



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

Case Reference : **CAM/00KC/LSC/2020/0038**

HMCTS : **Paper**

Property : **25 Goodman Drive, Leighton Buzzard,
Bedfordshire LU7 4UJ**

Applicant : **Simon Norman – Tenant/Lessee**

Respondents:

Landlord : **(1) Proxima GR Properties Limited**

Management Company: **(2) FirstPort Property Services Limited**

Representative : **JB Leitch Solicitors**

Type of Application : **a) to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and Tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002)**
**b) to determine whether the landlord’s
costs arising from the proceedings
should be limited in relation to the service
charge (section 20C of the Landlord and
Tenant Act 1985)**
**c) to reduce or extinguish the Tenant’s
liability to pay an administration charge in
respect of litigation costs (paragraph 5A of
Schedule 11 of the Commonhold and
Leasehold reform Act 2002)**

Tribunal : **Judge JR Morris
Mrs S Redmond BSc (Econ) MRICS**

Date of Application : **2nd September 2020**

Date of Directions : **9th September 2020**

Date of Decision : **25th January 2021**

DECISION

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Covid-19 Pandemic

This determination on the papers has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the case is to be determined wholly on the papers because it is not reasonably practicable for a hearing, or to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal found that the Account Preparation Fees and Audit Fees are not included in the Management Fee for the years ending 31st May 2014, 2015, 2016, 2017, 2018, 2019 and 2020 and determined them to be reasonable and payable by the Applicant to the Respondent Management Company.
2. The Tribunal determines that the Block charge of £2,620.00 per annum being a unit charge of £436.75 for Grounds Maintenance incurred for the years ending 31st May 2018, 2019 and to be incurred for the year ending 31st May 2020 is reasonable and payable by the Applicant to the Respondent Management Company.
3. The Tribunal determines that the Administration Charge of £60.00 is unreasonable.
4. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
5. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Reasons

Application

6. On 2nd September 2020 the Applicant made an application for a determination of the reasonableness and payability of Service Charges incurred for the financial years ending 31st May 2014, 2015, 2016, 2017, 2018 and 2019 and to be incurred in the year ending 31st May 2020 (Section 27A Landlord and Tenant Act 1985)

7. The Applicant challenges the following Service Charge Costs incurred which relate to the specific Property and not the Block:

2014		
Accounts Preparation and Audit Fees		£16.33
2015		
Accounts Preparation and audit Fees		£18.08
2016		
Accounts Preparation and Audit Fees		£28.55
2017		
Accounts Preparation and Audit Fees		£30.73
2018		
Accounts Preparation and Audit Fees		£21.54
Grounds Maintenance Block Charge £4,300		£716.81
2019		
Accounts Preparation and Audit Fees		£19.66
Grounds Maintenance Block Charge £4,335		£722.64
2020		
Accounts Preparation and Audit Fees		£20.67
Grounds Maintenance Block Charge £5,040		£840.16
Administration Charge		£60.00

8. Directions were issued on 9th September 2020. The Directions noted that the Applicant's argument that the Accounts Preparation and Audit Fees were included in the Management Fee and so not payable was based upon the decision of a First-tier Tribunal case reference CAM/42UG/LSC/2019/0037 "the Previous Decision"). The Directions warned the Applicant that this decision would not bind the tribunal as it related to a different property and that the relevant issues are case sensitive and that he will need to prove his contention.
9. The Directions added a party which was believed by the Procedural Judge to be the Landlord and Freeholder. It has since been noted that Proxima GR Properties Limited is the current Landlord and Freeholder and the parties have been amended accordingly.

The Law

10. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and is set out in Annex 2 to this Decision and Reasons.

The Lease

11. A copy of the Lease for the Property was provided dated 13th August 2004 which was between Barratt Homes Limited (The Lessor) (1), Peverel OM Limited (The Manager) (2) and Robert Wise Garofall (The Lessee) (3). The Lease is for a term of 157 years from 1st April 2003.

12. The Development of Kingswood Park on which the Building in which the Property is situated was transferred to Proxima GR Properties Limited on 11th August 2008 which is now the Freeholder and Lessor as evidenced by HM Land Registry Entry Title number BD241291 provided.
13. Peverel OM Limited changed its name to FirstPort Property Services Limited on 15th April 2015 and is the Management Company referred to as the Manager in the Lease.
14. The Lease was assigned to the Applicant on 31st July 2014 as evidenced by HM Land Registry Entry Title number BD239757 provided.
15. The relevant provisions of the Lease were identified as follows:
16. Clause 4.2 of the Lease states that the Lessee covenants with the Manager to observe and perform the obligations set out in the Eighth Schedule.
17. Paragraph 2 of Part One of the Eighth Schedule states that the Lessee covenants to pay the Lessee's Proportion of the Maintenance Expenses in the manner set out in the Seventh Schedule. From the Definitions in Clause 1 of the Lease, the Lessee's Proportion is the share attributed to the flat of the Maintenance Expenses which are the costs incurred by the Manager in carrying out the obligations set out in the Sixth Schedule ("the Service Charge"). The Lessee's Proportion under the Particulars of the Lease is 16.67% of the Block Costs.
18. The Sixth Schedule is set out in three parts: A, B and C.
 - a) The Service Charge or Maintenance Expenses item of Grounds Maintenance includes the obligations set out in paragraphs 1, 2 and 4 of Part A of the Sixth Schedule.
 - b) The Service Charge or Maintenance Expenses item of Accounts Preparation and Auditing includes the obligations set out in paragraphs 7.4 and 9 of Part C of the Sixth Schedule.
19. The Seventh Schedule, paragraph 6, sets out the manner in which the Lessee's Proportion of the Maintenance Expenses is to be paid. An estimated charge is demanded at half yearly intervals on account and a balancing charge is payable if the estimate was insufficient to cover the costs or in the event of an overpayment the sum is credited to the Lessee.
20. Under paragraph 15.3 of Part C of the Sixth Schedule, legal costs reasonably and properly incurred by the Manager in taking or defending proceedings may be reclaimed as a Maintenance Expense.

Description of the Property

21. The Service Charge items in issue did not require an inspection of the Building or the Property and none was undertaken by the Tribunal. The description of the Building and Property as a 2-bedroom first floor flat in a block of 6 purpose-built flats was sufficient for the Tribunal to make its determination.

Submissions

22. The parties agreed to there being no hearing and made paper submissions which are précised and paraphrased below. The Applicant's submissions are from the Application Form, the Statement of Case and Reply to the Respondent's Statement of Case. The Respondent provided a Statement of Case together with the Estimates and Actual Accounts for the years in issue.
23. Copies of the service charge accounts were provided for the years in issue. The costs relevant to these proceedings are set out in the table below.

	Items	Accounts Preparation	Audit Fees	Grounds Maintenance
Year Ending 31st May	Charge (Unit 16.67% of Block)	£	£	£
2014	Block	98.00		1,435.51
	Unit	16.33		239.29
2015	Block	98.53		1,084.86
	Unit	16.42		180.84
2016	Block	51.00	57.48	1,301.52
	Unit	8.50	9.58	216.96
2017	Block	107.75	63.58	1,872.20
	Unit	17.96	10.59	312.09
2018	Block	113.12	71.22	4,300.00
	Unit	18.57	11.87	716.81
2019	Block	116.80	74.65	4,335.01
	Unit	19.47	12.44	722.64
2020	Block	76.00	42.00	5,040.00
Budget	Unit	12.66	7.00	840.16

Applicants Case

Accounts Preparation Fee and the Audit Fees

24. The Applicant firstly addressed the issue of the Account Preparation Fee and the Audit Fees and referred to the First-tier Tribunal case, reference CAM/42UG/LSC/2019/0037 (a copy of which was provided) paragraph [31] ("the Previous Decision"), as follows:

However, the tribunal noted that management fees of £1,514.04 for 2017-18 had risen for the year in question to a budgeted £1,590, on top of which was a fee of £482, described as an "accounts preparation fee". What the tribunal

asked was included in the standard management fee? Mr Sweeney replied that it covered preparing and issuing service charge estimates, accounts, providing account information to external auditors, credit collection, reconciling accounts, correspondence with residents, planning the insurance and handling claims, general maintenance, site inspections, attending regular meetings when required, arranging ad hoc repairs, managing contractor performance, authorising payment of invoices for planned maintenance and utility suppliers, plus safety audits.

25. The Tribunal determined the matter at paragraph [42] as follows:

The tribunal considers that adding together the standard management fee and that for preparation of accounts for audit, a total of just under £2,000 or £500 per flat is excessive for the work likely to be required. The tribunal reduces the sum allowed to £1,000 or £250.00 per flat.

26. The Applicant submitted that the Previous Decision held the Account Preparation Fees and Audit Fees are included in the Management Fee. Therefore, because the Respondent in this case was also the Respondent in the Previous Decision the same principle applied and that all the Account Preparation Fees and Audit Fees from 2014 to date were not payable as they were included in the Management Fee.
27. The Applicant said that he had presented this argument to the Respondent before applying to the Tribunal with a view to settling the matter. However, the Respondent dismissed the claim and therefore he made the Application.

Grounds Maintenance

28. The Applicant said that the increase in the charge for Grounds Maintenance was unreasonable. It had increased from £1,872.20 in 2017 to £4,300.00 in 2018 for the Block which was an increase of £312.03 to £716.66 for his flat. He said that this was an increase of £2,427.80 over a single year. In this time the grounds of the Block have not changed, there were no more plants or grounds to look after and the maintenance requirements had not altered. The average increase over the previous years was between £300.00 and £500.00. The Applicant said that dividing the increase between the 6 flats gave a figure of £404.66 per flat which he considered should be reimbursed.
29. The Applicant said he had obtained a quote that was significantly lower than the £4,300.00 charge in 2018. The Respondent had told him that a tendering process was being undertaken but he had not heard anything further.

Administration Charge

30. The Applicant said that he had been charged a £60.00 Administration Fee in respect of the balance outstanding on his account. He said that the Lease did not have a provision which allowed the Respondents to charge this fee. With regard to the outstanding amount on his account he said that he had received the Service Charge invoice and asked if he could pay over three months to which the Management Company agreed. The payments were to be made in

June, July and August. The Applicant said that he had made all these payments.

Section 20C & Paragraph 5A of Schedule 11 Applications

31. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicant also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
32. With regard to these Applications the Applicant said that he believed he had done everything he could to resolve the matter before coming to the Tribunal. He said the Property was not part of a portfolio. He currently lived with his partner and rented it out to pay the mortgage. He had tried to sell the flat but the high Service Charge put off buyers. He believed that the Account Preparation Fees and Audit Fees are included in the Management Fee based on the Previous Decision and that the Grounds Maintenance Charge for 2018 following was unreasonable.

Respondents' Case

33. The Respondent specifically responsible for the Service Charge is the Second Respondent, FirstPort Property Services Limited, as the Management Company under the Lease. Therefore, references hereinafter to "the Respondent" are to FirstPort Property Services Limited.
34. The Respondent provided a Statement of Case in which were identified the parties, Property and Lease, referring to the relevant provisions. Reference was also made to the budgets, demands and Accounts which were provided.

Accounts Preparation Fee and the Audit Fees

35. The Respondent stated that the cost of the Maintenance Expense items of Accounts Preparation and Audit Fees were expressly included as Service Charge items in the Sixth Schedule of the Lease.
36. The Respondent submitted that the Applicant was wrongly attributing the First-tier Tribunal case reference CAM/42UG/LSC/2019/0037 decision to the present case. The Previous Decision did not create a precedent whereby account preparation and audit fees were not chargeable to leaseholders because they were part of the management fee.
37. The Respondent stated that the Previous Decision is distinguishable on the facts. It relates to an entirely different Development, Building and Lease with different management fees, accountancy and audit fees, differently calculated and chargeable. The Previous Decision determined that the total amount of

the accountancy, audit and management fees were too high and so were reduced. In the present case the accountancy and audit fees are considerably lower and do not form part of the management fee.

38. The Respondent said that there is no double charging as the work carried out in respect of each item is different.
39. Accounts Preparation and Auditing Service Charge items were reviewed in 2017 and a question-and-answer sheet (which was provided) was sent to each Leaseholder setting out how the Accounting Fees are calculated, what they cover and how they compared with the fees charged by other service providers. No part of the Management Fees includes the Accounts Preparation or Auditing.
40. The Management Fee covers inspections, producing reports, instructing and liaising with contractors, providing servicing at the Development, liaising with and responding to Leaseholders, as well as demanding and collecting service Charges. If the Accounts Preparation and Auditing were to be included in the Management Fee then the latter would need to increase to take account of the additional work.
41. With regard to the reasonableness of the Accounts Preparation and Auditing Fees it was submitted that these were extremely modest totalling £132.24 for the Property using the Applicant’s Schedule over the 6 years in issue.

Grounds Maintenance

42. The Respondent stated that the cost of Grounds Maintenance was expressly included as a Service Charge item in the Sixth Schedule of the Lease.
43. The Respondent submitted that the charge for 2018 was reasonable and payable.
44. The Respondent said that they had re-tendered for Grounds Maintenance and the retendering details were provided, the relevant section was as follows:

Ground Maintenance Tender 2020 for S10 Block 19 -29 Odd Goodman Drive		
Contractor	Cost per visit	Total for 26 visits per annum
Powerhouse Maintenance Services	£101.00	£2,620.00
Premier Gardening (Current Contractor)	£115.00	£4,200.00
Premier Gardening (Revised Price - one year only) *		£3,000.00
Ricky Tyler Landscapes	£102.00	£2,660.00
All Gardens (Awaiting Quote)		
Tony Claridge – No Quotation		
NLG – No Quotation		

* Email from Premier Gardening: “I have looked at the costs closely and due to the impact COVID19 has had on business and residents I am conscious we all must make sacrifices in order to help moving forward, with this in mind I

have reduced the costs by approximately 11%, this dramatically reduces the profit margin we have within the company however this will not affect the service provided, but should we be successful we would reinstate our original costs at renewal in a year's time.”

45. The Witness Statement of Ms Beth Lancaster, Senior Property Manager of FirstPort Property Services limited was provided confirming the contents of the Statement of case.

Section 20C & Paragraph 5A of Schedule 11 Applications

46. The Respondent submitted that the legal costs occasioned by the Application are costs recoverable as part of the Service Charge pursuant to the Sixth Schedule of the Lease.
47. In the absence of evidence showing the Account Preparation Fees and Audit Fees are included in the Management Fee and that the Grounds Maintenance charge is unreasonable, the Respondents submit that no Section 20C Order should be made.

Applicant's Reply

Accounts Preparation Fee and the Audit Fees

48. The Applicant conceded that the Lease makes provision for an Accounts Preparation and Audit Charge but he believed that the cost was included in the Management Fee.
49. He said that the Previous Decision proved that the Respondent included the Accounts Preparation and Audit within the Management Fee and that therefore they are charging twice for the same service. He said that he made his statement based on what Counsel had said to the tribunal at the hearing of the Previous Decision and that the Respondent had not provided any evidence to show that the Management Fee did not cover the Accounts Preparation and Audit in the present case.

Grounds Maintenance

50. The Applicant reiterated the point that he considered the increase in costs from 2018 to be unreasonable.

Section 20C & Paragraph 5A of Schedule 11 Applications

51. The Applicant reiterated the point that he considered he believed he had done everything he could to resolve the matter before coming to the Tribunal.

Decision

52. The Tribunal considered all the evidence adduced by the parties.

Accounts Preparation Fee and the Audit Fees

53. Firstly, the Tribunal considered the issue of whether the Account Preparation Fees and Audit Fees are included in the Management Fee.
54. In very general terms Service Charges can be divided into two groups: a) 'utilities and contractors' costs for maintenance and repair' and b) 'management'. The two groups are subdivided into individual costs depending on the lease and the services provided.
55. Preparing accounts and auditing the accounts may be said to come under the general term of 'management', together with the management fees themselves, which under some leases may include the running costs of a management company.
56. With regard to the Previous Decision, the present Tribunal does not have a copy of the lease, however, from paragraph [10] it appears that the Fifth Schedule of that lease listed the purposes for which the service charge was to be applied and paragraph 5 of the Schedule included the costs of management. In the Previous Decision the issue was the reasonableness of the cost of management, in particular, service charge items of management fees and accounts preparation fee, following an increase for the year 2018. In evidence it was said that the management fee included "*accounts, providing account information to external auditors*". From this it appears that the management company, in that instance, undertook both the preparation of accounts and the other aspects of management. Therefore, in order to determine whether the total management charge was reasonable, the tribunal aggregated the costs of the standard management fee and the preparation of accounts fee because both items were undertaken by the same person, namely, the management company. The tribunal subsequently found that the aggregated costs were excessive and so reduced them.
57. The decision was specific to the lease and the facts of the Previous Decision. As a decision of a First-tier Tribunal, the Previous Decision does not create a binding precedent that Account Preparation Fees and Audit Fees are included in the Management Fee.
58. Under the Lease before this Tribunal, Accounts and Audit costs are referred to specifically, as are Management Fees. Although there is an element of accounting in managing a property, in that managing agents need to collect the service charge, pay contractors and utility bills and keep a record of the same, nevertheless the role of preparing accounts and auditing them is a distinct one, especially in respect of a large development of several different blocks of flats. It is therefore appropriate for the costs associated with the tasks of Preparation of Accounts, Audit and Management to each appear separately on the Service Charge Account. It was noted that the accounts are prepared by a separate firm of accountants and not the Respondent.
59. In assessing the reasonableness of these costs, the Tribunal considered what work has been carried out, who carried out the work and the charge that has actually been made, looking at the items individually.

60. The Tribunal found that the preparing and auditing of the Service Charge accounts for the Block of six flats for each of the years in issue was carried out by Chartered Accountants, John Needham & Co for 2014, Haines Watts for 2015 and BDO LLP for 2016 thereafter, not the Respondent. In the absence of evidence to the contrary, in the knowledge and experience of its members, the Tribunal determined the cost incurred and to be incurred of the Service Charge items of Preparation of Accounts and Audit for the years in issue to be reasonable and payable.
61. The Tribunal found that, in the absence of evidence to the contrary, the Service Charge item of Management Fee included the cost of inspections, producing reports, instructing and liaising with contractors, providing servicing at the Development, liaising with and responding to Leaseholders, as well as demanding and collecting the Service Charge. Whereas it will include budgeting, based on the expenditure of previous years, and bookkeeping related to demanding and collecting the Service Charge and paying invoices, it does not include the preparing and auditing of the Service Charge accounts.
62. The cost and standard of management is not in issue.

Grounds Maintenance

63. Secondly the Tribunal considered whether the cost of the Grounds Maintenance for 2018 and the years following is reasonable.
64. The Tribunal found that the cost of the Grounds Maintenance increased from £1,872.20 in 2017 to £4,300.00 in 2018 for the Block which was an increase from £312.03 to £716.66 for the Applicant's flat. The Applicant submitted that the grounds of the Block had not changed, there were no more plants or grounds to look after and the maintenance requirements had not altered. The Applicant added that the average increase over the previous years was between £300.00 and £500.00. This statement was not contradicted by the Respondent and the latter point was evidenced by the Accounts for the previous years.
65. No explanation was offered by the Respondents for this increase which was a doubling of the charge. The contract with the ground's maintenance contractor appears to have been an annual contract and not a qualifying long-term contract which would have required a section 20 consultation procedure as the annual cost was over £100 per unit. Therefore, the Respondents were not tied into an agreement and were free to engage another contractor at the end of 2017.
66. Tribunals expect managers of properties to review contracts such as grounds maintenance each year to ensure that best value is being obtained. In the present circumstances the Tribunal would expect the Respondent to request a quotation from its current contractor in anticipation of the next year. If the quotation shows a substantial increase it would be expected that the Respondent would be in a position to obtain alternative quotations forthwith, not only in the event of an increase in price, but also, if the contractor should withdraw its services at the end of the year. If it is decided to remain with

existing contractor notwithstanding the increase a reasoned explanation needs to be given. Whilst a manager is not obliged to select the lowest price the extent of the increase incurred in the present circumstances is not reasonable. The Tribunal also does not consider it reasonable for the Respondent to wait two years before carrying out a tendering process.

67. On considering the tenders put forward the Tribunal noted that two of the tenders were considerably less than the current contractor and much more in line with the cost prior to 2018. The Tribunal does not accept that the Respondent, on receiving the notification of the increased cost, could not have terminated the current contractor in 2018 and engaged one of the lower priced contractors. There is no evidence adduced to indicate that the service offered by the contractors who provided lower priced tenders is any different than that of the current contractor, whose one-year concessionary price is still significantly higher than that of the other two contractors. The current contractor also makes it clear that if engaged for a year beyond the next year the price will be £4,200.00.
68. The Tribunal finds that towards the end of the year ending 31st May 2017 the Respondent should have been aware of the intention of the current Grounds Maintenance contractor to increase the cost from £1,820.00 to £4,300.00 and should have sought to engage a less expensive contractor. The Tribunal also finds that there are and, on the balance of probabilities there were, in 2017 less expensive contractors available. The Tribunal further finds that a contractor is prepared to carry out grounds' maintenance at a cost of £2,620.00 per annum. The Tribunal therefore determines that a reasonable charge for Grounds Maintenance for the Block is:

Year Ending 31st May	Charge (Unit 16.67% of Block)	Grounds Maintenance
2018	Block	£2,620.00
	Unit	£436.75
2019	Block	£2,620.00
	Unit	£436.75
2020	Block	£2,620.00
Budget	Unit	£436.75

Administration Charge

69. With regard to the £60.00 Administration Fee the Applicant stated that he had asked and the Management Company had agreed that he could pay an outstanding Service Charge over three months (June, July and August), and has done so. The Respondent has not contested this and no mention has been made by either party that the payments were conditional upon an additional charge being made.

70. In addition, the parties did not identify and the Tribunal could not find a provision in the Lease which permitted the Lessor to charge an individual Lessee a sum for late payment of the Serviced Charge other than interest on arrears under paragraph 3 of Part One of the Eighth Schedule.

71. The Tribunal determined the Administration Charge of £60.00 to be unreasonable and so not payable.

Section 20C & Paragraph 5A of Schedule 11 Applications

72. The Applicants applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicants also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

73. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

74. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.

75. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from the tenant.

76. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.

77. The Tribunal examined the Lease and found that pursuant to paragraph 15.3 of the Sixth Schedule the Respondent was able to charge the costs of the Proceedings to the Service Charge.

78. With regard to claiming costs directly from the Applicant the Tribunal found that the only provision permitting this was contained in paragraph 4 of Part

One of the Eighth Schedule with regard to proceedings under Section 146 and 147 of the Law of Property Act 1925 for breach of the Lease which the Tribunal found was not applicable here. Therefore, the Tribunal found that the costs of these proceedings could not be claimed directly from the Applicant.

79. The Tribunal therefore finds that the Respondent can claim its costs under the service charge although not directly from the Applicant.
80. Therefore, the second issue is whether an Order should be made under section 20C of the 1985 Act. In deciding whether or not it is just and equitable in the circumstances to grant an order the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings. The personal circumstances of a party are generally not relevant to this issue.
81. With regard to the conduct of the parties, the Tribunal considered that neither had acted unreasonably.
82. With regard to the outcome the Tribunal has found in favour of the Respondent with regards to the costs of the Service Charge items of Accounts Preparation and Audit not being part of the Management Fee. However, although an explanation of this issue was provided in the Respondent's Statement of Case this was late in the day. An earlier explanation by the Respondent in its capacity as Manager rather than a rejection of the argument might have settled this issue.
83. With regard to the costs of Grounds Maintenance for the year ending 31st May 2018 following, the Tribunal has determined a significantly lower amount than that charged. The Respondent failed to address the significant increase in Grounds Maintenance costs in a timely manner, although the tendering process now being undertaken shows that alternative, less expensive contractors were available. The Tribunal is of the opinion that the Applicant was justified in bringing the issue of the costs of the Grounds Maintenance before the Tribunal.
84. Therefore, the Tribunal is satisfied it is just and equitable to make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
85. Notwithstanding that there is no provision for the Respondent to claim the costs of these proceedings directly from the Applicant, for the avoidance of doubt a tribunal may make an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Based on its reasoning regarding the section 20C Order, the Tribunal also makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Summary of Determination

86. The Tribunal found that the Account Preparation Fees and Audit Fees are not included in the Management Fee for the years ending 31st May 2014, 2015, 2016, 2017, 2018, 2019 and 2020 and determined them to be reasonable and payable by the Applicant to the Respondent Management Company.
87. The Tribunal determines that the Block charge of £2,620.00 per annum being a unit charge of £436.75 for Grounds Maintenance incurred for the years ending 31st May 2018, 2019 and to be incurred for the year ending 31st May 2020 is reasonable and payable by the Applicant to the Respondent Management Company.
88. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
89. The Tribunal makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

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

ANNEX 2 - THE LAW

1. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
2. Section 18 Meaning of “service charge” and “relevant costs”
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period
3. Section 19 Limitation of service charges: reasonableness
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Section 20B Limitation of Service Charges: time limit on making demands
 - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges.
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
 - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Liability to pay service charges: jurisdiction
 - (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,
 of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

7. 20C Landlord and Tenant Act 1985

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 person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.
- (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.

8. Schedule 11 Commonhold and Leasehold Reform Act 2002

5 A Limitation of administration charges: costs of proceedings

- (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.