



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

**Case Reference:** CHI/00HN/LSC/2019/0004

**Property:** Flat 3, 158 Belle Vue Road, Bournemouth,  
Dorset BH6 3BJ

**Applicant:** Miss Lesley March

**Representative:** In Person (assisted by Becca Witherington)

**Respondent:** Elmbirch Properties PLC

**Representative:** Mr Paul Taylor

**Type of Application:** Section 27A and 20C of the Landlord and  
Tenant Act 1985 and Paragraph 5A of  
Schedule 11 Commonhold and Leasehold  
Reform Act 2002  
(Liability to pay service charges)  
Tenants application for the determination  
of reasonableness of service charges for the  
years 2013/14 to 2018/19.

**Tribunal Members:** Judge A Cresswell (Chairman)  
Mr W H Gater FRICS MCI Arb  
Mrs J Playfair

**Date and venue of Hearing:** 8 May 2019 at Bournemouth County Court

**Date of Decision:** 23 May 2019

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**DECISION**

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## The Application

1. This case arises out of the Applicant tenant's application, made on 15 January 2019, for the determination of liability to pay service charges for the years 2013/14 to 2018/19 inclusive.

## Summary Decision

2. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord has not demonstrated that all of the charges in question were reasonably incurred or that the services or work was of a reasonable standard or that they are reasonable in amount and are payable by the Applicant.
3. The table below sets out the heads of expenditure challenged by the Applicant where the Tribunal found the total of the sums demanded not to be reasonable and payable. With those exceptions only, the Tribunal found otherwise that the sums demanded by way of Service Charge are reasonable and payable now by the Applicant. The table details the amount payable by the Applicant for the years in question.

<b>Disputed Heads of Expenditure</b>	<b>Decision 2013/14 £</b>	<b>Decision 2014/15 £</b>	<b>Decision 2015/16 £</b>	<b>Decision 2016/17 £</b>	<b>Decision 2017/18 £</b>	<b>Decision 2018/19 £</b>
Management Fees	Deduct 20%	Deduct 20%	Deduct 20%	Deduct 20%	Deduct 20%	Deduct 20%
Professional Charges			Deduct £16, £7, £10, £64 + £15			
White Lines			Deduct £60			
Building Condition Report	Deduct £726					
Fire Safety and H & S Reviews	Reduce to £250 plus VAT	Reduce to £250 plus VAT	Reduce to £250 plus VAT		Reduce to £250 plus VAT	Reduce to £250 plus VAT
Door Snib			Deduct £60			
Chain, Post, Keysafe and Keys				Reduce to £185		
Gardening						Reduce to £852 inclusive of VAT
<b>DUE FOR YEAR from Applicant</b>	<b>£1219.07</b> (£1324.95 minus £49.50)	<b>£1884.82</b> (£1951 minus £50.70)	<b>£1248.01</b> (£1377.09 minus £51.60)	<b>£1321.20</b> (£1411.20 minus £51)	<b>£1929.87</b> (£2007.70 minus £49.51)	<b>£1523.80</b> (1702.20 minus £50.40)

	£56.38)	£15.60)	£22.40 £12 £31.08 £12)	£39)	£28.32)	£39.60 £88.40)
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4. The Tribunal orders the reimbursement of fees paid by the Applicant in respect of the application and hearing. The Tribunal allows the Applicant's applications under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application by way of service charge or administration charge.

### **Preliminary Issues**

5. There were a number of issues raised by the Applicant, which were not pursued at the hearing. Those issues are not dealt with substantively in this determination because they were not further pursued by the Applicant.

### **Inspection and Description of Property**

6. The Tribunal inspected the property on 8 May 2019 at 10 am. Present at that time were Mr Paul Taylor and Mr Charles Saunders, respectively Associate Director and Regional Manager Remus, the Managing Agent. The Tribunal notes its surprise that the property manager, George Strange, did not attend the Inspection (or the hearing) and that those in attendance appeared to have little or no knowledge of the physical features of the property the subject of the application.
7. The property is a flat, one of five, in a two-storey detached building standing on a corner site at the junction of Belle Vue Road and Foxholes Road in the Boscombe area of Bournemouth.
8. The building is about 40-50 years old and constructed with rendered walls, believed to be cavity brick/blockwork. The roof is pitched, covered in concrete tiles. There are uPVC double-glazed windows throughout and plastic gutters and downpipes.
9. The main entrance on Belle Vue Road has a tarmacaded car park, with a smaller parking area at the rear accessed from Foxholes Road. The remainder of the grounds have lawns and shrubberies.

### **Directions**

10. Directions were issued on various dates.
11. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
12. This decision is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given at the hearing by Mr Taylor and Mr Saunders and by the Applicant and her daughter, Becca Witherington. Ms Witherington played a very useful role as she had clearly made copious notes and was, unlike the Respondent, in control of the relevant details, thus saving considerable time.
13. At the end of the hearing, the parties told the Tribunal that it had properly covered all issues.
14. The Tribunal has had regard in how it has dealt with this case to its overriding objective:  
The Tribunal Procedure (First-tier Tribunal)<sup>[1]</sup>(Property Chamber) Rules 2013 Rule

3(1) (see Appendix below).

### The Law

15. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.
16. The relevant law is set out in the Appendix below.
17. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord’s costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 “the 1985 Act”). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges
18. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.
19. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*
20. *“If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the **Yorkbrook** case (**Yorkbrook Investments Ltd v Batten** (1986) 19 HLR 25) make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.”: **Schilling v Canary Riverside Development PTE Limited** LRX/26/2005 at paragraph 15.*
21. *“Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: **London Borough of Havering v Macdonald***

- [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.
22. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).
23. Where a party does bear the burden of proof:  
*"It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law... It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out...: the burden of proof is a last, not a first, resort."* (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).
24. In **Daejan Properties Ltd v (1) Griffin (2) Mathew**, the Upper Tribunal gave the following guidance on historic neglect:  
*"The only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that, but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided."*
- "In those circumstances the tenant to whom the repairing obligation was owed has a claim in damages for breach of covenant, and that claim may be set off against the same tenant's liability to contribute through the service charge to the cost of the remedial work."*
- "The damages which the tenant could claim, and the corresponding set off available in such a case, is comprised of two elements:*
- *"First, the amount by which the cost of remedial work has increased as a result of the landlord's failure to carry out the work at the earliest time it was obliged to do so; and,*
  - *"Secondly, any sum which the tenant is entitled to receive in general damages for inconvenience or discomfort if the demised premises themselves were affected by the landlord's breach of covenant".*

It is clear from the above decision of the Tribunal that the Applicants do bear the burden of proof insofar as it has be *"shown that, but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided."* The standard of proof in this circumstance is the normal civil standard, i.e. is the circumstance to be proved more likely than not. The Tribunal will take heed, however, when considering the issue of the burden of proof, of the guidance of the Court of Appeal in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38, set out above.

Damages can only be claimed for the time that the parties have been in a landlord and tenant relationship.

### **Ownership and Management**

25. The Respondent is the owner of the freehold. The property is managed for it by Remus.

### **The Lease**

26. The Applicant holds Flat 3 under the terms of a lease dated 16 October 2013 (“the lease”), which was made between Elmbirch Properties PLC as lessor and Betty Underwood and Claire Elizabeth Underwood as lessees which includes also covenants from a lease dated 1 March 1991 (“the old lease”), which was made between Andrew Lawrence Niven and Robert James Booth as lessors and Christopher Michael Riordan and Sharon Marie Pope as lessees. The Tribunal was provided with a copy of the lease and a copy of the old lease excepting page 1 thereof.
27. The construction of a lease is a matter of law and imposes no evidential burden on either party: **((1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill [2012] UKUT 373 (LC))**.
28. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:  
**Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:**  
15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14*. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions. In this connection, see *Prenn* at pp 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997* per Lord Wilberforce, *Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8*, per Lord Bingham, and the survey of more recent authorities in *Rainy Sky*, per Lord Clarke at paras 21-30.
29. The old lease provides for a 20% contribution by the Applicant to Service Charge costs.

### **General**

30. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:  
*1) To make no reduction, thereby leaving the costs as they were;*  
*2) To adjourn to allow the landlord to provide evidence, or*

3) To adopt the **Country Trade** “robust, commonsense approach”.

31. *The first of these options would have been wrong in the light of the landlord’s concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.*
32. *The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.*
33. *The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal’s overriding objective.*
34. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.

## **Management Fees**

### **The Applicant**

35. The Applicant believed that the management fees are too high. The block is a small block of 5 flats. Management of the block has been poor. Examples have included delays in responding to necessary works, wasted costs, too high costs, a poor accounting system and a refusal to communicate properly with the Applicant.

### **The Respondent**

36. The Respondent argued that its charges were fair. There was a single charge across the whole country. The charge had been tested by previous Tribunals. Mr Taylor believed that the charge reflected the going rate.
37. It has been accepted by Tribunals that there are no economies of scale in a small building.
38. Mr Taylor accepted that not everything was perfect, but said that the Respondent had been very open and transparent.

### **The Tribunal**

39. The Tribunal agreed with the Respondent that a small building offers no economies of scale and could not see that the fees charged were outside what it would normally expect to see for a property of this type. The managing agent was receiving something in the region of £110 a month to manage the property in accordance with its agreement with the Respondent.
40. The Tribunal noted, however, a number of issues relating to the performance of the managing agent.
41. It was noted that works identified as required were not always attended to with any speed. For instance, roof works and works to an exterior wall had been identified in 2013/14, but not returned to for action until a number of years later in the case of the former and still not yet in relation to the latter. Perhaps more seriously, a chartered surveyor tenant had reported the building as moving on 10 August 2012, but that issue had not been investigated with CCTV until October 2013 and action to repair not been taken until January 2015.
42. The managing agent had posted a charge for a key safe from another property to this property’s service charge account. There was a charge for white lines which had never been painted. A new door had been installed in 2013/14 with a snib, which later had to be removed for safety reasons. The invoices for Professional fees were meaningless to the reader.



43. The Respondent did not appear to be in obvious control of its contractors. The Tribunal noted that for some of the works going forward, there was a new system in place whereby greater reliance could be placed upon contractors, thereby providing more assurance as to the completion and quality of works over £250, but saw no reason why something of that nature could not have been in place historically and more comprehensively. How, for instance, would the new system cope with the above issue of the white lines or the issue about gutter cleaning?
44. There was a lack of clarity in the documentation used by the Respondent when instructing a contractor. The face of the form used required information from the contractor which was not furnished. Mr Taylor explained that this was due to a change in practice, but an observer could not readily tell when a job had been done, whether it had been done and whether any check had been made that it had been done.
45. Annual meetings were no longer held and there was an unwillingness to engage properly with the Applicant to resolve problems. No log of visits was provided at the hearing and the Tribunal found it puzzling that the property manager did not attend either the inspection or the hearing to assist with queries. The two senior representatives of the Respondent were unable to answer some relevant questions put by the Tribunal and the Tribunal was left to conclude that what it saw on the day of the hearing was symptomatic of the complaints raised by the Applicant. In their favour, it should be noted that Mr Taylor took a realistic approach to issues posed for the Respondent and conceded a number of items of expenditure.
46. All the above being said, there was a wealth of documentation to show that the managing agent had been involved in many aspects of the management of the property. Taking a rounded view, considering all of the above factors, the Tribunal concluded that there should be a reduction of 20% in each of the 5 years from 2013/14 to 2017/18, and for the budget year 2018/19.

## **Professional Charges**

### **The Applicant**

47. The Applicant had originally been concerned that the Respondent was seeking extra monies for works performed by the managing agent over and above the management fee. The particular concern was that the nature of the extra works was not detailed within the documentation made available. Once further documentation was made available by disclosure in the proceedings detailing the nature of the actual works, the Applicant's concern moved to some of the categories of work claimed for. In particular, she disputed charges for the removal of For Sale signs, arguing that this should be dealt with by liaison with individual tenants and estate agents and charged to individual tenants. Dealing with a water leak should be covered by Remus's contract with the landlord as a minor job. The Applicant queried whether dealing with anti-social behaviour should be charged. She argued that removal of items in the hallway should be the responsibility of individual tenants. She had been advised by a solicitor that there could be no charge for Section 20 works. An insurance claim for the water leak in July 2017 was unnecessary and should not have been claimed for.

### **The Respondent**

48. The Respondent pointed to its agreement with Remus, which listed the works covered by the management fee and the list of items not so covered. The items highlighted by the Applicant above were not covered by the agreement and could be charged as extra works associated with the property.



49. There would be no savings in relation to the For Sale signs because what the Applicant suggested would still involve work by the managing agent.
50. It was in the interest of the tenants for the managing agent to deal with anti-social behaviour.
51. The issue of items in the hallway was the same as in relation to For Sale signs.
52. The Respondent disagreed with the Applicant about Section 20 works.
53. An insurance claim had to be started within 21 days of an event, and a claim was opened to protect the tenants, albeit it did not go forward because the sums in question turned out to be below the insurance excess.

### **The Tribunal**

54. The Tribunal agreed with the Respondent that the issue of For Sale signs, items in the hallway and anti-social behaviour were all issues properly dealt with in accordance with the terms of the Lease and yet not otherwise remunerated within the management fee. It cannot agree with the Applicant that there was likely to be any saving by approaching the tenants directly and could not accept the Applicant's argument that the costs were not recoverable through the service charge.
55. The works associated with a Section 20 consultation process come at a cost. Here that cost was not included within the management fee agreement and so was properly separately chargeable as part of the service charge in accordance with clause 7.1.3 of the new lease (see below).
56. The Tribunal also agreed with the Respondent that it was prudent to commence an insurance claim in relation to the water leak for the reasons advanced by the Respondent.
57. The Tribunal agrees with the Applicant that, on the face of it and in the absence of other explanation by the Respondent, a £16 charge for water damage would appear to fall within its contracted remit and finds, accordingly, that that charge is not payable.
58. The Tribunal notes the Respondent's concessions that charges for gardening at £7, permissions at £10, demised issue of £64 and £15 are not payable and so orders.

### **White Lines**

59. The Tribunal notes the concession by the Respondent in relation to this item, with a consequent deduction of £60.

### **Building Condition Report**

#### **The Applicant**

60. The Applicant was concerned that a surveyor attended the property in October 2013 and produced two reports on that day, being the cyclical building condition report and a report specifically relating to an issue of subsidence. Apart from the fact that travel was charged for twice, the former report was rendered nugatory by the latter and was never put into practice. The knock-on effect was that there was to be a second charge for a condition report when there had been no value from the first.

#### **The Respondent**

61. The Respondent indicated that the landlord favoured 5-yearly building condition reports.
62. Mr Taylor accepted that he would have expected the surveyor to telephone and check whether the building condition report should be postponed given the findings relating to subsidence/drain leakage. He agreed also that it would have been reasonable for the surveyor to have advised the client of the major concerns before undertaking the overall report with a view to its postponement.

### **The Tribunal**

63. The Tribunal could not see how it could be reasonable to expect tenants to pay for the building condition report when it is accepted by the Respondent that it would have been prudent to seek further instructions when the major concerns were apparent and in light of the fact that what must have been obvious at the time became the reality, i.e. that the report was never acted upon and represented no value to the tenants.
64. Accordingly, the cost of the building condition report should be removed from the service charge demands, a deduction of £726.

### **Fire Safety and Health & Safety Reviews**

#### **The Applicant**

65. The Applicant accepted that charges for checking fire detection equipment were proper and accepted that a charge for what she described as an ioniser detector was proper.
66. She was concerned, however, about the cost of the reviews of Health & Safety and Fire Safety. She argued that the assessments could be done in-house and could be performed at the time of a regular visit. She had obtained a quotation of £145 + VAT for a fire risk assessment. The Respondent had charged £581.88 in 2013/14, £378 in 2014/15, £455.40 in 2015/16, £441.60 in 2017/18 and proposed £498 for the year 2018/19. Its own budget charges suggest £360 inclusive of VAT for a property of this size.

#### **The Respondent**

67. The Respondent argued that the responsible person is the freeholder. The Respondent conducted an assessment every 18-24 months of non-high rise buildings. Remus benchmarks its competitors. It has trained in-house assessors. The quotation from the Applicant was for a fire risk assessment only.
68. The budget charges are for budgetary purposes only.

#### **The Tribunal**

69. The Tribunal has been guided by the Regulatory Reform (Fire Safety) Order 2005 and the Code. Relevant parts of those documents can be found in the below Appendix.
70. The Respondent, as freeholder, is a “responsible person” within the meaning of Article 3 of the Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”) of premises defined by Article 31(10). As such, it is required to take measures as “general fire precautions” under Article 4. It is required to carry out a fire risk assessment (Article 9) and take specific action to minimise the risk of fire in the common parts. Having identified the general fire precautions that <sup>[1]</sup>are necessary and, having implemented them, the responsible person must put in place a suitable system of maintenance <sup>[2]</sup>and ensure that equipment is maintained in an efficient state, in effective working order and in good repair (Article 17). The responsible person must review its risk assessment regularly so as to keep it up to date (Article 9).
71. The Applicant believed that inspections were too regular; it became clear that both parties agreed that an interval of 18 to 24 months between inspections was acceptable and what should have been happening. It was apparent that risk assessments were conducted most years; the Tribunal could not criticise this regularity on the basis of the guidance in the Regulatory Reform (Fire Safety) Order 2005 and the Code and without further authoritative guidance, but would advise the Respondent to assure itself and the lessees of the reason for the mismatch between

accepted time scales and the reality of their occurrence. This should be about safety, not about providing a work opportunity for the managing agent.

72. The Tribunal found itself unable to agree with the Applicant's view of the review process and sided with the Respondent's view that it was entirely reasonable that the person conducting the reviews was properly trained and competent. This was not an area where a landlord could cut corners by asking an untrained property manager to undertake the role.
73. The Tribunal did, however, agree with the Applicant that the cost of the assessments was not a reasonable cost. The Respondent had, Mr Taylor accepted, not market tested its own costs. The property's common parts are small; there is a separate contract for the fire detection equipment; the building is relatively small and unremarkable in its form and construction. The Tribunal noted that the quotation submitted by the Applicant was for a fire risk assessment only. The Tribunal could not see how it could have cost more than £250 inclusive of VAT in any of the years in question for the combined reviews. Accordingly, the Tribunal orders that the charge for the years 2013/14, 2014/15, 2015/16, 2017/18 and the budget for 2018/2019 should be limited to £250 plus VAT.

### **Front Door**

#### **The Applicant**

74. The Applicant was concerned that a new door in 2013/14 subsequently, in the next year, required a new weather strip, the snib to be removed and the door closer replaced.

#### **The Respondent**

75. The Respondent conceded that the £60 cost of removing the snib was not a reasonable charge in the circumstances.

#### **The Tribunal**

76. The Tribunal notes the Respondent conceded that the £60 cost of removing the snib was not a reasonable charge and so orders.

### **Gutters**

#### **The Applicant**

77. The Applicant was concerned that she had been charged for cleaning the gutters in February 2016 in the sum of £140 and yet the roof report of November 2017 showed a build-up of moss with moss loosening and contributing to the gutters being choked. She did not believe that this latter situation could have arisen had the gutters actually been cleaned in February 2016.

#### **The Respondent**

78. The Respondent indicated that Remus records showed that the cleaning in February 2016 had resulted from notification by the property manager at the time.

#### **The Tribunal**

79. The Tribunal noted that there had been two autumns between the cleaning and the choking of the gutters. It noted from its Inspection that the property manager could only have seen blockage had that blockage been above the lip of the gutters and that there was no such blockage above the lip in the photographs taken at the time of the roof inspection. Further, the Applicant's own argument provides a counter-conclusion; if the loosening moss was contributing to the filling of the gutters, then here was an explanation for the choking two autumns later. It was also within the experience of the Tribunal members that such an occurrence was very far from being unusual.
80. Accordingly, the Tribunal finds the charge for gutter cleaning to be payable.

## **Chain**

### **The Applicant**

81. The Applicant believed that £50 rather than £80 would be a reasonable sum for the works involved in replacement of a chain.

### **The Respondent**

82. The Respondent argued that it was reasonable for its contractor to charge a £60 call-out fee and £20 per hour.

### **The Tribunal**

83. The Tribunal agreed with the Respondent for the reasons it gave.

## **Chain, Post, Key Safe and Keys**

### **The Applicant**

84. The Applicant was concerned that the costs associated with a replacement chain and post, resetting of a key safe and cutting of 2 keys was excessive at a cost of £380. Her own enquiries suggested that the parts required would have cost no more than £50, so that labour was costing £330. She felt a reasonable overall fee was £200.

### **The Respondent**

85. The Respondent's written submissions were to effect that the chain itself had cost £130, the keys £15, the post £15, the postcrete £10 and labour £210, equating to 3.5 hours.

### **The Tribunal**

86. The Tribunal became confused by the Respondent's evidence. The invoice simply detailed costs of £380. Although the job sheet referred to obtaining the chain from Tool Station, Mr Taylor had a feeling that the chain had been bought elsewhere. Mr Taylor was unable to point the Tribunal to invoice evidence to support the costings listed above. Also, the labour charges do not correspond with what the Tribunal believed to be the contractor's charging rates, £210 divided by 3.5 resulting in an hourly rate of £60.

87. Accordingly, the Tribunal cannot be satisfied by the evidence given on behalf of the Respondent that the chain cost £130 as opposed to the Tool Station chain priced by the Applicant at £15. Keys at £15, a post at £15 and postcrete at £10 all appear to be reasonable sums. A total for parts is, therefore, allowed in the sum of £55 and £130 is allowed for labour (£60 call out + 3.5 hours at £20 per hour), a total of £185.

## **Footpath Repair**

### **The Applicant**

88. The Applicant sought to compare the £65 costs of repairs to a driveway to fill a hole with the repairs to a footpath in 2016/17 for £265 and felt that a reasonable fee was £132.50. She was also concerned at the length of time taken to complete the work if it was a health and safety issue.

### **The Respondent**

89. The Respondent indicated that repairs were required to numerous areas as shown on photographs. The product used cost about £90.

### **The Tribunal**

90. The Tribunal cannot see how the Applicant can compare one job with another, when she is not comparing like with like as the task in issue appeared to be more detailed and costly in its nature than the comparator. Accordingly, it finds this charge to be reasonable and payable.

## **Water Leak**

### **The Applicant**

91. The Applicant was concerned at the lack of clarity in the documentation submitted by the Respondent as to when actions had been taken in relation to this water leak. She also argued that, had the Respondent called the water board, there would have been no charge made.

### **The Respondent**

92. The Respondent argued that it was prudent for the Respondent to send its contractor to investigate the source of the water leak. Had the leak been on the consumer's side, then it would have been the Respondent's responsibility to repair it. His ready attendance could be secured, whereas attendance by the water board could not.

### **The Tribunal**

93. The Tribunal agreed with the Applicant that here was another example of poor/confusing record-keeping by the Respondent. Reading between the lines, however, it was clear that it had become apparent that perceived dog urine was in fact a water leak requiring assessment. The Tribunal agrees with the Respondent that it was reasonable to send a contractor for the reasons it gave. As it turned out, the contractor was able to effect a running repair and the water board subsequently went on to complete the works for free. In these circumstances, the Tribunal finds the attendance and running repair by the contractor to be a reasonable expenditure recoverable through the service charge.

## **Roof Repairs**

### **The Applicant**

94. The Applicant was content with the charge of £120 for the use of a cherry picker, which had been confusingly described as a hoist in the documentation. She did, however, challenge £1044 for a temporary roof repair in November 2017, arguing that the repair should have been performed after the building condition survey of 2013/14.
95. The Applicant also contested £450 for a surveyor's fee for checking the temporary roof repairs as the work itself should have been done following the 2013/14 report.

### **The Respondent**

96. The Respondent contended that the 2013/14 report had not indicated water ingress. As the water ingress in 2017 was isolated, it was deemed appropriate to repair that area only.

### **The Tribunal**

97. The Tribunal noted that the 2013/14 condition survey referred only to removal of moss and repointing of a ridge tile and so could not see the logic in the Applicant's specific argument. Accordingly, the Tribunal found the cost of the roof works and the subsequent inspection by the chartered surveyor, using the cherry picker, both to be reasonable costs payable through the service charge.

## **Gardening**

### **The Applicant**

98. The Applicant was concerned that gardening costs appeared to have increased subsequently following the replacement of a previous gardener. She believed that 2 hours per week in the summer and 1 hour per week in the winter was sufficient for the small gardens associated with the property. She felt that a charge of £700 per annum was reasonable.

### The Respondent

99. The Respondent said that a number of gardening contractors work at other blocks in the area and they are used by the Respondent on other sites and provide satisfactory work. The proposed costs include VAT, whereas the previous gardener did not charge VAT, and the Respondent required proper liability insurance.

### The Tribunal

100. The Tribunal noted that the proposed charges on the basis of the hours proposed (which were not too dissimilar to those suggested by the Applicant) were about £31 per hour including VAT. That would equate to £201.50 for a 6.5 hour working day.
101. The previous gardener's costs had been under £600. With the new gardener, costs had increased to £838.80 in the year 2017/18, and there was a proposal to increase these costs to £1294 for the year 2018/19. The Respondent was unable to explain how the gardening costs could increase so greatly.
102. Even at £20 per hour inclusive of VAT, the gardener would be earning £130 inclusive of VAT on a 6.5 hours working day, which appeared to the Tribunal to be a far more reasonable sum, a sum which in its own experience is encountered for such a gardening contract. Accordingly, the Tribunal does not interfere with the charge in 2017/18, but orders that only £852 inclusive of VAT can be demanded for 2018/19 (£20 x 42.6 hours).

### Section 20c and Rule 13 Costs and Paragraph 5A Application

103. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.
104. The relevant law is detailed in the Appendix below.

### Section 20C

105. The Tribunal first examines the lease to determine whether the Applicant is able to recover its costs via the Service Charge in accordance with the lease. The Tribunal has followed the guidance of the Upper Tribunal in **Geyfords Ltd v O'Sullivan, Grinter, Shaw, Morgan, Bonsor** [2015] UKUT 0683 (LC) and has interpreted the lease in accordance with the guidance of the Supreme Court in **Arnold v Britton and others** [2015] UKSC 36.
106. The Tribunal reminds itself of the guidance in **Assethold Ltd v Mr NM Watts** [2014] UKUT 0537, where the Upper Tribunal rejected the [SEP] proposition that in order for legal costs to be recovered it was necessary for there to be clear and unambiguous wording to that effect. *"55. The proper question was not whether specific, or "magic" words appeared in the paragraph but whether the costs in question had been incurred for the purposes mentioned in the paragraph."*
107. In **Union Pension Trustees Limited, Paul Bliss v Mrs Maureen Slavin** [2015] UKUT 0103 (LC), the UT considered whether a lease including the following wording gave the landlord the power to recover £6,500 in legal costs incurred in LVT proceedings: [SEP] *"... any other costs and expenses reasonably and properly incurred in connection with the landlord's Property including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder."* [SEP] It was argued that the legal costs had been incurred *"in connection with the landlord's property"* in particular since it must have been contemplated that costs might be incurred in connection with the recovery of the expense of maintaining the fabric of the building. The Upper Tribunal rejected the argument. In another part of the lease

- there was the power for the landlord to recover the cost of specified professionals but lawyers were not included. In those circumstances: *"The parties cannot be taken to have slipped in, under general words, an obvious category of potential expenditure which their more specific provisions appear consciously to omit."*<sup>[L]</sup><sub>[SEP]</sub>
108. In **Sinclair Gardens Investments (Kensington) Limited v Avon Estates (London) Limited** [2016] UKUT 317 (LC), the Upper Tribunal refused to allow legal costs in the absence of clear words. There it was said that there is no need to construe service charge clauses restrictively. That said, *'it is reasonable to expect that, if the parties to a lease intend that the lessor shall be entitled to receive payment from the tenant in addition to the rent, that obligation and its extent will be clearly spelled out in the lease'*: see **Francis v Philips** [2014] EWCA Civ 1395 at [74]. The court or tribunal should not therefore *'bring within the general words of a service charge clause anything which does not clearly belong there.'*
109. There is no hard and fast rule that legal costs cannot be recovered where the clause employs 'general words' and makes no specific mention of lawyers or the costs of legal proceedings. However, the requirement of clarity means that in such circumstances there must be *'other language apt to demonstrate a clear intention that such expenditure should be recoverable'*: **Union Pension Trustees Ltd v Slavin** [2015] UKUT 0103 (LC). In that case, the following words did not allow the recovery of legal costs:
- "any other costs and expenses reasonably and properly incurred in connection with the [building] including without prejudice to the generality of the foregoing
- (a) the cost of employing Managing Agents and
- (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder".
110. The Tribunal has looked particularly at Clause 7.1.3 of the New Lease and has concluded that there is provision within the lease permitting the recovery by the Respondent of its costs, by reason of the words *"...such expenditure shall extend to all professional and other fees properly and reasonably incurred by the Lessor directly in connection with the management and administration of the building and/or in dealing with any statutory or other notices served by the Lessee"*.
111. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."* *"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000)).
112. *"An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*<sup>[L]</sup><sub>[SEP]</sub> *"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...; "*<sup>[L]</sup><sub>[SEP]</sub> *"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".*<sup>[L]</sup><sub>[SEP]</sub> (**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the*



*practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.” (Conway v Jam Factory Freehold Limited (2013) UKUT 0592 (LC)).*

113. Because the Applicant appears to have been forced before the Tribunal by the landlord’s reluctance to engage with her or respond to her submissions to it, and more particularly because she has enjoyed a good measure of success in the claims she has made, the Tribunal has no hesitation in allowing her application under Section 20c of the Landlord and Tenant Act 1985.
114. Taking a rounded view of all of the Tribunal’s findings which are detailed above but not repeated here, the Tribunal allows the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the Respondent’s costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the Applicant for the current or any future year.

### **Paragraph 5A**

115. The Tribunal follows the guidance in **Avon Ground Rents Ltd v Child** [2018] UKUT 02014 Mr Justice Holgate:
53. *We understand that many lessors have commonly relied upon lease terms of the kind referred to in para. 5 above (and on **Chaplain**) to demand payment by a lessee of the whole of the legal costs they have incurred in proceedings to recover service charge arrears from that lessee, including dealing with any issues about the reasonableness of such service charges. Where this happens, the lessee has only been able to challenge the reasonableness of such “post-issue” costs once they are demanded and become “administration charges” amenable to control under the 2002 Act and by being willing to become involved in yet more litigation. That process could carry on ad infinitum, generating unnecessary litigation, professional fees and costs. Para. 5A of Sch. 11 of the 2002 Act has been introduced to enable a lessee to make an application for an order to reduce or extinguish litigation costs which have been or are to be incurred. The order made by the court or tribunal does not depend upon those costs having already become “administration charges.” Provided that a lessee makes an application under para. 5A it is possible for the court or tribunal to address this litigation “carousel”.*
116. The Tribunal has made an order under Section 20C in favour of the Applicant and it follows, in the view of the Tribunal, that it is just and equitable for it to make an order extinguishing her liability to pay an administration charge in respect of litigation costs arising from her application and these proceedings.

### **Fees**

117. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*
- “Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative.”*
118. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicant with the fees paid by it. There appears to the Tribunal to

have been no other viable option open to the Applicant to resolve the issues save by making her application to the Tribunal. The Respondent is ordered to pay the sums of £100 and £200 to the Applicant in reimbursement of fees for the application and the hearing.

A Cresswell (Judge)

#### APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

#### APPENDIX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and  
Commonhold and Leasehold Reform Act 2002

##### **18 Meaning of “service charge” and “relevant costs”**

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, 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.

### **19 Limitation of service charges: reasonableness**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **27A Liability to pay service charges: jurisdiction**

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a postdispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 29 of the Tribunals, Courts and Enforcement Act 2007, provides (so far as relevant) as follows:

**29. Costs or expenses**<sup>[SEP]</sup>

(1) *The costs of and incidental to—*

*(a) all proceedings in the First-tier Tribunal, and (b) all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.*

*(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.*

*(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.*<sup>[SEP]</sup>

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 read as follows:

*Rule 13.—(1) The Tribunal may make an order in respect of costs only—*

*(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*

*(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—*

*(ii) a residential property case,*

*or (iii) a leasehold case; or*

*(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

*(3) The Tribunal may make an order under this rule on an application or on its own initiative.*

*(4) A person making an application for an order for costs—*

*(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the*

order is sought to be made; and <sup>[L]</sup><sub>[SEP]</sub>

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal. <sup>[L]</sup><sub>[SEP]</sub>

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or <sup>[L]</sup><sub>[SEP]</sub>

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings. <sup>[L]</sup><sub>[SEP]</sub>

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal; <sup>[L]</sup><sub>[SEP]</sub>

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”); <sup>[L]</sup><sub>[SEP]</sub>

**Rule 3** provides as follows:

**Overriding objective and party’s obligation to cooperate with the Tribunal**

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases <sup>[L]</sup><sub>[SEP]</sub>fairly and justly. <sup>[L]</sup><sub>[SEP]</sub>

(2) Dealing with a case fairly and justly includes— <sup>[L]</sup><sub>[SEP]</sub>

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal. <sup>[L]</sup><sub>[SEP]</sub>

(b) avoiding unnecessary formality and seeking flexibility in the proceedings; <sup>[L]</sup><sub>[SEP]</sub>

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; <sup>[L]</sup><sub>[SEP]</sub>

(d) using any special expertise of the Tribunal effectively; and <sup>[L]</sup><sub>[SEP]</sub>

(e) avoiding delay, so far as compatible with the proper consideration of the issues. <sup>[L]</sup><sub>[SEP]</sub>

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or <sup>[L]</sup><sub>[SEP]</sub>

(b) interprets any rule or practice direction. <sup>[L]</sup><sub>[SEP]</sub>

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and <sup>[L]</sup><sub>[SEP]</sub>

(b) cooperate with the Tribunal generally. <sup>[L]</sup><sub>[SEP]</sub>

**Schedule 11, Part 1, Paragraph 5A Commonhold and Leasehold Reform Act 2002**

(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—<sup>[SEP]</sup>(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<sup>[SEP]</sup>(b) “*the relevant court or tribunal*” means the court or tribunal mentioned in the table in relation to those proceedings.

***Proceedings to which costs relate***

First-tier Tribunal proceedings

***“The relevant court or tribunal”***

The First-tier Tribunal

**The Regulatory Reform (Fire Safety) Order 2005**

**Duty to take general fire precautions**

8.—(1) The responsible person must—

(a) take such general fire precautions as will ensure, so far as is reasonably practicable, the safety of any of his employees; and <sup>[SEP]</sup>

(b) in relation to relevant persons who are not his employees, take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe. <sup>[SEP]</sup>

**Risk assessment**

9.—(1) The responsible person must make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under this Order.

(2) Where a dangerous substance is or is liable to be present in or on the premises, the risk assessment must include consideration of the matters set out in Part 1 of Schedule 1.

(3) Any such assessment must be reviewed by the responsible person regularly so as to keep it up to date and particularly if—

. (a) there is reason to suspect that it is no longer valid; or <sup>[SEP]</sup>

. (b) there has been a significant change in the matters to which it relates including when the premises, special, technical and organisational measures, or organisation of the work undergo significant changes, extensions, or conversions, <sup>[SEP]</sup>

and where changes to an assessment are required as a result of any such review, the responsible person must make them.

**Service Charge Residential Management Code and Additional Advice to Landlords, Leaseholders and Agents Code of Practice 3rd edition**

**8.3 Risk assessments**

As the common parts of residential developments are deemed to be a ‘place of work’ (*Westminster City Council v Select Managements Ltd* [1984] 1 All E.R. 994), they are hence subject to health and safety at work legislation. The *Management of Health and Safety at Work Regulations* 1999 require employers to assess and manage health and safety risks.

Risk management involves identifying and controlling, by sensible health and safety measures, any potentially significant risk of accident or ill health to you, staff under your supervision, contractors, leaseholders, members of the public and visitors.

You should ensure that periodic risk assessments are carried out by competent persons at every scheme with common parts. The frequency of formal review

should form part of the risk assessment process but should be carried out whenever there are significant changes at the scheme. The risk assessment should be treated as a 'live document' which the property manager should refer to from time to time. FTTs have been critical of some managers incurring costs on a regular basis by frequently procuring new risk assessments. Regular reviews do

not necessarily entail producing a completely new risk assessment document. The extent of any review should be proportional to the risks identified and the complexity of the installations at each scheme.

The Health and Safety Executive (HSE) publishes detailed guidance on managing health and safety and recommends that risk management should be about practical steps to protect people from real harm and suffering. It has also produced an example risk assessment for the common parts of a block of flats. You should be aware of the guidance and other advice published by the HSE (see [www.hse.gov.uk](http://www.hse.gov.uk)).

A managing agent is likely to be deemed as a 'responsible person'; you should therefore ensure that risk assessments are undertaken by a 'competent person'. This may be you or other suitably qualified and experienced person(s).

If you are employing specialist consultants, they should be registered on the Occupational Safety and Health Consultants Register (OSHCR). This scheme was launched in January 2011 and can be accessed online at [www.oshcr.org](http://www.oshcr.org). Copies of the risk assessment should be made available to anybody attending, or working, on-site. You should also make occupiers aware of any issues that have an impact on their safety, and provide copies of the risk assessment on request. The risk assessment should be regarded as a 'live' document and kept under continual review. Any variations or newly identified risks should be assessed and appropriate controls actioned without delay.

#### **8.4 Fire risk assessments**

The *Regulatory Reform (Fire Safety) Order 2005* came into force in October 2006 and replaced over 70 pieces of fire legislation. It applies to all non-domestic premises in England and Wales, including the common parts of blocks of flats and houses in multiple occupation (HMOs).

Under this Order, the 'responsible person' must ensure that a fire safety risk assessment has been undertaken by a 'competent person' and must implement and maintain a fire management plan. This may be included within the generic risk assessment, or undertaken separately by a fire safety specialist.

You should ensure that assessments have been undertaken and an up-to-date fire management plan has been implemented for every scheme.

Article 3 of The Order defines the 'responsible person' as

an employer, if the workplace is under his or her control,  
 a person who has control of the premises in connection with trade or business, or

the owner of the property. Guidance is available from:

- . Local Government Regulation (formerly LACORS) at [www.lacors.gov.uk](http://www.lacors.gov.uk)

- . the Department for Communities and Local Government guide *Fire safety risk assessment: offices and shops* (available at [www.gov.uk/government/publications/fire-safety-risk-assessment-offices-and-shops](http://www.gov.uk/government/publications/fire-safety-risk-assessment-offices-and-shops)); and

- . the Local Government Association's guidance on fire safety for purpose-built blocks of flats ([www.local.gov.uk](http://www.local.gov.uk)). You should ensure that you



are familiar with these publications and wider guidance from the HSE on fire risk assessments and management plans. <sup>[L]</sup><sub>[SEP]</sub>Any works required to fulfil the action plan should be planned with your client without delay. To ascertain if costs are recoverable as a service charge you should refer to <sup>[L]</sup><sub>[SEP]</sub>the lease. Where service charge monies are insufficient to meet any expenditure required, you should consult with your client regarding longer term planning or arranging other funding options. Health and safety should not be compromised due to lack of funds and further advice should be taken if necessary. <sup>[L]</sup><sub>[SEP]</sub>It is essential that escape routes, and the means provided to ensure they are used safely, are managed <sup>[L]</sup><sub>[SEP]</sub>and maintained to ensure that they remain usable and available at all times. Corridors and stairways should be kept clear and hazard-free at all times. You should monitor compliance and, if necessary, arrange for items to be removed. Where necessary consideration should be given to taking action against leaseholders breaching the terms of their lease. You should have regular testing and servicing arrangements in place for any fire-fighting and detection equipment.