FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HB/LSC/2023/0053/AW.
Property	**:**	Flat 1, Barton Court, Whitefield Road, Bristol. BS5 7FX.
Applicant	**:**	Natalia Manente Andre.
Respondent	**:**	Hawkshaw & Barlow Limited.
Representative	**:**	Mr D. Reed.
Type of Application	**:**	Section 27A and Section 20C Landlord and Tenant Act 1985 (the Act); Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA).
Tribunal Members	**:**	Judge C. A. Rai Mr M. Ayres FRICS; Ms T. Wong.
Date type and venue of Hearing	**:**	23 November 2023. CVP Video Hearing Havant Justice Centre, Elmleigh Road, Havant, Portsmouth. PO9 2AL.
Date of Decision	**:**	12 January 2024.

DECISION

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1. The Tribunal decided that the Applicant is liable to pay her share of the following disputed service charges for 2022.

	Item	Service Charge	£
(a)	7	Window Cleaning	200.00
(b)	9	External Maintenance	98.00
(c)	10	Internal painting	700.00
(d)	11	Fire Doors	456.00
(e)	13	Roof Repairs	76.00

2. The Tribunal decided that the Applicant is not liable to pay her share of the following disputed service charges for 2022.

	Item	Service Charge	£
(a)	1	Membership fee- Property Redress Scheme	300.00
(b)	2	Cleaning costs incurred between May and December 2022	525.00
(c)	4	Fire alarm Logbook	48.57
(d)	12	Pre-contract cleaning costs (January to May) 2022	375.00

3. The Tribunal decided that the £352 service charge for external maintenance in December 2022 is unreasonable and that a reasonable amount for this service charge is £176. The Applicant is liable to pay her share of £176 (Item 8).

4. The Tribunal decided that of the £6,000 management fee is unreasonable and that a reasonable fee is £4,000. The Applicant is liable to pay her share of £4,000 (Item 14).

5. The Respondent told the Tribunal that it has requested that the 2022 Accounts are audited and that this is ongoing (Item 15).

6. The Tribunal makes an Order under section 20C of the Act for the benefit of the Applicant, and the other nine leaseholders of the building, that the Respondent's costs in relation to these proceedings are not relevant costs.

7. The Tribunal makes an Order under paragraph 5A of CLARA extinguishing the Applicant's liability to pay a particular administration fee in relation to litigation costs associated with the service charges demanded for 2022 and the costs of these proceedings.

Background

8. The Applicant is a leaseholder of a flat within the purpose built Block of flats known as Barton Court, Whitefield Road, Bristol. BS5 7FX (the Property). Ms Manente told the Tribunal that she had moved in to flat 1 at the end of 2021. The building contains ten flats completed at the end of 2021. Fourteen parking spaces serving the flats are located within the curtilage of the Block.

9. Internal works continued following completion to rectify snagging. External works, which broadly comprised ground works, landscaping and some limited planting, were eventually completed during the first half of 2022.

10. The lease of flat 1 is a tripartite lease made between the developer, Barton Court Developments Limited, DLR (Management) Limited and Natalia Manente Andre (the Applicant). Although the copy lease in the hearing bundle is a draft, the parties accepted that the draft lease is the same as the leases of the ten flats in the building. References to the "Lease" in this decision are to the standard form of lease, not the lease of a particular flat.

11. DLR (Management) Limited (described in the lease as "Management Company") changed its name to Hawkshaw & Barlow Limited (the Respondent) on 11 February 2022 [134].

12. The application was made by Ms Manente on 12 April 2023. In it she referred to the Landlord as Barton Court Developments, which was the correct name of the Respondent at the date of the application. During the hearing Mr Reed told the Tribunal that the freehold of the building had been transferred to the Respondent by the developer on 22 November 2022.

13. Ms Manente described the development as a new building comprising ten flats on three floors, eight of which have two bedrooms and two of which (the penthouse flats) have three bedrooms. She said that there is no lift. Outside there are approximately five square metres of "green area", (now tarmacked) a bike shed, a bin area and a car park with fourteen spaces. It was agreed that the only internal communal areas are the entrance, corridors, stairs and three cupboards containing the utility risers (one on each floor). (At the hearing Ms Manente referred to the external areas comprising of a seven square metre paved area. This description is consistent with the photographs in the bundle).

14. The application relates only to the service charges for 2022. The service charge year runs from 1 January until 31 December. The application lists fifteen disputed service charge items for 2022. It also included two costs applications for orders, the first, under section 20C of the Act, in favour of the Applicant and the other nine lessees and the second, under paragraph 5A of schedule 11 to CLARA, extinguishing the liability of a tenant to pay the litigation costs as an administration charge.

15. Following receipt of the application the Tribunal issued directions. The Respondent provided the Tribunal and the Applicant with the Hearing Bundle prior to the hearing. The Hearing Bundle contained 290 pages. During the week preceding the hearing Ms Manente made a case management application seeking to include correspondence between herself and the Institute of Chartered Accountants of England and Wales (ICAEW). The Tribunal granted consent for her to include this additional information (8 pages including the application).

16. References in this decision to numbers in square brackets are to the electronically numbered pages of the hearing bundle.

17. The Hearing was held remotely using CVP Video with the Tribunal and the Applicant and Respondent each participating remotely and separately logging in. Ms Manente represented herself at the Hearing and the Respondent was represented by Mr Daniel Reed, a director of the Respondent.

The Hearing

18. The Tribunal suggested that it would be sensible to consider the fifteen items numerically identified by Ms Manente, in the application, in turn and both the parties agreed. Ms Manente confirmed that there was no longer any dispute regarding the electricity charges which eliminated any need to consider items 3, 5 & 6.

19. The Tribunal heard submissions from both parties regarding each of the other twelve service charges disputed by Ms Manente in the Application.

20. The Tribunal's jurisdiction to determine this application is contained in section 27A and section 19 of the Act. Extracts from those sections are set out in the Appendix to this decision.

21. The Tribunal can determine if service charges are payable and if payable whether the charges are reasonable. In these proceedings the liability of the Applicants as leaseholders to pay service charges to the Respondent (either as the Management Company or as the Landlord) is not disputed by the Applicant. The dispute is about:-
    a. Whether some of the service charges demanded are recoverable under the terms of the Lease;
    b. If some service charges were incurred; and
    c. Whether some of the service charges are reasonable.

Disputed Service charges
Item 1 - the £300 fee for the Respondent's membership of the Property Redress Scheme.

22. The Respondent submitted that it is obliged to be a member of a redress scheme under The Redress Schemes for Lettings Agency Work and Property Management Work Order 2014 [SI No. 2359]. The Respondent sought recovery of the fee of £300 as a service charge. The Applicant objected.

Applicant's case

23. Ms Manente said that the Redress Scheme membership fee has nothing to do with the building of which the Property forms a part and is not recoverable as part of the service charge. She disputed that there is any provision in the Lease which entitled the Respondent to recover this fee as a service charge cost.

Respondent's case

24. Mr Reed said that the building is the only building, or property, managed by the Respondent, therefore since it is legally obliged to pay the membership fee, it is entitled to recover it from the service charge as it is just "an incremental administration fee".

25. Mr Reed accepted that if the Respondent took on the management of another building the amount of the fee recovered from Barton Court could change. He also accepted that other regulatory fees incurred by the Respondent are not invoiced as part of the service charge for Barton Court. He suggested that the fee for membership of the Redress Scheme is an "operating cost" and said that he had taken legal advice which confirmed that the Respondent is entitled to recover this cost. He suggested that Paragraph 1 (a) (iv) of Part 2 of Schedule 7 of the Lease, which enables recovery of costs incurred in complying with all laws relating to the Retained Parts, authorised the Respondent to recover this fee.

Tribunal's decision

26. The Respondent submitted that it is obliged to belong to the Redress Scheme. It told the Tribunal that it was party to the Lease, so leaseholders have a contractual obligation to pay for the services it is contractually obliged to supply.

27. The Tribunal cannot find any provision in the Lease which would enable the Respondent to charge leaseholders for its membership of this scheme as a service charge. Schedule 7 of the Lease is headed "Services and Service Costs" [53]. Part 1 lists the Services. Part 2 lists the Service Costs. Paragraph 1(a) defines the Service Costs are "all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord, or until the Handover Date the Management Company to be incurred of: (i) providing the services (ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts; (iii) complying with the recommendations of and requirements of the insurers of the building (insofar as those recommendations and requirements relate to the Retained Parts); (iv) complying with all laws relating to the Retained Parts, their use and any works carried out at them, and relating to any materials kept at or disposed of from the Retained Parts; [54].

28. The Handover Date is defined as "the date that the Landlord transfers to the Management Company the freehold" [24].

29. In paragraph 7 of the Landlord's Covenants in Schedule 6 of the Lease the Landlord covenants "Within a reasonable time following the grant of the last of the leases to the Flat Tenants by the Landlord, the Landlord will transfer to the Management Company the freehold of the Building, and the Management Company will accept the same" [36].

30. Mr Reed told the Tribunal that the last flat had been sold by the end of 2021 and the freehold was transferred to the Respondent. He said that the company's solicitors had been instructed to deal with this sooner but suggested that delays at the Land Registry might have delayed the completion of the transfer.

31. In the Lease the Management Company covenants with the Tenant to supply services until the Handover Date and thereafter the Landlord takes on that obligation, so it is implicit that the obligations are the Respondents from the date of completion of the lease, albeit initially as Management Company and latterly as Landlord.

32. The Tribunal has found no provision in Schedule 7 of the Lease which would enable the Respondent to recharge the cost of belonging to a Property Redress Scheme as a Service Cost. The paragraph in Schedule 7 to which Mr Reed referred it does not assist the Respondent.

33. Although this has not influenced its decision, the Tribunal has considered paragraph 5 of the Redress Scheme for Lettings Agency Work and Property Management Order 2014 [87]. That states that a person who engages in property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

34. Mr Reed confirmed that the Respondent does not manage any other property. He said he was advised to obtain the company to provide a suitable structure for setting up the Leases granted when the building was developed, and the flats were sold. The Tribunal is unsure whether in fact the Respondent is engaged in property management work. Its obligations to the leaseholders of Barton Court are contractual. Currently it is the freeholder. Previously it was the named Management Company, contractually obliged to supply those services referred to in the Lease to the leaseholders.

Item 2 Cleaning costs for internal common parts between June and December 2022 - £525.

Applicant's Case

35. Ms Manente said that the Respondent is obliged to "keep track" of the cleaning services and referred the Tribunal to the RICS Service charge Residential Management Code and additional advice to landlords leaseholders and agents (3rd edition) the "RICS Code" [179]. She said that towards the end of the year the cleaning had stopped and referred the Tribunal to an email which she had sent to Ceri Owen on 13 January 2022 which referred to the building being dirty and the leaseholders not having seen a cleaner very often. She asked how frequently they were engaged to clean [96].

36. An estimate of service charge costs, provided by the Respondent in May 2022, showed the annual cost for cleaning as £1,200 (£10 per leaseholder per month) [109].

37. Ms Manente said that the Respondent could not provide invoices showing that it had paid the cleaners or any other proof of payment. She said the leaseholders do not know when the cleaners stopped providing services. She told the Tribunal "We were not provided with any information with regard to a contract for the supply of cleaning. At some point the Respondent suggested that the cleaning company had ceased trading".

38. Ms Manente submitted that, contrary to what Mr Reed said at the hearing, the Respondent had failed to engage with her to agree a solution which demonstrated that payments had been made to the cleaners.

39. Miss Manente also confirmed that her application was made on behalf of all the leaseholders.

Respondent's case

40. Mr Reed said that cleaners had attended the building every two weeks, but he confirmed that the cleaners had "gone out of business". He said he did not know when this happened. He said that the company accountants had received evidence of payments of £37.50 being made by the Company to the cleaners every two weeks.

41. He said it would be possible for him to show the debit entries from the companies bank account but that the Respondent was unwilling to provide copies of its bank statements to the Applicant. He suggested that he had taken legal advice, which was that the provision of the accounts by the Respondent's accountant would be adequate. He was adamant that the reconciliation of costs

and expenses is correct and that the accounting reflected the advice he had received.

42. He told the Tribunal that after the Applicant raised queries of the Respondent "every week", he decided not to engage with her. He does not understand why supplying "signed off" accounts is insufficient evidence of the payment of the cleaners.

Tribunal's decision

43. The Tribunal does not accept the Respondent's arguments that it was unnecessary to respond to the Applicant with evidence of the costs which the Respondent incurred for supplying cleaning services. Ceri Owen, in her email dated 26 May 2022 [110], stated "The only aspect of the charges that are yet to occur are the internal cleaning and the external maintenance" She ended that paragraph of her email by saying …"we do expect there to be an element of these costs to be carried across to next year" [111].

44. Both parties agree that some cleaning services were provided until the company which had been supplying services stopped working. The representations from the parties regarding the quality of the service was inconsistent. The photographs which the Applicant has produced of the internal communal areas were taken whilst the contractors were still carrying out works so inevitably it would have been more difficult to maintain those areas during that period.

45. The 2022 accounts show an entry of £1,493 for cleaning [286] but this may include costs of both internal and external cleaning. It may also include the costs of window cleaning as this is not shown separately in the accounts and both parties agreed that this service was provided. The budgeted cost [109] show costs of £1,200 for internal cleaning, £600 for window cleaning and £1,800 for external maintenance which is defined as gardening clearing/cleaning and maintenance [109].

46. Interestingly the frequency of the estimated service charge costs for internal cleaning is monthly but during the hearing the parties agreed that when provided, the internal cleaning was carried out every two weeks.

47. Assuming, for reasons explained later in this decision, that the window cleaning costs for the year totalled £500, the cleaning costs shown in the accounts were £983 which is the equivalent of a cost of £38.88 every two weeks. However, the parties both agreed that cleaning ceased when the cleaning company stopped operating.

48. Having examined the accounts the Tribunal finds that that although expenditure of an amount, which broadly matches the estimated costs of cleaning the internal communal areas, is recorded, it is not clear is whether the cleaning was actually provided for more than six months? No invoices for cleaning have been provided.

49. On balance, the Tribunal find it likely that internal cleaning was provided by the Respondent for period starting in late May 2022, but the service stopped. No invoices have been provided. No information has been provided which indicates when the company which provided the service ceased to operate.

50. In the absence of any invoices evidencing these cleaning charges the Tribunal finds that this amount is not recoverable as service charges in 2022.

Item 4 Fire alarm and emergency lighting logbook - £48.57.
Applicant's case.

51. The Applicant objected to this cost because she believed that such costs should have been "developer costs". She said that if there is a legal requirement to keep a logbook that book should have been supplied by the developer and not paid for by the leaseholders.

Respondent's case

52. The Respondent said that he had obtained a report from Balmoral Consultancy who had advised that the logbook should be provided. He implied it was a recommended course of action rather than a statutory obligation. (The Balmoral Report was not included in the Hearing Bundle).

53. In response to questions from the Tribunal (Mr Ayres), Mr Reed confirmed that the production of the logbook is not a building regulation requirement. He said that he had received an invoice from the Balmoral but that it was not in the bundle. It then emerged that the cost for the logbook had been invoiced following the inspection and the issue of the report by Balmoral. The requirement was unconnected to completion of the building and was not a pre-occupation condition.

54. Mr Reed suggested that he would be able to send on the relevant information which would demonstrate the Balmoral recommendation and evidence the costs invoiced.

55. He then complained about the Applicant's oft repeated claim that costs of services should not have been made because the work was the "developer's responsibility" and he referred the Tribunal to the email exchange, in the bundle between Ms Manente and Ms Owen [107 – 133].

Tribunal's Decision

56. The Tribunal found that the Respondent had not disclosed any information about the report from Balmoral Consultancy until he mentioned it during the Hearing. Although he said he had an invoice, he had not put it into the Hearing Bundle. In the absence of conclusive information to back up the Respondent's submission that this cost should be allowed it finds that this charge is not a relevant cost and should not be included as a service charge in 2022. The charge is not referred to separately in the 2022 Accounts. Those refer to two separate related entries; £709 for fire alarm maintenance and £420 for a Fire Risk Assessment.

Items 7, 9, 10 and 13 - Window cleaning May - £200; External Maintenance December £98; Internal Painting £700; Roof Repairs £768.
Applicant's case.

57. The Applicant accepted that this work was carried out; What was disputed was the identity of the contractor and why the invoice provided, is from Gainsborough. The Applicant said that other contractors had carried out the work, (presumably subcontracted by Gainsborough).

58. All the invoices in the bundle evidencing these disputed service charges are from Gainsborough [279, 280, 281 & 283]. The dates on the invoices do not match the dates services were supplied. Ms Manente referred the Tribunal to emails from Ceri Owen as evidence that she worked for Gainsborough. She provided details of that company, obtained from Companies House, which show that it has the same registered office as the Respondent and that Mr Reed is a director of both companies [95]. She suggested that it was a conflict of interest for the Respondent not to "market test" the costs of the services it supplied. She also said that the Respondent has not complied with the recommendations in the RICS Code. She believed that although the costs have been invoiced by the Gainsborough, the contractors who supplied the services were subcontractors. Therefore, she is unsure if the invoiced costs are the same as the amount paid to the subcontractors. She had requested copies of the actual invoices issued by the contractors who provided the services.

Respondent's case.

59. Mr Reed suggested that there is no legal issue preventing him from supplying the information requested but the Respondent needed to be "economic and efficient" in supplying information to a leaseholder. When asked if he meant "reasonable", he said that there had been a problem with the original window cleaners. He had therefore arranged for Gainsborough to provide window cleaning instead which was cheaper. He knows that the windows were cleaned. He says that the service was efficient.

60. When the roof leaked, he arranged for Gainsborough to rectify the problem. He suggested that he was in a better position to obtain contractors because he is constantly utilising their services on his other construction sites. He said he would be able to demonstrate that all the costs incurred are reasonable. He explained that the repair to the roof was necessary because of damage caused by seagulls. It was therefore not related to an inherent construction issue. Mr Reed said that it was only because his company retains specified contractors that Gainsborough could procure the repair to the roof quickly, efficiently and in his view economically.

61. The Tribunal (Mr Ayres)n asked Mr Reed if the subcontractors were retained on a long term basis. Mr Reed confirmed that he has agreed day rates with some contractors. He suggested that he had undertaken a direct cost comparison on the window cleaning costs. He said he did not retain the subcontractors on fixed contracts but that they worked without formal contracts for nine months during the year. He had not obtained quotations for the external maintenance and internal painting, but he had obtained quotations for the window cleaning and the roof repairs.

62. Mr Reed maintained that the costs of the internal redecoration were competitive. He said three quarters of the services are supplied by subcontractors. Most of the work was carried out by Gainsborough Construction and he has received invoices. He was keen to stress that there is nothing strange about the arrangements undertaken by the Respondent. He also suggested that the issue of conflict raised by the Applicant is irrelevant. He said that the date of the invoices are the dates the payments are "put through" but do not necessarily relate to the date works are undertaken and or completed. All services were provided to a reasonable standard and "on time".

63. In its written response in the Bundle the Respondent stated, "it is not our business to know what Gainsborough Group Construction Ltd pay their employees or contractors".

Tribunal's Decision

64. Having considered both parties arguments the Tribunal has concluded that these costs are all relevant costs and the charges made are reasonable.

65. The relationship between the Respondent and Gainsborough does not automatically render the cost of the services supplied unreasonable. The Applicant appears to have been unsettled by these charges because a third party contractor provided the services. The Applicant accepts that the services were provided and has not criticised the works or services. Whilst it would have been preferable, and more transparent, for the Respondent to supply the invoices which showed that the works or services had been supplied by subcontractors , the absence of these invoice has not prevented the Tribunal from finding that these service charges were reasonable.

Item 9 External Maintenance – January to June £352.

Applicant's case.

66. Ms Manente said that the Management Company had "introduced itself" to leaseholders in May 2022 when she received an email from Ceri Owen (Estate Manager) [107]. She said that on that date the building was still in a construction phase. She does not believe that at that date any maintenance of the external areas had occurred as these remained unfinished.

67. Ms Manente referred the Tribunal to the photographs in the bundle [255 – 258]. She explained that the fence was 2 metres high and at some point, so were the weeds. She sent an email to Ms Owen [129] on 21 July 2022 complaining about the weeds. She said that the external areas were completed later in 2022. The invoice predated the date she had received the email from Ms Owen [107].

68. Ms Manente said she had been unaware of the graffiti, so would not have known that it had been removed.

Respondent's case.

69. The Respondent had confirmed that, notwithstanding the date of Ms Owen's communication, the Respondent is party to the Lease. Its obligations as management company date from the completion of the Lease.

70. The cost of £352 was for a single event. The weeds were dealt with eventually prior to the completion of the external areas at the end of 2022. The building is adjacent to a public playing field, and it had been necessary to remove some graffiti from the rear of the fence.

71. The completion of the landscaping scheme was a planning requirement and had been dealt with as development costs.

72. Mr Reed did concede that, with hindsight, the costs of £352 could and perhaps should have been described differently as removal of graffiti was not "regular" maintenance.

Tribunal's decision.

73. No invoice for this charge has been produced. It is not apparent which why this was omitted from the bundle. Whilst the explanation put forward by the Respondent was reasonable it does not adequately demonstrate that the costs were incurred. The Respondent appeared to have accepted that it would have been impossible to maintain the external areas until the work was finished at the end of 2022. However, the Tribunal accepts that if the charges made relate primarily to the removal of graffiti the amount charged is reasonable.

74. In the absence of physical evidence, which the Respondent should have provided, the Tribunal will allow 50% of the charge - £176.00. The Respondent has had adequate time to provide the Applicant and the Tribunal with a copy of the invoice and Mr Reed has admitted that the narrative regarding how the costs were incurred could have been clearer.

Item 11 – Fire Doors - £456.

Applicant's case

75. Although the invoice is dated 22 January 2023, the service to which it relates was provided in the preceding September (2022).

76. An adjustment has been made to the fire doors to ensure that these close automatically. Ms Manente referred to three sets of fire doors in the corridors.

77. She believed that if such an adjustment was necessary it should have been a cost paid by the developers as any adjustment should have been made before the flats were occupied.

Respondent's case.

78. Mr Reed said that this work had been undertaken following the Balmoral inspection and Report (to which he had referred the Tribunal earlier when considering the cost associated with the logbook – Item 4). He said that the Balmoral invoice was produced to the companies accountants and included in the 2022 accounts. Balmoral were engaged at the end of 2022. The parties disagreed about the number of doors requiring adjustment since the Respondent included the three doors in the corridor which provided access to the utility risers as "fire doors".

79. Mr Reed said that the cost was invoiced before the work was done. He suggested that there was no explicit requirement in the report that the work carried out must be done but it had been expressed as a "strong recommendation" which was why the work was was done; he said it had mostly been carpentry work.

80. Mr Reed insisted that there are six relevant doors, the three doors to the internal lobbies plus the three doors to the riser cupboards. He suggested that signage had been affixed to those cupboard doors. Mr Reed suggested that the recommendation related to the door closures, intumescent strips and signage. There was no agreement between the parties that all the signage existed.

Tribunal's decision

81. Although the parties agree that works have been carried out to the fire doors, the extent of those works is not documented in the bundle. Neither has the Respondent produced an invoice showing the amount debited as a service charge. The Respondent only provided an explanation why these works were carried out in response to these proceedings.

82. The Respondent could and should have explained to the Applicant why these costs were incurred. It could have disclosed information about the Balmoral inspection and its subsequent recommendations. It could also have explained the anomaly with regard to the timing of the charge to the service charge account and the actual works taking place.

83. Having heard from both parties, and taking into account that it is not disputed that the works have been done, the Tribunal is minded to accept this amount is recoverable as part of the service charges for 2022. By allowing the recovery of these costs it does not condone the way in which the Respondent has handled carrying out and invoicing the work. The Respondent has a responsibility to be transparent about the service charges. Costs incurred by the Respondent relating to fire prevention machinery are recoverable under paragraph 1.7 of Schedule 7 to the Lease [53].

84. The Tribunal 2022 accounts do not refer separately to these costs. These may be included under the heading "Repairs and Maintenance". It would be sensible for the narrative in the Accounts to record actual costs incurred accurately [286].

Item 12 Internal Maintenance – Pre contract cleaning £375.
The Applicant's case.

85. The Applicant, relying on the email sent by Ms Owen on 21 July 2022, concluded that that date was the first date upon which the leaseholders became contractually bound to pay the Respondent for the provision of management of the building .

86. Ms Manente said that she had expected to pay a reasonable price for the provision of the services supplied and quoted the Consumer Rights Act. She complained that during the first six months of 2022 internal works were still being carried out by the landlord. For the most part, save in relation to some internal redecoration of the common parts, this was snagging work in

individual flats but the contractors traffic and transfer of general dust and dirt in the communal areas was extensive and not rectified by any regular cleaning.

87. Ms Manente provided various dated photographs showing accumulated dust on some of the internal communal areas between 25 May 2022 and 15 June 2022 (a period of three weeks) [259 – 277]. She suggested that these photographs showed that the dirt which accumulated had not been cleaned between these dates and also the storage of the contractors equipment within the internal common parts of the building. Whilst acknowledging that she was happy to pay for services which were supplied, she was not happy to be charged for cleaning, which she claimed had not been provided.

88. Ms Manente also stated that there had been no external cleaning during this period because the external works were ongoing. In response to the suggestion that she had not complained about this she said that no-one person or company, had, at that stage, been identified as managing the Property.

Respondent's case.

89. Mr Reed said that the contractors would have cleaned up after working. The works were correctly identified by the Applicant as snagging. No one else had complained about the cleaning. He said that the service charges were for "three cleans" between late December 2021 and early January 2022 during which marks on the internal wall and stairs.

90. Although he acknowledged that Hawkshaw & Barlow were appointed in May 2022 he said that the cleaning services were performed or arranged by the contractors and had been invoiced to Hawkshaw & Barlow. This was confirmed by Ceri Owen in her mail to the Applicant dated 30 May 2022, but contradicted the content of her earlier email dated 26 May 2022, in which she said internal cleaning was not supplied until May 2022 [111 and 115].

Tribunal's Decision

91. Although the Applicant has provided photographic evidence of the condition of the internal communal areas this is evidence of the condition at the times and on the dates the photographs were taken. It has been treated by the Tribunal as indicative evidence rather than conclusive evidence. The amount charged by the Respondent is £375, which Mr Reed suggested was for three "cleans". In his oral evidence he implied that this related to tidying up the corridors and stairs following leaseholders moving in. He also said that the contractors would have arranged for cleaning and recharged Hawkshaw & Barlow.

92. The Tribunal does not find it reasonable that cleaning costs incurred whilst snagging works were ongoing, invoiced to Hawkshaw & Barlow by its contractors Gainsborough should be paid by the leaseholders.

93. Hawkshaw & Barlow were appointed as Managing Agents in May 2022. The cleaning costs appear to have been incurred prior to that date. It was agreed that the internal areas were redecorated following the leaseholders moving in. The Tribunal has concluded that any cleaning which was carried out, whether or not it was commissioned by the contractors, should have been invoiced to the developer/landlord as part of the rectification of the snagging which the

developer was contractually obliged to complete. Both parties agree that the snagging works either caused and/or contributed to the untidy or dirty condition of the internal areas during that period.

94. Furthermore, following completion of the snagging , the internal common parts were redecorated, the cost of which was part of the service charge (Item 3) and has been allowed by the Tribunal.

95. For those reasons the Tribunal finds that cleaning costs relating to the period before the Respondent's appointment in May 2022 are not recoverable from the Applicant.

Item 14 Management Fee £6,000
Applicant's case.

96. The Applicant submitted that the charge was excessive. The Building contains ten flats, so the charge of £600 per flat per year is unreasonable. The services provided by the Respondent are not extensive. The small external area has no garden and is mainly paved. The flats are on three floors. There is no lift. The internal areas comprise entrance doors, a hall, stairs, corridors and internal cupboards.

97. Ms Manente obtained two other quotations for management services [97 and 103]. Adam Church quoted £2,220 + VAT and HML quoted £1,750 + VAT. She said does not understand how the Respondent concluded that the management fee charged could be justified by the figures provided by the Respondent in the bundle [290].

98. Ms Manente queried the figure of £2,450 for legal services [290], which cost she said is not recoverable under the lease save in defined circumstances [53 – 54].

99. When asked by the Tribunal how much she would consider reasonable Ms Manente said £3,000 per annum. She said she does not believe the quotations she obtained are an exact reflection of costs, but in consultation with others, she believed that a fee of £3,000 per annum (£300 per flat) would be fair.

100. Ms Manente suggested that the connection between the Developer and the Manager explained what she termed the "exceptionally high management fees" She accepted that the Lease enabled the developer to appoint the manager. She asked the Tribunal to revise the management fee "in accordance with the market for the building retroactively for 2022 and the following years" [69].

101. She also questioned the quality of the service provided stating that residents had "constantly chased H&B for missing signs, maintenance of the roof, mould in the external areas and faulty intercoms [69].

Respondent's case.

102. Mr Reed confirmed that Hawkshaw & Barlow were appointed in May 2022 but suggested that services were provided to the leaseholders from the beginning of 2022. He did not state which company provided the services but said that "evidence has been provided" [69].

103. In rebutting Applicant's criticisms, he denied there was any missing signage, stating that signage requested "unfortunately took a while"; that the only roof maintenance was the repair of the roof which had been carried out within four weeks of the identification of the defect. He denied there were any reports of mould to external areas but said that internal mould had been addressed by both cleaners and window cleaners during cyclical visits. He denied that the intercom was faulty, suggesting instead that it was impossible to enable a quick release main door opening function because of the design of the external door.

104. Mr Reed said that he had taken advice about an appropriate management fee, and it had been suggested that £100 per month per leaseholder was reasonable. The summary at page 290 of the bundle is a summary of the Hawkshaw & Barlow costs for providing the services. The estimated service charges had been disclosed before the Leases were signed. He claimed that Ms Manente had made contentious claims that prompted the company to obtain legal advice.

105. Mr Reed produced a pie chart diagram which he held up during the Hearing and which he claimed illustrated the activity undertaken in managing the development. He said he has not claimed travel costs. He said the summary of costs [290] is based on an hourly rate of £22 per hour.

106. Mr Reed said that Ms Manente's two quotes were too low because companies would always "quote low" to obtain work. He considered that £100 per month per apartment is a market figure and twice the amount Hawkshaw & Barlow have charged.

107. When questioned by the Tribunal Mr Reed was asked to explain the relationship between market research and pricing, he said that to price the service he had used a "bottom up" model and supplemented that with advice from lawyers and accountants after consulting two companies with whom he worked. He had obtained a price when he purchased the freehold and indicative advice from someone he knew. He acknowledged that the quotations obtained by the Applicant are much lower.

108. Mr Reed said that he believed that the companies who had provided quotations to the Applicant would not provide a comparable service. He said that they have not disclosed a Service Level Agreement. He believes that the low quotations are a lure. No one in England could provide the service for that price and he does not believe that anyone would provide the services which his company provided at a loss.

109. Mr Reed admitted that the estimated expenditure does not match actual expenditure. He conceded that costs incurred by a managing agent providing volume services to more than one development would benefit from economies of scale. However, he said he is not passing on costs for maintaining an office or his insurance costs. He accepted that the first years costs may not be typical and suggested that within three years the costs would be lower.

110. Mr Reed said that none of the other leaseholders are unhappy, and he rejected the Applicant's challenge. There is no mechanism in the Lease which will enable Ms Manente to challenge all the service charge costs. Many of the expenses have increased because of the legal challenges pursued by Ms Manente, who has persisted in asking an unreasonable number of questions. He had said she made legal threats (which allegation she rebutted). He said she had pretended she did not know about the change of name of Hawkshaw & Barlow. He referred to her request for a copy of the insurance policy. He also accused her of defamation. He said he was not familiar with every aspect of the law which is why he paid professionals to answer questions. He repeated his allegation that he had been threatened by Miss Manente and said that there are some debtors. He insisted that he has provided the Tribunal with evidence that Hawkshaw & Barlow made a loss in 2022.

111. The estimated cost of management was disclosed in the sale particulars, and he blamed the Applicant for any increase in the costs. The Respondent has stuck to the estimate it originally provided.

Tribunal's Decision

112. The Tribunal finds that the management charge is excessive. The market testing, which the Respondent alleged that he had undertaken, was selective. Mr Reed only consulted his own contacts and professionals. He did not indicate if he had explained the construction of the Property or disclosed the size of the Development. The Property has a small internal communal area and a hard-surfaced external area with parking and fencing. The Landlord is required to insure the building and maintain the communal areas. There are only ten flats. The definition of Retained Parts in the Lease [25] includes the structure roof external walls and all load bearing walls and the rainwater goods. In addition, the foundations and external decorative surfaces of the Building external doors and the door and window frames are included. The Common Parts are defined as being "the front door, entrance hall, passages staircases and landings of the Building; and the external paths, accessway (shown coloured brown on the Plan), yard, staircases, landscaped areas and Refuse Area at the Building" [23].

113. Whilst accepting that the two quotations obtained by the Applicant may not accurately reflect the actual costs which those managing agents would charge the Tribunal has concluded, relying on its own knowledge, that a reasonable management fee, for the provision of the services supplied by the Respondent during 2022 to the Property is £400 per flat.

114. A professionally qualified managing agent would have more knowledge than the Respondent. It would not need to consult lawyers as the Respondent claims to have done.

115. Mr Reed was critical of the Applicant omitting to supply a service level agreement backing up the alternative quotations but has not provided a service level agreement in respect of the services provided by the Respondent to justify the level of the current management fee (for 2022).

116. The Respondent should have been able to deal with the Applicant's questions about insurance. Ceri Owen referred to a combination of different charges, none of which match the entry showing the cost of insurance in the 2022 accounts, as well as suggesting that the Respondent had made three separate payments for insurance [128] which totalled £2,264.48 plus unspecified fees for brokers and administration. As the Applicant observed the leaseholders are being charged for management but the information disclosed regarding the insurance premiums does not evidence a competent discharge of management duties by the Respondent.

117. Ms Owen also sought to charge an administration fee of £50 for the provision of the full insurance policy [115] which was questioned by the Applicant [116]. In her email dated 1 June 2022 [117] she states "your home is not insured by the buildings insurance, you should have your own insurance home insurance. The buildings insurance covers the building in its entirety."

118. The Landlord's "insurance" covenant is in paragraph 2 of Schedule 6 of the Lease [50] and requires the Landlord to effect and maintain buildings insurance and to serve on the tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building which notice should state the date on which the gross premium is payable to the insurers and the Insurance Rent payable by the tenant, how it is calculated and the date on which it is payable. Paragraph 2.3 obliges the Landlord, at the request of the Tenant, to supply the Tenant with a copy of the insurance policy and schedule and a copy of the receipt for the current years premium [50].

119. The way in which the Respondent failed to deal with the Applicant's request for information about the insurance suggests to the Tribunal that may not have been familiar with its obligations under the Lease regarding buildings insurance and the required disclosure of information, all things which a competent management company should have been able to deal with.

Item 15 - Accountant's certification
Applicant's case

120. The Applicant claimed the certification of the accounts was inadequate and gave reasons. She had stated to the ICAEW that the accounts were not signed or stamped.

121. The Applicant also suggested that Hawkshaw & Barlow had not addressed requests for the summary to be approved by a certified accountant. The Applicant provided the Tribunal with copies of her correspondence with the Institute of Charted Accountants in England and Wales (ICAEW) following her complaint about the 2022 accounts for the Property. The ICAEW described the accounts as "a compilation type report" which reflected the records provide without any underlying test of the records. It also agreed that the report did not express any form of assurance with regard to the accounts. The ICAEW

concluded that the accountants should have ensured that the accounts met the stipulations in the Lease.

Respondent's case.

122. The Respondent's written response relayed the response given by its accountants which said that the accounts provided complied with TECH 03/11 and were properly signed.

123. Mr Reed said that the accountant had been given access to the Respondent's records and implied that that was sufficient.

124. The Applicant's request for different certification was being processed and the costs would be charged back to the leaseholders.

Tribunal's decision

125. The Tribunal referred the parties to Part 1 of Schedule 6 of the Lease [34] which required the Landlord to prepare a certificate at the end of the service charge year showing the costs and the charge. It covenanted in paragraph 4.3 "to keep accounts records and receipts relating to the Service Costs ….and to permit the 'Tenant on giving reasonable notice, to inspect the accounts, records and receipts…."

126. The Service Costs are defined in Part 2 of Schedule 6 [54]. Paragraph (b) (ii) includes "the costs of accountants employed ….to prepare and audit the service charge accounts" [55].

127. Whilst the ICAEW said that the absence of a signature or stamp does not make the 2022 Accounts defective, it identified that the Respondent's accountant had not tested the information but had compiled the information provided (by the Respondent) into the accounts. Since the Lease enables the landlord to recover the costs of auditing the accounts it is not unreasonable for the Applicant to require this be done, especially because the Respondent was either unwilling or unable to disclose copies of all the invoices evidencing service charge expenditure.

128. The Respondent's accountant should have examined the relevant provisions in the Lease and worked with the Respondent to compile accounts which complied with the Lease and TECH 03/11. [See RICS Code].

129. Mr Reed said during the Hearing that he has now provided the Respondent's accountant with sufficient information to audit the 2022 accounts and this audit is ongoing.

130. The Tribunal has therefore concluded that this challenge is in the course of being resolved.

Costs applications.
Section 20C.

131. The Applicant said that whilst she does not believe that the Respondent's legal costs are recoverable under the Lease however, she wants the reassurance of an Order made by the Tribunal to guarantee that the Respondent's legal cost will not be recovered as service charges; She said that the management charges referred to and seemed to include legal costs. She said she had been forced to apply to the Tribunal because of the Respondent's failure to address her concerns and answer her questions. She confirmed that her application specifically included the other nine leaseholders of flats within the Property.

Para 5(A) of Schedule 11 to CLARA.

132. Ms Manente asked the Tribunal to make an order extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs. She said that her reasons for this application are the same as those she had given in support of her other application to extinguish or limit the recovery of costs by the Respondent.

133. In response to both applications Mr Reed claimed that many of the Applicant's submissions are wrong. He believes that the Respondent's costs of the Tribunal proceedings should be recoverable from the leaseholders. He said that the Respondent is entitled to seek legal advice. He said he had received messages in support of the Respondent's Management.

134. Mr Reed said that the Respondent accepted that there is an obligation for it to be transparent. He felt that Ms Manente had challenged his ethics and taken things out of context. He said that she has persisted in raising little details regarding invoices postdating services when, in his opinion, she should have just accepted that the services had been provided. He said that there was no conflict of interest. He claimed that the Respondent was entirely transparent. He claimed that Ms Manente would have been unhappy unless she was consulted about everything. He said this was illustrated by her statement that she had supervised the contractors adjusting the fire doors.

135. He said the Respondent had no intention to defraud the leaseholders. Managing the building has been a disaster but that he believed that many of the other leaseholders supported the Respondent not the Applicant.

136. Following the parties concluding their submissions the Tribunal asked the Respondent if he wished to make any further submissions in response to the two costs applications as the Applicant had not set out her reasons for making those applications until the Hearing.

137. Mr Reed stated that he would like time to respond, and agreed a timescale with the Tribunal within which he could make brief written submissions. Following the Hearing the Tribunal issued directions requiring the that the Respondent provide submissions on or before 14 December 2023. Nothing was received from the Respondent by this date.

Tribunal's Decision

138. The Tribunal makes an order under section 20C that none of the costs incurred by the Respondent in relation to these proceedings are relevant costs. This order is made in favour of Ms Manente and the other nine leaseholders named in the Applicant's application [8].

139. The Tribunal also makes an order under Paragraph 5A of CLARA that the Respondent extinguishing the liability of the Applicant and the other nine leaseholders to pay a particular administration fee in respect of litigation costs.

140. Having considered all the submissions, it received from both parties, the Tribunal has decided to make this order as it would not be just and equitable for the Respondent to recover any costs associated with the application and these proceedings.

Judge C. A. Rai
Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

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.

APPENDIX

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]2 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 [the appropriate tribunal]2 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]2 in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter. [...]3
]1

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.
(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [,residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal], or the [Upper Tribunal] or in connection with arbitration proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other persons or persons specified in the application
(2) ....
(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances

Schedule 11 to the Commonhold and Leasehold Reform Act 2002
Paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court."