FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EJ/LSC/2020/0070 FVH**
Properties	**:**	**3 & 9 Magdalene Court, Consett County Durham, DH8 6RF**
Applicants	**:**	**Mrs Mary Middleton (No 3)** **Mrs Sylvia Peacock (No 9)**
Respondent	**:**	**Karbon Homes Limited**
Type of Application	**:**	**Landlord and Tenant Act 1985 (the "1985 Act") – section 27A, and section 20C; Commonhold and Leasehold Reform Act 2002 (the "2002 Act") – Sch 11 para 5**
Tribunal Members	**:**	**Judge WL Brown** **Mr IR Harris, MBE FRICS**
Dates of Hearings	**:**	**19 March and 24 May 2021**

DECISION

(i) Regarding reasonableness of service charges and administration charges at issue the Tribunal's determinations appear in paragraphs 21 - 41 of this Decision.

(ii) Order made under Section 20(C) of the 1985 Act

(iii) No order as to costs

REASONS

Hearings

Hearings of this matter took place as referred to above. These were remote hearings by video which was not objected to by the parties. With the consent of the parties, the form of the hearing was by video using the Tribunal video platform (a Full Video Hearing – FVH). A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and all relevant issues could be determined in a remote hearing. The documents that we were referred to are in core and supplementary bundles and subsequent submissions, the contents of which we have recorded. (The parties were content with the process).

The Applicants did not attend but both were represented by a Litigation Friend, Mr William Peacock, who participated throughout on their behalf with their express written authority.

The Respondent was represented by Mr Joe Robson, Specialist Housing Manager.

The parties were directed at conclusion of the hearings to provide additional information to the Tribunal, which subsequently completed its deliberations.

Background

1. The Tribunal received an application dated 18 September 2020 from the Applicants for a determination as to whether service charges in respect of the Properties (being the respective apartments of the named Applicants) were payable and/or reasonable. The Application concerned the service charge years 2011/12 – 2019/20 inclusive and the advance service charge year 2020/21. The determination regarding service charges is made under Section 27A of 1985 Act.

2. Case Management hearings were held by video on 6 January and 19 March 2021 and Directions were made by the Tribunal throughout the proceedings.

3. There is a substantial history in this matter and the Tribunal will not here record all of the detail, but will focus on the key points and in particular those relevant to its determinations. The Respondent is successor to previous landlords of each of the Properties, thereby assuming the rights and responsibilities of its predecessors. During the course of the proceedings the parties reached certain agreements and the Respondent made certain concessions. In particular, the Respondent acknowledged that there had been a failure to provide the necessary statutory information prescribed by Section 21B of the 1985 Act for service charge years 2014/15, 2015/16, 2016/17 and conceded that sums demanded for those years would not be pursued. Therefore the Tribunal was left with a limited number of determinations to make, as set out below.

4. For reasons explained in decisions following the Case Management hearings and as mentioned in the previous paragraph, the Applicants were able to pursue before the Tribunal the Application for years 2017/18 – 2018/19 - other than in respect of 12 items for those years (inclusive, but not so as to extinguish the Tribunal's jurisdiction on other elements of charge in those years), 2019/20 - and the advance charge for 2020/21. Regarding the latter, Mr Peacock stated at the hearings that for this year all that the Applicants requested from the Tribunal was for it to direct that the decisions made for the earlier years are also applicable to the advance charge.

5. The parties prepared the schedule appearing at Annex A to this decision (a "Scott Schedule") detailing their respective positions on matters under dispute. Therefore the Tribunal will not repeat those representations, but may refer to additional information presented to it at the hearings and subsequently (understood by the Tribunal to have been copied to the other party) relevant to its determinations.

The Tenancies

6. The content of the tenancies was not identical, but had similarities.

i) The tenancy of Mr and Mrs Middleton's property (Number 3) was granted by the Respondent's predecessor, Derwentside Homes Limited. It is headed "Combined Starter And Assured (Non Shorthold) Tenancy Agreement for New Tenants. It records "This is a weekly Assured Shorthold Tenancy", beginning 5 September 2011. It records that the tenancy will automatically convert to an Assured Tenancy on 5 September 2012.

ii) The tenancy of Mrs Peacock's property (Number 9) was granted by the Respondent's predecessor, Derwentside Homes Limited. It records a "start date" of 7 July 2014 and was described as a "weekly Assured Shorthold Tenancy [called a Starter Tenancy]……." It records that the tenancy would automatically convert to an Assured Tenancy from 7 July 2015.

iii) The agreements both record "We may, after consulting with you and all other affected Tenants, increase, add, alter, vary, reduce or remove any service[s] for which you pay a Service Charge. We will act reasonably and will take account of tenants' views ……." A Notice of Variation is then to be served on the leaseholder before any change takes effect.

iv) The representations for the Applicants included that the amount of service charge was set at the outset of the respective tenancies. The Tribunal found and determined

that despite a service charge figure appearing on the face of each tenancy document the annual service charge was variable, because the agreements specify arrangements for estimating and reconciliation based on actual expenditure of service charges in each year (paragraph 56 for Number 3, paragraph 50 for Number 9).

v) The Tribunal found as a matter of fact that the tenancy clause referred to in iii) above does not contractually compel the Respondent to consult on amounts to be incurred year by year and element by element, but only where new or changes to specific charges are being proposed. We determined that the Tribunal's jurisdiction to determine payability and reasonableness of charges is not affected by the provision.
vi) Each tenancy contains provision for payment by the leaseholder of service charge, in addition to rent and obligation for certain repairs and maintenance upon the landlord. The Tribunal found that there is no clear definition of the composition of service charge in either agreement – what services will be charged for. However, we found that it is clear that a service charge is payable under each tenancy agreement. We identified mechanism in both for presentation of information about the advance charge ("We will send you a Service Charge Schedule showing the full details" – clause 56.1 (Number 3), clause 50.1 (Number 9)). It is explained that services will first be charged on an annually estimated expenditure and then reconciliation against actual expenditure is by way of adjustment of the following year's charge (clause 56.3 (Number 3), clause 50.3 (Number 9)). We found that the contracting party leaseholder cannot reasonably argue that they did not understand they had to pay a variable service charge. They are granted the right to inspect service charge accounts, receipts and other documents (subject to the Respondent's right to make a reasonable charge to cover copying costs, if relevant) (clause 56.5 (Number 3), clause 50.5 (Number 9)). Therefore, while a leaseholder cannot identify from the tenancy agreement the services for which they will be charged, there is a contractual process by which that information will be provided to them (in addition to statutory rights).

The Law

7. Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

a. only to the extent that they are reasonably incurred, and
b. where they are incurred on the provision of services or the carrying out of works, only for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.

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

8. Section 27A of the 1985 Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether service charge is payable and, if it is, as to
a. the person by whom it is payable,
b. the person to whom it is payable,
c. the amount which is payable
d. the date at or by which it is payable, and
e. the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -

a. the person by whom it would be payable,
b. the person to whom it would be payable,
c. the amount which would be payable,
d. the date at or by which it would be payable, and
e. the manner in which it would be payable.

9. Mr Peacock relied in part on the provisions in Section 11 of the 1985 Act:

Repairing obligations in short leases

(1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and

(b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—

(i) forms part of any part of a building in which the lessor has an estate or interest; or

(ii) is owned by the lessor or under his control.

(1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.

(2) The covenant implied by subsection (1) ("the lessor's repairing covenant") shall not be construed as requiring the lessor—

(a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,

(b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or

(c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

(3) In determining the standard of repair required by the lessor's repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

(3A) In any case where—

(a) the lessor's repairing covenant has effect as mentioned in subsection (1A), and

(b) in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and

(c) the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the lessor's repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.

(4) A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c).

(5) The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant—

(a) to put in repair or deliver up in repair,

(b) to paint, point or render,

(c) to pay money in lieu of repairs by the lessee, or

(d) to pay money on account of repairs by the lessor.

(6) In a case in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

10. Also of relevance in the 1985 Act is Section 18, which states:

Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

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

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

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

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

11. Also relevant is Schedule 11 of the 2002 Act which states

Meaning of "administration charge".
1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
.....

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

Reasonableness of administration charges.
2 *A variable administration charge is payable only to the extent that the amount of the charge is reasonable*
.....
Liability to pay administration charges
5 (1)An application may be made to the appropriate tribunal for a determination whether an administration 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.

The Properties

12. The Tribunal learned that the Properties are located in a purpose built block, converted in 2010/11 to 19 one and two bedroom flat, accessing some communal facilities (the "Development").

The Tribunal's Findings and Determinations

Lease interpretation

13. There are some differences between the tenancy agreements for each Property. The Respondent explained that generic agreements have been issued by the landlord for time to time. It was argued for the Applicants that a number of charges were inappropriately charged for via the service charge and were either responsibilities of the Respondent for which the expense could not be reclaimed that way, or were for items included within the "rent".

14. We heard from the Respondent that historically the method of apportionment of charges incurred for the Development had varied. It was confirmed that the Respondent is principally a provider of low cost social housing and owns a significant number of developments. For some matters, where charges were levied to the landlord for works carried out for a number of sites, including the Development, the total was simply divided by the number of sites, then for the Development the resulting sum was divided by the number of flats. For other charges there had been a more forensic division of the global total, based on the total count of properties involved. The Respondent had recognised that these methods were inconsistent, in some respects

unfair and in opposition to its own methodology of apportioning such charges relative to development size, or requiring invoicing to be scheme-specific.

15. Therefore, as some items at issue were charged through a historic process, the Tribunal began by considering for each item in dispute:

i. Does the respective tenancy agreement allow for recovery through the service charge for the specific costs?
ii. If so, for each individual item on the Scott Schedule to decide a) if they are a recoverable service charge item or included in the rent, and b) are the costs reasonable?
iii. The correct method of apportionment between each flat.

16. Mr Robson stated that the time the tenancy agreements were signed he understood that a separate schedule had been provided detailing which services were recoverable through the service charge payment, but that the Respondent was unable to provide a copy of that document. This schedule is not referred to anywhere in the agreement and as such doesn't form part of the contract. The agreements do go into some detail on what are the landlords repairing responsibilities, with some variations for Version 1 (No. 3) and Version 2 (No. 9), but these simply distinguish landlord and tenant responsibilities and give no direction on what is recoverable.

17. We found that the agreements make it absolutely plain that a quite considerable service charge is anticipated. On the second page of the agreement it is set out, which for No.3 shows a charge of £30.13 plus water charges in addition to the rent of £65.78. The tenant signing this could be in no doubt that a quite extensive service charge was payable. In addition, Para 56 goes into some detail as to how and when the charge is to be applied and that chargeable items would be fully detailed on the Service Charge Schedule, with these charges being variable after consultation. However, it again stops short of clarifying in advance the actual chargeable items, or the apportionment method.

18. In the absence of definitive guidance on chargeable items appearing in the tenancy agreement, we considered Section 11 of the 1985 Act. We found against Mr Peacock's argument that because the landlord has a statutory obligation for certain repairs it also meant the charge could not be passed on to a tenant. That is wrong in law. While a landlord has certain obligations identified in that section, there is no provision which prevents recovery from a party to a tenancy – meaning here the Applicants – if the agreement in question so provides. We made findings for each element at issue and in respect of all of those for which reasonableness has been determined we were satisfied that there was contractual provision under which the Applicants are responsible for contributing to the respective charge.

19. We also considered Section 18 of the 1985 Act. We found that all of the items put in dispute were covered by the wide definition in Section 18 (1)(a) of services, repairs maintenance and so on, and also compliant with Section 18(1)(b) as being variable (here, changing year to year).

20. During the hearing on 24 May 2021 Mr Robson conceded that some items should correctly be covered by the rental payment. He gave the example of roof tiles having to be replaced, or repairs to structural items relating to the lift shaft. He made the general distinction between structural items being included in the rental payment

and “consumables”, which were service charge items. He referred to the accompanying schedule at the time of tenancy, but which document was not before the Tribunal in evidence. The Tribunal found as a matter of law it was reasonable for structural items to be included in the rent, but that items in the nature of personal services, or management/upkeep of communal or common parts, should come under the service charge heading.

21. The Tribunal made a fundamental determination on the question of apportionment for the cost of works invoiced to the Respondent (or a predecessor) to cover more than one development. The Respondent’s own methodology diverges from that of predecessors – see paragraph 14. For service charge years where the Respondent alone has been involved for commissioning works, it requires from its contractors allocation of a charge to a specific development. For charges regarding the Development it then apportions the sum by 19, according to the number of flats. While we note this does not take account of the potential for apportioning according to flat size (some are one, some are two bedroom) neither tenancy identifies a method. Mr Peacock made no representation that there should be division by any other method than that lately adopted by the Respondent – his concern was to ensure a fairness of allocation to the Development. The Tribunal found that the allocation to each flat by dividing as to one-nineteenth was a reasonable method and should be adopted for the charges at issue where another method had been applied. The Tribunal directed the Respondent to present its figures accordingly and the Scott Schedule figures now reflect this action. It is understood that all figures are exclusive of any VAT properly chargeable on expenditure which is recoverable in addition from leaseholders.

22. Monitoring fire panel, smoke alarms, door entry - Service charge years 2017/18, 2018/19 and 2019/20

Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. The Applicants argued that the Respondent had failed to provide inspection facilities for documents relating to the contracts or calculations in respect of tasks undertaken by in-house staff of the Respondent and that no consultation as required by S20 had been undertaken., In each year the total charge to each flat is £2.50 per week, but this amount included both the contracted monitoring of the facilities mentioned and the additional operational and management services of in-house staff. On the Respondent’s calculations, only an amount of £60.13 per flat per annum related to the contract and on the balance of probabilities, the Tribunal was persuaded but by the Respondent’s evidence that the amount charged to the residents in respect of the monitoring services under the contract fell below the threshold for consultation and was correctly charged We were presented with no persuasive evidence to refute the Respondent’s explanation of the service to which the charge related, including remote monitoring for faults of the particular systems, which we found cogent and necessary for safety of the block and occupiers. We found the annual sum for each year to be reasonably incurred and reasonable in amount.

23. Help points + response - Service charge years 2017/18 and 2018/19

Having made the determinations set out in paragraph 18 and 19 we determined that this charge is recoverable through the service charge. We found that the charge comprises £1.10 per flat per week for the operation of Help Points in the development

and £1.00 per flat per week for emergency response responder service. From the evidence from the Respondent we found that these services were of benefit to the residents, many of whom are elderly and at risk of falls. While Mr Peacock advocated the availability of the national emergency services, at no direct cost, we found on a balance of probabilities that the provision of additional response services was likely to be a comfort to the majority of occupiers of the Development, all of whom we understood had been consulted about its provision when a previous contract with Durham Care Connect had ended and none had registered opposition; indeed the Applicants had approved. We were presented with no persuasive evidence to refute the Respondent's justification of the charge and having found them to be recoverable charges we further determined the sums to be reasonably incurred and reasonable in amount for each year.

24. Fire (alarm servicing/repairs/maintenance) - Service charge years 2017/18 and 2018/19

Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. The services are clearly necessary for safety of the block and its occupiers. We were presented with no persuasive evidence of the availability of a lower cost and determined the sum to be reasonably incurred and reasonable in amount for each year.

25. Laundry (servicing/repairs/maintenance/replacement) - Service charge years 2017/18, 2018/19 and 2019/20

Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. We were presented with no persuasive evidence of the availability of a lower cost and determined the sum to be reasonably incurred and reasonable in amount for each year.

26. Gardens (maintenance) - Service charge years 2017/18 and 2018/19

Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. The evidence was that for service charge year 2017/18 the work contract had been taken over by EDP, a subsidiary of the Respondent. The annual cost claimed in 2017/18 was £2,660.00, which we found was a marginal increase on the charge rendered by the previous contractor in 2016/17 (£2,577.60), while in the previous years had been £704.48 (2013/14), £1,833.72 (2014/15) and no information provided for 2015/16. In 2018/19 the charge rose to £3,125.00. The complaint presented for the Applicants was that the increases were unreasonable, not about the extent or quality of work. The Tribunal was presented with no persuasive evidence that the works could have been undertaken for a significantly lower sum. We determined the charge for 2017/18 to be reasonably incurred and reasonable in amount. However, we found no evidence to explain the increase of £465 in the following year. Using our expertise we found it reasonable for there to be an increase, but that it should have been capped at 5% - i.e. £133 – referable to inflation and related overhead increases. We determined that the reasonable sum for this element of charge should be in the region of £2,793, which we rounded to £2,800.

27. Cleaner - Service charge years 2017/18, 2018/19, 2019/20

No cost was detailed in the Scott Schedule and nor was evidence of any presented to the Tribunal as a service charge item in these years, hence no determination was necessary.

28. Support (meaning the charge for the onsite scheme officer) - Service charge years 2017/18, 2018/19 and 2019/20

This item relates to the warden service (known as RLT from 2019/20) which is shared between all nine of the Respondent's schemes. A percentage of staff costs varying between 20% to 35% was charged to leaseholders. Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. Provision of the service was not in dispute. The Tribunal evaluated the evidence from the Respondent about the cost of RTL in providing this service. We found no persuasive evidence that the annual sum involved was excessive (we noted that the charge rose by only £17 between 2017/18 and 2018/19). Therefore the Tribunal determined that it was reasonably incurred and in its amount for 2017/18 and 2018/19. The Applicants agreed the sum of £434.82 as being due for 2019/20.

29. Door Entry – Service charge years 2018/19

This item related to the cost of necessary repairs to the entry door, rather than monitoring services. Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. We were presented with no persuasive evidence of the availability of a lower cost and determined the sum to be reasonably incurred and reasonable in amount.

Additional items in Service charge year 2019/20

30. Electricity – the credit back of £323.63 acknowledged by the Respondent in the Scott Schedule was endorsed by the Tribunal. No other adjustments were found to be necessary as charges otherwise were found to be in line with bills rendered.

31. Grounds – this item is for the communal grounds maintenance referred to in paragraph 26. The Tribunal noted the comparative estimate for works presented for the Applicants. In the absence of any evidence presented to it explaining why the sum had increased the Tribunal found that it was appropriate to deal with the sum involved consistent with that for the increase between 2017/18 and 2018/19, i.e. a rise of 5% on the previous year's figure. The sum therefore determined as reasonable is £2,800 plus 5% (£140), making a total of £2,940.

32. Lift (meaning the maintenance of the lift, rather than the structural elements of the list shaft) - Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. We were presented with no persuasive evidence of the availability of a lower cost and determined the sum to be reasonably incurred and reasonable in amount.

33. Water (hygiene testing) and PAT (testing) - Having made the determinations set out in paragraphs 18 and 19 we determined that these charges are recoverable through the service charge. We were presented with no persuasive evidence of the availability of a lower cost for either and we determined the respective sums to be reasonably incurred and reasonable in amount.

34. Warden alarm - Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. On a balance of probabilities, the Tribunal was persuaded by the Respondent's evidence that that this cost relates to the fixed equipment, not the mobile units separately rented by the residents. We were presented with no persuasive evidence of the availability of a lower cost and determined the sum to be reasonably incurred and reasonable in amount.

35. Electric - Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. The Applicants' complaint is about a management decision about aligning contract renewal dates, outlined by the Respondent (see the Scott Schedule). We found that achieving savings overall by combining supply contracts was prudent and benefited the Applicants. There was no persuasive evidence presented that the specific charge was unreasonable and we determined that the sum was reasonable in amount.

36. Fire – the content here was understood to be separate from that set out in paragraph 22. The Applicants' first complaint was that there should have been statutory consultation (Section 20 formal consultation with leaseholders) before contracts had been entered into with Cormeton and Compass. The Respondent advised that the Compass costs had been refunded to the leaseholders. The contract with Cormeton Electronics Limited was in evidence. It was for three years from 5 November 2018 to 4 November 2021, with a two year extension period. No price appears, but the Respondent included on the Scott Schedule that the expenditure for 2017/18 was £2,270 (£2.50 per leaseholder). This would amount to £130 for the year. We found that included in this calculation is a charge of 80% of the contract price of £20,217.60 which is apportioned over the 269 units, to give a yearly per unit charge of £60.13, i.e. below the Section 20 threshold for statutory consultation. The Tribunal found on a balance of probabilities that the contract in question did engage the provisions of Section 20 of the 1985 Act (i.e. as a qualifying long-term agreement) but was for a sum below the £100 threshold for consultation. We record that the costs under the long term contract (80% of which charged) are exclusive of linked (and charged) in-house staff supervisory and management charges. Secondly, the Applicants' argument that the services were both the responsibility of the Respondent and were not recoverable from the Applicants was found to be without substance. Our determinations set out in paragraphs 18 and 19 apply and in the absence of persuasive evidence of the availability of a lower cost for the services at issue under this heading we determined the respective sums to be reasonably incurred and reasonable in amount.

37. Monitoring Tunstall Securus – the Applicants indicated that they were willing to pay the same charge as in the previous year (£353.93). The contract had not been renewed with Beyond Housing and the new provider's charge was effective from October 2019, part-way through the service charge year. The Tribunal found that the provision of the service was not disputed and that the Applicants' position was based on an unwillingness to pay an increased rate (equivalent to £0.88 per connection per week). While the Tribunal had sympathy with the Applicants' view, there was no persuasive evidence presented to the Tribunal to suggest that the work involved could still be provided at the previous rate, or that the sum involved was unreasonable. Therefore we determined the sum to be reasonably incurred and reasonable in amount.

38. Response BDS – following the hearings and consideration of representations for the Applicants, the Respondent removed the cost of the Pre-organised Reassurance calls from the warden call charge. Further, the Respondent agreed to bear the cost of BDS weekend reassurance calls. The effect was a revision of charges in favour of the Applicants as recorded on the Scott Schedule. The Tribunal determined, in line with the Respondent's own process for apportionment now being followed (see paragraph 14) that the reasonable method of allocating between developments of a charge for one service applying to more than one development, should be scheme specific. Hence for this element of charge the total applicable to nine developments should first be divided by 9 and the resulting sum referable to the Development divided by 19 (flats). Hence for this element of charge, the total of £50,400 per annum applicable to all nine developments should first be divided by the total number of 269 units and the resulting sum referable to the Development by multiplying by 19 (flats). The sum therefore determined as reasonable is £3,559.85.

39. Maintain Tyne Tec –we found that this cost is for maintenance of the telecare system comprising fixed onsite equipment (i.e. not the mobile units rented by residents on a choice basis). Having made the determinations set out in paragraphs 18 and 19 we determined that this charge is recoverable through the service charge. There was no persuasive evidence presented to the Tribunal to suggest that the sum for the work involved was unreasonable. Therefore we determined the sum to be reasonably incurred and reasonable in amount.

40. (Management) charge - Service charge years 2017/18, 2018/19, 2019/20

The Tribunal considered that an overall charge to reflect the operational costs in managing the development was reasonable. At the hearing, the Respondent confirmed that such a charge varies in amount for its other developments, which typically amounted to around 15%. At Magdalene Court the management charge applied was 5%. The applicant confirmed that he was not disputing the percentage amount and was only concerned that the amount payable under this heading will need to be altered if other service charge figures change. The Respondent confirmed that this would be the case as evidenced by the fact that the end of year reconciliation also amends the management charge amount. The Tribunal therefore determined that a management charge of 5% to be reasonably incurred and reasonable in amount when applied to the end of year figures (as amended by the Tribunal).

41. Advance service charge year 2020/21

While the Applicants presented in the Scott Schedule argument opposing various elements for which budgeted sums had been demanded of leaseholders, the Applicants requested from the Tribunal only its determinations on previous service charge years so that they had a model to be followed when considering the 2020/21 charges. The Tribunal made no determinations for that year and, of course, it remains open to leaseholders to ask for information and ultimately to make application to the Tribunal regarding the final charges once presented to them.

As to Section 20C and Costs

42. The Respondent agreed with the Applicants' request for an under Section 20C of the Act that the costs incurred, or to be incurred, by the Respondent in connection

with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years. The Tribunal found no reason not to make the corresponding order, which was duly made.

43. There was no application before the Tribunal concerning fees and it made no order as to costs.

Tribunal Judge L Brown.