



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

Case reference : **CAM/12UB/LSC/2019/0075**

**HMCTS code
(paper, video,
audio)** : **P:PAPERREMOTE**

Property : **Maddox House, Beech Drive,
Trumpington, Cambridge CB2 9PQ**

Applicants : **1. Mr Steven Hardingham and Miss
Hannah Barrow (Flat 13)
2. Mr Andrew and Mrs Lucy Hoch
(Flat 15)
3. Mr Paul Stanton (Flat 7)
4. Mrs Alison Whelan (Flat 9)**

Respondents : **1. E&J Ground Rents No5 LLP
2. RMB102 Limited**

Type of application : **Liability to pay service charges**

Tribunal members : **Judge David Wyatt
Judge Wayte**

Date of decision : **19 June 2020**

DECISION

Covid-19 pandemic: description of hearing

- A. This has been a determination on the papers which the parties have consented to. The form of determination was P:PAPERREMOTE. A hearing was not held because, on review of the documents produced by the parties for the determination, the tribunal was satisfied that a hearing was not necessary and all issues could be determined on paper.
- B. The documents that we were referred to are in an electronic bundle of 197 pages and four accompanying Scott Schedules completed by the parties for each of the service charge years in dispute, the contents of which we have noted. The decision made is described below.

Decisions of the tribunal

- (1) The tribunal determines that the following adjustments are to be made. References to numbered cost “items” are to those, with the corresponding numbers, examined in the tables set out later in this decision.
- (2) The tribunal does not have the information needed to determine the precise service charges payable by each of the Applicants after these adjustments are made, and so the credits to be applied to their service charge accounts, because this will depend on how some of the relevant costs were apportioned between internal and external expenses.
- (3) We hope that the parties can agree the apportionment of the relevant sums following this decision. If they are unable to do so, any party may apply within 28 days of this decision for the tribunal to determine the service charges payable by the Applicants. Any such application must provide full details of the apportionments of each relevant charge, their calculations and copies of their correspondence seeking to agree the same.
- (4) The service charge account for the 2016/17 service charge year is to be adjusted as follows:
 - a. £90 is to be deducted from the clearance and fire exit signage charge of £342 (item 3);
 - b. £45 is to be deducted to remove the additional accounting charge (item 7);
 - c. £180 is to be deducted to remove the additional fire and risk assessment arrangement charge (item 9);
 - d. £576 is to be deducted to remove the long-term plan charge (item 11);
 - e. £357 is to be deducted from the fall protection equipment testing charge of £714 (item 12); and
 - f. £338.34 is to be deducted from the electricity charges of £676.68 (item 13).
- (5) The service charge account for the 2017/18 service charge year is to be adjusted as follows:
 - a. £69 is to be deducted from the grounds maintenance charges of £419 (item 16);
 - b. £45.12 is to be deducted to remove the charge for the managing agent’s sign (item 18);
 - c. £405 is to be deducted from the fall protection equipment charge of £810 (item 19);

- d. £130 is to be deducted from the accountancy and related management charges of £782 (item 20);
 - e. £192 is to be deducted from the risk assessment charge of £756 (item 22); and
 - f. £140 is to be deducted to remove the professional fees/management set-up charges (item 23).
- (6) The service charge account for the 2018/19 service charge year is to be adjusted as follows:
- a. £147 is to be deducted from the grounds maintenance charges of £547 (item 26);
 - b. £255 is to be deducted from the fall protection equipment charge of £510 (item 30);
 - c. £189 is to be deducted from the insurance charges of £1,439 (item 31);
 - d. £31 is to be deducted from the accountancy fees entry of £798 (item 32); and
 - e. £200 is to be deducted to remove the professional fees/management charges (item 33).
- (7) The estimated service charges for the 2019/20 service charge year are to be adjusted as follows:
- a. £100 is to be deducted from the electricity estimate of £500 (item 35);
 - b. £234 is to be deducted to remove the solar panel maintenance estimate (item 39);
 - c. £195 is to be deducted from the insurance estimate of £1,495 (item 40);
 - d. £756 is to be deducted to remove the risk assessment estimate of £756 (item 42); and
 - e. £242 is to be deducted - either from the management fee estimate of £1,635 (item 43) or to remove the £242 management charges relating to the accounts (item 41).
- (8) The tribunal orders, under section 20C of the Landlord and Tenant Act 1985 (the “**1985 Act**”), that 50% of any costs incurred by the Respondents in connection with these proceedings in this tribunal, up to the date of this decision, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by:
- a. the Applicants; or
 - b. subject to any application made by the leaseholder of flat 11 at the Property for a different order, by that leaseholder.

- (9) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”).
- (10) The tribunal makes no order for reimbursement of the application fee.
- (11) The reasons for these decisions are explained in detail below. The relevant legal provisions are set out in the Appendix to this decision.

The application

- 1. The Applicants sought determinations pursuant to section 27A of the 1985 Act of service charges payable by them in the four service charge years from 2016/17 to 2019/20.
- 2. The case management directions given by the tribunal on 16 December 2019 directed that this application would be determined without an inspection unless any party requested one. No party did so.
- 3. The Applicants made a general allegation that the level of service charges is unreasonably high for a building of this type and have challenged individual items of expenditure in each relevant service charge year. The Applicants also sought:
 - (i) an order for limitation of the Respondents’ costs in these proceedings, under section 20C of the 1985 Act;
 - (ii) an order to reduce or extinguish liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act; and
 - (iii) reimbursement of the application fee paid.
- 4. Having considered all the documents provided, the tribunal has made determinations of the relevant issues, explained below after summaries of the details and the relevant provisions of the Lease.

The Property and the parties

- 5. Based on the details provided by the parties in the bundle:
 - (i) the Property (Maddox House) is a four-storey residential block of five flats, with a bin and bike store, an internal hallway and staircases to the upper floors, modest grounds and one parking space per flat but no lift or communal gardens;
 - (ii) Flats 7, 9 and 11 are one-bedroom single-storey flats on the ground/first floors with areas of about 538 sq. ft. each;

- (iii) Flats 13 and 15 are three-bedroom duplex flats on the second and third floors with areas of about 1184 sq. ft. each; and
 - (iv) the Property was built, or completed, in 2013.
- 6. The leaseholder of flat 11 is not a party to these proceedings. The Applicants hold leases of flats 7, 9, 13 and 15.
- 7. We proceed on the basis that each Applicant holds a long Lease of their flat at the Property in substantially the same terms as the specimen Lease provided. This requires the relevant Respondent to provide services as landlord and the Applicant leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the specimen Lease are summarised below.
- 8. As to the Respondents and managing agents, it appears that:
 - (i) the first respondent, E&J Ground Rents No5 LLP, was the landlord for the initial service charge years in dispute, until July 2019;
 - (ii) the second respondent, RMB102 Limited, is the landlord from then onwards; and
 - (iii) SDL Estate Management acted as managing agents until Encore Estate Management Limited took over from June 2018.

The Lease

- 9. The bundle includes a specimen lease of one of the duplex flats, dated 19 December 2013. It has a remaining unexpired term of over 200 years.
- 10. Under the terms of this Lease, for the purposes of this application:
 - (i) the “*Block*” includes the building, the land, the parking accommodation and the communal areas, footpaths, accessway, cycle store and bin store;
 - (ii) the “*Estate*” includes the land in the Land Registry titles specified in the Lease;
 - (iii) the “*Service Charge*” is the total cost of providing the “*Services*”, which are set out in the Fifth Schedule to the Lease; and
 - (iv) the service charge year is the period from 1 September to 31 August.

Covenants to provide Services and pay Service Charges

11. In clause 5 of the Lease, the landlord covenants to carry out the Services appropriate for the relevant flat and parking accommodation.
12. In clause 4 of the Lease, the leaseholder covenants with the landlord to pay the “*Proportion*” of:
 - (i) the Service Charge by two equal instalments in advance on 1 September and 1 March for each Service Charge Year;
 - (ii) the appropriate “*Service Charge Adjustment*” pursuant to the Fourth Schedule; and
 - (iii) any “*Additional Contribution*” (meaning any amount the landlord reasonably considers necessary for any of the purposes set out in the Fifth Schedule for which no provision has been made in the Service Charge and for which no reserve provision has been made under paragraph 2.2 of the Fourth Schedule) levied by the landlord.
13. The “*Proportion*” is generally to be based on the proportion the aggregate square footage of the relevant flat bears to the aggregate square footage of each unit of accommodation within the Estate capable of enjoying the benefit of the relevant Service. The Applicants state that the following proportions have been applied:

Flat	Internal costs	External costs
7	NA (ground floor flat with external access)	15.67%
9	17.075%	14.399%
11	17.075%	14.399%
13	32.925%	27.766%
15	32.925%	27.766%
Totals	100%	100%

14. These show that the apportionments are in practice for the Block, not any other part of the Estate. The same proportions are confirmed in the service charge accounts prepared for the Respondents, which describe the external costs as “*Schedule 1*” expenditure and the internal costs as “*Schedule 2*” expenditure.

15. These proportions are not challenged by the Applicants and they appear to be appropriate. The tribunal takes it that they are correct.

The estimated Service Charge and Service Charge Adjustment

16. By paragraph 2 of the Fourth Schedule, the Service Charge will include:
 - (i) expenditure estimated as likely to be incurred for the Services in the Service Charge Year (paragraph 2.1);
 - (ii) an appropriate amount as a reserve towards Services likely to arise at intervals of more than a year, including decorating the exterior of the Building, the repair of the structure and the repair of the Conduits (paragraph 2.2); and
 - (iii) a reasonable sum to remunerate the landlord for its administrative and management expenses in respect of the Estate, including a profit element, such sum to be determined, if challenged, by an independent accountant acting as expert (paragraph 2.3).
17. Applying section 27A(6) of the 1985 Act to these provisions, the appropriate amount as a reserve, and the appropriate amount for management, are to be determined by the tribunal if they are not agreed by the parties.
18. By paragraph 3 of the Fourth Schedule, after each Service Charge Year the landlord shall determine the “*Service Charge Adjustment*” (the amount by which the estimates under paragraph 2 have exceeded or fallen short of the actual expenditure in the Service Charge Year), and the leaseholder shall be credited with, or on demand pay, the Proportion of the Service Charge Adjustment appropriate to the Property.

The Services

19. The Fifth Schedule sets out the relevant Services, including:
 - (i) repair and decoration of the Block, keeping the accessway, footpaths and other communal areas properly maintained and surfaced and repairing and decorating common parts;
 - (ii) keeping communal areas suitably furnished, lit and cleaned and cleaning windows;
 - (iii) employing staff and paying management costs;

- (iv) keeping the Block insured for its full replacement value against specified risks and such other risks as the landlord thinks fit, and maintaining third party liability insurance;
- (v) paying expenses relating to an annual check of the photovoltaic panels on the roof of the Block, including any necessary hire of access equipment and any costs incurred in maintaining and repairing such panels; and
- (vi) carrying out such other repairs and defraying such other costs as the landlord shall consider necessary to maintain the Block as a good class development, or otherwise desirable in the general interest of the leaseholders in the Block.

Assessment of the Applicants’ challenges to certain relevant costs

- 20. The following assessments are made taking into consideration the Scott Schedules completed by the parties for the relevant service charge years and the contents of the electronic bundle.
- 21. The tribunal is glad to see from the Scott Schedules that the parties were able to use these to agree some of the relevant items. The tables below examine those items which the parties have not agreed or which the Respondents have agreed to change.

Service charges for 2016/17

No.	Disputed items (£)	Tribunal	Amount (£)
1.	524.42 Cleaning	Considering the points made by the parties, fortnightly cleaning would probably have been sufficient, but during this period the leaseholders did not request less frequent cleaning to save costs. In any event, even looking at the alternative hourly rate obtained by the leaseholders, the cost for each weekly visit was relatively low. The total cost was reasonably incurred.	No change
2.	252 Works/ removals	The invoice dated June 2017 is for two visits, to replace a faulty vapour fitting in the bin shed and to remove a dumped double mattress and other items.	No change

		<p>The leaseholders point to a failure to replace a bin store lock leading to “fly tipping” by others, but do not appear to have raised the issue themselves until October 2018, when the lock was replaced.</p> <p>The volume of rubbish referred to here and under items 3 and 4 below was not so great that the first Respondent should necessarily have realised that it might be left by others rather than the leaseholders themselves. This cost was reasonably incurred.</p>	
3.	342 Works/ removals	<p>This invoice is for three visits in August 2017, the first to remove rubbish, the second to inspect fire exit signage and the third to fit the fire exit signs.</p> <p>This work does not seem to have been carried out as efficiently as it should have been and the leaseholders have illustrated the modest cost of the type of adhesive fire exit signs used. £252 of this cost was reasonably incurred.</p>	Deduct 90
4.	584.40 Works/ removals	<p>This sum is comprised of the following three charges:</p> <p>(1) The leaseholders accept the £14.40 charge for bulb replacement.</p> <p>(2) The partial charge for the electrical supply and installation work to add RCD protection for the electrical sockets (£426) was reasonably incurred.</p> <p>(3) The remaining cost (£144) for removing sofas, a baby seat and cardboard from the bin store, invoiced in August 2016, was reasonably incurred.</p>	No change
5.	419.40 Entrance fobs	<p>This charge is for replacement of entrance fobs. It may be that the original entrance fobs from 2013 should have lasted longer, but they were several years old at this point.</p>	No change

		There is no evidence to suggest that a guarantee claim would have been worthwhile/justified. On this occasion, this cost was reasonably incurred for supply, attendance and programming of replacement entrance fobs.	
6.	308.09 Gardening	<p>This invoice is for gardening. Even considering the modest nature of the ~30 square metres of hedges/shrubs, the gardening visits of once per month in winter and twice per month in summer were reasonable, given the level of cost per visit.</p> <p>The leaseholders observe that the invoices do not add up to this figure, but that is not an issue because the sum charged is less than the total sum invoiced.</p>	No change
7.	523.50 Accountancy fees	<p>The leaseholders initially challenged this accounting charge but now accept it is reasonable.</p> <p>Their related challenge was to the linked additional accounting charge of £45 which was said to relate to incomplete records. The Respondents confirm that this cost was caused by an error on the part of the former managing agents.</p>	No change to 523.50 fee, but deduct 45 from additional accounting fee
8.	144 Bank admin fee	<p>This is a bank administration fee, paid to SDL, the former managing agents.</p> <p>Together with the management fees of £1,278 mentioned separately and the insurance administration fee of £48 at item 10 below, this gives a total management cost of £1,470 (excluding the separate fire and general risk assessment arrangement charge at item 9 below).</p> <p>The leaseholders provide a competing quotation from other managing agents. This quotation indicates that the total level of management fees is reasonable,</p>	No change

		because it is for £1,500 (£1,250 plus VAT).	
9.	180 Risk assessment arrangement fee	This was a charge paid to the managing agent for assisting its own department/group company to prepare the fire and general risk assessment for a separate fee. In view of the fire and risk assessment charges allowed at item 22 below for 2017/18, this additional charge was not reasonably incurred; nothing appears to have changed between these years to justify both sets of charges.	Deduct 180
10.	48 Insurance admin fee	This is an SDL insurance administration fee; please see item 8 above.	No change
11.	576 Long term plan fee	This charge from SDL for a “long term plan” is said by the Respondents to have been “refunded” on 29 October 2019. The Applicants query whether it has been credited to the service charge account.	Deduct 576
12.	714 Fall protection equipment testing	It appears that the main current reason for this charge - for testing fall protection equipment on the roof - is to enable maintenance of the solar panels. It appears that the Respondents have (or at this time had) not connected these solar panels for the benefit of the leaseholders. However, such safety equipment cannot necessarily be neglected. It may be required for other purposes for the Block in future and the lack of internal access inevitably means that the cost of safe external access to the roof is relatively high. In the circumstances, 50% of this cost was reasonably incurred.	Deduct 357
13.	676.68 Electricity	This electricity charge is mainly for continually lighting the common parts and may also include, for example, use of electricity by	Deduct 338.34

		<p>cleaners. It would generally have been reasonable for the Respondents to allow the systems installed by the developers to continue to operate, at least until the leaseholders requested the change to install timers/sensors and agreed the costs of that work in late 2018.</p> <p>However, in view of the level of cost and the apparent failure to register/connect the solar panels, only 50% (£338.34) of this claimed cost was reasonably incurred.</p>	
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22. The relevant adjustments to be made for the 2016/17 service charge year, as shown in bold in the last column of the above table, are summarised at the beginning of this decision.

Service charges for 2017/18

No.	Disputed items (£)	Tribunal	Amount (£)
14.	575 Cleaning	For the same reasons as item 1 above and allowing for inflation, this cleaning cost was reasonably incurred.	No change
15.	366 Window cleaning	<p>Based on the documents produced, this sum appears to be comprised of charges for cleaning external windows twice a year at up to £96 for each visit and interim window cleaning every other month at £30 per visit.</p> <p>This cost is reasonable and, it appears, comparable to the alternative quotation referred to by the leaseholders (£295.20) if VAT is added to that quotation.</p>	No change
16.	419 Gardening	In the bundle, the leaseholders have produced a photograph said to be from August 2018 showing that, at that time, shrubs and hedges had not recently been trimmed. However, there was no suggestion in the challenge in the Scott Schedule that	Deduct 69

		<p>these services had not been provided, only that visits by the gardeners were too frequent.</p> <p>Based on the information provided by the parties, for the reasons given for item 6 above and allowing for inflation, a cost of up to £350 would be reasonably incurred.</p>	
17.	108 Cigarette bin and key safe	The leaseholders challenge the need for the cigarette bin because they do not smoke. This cost, to replace the existing cigarette bin and to supply and fit a key safe, was reasonably incurred.	No change
18.	45.12 Encore signage	The tribunal notes that this sign included contact details for the managing agent, but it appears this was predominantly a marketing sign for the new managing agents.	Deduct 45.12
19.	810 Fall equipment testing	For the reasons given in relation to item 12 above, 50% of this claimed fall protection equipment testing cost was reasonably incurred.	Deduct 405
20.	782 Accountancy fees	<p>This fee is for accountancy and related services. In their reply, the leaseholders accept that a fee of £500 plus VAT (£600) would be reasonable, alleging that extra work was needed because accounting records from the previous managing agents were poor. The Respondents do not appear to dispute this, but they explain that this sum comprises:</p> <p>a) a fee from the accountants of £540; and</p> <p>b) a fee of £242 from Encore to carry out “accountancy” work on budget analysis and other services which include some accountancy support but appear largely to be of the type which would otherwise be included in a general management fee.</p> <p>The alternative quotations obtained by the leaseholders indicate that total</p>	Deduct 130

		<p>costs of £2,100 would be appropriate for general management (£1,500) and accounting (£600). We agree.</p> <p>The basic management fees (identified at items 21 and 24 below) total £1,448. Comparing these with the total alternative quotations of £2,100 leaves £652 as a reasonably incurred cost for other management services and accountancy. The balance of £130 is to be deducted.</p> <p>The other point raised by the leaseholders in respect of this item is addressed below this table.</p>	
21.	144 Bank admin fee	For the same reasons as item 8 above, this management cost was reasonably incurred.	No change
22.	756 Risk assessment	This cost is high for a health and safety and fire risk assessment. Based on the alternative quotations the leaseholders have obtained, they propose a fee of £564. Since we have disallowed the additional cost at item 9 above for arranging a risk assessment in 2016/17, we agree with the fee proposed by the leaseholders; £564 of this cost was reasonably incurred and the balance was not.	Deduct 192
23.	140 Professional fees	The leaseholders challenged this item, since no information had been provided. The Respondents say that this was a one-off charge for “setup” and sorting out historical problems, outside the normal management fee, but no information has been provided. For the same reasons as item 33 below, this appears to be a cost for the Respondents or the relevant agents, not the service charge.	Deduct 140
24.	1,304 Management fees	This charge was for basic management fees. The points made about these fees and the reasons for this determination are described below.	No change

Accountancy fees (item 20 above)

23. In addition to the points addressed at item 20 in the table above about these accountancy fees, the leaseholders also suggest, for the first time in their reply, that use of the accountants is a qualifying long-term agreement about which they were not consulted and that the costs recoverable from them are limited accordingly.
24. First, that seems unlikely. This type of work would normally be done under a periodic or ad hoc arrangement, not a contract with a long minimum term of the type explained below.
25. Second, no evidence of the terms of the arrangement with the accountants have been provided, because that is not the case the Respondents were asked to answer:
 - (i) the application by the leaseholders challenged costs because they said the costs were unreasonable given the size/nature of the block, not that this was a qualifying long-term agreement or there had been any failure to consult;
 - (ii) the leaseholders then made no reference to any such challenge in their Scott Schedule setting out their challenges in respect of each item of cost. They referred only to the level of cost, saying that they had obtained lower alternative quotations and suggesting that the extra cost was caused by a poor handover between managing agents, before then accepting that they had received a quotation from accountants for comparable costs of £500 plus VAT;
 - (iii) the leaseholders raised this potential issue only by way of reply when submitting the Scott Schedule, after the Respondents had answered their challenges in respect of the amounts of these accountancy and related fees. That was too late for the leaseholders to make this allegation.

Management fees (item 24 above)

26. Similarly, in respect of the basic management fees identified at item 24 in the table above, the application by the leaseholders challenged only reasonableness, not any failure to consult.
27. Further, the leaseholders then accepted in their Scott Schedule that the relevant cost of £1,304 was a reasonable management fee, noting that based on their alternative quotation a higher total management fee of £1,500 would have been acceptable. Naturally, the Respondents made no comment on this.

28. The leaseholders then added, only by way of reply when submitting the Scott Schedule, that the managing agents had changed from SDL to Encore, that leaseholders had not been consulted about this and that accordingly only up to £100 could be recovered from each leaseholder.
29. The leaseholders appear already to have agreed the actual cost. Even if they have not done so, this was too late to make this allegation. Further, the fact that Encore have been managing for more than 12 months does not mean that the agreement with them was necessarily a qualifying long-term agreement (i.e. for a contractual term which, absent termination for breach or the like, would exceed 12 months). No evidence of the term of the contract with Encore have been provided because that is not the case the Respondents were asked to answer.
30. The relevant adjustments to be made for the 2017/18 service charge year, as shown in bold in the last column of the above table, are summarised at the beginning of this decision.

Service charges for 2018/19

No.	Disputed items (£)	Tribunal	Amount (£)
25.	625 Cleaning	The 2018/19 accounts confirm that the actual cleaning cost was £625. The Respondents state and the leaseholders do not dispute that it was not until 2019 that it was requested/agreed that the frequency of cleaning be reduced. For the reasons given for item 1 above and allowing for inflation, this cleaning cost was reasonably incurred.	No change
26.	547 Gardening	The Respondents state that during 2019 the contract changed to a price of £500 for four visits per year and that weed spraying of the paved area is charged separately. For the same relevant reasons as item 6 above and allowing for inflation, a cost of up to £400 would be reasonable.	Deduct 147
27.	70 Removals	For the same relevant reasons as item 2 above, this removal cost was reasonably incurred.	No change

28.	138 Bin store lock	This was a reasonable cost for a contractor to supply, attend and install the replacement bin store lock.	No change
29.	348 Fire equipment	<p>The leaseholders agreed the budget figure of £240 for “other” fire equipment (separate to the specific fire safety works costing a further £240). The actual costs in the accounts, produced in February 2020, are £108 higher.</p> <p>The leaseholders do not challenge that additional cost as unreasonable, but have asked to see the invoice(s).</p> <p>Accordingly, we expect that the parties will be able to agree this figure, but if they cannot they may apply to the tribunal within 28 days of this decision with copies of the relevant invoice(s) and any representations.</p>	No change
30.	510 Fall equipment testing	For the same reasons as item 12 above, 50% of this claimed fall protection equipment testing cost was reasonably incurred.	Deduct 255
31.	1,439 Insurance	These are the relevant proportions of the insurance premia. For the reasons given below this table, £1,250 of this sum was reasonably incurred.	Deduct 189
32.	798 Accountancy fees	<p>The Respondents explain that this sum for accountancy costs comprises:</p> <p>a) an actual fee from the accountants of £525 (having expected a higher fee of £556); and</p> <p>b) a fee of £242 from Encore.</p> <p>For the same reasons as item 20 above, it is appropriate to assess these accountancy costs with the basic management fees, where total costs of £2,100 would be appropriate.</p> <p>The agreed items in the Scott Schedule confirm that the basic management fees paid to Encore</p>	Deduct 31

		<p>were £1,349. Comparison with the total alternative quotations of £2,100 leaves a reference figure of £751 for other management services and accountancy.</p> <p>This is so close to the fee charged that no adjustment is appropriate - the actual costs were reasonably incurred - but the Respondents will need to credit the service charge account with the £31 balance between the incorrect figure of £798 in the accounts and the actual costs of £525 and £242. They have already confirmed, in the relevant entry in the Scott Schedule, that they will do so.</p>	
33.	200 Professional costs	<p>The budget figure was £440 for professional costs. The leaseholders say that £200 has been invoiced per quarter, but the service charge accounts confirm the account has only been charged £200 for the service charge year.</p> <p>The Respondents say the £200 was a one-off fee from Encore from the handover which led to SDL agreeing to refund £1,014. The Respondents say that no funds have been paid over from SDL, at least so far. This £200 may have been a reasonable fee for Encore to charge to resolve problems and seek to recover funds if historical issues were caused by the Respondents' former agents, but if so it appears this is a cost for the Respondents or their agents, not the leaseholders.</p>	Deduct 200
34.	1,350 Reserve fund	<p>It appears this is a significant increase from previous reserve fund contributions and substantial works may not be needed for some time. The leaseholders propose £570, in line with reserve contributions in recent years.</p> <p>However, the Block is seven years old and it is said that the reserve fund held only £2,240 at the end of</p>	No change

		2017/18. In the circumstances, this is a reasonable reserve fund contribution.	
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Insurance cost (item 31 above)

31. The leaseholders challenged the estimates and then the actual cost of £1,439. They agree to pay £884, based on an alternative quotation they have obtained from Aviva. The Respondents explain the increase from previous years by reference to a higher valuation of the Block, including correction of the floor area. The leaseholders say that, even with those greater figures, their alternative quotation from Aviva only increases to £965.27.
32. The Respondents rightly point out that this alternative quotation is not on an entirely like-for-like basis, particularly because it assumes flats will not be sub-let. The Respondents suggest that several flats at the Block are sublet. We bear in mind that the “like-for-like” comparison is to be made with the relevant terms of the Lease, which (at clause 10.2) automatically permits subletting on assured shorthold tenancies for up to one year, or longer if the landlord consents.
33. The tribunal notes the points made by the Respondents about their market testing arrangements and the relevant principles, but the Respondents have not disputed the points made by the leaseholders that this is a relatively simple block where no claims have been made.
34. Based on the information provided by the parties, a cost of £1,250 would have been at the upper end, but reasonably incurred.
35. The leaseholders also suggested, for the first time in their reply, that the arrangement with the insurers is a qualifying long-term agreement. This seems unlikely; the Respondents do say that they go out to the market for tenders at three year or similar intervals, but it appears that normal annual policies are then taken out each year, with no indication of a long minimum contractual term (of the type described above when considering the similar points raised by the leaseholders about the accountancy and management fees).
36. In any event, it is too late to make this allegation; no case or evidence has been produced by the Respondents because this is not the case the Respondents were asked to meet.
37. The relevant adjustments to be made for the 2018/19 service charge year, as shown in bold in the last column of the above table, are summarised at the beginning of this decision.

Service charges for 2019/20

38. These are of course budget figures rather than actual costs. Our assessments are made on that basis, to determine what amounts are reasonable to collect as estimated service charges.

No.	Disputed items (£)	Tribunal	Amount (£)
35.	500 Electricity	Based on the reduction in electricity costs in the previous service charge year following installation of timers/sensors, the reasons noted for item 13 above, and the calculations from the leaseholders, £400 would be reasonable as an estimated service charge.	Deduct 100
36.	500 Gardening	For the same reasons as item 6 above, with an allowance for inflation, this amount would be reasonable as an estimated service charge.	No change
37.	570 Fire safety	This is a reasonable estimate for the costs of a specialist contractor to inspect and maintain the fire safety systems for the Block, including automatic opening vents and emergency lighting.	No change
38.	180 Fall equipment testing	The leaseholders agreed this figure in the Scott Schedule and then sought in their reply to change their position; even if this is not too late, for the same reasons as item 12 above, this estimate is reasonable.	No change
39.	234 Solar panel maintenance	This would in isolation be a reasonable estimate for the cost of maintaining the solar panel installations. The Respondents assert that the solar panels result in energy being passed into the communal system, but they do not explain the earlier correspondence with the leaseholders admitting that the solar panels have not been registered and the lack of any evidence in the electricity bills	Deduct 234

		<p>produced for previous years of the power said to be generated.</p> <p>If the Respondents can produce such evidence to the leaseholders that the panels have now been connected and are generating electricity for the Block, it may be possible for whatever costs are reasonably incurred to be agreed or, if necessary, determined on a future application to the tribunal, but on the information provided this estimated cost is not reasonable.</p>	
40.	1,495 Insurance	For the same reasons as those for item 31 above, with an allowance for inflation, a reasonable estimate would be up to £1,300.	Deduct 195
41.	794 Accountancy fees	For the same reasons as item 32 above, this is a reasonable estimate for accountancy/related management fees.	No change
42.	756 Risk assessment	This would be a high charge for a health and safety risk assessment and there is no indication that such an assessment is necessary, since nothing appears to have changed since the last risk and health and safety assessment in 2017/18 (item 22 above)	Deduct 756
43.	1,635 Management fee	<p>Based on the information provided, this would be a reasonable estimate for a total management fee.</p> <p>However, the tribunal has already allowed about £242 for management/accountancy support under the related charges in item 41, as for previous years when the management fees were less.</p> <p>Accordingly, the sum of £242 should be deducted, either from this estimate or from item 41.</p>	Deduct 242
44.	1,400 Reserve fund	For the same reasons as item 34 above, this is a reasonable reserve fund contribution.	No change

39. The relevant adjustments to be made to the estimated charges for the 2019/20 service charge year, as shown in bold in the last column of the above table, are summarised at the beginning of this decision.

General observations

40. In their general statement of case, the Applicants point to other properties in the area which they say pay much lower service charges. On the face of it, the estimated service charges for the larger three-bedroom flats for 2019/20, of £2,883.31, do seem high.
41. With the adjustments required by this decision, these will be reduced to less than £2,500 (depending on the precise apportionments involved).
42. The estimated service charges for the other flats (which, based on the costs and proportions provided, would have ranged between about £920 for the ground floor flat and about £1,500 for the intermediate flats) will reduce by a similar proportion.
43. These charges are at the upper end, but they do appear to be reasonable, given what appears to be a generally good standard of management and the need to work towards building up a sensible reserve fund for the future.

Applications under s.20C and para.5A

44. The Applicants applied for an order under section 20C of the 1985 Act for themselves and for the leaseholder of flat 11. It is not clear whether the Respondents intend to seek to recover any costs to date incurred in connection with these proceedings through the service charge. If they do, and if any of those costs are not payable under the Lease and/or are unreasonable, a new application can of course be made to the tribunal for a determination of the relevant service charges under section 27A of the 1985 Act.
45. The tribunal considers it just and equitable to make an order under section 20C of the 1985 Act in respect of 50% of any such costs, because:
- (i) the Applicants took a rather difficult approach in respect of some items, but have been co-operative about others;
 - (ii) similarly, the Respondents have been helpful in explaining some items and unclear or too ambitious about others;

- (iii) the Applicants have succeeded in reducing about half of those items still in dispute following compliance with the case management directions; and
 - (iv) the Applicants prepared the bundles and other documents efficiently; the points they attempted to raise late did not give the Respondent an opportunity to respond and so incur costs, and have not been successful.
46. The Applicants specified the leaseholder of flat 11, and themselves, in their application for an order under section 20C. That was no doubt intended to seek protection for all of the leaseholders at the Property from any costs incurred by the Respondents in these proceedings, but this decision does not bind the leaseholder of flat 11 because they are not a party to these proceedings. Accordingly, the leaseholder of flat 11 may apply to the tribunal for variation of the section 20C order insofar as it relates to them.
47. The Applicants also applied for an order under paragraph 5A of Schedule 11 to the 2002 Act. We do not make an order on this application, because we have not been informed of any particular administration charge in respect of costs incurred by the Respondents in these proceedings before this tribunal. If the Respondents do make any such administration charge, a new application can be made to the tribunal under paragraph 5/5A of the 2002 Act.
48. For the same reasons that we have made the 50% order under section 20C of the 1985 Act, we do not order the Respondents to reimburse the application fee paid by the Applicants.

Name: Judge David Wyatt Date: 19 June 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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

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

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

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

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.