FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/24UH/LSC/2020/0055/AW
Property	**:**	Flat 60 The Gate House, 354 Seafront, Hayling Island PO11 0AT
Applicant	**:**	Mrs Jean Barbara Godfrey
Representative	**:**	Mr Peter Godfrey
Respondent	**:**	ASP Independent Living Limited
Representative	**:**	Mr David Jenkins (Daniells Harrison)
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges Sections 19 and 27A of the Landlord and Tenant Act 1985 (the Act)
Tribunal Members	**:**	Judge C A Rai (Chairman) Mr M C Woodrow MRICS (Chartered Surveyor)
Date of Hearing	**:**	25 September 2020 (Day 1)
Date of Paper Determination	**:**	6 November 2020 (Day 2)
Date of Decision	**:**	4 January 2021
Date of Review	**:**	1 March 2021

DECISION

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1. The Tribunal determines that the Applicant is liable to pay the following service charges:-
   (a) for the service charge year 2019/2020

Warden Cover		**£260.27**
Communal Electricity		**284.30**
Communal Lounge		**Nil**
General Repairs	*61.87*	
Maintenance	*121.11*	
Garden	*250.00*	**432.98**
Management accounts	*29.35*	
Stationery	*5.57*	
Management fees (inc. VAT)	*300.00*	**334.92**

(b) on account for the service charge year 2020/2021

Warden Cover		**250.00**
Communal Electricity		**391.30**
Communal Lounge		**Nil**
Buildings Insurance		**227.39**
Communal Cleaning		**95.65**
General Repairs including Maintenance		***130.43***
Estate Maintenance	*86.96*	
Garden	*221.74*	**308.70**
Management accounts	*30.43*	
Management fees (inc. VAT)	*300.00*	**330.43**

2. The Tribunal has listed those service charge items which the Applicant challenged or which required investigation because of the Applicant's general challenges. The adjusted charges are **not** totalled as there are some items in the budget and accounts which the Applicant accepted. See the spreadsheet at Appendix 1 for a comparison between the budgets draft accounts for 2019/2020 and the sums demanded from the Applicant. The reasons for its decision are set out below.

3. Following an application from the Respondent dated 9 February 2021 for permission to appeal this decision which related to the service charge year 2019/2020 and specifically to the service charges for:- Warden cover, Communal Lounge and Garden, the Tribunal reviewed its decision and the amended paragraphs are shown underlined in this Reviewed Decision.

The Background

4. The Applicant is the owner of Flat 60, the "Property" a leasehold flat in a block of 23 Flats known as The Gate House, 354 Seafront, Hayling Island, P011 0AT. She is the registered proprietor of the Property under a lease dated 16 January 1998 made between Gorseway Retirement Care Limited and Wilson Homes Limited and John Chalmers and Sheila Patricia Chalmers which demised the Property for a term of 99 years from 1 January 1996.

5. The Lease recited that it was intended that the reversionary interest, (freehold), would be transferred to Gorseway Retirement Care Limited following the grant of all the leases in the Building. The Lease defined the Building as being the Gate House which comprises 23 Flats. The Lease stated that the flat must be occupied by someone of a Specified Age, defined as someone over 60 years of age. The Lease defined the Estate as the Gate House, two other buildings known as Gorseway Apartments (52 flats), an adjacent care home as well as the grounds surrounding these buildings and the roads, footpaths and parking spaces providing access to these buildings. The footprint of the Estate is shown on Plan 1 attached to the Lease edged in green [2RB page 141].

6. The Application, dated 17 June 2020, made on behalf of the Applicant by her son Peter Godfrey as her representative asked the Tribunal to

determine the liability to pay and the reasonableness of specific service charges demanded by the freeholder in 2019 on account for the service charge years 2019/2020 and a year later for 2020/2021, together referred to as the "disputed years".

7. Directions dated 24 July 2020 issued by Judge D R Whitney referred to a proposed, "remote" hearing date and stated that the Application and supporting documents would stand as the Applicant's case and required the Respondent to provide a response by 21 August 2020.

8. The Applicant was required to prepare a bundle of relevant documents and send these to the Tribunal and the Respondent electronically before the hearing.

9. Prior to the Hearing, the Tribunal received separate documents from each in the bundles listed in paragraphs 13, 14, 14 and 19 below.

10. During the Hearing it became apparent to the Tribunal that the Respondent could and should have supplied much more information than was in its bundles and that the missing information was essential to the proper determination of the Application.

11. Following the conclusion of the oral submissions, the Tribunal explained what additional information it wanted and in the following week the Tribunal issued the Further Directions referred to in paragraph 18 below. The Tribunal reconvened virtually following receipt of further documents from both the parties to enable it to consider the additional information.

The Hearing

12. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was scheduled to be (CVP) a full video hearing. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing and on paper.

13. The documents that we were referred to are contained in a collection of bundles. Prior to the Hearing the Applicant supplied 10 separate "bundles" comprising:-

- An index (1 page) [1AB1]
- The application to the First-tier Tribunal (11 pages) [1AB2]
- Applicant's statement of case (7 pages) [1AB3]
- Gate House Service charges- charts spreadsheets (5 pages) [1AB4]
- Accounts and sinking fund plan of previous freeholder (21 pages) [1AB5]
- Applicant's letters to Respondent's agent (7 pages) [1AB6]
- Barchester charges (3 pages) [1AB7]
- Minutes of Residents Meetings (6 pages) [1AB8]
- Additional letters From Respondent's agent (4 pages) [1AB9]
- Respondents agents budget sheets (5 pages) [1AB10]

None of the pages in these bundles are numbered.

14. The Respondent supplied a letter to the Tribunal with three separate "bundles" with four appendices comprising: -
    - Letter dated 19 August 2020 from agent to Tribunal (2 pages) [1RB1]
    - Respondents Statement of Case (6 pages) [1RB2]
    - Appendix I (1 page)[1RB1AI]
    - Appendix II (1 page)[1RB1AII]
    - Appendix III (2 pages)[1RB1AIII]
    - Appendix IV (10 pages) [1RB1AIV]

    None of the pages in the bundles are numbered.

15. Following a review of the "bundles" by the Judge, before the day of the Hearing, the Tribunal requested and received copies of:-
    - the Tribunal Directions dated 24.07.20 (5 pages)
    - the Lease of Flat 60 (43 pages)
    - the Applicant's Land Registry Title (4 pages)

    The Respondent's agent stated that he was unable to supply copies of the Respondent's Land Registry title.

16. The video Hearing was held on 28 September 2020 starting slightly later than the scheduled time due to a delay establishing the communication links.

17. Following the conclusion of the Hearing, the Judge advised the parties that the Tribunal could not make a determination without receiving further information. Both the parties agreed that it was unnecessary to reconvene a video hearing and agreed to the Tribunal making its decision based on the original bundles, the evidence at the Hearing and the further documents it would direct the parties to provide within the time limits both agreed to at the end of the Hearing.

18. The Tribunal issued Further Directions dated 28 September 2020 requiring the Respondent to provide specified additional information and documents, a short statement and, if required, an application under section 20ZA of the Act. The Applicant was directed to submit a further statement in response to the additional papers and if he wished, a response to any application made by the Respondent.

19. The Tribunal received a further paginated electronic bundle in five parts from the Respondent with an index identifying the included items, (200 pages) [2RB] and a written statement from the Applicant (15 pages) [2AB]. Subsequently the Tribunal met remotely to review the further documentation and determine the application.

General submissions of both parties

20. Both parties made submissions about the service charges specifically challenged and listed by the Applicant in the Application.

21. Mr Godfrey explained the background to the current dispute. The Applicant's liability to pay service charges under her Lease is not disputed. Mr Godfrey said that there has been no expansion of the services provided or increase in the quality of those services during the

disputed years. The Application relates almost entirely as to whether the sums demanded are reasonable in the context of the services actually provided.

22. Mr Godfrey stated that until late in 2018, when the freehold of the Estate was transferred to the Respondent, service charges had increased gradually at a rate of between 0 – 5% per annum but that since then the service charges demanded for the disputed years had increased by more than 59%. He said that this has resulted in the Applicant spending more than a third of her income on service charges for her flat. Many of his submissions highlighted the adverse effect such a substantial increase in costs has had and is likely to have on leaseholders with fixed incomes and limited resources. He said that since all the residents of the Gate House must be aged over 60, this has caused them all much concern.

23. He said he had met with David Jenkins of Daniells Harrison, the surveyor employed by the Respondent's Managing Agent with current responsibility for the managing the Estate. He had questioned the budgets for 2019/2020 and 2020/2021. In response, Mr Jenkins had said the budgets were provisional and would be reviewed by the end of 2019. However, the "review" which was eventually completed in late February 2020, did not result in any changes being made to the budgeted figures.

24. Mr Godfrey stressed that the services have not been increased or improved. An exchange of letters with Daniells Harrison followed in which Mr Jenkins sought to justify the increase and suggested a meeting. The Applicant was unwilling to meet during the Covid-19 pandemic not least because of the potential risk to his mother.

25. Mr Godfrey identified various inconsistencies in the budget for 2019/2020 particularly when compared to the accounts for 2018/2019.

26. In the Application he applied for review of the following specific service charges.

2019/2020: -

1. Warden cover
2. Communal electricity
3. Communal lounge
4. General repairs/ maintenance / garden
5. Management / accounts /administration

2020/2021: -

1. Warden cover
2. Communal electricity
3. Buildings insurance
4. Communal cleaning
5. General repairs / maintenance / garden
6. Management /accounts /administration

27. Mr Godfrey stated that it is unreasonable for his mother, the Applicant who is 92, to spend almost a third of her income on service charges for a property which she owns.

28. Barchester Assisted Living Properties (Gorseway) Limited (Barchester), was the freeholder until June 2018 when it sold its interest in the Estate to the Respondent. There was a six-month accounting period until the end of the 2018/2019 service charge year on 31 March 2020 which is why there are two sets of service charge accounts for the preceding year. The Respondent appointed Daniells Harrison as its managing agent who took over the management of the Gate House and the Gorseway Apartments and prepared the 2019/2020 budget.

29. Mr Godfrey said that the leaseholders at the Gate House have been intimidated by the rising service charges. He is unimpressed by the suggestion made by the Respondent in its written statement that Barchester had dipped into reserves to keep service charges stable. He also denied that the suggestion made by the Respondent that the age of the residents and the monthly collection of service charges impacted on management time or increased the complexity of the management of the Gate House.

30. It was established that some of the services upon which the budgeted costs are based are supplied by Agincare which company the Applicant believes to be connected to the freeholder because the registered office address and officers are the same.

31. Monthly management meetings are held but most of the residents of the Gate House are older than 60 and so have been unwilling to attend group meetings during the Covid-19 pandemic.

32. His discussions and correspondence with Daniells Harrison had not resulted in any changes to the provisional budgets or the sums demanded which was why the Applicant consulted him and made the Application.

33. Mr Jenkins had repeatedly suggested a meeting because he believed that that if he could explain the budget, the Applicant would have no need to apply to this Tribunal. [See letter dated 16 March 2020 in 1RB 1AIV and subsequent letters in same bundle].

34. One of the primary issues identified by the Application and during the Hearing was that the two budgets prepared by Daniells Harrison referred to headings which were different from the headings in the preceding service charge accounts and were unrelated to the heads of expenditure set out in the Lease. Mr Jenkins acknowledged that this could have increased confusion. He could not explain why service charge budget headings do not coincide with the services described in the Lease.

35. The initial budget for 2019/2020 dated 23 April 2020 [1AB10] marked several items "sinking fund". Amanda Rickwood, the former property manager, who Mr Jenkins had succeeded, prepared an explanatory note dated 3 May 2019 in respect of that budget [1RB1AIV page 7 - 10]. It stated that it was prepared because of enquiries from the leaseholders and she said that "all the items included in the budget are reasonable and fair for the benefit of the leaseholders collectively. The

costs are based on the previous budget produced by Barchester and I understand that their budget did not increase for several years. In addition, several items were not included" (in previous budgets) "that are required or advisable for the protection of the leaseholders. Additional items are required for legal compliance including legionella testing, asbestos survey, fire risk assessment, lift inspection, lift insurance, fire extinguisher servicing, fire alarm testing and emergency light testing". She also explained that whilst the reserve fund can be considered as your "savings pot", the sinking funds are allocated for separate works and she stated that:- "These funds will be retained in separate accounts for the future and only used when required for those particular works".

36. There are two different versions of the service charge budget in the bundles. The Applicant has provided an individual budget for 2019/2020 showing her individual contributions, and the budget for 2020/2021 which is a collective budget for the services charges for that year but which shows the comparison with the budget (not the actual costs) for 2019/2020 [1AB10]. The individual budget for 2019/2020 is dated 23 April 2019. The individual budget divides the budget between Schedule 1 and Schedule 2 but that division is different on the collective budget.

37. The individual budget for 2020/2021 is dated 6 March 2020. It refers to Schedule 2 and refers to the Communal lounges, general maintenance, garden maintenance and Warden costs. The collective budget refers to General repairs and maintenance, Warden and emergency cover costs, communal lounges and garden/estate maintenance. There is no reference to schedules 1 and 2 on this budget. On the individual budget the heads of charge are in alphabetical order but not on the collective budget. The headings are not identical. Water charges on the individual budget are referred to as water costs on the collective budget. Window cleaning on the individual budget is referred to as cleaning to windows on the collective budget. The amounts allocated to the reserve funds do not match.

38. Mr Jenkins offered no explanation for these anomalies. The headings do not refer to costs for legionella testing or an asbestos survey, notwithstanding the content of Amanda Rickwood's explanatory note.

39. In response to the Application, Mr Jenkins stated that following the purchase of the development by the Respondent, Daniells Harrison initially managed the Estate in reliance on the previous owner's budget but later concluded that the 2019/2020 budget should be prepared based on all known and anticipated expenditure, not in reliance on or by reference to the previous year's budget.

40. He referred to the copy of the budget in the Respondent's bundles and stated that "The Respondents believe that the anticipated costs are reasonable and payable under the terms of the leases granted. Should there be found to be a surplus in the income and expenditure accounts this will returned to the Lessees…." [1RB1 page 1]. (This was broadly similar to the statement in Amanda Rickwood's explanatory note.)

41. When questioned about the detail of the 2019/2020 budget prepared by his colleague Amanda Rickwood, Mr Jenkins admitted that as the individual budget dated 23 April 2019 sent to the Applicant provided a figure for the costs of each service to each apartment during the year, it effectively highlighted that several items of budgeted expenditure would result in individual contributions of more than £250.00 for that year [1AB10]. This breakdown is not shown on the copy of the budget in Mr Jenkins' bundles because he has only produced the collective budget [1RB1AI] (which is annotated as having been prepared by Amanda Rickwood).

42. The Tribunal asked Mr Jenkins about the Respondent's legal obligation to consult leaseholders in respect of significant anticipated expenditure and referred him to section 20 of the Act. Mr Jenkins confirmed he was familiar with the legislation and was invited by Tribunal Member Mr Woodrow to explain this section to Mr Godfrey, which he did.

43. The Tribunal suggested, which was confirmed by Mr Jenkins, that the Respondent had not undertaken any formal consultation as required under section 20 of the Act. The Tribunal confirmed it would direct that he could, if the Respondent so wished, submit an application for dispensation with consultation when responding to the Further Directions.

44. Although Mr Jenkins endeavoured to explain the budget during the Hearing, the initial correspondence and the documents provided by the Respondent to the Tribunal were insufficient to explain why the Respondent had altered the descriptions of many of the items in the budget.

45. Mr Jenkins repeatedly, in his correspondence and in his Statement of case [1RB1] justified charges as reasonable without providing any explanation, evidence or supporting documentation. He did not explain on what empirical evidence his statement was based. Commenting on the budget increases he stated, "the Respondents believe that the anticipated costs are reasonable and payable under the terms of the leases granted". He said in relation to the communal electricity costs, "We believe these costs are competitive in the current electricity supply market"[1RB1 page 2]. He said in relation to cleaning gutters, windows and paths "we believe that the budgeted costs are reasonable".

46. When responding to the Tribunal's questions, Mr Jenkins admitted that he could have supplied much more evidence to the Applicant including copies of electricity invoices, copies of the management contract and copies of supply agreements to illustrate actual costs underlying the budget calculations.

47. Mr Jenkins confirmed that the Lease Plan showing the extent of the Estate defined in the Lease includes the area edged in green [2RB Page 141]. He said that it included the Gate House which fronts Seafront Road, the Gorseway Apartments (two buildings) and the care home previously referred to in the Lease as a nursing home. The current

nursing home is set in extensive grounds including a pond to the west of the road leading to the Gorseway Apartments and the care home. That nursing home is not within the Estate and he said it was not owned by the Respondent. He told the Tribunal that it was owned by Agincare, the operators of the care home. He confirmed there is no physical delineation separating the grounds from the access road.

48. During the Hearing it was established and confirmed that the same gardeners maintain all the gardens. This had been the case during the previous ownership of the Estate. Mr Jenkins suggested that Barchester had shared the costs. He confirmed specifically that only a share of the costs of maintaining the Estate are recoverable from the lessees of the Gate House.

49. During the Hearing, when responding to specific questions raised by Mr Godfrey, Mr Jenkins confirmed that he had recently received a draft set of accounts for 2019/2020 which he said would provide clarity as to whether the budgeted figures were accurate. He produced a copy of those accounts to the Applicant and the Tribunal after the Hearing [2RB pages 133 – 138].

50. He also explained that some services are supplied to the Respondent by Agincare. He had however advised the Tribunal in his letter dated 19 August 2020 that Agincare are not party to the lease granted to the Premises nor the other twenty two long leasehold interests within the Gate House. Agincare are not the "parent company" of the Respondents as has been stated by the Applicant but have been appointed to provide services at the development; these include the garden and grounds maintenance together with the onsite warden and support staff. He referred to the development being specifically for occupation of persons aged over fifty years of age in that letter.

51. Generally, he accepted that there has been significant increase in some costs but explained this by reference to poor separation of costs by Barchester, some subsidisation of the costs and it drawing on the reserve fund.

52. The Applicant disputed that there was any evidence that Barchester had depleted the reserve fund and stated it remained a healthy amount.

Section 20ZA

53. In response to the Further Directions in which the Tribunal had offered the Respondent an opportunity to make an application to dispense with the Consultation Requirements, Mr Jenkins submitted an application for dispensation. He had taken account of the Tribunal's comments to him at the Hearing when it identified that contributions from leaseholders in relation to specific services exceeded £250 in the budgets for the disputed years.

54. The Respondent has sought retrospective dispensation from the consultation requirements in relation to the costs of gardening and grounds maintenance for the disputed years and for the provision of a

site based warden and out of hours emergency contact for the leaseholders and provision of electricity to the communal areas.

55. At the Hearing Mr Jenkins suggested that his company preferred to appoint contractors for a period of 364 days from 1 April 2019 but confirmed that in the case of both gardening and the warden, the contracts had continued. The reason given for applying for dispensation was that the Warden/support officer, who he described as a representative of the Landlord, was present at the monthly site meetings. He did not explain whether there had been any discussion regarding the value of the contract for the supply of those services or whether the costs were discussed with the residents present at those meetings.

56. The Applicant objected to the Respondent's section 20ZA application because he believes that the Tribunal will conclude and uphold her view that there have been many irregularities in relation to the budgeting, contracting and accounts. Her representative stressed the importance of proper consultation because of the vulnerability of the leaseholders of the Gate House both on account their age and propensity to trust the information distributed by the Respondent, not least because this information is so difficult to unravel. He also stressed that better discussions at the monthly management meetings and renewed efforts to engage with all the leaseholders at the Gate House would be of mutual benefit to the leaseholders and the freeholder. In his view granting dispensation would reward the Freeholder for non-compliance. He also requested that the Tribunal make an order extinguishing the Applicant's liability to pay an administration charge in respect of the Respondents litigation costs.

Summary of both written evidence and discussions during the video hearing in relation to specific service charges and the Tribunals determination in relation to the disputed service charges.

57. All the disputed charges for both years are listed in paragraph 26 above. This summary relates to both years. It has taken account of the actual figures in the draft service charge accounts for 2019/2020 which were not disclosed to the Applicant or the Tribunal before the Hearing.

Warden 2019/2020

58. The figure shown in the budget is £10,042.95 [1AB10] which is £436.65 per flat. The draft accounts for the year show a figure of £11,040.00 for a "scheme support officer" not a warden [2RB page 134]. A document headed Gorseway Park 354 Seafront Hayling Island with a subheading, Schedule of tasks for Warden dated 21 November 2019 [2RB pages 24 – 26], refers to an annual charge of £36,000 for "these services" and is signed by Simon Luckhurst although it is not clear in what capacity he has signed the schedule, neither does the document refer to any parties.

59. A Supply of Services Agreement made between the Respondent and Agincare (the supplier), to include Gorseway Apartments and the Gate House, between the Respondent and Agincare (the Supplier) refers to a cost of £32,748 per annum to be invoiced annually but can be paid

monthly for the sum of £2,729 [2RB page 30]. That is stated to be effective from 1 April 2019 for 364 days. Mr Jenkins confirmed at the Hearing that the agreement had run on at the end of March 2020.

60. The bundles contain evidence that costs shared between the Gorseway Apartments and the Gate House are divided in a ratio of 52:23 which would equate to an annual charge of £11,040 under the November document and £10,042.72 under the April document for the Gate House.

61. It has neither been disclosed by the Respondent, nor is it clear to the Tribunal, on what basis an "arm's length" agreement for the cost of supplying the warden or support officer to the Gorseway Apartments and the Gate House was negotiated.

62. As was noted during the Hearing and is recorded in paragraph 55, Mr Jenkins confirmed that his company preferred to appoint contractors for 364 days with a prior expectation that the contracts would "run on" and he was aware that this contract had run on. In fact, that expectation is reflected in the budgets. The cost per resident is clearly shown on the budget for 2019/2020 as exceeding £250 per lessee so there should have been consultation on what was effectively a qualifying long term agreement and Mr Jenkins accepted that there was none. Based on the documents disclosed, the Tribunal is unsure whether at the time of the preparation of the budget the Respondent could identify either the amount of the charge or indeed the extent of the service that would be provided. It is appropriate to record that the Applicant stated that there is no complaint about the service that was provided. If that service is provided in accordance with the schedule of tasks (see paragraph 58 above), the warden undertakes duties which assist the managing agent, such as co-ordinating monthly residents' meetings and preparing minutes, all of which are listed on the schedule of duties.

63. Given the lack of prior consultation, the Tribunal indicated to the Respondent that it would be likely to determine that the Applicant is not liable to pay the full amount of the costs invoiced for the Warden for this year and that her contribution should be capped at £250. The Respondent accepted that there had been no prior consultation so the Tribunal directed that he could make an application for retrospective dispensation. Nothing in the application subsequently made justifies why the Tribunal should grant this. The Applicant had asked for a review and explanation of the budget. Mr Jenkins suggested that that information with explanations of costs were regularly provided at the monthly management meetings by the Respondent's employees but this does not absolve the Respondent from his legal requirements to consult formally. The copy of the budget sent to the applicant identified the annual cost per flat so there was no excuse for the Respondent to miss the fact that consultation was required, save and except if there was a genuine belief and intention that the contract would be revised after 364 days. Mr Jenkins has confirmed that this did not happen and that the contract "ran on" so was effectively a

Qualifying Long Term Agreement within the definition contained in the Act.

64. The Respondent employed a firm of Chartered Surveyors to manage the Property and the Tribunal and the Applicant are entitled to assume that the firm was aware of the legislation regarding consultation and the obligation of the Respondent to consult with all the leaseholders in relation to Qualifying Works and Qualifying Long Term Agreements. This was confirmed by Mr Jenkins. (See paragraph 42 above). The evidence contains copies of correspondence between the parties which clearly demonstrate that the Applicant had questioned the budget and asked for more information. The Applicant's liability to contribute towards the cost of providing the warden is capped at £250 for 2019/2020. [The Tribunal referred to the wrong limit in that the legislation caps the amount recoverable in respect of as qualifying long term agreement in respect of which there was no prior consultation at £100]. However, it considers that it is reasonable nevertheless to allow the Respondent to recover this amount for the service provided as the Applicant has no complaint about the service provided but is only concerned by the increase in the costs of that service when compared with the costs during previous years.

65. Furthermore, the Applicant has suggested that Agincare is not wholly unrelated to the Respondent as there is commonality of officers. The Respondent has neither addressed, explained nor discussed the inter-company relationship between, or why the requirement to obtain at least two other quotations for services from an independent or unrelated party was not met.

66. The Respondent appealed against the finding by the Tribunal that the contract for the services of the warden was a Qualifying Long Term Agreement. It stated that the Tribunal was wrong in its finding that a contract for 364 days which had continued was a QLTA because at the commencement of the contract the Respondent could not have known that the contract would continue or run on.

67. It had also identified that if the relevant costs incurred under an agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant in respect of that period being more than £100, section 20 of the Act would apply to it. The Tribunal had incorrectly referred to a figure of £250 which is the limitation applicable to qualifying works. In such circumstance section 20 would limit the relevant contribution of the tenant to the prescribed amount of £100 which is referred to in clause 4 of the **Service Charge Consultation Requirements (England) Regulations 2003 [No. 1987].**

68. The Respondent has now referred the Tribunal to the Court of Appeal decision in **Corvan (Properties) Limited [2018] EWCA CIV 1102 and UKUT 228 (LC).** In Corvan, Martin Rodger QC Deputy President of the Upper Tribunal (Property Chamber), considered an appeal by the landlord against a FTT decision concerning service charges. The relevant issue was whether, in that case, the management

agreement was a qualifying long term agreement. He considered whether the agreement which was for a fixed initial term of twelve months, could be terminated before it had lasted more than twelve months. The FTT had found it was effectively an agreement for more than twelve months and therefore a QLTA and subject to section 20. Martin Rodger agreed with the FTT that the agreement was a QLTA. That element of his decision was appealed to the Court of Appeal. The appeal turned on the correct construction of the relevant clause in the management agreement and the scope of section 20ZA(2) which is the provision in the Act which enables a landlord to obtain dispensation from the consultation requirements. The Court of Appeal found in that case that the minimum term of the management agreement exceeded the initial twelve months.

69. In this application, the Supply of Services Agreement between the Respondent and Agincare for the provision of services stated "Effective from 1 April 2019 for 364 days" [2RB page 30]. It is dated 7 May 2019 and refers to The Cost as 32,748 per annum. A paragraph titled "Renewal" stated "Agreement to be renewed annually on 1 April". That is contradictory to a term of 364 days as it implies that there must in fact be a day i.e. the 30 March 2020 on which the agreement ends but it stated that it can be renewed annually, but effectively two days later. It is not apparent from the word "annually" if the renewal would be for 364 days or for a year as annually implies.

70. The Tribunal concluded that the reference in the Agreement to 364 days is effectively a sham. The Agreement was intended to be an annual agreement which would and could be renewed annually. Following discussion between the parties during the Hearing the Respondent's representative conceded that there should, in all the circumstances, have been prior consultation.

71. The Respondent's appeal stated that the Tribunal should have considered whether the agreement was for a term which must exceed 12 months and the original decision did not record what the Tribunal had considered. When challenged about the costs for the provision of the Warden, Mr Jenkins said that the Warden had discussed the budget with the residents and implied that was effectively consultation although he conceded it was not consultation which complied with the regulations which was why the Respondent subsequently applied for retrospective dispensation under section 20ZA.

72. The Tribunal accepting the merit of the Respondent's belated argument that this agreement, although effectively an agreement that was always intended to last for more than 364 days, could have been terminated sooner if the Respondent had sold the freehold. Therefore, the Tribunal cannot limit the Applicant's contribution towards the costs of providing the Warden to £100. It must instead consider whether the contribution demanded from the Applicant of £436.65 is reasonable.

73. The quality of the service provided by the Warden was not disputed by the Applicant and is therefore accepted as being reasonable within section 19 of the Act. The Applicant's written and oral submissions reflected that the Warden provided pastoral care to the residents of the Gate House.

74. The application was made because of the regular annual increase in the costs without changes or enhancement to the service provided. The Applicant lives independently in her own flat. The Warden's duties include administrative tasks which assist the Managing Agent and some practical tasks that could be provided by someone other than the warden. The essential question is whether the amount charged to the Applicant, is reasonable. The Tribunal has concluded that it was not. The reason for the Tribunal's error in relation to the limitation of the charge to £250, on the mistaken assumption that the limit applied to a QLTA, was because it considered that that amount was a fair and reasonable amount for the Applicant to pay for the service provided.

75. As identified by the Tribunal the information eventually provided by the Respondent following the Hearing was far from transparent as:-

(a) The budget is for £10,042.95 (£436.65) which is consistent with the annual charge in the agreement,

(b) The draft accounts show the sum of £11,040 (£481.48),

(c) the £12,000 shown as the budgeted cost for 2020 – 2021 was an incorrect apportionment of the £36,000 contract figure, and

(d) The schedule of tasks for the Warden [2RB page 24], although not described as a contract, contains a box which

refers to an annual charge for these services of £36,000 p/a (sic) is dated 21 November 2019 and signed by Simon Luckhurst, 23/75 of which would be £11,040.

76. Summarising the information which it has now received, it appears to the Tribunal that the accounts for 2019 – 2020 refer to a cost for the provision of the Warden which was not documented until November 2019 (after the disclosure of the budget for that year) and which replaced the preceding Supply of Services Agreement.

77. The Tribunal finds that the two agreements, when read together, indicates that the Respondent always intended to put in place an agreement to provide warden services for a period **in excess** of a year. If that is correct, the Respondent may only recover £100 from the Applicant for this service in 2019 – 2020. If, however, the Respondent is correct that the agreement for the provision of services is the agreement signed on 7 May 2019 and that is not a QLTA, the accounts are incorrect. Furthermore the Respondent terminated that agreement and replaced it with a QLTA on 21 November 2019. It has already acknowledged that there was no prior consultation. The Tribunal accepts that a reasonable charge for the provision of the Warden which includes "emergency cover", would be £5,750 per annum. However, from 21 November onwards, there is another agreement for which there has been no consultation. Therefore the Tribunal is minded to allow the equivalent of an annual charge of £5,750 for the period between 1 April 2019 and 21 November 2019 (234 days) plus £100 being the statutory limit applicable to a QLTA for the period between 22 November 2019 and 31 March 2020. The Respondent can therefore recover £260.27.

Warden 2020/2021

78. The Budget for this year was £12,000, an increase of £1,957 from the budgeted figure for the previous year. If the annual fee of £36,000 per annum shown in the schedule of tasks for the warden referred to in paragraph 58 above is accurate, the figure should be £11,040 which is 23/75 of that. The Applicant's contribution is £521.74.

79. The Respondent should have undertaken an appropriate consultation process for the current year before the estimated costs were finalised which may have achieved more agreement between the parties and a resolution at the end of the previous year.

80. Based on the information which the Respondent has supplied, the budgeted figure appears to be incorrect. The Respondent must undertake an appropriate consultation with the leaseholders if it wishes to ensure recovery of costs. At present The Tribunal has no alternative but to limit the amount it considers reasonable to £250 per leaseholder which amounts to a budgeted figure of £5,750 (£250 x 23).

81. The Respondent still has an opportunity to undertake a proper consultation before the accounts for 2020/2021 are finalised. Although the Tribunal can limit the amount payable on account

now, the Respondent will have another opportunity to justify these costs before the figures are finalised in the 2020/2021 accounts.

Buildings Insurance 2020 - 2021

78. The Applicant has stated that the contribution in 2020/2021 is significantly higher than in the preceding year. The amount shown in the 2019/2020 accounts, including engineering and valuation costs, is £4,970.

79. An invoice from Towergate, provided by the Respondent after the Hearing shows the premium attributable to the Gate House with effect from the 5 September 2020 is £4,574.53 [RB2 page 55].

80. The amount shown in the 2020/2021 budget is £5,230. The Applicant suggested to the Tribunal that the buildings value has been inflated to reflect an increase in the value of the Property collectively for the benefit of the owner. The Respondent has now provided a copy of a valuation for building reinstatement with details of the current policy and a breakdown of the premiums, since it is a group policy, which covers the Gorseway apartments and the Gate House. The reference to 75 apartments [2RB page 44] is in fact to both risk locations so includes the 23 Gate House apartments. The Applicant also objected to the figure of £5,000,000 for terrorism cover.

81. The Tribunal finds that the amount of cover recommended in the valuation is reasonable. It understands the Applicant's concern that the valuation was not independent but has concluded that the increase in premium has occurred because the Property was significantly under insured in previous years. The level of terrorism cover is appropriate to take account of the level of any personal injury claim which could arise however unlikely the Applicant perceives the actual risk.

82. The Tribunal therefore allows the budgeted figure of £5,230 of which the Applicant's share is £227.39.

Communal electricity 2019 - 2020

83. The cost per flat of the budget figure was £466.96. The draft accounts shown an annual charge of £6,539.00, in contrast to the budgeted amount of £10,740.00. Therefore, the actual contribution will be £284.30 per flat which, based on the information in the Application, is similar to the cost of electricity in the service charge years ending 2015 and 2016. That demonstrates that the Applicant was correct to challenge the budgeted figure since it bears no relation to the actual costs or indeed to the costs in the invoices which have now been provided.

84. One of the difficulties in analysing the actual costs is that the invoices the Respondent has now supplied only cover two periods between 23.10.18 – 10.09.19 and 1.01.20 – 31.07.20. No information has been provided for the period between 10 September 2019 and 31 December 2019. The actual cost of the

electricity is now stated in the draft accounts so the Tribunal determines that the Applicant's share of the cost of electricity for this period shall be calculated by reference to that amount and she is liable to pay £284.30 for 2019/2020.

Communal electricity 2020 -2021

85. The Tribunal found that the copy invoices produced by the Respondent following the Hearing confusing. These show that the amounts invoiced for electricity for the period between April 2020 and July 2020 amount to little more than £2,100 for a four month period which suggests that the budgeted figure of £9,000 is generous. The Tribunal, taking into account that consumption may be lower during April and July, determines that the amount shown in the budget is reasonable. It is however concerned by the apparent inability of the Respondents managing agent to produce copies of all the electricity accounts.

Communal Lounge/Sun Lounge 2019 – 2020

86. The budget for this year refers to the sum of £4,115.39 to include "utilities and management of the area". The charge in the previous year was £1,236. The Applicant has stated that until May of 2019, and for part of the preceding year, no room was available but nevertheless a charge of £1,118 was made by Agincare. However, following complaints received from the leaseholders, Daniells Harrison advised the Applicant in a letter dated 11 September 2019 that the charge for the sun lounge will be reduced to £100 from £1,118 per month [1AB9 page 3]. The final paragraph of that letter said that the reduction will be adjusted in the year end accounts and any surplus returned to the leaseholders at that time.

87. However, the draft accounts for 2019/2020 show the cost of providing the communal lounge as £4,224 [2RB page 134]. Mr Jenkins has provided copies of 6 invoices which are in respect of April, May, June, July, August and September 2019, all of which are dated 25 September 2019 and all of which are for £416.67 plus VAT (total £500). He has provided a seventh invoice dated 1 April 2020 for six months from October 2019 until March 2020 which is for £600. There is no reference to VAT on the latter invoice. These seven invoices total £3,600 which do not explain the figure in the accounts [2RB pages 100 – 105 (two pages numbered 104)]. Further confusion arises since the invoices are endorsed in manuscript "shared and allocated between the Apartments and the Gate House in the ratio 52%/23%".

88. Mr Jenkins has also provided a copy of an agreement between the Respondent and Agincare whereby that company agrees to provide the communal lounge, including utilities and management, for an annual cost of £13,420 per annum for 364 days from the 1 April 2019 [2RB page 31]. The agreement is for both the Gate House (23) and Gorseway Apartments (52). On the basis of the ratio applied by the Respondent the charge allocated to the Gate House for the 2019/2020 would be £3,045.

89. Mr Jenkins has also provided the Tribunal with a copy of an invoice dated 20 June 2019 from Agincare Homes Holdings to Independent Living Ltd relating to build works for the refurbishment of the Communal Sun Lounge [2RB page 140]. The Applicant submitted the service charge included the rental costs during the period of refurbishment.

90. The lease of the Property defines the Common Parts as including "communal lounges" if any [Lease page 2]. The wider definition of Common Parts includes areas such as roadways and drives and footpaths within the Estate intended to be for the use and enjoyment of the Lessee (in common with the other occupiers and their invitees) **of the flats comprised within the Estate.** [Tribunal's emphasis]. That definition does not include a communal lounge which is in another building and shared with others who are not owners of flats within the Estate. Estate is defined in Part 1 of the First Schedule as the land with a frontage to Sea Front Haying Island ….and edged green on plan A annexed hereto" [Lease page 24].

91. The communal lounge for use by the leaseholders of the Gate House and the leaseholders of the Gorseway Apartments is only available for intermittent use and latterly is a different facility from that which has until now been provided. It is located within the Care Home within the Estate not the Building (defined in the Lease.) Even if the Tribunal is incorrect in interpreting the lease as excluding the communal lounge within the Care Home from being a Common Part, there is no provision within the Lease which enables the Respondent to recover rent for supplying a communal lounge.

92. The Fifth Schedule to the Lease enables the Landlord to recover a Proper Proportion (the Lessee's contribution) of the costs of the Lessor in carrying out his obligations under Clause 5 (b) (d) (e) (f) (g) (h) (i) (k) and (n) of the Lease (Page 31 of the Lease). Those obligations include:-

(b) insurance maintenance decoration and renewal of the structure, the internal walls and party walls including sewers pipes drains cables and wires and the fire alarm and extinguishment system and the audio emergency communication systems, the Common Parts including main entrance halls passageways landings staircases lift shaft (if any) refuse chamber (if any) and wardens flat (if any)

(e) all charges for services payable for the Common Parts including any wardens flat

(f) cleaning and lighting the passages landings and staircases comprising the Common Parts

(g) decoration of exterior

(h) the costs of employing a managing agent (if necessary)
(i) the costs of maintaining an alarm and intercom system to the Flat
(k) insurance of furniture and equipment in the Common Parts and the
(n) the cost of employing a managing agent and or a warden or such other staff as the lessor shall deem necessary …. [Lease pages 18 - 21].

93. This would enable the Respondent to recover costs associated with the maintenance and decoration of a Common Part, costs of services and of insurance of furniture. In this case, the Respondent has been charging rent for the use of what it now claims is a Common Part. If it is correct in that interpretation, the Applicant has a right to use the Common Part at any time it wishes. If it is a Common Part access to it cannot be restricted to prearranged times. It would therefore be totally contradictory for the Respondent to charge rent. The original lounge is no longer available and the Respondent has charged rent for the use of a Sun Lounge. Despite the rental charge that lounge has only been made available intermittently. [See paragraph 95 below].

94. Whilst there is some duplication within the wording, the Lease provides for the provision of the Warden and the employment of a Managing Agent and for the Lessor to recover those costs as service charges. The Tribunal have concluded that the Lease contains no provision which enables the lessor to recover the costs of providing a communal lounge within a different building. Unless the Lease enables recovery of this cost, it cannot be recovered as part of the service charge.

95. Furthermore, the copy invoices supplied, together with the agreement between the Respondent and Agincare, reveal that a rental charge is being paid to Agincare for the use of the lounge. The Applicant has said that no lounge was available because of refurbishment works at the care home but charges have been invoiced, regardless of the fact that the lounge was unavailable for use. The Applicant has also said that the Sun Lounge, which is the room currently available, is not as suitable and not always available.

96. It appears to the Tribunal that the Respondent has recovered significant and irregular costs for the intermittent provision of a facility that it cannot recharge as a service charge. If the leaseholders separately agree to the arrangement and wish to pay for a facility, it can be provided, but those costs cannot be included within the service charge. If the availability of the lounge cannot be guaranteed and it is used intermittently and perhaps only for meetings, the managing agent could procure its use on an occasional basis and recharge those costs within the management costs.

97. The Tribunal determines that the Applicant is not liable to pay anything towards the provision of the communal lounge in 2019/2020. Since it has determined nothing is payable, the Tribunal has not addressed the considerable discrepancies in the information which the Respondent has provided to it regarding the invoicing by Agincare.

98. No explanation has been offered as to why the refurbishment costs of the sun lounge have been included in the service charge. Those costs have not been included within the section of the account headed communal lounge. However, the Tribunal suspected that since the invoice has been marked as "paid" it has instead been charged under Repairs and Maintenance. If that is the case it must be removed and the Tribunal remains concerned by the lack of transparency in the costs which the Managing Agent has authorised for inclusion in the service charge accounts.

Communal Lounge 2020/2021

99. For the reasons set out in paragraph 96 above, the Tribunal determines that the Applicant is not liable to make any payment on account for the use of the Communal Lounge.

Communal Cleaning 2020/2021

100. The Applicant has disputed the charge made on account in 2020/2021. He referred to a charge of £113.04 per flat. The budgeted figure of £2,600 is for weekly cleaning with an additional £750 which comprises cleaning the gutters once (£330), windows four times (£120) and paths (£300). No frequency has been disclosed for the latter but it should be a regular service.

101. The actual amount shown in the 2019/2020 accounts for these collective services is cleaning £1,366, gutters £660 and windows £72 (with no charge for the paths) which totals £2,098.

102. In the response to the Application, the Respondent said that it thought that the budgeted costs for pressure washing the external pathways and the hard landscaped areas are reasonable. However, since no charge has been included in the 2019/2020 accounts, and the Tribunal cannot detect any significant extent of pathway within the curtilage of the Gate House, it has concluded that until the charge was put into the 2019/2020 budget, cleaning costs would have been part of the gardening costs.

103. The Tribunal therefore determines that a reasonable charge for the communal cleaning, to include windows and gutters, is £2,200. In allowing this amount it has relied upon the actual charge in the 2019/2020 accounts. The Applicant's contribution will be £95.65 (1/23).

Repairs and maintenance 2019/ 2020

104. These costs appear in the budget and accounts in three places. A charge is shown for repairs and maintenance of the Gate House and an additional charge is shown for Repairs and Maintenance as a

"shared" cost and for garden and ground maintenance as a shared cost.

105. £5,000 was in the budget for 2019/2020, and the actual costs were £5,880 from which the Tribunal deducts £3,094.39 (which is the Gate House share of the costs of the sun lounge refurbishment). The Tribunal will allow £2,785.61 (£121.11 per flat).

106. The Tribunal has seen no evidence of what costs were actually incurred but for the reasons explained in paragraph 98 above, is concerned that this heading contains costs which should not have been included. The cost of the specific items of repair and maintenance itemised in the accounts as electrical testing, doors and lifts, which were not challenged total a further £3,089.

Repairs and maintenance 2020/2021

107. The budgeted figure for 2020/2021 is £5,000 which the Tribunal determines to be excessive. The Tribunal determines £3,000 is reasonable (£130.43 per flat). It makes this determination notwithstanding that the Applicant was unable to challenge this figure because the invoice for the refurbishment of the sun lounge had not been disclosed to her before she made the Application.

108. The provision of a payment of £12,750 towards the Reserve or Sinking Fund is unreasonable too. The 2019/2020 draft accounts show £11,750 was transferred into a separate sinking fund. If the intention is to pay towards significant itemised costs, the Respondent must undertake a consultation exercise, failing which the maximum it can collect on account is £5,750 towards which the Applicant would be liable to make a contribution of £250. The Respondent will have to comply with the consultation requirements for the specific costs it is budgeting for to enable it to recover a higher amount now and it should be able to do this if it is anticipating the need for specific repairs in the current service charge year.

Gardens and Ground maintenance 2019/2020

109. Gardens and Grounds maintenance are defined as being a "joint cost shared with the entire site" including the nursing home which is in separate ownership. Given that the gardens surrounding the Gate House are relatively self-contained, this arrangement is beneficial to Agincare but not to the residents of the Gate House.

110. The Tribunal consider that a 50% contribution towards these cost from the 75 apartments is excessive and it results in the Applicant's contribution exceeding the consultation limit. The Respondent has provided copies of a gardening specification from Agincare Homes Holdings Limited for Gardening at Gorseway Park at an annual cost of £19,968 (inc. VAT) and for 50% of the gardening at the Gorseway and the Gatehouse at £26,040 per annum (no mention of VAT) [2RB pages 23 and 28].

111. The draft accounts show the cost of gardens and ground maintenance as £8,962. The Tribunal determines that the maximum reasonable cost of maintaining the limited grounds and gardens at The Gate House is £5,750, equivalent to a payment of £250 per flat per annum. This charge is also consistent with the figure in the budget for 2020-2021. The contract for the supply of gardening is a contract which has resulted in a charge of in excess of £250 to a leaseholder. Therefore, the Respondent should have consulted with the leaseholders before committing to the cost of these works. There has been no prior consultation regarding this charge so whatever the actual charge, that is the maximum the Respondent can recover from the Applicant. If the Respondent wishes to demonstrate that the gardening services shared between the Care Home, the Nursing Home and the 75 apartments are fair, its consultation exercise will have to be detailed enough to satisfy the residents that they are not subsidising the Nursing Home and Care Home owners' costs. The Gate House residents have no rights to use the gardens belonging to the Nursing home and therefore should not be paying towards the maintenance of those grounds.

112. The draft accounts for 2019/2020 refer to Agincare Shared Costs as the Scheme support officers costs (Warden), the communal lounge, repairs and maintenance and gardens and ground maintenance. The amount allocated to repairs and maintenance was £1,423. There is no indication what costs this is intended to cover but the Respondent's second bundle contained a copy of a specification for general repairs and maintenance tasks undertaken at the Gate House. These all relate to maintenance within the Building or its grounds and includes fire alarm and emergency lighting testing. An amount of £820 was expressed to be an annual charge for 2020/2021 but this does not appear separately in the budget for that year, which is odd as the Respondent has produced a contract [2RB page 26]. However, an agreement for what appears to be a similar service dated 7 May 2019 for the period from 1 April 2019 for 364 days to be renewed annually, which Mr Jenkins said "ran on", shows an annual charge of £4,640 per annum, of which 23/75 is £1,422.93. This is equivalent to the figure shown in the 2019/2020 accounts [2RB page 29].

113. It is impossible for the Tribunal to assess what these costs might be and why the cost exceeds the costs which are specific to the Gate House, but they have been included in the budget for 2020/2021.

114. Mr Jenkins has disclosed an invoice dated 20 June 2019 relating to Car Park and Binstore Works from Agincare Homes Holdings for £3,400 [2RB page 139]. It contains a note that the costs are to be shared between the "Gorseway Apartments the Gate House and the care home". During the Hearing, the Applicant's representative stated that these works had not benefitted the residents of the Apartments or the Gate House. It was not disclosed whether the apportionment allocated to the Gate House, which would be £782 is included within this charge. On the 2019/2020 accounts £1,043 has been shown as the cost of bin store repairs which is wrong

because from the handwritten annotation on the invoice Daniells Harrison have split the entire cost between the Gate House and Gorseway Apartments. That figure although unchallenged should be reduced in the final accounts to £782.

115. The accumulated cost of general repairs, maintenance and gardening in the accounts totals £16,265, but both the maintenance and the gardening costs have been reduced so the Applicant's contribution is now £432.98.

116. In the absence of transparent information, the Tribunal has allowed individual contributions of £61.87 for general repairs, £121.11 for maintenance and £250 for gardening.

Garden and Ground maintenance 2020/2021

117. The Tribunal applying the same principles as for the previous year will allow £308.70 in total for the estate general repairs, maintenance and gardening based on the budgeted figures of £2,000 for general repairs (£86.96 per flat) and £5,100 for gardening (£221.74). The budget does not allocate anything specific against the heading "maintenance" but includes it with general repairs (with a note stating it previously included garden).

Management accounts and administration 2019/2020 and 2020/2021

118. The start date of the management contract is 23 October 2019. It refers to a charge of £21,375 plus VAT per annum equating to £285 plus VAT per unit per annum for the residential flats. The property is described in that contract as being Gorseway Park 354 Seafront Hayling Island Hampshire. That includes the Gorseway apartments, so all 75 flats and the Estate.

119. In his response to the Application Mr Jenkins stated that the "management of the Gate House is more time demanding and intensive than many similar sized private ownership developments where the owners/residents are not aged 50 plus. The ability for Leaseholders to pay service charges monthly also significantly increases the time spent on managing this development" [1RB1 page 5]. He offered no explanation as to why that would increase the management costs.

120. The explanations from Amanda Rickwood, the previous property manager regarding the budgeting, in a document headed Explanatory notes for service charge budget for the year to 31 March 2020 are not reflected in the actual budget she produced. She has not included all those heads of expenditure she claimed were a legal requirement. [1RB1AIV page 7] (see paragraph 35 above).

121. No attempt has been made to match the heads of charge in the Lease with the budget headings. Even more confusing, the headings in the draft accounts place the expenditure in a different order and do not refer to the Schedule 1 and Schedule 2 costs.

122. The Tribunal is aware that Amanda Rickwood left Daniells Harrison within the first year of its contract with the Respondent and that Mr Jenkins left his employment soon after the first day of hearing, albeit that he has supplied the information which the Tribunal directed that the Respondent should supply. However, as the Applicant identified, he has supplied almost 200 additional pages without putting the documents in a particular or logical order and has not provided a complete set of electricity invoices. Furthermore, he seems to have included information not relevant to the Gate House.

123. For all those reasons the Tribunal concluded, that Daniells Harrison has not supplied a service which justifies each leaseholder paying around £360 a year for the combined services of Management and accounting.

124. The element attributed to accounting charges is accepted as reasonable in 2019/2020. However, it is excessive in the 2020/2021 budget because the charge has doubled from £675 to £1,250 due to the addition of a Certification fee of £570. The Tribunal determines that at figure of £700 is reasonable (£30.43).

125. The Management fees are £7,488.79 in 2019/2020 and increased to £7,680 (£333.91 per leaseholder in the latter year). The Tribunal does not accept that this is a reasonable charge for the management service hitherto provided. Based on the information disclosed to the Tribunal, the managing agents need to review their methods and communication with the leaseholders since the Tribunal believe that the complaints raised by the Applicant disclose inefficient and poor management.

126. It was clearly confusing to provide an individual budget to leaseholders with different descriptions of the budgeted costs from those used in the collective budget. Furthermore, an attempt should be made to match the budget headings with the services listed in the Lease.

127. The Tribunal does not accept that the monthly collection of service charges with the small number of residents in the Gate House has increased the level of administration undertaken by Daniells Harrison, as suggested by Mr Jenkins in his statement. The information and evidence provided by Mr Jenkins demonstrate a somewhat haphazard approach to management. The documents supplied after the Hearing were also disordered and incomplete.

128. No information has been provided by Daniells Harrison to explain why it included £12,750 towards reserves in the 2020/2021 budget. That is a contribution of £554.35 per leaseholder. There is no

evidence that Daniells Harrison undertook a condition survey or anticipated major works. The Tribunal has assumed if such a survey had been undertaken or is intended, Daniells Harrison would have charged the leaseholders or shown the costs as anticipated expenditure in the budget. Furthermore it is clear from the draft accounts that overpayments for budgeted expenditure are simply "swallowed up" in the transfer of collected service charges to the reserve account as is shown by the draft accounts for 2019/2020 where £11,750 was transferred to the sinking fund and £2,606 was credited to the account from the reserves to match the total expenditure of £68,813 to the budgeted income. The statements made by both Amanda Rickwood and Mr Jenkins that any overpayments would be recredited to the service charge account are untrue. The budget for electricity was £10,740. The accounts show expenditure of £6,539 but it has not been suggested that anything would be returned to the leaseholders. Whilst that might be appropriate if they had been consulted and had agreed to do this, Mr Godfrey told the Tribunal that there was no consultation regarding either the 2019/2020 or the 2020/2021 budgets. His requests for a revision of the budgets were ignored.

129. The management contract refers to three bank accounts for the Gate House held by Daniells Harrison for service charges, ground rent and reserves and specifies the account numbers [2RB page 4] but in his response to the Further Directions, Mr Jenkins disclosed "All reserve funds and sinking funds are currently held together with the service charge monies in NatWest bank account number 54758327." That account is supposed to contain only service charges not reserves. He also said that the notes to the 2019/2020 draft service charge accounts show a balance of £37,833 of reserve funds and £11,750 of sinking funds, on 31 March 2020 [2RB pages 107 and 108].

130. Mr Jenkins stated that the NatWest Bank statement showing the balance of account no **54758327** as £72,607.98 on 31 March 2020 [2RB page 112] includes the reserve fund of £37,833 and the Sinking Fund of £11,750 [2RB page 107]. Page 112 following is an extract from the Nat West statement highlighting the balance identified as the closing balance but does not illustrate anything further.

131. The accounts for 2019/2020 show the stationery cost as an additional £34.92. In 2020/2021 the budgeted figure is £128. That is allowed on the basis that the Applicant retains an opportunity to challenge the actual figure once it is finalised.

132. For all these reasons the Tribunal determines that it is reasonable for the management fees to be limited to £250 + VAT for both 2019 and 2020.

Cost applications and costs generally

133. The Application includes an application for a Section 20C order and an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act. The Applicant submitted it was appropriate to make an order so that no costs arising from the application could be passed to the Applicant or any other leaseholder. Mr Jenkins stated that if the Respondent claimed costs, he wished to counterclaim. The Tribunal has a limited jurisdiction to award costs. It refers the parties to Rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [2013 No 1169]** and to the Upper Tribunal decision in **Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC).** Any application in relation to costs must be made within 28 days of the date of this decision.

134. The Tribunal has considered both the applications for both the Section 20C Order and the Paragraph 5A Order.

135. It makes an Order under section 20C of the Act to prevent the Respondent from regarding any costs in connection with these proceedings as relevant costs for the purpose of service charges.

136. On its own initiative, the Tribunal makes an Order requiring the Respondent to reimburse the Applicant the whole or any part of the application or hearing fee paid to HMCTS in respect of these proceedings, such sum to be paid within 28 days of this decision. This order is made under Rule 13(2).

137. Having considered the Applicant's request, it also makes an Order under Paragraph 5A of Schedule 11 of CLARA extinguishing the Applicant's liability to pay any litigation costs incurred by the Respondent in relation to these proceedings.

138. It has made these three orders in favour of the Applicant because it was unimpressed by the way in which the Respondent provided the information it was directed to provide in connection with these proceedings. It has found that the Applicant's complaints regarding the misleading nature of the budget information entirely justified.

139. The Tribunal has found much of the information provided on behalf of the Respondent confusing both in content and presentation. It was also concerned by the unfamiliarity of the Respondent's managing agent regarding the content of the Lease, particularly in his written correspondence with the Applicant or her representatives.

140. Mr Jenkins repeatedly referred to a requirement that the residents should be over fifty. The definition of "Specified Age" in the Lease is sixty years of age and above [Lease Page 2]. The Gate House flats are occupied by leaseholders who are entitled to receive more appropriate and sympathetic management of their homes than they have received during the last two years.

Judge C A Rai (Chairman)
Reviewed 1 March 2021

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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. 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.

2. The application must arrive at the First-tier Tribunal within 28 days* after the Tribunal sends written reasons for the decision to the person making the application.

3. If the person wishing to appeal does not comply with the 28-day time limit, the 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 First-tier 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.

* This period runs from the date of this reviewed decision.