



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

Case Reference : **CAM/00MD/LSC/2022/0004**

HMCTS : **Paper**

Property : **7 Crossways, Windsor Road, Slough SL1 2NE**

**Applicant -
Tenant** : **Dr Fady Zakharious**

**Respondent -
Management Company:** **Crossways (Slough) Management Company
Limited**

**Representative -
Managing Agent** : **Remus Management Limited**

**Interested Parties -
Agent re Energy Supply:** **Data Energy Limited**
Freeholder : **Adriatic Land 9 (6R1) Limited**

Type of Application : **1) to determine the reasonableness and
payability of Service Charges (section
27A Landlord and Tenant Act 1985)**
**2) for an order that the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(Section 20C of the Landlord and Tenant
Act 1985)**
**3) for an order to reduce or extinguish the
Tenant's liability to pay an administration
charge in respect of litigation costs
(Paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform Act
2002)**
**4) for an order to reimburse the application
fees (Rule 13(2) Tribunal Procedure (First-
tier Tribunal) (Property Chamber) Rules
2013**

Tribunal : **Mr Alan Tomlinson (Chair)
Judge JR Morris**

Date of Application : **21st May 2022**
Date of Directions : **18th July 2022**
Date of Decision : **24th October 2022**

DECISION

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Decision

1. The Tribunal determines that the service charge demands for the year ending 31st July 2020 were reasonable and payable by the Applicant to the Respondent.
2. The problem of pigeon droppings in the undercroft soiling the parking area and cars was dealt with by the tribunal decision in case reference CAM/00MB/LSC/0054 in which the actual cost for Internal Cleaning for the year ending 31st July 2020 and 2021 was reduced by 25%, in part, due to this factor. Therefore, this Tribunal has no jurisdiction to make a further determination by reason of section 27A (4)(c) of the Landlord and Tenant Act 1985.
3. The Tribunal determines that the Gas Charges (referred to in the Lease as Fuel Consumption Charges) for the Property of £390.09, incurred between the 1st January 2022 to 30th April 2022, were reasonable and payable by the Applicant to the Respondent's Agent Data Energy.
4. The Tribunal has no jurisdiction to make an order for compensation.
5. The Tribunal does not make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
6. The Tribunal makes an Order extinguishing the Applicants' individual liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
7. The Tribunal does not order the reimbursement of the Applicant's fees of £100.00.

Reasons

Application

8. The Application made on 21st May 2022 is for:
 - a) a determination of the reasonableness and payability of Service Charges for the Actual Costs incurred for the period 1st August 2019 to 31st July 2020 and the charge to the Property for gas for the period 1st January 2022 to 31st July 2022 and for compensation;
 - b) an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants;

- c) an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002);
- d) an order to reimburse the application fees (Rule 13(2) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013)

9. Directions were issued on 18th July 2022.

Previous Decision

- 10. The Applicant made an application to the First-tier Tribunal Property Chamber (Residential Property) in January 2021 under section 27A of the Landlord and Tenant act 1985 for a determination as to whether service charge costs to be incurred for the years ending 31st July 2020 and 2021 were reasonable and payable.
- 11. The decision, case reference CAM/00MB/LSC/0054 (copy provided), determined that the estimated window cleaning charge was reasonable and payable for both years and the estimated Communal Electricity charge was reasonable and payable for the year ending 31st July 2021.
- 12. It was also determined, presumably because the actual costs were known and the invoices were provided, that the actual Management Fees for the year ending 31st July 2021 were reasonable and payable.
- 13. In addition, for the same reason that the actual costs incurred were known, the invoices were provided and evidence was adduced, a determination was made with regard to the Internal Cleaning that the charge to the Applicant be reduced by 25%.
- 14. Pursuant to section 27A (4)(c) of the Landlord and Tenant Act 1985 this Tribunal makes no further determination with regard to Management Fees for the year ending 31st July 2021 the Internal Cleaning charges for the years ending 31st July 2020 and 2021.
- 15. No other determination was made with regard to the costs to be incurred or incurred was made.

Description of the Property

- 16. The Tribunal did not consider it necessary to inspect the Property or the Estate and Blocks (the Development) in which it is situated. However, from the Statements of Case, the Lease and the Internet the Tribunal formed the following description.
- 17. The Property is a first floor flat in one of four purpose-built blocks of similar flats lettered A, B, C and D (the Blocks). There are 153 flats over the four blocks. The blocks were constructed in 2017 and are 10 floors with a car park in an undercroft together with an external communal area with planters (the Estate).
- 18. Externally the flats have terraces and balconies. Internally there are stairs and a lift to the upper floors.

19. The internal areas of Block C are managed by a housing association whereas the other three blocks are managed by the Management Company.

The Lease

20. A copy Lease for the Property was provided. The Lease is for a term of 125 years from 1st August 2016 and is made between made between (1) Bellway Homes Limited (2) Fady Monir Nessim Zakhariou and Maddonna Michel Iskander Ishak (the Tenants) and (3) Crossways (Slough) Management Company Limited (the Management Company).
21. The Freehold title and the reversion to the Leasehold interest in the Property was subsequently assigned to Adriatic Land 9 (6R1) Limited.
22. According to the Lease the Management Company is required under Schedule 5 paragraph 2 to provide services and the Tenant is required under Schedule 3 paragraph 2 to contribute towards their cost by way of a service charge. The Tenant 's Proportion of the costs is defined in the Particulars to the Lease as 0.7022% of the Estate Costs as set out in Part 1 of Schedule 11 of the lease and 0.7565 of the Block Costs as set out in Part 2 of Schedule 11. Estate costs cover communal areas across the whole area of the estate while Block costs covers expenditure limited to the particular Block within which the Property is located.
23. In addition, The Tenant is to pay the Fuel Consumption Cost which is defined in Clause 1 as the cost of the energy consumption at the Property the calculation of the usage recoverable to be through the metering or monitoring of the Supplied Services which means the provision of hot water and space heating to the Property.
24. The relevant clauses are as set out in Annes 2 of this Decision and Reasons

The Law

25. The Law relating to these proceedings is set out in Annex 3 and should be read in conjunction with this Decision and Reasons.

Evidence

26. The Tribunal found that there were the following issues raised by the Applicant with regard to the Service Charge:
- Service Charge Demands for Service Charge year ending 31st July 2020;
 - Pidgeon droppings in the undercroft;
 - Gas charges for individual flats (referred to in the Lease as Fuel Consumption Charges) for the year 1st January 2022 to 31st December 2022, in particular that the costs incurred of £390.09 incurred between the 1st January 2022 to 30th April 2022 were unreasonable;
 - Compensation.

Applicant's Case

27. The Applicant completed a form attached to the Directions identifying the following as being in issue:

Service Charge Demands for year ending 31st July 2020

28. The Applicant referred to the decision in case reference CAM/00MB/LSC/0054 in which it was said that “The disputed service charges are reasonable and the applicant is liable under the terms of the lease of the property to pay the service charges as demanded other than as are disallowed or are varied by this decision.” He said the decision had been taken after all invoices for services had been sent to that tribunal. He said that following the decision the Managing Agent had wrongly issued a further Service Charge Demand based on different invoices and adding more charges to the year ending 31st July 2020. The Applicant contended that the tribunal had been misled by the Managing Agent by not making it clear that the Service Charge Demands were estimates and not for the actual costs. The previous tribunal was under the impression that it was dealing with actual costs not estimates. The Managing Agent has failed to address how the extra money is accounted for in the form of a breakdown with individual invoices for the extra costs. The Applicant added that when the Covid lockdown was implemented services were at a minimum and therefore he could not see how the charges had been incurred.
29. The Applicant provided copies of the emails from the Respondent’s Managing Agent sent in response to the Applicant’s requests for an explanation for the new Service Charge Demands following the previous tribunal decision. The relevant extracts are set out as follows:

2nd April 2022 from the Managing Agent in response to the Applicant’s question:

“The service charge budget is prepared for each year prior to the commencement of that service charge year, so we can collect enough funds to pay for the services in the building in the forthcoming year. This is what you referred to the FIT and I would refer you to the Judge's decision that the service charges are reasonable and that you are liable to pay the service charges under the terms of the lease. The only item the Judge found in your favour was the pigeon proofing. We have obtained quotes for this work, but due to a lack of funds we have not been able to instruct this work to go ahead.

The Service Charge year end accounts are prepared after the service charge year end when we have received all the invoices which is completed in accordance with terms of the lease. We are also required to do this by the Royal Institution of Chartered Surveyors who we are regulated by and the accounts detail what the actual costs were for the previous year and include any underspend or overspend which then has to be re-charged or credited to the leaseholders. You have received an invoice for your share of the overspend for the year 2019/2020. You will see the details of the expenditure in the accounts.

Please be advised that the service charge budget is an estimate of costs we expect to have to pay for the forthcoming year and is never 100% correct because there may be faults that have to be repaired etc. that we were not expecting and that is why the year end accounts are done.

I hope this helps to explain why you have received the invoice.”

Pidgeon Droppings in the Under Croft

30. The Applicant said that pigeons nested in the under croft creating and cleaning issue. Referring to the decision in case reference CAM/00MB/LSC/0054 he quoted the tribunal as saying here would appear to be minor issues with carpet cleaning but clearly there is an issue with pigeons and pigeon mess in the car park. This is an annoying and aggravating issue that really should be addressed quickly before the problem gets worse". The Applicant said that no action had been taken and now his car was permanently damaged and it has to be cleaned weekly. He asked for reasonable compensation.

Gas Charges for Individual Flats (the Fuel Consumption Charge)

31. The Applicant submitted that the gas charges for individual flats (the Fuel Consumption Charge) for the year 1st January 2022 to 31st December 2022 was unreasonable. In particular he produced two invoices. The first was for the period 1st November 2021 to 31st January 2022 for £274.21 the second was for the period 1st February 2022 to 30th April 2022 for £390.09 incurred. The first bill included the period 1st November 2021 to 31st December 2021 for which the charge was at the rate of £6.412p per kilowatt hour. However, the charge for the later period of the first bill from 1st January 2022 to 31st January 2022 and the whole of the second bill from 1st February 2022 to 30th April 2022 was at the rate of 22.431p per kilowatt hour. Therefore, the Applicant submits that the total charge of £179.89 for the later period of the first bill and the total charge of £374.59 for whole of the second bill are unreasonable.
32. The Applicant said that the Government announced a rise in gas by a maximum of 45%. He said he used to pay 6p per Kilowatt hour until January 2022. The Government said the rise will take place in April 2022. In March 2022 the he received letters and invoices for 21.36p per kilowatt hour which is a 358% rise in the gas bill effective from January 2022. He said he had been trying to obtain an explanation from the managing Agents for three months. He a said last year a quotation for 3p per Kilowatt hour ended up 9p per Kilowatt hour which he felt was reasonable. He accepted that the boiler burned up to 45% of the energy ineffectively and that is had always been the case although he could not understand why a boiler that was only 55% efficient was being used. Notwithstanding the inefficiency he asked how, now the price had gone up to 9p per Kilowatt hour, cost had increased to 21.36p per Kilowatt hour. He said that the Managing Agent did not appear to be able to explain it or why the charge is effective from January 2022.
33. The Applicant also was perplexed as to why a residential building which is not offices is treated as commercial and not residential. The Applicant said he wanted to know what action was being taken by the Managing agent to have the Crossways classified as residential. He said he had raised the question but not received a proper answer. He felt it was unfair and was not convinced with the Managing Agent's replies.
34. He added that he considered the Managing Agent was incompetent not to warn the tenants that the price was going to increase from 1st January 2022.

35. The Applicant provided copies of the emails from the Respondent's Managing Agent and Data Energy sent in response to the Applicant's requests for an explanation for the rise in gas costs. The relevant extracts are set out as follows:

5th May 2022 from Date Energy in response to the Applicant's question as to why the Government's April price cap was not applied to the Applicant's heating charge:

"Your heat tariff is driven by the cost of natural gas which has increased exponentially as you may be aware or have seen on the news. The current price for gas (which is the raw fuel used at basement level of your development to run your heat network) is around four times compared to what was applied a year ago. As previously stated, the gas is used to generate heat, and therefore any increase in gas rates will follow suit on your heat unit rate.

The April price cap you are referring to is an Ofgem regulation which applied to domestic gas and electricity suppliers. Heat Networks are not regulated by Ofgem. These are considered third-party residential use meaning they fall under commercial control as it is a communal gas supply, meaning gas is purchased on the open market and not protected by the legislation."

12th May 2022 from the Managing Agent in response to the Applicant's question as to why the Government's April price cap was not applied to the Applicant's heating charge:

"On the attached heat tariff presentation, (copy provided to Applicant and Tribunal) you can see the assessed network efficiency is 45.52%. This is calculated by comparing the amount of heat used at an apartment level, compared to how much gas was used to fuel the heat network for the same period.

You can see on the tariff the gas requirement; 1,187,783 kWh and the expected heat load is 540,656 kWh. This means with an efficiency of 45.52%, it takes 1,187,783 kWh of gas into the main boiler to generate 540,656 kWh of heat at an apartment level.

The tariff also includes the standing charge and the VAT."

19th July 2022 from the Managing Agent in response to the Applicant's question as to why the Government's April price cap was not applied to the Applicant's heating charge:

"There is an increase across the board on all costs in connection with energy. in the residential market, OFGEM have put in place a price cap to protect the residential customers from the full increase. As explained in my previous e-mail, communal heating systems such as that at Crossways are not considered residential and are therefore not protected by the cap.

We are bound by what the energy suppliers charge and although we have selected the cheapest option for the site, this is still a significant increase on last year. Remus have no ability to change the legislation or what OFGEM

consider to be residential or commercial. The only way you, the consumer can make a change in this is to write to OFGEM or your local MP. Remus do not have any power to change this.”

20th July 2022 from the Managing Agent in response to the Applicant’s question regarding the rate at which he was being charged for the heating:

“The system in place services the whole building as I am sure you are aware and therefore it works like a conventional boiler within a property but on a much larger scale. The difference between a conventional boiler within a property and a communal supply is that there is a lot more pipework and areas for heat to be lost. Meaning, the amount of gas used at the boiler is more than what ends up emanating in your apartment. The heat tariff is set based on the amount of gas that is being used at the boiler. You may be aware that we use a company called Data Energy to manage the billing element of the heat supplies we manage and they have provided the below explanation to help understand the setup of the system as well as the attached document which is given to new customers.

You have a gas meter serving the development. The gas that goes into the building, usually into a plant room where it is then converted into heat going into each apartment. I’ve attached one of our leaflets that gives a bit more explanation – this is what we usually send to residents with their first bills so they get an idea who we are and what we are billing them for.

Each apartment has a meter recording the heat used (space heating and hot water), information from which is sent remotely to us to use for billing purposes. The development has a set heat tariff, usually for a year to fall in line with the gas contract. The Heat Tariff charged very much depends on the efficiency of your heat network and how much heat is lost. A lot of the heat energy is lost, from the plant room where it’s generated, to the apartments, most of it being lost through the pipes. For instance, if the rate you were paying for the main gas supply is 4p/kWh and the Heat Network was performing at 40% efficiency, you would divide 4p/kWh by 0.4 to get a 10p/kWh heat unit rate to be recharged to occupiers. The efficiency of the system is calculated taking into account the gas used at the main gas meter compared to the heat used for the same period by the occupiers.”

Compensation

36. The Applicant said he was extremely disturbed by the service and very anxious. He claimed compensation for the disturbance caused by the way the Respondent’s Managing Agent handled the Tenants’ concerns. He said there were long delays in communication and included email communications in support of his claim.

Respondent’s Case

37. The Managing Agent provided a Statement of Case on behalf of the Respondent. This together with correspondence formed the Respondent’s case.

Service Charge Demands for year ending 31st July 2020

38. It was said that the service charge year is from the 1st August to the 31st July. The previous application and decision related to the estimated charge for the year ending 31st July 2020 because at the time of the decision the annual accounts were not available. The Managing agent said that it provided all the invoices for the items in issue in that case, that were available. The decision in respect of the Internal Cleaning for the year ending 31st July 2020 was based on those invoices and the evidence adduced.
39. When the end of year accounts for the year ending 31st July 2020 were finalised in 2021 it was found that there was an overspend of £48,144.21. The Applicant therefore received an invoice in 2022 for his share of this overspend in accordance with the apportionment in the Lease. A copy of the accounts was provided. The accounts are independently certified by chartered accountant Fawcetts LLP. The certification on the second page of the accounts states that the figures in the statement have been extracted correctly from the accounting records, that the accounting records were supported by receipts and other documents and that the balance of the service charge monies reconcile to the bank statement for the accounts in which the funds are held. The accounts were also approved by the resident directors of the management company.

40. The reason for the overspend were stated as being:

Electricity

41. The budget for electricity in the year to 31st July 2020 was £11,500 and the actual expenditure was £38,836.97. The cost of the electricity covers the supply to the Estate and the Block including the supply to the plant room to run the communal boiler, water tanks, pumps etc. it was said that there is a considerable amount of plant and equipment including five lifts, communal lights, fire alarms, door entry system, caretaker facilities, electric gate and CCTV system. The actual figure also includes the electricity that supplies the plant room which has the communal boiler, the communal water tank and the pumps that supply the whole building with water. This cost was not included in the figures that were provided to the previous tribunal because that was only referring to the Block costs and the Budget for 2019 to 2020 and 2020 to 2021. The Actual Costs for this item were considerably more than budgeted.

Lifts

42. The Budget for the lifts' maintenance was £3,000.00 but the actual expenditure was £8,573.00. this actual figure includes the quarterly maintenance visits plus all call outs and repairs to the lifts.

Pidgeon Droppings in the Undercroft

43. The Managing Agent agreed that there was an issue with pigeons nesting on the pipework near the ceiling of the undercroft car park and this has caused problems with pigeon mess on the cars and floor. It was said that the caretaker cleans up the floor regularly, but investigations are being made into long term solutions to prevent the pigeons from nesting in this area. Arrangements for specialist contractors to visit and advise on how to prevent the pigeons nesting in the car park and the cost for this

is included in the Service Charge Budget for 2021 to 2022. Once the Service Charge year has ended and the funds collected contractors will be instructed to carry out the necessary work.

Gas Charges for Individual Flats (the Fuel Consumption Charge)

44. The Blocks have a communal boiler and each flat has a meter which measures the usage of heat and hot water for that particular flat and the leaseholders are charged according to their usage. This is administered on behalf of the Management Company by a third-party company, Data Energy, and their administration costs were £15,882.66 for the service charge year. Data Energy create the invoices based on the meter readings and send them to the leaseholders. Data Energy also obtain quotes from gas suppliers each year so to ensure that the cheapest supplier is being used. The contract for the gas runs from the 1st January 2022 to 31st December 2022 and is currently with Crown Gas and Power. A copy of the review for gas supply dated 14th December 2021 for the year 2022 was provided.
45. It was said that as the cost was invoiced separately it was not a service charge item. However, the cost to maintain the boiler, and plant is included in the Service Charge. The Managing Agent said that it had provided information in reply to the Applicant's queries regarding the gas charges for individual flats on numerous occasions and his complaint has been escalated from the Property Manager in May 2022 to the Regional Manager on 13th July 2022 (who replied by email on 19th July 2022) and then to the Regional Director on 19th July 2022 (who replied by email on 20th July 2022). Copies were provided by the Applicant and Managing Agent and are referred to above.

Compensation

46. In response to the Applicant's claim for compensation for poor management and communication the Managing Agent said that it had been appointed by the directors of the Management Company. Directors have instructed Remus to act as their managing agent. The Agent said they are a professional firm acting in accordance with the guidelines for Property Management laid down by the Royal Institute of Chartered Surveyors. They specialise in the management of leasehold blocks of flats and employ over 125 staff and manage a total of approximately 40,000 units throughout England and Wales.
47. They said all properties are visited regularly, and minor works are carried out as and when required. A booklet is produced with their scale of charges and setting out details of how it performs its management functions. A copy of the Booklet is sent to each new Lessee when it is appointed as Managing Agent.
48. It was said that the Development is managed from the Thames Valley office which is in Reading and is local to Slough where the Development is situated. There is a dedicated Property Manager and Assistant Property manager that look after this Development who carry out regular site visits. The Managing Agent believed its management costs are competitive.
49. The Managing Agent went on to refer to the three emails sent 28th February and the 5th March 2022 by the Applicant to the Managing Agent as his evidence for poor

communication in support of his claim for compensation. The emails were regarding an issue with the intercom in the property. The Managing Agent said that to communicate with its customers in relation to property maintenance issues that affect all the residents they use an online portal as they do not have the resources to reply to every email from every residential block of flats the size of Crossways. They said they had updated the portal on 28th February 2022, 9th March 2022, 16th March 2022, 28th March 2022 and 30th March 2022 with information regarding the intercom issue for the residents.

50. The Managing Agent submitted that they had emailed the Applicant on numerous occasions in a timely manner regarding his queries and complaints to try to help with the concerns he has raised. They felt this is evidence of good communications with the Applicant.

Decision

51. The Tribunal considered all the evidence and submissions by the parties.
52. The Applicant appeared to be aware that under the Lease the Landlord is obliged to carry out services such as cleaning of common parts, window cleaning, maintenance of the lift and electronic gates, internal and external decoration etc. These services are for the benefit of the Tenants both with regard to day to day living, the long-term maintenance of the Building and the protection of their investment and under the Lease the Tenants pay for these services through the Service Charge.
53. What the Applicant appeared to be less clear about is that under the Service Charge the Tenants pay the actual cost of providing the services, no more and no less.
54. In this Lease, as is common in most leases, the Landlord or its Agent are able at the beginning of the year to demand an advance payment of the Service Charge based on a reasonable estimate of the costs to be incurred. This is held in a service charge trust fund and used to pay for the services as they are performed by contractors. At the end of the year final accounts are drawn up and if the estimate more than covered the cost of the services then there is a credit which is put towards next years' service costs. If there is a deficit because the services cost more than was estimated, then the Tenants must pay the balance. It is this balancing payment that was demanded from the Applicant.

Service Charge Demands for year ending 31st July 2020

55. The Application that led to the decision in case reference CAM/00MB/LSC/0054 was based upon the estimated costs, the costs to be incurred. In the event, because the case was dealt with after the end of the Service Charge years in issue, the Managing Agent included in the bundle, invoices for items of the services which were in issue, namely Internal Cleaning and Management, costs incurred for the whole year. Although, these were undoubtedly intended to justify the amount being asked in advance, the tribunal clearly felt it was able to make a determination for these costs that had been incurred.
56. This Tribunal finds that the tribunal in making its decision in case reference CAM/00MB/LSC/0054 was able to identify those actual costs which had been

incurred for those items in issue and make a determination accordingly. A determination having been made for these actual costs, this Tribunal cannot by reason of section 27A (4)(c) of the Landlord and Tenant Act 1985 make any further determination.

57. With regard to the balancing payment this tribunal could only make a determination in respect of the cost of items, the reasonableness of which, was not determined in the decision in case reference CAM/00MB/LSC/0054. The Tribunal cannot therefore make determination regarding the actual costs for Internal Cleaning and Management. Apart from these the Applicant has only put the overall actual costs incurred in issue. The Respondent's Managing Agent provides an explanation for the difference between the estimated charge and the actual charge. The Tribunal acknowledges from its knowledge and experience that it is difficult with a new property for managing agents to estimate the cost of certain items. The under-estimates in this case were identified by the Respondent's Managing Agent to be for electricity, the actual cost for which is significantly higher than the estimate, and lift maintenance. No evidence was adduced by the Applicant to show that these costs were unreasonably incurred or in amount. Therefore, in the absence of evidence to the contrary the Tribunal finds the balancing payment reasonable and payable.

Pidgeon Droppings in the Undercroft

58. The problem of pigeon droppings in the undercroft soiling the parking area and cars was dealt with by the tribunal decision in case reference CAM/00MB/LSC/0054 in which the actual cost for Internal Cleaning for the year ending 31st July 2020 and 2021 was reduced by 25% in part due to this factor. As stated, a determination having been made, pursuant section 27A (4)(c) of the Landlord and Tenant Act 1985 this Tribunal cannot make any further determination for those years.
59. If the Applicant takes the view that the actual cost incurred or the standard of works undertaken is not reasonable then this would need to be the subject of further proceedings with regard to subsequent years.

Gas Charges for Individual Flats (the Fuel Consumption Charge)

60. The Tribunal noted that the Respondent's Managing Agent submitted that the gas charge for individual flats was not a service charge. The Tribunal examined the Lease. The Tribunal found that the definition of Fuel Consumption Costs in the Lease was the gas charge for individual flats.
61. The Tribunal noted the in the conclusion of the Remus Management Limited Portfolio Review dated 14th December 2021 prepared by Data Energy it was stated that "Considering the quotes received, we would recommend the gas contract for Crossways is contracted with Crown ... This provides the best price for your client". The Managing Agent's client is the Management Company or the Landlord who incur the cost of the gas and then pass that cost to the tenants of Crossways, the apportionment being made in accordance with the meter readings for each flat. The Tribunal found that the only contract for the gas Supplied Services was between the Management Company or the Landlord and the Tenants and, at the present time, would be enforced by the Managing Agent or Data Energy as the Agents of the Management Company and/or the Landlord.

62. Therefore, the Tribunal found that the Fuel Consumption Costs charge comes within the meaning of “service charge” and “relevant costs” under section 18 of the Landlord and Tenant Act 1985 (1) 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
- (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 of which the service charge is payable.”
63. In addition, the Tribunal noted that the total cost of the gas supply appeared on the Service Charge Account for the year ending 31st July 2020 which confirmed it in its view that it was a service charge item.
64. In determining whether the amount was reasonably incurred the Tribunal found that the Applicant had not produced any evidence to contradict the Respondent's submissions that the Government cap does not apply to communal heating systems. The Tribunal also found that the cost was reviewed on 14th December 2021 for the year 2022 and the cheapest supplier was selected. The Tribunal also noted that although the cost of the gas at the communal boiler is using rounded figures, 9p per kilowatt hour due to the loss of 45% of the heat before reaching the heating interface unit (HIU) in the flat the cost has increased to 22p per kilowatt hour.
65. The Tribunal considered the Applicant’s submissions that although he accepted the 45% inefficiency of the system, he could not understand how for one year the cost was 6p per kilowatt hour at the communal boiler rising to 11p per kilowatt hour at the HIU and then for the following year because it has gone up to 9p per kilowatt hour the cost increases to 22p per kilowatt hour at the HIU.
66. The Tribunal applied the formula provided by the Managing Agent in the email of 22nd July 2022 whereby to take account of the inefficiency of the system the cost at the communal boiler is divided by 0.4552 to give the cost at the HIU. On 21st July the Tariff was 2.677p per kilowatt hour at the communal boiler this divided by 0.4552 gives the figure of 5.88p per kilowatt hour at the HIU. On 7th March 2022 the tariff is 9.724 p per kilowatt hour at the communal boiler which divided by 0.4552 gives the decision in case reference CAM/00MB/LSC/0054 figure of 21.36p per kilowatt hour at the HIU.
67. In the absence of evidence to the contrary the Tribunal finds that due to the inefficiency of the system the cost of gas at the boiler doubles by the time it reaches the meter at the flat and that the Respondent did incur the costs as recorded in the invoices claimed. Having found the costs have been incurred the onus is on the Applicant to show that the costs have not been reasonably incurred. In the absence of such evidence the Tribunal must find the cost reasonable and payable.
68. The Applicant said that he considered the late notification of the increase as of the 1st January 2022 was unreasonable as there was no warning given by Data Energy of the

increase. The Tribunal agrees that Data Energy should have given the Leaseholders notice of the increase and therefore determines that the Quarterly Administration fee for the billing period 1st November 2021 to 31st January 2022 of £15.50 is unreasonable and should not be charged.

Compensation

69. As stated in the tribunal decision in case reference CAM/00MB/LSC/0054 the Tribunal does not have jurisdiction to award compensation.

Representations re Section 20C & Paragraph 5A of Schedule 11

70. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.
71. The Respondent's Managing Agent said that that the Applicant should be responsible for paying for the Management Company's and the Managing Agent's costs in relation to preparing their submission to the Tribunal. The Managing Agent said it had provided the Applicant with as much information as it could in order to explain the increases and had responded to all the issues and complaints that had been made. Therefore, it was submitted that no Section 20C Order should be made.

Decision re Section 20C & Paragraph 5A of Schedule 11

72. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.
73. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
74. Following *Plantation Wharf Management Ltd v Fairman & Ors* [2019] UKUT 236 (LC) an order under section 20C can only apply to the Applicant.
75. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from the tenant.

76. Firstly, the Tribunal considered whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the service charge or directly from the Applicants.
77. The Tribunal examined the Lease and found that Schedule 5 paragraph 2.1 enabled the Management Company to reclaim the costs incurred by the Managing Agent in respect of these proceedings through the service charge.
78. With regard to individual liability Schedule 3 paragraph 7 permitted the Landlord to claim its legal costs directly against a Tenant in specific circumstances none of which applied to the present proceedings. However, for the avoidance of doubt the Tribunal may make an order notwithstanding that there is not provision in the Lease to make such charge. If there had been the Tribunal found that, taking into account the very considerable increase and the late notification, it would not be just and equitable to make the Applicant alone liable for questioning the service charge in this instance. Other Leaseholders may find these proceedings of interest in that they may not have been aware that notwithstanding being domestic consumers the cost of their gas does not come within the government capping provisions. Therefore, makes an Order extinguishing the Applicants' individual liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
79. Secondly the Tribunal considered whether an order should be made under section 20C of the Landlord and Tenant Act 1985. In deciding whether or not to do so the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
80. Taking into account the considerable increase in the cost of gas and the Applicant's understandable, although apparently erroneous, belief that his gas bill would be subject to government provisions limiting the charge, the Tribunal found that it was reasonable for the Applicant to make his application. However, in response to his application the Respondent provided a full explanation and, apart from the lateness in informing Leaseholders of the increase, the outcome has been in favour of the Respondent.
81. In addition, following *Plantation Wharf Management Ltd v Fairman & Ors* [2019] UKUT 236 (LC) the Tribunal considered it would not be just and equitable to exempt the Applicant from paying a share of the Managing Agent's costs of these proceedings included in a service charge in which he was the only Tenant involved.
82. Therefore, the Tribunal does not make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

Reimbursement of Fees

83. The Tribunal considered the application under Rule 13(2) for reimbursement of the Tribunal fees (i.e., £100 application fee) to be paid by the Respondent. The reimbursement of fees does not require the Applicant to prove unreasonable conduct on the part of the Respondent.

84. The Tribunal noted that the Application was made on 21st May 2022 whilst the Applicant's concerns regarding the gas charge were progressing through the Respondent's complaints procedure the culmination of which was an explanation regarding the gas charge in the correspondence of 19th and 21st July 2022. The Tribunal considered that the Applicant should have awaited the final answer to his complaint, which the Tribunal considered was clear, before commencing proceedings. Therefore, the Tribunal does not order the reimbursement of the Applicant's Tribunal fees of £100.00.

Summary

85. The Tribunal determines that the service charge demands for the year ending 31st July 2020 were reasonable and payable by the Applicant to the Respondent.

86. The problem of pigeon droppings in the undercroft soiling the parking area and cars was dealt with by the tribunal decision in case reference CAM/00MB/LSC/0054 in which the actual cost for Internal Cleaning for the year ending 31st July 2020 and 2021 was reduced by 25% in part due to this factor. Therefore, this Tribunal has no jurisdiction to make a further determination by reason of section 27A (4)(c) of the Landlord and Tenant Act 1985.

87. The Tribunal determines that the Gas Charges (referred to in the Lease as Fuel Consumption Charges) for the Property of £390.09 incurred between the 1st January 2022 to 30th April 2022 were reasonable and payable by the Applicant to the Respondent's Agent Data Energy.

88. The Tribunal has no jurisdiction to make an order for compensation.

89. The Tribunal does not make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

90. The Tribunal makes an Order extinguishing the Applicants' individual liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

91. The Tribunal does not order the reimbursement of the Applicant's fees of £100.00.

Alan Tomlinson (Chair)

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – THE LEASE

Clause 1 Interpretation and Definitions

“Fuel Consumption Costs” means the cost of or the estimated cost of the energy consumption at the Property the calculation of the usage recoverable to be through the metering or monitoring of the Supplied Services

“Supplied Services” means the provision of hot water and space heating to the Property

“Management Company Obligations” means the obligations to be carried out by the Management Company as set out in Schedule 11

Schedule 3 - Tenant’s Covenants with the Landlord and the Management Company

- 2 To pay the Tenant’s Proportion of the Estate Service Charge Coasts Fuel Consumption Costs and all existing and future rates assessments charges and outgoings
- 13 To pay the Tenant’s Proportion of the Estate Service Charge Coasts and Fuel Consumption Costs to the Management Company in the following manner
 - 13.1 In advance on the first day of August in every yea throughout the Term (or such other dates as shall be notified in writing to the tenant by the Management Company) ... the Tenant’s Proportion of the amount estimated form tie to time by the Management Company or its managing agents as the Estate Service Charge costs for the forth coming year and Fuel Consumption Costs (“the Yearly Payment”)
 - 13.2 ... [not relevant to these proceedings]
 - 13.3 Within twenty eight days after the service of the Management Company on the tenant of a Service charge Certificate in accordance with paragraph 3.1 of Schedule 5 for the period in question the tenant shall pay tot eh management Company the balance by the Tenant’s Proportion of the Estate Service Charge Costs and Fuel Consumption Costs received by the management Company pursuant to paragraphs 13.1 and 13.2 above falls short of the tenant’s Proportion of the Estate Service Charge Coasts Fuel Consumption Costs payable as a certified by the Service Charge Certificate during the sadi period and any overpayment by the tenant shall be credited against future payments due for the tenant.

Schedule 5 - Covenants by the Management Company

- 2.1 the management company may employ at the Management Company’s discretion a firm of managing agents to manage the Estate and discharge all reasonable and proper fees salaries charges and expenses payable to such agents or such other person who may be managing the estate and the cost of computing and collection the estate Service Costs.

- 3 As soon as practicable after the end of each financial Year the Management Company will provide the Tenant with an account of the Estate Service Charge Costs payable for that year due credit being given for the advance contribution relevant to that year and amounts carried forward from the previous financial years(s) (if any) and to carry forward to the next financial year any amount which may have been overpaid by the tenant as the case may require and for the purpose of this clause

Schedule 11 – The Estate Service Charge Costs

- 5.1 The cost of appointing an agent ...to collect the Fuel Consumption Costs

ANNEX 3 - THE LAW

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

1. Section 18 Meaning of “service charge” and “relevant costs”
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, 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
 - (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 of 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 period
2. Section 19 Limitation of service charges: reasonableness
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
3. Section 27A Liability to pay service charges: jurisdiction
 - (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.