FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/43UM/LSC/2021/0061
Property:	Various flats at Hazel House and Maple House, Sycamore Avenue, Woking GU22 9FG
Applicants:	Stefan Marev & Others (list below)
Representative:	Daniela Marev
Respondent:	Willow Reach Residents Management Company
Representative:	HML Group
Type of Application:	Section 27A and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants' application for the determination of reasonableness of service charges for the year 2018.
Tribunal Members:	Judge A Cresswell
Date of Decision and venue of Hearing:	18 February 2022 on the papers

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DECISION

List of Applicants

Daniela Marev (20 Hazel House)
Jessica Clark & Jamie Sims (14 Hazel House)
Adrian O'Callaghan & Stacey O'Callaghan (4 Hazel House)
Robyn Ambery-Smith & Christopher Ambery-Smith (17 Hazel House)
Daniele Caputo & Renisha Singh (2 Hazel House)
Chukwuma Daniel Mgbor (18 Hazel House)
Cao Son Do (16 Hazel House)
Danielle Morrison & Maria Morrison (9 Hazel House)
Jonathan Davies (24 Hazel House)
Paul Stevenson (1 Hazel House)
Stefan Marev (6 Maple House)

The Application

1. This case arises out of the Applicant tenants' application, made on 11 July 2021, for the determination of liability to pay service charges for the year 2018.

Summary Decision

2. The Tribunal reduces the charge for Estate Company Secretary Account to £144.
3. The Tribunal notes the agreement of the Respondent to reduce Estate Meetings and Inspections Account by £171.36 so that it can be accounted for elsewhere in the accounts.
4. The Tribunal reduces the charge for Estate Meetings and Inspections Account by a further £174.
5. The Tribunal reduces the charge for Estate Administration fee by £288.
6. The Tribunal reduces the charge for Hazel House General Repairs Hazel House to £378.50.
7. The Tribunal reduces the charge for Hazel House Refuse Collection Hazel House to £nil.
8. The Tribunal notes the acceptance of the Respondent that the sum of £828 for Hazel House Water Tank Maintenance - Hazel House is not payable.
9. The Tribunal allows the Applicants' application under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent

from recovering its cost in relation to the application by way of administration charge.

10. The Tribunal orders the reimbursement of fees paid by Applicants in the sum of £100.

Inspection and Description of Property

11. The Tribunal did not inspect the property.

Directions

12. Directions were issued on various dates. Directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013. Neither party requested an oral hearing.
13. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.
14. The Tribunal has regard in how it has dealt with this case to its overriding objective:

The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must:

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

The Law

15. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.
16. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
17. Under Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the tenant specified in the application.
18. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to

variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

19. In particular Parts 6 and 7 deals with bank accounts and accounting, in part as follows:

6.2 Bank accounts

You must open one or more client bank accounts which should be held at a recognised bank; that is, an institution authorised by the *Financial Services and Markets Act* 2000 or a deposit account (and not invested in deferred shares) of a building society within the meaning of the *Building Societies Act* 1986.

On opening a client bank account, you should give written notice to and seek written confirmation from the bank or building society that:

a) all money standing to the credit of that account is client money

b) the bank or building society is not entitled to combine the account with any other account or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it or any other account of yours; and

c) any interest payable in respect of sums credited to the account should be credited to that account.

Self-managed blocks should obtain a statement from their bank that the funds are ring-fenced.

You should advise, in writing, all those whose money you are holding including each client, the name of the account and the name and address of the institution. Further account details should be provided if requested. This may include whether or not it is an interest-bearing account and, if it is, the withdrawal notice period and any restrictions on withdrawals. If not immediately accessible, such restrictions will require the client's approval in writing.

7.6 Holding service charge funds in trust

You must hold service charge monies, and any interest accruing, by way of statutory trusts in accounts established in accordance with section 42 of the *Landlord and Tenant Act* 1987. Service charge payments must be kept separate from the landlord and managing agent's own money and must only be used to meet the expenses for which they have been collected.

They should be held in either separate client service charge bank accounts for each scheme you manage, or a universal client service charge bank account for all service charge monies but where monies for each scheme are separately accountable. If you operate one universal account it is a breach of trust to allow funds held for one scheme to be used to finance any other scheme. The accounts should include the name of the client or the property (or both) within the title of the account.

You should not commit expenditure unless you have the funds available to cover the costs in full. Some leases provide for the service charge account to borrow funds to meet required expenditure, but you cannot assume this to be the case without reference to the lease. In any event, you should ensure those funds have been made available prior to committing to the expenditure and should not allow service charge bank accounts to go into deficit.

You must hold such sums in trust for the purpose of meeting the relevant costs in relation to the property and they should not be distributed to the leaseholders when the lease is assigned/terminated, subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

Funds held for longer terms, or comprising large balances, should be held in an interest-earning account. Funds required to meet day-to-day expenditure should be immediately accessible. Where reserve funds are invested these must be invested in accordance with current regulations.

A trustee is under a duty to invest the trust funds not required to meet day-to-day expenditure. The investment must be in accordance with the terms of the trust, the *Trustee Investments Act* 1961 or an order made underthe *Landlord and Tenant Act* 1987 (which enables funds to be deposited at interest with the Bank of Englandor with certain institutions under Part 4 of the *Financial Services and Markets Act* 2000, including a share or deposit account with a building society, or a European

Economic Area firm mentioned in Schedule 3 to the Act). Trustees who want to take advantage of the wider powers of investment under the *Trustee Investment Act* 1961 (as amended by the *Trustee Act* 2000) should have regard to the provisions of that Act, and to the various subsequently enacted statutory instruments.

20. In **Enterprise Home Developments LLP v Adam** (2020) UKUT 151 (LC):

27. In Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25 Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this:

"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."

28. Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.

21. "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the*

case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

22. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:

    1) To make no reduction, thereby leaving the costs as they were;

    2) To adjourn to allow the landlord to provide evidence, or

    3) To adopt the **Country Trade** "robust, commonsense approach".

    The first of these options would have been wrong in the light of the landlord's concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.

    The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.

    The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal's overriding objective.

23. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.

24. The relevant statute law is set out in the Annex below.

Ownership and Management

25. Crest Nicholson Operations Limited is the owner of the freehold. The property is managed for the owner by the Respondent, which stands in its place as a party to the Lease.

The Lease

26. Paul Robert Stevenson holds Plot 79 under the terms of a lease dated 9 September 2015, which was made between Crest Nicholson Operations Limited as lessor and Mr Stevenson as lessee and the Respondent Management Company. The Tribunal understood this lease to be representative of all leases at the property.

27. The lease requires the tenants to pay twice yearly an estimated service charge, which is reconciled by the service of accounts for the period ending 31 December as soon as practicable thereafter.
28. The Development is defined in the First Schedule as: *ALL THAT piece of land situate off Westfield Avenue, Hoe Valley, Woking, Surrey now or formerly comprised in Title Number SY817220 together with any buildings or structures erected or to be erected thereon or on some part thereof under the name Willow Reach*
29. Paragraph 23 of the Sixth Schedule defines the Reserve Fund payments as follows: "*Such sum as shall be considered necessary by the Management Company (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be expected to be incurred at any time in connection with the Maintained Property save for any part or parts thereof which are specifically addressed in this Schedule.*"
30. The lease defines "*the Lessee's Proportion*" at paragraph 1 of the lease as "*a fair and reasonable proportion of the Maintenance Expenses payable by the Lessee in accordance with the Seventh Schedule.*"
31. *"The Maintenance Expenses*" are defined: "*means the reasonable and proper monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the Term in carrying out the obligations specified in the Sixth Schedule.*"
32. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).
33. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

    Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

    15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words,

in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

Estate Company Secretary Account - all applicants

The Applicants

34. The Applicants challenge the £635.97 charged.
35. HML managed to provide a backup for one £144.00 Shaw Wallace invoice, N-4015, unfortunately, it relates to the year 2017.
36. While appreciating the fact that the Respondent is using accrual accounting, for year-end accounts they expect to see the actual invoices that back up the accruals or prepayments. As they have not been provided with any invoices, they are challenging the £635.97 charge.

The Respondent

37. The Respondent provides a breakdown of the sum of £635.97 and the copy invoices. There will not be any invoices for accrual or prepayments.
38. It provides the copy invoices for £240 from Shaw Wallace to prepare the accounts for 2015 and copy invoices from HML for £660 and their credit note for £70.

The Tribunal

39. The Tribunal has found this all to be very confusing. There is no evidence that the Tribunal can see to support the levying of any charge (by HML) for company secretarial work; this does not appear to form part of the Gordon and Company management agreement with the Respondent, even if that agreement was assigned to it. Nor is there any explanation as to the £70 credit note.

40. There is also some confusion as to what rates HML charges for various tasks as its rates differ in some respects to the rates in the Gordon agreement.
41. What does appear to be clear is that Shaw Wallace charge £144 inclusive of VAT for preparing the accounts. The Tribunal, accordingly, reduces this charge to £144.

Estate Bank Charges Account all applicants

The Applicants

42. They do not consider £69.33 to be a valid estate cost.
43. They have not seen a statement of a bank account showing the service charge of £69.33, so are challenging it.

The Respondent

44. In accordance with Section 42 of the Landlord and Tenant act 1987, service charge monies must be held in a trust account on behalf of residents, to ring fence and protect the funds. Unfortunately, these accounts do attract a cost to run (hence the bank charges) and are not significantly interest bearing. With the base rate being so low, any interest attracted would be negligible. This would be split between all owners, hence being allocated to the Estate cost.
45. The bank statements are provided for the service charge and the reserve bank accounts and the breakdown of the bank charges for each quarter provided.

The Tribunal

46. The Tribunal agrees that the service charge monies should be held in a trust account and that the costs thereof are properly estate costs. If they were separated out to accounts for individual buildings, that would have the perverse effect of increasing the costs for the leaseholders. The costs are set by the bank and there is no evidence available to the Tribunal to suggest they are unreasonable.

Estate Meetings and Inspections Account all applicants

The Applicants

47. The Applicants challenge the total of £345.36.
48. That sum is comprised of two invoices; the first one HML Inv. AR31572 for £174.00 is unallowable as per CHI/43UM/LSC/2018/0024, where cost recovery through a service charge was prohibited by Judge D. Dovar.

49. The second one, HML Inv. AR31758 for £171.36 is not an estate cost, as note on invoice states: Keys and fobs for Martin, flat 7 Ash House – Respondent agreed to credit appropriately.

The Respondent

50. The Management Fees include one visit per annum and additional visits are charged – this was not a site visit for the FTT although a visit to inspect a particular aspect of the site in relation to the hearing.
51. Keys & fobs should not have been included in the estate costs and therefore this will be reallocated, and an adjustment made in the year end accounts 2021.

The Tribunal

52. The Tribunal notes the admission by the Respondent that the sum of £171.36 is not an estate cost and that it should be accounted for elsewhere.
53. At an earlier hearing, the Tribunal disallowed the Respondent's costs associated with the hearing. The Tribunal cannot see how, as described, the cost here could be anything other than a cost associated with the hearing and so disallows it. Accordingly, the Tribunal reduces the charge for Estate Meetings and Inspections Account by a further £174.

Estate Administration fee all Applicants

The Applicants

54. The Applicants refer to HML Inv. AR31781 for £288.00, note on invoice: 2-hour site visit. They do not consider this to be a reasonable expense under the administration fee account.
55. They are paying fixed management fees for the Estate and for each house within the Estate. The Respondent's reply that the management fees include one visit per annum and all others are charged is news to them and sounds unreasonable for a fixed fee contract. This is the first time they have seen the hourly charges and find this very ambiguous and worrying.

The Respondent

56. The Management Fees include one visit per annum and additional visits are charged. It attaches a copy of the Schedule of Charges for 2018, which shows the hourly rate

for a Property Manager at a cost of £120.00 plus VAT. The visit took two hours to complete, therefore the total cost is £288.00

57. The attached Management Agreement shows the Fee Structure and what is included within the Management Fee.
58. HML Holdings acquired the block management business of Gordon & Company Property Consultants, the flats and estates property management business of Gordon & Company, on 1 March 2017.

The Tribunal

59. The Tribunal has assumed that both parties to the Management Agreement agreed to its assignment to HML, the Respondent having engaged HML and operating through its agency. £120 per hour does seem to the Tribunal to be a relatively expensive charge to make, equating as it does to over £200,000 per annum.
60. Much would depend upon the circumstances leading to a charge. In this case, there is said to be an Inspection. The Management Agreement refers to a number of inspections during a year as part of the Standard Services, not one as suggested by the Respondent.
61. There is no evidence before the Tribunal that this visit was not a visit covered by the Standard Services. Accordingly, the Tribunal finds that it is not payable.
62. The Respondent might also wish to consider evidence supportive of the assignment of the Management Agreement in the event that there are further challenges.

<u>Estate Buildings Insurance Credit all Applicants</u>

The Applicants

63. The Applicant says that in 2018, HML were wrongly charging Willow Reach leaseholders for building insurance, when they were due to another company, Mainstay. Then, HML processed refunds to all, which totalled £30,830.72 in the 2018 Year End accounts provided to them.
64. After multiple requests to receive the invoice backup for the 2018 Year End accounts, due to the multiple issues, mentioned earlier, Sue Brown of the Respondent provided them with a detailed Statement of Expenditure for 2018 which lists every invoice in every account. They found multiple discrepancies between the two files, and one of them relates to Building Insurance.

65. According to the detailed Statement of Expenditure for the 2018 file, the building insurance credit was £32,966.00, which is £2,135.28 more than the amount listed in the year-end accounts. As this is the only backup they were provided with, they challenge the amount in the year-end accounts and think that all leaseholders should be credited £2,135.28 more.
66. They read the Respondent's reply carefully, but do not understand it. For year-end accounts they expect to see consistent figures across all year-end reports, backed up by invoices. Once again, they appreciate the fact that the Respondent is using accrual accounting, however, these accruals are ultimately replaced by actuals, and as the Respondent has failed to provide them with actuals, they are challenging the £2,135.28 variance. The Respondent also mentions credits in 2019 year-end accounts, however, there is no evidence that backs this statement and the provided screenshots do not add up to £2,135.28.

The Respondent

67. The Respondent says it is possible for there to be discrepancies with the Statement of Expenditure and the accounts as invoices can be incorrectly allocated at the time of payment, this is then corrected when the year-end accounts are compiled including accruals and prepayments when necessary.
68. The cheque was received for £32,965.84 on the 03/10/2018 from the developer, Crest Nicholson and it was apportioned by the developer as below between the blocks and the difference £2325.16 was for the estate insurance, so they were requested to put back into the service charge account.

Ash (Block 4) - £2,325.19 (Budgeted £2,500)

Beech (Block 6) - £5,807.32 (Budgeted £6,000)

Birch (Block 2) - £5,178.80 (Budgeted £5,500)

Hazel (Block 1) - £12,672.43 (Budgeted £13,000)

Hornbeam (Block 5) - £2,325.19 (Budgeted £2,500)

Maple (Block 3) - £2,331.75 (Budgeted £2,250)

69. The balance of credits in respect of the building insurance was credited back in the year end accounts for 2019 attached. The Apportionment of building insurance for Hazel House has already been taken into account in the FTT decision for 2018 by removing the total costs completely based on the budget.

The Tribunal

70. The Tribunal does not have jurisdiction to order the Respondent to compile its accounts in a more accurate manner. The Respondent has explained how it accounted for the monies, which it accepts were incorrectly demanded.

Estate General Reserve all Applicants

The Applicants

71. The Applicants have been requesting copies of the 2018 General reserve bank statements confirming the balance at 2018 year-end for the estate, Hazel and Maple House reserves, but none had been provided.
72. In October 2020, in the HML office, when multiple leaseholders were onsite to review the physical invoices, the bank statements were requested. Sue Brown asked them to request them formally via email, which was done as well on 8 December 2020. They had not received any confirmation of where their reserve money is kept, or any backup of the £1,632.99 negative adjustment done to the estate account in 2018 and they, therefore, challenge it.
73. The provided information for account GB30BARC20374783276368 does not match the beginning or the end balance of any of the estate/houses figures from the 2018 year-end account and it is unclear whether it belongs to the estate, a house, or to the whole development.
74. And the Respondent had failed to provide this information.
75. Following the above challenge is the first time they see any kind of backup relating to the -£1,632.99 estate reserve adjustment, however, the figures do not match the ones from the year-end accounts (1) and they do not relate to estate reserve costs (2). There is also no evidence of a -£1,632.99 adjustment in any of the provided four bank statements, so we are challenging it.

The Respondent

76. The Respondent says that the prior year surplus/ deficits adjustments and the below adjustments were made against the Estate general reserve.
77. The reserve fund statements were sent to the applicants on 04.03.21.
78. Please refer to note 4 below and of the signed year-end accounts 2018. The balance showed in the reserve account is the same as at the bank as below and in the attached reserve bank statement of £23,014.88 at the end and £9561.97 at the beginning. These funds are for the whole development.
79. As explained previously, adjustment for this amount and other reserve expenditure will be made in due course as they have now appointed directors for this development as of 21 September 2021.

The Tribunal

80. The Tribunal does not have jurisdiction to order the Respondent to compile its accounts in a more accurate manner.

Hazel House General Reserve Hazel House applicants

The Applicants

81. The Applicants cannot be assured that the 2 invoices totalling £4,464.00 listed as paid from the Hazel House reserve account have indeed been paid from there, so challenge these as well.
82. Expenses paid from reserve

Water Tank/Storage Maintenance (DSP Drainage & Plumbing Ltd) 1,728.00
Water Tank/Storage Maintenance (DSP Drainage & Plumbing Ltd) 2,736.00

£4,464.00

83. The Respondent has failed to provide them with any bank statement evidence that the £4,464.00 invoices were paid from the Hazel House reserve account. In the absence of such evidence, they would like to have the amount credited back to the reserve account.
84. Also, they have not been provided with any income/interest backup, which should be held in the trust account(s) by the Respondent.

The Respondent

85. The Respondent says that the above 2 listed invoices for the total of £4464 have been paid from the Hazel House Reserve Fund as instructed by the Property Manager.
86. £4464 invoices were originally paid out from the service charge bank account and it did not transfer the funds from the reserve account to the service charge account to cover these costs as it did not have any residences come forward to take the directorship or responsibility during that time to authorise the transaction to take the money from the reserve account. These adjustments will be done in due course.

The Tribunal

87. The Tribunal does not have jurisdiction to order the Respondent to compile its accounts in a more accurate manner.

Hazel House General Repairs Hazel House applicants

The Applicants

88. The Applicants have been challenging the Enterprise Services Groups Ltd invoices totalling £2,113.20 for many months. They have been requesting labour and material detail, as the only notes on the invoices do not justify the costs, for example - charge: £330.00, invoice note: site visit: door not closing on its own.
89. They consider the amounts to be unreasonably high without any backup provided.
90. After raising this challenge, this is the first time they are getting any kind of explanation from the Respondent; however, they cannot accept the provided evidence. The Work Order files are in Word format, so they could have been created or modified any time and lack the detail they are requesting.
91. In addition, the Respondent mentions that they are only using accredited contractors, but if one searches for Enterprise Services Group Ltd online, one will see that they specialise in cleaning and not in Door Repairs, which could explain their multiple visits to fix a front door in the duration of a year. They consider this an ineffective and inefficient way for the Respondent to manage the leaseholders' money.

The Respondent

92. The Respondent refers to the various invoices and work orders and explains:
93. Invoice £173.70

    WO 224789 03.10.18 states - Please have your locksmith to attend to the plant room door @ Hazel House to break the lock so that DSP Drainage can attend to resolve the issue with the water. Please provide us with a couple of keys to be labelled up

and put in the on-site key safe

This indicates that the key had been taken from the on-site key safe and not replaced, as there was an issue with the water pumps it was urgent and important to access the pump room.

94. Invoice £690.00

WO 215699 06.07.18 states - Please attend to Hoe Valley - Hazel House. We are still having issues with the main front door of Hazel House does not close onto the magnets when closing on its own. It draws in close but does not close fully. If one pushes the door it will engage with the magnets, but not if it's left to close on its own. As such the door is ajar 90% of the time. If the door cannot be fixed, please quote to replace.

The contractor spent some considerable time adapting the door in order that the building could be made secure

95. Invoice £450.00

WO 201310 16.02.18 states - Please can you attend to Hazel House as the AOV is open and we need a temporary cover placed until the engineer gets the parts. Ideally need someone over this afternoon or at the latest tomorrow. If it rains, we could suffer a flood into the building on the top floor.

This indicates that an urgent attendance was required.

96. Invoice £354.00

I am unsure of the query – this amount was allocated to Ash House – Hazel House was charged £84.00

97. Invoice £330.00

WO 214097 21.06.18 states - Please attend to Hoe Valley - Hazel House. The main front door of Hazel House does not close onto the magnets when closing on its own. It draws in close but does not close fully. If one pushes the door it will engage with the magnets, but not if it's left to close on its own. As such the door is ajar 90% of the time.

The contractor attended and made the necessary repair

98. Invoice £115.50

WO 225918 15.10.18 states - Please attend to Hazel House to repair the main front door. Apparently, the plates of the locking mechanism are loose.

The contractor attended and made the necessary repair

99. We do not consider that the cost of the works is excessive. Contractors generally do not issue invoices with complete breakdown of work for reactive orders, which all of these are. HML use accredited contractors which are vetted before being approved for use.

100. The work orders have now been attached for ease of reference – these are word documents, however they have been downloaded from our in-house system and have not been created or modified at any time.

The Tribunal

101. The Tribunal accepts that contractors often do not issue detailed invoices. That is where the detail of the work orders fills the gap. There is no evidence before the Tribunal to suggest that the work orders are other than genuine documents.

102. However, it has cost the leaseholders some £1,135,50 to fix the locking of the front door of Hazel House, the cost doubling after the first attendance. It is not reasonable to expect a customer to pay 3 times within less than 4 months to fix a door without further explanation. Taking an average of the 3 visits at £378.50, the Tribunal finds that the Respondent ought to have been more "on top" of this issue and expected its contractor to solve the issue on a single visit. Accordingly, the Tribunal reduces this charge to £378.50.

<u>Hazel House Refuse Collection Hazel House applicants</u>

The Applicants

103. The Applicants challenge the Enterprise Services Groups Ltd. invoices totalling £756.00 (£252.00 each), as they have not been provided with any invoice details, labour/materials/quotes/work reports, etc. apart from a general note: removal of dumped/bulk rubbish.

The Respondent

104. The Respondent says that this is the standard cost for removal and disposal of rubbish left in the communal areas. This varies and could be residents leaving bulky items in the communal areas or bin store, which will not be removed by the council refuse collectors. Or removal of items dumped in the estate grounds.

105. This is a standard cost, and the invoice will not show details.

The Tribunal

106. The Tribunal would expect the contractor to be acting on the instruction of the Respondent, but the Respondent has not provided work orders for this work. If there are no work orders, then the contractor's invoices are incapable of checking as to requirement and the scope of work. As such, these invoices are not payable by the leaseholders.

Hazel House Water Tank Maintenance • Hazel House all applicants

The Applicants

107. The Applicants' reason for challenging DSP Drainage and Plumbers, Inv. D7535 for £828.00 is that the charge does not belong to Hazel House, Block 1, but to Birch House, Daniela Marev confirmed with DSP via phone.

The Respondent

108. The Respondent HML have looked through their work orders and invoices and cannot see any mention of the block on any documentation. It has also contacted DSP Drainage and they believe that they attended to Birch House although cannot provide any documentation to prove this. They sent the report to HML, which included photographs and it asked the pump contractor if it was possible for them to identify the pump. They could not and therefore this will be reallocated, and an adjustment made in the year end accounts 2021.

109. Since late 2019 all work orders have included the block name to ensure this confusion does not occur again. It also has a new system in place in which you are unable to place a work order without allocating the block.

The Tribunal

110. The Tribunal notes the acceptance of the Respondent that the sum of £828 is not payable.

Hazel House AOV OV System Hazel House all applicants

The Applicants

111. The Applicants' reason for challenging HML inv. 1112252 for £288.00 with an invoice note: PM to Site to Open AOV is because they believe this is an unreasonably high charge without any further detail provided by HML.

112. They also do not understand why it would be necessary for a property manager to be performing this action, as they are sure there would be other cheaper and faster ways of getting it done. They also would like to note that the AOVs are managed by a

separate company, Bespoke Detection Services Ltd, that charged less money for an AOV survey 10 days later.

113. Here, they need to repeat their previous comment about the hourly charges as very unreasonable for a fixed service fee contract.

114. There is also a discrepancy between the invoice note: *PM to Site to Open AOV* and the Respondent's statement: *Property Manager to attend Hazel House to close the AOV*, which makes them very concerned about the appropriate property management of their development and homes.

The Respondent

115. The Respondent says that this invoice is for a Property Manager to attend to Hazel House to close the AOV, which someone had opened. Unfortunately, the invoice erroneously states that attendance was to open the AOV. As previously mentioned, the hourly rate for a Property Manager is £120.00 plus VAT. The visit took two hours to complete, therefore the total cost is £288.00. If the AOV had not been closed the building could have suffered considerable damage internally.

116. The AOV had to be closed urgently to prevent any damage for inclement weather and contractors were not available to attend the same day.

117. As previously stated, the invoice unfortunately erroneously states that attendance was to open the AOV.

The Tribunal

118. The Tribunal notes that this was an emergency visit and that £450 was charged by the contractor for a more involved emergency visit for a similar issue on 16 February 2018. Whilst again noting the relatively high hourly rate charged, there is no evidence before the Tribunal that the emergency could have been addressed at a lesser cost and, accordingly, the Tribunal finds it to be payable.

<u>Hazel House Lift Maintenance Hazel House applicants</u>

The Applicants

119. The Applicants challenge Kone PLC, Inv. 10327686, totalling £3,588.62, for the period 1 Dec 18 to 31 Nov 19, amount allocated to Hazel House is £1,810.00, because this was a prepayment, yet the full charge applied in 2018. They believe that the 2018 reasonable charge should be the amount incurred for December 2018 - £180.53.

120. The statement by the Respondent that the amount was budgeted for year 2018 does not justify its entire spend, just the one relating to year 2018.

The Respondent

121. The Respondent says that lift maintenance had never been placed in the past years 2016 & 2017. This is the first cover made from December 2018. So the full charge applied in 2018 for Hazel House & Beech House and the amounts have already been budgeted for.
122. The Kone invoice is for the year of 2018 and is for both lifts at Willow Reach and the amount allocated is for service and maintenance of the lift at Hazel House.

The Tribunal

123. The Tribunal can see no evidence to gainsay the assertion of the Respondent that, although the invoice was raised in December 2018, it was for the whole year, so that it finds £3,588.62 to be payable.

Hazel House Out of Hours Emergency - Hazel House applicants

The Applicants

124. The Applicants challenge HML Inv. 10311 for £969.92, amount allocated to Hazel House - £355.00, as they were provided with no charge backup by HML of how the cost was allocated to the house.

The Respondent

125. The Respondent says that the cost was allocated to Hazel House as being 36.62% of the total amount. Hazel House has 26 flats being 36.62% of the total number of flats, which is 71.

The Tribunal

126. The Tribunal notes the explanation requested by the Applicants has been provided by the Respondent.

Estate Gardening - Maple House applicants

The Applicants

127. The Applicant say that there was no gardening done outside Maple House in 2018, therefore, they would like for the allocation to exclude any charges that might have been allocated to Maple House from the £3,021.29 total to be credited back.
128. They attach photographs and an email chain with Sue Brown, where she did not refute the fact. Email Subject: Fwd Maple house 2018 accounts - Gardening.msg from 9 April 2021 and Fwd Maple House - Gardening Service.msg from 3 January 2020.
129. The first sub-standard gardening was done in December 2019, as it is clearly shown in the previously attached email Fwd Maple House - Gardening Service.msg.
130. They also attach a witness statement from a prior Maple House resident, who confirms that there was no gardening done outside Maple House in 2018 (email Ref outdoor area maintenance gardening service at Willow Reach estate and Maple House.eml.msg, from 28 October 2021). Therefore, they would like for any gardening charges allocated to Maple House in 2018 to be credited back to the Maple House residents.

The Respondent

131. The Respondent says that the email received from Ms Marev dated 6th January 2020, advised that the gardens adjacent to Maple House had not been attended to until December 2019. However, there is no evidence of this, and whilst there may be bare patches in the borders there does not seem to be any great issue other than the shrub, which is at the entrance door to Maple House, and was arranged to be pruned. When this was done, the residents complained saying it had been ruined, although it did grow back and has since been kept controlled. The budget does not allow for replacement plants only for ongoing maintenance. More shrubs are due to be planted this Autumn.
132. The gardeners would make an additional charge to replace planting as this cannot be included in the general maintenance costs. It believes that the decision not to replace the failed planting was made as the property was very new and the exact expenditure was not known at that time. This has now been completed this Autumn.

The Tribunal

133. The Tribunal notes that the Applicants are committed to paying a proportion of the Estate Costs (i.e. costs attributable to the Development), not simply gardening

associated with their own buildings. Their evidence concentrates on Maple House only, such that there is no suggestion that the funds expended were not expended on other parts of the Estate.

134. Whilst appreciating the realistic concerns of the Maple House residents, there is insufficient here for the Tribunal to find that this was, the above Estate Costs having been detailed, other than a reasonable demand.

135. It is worth flagging up at this time that there is an issue with how the gardening charges are made.

136. Paragraph 1 relates to the Maintained Property and reads: *Keeping the Maintained Property generally in a neat and tidy condition and tending and renewing or improving any lawns flower beds shrubs and trees forming part thereof a necessary and maintaining repairing and where necessary reinstating or improving any boundary wall hedge or fence (if any) on or relating thereto including any benches seats garden ornaments sheds structures or the like.* Here there is true gardening involving renewal and improvement.

137. The Respondent treats Estate Gardening as an Estate Charge and yet the definition of Maintained Property in the Second Schedule includes the Communal Gardens and the Blue Land. It may be as long as it is short to charge this as an Estate Charge, but it should actually be a Maintained Property Charge. The result may be the same as the burden is likely to be shared by the various Maintained Properties on the Development.

Paragraph 5A Application

138. The Applicants have made no application under Section 20C Landlord and Tenant Act 1985 as earlier Directions pointed out, but have made an application under Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.

139. The relevant law is detailed below:

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(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.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Rules 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"):
Rule 13.

> *(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

Paragraph 5A

140. The Applicants appear to have been forced before the Tribunal by the Respondent's performance in accounting so late in the day and, in some instances, causing confusion with how it presents its accounts and they have been substantially successful. Whilst appreciating that the costs may fall on others, the Tribunal allows the application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as

relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicants in this or any other year.

Fees

141. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*

"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."

142. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicants with the fees paid by them. There appears to the Tribunal to have been no other viable option open to the Applicants to resolve the issues save by making their application to the Tribunal. The Respondent is ordered to pay the sum of £100 to the Applicants in reimbursement of fees.

RIGHTS OF APPEAL

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

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an

extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

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

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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.

27A Liability to pay service charges: jurisdiction

(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-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a postdispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.