FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CJ/LSC/2019/0032**
Properties	:	**Various Apartments at Ettrick Lodge 36 The Grove Newcastle upon Tyne NE3 1NH**
Applicants	:	**Mr Anthony King & Joined Applicants – various (see Annex)**
Respondent	:	**Places for People Homes Limited**
Type of Application	:	**Landlord & Tenant Act 1985 – Section 27A & s20C** **Commonhold & Leasehold Reform Act 2002 – paragraph 5A of Schedule 11**
Tribunal Members	:	**Judge W.L. Brown** **Mr I R Harris MBE FRICS**
Date of Determination	:	**11 February 2020**
Date of Decision	:	**15 July 2020**

DECISION

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(1) The sums payable for service charge years 2017/18, 2018/19 and for the advance charge for 2019/20 in respect of the items identified as Issues 1 – 12 of this decision are to be calculated in accordance with paragraphs 37 – 48 of this decision.

(2) Order made under Section 20(C) of the Act.

(3) No order as to costs.

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Background

1. The Properties are self-contained apartments within a purpose built block of retirement flats constructed in the late 1980s. There are 46 flats one of which is reserved for a Secretary/Caretaker. The majority of the residents are aged over 80.The Applicant Mr Anthony King is the leasehold owner and occupier of Flat 29. He is the lead Applicant and references to "Applicant" and "Property" in this decision are for ease of reference and should be read to as to apply to each of the apartments of the various Joined Applicants, who likewise are leasehold owners of their properties. The Respondent is freehold owner of the block and also owns the managing agent for the time period in question, Residential Management Group Limited ("RMG"). A Right to Manage Company has been set up and it has appointed a new managing agent, with effect from 16 December 2019.

2. By Application dated 20 April 2019 (the "Application") the Applicant made application for the Tribunal to determine the payability and reasonableness of service charges in respect of the Property for the service charge years 2017/18 and 2018/19 and for the advance service charge year 2019/20. The determination regarding service charges is made under Section 27A of the Landlord & Tenant Act 1985 (the "Act").

3. Directions were made by the Tribunal on 31 July 2019, which subsequently were varied.

4. The Tribunal inspected the exterior and common parts of the block on 16 December 2019.

5. The hearing of this matter took place 16 December 2019 at SSCS Manorview House Kings Manor Newcastle-upon-Tyne NE1 6PA. The Applicant appeared in person. The Respondent was represented by Mr Andrew Rose, Senior Property Services Analyst for RMG, its managing agent.

The Lease

6. The parties referred the Tribunal to the lease for the Property dated 22 February 2016. The Applicant and Gwendolyn King were the original leaseholder of the Property. Particularly relevant extracts from the lease are, leaseholder covenant:

   4.1 To pay the Service Charge in the manner and on the dates herein mentioned and in accordance with the provisions of the First Schedule hereto provided that if the Service Charge shall remain unpaid for 21 days after becoming due (whether legally demanded or not) the Landlord shall be entitled to interest on the amount of unpaid Service Charge at the rate of 4% per annum above the Base Rate of the Co-operative Bank plc;

Further:

The Landlord hereby covenants with the Leaseholder as follows:

5.1 During the said term to keep in good and substantial repair and to repair re-decorate renew amend and clean when and as necessary and appropriate;

5.1.1 the structure of the buildings on the Property including in particular the foundations floors outside walls (including the window frames) roofs load-bearing walls joists and beams ....

5.1.2 the gas and water pipes conduits gutters ducts sewers drains and electric wires and cables (including the television aerial) and all other water sewerage drainage and electric and ventilation installations in under or upon the Property ....

5.1.3 The main entrance hall corridors and stairways communal laundry room the lift and any other interior communal parts of the Property enjoyed or used by the Leaseholder in common with others;

5.1.4 the boundary walls and fences of and in the Property and the entrance ways drives paths forecourts car parking spaces landscaped areas and ground of the Property;

5.1.5 to clean the surfaces of the glass in the windows of communal areas;

5.2.1 to employ a Resident Secretary for general supervision of the Property who shall be appointed by the Landlord who shall have the power to renew or terminate the appointment. The Resident Secretary may be employed exclusively in connection with the Property or in conjunction with duties in relation to any other property or properties owned or managed by the Landlord. The remuneration of the Resident Secretary and the terms and conditions or his or her employment shall be determined by the Landlord provided that neither the Landlord nor the Resident Secretary can accept responsibility for medical or other case of the Leaseholder and the Leaseholder agrees that he will at his own expense make his own arrangements for all such attention and care as may be necessary;

5.2.2 to provide a 24 hour emergency alarm and intercom system for the general security of the Leaseholder ....

5.2.3 to insure and keep insured in the name of the Landlord at full rebuilding or replacement cost the Demised Premises and all other buildings at Ettrick Lodge aforesaid together with such contents as are available for use in common by the leaseholders during the term hereby granted against loss or damage by fire and aircraft and such other risks as are normally covered by a comprehensive policy in an insurance office of repute and to make all payments necessary for the above purpose within seven days after the same shall respectively become payable and produce if required an appropriate extract to the Leaseholder's mortgagee and a copy

of the receipt for the last premium due and furthermore to include in such insurance provision for the payment to the Leaseholder of a sum not exceeding 10% of the purchase price paid by the Leaseholder in the event of the Demised Premises becoming unfit for occupation and use by the Leaseholder as a direct consequence of the occurrence of one or more of the insured risks such payment to be by way of provision towards the expenses of the Leaseholder for a maximum period of twelve months in respect of any alternative accommodation he may be obliged to take by reason of any such loss of damage aforesaid;

5.4 That the Landlord will pay into a sinking fund all such sums as are deducted from the repayment sum pursuant to Clause 9.2.4 hereof.

Schedule 1

1. The amount of the Service Charge shall be certified by the Landlord's accountants at the end of each financial year and if such charge shall be greater than the sum paid in advance in any year of the term by the Leaseholder as previously provided in this Lease the balance of the said sum shall be a debt due and owing to the Landlord and payable with the Service Charge for the ensuing year.

2. The said certificate shall contain a summary of the Landlord's expenses and the Service Charge shall (interalia) make provision for the following expenditure in respect of the Property:

2.1 the cost of the Resident Secretary's salary emoluments and provision of accommodation and office and all other costs in connection with the provision of the service of Resident Secretary and the alarm system provided that where the Resident Secretary is employed in conjunction with duties in relation to any other property or properties owned or managed by the Landlord as referred to in clause 5.2.1 and 5.2.2 hereof the cost shall be apportioned accordingly;

2.2 the cost and expense of the maintenance of the structure exterior and common parts of the Property and reasonable provision for a reserve against expenditure on maintenance repairs and replacements;

2.3 the expense of lighting and cleaning and heating the areas used in common by the Leaseholder and other Leaseholder's and the Landlord;

2.4 the cost of cleaning all outside surfaces of the windows of the Property;

2.5 the cost of keeping the ground cultivated and the forecourt driveways and car parking spaces in good condition;

2.6 the cost of maintaining and repairing and making provision for the replacement of the lift and its machinery laundry equipment the door entry system (if any) alarm system television aerial and fire precautionary equipment;

2.7 the rates taxes and other outgoings (including insurance of risks other than structure and contents) payable upon the Property not separately occupied by the Leaseholder;

2.8 the expense of insurance in accordance with the provisions hereof and of insurance of the parties used in common with all leaseholders;

2.9 auditors fees;

2.10 the costs of management which will not exceed the sheltered management allowance permitted from time to time by the Department of the Environment; and

2.11 all costs and expenses (other than those specified above or in clause 9.2.4 hereof) of whatsoever kind incurred by the Landlord in and about the maintenance and proper and convenient running and management of the Property or otherwise under or in connection therewith including in particular interest on any money borrowed to defray any expenses specified in this Schedule.

The Law

7. Section 19 of the 1985 Act states

   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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.

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

8. Section 27A of the Act states

   Liability to pay service charges: jurisdiction

   (1) An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -

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.

The Evidence and Submissions

9. The following is a summary of the main points presented by the parties. The Tribunal had regard to the oral evidence at the hearing and the bundle of documents presented to it. Also relevant was correspondence identified here later, subsequent to the hearing, as ordered by the Tribunal to be provided concerning some outstanding queries, which have been resolved by that correspondence.

The Issues and Representations

10. The Applicant alleged service charges were unreasonable and expressed concern about the quality of maintenance. His complaints regarding certain service charge elements related across the years for some for specific years. He raised concern about inter-company connections between corporate bodies involved with the building, connected to the Respondent, stating it is *".....owned by the Places for People Group Ltd. The Group has over 100 subsidiary companies including Places for People Energy (supplier of electricity to Ettrick Lodge) Places for People Landscapes Ltd the grounds maintenance contractor for Ettrick Lodge and RMG Ltd the managing agent, who in turn own Osterna Ltd the Health and Safety Consultants employed to carry out assessments at Ettrick Lodge."*

11. The Respondent asserted that the charges were based on actual cost for 2017/18 and 2018/19 and for 2019/20 on previous expenditure and all were reasonably incurred and in amount.

12. However, the Respondent conceded that the sundry expenses of £281 in 2017/18 should not have been charged and would be reimbursed. In addition, regarding anticipated postage expense of £375 for 2019/20, the Respondent did not expect these to be incurred. Also, in post-hearing correspondence two of the Applicant's contentions were accepted, as follows, with the effect that determinations by the Tribunal on those matters are not now necessary and the Tribunal's Order will confirm the concessions and consequential adjustments to the service charge accounts.

13. In a letter dated 3 January 2020 from RMG to the Tribunal regarding the Caretaker costs the Respondent stated: "*Upon review, the respondent concedes*

the broad position taken by you at the Tribunal hearing, RMG reimbursed Mr Wombwell in full for his duties at Ettrick Lodge and for working at the other Places for People site)s). A proportion only of the salary and other benefits, on a 29/36.25 basis, should have been allocated to the service charge for Ettrick Lodge. Our review has shown that this did not happen, and that all of the employment costs for Mr Wombwell were indeed charged in full to Ettrick Lodge.

Our review has covered the service charges years from 2014/15 to date. We have calculated that the service charge for Ettrick Lodge is due a refund of £24,842.99. This will feature in the Right to Manage completion statement, to be produced in due course."

14. In a letter dated 15 January 2020 from RMG to the Tribunal regarding costs associated with a previous Tribunal case it was stated: "*Within the Tribunal's determination on case MAN/OOCJ/LSC/2017/0080. An order was made under Section 20C of the Landlord and Tenant Act 1985. Of the Sundry Costs for 2017/18 therefore, the following should not therefore have been allocated to the service charge:*

RMG Recharges – FTT Meeting 22 November 2017	*£127.25*
RMG Recharges – FTT 22 November 2017	*£ 81.74*
RMG Recharges – FTT 8 February 2018	*£439.40*
TOTAL	*£648.39*

The costs were allocated to the accounts prior to the Tribunal's determination. Having been informed of the Section 20C order, these costs should have been refunded. The refund to the accounts of £648.39 was therefore planned to have been accounted for within the year-end accounts for 2018/19. This did not happen, so that the refund will feature in the completion statement being prepared for the handover of monies to the RTM Company."

General Issue

15. Regarding the service charge accounts, the Applicant argued that they were not independently audited or certified in accordance with the Lease (Schedule 1 referring to certification of the amount due and providing for auditor's fees as a cost). He further alleged that the accounts are misleading because some service charge items have been allocated to payment through the reserve fund, causing a credit to the service charge being funded by the reserve fund.

16. The Respondent asserted that the accounts were certified in accordance with the Lease.

Issue 1 Insurance charges

17. The Applicant's complaint was that the insurance premium represented a 245% increase on previous years. The building cost increases since 2015 have totalled 5.2%. The amount of cover is now £5,968,036.32. In 2015 the premium was £3,985, it now exceeds £10,000. The premium is affected by claims history and

changes in risk. The installation of a new sophisticated fire alarm system has further reduced the already low risk.

16. The Respondent's position was that upon RMG taking on management duties the Respondent requested a review of reinstatement values of all of its premises. Ettrick Lodge was inspected in March 2015, when the reinstatement value for the site was set for the block and for each unit by Trevaskis Consulting. Each unit was revalued at £127,196. Prior to the revaluation, the last figure used for a reinstatement value was £66,181.50.The premium therefore was based on more accurate information, increased annually for inflation. The Respondent uses Zurich Municipal to provide the insurance cover across its whole portfolio.

Issue 2 Fire Equipment Maintenance Charge

17. The Applicant asserted that the fire alarm system is a state of the art Gent Vigilon directly connected to a remote monitoring centre. The panel has a self-diagnosis facility. The Caretaker is tasked to test the fire alarms every Monday and to test the emergency lights monthly. There is one detector in the bin store and one in the laundry. There is no statutory requirement for them to be tested. There are only 3 portable appliances which do require an annual test. The sums for 2017/18 of £1,975; for 2018/19 of £3,089; and for 2019/20 of £2,600 are not justified.

18. The Respondent stated that the costs of maintenance of the fire alarm and fire prevention equipment related to services arising from regular tests and inspections by Honeywell and Rescom. In addition to the regular visits for tests and inspections, a number of one-off repairs had to be carried out, e.g. the disposal of fire extinguishers; replacement of faulty break glass; and faults to the fire alarm panel and emergency call point. The 2019/20 budget figure was a prudent forecast.

Issue 3 Grounds Maintenance Charge

19. The Applicant alleged that for 2017/18 £4,070 was excessive for the poor quality of the work and the time spent. He stated that the residents have been monitoring the operatives and found there is never more than 6 man-hours per visit (equals £33 per hr) and this has been confirmed by Mr M Mayhew of Places for People Landscapes Ltd. In its previous determination (see paragraph 14) the Tribunal determined that £20 per hour was a reasonable sum for these works. Charge for 120 hours per year @ £20 per hour = £2,400. The budgeted sum for 2019/20 of £4,030 was excessive.

20. The Respondent's position was that the costs in the 2017/18 accounts represented an accrual. Invoices were expected to the value of £4,070. No invoices were subsequently received; the accrual was reversed in 2018/19. In effect, nil costs were incurred in that year or the year following. The budgeted sum was the anticipated cost of the service, which has been the same figure for a number of years.

Issue 4 (in 2017/18 only) Repair of potholes

21. The Applicant stated that the sum involved of £900 had been paid for through the reserves contrary to the lease and had not been demanded. In addition, the works were carried out by a business from Teesside which made a 90 miles round trip to carry out the work. A reasonable cost would be 2 men for 4 hours at £20 per hour = £160 + 4 bags of Tarmac @£25 per bag = £100 total cost £260. Add 25% for overhead and profit = £325. Add 20% VAT £65. Total reasonable charge £390. He said that he saw no hardcore being poured, although the cost for it appears in the invoice.

22. The Respondent's response was that the works were carried out by A Slater and Son, a contractor often used by RMG as they are reliable and their costs are reasonable. The hourly rates provided by the Applicant are unlikely to be associated with a contractor that would meet required standards on insurance, financial capacity and health and safety.

Issue 5 Laundry Costs

23. The Applicant made the same allegation regarding payment through the reserve fund. His breakdown of the charges for 2017/18 was:

Machine delivery and installation charges	£3,022
Brush motor & PMV expenses	£ 472
Laundry equipment & Laundry Towel charges	£2,835
	£6,329

He questioned why in the accounts for 2018/19 there is no debit for Laundry & Towel charges but in the reserve account record there is a debit of £4,065.

24. The Respondent stated that the Lease provides for laundry costs to be an allowable cost.

Issue 6 (in 2017/18 only) Investigating Leakage Charge

25. The Applicant made the same allegation regarding payment through the reserve fund. He questioned why the charge of £493 had not been a claim on insurance.

26. The Respondent stated that the insurance cover did not include a track and trace service, so the costs of tracing a leak and remedying the same were payable through the service charge and reserve.

Issue 7 Accountancy fees.

27. The parties disagreed on whether these were recoverable under the terms of the Lease.

Issue 8 (in 2018/19 only) Water charges

28. The Applicant's point was that the sum claimed of £2,413 was low, compared to the accrual of £5,176, so accuracy was questioned.

29. The Respondent replied that the figure of £2,413 consisted of two invoices for £2,632.82 and £2,278.47. It stated: *"There was also a reversal of an accrual from the previous year where an anticipated invoice was not received. Balancing the invoices against the accrual released to the accounts resulted in the figure of £2,413.*

The accrual of £5,176 referred to by the Applicant has been reviewed. As there now seems no likelihood of there being an invoice for this amount, the accrual is not to be reapplied. This will have a positive impact on the Income and Expenditure account."

Issue 9 (only in 2018/19) Engineering and Lift Insurance

30. The Applicant alleged that the costs previously had been included within the buildings insurance charge. The sum involved is £513.

31. The Respondent replied that the Lease permits insurance for lift and associated machinery. Part of the costs was an accrual.

Issue 10 (only in 2018/19) Electricity charges

32. The Applicant stated that the sum of £6,144 was a considerable increase on previous years.

33. The Respondent replied that the costs relate to the supply of electricity for services in the common parts and include an accrual based on a recharge. The total cost was £5,622, which was subsequently apportioned to £5,286.65.

Issue 11 (only in 2019/20) Legal and Professional Fees

34. The Applicant objected to the incurring of £240. The Respondent stated "*There are a couple of debtors on the site whose accounts would warrant debt recovery action if they continue not to pay. The anticipated budget is modest, as it is hoped that these tenants will pay their service charge."*

Issue 12 Management Fees

35. The Applicant raised criticism of RMG and stated the market rate for a managing agent's work in Newcastle upon Tyne is £10,000 per year. His complaints included that RMG have failed to produce accounts in accordance with the Lease; have no long term maintenance plan and fail to maintain the building. He stated: "*Of particular concern is the deterioration of the exterior of the property. It was in 2012 when the outside was last painted. The gutters are blocked with leaves and have not been cleaned out for at least three years. In heavy rain water pours down the side of the building. This has resulted in damage to the woodwork. RMG are well aware of the problem, indeed some "temporary" repairs were carried out 2 years ago. Failure to act since then means that the repairs have themselves deteriorated. Promises to clean out the gutters have been broken. Given the time scale of the major works consultation process it will be 2020 before the exterior can be repainted. The delays will inevitably result in further additional costs as the woodwork*

continues to deteriorate and more remedial work will be needed at further cost to leaseholders. Trees bordering the property are in need of attention. The Boundary wall has required attention for some years and its unsatisfactory condition was pointed out by a Tribunal member during an inspection in 2017. No action has been taken. RMG do not monitor external contracts. The emergency repairs to the car park were of poor quality and unreasonably expensive. Their response to enquiries and complaints is woefully inadequate. They ignore the issues and avoid answering questions. They do not keep their promises. They are now claiming that writing to leaseholders is a cost additional to the cost of management. RMG's performance falls far below that required by reasonable and responsible management agent." He cited as an example of poor service that it had taken 51 days for one of the two tumble driers to be replaced.

36. RMG replying for the Respondent referred to the Tribunal determination for case MAN/00CJ/LSC/2017/0080 in which the sum for 2015/16 was approved as being in line with market rates. Since then, increases have been in line with inflation. The Respondent does not believe that performance of management has been such that the management fee should be reduced. In 2018/19 the management fee was held at the level of 2017/18. For 2018/19 a modest increase of £20 was asserted to be reasonable.

THE TRIBUNAL'S FINDINGS AND DECISION

35. The Tribunal was first satisfied that the Applicant's lease provides for recovery of the costs at issue (paragraph 6) and found that these are governed by clause 4.1 of the lease.

36. The Tribunal next considered the format of the service charge accounts. The Lease prescribes the presentation required (Schedule 1, clause 1 – they are to be certified by the Landlord's accountants.) The accounts for 2017/18 were presented as signed by "Alan Inglis for RMG". He is described as a Chartered Accountant. The 2018/19 accounts are signed by Thomas David. The Tribunal had concern that Mr Inglis may not be considered an independent accountant, but no persuasive evidence or authority was provided to the Tribunal on that point. It is not clear whether Mr David is a person signing in a personal capacity, or for a firm. However, all that the Tribunal can state here is that until there has been compliance with the Lease no sums are properly payable by the Applicant. The Tribunal assumes that the relevant accounts will be re-presented, if necessary, in a compliant form and therefore it has gone on to make determinations on the sums at issue.

37. The Tribunal Orders that the Respondent make adjustments to the service charge accounts to remedy the errors conceded by it, identified in paragraphs 12, 13 and 14.

    The Tribunal records from the RMG letter of 3 January 2020 that the Caretaker costs will be:

    2017/18 - £17,203.39

    2081/19 - £17,893.62

2019/20 (to December 2019) - £13,161.82

38. Issue 1 Insurance charges – the Tribunal was surprised that the insurance revaluation exercise in 2015 took 2 years to cause a change in premium levels, but it found that the evidence showed that the sum involved for 2017/18 is as incurred as payable to the insurer and thereafter sums are simply increased by inflationary amounts. Therefore, insurance being prudent and required by the Lease they are reasonably incurred costs. There was no evidence presented to suggest the revaluation valuations were incorrect, or to suggest premiums were excessive, so the Tribunal determined that the premium amounts are reasonable in amount.

39. Issue 2 Fire Equipment Maintenance Charge – supporting invoices for the sums involved were produced and their authenticity was not challenged. The Applicant did not present evidence to support his concern that unnecessary works had been undertaken. Therefore it followed on the facts available that the Tribunal found the sums to be reasonably incurred and in amount.

40. Issue 4 (in 2017/18 only) Repair of potholes – the Tribunal identified that the sum for this is £900 and appears as charged against the reserve fund. The Tribunal saw on inspection evidence of potholes to the carpark area, which we considered were new or had reappeared due to poor repair work. The Tribunal received no satisfactory explanation as to why the cost had been against the reserve fund. Given the poor state of repair of the carpark the Tribunal determined that the full amount incurred could not be reasonable because of that condition. Therefore the Tribunal determined the reasonable amount to be limited to £450, inclusive of any VAT.

41. Issue 5 Laundry Costs – the Applicant's challenge was concerned more with the recording of the expense against the reserve fund. There was no evidence to suggest the expense had not been incurred or was unreasonable in itself and therefore was determined as reasonable.

42. Issue 6 (in 2017/18 only) Investigating Leakage Charge – the evidence presented was that contractors had identified water ingress in the undercroft carpark, which subsequently was traced as a leak from the shower in apartment 19. In the bundle (page 237) was an invoice for investigation and repair, in the sum of £410 plus VAT. The Tribunal found that this was a cost which ought to have been charged to the owner or occupier of apartment 19, not to the leaseholders through the service charge. Therefore it is disallowed (although it should be noted that the owner/occupier involved may be entitled to bring a claim on the buildings insurance, which in turn may affect renewal premiums relevant for all leaseholders).

43. Issue 7 Accountancy fees – the Tribunal was satisfied that in principle these are recoverable within the service charge, in accordance with the Lease, Schedule 1 paragraph 2.11 (as an expense incurred for the proper and convenient running and management of the Property). There was no evidence that the costs related to non-relevant work or were excessive and therefore the Tribunal approved their amount.

44. Issue 8 (in 2018/19 only) Water charges – the Respondent confirmed that the actual charge was £2,413, explained as in paragraph 29. The Tribunal had no evidence to contradict that explanation and therefore the revised sum in that amount is approved.

45. Issue 9 (only in 2018/19) Engineering and Lift Insurance – the Tribunal understood from the oral explanation at the hearing from the Respondent's representative that this insurance is required, separate from the buildings insurance. It included annual inspection for such insurance purposes, which the Tribunal understands is a standard insurer requirement. It is separate from the routine lift inspections. The Tribunal was satisfied that such insurance was prudent, recoverable within the service charge as being in accordance with the general insurance provision (Schedule 1 paragraph 2.8) and there was no evidence to indicate the sum was unreasonable in amount. The sum is approved.

46. Issue 10 (only in 2018/19) Electricity charges – although there was some confusion over the presentation of the correct sum, the Respondent's explanation as recorded in paragraph 33 was found to be reasonable and there was no evidence to suggest the sum being recovered was now incorrect. The adjusted sum is £5,286.65. The previous year's comparative cost was £4,997. The closeness in amount persuaded the Tribunal on balance that the sum was likely to be accurate and was approved.

47. Issue 11 (only in 2019/20) Legal and Professional Fees – this is a budgeted amount so may be adjusted once an actual amount is known by the year end. The Tribunal was satisfied that the reasonable cost of pursuing a debtor is recoverable under Schedule 1 paragraph 2.11 of the Lease (see paragraph 43) and therefore in principle, subject to proof of expense and work carried out for it being presented, would be recoverable.

48. Issue 12 Management Fees – it is clear that the Applicants have fallen out with RMG. They have been able to end that relationship through the Right to Manage process. Aside from the general dissatisfaction with RMG's service expressed by the Applicant, there is evidence of accounting errors (see paragraphs 12, 13 and 14) for which the Respondent has to bear the consequences in terms of the sum it can recover from the Applicants for the work of the managing agent. In its previous decision referred to above the Tribunal found that £250 (inclusive of VAT) per year was then a reasonable management fee for the building, but on the facts found for 2015/16 it should be £200, inclusive of VAT, per apartment. The present case flushed out a number of significant errors in financial recording and some evidence was presented of poor performance on certain management tasks. The Respondent has been frank in admitting failings, albeit regarding some of them only after the hearing, during which it had refuted the Applicant's allegations. The Tribunal found that there must be a financial consequence for the reduced quality of service, spread over the three service charge years at issue. Therefore the Tribunal determined that for each of the years 2017/18, 2018/19 and 2019/20 the reasonable management fee should be limited to £150 (inclusive of VAT) per each Applicant, pro rata for 2019/20 to the end date of the RMG contract as managing agent for the Block.

As to Section 20C and Costs

49. The Applicant made application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.

50. The Respondent objected to a Section 20(C) Order. It contended that if it is successful in defending the challenge by the Applicant it should be allowed to recover its costs through the service charge. Further it stated: "*There is nothing to show that that residents have instructed the Applicant to act on their behalf in respect of the application or any associated Section 20C order. It is held by the Respondent that the Applicant does not therefore act on their behalf and represents himself solely*."

56. The Tribunal was satisfied that the Respondent has not been successful in defending this claim. Significant adjustments to the service charge accounts have been conceded and ordered as a result of the proceedings. As to the Applicants, while there was no evidence presented that those identified in the Annex to this decision had formally instructed Mr King to act for them, it was clear that the majority are elderly and that formality may not be at the forefront of their minds and they had been formally joined into the action. Therefore the Tribunal determined that it should make an order under Section 20C of the Act.

57. There was no application before the Tribunal concerning fees and it made no order as to costs. While the Application included a request under paragraph 5A of Schedule 11 of Commonhold & Leasehold Reform Act 2002 neither party made representations on that provision nor identified any cost to which it may apply. That part of the Application therefore has not been considered further.

Annex – Ettrick Lodge, Newcastle, NE3 1NH

Mr E Smith
Ms A L Mitchell
Mr R Lumsden
Ms J Lambert
Ms N S Brettwood
Mr M Bairstow
Ms J T Ramsay
Ms L N Perry
Ms M Tolchard
Mr G Tye
Ms D Marshall
Ms J E Fenwick
Mrs S Turnbull
Mr & Mrs J Y Luke
Mr A M Clark
Mr J Myers
Mrs M Chaudhry
Ms J Parkinnen
Ms M McGinn
Ms J A Stone

GUIDANCE ON APPEAL

1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).

2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**

3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.

4) You must apply for the permission **in writing**, and you must:
   - identify the case by giving the address of the property concerned and the Tribunal's reference number;
   - give the name and address of the applicant and any representative;
   - give the name and address of every respondent and any representative
   - identify the decision or the part of the decision that you want to appeal;
   - state the grounds of appeal and state the result that you are seeking;
   - sign and date the application
   - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.

6) On a review the tribunal can
   - correct accidental errors in the decision or in a record of the decision;
   - amend the reasons given for the decision;
   - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
   - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.

8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.

9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL

Tel: 0207 612 9710
Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.gov.uk/appeal-upper-tribunal-lands.