FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/23UE/LSC/2020/0056
Property	:	Fitzalan House, Park Road, Gloucester GL1 1LW
Applicant	:	Naomi Soanes — Flat 35 Zac Orehawa — Flat 10 Glyn Walker — Flat 5 Mihaela Ionescu — Flat 2 Libby Birnie — Flat 28 Nick Cassidy — Flat 12 Aleksejus Iljin — Flat 9 Ghazi Benmansour — Flat 15 Janna Heathershaw — Flat 32 Kachun Liu — Flat 21 James Wilford — Flat 29 Adam Cracknell — Flat 14 Ian & Emma Harpin — Flat 23 Jane Stokes — Flat 8
Representative	:	Ms Naomi Soanes
Respondent	:	Fitzalan House Limited
Representative	:	Mr Matthew Mills (Counsel)
Type of Application	:	Liability to pay and reasonableness of service charges; Sections 27A and 19 of the Landlord and Tenant Act 1985 (the Act)
Tribunal Member(s)	:	Judge C A Rai (Chairman) Mr Robert Brown FRICS (Chartered Surveyor)
Date and venue of Hearing	:	CVP (Virtual) 20 January 2021
Date of Decision	:	12 February 2021

DECISION

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1. The Tribunal determines that the Applicants are liable to pay the following service charges:-

For the service charge year ending 31 December 2019 (2019)

Cleaning	7,904.00
Building insurance includes engineering insurance	4,922.18
General maintenance (as categorised by PEL)	5,708.19
Fire Alarm and Smoke	207.84
Communal electricity	605.48
Garden/car park maintenance	340.80
Lift maintenance	4,099.20
Carpet cleaning	1,350.00
Management fees	4,000.00
Total	£29,137.69
Carry forward credit from previous year	(252.00)
Adjusted total	£28,885.69

On account for the service charge year ending 31 December 2020 (2020).

Cleaning	8,000.00
Building insurance	4,900.00
General maintenance (as categorised by PEL)	1,500.00
Fire Alarm and Smoke	1,150.00
Communal electricity	700.00
Garden/car park maintenance	700.00
Lift maintenance	2,000.00
Carpet cleaning	1,500.00
Management fees inc. VAT if applicable	6,300.00
Total	£26,750.00

2. The Tribunal makes an Order under section 20C of the Act that all or any of the costs incurred by the Respondent in connection with the proceedings before the First-tier Tribunal (FTT) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

3. The Tribunal makes an Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA) extinguishing the Applicants' liability to pay a particular administration charge in respect of litigation costs.

4. The reasons for its decision are set out below.

Background

5. The Property, a former office block, was converted into 35 residential flats by a developer P4i Limited, (P4i). The conversion of the Property was completed in February 2018. The Applicants are the owners of 14 flats within the Property. The current freeholder is Fitzalan House Limited, the Respondent. The Property has been managed by Peak Estates Limited (PEL) since the flats were sold to the Applicants.

6. The Applicants applied to the Tribunal in July 2020 for a determination as to the reasonableness of:-
   - service charges for 2019; and
   - the on account demand for service charges due for 2020.

   The service charge year for the Property runs from 1 January to 31 December. The Applicants also applied for Orders under section 20C of the Act and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLARA).

7. Ms Soanes is the lessee of Flat 35 demised to her by a lease dated 29 June 2018 (the Lease). The Lease was granted for a term of 126 years from 25 December 2017 and reserved an initial ground rent of £100 per annum escalating every 10 years payable in advance on the 1 January in every year of the term. A service charge is payable by the lessee in addition to rent and the "tenants share" is defined as "a fair and reasonable proportion to be determined by the Landlord, the Managing Agents or the Landlord's surveyor" [B1 page 373]. It is agreed by the parties that all the Applicants' leases, and presumably all the leases of the thirty five flats, are in a standard form containing the same covenants and obligations as those in the Lease.

8. The Tribunal issued Directions dated 6 August 2020 directing the parties exchange statements of their respective cases supplemented by any witness statements and copies of the Documents referred to and relied upon, within defined time limits. The Directions also stated that the Application would be determined following a video hearing and that the Tribunal would hear representations from the parties on the applications relating to costs and fees at the end of the hearing.

9. On 16 September 2020, the Applicants applied to the Tribunal to extend the time limits in the Directions. Their reasons were that after the Directions were issued the Respondent had attempted to sell the freehold reversion of the Property but the sale did not proceed. The Applicants, uncertain what effect the proposed sale might have on the Application, delayed complying with the Directions.

10. The Applicants' statement of case referred to Ms Soanes being contacted by Ben Blair of Blair Estates "shortly after the sale of Fitzalan House – he stated that Blair Estates had not been informed of the outstanding tribunal application or the ongoing maintenance issues with the Property prior to sale of the freehold" [B1 page 39]. The Respondent's statement confirmed that a sale was agreed in July 2020 but said the Application to the Tribunal was not seen by Mr Feld until 18 August 2020, following his return to his office after a holiday. He informed the Landlord who in turn advised the prospective buyer which resulted its decision not to proceed with the purchase.

11. Judge E Morrison issued Further Directions on 30 September 2020 which gave the Applicants "a final opportunity to comply with the Directions" and extended all the time limits imposed by the previous Directions.

12. Prior to the date of the Hearing the Tribunal received the Hearing Bundle and the other bundles and documents listed in the next paragraph.

13. This Hearing was a remote hearing which was consented to by all parties. The form of hearing was **V** video fully remote. A face to face hearing was not practical as the hearing took place during a period of Government "lock down" during the Covid-19 pandemic. The documents that the Tribunal was referred were contained in the following electronic bundles. (1) Hearing Bundle **"B1"** 469 pages; (2) Supplemental Bundle **"S1"** - 5 pages; (3) Skeleton Argument from Respondent's Counsel **"S2"** - 12 pages; and (4) Authorities **"A"** - 88 pages. In addition, various emails were received from the Respondent explaining and confirming that the parties had agreed to narrow the issues identified in the Application. The Tribunal agreed to the inclusion of bundle S1 notwithstanding it was submitted later than B1. Following the Hearing the Respondent supplied a copy of the 2019 service charge accounts and copies of the complete service charge demands issued to Ms Soanes in respect of flat 35 for 2019 and 2020. After receiving that documentation Ms Soanes emailed the Tribunal with a schedule confirming the dates upon which she had received four of the demands and confirmed that she had not been sent one of the demands or the accounts.

The Hearing

14. The Applicants were represented by Ms Naomi Soanes, the leaseholder of Flat 35. The Respondent was represented by Mr Matthew Mills with Mr Dovi Feld, Block Management Manager for PEL in attendance.

15. Before the commencement of the Hearing the Judge stated that whilst the Tribunal accepted the parties had agreed to narrow the service charges disputed by the Applicant, it would not allow that agreement to prejudice the Applicants' case if it found any of the documentation in the bundle misleading. She explained that the Tribunal had found it difficult to reconcile the amount of the service charges incurred in 2019 or demanded in 2020 with the budgets and the Respondent's statement. Mr Mills said he anticipated being able to clarify any confusion. He also listed which service charge headings remained in dispute which were agreed by Ms Soanes.

16. During the Hearing, the Tribunal were told that the 35 flats in the Property were registered and had been marketed as part of the government's Help to Buy Scheme which provided government lending incentives to qualifying buyers. It was acknowledged by Mr Feld that the 2017 schedule of anticipated service charges, a preliminary budget which was part of the marketing pack, had underestimated the amount of the service charges subsequently demanded from the leaseholders in 2018. It was accepted by the Applicants that this 2017 estimate had no legal relevance or limiting effect on the actual charges in subsequent years.

17. Mr Feld of PEL acknowledged that P4i the developer, the Respondent freeholder and PEL, the management company are all owned and controlled by the same person listed at Companies House as a director of all three companies.

18. Ms Soanes told the Tribunal the Applicants had applied to the Tribunal because they had become increasingly frustrated by the responses received from PEL to their questions about escalating service charges and the failure of that company to rectify problems. They were also concerned by the increasing amounts of the service charge expenditure attributable to repairing and maintaining the roof and the lift.

19. Ms Soanes explained that the Applicants had assumed that reasonable maintenance costs for a newly refurbished building would be much less than the sum leaseholders were charged in 2018 and for that reason have in the Application described some of the works for which service charges have been demanded as "snagging". They used this term because they believed that the works which resulted in those costs existed prior to the redevelopment and should have been addressed and rectified by the Developer or Seller, at their expense not at the expense of the leaseholders.

20. Mr Feld acknowledged that the way in which PEL had responded to Ms Soanes request for information, evidenced in an exchange of emails in February 2020 between her and Freidy Beck, was unacceptable and said that Mr Beck had been so advised [B1 page 94 – 99]. When Ms Soanes had been unable to open email attachments, which were copies of invoiced expenditure, Mr Beck had suggested that she could and should view them at PEL's London office.

21. Ms Soanes told the Tribunal that the roof of the Property has leaked consistently during the last three years, since she bought her flat. The Respondent was fully aware of this but had not rectified the problem and the roof was still leaking on the day of the Hearing. Ms Soanes' email to PEL dated 13 February 2020 stated that the roof has not been fixed for 8 months that "she has had 5 leaks this year whilst PEL had shirked their maintenance responsibilities and bounced me about between yourselves and P4I when it was never their responsibility". In the same email she also questioned if the use by PEL of "expensive London labourers" was appropriate [B1 pages 94 – 99].

22. Mr Feld told the Tribunal that agreement has now been reached between the Respondent and P4i whereby that company had agreed to pay for the ongoing roof repair works although, he did not explain the specification or extent of such proposed works, or why it has taken three years to reach this agreement.

23. The Respondent stated in its written evidence and at the Hearing that the Property had passed all building control and health and safety checks and that this included the lift and the outside gate. This was to support its submission that there were no "snagging" issues. No evidence of this compliance or certification was produced to the Tribunal.

24. Mr Mills told the Tribunal that the lift was refurbished, not replaced as part of the redevelopment of the Property. Mr Mills described it as "tired but serviceable" but conceded that the actual costs incurred in keeping it serviceable exceeded budgeted costs during both 2019 and 2020.

25. The Application disclosed other problems affecting the Applicants' flats which have not been considered by the Tribunal. This was because these problems have not yet resulted in service charges being demanded from by the Respondent so although these were intermittently referred to in the application and the written evidence, they were not considered during the Hearing, nor have they influenced the Tribunal when making its decision.

26. In addition to their statements and the evidence in the four bundles, the Tribunal heard oral submissions from both parties in relation to the disputed service charges. At the beginning of the Hearing the Judge told the parties that it had found it difficult to match the amounts of the service charges demanded in both 2019 and 2020 and referred to in their respective statements with the copies of demands and budgets in the bundles.

27. Mr Mills explained that the Respondent's invoices had been listed in the Appendices to the Respondent's statement in date order **to clarify and simplify** the Respondents' case. (Tribunal's emphasis). That statement refers to headings which differ from the categorisation of the service charges used in the service charge budget for 2020 [B1 pages 409 and 411].

28. When asked to explain why the total of the charges in the Respondent's statement did not match the total of the costs identified as actual costs in the Excess Charge statement, Mr Mills could not; he said the figures "nearly match the expenditure". He suggested that an invoice may have been carried over to the following year. (In fact, this was because of the credit of £252 shown in that statement and explained by the Respondent's solicitor after the Hearing).

29. The headings in the budget for 2020 and the service charge demands do not match. The Excess Report (see paragraph 32 below) referred to Guttering drains and window Cleaning (sic) which have been included together with the carpet cleaning under the heading "General Maintenance" in the Respondent's statement of case [B1 page 205].

30. The budgets and demands issued to the Applicants contain headings for Fire & Smoke Alarm Maintenance and Fire Risk Assessment both of which are categorised as Fire Safety Works in the Respondent's statement. Novel headings of "unanticipated costs" and "car park gate maintenance" are referred to on the 2020 budget. Car park gate maintenance is categorised as "outdoor costs" in the Respondent's statement of case.

31. Service charge accounts for 2019 were only provided by the Respondent after the Hearing. The total service charge for 2019 referred to in the Respondents' statement is £36,327.88. The total shown on the Excess Report for the 2019 budget is £37,606 but that Report refers to an actual spend of £37,354.54 (a difference of £252) shown as "an underspend" against the heading "general maintenance".

32. No copy of the budget that was sent to the Applicants prior to the commencement of 2019 or any of the service charge demands for that year were included in the bundle. (These were supplied after the Hearing). The Respondent has relied upon the document headed **Excess Report for:Fitzallan:Fitzallan House** (sic including misspelling) [B1 page 409].

33. When the Tribunal asked Mr Feld why the Respondent had not produced a copy of the service charge demand for 2019, he accepted that he had omitted to include either the 2019 demand or the 2019 budget in the Hearing Bundle and said this was an accidental omission. However, pages 468 and 469 is headed budget 2019. This is an accounting statement of processed invoices for 2019 at the end of which is an overview which provided some insight as to the service charge budget for 2019. Neither party referred to it during the Hearing.

34. Misleadingly although the Respondent's bundle index refers to a service charge budget for 2019 [B1 page 208], the references are to the Excess Report. (See paragraph 32 above.) Mr Feld confirmed the figures in the column headed budget amount were not the budget figures. He said the accounting software package redefined the budget figures when generating the Excess Report which was what is shown on that page [B1 page 409]. That Report was generated in February 2020 prior to the issue of the Excess service charge demand dated 4 February 2020 sent to Ms Soanes [B1 page 412]. However, those figures have been relied upon and used to support the Respondent's statement that the service charges are reasonable.

35. Furthermore, in its summary of the reorganised invoices the Respondent has added £252 to the total with the narrative "PEL invoiced £252 more for general maintenance than was incurred predicted". [B1 page 225]. That statement is incorrect because the reference is to the "budget" on the Excess Charge which Mr Feld confirmed was not a budget. The Tribunal itself concluded that the adjustment was made to reconcile the total figures with the amount referred to on the Excess service charge demand.

36. The demand for Excess service charges for 2019 addressed to Ms Soanes dated 4 February 2020 [B1 page 412] shows the difference between the budget and the actual costs as credits or debits and invoices and demands a further £276.47 which suggests that the budget for 2019 underestimated the service charge by £11,470.23. [Calculated by totalling the debits and credits]. The Tribunal concluded that the budget for 2019 was probably £25,884.31 [£37,354.54 - £11,470.23].

37. Ms Soanes told the Tribunal that the Applicants are and remain concerned about the "pre-development" defects which they believe continue to impact and increase the service charges demanded by the Respondent. She said that hitherto there has been a pattern of PEL underestimating the service charges that will be incurred at the start of each service charge year. When the Applicants purchased their flats the estimate of annual service charges (prepared in 2017) was significantly lower than the actual charges demanded in 2018. Since 2018 the service charges have increased year on year and the Applicants want validation that the increases are reasonable.

38. Ms Soanes said that, contrary to the Respondent's submissions and Mr Feld's Statement [S1 page 3] the Applicants had not challenged **all** the invoices and service charges in 2019. Neither has she, or any of the other Applicants, behaved in an aggressive manner. She admitted however that she and the other Applicants remain frustrated with the way in which PEL have dealt, or failed to deal, with their queries and rectification of the defects in the Property.

39. The service charges which both parties agree remain in dispute relate to cleaning services, lift repairs, gate repairs, roof repairs, insurance costs, managing agents' fees and the costs associated with the installation of

hand sanitising stations in 2020 (only relevant to the 2020 service charge year).

40. Mr Mills listed these items in the "agreed list of issues" which is tabulated with cross referencing to key documents at the beginning of bundle S1.

41. Although that list refers to windows and condensation (item 6) and it was acknowledged at the Hearing that there are ongoing discussions between the parties about the problems with windows and condensation, no service charges for works associated with the resolution of these problems have yet been demanded by the Respondent. Therefore, the Tribunal has no jurisdiction to consider challenges made by the Applicant about the costs of rectification of these defects.

42. Miss Soanes referred to each specific service charge challenged by the Applicants in turn and stated their reasons for their challenges. Mr Mills asked her to clarify some of those matters. Subsequently Mr Feld confirmed the accuracy of his statement and responded to questions from the Tribunal.

43. Mr Feld told the Tribunal he had no formal qualifications but said he had attended ARLA (Association of Residential Letting Agents) courses. Mr Brown asked him if he had intended to refer to ARMA (Association of Residential Managing Agents) but he said he had not, although it was not clear to the Tribunal that he understood the distinction. He was unable to confirm the basis of the PEL budgeting and did not answer when asked if he considered it had been accurate but accepted that the underestimate in 2019 had resulted in a demand dated 4 February 2020 being issued to Ms Soanes for an additional £276.47 for the 2019 service charge [B1 page 412].

44. He said he has experience of the relevant law regulating service charges. He said that all PEL service charge demands are accompanied by copies of the summary of the tenants' rights and obligations but he conceded that he may have may have omitted some documents from the bundles. He does not know anything significant about Halpern Insurance or whether it is regulated by the FCA. He said he was unaware of the existence of the RICS Service Charge Residential Management Code (the Code). When asked about ICAEW TECH 03/11 he said he is aware that service charge accounts should be audited or certified by an accountant.

45. The Tribunal is uncertain as to the Respondent's reason for changing the headings and categorisation of the service charge costs in its statement. It established that differences between the costs and the 2019 budget identified are inaccurate because the Excess Report on which it relied contained different budget figures. Mr Feld accepted that the "budget" referred to in the Respondent's Statement is not the actual budget so references to it as the 2019 budget are not accurate. The result of this admission is that the statements made by the Respondent comparing the service charge costs and the budget are also inaccurate. (See paragraph 33 above). He did not refer the Tribunal to page 469 of bundle B1. He

did not explain why earlier in the Hearing he had told the Tribunal his statement was accurate.

46. Following the Hearing and pursuant to the Directions issued by the Tribunal on 21 January 2021 the Respondent sent an undated unsigned copy of the service charge accounts for 2019 and copies of the five service charge demands issued to Ms Soanes for the service charges due in 2019 and 2020. These included the summary of rights and obligations which a landlord is legally obliged to include with service charge demands. Ms Soanes acknowledged that she had received four of the five demands but said she had not seen the demand for the insurance excess dated 1 August 2020 until it was included in the Hearing bundles. She said that it had not previously been sent to her.

The Lease

47. Mr Mills offered to refer the parties to the relevant clauses in the Lease to demonstrate that the services being provided were services that the Respondent is obliged to provide. Ms Soanes confirmed that the Applicants are not generally disputing their liability to pay service charges. During the latter part of the Hearing Mr Mills referred to specific sections of the Lease to support the Respondent's claim for costs.

48. The Tribunal considered specific clauses within the Lease to assess whether the Respondent has complied with its obligations to accurately estimate the service charge budgets and finalise the annual demands. The Sixth Schedule of the Lease contains the Service Charge provisions [B1 pages 399- 341]. The tenant is obliged to pay an interim charge, on account, in respect of each accounting period as specified by the managing agent or the landlord to be fair and reasonable (paragraph 1.4 of that schedule). That sum is payable in two equal payments on 1 January and 1 July in each year. Any overpayment is to be credited to the tenant's account and any underpayment is payable within 28 days of the service of the Certificate referred to in the following paragraph, (paragraph 6).

49. Paragraph 6 of the Sixth Schedule requires the Landlord or his managing agent to prepare and serve upon the tenant "as soon as practicable after the expiration of each Accounting Period" a certificate containing the following information:
    - The amount of the total expenditure for that Accounting Period
    - The amount of the Interim Charge paid by the Tenant in respect of that accounting period together with any surplus carried forward from the previous accounting period.
    - The amount of the Service Charge in respect of that Accounting period and any excess or deficiency of the Service Charge over the Interim Charges.

50. Paragraph 7 states that the said certificate shall be conclusive and binding on the parties but that the Tenant shall be entitled at his own expense and upon prior payment of any costs to be incurred by the Landlord and the Managing Agents at any time within one month after

service of such certificate to inspect the audited accounts relating to payment of total expenditure.

51. Clause 3 (s) of the Lease is a tenant covenant to "reimburse and fully indemnify the Landlord on written demand all proper necessary and reasonable fees charges costs and expenses (including Counsel's Solicitors .....proper costs charges and fees) incurred or suffered by the Landlord and arising out of or in connection with or incidental to:- (ii) any breach of the covenant on the part of the Tenant hereunder and .....[B1 page 382]

52. The Fifth Schedule to the Lease [B1 page 396] lists the services in respect of which the Tenant shall make a contribution and paragraph 21 [B1 page 385] includes "All costs whether or not referred to above incurred by the Landlord including Surveyors or other professional fees and legal fees and the Landlords shall acting reasonably deem necessary or advisable (without limitation as to the generality) in the general management safety convenience and administration of the Building ....." (which is defined as Fitzalan House).

The Law

53. The Applicants applied to the Tribunal for a determination under sections 19 and 27A of the Act.

54. "Service charge" is defined in section 18 of the Act as an amount payable by a tenant as part of or in addition to rent which is payable directly or indirectly for services repairs maintenance improvements or insurance or the landlords costs of management the whole or part of which varies or may vary according to the relevant costs. "Relevant costs" are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable.

55. Section 19 headed, **Limitation of service charges; reasonableness** provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period only (a) to the extent that they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard. It also provides that 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**.**

56. The Tribunal clarified the ambit of section 27A for the benefit of the Applicants as Ms Soames had been unsure if payment of the service charges demanded might prevent a leaseholder later challenging whether the sums demanded were reasonable.

57. It explained to Ms Soanes that section 27A(1) applies whether or not any payment has been made by a leaseholder (s27A(2). Section 27(5) states:-

"But a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment".

58. The Respondent made various submissions regarding the reasonableness of the service charges and the services and the conduct of PEL in dealing with the management of the Property and cast doubt upon the reasonableness of the application and the conduct of the Applicants in making it.

59. The Applicants' requested that the Tribunal make orders under Section 20C of the Act and under paragraph 5A of Schedule 11 to CLARA which were considered at the end of the Hearing.

60. During the Hearing Mr Brown referred Mr Feld to section 42 of the Landlord and Tenant Act 1987 which requires that where two or more tenants may be required under the terms of their leases to contribute to the same costs with others sums paid must be held by the payee as a single fund in trust. The Tribunal also asked Mr Feld if the payments made by the Applicants and the other Leaseholders were paid into a trust account.

61. Mr Feld confirmed that service charge payments are paid into and held in a PEL client account which relate solely to Fitzalan House. The fact that the demands referred to cheques being made payable to Fitzalan House Limited does not signify that that account is an account held by the Freeholder but is simply an aid to PEL tracking receipts.

62. Mr Feld appeared to be unfamiliar with section 87(7) of the Leasehold Reform Housing and Urban Development Act 1993 whereby the Secretary of State has approved the Code since he was unaware of its existence and therefore presumably unfamiliar with its content.

63. Mr Brown referred Mr Feld to section 21 of the Act which requires that the landlord must supply to each tenant paying service charges a written statement of account dealing with those charges and that statement must be supplied to each tenant not later than six months after the end of any accounting period (section 21(4)). He also asked him about section 21B which requires the service charge demands to be accompanied by a summary of the rights and obligations of the Tenants.

64. Mr Feld assured the Tribunal that PEL sends out the summary of rights and obligations with its demands but said that he had not included a copy of it in the bundles because it was not referred to as part of the Application. He did not explain how the Excess Demand satisfied section 21 of the Act. He did not refer to a certificate which would comply with the Landlord's obligations in the Lease.

65. Under section 22 of the Act a tenant must be afforded reasonable facilities to inspect accounts receipts or other documents.

66. The Tribunal concluded from the copy emails in the bundle that it appeared PEL had barely discharged its duties under section 22 since the

email exchange between Ms Soanes and Freidy Beck (PEL) showed his reluctance to provide the information she had requested in a suitable form and his response to her was initially both obstructive and rude [B1 pages 457 – 462].

67. The Tribunal's decision about the reasonableness or otherwise of the 2020 on account charges will not prevent the Applicant making a further application in respect of reasonableness of the actual charges for that year once these are finalised since this decision relates only to the reasonableness of the on account demand for service charges.

68. Section 20C of the Act enables the Tribunal to make an order that all or any of the costs incurred or to be incurred by a landlord in connection with proceedings before it are not relevant costs to be taken into account in determining the amount of the service charge payable by the tenant specified in the application.

69. Under paragraph 5A of Schedule 11 to CLARA a tenant may apply to the Tribunal for an order extinguishing its liability to pay a particular administration charge in respect of litigation costs as defined in that paragraph.

Further Directions

70. Following the conclusion of the parties' submissions the Tribunal told the Respondent that it required a copy of the 2019 budget together with a complete copy of the actual demands sent to Ms Soanes in respect of Flat 35. It issued Directions dated 21 January 2021 requiring this information to be sent to it together with the 2019 service charge accounts on or before 4 February 2021. When the Tribunal suggested that it would make this direction at the Hearing Mr Feld responded that he was unsure if the accounts 2019 had been prepared.

71. That statement has led the Tribunal to conclude it was unlikely that the Excess charge demand sent to Ms Soanes in February 2020 was accompanied by the information which the Lease requires the Landlord provide when it demands payment of "excess" service charges. The Tribunal was not provided with copies of a certificate served on tenants which complied with the provisions of the Lease before the Hearing. Following the Hearing the Respondent sent the Tribunal the 2019 Accounts and copies of the service charge demands sent to Ms Soanes.

Cleaning - 2019

72. The Application stated that the total service charge for cleaning charges in 2019 was **£8,547.20.** Ms Soanes had obtained copies of four invoices from two different companies for the period between 1 July and 1 September 2019 from the Respondent. The annual cleaning costs estimated in the pre-sale budget was £5,200. She wanted clarification as to whether the charges for 2019 are reasonable. She said the Applicants are confused by the dates on the copy invoices she had obtained from PEL and by the number of different cleaning companies used in 2019.

73. All the cross references to documents exhibited in the Respondent's Statement are incorrect because no original page numbers are shown on the exhibits to that statement and all pages have been renumbered when bundle B1 was paginated for the Hearing.

74. The cleaning invoices for 2019 are listed in date order and by category in the main hearing bundle [B1 pages 223 – 224]. These total **£9,254** for 2019. Mr Mills explained the difference between this total, which he has calculated and the figure of £7,904 which is referred to as Actual Spend on a statement headed "Excess Report Excess: 02 Budget 2019" [S1 page 408] by the fact that he included the carpet deep clean cost of £1,350, separately listed as a heading on that Report within the heading "communal cleaning".

75. Having checked the table in the Respondent's statement the Tribunal does not accept it was accurate record of the cleaning charges incurred in 2019. The invoice for 1 December 2019 (£600) has been moved to 2020. [Pages 264/5]. Two invoices both for £720 for January and February have been included within the 2019 charge. [Pages 317/9 and 320/3]. The written explanation given by the Respondent is that the invoice for December 2019 was not received until 2020 and that the January and February invoices were categorised as part of the 2019 service charge, although this is not reflected in the 2019 service charge accounts.

76. The correct figure including the invoice for December 2019 and omitting the invoices for January and February 2020 is **£7,904**. This is the same as the figure shown in the 2019 service charge accounts.

77. The Tribunal does not understand why it was suggested by the Respondent that some of the cleaning charges for 2019 and 2020 should be moved between the two years. This does not demonstrate either clarity or transparency. Paragraph 7.10 of the Code states that service charge accounts should be transparent and reflect all the expenditure in respect of the relevant account period. An arbitrary movement of costs between years without any explanation is a breach of the code and is likely to confuse leaseholders.

78. Ms Soanes had asked Mr Feld if invoices for cleaning charges during 2019 were duplicated. Mr Mills explained that two invoices which had been dated on consecutive days at the end of a month and on the next day (the first day of the subsequent month) resulted from a change of contractor. One contractor had charged in advance and the other in arrears. He also stated that weekly cleaning was necessary and which is the reason that the 2019 costs exceeded the 2017 estimate which he implied was based on the provision of a fortnightly service.

79. Ms Soanes said that the Applicants accepted weekly cleaning is both necessary and desirable and has not challenged the hourly rates referred to in the Respondent's statement. The Respondent referred to a reasonable hourly charge of between £17 and £22 per hour. Mr Mills said the hourly rate paid must be both reasonable and reflect the market rate because all three of the companies used by PEL had charged a similar amount. He also said that Aqua (the current contractor) carried out a wider range of cleaning services which lessened the administrative burden for PEL of dealing with multiple contractors. Mr Feld said that whilst there is no written specification for cleaning services, he had asked potential contractors to estimate the hours required and indicate the services they would provide. He said all the companies he had employed used local cleaners and two of the three are based in Gloucester.

80. Mr Mills admitted that he had reorganised the headings under which the service charge invoices are collated in the bundle and that he had done this when compiling the Respondent's statement. He has grouped the invoices in date order and by reference to the two service charge years and listed them in the appendices to that statement.

81. The cleaning invoices for 2019 are listed and scheduled at pages 223/224 of B1.

82. The Tribunal was surprised that PEL had not supplied information in an appropriate form to its advisor rather than rely upon Mr Mills to rearrange the invoices. It would have expected PEL as managing agent to have been able to produce tabulated invoices in date order as part of its management function.

83. Although the Applicant only challenged the cleaning costs because it was concerned about duplicate invoicing rather than reasonableness of the charge, the Tribunal is concerned that the Respondent's presentation of the information is an attempt to justify that the costs are reasonable.

84. The Tribunal accepts that the charge for all cleaning, excluding the carpet cleaning costs, in 2019 of £7,904 is reasonable.

Cleaning 2020

85. The budget for cleaning costs for 2020 is **£8,000,** which is the figure shown on the Demand dated 19 November 2019 [B1 page 411]. The figure is consistent with the actual charge for 2019 and on that basis the Tribunal determines it is reasonable. [The invoices for 2020 are listed on pages 228/229].

86. The Tribunal found it difficult to understand PEL's budgeting. The statement refers to a monthly charge of £720 which would suggest that the budget would have been £8,640. In its statement the Respondent referred to having received "cleaning" invoices for the period between January and October 2020 from which it projects an annual cost of £6,720 [B1 page 210].

87. Furthermore, PEL has omitted to produce evidence of its compliance with the requirements set out in the Lease with regard to certification of actual expenditure prior to demanding excess charges. That omission might influence the Tribunal in relation to future applications.

88. In the absence of any challenge by the Applicant the Tribunal has not analysed if the hourly rates paid to the contractors and referred to by the Respondent are reasonable. The Respondent stated that the Applicant should have provided evidence of comparable costs. That is not correct. It is the duty of the Respondent to demonstrate that the relevant costs incurred and recoverable as service charges are reasonable. Furthermore, the **Respondent is statutorily bound to comply with the RICS code.** [Section 87(7) of the Leasehold Reform Housing and Urban Development Act 1993]. Had the Applicant challenged the hourly rate the Tribunal might have concluded that the Respondent was unable to demonstrate reasonableness.

89. The Tribunal does not accept the Respondent's submission that since all contractors charged PEL a consistent monthly amount it demonstrates that the rate it was charges is a market rate and therefore reasonable. It might be evidence that PEL only employed contractors who charged similar rates. An internet search of standard hourly rates for cleaning services within Gloucester revealed a different average hourly rate from that which the Respondent submitted was reasonable. On the Respondent's own evidence, cleaning services have not been consistently satisfactory which prompted it to employ different contractors. That would imply that at least in the case of two of the three contractors used in 2019 their charges are not reasonable when taking account of the quality of the service provided.

Buildings insurance 2019

90. The Application for 2019 refers to a figure of **£6,639.60.** Ms Soanes complained that no evidence of alternate quotations was provided by the Respondent. She challenged the fact that PEL have invoiced specific leaseholders to recover the insurance excess instead of recovering this equally from all through the shared service charges.

91. She also queried why the Respondent had used Halpern Insurance. She said she could not find a website for that company. Mr Feld could not explain why he had chosen Halpern. He said it was a large company and that it was PEL's policy to reconsider the insurance premiums for all the properties it managed regularly and it had done so in relation to the Property. The Respondent produced copies of invoices totalling **£7,073.85** for 2019 which included engineering insurance. That cover is for the period between 08.01.19 until 07.01.20. However, the buildings insurance demands refer to a period of cover between 2.04.2019 and 14.09.20. Therefore, the costs incurred in 2019 are in respect of insurance cover for seventeen and a half months. The service charge accounts refer to £7,074 (which is effectively the same figure rounded up). These costs should have been apportioned between the 2019 and 2020 service charge years with the advance payment shown as an accrual. Alternatively, a note could have been put on the accounts confirming that the buildings insurance premium incurred was in respect of cover expiring on 14 September 2020 in the next service charge year.

92. Mr Feld's responses to questioning from the Tribunal about how PEL chose an appropriate insurer was unhelpful. His replies conveyed the impression to the Tribunal that he did not understand the distinction between a broker and an insurer. He could not explain why Halpern Insurance was the chosen broker and did not appear to know if it is regulated by the FCA (Financial Conduct Authority). A managing agent is required to be fully aware of the general insurance regulations issued by the FCA [paragraph 12.3 of the Code].

93. The budget figure for 2020 for insurance is £4,900, which apparently reflects that the premium covers twelve months. Ms Soanes suggested that this demonstrates that the premium charged in 2019 was unreasonable. The Tribunal having examined the information provided to support the charges agrees. It accepts that the reason for the excessive charge is that it was for seventeen and half month buildings insurance. Without sight of any 2018 service charge accounts it is impossible to clarify if there has been any duplication of charges already paid. Assuming that there has not, it is desirable that the insurance charges are properly apportioned over the service charge years to even out the annual service charges.

94. The Respondent omitted to provide copies of any invoices which evidence the cost of insurance for the period between 1 January 2019 and 1 April 2019. The Respondent could and should have provided this information but has not done so having presumably included the charge within its 2018 demands and accounts. (The reason that Tribunal has not suggested apportionment of the slight overrun of the engineering insurance with covers 7 days in 2020 so this can properly be considered a "de minimis" adjustment).

95. A simple calculation suggests that the correct amount would be:
Engineering Insurance: £325.00 [B1 page 243]
£1,179.20 (in the absence of actual figures the Tribunal adopts the annual figure on [B1 page 244] (91/365 days of £4,729.76 -(01.01.19 - 01.04.19)
Plus £2,018.49 (02.04.19 - 14.09.19) - [B1 page 244]
Plus £1,399.49 (108/365 days -14.09.19 - 31.12.19) –[B1 page 245]
Which equals £4,922.18.

96. The amount shown in the accounts of £7,073.58 is determined to be unreasonable. The Tribunal determines that a reasonable amount is £4,922.18. However, it accepts that it is not unreasonable for the actual cost of the premium incurred and paid in 2019 to be demanded from the Applicants if the Respondent has paid this "in advance". Insofar as service charges have already been paid by any of the Applicants the sums paid should be shown in the individual service charge legers as credits up to the date of the renewal of the policy.

97. The Applicants also challenged the demand dated 1 August 2019 addressed to Ms Soanes for payment of the insurance excess of £250 which was excluded from monies paid in settlement of an insurance claim in May 2019. After the Hearing she confirmed that that demand had not been sent to her.

98. In his statement dated 14 January 2021 [S1 pages 1 - 10] Mr Feld suggested that the primary reason for the Applicant's complaint regarding insurance related to the Respondent recharging Ms Soanes the £250 excess for works carried out to the roof. In paragraph 31 [S1 page 9] he lists the three claims made in 2019 all of which related to water leaks. He said that for two of the three cases that part of the repair costs not recoverable from the insurer (the excess) was recharged to the individual leaseholders whose flats were damaged. Ms Soanes was charged £250 in respect of an escape of water which resulted in a claim for £1,050 in **July** 2019. [S1 page 9]. However, the invoice referred to the **May** claim which, according to Mr Felds statement, was a claim for a leak from flat 15 to flat 5 and in respect of which the excess charge was invoiced to those flats. He has not explained what happened in relation to the recovery of the insurance excess for the third claim (also in July 2019) which related to the replacement of several mushroom caps on the vent pipes and totalled £2,600) [S1 page 9].

99. Mr Feld stated that since January 2019 the Landlord has only charged one invoice to the tenants for either condensation or leaks which was the invoice dated 19 November 2019 incurred because of Ms Soanes reporting a leak to her flat. That invoice dated 19 November 2019 was from L Jeffrey. Mr Feld also stated that the overwhelming majority of the costs and investigations into water leaks from the roof have and are to be paid for by P4i; for example, in October 2018 P4i paid for a new roof to be installed at no cost to the Tenants. However, Ms Soanes told the Tribunal that the roof was still leaking at the date of the Hearing. Her

email dated 13 February 2020 to PEL [B1 pages 457 – 458] referred to her having had 5 leaks this year.

100. Ms Soanes statement disclosed she had obtained a compensatory award from the Ombudsman against PEL which remains unpaid [B1 pages 40/41].

101. The Tribunal determines that the excess insurance charge set out in the demand dated 1 August 2020 is not payable by Ms Soanes. It has explained its reasons fully under the next service charge heading.

102. Although the Respondent confirmed that the roof was replaced in October 2018 it has also confirmed that there were three further leaks in 2019 and that there is another active insurance claim relating to the 2020 leak [S1 page 9].

103. It is apparent from the email correspondence disclosed between Adam Cracknell and P4i that the problems with the leaking roof were not for the most part, addressed by PEL but passed to P4i, leaving the leaseholders problems and the leaks unresolved. Persistent roof leaks will have impacted upon cleaning costs and internal decoration too so the consequences of the Respondents failure to address this problem are likely to result in further cost to the leaseholders. During the Hearing Mr Feld said that PEL will re-examine the circumstances in which PEL invoices specific leaseholders for the uninsured element of works carried out where an insurance claim has been successful.

Buildings Insurance 2020

104. The Applicant has not challenged the 2020 insurance charge. However, the Respondent has budgeted for an amount of £4,800.

105. In its statement the Respondent has suggested that the Applicants complaints regarding the cost of insurance were partly motivated by the amount of the insurance excess. The Tribunal concluded that their complaints were prompted by demands for payment of the insurance excess having been demanded from those leaseholders whose flats had been affected by the damage. These were not related to the existence or amount of the insurance excess.

General Maintenance and Snagging 2019
[this includes invoices within two of the Respondents categories general maintenance and outdoor maintenance garden and car park]

106. The charges which the Applicant disputes were £7,160 in 2019 and £1,500 in 2020, although Ms Soanes explained she referred the Tribunal to the 2020 figure to demonstrate that this showed that the amount charged in 2019 was unreasonable.

107. The Respondent's statement referred to general maintenance costs of £4,149 [B1 page 205] (accepting this includes an overcharge of £250). However, the Excess Demand dated 4 February 2020 sent to Ms Soanes refers to the sum of £6,160.19 [B1 page 412]. The Excess Report [B1 page

408] refers to the sum of £7,160.19. The Respondent has categorised some of the invoices as outdoor maintenance costs and referred to a separate and additional amount of £2,086.80 for those costs. The agreed list of items within these categories includes roof repairs and repairs to the external electric gate and maintenance of the outdoor area. The total costs under both headings were £6,235.99.

108. The Applicants submitted that as the redevelopment of the Property was only completed in 2018 it is entitled to expect that initial ongoing maintenance costs would, and should, be minimal. Some of the general maintenance costs incurred during the 2019 service charge year related to costs associated with works which should properly have been undertaken or rectified prior to the sale of the flats by the developer.

109. The Respondent's justification that the charges are reasonable is that it is obliged as landlord under the terms of the Lease to provide the services. The Property complied with building regulations and Health and Safety certification when the redevelopment was completed so on that basis, any subsequently incurred costs must be reasonable maintenance costs.

110. Further works were carried out in 2019, prior to a meeting between builders and the fire officer, to upgrade fire doors and this is evidenced by invoices from Sruli Builders and the Handyman [B1 pages 158, 159, 164]. The fire door that was commissioned in 2019 was delivered in July 2020 [B1 page 365] with the costs being invoiced over the two service charge years.

111. It was accepted by the Respondent that an invoice from BML dated 5 February 2019, sent to Ms Soanes by PEL, was not included in the service charges. However, on the basis of the Respondent's evidence in the bundle it is difficult to understand the difference between its figure and the Applicants' figure.

112. The schedule of general maintenance costs in the Respondent's statement is summarised by the statement that "PEL invoiced £252 more for general maintenance in 2019 than was incurred predicted" [B1 page 225]. The statement is incorrect because it relies upon the budget referred to in the Excess Report which, as conceded by Mr Feld, does not contain the budget figures. Furthermore, the demand for the excess payment [B1 page 412] refers to an excess figure of £6,160.19 [B1 page 412]. Based on what Mr Feld told the Tribunal it has concluded that the amount in the original budget of £1,000 was an unrealistic estimate. The 2019 Accounts confirm total expenditure of £7,160.19.

113. The Applicants disputed the reasonableness of all charges for roof repairs and in particular two invoices from L Jeffrey Roofing and Building Ltd (L Jeffrey) dated 17 February 2019 and 19 November 2019 [B1 pages 180, 280]. L Jeffrey is a roofing specialist based in London. There is no copy of the February invoice in the Bundle but the narrative

on the invoice in the Respondent's list refers to "callout to inspect damp in **a ground floor-flat"** [B1 page 224].

114. The narrative on the November 2019 invoice states: "attended the above property to inspect signs of leak which are unrelated to the works carried out by us previously". The cost "of an inspection" was £350 + Vat so totalled £420, an identical amount. (There is also a third invoice dated 17 February 2020) and coincidentally for the same amount of £420 referred to the replacement of stolen lead on parapet wall [B1 page 342].

115. Ms Soanes must, at some time, have seen a copy of the February 2019 invoice from L Jeffrey because she challenged PEL about it. Her comments are recorded on a spreadsheet [B1 page 180 - 183] but refer to an invoice dated 12 July 2018, a copy of which was provided with her statement and which refers to an inspection of a ground floor flat which is not roof related [B1 page 146]. The narrative matches that in the missing invoice. In his statement Mr Feld said the only invoice relating to the roof in 2019 was the November invoice but his bundle included references to the February invoice. It is unlikely that there would be two different invoices with an identical narrative so the Tribunal has concluded that the Respondent's list referred to the 2018 invoice which should not be included within the service charges for 2019, (or for 2018 since it is unrelated to the roof).

116. The narrative on the November 2019 invoice stated that it was for an inspection of the roof which resulted in the company concluding that the problem was unrelated to works it had previously carried out. The Tribunal determine it was unreasonable for the Applicants to have instructed a roofing specialist to travel from London to check whether work previously carried out had failed particularly when this resulted in a cost to the leaseholders of £350 plus VAT, effectively for a statement that the failure was unrelated to work L Jeffrey had previously undertaken. A competent managing agent would have a record of the work previously carried out and investigated the problem before asking for L Jeffrey to inspect. The Tribunal has considered all the service charges relating to roof repairs later in this decision.

117. The Respondent's statement in the supplementary bundle disclosed that it has made four insurance claims relating to the roof, the latter of which is ongoing. On three of the four occasions it has apparently recharged the excess of £250 to the leaseholder or leaseholders of the affected flat. This is not acceptable unless the leaseholders have caused or contributed to the damage. The uninsured loss, which is what the excess charge represents, should be shared between all the leaseholders, since they all benefit from the repair to the roof. However, the Applicants' evidence, which was not disputed, is that the roof of the Property has leaked continually since the Property was converted into flats. It said P4i have paid for some repairs and apparently replaced part of the roof in 2018, which works are guaranteed.

118. Mr Feld told the Tribunal that the P4i now accepted responsibility for the cost of all the necessary roof repairs. However, PEL have hitherto charged the costs of roof repair works to the service charge account. From the evidence in the bundles, it appears that L Jeffrey were originally employed by P4i.

119. The bundles contain copies of emails exchanged between Adam Cracknell and P4i which confirm, that PEL passed on complaints about leaks to P4i rather than itself investigate those leaks. Ms Soanes repeated this complaint in her emails to PEL. Whilst this may explain why PEL asked L Jeffrey to inspect the roof when another leak was reported, it does not excuse or justify it charging the cost of that inspection to the leaseholders.

120. The Respondent's statement confirmed that part of the roof was not renewed or replaced when works were carried out by P4i in 2018. Adam Cracknell's email dated 2 September 2020 [B1 pages 199 – 200] referred to machinery remaining on the roof.

121. This is consistent with Mr Feld's second statement [S1 page 7], in which he said that a small area of the roof is not under any warranty and issues which arise with this part of the roof will need to be repaired as part of the service charge. Mr Feld does not appear to have acknowledged to the Applicants that the roof continues to leak causing damage to carpets and surrounding plaster and brickwork and that the costs of repair and rectification will inevitably be passed on to the leaseholders.

122. The Tribunal determines that the Respondent cannot recover either of the two amounts of £420 invoiced by L. Jeffrey as service charges for 2019 (17 February and 19 November). No invoice has been provided to substantiate the first amount and the second charge should not have been incurred. **[Deduct £840].** None of the costs incurred by the Respondent in 2019 to repair the defective roof should be paid by the leaseholders. The Tribunal determine that such costs are not reasonable and have not been reasonably incurred by or on behalf of the Respondent during 2019.

123. Although the Tribunal has concluded that it is likely that equitably it the roof should be made watertight by P4i and at its cost, it is not yet known if P4i's agreement to pay for the necessary roof repairs will result in all repair works to make the roof wind and watertight being paid for by P4i.

124. The Applicants challenged the invoice dated 8 March 2019 from Mr Rubbish for £240 (inc. VAT) which refers to rubbish removal from Flat 9. The Tribunal does not accept that those costs fall within the definition of a service charge as the works refer to Flat 9. [B1 page 271]. Costs incurred for the removal of rubbish from Flat 9 would be the responsibility of the owner of that Flat. Ms Soanes queried this with Mr Feld who did not offer an explanation. [B1 pages 180 – 183]. She suggested that the invoice was effectively fraudulent. The Respondent in its statement has suggested that this bulky rubbish including planks

of wood was left in the rubbish hut. [B1 page 233]. In the absence of further information explaining the wording on the invoice the Tribunal determines that this is not a service charge. If the wording on the invoice was misleading it should have been queried by PEL when the invoice was issued, not explained by a comment in the Respondents Statement. **[Deduct £240].**

125. An invoice dated 11 October 2019 for £120 from Aqua refers to removal of left over building materials [B1 page 277] and adding a lock to the bin shed. The Respondent's statement states that P4i have agreed to pay these costs and this invoice will be reimbursed by way of deduction from the next service charge demand [B1 page 234]. Therefore, since the Respondents have agreed that the Applicants are not liable for payment of this invoice it must be deducted. **[Deduct £120].**

126. Although this was not discussed during the Hearing the Tribunal has concluded from the evidence in the bundle that PEL may manage rental flats within the Property as well as managing the communal areas which would explain why the invoices, for removal of rubbish from a specific flat, from BML for electrical works to Flat 8 dated 5 February 2019 [B1 page 211] and from Key Plus Limited and Pioneer for twelve replacement key fobs [B1 pages 287 and 289], and have been disclosed by PEL when these do not relate to its duties as managing agent for the Property and should not have been included within the service charges for the Property.

General maintenance 2020

127. The Applicants referred to the "on account" charge of £1,500 to highlight the difference between that charge and the amount they had been charged in 2019.

128. The Respondent's statement confirmed that the 2019 budget was based on the costs incurred in 2019 and the "state of the Property at the end of 2019 (for example, at that time the Property was suffering from intermittent problems with its lift roof and car park gate)" [B1 page 205]. It also stated that, when the budget was prepared, the Landlord's fund for the Property was negative because the Tenants "have been refusing to pay their service charges". Its listed invoices disclose accumulated costs for the period between 1 January 2020 and 28 October 2020 of £2,328.42.

129. The only invoice challenged by the Applicant, and after its application, is that dated 20 May 2020 for two large floor standing hand sanitiser stations (including 10 litres of sanitiser, batteries and delivery and set up costs) of £802.80.

130. Ms Soanes said that the cost was excessive when she compared it to the costs of providing something similar. She also objected to the branding. Mr Mills said that in May 2020 it had been difficult to obtain hand sanitiser or stations both of which were in short supply on account of the Covid-19 pandemic. He believed that the costs at the time whilst possibly

more expensive were justified on account of the stations having been supplied during or towards the end of a government imposed "lock down" period when hand sanitiser was in high demand. Mr Feld stated that any branding of the stations had not increased the cost. No further charges for sanitiser have been incurred since May 2020.

131. The Tribunal understands why the Applicants challenged this invoice. It accepts that the charge of £802.80 is relatively high for the machinery supplied. However, at the time the stations and sanitiser were supplied such items there would have been a high demand for the items which may well have been difficult to source. Therefore, taking into account those circumstances, it accepts that, the charge although excessive when considered at the date of the Hearing, may have been reasonable at the time it was incurred and is recoverable by the Respondent as part of the service charge in 2020.

132. The Tribunal suspects that the budget under this service charge heading is inadequate in 2020. It does not accept that the Respondent's statement referred to in paragraph 128. By November 2019, problems with the roof were persistent, not intermittent. If, and no evidence has been disclosed that, any leaseholder other than Ms Soanes has not paid the service charge demanded, the Landlord's fund was negative, surely the Landlord would have budgeted for more than £1,500. Furthermore paragraph 45 of the Respondent's statement is both illuminating and contradictory [B1 page 212]. It reads "…the Landlord notionally allocated £1,500 to general maintenance however this was intended to be an underestimate. In the Landlord's experience tenants are generally happier to pay for services which have been incurred rather than pay on account for budgeted services. Therefore, given the complaints raised by Ms Soanes in 2019, the Landlord decided to underestimate maintenance costs for 2020 so that the interim payment was lower and the Tenants would mainly only be charged once the costs had actually been incurred. However, in retrospect the Landlord accepts that this may have inadvertently caused the Tenants confusion and/or concern."

133. The Tribunal considers that the extracts from Mr Feld's statement above demonstrate PEL's lack of experience and absence of knowledge of the Code as well as the fact it has taken no account of the provisions of paragraph 1.4 of the Sixth Schedule to the Lease. That defines "Interim Charge" [B1 page 399] as "such sum or sums to be paid on account of the Service Charge in each Accounting Period as the Landlord or their Managing Agents shall from time to time specify at their discretion to be a fair and reasonable interim payment".

134. Instead, the Landlord firstly stated that the budget for 2020 was based on the budget for 2019. Later it stated that it decided to underestimate maintenance costs for 2020. The Landlord has ignored the provisions in the Code which states that the "best information available should be used to inform the budget estimate" [Clause 7.3].

Communal Electricity 2019

135. The Applicants challenged a charge of £1,000 in 2019. It is not apparent why that figure is referred to but the Tribunal assumes it is the figure that was referred to in the "missing" 2019 budget.

136. The Respondent has stated that the Landlord paid £1,278.66 for communal electricity in 2019. Although this figure is shown in the accounts the Tribunal does not accept that it is accurate. It has been provided with copies of two **credit notes** from SEE dated 25 July 2019 for £646.88 and 28 November 2019 for £631.78, (totalling £1,278.66) [B1 pages 361 - 364]. The Applicants' statement refers to an invoice dated 29 August 2019, (which was a cut off notice demanding £646.88) [B1 page 128]. Copies of this statement together with a second demand dated 7 May 2019 for £631.78 [B1 page 130] were presumably provided to Ms Soanes by PEL. These are in the exhibits to the Applicant's statement, not to the Respondent's statement but the figures are identical to those referred to in the two credit notes.

137. The Respondent has also provided a copy of a table provided by the electricity supplier SSE which summarises all charges and payments between October 2018 and September 2020 [B1 page 300]. It is extremely confusing but the difference between the totals of credits and debits is a credit of £590. The two credit notes, disclosed in the Respondents statement as invoices, both refer to estimated consumption.

138. When Ms Soanes corresponded with Mr Feld regarding these invoices it was suggested by her that these related to unoccupied flats but there is no evidence that this was correct. She possibly raised the question because the name on the account is "Landlord No2 Three Phase Fitzalan House". It is not possible to accurately calculate the amount of the electricity charge in 2019 but it is unlikely it was the amount which the Respondent has suggested. The Tribunal has concluded that cost of electricity invoiced by SEE in 2019 was £605.48 which is the total of four "rebilled quarters" listed under the dates 07.02.20 on the SEE table [B1 page 300].

139. The Tribunal is concerned by the failure of PEL to demonstrate any clarity with regard to the electricity invoices. It has provided the Applicants with different invoices from those it provided to its advisors for inclusion in the bundles. This is indicative of both disorganisation and of its failure to manage the Property transparently effectively and to the standard legally required by the Code.

140. Unless until PEL can demonstrate, with appropriate evidence, that the cost of electricity consumed was more than that shown on the SEE table as being the for the four rebilled quarters the Tribunal determine that the reasonable charge for electricity in 2019 was £605.48. That figure is consistent with the Respondent's calculation of a provisional figure for electricity consumption in 2020.

Communal Electricity 2020

141. The Respondent has produced an invoice dated 23 April 2020 which shows estimated consumption and a balance due of £147.02 for the first quarter. A second invoice for an overdue bill dated 13 August 2020 is for £148.59. [B1 pages 361 and 364]. It stated that the Landlord paid £340.07 to SEE for electricity between 1 January and 28 October 2020. It has totalled the invoices listed on the SEE table for 2020. On that basis it seems that the budget of £1,400 for communal electricity is excessive and should be reduced to £700.

Car park/garden maintenance – Outdoor maintenance/ gate 2019

142. The focus of the Applicants challenge related to the charge of £532.80 during this year. The Applicants stated that the car park gate had broken down multiple times since the redevelopment of the Property so considered that this might be "snagging". It was also suggested that it was unfair for those leaseholders without a parking space to pay towards the gate repairs. In the supplemental bundle the Respondent identified the issue as being whether the repairs to the external electronic gate were justifiably described as "snagging".

143. During the Hearing it was established that the electronic gate was replaced and not refurbished by P4i.

144. The invoices listed in the Respondent's statement are preceded by a statement that "PEL spent £54 less on general maintenance in 2018 than predicted, so credited the service charge account. However, the credit, cross referenced to page 259 (which reference does not match the page numbering in B1) is for £51. Three Invoices from Pioneer Automated controls are dated 8 January 2019 £138, 26 March 2019- £198 and 13 August 2019 -£894 two of which relate to repairs and the latter of which relates to fitting a RAM operator. It was agreed by the parties that there have been problems with the gate which may have been caused either by leaseholders or third parties misusing the gate and damaging the mechanism.

145. The definition of "Services" within the Lease includes all plant and machinery and installations serving the Building as opposed to the Demised Premises [paragraph 1(e) Fifth Schedule B1 page 396]. The Tribunal accepts that since the definition of the Tenants Share of the Service Charge is "a fair and reasonable proportion to be determined by the Landlord, the Manging Agents or the Landlord's surveyor" it is acceptable for the Respondent to share the costs of maintaining the gate between all the leaseholders. Mr Feld suggested that all leaseholders use

the area for disposing of rubbish or cross over it to gain access to the rear entrance to the Property. This was not disputed by the Applicant.

146. The invoices listed under this heading by the Respondent included three invoices relating to replacement key fobs all of which were queried by the Applicant**.** The key fobs operate the outdoor gate and are only issued to those leaseholders with parking spaces and therefore should be paid for by leaseholders individually.

147. Three invoices for fobs are dated 26 March 2019 from Pioneer (two fobs) £78, 17 June 2019 from Key Plus (ten fobs) £120 and 12 August 2019 Pioneer (fob for the cleaner £36).

148. The only charge for a key fob recoverable as a service charge is £36 relating to the fob obtained for the cleaner. The Tribunal determines that the sums charged by two of these invoices are not recoverable as service charges. The Respondent has stated that the invoices were accidentally charged and that the amount would be reimbursed "by way of deduction to the next service charge demand" [B1 page 239]. The Respondent's statement referred to paragraph 4 of the Sixth Schedule to the Lease [B1 page 214 paragraph 57]. **[Deduct £198**].

149. The figure of £532.80 referred to in the Application coincides with the amount categorised as actual spend for 2019 in the Excess Report but it is impossible for the Tribunal to work out accurately which invoices were included in that categorisation in that report. The total in the Respondent's summary of invoices [B1 pages 225 and 226] is £2,086.80 but includes £198 accidentally charged for keys and the alleged "credit" of £51. Whilst the Applicant has not specifically challenged the other invoices the Tribunal does not understand why the repair to the back door has been categorised as outdoor maintenance rather than building maintenance.

150. Regardless of whether there is any justification for the Respondent changing the heads of expenditure referred to its statement from those referred to in the budget the Excess Report shows sums of £7,160.19 plus £532.80, (£7,692.99) for General Maintenance and the Car Park/Garden Maintenance whilst the Respondents Statement refers to sums of £4,149.19 plus £2,086.80 (£6,235.99) for these two heads. The difference between these two figures is the separation out of the Fire Safety costs of £1,664.84 which were not challenged by the Applicant. The Excess Report only refers to £207.84 including the remainder of the charges within the category General Maintenance.

Outdoor Maintenance - Car Park /Gate Maintenance 2020

151. The amount challenged by the Applicants was £1,400 which is the budgeted expenditure. The Applicants considered this to be an increase over what they were misled to believe was the actual expenditure in 2019. If the Tribunal accepts the Respondents categorisation the budgeted figure is below the actual amount incurred in 2019. Neither explanation supports the calculation of the budgeted amount. The Respondent's statement list five invoices for repairs to the gate and a further two invoices of three more key fobs which are not service charges for the reasons explained above. The adjusted total of expenditure is £661. The Tribunal determines that a budget of £700 would be reasonable. It is noticeable that although the Respondent accepted that including invoices for 12 key fobs in 2019 was "accidental" it has included to the two further invoices for key fobs in 2020 in the bundle, notwithstanding it has now accepted that these cannot be recharged to the service charge account in 2019.

Lift maintenance 2019

152. The total charge for maintenance to the lift in 2019 was £4,099 and invoices for this are contained within the Respondent's bundle. Most of the charges incurred were invoiced on 12 September 2019 and relates to a major repair to the doors and the replacement of the locks.

153. The Applicants complained about these costs because they expected the lift to work efficiently because the Property was had recently been refurbished. Mr Mills described the lift as tired but serviceable. The Tribunal suspect that this description was unlikely to have been replicated in the materials used to market the flats prior to sale.

154. Whatever the expectations of the Applicants the lift is old and although intermittently serviceable is likely to continue to require regular maintenance. The Respondent has confirmed that the building complied with building regulations and health and safety checks following its refurbishment but this statement is unlikely to provide any comfort to the Applicants in relation to the serviceability of the lift.

155. The Tribunal accepts that all these charges are properly recoverable as service charges as no evidence has been disclosed by the Applicants which demonstrate that any of the charges incurred are unreasonable.

PEL Management Fees 2019 (which the Applicants described as service charge)

156. The only invoice from PEL in the bundle, dated 1 January 2019, is for £8,000. No VAT has been added. It appears that PEL invoice its fees in advance of carrying out any services, which might explain in part the deficit in the building budget.

157. However, when questioned about whether PEL charged VAT Mr Feld did not appear to know. Mr Mills referred the Tribunal to the service charge demand sent to Ms Soanes on 19 November 2019 which refers to VAT. [B1 page 411]. By this date PEL would not have invoiced for its services for 2020. The Tribunal cannot understand the reference to VAT on this invoice, which is not a VAT invoice. There is no VAT number on it and the invoice referred to in paragraph 156 above suggests that PEL has not until now charged VAT.

158. Ms Soanes told the Tribunal that the 2017 pre-sale budget estimated a much lower management fee. She had raised this with Mr Feld and emails evidencing this correspondence refer to a management fee of £250 per flat (which would total £8,250 per annum) [B1 page 456].

159. There is evidence in the bundles that Mr Feld accepted that Ms Soanes had been misled and agreed to reduce her share of PEL's management fee for 2019. However, it does not appear that this concession was made to her and it would "upset" the service charge account.

160. The Tribunal has concluded that no reliance can be placed upon the Respondent's, often repeated, assertion that the Property was satisfactory at the point that the flats were sold because it complied with building regulations and health and safety checks. Even if evidence was provided in support of the assertions which it has not been, the Property continues to leak, suffers with ongoing problems with its windows and contains a tired lift which requires regular repair.

161. The Property is managed by an agent with no formal qualifications and no knowledge of the Code who does appear to differentiate between services to the leaseholders and services to a third party whose rental apartments it appears to be managing alongside the Property. PEL have not estimated the service charge budgets for 2019 and 2020 in a realistic or professional manner. The Tribunal identified no skill transparency or logic on the part of PEL either in the preparation of the budgets or in the Respondent's analysis of the invoices recharged to the Applicants.

162. The Tribunal found it surprising that the Respondent's counsel found it necessary to reorganise and re-categorise its client invoices to enable it to present the Respondents case. In so doing Mr Mills appeared not to understand that it was not sufficient for his recalculated totals to "nearly match" the actual expenditure. Furthermore, he had not identified that he was relying on "apparent budgets" which were not actual budgets and other information which the Tribunal has concluded was misleading. The 2019 accounts do not comply with either the Code or ICAEW Technical Release 03/11. The way contracts appear to have been awarded without proper specification or any evidence of due diligence in market testing further demonstrate the Respondent's consistent failure to follow procedures set out in the Code.

163. Mr Mills suggested that Ms Soanes behaviour is unreasonable because she has taken out her anger with P4i on PEL. The Tribunal have

concluded that all the Applicants were entitled to be frustrated and angry having bought "newly converted" flats in 2018 and been subjected to ongoing leaks which have still not been rectified or resolved. It was confirmed by Mr Feld orally during the Hearing that after three years the Respondent has finally accepted that the roof is still leaking and that the developer will now fund the costs of rectification.

164. Mr Feld acknowledged that the developer freeholder and Managing Agents are owned and controlled by the same person. On that basis it is difficult to understand the justification for the P4i and PEL not working together with the Respondent to make the roof of Fitzalan House waterproof **.**

165. In the circumstances the Tribunal determine that the fee for 2019 although not intrinsically unreasonable is wholly unreasonable because of the inadequacy of the service that was provided and that therefore it is reasonable to allow only 50% of it to take account of this. **[Deduct £4,000].**

PEL Management Fees 2019 (which the Applicants described as service charge)

166. It is already clear from the evidence it heard that the management of the Property by PEL has not improved during 2020. For that reason, the Tribunal determines that it is reasonable to budget for a management fee for 2020 of £150 + VAT per unit. It refers to VAT since there is some evidence of a proposed charge but that tax will only be payable on production of a VAT invoice so should not be referred to separately on service charge demands. It however reiterates that it is open to both parties to challenge the reasonableness of the actual service charges for 2020 once the year end accounts have been produced (which must be no later than six months after 31 December 2020).

Costs applications

167. The Applicants applied for both a Section 20C order under the Act and an Order under paragraph 5A of Schedule 11 to CLARA. Mr Mills explained the effect of both orders to Ms Soanes who admitted that the Applicants had requested both without fully understanding the legislation.

168. Mr Mills referred the Tribunal to the provisions of the Lease submitting that the Respondent is entitled to recover its legal costs under the provisions in the Lease. [B1 page 382]. He referred to the provisions enabling recovery of proper legal costs being recoverable arising out of or in connection with or incidental to a breach of covenant. He said that Ms Soanes has not paid her service charges although he conceded that at the date of the Hearing, no evidence has been disclosed of properly compliant service charge demands having been sent to her. [The Respondent subsequently confirmed that this had been done]. He therefore suggested that as an alternative the Respondent may also recover legal costs as a service charge under costs under paragraph 21 of the Fifth Schedule to the Lease [B1 page 398].

169. He conceded that both his arguments about the provisions of the Lease enabling recovery by the Respondent of its costs would be irrelevant if the Tribunal is minded to make the orders requested.

170. Mr Mills accused Ms Soanes of having acted unreasonably. His reasons were that:- Firstly, she issued an application which queried every invoice; Secondly, she dropped some of her arguments and objections once she received the Respondent's statement of case; Thirdly she failed to understand that snagging in relation to the roof was nothing to do with the Respondent or the service charges and she should have dealt with the developer P4i. [S2 page 12].

171. Mr Mills provided various authorities and asked that that the Tribunal consider the guidance from the Upper Tribunal in the case of **Conway v. Jam Factory Freehold Limited [2013] UKUT 0592 (Conway)** which stated that the Tribunal should consider the conduct of the parties and the circumstances an only make an order against a landlord if it would be unjust for it to recover its costs in accordance with the Lease.

172. He also, in anticipation of the Tribunal ordering reimbursement of the Application and Hearing Fee, said that the Respondent has acted reasonably throughout the dispute. He suggested that any exercise of the tribunal's discretion in Rule 13(2) of **the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 1169** should be fair and just and decided in reliance on its overriding objective [Rule 3].

173. In summing up generally Mr Mills explained that even if the Tribunal is minded to find some merit in the Application it should accord the Respondent what was termed the "margin of appreciation" in the case of **Whaller v. Hounslow LBC [2017] 1 WLR 2817**. Given its conclusions about the Application, this Tribunal does not accept his arguments.

174. In his skeleton argument Mr Mills asked for recovery of all the Respondent's costs and submitted a substantial Statement of Costs.

175. When the Tribunal reminded him that the Tribunal is primarily a "no costs" jurisdiction and referred some of the amounts listed in the Respondent's statement of costs, he said he had been instructed by the Respondent to apply to recover its costs but taking into account what had occurred during the Hearing he would make no further oral submissions.

176. Ms Soanes stated that she had not paid her service charge because she did not want to compromise her chance of disputing the charges. She confirmed that she now understood that payment of the service charges demanded would not prevent her from disputing the reasonableness of the service provided or the charges demanded.

177. As requested by Mr Mills the Tribunal has considered the guidance of the Upper Tribunal regarding the making of an order under section 20C. In **Conway** Martin Rodger QC Deputy President said that on an application under section 20C the Tribunal should consider the practical and financial consequences of an order for all of those who will be affected by it and to bear those consequences in mind when deciding on the just and equitable order to make.

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

179. In Martin Rodger's judgement the primary consideration that the Tribunal should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charges is not used in circumstances that make its use unjust.

180. Mr Mills suggested that there are two possible clauses in the Lease which would enable the Respondent to recover its costs as part of the Service Charge.

181. The Tribunal determines that the Respondent cannot recover its costs of these proceedings under clause 3(s) of the Lease. That provision relates only to recovery of costs where there has been a breach of covenant by the tenant and steps taken in contemplation or preparation of a section 146 or 147 (forfeiture) notice. It accepts that paragraph 21 of Schedule 5 of the Lease is a widely drafted provision and might include the recovery of costs where these are associated with the general management of the Property. There is however a requirement in the Lease that the costs are reasonable, which is reinforced by section 27A of the Act.

182. The Tribunal was generally unimpressed by the content, inconsistency and accuracy of some of the Respondent's statements and by the with the way in which PEL has managed the Property.

183. The Respondent has repeatedly stated that Ms Soanes challenged all the service charges. However, she only asked for copies of all the invoices

when it became apparent that PEL were being obstructive. She stated that she and other Applicants were fed up with and frustrated by their inaction in relation to repairing the roof. She has demonstrated that the budgeting was unrealistic and that when invoices were produced the some have been included as service charges when the costs incurred should not have been incurred and in some cases are not recoverable service charges. The Application does not challenge all the service charges and the Respondents' statement acknowledges this fact.

184. Instead of accepting that there were omissions and shortcomings with the information provided to the Applicants and addressing and correcting these, the Respondent reorganised the service charge demands. Whilst now conceding that certain invoices should not have been charged to the Applicants these would have been charged to the Applicants if they had not made the application.

185. Subsequently the Respondent endeavoured to agree certain disputed items with the Applicants and blamed Applicants for the length and complexity of its statements.

186. The Tribunal have concluded that the Respondent's statements were intended to confuse the Applicants as illustrated by the fact that invoices were moved between the service charge years and by the total of the reorganised service charges not matching the Respondent's costs record.

187. Although the Respondent has now admitted mistakes with regard to the invoicing such acknowledgement is not in the main body of the statement but hidden in the appendices [B1 pages 234, 239].

188. Mr Feld's admission during the Hearing that the 2019 budget on which his statement relied was not the actual budget and his failure to refer to the actual budget has led the Tribunal to conclude that PEL were not transparent when dealing with the Applicants' questions and therefore their criticism of PEL is justified.

189. The demands issued by PEL to those leaseholders who had suffered most as the result of the defects in the roof was both unfair and unjust and fuelled the Applicants' frustrations. The excess, where recoverable from the Applicants should be shared between all 35 leaseholders, each of whom benefit from the repairs to the roof. However, as a result of the application it is now apparent that these costs should be recovered from the developer or the Respondent not the Applicants.

190. The Tribunal does not accept that it is credible that P4i was unaware of the defects in the roof following the completion of its redevelopment. The Tribunal suspect that that PEL endeavoured to pass on the costs of repairing the roof to the leaseholders with the knowledge of both P4i and the Respondent. However, PEL then inefficiently incurred additional unnecessary "inspection" costs which it also passed on to the leaseholders despite having done nothing to remedy the defects in the roof.

191. For all those reasons the Tribunal finds it appropriate and just to make an Order under section 20C for the benefit of the Applicants that all or any of its costs incurred in relation to these 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 Applicants.

192. For the same reasons, the Tribunal also makes an Order under Paragraph 5A of Schedule 11 to CLARA extinguishing the Applicant's liability to pay a particular administration charge in respect of litigation costs.

Judge C A Rai
Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the person making the application is seeking.