FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MB/LSC/2021/0035**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Property	**:**	**56-58 Martingale Chase, Newbury, Berkshire RG14 2ER**
Applicants	**:**	**1. Natalie Carter (No. 56)** **2. Richard Lord (No. 57)** **3. Carol Taylor (No. 58)**
Representative	**:**	**Natalie Carter**
Respondent	**:**	**Sovereign Housing Association Limited**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt** **Mr G F Smith MRICS FAAV REV**
Date of decision	**:**	**16 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraph 2 below. We have noted the contents.

© CROWN COPYRIGHT

Decisions of the tribunal

(1) The tribunal determines that the following disputed service charges are (or were) payable by each of the Applicants for the service charge years from 1 April 2019 to 31 March 2020 (**2019/20**), 1 April 2020 to 31 March 2021 (**2020/21**) and 1 April 2021 to 31 March 2022 (**2021/22**):

Disputed charge	**Payable**		
	For 2019/20 (actual cost incurred)	**For 2020/21 (reasonable estimated cost)**	**For 2021/22 (reasonable estimated cost)**
Grounds maintenance	£10	£10	£42.79
Fly tipping/estate works/pest control	£60.79	£3.57	£22.38
Cleaning	£59.27	£80.17	£84.69
Emergency light testing/H&S/fire equipment	£68.25	£64.07	£63.69
Repairs	£2.39	£50	£50
Audit fee	£9.90	£10.14	£10.38
Management fee	£85.36	£81.29	£85.85

(2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") that the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

(3) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

(4) The tribunal orders the Respondent to pay £150 to the Applicants, to reimburse 50% of the tribunal application and hearing fees paid by them.

Reasons

Applications

1. The Applicants sought determinations under section 27A of the 1985 Act as to whether certain service charges from 2019/20 onwards were payable by them. Extracts from the relevant legal provisions are set out in the Appendix to this decision. The Applicants also sought orders: (a) to limit any recovery of the Respondent's costs of the proceedings through the service charge, under section 20C of the 1985 Act; (b) to reduce/extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act; and (c) for reimbursement of tribunal fees, under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").

Procedural history

2. On 13 July 2021, a procedural judge gave case management directions which required the leaseholder of No.59 to be given the opportunity to join the proceedings. With extensions of time, the parties exchanged documents pursuant to the directions. On 30 September 2021, the Applicant produced an electronic bundle of 531 pages for use at the hearing. On 5 October 2021, the Respondent pointed out that their statement of case had been omitted from the bundle, providing a further copy (nine pages), and raised concerns about new photographs included by the Applicants in the bundle. There was no inspection. The directions noted that the procedural judge considered an inspection was not required, but relevant photographic evidence would be admitted. Neither party requested an inspection and we are satisfied that an inspection is not necessary to determine the issues in this case.

3. At the hearing on 14 October 2021, Natalie Carter represented the Applicants and gave evidence. The Respondent was represented by Ellie Phillips, Hannah Gillen, Steve Copas, Nicola Payne, Luke Charles and Tav Sahota, who also gave evidence. No application had been made by the leaseholder of No. 59 to join the proceedings. The original application named the occupiers of Nos. 54 and 55 as additional applicants, but the Respondent confirmed each paid only a fixed service charge under their tenancy agreements. As we explained at the hearing, the tribunal has no jurisdiction in these proceedings to determine service charges where the amount payable is fixed by the terms of a lease or tenancy agreement. Our jurisdiction is to determine variable charges (within the definition of "service charges" under section 18 of the 1985 Act, set out in the Appendix). Accordingly, we removed those additional applicants from these proceedings. We were also informed that Carol Taylor (No.58) had sold her lease on 15 July 2021, but wished to remain party to these proceedings. After considering the Respondent's representations in relation to the late photographs included in the

bundle, we decided we should take these photographs into account. They had been provided two weeks before the hearing and, as Miss Gillen said, most of them simply showed the same things as, or supported, the photographs which had been provided earlier.

Leases

4. The Applicants each have leases of two-bedroom flats in the building, known as 54-59 Martingale Chase, which is defined in the leases as the "**Building**". It contains six flats. The two flats on the ground floor of the Building (Nos. 54 and 55) are occupied by tenants housed by the Respondent, as are the six flats in the adjoining building known as 60-65 Martingale Chase. Each of the two buildings are self-contained, with their own entrance doors and internal common areas. The estate comprising those buildings and the surrounding garden areas, bin store and car park, shown edged blue on Plan 2 annexed to the leases (an extract from which is at page 226 of the bundle), is defined in the leases as the "**Property**". This is separate from another neighbouring building with its own associated garden and car parking areas.

5. The long lease of No. 56 was made between the Respondent (as landlord) and a predecessor in title to Miss Carter (as tenant). When we checked with the parties, they did not refer us to any relevant differences between the terms of this lease and those of Nos. 57 and 58. In the lease:

   (i) the **Service Charge** means one part of the Annual Maintenance Costs;

   (ii) the tenant covenants to pay on the first day of each month in advance such reasonable sums as appropriate on account of the Service Charge (clause 4.3.1) and, on receipt of the landlord's statement of the Annual Maintenance Costs certifying the amount of the Service Charge for the preceding year, any amount by which the Service Charge exceeds the advance payments (clause 4.4.1);

   (iii) the **Annual Maintenance Costs** refer to all sums spent or provided by the landlord in any year in connection with the administration management and maintenance of the Property, including the costs of performance of the covenants in clause 5, specified types of fees incurred in connection with management and/or maintenance of the Property or in connection with enforcing performance by leaseholders of their obligations under their leases, costs incurred in preparation of the statement of account for the Annual Maintenance Cost and any other sums properly incurred in the management or administration of the Property (clause 4.1.2);

(iv) the covenants in clause 5 include provisions for insurance, maintenance, repair, cleansing, decoration and replacement of the main structure of the building, Common Parts, entrance ways, paths and forecourts, keeping the Common Parts cleaned, lighted and in tidy condition and such other services as reasonably necessary for the benefit of the Building; and

(v) the expenses and outgoings in respect of which the tenant is to pay a proportionate part by way of service charge are set out in more detail in the Fourth Schedule. These include the fees of the landlord for general management.

Service charges in dispute

6. The Applicants had referred to lighting and electricity charges of £1,044.79, saying the bills seemed high and the Respondent should review its providers. They also referred to sums for the reserve fund and buildings insurance. However, in each case, they did not dispute these service charges, confirming they agreed the full cost. The parties agreed the appropriate service charge proportions in respect of the disputed charges were 1/6th of expenditure relating only to the Building and 1/12th of general expenditure on the Property.

7. The Applicants challenged the following specific service charges for 2019/20. They also challenged the charges for the same heads of expenditure for the following two service charge years. The service charge accounts for 2020/21 were not in the bundle and had not been addressed in the lead up to the hearing, having only recently been completed. Miss Gillen offered during the hearing to provide copies. Unfortunately, this was too late for these proceedings, not least because the Applicants would need to be given time to respond to them. In view of the timing, our determinations for 2020/21 and 2021/22 will have to be of the reasonable estimated charges payable in advance. As we explained, these determinations will not preclude the parties from making another application in future to determine the final charges payable based on the actual costs reasonably incurred for those later years, but we hope they will be able to agree them.

Grounds maintenance (2019/20 £48.22, 2020/21 £42.25, 2021/22 £42.79)

8. The Applicants challenged costs for 2019/20 of £578.58, paid under a ground control contract. Their 1/12th share would be £48.22. They said the small areas of grass at the front had been mowed. After requests, the hedges had been trimmed once and "vines" (ivy) at the back had been belatedly cleared. They said the value of the service provided was £40 for the Building, or £6.67 each. Miss Carter said she had the hedges trimmed when the Respondent failed to maintain them and the car park was a year thick with fallen leaves, producing invoices for £30 and £80 for hedge cutting and sweeping debris in the car park from September

2020 and May 2021 respectively, with an e-mail referring to a further £160 for trimming and clearing in August 2021. The Applicants also produced photographs of the exterior said to be from August 2020, May 2021 and August 2021, showing the bushes at the front, substantial rough vegetation growing at the rear, overgrown shrubs at the rear, trees they were unhappy with and leaf litter which had obviously been lying on the ground for a long time. The Respondent said a basic grounds maintenance service was provided for the Property, with 21 visits per year using a standard specification. This lengthy specification includes litter collection, grass and hedge maintenance, pruning, tree maintenance, leaf removal, sweeping pedestrian and vehicular areas and so on. They said the service had been provided continuously except for six weeks from March 2020, as a result of the Covid pandemic, and there was a reduction in services while they were resumed. They accepted the growth at the rear had not been properly removed. They accepted the service had been "inconsistent" and offered a 50% reduction in the charges for 2019/20 and 2020/21. They said they would work with the contractor to improve the standards of performance for 2021/22.

9. Steven Copas is a contract manager for the Respondent, responsible for the delivery of grounds maintenance services across the Respondent's portfolio. He accepted the shrub and hedge maintenance and clearance of leaf debris had been "below standard". He did not agree that maintenance of grassed areas had been. He accepted ivy growth removal work had not been completed as required. He described guidance on work on hedges which did not appear to be correct. He told us that contractors could not clear leaf and other debris using their leaf blowers when cars were parked in the car park, as if they were not required by the specification to sweep. He relied on the maintenance completion reports entered on the relevant portal by the contractors, without appearing to have examined them. At least some of those reports are dubious, including work which - compared with the photographs produced by Miss Carter - seems unlikely to have been carried out (such as strimming). The reports often use "before" and "after" photographs of completely different areas, which does not allow any comparison. They also either re-use an identical photograph for several different visits or repeatedly show very similar photographs of the same area, again with nothing for comparison to enable a check of what is said to have been done. We pointed this out to Mr Copas at the hearing (looking for example at pages 149-152, 158 and 166 of the bundle) but neither he nor any of the Respondent's other witnesses had any explanation. Mr Copas said he was working with the contractors to get more specific photographs in future. He had never inspected the site; there were about 2,500 sites and about 10% were inspected each year. Other individuals from the Respondent had visited recently, but had not commented on the condition of the grounds.

10. In our assessment, the grounds maintenance work carried out by the Respondent's contractors for the two previous service charge years was probably little more than cutting the modest areas of grass, very little

work on the hedges and clearing the ivy once at the rear. It appears the contractor simply has not performed most of the specified works and the Respondent did not take action about this in 2019/20 or 2020/21. The exterior areas would look significantly worse if the Applicants had not arranged more substantial work themselves. In our assessment, the reasonably incurred costs for ground maintenance were £120 in each of those years. The 1/12th share payable by each Applicant is £10 for each of 2019/20 and 2020/21. The estimated charge for 2021/22 of £42.79 is reasonable and payable.

Fly tipping/"estate works" (2019/20 £60.79, 2020/21 £3.57, 2021/22 £22.38)

11. The Applicants challenged costs for 2019/20 of £729.50, comprised of three items: £242 for collecting items left in the communal gardens (invoice provided, July 2019), £337.50 for clearing rubbish from the back of the bike shed (invoice provided, October 2019) and £150 for clearing rubbish outside the bin store (invoice provided, February 2020). They said all these costs related to the other building, not theirs. The Respondent said it provided a responsive bulk waste removal service, including removal of any fly tipped items in the wider estate areas of the Property. They said residents were charged an equal share of the cost unless the Respondent could establish who had dumped individual items and recover the cost from them directly. They had produced photographs of unsightly dumped materials including an armchair, mattress, bicycle and carpet or rugs in the garden area and other loose items around the bin store. Miss Carter acknowledged that the waste, or most of it, probably did not come from the flats, but someone from elsewhere seeing an opportunity to fly tip. She described problems with anti-social behaviour which meant those living in the Building stayed away from the relevant area, which is in the corner of the rear garden area but within the area shown edged in blue on the relevant lease plan (i.e. the Property, as defined in the leases) and near the car parking spaces. She asked about preventative measures, CCTV or otherwise. The Respondent suggested that as matters stood costs of clearing rubbish were likely to be less than the cost of CCTV and they had not found CCTV to be very effective in enabling prosecutions, which may depend on finding identifying markings or documents in dumped rubbish. The Respondent's witnesses did not know whether the fly tipping had been reported to the local authority or whether any other action had been taken by their housing team.

12. In our assessment, the cost of £729.50 was reasonably incurred and the share payable by each Applicant is their 1/12th share, £60.79, for 2019/20. The terms of the leases require the Applicants to contribute their share of the costs of keeping the Property, which includes the relevant estate areas, clean and tidy. The Respondent should obviously keep the problem of fly tipping and anti-social behaviour under review with their housing team and consider any deterrent or other action which could be taken, or any other support which could be provided. The fly tipping problem is clearly continuing; the bundle includes invoices for

removal of further waste from September 2020 and removal instructions from April and May 2021 noting complaints from residents that: (a) a mattress, metal bed frame and washing had been left to the rear of the bin store; and (b) a dumped wardrobe, in front of the bike shed, had been blown apart by the wind. In the circumstances, the estimated costs for 2020/21 of £3.57, and for 2021/22 of £22.38, are reasonable and payable.

Cleaning (2019/20 £85.54, 2020/21 £80.17, 2021/22 £84.69)

13. The Applicants challenged costs for 2019/20 of £1,026.52 paid under a contract with ServiceMaster (Deeland Ltd t/a ServiceMaster) for the Property. First, they asked why there were 13 entries. Miss Phillips said, and we accept, that this is because the invoice dated 28 February 2019 for 18 January to 17 February 2019 was not paid until April 2019. The following monthly invoices end with the 13th invoice, dated 26 Feb 2020, for 18 January to 17 February 2020.

14. The Applicants said cleaners were typically on site for 15/20 minutes for each visit and provided a very basic service, only hoovering. They indicated in their schedule of disputed and proposed costs that nothing should be payable for April to July 2020 and said the value of the service provided in the other months was a total of £80 for the Building. Miss Carter explained at the hearing that, as with many other such services across the country, no cleaning had been provided during the first set of restrictions introduced to control the Covid pandemic. The Respondent said basic internal cleaning services were provided for the common areas, based on a standard specification (a copy of which was produced). They said the service had been provided continuously and during the pandemic additional safety measures were taken by the contractors. They noted there was no real challenge to the standard of the service provided and produced a spreadsheet with dates which suggest visits were made throughout. They referred to 17 general cleaning visits, six visits to clean communal windows and one annual visit for a "deep clean" of floors. Nicola Payne was the contract manager at the Respondent responsible for the delivery of residential block cleaning services. She helpfully accepted that normal visits probably took about 15/20 minutes, while pointing out that the cleaners would need to spend longer at some visits where more cleaning was required. No relevant photographs were produced by any party. Unfortunately, because the invoices are large combined invoices for many sites and no breakdown has been provided (they refer to schedules which are not produced), the monthly amounts given to the Applicants as the sums paid to ServiceMaster are difficult to reconcile with the service said to have been provided.

15. On the evidence we heard, we consider it more likely that a reduced service, or no service, was provided between April and July 2020, but a basic service was provided for the other months which probably extended beyond hoovering to include surface and communal window

cleaning. Miss Carter had produced no alternative quotations. She referred to the high hourly rate which the time spent seemed to suggest, but the price does need to take into account insurance, travel and all the associated costs rolled up in a service provision price. If we deduct four payments of £78.83 (which appears to have been the normal monthly payment) as if no service had been provided for the months from April to July 2020 (£315.32) this leaves a balance of £711.20. In our assessment, this sum was reasonably incurred for the service which is likely to have been provided overall. 1/12th of this, £59.27, is payable by each Applicant for 2019/20. The estimated figures for 2020/21 of £80.17, and for 2021/22 of £84.69, are reasonable and payable.

H&S/Fire equipment (2019/20 £68.25, 2020/21 £64.07, 2021/22 £63.69)

16. The Applicants challenged costs for 2019/20 of £819 for monthly emergency light testing by Pyrotec Services Ltd for the Property. Again, they asked why there were 13 entries (with two invoices for January). The same explanation was provided (by Miss Phillips) as in relation to the cleaning invoices and this was accepted. The Applicants said they understood these tests involved five-minute visits and no evidence of them had been provided. They said the value of the service provided was £120 for the Building. The Respondent said Pyrotec provided monthly inspections and tests, and a separate annual inspection and test of the emergency light systems for the internal common parts. They said the visit involves checking the light fittings are operational (a "flick test", switching off the power supply to the lights) and charging correctly (which appears only to require a visual inspection to check that the relevant charging LEDs are illuminated) to ensure they will be fully functional in the event of power failure. They produced the relevant specification for the work and inspection certificates from 25 April 2019 onwards.

17. Mr Sahota said the monthly visits take about 30 minutes for both buildings (54-59 and 60-65). He said the annual test involves a full discharge of power for three hours to check the emergency lighting would last for this time, with any necessary work then carried out on the visit or thereafter. Miss Charles worked from home and said (apparently for the first time at the hearing) that neither she nor Mr Lord had ever seen a Pyrotec van until the last few weeks, following a visit from Mr Charles. Mr Sahota said Pyrotec had been the contractor for four years and there were little or no complaints about their service provision. He had attended the site the day before the hearing with a Pyrotec engineer, who ran through what was done each month and showed him that the emergency lighting was all working as it should. There is an anomaly in the inspection certificate prints provided in the bundle, which refer to the same previous and subsequent visit dates, but they have been completed by more than one engineer and signed. They also note, for example, that during the summer of 2020 failed LED fittings had been identified, on the top and ground floors, and replaced.

18. We consider that the total cost of £819 (for both buildings) was reasonably incurred, albeit at the upper end of what would be reasonable. Most of the checks should not have taken long, but given the nature of emergency lighting (for this three-storey building) it was reasonable for the Respondent to take a cautious approach, arranging frequent checks. The cost was reasonably incurred whether it included the cost of replacement LED fittings or those are the separate £14.35 communal lighting repair cost mentioned below. The amount payable by each Applicant for 2019/20 is their 1/12th share of £68.25. The estimated costs for 2020/21 of £64.07, and for 2021/22 of £63.69, are reasonable and payable.

Repairs (2019/20 £4.28 per flat, 2020/21 £50, 2021/22 £50)

19. The Applicants challenged costs for 2019/20 of £51.35, comprised of £37 for repairing "*both front and back doors*" (instruction produced referring to Nos. 54-65), and £14.35 for repair of communal lighting (instruction produced referring to Nos. 54-59). They said no repairs had been carried out to their block and produced photographs of the tired-looking front door (referring to what they said was an inadequate door handle), moss on the roof and what they said was "potential damp" on the exterior corner of the building, amongst other things. Miss Carter confirmed the £14.35 had been agreed. It was only the £37 which was in dispute. The Respondent said repair costs for 2019/20 had been equally apportioned between the 12 flats in 54-65 Martingale Chase, but it had found that in some cases it could not identify which repairs related to which building. It issued a revised year-end statement in February 2021, which (it said) removed those repair costs where it could not determine that those repairs related to the Building (54-59). At the hearing, it said the £37 must have related to the Building, not the other building, or it would have been removed as part of that process.

20. Miss Carter pointed out that the relevant work is described as repairing the front and back doors. She said the Building has no back door; it is the neighbouring building accommodating Nos. 60-65 which has front and back doors. Mr Charles helpfully confirmed this was correct; the Building had no back door. Otherwise, the Respondent said it provided a responsive repair and maintenance service. Mr Charles acknowledged the front door would benefit from redecoration; Miss Carter said it should be replaced. The Respondent said the Building was due for redecoration in 2023 (under a seven-year cycle) and it had found the door handle to be in good working order. They said that on 6 September 2021 Mr Charles had inspected the internal common parts and saw no signs of damp or moisture. Mr Charles said the staining on the front wall of the block is from water splashing from the guttering, not damp. He said work to clear the gutters had been ordered. He said the Respondent had already carried out remedial work in respect of damp in two ground floor flats and was arranging follow-up inspections in view of the matters described by the Applicants.

21. We consider that in view of the description of the work it is more likely that the £37 was for work on the other building, since the Building does not have a back door. The wording is less likely to indicate that the front doors of both buildings needed to be repaired, as well as the back door of the other building, and no other evidence was produced. Accordingly, we disallow that cost. The amount reasonably incurred and payable for 2019/20 is the £2.39 proposed by Miss Charles, being 1/6th of the £14.35 which related to the Building. The estimated costs of £50 for each of the following two years are reasonable, particularly in view of the further work said to be necessary, and payable.

Audit fee/"fees" (2019/20 £9.90; 2020/21 £10.14, 2021/22 £10.38)

22. The Applicants challenged an audit fee of £9.90. They said the audit had not checked delivery of costs charged, so was "worthless". The Respondent pointed out this was a fee for independent accountants to review the service charge accounts, not an audit of service provision or quality. We see why the Applicants bridled when they saw this charge, particularly in view of the failure to provide grounds management services, but this is a normal financial audit fee purely for checking the accounts, sampling invoices and the like. Miss Carter accepted this and we consider the cost of £9.90 per Applicant was reasonably incurred and payable for 2019/20. Similarly, the estimated charges for 2020/21 of £10.14, and for 2021/22 of £10.38, are reasonable and payable.

Management fee (2019/20 £85.36, 2020/21 £81.29, 2021/22 £85.85)

23. The Applicants challenged the management fee of £85.36 (per flat) for 2019/20. They said their requests were regularly ignored or unsatisfactory responses were provided. They said management was ineffective and had been "*offline*" for several months during the Covid pandemic. They said residents were having to "*self-manage*" some aspects of the block (i.e. grounds maintenance) to maintain use of parking spaces, reduce damp and allow enough light into the ground floor flats. They said the value of the management service provided was £20 per flat. The Respondent said the management fee was calculated as 15% of the total service charge costs. They said management had not been "*offline*" for several months and they adapted quickly to new ways of working during the pandemic. Ms Phillips said the charges included tendering for new contractors, managing contracts, leasehold management, administration and billing, dealing with queries and complaints, checking and paying invoices, preparing and issuing service charge statements and collecting rent and/or service charges.

24. We understand the Applicants' frustrations, with no direct contact information, apparently no clear understanding of who was managing their building at any one time and a general sense of dealing with many different specialist managers who referred matters between themselves and took a defensive approach rather than addressing problems. Mr

Charles was helpful, but had only recently been brought in to deal with some aspects of management while a colleague was away. The market rate for a proper management service was about £210 per unit several years ago and has probably increased from that figure, as pointed out and not disputed at the hearing. Miss Carter confirmed the Applicants would be happy to pay higher management fees than those claimed if an adequate service was provided, even if this was not a full open-market standard of service for a full market fee. The Applicant has not provided the type of service which would merit a normal management fee, and would have to substantially change its service delivery to merit a full market rate management fee. However, the management fee sought for the relevant years is very low. In our assessment, the claimed fee of £85.36 per flat was reasonably incurred for basic service charge administration and account documents, arranging buildings insurance and any similar fundamental work, and is payable. We do not consider that it is appropriate to charge as a percentage of the other service charge costs, or that we should reduce this management fee to reflect the reductions we have made in the other service charge costs. The estimated costs for 2020/21 of £81.29, and for 2021/22 of £85.85, are reasonable and payable.

Section 20C, paragraph 5A and reimbursement of tribunal fees

25. None of the parties could point to any administration charge which might under the terms of the leases be made in respect of the costs of these proceedings. Accordingly, we make no order under paragraph 5A of Schedule 11 to the 2002 Act. Miss Gillen helpfully confirmed that, while the Respondent's staff had spent time preparing for and attending the hearing, it had sought to avoid incurring legal costs and staff time would not be charged to leaseholders. The Respondent wanted to resolve this matter without additional service charge costs. In the circumstances, as explained at the hearing, we have decided that it would be just and equitable to make an order under section 20C of the 1985 Act to ensure there is no doubt about this in future.

26. Miss Carter said the £300 tribunal fees (the application fee of £100 and the hearing fee of £200) paid by the Applicants should be reimbursed by the Respondent. She also referred to additional costs of software to prepare the bundle. She pointed out the Respondent had refused to make any proposals in respect of grounds maintenance until the tribunal proceedings and she had sought to resolve the matter in correspondence before going to the tribunal. Miss Gillen fairly acknowledged the Applicants' frustrations and said both sides could have dealt with this differently, perhaps through the Respondent's internal complaints procedure or mediation. She said some of the disputed charges should not have been taken to the tribunal and the Respondent resisted reimbursement of fees/costs. Miss Carter confirmed there had been no suggestion of an internal complaints procedure until now.

27. Under Rule 13, we have a general discretion to order reimbursement of tribunal fees. As we explained at the hearing, we have no power to make any other order in respect of costs unless this is for wasted costs or a party has acted unreasonably in bringing, conducting or defending the proceedings, which does not appear to be the case here. In the circumstances, we have decided to order the Respondent to reimburse half the tribunal fees paid by the Applicants. The Applicants and the Respondent should all have done more to examine and seek to narrow or agree the issues. The Applicants have lost on several of the charges they challenged, but have been successful in relation to the grounds maintenance charges for the first two years and the cleaning and repair charges for the first year.

Name:	Judge David Wyatt	**Date:**	16 November 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this 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.

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

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (extracts)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.