



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

**Case reference** : **LON/00BG/LSC/2023/0033**

**Property** : **48A and 48B Bow Road, London E3  
4DH**

**Applicant** : **Amber Estates and Management  
Limited**

**Representative** : **Manish Patel**

**Respondent** : **Notting Hill Genesis**

**Representative** : **N/A**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge H Carr  
S Mason BSc FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **8<sup>th</sup> August 2023**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a face to face hearing The documents that I was referred to are in a bundle of 188 pages, the contents of which I have noted. The order made is described at the end of these reasons.

## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of **£461.96** is payable by the Applicant in respect of the service charges for each of its flats for the year 2019 - 2020
- (2) The Tribunal determines that the sum of **£0** is payable by the Applicant in respect of the service charges for each of its flats for the year 2020 – 2021.
- (3) The Tribunal determines that the sum of **£537.39** is payable by the Applicant in respect of the service charges for each of its flats for the year 2021 – 2022
- (4) The Tribunal determines that the sum of **£1581.23** is payable by the Applicant in respect of the service charges for each of its flats for the year 2022 – 2023
- (5) The Tribunal makes the determinations as set out under the various headings in this Decision
- (6) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (7) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

## **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 the Applicant in respect of the service charge years 2019 – 20, 2020 – 2021 , 2021- 2022 and 2022 – 2023.

## **The hearing**

2. The Applicant appeared in person at the hearing. The Respondent did not appear.
3. The Tribunal made inquiries of the clerk as to the non-appearance of the Respondent which had also not submitted any documentation and had not prepared a bundle.
4. The Applicant provided evidence of having copied the application to the Respondent. The application was sent to Mr Shahel Khan on 26<sup>th</sup> January 2023.
5. The tribunal was copied in to an email from the Respondent's Housing Officer, Mr Shahel Khan to the Applicant, copied to the Applicant's representative. That email, dated 1<sup>st</sup> February 2023 and with a subject heading, RE: Application form for 48A & 48B Bow Road, London, E3 4DH, contained the following message;  
  
Hi Mr. Patel,  
I have forwarded this request to our Service Charge Department, who should be able to provide clarity on determination of liability for Service Charge payments.  
Kind Regards,  
Shahel Khan  
Housing Officer
6. The tribunal advised the Respondent of the application and sent directions on 2nd March 2023 and sent amended Directions on 16th March 2023.
7. The Applicant sent the bundle to the tribunal by email and Mr Shahel Khan was copied in on 19th June 2023.
8. The clerk attempted to contact Mr Shahel Khan on the morning of the hearing but could not get through on the number provided. The phone was not answered and there was no opportunity to leave a message. Subsequent to the hearing after 4 pm on 10th July 2023 Mr Khan left a telephone message saying that he had received no correspondence about the case.
9. The tribunal considered the efforts made by the tribunal and by the applicant and determined that the failure to engage with the application was the responsibility of the Respondent and that it would proceed with the hearing in its absence.
10. The tribunal notes that the clerk attempted to contact Mr Khan on 11<sup>th</sup> July 2023, the day after the application was heard, on the number Mr

Khan left on 10<sup>th</sup> July 2023. She rang at 9.45, 12.39 and 15.36. There was no response to any of her calls.

11. The tribunal notes that emails were received from Mr Khan on 12<sup>th</sup> July 2023 as follows:

At 13.06

Hi,

I recently left a missed call on the line: **0207 446 7700**

I has a query regarding Case: **LON/00BG/LSC/2023/0033**

I have not been received any correspondence regarding the case above but only have been receiving correspondence from the claimant themselves regarding any tribunal hearing/updates.

Please can you send over any correspondence directed to Notting Hill Genesis to this e-mail please.

Thank you!

**Kind Regards,**

**Shahel Khan**

And at 14.33

Hi Jacqueline,

Could we request a copy of all the correspondence the London RAP has sent over to Notting Hill Genesis.

Can you e-mail all these over please.

These letters may have been lost in transit or in our admin desk.

Kind Regards,

Shahel Khan

### **The background**

1. The application concerns two flats within a purpose built block of 5 flats owned by the Applicant. 48A is a ground floor 1 bedroom flat and 48B is the basement floor flat below 48A. There are three other flats in the building which are owned by the Respondent and are tenanted.

2. The Applicant purchased 48A on 7<sup>th</sup> February 2018 and 48B on 9<sup>th</sup> March 2018. The Freeholder at the time of purchase was Genesis Housing Association. In April 2018 Notting Hill Housing Trust amalgamated with Genesis Housing Association Ltd to become Notting Hill Genesis.
3. The service charge year runs from 1<sup>st</sup> April to 31<sup>st</sup> March.
4. The apportionment of charges for the internal area of the block is 20% for each flat.
5. There is an external private courtyard to the block which has a gate. This area is used by residents of other blocks. In total 22 flats share this area, but three of the flats are double the size of the other flats so it appears that it would be reasonable to apportion charges on a 4% basis for each of the subject flats for this area this area.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicant holds a long lease of both flats which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing the Applicant and the tribunal identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges totalling £13,868.66 (£6,934.33 per flat) for the years 2019 – 20, 2020 – 2021 and 2021- 2022 relating to
    - a. Communal internal cleaning
    - b. Communal electricity
    - c. Gardening and external cleaning
    - d. Repairs
    - e. Management fees
    - f. Door maintenance

- g. Bulk refuse disposal
  - h. Specialist repairs
- (ii) The reasonableness and payability of estimated charges for 2022-2023
- a. Communal paladin
  - b. Communal internal cleaning
  - c. TV Aerials
  - d. Electricity
  - e. Door entry maintenance
  - f. Bulk refuse disposal
  - g. Gardening
  - h. Fire risk assessment and fire servicing and maintenance
  - i. Cyclical funds
  - j. Management fees

9. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

**Background to the claim**

10. The Applicant notes that in 2018 – 2019 its annual contribution per flat was £481.62. Since that date there have been massive increases in the annual service charges. It believes that the charges are disproportionate to the work involved and that it is being targeted to pay as it is the only leaseholder in the block.
11. The figures challenged for 2019/20 are based upon actual charges set out in the annual statement which was received on 8<sup>th</sup> July 2021.

12. For the year 2020/2021 the Applicant has not been sent either an estimate or an annual statement. The Applicant asks the tribunal to note that the Respondent continued to take direct debits of £131.03 per month.
13. For the year 2021/2022 the Applicant has not received an annual statement. It received the estimated charges on 5<sup>th</sup> July 2021. The Applicant asks the tribunal to note that the Respondent took direct debits of £133.00 pcm for each flat for the whole calendar year.
14. The Applicant says that since July 2021 it has requested on numerous occasions to see the service charge evidence and invoices for all of the years since it took ownership of the flats. Nothing has been provided.
15. In September 2022 the Applicant received an estimate for 2022/2023 service charges.
16. Eventually the Applicant demanded an urgent meeting. An appointment was arranged for 14<sup>th</sup> December 2022. At 3 pm on 13<sup>th</sup> December 2022 that appointment was cancelled.
17. At the beginning of January 2023 the Applicant received a final notice from the freeholder stating that the Applicant had to clear its arrears within three months or legal action would be taken. It is this notice that has led to the application to the Tribunal.

**Cleaning of internal communal areas 2019 – 2020, 2020 – 2021 and 2021 - 2022**

18. The Applicant disputes the following charges in relation to the cleaning of the internal communal areas:
  - (i) 2019 - 2020 - £1,270.43 per flat
  - (ii) 2020- 2021 – unknown as no estimate or annual statement has been sent for this year
  - (iii) 2021 – 2022 - £886.68 per flat
19. The Applicant says that in the annual statement it received for the service charge year 2018 – 19 the annual contribution per flat to the communal internal cleaning was £46.45. There was therefore a 2,635% increase in the costs from 2018 – 2019 which the Applicant considers cannot be justified.

20. The Applicant has received no estimated cost for 2020 – 2021 and therefore considers it should pay no more than requested in 2018 – 19.
21. For subsequent years the Applicant suggests increasing that sum by inflation.
22. The Applicant notes that the cleaners record how long they have attended the building on a register in the communal noticeboard. This shows that the cleaners attend on a weekly basis. The Applicant suggest that the average attendance is 26 minutes per session.
23. The Applicant suggest, using quotes from local cleaning businesses that a reasonable cost would be £16.30 per hour. Extrapolating the time average and cost average over 52 weeks it suggests an annual cost of £368. The contribution per flat would therefore be 20% of £368 which is £73.60 per flat, a fraction of the amount that is being charged.
24. Alternatively the Applicant suggests that a reasonable charge would be to take the figure of £46.45 as a base point and increase that figure according to inflation.
25. The Applicant told the Tribunal that the approximate area being cleaned was 8 square metres of lobby area, staircase and a one square metre landing area.
26. The Applicant argued that there had been no consultation about the cleaning contract and that the standard of the cleaning was poor.

### **The Tribunal's decision**

27. The tribunal determines that the amount payable in respect of internal cleaning for each flat is £200 for the year 2019 – 2020, £0 for the year 2020 - 2021 and £200 for the year 2021 – 2022.

### **Reasons for the Tribunal's decision**

28. The Tribunal's starting point is that cleaning did take place and that it is appropriate for the Applicant to pay a contribution per flat. Without any input from the Respondent the Tribunal is unable to understand the charges for internal cleaning and the reasons for the increase. The charges appear very high for the area requiring cleaning



and for the time that has been catalogued as having been spent on cleaning.

29. Whilst the Tribunal considers a lower figure would be more reasonable it is reluctant to take the Applicant's suggestion of taking the figure of £46.45 charged in 2018 – 19 and increasing it along the lines of inflation as the figure charged in 2018 – 19 seems extremely low.
30. Nor is it prepared to take the quote from a local cleaning business of £16.30 per hour as the appropriate charging rate. It has limited information about this company and recognises that the costs and responsibilities of a social landlord may result in a higher charge.
31. It considers that an annual charge of £200 per flat is reasonable in the absence of evidence to the contrary. It notes that after considerable variation in cleaning charges the estimated charge for internal cleaning for 2022/3 is £230.40 which is only slightly higher than the charge the Tribunal considers reasonable for the years 2019 – 2020 and 2021 – 2022.
32. As no estimates or actuals have been provided for the year 2020- 2021 it has determined that as a result of being time expired, there is no charge payable.
33. It considers it is very unlikely that the cleaning costs require consultation as only contracts for longer than 12 months need to be consulted on, and it is very rare that cleaning contracts are anything other than monthly rolling contracts.
34. The Applicant has provided insufficient evidence of what it claims to be a poor standard of the cleaning provided. Charges of £200 per annum per flat would presuppose a basic service and the Tribunal has determined not to reduce the annual charge further.

### **Communal electricity**

35. The Applicant challenges charges for internal electricity supply as follows:
- (i) 2019 - 2020 - £45.09 per flat
  - (i) 2020- 2021 – unknown as no estimate or annual statement has been sent for this year
  - (ii) 2021 – 2022 - £56.40

36. The Applicant says that the scales of the increases are not justified. It notes that there has been no upgrades or additional electrical devices added to the communal areas nor have there been any changes that would have increased electricity consumption.
37. The Applicant proposes that the charge levied in 2018-19 of £19.55 should be taken as the starting point and this should be increased/decreased in line with inflation.
38. The Tribunal asked about the appliances in the communal areas. The Applicant said that there were 3 low energy light bulbs which were operated by sensor. The cleaners would use electricity for vacuuming.

### **The Tribunal's decision**

39. The tribunal determines that the amount payable in respect of communal electricity is £45.09 per flat for the year 2019 – 2020, £0 for the year 2020 - 2021 and £56.40 for the year 2021 – 2022. .

### **Reasons for the Tribunal's decision**

40. The starting point is that electricity was supplied to the communal areas and that the Applicant is required to pay a contribution.
41. It is extremely difficult for the Tribunal to determine a reasonable charge in the absence of any evidence of charges. However, drawing on its experience taking the charge for 2018 – 19 as a starting point would be very misleading as electricity bills are often estimated and charges rolled over from year to year.
42. The Tribunal considers that these charges do not appear unreasonable and that as these are payable to an external provider it determines that the charges for electricity for the years 2019 – 2020 and 2021 – 2022 are payable and reasonable.
43. As the Applicant has had no information about the charges for 2020 – 2021, these charges are out of time and therefore are not payable.

### **Gardening and External Cleaning**

44. The Applicant challenges charges for gardening and external cleaning as follows:

- (i) 2019 - 2020 - £334.34
- (ii) 2020- 2021 – as no estimate has been received for this year this figure is unknown
- (iii) 2021 – 2022 - £252.36

45. The Applicant says that the area corresponds to the private front courtyard which is shared by five blocks comprising a total of 22 flats, with three flats double the size of the Applicant's properties. The courtyard is a paved area with a single tree and the area of the courtyard is around 280 square meters.

46. The area is paved and does not have a garden and therefore requires less maintenance and less cleaning compared to the internal communal cleaning. The Applicant therefore says it would expect to pay less than (or similar amount to) what it would expect to pay for the internal communal cleaning ie £46.45 per year.

**The Tribunal's decision**

47. The Tribunal determines that the amount payable in respect of gardening and external cleaning for 2019 – 2020 is £66.87, £0 is payable for 2020 -2021 and £50.47 is payable for 2021 – 2022.

**Reasons for the Tribunal's decision**

48. The Tribunal is again faced with a dilemma. It considers that the work charged for has been carried out but it has no explanation from the Respondent as to how it made the calculation of actual and estimated charges for this work.

49. In the light of the information provided by the Applicant about the area and character of the private front courtyard the charges seem very high. If all flats contributed and the 3 flats that are double the size of the standard flat contributed twice as much as the others, the total charge for external cleaning in 2019 – 2020 would be 25 x 334.34 which = £8,358.50. This does not appear reasonable or indeed correct.

50. The Tribunal notes that the Applicant has been apportioned 20% of the actual or estimated charges for the gardening and external cleaning rather than 4%.

51. It also notes that in 2022 – 2023 the estimated charge is £74.20 which it considers much closer to what is likely to be payable as

opposed to the charges that are currently being demanded for the years in dispute.

52. It therefore has taken the actual charges for 2019 – 20 and the estimated charges for 2021 -2022 multiplied them by 5 and then divided by 25 to reach what it considers to be a reasonable charge for the works.

53. It determines that nothing is payable for the year 2020 – 2021 as no actual or estimated charge has been provided to the Applicant and charges for that year are now time-barred.

### **Repairs (road, fencing, etc) 2019 – 2020 only**

54. The Applicant challenges charges for repairs as follows:

(i) 2019 - 2020 - £141.60

55. The Applicant says that there was no charge for repairs in its annual statement of 2018 -19. It also says that it has not been given any information about the works carried out. It does not consider it fair to charge for work which is significant in cost without such details.

56. It is not aware of any repair work carried out to the external areas of the property.

57. The Applicant proposes that it should pay no money for this service charge heading.

### **The Tribunal's decision**

58. The Tribunal determines that no money is payable for the repairs .

### **Reasons for the Tribunal's decision**

59. The Tribunal cannot make a decision about the reasonableness or payability of charges for which neither it nor the Applicant has any information.

60. It also notes that the apportionment of these charges is 20.00% which does not appear to be appropriate

### **Door Entry Maintenance; Bulk Refuse Disposal and specialist repairs - estimated charges for 2021 - 2022**

61. The Applicant disputes the estimated charges of £69.12 for door entry maintenance, £47.16 for Bulk refuse disposal and £20.52 for specialist repairs.
62. It says that in 2018 – 2019 there were no charges for any of these items. It says the charges are unrealistic, and it asks why there are such high charges for door entry maintenance and bulk refuse disposal given that the area is shared by 22 other flats and is a gated private courtyard.
63. The Applicant says that the freeholder should investigate who is responsible for bulk rubbish rather than charging it to the leaseholders. The Applicant says that there has been no evidence or communication about these items.
64. The Applicant told the tribunal that the front door to the block had a door entry system.

### **The Tribunal's decision**

65. The Tribunal determines to allow £69.12 for estimated charges for door entry maintenance but determines that the estimated charges for bulk refuse disposal and specialist repairs are not reasonable or payable.

### **Reasons for the Tribunal's decision**

66. The experience of the Tribunal is that door entry systems need frequent repair and it is appropriate to make a provision for this. Between the five flats the provisional sum is less than £350 and this amount seems reasonable to cover predictable charges.
67. The Tribunal considers that estimated charges for bulk refuse disposal and for specialist repairs should be based upon actual charges for the previous year. As no information about the actual charges for these items in the previous year are available, then it considers that there is no reasonable basis for the estimated charges.
68. Indeed the Tribunal is struggling to understand what is meant by specialist repairs in the circumstances of this block.

### **Management Fees**

69. The Applicant challenges the management fees as follows:

- (i) 2019 - 2020 - £220
- (ii) 2020- 2021 – no estimates have been received for this year
- (iii) 2021 – 2022- £252. 36

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70. The Applicant says that in 2018 – 2019 it was charged £150. An annual increase of 47% is not justified.

71. It therefore proposes paying £150 management fees.

### **The Tribunal's decision**

72. The Tribunal determines that the amount payable in respect of management fees is £150 for the year 2019 – 2020, £0 for the year 2020 – 2021 and £150 for the estimated charge for 2021 – 2022.

### **Reasons for the tribunal's decision**

73. The tribunal has been given no information about the work covered by the management fees.

74. It is clear that some work has been carried out, and the building appears to have been managed, but it is also clear that there have been serious deficiencies in the provision of information and explanation in relation to the service charge regime at the block.

75. Therefore, the Tribunal has taken what it considers to be a reasonable charge for managing a flat of this size in a block of this size and finding it to be £220, has reduced this to £150 for the failings in management services that it has identified.

76. This reduces the actual charge for 2019 – 2020 and the estimated charge for 2021 – 2022. The tribunal expects that the Respondent will, in accordance with the reasoning of the Tribunal on management fees reduce the actual charges for the year 2021 – 2022 when it produces the annual statement for the Applicant.

77. Nothing is chargeable for the year 2020 – 2021 as no estimates and no actuals have been provided within the statutory time limits.

### **Estimated charges for service charges for the year 2022 – 2023**

78. The Applicant has set out its arguments on these charges in a separate section because the Respondent has used different headings in its service charge estimate.

#### ***Communal paladin - £74.16***

79. The Applicant challenges the charge for the communal paladin. It says that it does not know what the charge is for and that in the previous year it was estimated as £30.48.

#### **The Tribunal's decision**

80. The Tribunal determines that the amount payable in respect of the estimated charge for paladins per flat is £33.00.

#### **The reasons for the decision of the Tribunal**

81. The Tribunal explained what paladins were and asked the Applicant if there were paladins in the front of the block. He said there were three and they served 25 flats. The Tribunal drew on its knowledge of charges and estimated that paladin hire for a year would be approximately £280. For three paladins that would equal £840 which divided between 25 flats would come to approximately £33 per flat.

#### ***Communal internal cleaning - £230.40***

82. The Applicant repeated his previous arguments about the internal cleaning charges.

#### **The Tribunal's decision**

83. The Tribunal determines that the estimated charge of £230.40 is payable and reasonable.

#### **The reasons for the Tribunal's decision**

84. The Tribunal had decided for previous years that the sum of £200 per annum per flat is payable and reasonable. The estimated charge of £230.40 therefore appears to be a reasonable estimated charge for internal cleaning for the year 2023 – 2024.

#### ***TV Aerials - £24.36***

85. The Applicant argues that this estimated sum is a 142% increase on the previous estimated charge for the year 2021 – 2022 of £10.08.

86. The Applicant says that it does not know what work is done in respect of the TV aerial and it does not understand why this is a regular charge.

### **The Tribunal's decision**

87. The Tribunal determines that the estimated charge of £24.36 is payable and reasonable.

### **The reasons for the Tribunal's decision**

88. The Tribunal drawing on its own knowledge and experience considers that a TV aerial will be provided to the block and that work will be required to maintain the aerial. The estimated charge is reasonable.

### ***Electricity - £54.36***

89. The Applicant considers that the increase of 178% from the charge in 2018 – 2019 is unjustified and it is not prepared to pay more than the £19.55 charged in that year.

### **The Tribunal's decision**

90. The Tribunal determines that the estimated charge of £54.36 is payable and reasonable.

### **The reasons for the Tribunal's decision**

91. The Tribunal refers the parties to its previous reasoning on charges for electricity. It has worked on the assumption that these are charges demanded by an external supplier. It determines that the estimated charge is reasonable. However, it fully expects when the actuals are provided for the years in dispute that there will be proper accounting for the electricity charges.

### ***Door entry maintenance - £167.92***

92. The Applicant objects to the estimated charge of £167.92 for door entry maintenance. It notes that the previous year the estimated contribution for each flat in the block is £69.12 and it has been given no explanation for the increase in estimated costs.



93. The Applicant does not understand why this is a regular charge.

**The Tribunal's decision**

94. The Tribunal determines that a sum of £69.12 is payable and reasonable in respect of estimated charges for door entry maintenance.

**The reasons for the Tribunal's decision**

95. The Tribunal determines to reduce the estimated charge to £69.12. This sum is payable and reasonable on the same basis that the estimated charge for door entry maintenance was payable in 2021 – 2022.

96. The Tribunal can see no reason for an increase in the estimated charge when no information about actual expenditure has been provided for the previous year.

***Bulk refuse disposal - £114.33***

97. The Applicant repeats its previous arguments about bulk refuse disposal. It notes that there has been a 142% increase in the estimated charge which cannot be justified. The Respondent has not told the Applicant what is actually done and why this is now a regular charge.

**The Tribunal's decision**

98. The Tribunal determines that a sum of £0 is payable and reasonable in respect of estimated charges for bulk refuse disposal

**The reasons for the Tribunal's decision**

99. The Tribunal considers that estimated charges for bulk refuse disposal and for specialist repairs should be based upon actual charges for the previous year. As no information about the actual charges for these items in the previous year are available, then it considers that there is no reasonable basis for the estimated charges.

***Gardening - £74.20***

100. The Applicant repeats its previous arguments about gardening.

**The Tribunal's decision**

101. The tribunal determines that a sum of £74.20 is payable and reasonable in respect of estimated charges for gardening

**The reasons for the Tribunal's decision**

102. The Tribunal refers to its reasoning on how gardening charges should be apportioned. It seems to the Tribunal that the Respondent is now properly calculating the Applicant's contribution and the estimated sum is reasonable and payable.

***Fire risk assessment charges of £118.80 and fire servicing and maintenance charges of £72.00***

103. The Applicant agrees that these services are important but argues that the estimated cost appears expensive. The Applicant is also concerned that the Respondent will treat these as annual items when this work is not actually required on an annual basis.

104. The Applicant also notes that it has not received any information about the report so it is not persuaded that the work has been done.

**The Tribunal's decision**

105. The Tribunal determines that a sum of £118.80 plus £72.00 is payable and reasonable in respect of estimated charges for fire risk assessment and fire servicing and maintenance charges.

**The reasons for the Tribunal's decision**

106. The Tribunal notes that there has not previously been charges for this work and assumes that no such work has been carried out.

107. Drawing on its own experience it considers that these charges are reasonable estimates of the costs that will be involved in the work.

108. The Applicant will have an opportunity to challenge these charges when the actual service charges are provided if there is evidence that the work has not been carried out or on the basis of evidence from comparable work done in comparable blocks that it has been charged at an unreasonable rate.

109. It also can challenge future charges for fire risk assessments and fire servicing and maintenance charges if it considers those future charges are unreasonable/not payable, for instance if the Applicant considers that the charges are unnecessarily becoming annual charges.

### ***Cyclical funds -£1,431.00***

110. The Applicant argues that there is no explanation for this charge which has not been charged before. It therefore disputes the charge.

#### **The Tribunal's decision**

111. The Tribunal determines that a sum of £500 is payable and reasonable in respect of the charge for contribution to cyclical funds

#### **The reasons for the Tribunal's decision**

112. The Tribunal in general supports the creation of a reserve fund. However, it would expect that demands for contributions to a reserve fund would be accompanied by an explanation of future and planned maintenance of the block and a justification of the level of the charge which has not been provided in this case. It also expects that the sum demanded would bear a close relationship to the level of service charges rather than in effect doubling those service charges for the year in question.

### ***Management fees - £220***

113. The Applicant repeats its arguments about management fees and argues that the estimated charge should be limited to £150.

#### **The Tribunal's decision**

114. The Tribunal determines that a sum of £200 is payable and reasonable in respect of estimated charges for management fees.

#### **The reasons for the Tribunal's decision**

115. The Tribunal considers that whilst the level of management of the property appears to have improved in the current year, it still falls short of providing full information about the estimated service charges. It has failed to meet with the Applicant in respect of the service charges and has failed to cooperate with the Tribunal in this dispute.

116. It therefore considers that the full estimated charge of £220 is not reasonable in this case and reduces the amount to £200. The Tribunal expects that this decision will be reflected in the actuals when they are compiled.

### **General points and calculations**

117. The tribunal asked the Applicant to note that some of the disputed charges that it has reduced are estimated charges. It may be that higher actual charges will be payable when the annual statement is produced, if there is evidence of the actual charge being higher. Of course the Applicant will be able to challenge the actual charges on the basis of reasonableness and payability just as he has been able to challenge the estimated charges. It is also possible that the estimated charges established as reasonable by the Tribunal will be higher than the actuals in which case the Tribunal expects that the Respondent will provide a full and proper accounting for the difference and reimburse the Applicant as appropriate.

118. The Tribunal has calculated what service charges are payable by the Applicant, for the years in dispute, taking into account its decisions above as follows:

- (i) Actual charges for 2019 – 2020 reduced by £1549.59 to £461.96
  - (a) It has reduced the communal cleaning charge of £1270.43 by £1070.43 to £200
  - (b) It has reduced the gardening and external cleaning charges of £334.43 by £267.56 to £66.87
  - (c) It has reduced the repairs charges of £141.60 by £141.60 to £0.
  - (d) It has reduced the charges for management fees of £220 by £70 to £150.00
- (ii) No charges are payable for the year 2020 – 2021 as no estimated or actual charges have been provided within the statutory time limits.
- (iii) The estimated charges for 2021 – 2022 of £1596.00 reduced by £1058.61 to £537.39
  - (a) It has reduced the communal cleaning charge of £886.68 by £686.68 to £200
  - (b) It has reduced the gardening and external cleaning charges of £252.36 by £201.89 to £50.47
  - (c) It has reduced the repairs charges of £20.52 by £20.52 to £0.

- (d) It has reduced the charges for management fees of £252.36 by £102.36 to £150.00
  - (e) It has reduced the bulk refuse charge from £47.16 by £47.16 to nil
- (ii) The estimated charges for 2022 – 2023 reduced by £1205.29 from £2786.52 to £1581.23
- (a) It has reduced the paladin costs from £74.16 by £41.16 to £33.00
  - (b) It has reduced the bulk rubbish costs from £114.33 by £114.33 to £0
  - (c) It has reduced the door entry maintenance charge from £167.92 by £98.80 to £69.12
  - (d) It has reduced the cyclical funds from £1431.00 by £931.00 to £500
  - (e) It has reduced the management funds from £220 by £20 to £200

119. The Tribunal notes that the Respondent has until recently been collecting direct debits from the Applicant. The Tribunal considers that rather than the Applicant being in arrears it is the Respondent that owes money to the Applicant.

### **Application under s.20C and refund of fees**

120. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

121. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Whilst it is clear that the Respondent has incurred no costs as it has failed to respond to this application the Tribunal is making this decision for the avoidance of doubt.

122. Taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the

Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

**Name:** Judge H Carr

**Date:** 8<sup>th</sup> August 2023

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).