FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00GF/LIS/2020/0037**
HMCTS Ref	**:**	**V:CVPEREMOTE**
Property	**:**	**Flats 50, 61 and 65 Beaconsfield Brookside, Telford TF3 1NQ**
Applicant	**:**	**Culloden Estates Limited (Tenant)**
Representative	**:**	
Respondents	**:**	**Mr Gunes Ata T/A Noble Design and Build (Landlord)**
Type of Applications	**:**	**(1) Application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the reasonableness and payability of service charges** **(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**
Tribunal Members	**:**	**Judge D. Barlow** **Mr W. Jones**
Date of Hearing	**:**	**21 January 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which has been consented to by the parties. The form of remote hearing was audio via the Cloud Video Platform (A:CVP). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in the Applicant's and the Respondent's bundles, the contents of which were considered by the tribunal.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the COVID-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted remotely; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction was necessary to secure the proper administration of justice.

DECISION

The Tribunal determines:

(1) That the reasonable service charge the Applicant is liable to pay, from the date on which the Respondent serves a valid service charge demand that complies with s47 of the Landlord and Tenant Act 1987 and s21B of the 1985 Act, for the service charge years 2016-2020, is as set out in the table below (and in detail on the annexed Schedules) - less any payments already made by the Applicant in respect of those years.

Year ending	Flat 50	Flat 61	Flat 65
31 March 2016	£199.92	£195.75	£195.75
31 March 2017	£205.65	£182.32	£182.32
31 March 2018	£213.08	£198.08	£198.08
31 March 2019	£180.83	£535.48	£535.48
31 March 2020	£184.29	£184.29	£184.29
31 March 2021	£83.20	£83.20	£83.20

(2) That a reasonable estimated service charge for the year ending 31 March 2021 is as shown on the table above (and more particularly detailed on the annexed schedules).

(3) An order is made under section 20C that the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into

account in determining the amount of any service charge payable by the Applicant.

(4) For the avoidance of doubt an order is made under paragraph 5A that the Respondent's costs of and incidental to these proceedings may not be recovered from the Applicant.

(5) The Respondent is ordered to reimburse the Applicant the sum of £300.00, in respect of the application and hearing fees, within 14 days of the date of this decision.

REASONS

BACKGROUND

1. This is the Decision on an application by the Applicant, Culloden Estates Limited, the leaseholder of Flats 50, 61 and 65 Beaconsfield Brookside, Telford TF3 1NQ ("the Flats") under section 27A of the Landlord and Tenant Act 1985 ("the Act") for determination of the payability and reasonableness of services charges in respect of the Flats for the service charge years 2015-2021 (inclusive).

2. The Applicant has made two further applications - under section 20C of the Landlord and Tenant Act 1985 for an order limiting 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')

3. The Respondent is Mr Gunes Ata, the freeholder of the Flats, who trades under the name or style of Noble Design and Build.

4. The Application was received by the Tribunal on the 9 October 2020. Directions were issued on 13 October 2020 requiring the Respondent to provide to the Applicant and the Tribunal, no later than 4 November 2020, copies of all relevant service charge accounts and estimates for the disputed years together with all demands for payments and details of any payments made.

5. A (remote) video hearing was held on the 21 January 2021. The participants in the hearing were: (i) the Applicant represented by Mr Tindall who was accompanied by his co-director Mr Lock; (ii) Ms Jade Ata, the Respondent's daughter who is responsible for the day to day management of the Flats, representing the Respondent. Mr Ata was unable to attend the hearing due to other business commitments.

6. No physical inspection was carried out by the Tribunal but information provided by both parties, along with online street view information, show that the Flats are situated within two of the three storey blocks of flats on the Beaconsfield estate in Telford. The estate was previously owned and maintained by The Wrekin

Housing Trust Limited ("Wrekin Trust"), an RSL. In 2015 the Wrekin Trust sold off some of the blocks, including those containing the Flats, to the Respondent. The Respondent owns 5 adjoining self-contained blocks on the estate, four blocks of six flats and one of four flats. Flat 50 is within block 49-54 Beaconsfield. Flats 61 and 65 are both within block 61-66 Beaconsfield. The landscaped areas of the estate were retained by Wrekin Trust who continue to maintain them, passing on the costs to the freehold owners of the blocks who, in turn seek to recover the costs from their tenants under their respective service charge provisions.

7. Externally each block has a shared bin store and a shared access/alleyway to and from the front and rear entrance doors to each block. Each block has a communal entrance area, stairs leading to a first-floor landing area and stairs leading to a second-floor landing area. There are two communal external doors on the ground floor, two windows on each of the first and second floors giving light to the communal landings and stairwell. There is no communal heating or fire equipment, but each block has movement sensitive emergency lighting.

8. The Applicant is the leaseholder of the Flats holding them under three leases: (i) Flat 50 is held under a lease granted on 26 October 2010 for a term of 99 years, between Wrekin Housing (landlord) and the Applicant (tenant); (ii) flat 61 is held on a lease dated 17 May 2011 for a term of 99 years, between Wrekin Housing (landlord) and the Applicant (tenant) and (iii) flat 65 is held on a lease dated 17 May 1993 for a term of 125 from 1 April 1993 between Wrekin District Council (landlord) and P.A. Britton and K.A. Britton (tenants). The leases of flats 50 and 61 are in common form. The lease of 65 Beaconsfield is an older form of lease, with service charge provisions that make specific reference to internal accounting procedures of the council.

Landlord's lease covenants

9. By paragraph 2 and 7 of Schedule 5 of the leases of flats 50 and 61 the Landlord covenants to insure the Properties and to carry out repairs, maintenance and the associated services set out in Schedule 6.

10. Under Part II of the Sixth Schedule of the lease of flat 65 the Landlord covenants to insure the Properties and to carry out the repairs, maintenance and the associated services set out in Part II of the Sixth Schedule.

Applicant's covenants

11. By clause 2.3(b) of the leases of flats 50 and 61 the Applicant covenants to pay a fair proportion of the Service Costs incurred by the Landlord in providing the Schedule 6 services including insurance.

12. By clause 1(2) of the lease of flat 65, the Tenant covenants to pay the service charge in accordance with the Fourth Schedule of the lease.

Service charge mechanism in leases

13. Paragraph 3 of Schedule 6 to the leases of flat's 50 and 61, requires the landlord to notify the lessee of the estimated Service Charge payable for each service charge period, which will be invoiced for payment on the 1 April in each year. Paragraph 3(j) requires the landlord to, within six months of the end of each service charge period, supply the tenant with a Service Charge statement containing a summary of the Service Costs incurred during that service charge period and showing the proportion payable by the tenant. Paragraph 4.7 requires every Service Charge statement to include a statement of the balance of the Sinking Fund and of the income and expenditure since the previous Service Charge statement.

14. Paragraph 2 of the Fourth Schedule to the lease of flat 65 provides that the tenant will pay the estimated interim service charge by four equal instalments in April, and on 1st July, 1st October, and 1st January of each year; and the Director of Housing will provide an annual Certificate containing a summary of all expenses and outgoings for the relevant year confirming how the Service Provision attributable to flat 60 has been calculated. Paragraph 5 confirms that the Service Provision proportion for flat 65 is .91% of the total Certificated costs.

15. Payment of the flat 65 service charge is made first, by the four equal interim payments and then by a balancing payment (or credit) following service of the annual Certificate.

16. Ms Ata confirmed that Mr Ata is the freeholder of the Properties. He purchased the blocks in 2015 from Wrekin Trust. Letters were sent to the tenants in April 2015 confirming that the Respondent was the new freeholder and enclosing an estimate of the service charges for that year. The letter stated that the charge would be subject to an annual increase on 1 April 2016 and that the charges would be a minimum of £49.50 per month for that financial year.

17. The Applicant became the owner of flat 50 in 2010, and flats 61 and 65 in 2011. It paid the monthly service charge fee demanded until 2018, but not without challenge. The Applicant did not regard the initial charges of £49.50 to be excessive, although a 50% increase on the service charges that were paid to the Wrekin Trust. In 2017 the Applicant wrote to the Respondent about the lack of formal demands, invoices or accounts and the lack of any evidence that the work and services it was paying for, was being done. After frequent requests for evidence of insurance, the Applicant also became concerned that the Flats were not insured. The Applicant repeated its concerns in 2018 but received no cooperation. The absence of any cooperation caused the Applicant to suspend payment in 2020 and led to this application.

SERVICE CHARGES - THE LAW

Statutory Framework

18. 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.

19. 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.

Relevant case law

20. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100; Daejan Investments Ltd v Benson [2011] EWCA Civ 38).

21. When interpreting a written contract, the Tribunal has to identify the parties' intention by reference to what a reasonable person having all the relevant background knowledge would understand the terms to mean. We have to focus on the meaning of the words in their context and in the light of the natural meaning of the clause; any other relevant provisions; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense (Arnold v Britton [2015] UKSC 36).

Service charge demands and Section 47 of the 1987 Act and s21B of the 1985 Act

22. The Respondent filed a bundle of documents for the hearing, unfortunately not indexed or paginated. The documents include, what are referred to as service charge accounts for the years 2015 to 2021 (inclusive). There are no copy demands.

23. Mr Tindall confirmed at the hearing that the Applicant had never been provided with any service charge demands, or any summary of rights for any of the years in question. The Applicant was just asked to pay a monthly charge which it did for some time. The Applicant says that it made repeated requests for formal invoices and accounts but was never been provided with anything. Mr Tindall confirmed that he had not seen the insurance or accounts documents produced by the Respondent within these proceeding, outside the proceedings. The Applicant therefore disputes that any service charges are payable for the years in question until such time as it receives an estimate of the charges in accordance with the contractual requirements of the leases and a formal demand for payment in accordance with s47 of the Landlord and Tenant Act 1987 (the "1987 Act") and a summary of the tenant's rights, as required by s 21(B)(3) of the 1985 Act.

24. Ms Ata did not dispute the Applicant's evidence. She confirmed that she was in school when her father purchased the blocks but had, even then, assisted him with emails. She started working for her father in 2018 dealing mostly with student rentals and had taken over management of the Beaconsfield blocks about 12 months ago. Ms Ata acknowledged that the service charge accounts were not up to scratch but was introducing a new Blockman service charge accounts system which would streamline the accounts, demands and invoices next year. Currently Ms Ata uses sage accounting and all payments are entered on a manual spreadsheet. She said on the Respondents current system they were lucky if 50% of the tenants paid their service charge.

25. The evidence of both parties confirms that no service charge demands which comply with notice requirements s47 of the 1987 Act or which contain a summary of the tenant's rights and obligations, as required by s21B of the 1985 Act were sent to the Applicant for any of the disputed years. The sanction under s47(2) and s21B(3) being, that any service charge is treated as not being due from the tenant to the landlord. The effect is however suspensory only in that the service charges are only treated as not due "at any time before the information is furnished by the landlord by notice given to the tenant" under s47(2) and confer on the tenant a right to withhold the service charge under s 21B(3). It is however necessary for the Respondent to serve demands that comply with s47 of the 1987 Act and s21B of the 1985 Act, before the amounts determined by the Tribunal as chargeable, can be treated as payable by the Applicant.

Lease of Flat 65

26. This is an old-style lease that does not appear to have been varied despite it containing service charge provisions specific to the local council which are now obsolete. Paragraph 5 confirms that the tenant's proportion is .91% of the total Certificated costs. This appears to based on the total number of flats on the Beaconsfield estate and there is no provision in the lease for a recalculation, should the council cease to own the flats. However, in practice the parties appear to have treated the tenant's proportion as being 1/6th of the block costs for 61-66 Beaconsfield and as no issue has been raised by either party concerning

proportions, the Tribunal have proceeded on the basis that the parties have probably agreed an informal variation of paragraph 5, to give efficacy to the original intention, which appears to be that lessees of each block would contribute equally to the service charge costs.

Heads of expenditure and challenges

27. The heads of expenditure challenged by the Applicant in respect of the Flats for the years ending 31 March, are indicated (x) in the table below. There is no challenge to communal electricity because nothing has actually been charged for this item to date.

Head of Expenditure	2016	2017	2018	2019	2020	2021
(1)Building Insurance	x	x	x	x	x	x
(2)Management Charge	x	x	x	x	x	x
(3)Communal Repairs	x	x	x	x	x	x
(4)Communal Landscaping	x	x	x	x	x	x
(5)Communal Cleaning	x	x	x	x	x	x
(6)Door Entry Checks	x	x	x	x	x	x
(7)Communal Window Cleaning	x	x	x	x	x	x
(8)Fire Safety						x
(9)Property/Building Inspection		x	x	x	x	x
(10)Sinking Fund		x	x	x	x	x
(11)End of Year Sign Off		x	x	x	x	x

28. The Applicant's challenge in relation to 2021 relates to the proposed estimated charges set out on the Respondent's estimated accounts for the 2020-2021 attached to the notes accompanying the Schedules in the Respondent's bundle.

Reasonableness and payability of service charges

29. 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.

30. A preliminary point arose concerning the reliability of the Respondent's documentary evidence. Paragraph 1 of the Directions dated 13 October 2020 ordered the Respondent to send to the Tribunal and the Applicant no later than 4 November 2020:

"*copies of all relevant service charge accounts and estimates for the years in dispute (audited and certified where required by the lease), together with all demands for payment and details of any payments made*".

The Respondent complied on 11 December 2020 but the only documents provided were a single sheet of figures for each of the flats, for each of the disputed years, headed "Service Charge Account". Each sheet contained a list of the Heads of Expenditure in columns showing: the Estimated Annual Cost of each head for the block (of six flats); the Individual Cost of each head (i.e. per flat); the Actual Individual Cost of each head; and the Balance (i.e. credit/debit over estimate) of each head.

31. The Applicant submitted its statement of case with Scott Schedules for each disputed year on 1 December 2020 in accordance with paragraph 2 of the Directions (which had been varied following the Respondent's initial failure to comply with paragraph 1). The Respondent submitted its statement of case and response to the Scott Schedule on 7 January 2021, following a letter from the Tribunal dated 21 December 2020, threatening to debar the Respondent for failing to comply with paragraph 3 of the Directions. The documents for each flat, for years 2015/16 to 2019/20, comprised: a single sheet "Service Charge Account"; a copy NIG Schedule of property owners insurance, with the premium redacted; evidence from Wrekin Trust concerning the cost of Communal Grounds Maintenance in 2018 and 2019; and a very large bundle of un-indexed, un-scheduled, un-collated and un-totalled, handwritten sheets headed 'Maintenance Repair Log', which will be referred to as the "Job Sheets". One year also included four third-party invoices for repair work.

32. On 9 January 2021, the Applicant raised a concern that the Job Sheets had been fabricated over the Christmas holiday period to justify the Respondents service charge costs. The allegation rested on a bundle of original Job Sheets which, it seems, were inadvertently included in the Respondent's bundle sent to the Applicant on 7 January 2021. The Applicant identified from indentations on the page above that many Job Sheets were not compiled in date order. On 13 January 2021 the Tribunal directed that it would hear submissions from both parties on this at the hearing and ordered the Applicant to send the original Job Sheets to the Tribunal.

33. The Tribunal inspected the original Job Sheets. They bear the indentations identified by the Applicant which indicate they were not compiled in date order. Several indentations post-date the date of the Job Sheet beneath. Many of the Job Sheets have been completed in different hands using different coloured pens. The allegation was put to Ms Ata at the hearing who readily admitted that Job Sheets were not a contemporaneous record of the jobs, but had been compiled in early January 2021, solely for the purpose of the hearing.

34. Her explanation was that the Respondent maintains spreadsheets of the time spent by its staff on each property. The spreadsheets include other properties, so rather than submit a copy of the spreadsheets which contained some irrelevant information, Ms Ata decided to copy each of the entries on the spreadsheets that relate to the relevant blocks, onto individual Job Sheets. When asked why they were completed in different hands and different colours, ostensibly to appear as if

a contemporaneous record, she said that it was a big job and she had therefore involved several people in compiling the Job Sheets, but they were an accurate reflection of the what is on the spreadsheets.

35. The Tribunal does not find the Respondent's explanation for presenting its evidence in the format Job Sheets, rather than simply submitting an annotated copy of the spreadsheets, to be credible. Significantly the spread sheets were not produced, but the information apparently copied onto individual Job Sheets in different hands and pens, ostensibly to give the appearance of a contemporaneous record of jobs, completed by the various persons responsible for the work. Also, this made any analysis of the figures extremely cumbersome as the sheets were not collated or indexed, the figures were not ordered or totalled in any way.

36. The Job Sheets were submitted as part of the Respondents bundle of accounts for each of the disputed service charge years, without any explanation of their authorship or source. They are virtually the only evidence provided to justify the annual charges for communal repairs, communal cleaning and window cleaning. The Tribunal is satisfied that the Job Sheets were compiled in this way with the intention of misleading both the Applicant and the Tribunal about the authorship and date of the jobs shown on the sheets, to present a body of evidence that indicated regular routine maintenance was being carried out. The Tribunal has therefore determined that the Job Sheet evidence is inherently unreliable and that the lengths taken by the Respondent to mislead the Tribunal and the Applicant, strongly indicate that it is unable to provide evidence that could satisfy the Tribunal, on balance of probabilities, that charges for many of the items shown on the Job Sheets have been reasonably incurred. The Tribunal therefore determined that it would only consider charges that were supported by other reliable evidence, such as third-party invoices.

37. It follows that Ms Ata's decision to present misleading evidence to the Tribunal and the Applicant, adversely affected the Tribunal's assessment of her credibility as a witness.

(1) <u>Building Insurance</u>

38. The Respondent provided redacted copies of an "Adjustment Schedule" as proof of the costs of the buildings insurance for the years in question. The 'Premises' described on each schedule is 49-66 Beaconsfield. The amount of the premium, the tax and the total chargeable had been redacted on the schedules produced for each year. When asked why that had been done Ms Ata said she hadn't understood that the amount of the premium was in dispute, she thought it was just the fact of insurance.

39. Ms Ata attended the remote hearing from the Respondent's offices in Wellington and appeared to have the service charge documents relating to Beaconsfield estate to hand. Ms Ata held up the front page of the insurance schedule for each

year to show the Tribunal the figures which had been redacted. She explained that the policy was part of a block policy that included other properties owned by her father. When he purchased the blocks at Beaconsfield they were added to his block policy which is why the schedule for 49-66 Beaconsfield is headed Adjustment Schedule and the premium shown as an additional premium. Ms Ata said that the policy schedules covered 4 blocks of 6 flats. The additional premium in 2016 for the property described as 49-66 Beaconsfield, was £562.32, plus premium tax 13.52, totalling £582.84.

40. When asked to explain how, once divided between the 4 identical blocks of flats, this came to the £42.35 charged for Flats 50, Ms Ata said this was because her father had chosen to pay the insurance premium monthly and the broker, Cobra Hints Insurance Services Limited, added interest of £179.46. Therefore, the total paid to the broker in 2016 was £762.30. She was unable to provide any evidence of the interest agreement or explain what the rate was. Ms Ata said there was nothing in writing about the interest, that her father would just call the broker each year and ask how much the premium was, including interest, and make a note of it. Nothing it seems was confirmed in writing. Ms Ata said that the only additional evidence she could offer was to try to find the monthly debits on the Respondents bank statement.

41. Ms Ata held up the Schedules for years 2017 to 2020 to show the Tribunal the redacted figures which were as follows:

    i. 2017 - £616.41 (inclusive of tax) to which Ms Ata claimed 270.54 interest had been added making a total of £811.62.
    ii. 2018 - £694.93 (inclusive of tax) to which £203.43 interest had been added making a total of £903.36.
    iii. 2019 - £723.63 (inclusive of tax) to which £217.17 interest was added making a total of £940.80.
    iv. 2020 - £754.03 (inclusive of tax) to which £226.13 interest was added making a total of £980.16.

42. The Tribunal were not satisfied with Ms Ata's explanation for redacting the figures from the Insurance Schedules, which were patently useless to the Applicant and the Tribunal without evidence of the premiums paid. The Applicant provided evidence to show it had been chasing the Respondent for some assurance about the buildings insurance since 2017. The Tribunal's Directions dated 13 October 2020, made clear that the Respondent was to provide this information and it is ridiculous to suggest that the direction could be complied with by providing to the Applicant and the Tribunal documents that had the relevant figures redacted.

43. The Tribunal were also not satisfied with Ms Ata's evidence concerning the interest added to the premiums. It is simply not credible that the Respondent would agree to pay interest, or that a reputable broker would charge such high rates of interest without the parties entering into a properly regulated financial

services contract. The Tribunal has no hesitation in reducing the insurance charges to 1/24 of the annual premiums (including tax) shown on the Schedules - which Ms Ata stated covered 4 identical blocks of 6 flats.

44. The consequences of those determinations are set out in the attached Schedules.

(2) Management Charge

45. The Applicant states that Wrekin Trust charged management fees of £68.28 for Flat 50 and £69.84 for Flats 61 and 65, but they managed the properties with clear evidence and documentation justifying the charges. The tenants were paying far less to Wrekin Trust for a much higher standard of management.

46. The Respondent provided no evidence for the basis of calculating the management charge or of the time spent on management.

47. Ms Ata stated at the hearing that the management charge was assessed by her father at £550.00 per block, based on the anticipated time commitment of a part time manager. The time is spent on general running of the Blocks and organisation of maintenance, cleaning and repairs, along with admin for chasing non-payment of the service charge. Ms Ata said that before she took over, the blocks were managed by Mr Ata and the staff. They spent roughly half an hour dealing with the 2-3 week cleaning and monthly window cleaning logs. Time was also spent updating bank records, on end of year summaries, chasing arrears, and dealing with the Council on landscaping and rubbish. She agreed that no precise estimate had been made of the time commitment, it was more of a guestimate.

48. For the reasons set out under the remaining heads of expenditure below, the Tribunal is not satisfied that the Management Charges are reasonable for the amount of management actually taking place. There is no evidence that the Respondent has prepared proper service charge accounts or summaries for any of the years in dispute. Maintenance has been patchy. There has been no planned programme of maintenance for the Blocks and only some 50% of the annual service charge has been collected. A reasonable fee for managing a Block of 6 apartments as part of a portfolio, is in Tribunal's view, in the region of £120.00 - £140.00 per apartment per year. The location of the Property could, if it was being properly managed, justify the higher figure, but the Management Charge should include monthly on-site inspections and the preparation of interim and final accounts, interim demands and summaries of all expenses. As very little time appears to have been spent by the Respondent in managing the Blocks or dealing with demands accounts and summaries, the Tribunal determines that the Management Charge should be reduced to £70.00 per year per Flat, to include the costs of monthly checks, including door entry, property and building inspection and what is referred to as 'end of year sign off', all of which are currently being charged separately and in addition to the management charge of approximately £90.00 per annum.

49. The consequences of those determinations are set out in the Schedules

(3) Communal Repairs

50. The Applicant states that it has seen little evidence of any maintenance and repair work and has asked repeatedly for evidence of the Respondent's expenditure on this. The Applicant was invoiced separately for communal roof repairs to Flats 61 and 65 in October 2018 (£1,250 divided between the 6 Flats = £208.34 per flat) but disputes that the work was carried out effectively because the ceiling inside the stairwell remained water stained in 2020 and appeared to still leak. The Applicant was also invoiced separately for removal of abandoned waste in May 2018 in the sum of £16.67 (£100.00 divided between 6 Flats).

51. Repairs during the years in dispute almost exclusively relate to door repair/lock replacement, removal of rubbish and repairs to a flat roof over part of block 61-66.

52. Ms Ata said that very little maintenance had been carried out over the past 18 months due to lack of funds in the service charge account, but prior to that maintenance had been regularly carried out, including repairs to the flat roof at 61-66 Beaconsfield, which had been carried out following service of an improvement notice on the Respondent, by the Council. The internal ceiling has not yet been repaired following the repair in 2018 because the Respondent wanted to give it time to dry out. There have been no further leaks, the mop and bucket in the Applicant's photographs was just left there in error by one of the cleaners. The invoices sent directly to the tenants for the roof repairs were not paid and the amounts were therefore added to the service charge. The Respondent also states that window and door locks are repeatedly repaired or replaced following vandalization or lessees' ripping them off when they have lost their keys.

53. The Respondent's evidence justifying the charges for communal repairs rests almost entirely on the information shown on the Job Sheets, together with a few third-party invoices from the companies used to carry out repairs. For instance, in 2015/16 the Job Sheets include charges for: Rubbish clearance - £50.00, Lock door replacement - £160.00, Sofa removal - £30.00, Bin store clearance - £100.00, New panel back door - £120.00 and back door repair - £65.00. No invoices for these items have been produced – the only evidence provided are the Job Sheets, which Ms Ata said were copied from the spread sheets kept in the office. For the reasons set out above the Tribunal has determined that the Job Sheets evidence is unreliable and should be disregarded. Furthermore, Ms Ata's relatively recent involvement made it difficult for the Tribunal to give much weight to her evidence on matters that pre-date her management of the blocks.

54. Ms Ata gave evidence at the hearing of continual problems with vandalism and removal of door locks. The Job Sheets indicate that the door locks had to be replaced/repaired on some 10 occasions between 2016 and 2018. The work was

apparently carried out by the Respondent's staff at a standard cost of £160.00 on all but one occasion. New Broom, the company engaged to replace the locks in 2018, also charged £160.00.

55. Mr Tindall said that he did not believe the Respondent had changed the locks on the other 9 occasions and if they had, the costs were excessive, given that the locks had simply been replaced with a cheap £10.00 style Yale lock as shown in the photographs. Furthermore, there were no receipts for the locks, no evidence of any actual expenditure and he had only been provided with replacement keys on one occasion, which was when New Broom had replaced the locks. Ms Ata said that the Respondent just recorded the overall cost of £160.00 on the spread sheet which included the cost of the lock, labour to fit it, time to get the keys cut and distribution of the keys to the tenants. She pointed to the New Broom invoice as backing up the cost charged.

56. The Tribunal determined that on balance it preferred Mr Tindall's evidence and has not allowed any charges for door and lock repairs/replacement other than that invoiced by Newbroom, because it is not confident that the work was actually carried out or to the extent that locks were replaced, whether the work was of a reasonable standard or the costs reasonable.

57. There are ten charges for rubbish removal/bin store clearance between 2016 and 2019 at a charge of between £50.00 and £120.00 per occasion, but there is no indication of how the charge has been assessed. Ms Ata says that the work is all done by the Respondent's staff but no hours are recorded, and there are no invoices. The Job Sheets simply show an entry for bill store clearance or similar and a sum, usually around a £100.00. The Respondent has not specifically challenged the costs of rubbish removal and although the Tribunal has concerns about the reliability of the evidence produced, considers it likely that some clearance of the bin stores would have taken place. As there is no specific challenge to these items the Tribunal has allowed the following block costs: block 49-54 2015/16 £50 + £100; 2016/17 £50+£100+£80; 2017/18 £80+£120 - block 61-66 2015/16 £125; 2016/7 £90; 2017/18 £110.

58. The only third-party invoices provided by the Respondent for Communal Repairs relate to 4 items charged in respect of Flats 61 and 65, in service charge year 2018/2019. They are all invoices from a company called Newbroom Cleaning and Property Services and are as follows: 10 May 2018 waste removal - £60.00, 10 May 2018 replacement door locks- £161.10; 13 September 2018 fit new flat roof - £1250.00 and 29 October 2018 supply and fit 7 microwave sensor lights - £656.20, Ms Ata said these were fitted following an advisory letter received from the Council. The total Block charge is £2127.30 – individual Flat charges are £354.55.

59. Mr Tindall challenged the quality of the roof repair works for the reasons set out above. The Tribunal have considered both parties submissions on this and determined that the charges for the roof repairs appear reasonable. Mr Tindall

has also challenged the reasonableness of the charges for replacing the microwave sensor lights having found similar fittings for as little as £34.00 per unit. The additional cost (about £418) for an electrician's time to attend the property and replace 7 lights does not seem excessive to the Tribunal and this invoice is therefore allowed in full.

60. The Tribunal determines therefore the reasonable costs to be included in the service charge accounts for Communal Repairs should be reduced to the following sums, for each flat for the years in dispute:

Head of Expenditure	2016	2017	2018	2019	2020	
Communal Repairs Flat 50	25.00	38.33	33.33	0.00	0.00	
Communal Repairs Flats 61/65	20.83	15.00	18.33	£354.55	0.00	

(4) Communal Landscaping

61. This work is carried out by Wrekin Trust and invoiced on a block by block basis to the freeholders of the blocks. The Respondent has not commented in any detail on this head of expenditure but has provided invoices for two of the years in question and the Applicant acknowledges that it was charged £31.13 per flat by Wrekin Trust for Grounds Maintenance when they were responsible. However, the Applicant states that the external grounds are now not so well maintained, often overgrown, unkempt and littered.

62. It appears from the invoices dated 09/03/2018 and 04/03/2019 that Wrekin Trust charged £274.68 per block for grounds maintenance in 2018 and £287.28 per block in 2019. No invoices have produced for the earlier years but is unlikely that they would have been higher that that charged in 2018, which divided between 6 flats is £45.78 per flat. The Tribunal therefore finds that the amounts re-charged to the Applicant for Grounds Maintenance for the years in dispute are reasonable.

(5)Communal Cleaning

63. The Applicant disputes that any regular cleaning is carried out to the blocks. The Applicant raised this issue with the Respondent in January 2017 by email, in which the Applicant stated that no cleaning services to the flats was apparent, despite Ms Ata having advised that the flats were cleaned fortnightly. The Applicant states that having spoken to other tenants, other leaseholders and through their own observation while re-furbishing the flats in 2018 over two periods of 7-8 weeks and 4 weeks, they saw no evidence of any communal cleaning. The Applicant had itself cleaned the ground floor communal area when it has become unhygienic. Wrekin Trust had a regular fortnightly programme of cleaning and there were no issues.

64. The Respondent relies on the Job Sheets as evidence of the charges for regular cleaning of the Blocks. The charges for 2016 are just over £70.00 per flat rising to around £130.00 per flat in 2020. Ms Ata stated that the Flats were not in a good area and the common areas often needed urine and faeces to be cleaned or rubbish removed. The Respondent had tried to keep costs down by not cleaning too often but that has led to complaints. Ms Ata said that the Respondent had experienced a lot of issues with retention of cleaners because they were not the greatest of people and they tended to do the minimum to get the job done. She had tried to jump on this over the past 12 months and there had been a high staff turnover, but the Respondent did not carry out routine inspections to check if the work was being done satisfactorily. It only checked the work if a complaint was received.

65. Mr Tindall disagreed with this. He said that his tenants' had complained about lack of cleaning and they has passed on the complaints to the Respondent but nothing was ever done in response. His tenants were good tenants who had often cleaned the communal areas themselves.

66. The Tribunal's view is that, if the Respondent was competently managing the properties cleaning should, unless specifically requested otherwise by the tenants, be carried out on a fortnightly programme. Unless window cleaning had been contracted with a separate firm, this would be carried out along with the communal cleaning. A reasonable charge for cleaning the limited common areas would in the Tribunal's view, given that there are several blocks in close proximity, be in the region of £30-35 per session. That equates to £780-£910.00 per annum which divided by the 6 Flats = £130.00 - £151.66 per flat.

67. For the reasons set out above the Tribunal has determined that the Job Sheets evidence is unreliable and should be disregarded. Furthermore, given the very limited extent of the common areas, the time entered on many of the Job Sheets is excessive. 4.5 to 5 hours, on the same day as a further three hours are claimed for window cleaning. 6.5 hours on the same day as 2.5 hours are also claimed for window cleaning. On one occasion a total of 9 hours for communal cleaning, bin store cleaning and window cleaning. The Tribunal prefers the evidence of Mr Tindall which, based on his personal observation over two periods of 7-8 weeks and 4 weeks in 2018, and his conversations with other tenants, raise a justifiable suspicion that cleaning, like maintenance work, is carried out infrequently and often, poorly. The Tribunal finds that that a sum of £30.00 per block is a reasonable cost for each clean. Having accepted the Applicant's evidence, the Tribunal finds it unlikely that cleaners were engaged on more than 4 occasions in each year and therefore finds the sum of £120.00 per year per block to be reasonable, which equates to £20.00 per Flat. The consequence of that determination is set out in the attached Schedules.

(6)Door Entry Checks

68. For the reasons set out in paragraph 48 above, the Tribunal's view is that the costs of making these periodic checks should, unless additional checks are specifically requested by a tenant, form part of the landlords Management Charge. The Respondent states that it is required to carry out regular checks due to constant issues with tampering and vandalism, while acknowledging that lack of funds due to non-payment of service charges mean that these checks are not now being carried out. It has charged a set cost of £180.00 per year (£30.00 per flat) for this item from years 2016/2017 on. The only evidence of the checks having been made, is again in the Job Sheets – approximately one sheet per month claiming an hour's work charged at £15.00. Ms Ata said that it took a member of staff 30-45 minutes to check the front and back door of each block but the Respondent charged a minimum of an hour a visit per block. It was put to her that as the Respondent had 5 adjacent blocks that would result in a charge of 5 hours to check 10 doors, every month. Ms Ata did not regard that as unreasonable.

69. The Applicant states that the doors are in a very poor condition and has submitted photographic evidence to support this. The door entry system and locks do not work and when any work is carried out it is substandard using cheap locks rather than security locks.

70. The Tribunal has considered the Applicant's photographs and agrees that they indicate that the doors are not well maintained despite the considerable amount of time apparently spent by the Respondent each year, looking at them. The Tribunal does not regard the Job Sheets as reliable evidence of the costs incurred and for the reasons set out above finds that the door inspections should be part of the regular management inspections included within the Management Charge. It determines therefore that no additional charge is reasonable. The consequence of that determination is set out in the attached Schedules.

(7)Communal window cleaning

71. The Applicant states that it was paying Wrekin Trust approximately £10.00 per year for window cleaning (£60.00 per block). The Respondent's charges range from £45.00 to £77.50 and again rely entirely on the Job Sheets as evidence of the work done and the charges for it. The Applicant submitted photographs of the communal windows in both blocks which showed extensive algae growth on the inside of the window panes. The Applicant also queried the differing amounts charged for each block despite the number and size of the windows being identical.

72. The Respondent states that windows were being cleaned at regular intervals until April last year, by the Respondents own staff, charged at £15.00 per hour as

shown on the Job Sheets. The regularity has been cut back due to non-payment of service charges.

73. The Job Sheets indicate that window cleaning was carried out monthly, often on same days as communal cleaning. The times entered on the Job Sheets for each window cleaning session vary between 1.5 and 7 hours without explanation and do not state whether it is an external or internal clean, or both. Most entries are between 2 and 3 hours. Given that there are only two banks of windows to the front of each block and four small windows to the rear the amount of time apparently spent on each block is often excessive.

74. It would be reasonable for the windows to be cleaned externally every 6-8 weeks and internally once a quarter. A reasonable charge is in the Tribunals view, in the region of £170 - £195.00, per block per annum. However, the Tribunal rejects the Job Sheet evidence for the reasons set out above and accepts the Applicant's evidence that window cleaning has been minimal, which is supported by the Applicant's photographic evidence. The Tribunal determines that a reasonable charge for the actual communal window cleaning that the evidence suggests has occurred, is £90.00 per year (£15.00 per flat), based on three sessions of 2 hours per year charged at £15.00 per hour. The consequence of that determination is set out in the attached Schedules.

(8)Fire Safety

75. The projected figure of £50.00 per annum per Flat, for fire safety is reasonable if the Respondent actually carries out the required fire safety checks and implements the findings of the overdue fire safety risk assessment for the communal area, that has yet to take place.

(9)Property and Building Inspection

76. For the reasons set out in paragraph 48 above the Tribunal has determined that periodic inspection of the buildings is part of the Respondents general management function and should be included within the Management Charge and it is not reasonable to impose an additional charge for this item. The consequence of that determination is set out in the attached Schedules.

(10)Sinking Fund

77. The leases of Flat 50 and 61 provide for maintenance of a sinking fund but only in in relation to the specific works specified in clause 4.2 of the lease.

78. The lease of Flat 65 makes no provision for a sinking fund and the amounts demanded under this head for flat 65 are not therefore lawfully demanded.

79. Ma Ata confirmed that the fund is not held in a reserve account (as required by s42 of the 1987 Act) and has, Ms Ata stated, been used by the Respondent to meet the shortfall caused by non-payment of the service charge. When asked to confirm on what basis the Respondent had calculated the sums demanded in respect of the sinking fund Ms Ata said that the sinking fund had remained the same throughout, she hadn't generated it. The figure was "introduced because we haven't received funds from half the leaseholders so we had to introduce the allowance for it to be there". Ms Ata could not assist with the basis on which Mr Ata had demanded a block charge of £397.12 in 2017 or any sums demanded since.

80. The Tribunal could find no rational basis for the sums demanded under this head of expenditure. The Respondent does not appear to have considered the limited contractual basis of the landlord's entitlement to set up a sinking fund. Indeed, Ms Ata appeared to have little idea of the purpose of a sinking fund or of the statutory requirements imposed on a landlord that maintains such a fund. She confirmed that there was currently £264.72 in the sinking fund for each block and this was in the company account.

81. The Tribunal has therefore determined that the sums demanded under this head of expenditure were not reasonable. The consequence of these determinations is set out in the attached Schedules.

(11)End of year charge

82. The Applicant submits that this should be covered by the Management Charge as it forms part of the general management of the property and that in any event the Applicant has never received any statements of account for the service charge.

83. The Respondent states that the charge is made to cover the costs of the "end of year service charge allocation accounts". It is not clear what this is supposed to mean, particularly as the Respondent has not provided the Applicant with any accounts since acquiring the blocks in 2015. If the charge is intended to cover end of year accounts then clearly these are charges that should be included in the Management Charge and no additional charge would be considered by the Tribunal to be reasonable. The consequence of that determination is set out in the attached Schedules.

84. Mr Tindall stated, when summarising the Applicant's complaints, that he believed the entire service charge had been fabricated by the Respondent to provide an income stream for the Respondent. There was no physical on-site evidence that any of the services were being provided and the Respondent was unable to provide any receipts or invoices for the amounts charged.

85. Ms Ata said that this was a bit of a kick in the teeth when the Respondent had tried to keep costs down by using his own staff and it validated her decision to put all maintenance work out to third parties in the future.

Service charge year 2020/21 estimated costs.

86. Ms Ata confirmed that the estimated figures in the draft account for this year were the same as the actual figures for 2019/20. She acknowledged that very little maintenance had been carried out since 1 April 2020 and was not therefore able to provide a reliable estimate for communal repairs or cleaning. She said that reduced cleaning had been provided 4-6 weekly for windows and 4 weekly for block cleaning. No door entry checks or property inspections had taken place. She had placed a contract for the overdue Fire Risk Assessment with CitationFE, which was due to be carried out on the 30 March 2021 at a cost of £200.00 plus VAT per block and the Respondent would need to implement the report's recommendations. An estimate of £300.00 per block for fire safety costs had therefore been made.

87. Ms Ata said that some adjustment to management charges would be made to reflect the reduced services that had been provided this year, but as the end of year work would be the same did not propose any adjustment to that estimate. Insurance had already been paid. The premium for this year was £797.76 giving a block figure of £199.34 plus interest, which totalled £259.26 per block.

88. From 1 February 2021 all maintenance repair and cleaning would be placed with third party contractors and she was obtaining quotes from two companies one of whom was Newbroom. The Respondent was however intending to fund the costs upfront, of all the current outstanding works to put the blocks in good order in time for the start of the next financial year and she had provided some estimates from Newbroom for this work which totalled £2,200.00 for block 49-54 and £3175.00 for block 61-66.

89. Mr Tindall said the proposed fire safety costs were reasonable if the work was actually done. He was disappointed that the remaining projections were again not backed by any evidence. There were no receipts, no accounts not even Job Sheets for this year. He would be happy to see contracts put in place with properly documented receipts and invoices giving some accountability.

90. The Tribunal determined that the block insurance costs, net of interest, appeared from the little evidence provided to have been reasonably incurred (£199.44). Communal Landscaping carried out by Wrekin Trust was an overhead that the Respondent had to pay, and the estimate was reasonable. The estimate provided for fire safety work is also reasonable.

91. The Tribunal was very concerned to hear that the blocks had been largely unmanaged all year leading to accumulated repair and maintenance issues which the Respondent was hoping to address through the appointment of Newbroom. Ms Ata said that the rubbish had now accumulated to the point where skip hire was necessary for its removal. As the seeds of a dispute concerning the extent to which the costs of the remedial repairs and rubbish disposal have been increased by the Respondents failure to manage the blocks for some time, the Tribunal is unable to determine that any estimate for communal repairs is reasonable.

92. The Tribunal finds that the limited cleaning carried out in previous years has been further reduced. No evidence was provided of any cleaning other than Ms Ata's evidence which she appeared to read from a spread sheet at the office, and the Tribunal finds that it is unable to determine that any estimate of the cleaning costs is possible. Furthermore, as on Ms Ata's evidence very little management has taken place this year the Tribunal is also unable to determine that any management charges are reasonable.

93. The Tribunal makes the same determinations as above on the remaining heads of expenditure for this year.

Section 20C Application

94. Ms Ata confirmed at the hearing that the Respondent had not incurred any legal costs in dealing with these proceedings. For the avoidance of doubt, and on the basis that the Applicant had been forced to issue these proceedings to obtain basic information and some clarity about the service charges, including confirmation of insurance, having not received any accounts since the Respondent's acquisition in 2015, the Tribunal has no hesitation in making the order requested.

Paragraph 5A Application

95. The Tribunal takes the same stance on the question of administration costs. We make an order that any administration charges sought by the Respondent in respect of the costs in these proceedings from the Applicants are extinguished.

Fees

96. The Applicant has paid £100 to bring this application and £200 hearing fees. Under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, we may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party. The Applicant has been forced to make this application having received no service charge accounts since 2015 and no proper response to correspondence going back to 2017. Its requests for information were largely ignored or met with the threat of court proceedings. The Applicant has succeeded in obtaining a significant reduction in the service charge costs and should not be out of pocket as a result of

bringing entirely meritorious proceedings. The Respondent is therefore ordered to reimburse the Applicant £300.00 within 14 days of the date of this decision.

Judge D Barlow **Date: 13 April 2021**

Right of Appeal

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.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(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.

The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.