FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UN/LIS/2018/0048**
Property	**:**	**24 Buckland Rise, Maidstone, Kent ME16 OYN**
Applicants	**:**	**DPS (Brockley) Limited**
Representative	**:**	**Mr Carlo Camicia of NAVE Property Services Ltd**
Respondent	**:**	**Mr Anthony Pond**
Representative	**:**	**In person**
Type of Application	**:**	**Liability to pay and reasonableness of service charges**
Tribunal Members	**:**	**Judge Paul Letman** **Mr Richard Athow FRICS** **Mr Peter Gammon MBE**
Date and venue of	**:**	**03 April 2019**
Hearing	**:**	**Bridgewood Manor Hotel, Walderslade Woods, Chatham ME5 9AX**
Date of Decision	**:**	**30 April 2019**

DECISION WITH REASONS

Introduction

1. By an application dated 04 September 2018 the Applicant landlord seeks a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to whether certain costs and charges are payable by the Respondent as service charges. The years in issue are 2017/18 and 2018/19 and the disputed charges set out in a schedule dated 14 January 2019 ('the Schedule').

2. At a telephone case management conference on 09 November 2018 (attended by Mr Camicia of NAVE Property Services Ltd, the Applicant's managing agent since 24 December 2016) the tribunal identified the issues to be determined as including the following:

   - Whether the service charges (including the demands) have been issued in accordance with the terms of the lease.
   - Whether the Applicant is entitled to claim £120 (2 x £60) by way of late payment charge and which terms of the lease are relied upon in this regard.
   - The reasonableness of the service charges for the period 01/10/17 to 31/03/18 in the sum of £841.78, and for the period 01/04/18 to 30/09/18 in the sum of £841.77.

3. The tribunal duly made directions for the further conduct of the application. These included provision for service by the Respondent of the Schedule (setting out the items in dispute and the reasons why each amount is disputed), disclosure of copies of any alternative quotations he relied upon and service of a statement of case with any witness statements of fact relied upon.

4. Directions were also made requiring the Applicant to complete the Schedule and in turn disclose copy documents and serve its own statement of case together with any signed witness statements of fact. Provision was made for the Respondent to send a brief reply if appropriate and for preparation of a hearing bundle by the Applicant.

5. The above directions having been substantially complied with, the matter came on for hearing before this tribunal on Wednesday 03 April 2019 at the Bridgewood Manor Hotel, preceded by an inspection of Buckland Rise ('the Property').

The Inspection

6. The inspection commenced at 10am on 03 April 2019. The premises comprise a substantial modern block of 24 flats, built about 12 years ago on a steeply sloping site. Whilst stepped to take account of the topography the block is otherwise typical of its kind, concrete framed with brickwork skin and timber windows and finished to the usual standards of developers and housebuilders of our era.

7. The tribunal in the company of Mr Camicia and Mr Pond toured the exterior of the block, viewing the gates, the refuse bins store (noting the rodent traps) and the car park area. The tribunal noted the two different types of external lighting, the high-level lamp posts, some of which were out of order, as well as the lower level bollard lights, 2 of which also were out of order.

8. The Respondent pointed out the overgrowth adjacent to the single bay at the top of the car park and informed the tribunal that this had been so bad that the tenant of the flat with the right to park in this bay had resorted to cutting the growth back himself. An allegation that was confirmed by the tenant himself, who briefly attended the view to assist the tribunal in this regard; for which we are grateful. The tribunal inspected all of the garden, including the uncultivated area at the boundary and the fairly extensive sloping areas of lawn surrounding the block on 3 sides.

9. The tribunal then entered the block, mounting the stairs in each half to gain an impression of the lay out and condition of the premises. The tribunal noted the fire and smoke alarms and notices, automatic and emergency lighting and AOV provision. Broadly speaking the interior appeared to be clean and tidy, but for one or two scuff marks on the paintwork. On each of the stairwells and passages off the lighting appeared to be fully functioning, though there was a query over a couple of luminaires. The common parts including the service riser cupboards appeared to be all clear of tenants' chattels.

The Law

10. As referred to above the application is primarily made under section 27A of the 1985 Act, which provides as follows:

27A Liability to pay service charges: jurisdiction

(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.

11. The application engages section 19 of the 1985 Act that establishes a statutory test of reasonableness limiting the recovery of relevant costs making up any service charge as follows:

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 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.

12. The meaning of reasonably incurred was considered by the Upper Tribunal in the lead case of *Forcelux v Sweetman*, where Mr Francis stated that:

'39. …The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

41. It has to be a question of degree, and whilst the appellant has submitted a well reasoned and, as I have said, in my view correct interpretation of 'reasonably incurred', that cannot be a licence to charge a figure that is out of line with market norm.'

13. Notably, in relation to the costs of major works in that case he accepted that the whilst there could be no criticism of the landlord's policies and procedures for appointing contractors, nonetheless he did *'..not see why they [the tenants] should be saddled with a cost that appears from the evidence to be substantially in excess of what could reasonably be construed as a market rate.'*

14. More recently this approach was endorsed by the Court of Appeal in *LB of Hounslow v Waaler* [2017] EWCA Civ 45, where Lord Justice Lewison stated '*In my judgment, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome*.'

15. As to the second limb of section 19, dealing with the standard of services, which is a central issue in this case, it is well established by the cases (see *Yorkbrook v Batten* (1985) HLR 25) that where a service has been carried out otherwise than to the relevant standard that does not mean that no charge is payable. Rather the amount charged should be reduced to reflect the extent to which the service fell short of the requisite standard. Though the charge may of course be diminished to zero where the tenant received no value whatsoever from the services or work for which the service charge has been levied.

16. As regards the application for a section 20C order, the section itself provides as follows:

20C Limitation of service charges: costs of proceedings.

(1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application…
(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.

17. The relevant case law in relation to section 20C was reviewed by the Deputy President in the Upper Tribunal in *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0519 (LC) at paragraphs 51 to 59. His review began necessarily with reference to the Court of Appeal decision in *Iperion Investments Corporation v Broadwalk House Residents Limited* (1996) 71 P & CR 34 and the well known passages from the judgment of Peter Gibson LJ, before continuing with detailed reference to the decision of the Lands Tribunal (HH Judge Rich QC) in *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000.

18. The Deputy President in *Conway* quoted with apparent approval the following passages from the judgment of HHJ Rich QC in *Doren* relating to the exercise of the 20C discretion:-

"28. 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.

29. I think that it can be derived from [Iperion] that where a court has power to award costs, and exercises such power, it should also exercise its power under s20C, in order to ensure that its decision on costs is not subverted by the effect of the service charge.

30. Where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an Order under s.20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.

31. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but 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 and properly incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them.

19. The review in *Conway* continued with reference to *Schilling v Canary Riverside Development PTE Limited* LRX/26/2005 where HHJ Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. Noting that the observations he had made in his earlier decision were intended to be "illustrative, rather than exhaustive" of the matters which needed to be considered, and adding significantly (at paragraph 13) that:

"The ratio of the decision [in Doren] is "there is no automatic expectation of an Order under s.20C in favour of a successful tenant." So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour."

20. More recently in *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC) His Honour Judge Behrens referred to the decision in *The Jam Factory* [2013] UKUT 0592, which he took to contain a full review of the authorities, and summarised the applicable principles as follows:

"1. The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.

2. The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.

3. Where there is no power to award costs there is no automatic expectation of an order under s 20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.

4. The power to make an order under s 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.

5. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income."

21. The Tribunal duly relies upon this guidance in its consideration of the Applicants' application for a direction under section 20C and under the equivalent and like worded provision in respect of litigation costs claimed as administration charges at paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The Lease

22. The hearing bundle includes the lease dated 10 April 2007 of flat 24 Buckland Rise ('the Lease'). The lease of each of the other flats is understood to be in substantially the same form. In so far as is presently relevant the Lease expressly provides as follows:

(a) Under the lessee's covenants at clause 2, the lessee covenants amongst other things, by sub-clause (5) 'To pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925..'

(b) Under the lessee's covenants at clause 2, the lessee covenants amongst other things, by sub-clause (5)(a) to 'Contribute and pay on demand the proportionate part set out in paragraph (g) of Part V of the Schedule hereto of all costs charges and expenses from time to time incurred or to be incurred by the Lessor in performing and carrying out the obligations and each of them under Part IV of the Schedule hereto as set out in the Notice mentioned in paragraph 11 of Part IV of the Schedule..'

(c) Under clause 7 the lessor '..covenants with the lessee to perform and observe the obligations and each of then set out in Part IV of the Schedule hereto.'

(d) Under Part IV of the Lease Schedule the Lessor's Obligations are defined to include maintenance and repair of, amongst other things, the main load bearing walls and foundations, fences and any gates (see paragraph 1(a)), communal aerial and other communal facilities (1(b)), interior common parts (1(c)), dustbin areas, paths and parking areas (1(d)) etc.

(e) Also under Part IV of the Lease Schedule paragraph 8(b) provides the Lessor '.. will take all and any action or remedy available in its own name against any lessee who defaults in making any payment as provided in Clause 3(5)(a) or 3(5)(b) herein or otherwise and the Lessor will be entitled to collect all costs, charges and expenses (including solicitors costs, barristers fees, surveyors fees and Court costs or otherwise and also its own administration expenses) properly incurred in relation or incidental to any action which the Lessor is unable to collect from any such defaulting lessee by incorporating all such items expended or to be expended as part of the costs charges and obligations as referred to in paragraph 9 of this part and shall be properly accounted for in accordance with paragraph 10 again of this part.'

(f) Further, under Part IV of the Lease Schedule, paragraph 9 provides for an account to be taken on the 31st day of March of each year, paragraph 10 states that the said account shall be prepared and audited by a qualified accountant and paragraph 11 stipulates that 'The Lessor shall within two months of the date of which the said account is taken serve on the Lessee a Notice in writing stating the said total and proportionate amount certified in accordance with the last preceding paragraph together with details if known and an estimate of the amount required for the following year.'

(g) Finally for present purposes it is noted that paragraph 14 of Part IV provides that 'The Lessor may at its option create and maintain a reserve fund of such sum (to be fixed annually) as shall be estimated by the Lessor or its managing agents (if any) to be reasonably required to provide a reserve fund for recurring items of expenditure in connection with the provision of the services facilities and amenities specified in this Part IV or any of them to be or be expected to be incurred at any time during the term.'

23. No particular point on interpretation is taken by the Respondent in this matter, as regards what is or is not included in the service charges, save in respect of the £60 default charges levied. Nonetheless, if and in so far as may be relevant the tribunal has the benefit of a previous tribunal decision dated 11 June 2012 between the same parties in respect of the same property and Lease, and in which Mr Athow was also a member of the tribunal.

The Contested Charges

24. At the hearing both sides made brief but general opening statements in support of their case, albeit more focused on past disputes than the specific items now currently in dispute (considered below). In particular Mr Pond referred to a compromise of earlier claims between the parties which he alleges the Applicant reneged upon when he needed to re-mortgage, the Applicant taking the opportunity so he alleged to demand payment in full rather than the discounted figure agreed.

25. However, whilst the tribunal was able to suggest the means, including potentially mediation, by which the parties (who are brothers-in-law) might resolve this dispute, it was bound to point out that this alleged breach of a compromise agreement was not within the scope of this application and for that matter appeared to be a claim in damages for breach of contract which in any event was not within the jurisdiction of the tribunal under section 27A of the 1985 Act.

26. Notably, beyond the general compromise point above the Respondent did not raise or pursue any broader issues on the form of demands or the like. Turning then to the specific matters for determination under section 27A.

Y/E 31 March 2018

General Maintenance £6,997

27. The principal cost comprised in this sum and disputed by the Respondent is the cost of the fence replacement works carried out in about November 2017 at a cost of £4,300 (the estimate for the work including 'vegetation clearance' is at [D111] and the two invoices totalling £4,300 at [D120 & D121]). There was no issue that the works required doing, the Respondent queried whether there should have been the subject of statutory consultation and challenged the reasonableness of the costs.

28. In support of his case that the cost was excessive the Respondent referred to and relied upon 2 rival quotations. One from Range Fencing Ltd [E265] in the sum of £3,250 to supply 65 meters of close board fence, with 6" concrete gravel board and concrete posts. The quote is subject to a note stating 'Please be aware this quote does not include corner posts or any take down and disposal of any existing fencing. This quote is no guaranteed until a onsite quotation has been made.' The second quotation was from Glebe Fencing [E266] in the sum of £1,437 including VAT and is supply only.

29. The Applicant pointed out that the costs of works per flat was below the £250 threshold for the purposes of consultation and contended that the rival quotations obtained by the Respondent were not a fair comparison. In particular Mr Comicia pointed out that both Range and Glebe had quoted for a markedly different specification, using for example smaller 6ft rather than 9ft posts, omitting site clearance, dismantling and disposal.

30. The tribunal unhesitatingly agrees with the Applicant on this item. The statutory threshold of £250 per flat for consultation is plainly not engaged (see the 2003 Regulations (SI 2003/1987)). As for the quotations produced by the Respondent these are simply not pricing like with like. Indeed, in so far as they offer any comparison at all they appear to support the cost incurred by the Applicant, given that the additional cost incurred by the Applicant of £1,050 was for significantly

more materials and work. In these circumstances the Respondent's challenge is rejected.

31. The only other item of cost under this heading disputed by the Respondent was the sum of £435.60 invoiced on 19 November 2017 by GA Evans Aerial Systems Ltd [D117] for a call out to check satellite TV reception, tracing the fault and supplying and installing a replacement 24-way distribution switch. Why, he asked, was he being asked to meet this cost when in July of the same year P. Beerling had charged £60 for a call out covering 'Tested cables, remade plugs .. all signals passed and working' [D129].

32. However, as the Applicant pointed out, the first invoice in time was only an initial call out whilst on the second occasion, with the problem recurring, more work was decided to be necessary and then carried out. The tribunal fully accepts this explanation which is patently supported by the documents. In our view both invoices were reasonably incurred and are reasonable in amount and no tenable grounds for challenging either cost has been presented.

Gates and Shutters £1,308

33. The Respondent queried the above sum on the basis that he required sight of the relevant invoices. These are annexed to the witness statement of Mr Camicia dated 19 February 2019 at [D140, D141 and D142] and having considering them at the hearing the Respondent was unable to state any real objection.

34. For its part the tribunal is satisfied that the charges are reasonable. Considering in particular the 2 larger items. The installation of the safety edge to the entry gates, as demonstrated on the inspection, for the sum of £547.50 was obviously properly and reasonably incurred, so too the annual maintenance inclusive of 4 call outs at £660.00 and both appear to be reasonable amounts.

Fire Alarms £1,418

35. The Respondent objected to this cost on the basis that it was double the previous year's cost (of £775 [D186]), he needed to see the invoices and the cost he said compared unfavourably with the £306 budget for Fire Risk he paid in espect of another flat he owned in Maidstone [E262].

36. The three relevant invoices appended to Mr Camicia's witness statement are (1) an invoice dated 24/1/18 from PLP Fire Protection in the sum of £278.40 to carry out a smoke vent test and replace batteries (2) an invoice from Fireguard dated 19/1/18 in the sum of £720 for Inspection & servicing fire alarm and emergency lighting (3) another invoice from Fireguard dated 05/7/18 in the sum of £420 to prepare a fire risk assessment.

37. Examining these 3 invoices the increase on the previous year is clearly explicable on the basis of the AOV test and one-off risk assessment. Further, the tribunal do

not accept the suggested comparison with a similarly labelled item for the Respondent's other flat, these are different premises with inevitably different requirements and there is no basis at all for supposing one is comparing like with like. In the tribunal's view the invoices effectively speak for themselves and the costs are clearly reasonable and payable.

Cleaning £5,202

38. The Respondent challenges the cleaning costs alleging that the costs have nearly doubled over the last 5 years and the work done is not to a reasonable standard. At the hearing he expanded his complaint to include the gardening (comprised in the same total cost), which he also alleged was not up to standard. He added that he didn't believe the cleaners or gardeners did the hours they say they do.

39. For the Applicant Mr Camicia explained that the number of visits was increased from once to twice a week in 2012. He rejected any allegation that the cleaners or gardeners did not work the hours charged and for which they had signed time sheets. In terms of rates he said that these were established contractors and that £18 per hour was a reasonable rate.

40. Mr Camicia also denied that the works were sub-standard. He visited every couple of weeks to check and was quite satisfied with the work done. He said he had had no other complaints about the cleaning. As for the gardeners he said they are engaged on a reactive rather than proactive basis and were maintaining the lawn and plants to a sufficient standard.

41. Considering the points raised, there is in the tribunal's view insufficient evidence to support the allegation that the contractors are not working the hours charged. To find otherwise would be effectively to decide that the contractors are acting dishonestly, falsifying their time sheets and invoices and there is no evidence before us upon which we could reach such a conclusion.

42. As for the challenge to the rates charged, the Respondent has not produced any rival or alternative quotations upon which to base any criticism of the charges being levied. Further, based on the tribunal's own experience the rates charged do not appear to be uncompetitive or otherwise outside of the market norm.

43. As for the standard of work both in terms of cleaning and gardening, based upon our inspection, admittedly only a snapshot so to speak of the quality of work, it appears to the tribunal that these works are being done to a reasonable standard, given the level of service contracted for and scale of charges. Further, we are fortified in this conclusion by the general absence of complaints from other residents.

44. In the circumstances the tribunal is satisfied on the evidence that the cleaning and gardening charges are reasonably incurred, carried out to a reasonable standard and are payable.

Management Fees £7,156

45. At £300 per unit the Respondent objects that the charges are too high. In this regard he referred to and relied upon 2 alternative quotations. Firstly, an email from Jennings & Barrett (based in Sidcup) dated 06 February 2019 [E268] indicating a charge of £160+VAT per unit. Secondly, a letter dated 07 February 2019 from Prime property management (based in Bromley) setting out their management services and proposing a fee of £200 per unit inclusive. The Applicant through Mr Camicia maintains the current charge is reasonable.

46. Based on the evidence adduced and our own experience as an expert tribunal in these matters the tribunal accept the criticism that the management charge of £300 per unit for these premises is too high and indeed outside the market norm. The more difficult question is what level of charge can be said to be reasonably incurred. The £160 per unit is a rudimentary quotation and looks relatively low. Similarly, we are conscious that very often particularly keen quotations are given in circumstances where a rival bid is invited in circumstances such as these.

47. In the light of these considerations, the nature and location of the premises and again grounded upon our experience of the relevant market in this area of Kent, we have come to the clear view that a reasonable management charge for these premises for the year in question and the service provided was £225 per unit inclusive.

Reserve Fund £5,000

48. The Respondent says that this is an excessive and unreasonable amount to collect by way of reserve. The Applicant notes that all the window frames in the block are timber and the exterior will need to be redecorated every 4 to 6 years. Mr Camicia pointed, for example, to the expenditure on external redecoration (including inevitably scaffolding access) in 2017 amounting to nearly £50,000.

49. It is obviously the case that the Applicant's case in this regard is correct. At least every 6 years it is likely to be the case that it will have to incur major works costs of no less than £30,000 on these premises. In these circumstances an annual collection of £5,000 is plainly justifiable, reasonably incurred and payable and the tribunal so determines.

Late Payment Charges £120

50. In this regard the tribunal accepts that the terms of the lease expressly provide for the lessee to pay all costs charges and expenses (including solicitor's costs) incurred by the lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925..' or otherwise to collect all such costs properly incurred in relation or incidental to

any action against a defaulting lessee by including that sum in the service charges claimed from all lessees (see paragraph 22(e) above).

51. Further, the tribunal accepts that in principle the costs incurred in making a section 27A application to determine the service charge payable by a lessee can come within the scope of a provision such as clause 2(5) (see *Freeholders of 69 Marina , St.Leonards on Sea v Oram* [2011] EWCA Civ 1258), provided that is a landlord can show (in evidence) that the application was made in contemplation of such proceedings (see *Barrett v Robinson* [2014] UKUT 322 (LC)).

52. However, on the basis of Mr Camcia's evidence the tribunal does not accept that these sums of 2 x £60 can be regarded as sums incurred by the lessor. As he explained each of these sums was levied upon the tenant as soon as Mr Camicia decided that the Respondent was in default. His evidence was very clear that this was not an extra cost that was charged by his company to the lessor but simply a sum demanded from the lessee. They are, as they are labelled, late payment charges.

53. In these circumstances the tribunal finds that these charges are not incurred by the lessor but instead amount to a penalty or fine imposed by the lessor (by its agents) on the lessee. The amounts are not therefore recoverable under the terms of clause 2(5) or for that matter and for the same reason, in default of recovery under 2(5), under the terms of paragraph 8(b) of Part IV.

(1) Y/E 31 March 2019 (Estimated only)

54. In relation to this service charge year the Tribunal is only concerned with the estimated service charge at [D196] and on account demands and accordingly in each case whether the demanded amount satisfies the section 19(2) test (above), that is to say the amount claimed is no greater than is reasonable. In so far as the Respondent may seek to recover any other or greater amounts following preparation of the y/e accounts for 2018/19 this can of course be the subject of further challenges if appropriate.

55. The disputed estimates are examined below. However, it should be noted that in the course of the hearing there was much discussion about the presentation of these figures. Not least because the item line descriptions do not tally with those in the year end accounts. For example, the estimates rather curiously separate block and estate charges, whereas there is no such distinction in the lease or division in the year end accounts. It also became apparent that the total item cost is in some instances an amalgam of different expenses that do not all match the description.

56. The tribunal therefore have some sympathy with the Respondent's frustration over the figures. For his part though, and to his credit, Mr Camicia accepted these criticisms and confirmed that he would endeavour going forward to make the accounts and estimates as consistent, accurate and transparent as practicable,

providing lessees with more rather than less information to assist their understanding of the sums they are being expected to pay.

a) Block Charges

57. Examining each of the block charges, in the light of the views expressed above each of the sums claimed appears to be consistent with the 2017/18 charges accepted by the tribunal. Each item appears, therefore, to the tribunal to be no greater than is reasonable. Certainly, the tribunal has no evidence to the contrary and the Respondent did not press any point in this regard.

b) Estate Charges

58. The estate charges (as listed) at [D196] proved more controversial, the Respondent suggesting that generally they were too high without taking any specific points except in relation to the Gate Maintenance. Reviewing these individually:

i) Gate Maintenance & Servicing, £1,700; although based upon the previous year, as the Respondent pointed out, that of course included the one-off installation of the safe edge. The tribunal accepts therefore that the provision appears to be unnecessarily high. Given the annual maintenance cost of £660 (see D142]) and allowing for some incidental costs, a reasonable estimate in our view is £750.

ii) Refuse Store Maintenance, £300; Mr Camicia explained that although no provision for this item appears in the previous year's account, he had made the allowance in case there was a requirement for some maintenance work. In answer to the tribunal's questions he broadly accepted, however, that this is in addition to the 2x Unplanned Maintenance items already in the estimate. In the tribunal's view to add this further amount is excessive, £nil allowed.

iii) Tree management, £100; the tribunal accepts that this item is extra over to the basic gardening services contracted with JAS and is a reasonable allowance to make.

iv) Communal Electricity and Lighting, £800; this appears to reflect closely the equivalent utilities charges in previous years, e.g £724 in 2018, and is therefore accepted by the tribunal as no greater than is reasonable on account.

v) Grounds Maintenance & Landscaping, £2,000; ignoring the rather grandiose label, given the gardening costs (for the calendar years) of £1,838.88 in 2015, £1,757.76 in 2017 and £1,781.46 in 2018 [D150], this is plainly a reasonable on account allowance to make for these services and the tribunal so determines.

vi) Unplanned Maintenance, £1,000; this is the second allowance of its kind but given the general maintenance costs in 2018 of £2,697 (excluding the larger fence replacement works) and £1,349 in 2017 and having regard to the maintenance obligations on the lessor and exigencies of looking after a

property of this kind, it does seem to the tribunal that this is a proper and reasonable provision to include in the estimate.

vii) Water, £150; this was not controversial and is duly approved by the tribunal.

viii) Pest Control, £800; the tribunal notes the contract entered for this service at a cost of £677 for 2018 and saw on its inspection clear evidence in the form of multiple traps of performance. In the circumstances the tribunal accepts that £800 is an appropriate budgeted sum and is no more than is reasonable.

c) Administration

59. As set out in the budget this comprised just 3 items. Firstly, block management in the sum of £7,140. However, in the light of the tribunal's decision in this regard (at paragraphs 44 to 46 above), this must be modified to £5,400. Secondly, accountancy charges in the sum of £1,000. Although the Respondent referred in this regard to the figure of £420 in the accounts for another Maidstone flat owned by him, based on its experience and expertise in such matters the tribunal is in no doubt that £1,000 is a perfectly reasonable level of charge and sum to be included in the budget. There are doubtless advantages also to using a locally based firm rather than working remotely with a firm in Glasgow, as with the Respondent's other flat. As for the £120 in respect of late payment charges included under this head, M Camicia conceded that there was no place for such an amount on account, before even any default or failure to recover could have happened, and rightly in the tribunal's view withdrew the claim.

d) Insurance

60. There was no dispute between the parties over the insurance provision in the sum of £2,000.

Conclusions

61. In accordance with the reasoning above the tribunal duly decides that the following sums are due and payable in respect of the disputed service charges:

(1) Y/E 31 March 2018

	Claim	Allowed
Cleaning (& Gardening)	£5,202	£5,202
Block Management	£7,156	£5,400
Fire Alarm	£1,418	£1,418
General Maintenance	£6,997	£6,997
Gate Maintenance	£1,308	£1,308
Pest Control	£ 677	£ 677

Reserve	£5,000	£5,000
Utilities	£ 724	£ 724
Insurance	£2,067	£2,067
Accountancy fees	£1,045	£1,045
Late Payment Charges	£ 120	£ nil

The Respondent's liability being based on the Service Charge proportion of 5.5% as provided under paragraph (g) of Part V of the Lease.

(2) Y/E 31 March 2019 (Estimated Budget)

	Budget	Allowed
Block	£13,000	£13,000
Estate	£ 6,850	£ 5,600
Admin	£ 8,260	£ 6,400
Insurance	£ 2,000	£ 2,000

Again, the Respondent's liability being based on his Service Charge proportion of 5.5% as provided in the Lease.

Section 20C/Paragraph 5A

62. In relation to the costs incurred in relation to this application, the tribunal accept the uncontested evidence in Mr Camcia's witness statement that this application was brought as a prelude to and in contemplation of further action by way of forfeiture should it become necessary and that therefore in accordance with the authorities referred to above the Applicant is on the face of things entitled to recover its reasonable costs of this application under clause 2(5) of the Lease. The Respondent did not argue otherwise.

63. Rather the Respondent seeks a direction under section 20C of the 1985 Act in case those costs are sought as service charges or otherwise paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, the equivalent of s20C in relation to administration charges. He argued that he had never refused to pay but had repeatedly requested the information he needed to determine his liability and that this material had not until very recently been made available.

64. The Applicant opposed the making of any such directions. Mr Camicia argued that the Respondent had been fighting 'old battles' as it were in relation to the

previous compromise and that relying on that he was simply refusing to pay the amounts in issue here. That faced with his intransigence the Applicant had had no choice but to commence this application, as demonstrated by the fact that even after service of his evidence exhibiting all the relevant invoices the Respondent had not conceded any ground.

65. In the tribunal's view there is right and wrong on both sides in this application. The presentation of the figures for the Applicant could have been clearer and the information provided earlier. The Respondent should perhaps have realised the compromise issue was not within the scope of this application and could have conceded some ground before the hearing. Furthermore, in the event each side can, in the light of our determination above, be said to have achieved a significant measure of success.

66. Taking all these matters into consideration, and in accordance with the guidance given in the cases discussed above, the tribunal has formed the view that it would be just and equitable in the circumstances of this case to make a direction under each of section 20C and paragraph 5A that 50% of the Applicant's reasonable costs are not to be regarded as relevant costs for the purposes of service charge and so as to reduce the Respondent's liability for the Applicant's reasonable costs if claimed as administration charges to 50% of that sum.

67. As to the amount claimed Mr Camicia helpfully provided the tribunal with a summary of the Applicant's costs to 03 April 2019 in the sum of £1,846.83. The Respondent had not seen this information before. Moreover, these costs have not as yet been demanded from the Respondent and the amount is not within the scope of this application. This tribunal therefore makes no determination as to what is the reasonable amount due in respect of costs (of which the Applicant may in accordance with the foregoing recover only 50%).

Right to Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein. That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application (a) written reasons for the decision or (b) notification of amended reasons for, correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

Dated as above.