FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00AZ/LSC/2020/0329**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flats A, B and C, 195 Sandhurst Road, London SE6 1NF**
Applicants	**:**	**(1) Ms. M.E. Hyde** **(2) Ms. C. Gardner** **(3) Ms C. V. Wierne**
Representative	**:**	**BG Solicitors LLP**
Respondent	**:**	**Chancery Lane Investments Ltd.**
Representative	**:**	**Not represented**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	**:**	**Tribunal Judge S. J.Walker** **Mr. A. Lewicki FRICS**
Date and venue of Hearing	**:**	**6 May 2021 – video hearing**
Date of Decision	**:**	**28 May 2021**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Applicants by way of service charges in respect of the service charge year ending on 28 September 2017 are as follows;

Flat A – the First Applicant - £531.25
Flat B – the Second Applicant - £502.21
Flat C – the Third Applicant - £796.88

(2) The Tribunal determines that the sums payable by the Applicants by way of service charges in respect of the service charge year ending on 28 September 2018 are as follows;

Flat A – the First Applicant - £3,243.76
Flat B – the Second Applicant - £4,865.63
Flat C – the Third Applicant - £4,865.63

(3) The Tribunal determines that the sums payable by the Applicants by way of service charges in respect of the service charge year ending on 28 September 2019 are as follows;

Flat A – the First Applicant - £785.35
Flat B – the Second Applicant - £1,178.00
Flat C – the Third Applicant - £1,178.00

(4) The Tribunal determines that the sums payable by the Applicants by way of service charges in respect of the service charge year ending on 28 September 2020 are as follows;

Flat A – the First Applicant - £581.30
Flat B – the Second Applicant - £871.95
Flat C – the Third Applicant - £871.95

(5) The Tribunal determines that no administration costs are payable by the Applicants for the service charge years 2017 to 2020.

(6) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge is granted.

(7) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is granted.

(8) The application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the payment of costs by the Respondent is refused.

(9) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement of the fees of £300 paid by the Applicants in bringing this application by the Respondent is granted. Payment is to be made within 28 days.

Reasons

The Application and Procedural Background

1. The Applicants seek 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 them in respect of the service charge years ending on 28 September 2017 to 28 September 2020.

2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act ("section 20C") and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("para 5A").

3. The application was made on 22 October 2020. The application identified charges in respect of a number of different matters which are set out below and do not need to be itemised here. Each service charge year in dispute is taken in turn.

4. Directions were issued on 12 January 2021 following an oral case management hearing in which both parties participated (pages 119 to 126). Among other things these directions required the Applicants to complete a Scott Schedule, the Respondent to respond to that schedule, and for the Applicants to prepare a hearing bundle. The Respondent was required to state their case by 8 March 2021.

5. On 17 March 2021 the Applicants' solicitors wrote to the Tribunal complaining that the Respondent had failed to comply with the directions, and they sought an unless order under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") barring the Respondent from taking further part in the proceedings. This application was considered by Judge Dutton on 22 March 2021, who ordered as follows;

> **"***if the respondent has not complied with Direction 4 and provided its statement of case and addressed the matters set out on the applicants' schedule by 6 April 2021 the respondent will be debarred from defending the matter pursuant to rule 9(1) and rule 9(7) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013."*

6. On 19 April 2021 the Applicants' solicitors again wrote to the Tribunal to inform it that they had still had no response from the Respondent. The Tribunal also had received nothing further from the Respondent by that date. It follows, therefore, that by virtue of the order made by Judge Dutton, the Respondent was debarred from taking any further part in the proceedings.

7. Of course, it does not follow from this that the Applicants' application is bound to be successful. They must still establish to the satisfaction of the Tribunal on the balance of probabilities that the charges they dispute are neither reasonable nor payable.

8. In due course the Applicants provided a bundle of documents for the hearing as required by the directions. This consisted of 670 pages. Although there were some problems with the bundle, as initially pages 164 to 303 had not been received by the Tribunal, the Tribunal did in the end have the whole of the bundle and it took all the documents contained in it into account when making this decision. Page references throughout this decision are to the page numbers which appear in the bottom right-hand corner of each page in this bundle.

9. By the date of the hearing the Tribunal had received nothing further from the Respondent and there was no indication that they had challenged Judge Dutton's order.

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

The Hearing

11. The Applicants were not represented at the hearing. Ms. Gardner, the Third Applicant attended and spoke on behalf of them all. The Respondent did not attend and was not represented.

12. 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.

The Background

13. The property is a terraced house which has been converted into three flats. It is located in a residential area of Hither Green roughly 8 miles from Central London. It is surrounded by many streets of houses of a similar character.

14. Although there was no evidence of title, there was no dispute that the freehold of the property is owned by the Respondent and that the Applicants are the long leaseholders of each of the flats.

The Leases

15. The leases of the three flats are at pages 22 to 118. In all material respects their terms are the same, though the percentage share payable in respect of the service charges is different. For flat A the amount payable is 25% (page 28), whereas for flats B and C the amount payable is 37.5% (pages 55 and 102). In each lease there is a covenant by the tenant to pay a share of the

outgoings incurred by the landlord in complying with their obligations under clause 5 of the lease. These obligations include the usual obligations to insure and repair.

16. In addition, each of the tenants covenant to make the payments provided for in the Fourth Schedule. Paragraph 5 of this Schedule requires payment of;

> "*Such reasonable sum or sums from time to time as the Lessor's surveyor shall consider desirable to be retained by the Lessor by way of a reserve fund as a reasonable provision for the prospective costs expenses and outgoings and other matters mentioned or referred to in this Schedule or any of them….*" (pages 41, 87 and 116)

17. Also, by paragraph 6 of the Fourth Schedule the tenants are required to contribute to the landlord's costs incurred in;

> "*the administration of the repairs maintenance and other matters mentioned in this Schedule including employing such staff as the Lessor thinks fit to carry out such matters (or at the Lessor's option) the reasonable or usual charges of managing agents employed by the Lessor for the purpose of administering and supervising the same and the fees of accountants and auditors (if any) employed by the Lessor in connection therewith provided that so long as the Lessor does not employ managing agents the Lessor shall be entitled to add the sum of 15% to any of the items aforesaid for administration*" (pages 41, 87 and 116)

18. Further, by paragraph 7 of the same Schedule the tenants are required to pay;

> "*all those charges and expenses (other than those payable for collection of rent) payable to any solicitor, accountant, surveyor, valuer or architect or other professional or competent advisor whom the Lessor may from time to time reasonably employ in connection with the management and/or administration of the Building and in or in connection with the enforcing the performance observance and compliance by the Lessee and all other Lessees of flats in the Building of their obligations hereunder*". (pages 41, 88 and 116)

19. The service charge year is not defined in the lease. In practice service charge accounts were made up to 28 September each year. There was no suggestion that this should not be treated as the appropriate yearly period for calculating what service charges are payable.

20. In addition, save for the specific aspects of the lease referred to below, there was no challenge by the Applicants on the basis that the charges sought were not justified in principle by the terms of the lease. Their arguments were that the charges sought were either unreasonable or otherwise not permissible by virtue of the legislation.

MATTERS IN DISPUTE

21. The Applicants' statement of case is at pages 13 to 21 and is supported by a witness statement from Ms Gardner at pages 127 to 130 and the exhibits provided with it. The Scott Schedules completed by the Applicants are at

pages 298 to 302. Each service charge year is considered in turn below. It appeared to the Tribunal that much of the dispute between the parties in this case concerned matters over which the Tribunal has no jurisdiction. It is important to stress that the only role of the Tribunal is to determine what charges are reasonable and payable. It is not part of the Tribunal's jurisdiction to determine disputes about such matters as whether or not the property is in disrepair, whether properly demanded charges have been paid or are owing, or whether there has been any breach of the trust under which reserve funds are held.

Service Charge Year Ending 28 September 2017

22. The service charge expenditure accounts for this year are at page 148. These show a total expenditure for the year of £2,404.69 with expenditure being incurred in respect of four matters which will be considered in turn.

23. The first item is a charge of £200 for accountancy. This was not challenged by Ms. Gardner. In any event, the Tribunal was satisfied that accounts had been prepared by a chartered accountant as they were in the bundle, and it considered the charge made was a reasonable one. The Tribunal was, therefore, satisfied that this item was reasonable and payable by the Applicants in accordance with their respective lease shares.

24. The next item is a charge of £1,229.69 in respect of building and terrorism insurance. It was accepted by Ms. Gardner that insurance had been provided and there was certainly no evidence to the contrary. However, she contended that the amount charged was excessive. Although at paragraph 13 of their statement of case (page 16) the Applicants contend that the sum charged is 60% higher than the top ten quotes, no comparable quotations were provided in the bundle. It was clear from the certificate of insurance provided for other years (pages 276 and 495) that the cover included terrorism risks and, indeed, the accounts themselves refer to building and terrorism insurance. This was objected to by Ms. Gardner on the basis that it was unnecessary given the location of the property and that the inclusion of terrorism cover was unreasonable.

25. The Tribunal acknowledges that the terms of the lease give the Respondent the power to insure the property for such other risks as they think fit. However, it is satisfied that the nature and location of the property, a considerable distance out of Central London in a largely residential area is such that it is not reasonable to include terrorism cover in the insurance. It therefore considers that a consequent reduction in the cost of the insurance to reflect this unreasonable aspect of the cover should be made.

26. The Applicants did not identify any other aspect of the nature or extent of the insurance cover which they considered to be unreasonable. There was also no evidence that the Respondent had not obtained insurance at arm's length. There was, therefore, apart from the terrorism cover already referred to, insufficient to displace the usual conclusion that a landlord is not required to shop around for insurance cover and that the cost of insurance obtained at arm's length is likely to be reasonable.

27. Taking all this into account the Tribunal concludes that the reasonable sum for insurance for this financial year is £1,000 and that, therefore, this sum is payable by the Applicants in their respective shares.

28. The next item in the 2017 accounts is a charge of £175. It was the Applicants' case that this was a charge made by the Respondent's managing agents in respect of their assuming the role of the responsible person for the property for the purposes of the Regulatory Reform (Fire Safety) Order 2005. Although no invoice was produced for this service charge year, there was one issued on 14 June 2018 (page 275). The Tribunal is satisfied that the 2017 charge was for the same thing.

29. In their statement of case the Applicants argued (at para 10 – page 16) that the managing agents had not met the required standards for being a responsible person and so the charge was not reasonable. Nothing was placed before the Tribunal setting out what it was contended were the standards which were to be met by such a person. Ms. Gardner argued that the managing agents had not inspected the property and that the managing agents could not act as the responsible person as they were not an individual. There was nothing to support the latter contention. Indeed, the definition of a responsible person in the invoice at page 275 would suggest the contrary as it includes the managing agent for the property, which could clearly be a body corporate. As regards inspection, the requirement of the responsible person described in this invoice is to carry out a fire-risk assessment. Ms Gardner argued that none of the Applicants had witnessed any visits by the managing agents to do this, her case was that they never attended at all. However, the Tribunal considered that this was unlikely, not least because the evidence before the Tribunal showed that some major works to the roof had been commissioned by the Respondent. The Tribunal considers it very unlikely that such work would have been put in hand without someone from the managing agents having inspected the property beforehand. It therefore does not accept the contention that the Respondent's agents never attended the property.

30. The Tribunal considers that the function of acting as a responsible person goes beyond the normal scope of day-to-day management and, therefore, it is reasonable to make a charge for this in addition to the normal management fee. It also considers that the sum charged - £175 – is a reasonable one.

31. The Tribunal therefore concludes that the sum of £175 for health and safety measures is reasonable and payable by the Applicants in their respective shares.

32. The final item in the 2017 service charge accounts is a charge of £800 for management fees. The Applicants challenged this charge on two grounds. Their primary ground was that the charge was not permitted under the terms of the lease as it exceeded 15% of the other service charges. In her submissions to the Tribunal Ms. Gardner relied on para 6 of the Fourth Schedule of the lease which, she argued, limited administration charges to 15%. The clause is set out in paragraph 17 above. It is clear that the Applicants' case is based on a mis-interpretation of the lease. This clause does

not impose a cap on the costs of managing agents. Instead, it allows for 15% to be charged by the Respondent for administration "*so long as the Lessor does not employ managing agents*". In this case there is no doubt that managing agents are employed so this part of the clause simply does not apply.

33. The second argument put forward by Ms. Gardner at the hearing was that the cost was, in any event, unreasonable. She accepted that the agents carried out such tasks as writing letters to the tenants, keeping the service charge accounts, arranging the insurance of the property, and collecting ground rent and service charges. Nevertheless, she argued that the quality of the service provided by the agents was poor. She argued that they were extremely poor at dealing with reasonable requests from the tenants and relied on extensive correspondence from page 218 onwards.

34. The Tribunal considers that the sum of £800 a year for the management of a property of this kind with 3 flats and in this location is very much towards the low end of the scale. However, it also considers that there was definitely some evidence of poor service on their part. It notes, in particular, the letter at pages 218 to 220 in which Ms. Gardner sets out the 23 written requests she has made for copies of relevant documents between October 2017 and April 2019 and her other complaints about their service.

35. The Tribunal concludes that this evidence shows that the management of the property was certainly not as good as it could have been and that, therefore, some reduction in the charge made is warranted. However, given the undisputed fact that the managing agents were carrying out a number of basic management functions and given that the rate charged was, in any event, at the low end of what the Tribunal would expect, only a relatively small reduction is appropriate. It therefore concludes that the reasonable sum for management is £750 per year and that that this sum is payable according to the Applicants' relative shares.

36. In conclusion, the total amount payable by the Applicants for the service charge year is, therefore, £2,125.00 apportioned between them as provided for by the lease.

37. One final complication in respect of this service charge year is the fact that Ms. Gardner did not become the leaseholder of her flat until 24 February 2017, as is acknowledged by the Respondent's agent at page 279. It follows that there must be a pro-rata reduction in respect of the charges payable. She was the leaseholder for 216 days of this service charge year. It follows that the costs of services provided throughout the year should be charged at the rate of 216/365 or 59.18%. This applies to everything apart from the accountancy fee which would not in fact have been incurred until the end of the period. It follows that the amount payable by Ms. Gardner for this period is made up as follows. 37.5% of the accountancy fee of £200, which is £75.00 plus 59.18% of her share of the balance. That is 59.18% of (37.5% of £1.925), which is 59.18% of £721.88, or £427.21, making a total amount payable of £502.21.

Service Charge Year Ending 28 September 2018

38. The service charge expenditure accounts for this service charge year are at page 306. In respect of the items in these accounts the Applicants' case was largely the same as for the previous year and the Tribunal's approach is equally similar. There are, though, two additional items which also need to be considered.

39. As with the previous year there was no realistic challenge to the sum of £225 for accountancy and the Tribunal is satisfied that this sum is reasonable and payable. The invoice is at page 269. There was an increase in the cost of insurance from £1,229.69 to £1,321.92, an increase of £92.23 or 7.5%. The Tribunal considers that this was a reasonable increase and that it is appropriate to increase the sum that it had itself considered to be reasonable the previous year by the same amount. It therefore concludes that the payable sum for insurance is £1,075. The sums for health and safety and the management fee are the same as the previous year and the Tribunal takes the same approach as for that year and concludes that the sums of £175 and £750 respectively are reasonable and payable for these.

40. The first of the new charges is a charge of £15 for bank charges. The sum quoted in the accounts is £15, whereas the invoice appears to be for £22.50 (page 271), though the difference may be explained by the charge only commencing part way through the service charge year. A fixed sum of £7.50 per property is quoted. The Applicants objected to this charge on the basis that it was unreasonable and should form part of the overall management charge. In addition, Ms. Gardner's evidence to the Tribunal, which it accepts, was that she was told by the managing agents that they did not have a single account just for this property.

41. The Tribunal concludes that it is unreasonable to include an additional charge for banking services as this should form part of the basic services provided as part of the general management of the property. It therefore concludes that the sum sought is not payable.

42. The second new charge is £135 in respect of the cleaning of the common parts. Invoices for this service are at pages 272 to 274 and suggest that cleaning was carried out in February, May and August 2018. No evidence other than the invoices was produced to confirm that cleaning took place. This was despite the fact that the Applicants' clear case was that, in fact, this cleaning did not happen (see para 14 at page 17). They added to their argument by pointing out that there was no power source in the common parts, which would make vacuuming unlikely, and, more significantly, a charge was made for cleaning in April 2020 (page 584) when the country was under lockdown because of the Coronavirus pandemic and the tenants were all at home and would have witnessed cleaning had it happened.

43. The Tribunal bears in mind that the mere fact that invoices have been produced for the provision of cleaning is not, of itself, proof that such cleaning has taken place. It also bears in mind the clear and unchallenged evidence of

the Applicants that the common parts of the property have not been cleaned by the Respondent or their agents, including the evidence in Ms. Gardner's witness statement (para 11 at page 129). It concludes that the property has not been cleaned as claimed and that, therefore, this charge is not reasonable and so is not payable.

44. In addition to the costs included in the service charge expenditure accounts and dealt with above, there were two other significant charges made in this service charge year. There was a demand of £5,750.02 towards the sinking fund, and a demand of £5,000 towards section 20 works to replace part of the roof. The Tribunal considers these two charges as follows.

Section 20 Works

45. According to the service charge accounts for this service charge year, a demand was made by the Respondent for a total sum of £5,000 in respect of works to replace the flat roof to the rear loft extension of the building (page 308). These are described as the section 20 works roof replacement project. Although it is not entirely clear from the demands for payment that this was the sum actually charged to the Applicants – Ms. Gardner was certainly charged 37.5% of this sum (see page 180) but other demands are less clear, it is the sum used in the accounts and upon which the Tribunal will determine what is payable.

46. The specifications for this work are at page 259. Ms. Gardner accepted that this was the work which was in fact carried out. On behalf of the Applicants Ms. Gardner made it clear that she did not dispute that a section 20 consultation exercise was carried out in respect of these works. She told the Tribunal that three quotes were obtained and that the cheapest one was selected, which was from Young & Harris Building Contractors. There was no doubt that the works to the roof were carried out. She made it clear that there was no issue as regards the quality of the work and she made it equally clear that she was not arguing that the cost of the works was unreasonable.

47. The documents show that an interim invoice for the work in the sum of £3,600 was presented by Young & Harris on 27 September 2018 (page 260), and that a balance of £4,674 was invoiced on 8 January 2019 (page 469), making a total sum paid of £8,274 in respect of the works. In addition, the managing agents have charged £500 for carrying out the section 20 consultation including serving notices, obtaining tenders, and serving notices of tenders (see page 470). This makes a total charge for the roof works of £8,774. The service charge accounts show that £5,000 of this was covered by the 2018 service charge demand and that the balance of £3,774 was met in the 2019 service charge year from the sinking fund (page 313).

48. The sole basis of the Applicants' challenge to the roof works themselves was based on an assertion that Young & Harris Building Contractors do not exist and are a sham company (para 11 at page 16). In support of this contention Ms. Gardner in her witness statement relied on a decision of a differently constituted Tribunal and, in particular, paragraph 51(11) of that decision (page 206). In that case the Tribunal was considering a firm described as Young &

Harris based in Morecambe and it clearly had grave reservations as to their being a genuine company. However, the Tribunal is not satisfied that this was a reference to the same contractors, bearing in mind that the address given for the contractors on their invoice in this case was in West London (page 260).

49. The Tribunal is at a loss to discern quite what the substance of the Applicants' case was. The contractors are clearly not entirely fictional as the work was done, and it is accepted by Ms. Gardner on behalf of the Applicants that there was proper consultation, that the work in the specification was done to an acceptable standard and that the cost was reasonable. That is all that the Tribunal needs to consider. On the basis of the Applicants' own case the Tribunal is satisfied that the sum of £8,274 in respect of roof works was reasonably incurred and is reasonable.

50. The only other challenge in respect of the roof works was in respect of the management fee of £500. It was argued that this was unreasonable. It is clear to the Tribunal that the charge was made in respect of the section 20 consultation (see page 470). There was no doubt that this process was undertaken and there was no criticism of the way in which this was done. In the view of the Tribunal the charge of £500 for this is a reasonable sum and goes well beyond what would be expected to be included within the basic management fee.

51. It follows that the Tribunal is satisfied that the whole of the total charge of £8,774 in respect of the roof works is reasonable and so, if demanded, would be payable by the Applicants in their respective shares. In fact, as explained above, it appears that only £5,000 was expressly demanded in respect of these works with the balance being met the following year from the sinking fund. It follows, therefore, that the sum of £5,000 demanded in this service charge year is reasonable and payable.

Sinking Fund

52. The service charge accounts also show that in 2018 a demand was made of £5,750.02 as a contribution to the sinking fund (page 308).

53. The Applicants' primary contention in respect of the sinking fund was that the sum charged was not recoverable because the sum sought exceeded the maximum amount that could be charged without statutory consultation and that such consultation had not happened – see paras 4 and 5 at pages 14 and 15.

54. The Tribunal rejects this argument as it is based upon a misunderstanding of the consultation requirements of the 1985 Act. Section 20 of the 1985 Act only requires consultation in respect of qualifying works or qualifying long term agreements. Qualifying works are defined in section 20ZA(2) as works on a building. In other words, there is an obligation to consult in respect of works that are to be done, failing which the amount of the charges that may be made is limited. Charges to a sinking fund are not charges made in respect of qualifying works and so no consultation requirements apply. Of course, once a landlord intends to make use of the funds in a sinking fund by spending

them on works, then the need to consult comes into operation. The consultation requirements are a protection against unnecessary or over-priced works. They do not apply to contributions to reserve funds, though become relevant once those funds are put to use.

55. This, however, does not remove the Tribunal's ability to limit the amount of what is charged to a sinking fund to what is reasonable. In this regard the Applicants' alternative argument was that the contributions sought towards the sinking fund were excessive and that future expenditure could be met from the balances already held by the Respondent (see para 6 at page 15). This was an argument which was advanced by Ms. Gardner at the hearing. She accepted that there should be a sinking fund but she challenged the size of the contribution.

56. The demands made in respect of the sinking fund were expressed to be in respect of an external redecoration programme, though no such programme was produced. They were also stated to be a 50% contribution to that fund, but the service charge accounts show that there were no demands in respect of the sinking fund in 2019 (page 313) or 2020 (page 318).

57. The accounts show that of the £5,750.02 demanded in 2018 £3,774 was used in 2019 to pay the balance of the section 20 roof repair works, leaving a balance of £1,976.02 in the fund.

58. The Tribunal also bears in mind the service charge accounts as a whole. In addition to the sinking fund there is also a general income and expenditure account. The accounts show that during the 2017 service charge year a surplus of just over £1,000 had been received from the tenants into the income and expenditure account and that the balance carried forward was £3,909.10 (page 149). By the end of the 2018 service charge year the balance carried forward in the income and expenditure account was £4,817.22 (page 308). This reduced to £3,410.01 by the end of 2019 (page 313) and had risen again to £3,907.06 by the end of 2020.

59. Although Ms. Gardner argued that it was not possible to be sure how much was being held in reserve and that it was likely that there was more than this in the sinking fund, the Tribunal has no reason to doubt the veracity of the accounts which have been prepared by a chartered accountant who, on the evidence before it, has no connection with the Respondent or the managing agent. Also, the historic statements of account (see for example pages 182 to 183) do not suggest that the previous service charges recovered would have led to any surplus significantly in excess of what is disclosed in the accounts.

60. Even if one combines the income and expenditure account with the balance in the sinking fund the amount available to the Respondent to spend on the property for other works at any one time was less than £7,000.

61. In her evidence to the Tribunal Ms. Gardner was unable to say when the exterior of the property had last been decorated. The Appellants have certainly included within the bundle evidence of a lack of repair (see pages 286 to 295).

62. The Tribunal notes that £3,774 of the contribution towards the sinking fund has been used to pay for the section 20 roof works, which, as already explained were reasonably undertaken and for which the cost was reasonable. It must, therefore, follow that this amount of the contribution to the fund is itself reasonable. Had the Respondent not used the sinking fund they could quite properly have sought the balance for these works in 2019, which they did not do. This means that, in effect, the dispute is narrowed down to the balance of £1,976.02 sought towards the sinking fund in 2018.

63. The Tribunal considers it good practice to hold reserve funds where the lease permits, as this enables the cost of expensive cyclical works to be spread over a longer period and enables unexpected contingency works to be paid for without nasty surprises for the leaseholders. This is something with which Ms. Gardner agreed.

64. If the disputed sum were not recovered, the total amount available to the Respondent for cyclical works and/or unexpected contingencies at any time would, at its highest, be less than £5,000. In the professional view of the Tribunal this would be insufficient to deal with any significant contingency and would certainly be insufficient to cover the costs of the redecoration of the whole of the exterior of the premises.

65. Bearing this in mind, and also bearing in mind that landlords are entitled to a degree of scope when it comes to making provision for cyclical future costs, the Tribunal concludes that in all the circumstances it is reasonable for the Respondent to recover the whole of the total charge of £5,750 in respect of the sinking fund for this service charge year. This contribution is reasonable and payable by the Applicants in their respective shares.

66. In the light of the findings set out above it follows that the total amount which it is reasonable for the Respondent to charge in the 2018 service charge year is as follows. In respect of the items charged to the income and expenditure account, £2,225 comprising the accountancy fee of £225, the insurance cost of £1,075, the health and safety charge of £175 and the management fee of £750. To this must be added the whole of the sum sought in respect of the section 20 works – namely £5,000, and the whole of the contribution to the sinking fund of £5,750.02, making an overall total of £12,975.02 which is payable by the Applicants in their respective shares.

Service Charge Year Ending 28 September 2019

67. In the service charge year ending in 2019 there were no further demands for contributions to either the section 20 works or the sinking fund (page 313). The only items charged for were set out in the income and expenditure account and many of these were items which had appeared in previous years and in respect of which the arguments were the same. The account is set out at page 311.

68. As in previous years there was no challenge to the accountancy fee, which this year was £225. The charge for insurance this year was £1,342.77, an increase

of £20.85 or 1.6% on the previous year. The arguments put forward by the Applicants were the same as for the previous years and the Tribunal reaches the same conclusion as in those years. It considers that it is appropriate to increase the reasonable sum from the previous year by the same amount, making the reasonable sum for this year £1,092.20.

69. There was again a charge of £135 for cleaning the common parts. The arguments were again the same as in the previous year and the Tribunal's position is the same. It is satisfied that this sum is not reasonably payable as it is satisfied that cleaning services were not in fact provided.

70. In this service charge year there was a finance charge of £7.50. It is not clear what this sum was for, though the invoice at page 492 suggests that it is in relation to banking fees but has not been passed on in full. In the absence of an explanation the Tribunal is satisfied that it is not a reasonable charge and, if it were indeed a charge in respect of bank charges, the Tribunal adopts the approach taken in the previous year and concludes that the sum is not payable.

71. Another new item in this service charge year was a charge of £621.96 in respect of general maintenance. There is an invoice at page 484 for £350 in respect of works to the spare bedroom and the kitchen ceiling. According to Ms. Gardner this related to some water damage to the property and that the Applicants had agreed to pay the contractor in respect of this. The Tribunal accepts that. There is an invoice dated 11 June 2019 for £156.20 in respect of work to change the lock to the front door on 17 December 2018 (page 485) and a further invoice dated 5 August 2019 for £115.76 in respect of the replacement of the lock on 18 January 2019 (page 488). These invoices together comprise the charge for general maintenance. The Applicants' case in respect of the works to the lock was that the work to replace it had to be done twice because the first time it was done it did not work properly (see para 12 at page 16). The Tribunal accepts Ms. Gardner's evidence in that respect. The Tribunal is satisfied that it was reasonable to change the locks on one occasion but it also accepts that the second attendance would not have been necessary had the job been done properly on the first occasion. It therefore concludes that the proper approach is to deduct the cost of the second invoice from the overall general maintenance charge. It follows that the reasonable sum which is payable for this is £506.20.

72. There was a further charge for £175 in respect of health and safety about which the arguments were the same and the Tribunal's conclusion remains the same as in previous years. This sum is reasonable and payable.

73. The 2019 service charges also included a fee of £1,200 as an insurance revaluation fee. The evidence shows that such a revaluation took place (see pages 473 to 482). The Applicants' case was that the cost was excessive and that it exceeded the £250 limit (page 302). The Tribunal does not accept the latter argument as the revaluation was neither works nor a long-term agreement. It also concludes that it is good management practice to undertake such a revaluation. However, it also notes that the invoice gives no

indication of the amount of time taken preparing the revaluation – the price is simply stated to be "as agreed" (page 472). It also notes that the report prepared is described as a "Desktop Rebuild Cost Assessment" (page 473) and there is nothing in the report to show that the property was in fact inspected. The photographs which have been included in the report (page 477) are from Google. On the basis of this evidence the Tribunal concludes that the insurance revaluation that was carried out was simply a desktop exercise. That being the case it considers, in its professional opinion, that the sum charged is excessive. A reasonable sum for such a desktop exercise would be £300 plus VAT, making a total of £360.

74. The final charge in this financial year was £835 in respect of management fees, an increase of £35 or 4.4% on the previous year. As there had not been an increase the year before the Tribunal is satisfied that such an increase is justified. It applies the same percentage increase to the sum it considered appropriate in the previous year (£750) and concludes, therefore, that the sum payable for this service charge year is £783.

75. Taking these findings together it follows that the Tribunal concludes that the total sum payable by the Applicants by way of service charges for this financial year is £3,141.40 to be apportioned according to the terms of the leases.

Service Charge Year Ending 28 September 2020

76. The service charge accounts for the final year in dispute are at page 316. Again, there was no charge for section 20 works or towards the sinking fund. The only new item was a charge of £90 in respect of professional fees. The invoice for this is at page 581. This shows that the charge was made in respect of an inspection to determine whether an EWS1 form was required for the premises. The inspector's conclusion was that such a form was not required because the building was not over 18 metres high and did not have any combustible cladding or combustible material on the balconies. Ms. Gardner's case was that this charge was unreasonable. The Tribunal agrees. It would be patently obvious to any competent managing agent that this property – a two-storey brick built house with a painted pebbledash façade – would not require such a form and, therefore, it is unreasonable to instruct a surveyor to produce a report to that effect. The Tribunal therefore concludes that this charge is not payable.

77. Insofar as the remaining charges for this financial year are concerned, the arguments put forward by the Applicants and the Tribunal's reasoning was the same as in previous years. In relation to the charge for insurance, the certificate of insurance at page 495 shows that the premium paid for this service charge year was £1,310.47. The premium paid is less than the charge for the previous year. Although the insurer has changed, the cover still includes terrorism risks – see page 495. The Tribunal therefore concludes that the same arguments apply and that the sum charged for insurance should be the same as in the previous year, namely £1,092.20. With regard to the remaining charges it concludes that the following charges are reasonable and payable; £250 in respect of accountancy, £175 in respect of health and safety and £808 in respect of management (applying a 3.2% increase on the previous

year). No charges are payable in respect of cleaning, finance charges or the professional fees.

78. Applying these findings it follows that the total sum payable for service charges in this service charge year is £2,325.20.

Administration Charges

79. In addition to the service charges, the Applicants also disputed the amounts charged by the managing agents by way of administration charges. No clear explanation of the sums demanded has been provided by the Respondent. There are a large number of demands set out in the bundle between page 321 and 466. Some of this make reference to charges for arrears letters and/or letters before action, some do not. Some include statements of rights and obligations as required by paragraph 4 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and some do not. It was not at all clear quite what sums the Respondent was seeking to recover and on what basis. The Respondent has not explained the basis for these charges and the Tribunal concludes that there is insufficient evidence before it from which to conclude that the charges made are reasonable. It therefore decides that no administration charges are payable by the Applicants for the years in question.

Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and Fees

80. The Applicants also applied for orders under section 20C and para 5A. At the hearing Ms. Gardner argued that it would be unreasonable for the Respondent to recover their costs of resisting the application through the service charge, especially given the number of complaints they had about the conduct of the managing agents and also in the light of the fact that the Respondent had been debarred from further defending the application.

81. The test for whether orders should be made under section 20C is whether or not the making of such an order is just and equitable. The Tribunal is entitled, when considering such an application, to have regard to both the relative success achieved by the parties and also to the history of the proceedings and the conduct of the parties in those proceedings. It bears in mind that the Applicants have achieved some degree of success, though certainly not everything which they have sought to achieve. It is not the case, though, that they have failed completely.

82. The Tribunal also decides to attach significant weight to the conduct of the parties in this case. As explained above, the Respondent has failed to comply with the directions in this case to such an extent that an unless order was made against them which was also ignored and which resulted in their being debarred from taking any further part in the proceedings. In the view of the Tribunal such a level of disregard to the Tribunal should carry consequences. It concludes that the just and equitable course is to make an order under section 20C preventing the Respondent from recovering any of the costs it has incurred in these proceedings through the service charge.

83. For the same reasons, the Tribunal also decides to make an order that prevents the Respondent from recovering any of its litigation costs as an administration charge under paragraph 5A and also orders the Respondent to re-imburse the Applicant the fees they have incurred to have this application issued and heard, which amount to £300.

Application for Costs

84. At paragraph 16 of the Applicants' statement of case they indicated that they sought to recover their own costs (page 21), and this was confirmed by Ms. Gardner. The Tribunal takes this to be an application for costs under the provisions of rule 13(1) of the Rules. The relevant parts of rule 13 make it clear that an order may only be made against a person if they have acted unreasonably in bringing, defending, or conducting proceedings. In this case the Tribunal is satisfied that it was not unreasonable for the Respondent to defend the proceedings, as the Tribunal's own conclusions show that much of what they sought to recover was reasonable. Whilst the Respondent has failed to engage with the Tribunal this has not, of itself, lead to an increase in costs. A hearing would always have been required and it is likely, in fact, that the Applicants' costs would have been higher had the Respondent been actively defending the application as the Applicants only dispensed with the services of their solicitors once the Respondent had been debarred from defending. In the circumstances, the Tribunal is not satisfied that the Respondent's conduct has unreasonably resulted in additional costs on the part of the Applicants and so the Applicants' application is refused.

Name: Tribunal Judge S.J. Walker **Date:** 28 May 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

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

Section 27A

(1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
- (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
- (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,
  of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)"litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)"the relevant court or Tribunal" means the court or Tribunal mentioned in the table in relation to those proceedings.