FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2019/0212**
Property	**:**	**Flat 4 (2nd Floor Flat) 127 Ladbroke Grove London W11 1PN**
Applicant	**:**	**Kamlesh Parmar**
Representative	**:**	**In Person**
Respondent	**:**	**127 Ladbroke Grove Ltd**
Representative	**:**	**Mr M Honeyben**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Mr A Harris LLM FRICS FCIArb** **Mrs L Crane MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**27 September 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a face-to-face hearing as a reasonable adjustment due to the applicant's disability. The documents before the tribunal are in a bundle of 775 pages, the contents of which the tribunal have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2014, 2015, 2016, 2017 and 2018. .

The hearing

2. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Honeyben the sole Director.

The background

3. The property which is the subject of this application is a five-storey property converted into five flats from basement to 4th floor. The applicant is the lessee of the second floor flat.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

6. The Respondent company is a lessee owned and controlled company following enfranchisement of the freehold. The Applicant was a director of the Respondent from 18 August 2003 to 9 March 2016. For a leaseholder who was a director of the Respondent to deny liability for

service charges for a period while he was a director of the company is not an attractive position.

7. Companies of this nature have little in the way of assets and are dependent on collection of service charges in order to be able to run a building. If one leaseholder does not pay it places a significant additional burden on the others.

8. In December 2016 the Respondent applied to the County Court for judgement in relation to sums owed by the applicant consisting of unpaid interim service charges amounting to £7411.86. The court awarded the Respondents all of the interim service charges claimed and awarded the applicant £608.28 on a counterclaim for disrepair. The tribunal considered the effects of this case in a preliminary decision made on 10 December 2019. The court case considered interim charges and not certified service charges.

9. In what should be a relatively straightforward building to administer where the five flat owners control the freehold it is clear that something has gone very badly wrong. There are a modest number of invoices each year so that accounting should be uncomplicated and the building is a simple one without complex services such as lifts or communal heating. It is not possible from the evidence before the tribunal to apportion blame for the breakdown in management but it is in the interests of all parties for the running of this property to be put back on a proper basis.

10. It is clear from the evidence, that in the past, there have been some informal arrangements between the flat owners for works including a substantial internal decorating contract which was not put through the service charge for whatever reason. However, most of the participants in those arrangements have now moved on and one of the issues is whether one of those arrangements for cleaning of the common parts is binding on their successors in title. However, in the view of the tribunal this confusion between informal arrangements and the mechanism set out in the leases is at least in part to blame for the current situation.

11. The Judgement of the Central London County Court dated 29 March 2018 under reference C62YM906 refers to the previous history of this matter and at paragraph 38 the judge said

> *It is entirely reasonable to have a reserve fund as all parties - and I do not think this is in issue - accept that remedial works are required in respect of the building. If I hesitate at that point and observe that of course certainly in a small management freehold company such as the claimant's where there are only a handful of tenants or directors managing four or five flats in a building, it is incumbent and indeed necessary for all tenants to make timely contributions to a service charge fund in order that the claimants as freeholders*

can carry out their covenanted obligations to carry out repairs.

12. And at paragraph 39

> *It seems to me the common theme running through this whole sad history since 2008/2009 is that the claimant management company has been hamstrung in doing anything significant as far as repairs and improvements are concerned because of the hole in the fund as a result of non-payment of the service charges.*

<u>The issues</u>

13. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The payability and reasonableness of service charges demanded for the years, 2014 to 2018 in particular:

- For 2014 the reasonableness of the following charges: electricity charges of £254, Health and Safety charges of £780, Repairs and maintenance charges including repair of timers - £116.72, Glass Panel repairs, £150, unblocking gulley £85, Sundry items of £33, Accountancy fees of £450 and Management Fees of £1827

- For 2015 the reasonableness of the following charges: cleaning charges of £480, Accountancy fees of £450, Management fees of £2840 Legal and Professional fees of £13, Insurance of £2360

- For 2016 the reasonableness of the following charges: insurance of £2976, Accountancy fees of £480, legal and professional fees of £5137, bad debt of £2225, Management fees of £2870, Company Secretary Fees of £380, Specification of works £2760, William Heath & co court fee, £1909, Rubbish clearance £80 +£165, unblocking drain £85, Broken sash £440, basement pipe work £268

- 2017 – the reasonableness and payability of charges of £3090.92

- All the charges for 2018

- whether the landlord has complied with the terms of the lease in respect of the charges demanded

- the role of and payments into the reserve funds

- whether there has been the necessary consultation

- whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made

- whether an order for reimbursement of application/ hearing fees should be made.

14. The parties have produced a Scott Schedule setting out the issues. There is one version with comments from the Applicant and the Respondent and a further copy produced by the Applicant without comments from the Respondent. The contents of both have been considered although the variations are relatively minor. Where issues affect more than one year for the same point of principle, the years will be considered together.

15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

16. Before dealing with individual items of expenditure it is necessary to deal with arguments under section 20B and with the question of certificates under the lease.

17. Matters relating to the internal management of the Respondent company or in relation to the roof space are not in the jurisdiction of this tribunal.

Section 20B

18. The Applicant argues that no service charges are payable for any year as the certificates and demands do not comply with the lease machinery and it is now too late to demand payment. The lease says that the amount of service charge payable is specified by a certificate and those presented in 2019 do not comply with the lease. In the absence of any valid certificates by 3 December 2020 being 18 months after the end of the last year, section 20B means that no charges are payable at all for any of the years 2014 to 2018 inclusive.

19. The same principles apply to the final demands as the certificates are a condition precedent to determine the amount payable. In addition the demand is not contractually compliant as it does not show the credits of the interim payments made for the said year.

20. Alternatively, and without prejudice to the arguments above the six-year limitation period applies and if it is determined that the certificates are not valid and even if section 20B did not apply no service charges payable for six-year prior to the date of any valid certificate as no service charges payable until a valid demand and certificate has been served.

21. The total interim payments of £9210.02 should be refunded under the balancing clause.

22. Without prejudice to the points already made, if the tribunal determines that the certificates and accounts dated 3 June 2019 are valid then the 18 month rule under section 20B applies and no service charges are payable for any amount incurred more than 18 months before the service of the certificates and the tribunal only needs to examine the items in the disputed schedule that occurred after 3 January 2018.

23. The Applicant has referred to the decision of the High Court in Brent v Shulem B Association [2011] EWHC 1663 (Ch) where the court set out its interpretation of section 20B (1) and section 20B (2).

24. The County Court in the decision referred to at paragraph 11 above dealt with the case on the basis that the service charges claimed were interim demands and that final certificates had not been provided at an appropriate time. However, the County Court did not regard the items in the charge as time barred for any reasons.

25. The Brent case held that section 20B(2) required that the lessee was notified in writing that cost had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge and that this required clear and unequivocal statements to that effect. While no letters have been provided to us with a statement in that precise form the tribunal is in no doubt that for the purposes of section 20B(2) the Applicant had been notified in writing that the charges had been incurred and that he would be required to pay a service charge.

Certification

26. Clause 3(2)(a) of the lease requires the amount of the service charge to be ascertained and certified by a certificate signed by the lessors auditors acting as expert and not as arbitrator is annually and so soon after the end of the lessors financial years as may be practicable…

27. The Applicant challenges such certificates as have been provided and says that the Respondent company did not provide certificates before May 2014. The tribunal notes that the Applicant was a director of the company at that time and presumably was complicit in that practice. The certificate for 2014 is alleged to be for part of the year and not compliant. It is also clear from his evidence that Mr Parmar wants to proceed by informal arrangements when it suits him and also to insist on strict compliance when he perceives an advantage in doing so. These two positions are contradictory. Proceeding by informal undocumented arrangements is fraught with difficulty and potential risk and the use of

a company provides protection of limited liability to the leaseholders as well as clarity and accountability.

28. The next ground of challenge is that the certificates have not been prepared by an auditor acting as an expert and that this is a condition precedent. With respect to the Applicant, the lease provides that service charges are to be set out in a certificate signed by the auditor, it does not say that the certificates must be prepared by the auditor.

29. However, the tribunal in its decision under case references LON/00AW/LSC/2019/0212 and LON/00AW/LAM/2019/0018 at paragraphs 10 and 11 held that the tribunal was entitled to consider the reasonableness and payability of the service charges once certification has taken place.

30. The tribunal considers it is reasonable for the company to delay finalisation of accounts and their certification due to the number of items in dispute and the long and convoluted history of this matter. However the tribunal sets below its decision on the reasonableness and payability of the various amounts and it should therefore be possible to complete the accounts and have them certified.

Reserve fund

31. Clause 3(2)(f) provides that a reserve fund can be operated.

The expression "the expenses and outgoings incurred by the Lessor" as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which has been actually dispersed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever dispersed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof which the Lessor or its Auditors or Managing Agents shall reasonably consider appropriate from time to time to put into reserve to meet the future liability of carrying out major works to the building with the object so far as possible of ensuring that the Service Charge shall not fluctuate substantially in amount from time to time

32. The Applicant argues that there is no scope in the lease to operate the reserve fund in the way that it has been evidenced by the accounts provided. The reserve fund is for major works only. There is no scope to use the reserve fund as asinking fund to support the non-payment by other leaseholders.

33. The Respondent argues that the reserve fund is not limited to major building works but any expenses that are of a periodically recurring nature whether by regular or irregular periods and that is wide enough to cover the cost of an ongoing piece of litigation. There is nothing in the lease that states the actual service charges have to be limited to the individual heads of expenditure set out in the service charge estimate. There is no express requirement for an estimate at all. With the exception of 2018 it would not have made any difference whether there was a reserve collection or not. If there had been no transfers to reserves, they would have had to have been a balancing charge and the end result would have been the same.

34. The tribunal agrees that the lease provides for a reserve fund and that such a reserve fund may include an amount for provision for major works but is not solely restricted to it.

35. The amounts to be transferred to the reserve fund and its operation will only become apparent once the final accounts have been prepared. It is open to a Landlord company to budget for contributions to the reserve fund to build up a reserve for major works, which all parties agree are necessary to this property and to do so by transferring surpluses from each year.

Service charge year 2014 and 2018

Dormant Accounts/ Annual Return 2014 £132.00 and £13.00; 2018 £13.00

The tribunal's decision

36. The tribunal determines that the amount payable in respect of the dormant accounts and annual returns is £132.00 and £13.00 for 2014 and £13.00 for 2018.

Reasons for the tribunal's decision

37. The Applicant argues that company accounts are not chargeable under the lease and that the 2014 charges in question were reimbursement to a then director of the company and disguised to look like an expense of the landlord.

38. The Respondent argues these matters are properly chargeable under the lease and relies on the decision of the Upper Tribunal in the Chiswick Village case. It is legitimate to reimburse a director for fees incurred on behalf of the company as if the accounts have not been filed the building could not be managed as the company would be struck off.

39. The tribunal prefers the Respondents argument on this point. In Chiswick Village the Deputy President said

"general administration and management of CVRL's property could not take place if CVRL itself was not managed. The company existed for one purpose only, namely to administer, manage and run the building on behalf of its members. All of the corporate governance activities of the company contribute to its own continuance and therefore to the achievement of that purpose, and all expenditure by the company on those activities is directed towards the same purpose. In circumstances where CVRL was intended to have no income producing assets of any significance and was to be owned by the leaseholders themselves I find no difficulty in accepting that the parties to the lease are unlikely to have intended any clear distinction between the management of the company and the management of the estate."

The tribunal considers these comments are directly applicable to the current case and finds that the amounts are reasonable and payable.

Cleaning 2014 £240 and 2015 £480

The tribunal's decision

40. The tribunal determines that the amount payable in respect of cleaning in 2014 is £240 and 2015 £480

Reasons for the tribunal's decision

41. The Applicant argues that no description of what has been cleaned has been provided and that the lessees made an agreement in 1999 that each leaseholder would clean its own part of the common parts. No evidence of this agreement has been provided. The Applicant further relies on what he describes as the "Duomatic " principle. (Re Duomatic Lts [1969] 2 Ch 365 The Applicant considers that this shows that a company is bound by the unanimous approval of its members and relying on Arnold v Brittan just because it no longer suits a company the court cannot insert terms.

42. The Respondent considers that the invoices obviously relate to the cleaning of the common parts, that was included in the budgets prepared by the then managing agents. The allegation the cleaning should not be charged because of an alleged agreement was raised in the County Court proceedings and cannot be raised again now.

43. The tribunal finds that the cost of cleaning the common parts is reasonable and payable under the service charge. It is clearly a service which the Respondent is entitled to provide. The tribunal considers that the "Duomatic" principle is wrongly stated and the case was the source

of the principle under which a director has a defence to a charge of breach of duty if the matter is ratified subsequently by unanimous vote of the shareholders. It is not prospective. It does not extend to varying the terms of a lease. The members of the company have changed since 1999 and the new members of the company are entitled to change its policy.

Insurance 2015 £590 2018 £2255

The tribunal's decision

44. The tribunal determines that the insurance payment for 2015 £590 and for 2018 of £2255 are reasonable and payable.

Reasons for the tribunal's decision

45. The Applicant argues there is no evidence of payment being incurred and a cashbook showing payments in 2015 of £2976 and £590 does not reconcile with the vouchers. There was no consultation with the leaseholders. For 2018 no evidence was provided of the disbursement.

46. The respondent states that the 2018 bill has now been provided. For 2015 the brokers originally sent a bill for the whole of the insurance premium and the Applicant asked that he be billed separately for his share of the premium and therefore separate bills were sent. The applicant did not pay his bill and therefore the managing agents paid it as well.

47. The tribunal prefers the arguments of the Respondent. Insuring the building is one of the most fundamental duties of the Respondent company and there is no evidence that the building was not insured properly in accordance with the lease terms.

Health and Safety 2014 £390

The tribunal's decision

48. The tribunal determines that the health and safety charge of £390 in 2014 is reasonable and payable.

Reasons for the tribunal's decision

49. The Applicant argues that an asbestos report had been done by a previous managing agent and there was no need for another report.

50. The respondent states it has no express correspondence about this but the managing agent obviously thought a new asbestos report was necessary supported by an email and budget. The Applicant did not pay

his share of the cost of the report carried out by the previous agent and therefore should not complain about paying for a new one.

51. The tribunal prefers the respondent's arguments. Health and safety is a responsibility of the respondent company and if an asbestos management report is not available to the managers of the building, it is not unreasonable to procure a fresh one.

Lister glass 2014 £150

The tribunal's decision

52. The bill for Lister glass for £150 in 2014 is reasonable and payable.

Reasons for the tribunal's decision

53. The Applicant argues that the invoice predates the service charge period and does not say what it covers. It is alleged that the glass panel was an internal door within a flat.

54. The respondent has provided an email chain showing that the reimbursement was of a leaseholder for replacement of a glass panel over the front door which had become broken.

55. The tribunal accepts the respondents evidence. The matter is clear from the email chain. There is no reasonable basis for disputing this item.

2014 GB Maintenance - Bin Store £342

The tribunal's decision

56. The tribunal determines that invoice for £342 in 2014 is reasonable and payable.

Reasons for the tribunal's decision

57. The applicant argues this item is not chargeable under the lease and that the invoice is wrongly addressed referring to 127 Ladbroke Road rather than Grove. The invoice refers to window boxes which are prohibited under the lease.

58. The Respondent considers that the invoice is an obvious typing error, it is clear the invoice relates to the bins in the communal bin vault and the spindles on the balustrade of the stairs. These are all the landlord responsibility under the lease.

59. On the balance of probability the tribunal prefers the respondents arguments on this matter.

<u>2014 GB Maintenance Gully clearance £85</u>

<u>The tribunal's decision</u>

60. The tribunal finds that the invoice for £85 for gully clearance is reasonable and payable.

<u>Reasons for the tribunal's decision</u>

61. The Applicant argues that there is no description of the said gully so he is unable to determine if it is part of a reserved part. It could be inside the flat.

62. The Respondent says the invoice clearly states the gully is on the front of the building which is the landlord's responsibility.

63. The tribunal agrees with the respondent and it is clear on the face of the invoice what it refers to. The repair is clearly a landlord's responsibility.

<u>Company secretary fees 2014 £272, 2015 £350, 2016 £420, 2017 £420</u>

<u>The tribunal's decision</u>

64. The tribunal determines that the company secretarial fees listed above are reasonable and payable.

<u>Reasons for the tribunal's decision</u>

65. The Applicant argues that company secretarial fees are not chargeable under the lease. Historically these have been managed between the lessees and the lessee has been company secretary and charges have not been passed through service charges.

66. The respondent considers these are reasonable and payable under the lease for the reasons set out in the Chiswick Village case referred to above.

67. The tribunal accepts that in the past individual leaseholders may have been prepared to act as company secretary but where no one is prepared to carry out the function it is reasonable for the company to pay a company secretary. The tribunal agrees that the charges are payable for the same reasons given above under dormant accounts.

68. Management fees

2014	£1827.00
2015	£2426.00
2016	£2870.00
2017	£2536.00
2018	£2400.00

<u>The tribunal's decision</u>

69. The tribunal determines that the management fees listed above are reasonable and payable.

<u>Reasons for the tribunal's decision</u>

70. The Applicant states that management fees are of poor quality and repairs have not been carried out during tenure. The Applicant considers the tribunal can take on board any breaches of the service charge code and that JMW Barnard were not very good for reasons given in his witness statement and there should be a substantial reduction in the fees. They failed to see to any maintenance issues that he raised.

71. The Respondent says that repairs were carried out as can be seen from the invoices and repairs items already referred to but that major repairs were not carried out to the building because of the Applicant's failure to pay his service charges.

72. The Central London County Court judgement refers to JMW Barnard as being the third set of managing agents. The judge referred to the history of issues between the Applicant and Respondent in relation to how the Company had been able or indeed unable to carry out its functions and that the three managing agents had all left due to the obstructive behaviour of Mr Parmar. The Applicant refers to a failure to repair rainwater goods but he was successful in his counterclaim in the County Court and also received compensation from the Ombudsman following a complaint regarding JMW Barnard. However it is clear from the judgement of the County Court and from the evidence before this tribunal that the Applicant has been difficult, obstructive and would have greatly increased the burden on a managing agent. It is quite clear he has not taken on board the comments of the judge in the Central London County Court and has continued to pursue minor or in some cases unarguable points.

73. The Directions of the tribunal require applicants to set out the amount, if any, they would pay for the disputed service charge item. Beyond stating that a substantial reduction should be made, no alternative figure has been put forward.

74. The proviso to clause 5 of the lease states that performance of the covenants on behalf of the lessor are subject to and conditional upon the lessee duly paying and contributing the Service Charge as hereinbefore provided.

75. In the circumstances the tribunal finds that the managing agents fees are reasonable and payable.

Accountancy fees £450 for 2014, 2015, 2016 and 2017 and £480 for 2018.

The tribunal's decision

76. The tribunal determines that the accountancy fees listed above are reasonable and payable

Reasons for the tribunal's decision

77. The Applicant argues that the accounts have been withdrawn and so a charge for accountancy fees is not reasonable. The lease provides for recovery of fees and costs incurred by the less or in respect of the certificates referred to in clause 3 (2) a of the lease and the accounts kept and orders made for the purpose thereof. Since the certificates were withdrawn it is not reasonable to charge for them. Preparation of accounts should be part of the managing agents fee.

78. The Respondent considers that the accounts were not withdrawn although the certificates were. In order to reissue certificates as to Mr Fleming had to redo all of the accounts but no additional charge has been made. The fee is reasonable for the service provided.

79. It is clear from the bundle that substantial amounts of work have been done on accounts for this property. It is also clear from the lease that the service charge covers preparation of accounts for the purpose of preparing certificates. For reasons which will become apparent, the tribunal considers fresh certificate should be prepared, that will be based on the accounts information already available taking into account the decisions of this tribunal. The tribunal therefore considers that the accounts charges are reasonable and payable.

2015 RP Maintenance electrical £120

The tribunal's decision

80. The tribunal determines that the invoice of £120 is reasonable and payable..

Reasons for the tribunal's decision

81. The Applicant disputes this as he is a unable to identify where the work applied.

82. The respondent states that this refers to an electrical test certificate relating to the common parts electricity. This is referred to in a managing agent's email of 7 August 2014.

83. The tribunal prefers the respondents evidence on this point and accepts that the charge relates to an electrical test certificate. It is reasonable and payable.

2016 Kegan Surveyors £2760

The tribunal's decision

84. The tribunal determines that the charge of £2760 from Kegan Surveyors is reasonable and payable.

Reasons for the tribunal's decision

85. The applicant disputes this item as it was not needed or used. He suggests there were complaints from other directors as to why this expense was incurred by the agents. No clause in the lease has been highlighted by the landlords in their reply to show this can be demanded. There has been no consultation or notice the works issued. An email is quoted from a previous director "Dilip has also asked why there was a payment of £2760 to Kegan's dated 12 October 2016 as none of us know what this relates to and we don't think we agreed to it"

86. The respondent states it is common ground that the building requires major works. Ms Mercer a then director queried the fee later but it is apparent from the correspondence that JMW Barnard considered they had the necessary authority to instruct Kegans and agree their fee. The proposed fee of 11.5% of the cost of the works is reasonable. The works were not carried out due to the Applicant's failure to pay service charges.

87. An oral application was made at the hearing for dispensation from the consultation requirements of section 20. The tribunal adjourned the hearing over lunch to allow the Applicant to respond. As the preparation of a specification was a preliminary part of major works and in the ordinary course of events would be followed by a formal consultation which would include surveyors fees the tribunal considered it was appropriate to grant dispensation under section 20 ZA in the particular circumstances of this case where the works stalled due to non-payment.

88. The tribunal considers that a formal specification is a necessary preliminary to repair works of this nature on a five storey building in order to ensure consistent tendering and proper provision for health and safety. The tribunal therefore considers that the fees are reasonable and payable.

2016 GB maintenance rubbish clearance £85 2017 rubbish removal £65

The tribunal's decision

89. The tribunal determines that the invoice for £85 for rubbish clearance is reasonable and payable. The tribunal also determines that the invoice for rubbish removal £65 is reasonable and payable.

Reasons for the tribunal's decision

90. The Applicant disputes liability as he claims to be unable to determine if the work was in a communal area from the invoice.

91. The Respondents says the invoices clearly state the removal of rubbish is from the bin area which is part of the common parts for which the landlord is liable.

92. The tribunal prefers the Respondents case. There is email correspondence referring to rubbish being dumped at the bin area which goes beyond domestic refuse clearance by the local authority. In those circumstances it is reasonable for the company to arranges clearance and charge the bill to the service charge.

2016 GB maintenance window repair £440

The tribunal's decision

93. The tribunal determines that the invoice of £440 is reasonable and payable

Reasons for the tribunal's decision

94. The Applicant objects to this on the grounds that sash windows are inside the flats and not the responsibility of the Company under the service charge. The invoice specifically says sash and there are no sash windows in the common parts. The photograph provided is not a sash. In the ombudsman's letter it says JMW Barnard has informed this office that the window in any defective rainwater goods will be rectified as part of the external redecoration. It is well established that external redecoration has not been done to date.

95. The respondent states that there are windows in the common parts. There is limited correspondence but on 30 September 2016 the property ombudsman upheld the Applicant's complaint about the window located on the top floor at the rainwater goods. It is likely that the window was repaired as a result of this complaint.

96. The tribunal accepts that a window in the common parts has been repaired. The evidence includes a photograph of a rotted window by some rainwater goods. The invoice clearly relates to repair of that window whether or not it is correctly described as a sash. The tribunal therefore determines that the invoice is reasonable and payable.

2018 MT sites £84

The tribunal's decision

97. The tribunal determines that this invoice is not payable

Reasons for the tribunal's decision

98. The Applicant objects this on the basis that there is no evidence of the disbursement and it is not clear what it is for. The Respondent states the voucher was included in the bundle supplied to the applicant but this invoice is not before the tribunal.

2018 Nuline £19.99

The tribunal's decision

99. The tribunal determines that this invoice is reasonable and payable.

Reasons for the tribunal's decision

100. The applicant objects on the basis this is a random cash invoice.

101. The respondent states it is for a time like switched purchased by the electrician when communal lights were repaired.

102. The tribunal accepts the Respondents evidence supported by the invoice.

2018 Veritas hopper repair £280

The tribunal's decision

103. The tribunal determines that this invoice is reasonable and payable.

Reasons for the tribunal's decision

104. The Applicant objects on the basis there is no evidence of the disbursement or when it was incurred.

105. The Respondent has provided a copy of the invoice which was for repair of a hopper head on the rainwater system which was the subject of one of the Applicant's counterclaims.

106. The tribunal has seen the invoice which clearly states that it has been paid and what it is for. The tribunal accepts the Respondents evidence.

Legal fees

107. The Applicant challenges various legal fees claimed by the Respondent as set out in the table below

disputed item	2014	2015	2016	2017	2018
other legal		£ 13.00			
court fee			£ 455.00		
legal fees			£ 1,909.00		
Legal fees				£ 4,000.00	
legal invoice				£ 840.00	
other legal and professional					£ 16,371.00
legal					£ 7,786.00
legal					£ 10,984.53

108. The Applicant says that the court assessed the legal fees for the litigation and cut them down due to overcharging, proportionality and partners hours charged for administration. The respondent tried to claim contractual costs but did not produce the certificates in time which is clearly a mistake by the agents of the solicitors. They should have applied to the FTT for a determination and not interim charges and then they would have recovered costs in full. I believe they were negligent and that costs were not reasonably incurred or reasonable in amount.

109. The Applicant said he has sought disclosure of all the privileged documentation to prove that these were reasonably incurred but this has been refused. The tribunal is requested to draw an adverse inference. The Respondent should also be asked to prove that every item on the legal fees certificate can be claimed under the lease. This is because the County Court case was not exclusively for service charges and there was a counterclaim for non-service charge items.

110. The Respondent repeats the point it must have been the intention of the parties that all leaseholders would pay their service charges so that the property could be properly run and that the costs of recovering them should go through the service charge if they were not recovered from the tenant in default. Paragraph 4 of the fourth schedule refers to the

reasonable charges and expenses of the Lessor or of the fees of the managing agents employed for the general management of the building and the collection of rents brackets including service charges. This is broad enough to cover legal costs.

111. It appears that the Applicant's objection to paying his share of the costs put through the service charge and not recovered from him is that but for Mr Fleming's "negligence" the respondent would have recovered all the costs from the Applicant and it is not reasonable to put the cost through the service charge. Obviously if the Applicant had paid all of the costs these would have been credited to the service charge and it is absurd for the Applicant to argue that because he should have been ordered to pay all of the costs he doesn't have to pay his share of what he was not ordered to pay. No order under section 20C was made by the County Court.

112. The tribunal agrees that the provisions in the lease are wide enough to cover the costs of litigation. The tribunal also notes that no order was made under section 20C in respect of the litigation. The tribunal also agrees that the provisions of the lease are wide enough to cover necessary legal costs which any landlord can incur in management of a property. The Applicant received his costs of the counterclaim. The tribunal also finds that it is reasonable for the company to recover its legal costs of other issues not concerned with the service charge as it must be able to defend its own interests and those of the other leaseholders.

113. In consequence, the tribunal finds that the legal costs are reasonable and payable.

Application under s.20C and refund of fees

114. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

115. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for no order to be made under section 20C of the 1985 Act, so that the Respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Name: A Harris **Date:** 27 September 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).