



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

Case Reference : **CAM/00ME/LSC/2019/0074**

Property : **18 Stour House 6 Kidwells Close
Maidenhead SL6 8GF**

Applicant : **Matthew James**

Representatives : **In person**

Respondent : **One Housing Group**

Representative : **Mr S Phillips of Counsel**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey**

**Date and venue of
Hearing** : **23 September 2020 by a telephone
hearing**

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

DECISION

Decisions of the tribunal

- (1) The tribunal determines that: -
- (2) The disputed service charges are reasonable and the applicant is liable under the terms of the lease of the property to pay the service charges as demanded other than as are disallowed or are varied by this decision with regard to the following specific items: -
 - a. External window cleaning the charge to the applicant is reduced to £nil; and
 - b. Internal cleaning; The charge to the applicant is reduced to £295.04
 - c. Security gate maintenance; the charge to the applicant is reduced to £nil.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **18 Stour House 6 Kidwells Close Maidenhead SL6 8GF**, (the property) and the liability to pay such service charge.
2. The applicant is the lessee of the property pursuant to a long lease dated 6 November 2015 made between (1) Citystyle Living (Kidwells THA) Limited (2) the applicant for a term of 125 years from 1 January 2015. At the date the lease was granted the estimated service charge payable in the first year of the lease was stated in the deed to be £1383.63. The property is a one bedroom flat on the third floor of Stour House. Stour House is one of seven blocks at Kidwells Close. The application was submitted to the Tribunal with regard to the 2017-2018 service charges where the actual service charges demanded for the property amounted in total to expenditure of £1695.13. This is the amount in dispute as well as how that amount is quantified as set out below. It was apparent from the contents of the trial bundle that the applicant wanted to raise issues arising from concerns he had about items in the accounts for subsequent service charge years. However, as the application to the Tribunal was limited to the one year detailed above the Tribunal took the decision to limit its consideration to that year in question.
3. The Disputed Charges are as follows:

- (i) For the year service charge year 1 April 2017 to 31 March 2018 being the total expenditure of which the applicant must pay a percentage:
- (a) CCTV maintenance £11,117.81
 - (b) Gardening maintenance £1200
 - (c) Water pump maintenance £1354.70
 - (d) Water safety assessment £6024
 - (e) Bulk rubbish removal £253.04
 - (f) Communal electrical tests £1019.87
 - (g) Door entry system/lift £5012.70 includes £950 and £658.99 lift maintenance
 - (h) Communal electricity £401.53
 - (i) External window cleaning £225
 - (j) Stour House Garden maintenance £719.67
 - (k) Internal cleaning £7966.32
 - (l) Lift maintenance £658.99
 - (m) Security gate maintenance £907.50
 - (n) Suspended access maintenance £428.34
 - (o) Medway Trent Stour electricity £1034.35
 - (p) Estate External repairs£4422.32
 - (q) Stour House internal repairs £1260.58
 - (r) Stour House M&E repairs £168.32
 - (s) Sinking fund contributions and deductions
 - (t) Management charges
 - (u) General issues including s.20

4. In addition to the specific service charges in dispute, the applicant had general issues regarding the service charges as well as specific concerns regarding section 20 notices and service charge invoices and hence the inclusion of these concerns within the list set out above.
5. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

6. The applicant was in person and the respondents were represented by Mr S Phillips of Counsel.
7. The tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.
8. This has been a remote telephone hearing which has been consented to by the parties. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and

because all issues could be determined in a remote telephone hearing. The documents that were referred to are in a bundle of many pages, the contents of which the Tribunal has recorded and which were accessible by all the parties.

The background and the issues

9. The property is a one bedroom flat in a purpose-built block of flats called Stour House and is one of 7 blocks of flats at a residential development known as Kidwells Close. It was built around 2014. The Estate, known as Kidwells Close and which was completed in 2015, and as defined in the applicant's lease comprises a total of 7 residential buildings. These are Stour House, Trent House, Medway House, Lea House, Arun House, Avon House and Eden House.
10. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite narrow issues in dispute.
11. The lessee of the flat at the property holds a long lease which requires the lessor, to provide services and the lessee to contribute towards their cost by way of a service charge. The lessee must pay a percentage described in his lease for the services provided. The liability for a share of the total service charge cost is expressed in the fourth and fifth schedules of the leases and may vary from flat to flat. Service charge costs for the property are categorised into schedules and the apportionment percentage is calculated using floorspace of individual flats within the estate so that larger flats pay a higher contribution of the cost of the services.
12. Accordingly, the issues arise for determination are with regard to the charges and issues listed above and will be considered item by item by the Tribunal following the same list. The Tribunal will consider whether the sums claimed for the service charge year are reasonable within section 19 of the Landlord and Tenant Act 1985, (were the services reasonably incurred and were they of a reasonable standard).

Decision

13. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal will consider each item in dispute, taking into account the written and oral representation made on behalf of the parties before and during the hearing.

CCTV Maintenance

14. Dealing first with the CCTV maintenance, the applicant makes the assertion that the service charge costs are not reasonable. He says that full details of the installation have not been provided, although it appears to be a basic system and he is advised there are 23 fixed direction cameras but that in 2017- 2018 when the installation was only a few years old the maintenance cost was £11,117.81, almost £500 per camera, which in the applicant's view would appear excessive. The applicant says he has not seen a contract regarding the CCTV system to enable him to evaluate it and to prepare an alternative quote on comparable terms. He also objects to the contract management fee charged by the respondent he says at 45%. The Tribunal will deal with this contract management fee in the context of management fees generally, later on in this determination.
15. The respondent says the provision of CCTV is an estate cost that covers a CCTV maintenance contract and anything else not covered by the contract such as other maintenance to keep the system in working order. Various CCTV cameras are located across the estate, and some of the cameras are attached to specific blocks but will be surveying areas beyond the block to ensure the estate is covered. The respondent also says that as a result of the contract over a number of properties belonging to the respondent including this estate the applicant has benefitted from the price being lower due to economies of scale. Some limited contract details were included in the trial bundle. The respondent says that clause 12.6 of the fourth schedule covers this service charge item. And the fifth schedule covers "such security and personnel and systems CCTV and concierge services as the landlord shall see fit from time to time".
16. The Tribunal noted the disagreement between the parties about the provision of the contract for the CCTV work. The Tribunal will consider this aspect of the dispute under the consideration of general issues later in this determination. The Tribunal was satisfied that the lease provision did cover the CCTV system and so was properly part of the service charge provision and was therefore payable subject to reasonableness. In that regard the Tribunal noted that the amount payable by the applicant was actually 0.3705% of the total amount of £11117.81 being just £41.19. The Tribunal was satisfied that this was a reasonable charge for this service as it did not appear to the Tribunal to be excessive given the nature of the service provided.

Gardening maintenance

17. The dispute in this regard relates to the maintenance of a "green roof". The applicant wanted to know the location of the green roof but says this was not provided by the respondent. The applicant says presumably the roof covers one of the residential blocks and the cost

should be apportioned between the flat owners of that block. In the same way if there are repairs to the Stour House roof, or any repairs to the fabric of the Stour House, flat owners from Stour House and not from other blocks would be expected to contribute.

18. The respondent says this expenditure was an estate cost as provided for in the lease. There are various blocks across the estate with green roofs and these were all checked by a contractor and works were carried out where work was required. The respondent says that this is a common part for which a service charge is allowed under the lease terms. With another invoice of £690 the total charge in the accounts was £1890 of which the applicant is responsible for approximately £7. The Tribunal was satisfied that this was payable under the lease terms and was a reasonable charge.

Water pump maintenance

19. At the hearing the applicant acknowledged that there was a water pump serving this block and as such the original objection fell away. Therefore, the Tribunal found that this service charge in this regard is payable and reasonable.

Water safety assessment

20. At the hearing the applicant accepted the reasonableness of this service charge. Therefore, the Tribunal finds it to be payable and reasonable.

Bulk rubbish removal

21. At the hearing the applicant accepted the reasonableness of this service charge. Therefore, the Tribunal finds it to be payable and reasonable.

Communal electrical tests

22. The applicant says that “the Electrical Test Inspection, at a cost of £1,019.87, was undertaken before Stour House was even 3 years old. There is no statutory requirement for such inspections but it is accepted that it is good practice to carry out these tests but once every 5 years is more than sufficient. The Respondent’s own Life Cycle Report, undertaken by Metcalf Briggs Surveyors identifies that testing is to be undertaken every 10 years.”
23. The respondent says it has a duty of care to carry out inspections as required. “Electrical inspections are a regular requirement and are service charge recoverable. There are a series of safety tests carried out on the communal electrical wiring and installations that ensure all systems work correctly and comply with safety standards. The tests are

as and when required.” It seems that the landlord intends to carry out annual checks of this nature.

24. The Tribunal noted that the total charge for this item was £1019.87 of which the applicant was responsible for 4.9173% being £50.15. In itself the amount is not excessive for an electrical safety check such as this. The concern is in relation to the frequency of the safety check. Counsel for the respondent explained that this safety check was what should be expected of a reasonable landlord and that given what had happened to blocks of flats elsewhere that it was appropriate to make these checks annually. The Tribunal determined that it was reasonable to effect annual checks where safety was concerned and that the cost of this annual check was not excessive and was consequently considered reasonable and payable under the lease terms.

Door entry system/lift, includes lift maintenance

25. The entry made by the respondent for lift maintenance in fact was mis-titled and was actually in relation to an agreement with BT to provide an external phone line to service the door entry system. So, this cost is actually for the BT line that serves the communal door entry system. The applicant wanted to inspect a contract for the door entry system service. The respondent stated that “the invoices disclosed are not for any specific works but are for the yearly maintenance contract for the door and entry system paid in two instalments. The maintenance contract covers, required maintenance work that included in scope of the maintenance contract.
26. However, any works not included in the maintenance contract will be charged as a repair. Door maintenance contract is provided to ensure the door is maintained and kept in working order. As the door gets older repairs to fix it can become more expensive, having a contract in place helps reduce the overall cost for residents because the required maintenance to help keep the door in working order and repairs would be covered with in the scope of contract. Additional costs are not recovered from residents.”
27. The respondent did confirm that one of the invoices in connection with the door entry system was incorrectly entered under lift maintenance. The respondent apologised for the error and for any confusion caused as there is no lift in this block. The applicant stated that “In 2017/18 the door entry installation was only a few years old. The maintenance costs being charged appear excessive for such a new and relatively simple installation. The excessive cost is in part explained by the 45% mark up being applied by the Respondent, these mark ups should be removed, such costs are clearly unreasonable.” This additional contract management charge will be considered later in this determination.

28. Otherwise the Tribunal did not have before it any persuasive evidence to show that this charge was unreasonable. The accounting entries may have been erroneous but the level of the actual charge payable by the applicant for the work done did not appear to the tribunal to be excessive. Therefore, the Tribunal finds the charge to be both payable and reasonable.

Communal electricity

29. The total charge in this regard in the accounts is £401.53. This a charge to the applicant of £19.74 at 4.9173%. The applicant is concerned that this figure come from estimated accounts. Additionally, as there are solar panels on the estate the applicant wanted to know the reduction in the charge brought about by the contribution made from the solar panels. The respondent says that the electricity supplier is only obliged to take actual readings every two years so this is likely the reason that the invoices are based on estimates. The solar panels that feed into the communal supply will provide some reduction to the communal electricity cost. Any surplus is fed back into the grid however there is no arrangement for the grid to sell any surplus back to the landlord. In view of the minor amount charged to the applicant the Tribunal considers this charge to be payable and reasonable.

30. External window cleaning

31. This charge in the accounts in total amounts to £225 of which the applicant pays 4.9173% being £11.06. The applicant says that no window cleaning was undertaken so this charge should be cancelled. The respondent says that the cleaning was carried out but only on request by the property manager and there was no regular window cleaning contract in place. The Tribunal was not persuaded by the evidence from the respondent and in this regard prefers the evidence from the applicant. Therefore, this service charge regarding external window cleaning is reduced to £nil.

Stour House Garden maintenance

32. The total charge in this regard is £719.67 and the applicant's contribution at the above percentage is £35.39. The applicant says that "It is disputed that regular maintenance was carried out; many complaints were raised about this. £1,000 pa is collected via the sinking fund for gutter clearance so we are being asked to pay towards this item twice. The amount the tenant is willing to pay - £142.32 based on 50% of the charges, nothing to be payable in respect of gutter clearance as this should be paid out of the sinking fund." The respondent said that Gutter Clearance is classed as day to day repair. Blocked gutters need to be attended to as and when required and therefore this cost is service charge recoverable. The guttering cost was recovered through resident's service charges and not the sinking fund. On careful consideration of

the evidence and the nature of these items the Tribunal was satisfied that this charge was reasonable and payable by the applicant. On the question of the sinking fund, this aspect of the dispute will be considered later in this decision.

Internal cleaning

33. The total charge in this regard is £7966.32 of which the applicant pays £391.73. The applicant asked for contract details regarding the cleaning but did not receive this. The applicant says that the respondent has provided some details of the scope of cleaning services in their witness statement and further details can be found in correspondence which also confirms weekly cleaning was 4 hours, but no contract details have been provided. The applicant asserted that “The invoices refer to caretaking which suggests more services, perhaps to the social housing, than just cleaning. Based on 4 hours cleaning a week the cost in the service charge of £7,966 equates to just under £40 per hour which is clearly not reasonable. An alternative quote for cleaning, based on the Respondent’s cleaning specification and where 4.25 hours per week has been allowed, has been obtained. The quote is £4,622 and this equates to £20.19 per hour.” The quote was shown to the Tribunal.
34. The applicant went on to say that “Actual cleaning costs for comparable properties also in Maidenhead (Shelley House, a 15-unit block in York Road and Cresset Court, a 17-unit block on the High Street) are £3,620 per annum and £4,357 per annum respectively.” These details were confirmed to the Tribunal Therefore the applicant says that cleaning costs for Stour House should not therefore exceed a maximum of £4,700 per annum. The applicant goes on to say that “Cleaning invoices refer to caretaker duties. I believe it is possible that the caretaker provides services other than weekly cleaning to the social housing block hence charges higher than one would expect for 4 hours cleaning a week. I believe therefore that Stour House flat owners are being charged for caretaking services they are not receiving.”
35. The respondent explained that this expenditure includes the provision of a full-time caretaker for the wider estate. A list of the matters covered was provided in the respondent’s evidence. The respondent believes that economies of scale will apply in this regard. The Tribunal preferred the evidence of the applicant in this regard. He provided alternative information that appeared to show that this charge was excessive. Therefore, the Tribunal determines that this charge in total should be reduced to £6000 which the Tribunal estimates takes into account both the caretaking and cleaning elements. The charge to the applicant is consequently reduced to £295.04.

Lift maintenance

36. This was a charge shown as £658.99. This is the charge that was in regard to the telephone line for the door entry system and had been considered previously.

Security gate maintenance

37. At paragraph 98 of the respondent's witness statement it states that the invoice in this regard relates to the car park barrier at the 'Block'. The applicant has assumed this means Stour House. There is no car park barrier at Stour House. The respondent then states that the invoice should in fact be applied to the whole estate. The respondent asserted that the barrier is in the car park at the Stour block entrance, although this is applicable to the Stour House block because the cost is for the car park area, the cost also benefits other blocks because it minimises the security risks for all blocks. The respondent says this cost will be corrected and moved to the estate schedule, thus reducing the cost for Stour block residents. On the assumption that the charge will in future be made correctly in the manner outlined by the respondent, for this year the Tribunal determines that the charge is unreasonable in that it has been incorrectly allocated and apportioned. Therefore, the Tribunal determines this charge to be reduced from £44.62 to £nil for the applicant for this one year in dispute.

Suspended access maintenance.

38. This relates to suspended access equipment that is required for any works or inspections to the external upper areas of the blocks. The landlord says that this equipment must be regularly maintained to ensure it is safe for future use. The total charge in this respect was £428.34 giving a charge to the applicant at 4.9173% of £21.06. The Tribunal was not able to find any convincing argument or evidence in the applicant's submissions about this minor service charge and therefore finds this charge to be payable and reasonable.

Medway Trent Stour electricity

39. The total charge here was £1034.35 giving a contribution by the applicant at 0.8859% of £9.16. The applicant said that "The invoices appear to relate to 3 separate supplies. Why have they been lumped together and why are Stour House flats contributing towards non-Stour House electricity charges (already paying towards communal electricity for Stour House)? Invoices appear to be estimates only, why no actuals?". The Respondent in its reply asserted that "The electricity supplier is only obliged to take actual readings every two years so this is likely the reason that the invoices are based on estimates. Stour House has a meter for the internal communal supply to the block - Meter number K14C08200. This cost is charge via Schedule 8. In addition to the internal communal supply, Medway, Trent and Stour benefit from external lighting on the estate. The external communal electricity

supply (car parks, bike stores etc.) for Medway, Trent & Stour is supplied via three meters - numbers S89c83789, K70Co4996 and S12R14692. As all three blocks benefit from these supplies the costs are held in a separate schedule - Schedule 14 and these costs are apportioned equally between all the properties in these three blocks. The Property Manager will be undertaking a meter reading of all these meters in the near future.” The respondent has said that in the event that the estimates are not accurate any credit passed on by the supplier will be apportioned and repaid to the tenant. In the light of this information the Tribunal was satisfied that this service charge was payable under the lease terms and was a reasonable charge.

Estate External repairs

40. The applicant says of these that “There are multiple issues with the invoices. Many cover multiple jobs with descriptions that are not clear and no details of apportionments and why Stour House flats have liability. Details of precise works and apportionments are required. Many invoices appear to relate to doors at Trent House and the private car park (neither of which are defined as a 'Common Parts') so why should Stour House flats be contributing towards these costs? My lease gives me no rights to access/use the car park or Trent House. My view is that none of the costs covered by these invoices are recoverable from Stour House flats.” In reply the respondent asserted that “The car park is an estate cost as it is underneath all the blocks and houses systems which benefit the whole estate such as the estate water pump system, bike stall etc. Although each block has their own entrance and invoices state the different areas or system where repairs occurred it still benefits all residents if all the car park is maintained. As a result, all resident should contribute to it, also leaseholders have agreed to contribute to estate communal areas in addition to their own block.” These service charges amount in total to £4422.32 of which the applicant pays 0.3705% being £16.38. The Tribunal is satisfied that these items are payable under Schedule 4 of the lease and as such the Tribunal also finds the limited service charge of £ 16.38 to be reasonable.

Stour House internal repairs

41. The applicant says of these repairs that “There are a number of invoices covering multiple jobs with no descriptions. How does OHG know what the actual jobs are and that they are related to Stour House? Amount tenant is willing to pay - Nil without details of what work was actually carried out.” The respondent in reply asserts that “The invoices are not for any specific works but are for the yearly maintenance contract for the door and entry system paid in two instalments. Door maintenance contract is provided to ensure the door is maintained and kept in working order. The maintenance contract covers, required maintenance work that included in scope of the maintenance contract. As the door

gets older repairs to fix it can become more expensive, having a contract in place helps reduce the overall cost for residents because the required maintenance to help keep the door in working order and repairs would be covered within the scope of contract. Additional cost is not recovered from residents. The reason why the door entry cost has been split between two schedules is because block schedule 8 covers maintenance and 308 block schedule cover repairs. This is done to ensure that tenants only contribute to maintenance and services provided within the estate and their block. The door entry cost charged in the 308 block repairs schedule are repairs that were not covered in the scope of the door entry contract.”

42. The internal repairs are covered by Schedule 4 of the lease. The 5th Schedule requires the provision of maintenance and repairs at clause 2 thereof. The amount in the Schedule prepared by the parties for the use of the Tribunal shows the costs at £1260.58 being the amount in this regard where the applicant pays 4.9173% being £61.99. The respondent’s explanation for these charges seems appropriate in the circumstances. Accordingly, the level of the actual charge payable by the applicant for the work done did not appear to the tribunal to be excessive. Therefore, the Tribunal finds the charge to be both payable and reasonable.

Stour House M&E repairs

43. This covers the cost of maintaining mechanical and electrical equipment and systems within the communal areas of the applicant’s block. The actual total charge in the accounts was £1684.32 and at 4.9173% the amount charged to the applicant was £82.82. The applicant felt he did not have sufficient details of these repairs to approve them. The respondent explained that “This is a part of the fire and electrical system in the block which helps ensure the safety of the block and residents. What items that need repair can vary yearly, we always try to maintain building systems and equipment’s to ensure repairs are not required. However regardless of the age of the systems, faults can arise, when this happens we have a duty to repair to keep the building, safe and in working order. Theses invoices were originally produced for internal purposes and OHG are working on improving invoices so they are cleared to residents if requested.” The applicant also objected to the management fee addition on top of the service charge, the mark up referred to previously and this will be considered under management fees later in this decision.
44. The Tribunal was satisfied with the evidence provided by the respondent and therefore considered that service charges payable and reasonable.

Sinking fund contributions and deductions

45. The applicant quoted the RICS's definition of a sinking fund as being "*A fund formed by periodically setting aside money for the replacement of a wasting asset (for example, major items of plant and equipment, such as heating and air-conditioning plant, lifts, etc.). It is usually intended that a sinking fund will be set up and collected over the whole life of the wasting asset.*" The applicant then goes on to observe that "Despite this annually occurring items have been included in the sinking funds which is wholly inappropriate. These same items have also been allowed for elsewhere in the annual service charges budgets which means double counting. A large number of relatively small items, as little as £500 per annum, are also covered by the sinking fund. I believe it is reasonable that only items with a value of £5,000 or more should be covered by the sinking fund. This would reflect both the RICS's and the Respondent's view of the objective of the sinking fund."
46. The respondent says that the lease of the property allows the landlord to use the sinking fund at its discretion. In the 4th schedule to the lease, at clause 1.8 it provides that "Such reasonable provision (if any) for anticipated expenditure in respect of any of the said covenants or any of the services as the landlord shall in its absolute discretion from time to time consider appropriate" The respondent confirmed that it collects sinking fund contributions through the service charge and hold the monies in trust for the tenants in an account that earns interest that accrues to the benefit of the tenants.
47. The amount collected for the sinking fund is determined by a life cycle report provided by a surveyor when the property was built This report considers the component parts of the building that may need replacing and what their life expectancy might be. So, this will cover items such as windows, water pump systems, fire safety systems and roof structures. This report informs the lessor on the amount to collect by way of the sinking fund contributions. In the accounts for the year in question there was an expenditure noted against the sinking fund of £471.90. The applicant challenged this deduction.
48. The applicant has questioned whether the sinking fund is reasonable. He has asserted that "Cyclical redecorations occur approximately every 5 years, depending on need. A sinking fund is not for minor repairs or maintenance and therefore these costs are recovered via your service charges'. OHG are completely ignoring this. The sinking fund accounted for 45% of the budget last year, this is excessive and disproportionately too high and the sinking fund needs to be significantly reduced and omit any items occurring more frequently than once in every 5 years."
49. In reply the respondent asserted that "The sinking fund is for the benefit of the property and remain a provision for major works, cyclical works and qualifying systems and equipment. If sinking fund payments were reduced, when major repairs are required there may not be

enough money to cover the cost of larger works. As a result, the residents may have to pay the full cost for major works if several major repairs occur or any additional costs not covered by the sinking fund. The sinking fund amount contributions have been calculated to help ensure should any of the major works, cyclical works or qualifying equipment needs repairing this can be covered by the sinking fund, thus lessening the financial burden for residents for these types of works. With the expectation of a one-off charge for emergency lighting fire system from 2016-17 years, which a qualifying item and was approved on requested from the property management team at the time, it's rare the sinking fund is used for smaller items. The sinking fund has not been used for any other expense in 2017-18 year and no costs has been collected twice. Any amount deducted from the sinking fund has always been clearly shown in resident's booklet along with the total amount of the fund each year and interest earned. Residents can request to see the invoice relating to any deductions. The invoice has been provided in the supporting documents”

50. The Tribunal firmly supports the provision of a sinking fund and believes its existence is beneficial to the tenants on this estate. The amount collected does not seem disproportionate and may seem large in comparison with the comparatively modest service charges. Accordingly, it seems very sensible for all the tenants that there be such a fund accruing interest for their sole benefit that is in existence to enable repair costs to be met in the future. As for the deduction of £471.90, made for the repair to emergency lighting, this seems allowable under the lease terms and the Tribunal finds the deduction reasonable.

Management charges

51. There are two aspects to this objection by the applicant. First the management charge in the annual accounts and secondly the applicant says that the respondent charges a contract management fee of 45% on all their invoices. He objects to both charges.
52. Dealing first with the annual management charge, the accounts for the year in dispute shows the management fee at £198.89. This sum is disputed by the applicant who says that “One Housing Group as managing agents have a duty to respond to reasonable requests for information and in a reasonable timeframe. Unfortunately, they make little or no attempt to respond to even the most simple enquiries and the vast majority of emails don't even get acknowledged. The main reason we are now at Tribunal is because questions have been raised about the service charge and very limited responses have been provided. Because of this I believe that One Housing Group have failed to provide even a basic level of management and so management fees should be excluded from the 2017/18 service charge.”

53. The respondent says that the management fee the tenants pay helps to cover the costs the respondent incurs in providing a general housing management service. The respondent apologised for any delays in responding to the applicant's enquiries but observed that the residents are obliged under the lease terms to contribute to the costs the respondent incurs in providing this service. The respondent says that the management fee is regularly benchmarked across the sector and it says that is in line with other housing providers.
54. The Tribunal, whilst observing that the respondent had been slow in dealing with the enquiries made by the applicant, was of the view that this charge was well within the range of management fees seen by it in cases of this kind and if anything was at the bottom end of such charges. Therefore, the Tribunal determines that these annual management charges are reasonable and payable.
55. The Tribunal then considered the mark up management charges added to invoices referred to previously in this decision. The respondent states that this add on management fee covers the cost of specialist contractors and maintenance staff and it covers head office and frontline staff such as income account advisors, call centre, property managers, service charge staff etc. One Direct adds a mark up to invoices to represent their management fee. This is because One Direct as a management entity is a separate entity from One Housing Group the lessor. These add on charges are made to cover "the attendance of One Direct operatives on call outs rather than incurring one off fees imposed by the contract provider thus resulting in a cheaper service for the residents". The respondent believes that by using this mark up it is in the end cheaper for the tenants.
56. The applicant considers this charge to be too high at what he says is 45% and may amount to a duplicate payment on top of the annual amount already charged.
57. The Tribunal considered the point carefully but, in the end, decided that this was a reasonable charge and that there was no convincing evidence of double charging. Therefore, the Tribunal was satisfied with the evidence provided by the respondent and consequently considered that element of the service charges reasonable and payable.

General issues including s.20

58. The applicant raised issues regarding notices under s.20 of the Landlord and Tenant Act 1985 which involves leasehold property and consultation with leaseholders on proposed major works. It is intended to protect leaseholders from paying unnecessarily large sums for work carried out to their building. In effect it says that a leaseholder's contribution to the cost of works will be capped if the landlord or their managing agent fails to follow a set consultation process.

59. Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) sets out a consultation process which must be followed when carrying out qualifying works to a building where the contribution from any one lessee exceeds £250, or a qualifying long-term agreement where the contribution from any one lessee exceeds £100 in one financial year. For qualifying works, under Section 20 managing agents / freeholders must serve a “Notice of Intention to Carry Out Works” on all lessees. This Notice must generally describe the proposed works, state the reasons for considering the proposed works, and invite leaseholders to make written observations within 30 days.
60. The applicant says he has asked for details of all relevant notices and contracts but has not received what he wanted. At the hearing the applicant produced late evidence in this regard namely a letter dated 24 January 2018 addressed to a Ms Foulds of Flat 3 Stour House from One Housing that purported to be a s.20 notice. Neither the respondent nor the Tribunal had seen this letter prior to the hearing and as such the Tribunal could only put such weight on this this evidence as the Tribunal thought appropriate given that nature of this late evidence. The letter appeared to be a statutory notice regarding a fire safety system maintenance contract, the statutory notice being dated 24 January 2018.
61. The respondent in their evidence before the Tribunal stated quite categorically that there were no section 20 consultations applicable to this estate in the 2017-2018 service charge year. The Tribunal is aware of s.20 issues raised by the applicant in relation to subsequent service charge years but as this application only relates to the one year in dispute there is little more that the Tribunal can do other than to find that there is nothing further to determine in this regard.
62. Otherwise the applicant also raised an issue regarding the format of the invoices sent out by the respondent. In that regard the respondent confirmed that Citystyle Living (Kidwells THA) Limited is the landlord but that One Housing Group is appointed to manage the Kidwells estate and therefore the invoices have been correctly issued on behalf of the landlord. If there was an error the Counsel for the respondent said they relied upon the decision in *Johnson V County Bideford* [2012] UKUT 457 (LC). In the light of this the Tribunal is satisfied that the invoices are not mistaken.
63. The Tribunal noted that one aspect of the hearing does not put the respondent in a particularly good light. At several points in the dispute it was clear that the respondent either failed completely or was slow to provide the contractual details that the applicant requested. Indeed at least three letters were written by the Tribunal regarding this failure. The Tribunal would urge the respondent to review its working practices

to ensure that it responds in a timelier fashion to reasonable requests such as this.

64. For all the reasons set out above the tribunal is of the view that the service charges for the various items listed above are reasonable and payable by the applicant.

Application for a S.20C order

65. The tribunal is able to consider and if appropriate make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. However, before doing so the tribunal did indicate at the end of the hearing that it would give **directions** regarding submissions. Accordingly, the respondent has 14 days from the date of the receipt of this decision to file and serve such submissions it wishes to make with regard to s. 20c. Thereafter the applicant has 14 days from the receipt of the respondent's submission to file and serve his own submissions regarding s.20c. After both parties have been given the opportunity to make submissions the tribunal will issue its decision with regard to the s.20c application.

Name: Judge Professor Robert
Abbey

Date: 2nd October 2020

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

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

ANNEX - RIGHTS OF APPEAL

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