420, 448 (part). Total of invoices: £191.75; Applicant's proportion: £1.40.
- 83 The total to be deducted from the Applicant's service charge for repairs and maintenance in 2019 is £68.62.

Graphic art works

- 84 The service charge accounts for 2019 included, under the repairs and maintenance head of expenditure, costs of £1,860.00 for three graphic art works in the reception areas of the building.
- 85 In her Scott Schedule the Applicant asserted that none of the three works was on display when she visited the subject property in early 2020, although at the hearing she confined her assertion to the work in phase 1 of the building.
- 86 Whether or not the works were on display at that time, the Tribunal requested and received photographs which confirm that the works are now on display.
- 87 The Applicant subsequently sent an email to the Tribunal, in which she 'averred' that the costs of the works should be borne by the Respondent.
- 88 The Tribunal cannot have regard to unsolicited submissions after the close of the hearing; but in any event the Applicant's submission provided no basis for her argument.
- 89 The Tribunal determines that the costs of the works have not been shown to be unreasonable and are payable by the leaseholders, including the Applicant.

Repairs and maintenance: summary

- 90 The consequences of those determinations for the Applicant are set out below –

	Repair and maintenance costs included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	158.95	86.70	72.25
2019	469.99	401.37	68.62

Head of expenditure (8): Car park maintenance

- 91 Quite apart from the costs relating the car park included in the general repairs and maintenance head of expenditure, the service charge accounts for 2018 and 2019 included a separate car park maintenance head of expenditure and costs of £1373.00 and £7603.00. It has been explained above that the Tribunal has determined that the Applicant is not liable to contribute to costs incurred in respect of the car parking area.
- 92 It follows that the Applicant is not liable for any of the costs allocated to the separate car park maintenance head of expenditure.
- 93 The consequences of that determination are set out below –

	Car park maintenance costs included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	10.02	00.00	10.02
2019	55.50	00.00	55.50

Head of expenditure (9): Car park electricity

- 94 The incorrect inclusion of electricity costs relating the car park in the Applicant's service charge has been addressed in the determination of overall electricity costs: see paragraphs 41-44 above.

Head of expenditure (10): Insurance excess

- 95 The costs of excess payments under the buildings insurance policy included in the service charge accounts were as follows –

2018: £5,500.00
2019: £10,500.00

- 96 The Applicant disputed her liability to contribute to the excess payments on the ground that excess payments for claims relating to individual apartments should be charged back to the relevant leaseholder.
- 97 As already noted, the Tribunal excludes from the service charge accounts payments in respect of claims relating to individual apartments.

98 The Tribunal therefore determines that none of the excess payments are properly included in the service charge accounts for 2018 and 2019.

99 The consequences of that determination are set out below –

	Insurance excess costs included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2018	36.56	00.00	36.56
2019	69.80	00.00	69.80

Head of expenditure (11): Window cleaning

100 The Applicant questioned the costs for window cleaning included in the service charge accounts on the ground that she had no information as to dates when the cleaning was carried out.

101 However, when the Respondent provided those dates, the Applicant withdrew her challenge.

Head of expenditure (12): Land Registry fees

102 The Tribunal accepted the explanation provided by the Respondent.

Head of expenditure (13): Legal/professional fees

103 The Respondent accepted that legal fees of £6460.00 had been incorrectly included in the service charge accounts for 2019.

104 The consequence of that concession is set out below –

	Legal/professional fees included in Applicant's service charge	Reduced costs to be included in Applicant's service charge	Sum to be deducted from Applicant's service charge
2019	47.16	0.00	47.16

Service charges: summary for 2018 and 2019

105 The sums to be deducted from the Applicant's proportion of the service charge costs detailed in paragraph 16 above are set out in the following two tables –

Deductions by head of expenditure and service charge year

Head of expenditure	2018	2019
Accountancy fees	0.00	0.00
Reception service	1.05	1.05
Cleaning internal communal	19.93	28.47
Electricity	7.78	7.83
Fire risk assessment	0.00	0.00
Management charges	79.72	79.72
Repairs and maintenance	72.25	68.62
Health and safety risk assessment	0.00	5.43
Car park maintenance	10.02	55.50

Insurance excess	36.56	69.80
Window cleaning	0.00	0.00
Land Registry fees	0.00	0.00
Legal/professional fees	0.00	47.16
	227.31	363.58

Total deductions by year

	Applicant's proportion of total costs in service charge account	Sum determined by Tribunal to be deducted from Applicant's proportion	Reasonable service charge payable by Applicant
2018	1412.89	227.31	1185.58
2019	2067.54	363.58	1703.96

Interim payment for 2020

- 106 The Applicant's application also challenged the interim service charge for 2020 of £1597.58.
- 107 In the absence of the final accounts for that year, a similar analysis to that applied to the years 2018 and 2019 is obviously not possible; and there may be a demand for a balancing payment for 2020.
- 108 Although the Respondent appears to be giving effect to the many of the Tribunal's determinations in the 2019 Decision, it has continued to charge unreasonable management fees and to ignore the determination as to the proper allocation of costs between individual leaseholders and the service charge. The Tribunal therefore determines that the interim demand of £1597.57 should be reduced by £200.00 to £1397.57.

Service charges: summary

- 109 The Tribunal therefore determines –
- (a) that the reasonable service charges which the Applicant is liable to pay for the service charge years 2018 and 2019 are, respectively, £1,185.58 and £1,703.96 – a total of £2,889.54;
- (b) that the reasonable interim service charge which the Applicant is liable to pay for the service charge year 2020 is £1397.57.
- 110 However, the actual charges due from the Applicant in respect of service charges for 2018, 2019 and 2020 will need to take into account payments already made in respect of those years (i) pursuant to the 2019 Decision and (ii) in April and September 2020: see paragraph 11 above.

Other charges

- 111 The Applicant also challenged three further charges included in her individual account – a tracing agent fee of £60.00, debt recovery fees of £300.00 and an arrears administration charge of £50.00.
- 112 Although these charges are administration charges, which should be challenged by an application under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, the Respondent did not

raise any jurisdictional objection and the Tribunal takes the view that it is convenient and appropriate to deal with the challenges.

- 113 At the hearing the Respondent conceded the challenge to the tracing agent fee, which should therefore be credited to the Applicant's individual account.
- 114 The Respondent explained that the debt recovery fees related to unpaid service charges for the years 2012 to 2017 and correctly observed that the charges were allowed as part of the 2019 Decision.
- 115 The arrears administration charge was imposed for the non-payment of the 2019 interim service charge. The Applicant challenged the charge on the ground that she did not receive the invoice for the 2019 interim service charge demand until 29 January 2020. The Tribunal is satisfied that the demand was issued on 4 December 2018 and sent to the Applicant on that date or soon afterwards. The Tribunal is also satisfied on a balance of probabilities that the demand was delivered to the Applicant soon after it was sent. The Tribunal is not suggesting that the Applicant is untruthful. Given the ill-health of her husband at the relevant time and her own subsequent health issues, she would understandably have had other priorities and it is possible that she does not recall receiving the demand. Although the charge is payable under the terms of the Applicant's lease, in the particular circumstances the Respondent may wish to consider withdrawing the charge.

Miscellaneous matters

- 116 As part of her application the Applicant requested that the Tribunal make various orders/declarations as to the future management of St Georges Mill. However, the Tribunal does not have jurisdiction to make such orders/declarations.

Decision

- 117 The reasonable service charges which the Applicant is liable to pay for the service charge years 2018 and 2019 are, respectively, £1,185.58 and £1,703.96 – a total of £2,889.54;
- 118 The reasonable interim service charge which the Applicant is liable to pay for the service charge year 2020 is £1397.57.
- 119 The above sums are subject to the deduction of payments already made by the Applicant in respect of those years (i) pursuant to the 2019 Decision and (ii) in April and September 2020.
- 120 The tracing agent fee of £60.00 is to be credited to the Applicant's individual account.
- 121 The Applicant is liable for the arrears administration fee of £50.00 (subject to the comments of the Tribunal in paragraph 115 above).

Costs applications

- 122 If the parties wish to make representations in relation to the section 20C application and the paragraph 5A application, they must do so in accordance with the Directions attached to this Decision.

Appeal

- 123 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 124 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.
- 125 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 126 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

17 November 2020

Professor Nigel P Gravells
Deputy Regional Judge