FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UB/LSC/2020/0037**
HMCTS code (audio, video, paper)	**:**	**A:BTMMREMOTE**
Property	**:**	**16 Ely Place, Monkswell Trumpington Cambridge CB2 9SS**
Applicant	**:**	**John Scarff**
Respondent	**:**	**Metropolitan Housing Trust Limited**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt** **Mrs Sarah Redmond BSc Econ MRICS**
Date of decision	**:**	**4 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 247 pages (together with the further documents described in paragraph 19 below), the contents of which we have noted.

Decisions of the tribunal

(1) The tribunal determines that the service charges challenged by the Applicant in the Respondent's service charge statement of total actual expenditure of £1,105.22 in the period from 1 April 2018 to 31 March 2019 were payable by the Applicant. These charges are covered by the estimated service charge already paid by the Applicant which leaves an excess for the following year, as recorded in the statement.

(2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 that all the costs incurred by the Respondent in connection with 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 Applicant.

(3) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(4) The tribunal orders the Respondent to reimburse to the Applicant £200, being the amount of the hearing fee paid by him.

Reasons

Application and hearing

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") of certain service charges payable by him for the 2018/19 service charge year.

2. The Applicant also seeks orders under s.20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

3. The relevant legal provisions are set out in the Appendix to this decision.

4. There was no inspection. The case management directions given by the tribunal on 3 September 2020 noted that the tribunal considered an inspection was not required, but relevant photographic evidence would be considered if produced in good time. Neither party requested an inspection or produced photographs. We are satisfied that an inspection is not necessary to determine the issues in this case.

5. At the hearing on 10 December 2020, the Applicant, Mr Scarff, represented himself. The Respondent was represented by Elizabeth White of Counsel, with Duncan Lapping (leasehold and service charge manager for the Respondent) giving evidence.

6. Having considered all the documents provided and heard from the parties, the tribunal has made determinations of the issues as follows, after summarising the background and the relevant provisions of the Lease.

Background

7. The Applicant holds a long Lease of the Property which requires the Respondent landlord to provide services and the Applicant leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease will be referred to below. The Respondent is the freeholder.

8. A different tribunal in this jurisdiction determined in case number CAM/12UB/LSC/2018/0033 that for the service charge year 2015/16 the Applicant should not be required to contribute through the service charge to the cost of a personal alarm system.

Lease

9. The **Property**, 16 Ely Place, is a two-bedroom ground floor flat in a two-storey block of eight purpose-built flats (known as 9-16 Ely Place).

10. The **Estate** is described in the Lease as the development at Monkswell, including the garden and grounds. It includes five similar or identical blocks, known as 1-8 Salisbury Place, 9-16 Salisbury Place, 1-8 Ely Place, 9-16 Ely Place and 17-24 Ely Place.

11. By deed dated 31 July 2014, the original Lease of the Property (dated 30 January 1998, for a term expiring in 2086) was surrendered and a new lease was granted for a term expiring in 2176 on the same general terms as the original Lease (except for variations which are not relevant to these proceedings).

12. The Lease of the Property provides for a "*current service charge*" under clauses 3.1 and 3.2. There are further provisions for a "*deferred service charge*", but these are not relevant to these proceedings. The Lease fixes the "*Service Charge Proportion*" at 1/38th and in effect sets the service charge year as 1 April in each year to the following 31 March.

13. By clauses 3.1 and 3.2, the leaseholder covenants to pay the current service charge: "*…as a contribution towards the costs and expenses of running the Estate and the maintenance thereof and the other matters more particularly specified in Part I of the Third Schedule…*". This is to be paid monthly on the first day of each month. The amount payable under the terms of the Lease is the Service Charge Proportion of the landlord's estimate of the costs of providing these services during the year, based on the actual costs of providing those services for the

previous year with allowance for any excess or shortfall and provision for various additional matters including a property repairs reserve fund.

14. Part I of the Third Schedule includes:

(i) the costs incurred by the landlord in carrying out its obligations in clauses 5.1.1 (which includes maintenance of common parts of the Estate), 5.1.2 (which includes cleaning of common parts of the Estate, cleaning of outside windows, maintaining driveways, forecourts and grounds) and 5.1.3 (the obligation in 5.1.3 includes maintenance and repair of the separate heating installation within the Dwelling; paragraph 1 of Part I of the Third Schedule refers to the costs of maintenance and repair, but not renewal, of the heating installations within the dwellings); and

(ii) all other expenses (if any) incurred by the landlord: "*…in and about the maintenance and proper and convenient management and running of the Estate and the garden and grounds thereof and of the roads and footpaths drains and services serving the Estate…*".

The issues

15. The application by the Applicant leaseholder contested service charges in respect of certain invoices from:

(i) "*New Green*" for ground maintenance and cleaning, and a one-off invoice for refuse removal for fly tipping;

(ii) "*BSW*" for service and maintenance; and

(iii) "*Synergy*" and "*Crimson*" for fire risk services.

16. The directions required the Applicant to send to the Respondent landlord a schedule in the form specified by the directions, together with other specified documents, by 2 October 2020. Instead, on 23 September 2020, he produced a letter confirming that his challenge was that:

(i) The general invoices produced appeared to cover several other sites but the Respondent had failed to produce a breakdown; the Applicant accepted that 1/38th of Estate costs were payable but said that the Respondent should not apply a proportion of the cost incurred business-wide to the Property, without reference to the actual costs incurred on the site; he had requested copies of invoices for the Estate alone, but said that no such invoices or other site-specific costings had been provided;

(ii) The general invoice for fly tipping was questioned because none of his neighbours were aware of any fly tipping on the Estate and again he could not determine how much had been charged to the Estate for this; and

(iii) The charges for statutory testing appeared excessive, because there were five identical blocks and two companies doing what appeared to be similar work.

17. The Respondent was required to produce its case in response by 30 October 2020. It did so with the witness statement of Mr Lapping with an exhibited bundle of documents, including copies of the relevant invoices and breakdown spreadsheets. Mr Lapping said in the statement that:

(i) the Respondent did use contractors/suppliers to provide services for the Estate and other properties, but do not apply a proportion of costs. He referred to the audited service charge statement showing the expenditure incurred on each service charge element, but did not explain this; and

(ii) the Respondent actually charges 1/39th, not 1/38th, per flat.

18. On 8 November 2020, the Applicant sent a reply, raising specific points which are considered below. We have also considered the further documents described below.

19. On 19 November 2020, the Applicant wrote with an estimate from Synergy for carrying out fire risk assessments (considered below). He had copied this estimate to the Respondent's address in London, but it emerged at the hearing that it had not reached the Respondent's representatives. Accordingly, we read the contents of this document aloud at the hearing and arranged for copies to be sent by e-mail to the Respondent's representatives on the day of the hearing. We gave them until 5pm on 11 December 2020 to make any further submissions about this material. We also agreed with the parties that the Respondent could send us a copy of the relevant service charge estimate from early 2018, because they had omitted it from their bundles, but this has not arrived. On 8 December 2020, the Respondent sent e-mails with a skeleton argument from Ms White, additional documents for insertion in the bundle (a letter of 20 November 2019 from the Respondent and a copy of the fire risk assessment being challenged) and better copies of two schedules which had already been included in the main document bundle. On 9 December 2020, the Applicant forwarded to the tribunal an e-mail from Mr Lapping, answering questions which had been asked in November 2020. On 10 December 2020, we received the Respondent's written submissions on the estimate obtained by the Applicant from Synergy. On 11 December 2020, we received two e-mails from the Applicant with his own further submissions.

New Green invoices (£11,583.02)

20. The Respondent had produced a service charge statement for 2018/19 which included total Estate expenditure of:

    (i) £3,476.90 on internal cleaning;

    (ii) £6,078.12 on gardening and grounds maintenance; and

    (iii) £2,028 on external cleaning.

21. The Applicant was concerned that these figures seemed to have been apportioned from general invoices, not properly allocated to the Estate. In response to his concerns, the Respondent had informed the Applicant in correspondence in June 2020 that these costs had been set as fixed charges for each block on each estate, as part of a "*tendered contract sum*". It said that for 9-16 Ely Place for 2018/19 the charge for some of these services was fixed with the contractor at £205.30 per month, but gave no other real information or explanation about this.

22. Mr Lapping's witness evidence from October 2020 produced copy general monthly invoices from New Green Services for many (unspecified) properties (totalling £121,764.83 for internal cleaning, £248,489.70 for gardening and grounds maintenance and £37,607.90 for external cleaning) and a breakdown spreadsheet which seemed to indicate that the Applicant was correct and the Respondent had apportioned each of these invoices to arrive at the above figures.

23. However, Mr Lapping explained at the hearing that in fact these costs were payable under contracts with fixed prices. He could not give evidence about the procurement from his own knowledge; he said the contract "*would have been*" procured under OJEU requirements (i.e. the Public Contracts Regulations, which generally require publication of the opportunity and an open competitive process). He told us at the hearing that different prices applied to different properties depending on the scope of service required by each, and in this case the fixed contract prices were:

Price per calendar month	**Internal cleaning**	**Gardening and grounds maintenance**	**External cleaning**
Price until 31 March 2018	359.89	523.08	233.13
Price from 1 April 2018	346.33	694.38	224.36

24. These figures were included in Mr Lapping's spreadsheet from October 2020, but had been labelled "*Apportioned value*", with a corresponding "*Apportionment*" column giving the relevant percentages of the total general invoice sum. Mr Lapping apologised for the confusion this had caused. He told us that the corresponding "*Apportionment*" column was for internal checking purposes only. The reason the total costs were less than the fixed monthly prices would suggest for the 12-month period were that the Respondent had terminated the contract with New Green before it would otherwise have expired. The reason for early termination was problems with service delivery at some sites. He did not have a record of visits to the Estate and was not aware of any problem with service delivery at the Estate.

25. The Applicant confirmed that he was not contesting the level of the charges. He did not dispute that they seemed to be reasonable and he was not saying that these cleaning and grounds maintenance services were not of a reasonable standard. His concerns were about: (1) the invoices dated 1 April 2018; (2) whether costs had been properly allocated to the Estate; and (3) the separate invoice in relation to fly tipping. These matters are considered in turn below.

26. The Applicant asked whether the first invoices dated 1 April 2018 should have been included, because they must relate to services performed in March 2018, in the previous service charge year. On the information provided to us, since these invoices were not delivered until April 2018, it is appropriate to include them in this service charge year. These invoices are not limited by Section 20B of the 1985 Act, because they are within the estimated service charge paid by monthly instalments in advance. The total actual service charges incurred are less than the estimated service charge, leaving a surplus for the following year.

27. The Applicant's main concern was about whether these costs had been properly allocated. When he had first seen them, only the general invoices had been provided. He had then received a partial explanation in correspondence, only for this to be (apparently) contradicted by the spreadsheet produced in October 2020. He acknowledged the explanations from Mr Lapping at the hearing, but pointed out that the relevant contracts had not been provided. He really wanted individual invoices so that he could see simply and clearly which costs related to the Estate, not other properties. He said that such invoices had been provided in the past. He felt that individual invoices could easily be combined by computer systems, so would not add extra administrative work. The Respondent said that bulk invoicing was common practice. It said that individual invoices would be less efficient, where the same contractor was working on approximately 160 locations. However, Mr Lapping acknowledged that the information in relation to the New Green invoices had been lacking and then confusing. He said that the Respondent was in the process of reviewing its estimating and accounting arrangements and the service charge statement itself, to help with communications.

28. The additional New Green invoice £16,811.45 plus VAT for removing fly tipped refuse did not seem to be included in the bundle of invoices and spreadsheets showing what had been charged to the Estate. Mr Lapping confirmed that it had not been. This was a reactive service and there had been no need for it at Monkswell in the 2018/19 service charge year. He said that unfortunately this invoice had been included in error when copy invoices were given to the Applicant. This did not appear to have been explained to the Applicant, despite his questions about it generally and in the application form itself, until the hearing.

Conclusion

29. We are satisfied that the costs charged to the Estate were payable under the terms of the Lease and reasonably incurred in respect of the Estate. Preferably, the Respondent would have provided more information about the relevant contracts for provision of these services, even if this was simply an extract from them and a summary of their procurement. However, we accept the evidence of Mr Lapping as more likely than not to be true. The Applicant would prefer separate invoices for the Estate alone, but he cannot insist on this. The Respondent should make more effort to explain matters to leaseholders (a point we return to below), but it has now adequately explained the relevant charges. As noted above, it is appropriate to include the 1 April 2018 invoices in this period and the invoice for removal of fly tipped refuse was not charged to the Estate. The overall charges are plainly at a reasonable level. Accordingly, the full cost of £11,583.02 for cleaning, gardening and ground maintenance is to be taken into account in the service charge.

BSW and building repair/maintenance invoices (£4,760.49)

30. The Respondent's service charge statement for 2018/19 included total Estate expenditure of £4,760.49 on building repairs and maintenance.

31. The Applicant was concerned that again he had seen only general invoices from "*BSW*" for their work on many properties, without any breakdown showing which costs related to the Estate. He did not challenge the other invoices (from Aaron Services Limited for £58.52 including VAT for supplying and fitting a carbon monoxide alarm at 15 Ely Place, and from Lovell Partnerships Limited for a total of £1,873.68 including VAT for various repair works, remedying and re-lagging burst pipes, clearing blocked drains and carrying out other general maintenance at Salisbury Place or Ely Place as itemised).

32. Mr Lapping's witness evidence from October 2020 produced copy general monthly invoices from BSW Heating Limited. Each of these attached breakdowns showing what work had been carried out at identified properties, and the versions in the bundle had been marked up to highlight those entries which related to the Estate. These were summarised in a schedule indicating that the balance of £2,828.29

(including VAT) related to invoices from BSW Heating Limited for call-outs for engineers to resolve problems with heating or hot water problems and repair work for heating/hot water installations at Salisbury Place or Ely Place. The relevant entries in the invoices produced are not less than this sum.

33. The Applicant was unhappy with bulk invoices, despite the breakdowns produced. Generally, he was not alleging that the level of cost was unreasonable or that any of the work carried out by BSW was not of a reasonable standard, but he queried the following specific items:

    (i) charges in the schedule attached to the BSW invoice from August 2018, which referred to work on a basement car park and a plant room, when the Estate had neither; and

    (ii) a charge in the schedule attached to a BSW invoice from November 2018 for £53.17 plus VAT for changing timings on a boiler for 9 Salisbury Place, setting this up and testing. He asked why the site manager could not have done this, saying that an engineer was not needed and the manager should be able to cope with this type of task.

34. As for the August items, we could see from the clearer version of this schedule sent by e-mail on 8 December 2020 (which was in small print that the Applicant had been unable to read) that the relevant items related to other properties and had not been charged to the Estate. As explained at the hearing, we could see why the Applicant had been confused by the original schedule in the bundle, which is split and printed across several pages in a way that mixes up the various rows of the schedule.

35. As for the November item, Mr Lapping said that orders were based on requests from leaseholders. If there were heating failures, the scheme manager was not a heating engineer or plumber and would not necessarily be available, since their time was split between the Estate and another property. He speculated that sometimes a leaseholder may not understand that a problem is caused only by a timer or a relative having adjusted it for them. The Respondent's approach was to have contractors attend to provide a general service, which will sometimes involve less serious work. The Applicant said he understood that the provision for the landlord to repair the heating installations in the flats was unusual and, as a result, leaseholders of flats on the Estate often had a "*fight*" to convince the Respondent to carry out heating repair work. Mr Lapping said that the Respondent's records had been updated to clarify this.

Conclusion

36. We are satisfied that the costs charged to the Estate were payable under the terms of the Lease and reasonably incurred. The clearer version of

the breakdown schedule for the August invoice confirms that the other costs were not charged to the Estate. The only remaining sum in dispute is the single charge of £53.17 plus VAT from the November invoice. We are satisfied that this cost was reasonably incurred; it is the only such item amongst all the other charges for more substantial work and this result of the Respondent's approach (as described by Mr Lapping) is proportionate and reasonable. The overall charges are at a reasonable level, bearing in mind that they include the work on heating/hot water installations for individual flats as required by leaseholders. Accordingly, the full costs of £4,760.49 for building repairs and maintenance are to be taken into account in the service charge.

Fire risk assessments (£2,640)

37. The Respondent's service charge statement for 2018/19 included total Estate expenditure of £2,640 on statutory testing and servicing.

38. The evidence from Mr Lapping in October 2020 produced invoices from Crimson Fire Risk Services Ltd with breakdowns indicating that this included £2,550 (£2,125 plus VAT) for fire risk assessments carried out in December 2018 to January 2019, at a price of £425 plus VAT for each of the five blocks on the Estate.

39. The Applicant was concerned that a fixed price was being charged per property (the bulk invoice showed that most of the other properties were being charged the same £425 plus VAT) and asked whether smaller/simpler properties were subsidising larger or more complex properties which would need more work to assess. He also argued that the fire risk assessment produced by Crimson was not good enough. He pointed out that the assessor's estimate of the age of the building was wrong, and asked whether they should have highlighted as potential issues the facts that there was no heat detection and that the front fire doors did not have door closers and did not give 30-minute resistance. He produced an informal advice note from Cambridgeshire Fire & Rescue Service. This does not say that the assessor is wrong, but appears to indicate that they would not take enforcement action to require heat detection/door closers/new fire doors. The note states that the front doors were suitable fire resisting doors, and there "*may be occasion*" to fit self-closers where there are shared walkways to certain flats. It also observes that there is no communal alarm. The Applicant accepted that although he had queried these contents of the report (and felt that he had stopped the Respondent from carrying out unnecessary work they might otherwise have arranged because of the report), his main concern was that he felt the charge was excessive for the work required to carry out the fire risk assessments of these blocks.

40. On 19 November 2020, the Applicant produced an estimate from Synergy Fire Engineering for 12 fire risk assessments at a price of £350 (plus VAT) each, saying that sites with stairwells would be done for the

same price and the quotation assumed 12 locations spread around the country. He argued that they would have discounted this further for the Estate of five similar or identical blocks. He later argued that, allowing for inflation, this price would have been lower in 2018/19.

41. Mr Lapping said that the contract with Crimson had been arranged before he joined the Respondent (in 2018), so he was not aware of the procurement details, but he had consulted his colleagues and understood from them that the price of £425 plus VAT was a fixed price per stairwell, not per property. He pointed to a different property in the breakdown attached to one of the Crimson invoices (25-28 Farnborough), which was charged £850; he expected that this property had two stairwells. Ms White submitted that this was an appropriate pricing arrangement, since each stairwell must be inspected. This was, she said, a fixed price; one site was not subsidising another. She submitted that the Respondent was not required to obtain the cheapest price, provided that the price was within reasonable bounds, and there was nothing wrong in the report except the date of the building. She also made written submissions in relation to the estimate from Synergy, as noted above.

42. The spreadsheet produced by Mr Lapping indicated that the balance of £90 (in addition to the £2,550 for Crimson, to make the total of £2,640 on statutory testing) was the price relating to the Estate from a general invoice from Synergy Fire Engineering Ltd produced in the bundle for "*Project Openview Surveys*". The Applicant was concerned that this was an additional charge for fire risk assessments, doing the same work that Crimson had been paid for. At the hearing, Mr Lapping explained that this was a separate charge, for an audit to check work carried out by a contractor (Openview) on inspection and maintenance of emergency lighting at the Estate.

Conclusion

43. We are satisfied that these charges were payable under the Lease and the challenged work was of a reasonable standard. Even taking into account the advice from the Fire and Rescue Service and the inaccurate estimate of the age of the building, on the evidence produced the Crimson assessment was of a reasonable standard; there is room for a range of professional opinion and it is reasonable for fire risk assessors to take a cautious approach.

44. It is well established that if the landlord has chosen a course of action which leads to a reasonable outcome, the costs of pursuing that course of action will have been reasonably incurred even if there was a cheaper outcome which would also have been available. However, this is not a licence to charge a figure which is out of the market norm; the charge needs to be reasonable in the light of market evidence. Ms White referred us to Forcelux v Sweetman [2001] 2 E.G.L.R. 173 and these points are confirmed in Waaler v Hounslow LBC [2017] EWCA Civ 45.

45. On the information provided, the difference between £350 (£1,750 for the five blocks) plus VAT in 2020 and £425 (£2,125) plus VAT in 2018/19 is not sufficient to indicate that the latter is outside a reasonable market price. Further, the evidence produced by the Applicant is only a general estimate, not a firm quotation for the relevant Estate, and the Applicant could only speculate that a further discount might be available; he had not obtained a quotation for the Estate. Neither party could tell us when a fire risk assessment had last been carried out before December 2018 (although the papers supplied indicate that electrical safety tests were carried out in 2013 and 2019); there is no indication that fire risk assessments had been carried out too frequently or that an assessor would have had previous data to work from and update rather than starting afresh.

46. The explanation given by Mr Lapping in relation to the separate £90 Synergy cost was not challenged by Applicant and we accept it. Accordingly, the full costs of £2,640 for statutory testing and servicing are to be taken into account in the service charge.

Proportions

47. There are 40 flats in total on the Estate. One is a guest flat and one was the warden's flat. The remaining 38 were for leaseholders, hence the fixed service charge proportion of 1/38th in the Lease. The parties agreed that the warden's flat had in recent years been sold (presumably on a long lease), although they disagreed about when this had happened.

48. The Applicant had concerns about whether the leaseholders were subsidising the Respondent in respect of this flat, or the owner of it. However, it is clear from calculation of the relevant sums in the service charge statement that the Applicant is being charged 1/39th of the relevant costs, not 1/38th. The Respondent confirmed that they agreed the service charge proportion for the relevant 2018/19 service charge year was 1/39th of the relevant costs.

49. The Applicant pointed to differences between service charge estimates for 2019/20 for the Property and for 14 Ely Place, saying the difference showed that something must be wrong with the Respondent's systems. Mr Lapping found it difficult to comment, but agreed that this may be the result of a system issue or error. However, the Applicant confirmed that all the leaseholders ended up paying the same amount through the statement of actual costs. The error was with the estimates; they simply had different balancing credits or payments at the end of the year to account for the differences between the estimates. Accordingly, we are not satisfied that this potential problem with the estimates for 2019/20 indicates that there is anything wrong with the final costings produced to us and examined above for 2018/19.

Section 20C/paragraph 5A applications/tribunal fees

50. The Applicant pointed out that he had paid his service charges in full. He had to come to the tribunal because the information provided by the Respondent was difficult to follow. He had tried to sort matters out with Mr Lapping's department but they had refused to correspond with him. Mr Lapping explained that his team dealt with service charge budgeting. Queries about service delivery matters had to be dealt with by the relevant departments, so he had asked the Applicant to liaise with the site manager (Ms Arnold). The Applicant said that in reply he had asked by e-mail whether Ms Arnold was of sufficient seniority to agree such matters, and said that Mr Lapping had not responded. The Applicant said that Ms Arnold always struggled to get responses from different departments of the Respondent and had told him that she did not understand accounts.

51. Ms White opposed the applications for orders under section 20C or paragraph 5A, and any possible order for reimbursement of tribunal fees. She submitted that the Respondent could have continued to ask the same or additional questions, and that much of the information in these proceedings had been provided in October/November 2019. She said that some explanation was also given in the relevant service charge estimate from 2018, but (despite allowing the Respondent another opportunity to provide a copy) the tribunal has not received this.

52. None of the parties could point to any particular administration charge which might under the terms of the Lease be made to the Applicant in respect of the costs of these proceedings, when he has paid his service charges. Accordingly, as explained at the hearing, we make no order under paragraph 5A of Schedule 11 to the 2002 Act; it appears there would be nothing for it to bite on.

53. Mr Lapping could not tell us whether the Respondent intended to seek to add the costs of these proceedings to the service charge. Ms White did not have specific instructions about that, but was instructed to oppose the application for an order under section 20C. While we make no finding on this, we are not sure that any such costs would be recoverable through the service charge under the Lease at all. Even if they are, we are satisfied that (save for the tribunal fee considered below) each party should bear their own costs of these proceedings; the Respondent should not add them to the service charge. The Respondent did provide copy invoices and information, but this was confusing and extremely difficult, or impossible, to assess without the hearing. Perhaps the Applicant could have tried harder to raise simple questions through the site manager and/or other departments, rather than asking his questions to some and then sending increasingly frustrated complaints to many people at the Respondent, but even in these proceedings (which made it quite clear what the Applicant was concerned about) the requisite explanations were not given until the hearing itself. The Applicant has

not achieved any reduction of the service charges, but most of his concerns were caused by confusing or irrelevant information given to him by the Respondent. The parties have in effect achieved through these tribunal proceedings the result they could have obtained by co-operating with each other to discuss and explain the relevant costs. The Respondent should work harder on producing clearer documents or providing a simple explanation with its general invoices and spreadsheets.

54. For these reasons, we make an order under section 20C of the 1985 Act that all the costs incurred by the Respondent in connection with 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 Applicant. If the Respondent seeks to add the costs of these proceedings to the service charge of any other leaseholders, they may wish to consider applying to the tribunal under section 27A and section 20C of the 1985 Act for determination of whether those costs are payable.

55. For the same reasons as those given in paragraph 53 above, the Respondent should not be required to reimburse the application fee paid by the Applicant but under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 we order the Respondent to reimburse the £200 hearing fee paid by the Applicant.

Name: Judge David Wyatt **Date:** 4 January 2021

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number),

state the grounds of appeal and state the result the party making the application is seeking.

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 ... the First-tier Tribunal ... 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.