



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT at  
Leicester, sitting at Centre City  
Tower, 5 – 7 Hill Street,  
Birmingham B5 4UU.**

**Tribunal reference** : **BIR/00FY/LIS/2020/0041 and 42  
BIR/00FY/LIS/2021/0004 and 5  
BIR00FY/LLD/2021/0002 and 3  
BIR.00FY/LLC/2020/0005**

**Court claim number** : **G4QZ277Y & G4QZ285Y**

**Properties** : **6 and 7 Royal Court, Haydn Road,  
Nottingham, NG5 2JU**

**Applicants (tribunal)** : **Mr Darrell Wayne Redmond and  
Mrs Rosie May Redmond**

**Respondent (tribunal)** : **Blue Property Management UK  
Limited**

**Representative** : **Blue Property Management UK  
Limited**

**Tribunal members** : **Judge D Barlow  
Mr Wyn Jones**

**In the county court** : **Judge D Barlow (sitting as a Judge  
of the County Court)**

**Date of decision** : **29 March 2022**

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**DECISION**

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## Summary of the decisions made by the FTT

- (1) Service Charges: the reasonable service charge the Applicants are liable to pay is the amount demanded by the Respondent for each service charge year in dispute, reduced by the deductions set out in the table below (and in detail, on the annexed Schedule), less the amounts already paid by the Applicants' in respect of Services Charges demanded for the years in dispute.

\*Years 2017 to 2019 show only the 'on account' demands as no balancing charge demands have been made by the Respondent landlord for those years.

S/C year	Amount demanded	S/C deductions Flat 6	S/C deductions Flat 7	S/C payable Flat 6	S/C payable Flat 7
2009	£840.08	-	-	£840.08	£840.08
2010	£1153.34	£103.72	£103.72	£1042.62	£1042.62
2011	£952.75	-	-	£952.75	£952.75
2012	£1297.33	£720.06	£720.06	£577.27	£577.27
2013	£1383.50	£670.00	£670.00	£713.50	£713.50
2014	£1209.84	-	-	£1209.84	£1209.84
2015	£1571.50	-	-	£1571.50	£1571.50
2016	£1802.25	£187.25	£187.25	£1615.00	£1615.00
2017	*£1481.00	-	-	£1481.00	£1481.00
2018	*£1525.00	-	-	£1525.00	£1525.00
2019	*£1432.00	£75.00	£75.00	£1357.00	£1357.00
2020	£1406.00	-	-	£1406.00	£1406.00

- (2) That a reasonable estimated service charge for the year ending 31 December 2020 is as shown in the table above (and in detail on the annexed Schedule).
- (3) The Tribunal makes no order, under section 20C of the Landlord and Tenant Act 1985.
- (4) The Tribunal makes no order, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

## **Summary of the decisions made by the County Court**

- (1) Service Charges of £2,073.67 in respect of Flat 6 Royal Court.
- (2) Services Charges of £2,241.53 in respect of Flat 7 Royal Court.
- (3) Costs under clause 33 (a) and (c) of Schedule 6 to the lease of Flat 6 Royal Court, of £410.00;
- (4) Costs under clause 33 (a) and (c) of Schedule 6 to the lease of Flat 7 Royal Court, of £410.00;
- (5) Administration charges under clause 33 (a) and (c) of the Lease of Flat 6 Royal Court, of £411.80;
- (6) Administration charges under clause 33 (a) and (c) of the Lease of Flat 7 Royal Court, of £374.30;
- (7) The Court makes no order for contractual interest.
- (8) The Court makes no order, under section 20C of the Landlord and Tenant Act 1985.
- (9) The Court makes no order, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

\*The total award was reduced by the sum of £288.48 as summarised in paragraph 134.

## **Background and Directions**

1. The Respondent Management Company issued proceedings against the Applicants on 9 March 2020 in the County Court Business Centre under claim numbers G4QZ277Y and G4QZ285Y, for unpaid service charges relating to Flat 6 totalling £6,354.49 plus the court fee of £410.00; and for Flat 7 totalling £6,326.27 plus the court fee of £410.00. The first Applicant filed a counterclaim on 1 April 2020 which was struck out by the court for failure to pay the court fee. The first Applicant applied to re-instate the counterclaim. Both proceedings, including the first Applicant's application for re-instatement of the counterclaim, were then transferred to the County Court at Leicester and then to this tribunal by the order of District Judge McClure dated 23 July 2020.
2. The order transferring issues to the tribunal was in wide terms:

“All matters within the jurisdiction the First Tier Property Tribunal are transferred to the First Tier Property Tribunal” for determination together with “all outstanding issues including costs and interest” and for the avoidance of doubt, including the first applicant's application for reinstatement of his counterclaim.
3. All First-tier Tribunal (“FTT”) judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County

Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.

4. On 20 January 2021, the Tribunal received applications from the Applicants' for determination of their liability to pay and the reasonableness of service charges, under section 27A of the Landlord and Tenant Act 1985 ('the Act'), together with applications for the Tribunal to make orders to limit service charges payable under section 20C of the Act and for orders to limit administration charges payable under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').
5. The Tribunal wrote to the parties on 13 May 2021, informing them that all the issues in the proceedings would be decided by a combination of the FTT and the Tribunal Judge member of the FTT, sitting as a Judge of the County Court. The matter eventually came to a remote video hearing on 7 and 8 July 2021
6. Accordingly, Judge Barlow presided over both parts of the hearing, which has resolved all matters before both the Tribunal and the Court.
7. This decision will act as both the reasons for the Tribunal decision and the reasoned judgment of the County Court.

#### The Property

8. The Royal Court building comprises 12 flats who share the service charge in equal proportions of 8.333 recurring percent. The Tribunal did not inspect the Property but were told by the Respondent's representative that the external common parts comprise a car parking area, a bin store and an electronic gate leading to the car park. There is cladding to the back of the building which has recently been tested. On the roof there is a communal sky system and a communal aerial system. Access to the building is through a front door with an intercom entry system and *maglock* door entry.
9. Internally there are three floors. Entrance to the building is through the front door into a corridor which in turn leads to two ground floor flats. It also houses riser cupboards and a staircase leading to the flats on the first and second floor (five flats on each floor). There is a back door leading to the external car park. All the common parts of the building are maintained by the Management Company. Internally there are nine fire doors with glazed panels and windows on each of the first and second floor landings.
10. The cost of cleaning the internal glazing within the common parts of the building and the external windows for the entire building, including the flats windows, forms part of the service charge.

11. The ground floor car park which is partly built over, has 10 spaces plus one disabled space.

#### The Lease

12. The Applicants' hold the Properties under long leases, which are on identical terms to those of the other flats. Each lease requires the Management Company to provide the services set out in the Seventh Schedule to the lease and the lessee is required to contribute towards the 'Service Costs' and expenses set out in the Ninth Schedule by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

#### The Proceedings

13. The claims against the Applicants' in the County Court comprised of the following:

##### 6 Royal Court

- (i) A service charge amounting to £6,364.49 (including interest on arrears and administration charges) in respect of service charge years 2017-2019;
- (ii) The Court Fee of £410.00

##### 7 Royal Court

- (i) A service charge amounting to £6,326.27 (including interest on arrears and administration charges) in respect of service charge years 2017-2019;
- (ii) The Court Fee of £410.00

14. The Statements of Account provided in support of the County Court claim showed a rolling balance of service and administration charges demanded, against payments received, from the Applicants for the period 31 December 2009 to the issue of proceedings on 6 March 2020. The accounts had however been reduced to zero at various times and the outstanding charges predominantly relate to the service charge years 2017-2019. The Statements included the 'on account' charges for 2017 – 2020 inclusive but no balancing charges for those years.
15. The applications under s27A of the 1985 Act seek determination of service charges and administration charges for the years 2009-2019 (inclusive) and the reasonableness of the budget demand for 2020. The service charge year runs from 1 January to 31 December in each year.

## Directions and Hearing

16. Directions were made on 26 January 2021, confirming that the Tribunal does not have jurisdiction to determine litigation costs in connection with proceedings begun before 6 April 2017, under paragraph 5A of Schedule 11 to the 2002 Act. The Directions also sought clarification as to the correct Respondent given that the Management Company appeared to be representing a company called Torminalis Limited. A remote hearing using Cloud Video Platform was held on the 7 and 8 July 2021. The Applicants' were represented by Mr Redmond. The Respondent was represented by Mr Marlow a senior manager of the Respondent Management Company.

## **The Issues & Decisions (FTT)**

### **Service charges**

17. The Applicant leaseholders' argue that some of the Service Charges were not reasonably incurred. The disputed heads of Service Charge were set out in detail within two Scott Schedules. They broadly fall within the following categories:
  - (a) The overall increase in the level of the service charge over the years in question.
  - (b) The extensive use of Blue Property Maintenance UK Limited ("Blue"), and other associated companies of the Management Company, for most of the services provided.
  - (c) Electricity charges.
  - (d) The hourly rates charged by Blue for cleaning of common parts.
  - (e) The cost of Health and Safety and Fire Risk assessments.
  - (f) The hourly rates charged to the Management Company by Blue for specific items of maintenance and repair, including the electric gate for each of the service charge years in question.
  - (g) Removal of waste
  - (h) Management fees.
  - (i) Other general complaints that do not directly challenge specific invoices.
  - (j) Administration fees.

18. Mr Redmond also complained that demands for balancing charges were often sent a long time after the end of the relevant service charge. The Management Company's response was that the balancing charges complied with s20B of the 1985 Act. However, during the hearing it was acknowledged by the Respondent that the date of the balancing charges for service charge years 2010, 2011, 2012, 2014, 2015 and 2016, made it unlikely that all relevant costs incurred during those years, could have demanded within the time limits imposed by s20B. Mr Redmond had not made any specific challenges in his statement of case. Consequently, the issue had not been addressed by the Management Company in any detail. Determination of this issue was therefore postponed on directions that the Management Company provide a schedule of all relevant costs demanded outside the time limit imposed by s20B for the service charge years specified below. Mr Redmond was given an opportunity to provide submissions on the schedule and the Tribunal reconvened to consider those submissions and hear further oral submissions from the parties on 24 November 2021.

Year ending 31 December	2010	2011	2012	2014	2015	2016
Date of balancing charge	29 June 2012	25 June 2013	27 June 2014	21 Jan. 2016	1 Jan. 2017	29 Dec. 2017

## **The Arguments**

### ***Overall increase since 2009 and the use of Blue and associated companies for the services***

19. Mr Redmond said that his main concern was the steep increase in the overall level of service charge since 2009, which he believed was due to the extensive use of associated companies of the Management Company rather than competitive tendering with third-party contractors. In 2009 his service charge was £720.00 per flat. It has risen steadily over the years to £1,432.00 per flat in 2019.

20. Mr Marlow confirmed that the Management Company placed most of the services with associated companies, because it was a more convenient and efficient way of providing them. The only services they did not provide were specialist services such as TV and aerial maintenance, roofing and external cladding. The Management Company did however continuously benchmark its services against those provided by other companies. Mr Marlow explained that the management Company also managed approximately 160 other sites in the UK, 45 of which were personally managed by him. Some were fully managed, others only partially managed

by the company. He was therefore required to tender for additional services on some sites and consider tenders received on other partially managed sites. Consequently, the Management Company were able to continuously monitor the general level of pricing for various heads of expenditure.

21. Mr Marlow denied that the services had increased substantially over the past 10 years and suggested that the increases were in fact steady because the Management Company operated a 'one-stop-shop' for the services.
22. Mr Redmond said that the use of associated companies was at the heart of his challenge and contended that where work was carried out by an associated company, it should not be for profit. Mr Redmond's argument on this point was not entirely clear but he appeared to suggest that as a management fee was charged by the Management Company for managing the services, if those services were provided by an associate company, they should be carried out at no additional cost or certainly with no profit element. Mr Marlow submitted that all commercial companies work for a profit and had independent contractors been used to provide the services, the charges would always include a profit element. The Management Company was however conscious that it effectively set the rates for the jobs and that is why it regularly benchmarked the costs of the services to ensure that the charges and hourly rates were reasonable.

#### Deliberation

23. Mr Redmond's concerns about hourly rates and the use of associated companies formed the basis of most of his challenges to specific items of charge. However, he provided no comparable evidence of the likely level of charges available for the services had the Management Company undertaken competitive tendering for any of them. Using its expertise as a specialist tribunal the Tribunal determined that the hourly rates and day rates charged for the services provided by Blue and other associated companies, to the Management Company, were within a range of reasonable rates for the particular services in question. Further comment on the specific heads of challenge is set out below and the effect of the Tribunal's determination in each case is set out in the Schedule.

#### ***Electricity charges***

24. Mr Redmond's complaints are threefold. First, there are no invoices supporting the earlier years charges; secondly, there is a larger charge in 2009 that is unexplained; and finally that invoicing from 2018 is on a rolling credit/surplus basis brought forward each year and that consequently, leaseholders are paying in advance for poorly estimated charges.



25. Mr Marlow said that he had only been in post since 2018 and invoices for services going back to 2009 were not now available. Had Mr Redmond raised this issue earlier it would have been possible to provide invoices for the earlier years. However, no challenge or concern about electricity charges had been made until these proceedings.
26. Furthermore, the amount charged to the leaseholders was set by the utility company based on previous years usage and the direct debit set up and managed by the Management Company, was intended to cover the anticipated usage. The fact that the direct debits had always been sufficient to cover the charges, rather than undershooting, indicated that the electricity account had been correctly managed. Mr Marlow acknowledged that the charges for 2009 were higher, but as invoices going back that far were no longer available, he could only now guess why that might be.

#### Deliberation

27. The Tribunal finds it unsurprising that the Management Company has not retained invoices for hitherto unchallenged electricity bills dating back 10 years. The lack of an invoice does not of itself render relevant costs unreasonably incurred, absent any other evidence that the charges might be unreasonable. The higher charge in 2009 is not explained but neither does the lack of an explanation render the charge unreasonable. As the charge was not challenged in 2010 or in fact prior to these proceedings, it is likely that the charge was not regarded as unreasonable at the time it was incurred.
28. The Tribunal finds that the Management Companies method of invoicing on a rolling credit to be both a usual and sensible method that avoids an unwelcome balancing charge being levied at the end of the year. In any event it is not suggested that the electricity charges are unreasonably incurred or not provided to a reasonable standard. The Tribunal therefore finds the electricity charges to have been reasonably incurred and reasonable. The effect of these determinations is reflected in the Schedule below.

#### ***Cleaning***

29. Mr Redmond's complaint is essentially the same for each year. He believes the hourly rates charged are unreasonable. In evidence he also submitted that there was an issue with visibility of the cleaning staff that led him to suspect they did not always clean as invoiced. The visibility concerns were, he said reported to him by previous tenants, from whom he had hoped to obtain a witness statement but had not been able to do so.
30. Mr Redmond did not have any evidence of comparable quotes for cleaning of the common parts. He said that as the cleaning was carried out by an

associated company the rates were not transparent. The lack of transparency meant he could not be sure that the rates were reasonable. Also, that in his view the charges should form part of the management fee. Furthermore, an invoice dated 9 July 2019 [pg 324 in the Respondent's original bundle] for 'Rug Doctor' carpet cleaning charges, included reference to a day rate for two men of £187.50 plus vat. Mr Redmond therefore inferred that as cleaning carpets was much the same task as general cleaning, the appropriate hourly rate was £11.72 based on the day rate shown on the 'Rug Doctor' invoice divided by 2 men working an 8-hour day.

31. Mr Redmond referred the Tribunal to an individual contractor's invoice in 2019 which indicated the contractor had been unable to contact the caretaker on site for entry and had left without dealing with the call out. This, taken with his tenant's comments about visibility, was Mr Redmond submitted, sufficient to establish a pattern of the cleaner/caretaker not being visible on site.
32. Mr Marlow explained that the Management Company arranged for the entrance doors and common parts of the property to be cleaned fortnightly by Blue. The charges were invoiced to the Management Company monthly. In 2009 the charges were £115.00 per month (including VAT). In 2010 the charges were £117.00 per month inclusive, rising to £120.00 per month inclusive in 2011. Mr Marlow believes the charges in 2009 were based on hourly rates of approximately £20.00 for two fortnightly visits of 2.5 hours. This was increased in 2011 to £25.00 per hour and remains at that level.
33. Mr Marlow said that the cleaners did not just undertake cleaning of the common parts within the building. They also dealt with litter picking in the car park and external areas, the bin stores, reported abandoned vehicles, took monthly utilities readings, checked all accesses were clear for emergency vehicles, checked all internal and external fire doors and lighting, fire escape routes, fire alarms and call points. They also checked that all internal and external lighting timers were correctly set. The carpet cleaning invoiced in the 2019 'Rug Doctor' invoice would have been charged at a day rate of £187.50 for a maintenance engineer not a cleaner (increased in 2019 from the £150.00 day rate previously charged). The invoice would equate to two men for 1/2 a day plus one hours overtime charged at £35.00. The day rate in 2019 for maintenance engineers was not, he suggested, a relevant comparable to the hourly rates charged for general cleaning.

#### Deliberation

34. Mr Redmond may not be happy about the cleaning charges or what he describes as a lack of transparency concerning the hourly rates charged by the Management Companies associated companies, but it has been open to him for some considerable time to obtain relevant alternative quotes for

the work. Alternative quotes might either have assuaged his suspicion that the Management Company is profiteering at his expense, or alternatively provided some evidence in support of his concerns. As it is, Mr Redman has not provided any convincing evidence to substantiate his concerns about the hourly rates charged.

35. The tenuous link between Mr Redmond's tenant's complaint about lack of visible cleaning and a contractor's comment on the 'Rug Doctor' invoice in 2019, is insufficient evidence for the Tribunal to conclude that a pattern is established that demonstrates the cleaning has not been provided to a reasonable standard.
36. Clause 8 of the lease permits the Management Company to employ and pay other companies to carry out any duties of the Management Company under the lease.
37. Using the Tribunal's expertise as a specialist tribunal, the Tribunal has determined that hourly rates for cleaning and the ancillary services provided, in the location of the Property, would generally fall within a range of £20.00 - £35.00 per hour (exclusive) for the years in question. The Tribunal dismisses Mr Redmond's submission that the day rate specified in the 2019 'Rug Doctor' invoice can be used as a comparable for concluding that £11.72 is a reasonable hourly rate for cleaning, because it relies on an improbable inference that a cleaning company could have been found that would have been prepared to undertake the cleaning service for the Property, at that rate.
38. The Tribunal does not therefore find that the hourly rates charged by the Management Company for cleaning and ancillary services, to have been unreasonably incurred or unreasonable. The effect of these determinations is reflected in the Schedule below.

### ***Health and Safety compliance checks and Fire Safety checks***

39. Mr Redmond's challenge is that the H&S checks and the Fire Safety checks are carried out by an associated company for annual fees of £240.00 per report. A total charge of £480.00 every year. Mr Redmond submitted that the assessor is often the same person who attends on the same day and just provides an updated report which is identical to the previous year's report, consequently, the costs are unreasonably high. Mr Redmond submitted that the assessors' time should be for both reports, and if there is no change from the previous year's report, no additional charge should be made because the assessor is just re-dating and replicating the earlier report.
40. Mr Marlow said that the Management Company was under a contractual duty to comply with the regulatory obligations of the landlord. This included a

duty to arrange annual compliance tests by suitably qualified assessors. The checks were not just a re-dating of the previous year reports, the assessor had to inspect to confirm if there were any new hazards or fire safety risks that needed to be addressed. The charges are, he submitted reasonable and in line with those charged by independent assessors who's charges Mr Redmond could easily have benchmarked if he had concerns.

## Deliberation

41. Clause 9 of the Ninth Schedule to the lease permits the Management Company to include as part of the service charge, the cost of compliance with notices, regulations and orders of any competent Authority that affect the Estate. The person responsible for the common parts of the building must comply with the Regulatory Reform (Fire-Safety) Order 2005 to keep occupants of the building safe. This is generally addressed by a fire safety risk assessment to take account of existing fire safety measures and determine whether additional measures are necessary. That assessment must be reviewed regularly to keep it up to date and the frequency of that review is a matter of judgement for the Management Company, taking into account the size, age and condition of the building.
42. Similarly, under the Management of Health and Safety at Work Regulations 1999, all blocks of flats must have a health and safety risk assessment carried out for the communal parts, if used by contractors, staff and visitors. The assessments should be regularly reviewed at the discretion of the Management Company and will generally consider the Work at Height Regulations 2005 where planned work involves contractors or employees working at height to for instance to change light bulbs, clean upper floor windows or repair ceilings and roofs.
43. Mr Redmond appears to think the assessments are a box ticking exercise that should be carried out at minimal, or no cost to the leaseholders. The Tribunal disagrees. Given the size of the building the Management Company might want to consider whether the fire safety assessment could be safely be reviewed every other year, rather than annually, but there is no evidence before the Tribunal to suggest that the charge for an annual review is unreasonably incurred. Charges for H&S and Fire Safety assessments vary depending on the size, style and complexity of the property, but using its expertise the Tribunal finds that charges of between £240 - £599 to be fairly standard for a mid-level block of flats of this size. The Tribunal does not therefore find that the annual charges for the H&S and Fire Safety Risks assessments to be either unreasonably incurred or unreasonable. The effect of these determinations is reflected in the Schedule below.

***Hourly rates charged by Blue for items of maintenance and repair, including the electric gate.***

44. Mr Redmond's challenges fall into three main categories: charges for maintenance of the electric gate; hourly rate charges for technicians changing lights, lamps and light bulbs; labour rates charged for various items of maintenance and repair.

*The electric gate charges*

45. In relation to the electric gate Mr Redmond's complaint is that he did not understand the basis of a charge in 2010 of £150.00 [page 347 of the bundle]. Mr Marlow explained that this was the annual servicing charge for the electric gate. The annual service included checking the electrics, the fob entry and emergence release system. Mr Marlow said that while 2010 was too long ago for him to be sure, he thought £150.00 was the day rate then being charged. A day rate was charged where using hourly rates (which in 2010 for a gate technician would, he thought, have been about £30.00 per hour) would result in a higher charge than using the day rate. The day rate was cheaper when, with travelling, the technician was likely to be engaged for more than 5 hours.
46. Mr Redmond also complained that in 2011 the charges of £120.00 for a call out did not appear to be either day rate or hourly rate [pages 246 – 247 of the bundle]. Mr Marlow explained that some call out work was charged on a menu of set fees set out on Blue's website. The Management Company had benchmarked Blue's set fees against other companies providing similar specialist electric gate services. Other companies such as Magitech, Walton Gates and KC Automaton also use fixed rates for some services. Magitech charge unit prices of £150.00 for a call out if you have a contract with them. If not, a one off call out charge is about double that. Based on other rates, a call out fee of £120.00 was he submitted, reasonable.

Deliberation

47. As with Mr Redmond's other heads of complaint he did not provide any evidence of cheaper alternative quotes for the work. There is therefore no evidence on which the Tribunal can conclude the charges for servicing and call out charges for the electric gates are either unreasonably incurred or unreasonable. The effect of this determination is reflected in the Schedule below.

*Charges for changing light bulbs and lamps*

48. Mr Redmond challenged invoiced sums totalling £539.90 in 2011, for replacing light bulbs and lamps over a period of 12 months which involved 8 separate visits to the property [page 350 of the bundle]. Mr Marlow

explained that in 2011 the Management Company contracted out all electrical work that needed to be certificated. However, non-certificated work such as changing light bulbs, was carried out by technicians employed by Blue. In this case the work was carried out by a named Blue technician described as a multi-skilled operative. Mr Redmond said that he had to accept the charges were made because he could see the invoice had been presented to the Management Company, but he was concerned that the charging rates may not be reasonable. He reiterated his argument about lack of transparency between the associated companies and his submission that the charges should be included in the management fee.

49. Mr Marlow submitted that charges totalling £590.00 for 8 visits to the property over a 12-month period, which also included the cost of the replacement bulbs and starter switches, was not unreasonable. He said that although Mr Redmond had not provided any comparable quotes, he'd be very surprised if it was possible to get any third-party contractor to attend the property on eight occasions for charges of less than £600.00 including parts. Most would charge a minimum call out fee of £45-£55.00, furthermore the management fee did not and was not intended to cover this sort of work.

#### Deliberation

50. The Tribunal agrees with Mr Marlow, not least because, as before, there was no evidence before the Tribunal from which it could determine that the charges were either unreasonably incurred or unreasonable.

51. The effect of this determination is reflected in the Schedule below.

#### *Labour charges for specific items of maintenance and repair work*

52. S/C year 2010 – challenges in respect of Guttering (£148.88); Repairing a leak (£141.00) and repairs/replacement of doors (£630.00). Mr Redmond's challenge is that these items could have been carried out under the building warranty. Mr Marlow confirmed that the excess payable on the building warranty was £1000.00 per claim so it was not sensible to pursue a claim unless there was major structural defect. Mr Redmond accepted this. However, Mr Marlow did concede that the charge for the doors should have been under the then applicable day rate of £150.00 plus vat for two operatives and agreed to reduce the charge to £300.00 plus VAT – (totalling £360.00) which is reflected in the Schedule below.

53. S/C years 2011 - 2019 – Labour charges were mainly challenged on the hourly rates argument. Mr Redmond expanded further on his previous concerns about lack of transparency, associated companies making a profit, and his contention that the charges should in any event be covered by the management fee. He also submitted that if there was a relevant day rate then the hourly rate should be calculated by dividing the day rate by the

usual number of hours worked in a day. So, a day rate of £150.00 would translate to an hourly rate of between £18-£21.00. Mr Marlow submitted that a day rate was designed to pass on to the leaseholders some of the benefits of the operative not having to travel between jobs. It did not signify that the hourly rate was some sort of premium rate that was unreasonably high.

#### Deliberations

54. The Tribunal rejected Mr Redmond's submissions. Charges for maintenance and repair work does not and should not form part of the management fee. Companies employed by the Management Company are entitled to include a profit element in the rates charged, regardless of any connection to the Management Company. The issue is whether or not the charges are reasonably incurred and reasonable. A day rate is a discounted rate which benefits leaseholders, it does not signify that a higher hourly rate charged for shorter visits is unreasonable. The transparency argument has already been rejected. Mr Redmond could have obtained alternative quotes to justify his submissions but has not done so. The hourly rate of £35.00 for technical work is within the range of rates that the Tribunal, using its expertise, finds reasonable.

55. The same arguments were deployed by Mr Redmond in respect of labour charges on numerous invoices in S/C years 2011 to 2019 . They are all (save where mentioned in the year specific challenges below) rejected for the same reasons and designated for convenience in the Schedule - Labour 'hourly rate'. The Tribunal's determinations are reflected in each case, in the Schedule below.

#### **56. S/C year 2013 (other specific items of challenge).**

(a) Labour charges of £1085.00 (excluding VAT) for work following the Fire Risk Assessment. Although Mr Redmond's challenge was based on the hourly rates arguments Mr Marlow conceded that the labour charges seemed high and he agreed to reduce the labour charge to £450.00 (i.e. the net day rate for three operatives).

(b) Labour charges of £690.00 for painting and decorating including materials. Mr Redmond conceded this having heard an oral explanation of the invoice from Mr Marlow.

(c) Labour charges of £175.00 for electrical work. Mr Marlow conceded the work should have been charged at the rate of 4 hours not 5 and agreed a reduction to £140.00.

(d) Labour to remove rubbish (a dumped sofa) £70.00. Mr Redmond submitted that the Council would remove this without

charge. Mr Marlow said that was not the case, the Management Company had an obligation to dispose of dumped furniture as part of its management of the estate and that a charge of two hours at £35.00 per hour was reasonable for this. The Tribunal agree.

- (e) Bulky item removal charge of £30.00. This was essentially the same argument as above. Mr Redmond submitted that tenants could have used a free bulky waste removal service. Mr Marlow agreed but said that didn't assist when large items were dumped anonymously. The Management Company was obliged to have bulky items of waste removed as part of its responsibility keep all parts of the estate in a safe and well maintained condition. The Tribunal agree with Mr Marlow on this point.

57. The effect of the above concessions and determinations are reflected in the Schedule below.

58. ***S/C year 2016 (other specific items of challenge)***

- (a) Invoice totalling £2,256.87 for roof repairs following damage in 2013 but not invoiced to Management Company until April 2016. Mr Redmond queried whether the damage should have been covered by insurance. Mr Marlow said the damage was not covered by insurance because the cause was deemed disrepair. There had been 3 insurance claims for damage in 2016, each incurring payment of an excess of £300.00 per claim. The excess of £1,200 shown in the accounts did not however relate to the work shown on this invoice. Mr Redmond thought it was suspicious but offered no other challenge to the invoice. The Tribunal thought the delay in invoicing the work was regrettable but had no reason to find the invoice suspicious or the cost of the repair works to have been unreasonable or unreasonably incurred.
- (b) Invoice totalling £607.18 for attendance at the Property following a reported leak, removal of wet carpets, waste disposal and other items. Mr Redmond's query was as above. The invoice relates to the initial call out caused by water ingress through the roof in 2013 which resulted in the works covered by the previous invoice. Mr Marlow's response was the same. No evidence or argument was provided to suggest that the costs were unreasonably incurred or unreasonable and the Tribunal therefore determined that the costs were reasonable.
- (c) Hourly rate challenge to an invoice for car parking of £81.25. Mr Marlow conceded that the invoice should have shown a unit charge of £18.75. A reduction to that sum was therefore conceded.



- (d) A query from Mr Redmond about 12 zero due invoices of £30.00 for emergency lighting checks. Mr Marlow confirmed that the Management Company received 12 x monthly invoices for the annual fee of £360.00. There was no challenge to the payability or reasonableness of the charges.
- (e) A similar query from Mr Redmond in respect of 6 invoices of £108.00 for window cleaning which Mr Marlow confirmed was the annual fee of £648.00 invoiced every other month. There was no challenge to the payability or reasonableness of the charges.

59. The effect of the above concessions and determinations are reflected in the Schedule below.

**60. S/C year 2017 (other specific items of challenge)**

- (a) Hourly charges of £80.00, £120.00 and £60.00 for an emergency call out service which Mr Redmond challenged as being unreasonably high. Mr Marlow explained that a 24/7 emergency call out service is provided. The costs are charged on the basis that the first call has a unit price of £80.00 for the call out. If it is necessary for persons to attend site, they charge £120.00 for the first hour and after that £60.00 per hour. The hourly rates reflect the time of the call which in this case was 11.53 pm and the need for operative to attend site at night to investigate a leaking roof. Mr Redmond provided no evidence of alternative or comparative quotes for a 24 hour call out service. There was therefore no evidence on which the Tribunal could conclude that the charges were unreasonable or unreasonably incurred.
- (b) An invoice for £1,080.00 from a third-party contractor (Sackett Roofing) for the hire a cherry picker, broken down as to £550.00 (plus VAT) for the hire, pick up and drop off and £350.00 (plus VAT) for one day's labour. Despite this invoice coming from a third party, ostensibly alleviating Mr Redmond's concerns about transparency and the Management Company setting its own rates, he nevertheless challenged the contractors labour charge as being too high. Mr Marlow said that the labour charge almost certainly covered two operatives at a day rate of £175.00 plus vat each for which was not unreasonable. Mr Redmond once again offered no evidence or suggestion as to what a reasonable charge for this service should be. The Tribunal therefore concluded that the charges were not unreasonable or unreasonably incurred.

61. The effect of these determinations is reflected in the Schedule.

### **Management Fees**

62. S/C year 2019 – Management Fees of £3,240.00 invoiced monthly [pgs 723-734 of the Bundle]. Mr Redmond's challenge was that he did not know what services the management fee covered. Mr Marlow confirmed that the management fee covered the Management Companies functions in managing the Property and the services. It included managing all regulatory compliance matters, caretaking and cleaning, general maintenance and security. Negotiating and managing service contracts, validating and paying invoices, preparing service charge budgets and demands and accounts, chasing payments, managing the service charge funds, providing general advice and assistance to residents and dealing with queries, quarterly site inspections, dealing with buildings insurance and claims, lease queries and variations and also liaising with the freeholder. Mr Marlow said that the Management Companies functions are all listed on the companies website for the benefit of leaseholders.

63. Mr Redmond said that it was unreasonable for the Management Company to levy additional administration fees to individual leaseholders, over and above the management fees. He suggested that the costs of chasing late payment of his service charges should be covered by the management fee. Apart from that, Mr Redmond made no specific challenge to the services covered by the management fee and provided no comparable evidence of management fees charged by other management companies.

### **Deliberation**

64. The Tribunal using its specialist knowledge find that the management fees were reasonably incurred and fall within the range of reasonable charges for management of a Property of this age, configuration and size.

65. That determination is reflected in the Schedule.

### **The 2020 budget charge**

66. The Management Company provided a detailed budget for S/C year 2020 showing total anticipated expenditure of £16,878.00. The allocation for each flat based on the contractual proportion of 8.33334% is £1,406.50 per flat.

67. Mr Redmond said that £2,406.50 did not seem unreasonable for the anticipated heads of expenditure provided that, it was no more than an inflationary increase.

#### Deliberation

68. Under section 19(2) of the Act, the Tribunal is required to determine whether the estimated contribution requested by the Respondent exceeds a figure which would reasonably be payable under the provisions of the Lease. The Tribunal is not concerned as to whether any actual costs have been reasonably incurred

69. The actual expenditure for 2019 was £15,615.00. The budget is based on previous years expenditure but anticipates increases in the budgets for repairs and general maintenance, management fees, accountant's fees and fire alarm maintenance. They are relatively modest increases and absent any specific challenge from Mr Redmond, the Tribunal finds that the budget demand of £1,406.50 per flat for the service charge year 2020 is of no greater amount than is reasonable.

#### **The s20B issue**

70. On 8 July 2021 the hearing was adjourned to allow further evidence and argument to be provided on this issue. Directions were made requiring the Respondent to provide a schedule of all service charge costs incurred by the Management Company ('incurred' generally meaning the date on which the charges are invoiced to the Management Company), more than 18 months prior to the dates on which the final accounts and balancing demands were sent to the Tenants, for each of the service charge years ending 31 December 2010, 2011, 2012, 2014, 2015 and 2016.

71. An additional statement of case was filed by the Respondent attaching Schedules of invoices in 2010, 2012 and 2016, which the Respondent calculated should be conceded. These are summarised as follows:

- (a) - 2010 – 9 invoices = £1,244.72
  - (b) - 2011 – 0 invoices = all due and payable
  - (c) - 2012 – 27 invoices - £4,380.72
  - (d) - 2014 – 0 invoices – all due and payable
  - (e) - 2015 - 0 invoices – all due and payable
  - (f) 2016 – 13 invoices - £1,497.04
- Total to concede - **£7,122.48**

72. Unfortunately, the excel schedules detailing all invoices for the years in question were not attached the statement. However, the Respondent did explain its approach to the exercise undertaken for each year. The procedure followed was first to place the invoices for each year in date order from oldest to newest. The invoices were then totalled in excel for

each year. Once the income from the 'on account' demands for each year had been exhausted, a redline was drawn on the schedule. A calculation was then made of all invoices below the line to see if the invoice date was more than 18 months (547 days) before the date of the balancing charge. If the calculation showed that more than 547 days had elapsed the invoice was conceded. If less, it remained payable.

73. Mr Redmond also filed a statement in response. He did not challenge the basis of the Respondents calculations, or the procedure adopted to calculate whether the invoices were payable. He did not challenge the validity of the 'on account' demands. He just asked that the Tribunal consider asking the Respondent to carry out the same exercise for the other service charge years in dispute i.e. 2009, 2013, 2017, 2018 and 2019.

74. The hearing was reconvened on 24 November 2021 to consider the parties submissions on the s20B issue (together with submissions on contractual interest and the Applicants' limitation of costs applications). Mr Marlow again represented the Respondent. Mr Philips, the Respondent's in-house lawyer, gave evidence on the methodology adopted for the s20B schedules, and also on the contractual interest schedules and costs. Mr Redmond again represented the Applicants.

75. The Tribunal asked why the Respondent hadn't filed the complete excel schedules for each year that the Tribunal had directed should be considered. Mr Philips said that he thought all the schedules had been attached to the statement and that they could be sent by email immediately if the Tribunal wanted to consider them. While the Tribunal did not doubt the veracity of the Respondent's statement, it determined that the full schedules should be provided to the Tribunal and to Mr Redmond if only to rule out any concern about the accuracy of the calculations made for each of the years in question.

76. As Mr Redmond was a litigant in person it was not deemed fair to expect him to consider the additional schedules during the mornings hearing. The Tribunal therefore decided to hear argument and submissions from the parties on the approach taken by the Respondent to the calculations, on the assumption that the full spread sheets, when available, would be consistent with the Respondent's submissions. If they were not, Mr Redmond would have an opportunity to make further submissions.

77. Mr Philips explained the procedure, which was as set out above. The Tribunal, looking at 2010 year, asked if the invoice dated 23 October 2010 was the first invoice received after the date on which the income received from the 'on account' charge was exhausted. Mr Philips confirmed that was the case, and that a calculation of the difference in days between each subsequent invoice and the date of the balancing charge (29 June 2012) was then made. Mr Philips confirmed the same procedure had been followed for each service charge year the Respondent had been asked to consider, which had led to the Respondent conceding the above sums.

78. Mr Redmond made no comment on the correctness or otherwise of the approach adopted by the Respondent. He asked if the Respondent could be ordered to carry out the same exercise for all the other service charge years as some large sums had been conceded.
79. The Tribunal explained that it had confined the further enquiries to the years where there were significant balancing charges which were demanded 12-18 months after the end of the service charge year. Those years where the balancing charge was either small, or a credit sum, or had been invoiced 9 months or less after the year end, had not been selected because it was unlikely that the limitation period would have been exceeded. For instance, in 2009 there was a balancing charge of just £1,413.00 for the whole estate, demanded 9 months after the year end. It was therefore unlikely that any relevant costs would have been incurred more than 18 months before the balancing demand was made, given that the 'on account' income would not have been exhausted until near the end of the service charge year. In 2017, 2018 and 2019 there was a budget surplus. There was therefore no possibility of s20B being engaged for these years.
80. Subject to consideration of the detailed excel schedules when received, the Tribunal was satisfied that the approach taken by the Respondent correctly identified those invoices which were not recoverable due to the limitation period specified in s20B.
81. The additional excel Schedules were received by the Tribunal on the 24 November 2021. Further Directions were made confirming that the Applicant could make further written submissions on the Schedules no later than 9 December 2021, following which the Tribunal would reconvene to consider the Schedules together with any written submissions received from Mr Redmond.
82. On 6 December Mr Redmond filed a further statement which set out a different basis for calculating whether any invoices were outside the limitation period specified in s20B, by reference to his own schedule. This schedule indicated that invoices totalling £67,908.50 were invalid. Unfortunately, Mr Redmond had not understood the relevance of the 'on account' income and had made his calculations without taking any account of the income received each year from the 'on account' demands. His alternative schedule was therefore misconceived. Mr Redmond did not comment on the excel Schedules provided by the Respondent.

#### Deliberation

83. The Tribunal reconvened to consider the Respondent's excel Schedules and Mr Redmond's submissions. The Tribunal found the calculations on the Schedule to be consistent with the Respondent's submissions at the reconvened hearing. The Tribunal found Mr Redmond's alternative schedule unhelpful and misconceived. The Tribunal therefore confirms its preliminary view that the Respondent has correctly identified those

invoices falling outside the s20B limitation period which total £7,122.48. That determination is reflected in the Schedule.

## Section 20C and Paragraph 5A in the Tribunal Proceedings

### Paragraph 5A

84. The Applicants' do not dispute that under clause 33(c) of Schedule 6 to the Lease, they are contractually obliged to pay all costs, charges and expenses incurred by the Management Company in connection with the recovery of arrears of Service Charge. The Applicants' however seek an order under paragraph 5A reducing or extinguishing all administration costs levied, from 2009 up to and including these proceedings. The grounds are that administration costs have risen sharply, and the Applicants have previously paid them under duress.

85. The specific costs challenged are:

Year	Item	Flat 6	Flat 7
2014	Arrears admin charge	£50.00	£50.00
	Arrears Admin charge	£50.00	£50.00
	Notice of issue of county court summons	£178.20	£178.20
2015	Final notice of issue of county court summons	£178.20	£178.20
	Legal fees	£237.60	£237.50
	Court fee	£105.00	£105.00
2016	Arrears admin charges	£50.00	£12.50
2019	Arrears admin charges	£50.00	£50.00
	Arrears admin charges	£50.00	£50.00
	Letter before action	£90.00	£90.00
	Letter to lender	£78.00	£78.00
	Court fee	£410.00	£410.00
	Issue of Proceedings	<u>£267.00</u>	<u>267.00</u>
Total admin charges for 2019		<u>£945.00</u>	<u>£945.00</u>

86. Mr Redmond expanded on his challenges in his supplemental statement and at the hearing, complaining that one letter covering both flats could have

been used rather than sending two each time. The costs of the letters telling him that he is in arrears at £50.00 each, are he said excessive. The letters to his lender notifying them that he is in arrears of service charges at £178.20 each, is unreasonable as they are likely to be based on a standard template. Mr Philips charges of £237.60 for in house legal fees are, he said, unreasonable because he works 'in-house'. Court fees are unreasonable because the Respondent could have sought redress in the Tribunal.

87. Mr Redmond explained his own financial challenges in some detail which were compounded by having to meet at least 4 CCJs. This has prevented him from obtaining other sources of finance. As his financial situation has been worsened by excessive charges that could have been prevented had the Respondent applied to the Tribunal not the court, Mr Redmond seeks an order limiting his costs

88. Mr Philips explained that all debt chasing and collection was dealt with in-house. 90% of legal work was also dealt with by the Management Companies in-house legal team. Out of 3,500 leaseholders they only had about 650 debtors. 4/5ths of all leaseholders paid promptly.

89. The company has a legal arrears chasing system which it applies to all developments. They now charge £90.00 for the initial letter before action and £78.00 for the letter sent to lender. The legal costs are regularly benchmarked with other management companies. An example Mr Philips said is Pier Management who sends all its debt collecting to solicitors. Their charges are on average £120.00-£150.00 per letter. By comparison the highest unit cost of a letter from Mr Philip's department is £90.00.

90. Mr Philips did acknowledge that the charge of £178.20 for each of the two lenders letters sent in December 2014 and January 2015 was higher than their current charge and agreed to reduce the Respondent's claim by the cost of one letter per Flat. A reduction of £178.20 per Flat, has therefore been made to the administration charges payable in the County Court proceedings (as detailed in paragraph 130 below).

91. Mr Philips said that the Management Company has an admin department that deals with credit control before debts are passed to the legal team. They charge £50.00 per arrears letter. Mr Redmond said that if the Management Company had 650 debtors all paying a £50.00 admin fee, that was unreasonable, and they should reduce the letter cost to £10.00. Mr Philips said the fee was pitched at that level to cover costs and to deter continued late payment. If they charged £10.00 per letter, that would not deter continued late payment. Mr Philips also said that they have benchmarked admin costs against on-line credit control companies all of whom charge a standard £50.00 fee for credit control letters. Furthermore, if the Management Company sent all the debts to solicitors to pursue the costs would be far higher.

92. Mr Philips confirmed that since issue of the Tribunal proceedings the only additional administration fees incurred were for postage of £42.73 in respect of both Flats and copying fees of £185.50 based on .05 pence per page for about 5000 pages copied for the bundles. The only additional litigation costs the Management Company would be seeking in relation to the proceedings before the Tribunal was £500.00 per Flat to cover costs of preparation of the Bundles and attendance at the hearing by a senior manager and the Management Companies in-house lawyer.

#### Deliberation

93. The Tribunal had previously explained in Directions that an order could not be made in respect of litigation costs incurred before 6 April 2017 under Schedule 11 Paragraph 5A. Furthermore, as Mr Redmond had not made any separate application under Schedule 11 paragraph 5(1) for the Tribunal to determine the reasonableness of the administration charges he sought to challenge, this issue was not properly before the Tribunal to determine.

94. Mr Redmond does have an application before the Tribunal under paragraph 5A for an order reducing or extinguishing his liability to pay litigation costs in relating to these proceedings. Although the issues raised by the Applicants' has led to a reduction in the service charges payable, it is clear even from Mr Redmond's evidence, that he has been under financial stress for some years which has led to persistent arrears accruing over a prolonged period.

95. There are only 12 flats in this development. Mr Redmond owns two and his failure to pay what is 1/6<sup>th</sup> of the overall budget, promptly and regularly, has caused real issues for the Management Company in providing the services. The Tribunal has no doubt that the Management Company was obliged to resort to court proceedings on the several occasions that it did, to obtain payment of the service charge from the Applicants. On balance therefore the Tribunal does not find that it is just or equitable to make any order limiting or extinguishing the Applicants' liability to pay contractual litigation costs, but notes that the Respondent has confirmed to the Tribunal that in relation to the Tribunal proceedings, it only intends charging the modest sums set out in paragraph 92 above.

#### Section 20C

96. The Applicants' also seek an order that the costs incurred in the s27A proceedings are not relevant costs for the purposes of determining the amount of any service charge payable by the Applicants. For the reasons give in the preceding two paragraphs the Tribunal does not consider it just and equitable to make an order under s20C of the Act, not least because the burden of the costs would then fall entirely on the remaining 10 leaseholders.



## The issues & decisions (County Court)

### Interest on Service Charge arrears

97. The Respondent has claimed contractual interest at the rate of 10% per annum on arrears of service charge pursuant to clause 10(i) of the Lease which provides:

*“If the Rent or the Service Charge and sums hereby reserved or if any other monies which may become payable by the Lessee hereunder or any part of such rents service charge or other money at any time or times remains unpaid for twenty-one days after becoming due and payable (whether such sums have been formally or legally demanded or not) then the amount thereof or the balance for the time being unpaid shall at the discretion of the Lessor or the Management Company .....as from the expiration of the said period of twenty-one days and until such rents service charge or other monies as aforesaid or the balance thereof remaining unpaid shall have been paid bear and carry interest thereon (as well after as before any judgement) **at the rate of ten per centum per annum or at a rate equivalent to two per centum per annum above the base rate of Royal Bank of Scotland/Natwest Bank PLC for the time being prevailing (whichever shall be the higher rate of interest)** and the Lessee accordingly hereby covenants with the Lessor and the Management Company that in such circumstances (and if so requested by the Lessor or the Management Company) and during such period or periods as aforesaid the Lessee will pay to the Lessor or the Management Company in addition to the said yearly rent service charge or other monies as aforesaid or the balance thereof for the time being unpaid interest thereon at the aforesaid rate.”*

98. One problem with calculating interest from the ‘due and payable’ date is that the Management Company do not appear to have ever collected the ‘on account’ demand in the manner specified in paragraph 3 of the Twelfth Schedule to the lease which provides:

*“On ten dates during each year nominated by the Management Company and with not less than one month between each date (or such other dates as shall from time to time be nominated by the Management Company at its sole discretion) the lessee shall pay by Bankers standing order to the Management Company payments in advance and on account of Service Charge for the Management Company’s Financial Year then current.”*

99. In practice the 'on account' budget demand has been sent to the leaseholders at the beginning of each service charge year with a request for payment of the entire sum. This does not appear to have been queried by any of the leaseholders, including Mr Redmond. As neither party had considered how, in these circumstances, a due date from which interest calculations could be ascertained the Tribunal postponed consideration of the interest claim until the re-convened hearing to allow the parties to make further representations.

100. In its supplemental statement the Respondent acknowledged the issue and fairly decided to credit all interest charged on the Statements of Account, which date back to 19 August 2010. The Respondent now just seeks interest from 1 August 2019 on arrears outstanding at 31 December 2019 (5 months), 31 December 2020 (12 months) and at 31 August 2021 (8 months). 1 August 2019 had been selected by the Respondent because the last payment on account made by the Applicants was 31 July 2019. The Respondent's argument appears to be that the 'on account' service charge demands would, even if monthly payment had been nominated, have fallen due and payable at the latest, by the year end. Therefore, interest should unarguably be payable from that date.

101. Schedules were provided for each flat showing the Respondents calculation of daily interest as  $A/365 \times 10\%$ ; where A = the service charges invoiced and unpaid. The daily rate is then multiplied by the number of days the arrears have been outstanding to provide the interest sum due.

102. Based on the Schedules the Respondent now claims:

(a) Contractual interest of **£937.69** for Flat 6 broken down as to:

- £120.28 to 31.12.2019
- £429.49 to 31.12.2020
- £387.92 to 31.08.2021

(b) Contractual interest of **£934.98** for Flat 7 broken down as to:

- £119.74 to 31.12.2019
- £428.19 to 31.12.2020
- £387.05 to 31.08.2021

The interest previously claimed, but now conceded, as shown on the Respondent's Statement of Account for Flat 6 is as follows:

to 12.03.2015	£73.15
to 06.03.2020	£1,802.61

The interest previously claimed, but now conceded, as shown on the Respondent's Statement of Account for Flat 7 is as follows:

to 12.03.2015	£73.15
to 06.03.2020	£1,777.41

103. Mr Redmond submitted in his supplemental statement that as the demands for payment of the service charges did not offer the instalment payment option specified in the lease, any claim for interest is invalid and should not be recoverable.

#### Deliberation

104. The Tribunal has sympathy with Mr Redmond's argument. Although not happily worded, the clear intention of the lease contract was that the leaseholders would have an opportunity to pay the 'on account' demands by ten equal periodic instalments. This appears not to have happened. Instead the Management Company has each year demanded the entire 'on account' budget in advance, which has significantly benefitted the Management Companies cashflow at the expense of the leaseholders cashflow.
105. It also presents a difficulty in establishing a baseline date from which to calculate interest on late payments of the 'on account' service charge demands. The Respondent having realised the problem could instead have claimed interest on arrears relating to the balancing charges from 21 days after payment fell due on the final account, but has instead presented an argument for continuing to seek interest on all arrears of service charges on and from 1 August 2019, despite not establishing that this is the contractual due date from which to make its calculations.
106. The Tribunal is unable to determine that the Respondent is entitled to demand contractual interest on arrears, or late payment of the 'on account' demands, because payment has not been demanded in accordance with the lease. Neither has the Respondent provided a calculation based on the due

dates on which any balancing charges were demanded. The Respondent's County Court claim is therefore reduced by the amount of interest shown on the Respondent's Statements of Account, which have been conceded (**£1,875.76 in respect of Flat 6 and £1,850.56 in respect of Flat 7**). The Tribunal, for the reasons set out above, also rejects the Respondent's new claim for interest as detailed in its supplemental statement and summarised in paragraph 102 above.

### ***Other charges on the statements of account***

107. There is reference to a charge of £142.18 for removal of a washing machine on 11 August 2015, in the Respondent's Statement of Account for Flat 6, filed with the county court. Mr Redmond challenged the charge on the basis that the council's free bulky waste collection system could have been used. The Respondent responded to say that where the tenant cannot be identified to recharge the costs to them, the charge had to be placed in the service charge. The Respondent did not suggest that Mr Redmond or his tenant was responsible for dumping the waste, it justified the charge as being a legitimate item of service charge. Service charge items are not recoverable from leaseholders direct other than through the service charge mechanism in the lease, which does not allow for individual items to be separately charged to leaseholders. The item should not have appeared on the Statements of Account as a specific charge to Flat 6. It should have been charged to the 2015 service charge account, which is split between the all flat owners. The sum of **£142.18** is not therefore directly recoverable from the Applicants under the lease of Flat 6 and the Respondent's claim as shown on the Statement of Account for Flat 6 is consequently reduced by this amount.

### **Costs of the County Court Proceedings**

108. The costs claimed by the Respondent landlord on the N260 statement of costs are as set out in paragraphs (a) and (b) below:
- (a) The court fee on issue - £410.00 per Flat
  - (b) The Respondent's £100.00 contribution to the Tribunal hearing fee (i.e. - £50.00 per Flat).
109. The Tribunal hearing fee is not recoverable under the County Court proceedings and as no application was made by the Respondent under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, for reimbursement of the hearing fee, no order was made in respect of this fee.

110. In relation to the Court fee on issue, Mr Philips referred to Schedule 6, clauses 33(a) and (c) of the Lease, which entitles the Management Company to recover from the lessee all costs and expenses incurred in contemplation of proceedings under s146 or s147 of the Law of Property Act 1925; and all costs charges and expenses incurred in connection with the recovery of arrears of Service Charge.
111. Mr Redmond did not dispute that the Applicants' were contractually liable to pay costs and expenses incurred in connection with this litigation, but argued that as so many other charges had been shown to be unreasonable, he had difficulty accepting that the costs claimed were reasonable.
112. Mr Philips said that he was happy for costs to be ordered at the court's discretion
113. The first issue for the County Court is whether to award some or all of the costs. The second issue is then the quantification of such costs as are awarded.
114. In terms of the award of the costs Judge Barlow made an order under s.51 Senior Courts Act 1981. She applied the presumption found in CPR 44.2 of the Civil Procedure Rules namely that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. She concluded that the Respondent landlord was the successful party applying the test found in *Barnes v Time Talk (UK) Ltd [2003] EWCA Civ 402*.
115. Judge Barlow recognised that this is a rebuttable presumption and that an important factor is the contractual provision. She took into account the decision in *Church Commissioners v Ibrahim [1997] EGLR 13* but recognised that an order to pay costs is discretionary and that the Court retains that discretion
116. Judge Barlow (in her capacity as a Judge of the County Court) concluded that Clause 33(a) and (c) of Schedule 6 to the Lease gives the landlord a contractual entitlement to its costs in taking proceedings to recover Service Charges and that there were no circumstances that justified the exercise of the courts discretion to displace the contractual position.
117. In this matter, the original claim against each of the Applicants' was for outstanding Service Charges and administration costs that have accrued from the beginning of 2017. Mr Redmond does not dispute that he has been under considerable financial strain during the period covered by the statements of account and agreed that the sums he has paid to reduce the arrears, has been on an 'as and when' he could afford it basis.

118. As the costs claimed by the Respondent landlord are just the Court issue fees the Court finds that the sum claimed is reasonably incurred.
119. Accordingly, the Court finds that
  - (a) the sum of **£410.00** is payable in respect of costs for Flat 6;
  - (b) The sum of **£410.00** is payable in respect of costs for Flat 7.

### **Section 20C and Paragraph 5A in the County Court Proceedings**

#### Section 20C

120. The Applicants' and Respondent's submissions were the same as detailed in paragraphs 84-91 above.
121. Taking those submissions into account and all the circumstances of the case, Judge Barlow was not satisfied that would not be just and equitable for an order to be made under s20C of the Act.

#### Paragraph 5A

122. The Applicants' and Respondent's submissions on the Paragraph 5A application were the same as detailed in paragraphs 84-91 above.
123. Judge Barlow did not, for the same reasons as set out in paragraphs 93-95, consider it just and equitable, to make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, restricting or limiting the Applicants' liability to pay any administration charges in respect of the litigation costs incurred or to be incurred by the Respondent in connection with the proceedings before the County Court in this matter.

### **Administration costs under clause 33(c) of Schedule 6 to the Lease**

124. Although Mr Redmond has not applied for a determination of the reasonableness of administration charges under paragraph 5 of Schedule 11 to the 2002 Act, as matter of contract it is implicit that administration charges levied under clause 33(c), should be reasonable. Judge Barlow therefore considered whether Mr Redmond's challenges to the administration charges (summarised in paragraphs 84-87 above) amounted to a defence to his liability to pay the charges claimed in the County Court proceedings.

125. The Respondent seeks contractual administration costs in the County Court proceedings totalling:
- (a) £590.00 in respect of Flat 6
  - (b) £552.50 in respect of Flat 7
126. Judge Barlow considered the Management Companies submissions (summarised in paragraphs 88-91 above) and determined that it was reasonable for the Management Company to set a menu of fees for credit control letters where they were calculated as a reasonable pre-estimate of the costs incurred in chasing arrears. It would not however be reasonable for the costs to include a penalty, or disincentive element.
127. Mr Redmond's arguments (summarised in paragraphs 84-87) were considered by Judge Barlow who noted the absence of any evidence of comparable charges for administration fees or legal fees of in-house legal departments. Mr Redmond's argument was that the charges were excessive, and the volume of credit controls letters appeared to generate an unreasonable income for the Management Company who were already charging fees for managing the site.
128. Mr Philip's evidence was that the Management Company regularly benchmarked its charges against other comparable management companies and that they operate a streamlined in-house service which keeps the administration costs at a reasonable level. Judge Barlow had no reason to doubt Mr Philip's evidence particularly as he'd fairly agreed to reduce the Respondent's claim by the cost of a letter charged in connection with earlier proceedings, because it appeared out of kilter with current rates. On the evidence provided, Judge Barlow did not consider the Management's Company's contractual administration charges to be unreasonable. Furthermore, Mr Redmond had paid the legal and administration costs charged in 2014, 2015 and 2016 when he settled the earlier proceedings. The duress he mentions appears to be no more than avoiding the consequences of not satisfying the earlier county court proceedings, which he could have challenged at the time, but did not.
129. Judge Barlow found therefore that the administration fees charged prior to 2019 were admitted by the tenants when they settled the earlier proceedings and that the administration charges in respect of the arrears leading to these proceedings, were reasonable and therefore payable.
130. Judge Barlow therefore finds:
- (a) the sum of **£411.80** is payable for administration charges in respect of Flat 6, which comprises the £590.00 claimed on the Statement of Account, less the agreed deduction of £178.20 = £411.80;

(b) the sum of **£374.30** is payable for administration charges in respect of Flat 7, which comprises the £552.50 claimed, less the agreed deduction of £178.20 = £374.30.

131. The Respondent's claim is reduced by two further sums. First the sum of **£142.18** incorrectly charged to Flat 6 for removal of a washing machine (see paragraph 107 above). Secondly the interest payments of **£73.15 per Flat** already paid by the Applicants on 22 June 2015 and 17 July 2015, (when the Accounts were paid down to a zero sum), but have now been conceded (see paragraphs 102 and 106 above). These adjustments have been carried forward to the summary in paragraph 134.

132. Given that the FTT has made a decision regarding the Service Charges, the Respondent landlord is entitled to a judgement in the sum determined.

133. The Service Charges payable by the Applicants' have been calculated using the Statements of Account filed by the Respondent in the County Court proceedings, as follows:

(a) Flat 6 = £2,073.67

Calculated using the formula: (SCD - D) - C = P where:

- (i) SCD equals the sum of service charges demanded from 1 January 2016, which is the first date following the Statement of Account being reduced to a zero balance = 8,411.34
- (ii) D equals the deductions made by the Tribunal to the service charges for the years 2009-2019 - as detailed on the Schedule = 1,756.03
- (iii) C equals the total sum credited to the Statement of Account from 1 January 2016 = 4,581.64
- (iv) P equals the balance payable = (£8,411.34 - £1,756.03) - £4,581.64 = £2,073.67

(b) Flat 7 = £2,241.53

Calculated using the same formula: (SCD - D) - C = P:

- (i) (£8,411.34 - £1,756.03) - £4,413.78 = £2,241.53

134. By way of conclusion, I make the following awards in favour of the landlord:

(a) Service charges Flat 6: £2,073.67

(b) Service charges Flat 7: £2,241.53

(c) Administration charges Flat 6: £411.80



- (d) Administration charges Flat 7: £374.30
- (e) Costs under clause 33(a) and (c) of the Sixth Schedule to the lease for Flat 6: £410.00
- (f) Costs under clause 33(a) and (c) of the Sixth Schedule to the lease for Flat 7: £410.00
- (g) The award for Flat 6 is reduced by: the sum of £73.15 and £142.18  
= £218.33
- (h) The award for Flat 7 is reduced by: £73.18

135. The landlord has asked for the order to be made as an order of the county court so that it can be directly enforceable without further application having to be made to the court. I will accede to this request and have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Leicester, to be entered in the court's records. All payments are to be made by **27 April 2022**.

**Name: Judge Barlow**

**Date 29 March 2022**

## **ANNEX - RIGHTS OF APPEAL**

### *Appealing against the tribunal's decisions*

1. 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 date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

### *Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court*

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

*Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court*

8. In this case, both the above routes should be followed.

**SCHEDULE**

**Disputed charges for Flats 6 & 7 Royal Court 1 January to 31 December of years 2009-2019 inclusive (the same items were challenged for identical reasons in respect of each Flat)**

<b>ITEM</b> <i>[references in square brackets are to the relevant page in the Bundle]</i>	Cost	Tenants' proposed sum	Landlord's proposed sum	Tribunal's determination
<b>S/C year ending 31 Dec. 2009</b>				
Electricity	1,479	A reasonable sum	1,479	£1,479.00
Cleaning	920.00	Ditto	920.00	£920.00
Risk Assessment/HSE	240.00	Ditto	240.00	£240.00
Maintenance	1,057	Ditto	1,057	£1057.00
<b>S/C year ending 31 Dec. 2010</b>				
Cleaning	940.00	A reasonable sum	940.00	£940.00
Risk Assessments	480.00	Ditto	480.00	£480.00
Survey	82.25	82.25 Conceded	82.25	£82.25
<u>Maintenance</u>				
Guttering	146.88	A reasonable sum 117.50 (conceded)	146.88	£146.88
Leak repair	141.00		141.00	£141.00
Labour charges	630.00		630.00	£630.00
Service call (aerial)	117.50		117.50	£117.50

Electric Gates service costs	193.88	A reasonable sum	193.88	£193.88
S20B costs conceded			-£103.72	-£103.72
£1244.72/12 = 103.72				
<b>2010 – total costs deducted by Tribunal</b>				<u>£103.72</u>
<b>S/C year ending 31 Dec. 2011</b>				
Risk assessments	480.00	A reasonable sum	480.00	£480.00
Cleaning	960.00	Ditto	960.00	£960.00
Bulb replacement (relates to several invoices)	539.90	Ditto	539.90	£539.90
Labour charges (hourly rate for technician)	35.00	Ditto	35.00	£35.00
Labour charges (for technician)	70.00	Ditto	70.00	£70.00
<b>S/C year ending 31 Dec 2012</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
Labour (hourly rate)	144.00	Ditto	144.00	£144.00
Labour (hourly rate)	144.00	Ditto	144.00	£144.00
Delivery costs (hourly rate)	35.00	Ditto	35.00	£35.00

Tuning Transmitter	35.00	35.00 (conceded at hearing)	35.00	£35.00
Labour (hourly rate)	450.00	A reasonable sum	450.00	£450.00
Labour (hourly rate)	175.00	Ditto	175.00	£175.00
Labour (hourly rate)	70.00	Ditto	70.00	£70.00
Labour (hourly rate)	105.00	Ditto	105.00	£105.00
Labour (hourly rate)	175.00	Ditto	Conceded in Scott schedule	<b>-£175.00</b>
Labour (hourly rate)	180.00	Ditto	Conceded in Scott schedule	<b>-£180.00</b>
Labour (hourly rate)	200.00	Ditto	200.00	£200.00
Labour (hourly rate)	96.50	96.50 (conceded at hearing)	96.50	£96.50
Labour (hourly rate)	35.00	Ditto	35.00	£35.00
Risk Assessments	480.00	Ditto	480.00	£480.00
S20B costs conceded £4,380.72/12 =				<b>-£365.06</b>
<b>2012 – total costs deducted by Tribunal</b>				<b><u>£720.06</u></b>
<b>S/C year ending 31 Dec 2013</b>				
Cleaning	960.00	A reasonable sum	960.00	£480.00
Risk Assessments	480.00	Ditto	480.00	£480.00

Bulky item removal	30.00	00.00	30.00	£30.00
Labour (hourly rate)	105.00	reasonable sum	105.00	£105.00
Labour (hourly rate)*	1,085.	Ditto	450.00 (635.00 conceded)	-£635.00
Labour (hourly rate)**	690.00	690.00 (conceded at hearing)	690.00	£690.00
Labour (hourly rate)	75.00	A reasonable sum	75.00	£75.00
Labour (hourly rate)	105.00	Ditto	105.00	£105.00
Labour (hourly rate unclear)	90.00	Ditto	90.00	£90.00
Labour (hourly rate unclear)	126.00	Ditto	126.00	£126.00
Labour (hourly rate)	175.00	Ditto	140.00 (conceded 35.00)	-£35.00
Labour (hourly rate)	70.00	Ditto	70.00	£70.00
Labour (hourly rate)	35.00	Ditto	35.00	£35.00
Labour (hourly rate)	105.00	Ditto	105.00	£105.00
Labour (hourly rate)	35.00	Ditto	35.00	£35.00
Labour (hourly rate)	100.44	Ditto	100.44	£100.44
Labour (hourly rate)	35.00	Ditto	35.00	£35.00
Labour (hourly rate)	35.00	Ditto	35.00	£35.00
Labour (hourly rate) (rubbish removal)	70.00	Ditto	70.00	£70.00
Labour (hourly rate)	70.00	Ditto	70.00	£70.00
Labour (hourly rate)	70.00	Ditto	70.00	£70.00
Labour (hourly rate)	70.00	Ditto	70.00	£70.00

Risk Assessments	480.00	Ditto	480.00	£480.00
<b>2013 – total costs deducted by Tribunal</b>				<u>£670.00</u>
<b>S/C year ending 31 Dec. 2014</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
Risk Assessments	480.00	Ditto	480.00	£480.00
Hourly rates challenge to 13 invoices:	350.00 70.00 70.00 52.50 90.00 52.50 150.00 52.50 70.00 70.00 70.00 150.00 175.00	Ditto	350.00 70.00 70.00 52.50 90.00 52.50 150.00 52.50 70.00 70.00 70.00 150.00 175.00	£350.00 £70.00 £70.00 £52.50 £90.00 £52.50 £150.00 £52.50 £70.00 £70.00 £70.00 £150.00 £175.00
<b>S/C year ending 31 Dec. 2015</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
Risk Assessments	480.00	Ditto	480.00	£480.00



<b>S/C year ending 31 Dec. 2016</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
<u>Maintenance:</u>				
Repairs to roof	1,223.8	Ditto	1223.8	£1,223.80
Repairs to roof	2,256.87	Ditto	2,256.87	£2,256.87
Repairs to roof	607.18	Ditto	607.18	£607.18
Hourly rate challenge to 8 invoices [at pages 595-602]:	35.00 35.00 35.00 10.00 35.00 35.00	Ditto	35.00 35.00 35.00 10.00 35.00 35.00	£35.00 £35.00 £35.00 £10.00 £35.00 £35.00
Incorrect charge for car parking [pg 597]	81.25	Ditto	18.75	<b>-£62.50</b>
Hourly rate challenge to 14 invoices [at pages 603-617]	10.00x4 =40.00  35.00x9 =315.00	Ditto	  355.15	  £355.15
Unit rate charge for monthly emergency light testing 12 x £30.00 [pgs 622-633]	360.00	Ditto	360.00 annual charge invoiced monthly	£360.00
Unit rate charge for two monthly window cleaning 6 x £108	648.00	Ditto	648.00 annual charge invoiced monthly	£648.00
S20B costs conceded £1,497.04/12 = 124.75			-£124.75	<b>-£124.75</b>
<b>2016 - total costs deducted by Tribunal:</b>				<b>£187.25</b>

<b>S/C year ending 31 Dec. 2017</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
Risk Assessments	480.00	Ditto	480.00	£480.00
<u>Maintenance:</u> Hourly rates charged on 8 invoices:				
Pg 655	105.00	Ditto	105.00	£105.00
Pg 656	70.00		70.00	£70.00
Pg 659	52.50		52.50	£52.50
Pg 660	140.00		140.00	£140.00
Pg 662	140.00		140.00	£140.00
Pg 663	52.50		52.50	£52.50
Pg665	227.50		227.50	£227.50
Pg 671	122.50		122.50	£122.50
Hourly rate charge for emergency out of hours service [Pg 667]	180.00 80.00	Ditto	180.00 80.00	£180.00 £80.00
Charge for hire of Cherry Picker from Sackett Roofing	1080.00	Ditto	1080.00	£1080.00
<b>S/C year ending 31 Dec. 2018</b>				
Cleaning	960.00	A reasonable sum	960.00	£960.00
Electricity	1147.21	Ditto	£960.00	£1147.21
Risk Assessments	480.00	Ditto	480.00	£480.00
<u>Maintenance:</u> Hourly rates charged on 5 invoices:				
[Pg 690	70.00	Ditto	70.00	£70.00
Pg 691	87.50		87.50	£87.50
Pg 693	70.00		70.00	£70.00
Pg 695	140.00		140.00	£140.00
Pg 698]	70.00		70.00	£70.00

<b>S/C year ending 31 Dec. 2019</b>				
Cleaning: 8 x 135.00 1 x 135.42	1080.00 135.42	A reasonable sum	1080.00 135.42	£1080.00 £135.42
Electricity	1019.26	Ditto	1019.26	£1019.26
Risk Assessments	480.00	Ditto	480.00	£480.00
Management Fees 12 x 270.00	3,240.0	Ditto	3,240.00	£3,240.00
Maintenance: Hourly rates charged on 7 invoices: [Pg 735 Pg 737 Pg 738 Pg 740 Pg 741 Pg 1008 Pg 743]	222.50 87.50 187.50 122.50 187.50 35.00 52.50	Ditto	222.50 87.50 187.50 122.50 187.50 35.00 52.50	£222.50 £87.50 £187.50 £122.50 £187.50 £35.00 £52.50
<u>Metro Rod charges:</u> Call out charge (abortive visit)	75.00		Conceded	<b>-£75.00</b>
Call out charge (effective visit)	75.00		75.00	£75.00
Invoice for drain clearance	1,296.0		1,296.00	£1,296.00
<b>2019 - total costs deducted by Tribunal</b>				<b><u>-£75.00</u></b>
<b>S/C on account charges year ending 31 Dec 2020</b>				
Budget demand	1,406.0	A sum based on RPI increase	£1,406.00	£1,406.00