FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UN/LSC/2020/0093
Property	**:**	Arlington House, All Saints Avenue, Margate CT9 1XP
Applicant	**:**	John Keith Moss and other lessees (full list on page 2)
Representative	**:**	John Keith Moss
Respondent	**:**	Metropolitan Property Realizations Ltd
Representative	**:**	Memery Crystal LLP
Type of Application	**:**	Service charges: section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge E Morrison
Date of Decision	**:**	10 September 2021

DECISION

List of Applicants

John Keith Moss – (Flat) 11B
John MacAllan – 6F
Michael Kincaid – 15B
Gareth Addis -11C
Tom & Jo Griffiths – 5A
Sandra & James Glynn – 5H
Marc Moderegger & Elaine Barnwell – 13F
Sue Kenten & Karl Jastrzebski – 10H
Gaye & John Harmer – 15G
Paul & Sue Wright – 13H
Peter Cooke & Philippa Darbyshire – 11E
Margaret Gaskin – 4G
Sue & Keith Line – 18D
David & Lynna Frodsham – 11E
Bruce Fraser – 16E
Adrian Barnett – 9F
Juliet Whiting – 12C
Nigel Plank – 15H
Peter Wrench & Pauline Jordan – 3E
Jon Bidston – 11F
Matthew Darbyshire & Elizabeth Spooner – 6C
Jane Wenham-Jones – 10A
Brian & Sheelagh Smith – 2G
Colin & Duncan Mercer – 6E
Rita Pengelly – 7E
Jeetender Pandhi – 9B
Mark Gura – 13D
Brian Cooper – 2B
Patrick Gregory – 3B
David & Elizabeth Walker – 16C
Jon Carter & Richard Prior – 5G & 8B
Trevor Thomas – 13C
Andrew Pull – 10C

The Application

1. On 12 October 2020 a number of the lessees of flats at Arlington House, Margate made an application to the Tribunal for a determination of the service charge for 2018, pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). The value of the service charges in dispute was said to be £77,023.93.

2. The Applicants also sought orders limiting recovery of the Respondent lessor's costs in the proceedings under Section 20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

3. This is the fourth time that the Tribunal has been required to determine service charges for Arlington House. In 2009 the Tribunal dealt with service charge years 2002 – 2008. In 2015 the Tribunal dealt with years 2009 – 2011 and budgets for 2013-2014. In 2019 the Tribunal dealt with years 2013 – 2017 and the budget for 2018, and the decision in that case (Case Ref. CHI/29UN/LIS/2018/0039) is referred to herein as "the 2019 decision".

4. The judge dealing with the current application also sat on the previous two applications. On both those occasions the Tribunal carried out an inspection of Arlington House before the hearings and the judge is therefore familiar with the property.

5. As in the previous cases, John Moss, the lessee of Flat 11F, represents the lessees (in 2015 he was the sole lessee party).

6. In all the applications, despite the best efforts of the Tribunal, the parties have produced unnecessarily large bundles. In the current case, the original bundle ran to over 1800 pages and was rejected. The Tribunal required that the number of Applicant witness statements be reduced from 35 to a maximum of 6, and that other revisions be made so the amended bundle (excluding authorities) now runs to 837 pages.

7. The parties have not requested an oral hearing, and following a review of the amended bundle, the Tribunal considered that the application was suitable for determination on the papers alone. This decision is therefore made on the basis only of what is in the amended bundle, the separate authorities bundle, which includes the previous Tribunal decisions, and correspondence received from the parties in response to queries by the judge during her deliberations.

8. The proceedings in 2019 were notable for the fact that the lessor failed to engage properly in the proceedings. Despite a huge number of challenges made to items of expenditure by Mr Moss, the vast majority were not met with any evidence in response. Despite a two day hearing, the Respondent served no witness statements and no-one gave oral evidence on its behalf. As stated at para. 30 of the 2019 decision, the Tribunal's findings must be viewed in that context.

9. The situation today is otherwise. The Respondent has produced detailed witness statements from Linda Kavanagh, its Head of Residential Property Management, from Matthew Shaw, Head of Operations at Trinity (Estates) Property Management Limited ("Trinity") – the managing agents in 2018, and from Michael Barber of Parsons Sons & Basley ("PSB") – the current managing agents.

10. Some of the lessees' challenges to expenditure are the same or similar to those made previously. It does not follow that that the Tribunal must reach the same conclusion on those challenges in this case, because the lessor may now have produced evidence which affects the outcome.

11. Having said that, certain points of principle were decided in the 2019 decision which were not dependent on the evidence, and which remain applicable in these proceedings.

Arlington House

12. Arlington House is an 18 storey tower block built in the early 1960s as part of a larger development which includes Arlington Square, comprising some 50 shop units and a multi-storey car park. In 2019 the shops had been vacant and boarded up for some time. Within Arlington House itself there are 142 flats over 18 floors, the flats being accessed from corridors running the length of the building that are sub-divided by fire doors. 106 flats are demised on long leases, and the remaining 36 flats are retained by the Respondent and let out to tenants.

13. On the internal ground floor of Arlington House is the entrance lobby leading to access to the two lifts and to the fire escape staircases, a porter's office, a store room, and the electricity meter room. Outside there is an undercroft area with access to the refuse chute collection area and pump room.

14. Above the 18th floor is a loft area housing water tanks and the lift motors/controls. Doors give access to the rooftop which houses a number of telecommunication aerials and communications equipment belonging to third parties.

The leases

15. There are least three different forms of lease in existence, but fortunately the differences between them are slight for the purposes of this application, and will only be referred to where necessary. All require the lessee to pay a service charge in a specified percentage (which varies from flat to flat). Payments on account may be required on 25 March and 29 September. At the end of the service charge year on 31 December, a full account must be prepared. The lessee must pay any balance owed, or the lessor must credit the lessee, as appropriate. Save where mentioned below, it is agreed that the expenditure comprised in the service charge falls within categories payable under the terms of the leases.

The issues

16. The service charge accounts for 2018 were signed off by the accountants on about 7 August 2020 and then sent out to the lessees. The claimed expenditure totals £202,284.00, compared with £187,652.00 in 2017 (before reduction by the Tribunal to £168,661.00).

The categories of expenditure listed the Income and Expenditure Account match those used in the expenditure analysis spreadsheet maintained by Trinity (Bundle p159).

17. A Scott Schedule has been prepared by the parties. Fortunately, in the course of the proceedings and following disclosure of information by the Respondent, a number of items of expenditure that were disputed have now been agreed. Either the Applicants have agreed that the sum claimed is payable, or the Respondent has agreed to cancel or reduce the charge. Attached to this decision is a Decision Spreadsheet, based on the original expenditure analysis spreadsheet, which sets out the amounts allowed by the Tribunal for each item of expenditure, and incorporates the concessions made by the parties.

18. The remaining items in dispute are dealt with category by category below. The Tribunal's decision on each individual item is noted in the final column of the Scott Schedule also attached to this decision.

Whether costs are reasonably incurred

19. Under section 19 of the Act service charge 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.

20. Many of the challenges made by the Applicants are on the grounds that the work carried out by contractors has not provided a long term solution to an issue, or has not addressed every problem arising. In some cases it is said that the work would not have been necessary if the Respondent had taken action earlier. However, the reasonableness of incurring costs does not depend upon whether the repairs ought to have been allowed to accrue or how the need for remedy arose. This was made clear by the Lands Tribunal in *Continental Ventures v White* [2006] 1 EGLR 85 and more recently in *Daejan v Griffin* [2014] UKUT 0206 (LC). In *Daejan* the Upper Tribunal explained that the only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects would have been avoided.

21. As for work which effects a temporary repair but not a permanent solution, the question is whether the course of action has lead to a reasonable outcome. In *Waaler v Hounslow LBC* [2017] UKUT 154 (LC) the lessees argued that the lessor should have chosen to repair windows rather than replace them at greater cost. The Court of Appeal said that whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Act was to be determined by reference to an objective standard of reasonableness. The focus of the inquiry was not

simply a question of the landlord's decision-making process but was also one of outcome; where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred (even if there were a cheaper outcome which was also reasonable). In the case of Arlington House, the lessees object to paying for temporary repairs, but the issue for the Tribunal is whether the outcome is reasonable. There are other courses of action available to lessees who consider that their lessor is not adequately performing its repairing obligations under the lease.

Employee equipment

22. The Applicants object to paying monthly charges totalling £422.40 for a broadband connection through the telephone landline to the caretaker's office, on the ground that the internet has never been installed. During the Tribunal's inspection in 2019, this was verbally confirmed by the caretaker, and in the 2019 decision the costs were disallowed.

23. Mr Shaw states that broadband "is provided to be made use of by the caretaker" and if disconnected and later reconnected there would be a charge for this. Mr Moss says the caretaker had an internet connection through his mobile telephone in any event.

24. Doing the best it can on this evidence, the Tribunal concludes that although the caretaker could have used broadband in his office in 2018, he did not do so because it was never physically installed e.g. by setting up a router. On this basis, the cost was, through no fault of the Applicants, completely wasted and cannot be regarded as reasonably incurred. The cost is disallowed.

Communal cleaning

25. These costs are in fact the charges of Ottimo, for providing a full -time caretaker. The leases provide that the cost of maintaining the common parts and employing a "porter" is recoverable though the service charge. One version of the lease includes in the lessor's covenants an obligation to maintain the services of a porter for the performance of the following duties: "To cleanse the entrance hall stairs and passages and attend to the lighting and extinguishing of the lights therein".

26. The caretaker's Job Description provides further clarification of his duties. They include carrying out "small areas of redecoration as agreed with the estate manager". Trinity's February 2018 Action Plan states that maintenance tasks should be undertaken on Tuesdays and Thursdays. His Rota provides for approximately 10% of his 40 hour week to be spent on Arlington Square (the commercial area).

27. Ottimo Invoice 54780 is challenged on the ground that the caretaker, rather than another Ottimo operative, should have been used for one hour's repainting of a wall, to cover some marks, the paint being available onsite. Mr Shaw suggests it was reasonable to use another contractor where additional work by the caretaker would detract from his core duties of cleaning .

28. This was a small job and the scope of the caretaker's duties are not limited by the specific references to those of a "porter" in the lease, but are defined by what Trinity/Ottimo have agreed he should do. It is clear that these duties can include minor maintenance and decorating. There is no evidence that he could not have repainted the wall as part of his duties, and the Tribunal finds the cost of employing another person was unreasonably incurred.

29. However, the main challenge to expenditure under this head relates to the claim that 10% of the monthly fee charged by Ottimo for the caretaker's services should be paid by the Respondent, as that work relates to Arlington Square for which the lessees have no responsibility. In the 2019 decision the Tribunal accepted that argument, in the absence of any contrary evidence from the Respondent. However, the Respondent has now produced evidence that Ottimo invoices the Respondent separately for the caretaker's time on Arlington Square duties and that these costs go through the Arlington Square service charges.

30. On the basis of this new evidence, the Tribunal is satisfied that the costs billed to the lessees represent only the cost of the caretaker's services to Arlington House. While Mr Moss asserts that even while at Arlington House the caretaker has to spend time allowing engineers from various outside companies to access the telecommunications equipment on the roof there is no evidence that this is anything but *de minimis*.

31. There is no other credible challenge to the monthly Ottimo charges for the caretaker and they are allowed.

Lift maintenance

32. The cost of lift maintenance in 2018 was £40,065.00 against a budget of £10,000.00 and 2017 costs of £16,051.00 (which were unchallenged).

33. The lifts at Arlington House are the original lifts and are thus approaching 50 years old. In 2018 one or other of the lifts continually broke down, and there are around 90 invoices from United Lifts, mostly for call-outs (many out of hours) and repairs. 36 of these invoices are disputed. The worst period was in November 2018, when there were 9 call-outs over two days. Many of the call-outs were as a result of one or other lift not working, but after the contractor carried out a "re-set", it worked again. On other occasions, the lift was found to be working again by the time the contractor arrived on site. On a few

occasions investigation revealed a more significant problem, and repairs were then carried out, including one occasion where the Fire Service had to attend as people were stuck in the lift, causing damage as they rescued them.

34. Mr Moss says that resetting the lift merely involves the momentary shutting off of the power supply to the lift using an isolation breaker in the ground floor electricity intake room or on the 19th floor. He notes that £3900.57 was paid during this year for 12 service visits from United Lifts, and submits that if the lifts had been properly serviced, and the ongoing intermittent fault causing the lifts to stop working remedied, the costs of call-outs for frequent breakdowns would have been avoided.

35. The Respondent says that whenever a lift was not working, it was reasonable to require the contractors to attend. This is an 18 storey tower block, where residents are clearly dependent on the lifts. They cannot be left out of order. Mr Shaw exhibits a report from United Lifts prepared in 2014 which confirms that the drive system for the lifts is technically obsolete and well beyond the typical 25 year life span. It recommends replacement of the main operating equipment and various other upgrades if not full replacement. In early 2018 United Lifts provided further quotes for repairs and complete replacement. An email from the Managing Director provided for the purposes of these proceedings in January 2021 discusses the unpredictable nature of the problems occurring with the lifts and repeats that they are way beyond their serviceable life. He estimates that the lifts are used over 73,000 times each year, and blames the ongoing problems on the fact that his company's ongoing advice about required upgrades was not acted upon. He states that in 2019 Lift 2 was switched off permanently because it was unsafe.

36. A letter from the Managing Director of Technical Lift Consultancy Ltd dated 31 July 2019 states he is amazed that United Lifts have managed to keep the lifts going for so long without modifications, and that both lifts are at the stage where critical failure is inevitable.

37. The Tribunal concludes that all the disputed invoices from United Lifts are for costs that were reasonably incurred. The Applicants have provided no evidence from a lift expert. There is no evidence that call-outs were required unnecessarily, or that the outcome (leaving the lifts in service or, rarely, awaiting further repairs) was not reasonable. It makes no difference even if the call-outs were necessitated by the lessor's failure to arrange a more permanent solution (see paras. 20-21 above). Nor is there any evidence that the charging rates were unreasonably high, or that the work done was not done to a reasonable standard. The costs are all allowed.

38. There is one further invoice, from Otis Technologies, dated 8 June 2018 which is not for work on the lifts but for carrying out a condition survey and producing a quote for refurbishment. Otis supplied the original

lifts almost 50 years ago and Mr Shaw says it was thought appropriate to get a quote from them. The Applicants object to paying this invoice on the basis that it was not disclosed to them, and it was not until 2020 that any real action was taken with regard to proceeding with major works to the lifts. The witness statement of Marc Moderegger (Flat 13F) refers to a number of other reports on works required to the lifts and quotes obtained from other companies in 2018.

39. The expenditure spreadsheet contains no evidence that any other of the companies who provided quotes in 2018 for lift works have charged for this, and given that other companies were providing quotes, the Tribunal is not satisfied that it was reasonable to procure a quote from Otis which had to be paid for. The report does not appear to have been utilised in any way by the Respondent, even in a 2020 application to the Tribunal for dispensation from consultation. The Tribunal is not satisfied that this cost was reasonably incurred and it is disallowed.

Fire alarm/emergency lighting maintenance

40. The Applicants say that 50% of the annual cost from Amthal for the fire alarm service should be disallowed because faults were showing on the fire alarm control box which should have been corrected. Another invoice was raised on 31 May 2018 "to investigate faults on the fire alarm panel" which the Applicants say is a cost that should have been covered by the service contract. In response Mr Shaw says that the annual maintenance cost includes inspection and service only and does not include call-outs and repairs outside of the maintenance inspection.

41. The contract with Amthal is not in evidence. On a balance of probabilities the Tribunal is not satisfied that the service was not carried out to a reasonable standard or that the 31 May invoice was not covered by the service. The costs are allowed.

42. The Applicants also suggest that a further invoice from Amthal for 3 hours work on 3 August 2019 should be disallowed as it overlaps with the 16 hours of work charged by Amthal in another invoice for work on the same date, and 19 hours of work by two engineers in one day is unlikely. Only the invoice for the smaller amount is in the bundle but Mr Shaw says that the larger one was for different work and that "details of works provided under both have been evidenced".

43. Contrary to what Mr Shaw says the work done has not been evidenced. A rational challenge has been made by the Applicants and has not been sufficiently dealt with by the Respondent. The smaller invoice for £258.00 is disallowed.

Door entry system maintenance

44. The door entry system works though a remote key pad at the main entrance. This dials the designated telephone number of the flat requested to authorise entry. Therefore the system has to be updated whenever a telephone number changes. Stanley Security is paid an annual fee to provide the equipment and system. In 2018 Stanley raised a number of additional invoices for charges for attendances to update telephone numbers (up to £261.60 to update a single number).

45. Mr Moss says that this had previously been done by the caretaker. Mr Shaw responds that it is not a function mentioned in the lease as a porter's duty.

46. The Tribunal accepts what Mr Moss says as no charges for this work were made in 2017. As stated above, what the lease says about a porter's duty does not limit what the caretaker may be asked to do as part of his duties. The duties outlined in the job description include "To keep a record and frequently update all names, telephone numbers and points of contact for emergencies". It is not reasonable to pay for a call-out for this simple task which can only take a minute or two per number. The charges are disallowed.

47. One further invoice for £261.60 relates to a call-out on 19 September 2018. According to the invoice Stanley had been told that the door entry was not working but on arrival the caretaker said there was no problem, and that possibly a removal company had wedged the doors open. Mr Shaw suggests it was the lessee of 8A who reported the problem to Trinity, and it was reasonable for Trinity to summon the contractor. Mr Moss says Trinity should first have checked with the caretaker and does not accept a lessee was involved in reporting. On balance the Tribunal allows the invoice on the basis that it is more likely than not that whoever arranged the call-out reasonably believed there was a problem with the door that needed fixing.

CCTV

48. The Applicants seek a 50% reduction in the cost of the annual service contract on the ground that not all cameras were showing clear images, and there is no evidence that these faults were rectified.

49. The invoices clearly itemise what work was done at each half-yearly visit, consisting of various checks, and separately notes remedial work required. The fact that the remedial work was not done does not affect the validity of the charge for the visit, there being no evidence that this was not done to a reasonable standard or as required under the contract. The charge is allowed in full.

Lightning Protection

50. PTSG carried out repairs and upgrade to the lightning protector on the roof of the building. The Applicants submit that the lessees should only pay 33% of the cost, rather than 88% (the Respondent charging 12% to Arlington Square). It is argued that commercial tenants using the roof for their equipment gain most benefit from the lightning protector, and that it is their equipment which increases the likelihood of a lightning strike. The lessees do not even have a TV aerial on the roof.

51. This issue was dealt with at paragraphs 71 -73 of the 2019 decision and applies equally now. The costs are chargeable to the lessees under the leases regardless of the benefit to third parties, unless it is established that third parties caused the cost to be incurred. There being no evidence of that being the case, the costs are allowed.

General repairs and maintenance

52. There are 16 invoices in dispute. It is not proportionate to set out each side's submissions in detail. Instead the following summary is provided.

Libra invoice 27567 – Emergency weekend call-out to investigate leak in Flat 1E. Contractor could not access stack pipe, reported, but heard nothing further from Trinity. Cost allowed: reasonably incurred as no evidence there was not a genuine problem that required investigation and no evidence that follow up work not done by others.

Ottimo invoice 56456 – filling in hole and repainting. Not obviously within caretaker role. Cost allowed.

TMG Invoice 15517 – weekend (caretaker not available) call-out to clear refuse chute blockage which had cleared itself by time contractor arrived. Cost allowed as no evidence that not a genuine problem justifying call-out.

Ottimo invoice 58365 – for "removing bulky items off site". Unauthenticated photos appear to show waste in commercial area. Residents are aware they are responsible for removal of their own items. It is unclear where the waste had originated. Disallow 50% of costs on basis cost should be shared with commercial area in absence of better information.

Libra invoice 27339 – Clearing of blocked gullies under building. Applicants suggest gulley deals with surface water from commercial area but no supporting evidence from contractor's report. Cost allowed.

FDS Drainage 6549 – unblocking multiple rainwater gullies. No evidence not reasonably incurred. Cost allowed.

Ottimo invoice 60174 – repairing lights on 16th floor. Lights had also been repaired two weeks earlier by another contractor. Respondent concedes original contractor should have been recalled. Cost disallowed.

Ottimo invoice 60167 – four key safes supplied. Applicants say not a service charge item as Respondent does not need to store lessees' keys. However the Purchase Order refers to safes "for residents spare keys". Mr Moss says that lessees were not notified that key safes were available for their own use. Cost disallowed on basis keys likely to have been those for flats retained by the Respondent.

Ottimo invoice 60611 – annual jet washing of bin store, walls and chutes taking 1 day. Applicants' submission that caretaker should do this using machine on site not accepted. This is not general cleaning. Cost allowed.

Libra invoice 27613 –Call-out to investigate damp to wall between flats on 16th floor. No damp found raising doubt about call-out but another matter dealt with while on site. Unclear if issue with common parts but reasonable to summons contractor to investigate. 50% of cost allowed.

Libra invoice 28188 - roof repair to stop leak into flat below and clearing gutter. Applicants suggest repair required only due to footfall of third parties using the roof, but no evidence to support this. Cost allowed.

Ottimo invoice 69335 – attending to blocked soil stack in Flat 10D. Mr Moss who lives directly above contends there was no blockage in the stack but the detail provided by the contractor contradicts this. Cost allowed with no deduction for sub-contracting by Ottimo as not established cost unreasonable.

Hardall invoice MK19827 – service of refuse chutes. Applicants say not payable as fire doors to chutes were still not compliant with fire safety requirements and a new fire door was recommended. Cost allowed. No evidence that service not carried out to a reasonable standard; works found to be required are a separate matter.

Nirvana invoice NM6621 – call-out to check kitchen waste pipe in Flat 13D but contractor suspected blockage in main stack and quoted for the work. Further work later carried out by another contractor on three stacks. No evidence that concern related to main stack when Nirvana call-out requested. Blocked sink is lessee's responsibility. Cost disallowed.

Trinity invoices 102513 – cost of padlock and key safe. No evidence of reason for this. Cost disallowed.

Argyle Drains invoice 356 – unblocking of pipe in flat which was causing back up in other flats. Applicants suggest not payable as work

wholly within a flat so should have been paid for by the lessee. However the communal pipework must have been affected so 50% of cost allowed.

Reactive refuse removal

53. Five Ottimo invoices for removing bulky items are challenged. Some detail is available: on two occasions there were fridge freezers and there are photographs of a large furniture items. One invoice refers to two fridges being dumped on site. The Applicants say that residents should be responsible for the cost of removal of their own items, which the Respondent accepts, but says that where the responsible person cannot be identified it is still necessary to remove the waste, and the cost is reasonably incurred.

54. The Tribunal's view is that management systems should be in place to ensure that residents cannot leave bulky items in the communal areas without first making appropriate arrangements for their removal and paying for this. It is not reasonable to require the lessees to pay for the removal of other people's items, and to continue this practice will only encourage further dumping. The cost is therefore disallowed.

55. One other invoice is a charge for a Saturday attendance to unblock the bin chutes, carried out by the caretaker as overtime. The Respondent has already agreed to remove an Ottimo invoice for a failed attempt (due to lack of proper equipment) to clear the chute 3 days earlier. The Applicants say that the caretaker should have attended to this during his normal working hours, so there would have been no additional charge. There being no clear evidence that the caretaker could not have dealt with this during the working week, this cost is disallowed.

Fire risk assessment

56. On 3 July 2018 Tetra carried out a Fire Risk Assessment Review costing £2274.00. The Applicants object to paying this, on the ground that the previous assessment costing £1860.00 in July 2017 had recommended a further review in July 2019, and in July 2018 most of the 2017 recommendations had still not been acted upon. On 17 July 2018 Kent Fire & Rescue Service (KFRS) inspected and in August 2018 they issued a formal Notice serving a Schedule of works to be carried out by February 2019.

57. Mr Shaw says that by July 2018 much of the work recommended in the 2017 assessment had been done, and that the remaining works required section 20 consultation, which began in December 2018. Given the involvement of KFRS it was reasonable to have a further assessment in July 2018, which then recommended annual reviews.

58. Given the heightened attention to fire safety following the Grenfell disaster in 2017 it cannot be regarded as unreasonable to commission annual fire safety assessments for an 18 storey tower block, regardless

of the extent to which the 2017 recommendations had already been carried out. The cost is allowed.

Accountancy fee

59. The accountants have charged £1500.00 + VAT to complete and sign off the service charge accounts. In 2017 the charge was £1200.00 + VAT. The Applicants say this increase is unjustified. Not much work is required as the accountants can simply transpose the figures from the expenditure spreadsheet maintained by Trinity.

60. The Applicants also criticise various elements of the accounts but these criticisms have been adequately answered in the Respondent's statement of case. The Respondent has produced the accountants' time records, and the Tribunal is satisfied from these that the cost is reasonable and should be allowed.

Management fees

61. Management throughout 2018 was carried out by Trinity, who charged £2556.34 (inc. VAT) per month, a 2.5% increase on the 2017 charge.

62. In the 2019 decision the Tribunal reduced the recoverable management fees by 20% to reflect a litany of management failures (see paras. 89-94).

63. In their first statement of case in these proceedings, the Applicants sought a 60% reduction of the fees in 2018. This has now been amended to 30%. The Applicants rely on the following:

- Delayed production of the 2018 service charge accounts until August 2020
- Alleged payment of invoices where no work has been carried out
- Increase in the number of jobs passed by Trinity to Ottimo, a sister company
- Duplicated charges in the expenditure spreadsheets
- Obtaining of unnecessary reports and then doing nothing in respect of recommended works
- Failure to implement fire safety measures leading to intervention by KFRS, including non-closing fire doors in the corridors
- Continuing to charge heads of expenditure disallowed by the Tribunal in 2019
- Failing to address lessees' concerns re lights not working
- Failure to repair damaged corridor walls
- Failure to implement majority of items listed on Trinity's own Action Plan drawn up in February 2018, notably refurbishment of the lifts, foyer and lift lobby redecoration, repair/replacement of the many broken/missing floor tiles
- Lack of response to residents' communications to Trinity
- Inadequate standard of cleaning of common parts.

64. The Respondent answers as follows:

- The majority of the lessees have not been party to the repeated Tribunal proceedings
- The leases require that the end of year accounts be prepared "so soon after the end of the Lessor's financial year as may be practicable". Given the change of managing agents in November 2019 and the need to consider the 2019 decision the requirements of the lease have been met.
- Errors on the service charge calculations have been few, including duplications
- The Tribunal found no evidence of cleaning not being done to a reasonable standard when it inspected in 2019 and challenges for previous years on this ground were rejected
- The 2019 decision had not been received when the 2018 costs were incurred.

65. The Tribunal repeats what was said in the 2019 decision at para. 93: Arlington House is not a straightforward property to manage. It is a high rise block with mixed tenure occupancy, third party usage of common parts, and aged equipment requiring regular call-outs. Trinity's fee works out to an average of £216.03 per annum per flat, which is very modest by today's standards, particularly given that there is a full-time caretaker on site. However, Trinity has agreed to provide a reasonable service for that price.

66. While the Respondent has not disputed all of the Applicants' complaints, the Tribunal is less concerned about various aspects of management than it was previously in light of evidence now given on behalf of the Respondent. Although Ottimo has still been used as a middleman in some situations, there is no evidence this has inflated costs to an unreasonable level. The criticism that people have been paid for carrying out no work is unfair. The errors/discrepancies in the expenditure summary have been few and corrected by the Respondent once pointed out. The 2020 accounts were delayed but not as badly as in some previous years and there was no prejudice to lessees as section 20B notices were sent out with an expenditure summary.

67. However, certain matters still indicate that management has not overall been to a reasonable standard. The principal concerns are (a) tardiness in carrying out works recommended in the 2017 Fire Safety Report, (b) tardiness in tackling the problem of the failing lifts (c) failing to carry out works identified to be done in Trinity's own Action Plan.

68. Taking everything into account the Tribunal concludes that it is right to disallow 10% of the management fees.

Out of hours fees

69. Trinity charges a monthly "out of hours" fee of £45.76 inc. VAT which the Applicants dispute. The Tribunal previously disallowed this as there was no evidence that this service was not covered by the normal management fee. It has now been clarified that Trinity took over the obligations of the previous managing agent, Chainbow, and that the agreement between the Respondent and Chainbow still applied in 2018. The Respondent relies on the terms of that agreement to say that the out of hours fee is permitted. The Tribunal disagrees. While services additional to the Services may be charged for, the Management Services section of the agreement requires that an Out of Hours contact number be available as part of the normal service. Meetings held outside normal hours may be charged at double time but there is no evidence that the monthly fee has any connection with such meetings. The fee is accordingly disallowed.

Banking charges

70. £63.00 (£5.25 per month) for Trinity's bank charges is also disputed. In the 2019 decision the Tribunal noted that the only clause in the lease which might cover this was "the fees of the Lessor's managing agents for the collection of the rents of the flats in the said buildings and for the general management thereof". There was no evidence that Trinity was entitled to charge the Respondent for bank charges on top of its normal management fee and the cost was disallowed. That remains the position and the same decision is reached now.

Other challenges

71. Although the Applicants' statement of case raised a number of other issues aside from challenges to various items of expenditure, it has been confirmed that the only matters now pursued are those in the Scott Schedule, all of which have been dealt with above.

Calculation of service charge

72. The attached completed Scott Schedule sets out, in the final column, the Tribunal's decision on each challenged item of expenditure.

73 The sums determined by the Tribunal and concessions made by the parties have been recorded in the final column of the attached Decision Spreadsheet, from which it can be seen that the **total service charge recoverable for 2018 is determined in the sum of £179,926.19**.

Costs

74. In the absence of submissions from either side the Tribunal's provisional determination is that no order will be made under section 20C of the Act, and that (the application having been made by the lessees) no order is necessary under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. If either party disagrees, they may make written submissions (maximum 2 pages) within 14 days of receipt of this Decision. In the absence of further submissions the provisional determination on this point will become final.

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.