



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	CHI/18UK/LSC/2020/0102
Property	:	Lenwood Country Club Lenwood Road EX39 3PN
Applicants	:	Christopher Graham Ley Gerald 12 Graham Ley and Marion Jean Ley Patricia Jane Langdon 27 Peter Charles Metherell 48 Brian Steele and Jennifer Steele 41 Lawrence May 32B David John Baldwin 19A Rebecca Edmonds 34 Juliet Chandler 39 Patrick Butler and Julie Renshaw 58 Kevin Bedford 53
Representative	:	Mrs Lisa Ley
Respondent Representative	:	Ground Rent Trading Limited Mr Shmuli (Paul) Simon
Type of Application	:	Liability to pay and reasonableness of service charges (Section 27A Landlord and Tenant Act 1985) (the Act)
Tribunal Members	:	Judge C A Rai (Chairman) Mr M Woodrow MRICS (Chartered Surveyor)
Date type and venue of Hearing	:	18 May 2021 - Determination on the papers without an oral hearing
Date of Decision	:	21 June 2021

DECISION

Background

1. The Applicants applied to the Tribunal for a determination of liability to pay and reasonableness of service charges. They submitted two separate application forms seeking determinations of the service charges payable:-
 - a. for the service charge year ending 29 September 2020, and
 - b. on account for the service charge year ending 29 September 2021.
2. In addition, the Applicants disputed the insurance charge of £241.63 for the period 31.07.20 to 30.07.21. They asked questions about interest charges and administration charges for “arrears letter”.
3. The Applicants also applied for orders under section 20C of the Act and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA) preventing the landlord from recovering the costs of the proceedings through the service charge or directly from the tenants.
4. The service charges demanded by the Respondent were in respect of the Applicants’ leasehold chalets or bungalows at Lenwood Country Club, Lenwood Road, Northam, Bideford EX39 3PN (the Property).
5. Judge Tildesley OBE issued Directions dated 3 November 2020 (the November Directions) in which he confirmed that the applications were suitable for a determination without an oral hearing unless either party objected or the Tribunal later decided otherwise. Neither party subsequently objected to a paper determination. The Property was not inspected by the Tribunal prior to the issue of this decision but both members of the Tribunal have inspected the Property previously.
6. The Respondent was directed to send the Applicants’ Representative a statement of the service charge expenditure for the year ending 29 September 2020 with copies of the invoices supporting the expenditure and a copy of the service charge budget for the year ending 29 September 2021 by 27 November 2020.
7. The Applicants’ Representative was required to send the Respondent a statement of truth setting out each aspect of the Applicants’ case with copies of all relevant documents on which they relied and any witness statements on which they sought to rely by 18 December 2020.
8. The Respondent was directed to send the Applicants’ Representative a statement of truth setting out each aspect of the Respondent’s case with copies of all relevant documents with any witness statements on which it relied by 15 January 2021.
9. The Applicants were directed to collate the documents and prepare a bundle for the Tribunal (the determination bundle) and send it to the Tribunal and the Respondent by 29 January 2021.
10. The Applicants applied to the Tribunal for variations of the time limits granted by Directions made on 23 November 2020 and 19 January 2021. The applications referred to delay by the Respondent disclosing information and its reluctance to disclose information until just before the deadline for submission of the determination bundle.

11. Judge Tildesley OBE in Revised Directions dated 19 January 2021 directed that determination bundle be sent to the Tribunal by 8 February 2021 and that failure to comply would result in the cancellation of the determination.
12. The application was set down for determination on 10 February 2021 but the Tribunal was unable to make a detailed determination on that day with the bundle available to it because of the Respondent's failure to comply with the disclosure requirement in paragraph 11 of the November Directions. It had not supplied a statement of service charge expenditure for the service charge year ending 29 September 2020.
13. Further excuses were made by the Respondent in correspondence exchanged with some of the Applicants and their Representative. The Respondent sought to delay the determination of the proceedings pending issue of the service charge accounts for the year ending 29 September 2020. In several emails Mr Simon suggested that the accounts would be available by the end of March 2021 and claimed that the Respondent was not legally obliged to issue the service charge accounts before 31 March 2021 [B page 124].
14. The Tribunal issued Further Directions dated 11 February 2021 (the February Directions) in which it stated that because of the Respondent's failure to comply with any of its earlier directions and its general procrastination it had adjourned the determination and gave the Respondent another opportunity to fully comply with its directions [Paragraph 14 B page 50]. The Tribunal also stated the provisional determination it intended to make unless the Respondent provided evidence of the reasonableness of each element of its 2020/2021 budget by providing copies of invoices supporting the service charge expenditure it was entitled to recover.
15. The Respondent was directed to provide the following information on or before 11 March 2021:-
 - a. Service charge accounts for 2020.
 - b. A certificate of expenditure for 2020 in a form which complied with the Lease together with copies of all supporting invoices which must be addressed either to the Respondent or to its managing agent.
 - c. If relevant, any final demand it intends to issue to the leaseholders for any balance of service charge due for 2020.
 - d. Copies of all reports and assessments referred to in the Respondent's statement where costs have been incurred in their production.
 - e. The insurance policy and schedule for 2020 and 2021 with full details of the premium payable which should in both cases exclude any premium payable for loss of rent.
 - f. A comprehensive list of the machinery included in the insured risks covered by the current buildings insurance policy.
 - g. A precis of the anticipated expenditure in 2021 upon which the 2021 budget is based which shall, where appropriate, include copies of any estimates or tenders issued to prospective contractors.

16. Paragraph 21 of the February Directions stated that “Failure by either party to respond to these Directions within the time limits set out above will result in the Tribunal striking out that party’s application or response”.
17. The Respondent failed to comply with the February Directions. Mr Simon sent an email to the Tribunal on the day before the expiry of the deadline for compliance, citing difficulties and claiming it was inequitable for the Tribunal to sanction the Respondent for not producing accounts before the expiry of the statutory deadline (section 21(2) of the Act).
18. The Tribunal issued its final Directions on 15 March 2021 which recorded that:-
 - a. It was unimpressed with the Respondent’s submissions because he had twice failed to comply with the November Directions which had led it to conclude that this failure was deliberate.
 - b. It would include in its decision a determination that all sums previously demanded on account of the service charges for 2020/2021 are not recoverable.
 - c. Continuing failure by the Respondent to supply the statement of service charge expenditure for 2019/2020 with copies of the invoices supporting it on or before 31 March 2021 would result in the Tribunal striking out the Respondent from making any additional response to the Application.
19. Nothing further was received from the Respondent by the Tribunal and on 16 April 2021 the Tribunal gave the parties notice that it had barred the Respondent from taking any further part in the proceedings pursuant to Rule 9 of **the Tribunal Procedure (First-tier Tribunal)(Residential Property) Tribunal 2013 [SI No 1169]** (the Rules).
20. The 28 days for the parties making representations expired on 15 May 2021. The Applicants emailed the Tribunal seeking clarification that nothing further was required from it because the Directions had referred to the application being struck out. The Tribunal clarified that the notice dated 16 April 2021 gave notice that the Respondent was barred from taking further part in these proceedings. The Respondent made no further representations to the Tribunal before the date on which the Tribunal considered the application prior to making this determination.
21. The Applicants supplied the Tribunal and Respondent with a determination bundle comprising 454 pages (“B”). Following receipt of the bundle the Tribunal issued Directions dated 11 February 2021, 15 March 2021 and a Notice to debar the Respondent dated 16 April 2021. The Respondent made an application for an extension of time dated 11 March 2021 comprising 3 pages (“R”). The Applicants sent the Tribunal electronic copies of demands for payment from the Respondent which it described as “arrears letters” addressed to the leaseholders of chalet 12 dated 23 February 2021 and 6 May 2021 comprising seven pages (“A”). These are the only other documents

referred to the Tribunal and the only additional documents supplied by the parties considered by it when making this decision.

22. All references to page numbers within square brackets within this decision are to the numbered pages in the determination bundle which also contains copies of three sample leases of chalets 12, 19A and 48 Lenwood Country Club [B pages 212 – 273] which the Tribunal has referred to within this decision as the “Lease”. Neither party has suggested that the leases of any of the Applicants chalets are materially different in a way that would affect the application and the decision.

The disputed issues

23. The Application relates to two service charge years expiring on 29 September 2020, “2019/2020” and 29 September 2021 “2020/2021”.
24. The Applicants seek a determination of reasonableness in respect of the service charges demanded for 2019/2020. The First-tier Tribunal made a determination that the Respondent was entitled to demand £508.09 on account in September 2019 (CHI/18UC/2019/0013) [B page 406].
25. The Applicants dispute that the contribution of £241.63 per leaseholder for insurance for the period between 31.07.20 and 30.07.21 is reasonable.
26. The Applicants complained that interest charges had been added to some service charge accounts without any explanation. They asked if the charges could legitimately be levied “given that there is no outstanding balance” on some accounts.
27. The Applicants said that in some cases a charge of £60 had been made for arrears letters which exceeds the £10 charge referred to in the Lease. They said that they do not accept the legitimacy of the charge or that the alleged arrears existed. They said “The charge must be removed from the Applicants’ accounts”.
28. The Applicants seek a determination of the reasonableness of the on account payment for service charges for 2020/2021 demanded by the Respondent on 15 September 2020 of one thousand four hundred and fifty three pounds and 62 pence (£1,453.62) [B page 279].

Service charges for 2019/2020

29. In the application form the Applicants referred to the budget supplied by the Respondent for 2019/2020 and asked the Tribunal to confirm that their contributions be limited to the “on account” payment previously determined by the Tribunal as reasonable. They stated that “they requested that the Tribunal confirm its earlier decision following the publication of the service charge accounts which are due to be published by the 30th March 2021. The Tribunal will then be able to inspect the service charge accounts along with any relevant invoices and make any adjustments that it feels are reasonable” [B page 11]. The Applicants stated that they submitted this application because of “continued threats of further action by the Respondent”. They also

requested that any hearing take place at a time to “coincide with the publication of the service charge accounts of the year ending 29th September 2020 (due by 30th March 2021)” [B page 11].

30. The Respondent has not fully complied with the November Directions. The Respondent’s application for an extension of time dated 11 March 2021 stated that “The accounts for the year ending 30.09.2020 will be provided to leaseholders by the end of the month but due to the festival of Passover, the Respondent’s office will be closed from 26 March 2021 to 5 April 2021 (inclusive)” [R page 2].
31. The Respondent has disclosed copies of some invoices relating to service charge expenditure for 2019/2020 to the Applicant but has not explained why it has not produced evidence of all its expenditure for 2019/2020. The invoices which were produced are listed in a spreadsheet which the Applicants referred to as the “Lenwood Expenditure” and total £56,519.24 [B page 64].
32. The Applicant’s statement explained why it challenged items listed in the Lenwood Expenditure.
33. The Lease requires that the lessees of each chalet to pay a 1/59 share of the budgeted Expenditure in advance on 29 September in each year.
34. The application for payment sent on behalf of the Respondent to the lessees of chalet 12 on 24 September 2019 demanded £1,648.41 on account for 2019/2020 [B page 274].
35. The budget for 2019/2020, included in an email dated 2 October 2019 [B page 280] sent to Christopher Ley (one of the Applicants) by the Respondents managing agent was £64,288.11, **1/59 of which is £1,089.63.**
36. In its decision dated 12 May 2020 (CHI/18UC/LSC/2019/0113) another Tribunal determined that a payment on account of £508.09 for 2019/2020 to be reasonable. (That decision was made after examining the budget disclosed in the email dated 2 October 2019 referred to in paragraph 35 above).
37. The Respondent’s representative, Mr Simon, in his statement dated 25 January 2021 made in response to the Tribunal directions, referred to the application in respect of 2019/2020 as relating to budgeted service charge expenditure, which it does not. The application was for a determination of the reasonableness of the actual, not budgeted, expenditure. The copies of the application forms in the bundle are not dated but the Directions issued by the Tribunal in response are dated 3 November 2020 so this Tribunal has concluded that the Applications were made late in October about one month after the end of the 2019/2020 service charge year.

38. Mr Simon claimed that the application was premature because it ought to have been made (if necessary) after the service charge accounts are published on or before 31 March 2021. That does not explain why the Respondent was unable to produce the invoices relating to expenditure incurred for 2019/2020 when that information would have been needed by Respondent's accountants to enable them to prepare the service charge accounts for 2019/2020.
39. Mr Simon stated (incorrectly) that the Application for 2019/2020 related to "on account" payments when it related to the actual service charge and that the application for 2020/2021 relates to actual payments when it relates to "on account" payments.
40. The copy of official land registry title entries for the Property attached to his statement is out of date showing the entries on 3 April 2019. No further evidence has been disclosed to demonstrate whether it remains accurate.
41. In relation to the application relating to the 2020/2021 service charge demand, Mr Simon stated that the application for determination of the reasonableness of that on account demand is premature because it should not be made until the publication of the accounts "on or before 31 March 2022". He also referred to an annual interest rate of 10% being applicable in respect of non-payment of a contractual amount due from the Applicants under their respective leases [B page 164]. That was a reference to clause 3(17) of the Lease [B page 220].
42. The Applicants' statements contain a detailed explanation of their reasons for disputing the reasonableness of the alleged expenditure which the Respondent claimed to have incurred during 2019/2020.
43. The Applicants' have also questioned the application of the credit made to each leaseholder's service charge account by the Respondent following the Tribunal determination dated 12 May 2020 (CHI/18UC/LSC/2019/0013). They suggest that it has not been explained and may not be correct which has fuelled concerns about the capabilities of the Respondent's managing agent.
44. The Applicants have provided specimen leases of three chalets in the bundle (12,19A & 48), all of which are broadly similar. The Lease demises the chalet to the Lessees subject to the payment of rent, the payment of "such sum as the Lessors may from time to time pay for the insurance of the Demised Premises in accordance with their covenant hereinafter contained" and a service charge which is reserved as "additional rent".
45. The service charge is payable in advance on the 30 September in every year and is "£247 per annum **or if greater** (Tribunal's emphasis) the sum of £247 multiplied by the index of retail prices maintained by HM Government on the 31st day of July immediately preceding the end of such period of one year and divided by the amount of the said Index on the 31st day of July 1997, such figure being 157.5" **or** (Tribunal's emphasis) "A sum which shall be one fifty ninth of the sum calculated

in accordance with the Fourth Schedule hereto and payable in accordance therewith” [B page 215].

46. The Lessor’s insurance covenant in clause 5(4) of the Lease [B page 221] provides that the Lessor insure the Demised Premises, defined as the bungalow demised and edged red on the Lease plan, for a quoted sum or “such greater sum as the Lessors think fit and whenever required” “produce to the Lessees the policies of such insurance and the receipt for the last premium for the same and will in the event of the demised premises (sic) being destroyed by fire or other insured risks as soon as reasonably practical lay out the insurance money received in the repair rebuilding or reinstatement of the said demised premises”.
47. The Lessor covenants in the Lease, (amongst other things) to carry out certain obligations relating to repair, maintenance of defined areas with the Park, maintenance of the sewers and sewage plant, and refuse collection. Although the three specimen leases in the bundle are not identical, the service charge provisions appear to be identical in all three.
48. The Fourth Schedule to the Lease contains the service charge provisions which require that the Lessor determine and give notice (to the Lessee) of the amount of the service charge payable on 30 September each year in advance of the succeeding year [Paragraph 1 B page 228].
49. The Lessor’s accountant is required to certify the amount of the service charge as soon as practicable after 30 September in each year so that the amount actually paid in advance can be adjusted upwards or downwards when compared with actual expenditure. Paragraph 2 of that Schedule states that any shortfall is payable as a debt by the Lessee and any overpayment shall be held to the credit of the Lessee and taken into account with the subsequent years’ service charge.
50. The Certificate referred to in paragraph 1 “shall contain a summary of the Lessors expenses which shall constitute the following:-
 - a. The cost of complying with the Lessors covenants in clauses 5(2) and 5(3) of the Lease (in respect of which the Lessor shall be entitled if appropriate to charge for their own time at a reasonable rate) (but excluding always the cost of complying with clause 5(2)(b) (the same being charged separately).
 - b. the cost of cleaning and where necessary lighting the areas used in common by the Lessee and other Lessees and the Lessors.
 - c. The cost of gardening and landscaping the Estate.
 - d. The cost of providing and maintaining any service or amenities that may be requested in writing by a majority of the Lessees of the bungalow comprised on the Estate and which may be provided by the Lessors at such request [B page 229].
 - e. The fees of the Lessors accountants.
 - f. The cost of management which shall not exceed the management allowance permitted from time to time by the Department of the Environment and which in any event shall not exceed 5% of the cost of the services otherwise provided.”

51. Clause 5(2)(b) of the Lease refers to the obligation to keep the sewage plant serving the Estate in good working order.
52. The Estate is defined by reference to the plan “being the land edged yellow and coloured brown” [B page 212].
53. Clause 3 of the Lease contains provisions for recovery of the cost of reminder letters sent in respect of any overdue payment demanded for rent or insurance from a lessee of £10 for each letter, clause 3(14) [B page 219] and for the Lessor to recover interest on payments of rent or other sums due from the Lessor at 10% , clause 3(17) [B page 220].
54. In their statement made in response to the Respondent’s statement, the Applicants requested that the Tribunal reimburse their application fee and make an order for costs against the Respondent under Rule 13(1)(b) of the Rules because of the Respondent’s unreasonable behaviour [B page 207].

On account payment for service charges due in 2020/2021; insurance interest and administration charges

55. The Applicants dispute some but not all the items in the budget but it is not possible for them to assess how the budgets have been calculated because of the absence of accounts demonstrating the actual expenditure in the previous year.
56. The Respondent’s budget figures are reproduced below noting which items the Applicants disputed in the application.

Audit Fees	£750	Agreed
Bank Charges	£445	Disputed
Cleaning and Gardening	£41,400	Disputed
Electricity	£1,300	Agreed
General Maintenance	£6,750	Disputed
Health and Safety	£375	Disputed
Management Fee	£4,084	Disputed
Pumps	£5,000	Disputed
Refuse Collection	£17,160	Disputed
Sinking Fund	£2,000	Disputed
Tree Surgery	£6,500	Disputed
Total	£85,764	
57. The Applicants also disputed the payment demanded by the Respondent of £241.63 per chalet for insurance for the period 31/07/2020 until 30/07/2021.
58. One applicant has been charged interest and several applicants have been charged £60 for letters chasing arrears although the lease refers to a sum of £10 per letter.

Bank Charges

59. The Respondent stated that it was not within the budget but that the Respondent has supplied an invoice from Moreland Estate Management dated 2 October 2019 for £442.50 [B page 87]. There is no provision within the Lease to enable the Respondent to include this in the service charge. The Applicants submit that if the charges were incurred, these should be part of the overall management charge but it is an arbitrary charge made by Moreland. This was admitted in paragraph 5 of Respondent's statement [B page 155].

Decision

60. The Tribunal determines that this sum is not recoverable. It made a similar determination in its earlier decision (CHI/18UC/LSC/2019/0113) to which the Applicants referred, but the Respondent has failed to take account of this part of its determination.

Cleaning and gardening General Maintenance and Refuse Collection.

61. The total budget for these three items is £65,310. The Applicants submit that all works carried out on the Park which fall under these three headings are carried out by one employee who works on the Park for an average of three days per week. In a previous determination the Tribunal accepted that sums averaging £20,350 as a reasonable charge for gardening. The Applicants submitted that they would accept a budget sum of £20,500.
62. The Respondent has suggested that the gardening costs for this period will be higher than were originally allowed by the Tribunal as in the payment on account determined for the previous year. In the absence of accounts and a copy of a "perfected" invoice which is the expression used by Mr Simon in paragraph 9 of the Respondent's statement [Page 155], it is impossible to assess accurately any possible expenditure.

Decision

63. For that reason, the Tribunal determines that the Applicants figure of £20,500 is reasonable subject to the proviso that "Tree Surgery", which it has considered under a separate heading, as it is so shown in the budget, should really have been included within "gardening and landscaping" as this is the description of the cost recoverable in the Lease.

Health and Safety

64. The sum referred to in the budget for this item is £375. In a previous decision (CHI/18UC/LSC/2019/0113) the Tribunal agreed to allow a sum conditionally on the provision of a copy of any assessment being available for inspection by the leaseholders. No assessment has been made available and hitherto no invoice has been produced.

Decision

65. There is no specific provision within the lease which would enable the recovery of a service charge under this heading but until the accounts are finalised it would be inconsistent of the Tribunal not to accept the budgeted figure of £375. It allows the inclusion of this sum in the

budget conditionally subject to it only being reasonable to recover the amount as a service charge if a copy of the assessment is either sent to the Applicants or made available on site for inspection.

Pumps

66. The Applicants dispute the budget figure of £5,000 because the expenditure in the two previous years, in so far as evidence of it has been disclosed, does not justify an increase in budget expenditure to this amount. They initially suggested that they would accept £4,000 as a reasonable budget based on past expenditure. Subsequently when further information was provided by the Respondent, they indicated that based on the expenditure disclosed they believed that a sum of £1,200 would be reasonable. They acknowledged the existence of a maintenance contract but suggested that only two visits have taken place in the last year compared with 4 visits in previous years.

Decision

67. Given the existence of the private sewage system the Tribunal considered that the budget of £1,200 suggested by the Applicants is too low and determines that £4,000 is a reasonable amount.

Sinking Fund

68. The Lease does not enable the Respondent to collect payments for retention in a sinking fund and this is a novel item in the budget. For that reason, the Applicants dispute its inclusion in the budget.

Decision

69. The Tribunal determine that the Respondent cannot recover any payment from a leaseholder under this heading as it has no contractual entitlement to do so under the Lease.

Tree Surgery

70. The Respondent has supplied copies of three invoices:-
a. 8 March 2020 from Taw & Torridge Tree Services Limited for the sum of £1,740 including VAT for specified works [B page 85];
b. 18 August 2020 Coastal Tree Consultancy for a Site Visit and Report £135; [B page 90] and
c. 24 September 2020 Coastal Tree Consultancy for a tree survey and health and safety condition survey and report £540.
71. The Taw & Torridge invoice referred to a planning application and work undertaken to three oak trees by 47A and 47B and two dead willow trees close to and 25 and 26 [B page 91].

Decision

72. The Tribunal has not been provided with a copy of the arboricultural safety inspection or given a copy of the recommendations referred to on the insurance schedule. The Applicants stated that they have not been provided with information on which to assess if the budget is reasonable or not. For that reason, they said that they consulted a locally based tree surgeon who has quoted a sum of £720 a day (inclusive of VAT) for a three man team who could remove three trees in day. No written evidence of this quotation has been submitted. The Applicants accepted that the type and size of the trees as well as access

arrangements would impact on this “quotation”. The Applicants also accepted that it is appropriate to budget for the Tree Survey but stated they were unwilling to agree to a budget of more than £3,000 unless the reports obtained together with estimates for the recommended work are disclosed.

73. Mr Simon stated that the budget figure of £6,500 as based on information available to the Respondent prepared the budget and represents the actual cost of work which has been carried out [B page 159]. The three invoices disclosed in the bundle and referred to above total £2,415.
74. The Respondent suggested that based on a quotation from Taw & Torridge dated 12 December 2020 the budget will be exceeded. That quotation is for £10,596 which includes VAT [B page 183]. The Taw & Torridge quotation indicates that some of the recommended works be undertaken over a two year period.
75. In response the Applicants submitted that if the Respondent is suggesting that the actual costs of “tree surgery” might amount to £17,100 (the original budget figure plus the quotation now produced there would need to be consultation because the individual contribution towards the estimated cost of this single item would exceed annual contribution of £250 for this work. He has not supplied further information to demonstrate that expenditure has equalled or exceeded the budget figure of £6,500.
76. In the absence of further clarification and information the Applicants suggested that it would agree a budget of £4,000 (in addition to the £20,500 for more general gardening).
77. The Tribunal determines that it is appropriate based on the limited information which has now been provided to allow the budget sum of £6,500 for this item as the areas of the estate within which the trees are located is relatively large and adjacent to the road which provides primary access to the chalets. The cost is recoverable under the lease under the specific heading of gardening and landscaping the Estate. The wooded area is within the land edged in yellow which is defined as comprising the Estate [B page 231] which is the lease plan in the lease of chalet 12. The work covered by the Taw & Torridge invoice referred to above appear to have been carried out to trees adjacent to chalets rather than located in the wooded area. However, the Respondent should have disclosed copies of all the reports obtained and explain why it has commissioned separate reports from Coastal Tree Consultancy and Taw & Torridge Tree Services.

Decision on budget

78. Applying their own adjustments, the Applicants have calculated that a reasonable service charge budget for 2020/2021 would be £29,242.50, a 1/59 share of which is £495.64.
79. The Tribunal have recorded its calculations of the service charge it determines as reasonable in the Appendix to this decision. The Appendix shows the original Budget, the Applicants proposed figures and the those the Tribunal has determined as reasonable. The management fee of 5% of the actual expenditure in a service charge year has been calculated and inserted by reference to the budget determined.

Insurance contribution 31 July 2020 to 30 July 2021

80. The Applicants have challenged the amount of £241.63 which has been demanded for the period. The policy includes loss of rental income cover. The applicants stated that the broker M&N confirmed to them that the cover was optional and benefits the policy holder not the leaseholders. The Respondent is not entitled to recover the cost of such insurance under the Leases. They also dispute that the policy should cover Landlord's Machinery and Plant and Fixtures and Fittings.
81. The Tribunal agree that the cost of loss of rent cover cannot be passed on to leaseholders. However, it expects and hopes that the cover for machinery plant and fixtures and fittings is in respect of the pumps for the sewage and drainage system.
82. The Respondent has stated that its broker has been asked to provide a new policy schedule excluding loss of rental cover as the Tribunal previously determined that could not be recovered. The Tribunal previously made a determination on the amount it was reasonable for the Respondent to charge two other leaseholders (who are not Applicants) for insurance for this period on 8 April 2021 (CHI/18UK/LSC/2020/0131). In the absence any further information from the Respondent it makes the same determination that £150 is a reasonable amount for the Landlord to charge for insurance for this period.

Interest and administration charges

83. The Applicants also complained about interest charges made by the Respondent and administration charges of £60 for arrears letters. The lease provides for interest in respect of unpaid service charges and refers to a rate of 10%. Mr Simon stated that the Applicants are liable to pay this sum if they do not pay the charges when demanded.

84. Clause 3(14) of the lease [B page 219] refers to a lessee covenant to pay £10 payable as additional rent for reminder letters in the event of any payment being overdue by more than fourteen days. Clause 3(17) states that if payment of rent or any other sum due from the Lessee to the Lessors under the provisions of this Lease is more than fourteen days overdue then, without prejudice to any other right or remedy of the Lessors, the Lessee shall pay interest at ten percent (10%) on such payment from its due date until actual payment. The right of set off or deduction is specifically excluded [B page 220]. The Tribunal therefore determine that the Respondent is contractually entitled to make a £10 administration charge for arrears letters and to charge interest at the 10% on arrears of rent or other sums due.
85. Whilst there is a clear inference in the application that some charges appear unfair and have demanded incorrectly the Tribunal's jurisdiction is limited to that contained in sections 27A and 19 of the Act. It cannot order the removal of a charge made by the Respondent from an individual's service charge account.

Decision and Reasons generally

86. When it became apparent to the Applicants and the Tribunal that the Respondent was unwilling to comply with the Tribunal Directions, the Tribunal put the Respondent on notice that it would debar it from participating in these proceedings.
87. The only substantive response received from the Respondent to its Directions was an application for an extension of time which was received on the day before the day on which the Tribunal was initially scheduled to determine the Application. Although that request for an extension of time was granted, the Respondent made no further submissions and was subsequently debarred from participating in these proceedings.
88. The Tribunal gave the parties notice of its provisional determination in the February Directions.
89. The Respondent has claimed that it cannot issue a further demand for service charges in 2019/2020 until the accounts for that year are available. However, the Respondent has refused to provide full information of the service charge expenditure incurred for that year. If the Respondent cannot provide that information to the Tribunal, it seems unlikely that it has provided the information to its accountants.
90. Section 27A of the Act enables the Tribunal to make a determination as to the amount of the service charge that is payable.
91. Section 18 of the Act explains the meaning of service charge as being an amount payable directly or indirectly for service charges and the whole of which or part of which may vary according to the relevant costs.
92. Section 19 of the Act provides that relevant costs shall only be taken into account in determining the amount of a service charge payable for

a period, if they are reasonably incurred and where they are incurred on providing services or carrying out works, only to the extent that the services or works are of a reasonable standard.

93. In these proceedings the Respondent has disclosed limited information regarding the services provided and the costs of those services during the service charge year. It has not complied with the Tribunal Directions and omitted to respond to the Applicants' requests for further information.
94. Taking into account the refusal of the Respondent to co-operate with the Applicants, which resulted in the Tribunal barring out the Respondent from further participation in these proceedings, the Tribunal determines that:-

Service charges payable for 2019/2020

- a. Under Rule 9(8) of the Rules if a Respondent has been barred from taking further part in proceedings under Rule 9 and the bar has not been lifted, which is the case in these proceedings, the Tribunal may summarily determine all or any of the issues against the Respondent.
- b. The Tribunal determines that the services charges payable shall be equivalent to the on account payment collected for this year which is £29,977.50, a 1/59 share of which is payable in respect of each chalet which amounts to £508.09.

Service charges payable on account for 2020/2021

The Tribunal determines that a reasonable on account payment, which has been based on the limited information the Respondent provided is £35,201.25 and a 1/59 contribution of £596.73. The reasons for its calculation are set out below and the individual heads of expenditure allowed are set out in the appendix to this decision.

Insurance for period between 31 July 2020 and 30 July 2021

The sum payable for this period was previously determined in another decision in respect of an application made by Mr and Mrs Harris and Mr Ready-Warne dated 8 April 2021 (CHI/18UK/LSC/2020/0131). No additional information was provided by the Respondent so the Tribunal determines that the sum of £150 is a reasonable amount payable for insurance by each of the Applicants.

Section 20C application

The Tribunal makes an order under section 20C of the Act that all the costs incurred in relation to these proceedings before this Tribunal are not to be regarded as relevant costs which might otherwise be taken into account in determining the amount of the service charge payable by the Applicants. It has made this order because of the conduct of the Respondent in defending these proceedings, which conduct has been referred to in the Background to this determination.

Paragraph 5 of Schedule 11 to CLARA

The Tribunal makes an order under paragraph 5A of Schedule 11 to CLARA extinguishing the liability of the Applicants to pay a particular administration charge in respect of litigation costs. It makes the order because the conduct of the Respondent throughout the course of these proceedings which has led it to conclude that it would be inequitable for the Respondent to recover any of its costs from any of the Applicants irrespective of any contractual entitlement to do so contained in the Lease.

Applicants' Costs and reimbursement of application fee

95. The Applicants have applied for the reimbursement of its application fee and for costs associated with the preparation of its application. This Tribunal has jurisdiction to consider their application under Rule 13 of the Rules which give the Tribunal **discretion** (Tribunal's emphasis) to order the reimbursement of the whole or any part of a fee paid to HMCTS (Rule 13(2)).
96. It may also make an order in respect of costs if a party has acted unreasonably in bringing, defending or conducting proceedings in a residential property case. (Rule 13(1)(b)).
97. The Applicants referred the Tribunal to the Respondent's unreasonable behaviour evidenced by sample correspondence included in the bundle and has also referred to other correspondence supplied to the Tribunal in relation to a previous application. The Tribunal cannot make an order for costs without affording the "paying party" an opportunity to make representations to it.(Rule 13 (6)).
98. Although the "costs application" was in the Applicants' statement in the hearing bundle which was disclosed to the Respondent before it was barred from responding to these proceedings, and the Respondent must have been aware of it for some time, the Tribunal offers the Respondent a final opportunity to make representations regarding the Applicants application for costs and will consider any representations received by the Tribunal on or before 1700 hours on the 9 July 2021. **Those representations must be sent to the Tribunal and the Applicants electronically and at the same time and on the same date.**
99. The Applicants have not quantified the amount of costs they seek to recover but have submitted that they seek to recover reimbursement of the fees and costs associated with the time taken which they suggest is "in excess of 100 hours" to prepare the Application and respond to the Directions [B page 207]. Rule 13(4)(b) provides that a person making an application for costs should provide a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal. The Tribunal therefore directs the Applicants to provide an appropriate schedule which should set out the amount of the costs they are claiming and explain how the amount was calculated. That schedule must be received by the Tribunal on or before 1700 hours on 9 July 2021 and **sent to the Tribunal and the Respondents electronically as the same time and on the same date.**

100. The Tribunal may make an order requiring the other party to reimburse any party the whole or part of any fee paid by the other party. (Rule 13(2)).
101. The Tribunal orders the Respondent to reimburse the Application Fee and the Hearing Fee totalling £300 to the Applicants. That is the amount which has been received by HMCTS. This sum must be paid to Mrs Ley, the Applicants' representative, within 28 days of the date of this decision.
102. The Tribunal will defer consideration of the application made by the Applicants for costs under Rule 13(1)(b) until after the expiry of the time limits referred to in paragraphs 98 and 99 above. It would expect to issue its decision on the costs' application within 28 days of that date or, if earlier, on the date of receipt of both parties' further submissions.
103. In considering whether to make an award of costs the Tribunal will take account of the guidance provided by the Upper Tribunal in the case of **Willow Court Management Company (1985) Ltd v Alexander [2016 UKUT 290 (LC)]**.

Judge C A Rai (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper 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.
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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.