



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

**Case Reference** : **CAM/12UC/LSC/2021/0018**

**HMCTS** : **CVP**

**Property** : **5 Cloughmore House, Trafalgar Street,  
Cambridge CB4 1ET**

**Applicant (Tenant)** : **Robert Price**

**Respondent (Landlord &  
Freeholder)** : **Cloughmore Homes Limited**  
**Representative** : **John Price**

**Type of Application** : **1) To determine the reasonableness and  
payability of Service Charges (Section 27A  
Landlord and Tenant Act 1985) and  
Administration Charges (Schedule 11  
Commonhold and Leasehold Reform Act  
2002)**  
**2) For an Order to limit the service charges  
arising from the landlord's costs of  
proceedings (Section 20C Landlord and  
Tenant Act 1985)**  
**3) For an Order to reduce or extinguish the  
Tenant's liability to pay an administration  
charge in respect of litigation costs  
(paragraph 5A of Schedule 11 of the  
Commonhold and Leasehold Reform Act  
2002)**

**Tribunal** : **Judge JR Morris  
Ms A Flynn MRICS**

**Date of Application** : **14<sup>th</sup> March 2021**  
**Date of Directions** : **23<sup>rd</sup> April 2021**  
**Date of Hearing** : **17<sup>th</sup> August 2021**  
**Date of Decision** : **7<sup>th</sup> October 2021**

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**DECISION**

## **Covid-19 Pandemic: Remote Video Hearing**

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

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

### **Decision**

1. The Tribunal determines that the Service Charge for the year ending 31<sup>st</sup> December 2018 is not payable by the Applicant to the Respondent pursuant to section 20B of the Landlord and Tenant Act 1985 because there is no evidence that a Demand has been served within 18 months of the costs being incurred.
2. The Tribunal determines that the Service Charge of £687.84 is reasonable and payable by the Applicant to the Respondent for the year ending 31<sup>st</sup> December 2019 when properly demanded.
3. The Tribunal determines that the Service Charge of £701.12 is reasonable and payable by the Applicant to the Respondent for the year ending 31<sup>st</sup> December 2020 when properly demanded.
4. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
5. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### **Reasons**

#### **Application**

6. This Application is one of three made by the Applicant in respect of properties in which he has a leasehold interest. Each Application has been dealt with separately and a decision has been issued for each because there are differences with regard to the properties, the Leases and the covenants, the

Service Charges and heads of expenditure and costs thereunder and the years in issue. However, a number of the issues raised are common, therefore, there is some repetition and similarities in the account of the evidence and the submissions made in each of the Decisions. The Statements of Case dealt with all three Applications and the Tribunal has identified and addressed only those points and submissions that are relevant to each Application.

7. The Application dated 14<sup>th</sup> March 2021 is for:
  - 1) A determination of the reasonableness and payability of Service Charges incurred for the years ending 30<sup>th</sup> June 2018, 2019 and 2020 and the costs to be incurred for the year ending 30<sup>th</sup> June 2021 (“the years in issue”). (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold and Leasehold Reform Act 2002);
  - 2) An Order to limit the service charges arising from the landlord’s costs of proceedings (Section 20C Landlord and Tenant Act 1985);
  - 3) An Order to reduce or extinguish the Tenant’s liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002).
8. Directions were issued on 23<sup>rd</sup> April 2021.
9. In the written and oral representations, it was apparent that Mr John Price had perceived the business arrangement between Mr Robert Price and himself as a family firm with each having a role within the company. However, the Tribunal found that in law this was not the case. Mr John Price is the Director of Cloughmore Homes Limited which is the Freeholder of the Block in which the Property is situated. Mr John Price as an individual is the Leaseholder of 8 of the 10 flats and Mr Robert Price is the Leaseholder of one. The remaining flat being held by another person. All the Leaseholders let their Flats on short leases.
10. Mr John Price has taken on the role of Managing Agent and he also undertakes the gardening, minor repairs and some caretaking.
11. It was apparent that prior to 2018 the management of Cloughmore House had been relatively informal with costs being paid and accounted for within the family context. Since 2018 the business relationship between the parties has changed requiring matters to be put on a more formal basis. In the course of the transition there has been a hiatus in respect of accounting for some of the work carried out and the costs incurred. The Tribunal in its determination has done its best with the evidence available.
12. The Tribunal was not insensitive to the personal nature of this dispute, nevertheless, as a Tribunal it is only concerned with the law and its application to the evidence and submissions.
13. There is a mention of ground rent and breach of lease. The Tribunal only has jurisdiction in respect of this particular Application to deal with service and administration charges.

14. The Tribunal identified two issues: (i) reasonableness and (ii) payability of the Service Charge for each year.

### **The Law**

15. A statement of the relevant law is attached to the end of these reasons.

### **Description of the Property**

16. The Tribunal was not able to make an inspection of the Property or the Block in which it is situated due to Government Coronavirus Restrictions. The following description is derived from the Lease, the Statements of Case and the Internet. At the hearing the parties agreed the description was correct.
17. The Property is a three storey Block of 10 Flats (the Block) constructed circa 2008 of brick elevations to the front and clad elevations to the rear under a composite/artificial slate tile roof. The windows have sliding sash upvc frames with double glazed units and the doors are upvc. The rainwater goods and fascia are also upvc.
18. Internally there are no Communal Parts. The entrance from the street is into a courtyard off which the flats are accessed directly at ground floor level or via stairs at first and second floor level. There is an entrance door from the street into the courtyard. Access to this is via an intercom/door entry system.
19. Externally there is an enclosed garden to the rear comprising a gravel courtyard and a shrubbery. There is also a Bin Store and a Cycle Store. There are external lights.
20. The Block is situated in the centre of Cambridge on a corner between Trafalgar Street and Victoria Avenue. The neighbouring property on Victoria Avenue is a centre for the homeless.

### **The Lease**

21. A copy of the Lease was provided dated 9<sup>th</sup> May 2008 which is for a term of 125 years from 1<sup>st</sup> January 2008 made between (1) Cloughmore Homes Limited (2) Robert Anthony James Price (“the Lease”).
22. The following are the relevant provisions of the Lease.
23. Clause 1.1 sets out the Definitions

The “Block” is defined as the land shown edged blue on Plan Number 1 together with the buildings erected thereon comprising in total 10 flats bin store cycle store garden patio known as Flats 1 to 10 inclusive and being registered under title Number CB232274.

The “Communal Areas” are defined as those parts of the Block laid out as entrance bin store cycle store communal gardens patio footpaths and private accessway

The "Half-yearly Dates" are 1<sup>st</sup> July and 1<sup>st</sup> January.

The "Service Charge" is defined as the total costs of the services as are appropriate to the Property set out or referred to in the Fifth Schedule and in the Sixth Schedule

The "Service Charge Year" is defined as 1<sup>st</sup> July to 30<sup>th</sup> June or such other 12-month period which the Landlord chooses from time to time. The Landlord has changed the Service Charge Year to 1<sup>st</sup> January to 31<sup>st</sup> December.

24. Clause 3 Lessee's Covenants with the Lessor

3.1 The Lessee hereby covenants with the Lessor as follows: -

3.1.3 To pay to the Lessor the Service Charge specified in the Particulars and as revised (being the Service Charge Adjustment and the Additional Contribution) in accordance with the provisions set out in the Fourth, Fifth and Sixth Schedules half yearly in advance on the Half-Yearly Dates...

25. Clause 4 Covenants by the Lessor

4.1 The Lessor hereby covenants with the Lessee as follows: -

4.1.1 The Lessor will during the Term carry out the works and provide the services specified in the Fifth Schedule

Third Schedule

14 To pay the Lessor on demand all costs charges and expenses (including legal costs and Surveyor's fees) which may be incurred by the Lessor or which may be come payable by the Lessor in respect of the preparation of a Schedule of Dilapidations or under or in contemplation of any proceedings in respect of the property under Section 146 and 147 of the Law of Property Act 1925...

26. The Fourth Schedule

1. The service charge shall be calculated by reference to the floor area of each property within the Block...

2. The Service Charge in respect of each Service Charge Year shall be computed not later than the beginning of June immediately preceding the commencement of the Service Charge Year and shall be computed in accordance with paragraph 3 of this Schedule. (As the Service Charge Year has been changed the charge should be computed no later than December.)

3. The Service Charge shall consist of a sum comprising

- 3.1 The expenditure estimated as likely to be incurred in the Service Charge year by the Lessor for the purposes mentioned in the Fifth Schedule together with
  - 3.2 An appropriate amount as a reserve for or towards the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such service Charge year being matters which are likely to arise either only once during the unexpired term or at intervals of more than one year during such unexpired term including such matters as the decorating of the exterior of the Block the repair of the structure thereof and the repair of the Conduits
  - 3.3 A reasonable sum to remunerate the Lessor for its administrative and management expenses in respect of the Block...
  4. After the end of each Service Charge year the Lessor shall determine the Service Charge adjustment calculated as set out in the following paragraph 4.1
  - 4.1 The Service Charge Adjustment shall be the amount if any by which the estimate under paragraph 3.1 of the Schedule shall have exceeded or fallen short of the actual expenditure in the Service Charge year
  6. The Lessor shall arrange for audited accounts for the Service Charge in respect of each Service Charge year to be prepared and shall supply to the Lessee a summary of such accounts
27. The Fifth Schedule - Purposes for which the Service Charge is to be Applied
- The provisions include:
1. The decoration, cleaning and repair of the structure and the maintenance of the grounds
  2. The decoration and repair of the common parts
  3. Payment of outgoings
  4. Employment of staff
  5. Payment of costs incurred in management by Lessor
  6. Television signal
  8. Insurance
28. The Sixth Schedule - Grouping of Service Charge Expenditure
1. Building Insurance
  2. Maintenance of Communal Areas Bin Store and Cycle Store and private accessway
  3. TV Aerial (if any)
  4. Conduits
  5. Reserve fund for long term maintenance
  6. Management Fee
  7. Audit Fee
  8. Electricity

## Hearing

29. A Hearing was held by video conferencing on 17<sup>th</sup> August 2021 which was attended by Mr Robert Price, the Applicant, and Mr John Price Director of the Respondent, representing the Respondent.

## Evidence re Reasonableness of the Service Charge

30. The Tribunal considered each of the years in issue as follows.

### *Year Ending 31<sup>st</sup> December 2018*

31. No Service Charge Demands were provided for year ending 31<sup>st</sup> December 2018.
32. The Service Charge Accounts for the Actual Costs of the Block dated 14<sup>th</sup> December 2018 for the year ending 31<sup>st</sup> December 2018 were provided and the costs were as follows:

<b>Service Charge for year ending 31<sup>st</sup> December 2018</b>		
<b>Item</b>	<b>Description</b>	<b>£</b>
1	Gardener	840.00
2	Plants	50.00
3	Window Cleaner	356.40
4	Buildings Insurance	941.11
5	Electricity	313.51
6	Water	39.15
7	Stationery & Postage	25.00
8	Management Charge	1,650.00
9	Repair of Garden Lighting	315.00
10	Intercom Repairs	615.00
11	Miscellaneous including light bulbs and visits to Midwinter House	714.23
	<b>Total</b>	<b>6,160.00</b>
	Unit Charge 1/10 <sup>th</sup>	616.00

33. Invoices were provided as follows:
- Gardening JJ Price for 12 months @ £70.00 per month £840.00
  - Plants VAT Returns
  - Window Cleaner ADC
    - 01/02/18 £139.20
    - 01/05/18 £139.20
    - 01/08/18 £139.20
    - 01/11/18 £139.20
    - Total £556.80
  - Buildings Insurance 01/08/18 - 31/08/19 £748.48
  - Electricity E-on
    - Reading 04720 Cloughmore House 17April 2018 £81.36
    - Reading 04810 Cloughmore House 13 July 2018 £67.22
    - Reading 04913 Cloughmore House 12 October 2018 £73.35
    - Total £221.93

	Reading 03876 Leys Lodge	£75.30
•	Water 19/01/18 – 18/07/18	£16.11
	19/07/18 – 16/01/19	£23.04
	Total	£39.15

34. The Applicant identified in a Scott Schedule each of the items of the Service Charge disputed together with comments. The Respondent's Representative in turn made comments in response. Both parties also added to their comments through their respective Statements of Case and oral submissions in the course of the hearing.

*1. Gardner - £840.00*

35. The Applicant stated that he did not believe a gardener was employed during 2018.

36. The Respondent's Representative provided invoices to show that he had carried out the gardening work and said that it was impossible to maintain the lawns and shrub borders and prune the trees for this site in less than an hour a week at £16.00 which was the rate charged in Cambridge.

*2. Plants - £350.00*

37. The Applicant said that he required evidence that plants had been purchased for the Block.

38. The Respondent's Representative provided a copy of the VAT Ledger which showed plant sales of £1,700.00 which were said to have been distributed across the properties within the Respondent's portfolio. The Respondent's Representative said that the invoice referred to Paddock Street, Soham because he said that most of the plants went there as building work was being carried out at that site and the properties constructed were being prepared with a view to sale.

*3. Window Cleaner - £356.40*

39. The Applicant said that he required evidence of the expenditure by way of the invoices to show that the windows had been cleaned. The Applicant referred the Tribunal to an email in the Bundle in which the window cleaner, ADC Cleaning Services, in answer to question asked by the Applicant, said that they had cleaned the windows at Cloughmore House 4 times in 2018 and that the last invoice was sent in June 2018.

40. The Respondent's Representative provided invoices to a value of £556.80 but said that the actual cost was £1,113.60. He said that whereas ADC Cleaning Services were very good window cleaners they were not very good at administration and referred to the invoices dated August and November 2018.



*4. Buildings Insurance - £941.11*

41. The Applicant said that he required evidence of the expenditure by way of the Insurance invoices.
42. The Respondent provided what he said was an invoice for £748.48 and said that the additional cost included in the Service Charge was for adding the names of the mortgage lender but that the invoices were not to hand. He said the mortgagors were Leaseholders in the Block who had changed their mortgagee.
43. The Applicant said that this was not an invoice but a renewal schedule for the insurance for the year ending 2019 and that no invoice had been provided for 2018.

*5. Electricity - £313.51*

44. The Applicant said that he required evidence of the expenditure by way of the invoices for electricity.
45. The Respondent's Representative provided three invoices for £221.93 relating to the Block and another invoice for £75.30 that related to another property.

*6. Water – £39.15*

46. The Applicant said that he required evidence of the expenditure by way of the invoices for water consumption.
47. The Respondent's Representative provided the invoices. The supply is situated in Victoria Avenue although the postal address of the Block is Trafalgar Street.

*7. Stationery & Postage - £25.00*

48. The Applicant said that the item of Stationery & Postage should be part of the Management Charge.
49. The Respondent's Representative said that the cost of Stationery & Postage is 6 pence per week per flat which is reasonable.

*8. Management Fees - £1,650.00*

50. The Applicant stated that the charge of £165.00 per unit for management was excessive as the management is poor. He said that £95.00 per annum is a reasonable figure although if the Block was being managed well then £165.00 would be reasonable.
51. The Respondent's Representative stated that the Management Fees were for overseeing all of the contractors and services provided. It included regular attendances, overseeing the safety of the premises including inspections of communal and emergency lighting, carrying out minor repairs, removing the post for departed tenants and forwarding the same, communications with

utility companies, liaising with the Council when bin collections are missed, regular removal of bottles and cans from the surrounding area of the bins, cleaning and sweeping the Bin Store and Bicycle Store and an average of four trips to the recycling centre annually to dispose of excess rubbish arising from tenants and to remove garden rubbish, shrub cuttings etc...

52. The Respondent's Representative said that he regularly visited the Block and spoke with the tenants there. He regularly had to sort the rubbish to make sure that it was taken by the Council, which was not a pleasant job.

*9. Repair of Garden Lighting - £315.00*

53. The Applicant said that he required evidence of the expenditure by way of the invoice for the Repair of the Garden Lighting.

54. The Respondent's Representative said that it was not available but was not an amount that he was likely to fabricate.

*10. Intercom Repairs - £615.00*

55. The Applicant said that he required evidence of the expenditure by way of the invoice for the Intercom Repair.

56. The Respondent's Representative said that it was not available but like that for the lighting it was not amount that he was going to fabricate.

*11. Miscellaneous - £714.23*

57. The Applicant said that the amount attributed to Miscellaneous costs equated to nearly 10% of the entire budget and should be evidenced by invoices. Any visits by the manager to Midwinter House, the Centre for the Homeless, next door to the Block regarding disturbance or nuisance should be part of the Management Charge.

58. The Respondent's Representative said that this cost included minor repairs which in 2018 included replacement keys, new letter boxes, new fittings to retain the doors for the bin men which are constantly being damaged, cleaning materials, occasional garden tools, weedkiller, rubbish sacks, petrol for visits to the recycling centres.

59. It also includes several meetings during the year with Midwinter House due to complaints by occupiers of the Block about the conduct of residents at Midwinter House and in removing persons who have broken into the Block.

***Year Ending 31<sup>st</sup> December 2019***

60. Copies of Service Charge Demands were provided as follows:
- 1) Demand dated December 2018 for the period 1<sup>st</sup> January 2019 to 30<sup>th</sup> June 2019 for £400.00
  - 2) Demand dated June 2019 for the period 1<sup>st</sup> July 2019 to 31<sup>st</sup> December 2019 for £400.00

61. The Service Charge Accounts for the Actual Costs of the Block dated December 2019 for the year ending 31<sup>st</sup> December 2019 were provided:

<b>Service Charge for year ending 31<sup>st</sup> December 2019</b>		
<b>Item</b>	<b>Description</b>	<b>£</b>
1	Gardener	840.00
2	Plants	170.00
3	Window Cleaner	356.40
4	Buildings Insurance	916.83
5	Electricity	273.04
6	Water	42.09
7	Stationery & Postage	25.00
8	Management Charge	1,750.00
9	Replace Entrance Doors	1,196.70
10	Replace Entrance Doors	710.00
11	Replace Entrance Doors	386.40
12	Replace Entrance Doors	750.00
13	Miscellaneous	619.14
	<b>Total</b>	<b>8,200.00</b>
	<b>Unit Charge</b>	<b>820.00</b>

62. Invoices were provided as follows:

• Gardening JJ Price for 12 months @ £70.00 per month		£840.00
• Plants VAT Returns		£170.00
• Window Cleaner ADC	VAT Return for	£242.40
	31/01/19	<u>£139.20</u>
	Total	£381.60
• Buildings Insurance	01/09/19 - 31/08/20	£4,092.46
• Electricity E-on		
	Reading 05223 Cloughmore House 7 May 2019	£99.81
	Reading 05315 Cloughmore House 2 August 2019	£66.69
	Reading 05328 Cloughmore House 22 October 2019	£44.05
	Reading 05397 Cloughmore House 20 January 2020	<u>£62.49</u>
	Total	£273.04
• Water	17/01/19 – 31/07/19	£17.95
	01/08/19 – 31/01/19	<u>£24.14</u>
	Total	£42.09

63. As with the previous year representations were made by the Applicant identifying disputed items in the Scott Schedule and the Respondent's Representative in turn made comments in reply. Both parties also added to their comments through their respective Statements of Case and oral submissions in the course of the hearing.

*1. Gardener - £840.00*

64. The Applicant stated that he did not believe a gardener was employed during 2019.

65. The Respondent's Representative attached invoices and repeated the statement made regarding 2018 and added that in 2019 a lot of time had been spent weeding the gravel pathways. He said that every time he went there in the summer there was a red haze of small plants that he had great difficulty in eradicating. He also said that gardeners charged £16 per hour in Cambridge and the charge made was a little more than 1 hour a week.

*2. Plants - £350.00*

66. The Applicant said that he required evidence that plants had been purchased for the Block.
67. The Respondent's Representative provided a copy of the VAT Ledger which showed a number purchases of plants which he said were distributed across the properties within the portfolio. In addition, the Respondent's Representative said that the garden was re-barked every year and unhealthy or dead shrubs removed.

*3. Window Cleaner - £356.40*

68. The Applicant said that he required evidence of the expenditure by way of the invoices to show that the windows had been cleaned.
69. The Respondent's Representative provided an invoice for £139.20 for May and an extract from the VAT return which showed a charge of £242.40.

*4. Buildings Insurance - £916.83*

70. The Applicant said that he required evidence of the expenditure by way of the Insurance invoices.
71. The Respondent's Representative provided an invoice for £4,092.46 for his property owners block insurance policy.
72. With regard to 2019 the Respondent's Representative produced a broker's invoice for £4,092.46 and for 2020 an invoice for £4,716.50. Both were for block policies for the Respondent's holdings. However, no other information was provided and the apportionment of the block policy premium appeared to be made by the Respondent's Representative and managing agent rather the broker.
73. At the hearing there was some discussion as to the placing of insurance. The Applicant questioned how the premium was apportioned and provided an alternative quotation but could not say whether it was like for like because the Respondent had failed to provide insurance certificates and other documents as required by the Lease. The Tribunal was not able to consider the alternative quotation due to the absence of this evidence.
74. The Applicant referred the Tribunal to the document which the Respondent's Representative had said was an invoice for the insurance premium for 2018. He said that this was in fact a renewal schedule for the Property which stated a

premium of £748.48. He submitted that this sum was a reasonable premium and that the amount stated in the Accounts for the Actual Costs of the Block was an arbitrary sum set by the Respondent. He referred to the note at the top of the letter from Saffron Insurance made by the Respondent's Representative which stated: "Apportioned £916.85 to Cloughmore House -£91.68 per flat". He said that this was not an apportionment made by the broker or insurer but by the Respondent's Representative.

*5. Electricity - £273.04*

75. The Applicant said that he required evidence of the expenditure by way of the invoices for electricity.
76. The Respondent's Representative provided invoices for £221.93 relating to the Block and another invoice for £75.30 that related to another property.

*6. Water – £42.09*

77. The Applicant said that he required evidence of the expenditure by way of the invoices for water consumption.
78. The Respondent's Representative provided the invoices. The supply is situated in Victoria Avenue although the postal address of the Block is Trafalgar Street.

*7. Stationery & Postage - £25.00*

79. The Applicant and Respondent's Representative repeated the submissions made regarding the cost in 2018.

*8. Management Fees - £1,750.00*

80. The Applicant stated that the charge of £175.00 per unit for management was excessive as the management is poor.
81. The Respondent's Representative repeated the submission made in respect of the 2018 charge adding that it equated to 2 hours per flat.

*9. – 12. Replacement of the Entrance Doors - £1,196.70; £710.00; £386.40; £750.00 = Total £3,043.10*

82. The Applicant said that he required evidence of the expenditure by way of the invoice for the Replacement of the Entrance Doors and said that a section 20 procedure should have been followed as the cost exceeded £250.00 per Flat.
83. The Respondent's Representative said that originally the doors were inset into the entrance and in the past the users of the neighbouring centre for the homeless had gathered in the recess, some of whom had acted in an anti-social manner. This had been the subject of a long running discussion with the centre. In 2019 the doors were very badly damaged and had to be replaced as a matter of urgency. To eradicate the problem of homeless and other persons gathering in the recess the doors were re-positioned so that they were flush

with the external wall. This required the re-positioning of the entrance/intercom system. A section 20 procedure was not possible due to the urgent nature of the works. The Tribunal said, in that situation, the Respondent should have applied to a tribunal for an order under section 20ZA of the Landlord and Tenant Act 1985 to obtain dispensation from the section 20 procedure due. The Respondent's Representative added that the doors made a very big difference to the Block as homeless and other persons longer congregated around the entrance.

*13. Miscellaneous - £619.14*

84. The Applicant and Respondent's Representative repeated the submissions made regarding the cost in 2018.

**Year Ending 31<sup>st</sup> December 2020**

85. Copies of Service Charge Demands were provided together with a Summary of tenants' rights and obligations as follows:
- 1) Demand dated January 2020 for the period 1<sup>st</sup> June 2020 to 30<sup>th</sup> June 2020 for £400.00
  - 2) Demand dated June 2020 for the period 1<sup>st</sup> July 2020 to 31<sup>st</sup> December 2020 for £400.00
86. The Service Charge Accounts for the Actual Costs of the Block dated December 2020 for the year ending 31<sup>st</sup> December 2020 were provided:

<b>Service Charge for year ending 31<sup>st</sup> December 2020</b>		
<b>Item</b>	<b>Description</b>	<b>£</b>
1	Gardener	1,200.00
2	Plants & Weed Killer	200.00
3	Window Cleaner in Gutter/Fascia Clean	400.00
4	Buildings Insurance	970.00
5	Electricity	229.40
6	Water	21.79
7	Stationery & Postage	25.00
8	Management Charge	2,000.00
9	Miscellaneous	150.00
10	Building Sinking Fund	2,500.00
	<b>Total</b>	<b>7,696.19</b>
	Unit Charge 1/10 <sup>th</sup>	769.62

87. Invoices were provided as follows:
- Gardening JJ Price for 12 months @ £100.00 per month £1,200.00
  - Buildings Insurance 01/09/20 - 01/09/21 £4,718.15
  - Electricity E-on
    - Reading 05498 Cloughmore House 30 April 2020 £75.98
    - Reading 05478 Cloughmore House 16 July 2020 £34.85
    - Reading 05509 Cloughmore House 20 October 2020 £56.08
    - Total £166.91

88. As with the previous two years, representations were made by the Applicant identifying disputed items in the Scott Schedule and the Landlord in turn made comments in response. Both parties also added to their comments through their respective Statements of Case and oral submissions in the course of the hearing.

*1. Gardener - £1,200.00*

89. The Applicant stated that he did not believe a gardener was employed during 2020 to provide regular maintenance and required evidence of the expenditure by way of the invoices. A quote of £70.00 per month from Duncan Property Services & Co was provided to show that current rates had not altered since 2018.

90. The Respondent's Representative attached invoices and repeated the statement made regarding 2018 and 2019 adding that in 2020 gardeners in Cambridge were charging £20 per hour and the charge made was a little more than 1 hour a week.

*2. Plants - £200.00*

91. The Applicant said that he required evidence that plants had been purchased for the Block. He added that it appeared that money was being wasted on the wrong plants as there was a constant replacement of plants in what is a very small garden where there are currently just a handful of plants.

92. The Respondent's Representative said that the garden was re-barked every year and unhealthy or dead shrubs removed.

*3. Window Cleaner - £400.00*

93. The Applicant said that he required evidence of the expenditure by way of invoices to show that the windows had been cleaned.

94. The Respondent's Representative said that no invoices were available.

*4. Buildings Insurance - £916.83*

95. The Applicant said that he required evidence of the expenditure by way of the Insurance invoices but did not dispute the premium.

96. The Respondent's Representative provided an invoice for £4,092.46.

97. At the hearing the Applicant made the same submission as for the previous year namely that the premium charged was an arbitrary sum determined by the Respondent for the Block and not apportioned by reference to the broker. He referred the Tribunal to the renewal schedule provided for 2018 which stated a premium of £748.48. He submitted that this sum was a reasonable premium.

98. The Applicant referred the Tribunal to the document which the Respondent's Representative had said was an invoice for the insurance premium for 2018. He said that this was in fact a renewal schedule for the Property which stated a premium of £748.48. He submitted that this sum was a reasonable.

*5. Electricity - £229.40*

99. The Applicant said that he required evidence of the expenditure by way of the invoices for electricity.
100. The Respondent's Representative provided invoices for £166.91 relating to the Block.

*6. Water – £21.79*

101. The Applicant said that he required evidence of the expenditure by way of the invoices for water consumption.
102. The Respondent's Representative said that no invoices were available.

*7. Stationery & Postage - £25.00*

103. The Applicant and Respondent's Representative repeated the submissions made regarding the cost in 2018 and 2019.

*8. Management Fees - £2,000.00*

104. The Applicant stated that the charge of £200.00 per unit for management was excessive as the management is poor. Referred to RICS code re increase.
105. The Respondent's Representative repeated the submission made in respect of the 2018 charge adding that it equated to 2 hours per flat.

*9. Miscellaneous - £150.00*

106. The Applicant said that he required evidence of the expenditure by way of the invoices for the miscellaneous items.
107. The Respondent's Representative drew attention to the much-reduced cost of the miscellaneous item which he said had been due to the installation of the flush entrance doors. The reduced incidence of ant-social behaviour meant that he no longer had to make repeated visits to the centre for the homeless next door.
108. The Respondent's Representative said with reference to this and the costs under the previous miscellaneous headings that he had not thought invoices were necessary as so many of the items were minor. For example, he said he purchased cleaning materials and black bags etc on his weekly shop. He had not itemised all the things but believed they would come to a great deal more if he had.



109. He said that overall, he believed he provided good value for money in his role of Managing Agent, Gardener and caretaker.

*10. Building Sinking Fund - £2,500.00*

110. The Applicant required evidence that the funds were kept in a Client Trust Bank Account.
111. The Respondent's Representative said that when he received funds then he would do so. At the moment he was paying all the expenses because the Applicant had not paid anything towards the Service Charge.

***Year Ending 31<sup>st</sup> December 2021***

112. An Estimated Service Charge Demand dated 4<sup>th</sup> June 2021 for £400.00 was served with a letter dated 5<sup>th</sup> June 2021 for the period 1<sup>st</sup> July 2021 to 31<sup>st</sup> December 2021 but it did not appear to be accompanied by a Summary of Tenant's Rights and Obligations. No Estimated Service Charge for the period 1<sup>st</sup> January 2021 to 30<sup>th</sup> June 2021 was provided.

**Decision re Reasonableness of the Service Charge**

113. The Tribunal considered all the evidence and submissions made by the parties in writing and orally.
114. The Tribunal firstly considered the Reasonableness of the Service Charges for each year and the payability of those charges.
115. The Tribunal noted that a number of invoices had been provided. The Respondent having provided this evidence it is presumed that these costs have been reasonably incurred and are reasonable in amount. The onus is therefore on the Applicant to show that the costs are unreasonably incurred or unreasonable in amount. This may be because the work was not done at all or was unnecessary or the cost is not commensurate with the quantity of work done or that the standard of the work was not reasonable. Where no invoices or evidence is adduced, the Tribunal makes its determination based on the balance of probabilities and its own knowledge and experience.

*1. Gardener*

116. The costs claimed and determined for Gardening for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£840.00	£840.00	£1,200.00
Determined by Tribunal	£840.00	£840.00	£840.00

117. The Respondent's Representative, Mr John Price, carried out the gardening work and provided invoices stating that he charged approximately £16.00 per hour on the basis of an hour a week throughout the year for 2018 and 2019 but that the rate increased in 2020 to £23.00 an hour in line with the rate in Cambridge for gardening. The Applicant said that he did not consider that the

rate had increased for 2020 and submitted a quote of £70.00 per month from Duncan Property Services & Co to show that current rates had not altered since 2018.

118. The Tribunal found that the garden was laid to gravel together with a shrubbery and as such was not a demanding area to maintain. The Tribunal found in its knowledge and experience, fortnightly visits during the 32-week growing season of two to three hours was sufficient to prune the shrubbery, lay bark and spray weed killer on the gravel. The Tribunal determined that a charge of £840.00 per annum for the three years in issue was reasonable.

### *2. Plants*

119. The costs claimed and determined for Plants for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£350.00	£170.00	£200.00
Determined by Tribunal	£50.00	£50.00	£50.00

120. The Tribunal acknowledged that Mr John Price sought to make the garden attractive. However, taking into account that the only planted area was the shrubbery it found that £240.00 per annum spent on plants was too much.
121. It appeared it was difficult to retain plants. In its knowledge and experience the Tribunal is aware of a wide range of robust perennial plants used in communal areas which provide not only greenery but colour. The Tribunal felt that Mr Price should seek advice to obtain advice on planting to avoid annual replacements. The Tribunal determined that in the absence of more specific invoice evidence, £50.00 per annum was reasonable for the years in issue for this particular garden.

### *3. Window Cleaner*

122. The costs claimed and determined for Window Cleaning for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£356.40	£356.40	£400.00
Determined by Tribunal	£356.40	£356.40	£400.00

123. The Tribunal found that the window cleaning invoices did not correspond to the amount recorded in the Account for the Actual costs. The invoices for 2018 and 2019 came to more than the Service Charge amount and no invoices were provided for 2020. In the absence of evidence to the contrary the Tribunal accepted the charge of £356.40 per annum for 2018 and 2019 and £400.00 for 2020 which included the cleaning of the fascia and guttering.

### *4. Buildings Insurance*

124. The costs claimed and determined for Insurance for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£941.11	£916.83	£970.00
Determined by Tribunal	£865.00	£916.83	£970.00

125. The Tribunal found that it was the responsibility of an individual Leaseholder to pay the charges made by an insurer when the Leaseholder causes the policy to be amended because of a change of mortgagee. Therefore, the charge for the insurance for 2018 should relate to the premium only and not include administrative costs for amendments for which the individual leaseholder should be invoiced.
126. The Tribunal found that there was no invoice for the insurance for 2018.
127. With regard to 2019 the Respondent's Representative produced a broker's invoice for £4,092.46 and for 2020 an invoice for £4,716.50. Both were for block policies for the Respondent's holdings. However, no other information was provided and the apportionment of the block policy premium appeared to be made by the Respondent's Representative and managing agent rather than the broker.
128. The Respondent's Representative provided a Renewal Schedule for 2019 for £748.48.
129. The Tribunal sets out below matters which a landlord should keep in mind when obtaining insurance.
130. An insurance policy must be compliant with the Lease. In obtaining insurance the landlord does not have to obtain the cheapest premium but it must be a premium that is representative of the market rate or that has been negotiated at arms' length in the market place (*Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111 & *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50)
131. A commercial landlord with a very substantial portfolio, may negotiate a 'block policy' for all the landlord's holdings rather than negotiating individual policies property by property as there are advantages of practicality for the Landlord and more comprehensive cover for the Tenant (*Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173). However, so far as the apportionment between individual properties and their tenants within the portfolio is concerned, the policy should not mean that the premium is apportioned in such a way that tenants of high-risk properties pay less and tenants of low-risk properties pay more than if the premium were apportioned to take account of the relative risk of the respective properties. In other words, the Applicant should pay a premium that reflects the risk related to the Property.
132. In determining whether a premium is reasonably incurred there are two tests, firstly a landlord must show that its decision-making process is rational and secondly that the outcome is reasonable (*Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC) & *Waalder v Houslow LBC* [2017] EWCA Civ 45)

133. The Tribunal firstly considered the Respondent's process of placing its insurance. The Tribunal found that the Respondent instructed a broker who, on the balance of probabilities, has gone into the market place and obtained insurance at arm's length. The Respondent had placed insurance for all its holdings under a block policy as it is entitled to do. It had not selected the lowest premium, as it is not obliged to do, as shown by the renewal notice from NIG which was for a premium of £748.48.
134. Secondly the Tribunal considered whether the outcome of the above process resulted in an excessive premium. The Tribunal found that, on the evidence it had available, it did not.
135. The Tribunal determined that the premium for 2019 and 2020 is reasonable as stated on the Account for Actual costs for those years. However, the Respondent had included in the premium for 2018 the charge payable by the Leaseholder for amending the policy. The difference between the 2019 and 2020 premium was about 6%. On the basis that the charge from 2018 to 2019 was a similar increase the Tribunal determines that the premium of £865.00 for 2018 is reasonable reflecting the deduction of the charges for amendments.

#### *5. Electricity*

136. The costs claimed and determined for Electricity for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£313.51	£273.04	£229.40
Determined by Tribunal	£221.93	£273.04	£166.91

137. The Tribunal found that the total of the electricity invoices corresponded to the amount recorded in the Account for the Actual costs for 2019 but not for 2018 or 2020. For both years the invoices came to less. A quarterly invoice was omitted for 2018 and replaced by one from another property (Leys Lodge). This was disregarded. The lack of information meant the missing amount could not be calculated. However, the 2018 total based on the invoices provided was in line with 2019 total and therefore the Tribunal determined the 2018 charge based on the invoices provided was reasonable. The last invoice for 2020 was omitted. As this may be carried over to the next year the Tribunal determined the amount for 2018 of £166.91 was reasonable based on the invoices provided.

#### *6. Water*

138. The costs claimed and determined for Water for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£39.15	£42.09	£21.79
Determined by Tribunal	£39.15	£42.09	£21.79

139. The Applicant accepted the water consumption on production of the invoices to support the Accounts of the Actual Costs for the years in issue.

*7. Stationery & Postage*

140. The costs claimed and determined for Stationery and Postage for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£25.00	£25.00	£25.00
Determined by Tribunal	£0.00	£0.00	£0.00

141. The Tribunal found that the stationery and postage costs should be included in the Management Fees.

*8. Management Fees*

142. The costs claimed and determined for Management Fees for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£1,650.00	£1,750.00	£2,000.00
Determined by Tribunal	£1,650.00	£1,750.00	£1,850.00

143. The Tribunal took into account the duties of the Managing Agent under the RICS code including:

- Maintaining records,
- Arranging reports, surveys and risk assessments in accordance with statutory requirements,
- Preparation of accounts,
- Arranging and monitoring general repairs to the common parts,
- Receiving and paying invoices,
- Liaising with contractors, tradesmen etc.,
- Preparing and serving service charge and ground rent invoices in accordance with statutory requirements,
- Collecting service charges and ground rent and enforcing payment.

144. The Tribunal found that there were failings in the management. Whereas the Lease did not require the Estimated Service Charge Demands to be itemised this is good practice particularly in the present case. Since there were no certified or audited accounts as required by the Lease for any of the previous years the Leaseholder would not know on what the money demanded was to be expended.

145. There was no evidence of any Service Charge or Reserve designated account. The Respondent's Representative said that none existed as there were no sums to put in it. In this regard it appeared that the Respondent's Representative conflated his position as Director of the Respondent with that of his being a Leaseholder of 8 out of 10 of the Flats. The two are separate persons. The designated account should be in the name of the Respondent as trustee for the Leaseholders. All the Leaseholders should, including the Respondent's Representative, pay their estimated Service Charge contribution

as apportioned in the Lease into the account. The Service Charge costs are then paid out of that account. It is there as a protection for all Leaseholders.

- 146. There were a number of invoices missing and works were carried out and charged for without any record of what had been done.
- 147. No insurance certificates or policies were provided.
- 148. In making its determination the Tribunal took account of the discussions between the Managing Agent and the neighbouring centre for homeless persons in respect of anti-social behaviour. The Tribunal determined that, in its knowledge and experience, and notwithstanding the shortcomings in the management a reasonable charge is £165.00 per unit for the year 2018, rising to £175.00 per unit for 2019 and £185.00 for 2020.
- 149. The Tribunal is aware that until 2018 a far less formal approach was taken with regard to the management and according to the Respondent's Representatives, he paid all the costs. As soon as that arrangement changed in 2018, the Lease and the legislation needed to be strictly followed to avoid conflict.

*Repairs*

- 150. The costs claimed and determined for Repairs for the years in issue were as follows:

Description	2018		2019	
	Claimed	Determined	Claimed	Determined
Repair to Garden Lighting	£315.00	£315.00		
Repair to Intercom	£615.00	£615.00		
Replace Entrance Doors			£1,196.70	£2,500.00
Replace Entrance Doors			£710.00	
Replace Entrance Doors			£386.40	
Replace Entrance Doors			£750.00	

- 151. Notwithstanding the unavailability of the invoices for the repairs to lighting and the intercom in 2018, on the balance of probabilities the Tribunal accepted that the work had been done and that the amounts were correct. It determined them to be reasonable.
- 152. Similarly with the invoices for the replacement of the doors, notwithstanding the unavailability of the invoices, on the balance of probabilities the Tribunal accepted that the work had been done and that the amounts were correct. Although the Tribunal determined the amounts to be reasonable, as the cost amounted to more than £250.00 per unit a section 20 Procedure should have been followed or a section 20ZA dispensation should have been obtained before or after the work had been carried out. As neither of these were done the Tribunal limited the cost to £2,500.00 (£250.00 per unit.)

*Miscellaneous*

153. The costs claimed and determined for Miscellaneous Items for the years in issue were as follows:

<b>Service Charge Amount</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Claimed	£714.23	£619.14	£150.00
Determined by Tribunal	£150.00	£150.00	£150.00

154. The Tribunal considered the cost of replacement keys is for individual leaseholders not the Service Charge.
155. It is for management to engage a contractor to carry out minor repairs, re-new letter boxes and re-new fittings to retain the bin store doors. If the Respondent's Representative as the Managing Agent is to carry these out, a clear costing must be provided in the form of an invoice. The Tribunal did not consider these to be minor repairs.
156. Garden tools, weed killer and rubbish sacks are within the gardener's contract and should not be added on as miscellaneous.
157. The removal and disposal of inappropriate waste needs to be clearly identified in order that the managing agent can keep track of what, when and how items are being disposed of. If as appears in this case, waste is removed by the manager, then a charge is appropriate and should be invoiced. The sorting of waste is also an issue for a number of blocks. Ad hoc arrangements can be ineffective and lead to additional cost whereas a regular charge for sorting immediately prior to collection can be most effective. Fly-tipping of large items also needs to be recorded, if possible, the disposer identified and the item removed and an invoice raised.
158. In the absence of invoices or other evidence the Tribunal determines an allowance of £150.00 for miscellaneous items to be reasonable.
159. The Tribunal was of the opinion that the discussions between the Managing Agent and the neighbouring centre for homeless persons in respect of anti-social behaviour was part of the Landlord's obligation to ensure that Leaseholders had quiet enjoyment of their Flats. The Tribunal determined that it was reasonable for the cost of this to be within the Management Fee.

*Reserve*

160. The Tribunal noted that the cladding to the rear elevation of the Block would require replacing as it reached its 20-year anticipated life span. The Tribunal determined that the sum of £2,500 was reasonable and payable on proof of a designated trust account. A projected cost should be obtained within the next year.

## Summary of Decision as to Reasonableness

161. The following costs are determined by the Tribunal to be reasonable for the years in issue (the figures in bold are those that have been determined):

		<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Item</b>	<b>Description</b>	<b>£</b>	<b>£</b>	<b>£</b>
1	Gardener	840.00	840.00	<b>840.00</b>
2	Plants	<b>50.00</b>	<b>50.00</b>	<b>50.00</b>
3	Window Cleaner	356.40	356.40	400.00
4	Buildings Insurance	<b>865.00</b>	916.83	970.00
5	Electricity	<b>221.93</b>	273.04	<b>229.40</b>
6	Water	39.15	42.09	21.79
7	Stationery & Postage	<b>0</b>	<b>0</b>	<b>0</b>
8	Management Charge	<b>1,650.00</b>	<b>1,750.00</b>	<b>1,850.00</b>
9 ff	Repairs:			
	Garden Lighting	315.00		
	Intercom	615.00		
	Replace Entrance Doors & Reposition Intercom		<b>2,500.00</b>	
10	Miscellaneous	<b>150.00</b>	<b>150.00</b>	150.00
11	Reserve			2,500.00
	<b>Total</b>	<b>4,322.48</b>	<b>6,878.36</b>	<b>7,011.19</b>
	<b>Unit Charge</b>	<b>432.25</b>	<b>687.84</b>	<b>701.12</b>

## Payability

162. The Applicant submitted that he had not received any Demands for Service Charges other than those that were included in the Bundle. Those that he had received he said were defective in that in addition the Demands were defective in that they did not comply with the Lease and so he submitted were not payable.
163. In addition, he said that he had not been provided with the Accounts for the Actual Costs incurred until 7<sup>th</sup> May 2021 and suggested that the Accounts had only been prepared for the Tribunal hearing. He referred the Tribunal to correspondence he had with a Mr Sinclair of Sinclair Taylor, a debt recovery agency which consisted of a series of seven letters between 17<sup>th</sup> February to 4<sup>th</sup> May 2021 in which the Applicant requested a copy of the accounts. The Applicant said that these were provided on 7<sup>th</sup> May 2021.
164. The Respondent's Representative said that he had sent the Applicant the accounts every year. He said that all the Demands and Accounts of the Actual Costs for each year in issue, which included Demands that had been sent, were in the Bundle.
165. The Tribunal asked the Respondent's Representative whether there were any other documents or anything in writing which informed the Applicant that the



Service Charge costs had been incurred for any of the years in issue. He said that so far as he was aware there were not, everything was in the Bundle.

166. The Respondent's Representative said that the Applicant was well aware of the costs incurred. He said that he had paid for all the outgoings on the Property until 2018. He then asked the Applicant to pay the Ground Rent and Service Charge and the Applicant has as a result sought to avoid paying.

### **Decision re Payability**

167. If Service Charge costs are not demanded within 18 months of their being incurred then under section 20B of the Landlord and Tenant Act 1985 they are not payable. If a Demand is defective then the cost being demanded is not payable. If the defect is not remedied by the Demand being re-served correctly within 18 months, then it may not be payable under section 20B depending on the defect.
168. Demands may be defective for two main reasons. Firstly, because they are not compliant with legislation and, secondly, because they are not compliant with the Lease.
169. The legislative requirements are that a service charge demand must under section 47 of the Landlord and Tenant Act 1987 state the name of the current Landlord, under section 48 of the 1987 Act must provide the Leaseholders with a correct address for service of notices and under section 21B of the Landlord and Tenant Act 1985 must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. If any of these requirements are not met then the demand is not payable until it is subsequently served in compliance with the legislation. The section 20B time limit does not apply to demands which are defective due to non-compliance with these requirements because the legislation itself provides the penalty namely that they are not payable until served correctly.
170. Applying this to the present case the Tribunal looked at the Demands that had been served as provided and referred to above. The Tribunal found that all the Demands provided for the years in issue complied with sections 47 and 48 of the Landlord and Tenant Act 1987. It was not clear how many complied with section 21B of the Landlord and Tenant Act 1985. A summary of tenants' rights and obligations was only annexed in the Bundle to the Summary Demand dated June 2020 which demanded the estimates in arrears for 2019 and 2020. However, this summary of rights and obligations was not valid as the print was too small. The Demands would therefore all have to be re-served to be compliant with section 21B.
171. The Tribunal then considered whether they were served in accordance with the Lease. A demand must be compliant with the lease or it will not be a valid demand. In *London Borough of Brent v Shulem B Association Ltd* [2011] EWHC 1663 (Ch) it was held that a demand that is initially not compliant with the Lease must be re-served in its correct form within 18 months of the costs being incurred as stated in section 20B (1) of the Landlord and Tenant Act 1985, unless the Lease provides otherwise. For section 20B (2) to exempt

the landlord from the effect of section 20B (1) the tenant must be notified in writing within 18 months that those costs had been incurred and that the tenant would subsequently be required under the terms of the lease to contribute to them by the payment of a service charge. Section 20B (2) only applies to costs incurred, not to be incurred. This interpretation was confirmed In *Johnson v County Bideford Ltd* [2012] UKUT 457 (LC) the then President of the Upper Tribunal at paragraph [10] distinguished between a demand that was not statutorily compliant and one that was not contractually compliant with the Lease. The distinction is that sections 47 and 48 of the Landlord and Tenant Act 1987 and 21B of the Landlord and Tenant Act 1985 allow for retrospective correction. With regard to a lease, it depends on the terms of the lease whether retrospective correction is allowed. If the terms do not, then section 20B applies.

172. The Tribunal then compared the requirements of the Lease with the Demands actually served. Paragraph 3 of the Fourth Schedule states:

The Service Charge shall consist of a sum comprising

- 3.1 The expenditure estimated as likely to be incurred in the Service Charge year by the Lessor for the purposes mentioned in the Fifth Schedule together with
- 3.2 An appropriate amount as a reserve...
- 3.3 A reasonable sum to remunerate the Lessor for its administrative and management expenses in respect of the Block

173. The Tribunal found that there was no obligation in the Lease to itemise the estimate and that a lumpsum Demand that was a genuine pre-estimate would be sufficient.

174. No evidence was adduced that any Demand had been made for an estimated Service Charge in 2018. The first Demand, for which there was evidence of a Demand, was in respect of the Service Charge Account for the Actual Costs dated 14<sup>th</sup> December 2018 but which the Applicant said he had only received on 7<sup>th</sup> May 2021 prior to the Hearing.

175. The evidence that was adduced to show that estimated Service Charges had been demanded only related to 2019 and 2020 which was as follows:

Year ending 31<sup>st</sup> December 2019

- 1) Demand dated December 2018 for the period 1<sup>st</sup> January 2019 to 30<sup>th</sup> June 2019 for £400.00
- 2) Demand dated June 2019 for the period 1<sup>st</sup> July 2019 to 31<sup>st</sup> December 2019 for £400.00

Year ending 31<sup>st</sup> December 2020

- 1) Demand dated January 2020 for the period 1<sup>st</sup> June 2020 to 30<sup>th</sup> June 2020 for £400.00

- 2) Demand dated June 2020 for the period 1<sup>st</sup> July 2020 to 31<sup>st</sup> December 2020 for £400.00
176. Further Demands were served in the form of the Service Charge Account for the Actual Costs incurred for the years ending 31<sup>st</sup> December 2019, dated December 2019, and 2020 dated December 2020 but which the Applicant said he had only received on 7<sup>th</sup> May 2021 prior to the Hearing.
177. The Tribunal noted the correspondence between Mr Sinclair of Sinclair Taylor, the Respondent and the Applicant between 18<sup>th</sup> January 2021 and 4<sup>th</sup> May 2021. The Tribunal could see no reason for the Applicant to ask for this information if it had been provided earlier. Based on this evidence the Tribunal found that the Service Charge Accounts of the Actual Costs incurred for the years ending 31<sup>st</sup> December 2018, dated 14<sup>th</sup> December 2018, 2019, dated December 2019, and 2020 dated December 2020 were not served on the Applicant until 7<sup>th</sup> May 2021.
178. No evidence was adduced to show that a Summary of Tenants' Rights and Obligations, as required by Section 21B of the 1985 Act had been served with the Service Charge Account for the Actual Costs for 2019 and 2020.
179. The Tribunal found that the Respondent did not demand the Service Charge for the year ending 31<sup>st</sup> December 2018 until 7<sup>th</sup> May 2021 which is more than 18 months after the costs in that year were incurred. Therefore, the Tribunal determined that pursuant to section 20B of the 1985 Act the Applicant is no longer liable to pay these costs.
180. The Tribunal found that the Demands served by the Respondent for the Estimated Service Charge costs and the Actual Service Charge costs for the years ending 31<sup>st</sup> December 2019 and 2020 did not comply with section 20B of the 1985 Act in that they were not accompanied by a valid Summary of Tenants' Rights and obligations. Therefore, the Tribunal determined that they were not payable until a compliant Demand was served.

### **Decision as to Reasonableness and Payability**

181. The Tribunal determines that the Service Charge for the year ending 31<sup>st</sup> December 2018 is not payable by the Applicant to the Respondent pursuant to section 20B of the Landlord and Tenant Act 1985 because there is no evidence that a Demand has been served within 18 months of the costs being incurred.
182. The Tribunal determines that the Service Charge of £687.84 is reasonable and payable by the Applicant to the Respondent for the year ending 31<sup>st</sup> December 2019 when properly demanded.
183. The Tribunal determines that the Service Charge of £701.12 is reasonable and payable by the Applicant to the Respondent for the year ending 31<sup>st</sup> December 2020 when properly demanded.

### **Administration Charges**

184. No evidence was adduced as to Administration Charges for non-payment or late payment. However, as the Tribunal has determined that:
- the Applicant is not liable for the Service Charge for the year ending 31<sup>st</sup> December 2018 because there is no evidence that a Demand has been served within 18 months of the costs being incurred (section 20B Landlord and Tenant Act 1985); and
  - the Service Charges for the years ending 31<sup>st</sup> December 2019 and 2020 are not payable by the Applicant to the Respondent because the Demands were not served with a valid Summary of Tenants' Rights and Obligations (section 21B Landlord and Tenant Act 1985);
- Any Administration Charges are not reasonable or payable.

### **Submissions Re Section 20C & Paragraph 5A of Schedule 11**

185. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.
186. The Applicant stated that he had not received any estimated or actual accounts of the Service Charges. As he was liable for the Service Charges, he said he wanted to know what the costs were and to see the invoices. He said that before he had a meeting with the Respondent's Representative to discuss the Service Charges, he wanted to know what the costs were. The Respondent's Representative had all the information and he felt he would be at a disadvantage to discuss or agree anything without knowing all the facts. There would have been no need to come to the Tribunal if he had been given the information he requested.
187. The Respondent's Representative said that he had never asked for the accounts before 2018 because the Respondent's Representative had always paid everything. It is only now that he has been asked to pay that the Applicant has asked to see the accounts and invoices. The Respondent's Representative said the Applicant had only asked to see the documents once he knew that Respondent's Representative intended to pursue the matter. The Respondent's Representative said he had offered to meet and discuss matters but the Applicant had refused even after he had received all the information he had requested. The Respondent's Representative said that the matter could have been sorted out without a tribunal application.

### **Decision re Section 20C & Paragraph 5A of Schedule 11**

188. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

189. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
190. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.
191. First the Tribunal considered whether the Lease contained a provision allowing the Landlord to claim its legal costs through the Service Charge. The Tribunal was of the opinion that it did not. Paragraph 5 of the Fifth Schedule refers to the Tenant's liability to pay costs incurred in management by the Landlord however there is no reference to include legal costs in respect of these proceedings.
192. Secondly the Tribunal considered whether the Lease contained a provision allowing the Landlord to claim its legal costs directly from the Tenant Applicant. The only provision which enables the Landlord to claim legal costs in court proceedings from the Tenant is in paragraph 14 of the Third Schedule. However, this refers to an action in connection with or contemplation of preparing or serving a section 146 or 147 Notice under the Law of Property Act 1925, which this is not.
193. Notwithstanding its opinion that the Landlord was not able to claim its legal costs in the proceedings before the Tribunal, the Tribunal considered whether it was just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal was of the opinion that improved management could have remedied most of the issues and that each party should be responsible for its own costs. In this case, if there were a proviso whereby the Respondent could recover its costs, making an order would provide that result. Therefore,
  - 1) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
  - 2) The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

**Judge JR Morris**

**APPENDIX 1 - RIGHTS OF APPEAL**

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## APPENDIX 2 – THE LAW

### **The Law**

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
  - (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, improvement 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 of which the service charge is payable.
  - (3) for this purpose
    - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
  - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
    - (a) only to the extent that they are reasonably incurred; and
    - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
  - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Landlord and Tenant Act 1985  
Section 20B Limitation of Service Charges: time limit on making demands
  - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
  - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been

incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21A Withholding of service charges

- (1) A tenant may withhold payment of a service charge if—
  - (a) the landlord has not provided him with information or a report—
    - (i) at the time at which, or
    - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
  - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.
- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  - (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
  - (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.
- (3) An amount may not be withheld under this section—
  - (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
  - (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.
- (4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
- (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

6. Section 21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of



service charges do not have effect in relation to the period for which he so withholds it.

- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7. Section 27A Landlord and Tenant Act 1985

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party
  - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

8. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 the Upper 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—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.
- (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.

#### Limitation of administration charges: costs of proceedings

5A(1)A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
  - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
  - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

