FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UN/LSC/2020/0118
Property	:	Flats 1-7, 1 Penhurst Road, Ramsgate, CT11 8EG
Applicant	:	Sarah Anderson Simon Cowdrey Julia Duncan Geoffrey Fenney Sharon and Mark Foster Martin Green Julia Smith
Representative	:	Julia Smith
Respondent	:	Keighley Investments Limited
Representative	:	Bradys Solicitors
Type of Application	:	Section 27a Landlord and Tenant Act 1985- determination of service charges
Tribunal Member(s)	:	Judge J Dobson
Date and venue of hearing	:	On the papers 24th May 2021
Date of Decision	:	1st July 2021

DECISION

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Summary of the Decision

1. **The Applicants' application pursuant to section 27A of the Landlord and Tenant Act 1985 is dismissed.**

2. **The Tribunal refuses the Applicants' further applications pursuant to section 20 of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**

The Application and history of the case

3. The Applicants sought a determination in respect of what were said to be service charges for 2019 and 2020 in relation to Flats 1-7, 1 Penhurst Road, Ramsgate, CT11 8EG ("the Property"), stated in the application in the sum of £22,000.

4. The Applicants stated that they objected to, it was understood, the cost of replacement of a fire escape on the basis of inadequate historic maintenance by the Respondent and incompetent management. The Applicants posed the following specific issues for determination by the Tribunal:

    - Should leaseholders be financially responsible for structural repairs that become necessary due to lack of maintenance by the property management company
    - Should the management company make financial provision from regular service charges to provide regular preventative maintenance measures to the structure of the building
    - Should the management company have decided to try to achieve planning permission to remove the escape without first consulting the KFRS [the Tribunal perceives this to mean Kent Fire and Rescue Service] and building regulations
    - Knowing that there would need to be remedial /repair work on the fire escape should the management company use the underspend in budget designated in 'structure' and ' fire safety' towards the costs of this, especially as they had envisaged being able to do the original work within budget.

5. The procedural history has been somewhat more complex than the usual. Directions were first issued on 11th December 2020 in which the Respondent was named as Alistair West, reflecting the name of the Respondent as provided on the application form.

6. An application dated 17th January 2021 was submitted to change the name of the Respondent, in response to which Directions were made on 18 January 2021 further to which the company in which the freehold was vested at the date of application was named as Respondent. It was notable that the freehold had been sold to a company, 1 Penhurst Road RTM

Company Limited, but after the date of the original application and where any service charges had been demanded by the freeholder at the relevant time.

7. Other applications were subsequently made by both parties, most recently further applications dated 2nd March 2021 by each party for further management directions to be given. Essentially, the Applicants wished to be able to rely on additional paperwork where the application has been identified in previous Directions to be unclear and the Respondent wished for further clarity. I found the Applicants' case management application not to be entirely clear as to the extent of the additions sought. It was also unclear to what extent the matters raised in fact related to challenges to the amount of service charges but where the lack of clarity meant that it appeared unsafe to reach any view on that point. In the event, and not without some concern as to duplication of effort, I acceded to an approach broadly reflecting that proposed by the Respondent and particularly directed the production of a Scott Schedule and the service of further, composite and comprehensive, statements of case, setting out each aspect of the cases in clear terms and identifying any relevant documents, accompanied by all documents.

8. The Tribunal had stated that it would not inspect the Property but that if the condition of the Property was salient to the issues the parties had permission to include photographs. The Tribunal also explained that the Tribunal may also seek to view the Property on the internet. The parties were informed that if a party contended that an external inspection of the Property was necessary, they must make an application no later than the date for provision of the bundle. No application has been made.

9. The Tribunal additionally stated that it would decide the case on the papers unless a party applied for an oral hearing. None did so.

10. The Directions provided for the Applicants to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Applicants have done so. The PDF bundle amounts to 192 pages, including original and later statements of case. I have considered that bundle. Both sides have also provided helpful Skeleton Arguments. I have also considered those.

11. This is the Decision of the Tribunal following the paper determination of the application made by the Applicant. I set out the parties' cases and their rather substantial evolution below and refer to matters within the Skeleton Arguments where relevant to the issues considered.

The Background

12. The application explains that the Applicants are the Lessees of each of the seven flats within the Property.

13. The Respondent is, following amendment, the freeholder of the Property at the time of the matters in dispute, namely 2019 and 2020. The

management was dealt with on behalf of the Respondent by an agent, Azure Property Consultants Limited ("Azure").

14. On 2nd December 2020, the freehold title was obtained by 1 Penhurst Road RTM Company Limited, as mentioned above. That is a resident-owned company.

The Lease

15. The Applicants have provided the lease of one individual flat within the Property, Flat 4, entered into on 12th October 1989 for a term of ninety-nine years from 25th December 1985 ("the Lease"). I understand that the leases of the other flats are in substantively the same terms. The principal pertinent parts of the Lease with regard to service charges and the works and other matters for which they are payable state as follows:

> 2. THE LESSEE HEREBY COVENANTS with the Lessor and with the owners and lessees and occupiers of the other Flats comprised in the Building so that this covenant shall be for the benefit and protection of the lessor and said owners and lessees and occupiers that the Lessee and the persons deriving title under them will at all times hereafter observe the restrictions and regulations set forth in the First Schedule hereto and each of them and such other regulations notified in writing to the Lessee as the Lessor may from time to time make for the good management of the Building of which the demised premises form part-
>
> 3. THE LESSEE HEREBY COVENANTS with the Lessor as follows:
> .....
> (f) At all times during the said term within fourteen days of a demand to pay and contribute one quarter of the costs incurred in respect of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto and to pay to the Lessor on the execution hereof a sum of One Hundred Pounds (£100.00) or such sum as the Lessor shall from time to time reasonably determine to be held by the Lessor as a reserve fund out of which the Lessor may in the first instance pay the said costs expenses outgoings and matters and so that such reserve funds shall be maintained at the sum of One Hundred Pounds (£100.00) or such sum as the Lessor shall from time to time reasonably determine;
>
> 5. THE LESSOR HEREBY COVENANTS with the Lessees for itself and its successors in title as follows:
> .....
> (2) Throughout the terms hereby granted to maintain repair renovate and renew and keep in good order and substantial conditions:
> (a) the main structure and in particular the foundations joists external walls roof chimneys stacks gutters and downpipes of the Building;
> (b) the stairways hall and passageways used or capable of being used by the Lessee in common with the lessees or occupiers of any of the Flats in the Building and all gas and water pipes cables wires ducts drains cisterns or tanks as are enjoyed or used in common by the owners lessees or occupiers of any of the Flats in the Building
> (c) so often as the Lessor shall reasonably consider necessary but not less than once in every three years calculated from the date hereof to redecorate the exterior of the Building in accordance with the scheme of decoration presently

existing and not less than once in every five years to redecorate in like manner the stairways halls and passages referred to in sub-clause (b) hereof-

.....

(7) To keep proper books of account relating to all costs charges and expenses incurred by the Lessor in performing the covenants in the Fourth Schedule hereto-

6. IT IS HEREBY AGREED AND DECLARED:

.....

(g) The Lessor shall not be responsible or liable for any damages injury or loss howsoever caused suffered by the Lessee or any other person whomsoever through any defect in the demised premises or any part thereof or the Building of which the demised premises form part including without prejudice to the generality of the foregoing any boiler central heating system and any other machinery and/ or equipment or apparatus or the failure to perform or supply any of the obligations or services herein provided (if any) or for or through the default neglect omission or misconduct or otherwise of any lessee servant visitor or workman of the Lessor or other persons occupying and engaged about or employed by any persons for any purpose in or about the Building of which the demised premises form part and any failure on the part of the Lessor to perform or supply any obligations or services herein provided shall not release the Lessee from any of the covenants in this Lease contained-

THE SECOND SCHEDULE hereinbefore referred to

There is to include in the demise:

1. Full right and liberty for the lessee and all persons authorised by them (in common with all other persons entitled to the like right) and at all times by day and by night and for all purposes to go pass and re-pass over and along the front entrance footpath and through and along the entrance way passageways hallways and staircases affording access to and from the demised premises from Penhurst Road-

THE FOURTH SCHEDULE hereinbefore referred to

1. The costs incurred by the Lessor in insuring the Building in accordance with Clause 5(3) hereof-
2. The expenses of fulfilling the Lessor's obligations under Clause 5(2) hereof-
3. The cost to the Lessor of performing the Lessor's covenants in this Lease so far as the same are not set out in detail in this Schedule-
4. The proper management and collection of expenses incurred by the Lessor and its agents in respect to the management of the Building-

The Law

16. The relevant statute law is set out in the Appendix to this Decision.

17. Essentially, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs

of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease.

18. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. A service charge is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

19. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

20. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.

Facts not in dispute

21. There appears to be no dispute that service charges were demanded in 2019 and 2020 or that accounts have been produced. Neither does it appear to be in dispute that there was variance between budgeted sums and actual expenditure. The Applicant has not raised any issues in respect of the form of demand made by the Respondent or any statutory requirements in relation to a service charge.

22. There is no dispute about the amounts of the demands made, the expenditure actually incurred, or the matters dealt with within that expenditure. Most importantly, it is apparent with the benefit of the clarification of the Applicant's case that it is agreed that no expenditure was incurred on maintenance of the fire escape- which appears to have been installed when the Property was formerly used as a public house/ hotel- during either of the years 2019 or 2020.

23. Whilst the application refers to a, not insubstantial, sum, in practice- and as it transpires- it is agreed that there was no actual service charge of that sum in relation to the fire escape. Service charges as were rendered for other actual items of expenditure are not individually in dispute in the application made.

24. In 2019, Azure proposed the removal of the fire escape and no replacement of it. Reference is made to a fire risk report that stated there to be no need for a fire escape. The cost to be incurred was to be the cost of that removal of the fire escape.

25. However, it is set out in communications and not disputed, that Azure subsequently established that whilst the fire escape could be removed, there would be a requirement imposed by the local Council for other works to be undertaken. It was decided by Azure that the better course was not to, on the one hand, remove the fire escape and seek to undertake those other works but rather, on the other hand, to replace the existing fire escape with a new fire escape.

26. The work was not in the event undertaken by or on behalf of the Respondent at any time. There has consequently, I repeat, been no actual expenditure on removal or replacement in relation to the fire escape demanded as service charges.

27. It is worth recording that the documentation indicates that the fire escape has deteriorated to the insider of the mild steel tubes and, whilst there may be differences of perspective between the parties as to fault- including whether the inside of the tubes was capable of being maintained- there was not a disagreement as to the need for action to be taken.

28. I should perhaps record, and this point is as good as any to mention it, that I have received no information as to whether the new freeholder intends to remove, replace or do anything else with the fire escape.

The Parties' cases in relation to the Disputed Issues

29. I start by observing that the Applicants' case has changed significantly over the course of the progress of this application. The initial matters appeared quite limited: the later ones are just about related to the same broad matters rather than advancing new ones, although the margin is a fine one.

30. It is apparent that the Applicants- and especially the Applicant who acts as representative for the Applicants collectively- have been unhappy about the previous dealings with and proposals of the Respondent in respect of the fire escape. That is set out at some length in the documents. For the reasons explained below, there would be little purpose served by detailing the contents of those documents at length. Therefore, I do not do so but rather seek to deal with in relatively brief terms.

31. Suffice to say, the Applicants' representative has expressed her dissatisfaction with the approach taken by the Respondent and agent, in particular asserting that the Respondent has inadequately maintained the fire escape and so allowed the fire escape to deteriorate such as to need removing and so require the major works for which the consultation process was required- although other apparent dissatisfaction is also mentioned to a rather lesser extent but without a specific challenge to service charge sums. She pursued a complaints procedure with the Respondent's agent and threatened an application to the Property Ombudsman- it is not apparent whether she followed through with that.

32. The application form filed with the Tribunal in fact says, I note, with regard to the "Service Charges in Question" that in relation to 2019 and 2020 the Applicants object "to section 20 issued….". That is, I now perceive, to say the consultation process and proposal to remove and/ or replace the fire escape as opposed to actual service charges as such.

33. The Applicants' statement of case in response to the Directions refers to budgets, to lack of allocation of funds for external repairs and maintenance in previous budgets and to surplus sums being used to offset some of the costs that would have been incurred with the fire escape works. There is suggestion that lack of regular external repairs and maintenance may "have been a factor" in sums demanded for particular works in 2015 and 2016, but those years charges do not all within the application. There are references in the documents to the service charge apportionment and an assertion that the budget and maintenance management is flawed resulting in increased service charge. However, no specific increased charge is referred to, whether in any given service charge year or at all.

34. The statement of case also states that the Applicants would wish the Tribunal to consider wider aspects in respect of the lease, building regulations, fire risk assessment recommendations and the RICS code of conduct. However, it is not apparent that relates to any specific part of service charges said to be unreasonable and does not properly fall within the application made, hence I have not considered those matters.

35. The Scott Schedule adds in relation to 2019 service charges a query that the actual cost of external repairs and maintenance was £438.00, whereas the Variance Report shows that the estimated budget had been £3500.00. The Schedule goes on to say that this leaves £3062.00 unaccounted for which is, it is said, the cost of the disputed service charge for this period.

36. The allegation made in relation to that is that there has been no evidence provided as to where this surplus is accounted for or that it was reasonable for there to have been a surplus in this budget schedule for this year. However, there is also mention that the Respondent envisaged the removal of the fire escape and provided for that. A reason for the dispute is said to be that there is no evidence that any credit was made for the surplus in the 2020 budget calculation.

37. The Scott Schedule also states a dispute about the sum of £1725.00 for 2020. That £1725.00 is explained to be the balance of £3500, again provided for in the budget as the sum anticipated to be required for External Repairs and Maintenance after deduction of actual expenditure on External Repairs and Maintenance in 2020, of £1775.00. The Applicants' say that it is unreasonable to have the funds in the budget and not use them towards the costs of the section 20s issued for external repairs and maintenance.

38. The position of the Respondent in relation to the Applicants apparent original case can be summarised quite simply. It is that there have not been service charges in 2019 or 2020 in relation to the fire escape in the

event, no work having been undertaken, as noted above. It is said that repairs were intended to be undertaken in 2018 and cost for those was anticipated and sums demanded for the cost that was anticipated to be incurred. However, the fire escape was established to be beyond repair and so the works were not carried out. As identified above, the next plan was to remove the fire escape but that did not happen either and hence in the event there was less expenditure in relation to the fire escape than had been provided for in the 2019 list of anticipated expenditure. There was also a planning application fee incurred in 2019 but credited in 2020.

39. It is said that there was a consultation process in 2019 in relation to removal alone of the fire escape and one in 2020 about removal and replacement. The Applicants have expressed considerable unhappiness is the change of approach, explained above. It is said that as the Applicants served their notice claiming to exercise the right to buy, matters did not progress further with the consultation.

40. The Respondent attached breakdowns of expenditure and certificates from a bookkeeper, together with what appear on quick perusal to be appropriate section 20 consultation documents- nothing turns on the specifics of them.

41. The Respondent's original statement of case predates the Scott Schedule and so takes no account of Applicants' case in respect of service charge on-account demands and any impact from 2019 on 2020. A supplement has also been prepared since the March 2021 Directions. That comments on the consultation process and other matters.

42. In relation to the budget variance 2019 as to External Repairs and Maintenance, the Respondent's position as expressed is that some items were under budget and others over- budget and that an appropriate reconciliation was prepared, with surpluses being credited and shortfalls requiring balance payments. The Respondent accepts that the budget for 2019 had allowed £3500 for External Repairs and Maintenance. In the event only £438 was spent.

43. Significantly, it is said that credit balances were paid to the given lessee, the Respondent having no entitlement to hold surplus funds against future expenditure. No money paid by the Applicants has therefore been "lost". The Respondent has attached a series of credit notes addressed to lessees in relation to over-payments in 2019 following a balancing of the accounts. The Respondent also commented that there were variances with other items but accepted that there was an overall surplus, hence the credits. The Respondent also provided a detailed calculation sent to each of the lessees which sets out anticipated expenditure, actual expenditure and so the excess funds received as compared to those required. The calculations accord with the credits issued.

44. The Respondent says much the same in respect of anticipated expenditure in relation to the fire escape in 2020. A sum on account of £3500 was demanded for anticipated costs. It is agreed that actual expenditure was

lower, the £1775 stated by the Applicants, but that the surplus after actual expenditure on items paid for by the service charges was credited to the Applicants.

45. The Respondent additionally comments on the item in the Schedule which refers to the reconciliation from 2013 to 2019 and to external works, noting that documentation relates to a summary of reconciliations of the service charges budgets and expenditure and that, save for 2013, there has been expenditure on external items. The statement of case concludes by noting the 2019 and 2020 demands to have been paid by the Applicants and that the amounts in dispute in the Scott Schedule- which are correctly noted to be very different to the original claim for £22,000- are the amount of the difference between particular budget sums and subsequent actual sums, where any excess on- account payments were refunded.

46. The Applicants have also provided a reply to the Respondents' response to the Scott Schedule and have both clarified and somewhat expanded on the case of the Applicants. That largely covers ground already referred to above, in relation the condition of the fire escape and related, making other comments as to management and lack of proactive maintenance but then introduces new themes. The reply attaches seven pages of photographs of the fire escape and of scaffolding, including the access door to it and around that, which are helpful.

47. Six other documents are provided. Documents D to F do not alter this Decision in any way and so do not require summarising. Document C is said to relate to the ability of the Respondent to create a sinking fund. The words that refer to reserve fund say, "A reserve fund is not held by Azure for the property. If once a reconciliation is completed, it shows funds are available from the current budget then these can be utilised."

48. The other aspect of the Applicant's reply is contained in one long-ish paragraph. I consider it to be entirely new as compared to the application as brought and even as clarified. It is that there were errors made with the calculation of service charges and the appropriate percentages since the incorporation of Flat 1A. It is said that the Applicants believed that issue to be resolved by the credits but that if the credits relate to surpluses as stated in the Respondent's case then the Respondent has failed to take account of the percentages point. It also said that it was believed that any surplus service charge funds would be used to pay for fire escape works.

49. Reliance in relation to that aspect is placed on documents A and B, which are letters from the Respondent's managing agent with regard to the terms of the Lease, the service charge percentages and related matters. It is said those support the Applicants belief that the credits reflected reconciliation of the service charge and not repayment of any surplus funds held.

50. However, the Applicant's case does not go as far as to say that the Respondent is incorrect in relation to why the credits were applied. Rather it addresses the question of the percentage points. It is said that has been a failure to apply additional credits for that.

Consideration of the Disputed Issues

51. I have not sought to determine any matters beyond the Applicant's specific application plus the somewhat different clarification in the statement of case in response to Directions and the Scott Schedule and the quite new points raised in the reply to the Respondent's case, which I have narrowly accepted as falling within or thereabouts fitting with the matters raised in the application, somewhat unclear though that is in places and quite doubtful though it is in others. I have not ventured into queries about service charges or works which relate to entirely different items. I have limited any determination to such matters as the Applicant and Respondent have raised. I should say for the avoidance of doubt that I accept that action is required in relation to the fire escape. Not only does that appear to be agreed by all concerned but it is also apparent from photographs produced by the Applicants' representative.

52. I do state that the Scott Schedule prepared is helpful in providing clarity as to the aspects of the case and the parties' positions. It helps to emphasise exactly what the Applicants application related to and hence the Tribunal's jurisdiction in relation to that. I repeat that there is no challenge to the liability in principle for service charges which have been demanded of the Applicants. There have been no actual costs incurred in 2019 or 2020 in relation to the fire escape with a demand made for service charges to pay for such for such costs for which a determination can be made as to the reasonableness of the service charges or the reasonableness of the standard of work. No issue arises as to who must pay, to whom they must pay, how much they must pay, the date by which they must pay or the manner in which they must pay in relation to any such cost. The Applicant's Skeleton Argument correctly identifies matters about service charges, consultations and the Code but the key points for my purposes are as stated earlier in this paragraph.

53. The Applicants' case very much referred to the section 20 consultation process about major works. However, that is a process to be followed. Service charges demanded are a different matter. Other criticisms about management and decision making, including in the Applicant's Skeleton Argument, do not take the issues forward.

54. Insofar as the Applicants' position regarding the fire escape is that the Respondent was in breach of covenant for failing to maintain, as the Respondent's Skeleton starts by observing no application has been brought regarding such a breach. Indeed, the Tribunal would have no jurisdiction to deal with a freestanding application in relation to a breach of covenant brought by a lessee- that would need to be made to the County Court.

55. The alternative argument would be that the cost for removal and replacement of the fire escape is greater than it ought to have been because of any potential breach and so that should affect the reasonable service charges in relation to the cost incurred for removal. There may in principle be a counter argument about breach by the lessor. That would arise only if

the work had been undertaken, service charges had been demanded in respect of the cost of that and the Applicants had raised the particular argument in response to it. That has not occurred. The Respondent's Skeleton Argument is correct to submit that where there is no service charge liability, there is nothing to set-off against. Hence, there is nothing for me to determine in relation to that.

56. It appears safe to say that when the current freeholder comes to deal with the fire escape- and it is apparent that it will have to do so sooner rather than later- there will be cost incurred. That cost will presumably be demanded from the Applicants. However, that is not a matter for the Tribunal to deal with at this time.

57. It therefore may well have been- and indeed may still be with the new freeholder- that issues raised by the Applicants would have been relevant to the amount of service charges demanded in relation to any steps taken by the Respondent in respect of the fire escape and service charges for incurred costs. The Respondent may well have needed to explain fully its approach. The Tribunal may have provided answers to some or all of the questions posed by the Applicants in the course of giving its decision as to the amount of such service charges payable and reasonable if appropriate in that context. However, the Tribunal does not determine matters in a vacuum but only in the context of, in this sort of instance, deciding whether actual service charges are payable and reasonable.

58. I turn then to the matters raised in the Applicants' later statement of case and the Scott Schedule. I can only consider whether amounts demanded on account were reasonable at the time- actual cost and standard of work only apply when the work is actually undertaken. Case authorities are, I consider, clear as to that and neither party referred to anything to alter my view as to that.

59. Firstly, in terms of the point added in the schedule that the cost of removal of the fire escape was budgeted for, it appears clear that such work was indeed budgeted for at the time as an element of the wider budget for 2019, so much is agreed. I find that no sufficient evidence has been provided by the Applicant that the on- account demands were unreasonable at the time they were made, at which point for 2019 removal of the fire escape was anticipated and expected to require paying for. There is, for example, no evidence that the work could have been anticipated to be dealt with at considerably lower cost. The work was not subsequently undertaken and hence there was a variance between the sum budgeted for and actual expenditure, but that does not render the budgeted cost unreasonable at a time when work was envisaged.

60. It may be useful to re-iterate that the Tribunal can consider the reasonableness of the demands. However, issues as to accounting for funds received and any claims in relation to such sums owed by one party to another and related matters are not ones for the Tribunal, save for in relation to the specific point below.

61. In terms of the 2020 budget, I consider that was properly prepared in relation to anticipated expenditure that year. The size of any existing pot from which any of the expenditure could be funded and hence the extra funds required and to be demanded as service charges would be affected by the previous payments if those were retained. To any extent that the 2020 on-account demands failed to take account of payments previously demanded, received but not spent or refunded and so retained, those could in principle be unreasonable for being unnecessarily high. That is where funds received are relevant to the matters determinable by this Tribunal. If the lessees had a surplus in the service charge account already, the additional funds required to fund the 2020 anticipated budget would logically be lower. That would not render the budget itself inappropriate, but it may make the level of the demands for further service charge sums unreasonable for the above reason.

62. The Respondent has explained how the service charge account was operated and as to additional demands or credits as appropriate. I find nothing unusual in that. If any surplus was returned at the end of a given year as the Respondents say, it was not relevant to the amount of the demands for subsequent years. Detailed calculations were prepared, and the sums stated in letters to the Applicants to be returned predominantly reflected those- in five out of seven cases, where more was returned in the other two instances, as mentioned further below.

63. In 2020, I understand that expenditure was still anticipated in relation to the fire escape. That much is obvious from the communications. I find nothing unreasonable in a sum again being included in the service charge budget in relation to the cost of that anticipated work. In a similar manner to 2019, the fact that anticipated work did not subsequently take place and the fact that there was in 2020 a variance between the amount demanded on account for the expenditure then envisaged and the actual expenditure incurred does not render the on- account demand unreasonable.

64. The Applicant's case about the percentages and the appropriateness of credits in relation to them, in the absence of a firm case that the reason given by the Respondent is wrong, is that other credits should have been applied. I consider that if that is correct, the service charge demand for 2020 could be unreasonable for demanding sums not required because funds are in practice already held which, as not credited, should be applied. However, the Applicants do not advance that argument in terms as I read their case.

65. I am mindful that the Applicants have to adequately raise an issue such that the Respondent needs to then respond to it. Lessees commonly do not possess all of the evidence and documentation that freeholders do. However, the Applicants have only raised an issue with percentages in the last documents served and not at any previous point in the proceedings. It was therefore raised after the last point at which provision had been made for a response from the Respondent and hence there is nothing from the Respondent explaining whether the percentages point affected the reconciliation and the amount of the credits. That is a reason for caution.

66. It is apparent from documents A and B attached to the Applicants' reply about the credits, that the Respondents' agents wrote to the lessees in August 2019 about the service charge apportionment percentages. It appears that they did so on the basis of their own investigations and not obviously because of urging by the Applicants. The letters note that the existing situation is perceived by some lessees to be unfair but is a reflection of the terms of the existing leases and where the landlord is under no obligation to alter that. Indeed it is said, correctly I consider, that it is the way in which the situation must continue unless and until variations can be agreed with the six of the lessees whose contributions are not expressed as "a fair proportion". It is said that there are different schedules and that there may be over-recovery under some and under-recovery under others but all of that is reconciled at the end of the year. It is said that some lessees pay more than "a fair proportion" would produce and others less. Notably, the new Flat, Flat 1a, already pays a fair proportion because the lease for that Flat provides for that. Only Flats 2 to 6 would experience a change.

67. The subsequent letter, dated 2nd October 2019, explains that the majority of lessees have agreed the variation- although it necessarily follows from that not all of the lessees had done so. It says that accounts will be reconciled at the end at the end of the 2019 year applying the new percentage rates and those percentages backdated and that January 2020 onward will be at the new rates. It is apparent from the 2020 budget calculation sent by the Respondent's agent to the Applicants' representative that different apportionment was made of different elements of the overall budget. As to how there could have been a variation unless and until all lessees agreed is less than clear. It may be that all agreed subsequent to the date of the letter.

68. I find that that the letters Documents A and B make no reference to any additional credits being paid. There is to be a reconciliation. It is apparent that per Lessee there was, one, reconciliation. For each Applicant, a separate Service Charge Reconciliation Apportionment Report was prepared.

69. It is not obvious to me that those take account of the variations of the leases and any change in percentages, but rather more importantly, it is not apparent that they do not. I do have correspondence that says that there will be reconciliation and a detailed reconciliation is shown to have been carried out. The credits to the Lessees vary substantially, from £117.77 at the lowest, followed by £135.78, and then up to £1167.67 at the highest. It appears to me of some likely relevance that the lowest sums relate to Flats where a fair proportion provision already applies (Flat 1a with the lowest sum) and Flat 1 for which the percentages were not to alter.

70. Insofar as I possess evidence in the bundle, that points to the reconciliation including the percentage points aspect and the credits addressing that. The Applicants have produced no evidence that persuades me that there should have been additional separate credits. Hence, there is no evidence that

funds were held by the Respondent which should have been set against the 2020 budget and so have affected the 2020 demands. I should say that the bundle contains no copies of 2020 service charge demands on account of anticipated costs for me to be able to identify whether sums are the same as those in the apportioned budgets for each Lessee or any different but I have identified no reason for which there ought to be a difference and I work on the evidence provided. For the avoidance of doubt, I do not consider that there is any inference that I can properly make from the evidence presented to me which might assist the Applicants.

71. There is no evidence that there may have been an impact on 2020 on-account service charge demands so as to render those unreasonable.

72. In my judgement, the Applicants have failed on the evidence provided to me to prove their case as advanced late in the proceedings that changes to the apportionment of service charges following the end of the 2019 service charge year meant that there was money which should properly have been applied to the 2020 budget such that less in the way of service charges should have been demanded on-account for 2020 than actually was and hence a service charge on-account demand was unreasonable.

73. The concern as to the late introduction of the Applicants' point and the lack of ability for the Respondent to specifically respond to that was not significant in those circumstances. I cannot say if there might have remained any accounting questions, which should not be taken to imply that I consider there are, but I repeat those fall beyond the jurisdiction of the Tribunal. I have determined such questions as are raised about actual service charge demands as can properly be identified from, and taking a generous view of, the Applicants' case.

74. I consider that much of the Applicants' issue lies in relation to on-account demands and actual service charge expenditure relates not to the unreasonableness of the demands but rather of how the accounting information presented has been understood by the Applicants, which is not a matter in relation to the reasonableness and payability of the service charges and so not a matter for this Tribunal.

75. The Applicants have, by way of example, considered the specific sum budgeted for in the relation to the fire escape- perhaps understandably given that was their main focus- but not sufficiently the wider picture. Their main focus has been on the particular sum demanded in 2019 on account as if that occurred in isolation from the remainder of the service charges and the costs to which they relate. However, that is not the case. The £1725.00 balance referred to after expenditure in 2020 on the specific item- External Repairs and Maintenance- indicates a focus on the particular anticipated and actual expenditure item and not the service charges as a whole. In any event, and as explained above, if in fact the Respondent has not accounted for sums appropriately and still owes money to the Applicants, that is not a matter- except as explained above as to level of later demands and which was not demonstrated- an issue for the Tribunal because it is about money owed and not service charges payability

and reasonableness. Reasonableness of demands and correct accounting practices are quite different matters.

76. The other wider comments briefly made in the statement of case but not in the application about the two particular service charge years go nowhere near to founding an arguable case in relation to those matters and appear principally to be advanced as supporting the argument about the fire escape and lack of previous maintenance rather than being separate points in themselves. It is not necessary to say more about them.

77. In a similar vein, it is not necessary to consider the issue of whether the fact that the Applicants paid the service charges demanded on account may preclude a challenge to them no. The Respondent has not raised that issue in terms and so I would probably have determined that it was a point I ought not to consider. I might have made certain observations. In the premises, there is no need for me to even go that far.

78. It may very well be that there were issues the management of the Property. Certainly, the Applicants have perceived there to be, although I do not attempt to determine whether they so perceived rightly or wrongly. It is apparent from the documentation supplied by the Applicants in particular that full and detailed financial records have been maintained, including budgets, spreadsheets of expenditure and reconciliations- but I appreciate that is only part of the story and is not determinative as to other issues. If it is indeed said that specific actual service charges were not reasonable for given years, a separate application would have to be made identifying the demanded sums in question, assuming always that there is considered by the Applicants to be merit in taking such a course. That is not a matter directly relevant to this Decision.

79. In light of all of the above, the application accordingly fails.

Applications in respect of costs and refund of fees

80. The Tribunal refuses the applications made by the Applicant that any costs incurred in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the tenant pursuant to section 20C of the Landlord and Tenant Act 1985 and the similar application, pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished.

81. The Tribunal is given a wide discretion to do that which it considers just and equitable in all the relevant circumstances in respect of both provisions. For practical purposes in this instance, the test and the considerations are effectively the same for each application.

82. The Tribunal does not consider it to be just and equitable to grant either of the applications in light of the Applicant's lack of success in this matter, given that I have found that the matters raised by the Applicants cannot be

determined, and the wider circumstances. The first element alone is not necessarily determinative, although it is never irrelevant.

83. The Tribunal will always bear in mind the potential practical and financial consequences of the approach taken, although here the position in terms of costs and service charges and/or administration charges is not the usual given that the Respondent no longer owns the Property.

84. As the Respondent's representative correctly observes, the decision in relation to this aspect of the matter is effectively irrelevant for that reason. However, that is no reason to alter the approach to properly take.

85. No application has been made by either the Applicant or the Respondent for an order for costs against a party who has conducted the proceedings in an unreasonable manner, pursuant to Rule 13 of the Tribunal Procedure Rules 2013 and so nothing need be said about that.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk

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

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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.

Section 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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the First-Tier Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made –.....

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

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.
(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1
(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5
(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).