FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**Sitting on**
Property	**:**	**Flat 40, Penwortham Hall Gardens, Penwortham, Preston PR1 9TG**
Applicant	**:**	**Derek Roscoe**
Respondent	**:**	**Places For People Homes Limited (represented by Residential Management Group Limited)**
Type of Application	**:**	**Reasonableness of Service Charges Section 27A and 20C Landlord and Tenant Act 1985 and Schedule 11, Paragraph 5A Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Mr J R Rimmer** **Mr J Faulkner**
Date of Determination	**:**	**31st December 2021**
Date of Decision	**:**	**22 March 2022**

DECISION

Order : **The service charges for the years 2014-15 to 2019-20 are reasonably incurred at reasonable cost, with the exception of the lift maintenance charges which are to be reduced in accordance with paragraphs 44-46, herein.**

The Tribunal makes orders under Section 20C Landlord and Tenant Act 1985 and Commonhold and Leasehold Reform Act 2002 That the costs of these proceedings shall not form any part of future service charges or administration fees recoverable by the landlord (in accordance with the views of the landlord's representative)

Application

1 The Tribunal has received an application from the Applicant in this matter under section 27A Landlord and Tenant Act 1985 for it to consider whether the service charges demanded in respect of Flat 40, Penwortham Hall Gardens are reasonably incurred at reasonable cost.

2 There are also ancillary applications under Section 20C of that Act and Schedule 11. Paragraph 5A Commonhold and Leasehold Reform Act for ancillary costs in relation to the proceedings to be excluded from future charges to be levied against the Applicant.

3 Mr Roscoe is the leasehold owner of the property in question, having previously been the attorney of his mother, the previous leasehold owner, prior to her passing.

4 The Respondent is an extensive provider of social housing, which in the case of Penwortham Hall Gardens, is managed by Residential Management Group Limited.

5 The subject property, Flat 40, is one of 13, numbered 39-51, situated in what was Penwortham Hall itself. The Hall is a Grade II listed building that is commonly known as "Phase 3" of the redevelopment of the Hall and surrounding grounds, dating from 1985. In addition to the 13 flats in the Hall there are 51 other properties on the development. In addition to the common areas of the development the Hall itself has, by its nature and layout, additional common areas for which service charges are levied.

6 The development, as a whole, provides retirement, warden assisted accommodation in a variety of 2-bedroom properties.

7 Mr Roscoe's application has come about by reason of his concern as to the extent of the charges being levied in relation to his mother's occupation of Flat 40 and a continuous thread running through his case has been what he sees as the

opaqueness of the management processes of the Respondent's managers and the difficulty he has experienced in obtaining information sufficient for him to make a proper judgement as to the reasonableness, or otherwise, of the various elements of the service charge payable under the terms of the lease relating to the flat.

8 That lease dates from 30th September 1986 and is made between the North British Housing Association Limited (1) (the predecessors of Places for people) and Morris and Anne Roscoe (The Applicant's parents). It is a 99-year lease from that date.

9 Clause 4 of the lease contains covenants by the lessees to pay both the service charge and the charge for gas electricity power and other services and those services are further set out in the only schedule to the lease.

10 A matter of particular concern to the Applicant is that paragraph (1) of the Schedule provides that:

"The amount of the service charge shall be certified by the landlords' accountants at the end of each financial year and if such charge shall be greater than the sum paid in advance in any year of the term by the tenant as previously provided in this lease the balance of the said sum shall be a debt due and owing to the landlords and payable with the service charge for the ensuing year."

11 Paragraph (2) provides that:

"The said certificate shall contain a summary of the landlords' expenses…"

12 Thereafter the services are set out in that paragraph. It need not be set out in full here as its contents are known to each of the parties and to the Tribunal.

13 Following the making of directions for the further conduct of this matter by a Deputy Regional Judge of the Tribunal on 19th November 2020 the Applicants case became more clearly stated in his statement of case dated 17th January 2021, although previous iterations of the Applicant's concerns had been raised in letters of complaint to both the respondent and the Housing Ombudsman. The Tribunal has had the opportunity of considering at length and in detail the careful and meticulous examination of the costs set out in those documents, as well as those directly within the proceedings.

14 The Respondent provided its own statement in reply and the position prior to the commencement of the hearing is set out in a "Scott" Schedule; detailing specific elements of the service charges for six accounting years that remained the subject of actual, or potential dispute between the parties. It comprises nearly 140 different items. The combined total documentation received from the parties in due course approached some 3000 pages.

The law

15 Section 18(1) Landlord and Tenant Act 1985 ("The Act") provides the definition of a service charge as …
An amount payable by a tenant of a dwelling as part of, or in addition to, the rent

(a) Which is payable directly, or indirectly, for services, repairs, maintenance, improvement, or insurance, or the landlord's costs of management and

(b) The whole or part of which varies, or may vary, according to the relevant costs

16 The law relating to jurisdiction in relation to service charges, falling within Section 18, is found in Section 19 of the Act which provides:

(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 the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

17 Further Section 27A Landlord and Tenant Act 1985 provides:

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the amount which is payable

(d) the date at or by which it is payable, and

(e) the manner in which it is payable

and the application may cover the costs incurred in providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

(4) No application under subsection (1)…may be made in respect of a matter which-

(a) has been agreed or admitted by the tenant

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

18 Section 20C Landlord and Tenant Act 1985 provides that:

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings

before… the First-tier tribunal… are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application

(2) The application shall be made…

(ba) in the case of proceedings before the First-tier Tribunal, to the Tribunal

(3) The…tribunal to which the application is made may make such an order on the application as it considers just in the circumstances.

19 Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 provides that:

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

Inspection

20 In view of the current pandemic the Tribunal applied its revised policy in relation to inspections and did not attend the subject property prior to the hearing. As a result of what it heard and was able to determine thereafter, no subsequent inspection was deemed necessary.

The submissions and evidence

21 As noted above, the Tribunal received extensive submissions and documentation pertaining to the case as referred to in paragraph 14, above. The statement of the Applicant's case is primarily of eight pages in length to which are then added a number of pages of notes and details of earlier enquiries made by email of the Respondent.

22 The response to that comes from the Respondent in a statement of case dated 22nd June 2021, following a further position statement from the Applicant dated 22nd April and the Scott Schedule prepared by both parties for the assistance of the Tribunal.

23 The Applicant's case is therefore set out at some length and is quite clear. It is the following:

(1) Concerns start over the provision, or otherwise, of the warden service provided within the service charge. The Applicant feels that the Respondent is in breach of the terms of the lease.

(2) This prompts a comprehensive and thorough (no other words would seem fit to describe the breadth and scope) investigation by the Applicant into the services provided.

(3) This engenders very considerable communication between the Applicant and the Respondent as to the reasonableness, or otherwise of the costs of service provision, with particular reference, but not to the exclusion of other matters (hence the Scott Schedule), to warden provision, management and the extensive travails in relation to the lift.

(4) The view adopted by the Applicant that notwithstanding issues in relation to particular services there is a fundamental problem with the lack of auditing of the service charge accounts by an appropriate accountant (see paragraph 10, above).

(5) There are other issues raised by the Applicant in relation to the application of the provisions of the lease relating to the sinking fund and the calculation of contributions.

24 The Respondent answers these challenges in the statement in response to the Applicants case by distilling the concerns expressed into 31 numbered paragraphs and providing its own views thereon. A further 8 paragraphs deal with matters raised in the Applicant's position statement.

25 At the subsequent hearing of the matter on 6th and 7th December 2021 the views of both the Applicant and the Respondent upon all those points that remained unresolved were considered and discussed with the parties during the course of a hearing that lasted 2 full days, by reference to the respective submissions and consideration of the Scott Schedule as contributed to by the parties

Determination

26 Fundamental to the Applicants case is the matter of the certification of the accounts. It is quite clear that they have not been professionally audited by an accountant holding a professionally recognised accounting accreditation. Mr Roscoe asks the Tribunal to consider there to be a fundamental flaw in compliance with the provision of the lease that the service charges "be certified by the landlords' accountants at the end of each financial year" as provided for in paragraph (1) of the schedule to the lease (see paragraph 10, above)

27 Mr Roscoe referred the Tribunal to previous decisions where a failure to comply with the requirement of the lease as regards the provision of accounts has proved fatal to a claim for service charges on the part of the landlord. Indeed, the Tribunal is acutely aware of many such decisions and is therefore conscious of the need to look closely at the provisions of the lease for 40, Penwortham Hall Gardens.

28 Paragraph 10, above sets out the requirement of paragraph (1) of the schedule to the lease that:

"the amount of the service charge shall be certified by the landlords' accountants" prior to that amount being the definitive charge for the year.

29 The Tribunal notes that there is no requirement for there to be a set of accounts certified as audited, merely that the amount of the services is to be certified. Additionally, there is no requirement for there to be any involvement of an accountant belonging to any recognised accountancy body or having some specific professional qualification. The Tribunal reads the provision as simply requiring, somebody, fulfilling the function of being responsible for the landlord/management company's accounts, to provide a certified amount.

30 This has been done. The Tribunal does note however that even this task appears to have been achieved only with some difficulty on occasions and as Mr Roscoe rightly points out, not in accordance with the RICS guidance on accounting for service charges.

31 In now setting out its determination as to the reasonableness, or otherwise, of the service charge for 40 Penwortham Hall Gardens, having determined that initial point, for the 6 accounting years from 2014-5 to 2019-20 it is appropriate to set out a number of preliminary matters upon which the Tribunal reached relatively straightforward conclusions, mainly with the consent and concurrence of the parties.

32 (1) The Applicant's case and, indeed, his concerns with the charges as evidenced by the documentation supplied by the Respondent, was influenced by his own professional standards pertaining to what appeared to be a lifetime engaged in quality control, latterly at Airbus Industrie in Toulouse. Mr Roscoe clearly sets a far higher quality control standard on paperwork required to justify approval of any stage in a particular process. Without doubt the margins of error need to be as close to zero as possible in such an industry where catastrophe would otherwise ensue.

Those high standards need not necessarily apply to service charge managers dealing with more mundane paperwork where the test will ultimately be whether, on balance, the Tribunal can establish what costs and invoices are reasonable for services that have been provided, together with the need to balance cost against provision.

33 (2) The Tribunal is nevertheless drawn to the conclusion that the Respondent has no doubt contributed to the length and complexity of this matter by failing to appreciate the rigour that the Applicant would apply to the examination of the documents it provided. It is distinctly possible that these proceedings could have been shortened, if not avoided, had that appreciation been realised.

34 (3) It is important to establish those matters over which the Tribunal have jurisdiction. Its statutory foundation, in the context of these proceedings, comes from the Landlord and Tenant Act 1985 and is in relation to the reasonableness, or otherwise, of service charges. It is not here a Tribunal established to hear contested argument as to compliance with and breaches of other obligations created by the lease, for example those relating to provision, or otherwise of the

warden service. Similarly, it should not concern itself with matters that are not charges, for example interest accruing on reserve funds, except to the extent it may conceivably reflect elsewhere in management issues.

35 (4) The Tribunal cannot concern itself with the sinking fund. Contributions to this are not payments in respect of services, or charges for them, but obligations created separately under the terms of the lease. It is therefore inappropriate for the Tribunal to comment upon those entries in the Scott Schedule that relate to this fund, save and except that the Tribunal believes that it was able to assist the Applicant by examining correctness of contributions to the fund in the relevant years during the course of its deliberations generally.

36 (5) It is important to establish that for all the years in question the Tribunal is able to deal with actual costs incurred, according to the expenditure recorded by the Respondent within the accounts. That expenditure does not necessarily match at any time the budgeted costs against which the tenants make their service charge payments in advance throughout the year. Those budgets are based on, without necessarily replicating, the actual costs of the preceding year. It is however the actual costs that are eventually incurred that the Tribunal must consider where those are available.

37 (6) There are occasions where there is a lack of consistency in how costs incurred are allocated to a head of charge and in different years the cost of particular work may appear in different heads (for example internet provision appears separately, then elsewhere within telephone charges in another year). It is important to note how, for someone inexperienced in examining subsequent accounts, this may create confusion and unnecessary work. Item 2 in the schedule for the 2017-18 year is an example.

38 (7) There are also occasions when the Respondent, having checked the accounts, whether or not as a direct result of the Applicants concerns, have then found it necessary to re-allocate certain expenditure elsewhere, or split it differently between the various phases of the development. Analysis of the relevant elements of the accounts produced to the Tribunal in the form of schedules of expenditure suggest that ultimately charges only relevant to Phase 3, being the phase where Penwortham Hall itself is situated, after adjustment, are levied. See for example page 457 of the Respondent's bundle in relation to the correction of double invoicing by the lift contractor and, similarly a reversal of incorrect management fees on page 458. There are many others.

39 (8) Particularly in the setting out of the summary of his case, at page 74 onwards of his bundle, the Applicant accepts an absolutist position in relation to most charges. They should be disallowed in the absence of sufficient supporting evidence from the Respondent. He does accept that those services are supplied but attributes no value to them. This position is ameliorated in the Scott Schedule by a recognition that if a provision is made it will have some value that must be attributed to it.

40 The Tribunal may then move on to consider in detail the observations made by both parties upon the various elements of the service charge upon which there has been no agreement between them. They are set out in the Scott Schedule year by year and then by head of charge. In seeking to deal with the schedule the Tribunal has taken the view that it is easier to deal with the heads of charge sequentially, dealing with all years in which they are contested as one subject area.

Cleaning charges

41 These are now accepted by the applicant as appropriate in each of the 6 years under consideration.

Draining, guttering, sewage

42 The Applicant suggests initially that an amount of £250.00 a year is appropriate for what is provided by the Respondent, primarily the clearing of gutters to the building, but with other occasional related work. In one year no cleaning actually takes place according to the Respondent and in another the gutters are cleared twice. In a further year the amount is charged under roof repairs, rather than gutter cleaning. The point is made in paragraph 38 (above) that this inconsistency does not help establish the clarity the Applicant needs to simplify the issues he seeks to identify.

43 The Applicant also has concerns that cleaning may be required more often than actually takes place, but there is nothing that substantiates this claim and such cleaning as does take place is vouchered. In the absence of evidence to the contrary there is nothing to suggest that the charges levied for such cleaning as does take place is other than reasonable.

Lift maintenance

44 Mr Roscoe expresses a number of concerns in relation to the lift

(1) The maintenance contract does not provide value for money compared to alternatives, although examination of his suggested alternative does not support the view that this would be any cheaper

(2) The failure by the management company to provide a working lift for a considerable period of time which, although historical, continues some 18 months, or thereabouts, at the start of the period under consideration from 2014.

(3) The continued payment for repeated lift maintenance visits (and other work such as safety inspections during this extended period of inactivity.

45 In relation to this latter issue the Tribunal does not feel that the Respondent adequately explains the dichotomy between the period of time during which the

lift appears to be out of commission and the continual expenditure incurred to obviously very limited effect. The Tribunal is of the view that in the absence of significant supporting evidence the apparent similarity between charges when the lift is working and when it is out of use for a significant period is unreasonable.

46 In the absence of any clear indication as to how costs might be adjusted in such circumstances the Tribunal comes to the conclusion that for a period of a year and a half, or thereabouts, a reduction of costs in a full year of 50% and for a half year 25% would be appropriate.

Fire equipment maintenance

47 The Applicant accepts that there is a vital need to maintain the equipment but is of the view that work which is carried out is haphazard. He also suggests that it may be possible to effect some efficiency savings. He is however in the difficult position that many Applicants find themselves: there is no evidence to provide to counter the vouchered invoices from contractors on behalf of the Respondent.

48 If the Tribunal accepts the net cost of relevant items comes to some £5000.00 over a 6-year period, or approximately £64 per flat per year, the issue is not whether such work could be done differently, or at less cost but is such a charge reasonable? There is nothing to suggest it is not.

49 A particular issue arose in relation to the cost of a call-out to an alarm over Christmas 2017 in the 2017-18 accounts. The Tribunal is satisfied that if there is an alarm call a response is required, even if the call is then found to be a "false alarm". Cost over the festive period is likely to be grater than at other times.

Electrical equipment maintenance

50 Similar points are made here as are made in relation to the preceding item and the Tribunal again draws the same conclusions. The average cost per flat is about £24.00. Mr Roscoe did, however, make the point that the lack of clarity in relation to some invoices made his assessment more difficult than it needed to be.

General repairs and maintenance

51 Mr Roscoe is happy to accept that an amount of £1,242.00 is appropriate for the year 2018-19 and uses this as his base from which to challenge the amounts for each of the other five years and that costs should not vary greatly, year on year. The Respondent relies upon the view that the costs vouchered are reactive and incurred only in response to repairs that are identified and require attention.

52 An analysis of the schedules of expenditure provided by the Respondent suggests nothing out of the ordinary, or anything that attracts the eyes of the Tribunal as something unusual, or excessive. There is nothing to suggest that they are other than expenditure reasonably incurred at reasonable cost.

Ground Maintenance/Tree surgery

53 These are items that may usefully be considered together, although tree surgery is not a charged item in every year.

54 The Applicant makes a number of points to challenge some of the charges:

(1) The grounds maintenance charges are excessive and a lower quote was obtained for the work.

(2) Tree surgery may not be carried out in the manner appropriate to work taking place in a conservation area (notwithstanding the there are no relevant tree preservation orders).

(3) It is not clear that invoices provided relate to work at the site of Penwortham Hall Gardens).

55 The Tribunal is satisfied that Mr Roscoe has been misled by the documentation supplied in support of the charges to the extent that the lack of clarity and precision in the invoices would not have been acceptable to him in his professional life. However,

- The Tribunal is satisfied that the reference to Syke Hill is to a property adjoining Penwortham Hall Gardens and not an invoice relating to a different property.
- The reference to a Tree Preservation Order application is reasonably likely to be the notice to the Local Authority required before work is carried out in a conservation area.

56 It may well be the case that the gardening/ground keeping costs could be lowered with a contract being placed elsewhere, but this is neither entirely clear, nor sufficient to indicate that the costs actually incurred may be unreasonable. The task the Tribunal is set is to consider that a cost is reasonable, not to venture so far as to suggest a different cost may be more reasonable.

Buildings Insurance

57 Mr Roscoe provides, at page 503 onwards in his bundle of documents, the results of enquiries he has made via a price comparison website as to the possible costs of buildings insurance for Flat 40. He has used the quotations received as evidence that current premiums through the service charge are unreasonable. The issue was examined at some length by the Tribunal at the hearing.

58 Mr Roscoe conceded that he may not necessarily have been comparing like with like when seeking his quotation and the Tribunal has some concern that the reinstatement value of the whole building and the extent of the common parts may not have been given full consideration. The Tribunal would also have concerns for the landlord/management company at the fragmentation of

insurance cover if each flat owner went his or her own way. Oversight of complete cover would be difficult and that is a fundamental reason as to why a lease such as that for this subject property places the obligation to insure upon the landlord.

59 The cost per flat does not seem unreasonable to the Tribunal and in the absence of some evidence that is more compelling in support of the Applicant's case as to the cover provided and the valuation of the whole building, the Tribunal is drawn to the conclusion that there is nothing to suggest the premiums are unreasonable.

Management fees

60 Within the Scott Schedule the Applicant makes a number of points as to the deficiencies that he sees in the management of the development that ought to be reflected in a reduction in the amounts to be charged

- The level of charges acts as a disincentive to prospective purchasers
- The information required to verify the legitimacy of the expenditure is not readily available or willingly provided and accuracy, or otherwise of the accounts is not easy to establish
- There are clear acts of mismanagement, for example the handling of the lift breakdowns
- There are continual misapplications of invoices requiring correction at later dates and in later years

All of which reflect in part the observations made by the Tribunal earlier.

61 Whilst comment has also been made above that the Tribunal may be more flexible in its approach than the Applicant would, it is clear that some of the efforts of the Respondent may be open to criticism. The Tribunal does, however, remind itself that all service charges costs, including those relating to management, are a balance between standards and costs. Such is the case here. No doubt with additional staff and resources some of the difficulties perceived by the Applicant could be ameliorated or avoided. The Tribunal must ask itself whether, on balance, the charges are reasonable for a reasonable management provision.

62 For the avoidance of doubt the Tribunal does not take any issue with the amount of interest accruing on reserve deposits as reflecting upon management performance and mentions this here in view of its observations in paragraph 34, (above).

63 The amounts themselves, per flat per year, are conceivably below what the Tribunal, from its knowledge and experience, might see for similar provision in similar developments for not dissimilar levels of service. In that context they are reasonably incurred at reasonable cost.

Health and safety assessments

64 These charges appear on an annual basis, with the exception of 2019-20 where that annual cost is carried forward into the subsequent year. It includes a health and safety inspection, together with a fire risk assessment. There is also (except, apparently in 2014-15) a separate asbestos substance report.

65 Whilst Mr Roscoe appeared to have no issue with the principle of the health and safety and fire risk assessments, he did express some concern as to what was provided for the costs involved. The Tribunal was able to request and receive at the hearing a copy of the latest report available to assist with its understanding of what work was undertaken. The costs relating thereto appear to be reasonable.

66 The Applicant expressed greater concern of the need for and extent of the asbestos inspection and report, (which the Tribunal dealt with as part of the general repair costs, but which might usefully be considered here) particularly the need to have such regular assessments given the limited amounts within the building. The Tribunal accepts the likelihood that year on year there is likely to be little or no disturbance of the relevant items within the building which contain asbestos. The position for a manager of a block such as this is to make a value judgement as to the risk that might arise, as against the cost of regular inspections. It is not a question of whether inspections at longer intervals would be more reasonable, but are annual inspections reasonable, given the duties imposed upon the Respondent. The Tribunal is prepared to say that the work is reasonably incurred at reasonable cost.

Internet provision

67 This charge appears in 2018-19 and 2019-20. It is also referred as telephone charges in 2017-18. It relates not to internet provision to individual flats, but to the warden's office, to assist with warden duties. Whilst there may be some concern on the Tribunal's part as to the cost when referenced to the time for which the warden service operates it is reasonable to incur such costs for the more efficient operation of the service.

Support costs

68 Paragraph 29 of the Respondents Bundle provides an explanation of the matters to which these costs relate, the operation and maintenance of the alarm call system operated via a third-party agency. The Tribunal understands that for Penwortham Hall Gardens no charge is made for depreciation, or eventual replacement of the system, which will fall to be met from the reserve fund when incurred.

69 The tenor of the Applicant's observations entered into the Scott Schedule suggests that his interest might be satisfied by a sufficient explanation as to what the costs are that are charged and that explanation may be sufficient.

70 To the extent that they amount, in rough terms to about £110.00 per year, per flat. Or a little over £2.00 per week, the Tribunal considers them reasonable.

Utility costs

71 These costs, so far as they relate to both water and electricity utilities, as detailed in the Scott Schedule, are a further example of a situation where costs have historically been incorrectly allocated between the phases of the development and a reconciliation has taken place, resulting in a significant credit of £2818.00 being applied in the 2019-20 year for electricity. The considerably lower water charges show an amount in that final year of £14.00 as against variable amounts between 376.00 and £149.00 in earlier years. As such they illustrate the point made by Mr Roscoe as to the level of significant errors that have needed to be rectified and to a casual mind it might appear that the Applicant's prodding may have contributed to the rectification.

72 They do now appear to be substantiated by vouchered evidence, subject to the changes that have now been made, and do appear to be reasonable for the extent of the provision to the building and the warden's office.

73 The gas charges are understood to be principally the burden of the contract for maintenance and the annual gas safety check.

74 The Tribunal consider the charges to be reasonably incurred at reasonable cost.

Warden costs

75 The Respondent's statement of case explains these at some length. They are the costs incurred in relation to the warden service and within the documentation supplied by the Respondent there is a breakdown of how the costs are made up. The service, with its ancillary costs are provided for by paragraph 2(a) of the Schedule to the lease.

76 Mr Roscoe has concerns about the warden service and its adequacy. It is important to note, firstly, that the costs charged are only the costs for the service actually provided and not for a service to a higher standard which does not then materialise. Secondly, it is quite clear from the lease that the ultimate arbiter of what should be provided is the landlord/management company as no further specification is provided in the lease other than a reference to "a warden service" in Clause 5(2) of the lease.

77 The costs are set out, year on year, and the Tribunal considers them to be reasonable according to its knowledge and experience of such matters.

Reserve fund and maintenance fund

78 These funds may usefully be considered together. The Applicant makes a valid point that it is not easily apparent to a person in his position how contributions are assessed to the reserve fund and then how, and on what basis, decisions are made to make contributions to expenditure from this and/ or accrued maintenance funds.

79 Closer examination, of both the documentation provided by the Respondent and the explanations given at the hearing, suggests that funds are used in the event that actual expenditure significantly exceeds that provided for in the preceding annual budget, with particular reference to significantly large amounts.

80 Mr Roscoe points out the lack of attention that has been paid to the windows in the development since 1984 and that plans are now made to effect significant replacement and upgrade. The proposed work will eat significantly into those funds as an alternative to a considerably higher annual charge(s) during the periods the work is done.

81 The Tribunal frequently encounters these funds as a regular bone of contention. Leaseholders generally underestimate the cost of likely cyclical costs (such as painting and decorating of common parts or attention to central heating systems in addition to window replacement) and the need to have balances to meet the expense.

82 The Tribunal notes the manner in which the Respondent has used reserve funds to meet costs for particular services that have exceeded budgets, rather than surcharge leaseholders at the end of particular years. There is always the possibility that the Respondent could raise monies for the reserve fund from a tenant who then disposes of the lease to an assignee who then benefits from expenditure met from the reserve.

83 There is nothing in what the Tribunal has read or heard that suggests that the collection and then expenditure has been done in anything other than a reasonable manner by the Respondent and the balances are not unreasonably high having regard to potential expenditure that might occur, of which the current proposals in relation to the window replacement is an example.

84 There are then a small number of matters that occur once, or only occasionally in the Schedule that also need to be considered.

Bulk refuse removal

85 This item appears in the 2019-20 year as the cost of an additional brown bin (the colour for garden refuse in South Ribble) and in 2014-15 in relation to removing furniture items left by a tenant. In the former case the cost was £61.00. and in the latter £47.00.

86 To the Tribunal's mind they represent prudent expenditure in the circumstances if the circumstances surrounding the grounds and gardens justified a further bin, or the costs of enforcing covenants against a tenant outweighed the cost of management intervention. The costs involved suggest a reasonable exercise of judgement on behalf of the managers.

Signwriting

87 This appears in the 2015-16 accounts in an amount of £302.00. The Applicant suggests that the work was not reasonably incurred and was not budgeted for. The Tribunal is satisfied with the explanation provided by the Respondent in the Schedule and the amount appears to be reasonable.

Section 20C Landlord and Tenant Act 1985 and Schedule 11(5A) Commonhold and Leasehold Reform Act 2002

88 At the conclusion of the hearing the Respondent indicated that there would be no attempt to reflect any costs of these proceedings in future service charges, nor to seek to recover them as administration charges. The Tribunal did not therefore seek to engage with the parties in examination of the lease with regard to provision for such matters, but in the light of the indication made, is happy to confirm an order to that effect within its decision as being just to do so.

J R Rimmer
TribunalJudge
22 March 2022