FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/LSC/2019/0064**
Property	**:**	**59 Blackburn Street, Salford, Manchester, M3 6AS**
Applicant	**:**	**Mr Mathew Gray, Solicitor acting in person**
Respondent	**:**	**Contour Property Services Limited**
Represented by		**Mr Sebastian Clegg, Barrister**
Type of Application	**:**	**Section 27A and 20C, Landlord And Tenant Act 1985. Schedule11, paragraph 5a, Commonhold and Leasehold Reform Act 2002. Rule 9(2) Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**
Tribunal Members	**:**	**Judge C. P. Tonge LLB, BA** **Mr J. Faulkner FRICS**
Date of Determination	**:**	**1 September 2020**
Date of Decision	**:**	**2 October 2020**

DECISION

Background

1. A Case Management Hearing took place in this case on 30 June 2020. As a result of that hearing the Tribunal, Judge Tonge sitting alone, issued a Decision, Order and Directions of 30 June 2020 and that document is hereby incorporated into this Decision and will be annexed to this Decision.

2. The Tribunal notes that there are two errors in the Decision, Order and Directions of 30 June 2020. In paragraph 3 on page 2, the first sentence states that Taylor Wimpey U. K. Ltd is the freeholder, in fact that company is the landlord. In paragraph 30, on page 8 there is a reference to "paragraph 28 above" it should be "paragraph 29 above".

3. The Decision, Order and Directions of 30 June 2020 deals adequately with the "Application and background". There is no need to repeat that information again here, although to assist the reader, it is summarised.

4. As a result of the Case Management Hearing the Tribunal made an order striking out part of the case for lack of jurisdiction. The Applicant withdrew his challenge to the reserve fund (that is in fact two separate funds, the cyclical fund and the sinking fund) and further, agreed that the Tribunal should not consider service charge year 1 April 2019 to 31 March 2020. The case continuing with four service charge years to be considered, those commencing 1 April 2015, 1 April 2016, 1 April 2017, 1 April 2018 and in consideration of service charges under three heads, additional charges, management fees and insurance charges.

5. In compliance with Directions a hearing bundle has been served, Part 1 being entitled "Case Management" containing the Directions, the Applicant's request for (amongst other things) more information relating to the insurance service charge, dated 5 December 2019 and the Decision, Order and Directions of 30 June 2020. Part 2, "Pleadings" contains the application to the Tribunal, Statements of Case, Reply and a copy of the lease. Part 3 containing the witness statements and exhibits.

6. The Tribunal, now sitting with two members, dealt with the final hearing by video hearing monitored by a clerk to the Tribunal, hearing evidence on 25, 26 and 27 August 2020. The Tribunal met again in private session, again by video, on 1 September 2020 to decide the issues in the case. Video hearings being held because of the need to comply with social distancing in the Covid-19 pandemic. These video hearings were the only change to the Tribunal's procedure brought about by the Covid-19 pandemic and the Tribunal having considered the bundle of evidence and the oral evidence of the parties and witness evidence is satisfied that this change in procedure has not caused any injustice to either party.

The law

The Landlord and Tenant act 1985
section 27A, Liability to pay service charges: jurisdiction

(1)An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

(d)the date at or by which it is payable, and

(e)the manner in which it is payable.

(2)Subsection (1) applies whether or not any payment has been made.

(3)An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,

(b)the person to whom it would be payable,

(c)the amount which would be payable,

(d)the date at or by which it would be payable, and

(e)the manner in which it would be payable.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 18, Meaning of "service charge" and "relevant costs".

(1)In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a)which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b)the whole or part of which varies or may vary according to the relevant costs.

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

(3)For this purpose—

(a)"costs" includes overheads, and

(b)costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19, Limitation of service charges: reasonableness.

(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.

Section 20C, Limitation of service charges: costs of proceedings.

(1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, or the First-tier Tribunal .....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—

in the case of proceedings before the First-tier Tribunal, to the tribunal;

(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.

Commonhold and Leasehold Reform Act 2002

Paragraph 5A of schedule 11, 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.

The Final Hearing

7. The final remote video hearing commenced at 10am on 25 August 2020. Both parties had prepared skeleton arguments and the Respondent had prepared a chronology of events. Representation is as described above.

8. The written evidence is 703 pages in length and the Tribunal will refer to that evidence as necessary in the determinations that have been made. It is however relevant to note that at pages 21 and 22 of the Applicant's witness statement (bundle, part 3, page 21 and 22) the Applicant goes into some detail as to the difficulties he has encountered in attempting to obtain information from the Respondent regarding the calculation of the insurance service charge for the property.

9. It is also necessary to note that there are four errors made in the calculation of the Applicant's service charges. These are dealt with by the witness Lee Allsopp (third witness statement, bundle, part 3, page 499 to 501). These were pointed out by the Applicant in his witness statement and are admitted by the Respondent, with refunds being arranged. The Tribunal indicates that any such refund, in relation to the Applicant's service charge account, should be to that service charge account.
    - A prior tribunal case MAN/00BN/LSC/2017/0089, decided on 16 July 2018, had involved an order preventing costs from forming part of the service charges, but service charges have been charged in respect of the costs of that case.
    - Additional charges have been miscalculated as per the witness statement.
    - An incorrect figure has been used in the 2014 to 2015 service charge year calculations of additional charges.
    - Additional charges have been miscalculated in service charge year 2017 to 2018, arrangements being made to refund the error in the subsequent year.

10. The Trinity Riverside Estate is a purpose built estate of 116 leasehold houses and blocks of flats containing 213 flats, the landlord owning a head lease to the site, so that the landlord could develop the area, leasing out individual houses and flats to long leaseholders. The management company is named as a party to the lease. It has changed its name several times, but is now called Contour Property Services Limited. The lease to the property is for a term of 125 years from 10 July 1992. The Applicant acquired the remainder of that lease on 27 January 2006 and set up a direct debit to pay the service charges. The service charge payments were then paid month by month until Mr Gray cancelled that direct debit, the last payment being May 2018. In March 2012, Mr Gray moved out of the property, a friend moving in as sub-tenant. From that date until 2017, Mr Gray did not concern himself with the post being received at the property. The application to this Tribunal is dated 14 August 2019.

Determination

11. The Tribunal first turns to the lease. In most cases it is sufficient for the Tribunal simply to give a ruling as to what the relevant terms of the lease mean. However, in this case there have been substantial submissions and evidence given as to the meaning of the relevant terms and these are now dealt with.

12. The Tribunal applies the guidance provided in Arnold v Britton and others [2016] 1 All ER 1, by the Supreme Court. The Tribunal must focus on the meaning of the words in their documentary, factual and commercial context, considering 6 additional factors (7 in total) as summarised at paragraph 15 and then further explained in the judgement. One of these factors is whether the interpretation makes commercial common sense.

13. It is common ground that the lease provides for service charges for the day to day running of the site and additional works that from time to time may be needed. The Applicant, however, challenges the chargeability of service charges for fixed fee management and for addition fee percentage based management charges. The Applicant contends that the lease is such that anyone managing this estate must do so without making any profit, covering their costs only.

14. The Applicant points to clause 2 of the lease (bundle, part 2, page 29) and submits that this is a none profit clause. The Tribunal does not agree with the Applicant. This is a clause giving the landlord an option to transfer its interests to the management company. It does not say anything about profit. It does not limit management fees in any way. To construe the clause in that way would not make commercial common sense.

15. The Tribunal notes that the definition of maintenance charge (bundle, part 2, page 28) is " such other sum as the Association (the Respondent) shall from time to time deem payable by the purchaser (the Applicant) to the Association in accordance with the provisions of Part I and II of the sixth schedule of this lease". Brackets are added to the definition by the Tribunal.

16. The sixth schedule, part I, clause 2 requires the sum specified to be apportioned " upon the basis of the number of flats and houses then…. in the development"(bundle, part 2, page 38).

17. The sixth schedule, part II clause 1, 2 and 3 (bundle, part 2, page 39) deal with the expenditure to be recovered by means of a maintenance charge, including management fees. There is clear evidence from the witnesses, particularly Michelle Howard that the parent company (of the management company) Onward Homes Limited has a staff of employees

that are dedicated to the provision of services at the Trinity Riverside Estate. The Applicant submits that because clause 2 permits a management fee to be charged for employees of the management company, it does not permit management fees to be charged for the services of persons who are not directly employed by the management company. ("Employees" being again mentioned in clause 3.) The Applicant submits that these are very precise and restrictive clauses.

18. The Tribunal does not agree with the Applicant, to leap to this conclusion would make no commercial sense and would mean that 13 employees of Onward Homes Limited could never, under the terms of this lease, be paid for their services to the Trinity Riverside Estate. Having heard extensive arguments from both sides the Tribunal determines that these clauses are wide and inclusive. Clause 3 permits management fees to be charged for "all outgoings incurred in connection with the provision of services as described in the lease". The Tribunal determines that this is potentially sufficient to justify the management company charging both a fixed fee management charge and a percentage based additional fee, management charge. The Tribunal will, however, return to the issue as to whether both types of management fee can properly be charged at the same time.

19. It is common ground that the lease imposes a duty upon the management company to insure the buildings upon the Trinity Riverside Estate pursuant to clause 8(a) of of the fifth schedule (bundle, part 2, page 37). The Applicant contends that clause 8(c) limits the policy of insurance that must be obtained to the Trinity Riverside Estate only, contending that it prevents the use of a block policy that contains the estate. The Tribunal does not agree with the Applicant. The Tribunal notes that the management company must be able to produce "a summary of the details of such Policy and the receipt for such payment". This is however simply an administrative matter, The Respondent must provide the information required by the clause. It does not prevent the use of a block policy (as are used in this case) with the benefit of reduced premiums, resulting in a lower insurance service charge.

20. Further, the Applicant submits that any reduced policy cost derived from the use of block policy insurance is a false economy because the insurance policy cost for the Trinity Riverside Estate will then be effected by insurance claims being made on other estates that have nothing to do with the Trinity Riverside Estate, as happened when a 5 million pound claim was made in or about 2015. The Tribunal agrees that a claim under a policy will increase subsequent policy premiums, the same would happen if a neighbouring block of flats in the Trinity Riverside Estate had a claim. This does not mean that the management company should not utilise block policies, the Tribunal encourages their use as a means to reducing costs. However, it is clear to the Tribunal that in such circumstances the

Trinity Riverside Estate should be charged only for the cost of the insurance at that estate and so apportionment of costs between the entities provided with insurance must be done in a reasonable and appropriate way.

21. The Applicant submits that the service charge accounts do not comply with TECH 03/11 Residential Service Charge Accounts, issued jointly by the Royal Institution of Chartered Surveyors, the Association of Residential Managing Agents and professional accounting bodies. The Tribunal notes that the accounts have all been drawn up by Chartered Accountants.

22. The Respondent's witness Lee Allsopp deals with this issue and produces various accounts that are signed by a representative of the Chartered Accountant and that specify that the work has been carried out having regard to TECH 03/11 (bundle, part 3, page 285, 290, 295, 300). The Tribunal accepts this evidence. TECH 03/11 has been complied with.

23. Having determined that the three challenged charges can be charged, or in the case of additional fees can potentially be charged under the terms of the lease, the Tribunal now consider each class of charge over the four year period that is challenged.

24. Management charges with a fixed fee, adjusted from year to year, have been charged at the Trinity Riverside Estate from 1992 to present. It is the Respondent's case that these were sufficient for the needs of the management company up to 2014, when the Respondent indicates that they were not providing enough income, there being a short fall which is not specified. The Tribunal indicates the view that the proper way to deal with such a short fall is to increase the fixed fee charged in subsequent years.

25. The Applicant challenges these fees on the basis that they are charged at an unreasonably high level. He produces a quote for management fees for the estate from Ian Magenis of Scanlans Property Management LLP, dated 21 May 2020, at £42,600 per year including VAT, a management proposal is also exhibited (bundle, part 3, page 152 to 184). The Tribunal notes that the proposal includes additional fees at unspecified cost (bundle, part 3, page 173 to 175). The Tribunal notes that the £42,600 per year part of that quoted cost is cheaper than the management fees being charged by the Respondent for the Trinity Riverside Estate;
    - service charge year 1 April 2015 to 31 March 2016 £54,588.84, £215.28 per apartment
    - service charge year 1 April 2016 to 31 March 2017 £55,011.53, £216.95 per apartment
    - service charge year 1 April 2017 to 31 March 2018 £56,110.12, £221.28 per apartment

- service charge year 1 April 2018 to 31 March 2019 £58,299.14, £229.91 per apartment

26. The Tribunal has no way to know what the standard of service provided under the Scanlan proposal would be. Four errors have been admitted by this management company (see paragraph 9 above) and the Applicant raises issues as to failure to disclose information, particularly in relation to insurance. On the other hand, the Tribunal also notes that the Respondent's case is that by 2014 these fees were not sufficient (despite annual increases) to cover their costs.

27. The Tribunal also notes that the management work is carried out for this estate by persons employed by the parent group, Onward Homes Limited. The management service charge collected must be sufficient to pay the wages of this staff and cover all costs incurred in performing management functions in circumstances where the Respondent's case is that the charges being demanded in 2014 were not able to meet these costs.

28. The Tribunal balances the above factors and relies upon its own knowledge, built up from prior cases, of management fees generally within the industry. The Tribunal determines that these management fees are within the bracket of reasonable fees for an estate of this nature, although at the upper end of that scale. In making this determination the Tribunal points out that the Tribunal takes into account that the management company is being recompensed for undertaking all management functions according to the Code of Practice, Royal Institution of Chartered Surveyors, Service Charges Residential Management Code, second edition, paragraphs 2.3, 2.4 and 2.5, third edition, paragraphs 3.3, 3.4 and 3.5.

29. The Tribunal moves on to consider the addition fees that have through the period relevant to this case been charged as an additional percentage based charge on service charge costs, in addition to the management charge fixed fee.

30. It is common ground that these charges were first thought to be necessary by the Respondents in or around 2014. Prior to this the fixed fee management charge had been sufficient for the needs of the management company. These additional fees were first brought to the attention of the long leaseholders on the Trinity Riverside Estate by a pack posted to each property effected by this charge on 26 February 2014 (bundle, part 3, page 432 to 442). The Applicant did not collect this pack from the property, but does not dispute that it was sent to the property.

31. These charges are;
    - 2015 to 2016, per apartment £34.74
    - 2016 to 2017, per apartment £55.13
    - 2017 to 2018, per apartment £105.09

- 2018 to 2019, per apartment £65.36
  Total £260.32

32. The Applicant challenges these additional charges on the basis that they are being collected contrary to the guidance in the Code of Practice, Royal Institution of Chartered Surveyors, Service Charges Residential Management Code, third edition, paragraph 3.3 which states in relation to management fees, "basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to preferable...". The Tribunal points out that the code, although only effective from 1 June 2016, replaces guidance in the second edition that is of the same effect. Further, both codes are approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and Statutory Instrument (S. I. 2016/518).

33. The Applicant further challenges these additional charges on the basis that they are being collected contrary to the guidance in the Advice Note- Management Fees, published by the Association of Residential Management Agents, the leading trade body for residential leasehold management. Guidance is stated to be best practice and good practice. Guidance notes on the fifth page states that in relation to management fees, all members agree to be abide by the RICS Service Charges Residential Management Code and it also states that, "standard annual fees are usually quoted as a fixed fee rather than as a percentage. This method is considered to be preferable."(bundle, part 3, page 141).

34. On the sixth page the guide states, "Both ARMA and RICS believe it's poor practice to use percentages as a basis for management fees because it establishes an immediate conflict of interest between the client and the agent."(bundle, part 3, page 142). The Tribunal adds that, in its view, the conflict of interest there being guarded against is that if more is spent in service charge costs, the percentage based management fee would increase whilst the fixed fee management fee would not increase.

35. The Respondent's case is that it was fair to add a second percentage based management charge in 2014 and that these additional charges are reasonable. The Tribunal does not agree with the Respondent. There was already in place a fixed fee management charge (subject to annual review and increase if necessary). That scheme as approved of by the Royal Institution of Chartered Surveyors, Service Charges Residential Management Code and the Advice Note- Management Fees published by the Association of Residential Management Agents, had been in place for 22 years. The Respondent then chose to add to that scheme an additional charge that is contrary to the guidance in these two codes whilst also retaining the fixed fee based scheme.

36. The Tribunal determines that this was an unreasonable decision taken by the Respondent. It is entirely unreasonable to charge both a fixed fee and a percentage based fee to cover the day to day management of this estate. The Tribunal has considered the additional charges over the four years covered in this case. The charges are all charged on day to day service charge expenses that are also covered by the fixed fee management charge.

37. The Tribunal determines that the additional charges as set out in paragraph 31 above are unreasonable and they must be credited back to the Applicant's service charge account.

38. The Tribunal notes that the Code of Practice, Royal Institution of Chartered Surveyors, Service Charges Residential Management Code, third edition, paragraph 3.5 permits additional charges to be applied to service charge expense that is outside the normal day to day running of the estate such as major works, but there have been no additional charges of that nature in the relevant period.

39. The Tribunal now considers the insurance charges. There is a changeover of insurance broker during the period appropriate to the calculations of the insurance cost demanded for service charge year 2017 to 2018, from Zurich to Gallagher. The service charge year and the insurance year are different so that in calculating each service charge year it is necessary to split the cost of the insurance between two years. The cost demanded in respect of insurance premiums were clarified in a schedule to the Applicant's skeleton argument and are:
    - 2015/2016 with Zurich, per apartment £101.54
    - 2016/2017 with Zurich, per apartment £143.67
    - 2017/2018 with Zurich and Gallagher, per apartment £173.95
    - 2018/2019 with Gallagher, per apartment £59.32

40. There is a complicated procedure for the arrangement of insurance. The parent company Onward Homes Limited arranges a block policy to cover various commercial interests that the company has, this includes a large number of sites and a huge number of properties with premiums approaching, or just over, two million pounds. It includes the leasehold properties being managed by the Respondent, Contour Property Services, who are currently responsible for insuring the buildings and estates housing some 3,697 leasehold properties (according to the witness Michelle Howard). These estates include the Applicant's Trinity Riverside Estate. The Tribunal accepts that this results in lower cost per insured unit than would otherwise be the case.

41. The Respondent then has the difficulty of apportioning the proper cost of insurance from this huge policy to the individuals who are required to pay towards this insurance premium. The Tribunal notes that much of the information relating to this procedure is classed by the Respondent as

confidential commercial information that the Respondent is not willing to disclose. This has led to numerous requests for information by the Applicant that were, in our view, not properly dealt with by the Respondent. The Tribunal has been told that against this very complicated procedure a partly redacted 200 page document was sent to the Applicant, who replied to the effect that he did not understand the procedure, would not struggle with the document and would await service of witness statements.

42. The Tribunal needs to understand how the insurance fee that was demanded of the Applicant was calculated and even with all the information in the hearing bundle, the Tribunal is having difficulty with this. The Tribunal asked for further disclosure relating to Trinity Riverside Estate insurance costs at the end of the first day of the hearing, that disclosure to be forwarded to the Tribunal office before the second day of the hearing commenced. The Tribunal spent some time at the end of the first day's hearing discussing this with Mr Clegg, barrister for the Respondent. The evidence requested was not provided. At the start of the second day further time was spent on this problem and the Tribunal agreed to wait until noon that day for the provision of the required documents.

43. Paul Andrew Till, called on behalf of the Respondent, was able to assist the Tribunal with some of the missing information. He was able to email documents to the Tribunal office that made it possible for the Tribunal to calculate the actual cost of the insurance obtained for the Trinity Riverside Estate. It was necessary to delay proceedings for a further 20 minutes for the documents to be emailed and then forwarded. Mr Till gave evidence that he had sent the forms now being put before the Tribunal to his superiors when he had been asked to become involved in the case.

44. The Tribunal takes the view that the insurance documents produced during the hearing by Mr Till and previously forwarded by him to assist in the preparation of the case, should have been disclosed to the Applicant before the hearing commenced. They should have been included in the hearing bundle. If that had been done a significant amount of hearing time would have been saved.

45. The documents produced and explained by Mr Till have permitted the Tribunal to make the following calculations. It was possible with these documents to see what the insurance had actually cost, adding in the relevant insurance against terrorist acts, for the whole of the properties insured by Contour Property Services Limited. This was done for three relevant insurance period years, two service charge years. Insurance year 31 October 2014 to 30 October 2015, being £167,310.10 (premium), plus £2,933 (terrorism) adding 9.5% (insurance premium tax)£16,173.17, dividing that by the number of properties insured by C. P. S. (according to

Mrs Howard 3,697) making a total of £50.42 per annum per property or £4.20 per calendar month. Seven months are to be included in service charge year 1 April 2015 to 31 March 2016. Hence £29.40 to be charged in that service charge year.

46. A similar calculation has been made for insurance year 31 October 2015 to 30 October 2016, following the same method of calculation, but now using 10% insurance premium tax:

Policy cost	£244,912.54
terrorism	£3,027.46
tax at 10%	£24,794
Total	£272,734
Divide by 3,697	£73.77 per year or £6.15 per calendar month,

5 months are to be included in service charge year 1 April 2015 to 31 March 2016. Hence £30.75 to be charged in that service charge year.

47. As a result the Tribunal is able to determine that the properly calculated insurance service charge for the Applicant's property in service charge year 1 April 2015 to 31 March 2016 is £60.15. In fact the Applicant was overcharged by £41.39. That overcharged figure is unreasonably overcharged and must be credited back to the Applicant's service charge account. The Respondent could have made the same calculation, but it appears that it did not do so.

48. In calculating the proper insurance service charge for service charge year 1 April 2016 to 31 March 2017, 7 months at £6.15 must be included in the charge, being £43.05.

49. A similar calculation has been made for insurance year 31 October 2016 to 30 October 2017, following the same method of calculation, using 10% insurance premium tax:

Policy cost	£256,080.02
terrorism	£3,027.46
tax at 10%	£25,910
Total	£284,990.77
Divide by 3,697	£77.09 per year or £6.42 per calendar month

5 months are to be included in service charge year 1 April 2016 to 31 March 2017. Hence £32.10 to be charged in that service charge year.

50. As a result the Tribunal is able to determine that the properly calculated insurance service charge for the Applicant's property in service charge year 1 April 2016 to 31 March 2017 is £75.15. In fact the Applicant was charged £143.67, an unreasonable over charge of £68.52. That overcharged figure is unreasonably overcharged and must be credited back to the Applicant's

service charge account. The Respondent could have made the same calculation, but it appears that it did not do so.

51. The figures provided do not permit the Tribunal to make the same calculations for service charge year 1 April 2017 to 31 March 2018. However, the Tribunal is confident that if the Respondent wanted to calculate the true cost to the Applicant for this year it could have done so. The Tribunal calculates that the average correctly calculated charge for the two service charge years that the Tribunal has been able to calculate is 56% of the figure actually charged. In this service charge year the Respondent demanded a payment of £173.95. As such the Tribunal determines that the correct cost of insurance that should have charged to the Applicant in this service charge year is in the region of £97.41 (56% of that demanded) and that the remaining £76.54 has been unreasonably overcharged and must be credited to the Applicant's service charge account.

52. The Tribunal notes that the charge for insurance during service charge year 1 April 2018 to 31 March 2019 is £59.32. The reduction in premium contribution being due to the change of insurance broker from Zurich to Gallagher now being fully effective for the whole of this year. The Tribunal notes the benefit that the Applicant received by this change over, however, the Tribunal is satisfied that during the relevant time period Onward Housing Group made strenuous efforts to obtain competitive insurance policies. The Tribunal determines that the Applicants contribution to this year's insurance policy cost is reasonable.

53. In making these determinations relating to insurance the Tribunal has had regard to the guidance provided in the Upper Tribunal case of Forcelux Ltd v Sweetman and another [2001] 2 EGLR 173 and as a result has considered the issue of whether the charge that was made was reasonably incurred? Were the landlord's (management agent's) actions appropriate in the circumstances? The Tribunal determines that they were not. The management agent could have calculated the true cost to the Applicant but did not to do so.

54. In summary the Tribunal makes a determination that the Applicant has been unreasonably overcharged in the insurance service charge demanded as follows and these amounts must be credited to the Applicants service charge account:
    - service charge year 1 April 2015 to 31 March 2016 is £41.39
    - service charge year 1 April 2016 to 31 March 2017 is £68.52
    - service charge year 1 April 2017 to 31 March 2018 is £76.54

    Total £186.45

55. The Tribunal now considers the Applicant's application for an order pursuant to section 20C of the Landlord and Tenant Act 1985 to prevent the landlord (management agent) from including the costs relevant to

these Tribunal proceedings from being included as a relevant cost when calculating the Applicant's service charges and the similar provision relating to variable administration charges for the same costs pursuant to the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11.

56. The Tribunal notes that if protection under section 20C is granted then all other long leaseholders in the Trinity Riverside Estate can still be charged a service charge to recompense the management company for these costs. However, the Tribunal notes that the Applicant has succeeded in reducing two out of the three service charges that the Tribunal has been required to consider. Further, the Tribunal determines that the additional charge adopted in 2014 should never have been adopted in its present form at all. Such a charge should only being charged when not included in the RICS code, paragraph 3.4 and in accordance with RICS code, paragraph 3.5.

57. The Tribunal determines that had the Applicant not brought this case before the Tribunal the overcharging of insurance fees and improper use of additional percentage based management fees would not have been remedied.

58. Further, the Tribunal notes that the Respondent accepts that there were errors made in the calculation of service charges generally and the Tribunal is satisfied that it is likely that these errors would not have been discovered if this case had not been brought (paragraph 9, above).

59. The Tribunal considers the failure of the Respondent to disclose the documents finally provided in evidence by Mr Till. These documents could have been, and should have been disclosed when Mr Till made them available for disclosure. They should have been included in the hearing bundle.

60. The Tribunal notes that some of the case has had to be struck out and that some of the case has been withdrawn. Nevertheless, the Tribunal determines that it is just, fair and equitable to make the orders requested by the Applicant.

Decision

61. The Tribunal decides that the additional percentage based management charge should not have been charged on the services to which the charge has been applied and that the sum of £260.32 must be repaid to the Applicant's service charge account, without delay.

62. The Tribunal decides that the Applicant has been unreasonably overcharged for insurance and the sum of £186.45 must be repaid to the Applicant's service charge account, without delay.

63. The Tribunal decides that it is fair and just to make an order that all of the costs incurred, by the landlord (Respondent) in connection with proceedings before this First-tier Tribunal 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, pursuant to section 20C of the Landlord and Tenant Act 1985.

64. The Tribunal makes an order to extinguish the tenant's liability to pay an administration charge in respect of litigation costs with regard to these Tribunal proceedings, it being just and equitable to do so, pursuant to Paragraph 5A of schedule 11, of the Commonhold and Leasehold Reform Act 2002.

66. Appeal against this decision and the decision made on 30 June 2020 is to the Upper Tribunal. A party wishing appeal must first, within 28 days of this decision being sent to the party, deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of the appeal, particulars of the appeal and the result that the party seeks to achieve by making the appeal.

Judge C. P. Tonge

2 October 2020

Annex to this Decision the Decision, Order and Directions of 30 June 2020.