



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

Case Reference : **CAM/00KF/LSC/2020/0043**

HMCTS : **Paper**

Property : **25 & 25a Ailsa Road, Westcliff on Sea,
Essex SS0 8BJ**

Applicants (Tenants) : **Mr Paul Geoffrey Potton
Ms Amanda Cameron**

**Respondent (Landlord):
Managing Agent** : **Long Term Reversions (Torquay) Limited
Warwick Estates**

Type of Application : **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)**

**to determine whether the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(section 20C of the Landlord and Tenant
Act 1985)**

**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 J R Morris**

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

Date of Directions : **8th October 2020**

Date of Decision : **8th 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 determines that the reasonable estimated service charge payable for the year 1st July 2020 to 30th June 2021 under the Flat 25a Lease by the Applicant, Mr Paul Geoffrey Potton, to the Respondent is £627.20.
2. The Tribunal determines that the reasonable estimated service charge payable for the year 1st July 2020 to 30th June 2021 under the Flat 25 Lease by the Applicant, Ms Amanda Cameron, to the Respondent is £484.40.
3. 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.
4. 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

Introduction

5. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges to be incurred for the year ending 30th June 2020 and to be incurred for the year ending 30th June 2021 are reasonable and payable.
6. The Applicants challenge and the issues identified are the following service charge items:
 - a. £216.00 for monthly cleaning of "internal communal areas";
 - b. £780.00 for garden and ground maintenance;
 - c. £14.40 for out of hours emergency repairs;

- d. £100.00 for professional fees;
 - e. £219.99 for risk management.
7. The Applicants also seek:
- (a) an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985; and
 - (b) an order to reduce or extinguish the Tenant'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;
 - (c) an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reimbursement of application/hearing fees paid.
8. Directions were issued on 8th October 2020.
9. Ms Amanda Cameron, who is the Tenant of 25 Ailsa Road, was joined as a party by her letter to the Tribunal dated 14th October 2020. Ms Cameron purchased the assignment of the Lease under her married name of Mrs Amanda MacManus and she appears under this name on the Land Registry Entries and the Service Charge demands. She has since reverted to her maiden name of Cameron and she made this Application under that name.
10. The Tribunal did not inspect the building ("the Building") in which the Properties are situated due to the regulations regarding the Coronavirus pandemic referred to in the headnote of this Decision. The Tribunal was able to obtain a good perception of the Building from the Application Form, the parties' Statements of Case with photographs and the Internet.
11. The Tribunal found that the Building is a semi-detached house which has been converted into two flats. The Building is said to be constructed of '9 inch' brick walls and the front elevation is faced with stone. The cornices and window sills, lintels and reveals to the front appear to be painted stone. The windows are sliding sash. The roof covering is clay tile. The composition of the windows, the entrance doors and the rainwater goods is not known.
12. The Building is three storeys with a two bedroom flat on each floor. Number 25 is on the ground floor and number 25a is on the first floor. The flats are of a maisonette style in that they each have their own entrance door and there are no internal common parts. The entrance door to number 25, the ground floor flat, is the original front entrance and the entrance to number 25a, the first floor flat, is a door accessed via a gated pathway to the side of the Building.
13. Externally, there is a garden ("the Garden") to the rear which is demised. The Garden is divided between the two Flats with the rear Garden Area allocated to Flat 25a and the front Garden Area being allocated to Flat 25. There appears to be access to the both Garden Areas via the gated pathway to the side of the Building. There is also access to the Garden Area of Flat 25 through the Flat. What was originally the front garden is now hard landscaped to provide a car park ("the Forecourt") for the exclusive use of the two Properties. The left-hand side of the Forecourt as seen facing the Building from the road is demised to Flat 25. The right-hand side of the Forecourt

appears to be retained by the Landlord with easements over it for the use of the Tenants.

The Law

14. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 as set out in Appendix 2 of this Decision and Reasons.

The Lease

15. In respect of Flat 25a, a Lease had been granted in 1999 which had been replaced by a Lease in 2007 which had contained new terms thus replacing the 1999 Lease. In respect of Flat 25, a Lease had been granted in 1987 which had been replaced by a Lease in 2010 which had incorporated by reference the terms of the 1987 Lease. Therefore, the extant Leases were, as confirmed by the Land Registry Entries provided, the 2007 for Flat 25a and the 2010 Lease which incorporated the terms of the 1987 Lease.

The Flat 25a Lease

16. A Copy of the Flat 25a Lease was provided (“the Flat 25a Lease”). The Lease is for a duplex maisonette Flat on the first and second floors of the Building together with a Garden Area at the rear and a Parking Space on the left-hand side of the Forecourt, looking from the road to the front of the Building. The pathway from the road to the entrance to Flat 25 at the front is demised to Flat 25 but is subject to an easement for the Landlord and the Tenant of 25a to pass and re-pass over it. The pathway to the entrance to Flat 25a to the side of the Building which also gives access to the Garden Areas at the rear is retained by the Landlord subject to the easement for the Landlord and the Tenants of 25 and 25a to pass and re-pass over it.
17. The Flat 25a Lease was dated 26th June 2007 between Regis Group (UBK) Limited (1) and Paul Geoffrey Potton (2) for a term of 99 years from 1st July 2000 and is the most recent Lease as evidenced by the Land Registry Entry Title Number EX808791. A summary of the provisions of the Lease relevant to these proceedings are set out below.
18. The demise of each flat is set out in Clause 1 of the Lease and is as follows:
ALL THAT First Floor Flat forming part of the property registered at HM Land Registry under title number EX358562 known as 25 Ailsa Road, Westcliff on Sea, Essex and is for the purposes of identification only shown edged blue on the plan annexed hereto (hereinafter called “the Building”) which said Flat is known as 25a aforesaid and is for the purposes of identification only shown edged red on the plan annexed hereto together also with the garden land (if any) shown also hatched green on the plan annexed hereto and parking space hatched red on the plan annexed hereto (hereinafter called “the Flat”) together also with the ceilings and floors of the Flat and the joists and beams on which the floors are laid (but not the joists and beams to which the ceilings are attached nor the external and internal walls from the same level down including the foundations) together also with

all windows window frames external door(s) cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purposes of the Flat but no other TOGETHER WITH (in common with the Landlord persons authorised by the Landlord and all other persons entitled) the easements rights and privileges mentioned in the First Schedule hereto ...

19. Clause 3 of the Lease states:
The Tenant covenants with the Landlord and with the owners and lessees of the other flats comprised in the Building that the Tenant will at all times hereafter:
 - (2) *Subject as herein before mentioned to contribute and pay a proper proportion of the costs expenses outgoings and other matters mentioned in the Third Schedule hereto and if required by the landlord to make advance payments in respect of the same or an account thereof*

20. Clause 4 of the Lease states:
The Landlord HEREBY COVENANTS with the Tenant as follows:
 - (5) *That subject to the Tenant and the tenants of the other flats comprised in the building the Landlord paying the contribution hereinbefore referred to that the Landlord will carry out the maintenance renewal and repair of all items referred to in Clause 1 2 and 3 of the Third Schedule hereto*

21. Clause 6 of the Lease states:
IT IS HEREBY DECLARED as follows:
 - (1) *that every internal wall separating the demised premises for any adjoining flat shall be a party wall severed medially*
 - (2) *that the word "repair" includes the rectification or making good of any defect in the foundations or structure of the Building notwithstanding that it is inherent or due to the original design thereof*

22. The First Schedule of the Lease states:
 1. *Full right and liberty for the Tenant and all persons authorised by him at all times by day or night and for all purposes to go pass and repass through and along the main entrance pathways hallways stairs and passages of the Building for the purpose of access to and egress from the Flat hatched brown on the plan annexed hereto*

23. The Second Schedule of the Lease states
There is excepted and reserved in fee simple out of this Lease to the landlord and the owners and the tenants of the other flats comprised in the building easements rights and privileges over along and through the demised premises equivalent to those set forth in paragraphs 1, 2, 3, 4 and 5 of the First Schedule to this Lease

24. The Third Schedule of the Lease states:
 1. *Maintaining repairing redecorating and renewing*
 - (a) *the main structure foundations and in particular the roof chimney-stacks gutters and rainwater-pipes of the Building*

- (b) *the gas and water pipes drains and electric cables and wires the cold water tank in under or upon the building enjoyed or used by the tenant in common with the owners occupiers tenants and lessees of the other flats comprised in the Building*
- (c) *the main entrance pathways passages landing and interior staircase of the Building so enjoyed or used by the tenant in common as aforesaid*
- (d) *the boundary walls and fences of the Building*
- 2. *If appropriate cleaning and lighting the passages landings staircases and other parts of the Building so enjoyed or used by the Tenant in common aforesaid*
- 3. *Decorating the exterior of the Building*
- 4. *The administration charges of the Landlord equivalent to 15% plus VAT or similar tax as appropriate to the total cost of any works effected in accordance with the Landlord's obligations under this Lease PROVIDED that if any works are effected by the Landlord it shall be entitled to the administration fee in addition to any profit included in the cost of work undertaken by it*
- 5. *Paying the fees of any managing agents employed by the Landlord*
- 6. *Paying the costs incurred in the preparation and auditing of the accounts of the maintenance fund and for supplying summaries of such audited accounts to the tenants of the Building*
- 7. *All other costs and expenses incurred by the Landlord or its agents in carrying out its obligations under the Lease*

The Flat 25 Lease

- 25. A Copy of the Flat 25 Lease was provided ("the Flat 25 Lease"). Although granted in 2010 it retains the covenants, provisos and conditions of a Lease granted in 1987 ("the Previous Flat 25 Lease"), except as to rent, the term of years granted and as modified in the Schedule of the Previous Flat 25 Lease. The Schedule modifies the Particulars, Clause 2(18), (19), (20) and (21) and a new Clause 6.
- 26. The Previous Flat 25 Lease and the Flat 25 Lease are for the Ground Floor Flat together with the Garden Area and the left-hand side of the Forecourt, looking from the road to the front of the Building. The pathway from the road to the entrance to Flat 25 at the front and to the entrance to Flat 25a to the side which also gives access to the Garden Areas at the rear is retained by the Landlord subject to the Tenants' easements.
- 27. The Previous Flat 25 Lease, dated 19th August 1987, was between Frank Gould (Landlord) (1) and Philip Gerald Howorth (Tenant) (2) for a term of 90 years from 1st July 1987.
- 28. The Flat 25 Lease was dated 29th April 2010 between Ground Rent (Regis) Limited (1) and Warren James Magee and Katrina Cathleen Slade (2) for a term of 99 years from 29th April 2019. The Lease is for a term of 99 years from 29th April 2010. Ms Cameron was assigned the Flat 25 Lease in 2019, as evidenced by a copy of the Land Registry Entry Title Number EX873431. A

summary of the provisions of the Lease relevant to these proceedings are set out below.

29. Part 5 of the Particulars defines *Proportion of Service Charge* as *One half*
30. Part 6 of the Particulars of the Flat 25 Lease define the Demised Premises as:
ALL THAT the ground floor maisonette in the Building known as 25 Ailsa Road Westcliff on Sea in the Borough of Southend on Sea in the County of Essex as the same is delineated on the plan annexed hereto and thereon for identification only edged red together also with the garden appurtenant thereto as the same is delineated on the plan annexed hereto and thereon for identification only edged green.
31. The Recitals further describe the Demised Premises as:
 - (1)(a)(i) *In the case of the ground floor flat the portion of the Building encasing such flat shall include the footings (and cellar if any) all walls (other than party walls) window frames and external doors and the first-floor joists but excluding the floor boards and tiling comprising the floor of the first floor flat and including all drains pipes cables and wires passing within the same limitations*
 - (1)(a)(ii) *In the case of the first floor flat the portion of the Building encasing such flat including the ground floor entrance and stairway or staircases leading thereto the floor boards and tiling forming the floor all walls (other than party walls) window frames and external doors and the roof and including all gulleys drains pipes cables and wires within the same limitations*
 - (1)(a)(iii) *every internal wall separating the Demised Premises from an adjoining flat shall be a party wall severed medially*
 - (1)(b) *The expression “the Building” shall mean the building block or group of flats of which the maisonette forms a part a short description of which is stated in Part 3 of the Particulars hereto*
 - (1)(e) *The expression “repair” includes the rectification of making good of any defect in the foundations or structure of the Building*
 - (1)(f) *The expression “the undemised premises shall mean that flat or maisonette or those flats or maisonettes and garden or gardens which are comprised in the Building and do not form part of the demised Premises*
32. Clause 1 states:
...and paying by way of additional Service Charge or on account thereof calculated in accordance with the Third Schedule hereto such sum or sums to be paid immediately upon demand thereof
33. Clause 2 states The Tenant hereby covenants with the landlord as follows: -
 - (1) *To pay the reserved rent on the days and in the manner aforesaid*
 - (3) *To put and keep in repair the Demised Premises (other than those parts comprised and referred to in the Third Schedule hereto)*
 - (13) *To contribute and pay the proportion set out in Part 5 of the Particulars hereto of the costs expenses outgoings and other matters (hereinafter called “the Service Charge” mentioned in the Third Schedule hereto in the manner therein provided*

- (6) That (if so required by the Tenant) the landlord will enforce any of the covenants to repair or covenants to contribute
- (7) That (subject to contribution and payment by all the tenants of the Building the landlord will maintain repair decorate and renew those matters set out in part 1 of the Third schedule

34. The Third Schedule of the Lease states:

Part 1 – The costs expenses outgoings and other matters as follows: -

- (i) *Effecting the Insured risks*
- (ii) *Maintaining repairing redecorating and renewing*
 - (a) *the main structure foundations and in particular the roof chimney-stacks gutters and rainwater-pipes of the building*
 - (b) *the gas and water pipes drains and electric cables and wires the cold water tank in under or upon the building enjoyed or used by the tenant in common with the owners occupiers tenants and lessees of the other flats comprised in the Building*
 - (c) *the main entrance pathways passages landing and interior staircase of the Building so enjoyed or used by the tenant in common as aforesaid*
 - (d) *the boundary walls and fences of the Building*
- (iii) *Decorating the exterior of the Building*
- (iv) *If appropriate cleaning and lighting any passages landings staircases and other parts of the Building so enjoyed or used by the Tenant in common aforesaid and or keeping the paths and garden or garden area in good condition*
- (v) *The fees of the Landlord for the collection of the rents of the flats demised in the building and for the general management thereof such fees to be calculated at ten pounds per centum of the total annual service charges payable in respect of the Building plus Value Added Tax at the prevailing rate per annum*
- (vi) *The Landlord may at its discretion provide a sinking fund for all or any of the aforesaid items*

Part 11 – Provision for payment of the Service Charge

- (i) *To pay to the Landlord or his agents as an advance contribution towards the Service Charge for the period up until the First day of July next an amount calculated at the rate specific in Part 5 of the Particulars hereto from the date of this demise until the first day of July next and such amount shall be payable to the Landlord on the execution hereof*
- (ii) *To pay to the Landlord or his agents on the First day of July in each year commencing on the First day of July next such sum in advance as shall from time to time prove necessary on account of the Service Charge*
- (iii) *As soon as convenient after the First day of July in each year commencing with the First day of July next the Landlord or his agents shall prepare an account showing the Service Charge for the preceding year and upon such account being certified by the Landlord's Agents the same shall be binding upon the parties hereto*
- (iv) *The maintenance of service charge ascertained in accordance with the preceding clause for each year after the first day of July next*

- ascertained as aforesaid shall be appointed (being proportion of service charge) as defined in part 5 of the Particulars hereto*
- (v) *If the Tenant's proportion of the service charge ascertained as aforesaid shall be greater than the amount paid on account by the tenant an amount which is equal to the difference shall be paid by the tenant to the Landlord or his agents within twenty one (21) days of the notification of the amount thereof but if the actual costs aforesaid shall be less than the amount paid on account the difference shall be held in credit by the Landlord or his agents owing by the Landlord at the expiry of the term when it shall be repaid to the Tenant*

Submissions

35. Each party made a Statement of Case which is précised and paraphrased below. Mr Potton's statement is made on behalf of Ms Cameron and himself as the Applicants.

Applicants' Submissions

36. Mr Potton stated that 25a Ailsa Road is his home and only property and that no application to the tribunal had been made previously. He said that Ms Cameron had moved into 25 Ailsa Road on 25th May 2019.
37. Mr Potton referred to the photographs that had been provided and said that there are no internal communal areas to the Building and that each flat has its own entrance. He added that there are no communal landscaped areas in that the front of the property is mostly hard standing with just a thin strip of border each side and a tropical plant. Ms Cameron parked her vehicle on the gravel on the left-hand side and Mr Potton parked his vehicle on the concrete on the right-hand side and they each maintained their respective sides.
38. Mr Potton said that the area needed little or no maintenance. It took him about two hours a year to maintain the greenery on his side which he had done for 13 years although it took Ms Cameron a little longer on her side. They were both in agreement that neither required a gardener and that there was no mention in the Lease of employing a gardener.
39. Mr Potton said that there was nothing in his Lease saying that he had to pay a service charge and also disputed charges for cleaning of internal communal areas, garden and ground maintenance, out of hours emergency repairs, accountancy, professional fees and risk management.
40. Mr Potton provided the Actual Accounts for the years ending 30th June 2019 and 2020 and Estimated Accounts for 2021, the latter being the year in issue. These are summarised in the table below.

Year ending 30th June	Actual 2019	Actual 2020	Estimated 2021
Item	£	£	£
Accountancy Fees	49.00	60.00	60.00
Bank Charges	12.00	6.00	0

Internal Cleaning	0	0	216.00
Garden & Grounds Maintenance	0	260.00	780.00
General Minor Repairs	66.00	0	400.00
Management Fee	573.00	494.00	360.00
Out of Hours Emergency Fee	38.00	21.00	14.40
Professional Fees	0	180.00	100.00
Risk Management	0	210.00	220.00
Sundries	48.00	98.00	0
Sub Total	786.00	1,329.00	2,150.40
Reserve Fund	29.00	0	200.00
Total	815.00	1,329.00	2,354.40

41. Mr Potton stated that he considered the Managing Agent had not carried out its role competently. He also expressed his disappointment with regard to the operation of leasehold and said that Ms Cameron shared his views.
42. He expressed his dissatisfaction with the Risk Assessment carried out referring to the following items:
- Hazard Location 4 - Wall Coverings: He said there is no external wall coverings which could catch fire as the Building was constructed of brick and stone.
 - Hazard Location 5 – No drinking water signage: He said that water of the outside tap came from the rising main and so could not be hazardous.
 - Hazard Location 6 – Asbestos roof: He said the Building had been constructed in 1906 and asbestos was not used in construction until 1930. The roof is original kiln fired clay tiles fixed to wooden battens and beams with timber soffits and fascia, there is no asbestos.
 - Hazard Slip, Trip and Fall: He said that there is no moss growing on the access path to the rear garden. He said he regularly swept and cleaned the area.

Respondent's Submissions

43. The Respondent's Managing Agent stated that it had started management of the Building on 20th December 2019. It did not receive any handover information other than a statement that a demand of £407.00 had been made in relation to each Property for the previous year. No budgetary information based on the terms of the Lease identifying the Service Charge items was provided and due to the coronavirus restriction, budget for the year 30th June 2020 to 31st July 2021 was based upon assumptions made based on similar properties.
44. The Managing Agent referred to Service Charge items challenged by the Applicant as follows:

Cleaning and Gardening

45. The Agent quoted the Flat 25 Lease and said that because paragraph (iv) of Part 1 of the Third Schedule referred to cleaning and gardening a small sum was included for cleaning any internal hallways and maintaining grounds. With regard to cleaning, as the Agent was subsequently notified that each flat had its own entrance, no funds were spent and those received would be credited at the year end. With regard to gardening after reviewing the small

area to the front all works were stopped after July 2020 and a credit applied as per the terms of the Lease.

Out of Hours

46. The Agent referred to paragraph (v) of Part 1 of the Third Schedule of the Flat 25 Lease and said that a one-off yearly fee of £7.20 per Leaseholder was charged to allow the out of hours team to handle any incoming calls that are of an emergency such as leaks into the properties, storm damage etc. The out of hours team would instruct a contractor to attend and repair.

Professional Fees

47. The Agent said that the Professional Fees charge was for the Landlord to approve all budgets and Service Charge Accounts that the Agent produces inhouse. This includes any administration that the Landlord may need to carry out in their legal team becoming involved in debt recovery. Reference was again made to paragraph (v) of Part 1 of the Third Schedule of the Flat 25 Lease

Risk Management

48. The Agent said that the Risk Assessment was carried out in furtherance of the Health and Safety at Work etc Act 1974 with a view to ensuring that the structure and foundations are maintained and any fire risks are identified and addressed so they can be rectified in a timely manner. A copy of the report was provided.

Decision

49. The Tribunal considered the submissions of the parties.
50. Due to there being different leases for each Property the Tribunal dealt with the Application separately for each Flat.

Flat 25a

51. Firstly, the Tribunal considered how the rights and obligations under the Flat 25a Lease applied. The Tribunal found as follows.
52. Under Clause 1 of the Flat 25a Lease the whole of the internal area including the windows and entrance doors of the Flat is demised and there are no communal internal areas. The external and internal walls down to the foundations are retained by the Landlord. Of the external areas the rear Garden Area is demised. Under Schedules 1 and 2, except for a Parking Space, the right-hand half of the Forecourt at the front is retained by the Landlord with easements over it for the Landlord and the Tenants.
53. Under Clause 3 of the Flat 25a Lease the Tenant is responsible in both obligation and cost for the repair and maintenance of the demised premises

which includes the Flat and the Garden Area. Apart from Clause 3(2) these provisions are not relevant to these proceedings.

54. The Tribunal found that based on what was demised under the Flat 25a Lease the Landlord as Freeholder retained the right-hand side of the Forecourt (subject to the Tenant's easements) and the structure of the Building including the walls, foundations, roofs, rainwater gutters and pipes and boundary fences.
55. Under the Third Schedule paragraph 1(a), part of (c) and (d) and paragraph 3 the Landlord is required to maintain, repair, redecorate and renew these parts. The part of paragraph 1(c) applicable to the areas retained by the Landlord are the "pathways passages". Other parts referred to in paragraph 1 (c) and paragraph 2 are not applicable because they refer to internal parts of the Building which are part of the demised premises.
56. Under Clause 3(2) the Tenant is obliged to pay a proper proportion of the costs attributable to the Flat, of the Landlord fulfilling its obligations under the Third Schedule. The Landlord is entitled to demand the payment of these costs in advance. A proper proportion would be a half of the costs since there are two Flats in the Building and the Flat 25 Lease specifically requires the Tenant to pay a half.
57. Paragraph 4 of the Third Schedule entitles the Landlord to claim an administration charge of 15% of the total cost of the work in fulfilling its obligations, plus VAT if appropriate.
58. In addition, paragraphs 5 and 6 of the Third Schedule require the Tenant to pay the Managing Agents Fees and the costs of preparing the accounts of the maintenance fund and paragraph 7 requires the tenant to pay all other costs of the Landlord in carrying out its obligations under the Flat 25a Lease.
59. Secondly the Tribunal applied the provisions of the Flat 25a Lease to the Service Charge.

General Repairs

60. On applying the above findings to the Service Charge the Tribunal found that under the Flat 25a Lease, a charge for General Repairs is authorised to meet the Landlord's obligations under paragraphs 1(a) (c) and (d) and 3 of the Third Schedule, to maintain, repair, redecorate and renew "*the main structure foundations and in particular the roof chimney-stacks gutters and rainwater-pipes of the building*" and the "*pathways passages*".
61. The Landlord is also authorised to make a demand in advance under Clause 3(2). The amount of the estimated charge for General Repairs is not disputed and so is determined to be reasonable and payable.

Risk Management

62. The Risk Management charge is for a survey that relates to a variety of matters generally relating to the condition of the Building. This survey potentially comes within paragraphs 1(a), (c) and (d), 3 and 7 of the Third Schedule as part of the obligation to maintain, repair, redecorate and renew the Building. However, as is mentioned in the report, the Property Manager needs to be clear about what parts of the Building are demised and in respect of which the Landlord has no obligation and those parts which are retained and for which the Landlord has a responsibility.
63. Overall, the Tribunal considered that as the first Survey/Report undertaken by the Managing Agent since taking over management and taking into account the prevailing coronavirus restrictions, it was necessary and the costs reasonably incurred and payable. However, in future the report needed to be more Building specific and focused on the obligations under the Lease as well as any statutory requirements.

Cleaning and Gardening

64. As was recognised and conceded by the Respondent's Managing Agent, all the internal areas are demised so there are no internal communal parts to clean. The rear garden is also demised and therefore no maintenance of that area is required. Therefore, notwithstanding the provisions of paragraph 2 of the Third Schedule a charge for internal cleaning and gardening is not payable under the Flat 25a Lease. Therefore, the charge is not reasonable or payable.
65. A charge could be made for maintenance work on the left-hand side of the forecourt, although, the parties acknowledged that as it was a relatively small hard landscaped area this would be limited to repair work to the surface and not gardening.

Accountancy Fee

66. The Tribunal then considered the estimated costs for the Accountancy Fee which it found is authorised to be charged under paragraph 6 of the Third Schedule of the Flat 25a Lease. No alternative charges were provided and in the absence of evidence to the contrary the Tribunal found that in its knowledge and experience the estimated charge of £60.00 was reasonable and payable.

Out of Hours Emergency Fee, Professional Fee and Management Fee

67. The Tribunal considered the charges for the Out of Hours Emergency Fee, Professional Fee and Management Fee as being related to the Managing Agents' Fee. A charge for managing agent's fee is authorised under paragraph 6 of the Third Schedule of the Flat 25a Lease.
68. The role of the Managing Agent is set out in the RICS Service Charge Residential Management Code and includes in the present circumstances:

- Inspecting the property and checking for minor repairs and instructing contractors;
- Responding to emergencies;
- Annual surveys of the Building and assessing when major works are required (the managing of major works would incur an extra charge of 15% as set out in paragraph 4 of the Third Schedule);
- Preparing of estimates and demands;
- Collection of rents and service charges; and
- Making and accounting for payments and receipts.

The Tribunal is of the opinion that obtaining the Landlord's approval of budgets and service charge accounts is a cost that should be included in the management fee. Any administration that the Landlord or its Agent may need to carry out recovery by their legal team would only be incurred as and when necessary and, for a Building of only two flats, should not be a standard estimated annual cost. Therefore the £100.00 charge was determined not to be reasonable. The Tribunal found that, taking into account the proportion of the Building that is demised and the lack of communal areas, the engagement and supervision of gardeners and cleaners would not be required. Also, the obtaining of insurance appears to be a matter for the Landlord to arrange and is not in issue in these proceedings. The Tribunal found that included in the management fee are the administrative and professional insurance costs of the agent and although the Building is relatively small there is an optimum charge.

69. No evidence was adduced by the Applicants with regard to the amount of the management fees which they considered reasonable. The Tribunal therefore used its knowledge and experience and determined that in the absence of evidence to the contrary the Management Fee of £360.00 was reasonable and payable. The Out of Hours Emergency Fee of £7.20 for call handling was also determined to be reasonable.

Reserve or Sinking Fund

70. There is no specific provision in the Flat 25a Lease for a reserve or sinking fund to be created. However, under Clause 3(2) of the Flat 25 Lease the Landlord is authorised to make a demand in advance and it is noted that the Landlord has established a reserve or sinking fund. These funds are held in trust for future works and mitigate the cost to a tenant of a demand when substantial works are required. It is noted from the accounts provided that there is currently £923.00 in the Fund. The Tribunal is of the opinion that such funds are to be encouraged. The amount demanded is £100 from each Flat and this has not been challenged by the Applicants. The Tribunal determine such amount to be reasonable and payable.

Estimated Service Charge

71. The Tribunal found that the Estimated Service Charge for the year 1st July 2020 to 30th June 2021 under the service charge provisions of the Flat 25a Lease was:

Year ending 30th June	Estimated 2021
Item	£
Accountancy Fees	60.00
General Minor Repairs	400.00
Management Fee	360.00
Out of Hours Emergency Fee	14.40
Risk Management	220.00
Sub Total	1,054.40
Reserve Fund	200.00
Total	1,254.40
Proportion payable by Tenant of Flat 25a	627.20

Determination

72. The Tribunal determines that the reasonable estimated service charge payable for the year 1st July 2020 to 30th June 2021 under the Flat 25a Lease by the Tenant Applicant, Mr Paul Geoffrey Potton, to the Respondent is £627.20.

Flat 25

73. Firstly, the Tribunal considered how the rights and obligations under the Flat 25 Lease applied. The Tribunal found as follows.
74. The whole of the internal area, including the windows and entrance doors, of the Flat is demised and there are no communal internal areas. Of the external areas the rear Garden Area and the left-hand side of the Forecourt is demised.
75. Under Clause 2 of the Flat 25 Lease the Tenant is responsible in both obligation and cost for the repair and maintenance of the Demised Premises subject to the provisions of the Third Schedule.
76. The Tribunal found that based on what was demised and un-demised under the Flat 25 Lease, the Landlord as Freeholder retained the right-hand side of the Forecourt (subject to the Tenant’s easements) and boundary fences. Under paragraph 1(a)(i) and (ii) of the Recital of the Flat 25 Lease the Landlord does not retain the walls of the Building as these are demised to each Flat. The Landlord also does not retain the footings, as these are demised to Flat 25 or the roofs, rainwater gutters and pipes as these are demised to Flat 25A. However, under paragraphs (ii) (a) and (iii) of Part I of the Third Schedule the Landlord is required to maintain, repair, redecorate and renew these parts, notwithstanding they are part of the Demised Premises under the Flat 25 Lease.
77. Under paragraph (iv) of Part I of the Third Schedule the Landlord is also responsible for “keeping the paths...in good condition”. The maintenance of other items in paragraphs (ii)(b) and (c) and (iv) (except for the paths) are not the responsibility of the Landlord because they refer to external or internal parts of the Building which are part of the Demised Premises. Unlike the

walls, footings, roofs and rainwater goods there is no obligation in the Flat 25 Lease for the Landlord to maintain these demised parts.

78. Under Clause 2 (13) the Tenant is obliged to pay a proportion, which under Part 5 of the Particulars is a half, of the costs attributable to the Flat, in respect of the Landlord fulfilling its obligations under the Third Schedule. These costs are, under Part 5 of the Particulars, referred to as the Service Charge.
79. Under Part II of the Third Schedule the Landlord is entitled to demand an advance contribution to these costs plus a balancing payment if the advance contribution is found to be insufficient at the end of the year. If the advance contribution is more than required, then the excess will be credited to the Tenant.
80. The Landlord is also entitled to create a sinking fund to meet the Service Charge in the future.
81. Under paragraph (v) of Part I of the Third Schedule the Landlord is entitled to an administration charge of 10% plus VAT, if appropriate, of the Service Charge.
82. Secondly the Tribunal applied the provisions of the Flat 25 Lease to the estimated Service Charge demanded for the year in issue.

General Repairs

83. On applying the above findings to the Service Charge the Tribunal found that, notwithstanding the demise in paragraph 1(a)(i) and (ii) of the Recital of the Flat 25 Lease, a charge for General Repairs is authorised to meet the Landlord's obligations under paragraphs (ii)(a) and (iii) of Part I of the Third Schedule. This is provided the funds are used to maintain, repair, redecorate and renew *the main structure foundations and in particular the roof chimney-stacks gutters and rainwater-pipes of the building*. The Landlord is also authorised to make an estimated demand in advance under paragraph (i) of Part II of the Third Schedule which under Clause 2(13) the Tenant is obliged to pay. The amount of the estimated charge for General Repairs is not disputed and so is determined to be reasonable and payable.

Risk Management

84. The Tribunal findings in respect of the Risk Management charge for Flat 25A are the same for Flat 25. Therefore, the disputed charge of £220.00 is determined to be reasonable and payable.

Cleaning and Gardening

85. As was recognised and conceded by the Respondent's Managing Agent, all the internal areas are demised so there are no internal communal parts to clean. The rear garden and forecourt to the left-hand side of the Building is also demised and therefore no maintenance of that area is required. Therefore, notwithstanding the provisions of paragraphs (i)(c) and (iv) of Part I of the

Third Schedule a charge for internal cleaning and gardening is not payable under the Flat 25 Lease. The charge is therefore not reasonable or payable.

Estimated Service Charge

86. The Tribunal found that the total annual Estimated Service Charge was £620.00, comprising General Maintenance at £400.00 and Risk Management Survey at £220.00. Under Part 5 of the Particulars and Clause 2(13) of the Flat 25 Lease the Tenant covenanted to pay a half of the Service Charge which is £310.00.

Accountancy Fee, Out of Hours Emergency Fee, Professional Fee and Management Fee

87. The Tribunal then considered the estimated costs for the Accountancy Fee, Out of Hours Emergency Fee, Professional Fee and Management Fee. The Tribunal found that none of these Items of the Service Charge are referred to in the Flat 25 Lease by name. The Tribunal was of the opinion that these fees come within paragraph (v) of Part I of the Third Schedule to the Flat 25 Lease which states: “*The fees of the Landlord for the collection of the rents of the flats demised in the Building and for the general management thereof*” and “*such fees are to be calculated as ten pounds per centum of the total annual service charges payable in respect of the Building plus Value Added tax at the prevailing rate per annum*”. They all comprise part of the general management and are in effect a Management Fee.
88. The Lease restricts the amount of these costs to 10% of the annual Service Charge for the Building. The Tribunal determined the total estimated annual Service Charge to be £620.00. £10.00 per centum of which is £62.00 plus Value Added Tax at 20% (if applicable) is £12.40 giving a total of £74.40.

Reserve or Sinking Fund

89. Under paragraph (iv) of Part 1 of the Third Schedule of the Flat 25 Lease the Landlord is entitled to establish a reserve or sinking fund to be created and has done so. The funds are held in trust for future works and mitigate the cost of a demand when substantial works are required. It is noted from the accounts provided that there is currently £923.00 in the Fund. The Tribunal is of the opinion that such funds are to be encouraged. The amount demanded is £100 from each Flat which is reasonable.

Determination

90. The Tribunal determines that the reasonable estimated service charge payable for the year 1st July 2020 to 31st June 2021 under the Flat 25 Lease by the Tenant Applicant, Ms Amanda Cameron, to the Respondent is £484.40 comprising a service charge of £310.00 plus management charge of £74.40 including £12.40 VAT (if applicable) plus a £100 contribution to the sinking fund.

Section 20C & Paragraph 5A of Schedule 11

91. 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.
92. Neither party made representations with regard to the Application for either order.

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

93. 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.
94. 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.
95. 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.
96. 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 Applicants.
97. The Tribunal examined the Lease and found that paragraph 7 of the Third Schedule in the Flat 25a Lease is intended to cover costs generally incurred by the Landlord. However, these proceedings are not in order for the Landlord or its Agents to carry out its obligations under the Lease. There is no similar provision in the Flat 25 Lease. Therefore, the Tribunal found that there were no provisions in either Lease that enabled the Respondent Landlord to charge the costs of the Proceedings to the Service Charge.

98. With regard to claiming these costs directly from the Applicant the Tribunal found that the only possible provision was contained in Clause 2(3) of the Flat 25a Lease which states:
“to pay all costs charges and expenses (including solicitors costs and surveyors) incurred by the Landlord for the purpose of or incidental to the preparation and service of a notice under section 146 of the Land Registration Act 2002 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”.
99. This appears to be an error in that there is no section 146 of the Land Registration Act 2002 and the section and Act that it is intended to refer to is section 146 of the Law of Property Act 1925. Even if the correct legislation was referred to the Tribunal it is of the opinion that these proceedings are not *“for the purpose of or incidental to the preparation and service of a notice or proceedings under section 146 of the Law of Property Act 1925”* and therefore they cannot be claimed directly from the Applicant.
100. There is a similar provision contained in Clause 2(12) of the Flat 25 Lease except that it correctly refers to section 146 of the Law of Property Act 1925. However, as stated above, the Tribunal is of the opinion that these proceedings are not *“for the purpose of or incidental to the preparation and service of a notice or proceedings under section 146 of the Law of Property Act 1925”* and therefore they cannot be claimed directly from the Applicant.
101. The Tribunal therefore finds that the Respondent can neither claim its costs under the service charge or directly from the Applicants.
102. Notwithstanding there being no provision in a lease, for the avoidance of doubt, a tribunal is able to make an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act if it is satisfied that it is just and equitable to do so. In deciding whether or not to do so the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
103. With regard to the conduct of the parties, the Tribunal considered that neither had acted unreasonably.
104. With regard to the outcome the Tribunal found that the Respondent and its Managing Agent demanded a Service Charge that was not in full compliance with the Lease and that the Applicants were justified in bringing the matter to the Tribunal. Although the appointment of a new Managing Agent had been some reason for the error it was not right that the Applicants should have to pay for it. Therefore, the Tribunal is satisfied it is just and equitable to make Orders 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 and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants’ liability to pay an administration charge in respect of litigation costs.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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 Landlord and Tenant Act 1985
 - (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 Landlord and Tenant Act 1985
 - (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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.