FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00BE/LSC/2020/0192**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**22, William Square, Rotherhithe Street, London. SE16 5XJ**
Applicant	**:**	**Mr. Christopher Simmons**
Representative	**:**	**Not represented**
Respondent	**:**	**Holding and Management (Solitaire) Ltd.**
Representative	**:**	**Ms. Rebecca Ackerley of counsel instructed by J B Leitch Solicitors**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Mark Taylor MRICS**
Date and venue of Hearing	**:**	**5 March 2021 – video hearing**
Date of Decision	**:**	**16 April 2021**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

Decisions of the Tribunal

(1) The Tribunal determines that the sum payable by the Applicant by way of service charge in respect of his contributions to the reserve fund for his block in each of the service charge years from 2014 to 2019 inclusive is £1,020.

(2) The Tribunal determines that the sums payable by the Applicant by way of service charges in respect of the supply of electricity to his block in each of the service charge years from 2016 to 2020 are as follows;

2016	£15.99
2017	£67.17
2018	£61.65
2019	£69.36
2020	£69.36

(3) The Tribunal determines that the sums payable by the Applicant by way of service charges in respect of the hire of refuse bins for the estate in each of the service charge years from 2016 to 2018 inclusive are as follows;

2016	£31.93
2017	£31.80
2018	£22.62

(4) The Tribunal determines that the sum of £186.48 in respect of the 2009 service charge year but which was not charged at that time because of an accounting error is payable by the Applicant.

(5) The Tribunal determines that the sum of £14.76 in respect of the 2020 service charge year for the cost of the Port of London Authority licence in respect of the estate is reasonable and payable by the Applicant.

(6) The Tribunal makes no determination as to the reasonableness or otherwise of any costs in respect of works to the river wall which may or may not be charged in respect of the 2021 service charge year.

(7) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge is allowed but only to the extent that 25% of those costs may not be recovered.

(8) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused as an order

is not necessary. The Respondent concedes that the landlord's litigation costs are not recoverable as an administration fee.

(9) The Respondent is ordered to re-imburse the Applicant 25% of the fees incurred by him for issuing this application and having it heard.

Reasons

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by him in respect of each of the service charge years ending on 31 December from 2014 to 2020 inclusive.

2. The Applicant also sought an order for the limitation of the landlord's ability to recover their costs as a service charge under section 20C of the 1985 Act and an order to reduce or extinguish his 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.

3. The application was made on 7 July 2020. It identified charges in respect of a number of different matters which are set out below and do not need to be itemised here. It was first considered by Mrs. E. Flint on 13 October 2020 when a number of directions were made. The directions required the parties to complete schedules in respect of the disputed charges and for the provision of document bundles by them. These directions were complied with. The case was allocated to the paper track for determination on the papers during the week commencing 4 January 2020.

4. However, on 14 December 2020 the application was reviewed by Judge Vance who decided that a determination on the papers was not appropriate and who directed an oral hearing by remote video.

5. A bundle of 597 pages was produced and was before the Tribunal. References to page numbers are to this bundle unless otherwise stated.

6. The day before the hearing the Respondent provided the Applicant and the Tribunal with a skeleton argument and a second witness statement from their witness Ms. Linda Foss which exhibited in excess of 200 additional pages of documents.

The Hearing

7. The Applicant attended in person. The Respondent was represented by Ms. Rebecca Ackerley of counsel.

8. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. The Tribunal Chairman did, though, inform the parties that he lived nearby the premises and had visited the development of which it forms part. There were no objections to his involvement in the hearing.

9. At the outset, the Tribunal dealt with the admissibility of the additional documents as the Applicant had objected to their production on the basis that they had been provided at a late stage in the proceedings. The first document was a skeleton argument of 6 pages. The Tribunal explained the nature of a skeleton argument to the Applicant and was satisfied that he had had an opportunity to read it. The Tribunal concluded that it was appropriate for it to have regard to the contents of this document as this would reduce the need for oral submissions from Ms. Ackerley.

10. The Tribunal then invited Ms. Ackerley to address the question of why an additional 200-odd pages of documents had been provided at a late stage of the proceedings. She explained that although there were a large number of documents most were not, in fact, specifically relied on but had been included for the sake of completeness. She explained that most of the additional documents were notices under section 20B of the Act which enclosed the income and expenditure accounts for the entire estate. With the exception of the covering letters, these documents were already in the bundle. The only other additional documents were a statement of the Applicant's service charge account for the period in question, a revised major works plan for the whole estate comprising 11 pages which had been produced because there was a formula error in the Excel spreadsheet which had originally been prepared, and 2 pages of correspondence in respect of the electricity supply which provided documentary evidence for the first time of something which the Applicant had asserted in his own statement of case.

11. On the basis of this explanation, and having followed a process by which the nature and significance of the additional documents was explained to the Applicant, the Tribunal was satisfied that it was in the interests of justice to allow the additional documents to be admitted.

The Background

12. The property is a one-bedroom flat in a purpose built block of flats. This block forms part of a development of several similar blocks which are situated on the banks of the river Thames in Rotherhithe known as Sovereign View. For the purposes of the calculation of service charges the Respondent's accounts show that there are some 26 different blocks. However, not all of these blocks are, in fact, physically disconnected. For example, the property is treated as being part of the block known as 13-23 William Square, but this is connected to the block known as 1-12 William Square. This is a common feature across the estate.

13. The freehold of the property is owned by the Respondent – the evidence of title is at pages 123 to 140. The Applicant, jointly with Shirley Anne Simmons, holds

the property on a long lease made between (1) Barratt London Ltd, (2) Barratt Homes Ltd., (3) the Respondent and (4) Rebecca Elizabeth Morrill for a term of 125 years from 25 March 1993 (pages 143-144). In addition to being the successor in title to the freehold the Respondent is "the Company" defined in the lease.

14. Since 2014 the Respondent has appointed Kinleigh Folkard & Hayward as the managing agent of the estate.

The Lease

15. The lease is at pages 147 to 184. By clause 3.2 of the lease the Applicant covenanted to pay the service charge and the estate charge to the Company (page 155). There is a similar covenant in paragraph 1 of the Third Schedule (page 164). The terms "service charge" and "estate charge" are defined in clauses 1.7 and 1.8 of the lease respectively (page 153).

16. The former relates to the "annual maintenance provision" and relates to the Block of which the property forms part. The extent of the Block is shown edged green on the lease plan (page 150). The annual maintenance provision is defined by paragraph 2 of Part III of the Fourth Schedule and means the expenditure estimated to be likely to be incurred by the Company for the purposes of Part I of the Fifth Schedule together with;

> "*(ii) an appropriate amount as a reserve for or towards those of the matters mentioned in Part I of the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term including (without prejudice to the generality of the foregoing) such matters as the decorating of the exterior of the Block the repair of the structure thereof and the repair of the drains*"
>
> and
>
> "*(iii) a reasonable sum to remunerate the Company for its administrative and management expenses in respect of the Block (including a profit element)….*"

(pages 172-173)

17. Part I of the Fifth Schedule contains usual provisions in respect of repair, decoration, maintenance, management and insurance of the Block. By part 1 of the Fourth Schedule the Applicant's share of the annual maintenance provision is 4/49 (or 8.16%) and this is the extent of his service charge (page 172).

18. The estate charge is defined as 1/271 of the aggregate of the Company's expenses and outgoings in respect of Part II of the Fifth Schedule (page 153). These include the costs of carrying out the Company's obligations under paragraph 7 of the Sixth Schedule which include the maintenance of the amenity areas and conduits (paragraph 7(i)) and the payment of outgoings assessed or charged

upon the amenity areas (paragraph 7(ii)) (page 182). The amenity areas are defined in Clause 1.11 (page 154) and include all those parts of the estate which comprise roadways, forecourts and parking areas. By Part II of the Fifth Schedule the estate obligations expressly include the repair and maintenance of the electronic gates installed on the estate (para 12) and the costs of complying with the terms of any licence or consent granted by the Port of London Authority ("PLA") in relation to the estate (para 11) (pages 180-181). Provision is made in paragraph 6 of Part II of the Fifth Schedule for the provision of a reserve for estate expenditure.

19. It was clear from the Applicant's statement of case that he did not dispute that the terms of the lease allowed for the recovery of charges in respect of the matters in dispute (see page 75). His case was that the charges sought were not reasonable or appropriate.

MATTERS IN DISPUTE

20. The application specified the sums which were in dispute and the Tribunal confined itself to considering those matters only. They are set out in the application and appear at pages 10 to 18. Many items of dispute were raised in successive service charge years and the Tribunal took the approach of dealing with them by reference to subject matter across the relevant service charge years rather than dealing with each year in full before continuing to the next.

Allocation of Reserve Funds

21. The Applicant contested the amount he had been charged as a contribution to the reserve fund for each of the years 2014 to 2019 inclusive. His case as set out in his statement of case (pages 75-76) was that the charges for these years were both excessive and disproportionate when compared to other blocks on the estate. With regard to the former, his case was that the contribution was double a single year's expenditure. With regard to the latter, he argued that there was no justification for his block contributing significantly more to the reserve fund than the block 1-12 William Square, especially as they comprised a single building and much of the external work would effectively be shared.

22. The Applicant also raised a discrepancy which the Tribunal itself had noted when examining the estate accounts. In the accounts for all the blocks (which begin at page 245) with the exception of the Applicant's block and the block known as 19-30 Frederick Square, one single sum is charged by way of a contribution to the reserves in each service charge year. However, in the case of these other two blocks the accounts make two separate provisions for contributions to the reserve in each year. This can be seen at page 331 which shows that in 2014 13-23 William Square (the Applicant's block) was charged £7,300 for what are described as Schedule 1 costs and £8,690 for what are described as Schedule 2 costs, making a total of £15,990. However, the accounts for 1-12 William Square show a single contribution to the reserves of only £6,610. This is further shown in the balance sheet for the reserve funds for the 2014 service charge year (page 334). This shows two separate figures for Schedule 1 and Schedule 2 in respect of 19-30 Frederick Square and 13-23 William Square whereas there is just a single figure for all other blocks.

23. The Tribunal could find no basis in the lease for a distinction between Schedule 1 and Schedule 2 costs and the Respondent was unable to provide any explanation for the difference in the way these two blocks were treated. They confirmed that there was no difference in the scope of the tenants' liabilities for these two blocks as compared with the others.

24. This different treatment of the Applicant's block dated back to at least the 2012 service charge year. The effect of it was that by the end of 2014 the total held in the reserve fund for the Applicant's block was £45,106 which was a larger sum than for any block other than 19-30 Fredrick Square (page 334).

25. This different approach continued to be applied throughout the following service charge years. The contributions to reserves for the Applicant's block and 1-12 William Square shown in the accounts for the following years were as follows;

Year	13-23 William Square	1-12 William Square	Pages
2015	£15,990	£6,610	350-351
2016	£15,990	£6,610	370-371
2017	£15,990	£6,610	390-391
2018	£15,990	£12,997	410

26. By the end of the 2018 service charge year the balance in the reserve fund for the Applicant's block was a total of £105,816. With the exception of 19-30 Frederick Square this was £26,318 greater than the next largest amount – that for 5 to 8 and 27 to 30 Elizabeth Square (page 413).

27. In 2019 the sum budgeted for the reserve fund for the Applicant's block was reduced to £13,900 and in 2020 it was further reduced to £8,000 as shown in the Respondent's statement of case (page 94).

28. At paragraph 54 of the Respondent's statement of case it is asserted that the tenants of the Applicant's block have contributed less into the reserve fund than the tenants of 1-12 William Square. The above shows that that is patently not the case.

29. The Respondent's case was that although the Applicant's block had accrued a greater reserve fund, this was sufficient to meet the cost of future major works whereas the reserve held in respect of 1-12 William Square was inadequate (see para 57 at page 95). They argued that the funds had been reasonably and proportionally estimated in order to provide for cyclical maintenance.

30. The Respondent relied on a major works plan which had been prepared in 2017. The correct version of this appeared at pages 208 to 218 of the additional material. The Tribunal noted that it was clear that the projected works in the major works plan had slipped. It projected £56,848 of external works in 2018 leaving a year-end balance in the reserve of £49,968 (page 216 of the additional material). However, the accounts showed that the balance held at the end of 2018 was £105,816.

31. The evidence of Ms. Foss was that the external works were delayed until 2019 and were not completed until 2020 and that the projected internal redecorations and carpeting would now not take place until 2021. She said that at 17 February 2021 the total balance in the reserve account for the Applicant's block was £8,151.57 for external works and £45,382.65 for internal works, making a total balance of £53,534.24. Given that the lease makes no distinction between internal and external works the Tribunal took the approach that the total sum held in the reserve was available for any future planned works.

32. The Tribunal noted that the major works plan budgeted for contributions of £15,990 in 2019 and £10,000 per annum from 2020 onwards, whereas the actual budget sums sought were £13,990 and £8,000. This of itself suggested that the Respondent considered that the reserve fund needed less than had been budgeted for at the time the plan was prepared.

33. The projected cost of the internal decorations and carpeting was £33,100. The plan was for this to be incurred in 2021. Given the delays to the external repairs, which were budgeted on a 6 year cycle – these would not be undertaken again until 2026, with further carpeting and internal decorations to follow on a 7 year cycle in 2028 at the earliest. The total budget cost for these was £112,660.

34. The Tribunal bore in mind that it is reasonable to make a considerable allowance for contingencies and to give the landlord considerable scope when considering medium to long-term plans such as the major works plan, though it noted that considerable sums had been recovered for the reserve fund in the years before this plan had even been created and that for many years expenditure from the reserve fund had been at very low levels – possibly, as suggested by Ms. Foss, because the sums held in reserve for other blocks were insufficient. It bore in mind that the ideal situation with a reserve fund is that contributions should be at a steady rate and should be sufficient to meet the likely future expenditure with allowance being made for contingencies. Ideally, tenants should not be required to pay large sums many years in advance of their being needed, nor should they be faced with the nasty surprise of a sudden need to increase the contributions to the reserve significantly.

35. In this case the Tribunal had to balance two arguments. That of the Applicant was that he has been treated unfairly historically as he had had to contribute significantly more to the reserve fund than many others on the estate. On the other hand, the Tribunal had to consider the landlord's obvious desire to ensure that they have enough money to pay for necessary cyclical works and/or contingencies. Overall, the Tribunal also had to consider what was a fair contribution to the reserve fund.

36. There was no doubt in the Tribunal's mind that the Respondent's block – and 19 – 30 Frederick Square – had contributed disproportionately to the reserve fund in the past. The question was, though, whether this meant that the Applicant had been charged too much or the other tenants had been charged too little, or a combination of the two. In considering that question the Tribunal concluded that the fact that the Respondent was now budgeting for lower contributions than in the past from the Applicant at the same time as

implementing a major works plan suggested that the historic sums were indeed too high.

37. The Tribunal also bore in mind that the question of what sums should be charged for 2021 and future years was not before it, but nevertheless it could consider the question of fairness in the round.

38. The Tribunal addressed its mind to finding a figure which met as far as possible the requirements set out above. If the historic figures for the years 2014 to 2018 inclusive were reduced to £12,500 per annum rather than £15,990 – a reduction of roughly 21%, this would result in a reduction to the reserve fund of £17,450. If the figure were also reduced in the budget for 2019 to £12,500 this would result in a further reduction of £1,490, making a total reduction of £18,940. Such a reduction would still leave the balance in hand as at February 2021 of over £34,000. If the sum of £12,500 were then recovered in the service charge years 2021 to 2028 inclusive this would produce a further £100,000 for the reserve which, when added to the current reserve, would be sufficient to meet the projected costs of £112,660 with a reasonable margin for contingencies.

39. A contribution of £12,500 per annum would be a steady and predictable amount each year and would be sufficient to meet the landlord's obligations. The Tribunal therefore concluded that the reasonable sums to be charged to the reserve for the Applicant's block for each of the years 2014 to 2019 inclusive is £12,500 rather than the sums charged or budgeted for. The Applicant's share is 8.16% or £1,020 per annum. Although future years fall outside the Tribunal's jurisdiction, the same sum if continued forward would be sufficient to cover future budgeted major works. The Tribunal accepted that the 2020 budget figure of £8,000 is lower than what it has concluded is a fair ongoing annual amount, but this element was not before the Tribunal. The sum of £1,020 in respect of contributions to the reserve fund is reasonable and payable by the Applicant in respect of each of the service charge years 2014 to 2019.

Electricity Costs

40. The Applicant challenged the electricity costs for each of the service charge years 2016 to 2020 inclusive. His application did not challenge electricity costs from earlier years and so the Tribunal did not consider any such earlier costs. The accounts for the years 2016 to 2018 show that the actual amounts charged for electricity in those years were as follows;

Year	Amount	Page
2016	£490	370
2017	£926	390
2018	£850	410

The budget sums for 2019 and 2020 are both £850 as per the Respondent's statement of case at page 90.

41. The Applicant's case was that the costs charged for electricity have fluctuated wildly over the years and that insufficient information has been given to him to explain the sums charged. He argued that the potential for electricity use in the

common areas is limited and did not justify the charges sought. He also argued that information obtained from the Respondent showed that some of the electricity was being used for functions which should be charged to the estate accounts rather than the block accounts, such as the entrance gate and estate lighting.

42. The evidence before the Tribunal in relation to electricity charges consisted of a number of electricity bills (pages 415 to 442) and reference was also made to some transaction reports (pages 594-595). In the additional material there was some correspondence between the parties in relation to what services were run from the relevant meter (additional material pages 220 to 221). This showed that the Respondent had, from 2017 onwards, apportioned the electricity costs from the meter in question, charging 50% to 1-12 William Square, 45% to the Applicant's block and 5% to the estate.

43. In the course of the hearing the Respondent was unable to provide a clear explanation for the figures used in the accounts, which did not appear to match those in the bills or transaction reports. In addition, no explanation could be provided for how the apportionment percentages had been arrived at, especially as it was accepted that 1-12 William Square had a lift but the Applicant's block did not.

44. As a result, the Tribunal directed the Respondent to file further evidence and submissions in relation to the electricity charges by 19 March 2021 with the Applicant having until 26 March 2021 to provide a response. As a result of these directions the Tribunal received a supplemental statement of 21 pages from the Respondent – page references to this will be preceded by the letter S – and a 9 page response from the Applicant. (Part of the Applicant's response deals with other matters apart from the electricity charges and as such falls outside the scope of what the Tribunal directed. Only those parts of the additional material which relate to the electricity charges were considered by the Tribunal).

45. Despite the additional material, the Tribunal still had great difficulty making sense of the evidence provided by the Respondent and it also concluded that some of what was said was clearly inaccurate.

46. The Respondent's case was that there was 1 electricity meter which served both the Applicant's block and 1-12 William Square. This was meter F91A13746. This was accepted by the Tribunal. There was no suggestion that the Applicant's block had any supply from any other meter. At paragraph 8 of the supplementary statement it says that this meter is Opus account number 842675 described as William Square or 1-12 William Square (page S4).

47. The bills at pages 415 to 434 cover the period from 1 February 2016 to 30 November 2017 though some are missing – eg there are no bills for either February 2017 or July 2017. These bills all have the account number 842675 and are described as the landlord's supply for William Square. Each and every one is for an estimated amount and so the assertion by the Respondent at paragraph 6 of the supplementary statement (page S3) that meter readings were taken for Opus Energy by onsite staff, appears to be inaccurate.

48. The bundle then includes invoices dated 20 November 2018 and 19 December 2018 from Opus (pages 435 to 438). These two also bear the account number 842675, but they state that they relate to Lighting Plots at Frederick Square and bear the meter number L84A 00530. The Tribunal was not satisfied that these bills - nor those at pages 439 to 442 from Swalec which refer to a third meter – have any connection to the supply to the Applicant's block.

49. Although the Opus account number 842675 clearly relates to more than one meter, the Tribunal was prepared to accept that the bills at pages 415 to 434 do indeed relate to the William Square supply through the meter F91A13746.

50. The next issue was what does this meter supply. In the supplementary statement the Respondent states that it supplies 1-12 and 13-23 William Square, some external lampposts and the car park gate (para 8 at page S4). Evidence was provided to show that the power consumption of the car park gate and the lift at 1-12 William Square is relatively low, and the Tribunal accepted this. On this basis 5% of the charge was apportioned to the estate charges, 45% to the Applicant's block and 50% to 1-12 William Square.

51. The transaction reports and invoices support the Respondent's contention that from 2017 onwards the electricity costs were apportioned in this way. Take for example the invoice for 17 March 2017 (page 426). This is for £198.43. In the transaction reports £99.22 has been charged to block 1-12 (page S9) and £89.29 has been charged to the Applicant's block (page S12). These figures are consistent with the apportionment stated.

52. The Applicant's response to this was that it failed to take account of the fact, as he claimed, that the main entrance gate to the estate is also powered through this meter and that, therefore, the apportionment is wrong.

53. As explained above, the estate comprises a number of blocks along the river Thames. Vehicular access to the estate is provided by an estate road along which a one-way system operates. All vehicles enter at one end of the estate and leave at the other end. Access is obtained through an electric gate. This is situated right next to the Applicant's block. The estate comprises 271 flats.

54. In an e-mail to the Applicant advising him of how the electricity was apportioned dated 20 July 2020 which appears at page 220 of the additional material provided before the hearing Mr. Carl Warland of the managing agents stated that the meter serves the underground car park, the two blocks, the entrance gate and two lamp posts. In additional e-mails provided with the Applicant's reply to the supplementary submissions the Applicant asked for clarification of which entrance gate was being referred to. The reply from Mr. Warland was that the gate is "*the entrance block closest to William Square*". In reply to this the Applicant e-mailed Mr. Warland stating that he presumed that the gate referred to was the main entrance gate to the estate and that this was used by every vehicle entering the estate. Mr. Warland's reply was "*it is indeed the gate that is closest to William Square*".

55. It was also the Applicant's case at the hearing that the main entrance gate was powered from the electricity supply to his block.

56. The Tribunal was satisfied on the balance of probabilities that the electricity supply to the Applicant's block also powered the main entrance gate to the estate. This is a different gate to the gate to the car park. In the Tribunal's view Mr. Warland has accepted in his answer to the Applicant's e-mail that the gate referred to is that one. Despite this e-mail and the Applicant's case before the Tribunal nothing in the Respondent's supplementary response has addressed how that gate is powered. No information has been given as to its power consumption.

57. In the view of the Tribunal the fact that the entrance gate is powered by the supply to the Applicant's block must be taken into account but has not been. To date the apportionment of 5% to the estate costs has been made on the basis that the only amounts which should be charged to the estate are the costs of running two lampposts and the car park gate. No account has been taken of the main entrance gate. Even given the evidence that the car park gate uses little electricity, there is nothing to show that the main gate is equally economical and also the main entrance gate will be used far more than that to the car park. An estate of the size of this one is likely to produce a significant number of vehicle movements. In the absence of any more detailed evidence, the Tribunal must do its best to determine what is reasonable and it concluded that the appropriate deduction from the electricity account for estate charges should be 15% rather than 5%.

58. That leaves the question of how the benefit of this 10% reduction should be apportioned between blocks 1-12 and 13 – 23. The Tribunal was satisfied that given that there was little to distinguish between the power consumed by the two blocks – accepting as it did the evidence of the relatively low power consumption of the lift in block 1 -12 – that the fair solution was to apportion half of the reduction to each block. Therefore, the proper apportionment is 45% to block 1-12, 40% to block 13 – 23 and 15% to the estate. This means a reduction in the actual amounts charged to the Applicant's block for the years 2017 and 2018. In 2017 45% of the electricity bill was £926 therefore the whole amount was £2057.78 and 40% of that is £823.11 – this is the correct amount for that year. Similarly in 2018 45% of the electricity bill was £850 therefore the whole amount for that year was £1888.88 and 40% of that is £755.55.

59. The Applicant's share of these costs is 8.16%, so the sums payable by him for electricity supplied to his block in 2017 and 2018 are £67.17 and £61.65 respectively.

60. The Tribunal then considered the electricity charges for 2016 which, according to the Respondent, had not been apportioned at all. The transaction reports for electricity charges for 1-12 William Square and the Appellant's block are at pages S9-10 and S12 respectively.

61. The 2016 transactions for block 1-12 comprise 9 invoices dating from 11 March 2016 to 31 December 2016. All but two have the reference Opus 842675. The total of these invoices is given as £686.76 (page S9). This is consistent with the accounts for that year which show an actual expenditure of £687 (page 371). However, the amounts stated in the transaction reports are not the same as

those on the invoices. For instance, the invoice dated 11 March 2016 for Opus account 842675 is for £166.66 (page 415), but the sum shown in the transaction report is £133.21.

62. The 2016 transactions for the Applicant's block comprise 11 invoices dating from 11 March 2016 to 31 December 2016. These total £1,757.83, though a credit of £1,246.84 appears to have been brought forward, giving a balance of £510.99 (page S12). This, however, cannot be reconciled with the accounts for 2016 which show an actual amount for 2016 of £490 (page 370). No explanation has been given for this difference. The amounts recorded in the transaction report, though, do match the sums on the invoices. Thus the sum of £166.66 from the 11 March 2016 invoice (page 415) is shown in that report. The same is true of all the subsequent bills contained in the bundle. It seems, therefore, that the whole of the sums charged for electricity in 2016 for this meter have been passed on to the Applicant's block – though how and why the sums charged to block 1-12 have been arrived at is far from clear if, as is stated, there is only one meter and, therefore, only one bill for each charging period. There is much that the Respondent has not explained.

63. What is clear, though, is that the Respondent accepts that before 2017 the electricity costs through the meter supplying the Applicant's block were not apportioned but were charged to his account (see para 9 at page S4). Given the confusing nature of the evidence the Tribunal decided to adopt the figure given in the 2016 accounts as being the accurate one as these were, after all, the Respondent's formal accounts. It follows that the unapportioned figure was £490. Applying the same apportionment as above, the correct sum for the Applicant's block is 40% of £490, which is £196. The Applicant's share of this is £15.99.

64. This then leaves the budget figures for 2019 and 2020 which have been set at £850 for each year. Even after a fair apportionment has been carried out the sums chargeable to the Applicant's block in 2017 and 2018 were £823.11 and £755.55. On that basis, the Tribunal considered that a budget estimate of £850 for each of the successive years was reasonable. The Applicant's share for those years is £69.36.

65. It follows from what is said above that the Tribunal concluded that the reasonable sums for the Applicant to pay for electricity in the years 2016 to 2020 inclusive are as follows;
2016 £15.99
2017 £67.17
2018 £61.65
2019 £69.36
2020 £69.36
These sums are payable by the Applicant.

Bin Hire

66. In the service charge years 2016 to 2018 inclusive a charge was made in respect of the provision of hired waste disposal bins for the estate. These were treated

as estate costs. The accounts show that the sums charged in each year were as follows;

2016	£8,653 (page 360)
2017	£8,618 (page 382)
2018	£6,129 (page 401)

The Applicant's share of these costs is £31.93, £31.80 and £22.62 respectively.

67. The Applicant's case was not that the waste bins were not required nor that the hire costs were excessive as such. Rather his case was that the Respondent should have bought bins rather than hiring them. In his statement of case he said that in 2015 the Respondent was asked to purchase refuse bins and to cancel their existing hire contract and that by delaying doing this until after 2018 additional costs had been incurred (page 59).

68. The Respondent's case is set out at paras 63 to 71 of their statement of case (pages 96 to 98). It is as follows. The Respondent entered into a contract for the hire of 44 1,100 litre waste bins for the periods 2014-2018. The lease does not impose any obligation to purchase bins on demand or otherwise, there is no challenge by the Applicant to the reasonableness of the actual hire costs and no account has been taken of the purchase cost (£8,250) or of ongoing maintenance and replacement costs.

69. The Tribunal was satisfied that the costs of hiring waste bins was reasonable and payable by the Applicant. There is no obligation on the landlord to purchase equipment to enable it to perform its duties under the lease rather than obtaining such equipment under a hire contract, even if the result is that the hiring is a more expensive option. Provided that the hire costs themselves are reasonable – and there was no suggestion in this case that they were not – only in the most exceptional cases, of which this is not one, could it be said that choosing to hire rather than to buy is unreasonable.

70. The Tribunal was, therefore, satisfied that the amounts sought by the Respondent in respect of bin hire were both reasonable and payable by the Applicant.

Historical Charges

71. In respect of the 2018 service charge year the Applicant challenged a charge of £865 which he described as an historical charge raised retrospectively. He contended that the sum was not payable because it was being made in respect of works which took place more than 18 months ago and so fell foul of the time limit imposed by section 20B(1) of the Act (page 60). It was not clear why the Applicant put the figure for this item at £865 as the demand, which appears at page 214 is for £186.48. There are further demands at pages 217 to 228 which are for balancing charges in respect of the service charge years 2013 to 2016. However, no express challenge is raised as to these and, in any event, the jurisdiction of the Tribunal is to determine the underlying payable costs not to adjudicate as to the state of the account as between the landlord and the tenant.

72. The Respondent's case was that when preparing the 2009 estate accounts an error was made in which each tenant was incorrectly credited with the sum of £186.48 and so the accounts showed that the actual income that year was

greater than that in fact received. Each tenant benefited by a credit of £186.48. The charge was made to rectify that error. Their case was that although the additional sum charged related back to works done in 2009, the bar to recovery in section 20B(1) did not apply because a notice had been provided within 18 months informing the Applicant that those costs had been incurred and that they would be recoverable from him (pages 106 to 109). Although the original notice was no longer available for the 2009 charges a letter sent to all tenants on 20 December 2017 identified the error and explained it to the tenants and confirmed that section 20B notices had been sent on 25 June 2010 (pages 571 – 575).

73. The Tribunal accepted the Respondent's case. This was clearly an accounting error and nothing more. No challenge was made to the underlying costs reflected in the 2009 accounts. It accepted that a section 20B notice had been served in 2010 which related to the costs in question and therefore concluded that, even though the demand was being made many years later, the sum was payable by the Applicant.

74. To the extent that similar arguments were raised in relation to the balancing charges for the years 2013 to 2016 the Tribunal reached the same conclusion. It was satisfied on the basis of the additional material that section 20B notices had been served and, in any event, other than the matters set out above which result in a change to the charges for those years – no challenge had been made as to the substance of the costs sought.

75. The Tribunal was therefore satisfied that the sum of £186.48 is payable by the Applicant in respect of the accounting error made in 2009.

Port of London Authority Licence

76. In his application in respect of the 2020 service charge year the Applicant raised an issue as to the renewal of a licence the Respondent holds from the PLA. This relates to a bridge over a channel which runs through the former entrance to Lavender Dock, which is situated within the estate, a suction pipe and a number of ladders and fenders. The licence is at pages 460 to 470. The budgeted sum for 2020 was £4,000 (page 192) of which the Applicant's share is £14.76. In his statement of case he complained that increases in the sums charged for this licence by the PLA were greater than provided for by the formula set out in the licence. He also stated that the actual amount of his dispute is probably not very significant but that he was concerned that the Respondent should exercise their powers under the terms of the licence in order to keep costs down (page 60).

77. In the course of the hearing itself the Applicant stated that he had no issue about the money charged to the estate costs for this licence per se, though his case was that the cost of the licence should not increase more than provided for in the terms of the licence itself.

78. The licence was originally granted in 1996 and its terms are somewhat unusual. The sum payable in return for the grant of the licence is not expressly stated in the licence. Rather, by clause 2(1) the consideration is said to be the sum agreed from time to time between the parties or assessed in accordance with section 67

of the Port of London Act 1968 (page 464). That section allows for the determination of licence fees by an arbitrator appointed by the Royal Institution of Chartered Surveyors.

79. By clause 2(3) the consideration for the licence is to increase on an annual basis at the lower of two specified rates. The Applicant's case was that the cost of the licence had increased over time and that those increases exceeded those prescribed under clause 2(3).

80. In 2016 the PLA re-assessed the cost of the licence at £3,100 excluding VAT. With VAT the sum would be £3,720. They wrote to the Respondent stating that the annual sum would apply from 17 October 2016 and would be subject to annual adjustment upwards but that this adjustment would not exceed the annual rate of inflation as measured by the retail price index (page 473). The letter proposed a review in 2021.

81. There was insufficient evidence to show that any increased charges made to the Respondent by the PLA exceeded this upward limit. In any event, the odd wording of the consideration clause which sets the consideration at the sum agreed from time to time, plus the ability to give 6 months notice to terminate the licence and the obvious costs involved in going to arbitration means that the Respondent would be in a weak position in seeking to resist any increase above that rate.

82. The Tribunal bore in mind that the Applicant had accepted there was no issue of money in respect of this item and also bore in mind that any dispute would concern only the amount of any excessive increase, not the underlying cost of the licence. The Applicant's share of this cost is only 1/271 so even if there were an excessive increase of £271 the Applicant would only gain to the tune of £1.

83. Taking all matters into consideration the Tribunal concluded that the budgeted sum of £14.76 in respect of the PLA licence for 2020 was reasonable and payable by the Applicant.

Riverwall Works

84. The remaining issue raised by the Applicant, and which related to the 2020 service charge year, related to proposed works to the river wall. He invited the Tribunal to consider whether those works were appropriate and whether a consultation under section 20 of the Act should be undertaken (page 18).

85. The Respondent's case was that the application was premature as no charge has currently been made for any such works. At the date of the application and at the date of the hearing no charge has been raised for such works and so the Applicant could not contend how much he says is reasonable. At the hearing the Respondent made it clear that any costs of works to the river wall would be charged in the 2021 service charge year.

86. The Tribunal agreed with the Respondent in this regard. This part of the Applicant's application is premature. In any event, any charges would appear in the 2021 service charge year about which the Applicant has raised no issues as yet.

Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and Fees

87. In his application the Applicant applied for an order under section 20C of the 1985 Act and for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

88. At the hearing the Applicant argued that it would be unreasonable for the Respondent to recover their costs of resisting the application through the service charge. He argued that had his complaints been dealt with properly when he made them it would not have been necessary for him to bring his case before the Tribunal.

89. On behalf of the Respondent Ms. Ackerley resisted the application under section 20C. She accepted that paragraph 5A was not applicable as she accepted that litigation costs such as those incurred in this application were not in any event recoverable under the terms of the lease.

90. As far as the section 20C application was concerned she relied on the Respondent's statement of case. It was not unreasonable to have responded to the Applicant's claims and the Respondent had acted reasonably.

91. The Tribunal accepted the Respondent's concession that the lease did not allow for the recovery of costs incurred in these proceedings from the Applicant as an administration charge. Although the Respondent's statement of case suggested the contrary (para 142 at page 117) this was in reliance on paragraph 2(b) of the Third Schedule of the lease (page 37). This clause only applies to the cost of proceedings taken against the lessee to recover rent or other monies payable by them. These proceedings were not taken against the Applicant but by him and are not proceedings for the recovery of money. An order under paragraph 5A is therefore not necessary.

92. The test for whether orders should be made under section 20C is whether or not the making of such an order is just and equitable. The Tribunal bore in mind the history of the proceedings. It also had regard to the relative success achieved by the parties. It concluded that both parties had had a degree of success. Although the Applicant had succeeded in reducing some of the sums payable by him, including the largest sums in dispute, much of his case was concerned with matters which were outside the Tribunal's jurisdiction or concerned matters where his case was obviously weak. The Tribunal also had regard to the poor quality of the information provided by the Respondent in respect of the electricity charges which resulted in far greater time being spent on the issue than it perhaps merited.

93. It concluded that the just and equitable course was to make an order under section 20C preventing the Respondent from recovering 25% of the costs it had incurred in these proceedings through the service charge.

94. For the same reasons the Tribunal also ordered the Respondent to re-imburse the Applicant 25% of the fees he has incurred to have this application issued and heard.

Name: Tribunal Judge S.J. Walker **Date:** 19 February 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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, improvements 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 for which the service charge is payable.

(3) For this purpose -
(a) "costs" includes 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 or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or
   (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in

determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(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 a demand for payment of the service charge is 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.

Section 20C

(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 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 a county court;
- (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
- (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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 a 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.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the

tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

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

(3)In this paragraph—

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

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