



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

**IN THE COUNTY COURT at
BOURNEMOUTH AND POOLE**

Tribunal reference : **CHI/00HN/LIS/2021/0038**

Court claim number : **201MC778**

Property : **Flat 2 Charlton House, 14 Bradburne
Road, Bournemouth, Dorset, BH2 5ST**

Applicant/Claimant : **Charlton House (Bournemouth) Limited**

Representative : **House and Son**

Respondent/Defendant : **Mr Derrick Robert Symes**

Representative : **Mrs P Symes**

Tribunal members : **Judge J Dobson
Mr M JF Donaldson FRICS**

In the county court : **Judge J Dobson**

Place/ date of hearing : **18th November 2021
Poole Magistrates Court
(In person)**

Date of decision : **26th November 2021**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decision made by the Tribunal

1. The Applicant has failed to demonstrate that any service charges are recoverable by the Applicant lessor from the Respondent lessee.
2. If such service charges were recoverable and to the extent that the Respondent challenges the amounts of individual items of them, the Applicant has failed to demonstrate that the amounts charged for the items challenged are reasonable.
3. The Respondent's specific challenges to his obligation to pay other individual items at all, specifically the building insurance, fire protection and electricity charges, fail. The Respondent is liable for such charges, provided service charges are payable more generally and the particular charges for those items year to year are reasonable.
4. No costs of the proceedings may be recovered by the Applicant as service charges or administration charges.

Summary of the decision made by the Court

5. The Applicant's claim for ground rent is allowed in the sum of £200. The Respondent must pay that sum by 24th December 2021.
6. The remainder of the Applicant's claims, including for interest and costs, are dismissed.

Procedural background

7. It merits setting out the something of the history of this claim. That was less smooth than ideal.
8. On 19th March 2021, the Applicant lessor issued a money claim in the County Court under Claim No. 201MC778. The substantive claim was for the sum of £3939.66, comprising service charges totaling £4139.58 and ground rent of £200.00, in relation to Flat 2 Charlton House, 14 Bradburne Road, Poole, Dorset, BH15 2NS ("the Property"), together with interest of £192.00 and court fees of £185.00.
9. The Respondent filed a Defence by completing the form "Respond to a money claim" and submitting a handwritten statement with certain enclosures, including a letter from his GP dated 23rd November 2020. Amongst other matters, the Respondent asserted effects on his property and himself of water leaking and the effects of other suggested breaches by the Applicant which should be offset, such that he denied any money to be owed.

10. On 19th April 2021 the whole claim was transferred to the Tribunal by Order of District Judge Powell. As a result of amendments to the County Courts Act 1984, the issues falling outside of the Tribunal's jurisdiction can be determined by a Tribunal Judge sitting as a Judge of the County Court and such issues were allocated to a Tribunal Judge accordingly.
11. The Tribunal gave Directions dated 13th August 2021 that required each side to serve witness statements and documents relied on and permitted the Applicant to serve a Reply. The Directions did not provide for a bundle to be prepared, requiring copies of the statements and documents to be sent to the Tribunal in addition to being served on the other party. The Directions further provided for a Scott Schedule to be prepared by the Applicant, for which a precedent blank example was provided, which was directed to detail each charge which is the subject of the claim. The Directions additionally stated that the claim would be determined on paper if the parties both consented to that.
12. The Applicant did serve two short- a side each- witness statements, one dated 26th August 2021 from Peter Martyn Sheffield and the other dated 27th August 2021 from Peter Coleby. The Applicant completed the Scott Schedule only with a single entry for the entirety of the "service charges" claimed and in the sum overall claimed and with the other sums claimed set out below- ground rent, interest and costs, thereby failing to provide the detail of each charge for which a claim was made as directed.
13. In response, the Respondent filed a handwritten statement, together with short statement from his mother, a further letter from his GP dated 20th October 2016 and eight colour photographs, with comments on the rear of those as to the contents. He added various comments to the Scott Schedule document identifying 8 specific elements of the service charges and figures disputed by him further to his position more generally.
14. The Applicant provided a reply, consisting of a list of further documents relied on and copies of those documents, including providing the lease of the Property. The Scott Schedule as completed by the Respondent was added to with handwritten comments on behalf of the Applicant in response to the items identified by the Respondent. No further witness statement was provided.
15. Further Directions were then given, dated 18th October 2021. In the absence of both parties having consented to paper determination (necessary in relation to the County Court part of the case before such a paper determination could proceed), the Directions listed a hearing. The Applicant was directed to pay a hearing fee and to take certain other steps, including the provision of a letter authorising the representative to represent the Applicant and the provision of the service charge statement for each year in dispute. There was a further direction for a Scott Schedule, which was specifically required to identify each item of expenditure for the given year in question by 26th October 2021. Provision was made for further steps to follow that. Another example blank Scott Schedule was supplied.
16. The second attempt by the Applicant to complete the Schedule added no more than a list of the demands made in each year, giving the amount of each demand. The Applicant effectively ignored both sets of Directions from the Tribunal in relation to the completion of the Scott Schedule. Therefore, in terms of a Scott

Schedule, the Tribunal only had the assistance of the comments made by the Respondents and the replies to those.

The factual background to the dispute

17. The Applicant made demands for payment of service charges on 1st January 2019, 1st July 2019, 1st January 2020, 1st July 2020 and 1st January 2021. Accompanying at least the last two demands were apparently the Summary of Rights and Obligations required by section 21B of the Act. All of those demands were apparently interim ones ahead of final calculation of the actual service charges payable in the given year. The Applicant also made demands for ground rent on 1st July 2019 and 1st July 2020. Those were accompanied by a notice pursuant to section 166 of the Commonhold and Leasehold Reform Act 2002.
18. Thus, the remit of the Tribunal was to determine whether the service charges for the years 2019, 2020 and 2021 (in part) were payable and reasonable.
19. The Tribunal Judge would then decide, sitting as a Judge of the County Court, whether any service charge monies were owing to the Applicant, and decide issues about ground rent, interest and costs.

The Property and the Inspection

20. The Directions dated 18th October 2021 provided that the Tribunal would undertake an inspection of the exterior of the Property on the final hearing date. The Tribunal did so at 10am, in advance of the commencement of the hearing at 11.30am and as notified in advance to the parties.
21. The parties did not attend the inspection. The Tribunal noted the situation of the Respondent's flat and the entrance to it, the external areas to the side of Charlton House ("the Building") and the adjoining flat 14A. The Tribunal went to the rear of the Building by use of the path and steps by 14A, although that did not assist in relation to the Respondent's Property because of the fence running from the side wall of 14A, which prevented sight of the rear of the Building. The Tribunal also went into the car park of the property adjoining the Building, from which the rear of the Property was visible.
22. The Tribunal notes that the Property is on the lower ground floor of the main part of Charlton House, although extends beyond that as a single story with a flat roof. The Property has a separate entrance to that for the main part of the Building, although there are also separate entrances to another lower floor flat, via stairs, and to 14A, which is situated at the other side of the Property to the main part of the Building and roofed by a continuation of the flat roof. 14A is accessed via a small conservatory. That conservatory appeared to be the construction to which the Respondent has expressed concern in his case. The Respondent's Property also has a conservatory area to the front and a door from the external area to the side of the Building into that and another door from that into the remainder of the Property.
23. The Tribunal noted there to be apparent rot to the rear door of the Respondent's flat, although any more detailed consideration of that was not possible from the car park to the adjoining property, which was separated from the rear of the Property and the outside area behind it by another fence.

24. To the front of the Building onto Bradburne Road was hard-standing for car parking. To the side was a further area, principally of hard-standing, with a very small area of grass and some storage. There were bushes to either side. There was evidence of where a tree may have been removed, which accords with the Respondent's case that one has been. It was unclear whether the area to the rear of 14A and accessible by the steps was part of the property leased to 14A or to the Building generally. Nothing appeared to turn on that.

The Hearing

25. At the hearing the Applicant was represented by Mr Peter Coleby, who also gave evidence in his role as employed by the managing agent of the Applicant, House and Son. Mr Peter Sheffield, another lessee and a Director of the Applicant, also attended for the Applicant, giving evidence. He additionally made some submissions. In the circumstances, a relatively informal approach was taken whereby Mr Coleby and/ or Mr Sheffield provided the advocacy on behalf of the Applicant on any given point.

26. The Respondent was not in attendance. He wrote to the Tribunal by letter of 3rd November 2021, received 8th November 2021, requesting that his evidence be considered in writing due to his ill health and stated inability to attend the hearing. He did not ask for any other adjustments to be made or make any other requests.

27. The Court and the Tribunal were made aware of that request prior to the hearing and were content to accede to the request. The Applicant did not object.

28. The Respondent also provided a number of other paragraphs to his letter, which were not considered in advance of the hearing. They were very late as compared to the date by which the Respondent was directed to provide his case and were only then received by the Tribunal and not by the Applicant. The letter had been provided by the Tribunal administration to the Applicant in advance of the hearing. The Applicant did not object to the Tribunal considering the letter, Mr Coleby stating that most of the issues had been raised before, although in the event there was no need to do so.

29. The Respondent additionally provided a number of further photographs with writing to the rear of them, accompanying that letter. The Tribunal did not consider those in advance of the hearing either, providing them to the Applicant at the hearing and giving the Applicant time to consider them. The Applicant did not object to the Tribunal considering the photographs, although in the event there was no need to consider those either.

30. As there was no complete paginated bundle before the Tribunal, the Tribunal does not when referring to documents refer to page numbers.

The Lease

31. The Tribunal was provided with a copy of the lease for Flat 2 ("the Lease"). The Lease, dated 9th April 1996, is for a term of ninety- nine years. The Lease defines the Property and the Building as defined above.

32. The Lease is tri-partite. The “Landlords” and “the Managers” are separate entities. The responsibility for the management of the Building largely falls on the Managers as defined. However, it is common ground that there are no separate Managers any longer and that the management came to be dealt with by the Applicant, which purchased the freehold, and that the Landlords and the Managers as first defined became one and the same entity, namely the Applicant lessor. Obligations within the Lease quoted below as falling on the Managers therefore fall on the Applicant in practice just as much as any obligations said to fall on the Landlords. The lessee Respondent is referred to as “the Tenant”.

33. The relevant parts of the Lease for these purposes are as follows (retaining the original spelling and other clerical errors):

- 1.6
“THE COMMON PARTS” are the parts of the building intended for use by some or all of the tenants or other occupants of the building.
- 1.7 NO obligation to repairs extends to rectifying any damage caused by any insured risk (defined below), unless or to the extent that, because of anything done or not done by the person obliged to repair, the insurers do not pay under the policy
.....

3. THE Tenant agrees with the Landlords:

- 3.1 TO pay the basic rent by yearly instalments in advance on 1st day of July in each year (the first and last payments being proportionate sums if appropriate), the last payment being made in advance on the rent day preceding the end of the lease period
- 3.2 NOT to reduce any payments of rent by making any deductions from it or by setting any sum off against it
- 3.3 TO pay interest on any rent paid more than seven days after it falls due
.....
- 3.5 TO keep in good repair all parts of the property which this lease does not make the Manager’s responsibility
.....
- 3.10 NOT to insure any part of the property including any addition to it or fixture
.....
- 3.28 TO pay all expenses (including solicitor’s and surveyors’ fees) which the landlords incur in preparing and serving:
 - (i) a notice under either section 146 or Section 147 of the Law of Property Act 1925, or any other notice pursuant to the terms of this lease, even if forfeiture is avoided without a court order
.....

4. THE Tenant agrees with the Managers:

- 4.2
TO pay the service charge calculated in accordance with the fifth schedule on the dates stated there
- 4.3 TO pay any interest on any payment of service charge paid more than seven days after it falls due
.....

5. THE Managers agree with the Tenant:

- 5.1 (a) TO insure the building, and all additions to it, under a policy which satisfies the conditions set out below
(b) The conditions with which an insurance policy must comply are:
(i) cover is provided against the following risks (“insured risks”), so far as that cover is generally available for the type of building on the property:
Fire, lightning, explosion. Landslip,
Subsidence, heave, riot, civil commotion, aircraft, aerial devices, storm, flood, impact by vehicles and damage by malicious persons and vandal and other risks which the Landlords from time to time reasonably consider should be covered
(ii) the sum insured is at least the full rebuilding cost of the entire building and any additions to it which should be insured, plus an appropriate percentage for professional fees and three years’ loss of rent
(iii) the policy is issued by a reputable insurance office or at Lloyds
.....
- 5.2 TO provide the services listed in the Sixth Schedule for all the occupiers of the building, and in doing so
(a) the Managers may engage the services of whatever employees, agents, contractors, consultants and advisers the Managers consider necessary
(b) the Managers shall not be liable for any failure or delay caused by industrial disputes, shortage of supplies, inclement weather, and other causes beyond their control
- 5.3 TO maintain a reserve fund in accordance with the Seventh Schedule
- 5.4 AT the Tenant’s request, and on the following terms, to enforce the obligations undertaken in their respective leases by tenant or other parts of the building. The Tenant must:
(a) meet all expenses
(b) comply in advance with the Landlord’s reasonable requirements as to payments on account and/or giving security for payment

.....

THE FIRST SCHEDULE

Basic Rent

During the lease period the basic rent is as follows:

For the first 33 years of the term £100 per year

.....

THE SECOND SCHEDULE

Rights granted with the property

- 1 The right to the support shelter and protection which the flat now enjoys from

other parts of the building

.....

- 3 (a) For access to the property, the right to use at any time and for reasonable purposes but on foot only the pathways and access areas leading to the building
(b) The right to use the common parts to gain access to the flat

.....

- 5 The right to go into other flats in the building to inspect the state or report of the flat and any sewer, drain, pipe, wire or cable serving it, and to do any repairs.....

THE FIFTH SCHEDULE

Service Charge

- 1 “Service costs” means the amount the Landlords spend in carrying out all the obligations imposed by this lease (other than the covenant for quiet enjoyment) including the cost of borrowing money for that purpose

.....

“interim service charge instalment” means a half yearly payment on account of the final service charge..... is a half of the final service charge on the latest service statement

- 2 The Landlords must
- (a) keep a detailed account of service costs
 - (b) have a service charge statement prepared for each period ending on the 1st day of July during the lease period, which
 - (i) states the amount spend on each major category of expenditure
 - (ii) states the amount of the final service charge
 - (iii) states the total of the interim service charge instalments paid by the Tenant
 - (iv) states the amount by which the final services charge exceeds the total of the interim service charge instalments (“negative balance”) or vice versa (“positive balance”)
 - (v) is certified by a member of the Institute of Chartered Accountants in England and Wales that it is a fair summary of the service costs, set out so that it shows how they are or will be reflected in the final service charge, and is sufficiently supported by accounts, receipt and other documents which have produced to him
- 3 On each day on which rent is due under this lease the Tenant is to pay the Landlords an interim service charge instalment
- 4 (a) If a service charge statement shows a positive balance, the Landlords must pay that sum to the Tenant when giving the Statement
(c) If a service statement shows a negative balance, the Tenant must pay that sum to the Landlords within fourteen days after being given the statement

THE SIXTH SCHEDULE

Services to be provided

- 1 Repairing the roof, outside, main structure and foundations of the building

.....

- 4 Repairing and maintaining those services in the building and its grounds which s serve both the property and other parts of the building

- 5 Heating lighting and cleaning the common parts
- 6 Repairing and maintaining those services in the building and its ground which serve both the property and other parts of the building.....
- 7 Maintaining the grounds of the building, including:
 - (a)
 - (b) Planting and tending the gardens
.....
- 14 Keeping accounts of service costs, preparing and rendering service charge statements and retaining accountants to certify those statements.

The Case before the Tribunal

The Tribunal’s jurisdiction

- 34. The Tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor’s costs of management, under the terms of the Lease and which vary according to such costs- section 18 of the Act.
- 35. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. Where service charges are payable in advance, no greater amount than is reasonable is payable (section 19(2)).
- 36. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
- 37. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.
- 38. It is well established that a lessee’s challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable. The burden is on the landlord to prove reasonableness, but the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EWLands LRX 26 2005).

Payability of the Service charge

39. The Tribunal was mindful that the Respondent had not specifically raised an issue as to the Applicant's compliance with the Lease in relation to the service charges demanded. However, it is fundamental that service charges are actually payable and that the provisions of the Lease in relation to the charges becoming payable have been complied with. The Tribunal must consider the question of whether service charges are contractually due and to what extent before addressing questions as to reasonableness of the charges.
40. The Tribunal considered it to be quite proper to therefore determine whether service charges were payable and indeed that it would not be appropriate to ignore that fundamental question. The Tribunal is an expert one and must apply its expertise to relevant questions in the case. The Tribunal determined it to be inappropriate to ignore the question of the requirements of the Lease.
41. The Lease is quite specific as to the requirements in respect of service charges. As set out above, paragraph 2 of the Fifth Schedule, requires a service charge statement to be produced each year containing various pieces of information and certified as provided for. The service charge for the following given period is premised on that and the amount of the charge as bearing the required relationship to that.
42. Mr Coleby and Mr Sheffield did not have a copy of the Lease with them. The case officer printed one and handed it to them. Judge Dobson also read out to them the provisions on which the Tribunal wished to be addressed on behalf of the Applicant.
43. Mr Sheffield described the Lease essentially as old-fashioned and stated that the more recent leases of nine hundred and ninety-nine years had been granted to those lessees who are members of the Applicant in replacement of their original leases are in more modern terms. Nevertheless, it is the provisions of the Respondent's Lease which apply as against the Respondent.
44. There was no evidence that the service charges demanded in 2019 and onwards had been calculated according to the service charges due for the year prior to the given service charge year.
45. Whilst there was a document for 2020 to 2021- and indeed a corresponding document for 2021 to 2022, described as a Service Charge Budget Calculation, that reads as a budget for the coming year and not as a statement of the charges that were in fact incurred for that year, although even if it had been such a statement, that would only have assisted the Applicant in respect of the following service charge year 2021 to 2022, which falls outside of this claim. The figures are mainly round ones. The document being a budget is entirely consistent with its title. It is not described as a service charge statement for a year which has ended, and the figures included do not suggest it to be one. The Respondent's Lease makes no reference to a budget.
46. There is also no certification of that Budget Calculation document or of any other document produced to the Tribunal. Mr Coleby stated that at the end of the year the accounts are sent to an accountant. Mr Coleby was specifically asked by Mr

Donaldson FRICS whether the accountants instructed provided the certificate required by the Lease. Mr Coleby was candid in replying that he could not say that they did- he did not know.

47. Consequently, the Tribunal found there to be no evidence before it that the requirements of the Lease had been complied with and so the demands were valid demands.
48. There was also consequently no evidence provided as to any calculation of the balance of service charges due from the Respondent over the level of the interim payments in any given earlier year or of any reduction in the charges demanded by the Respondent to reflect actual expenditure in any given year. Whilst the demands for service charges on which the claim is based were interim ones and so must ordinarily be reasonable as such (*Knapper v Francis* [2017] UKUT 3 (LC) at the time of issue, that does not disapply the provisions of the Lease.
49. That did not assist the Tribunal with finding it more likely that the service charge amounts demanded were correct and so potentially drawing any inference from that of compliance with the Lease in documents unseen by the Tribunal, even if that were not something of a leap and so could be a proper inference to draw. Indeed, the general presentation of the Applicant's case suggested it more likely than not that there had not been compliance.
50. It was also relevant in that regard whether the Applicant was able to demand service charges on 1st January of a year. Whilst the Lease refers in the Fifth Schedule to a "half- yearly payment", the only date on which the lessee is specifically stated to have to pay- paragraph 3 of that Schedule- is the date on which the rent is payable. Clause 3 of the Lease says that rent is payable on 1st July of the given year.
51. The Tribunal found there to be an apparent contradiction between the term "half- yearly payment" and a payment only due once per year on the rent payment date. At first blush, it would appear that there had been a failure in the drafting of the Lease back in 1996.
52. One possible interpretation is that only half of the anticipated yearly service charge was payable in advance, with the remainder payable later. Provisions broadly of that nature are encountered from time to time in older leases, although would be very unusual in a more recent lease. Whilst it is not immediately easy to read the Lease to interpret the phrase as intending that result, paragraph 3 of the Fifth Schedule is explicit in its wording that interim service charges are payable on the date for rent payment and would have to be read in such a manner as to remove certain of the particular words used and also to read in several other words in order to produce the result that half of the service charges were payable on the rent payment day and the other half on another day. That would be quite a step. The possible interpretation suggested above would at least be consistent with paragraph 3 of the Fifth Schedule and clause 3 of the Lease and would produce a result which, whilst relatively unusual, was not beyond the realms of plausibility.
53. In the particular circumstances of the wider finding made by the Tribunal, it was not necessary to reach a definite conclusion as to the correct interpretation of the Lease. That is not the point of significance in relation to this Decision.

54. The significant point is that in any event, the Applicant made two demands for service charges in any given service charge year, making a demand on 1st January. Whilst there are demands for service charges for the period 1st July onward- for six months- in 2020 and 2021, those post-date 1st July by nearly three months and then by one month. The Tribunal finds that the Applicant demands for two interim payments were at least not easily consistent with the payment date provided for in the Lease.
55. Mr Coleby and Mr Sheffield appeared taken by surprise by that issue as to the provisions of the Lease. That served to indicate that the provisions had not been carefully scrutinized and understood. That in turn increase the likelihood that there had been a failure to sufficiently consider the other provisions of the Lease in respect of demands for service charges and to comply with those. The impression created overall was that the approach taken to service charges may reflect the more recent leases held by the five lessees who participated in the Applicant company, rather than complying with the older leases. If that impression is incorrect, it had been in the power of the Applicant to produce an accurate one.
56. Mr Sheffield additionally stated, more than once, that the service charges payable by the Respondent were considerably less than those paid by the lessees with the flats in the remainder of the main part of the Building. He later accepted that the service charge demands issued apparently showed the Respondent as paying one- seventh of all costs incurred and lent no support for him paying less than other lessees. If further emphasis were needed, that only served to emphasise that the Applicant appeared unaware of the relevant provisions and how service charges demands ought to be and were dealt with. It reinforced the overall evidence of a failure to comply with the Lease and for demands to be valid in light of the Lease requirements.
57. The Tribunal accordingly found on the case presented and on the balance of probabilities that there had not been compliance with the requirements of the Lease and that there were no valid demands for service charges for the period in question.

Set- off

58. The argument by the Respondent in respect of asserted breaches of covenant by the Applicant would have been relevant in relation to service charges being payable in the event that the Applicant had been able to demonstrate that any were payable.
59. The Respondent raised the matters in his Defence in the County Court. He did not file a Counterclaim, which would then have been a matter for the Judge sitting as a County Court Judge. The Tribunal is able to consider such breaches and the value of any money claim arising from them in the course of considering the amount of service charges payable, including reducing the amount of such service charge payable by the value of breaches of covenant found.
60. However, as no service charges were demonstrated to be payable, there is no sum against which to set- off. Consequently, the Tribunal did not consider the Respondent's assertions of breaches of covenant, those having no impact on the

level of service charges (none) found payable. Therefore, no findings have been made.

The Respondent's individual challenges to service charge items

61. Given that the Tribunal could clearly identify the individual challenges to items raised by the Respondent, the Tribunal considered that, in case it is found to be wrong as to payability and in any event in the hope that it is of assistance for the future, it ought to make findings in relation to those challenges if and insofar as possible. The Tribunal's determinations have no impact on the wider findings as to payability in these proceedings.

62. For the avoidance of doubt, whilst the question of service charges being payable was so fundamental that the Tribunal addressed that notwithstanding that the Respondent had not specifically raised the point, the Tribunal considered that when it came to payability and/ or reasonableness of specific given charges, the Tribunal ought only to consider such charges to the extent that the Respondent had disputed them.

63. Accordingly, the Tribunal considers the eight entries made by the Respondent in the Scott Schedule and sets out such findings as it can make. The Tribunal does so for each of the service charge years or part years involved in this case, therefore 2018- 2019, 2019- 2020 and 2020-2021. The Respondents specific challenges do not identify any given year.

64. The eight items are taken in the order listed in the Scott Schedule:

i) Gardening

65. The Respondent asserted that the gardener only worked for one hour per month, an assertion of unreasonableness of the charges: the Applicant responded that the gardener attends fortnightly for one and a half to two hours. The parties' positions were not confirmed and expanded on in witness evidence. Mr Coleby said that he thought that the cost was reasonable for the work done. A quote was provided by the Applicant from the gardener in 2018 for the work he proposed to undertake. There were no invoices provided which demonstrated that the cost had been incurred or stated the work actually undertaken.

66. The Applicant has failed to demonstrate the service charges to be reasonable. Whilst the Tribunal accepts a charge is reasonable for gardening work undertaken, the Tribunal has insufficient evidence of the level of work and quality of work to make any proper assessment of the level of any service charges reasonable, being unable to prefer one case or other as set out in a handful of words and lacking any adequate information to consider.

ii) Garden sundries

67. The Respondent stated "half black used per visit no planting etc": the Applicant responded that garden sundries are for new hedges to be planted. It is not easy to understand the first part of the Respondent's comment. Mr Coleby explained in the hearing that the sundries are the costs of new plants purchased by the gardener, which are quoted for and such quotes are approved in advance of the items being purchased. There were no quotes produced, nor invoices provided as

rendered following approval and purchase of plants and similarly, there was no other evidence of the plants in question.

68. The Applicant has failed to demonstrate the service charges to be reasonable. Whilst the Tribunal accepts the oral evidence that plants, in general, have been purchased, the Tribunal has insufficient evidence of those or their cost to make any proper assessment of the level of service charges reasonable- in the same manner as above.

iii) Cleaning

69. The Respondent asserted that the cleaner attended for twenty minutes each month, whereas the Applicant asserted that the cleaner attends fortnightly. No more information was provided by either party. It was in relation to this item that Mr Sheffield stated the second time, albeit incorrectly, that the Respondent did not contribute to a number of service charge items and where he subsequently accepted that there were no service charge costs beyond those listed on the Budget Calculations sent to the Respondent.

70. The Tribunal had two short statements as to the parties asserted position with nothing indicating which may be more likely correct. The Respondent may not be particularly aware about a communal area he does not need to enter in order to access his flat- although it is still a communal area as defined in the Lease and the Respondent is obliged to contribute to those whether he actually uses them or not. Equally, there was no suggestion that the Applicant monitored carefully.

71. Save the quote produced by the Applicant is from back in 2014, exactly the same comments apply in relation to this item as did to gardening- see i) above.

iv) Insurance

72. This item is different to the above, the Respondent expressing his challenge in terms of liability for charges in themselves. The Respondent said that he had his own building insurance and had done so for many years. The Applicant referred to clause 5.1 of the Lease.

73. The Tribunal determines that clause 5.1 of the Lease is clear that the Applicant is responsible for insuring the Building and is entitled to charge the cost of that through the service charges. The Tribunal observes that the Respondent may in fact have contents insurance as opposed to building insurance and that there may be confusion. It would be unusual for there to be building insurance for a flat in premises such as the Building and the Respondent has provided no evidence of such. However, that would in any event have no bearing on the Applicant's entitlement to charge as service charges the cost the building insurance taken out by it.

74. The Respondent did not challenge the cost of the insurance taken out by the Applicant or the extent of the cover. Therefore, the Tribunal determined that no case had been advanced requiring the Applicant to prove the reasonableness of those. The service charge would have been recoverable as claimed if service charges had been found to be payable more generally.

v) Management

75. The position is essentially the same as i) above.
76. The Respondent asserts that the managing agents have failed to manage the site: the Applicant replied that House and Son work closely with the directors of the Applicant and on their instruction. The Respondent did not explain in any more detail, whereas it is apparent in contrast that at least some management tasks have been undertaken.
77. On the other hand, there were significant deficiencies in the presentation of this application and confusion as to the provisions of the Lease, whereas ensuring compliance with the requirements of the Lease is a basic feature of management. That inevitably causes concern at the potential for other failings with aspects of management for which the fees were charged. Mr Coleby and Mr Sheffield did not better explain the management tasks, the time involved or anything which demonstrated the reasonableness of the cost. Neither was there any invoice describing the work undertaken, the rate charged or similar, or any evidence of the nature of the agreement entered into.
78. The apparent cost for management fees on the basis of the £200 figure stated by the Respondent was £1400, apparently £200 charged to each of seven lessees. However, the Service Charge Budget Calculation for 02/02/2020 to 01/07/2021 referred to two sums of £1400- suggesting overall fees of £2800, not an insignificant sum. The reasonableness of that figure is very much dependent on the agreed work and the standard of that, which the Tribunal cannot assess. The Tribunal has concluded that it cannot indicate the reasonable figure for management costs for work performed to a reasonable standard on the very limited information available. Nevertheless, whatever that figure may be, it is very likely that the figure would have been reduced by the Tribunal to reflect work not of sufficient standard.

vi) Window cleaning

79. The Respondent asserts that the window cleaner is unable to clean the windows as “he not suitable of pressure wash method”; the Applicant responded stating that the window cleaner visits every three months. It is not easy to understand the second, quoted, part of the Respondent’s comments. Mr Coleby stated that he did not know what method the window cleaner used to access the clean the windows.
80. Save that there is not even a quote for window cleaning produced by the Applicant, the essential problem identified in i) above applies in relation to this item. The Applicant has failed to demonstrate the service charges to be reasonable. Whilst the Tribunal accepts some charge is reasonable for window cleaning work in principle, the Tribunal has insufficient evidence of the level of any work undertaken and quality of work to make any proper assessment of the level of any service charges reasonable

vii) Fire Protection

81. The Respondent states that he does not have an alarm and that he is still waiting: the Applicant responds that a “sounder” has not been fitted as access was denied. The parties have both made other comments about a fire alarm to

the Property at some length in their statements of case and evidence. The Applicant produced several letters in which access was requested. There was some confusion between Mr Coleby and Mr Sheffield as to whether the fire alarms were in communal areas or in lessee's flats, although Mr Sheffield was clear that there had been a fire risk report prepared at the time of the Applicant's purchase of the Building and his evidence as to fire alarms in individual flats was preferred.

82. The Tribunal finds that the weight of the evidence is very much in favour of the Applicant having made efforts and the Respondent not co-operating, such that whilst the Respondent is correct that he does not have an alarm, that is his own fault.

83. The Respondent makes no other challenge to the service charge for fire protection, in particular not challenging the amount of the service charge. The Tribunal finds that the Applicant has not been faced with any case to answer as to the amount. The Tribunal finds the fire protection element of the service charges reasonable, albeit that it has not been demonstrated that they are payable.

viii) Electricity

84. The Respondent states "all my electric is charged through my mains including my outside light": the Applicant refers to paragraph of the Sixth Schedule to the Lease. Mr Coleby explained that the charge relates to electricity for the communal parts only and so entirely separate to the cost payable by the Respondent for his own use. The Tribunal determines that the Sixth Schedule of the Lease is clear that the Applicant is responsible for the electricity use for the communal parts of the Building and entitled to charge the cost of that through the service charges. The Applicant is therefore entitled to charge that cost.

85. The Tribunal understands the Respondent to contend that he should not have to pay the charge for electric at all- there is no reference to the actual cost of it. As the Respondent has not challenged the cost for electricity, the Tribunal finds that reasonable as claimed, subject to wider payability.

Summary

86. It will be seen that the net effect is that the Tribunal has been able to address the principle of whether service charges for individual items are payable where the Respondent has disputed liability for them at all- assuming the charges to be payable more generally- but has not been able to assess the reasonable level of the service charge items which are queried as to the amounts.

The Tribunal's concluding remarks

87. The evidence presented by the Applicant was unsatisfactory at best. There was simply no evidence that the requirements of the Lease had been complied with, where the various failings served to cast considerable doubt as to compliance and where even the additional oral information could not assist.

88. The Tribunal considered whether it ought to adjourn the final hearing in order that the Applicant could provide the evidence lacking. However, the case was

listed for final hearing in the Tribunal, for trial in respect of the County Court elements and had been issued eight months earlier. The Tribunal further considered that it was a matter for the parties to decide what evidence they wished to rely on and not for the Tribunal to step into the arena, not least on the final hearing date, and take a step plainly beneficial to one party and equally potentially detrimental to the other, particularly where such had not been requested in advance by the Applicant and notified to the Respondent so that the Respondent could comment. The delay, the additional cost and the need to arrange a further hearing date where a venue had been booked for the final hearing date and the panel had attended all weighed heavily against an adjournment. The Tribunal was mindful of the over-riding objective and the factors set out. The Tribunal concluded that it ought not itself to invite the Applicant to apply for an adjournment and so did not do so.

89. In those circumstances, any question of whether the demands in January 2019, July 2019 and January 2020 were accompanied by the required Summary of Tenant's Rights and Obligations did not need to be determined in order to determine whether or not the charges were payable. However, the Tribunal observes that the demands for July 2020 and January 2021 were provided to the Tribunal by the Applicant three pages long. The third pages comprised the Summary. In contrast, the earlier demands were provided as one page only. That suggested that only a single page was provided to the Respondent and that the demands were not accordingly valid. There was no evidence that they were valid. On the evidence presented, the Tribunal found those three demands were not valid, and the charges demanded are not payable unless or until valid demands are served.
90. In respect of the July 2020 and January 2021 demands, if there had been sufficient evidence of compliance with the requirements of the Lease and subject to the issue identified in respect of the demand in January 2021, the Tribunal would have found the demands to be valid.
91. It is neither necessary or appropriate for the Tribunal to add anything about the above potential issues in the circumstances.
92. It is nevertheless essential that the parties now engage with each other to assist with the management of the Building and the undertaking of any appropriate work. It is in their mutual interest to resolve matters. Unless and until that is done, disputes are likely to continue, involving time, potentially cost, and inconvenience for all.
93. It is particularly regrettable that there is a dispute about fire safety. The absence of fire protection in the Respondent's Property creates risk for the Respondent and for other occupiers of the Building. The Respondent complains of lack of action by the Applicant, whereas the Applicant has produced several letters to the Applicant seeking access so that steps may be taken and the Tribunal has found that fault lay with the Respondent. It is not for the Tribunal to advise either party in relation to the issue. The parties may wish to obtain advice as to steps which one or other is entitled to take to resolve an issue plainly in need of resolution.
94. The Tribunal finally observes that whilst Mr Sheffield stated that the five lessees who had participated in the Applicant and its purchase of the freehold held 999

year leases in updated terms, in respect of the Respondent the Applicant must comply with the terms of the Respondent's Lease, and so too the leases of the other lessees who did not participate in the Applicant, albeit that may impose different requirements

The County Court issues

95. The Tribunal has determined that nothing is recoverable by way of service charges for the periods claimed on the evidence provided, there being a failure to demonstrate compliance with the Lease and that, on the evidence, on the balance of probabilities any sums are properly payable.
96. The Defence served by the Respondent asserted set off, as explained above, but where no determination of the value of that was required by the Tribunal because no sums had been found payable against which to so set-off. There was no counterclaim filed with the County Court and so there was nothing for the County Court to consider beyond that set-off, unless the matters raised by the Respondent were appropriate to set-off against rent.
97. The court found the rent demands, each for £100, to be payable for the years 2019- 2020 and 2020- 2021. The demands made and the accompanying notices were held to be valid. The court found that the rent had not been paid by the Respondent, indeed the Respondent had made no assertion that it had been. Accordingly, £200 was held to be owed by the Respondent to the Applicant in respect of the rent, subject to any potential set-off.
98. The court further found that whilst it would in principle have been appropriate to set-off any claim by the Respondent in relation to breach of contract by the Applicant against service charges, it was not appropriate to set-off any such claim against the sums owed for rent. That rent did not relate to obligations to be performed by the Applicant and costs incurred but rather the existence of the Lease. There was insufficient connection between that and the breaches asserted by the Respondent for there to be set-off against the rent.
99. The court is aware of a case authority, *Geldof Metaalconstructie NV v Simon Carves Ltd* [2010] EWCA Civ 667, on the point but no caselaw was advanced by the parties and the court did not identify the authority at the time of the hearing. In light of the settled law, as the court considers it to be, and the very modest sum in questions, the court concluded that it was not appropriate to seek specific submission from the parties in relation to that case or any other authority.
100. The rent of £200 therefore remained payable and the Applicant is entitled to judgment in that sum.
101. The claim for interest is expressed as £192 for two hours of staff time to collate information and submit claim at £80 plus VAT per hour. As is abundantly clear, and Mr Coleby accepted, that is not interest.
102. Given that no proper claim for interest was advanced and given the very small amount of interest that there could potentially be on the principal claim successful, the claim for interest was disallowed.

103. For completeness, the asserted costs of staff time, understood to be of House and Co, had not crystallised as administration charges within the jurisdiction of the Tribunal. Neither were they legal costs which might have been recoverable in court proceedings or any costs of a party of representing themselves. The court determined that the sum was not properly recoverable as costs either.
104. The court was addressed by Mr Sheffield on the question of recovery of the court fee. He said that the reasons for the case being at a hearing was the Respondent being at fault. He submitted that it was only fair that the Applicant recover the fee. He did note that the costs were applicable to the claim and explained that he had expected to recover more.
105. Having considered those submissions, the claim for court fees was disallowed in full. The court was mindful that in the event of a claim for £200, the Applicant would have paid a fee of £35 and would have potentially been entitled to recover that sum. However, the Claimant succeeded to less than 5% of the claim issued and where it was far from clear that it would have been reasonable for proceedings to be issued solely to recover the specific element- the rent- for which there was success, at least without taking other additional steps prior to that.
106. The court has a wide discretion which, taking account of the circumstances and level of success, it concluded should be exercised to disallow recovery of any fee.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.

The date that the judgment is sent to the parties is the hand-down date.

From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

1. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.
3. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

4. In this case, both the above routes should be followed.

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 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 leasehold valuation tribunal, or the First-Tier 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 –.....
in the case of proceedings before the First-Tier Tribunal, to the Tribunal.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).