



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **CHI/45UG/LSC/2022/0009**

Property : **3 Pine Trees Court, Hassocks,
West Sussex, BN6 8NW**

**Applicant
Leaseholder** : **Mr Paul Kirkdale**

Representative : **None**

**Respondent
Freeholder** : **Pine Trees Court Residents Association
Limited**

Representative : **None**

Type of application : **Determination of liability to pay and
reasonableness of service charges under
Section 27A of the Landlord and Tenant
Act 1985**

**Application for Order under section 20C
of the Landlord and Tenant Act 1985**

**Application for Order under paragraph
5A of Schedule 11 of the Commonhold
and Leasehold Reform Act 2002**

Tribunal members : **Mrs J Coupe FRICS
Mr MJF Donaldson FRICS MCI Arb MAE**

**Date of Hearing
Held by CVP** : **15 June 2022**

Date of decision : **3 August 2022**

DECISION

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Covid-19 pandemic: description of Hearing

This has been a remote video hearing which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable due to the pandemic and all issues could be determined in a remote hearing with parties present. The documents that the Tribunal were referred to are in an electronic bundle, the contents of which have been noted. The order made is described below.

Decisions of the Tribunal

- (1) The Tribunal has made determinations of reasonableness in respect of disputed service charges for the year ending 30 June 2020, 30 June 2021, and budgeted charges for the year ending 30 June 2022, as summarised in the table annexed to this decision.**
- (2) The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985, preventing the respondent from charging the costs of the proceedings to the applicant through the service charge.**
- (3) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, preventing any administration charges in relation to these proceedings being charged to the applicant.**
- (4) The Tribunal orders the respondent to refund the applicant 50% of the application fee and hearing fee within 28 days of the date of this decision.**

The Application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by him in respect of service charge years ending 30 June 2020 and 30 June 2021, and advance service charge payments for the year ending 30 June 2022.
2. The applicant seeks an order pursuant to Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
3. Directions were issued on 29 March 2022. The Directions were substantially complied with and the Tribunal was supplied with an electronic bundle of 353 pages.

The Hearing

4. The hearing took place remotely via CVP video platform. Both parties were in attendance. At the conclusion of the hearing each party confirmed that they had been afforded adequate opportunity to present their respective

case and to make representations to the Tribunal.

5. The applicant, Mr Paul Kirkdale, attended the hearing. The respondent, Pine Trees Court Residents Association Limited (“PTCRA”), was represented by two of its Directors, Mr Mike Potter and Mr Stephen Richards.
6. The respondents’ case was advanced predominantly by Mr Potter with occasional contribution, and clarification, provided by Mr Richards. Also, in attendance for the respondent were Mr Alexander Dowden-Yates, Assistant Head of Accounts at Hunters Managing Agents, and Mr Mark Newman, Property Manager at Hunters Managing Agents (‘the Managing Agents’). Neither Mr Dowden-Yates nor Mr Newman provided witness statements in advance of the hearing.

The Background

7. Pine Trees Court is a purpose-built residential development comprising fifteen self-contained flats within two blocks; one block housing six flats and the other block 9 flats.
8. The subject property, 3 Pine Trees Court, is a two-bedroom flat within the smaller of the two blocks. Photographs within the bundle show the block to be three storey in height, with garaging at ground level and two floors of residential accommodation above. The block appears to be constructed with brick elevations, part tile-hung, beneath a pitched timber roof clad in tiles.
9. The lessees of Pine Trees Court are each members of the Management Company, PTCRA, within which the freehold is vested.
10. Neither party requested an inspection and the Tribunal did not consider one necessary, nor would it have been proportionate to the issues in dispute.

The Issues

11. The Tribunal, at the outset, confirmed with the parties the relevant issues for determination, these being:
 - (i) The payability and/or reasonableness of service charges for the service charge years ending 30 June 2020; 30 June 2021; and advance charges for year ending 30 June 2022. The hearing, and determination, was limited to those heads of expenditure identified within the applicant’s application form dated 14 January 2022;
 - (ii) Whether the Tribunal should make an order under Section 20C of the Landlord and Tenant Act 1985, preventing the landlord from claiming any costs of the application as part of the service charge;
 - (iii) Whether the Tribunal should make an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the landlord from claiming any administration charges in respect of any litigation costs arising from this application.

12. The parties agreed that the above encompassed those issues to be addressed. Each year was taken in turn and, once submissions and questions from both parties concluded, each party was afforded an opportunity to provide closing statements. Regular breaks, including a lunch break, were taken throughout the proceedings.
13. What follows is a summary of the relevant points made by the parties.
14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Law

15. The relevant law is set out in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985, as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
16. The Tribunal has the power to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums that are payable, or would be payable, by a tenant to a landlord for the costs of services, repairs, maintenance or insurance, or the landlord's costs of management, under the terms of the lease. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

The Lease

17. The applicant holds Flat 3 Pine Trees Court under the terms of a lease dated 16 September 1986, which was made between South Bank (Homes) limited as landlord and John De Rivas Aldcroftt and Joyce Irene Aldcroftt as tenant.
18. The Respondent relies on Section 3, Clause 11 of the Tenant's covenants to recover expenditure, through the service charge, incurred by the landlord in complying with the obligations contained in the Third Schedule.

Service charge year ending 30 June 2020

19. The applicant, in his statement of truth, outlined the basis of the challenged matters relating to all identified heads of expenditure in dispute as the following:
 - (i) Invoices/receipts do not reconcile to the service charge accounts of years ending 30 June 2020 and 30 June 2021;
 - (ii) Missing and incorrect invoices;
 - (iii) Inconsistent and poor accounting standards;
 - (iv) Items paid from the service charge fund are not provided for under the lease;

- (v) Service charge for 2022 is above that required;
 - (vi) Directors do not demonstrate any responsibility or accountability.
20. **Cleaning: amount disputed £1998.00** – The applicant challenged the quality of the undated invoices raised by Chorda Cleaning Services; the inclusion, in year-end accounts, of expenditure from previous accounting years; and, additional disinfection charges of £24.00 in April and May 2020.
 21. Upon questioning from the Tribunal, the applicant confirmed that, with the exception of the £48.00 disinfectant charges, he was not challenging the costs of the cleaning or whether the costs had been incurred.
 22. The applicant explained that he did not live in Pine Trees Court and visited infrequently. He was therefore unable to comment on, or challenge, the quality of the work provided by Chorda Cleaning Services.
 23. For the respondent, Mr Potter said that he did live in the development and that he had no cause for concern over the standard of cleaning. He conceded that the respondent was unaware, and had not authorised, the additional expenditure totaling £48.00 on disinfectant. As such, he agreed that £48.00 be deducted from the service charge expenditure.
 24. The respondent further explained that the management contract for Pine Trees Court had been awarded to Hunters and, accordingly, the respondent relied upon the Property Manager, Accounts Department and external Accountant in regard to accounting practices. The respondent sought the Tribunal's permission to refer to Mr Dowden-Yates.
 25. As previously stated, neither attendee from Hunters provided a witness statement or statement of truth within the respondent's submissions. As such, the respondent was not entitled to call them as witnesses. However, it became clear early on in the proceedings that the respondent was unable to satisfactorily address the Tribunal on a number of the challenged items of expenditure without reference to the Managing Agent.
 26. Having considered the matter, and having decided that the applicant would not be prejudiced by the Tribunal hearing from Mr Dowden-Yates, and in the absence of any objection from the applicant, the Tribunal decided that in the interests of fairness and justice they would take evidence from Mr Dowden-Yates on specific points only. Accordingly, Mr Dowden-Yates provided an oral statement of truth.
 27. Mr Dowden-Yates was unable to confirm that either the Directors or the Managing Agents had authorised the additional cleaning costs. In regard to the lack of invoice dates, Mr Dowden-Yates advised that, in such circumstances, the Managing Agent's policy was to apply the invoice receipt date. He stated that the dates of cleaning were recorded on the undated invoices.

28. **Electricity: amount disputed £489.00** – The applicant asserted that, throughout the disclosure process, the only two invoices produced by the respondent’s Managing Agent were for £127.63 and £79.09, and that both invoices related to the period 1 April 2020 – 30 June 2020, that being the previous financial year. As such, the applicant claimed that neither were costs reasonably incurred within the service charge year in question.
29. On behalf of the respondent Mr Dowden-Yates responded that additional electricity invoices were available but that due to a clerical error by the Managing Agents they had been omitted from the bundle. Mr Dowden-Yates stated that such invoices had been available for inspection by the applicant during disclosure, a statement the applicant, in turn, disputed.
30. In regard to the date the invoices were posted to the accounts, Mr Dowden-Yates was unable to explain why invoices from a previous accounting year had been included within the accounts for the year in question and averred that the Managing Agent relied on the external accountant in such matters.
31. The applicant identified a sum of £39.00 within the ‘summary of costs for the year ended 30 June 2020’. A discussion ensued on Directors reimbursement of nominal monies personally expended on items such as light bulbs. Such sums were not challenged in the application and, accordingly, the Tribunal makes no determination on this point.
32. **Gardening: amount disputed £4,156.00** – The applicant challenged the sum demanded on three grounds: a) that the invoices provided by the respondent’s agent during disclosure did not total £4,156; b) that some payments made to Woodjetts Landscapes were for work undertaken in the previous financial year; c) that the quality of invoices provided by Woodjetts Landscapes was poor.
33. The applicant did not challenge either the quality of gardening work undertaken during the year in question, nor the total cost. His challenge centered on transparency of invoices and accounting practices. He referred the respondent to HMRC’s guidance on information to be provided within an invoice.
34. The respondent said that the gardens and grounds were well maintained and that the costs were both reasonable in sum and reasonably incurred. He advised that the costs included tree surgery of approximately £800.00. Mr Dowden-Yates claimed that the invoices presented were adequate for service charge purposes but that he was unable to answer more detailed questions on the accounting practices adopted by the external accountant.
35. **Gutter and drain clearance: amount disputed £320.00** – The applicant stated that no evidence of such expenditure was produced during disclosure and, as such, the costs could not be deemed reasonable or payable.
36. The respondent recalled such work being undertaken and that he was satisfied the work was to a reasonable standard. Mr Dowden-Yates was unable to advise the Tribunal as to why the relevant invoice had neither been included in submissions nor provided to the applicant, and repeated his

previous position of clerical error.

37. **Insurance: amount disputed £2,995.00** – The applicant challenged the transparency of the costs incurred and the extent of cover in place. He noted £217.56 was expended on Directors and Officers insurance (D&O), a sum he claimed was not recoverable under the lease. Upon questioning from the Tribunal, he accepted that the costs had been incurred and that, with the exception of the D&O costs, the premium was reasonable. Furthermore, the applicant agreed that insurance costs, bar D&O costs, were recoverable under the lease.
38. Mr Dowden-Yates acknowledged that the Managing Agents accounting procedures were complicated and lacked transparency, which, in turn, had the potential to cause lessee's confusion. He conceded that the Managing Agents internal processes require improving. Mr Dowden-Yates stated that the buildings insurance costs were both reasonable and comparable with other properties within their portfolio, and that recharging D&O costs to the service charge account was standard practice. He made no comment on any provision within the lease which allowed such recovery.
39. The respondent, later in the proceedings, advised the Tribunal that although D&O insurance was not mandatory, it was, nevertheless, highly recommended by professional bodies and managing agents as affording personal protections for lessees volunteering as Directors of a lessee owned management company.
40. **Management fees: amount disputed £3,314.00** – The applicant claimed the agent's invoices lacked transparency, professionalism and, on at least one occasion, were presented on plain rather than headed paper. The applicant challenged the quality of the Managing Agent's work, particularly in light of his findings, and the Managing Agent's lack of co-operation and transparency during disclosure.
41. The applicant challenged a cost of £250.00, paid to the Managing Agents as remuneration for acting as Company Secretary, averring that the lease does not provide for the recovery of such expenditure under the service charge.
42. For the respondent, Mr Dowden-Yates advised that the management fee included VAT and two board meetings a year, and that the fee had been frozen for two years. In regard to missing invoices, he advised that all invoices were provided to the external accountant at year-end. However, Mr Dowden-Yates conceded that the applicant, and the Tribunal, had not been provided with evidence of such, again citing clerical error.
43. **Refuse: amount disputed £11.00** – The applicant challenged the cost on the basis that receipts did not tally with the year-end accounts and that the costs were not reasonably incurred.
44. The respondent advised that the costs related to the purchase of bin liners, utilised to alleviate smell and leaking waste debris in the wheelie bins. Mr Potter conceded that he had not filed copies of all receipts as some were included in his personal shopping receipts. Mr Potter advised that on more than one occasion he didn't reclaim such expenditure, instead personally

footing the cost. Mr Potter's opinion was that the purchase of bin liners was a reasonable cost, provided for by the lease, and that the costs were reasonably incurred.

45. **Repairs and maintenance: amount disputed £3,175.00** – The applicant challenged a missing invoice of £5.55. Neither the respondent nor Mr Dowden Yates were able to shed any light on the nature of said invoice.
46. **Window cleaning: amount disputed £900.00** – The applicant asserted that the windows of his flat are included within his demised premises and, as such, the cleaning of said windows by the respondent is not a valid expense to be charged to the service charge account. In support of his position, he referred the Tribunal to the definition of his demised premises found at paragraph 1(vi) of his lease:

‘the internal and external doors and the windows and the window frames of the demised Flat and all glass in the said doors and windows’.
47. Furthermore, the applicant referred the Tribunal to the Third Schedule of the lease whereby the windows or glass of the windows are not referenced.
48. The respondent relied on the Third Schedule, Clause 13 for authority to charge window cleaning costs to the service charge:

‘To provide and supply such other services and carry out such other repairs and works and defray such other costs as the Landlord or its agents shall consider necessary or convenient for the benefit of all the tenants and lawful occupiers in and of the Development including the setting up of a reserve fund to meet any future liability under this Schedule.’
49. The respondent explained that it was the Director's collective decision to clean the windows in Pine Trees Court for the benefit of all, and in order to maintain the overall appearance of the development. He said that, with the exception of the applicant, none of the lessees had complained during the many years that the system had been in place. He conceded that the lease did not specifically provide for the recovery of such expenditure through the service charge and suggested that varying the lease would benefit all.
50. **Supply of electricity to the garages:** The applicant referred the Tribunal to a letter issued by the agent on 8 September 2021, included at page 232 in the bundle, requesting those lessees with garages to provide meter readings to the agent in order that invoices for the supply of individual electricity could be raised. The applicant was aware of lessees who had provided readings and, subsequently, had paid demands for personal use of electricity. The applicant questioned why such revenue failed to appear in the year-end accounts.
51. The respondent referred to Mr Dowden-Yates who advised that such revenue was deducted from the total cost of electricity posted to the accounts. Mr Dowden-Yates conceded that this accounting practice lacked transparency and could be deemed confusing. He suggested that, in future, such revenue would be accounted for separately. The Tribunal was pleased that a pragmatic and sensible resolution had been reached on this matter.

The Tribunal's decision – Service charge year ending 30 June 2020

52. **Cleaning:** The applicant did not dispute that the costs had been incurred or the quality of work undertaken. The only challenge related to £48.00 of costs in regard to disinfectant, a cost the respondent conceded was unauthorised. The Tribunal determines that the sum of £48.00 is not payable and, accordingly, determines a sum of £1,950.00 as reasonable and payable in accordance with the lease.
53. **Electricity:** There was no dispute between the parties that electricity had been provided to the communal areas and garages during the financial year and, as such, costs had been incurred. The dispute arose in regard to the lack of any invoices for the relevant period.
54. In the absence of any evidence the Tribunal are unable to determine the exact costs incurred. However, as both parties concur that costs have been reasonably incurred the Tribunal, doing the best it can, finds the stated costs of £489.00, which the Tribunal are advised are net of garage revenue, to be reasonable and payable.
55. **Gardening:** Neither the cost nor reasonableness of works were challenged. Accordingly, the Tribunal find the sum of £4,156.00 reasonable and payable in accordance with the lease.
56. **Gutter and drain clearance:** In the absence of any evidence to substantiate the costs incurred, the Tribunal determines the cost of £320.00 as unreasonable and not reasonably incurred. Accordingly, the Tribunal reduces this charge to nil.
57. **Insurance:** The applicant did not challenge either the cost of the buildings insurance or whether the sum had been reasonably incurred. The challenge arose in regard to the recovery of D&O insurance costs through the service charge account.
58. The respondent relies on the Third Schedule, Clause 13 (as quoted in paragraph 48 above) to recover the D&O costs within the service charge. Clause 13 refers to costs incurred:
“... for the benefit of all the tenants and lawful occupiers in and of the Development ...”.
59. The ‘Development’ is defined at Section 2 of the lease as:
“... the piece or parcel of land at Hassocks aforesaid which is shown by blue edging on the said plan together with all buildings structures erections watercourses roads paths hard-surfaced areas installations appliances and service media now or within the specified period situate on in over or under the said piece or parcel of land and not for the time being owned or adopted by the appropriate statutory authority.”
60. The costs incurred relate to the personal liability insurance of the Directors and Officers of PTCRA Limited, a private company owned by the lessees and run by volunteer Directors. As such, the costs, which form part of the running costs of the company, do not fall within the definition of ‘Development’ above.

61. Furthermore, the Tribunal considers the sweeper provision at Clause 13, and upon which the respondent relies, is not intended to support the landlord's wide interests as freeholder but instead provides for the landlord to recover expenditure incurred fulfilling their obligations as landlord.
62. Accordingly, the Tribunal finds that the D&O costs are not recoverable under the provisions of the lease and reduces such costs to nil, resulting in a total sum recoverable under the lease for insurance as £2,777.44.
63. However, the Tribunal comments that it considers it to be entirely sensible for the Directors and Officers of a lessee-owned company to be afforded the protection of D&O insurance. Without such insurance, it is unlikely a volunteer Director would be willing to take up office. Although, in this instance, such costs are incapable of recovery under the service charge, the lessees may jointly elect to provide their elected representatives with such protection by raising separate invoices outside of the service charge mechanism. Without affording Directors such protection, the Tribunal considers it unlikely present officers will remain in post or new officers would be prepared to volunteer for appointment.
64. **Management fees:** The Tribunal finds the service provided by the Managing Agent falls short in a number of areas. By their own admission, invoices were omitted from evidence, whilst further invoices were unaccounted for; the Managing Agent failed to co-operate fully with the applicant during disclosure; internal accounting practices lack transparency and, in their own words, are confusing; unauthorised costs e.g. disinfectant costs, were paid without sufficient verification; electricity revenue was inadequately accounted for; and company expenditure was paid from service charge revenue.
65. For reasons explained in paragraphs 60-61 above, the Tribunal considers the charges of a Company Secretary appointment relate to a cost incurred by PTCRA Limited, as opposed to a service charge expense. The Tribunal accordingly reduces the fee of £250.00 plus VAT to nil
66. The Tribunal having weighed up its findings, and omitting Company Secretary fees of £250.00 plus VAT, reduces the Managing Agent's fees by 10 per cent to arrive at an amount that is reasonably incurred, that being the sum of £2,712.60.
67. **Refuse:** The Tribunal finds the purchase of bin liners a legitimate expense. Receipts submitted exceed the cost of £11.00 claimed and, as such, the Tribunal finds that £11.00 is a reasonable cost, reasonably incurred, and payable in accordance with the lease.
68. **Repairs and maintenance:** The Tribunal finds the sum of £3,169.45, that being the respondents' sum, less the unaccounted fee of £5.55, reasonable and payable in accordance with the lease.
69. **Window cleaning:** Section 1(vi) of the lease demises 'all glass in the said doors and windows' to the tenant.

70. The Third Schedule makes no reference to windows or window glass.
71. Accordingly, the Tribunal finds that window cleaning costs are not relevant expenditure recoverable under the service charge. The Tribunal disagrees with the respondent that Clause 13 of the Third Schedule acts as a sweeping up clause, permitting the Directors to charge such expenditure. Clause 13 relates to the 'Development' as opposed to the demised premises. Accordingly, the Tribunal reduces this charge to nil.

Service charge year ending 30 June 2021 – Where submissions were similar to those argued in the previous year the detail is not repeated below.

72. **Accountancy fees: amount disputed £654.00** – The applicant finds the accounting practice confusing and lacking in transparency. His concerns relating to accruals were, in his opinion, unanswered by either the respondent or the Managing Agent, and he suggested that applying the current methodology risked an element of double counting in year-end accounts. Upon questioning from the Tribunal, he said that he did not challenge the cost of the accountancy nor that such sums were reasonably incurred, instead his challenge related to transparency and accounting practice.
73. For the respondent, Mr Dowden-Yates repeated his earlier concession that the accounting practices, and the Managing Agent's use of trial balances, was confusing. However, he denied there was double counting.
74. **Bank charges: amount disputed £1.00** – The applicant alleged that no evidence was provided by the respondent, or agent, to substantiate such expenditure and, accordingly, it was neither reasonable in cost nor reasonably incurred.
75. For the respondent, Mr Dowden-Yates was unable to support the charge, suggesting it was perhaps an account handling fee or possibly a transaction cost.
76. **Cleaning: amount disputed £2,262** – as with year ending 2020, the applicant challenged the accounting practices; the lack of invoice dates; and £312.00 of additional disinfectant charges. He did not challenge the reasonableness of the routine cleaning costs nor that the routine cleaning costs had been reasonably incurred. The respondent's position remained that reasoned in paragraph 23 above.
77. **Electricity: amount disputed £819.00** – The applicant challenged the duplication of invoices; the accounting practices with particular reference to accruals; the invoice totals failing to equal the service charge accounts; and the previously discussed issue with regard to the landlord's supply of electricity to private garages.
78. For the respondent, Mr Dowden-Yates conceded that evidence he had provided to the Tribunal during the morning session, in relation to accounting practices, was now proven to be inaccurate. He said that the Managing Agents had upgraded their software during this financial year and that, as a result, there was potential for error in expenditure allocation.

79. **Gardening: amount disputed £4,968.00** – As with the previous year, the applicants' challenge centered on unprofessional invoices; accounting practices; and a lack of transparency. He challenged neither the cost of the gardening, nor that the costs were reasonably incurred.
80. **Insurance: amount disputed £3,288.00** – The applicant claimed that the invoices presented did not tally with the service charge accounts by +£9.98. As with the previous service charge year, he challenged the recoverability of D&O insurance.
81. **Management fees: amount disputed £3,416.00** – The applicant claimed the invoice totals did not equal the service charge accounts. He also challenged the validity of three invoices on the basis of not being presented on headed paper and an incorrect VAT number. He repeated his earlier claim that Company Secretary fees were not recoverable under the service charge.
82. Mr Dowden-Yates advised that the lack of headed paper was merely a clerical error, whilst the VAT registration number related to the company which had acquired Hunters in 2019.
83. **Miscellaneous expenses: amount disputed £36.00** – The respondent advised that these expenses related to two invoices, one for £12.90 and the other £23.10, which referred to smoke alarm batteries and bin liners. The applicant challenged whether such expenses were recoverable under the lease. He did not challenge the reasonableness of the amounts.
84. **Refuse: amount disputed £19.00** – The applicant challenged the costs as not recoverable under the lease as service charge expenditure. The respondent argued such expenditure was a legitimate expense and hence recoverable.
85. **Window cleaning: amount disputed £1,080.00** – reasoning of both parties as per paragraphs 46-49 above.

The Tribunal's decision – Service charge year end 30 June 2021

86. **Accountancy Fees:** The applicant challenged neither the cost of the accountancy fees nor that such costs were reasonably incurred. Accordingly, the Tribunal finds the sum of £654.00 payable in accordance with the lease.
87. **Bank charges:** No evidence was produced to substantiate the £1.00 charge to the service charge account. Accordingly, the Tribunal reduces the sum payable to nil.
88. **Cleaning:** As with service charge year ending 30 June 2020, the Tribunal finds the unauthorised expenditure of £312.00 unreasonable. As such, the Tribunal determines a sum of £1,950.00 as reasonable and payable in accordance with the lease.

89. **Electricity:** Doing the best it could with the limited and incomplete evidence presented, the Tribunal determined a figure of £590.08, as reasonable and payable in accordance with the lease.
90. **Gardening:** Neither the cost nor reasonableness of works were challenged by the applicant. Accordingly, the Tribunal finds the sum of £4,968.00 as reasonable and payable in accordance with the lease.
91. **Insurance:** For reasons explained in paragraphs 60-62, the Tribunal finds the D&O insurance expenditure of £228.44 non-recoverable under the lease. The balance of the insurance costs, that being £3,059.56 is found by the Tribunal to be reasonable and reasonably incurred, and therefore payable.
92. **Management fees:** Invoice 202106057, at page 97 of the bundle, records the annual management fee as £2,536.95 + VAT and the Company Secretary fee as £250.00 + VAT. Although unprofessional in appearance and lacking in transparency, the Tribunal allowed those demands presented on plain paper.
93. For reasons explained in paragraph 65 of this decision, the Company Secretary fees of £250 + VAT are not recoverable under the service charge account.
94. The Tribunal having weighed up its findings, and omitting Company Secretary fees of £250.00 plus VAT, reduces the Managing Agent's fees by 10 per cent to arrive at an amount that is reasonably incurred, that being the sum of £2,469.91.
95. **Miscellaneous expenses:** The Tribunal finds smoke alarm batteries and bin liners as reasonable costs recoverable under the lease. Accordingly, £36.00 is payable.
96. **Refuse:** The Tribunal finds such expenditure as legitimate and reasonable and, as such, payable in accordance with the lease.
97. **Window cleaning:** For reasons previously explained the Tribunal reduces this charge to nil.

Service charge year ending 30 June 2022

98. The applicant challenged the Directors' rationale for increasing the service charge for year-ending 30 June 2022 and questioned the validity of the proposed forecast on which said increase was based.
99. The applicant contended that the reserve fund, standing at £13,470.00, held sufficient funds for everyday expenditure and noted that the account was non-interest bearing. The respondent concurred with the sum held and agreed that negligible interest was earned due to historically low interest rates.
100. The applicant argued that inflation was effectively depreciating the fund and that increasing the reserves was financially imprudent. He acknowledged that the lease provided for the accumulation of a reserve fund but argued

this was discretionary rather than mandatory and, furthermore, that in the current economic climate of rising costs was ill-considered.

101. The applicant argued that the 5–10-year expenditure projection, prepared by the Directors and Managing Agent, was flawed, as it was neither professionally prepared nor contributed to by a Chartered Surveyor. The applicant disagreed with the timings and estimates of some of the proposed works and heads of expenditure. He acknowledged the merit of such a plan, but claimed the version produced, and upon which the service charge increase was predicated, was not credible.
102. The applicant argued that service charge revenue had exceeded expenditure for the two previous years, thereby further indicating that no increase was warranted. He noted that were he to dispose of his flat, he would not be entitled to a refund for monies not expended. His preferred option was for lessees to meet additional costs as and when they arose.
103. The respondent replied that the 5–10-year plan was a working document, utilised as a reference point and updated regularly. He noted that the buildings were ageing and that in addition to routine maintenance, major works were forthcoming. Furthermore, works already overdue now required scheduling. The respondent stated that existing reserves were insufficient to meet planned expenditure and that a modest service charge increase was justified and prudent.
104. The parties agreed that those heads of expenditure previously addressed, and the issue of recharging electricity usage to individual garage owners, had been adequately covered earlier in the proceedings but remained relevant to this determination.

The Tribunal's decision – Service charge year ending 30 June 2022

105. The Tribunal finds that the lease, at paragraph 13 of the Third Schedule, provides for a reserve fund. The freeholder's maintenance and repair obligations, and some periodic timings, are also contained in the lease. In order to meet the costs of such obligations, the Tribunal agrees that a planned schedule of maintenance and expenditure is a useful tool, albeit that the final costs of works are likely to deviate from those estimated. The Tribunal is not concerned that the expenditure projection was prepared using the collective knowledge and experience of the Directors and the Managing Agent, as it is a working document. When major works are programmed, detailed schedules and costings would be expected.
106. The expenditure projection identifies major works of significant cost over a ten-year period. To accumulate funds towards such anticipated expenditure the Directors increased the service charge contributions. Without such action, they argue, and the Tribunal concurs, that insufficient funds will be held by the date required. The Tribunal therefore finds no flaw in the Directors' logic and, furthermore, finds, the amount of increase from £350.00/quarter to £387.50/quarter reasonable.

107. However, the service charge budget is based upon heads of expenditure challenged earlier in the hearing. The budget therefore requires amendment in line with the Tribunal's determinations above, in particular to remove any proposed costings attributable to window cleaning; D&O insurance; and Company Secretary fees.
108. The Tribunal also reminds the respondent, and their Managing Agent, that all expenditure must be reasonable, be reasonably incurred, and be capable of being proven by way of invoices if challenged.

Applications for Orders under Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

109. The applicant tenant requested the Tribunal make orders to the effect that neither he, nor other lessees, should have to pay any of the respondents' costs of these proceedings via the service charge, and that any costs they may be liable for under any clause in the lease allowing the respondent to charge an administration charge for their costs, should not be payable.
110. The Tribunal invited submissions in respect of these applications during the hearing. The applicant made comments to the effect that he had attempted to resolve this matter with both the respondent, and the Managing Agent directly, in an endeavour to avoid an application to the Tribunal, however such attempts were unsuccessful. The applicant claimed the Managing Agent frustrated the process of disclosure, failed to evidence all expenditure, and that the applicant had brought to the respondents' attention financial irregularities of which they were unaware, one of which, the additional cleaning costs, had been conceded by the respondent as unreasonable.
111. The respondent agreed that the service provided by the Managing Agent fell short of that anticipated and that some of the challenged costs had been conceded. However, they defended other challenged costs, claiming they were both reasonable in cost and reasonably incurred.
112. The purpose of Section 20C is to give the Tribunal the power to prevent a landlord recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal.
113. In *Tenants of Langford (Sherbani) v Doren Limited* LRX/37/2000, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC), at paragraph 28, said:
"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they may arise."
114. However, there is also guidance in other cases to the effect that an order under Section 20C is to deprive the landlord of a property right and it should be used sparingly (see for example, *Veena v Chong: Lands Tribunal (2003) 1EGLR175*).

115. The Tribunal has considered all the circumstances and evidence before it, and has determined that although the applicant has been successful on a number of challenges, others have failed. The Tribunal notes that many of the applicants' challenges concerned accounting practices where the actual costs incurred were deemed reasonable, and reasonably incurred, by the applicant.
116. The Tribunal is however mindful that the applicant, through his diligence, brought to the attention of the respondent financial irregularities previously undiscovered. Finally, we take note of the Managing Agents lack of full disclosure both to the applicant and during these proceedings, and their lack of clarity in oral evidence. In the round the Tribunal therefore determines that it would not be just and equitable if the applicant were to be held responsible for the cost of these proceedings.
117. Accordingly, the Tribunal makes an order pursuant to Section 20C of the Act that none of the respondents' costs of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant.
118. The applicant's request to extend the Section 20C order to multiple lessees fails, as none were a party to this application.
119. The applicant also applied for an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the applicant's liability to pay administration charges in respect of the respondent's litigation costs. The respondent advised that no such costs had been incurred however, for the avoidance of doubt, we exercise our discretion to make such an order preventing any administration charges in relation to these proceedings being charged to the applicant.
120. The applicant has been partially successful in this application. The Tribunal acknowledges that the applicant attempted to resolve his grievances through dialogue and correspondence with the respondent and their Managing Agent prior to applying to the Tribunal for determination. Accordingly, we further order that the respondent pays the applicant fifty percent of both the cost of the application fee and the hearing fee. Such fees to be paid within 28 days of the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex 1 : Summary of determinations.

Year	Item	Determination
Year end 30/06/2020	Cleaning: £1,998	Reduced to £1,950.00
	Electricity: £489	Reasonable
	Gardening: £4,156	Reasonable
	Gutter & drain clearance: £320	Nothing payable
	Insurance: £2,995	Reduced to £2,777.44
	Management fees: £3,314	Reduced to £2,712.60
	Refuse: £11	Reasonable
	Repairs & maintenance: £3,175	£3,169.45 payable
	Window cleaning: £900	Nothing payable
Year end 30/06/2021	Accounting fees: £654	Reasonable
	Bank charges: £1	Nothing payable
	Cleaning: £2,262	Reduced to £1,950.00
	Electricity: £819	Reduced to £590.08
	Gardening: £4,968	Reasonable
	Insurance: £3,288	Reduced to £3,059.56
	Management fees: £3,416	Reduced to £2,469.91
	Misc. expense: £36	Reasonable
	Refuse: £19	Reasonable
Window cleaning: £1,080	Nothing payable	

Annex 2

Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 provide:

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to 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' include overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19(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 for the carrying out of works, only if the services are of a reasonable standard;

and the amount shall be limited accordingly.

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

Section 27A, so far as relevant, 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.

(2) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, if it would, as to –

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

The 'appropriate tribunal' is this Tribunal.