FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/43UK/LSC/2019/0112**
Property	:	**Pinewood House, 44 Chaldon Road, Caterham-on-the-Hill, Surrey CR3 5PE**
Applicant	:	**Dominic George (Flat 12)** **Jonathan Charles Brown and Rebecca Jasmine Brown (Flat 4)** **Anthony Caruana (Flat 11)** **Pramodrai Dhamashi Chotal (Flat 3)** **Syeda Afeen Batool Gardezi & Syed Ali Raza Gardezi (Flat 7)** **Daniel Shefki Wayna Hassan & Naomi Jasmin Tabords (Flat 5)** **Hayley Vitoria Mitchell (Flat 12)** **Vijay Malinkani Patel (Flat 9)**
Representative	:	**Dominic George**
Respondent	:	**Pinewood House RTM Limited**
Representative	:	**Errol Woodhouse/Dean Upton**
Type of Application	:	**Determination of service charges**
Tribunal Member	:	**Judge E Morrison**
Date of decision	:	**3 September 2020 (on the papers)**

DECISION

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The applications

1. Under the application dated 8 October 2019 the Applicant lessees (of eight flats) applied under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of their liability to pay service charges for service charge years 2017/18 and 2018/19. The Respondent is the management company for the block.

2. The Tribunal also had before it applications from the Applicants under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for orders that the Respondent's costs of these proceedings should not be recoverable through future service or administration charges, and an application for reimbursement of fees.

Summary of decision

3. The service charges recoverable by the Respondent are as follows:

Year	£
2017/18	Nil
2018/19	Nil

4. Orders restricting the recovery of costs have been made (see paragraph 84 below).

The lease and service charge machinery in practice

5. The Tribunal had before it a copy of the lease for Flat 12 and was told that the leases for all the other flats were, so far as relevant, in similar form. The lease is for a term of 125 years from 24 June 2015 at a ground rent of £200.00 for the first 25 years and rising thereafter. The parties to the lease are (1) JLAD Limited (the landlord) (2) the tenant and (3) the Respondent management company ("the Company").

6. The relevant provisions in the lease may be summarised as follows:

   (a) The tenant is liable to pay "a fair and reasonable proportion" of the service charge;
   (b) Payments on account of the service charge are to be paid each 25 March and 29 September in accordance with an estimate to be sent by the Company to the tenant as soon as possible after the start of each service charge year;
   (c) The service charge year commences 29 September although this may be changed by the landlord;

(d) As soon as practicable after the end of each service charge year the Company is to send the tenant a certificate showing the costs comprised in the service charge. The certificate must be in accordance with service charge accounts "prepared and audited by the Company's independent accountants";

(e) If the on account payments are less than the final service charge, the tenant is to pay the difference on demand; if the on account payments exceed the actual charge, the landlord shall credit the difference to the tenant's service charge account;

(g) The costs which may be included in the service charge are set out in Schedule 7 to the lease (these will be referred to below as necessary);

(h) The tenant must also pay the Company "a fair and reasonable proportion" of the cost to the Company of insuring Pinewood House. This is described in the lease as "insurance rent".

7. The lease is unclear in respect of the division of functions between, and the tenant's obligations to, the landlord and the management company. The company is the entity responsible for providing the services in respect of which the service charge is payable, and for administering the service charge machinery. However, the payment provisions are ambiguous; it is only the "insurance rent" which is specified to be payable to the management company rather than to the landlord, and it is the landlord who is required to credit the lessee's account if too much has been paid and who is authorised to employ managing agents to provide the services.

8. Fortunately the landlord, now Lamda GR Limited, and the parties have agreed that all service charges payable in respect of the years 2017/18 and 2018/19 should be paid to the Respondent management company, which has incurred the costs, notwithstanding any provisions in the lease stating or suggesting that such charges are payable to the landlord.

9. The service charge year now runs from 1 April – 31 March. Each lessee is charged 1/16th of the claimed expenses, after deducting the contribution of the retail unit.

Background

10. Pinewood House is a purpose-built mixed development of 16 flats and one retail unit. The residential element is divided into two blocks with separate entrances for flats 1 - 6 and 7 - 14. Flats 15 and 16 on the ground floor have their own individual entrances, and were converted from two units originally intended for commercial use.

11. On 8 May 2018 the Tribunal issued its decision in Case No. CHI/43UK/LIS/2017/0046, a lessee application under section 27A of the Act in respect of the service charges for 2016/17, the year in which most of the flats were first demised. This decision is quoted extensively by Mr George in his submissions for this case. The Tribunal

reduced the sum recoverable from each lessee from that claimed by the Respondent. For example Mr George, the lessee of Flat 12, had paid £923.00 on account when he purchased his flat. His share of the service charge was determined to be £517.85. At paragraph 57 of the decision the Tribunal explained that each lessee was "entitled to a credit ... to be applied against future instalments of the service charge, as provided in Schedule 4 to the lease".

12. Papers have been sent to the Tribunal indicating that Mr George and other lessees have issued a money claim in the county court against JLAD Limited, the original landlord/developer. This seeks repayment of overpaid service charges in relation to 2016/17, which is to be heard as a small claim on 15 September 2020. It is unclear on what basis such a claim can be made; the lease does not provide for repayment and the Tribunal did not order repayment. Reference should be made to paragraph 2.3 of Schedule 4 to the lease.

13. At the date of the earlier decision, Errol Woodhouse was a shareholder in JLAD Limited and he told the Tribunal that he would shortly become its sole director and shareholder.. He lived in Flat 15 and described himself as the Project Manager of the development. He was the person carrying out the Respondent's day-today management functions although he held no formal role in the company.

14. The freehold reversion was assigned by JLAD to Whitelake Properties Investment Limited on 30 November 2018; there was a further assignment to Lamda GR Limited on 9 August 2019.

15. The Respondent is a company limited by guarantee; despite its name it is not a company established under the "right to manage" provisions of the Commonhold and Leasehold Reform Act 2002. Until November 2019, Dean Upton, an accountant who had formed the company, was the sole director. He has now been replaced by Mr Woodhouse. There is no evidence before the Tribunal as to who are the members of the company. At paragraph 37 of its earlier decision the Tribunal expressed concern about its governance and accountability. The Respondent has since made it clear that it would welcome participation in management from lessees, but none have volunteered. Mr Upton remains involved in that his firm prepares the service charge accounts and he has assisted Mr Woodhouse in preparing this case.

16. There is one other company mentioned by the Applicants: Pinewood House Residents Limited. This is a company formed by some lessees and it appears to be a non-recognised tenants' association. It is unclear why it is incorporated; in any event its existence has no bearing on the determination of the application.

Representation and evidence

17. The parties have agreed to a determination on the papers.

18. The lessees of eight flats (half the total) have appointed Mr George as their representative. He has prepared a bundle running to 547 pages in a case which concerns service charges in modest amounts for a small development. Although Mr George has clearly undertaken legal research and put an enormous amount of time and effort into preparing this case, the Tribunal's task has not been made easier by the inclusion in the very lengthy submissions of much that is repetitive, irrelevant or legally misconceived. It is not proportionate for the Tribunal to address every point he has made and to explain why it is not germane to the determination. The Tribunal therefore confines itself to mentioning relevant points which should properly be considered.

19. The Respondent's statement of case is brief and unsigned. Although it responds to some of the issues on reasonableness, it does not engage at all with the legal submissions made by Mr George.

20. Both sides have provided a great deal of supporting documentation. In the Applicants' case this includes witness statements but the contents of these are not germane to the application; they address incidents between various lessees and Mr Woodhouse that have nothing to do with service charges, but which appear to have increased animosity on both sides.

The law and jurisdiction

21. The Tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.

22. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

23. Section 20B(1) provides that costs incurred more than 18 months before a demand is made for their payment will not be recoverable. However, under section 20B(2), this will not apply if, within 18 months of being 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.

23. Under section 20C a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into

account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

24. Under section 21B of the Act a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The wording of the summary is prescribed. A tenant may withhold payment of a service charge if the summary is not provided.

25. Under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs".

26. Section 47 of the Landlord and Tenant Act 1987 requires that any written demand given to a tenant of a dwelling contains the name and address of the landlord, and if that address is not within England and Wales, provides an address within England and Wales where notices may be served. If a service charge demand does not contain this information the sum demanded "shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant".

The issues

27. The Applicants have raised a number of general challenges to payment of the service charge based on:

    (i) Alleged non-compliance with section 22 of the Act
    (ii) Alleged defective mode of service of the demands.
    (iii) Alleged non-compliance with section 47 of the Landlord and Tenant Act 1987
    (iv) Alleged non-compliance with section 21B of the Act
    (v) Alleged non-compliance with Schedule 6 Part II paragraph 3.1 of the lease.

28. The Applicants also challenge the reasonableness of the service charges, challenging every head of expenditure in each year.

Alleged non-compliance with section 22 of the Act

29. Section 22 deals with the provision of information by a landlord to a tenant who has made a request under that section. Mr George says that such a request was made on 30 November 2018, which was only complied with (and then possibly only in part) in January 2020. This is not denied by the Respondent.

30. The failure to comply with a section 22 request does not invalidate or otherwise nullify an obligation to pay service charges. It also appears that Mr George mistakenly believes that the service charge accounts

served by the Respondent under the lease are the same as a "written summary of costs" which may be requested under section 21 of the Act, and provision of which is a pre-requisite to a section 22 request. That understanding is incorrect; they are different things.

31. Accordingly the point made by the Applicants does not affect the payability of the service charge.

Alleged defective mode of service of the demands

32. Mr George states that all the demands have been sent by email and are therefore invalid because clause 15.3 of the lease states "A notice required to be given under this lease shall not be validly given if sent by fax or email". He also contends that section 196 of the Law of Property Act 1925, dealing with permitted methods of service, has not been complied with. The Respondent has made no comment on this.

33. The Tribunal does not consider that a demand for service charges is a "notice" under the lease; nor is it a notice "required or authorised to be served or given" by the 1925 Act. The Applicants do not contend that the service charge demands were not received. Their validity is not affected by the mode of service.

Alleged non-compliance with section 47 of the Landlord and Tenant Act 1987

34. Mr George has provided copies of the four demands served on him for 2017/18 and 2018/19. The Tribunal assumes that identical demands (in terms of amount) were served on the other lessees; each notes a service charge of £485.00. The demands include the name and address of the landlord. However at the time of a case management hearing held on 23 March 2020 it was Mr George's contention that section 47 had not been complied with. It is the Tribunal's understanding from comments in each side's statement of case that the demands were then re-issued, and the Applicants accept that section 47 has now been complied with.

35. However, Mr George submits that because the demands were not re-issued until after March 2020, they fall foul of section 20B of the Act, being made more than 18 months after the relevant costs were incurred. This submission is incorrect. In *Johnson v County Bideford Ltd* [2012] UKUT 457 (LC) the Upper Tribunal held that a failure to comply with section 47 can be corrected with retrospective effect, so that section 20B of the Act is not engaged.

36. Thus the earlier non-compliance with section 47 does not affect payability of the service charges.

Alleged non-compliance with section 21B of the Act

37. Mr George says that none of the demands served have been accompanied by the Summary of Rights and Obligations required by section 21B of the Act. This is not denied by the Respondent.

38. Section 21B(3) states: "A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

39. It follows that the Applicants do not have to pay any service charges otherwise found to be due unless and until the Respondent re-issues all the demands so as to comply with section 21B. Whenever this is done, section 20B is not engaged, because as with section 47 of the 1987 Act, section 21B is a statutory as opposed to a contractual requirement, and non-compliance does not affect validity of the earlier demand for the purposes of section 20B. See *Service Charges and Management* 4th ed Tanfield Chambers at 32.09.

Alleged non-compliance with Schedule 6 Part II paragraph 3.1 of the lease

40. Paragraph 3.1 is a covenant by the Respondent in the following terms: "Before or as soon as possible after the start of each Service Charge Year, the Company shall prepare and send to the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that year".

41. By paragraph 2.1 of Schedule 4 to the lease the tenant covenants to: "…pay the Estimated Service Charge for each Service Charge Year in two equal instalments on each of the Rent Payment Dates".

42. The Applicants say that no estimates have been provided for either 2017/18 or 2018/19, and this is not denied by the Respondent. After citing section 20B of the Act and section 47 of the 1987 Act, the Applicants then submit that "invalid demands that are not accompanied with estimates or certified accounts cannot constitute their payment by lessees as they were corrected outside of the time-limits imposed, thus making them irrecoverable by the Respondent". This is a confusing sentence, not least because it appears to merge objections based on section 47 with objections based on non-provision of estimates. However, the point about the absence of estimates is clearly intended to cast doubt on the validity of the demands with reference to the time limits of section 20B(1). The Respondent has not made any submissions in response.

43. In order to constitute a demand for payment within section 20B, the landlord's communication must be a valid demand under the provisions of the lease: *Brent LBC v Shulem B Assoc Ltd* [2011] EWHC 1663 (Ch). In *Skelton v DBS Homes (Kings Hill) Limited* [2017] EWCA

Civ 1139 the Court of Appeal held that interim demands were not valid demands under the lease for the purposes of section 20B(1), because the lease required the landlord to prepare estimates containing a summary of the estimated costs and to serve them on the tenant, together with a statement showing the service charge payable by the tenant on account of those service costs. The demands had been served without the estimates; when the estimates were finally served, validating the demands at that point, the 18 month time limit in section 20B(1) had already expired. Thus the tenant received a windfall; he had no liability to pay the service charges simply as a result of the landlord not having complied with the terms of the lease for service of a valid demand.

44. In the case of Pinewood House, the tenant's obligation is to pay "the estimated Service Charge… in two equal instalments" and the Company's obligation is to send the tenant "an estimate of the Service Costs… and a statement of the Estimated Service Charge …". All that the Respondent has sent the Applicants are the four demands which describe the payment requested in the following ways: "Service Charge Request April 2017", "Service Charge for the Period to end of March 2018", "Service Charge for the Period to end of Sept 2018" and "Service Charge Covering Period 30.09.18 – 25.03.19".

45. The requirement to provide an estimate is not a mere formality, and is a requirement found in many residential leases. If a lessee receives a demand to pay service charges in advance, he is entitled to be satisfied that he is not being asked to pay more than a reasonable amount: see section 19(2) of the Act.

46. None of these demands served by the Respondent mentions that the sum demanded is an estimate, or even describes the demands as on account, or interim, or as based on estimated costs. It is therefore impossible to avoid the conclusion that the Applicants' covenant in the lease to pay the estimated service charge has not been triggered. The demands are not valid under the provisions of the lease and therefore cannot satisfy the requirements of a demand for the purposes of section 20B(1).

47. No other demands have ever been served and it is now approaching 18 months after the end date of the 2018/19 service charge year. However, it is necessary to consider whether section 20(B)(2) might operate to preserve the Respondent's right to require payment. The Bundle includes a letter from the Respondent to the lessees enclosing the 2017/18 service charge accounts but it does not notify the lessee that he will be required to contribute to the costs; to the contrary it says that the on account payments requested were for more than the actual costs incurred. There is another letter enclosing the 2018/19 service charge accounts, but again there is no notification which could satisfy section 20B(2).

48. Neither do the service charge accounts themselves or any of the other documents in the bundle satisfy the requirements of section 20B(2).

49. The Tribunal is therefore reluctantly constrained to conclude that **the Applicants have no present liability to pay any of the service charges for 2017/18 or 2018/19.** The Respondent will doubtless consider this harsh, and will be right to do so. However, it is what the law requires. It is the unfortunate result of the Respondent seeking to manage Pinewood House without due regard to the provisions of the lease, the necessary legal knowledge, or the assistance of professional managing agents, and doing so in a situation where some lessees seek to find any reason for avoiding payment.

50. In case the Tribunal is incorrect in its finding at paragraph 49 above, and there is a successful appeal on the point, it is appropriate to address the remaining issues as to reasonableness of the service charges. However paragraphs 51 – 83 below must be read subject to this finding.

Disputed heads of expenditure

Insurance

2017/18: £3705.60
2018/19: 4011.10

51. Mr George challenges the cost of the buildings insurance. He does so by mistakenly relying on paragraph 8 of the Schedule to the Act (which does not apply as the lease does not require the lessee to insure); in reality he is complaining that the premium payable under the policy arranged by the Respondent is excessive, and that the Respondent has not disclosed information about the insurance, including details of any commission, as required by Schedule 6 Part II of the lease and paragraph 3 of the Schedule to the Act.

52. In 2017/18 he claims that an analysis of the bank statements and bank mandate shows that only £2583.42 was payable (7 monthly payments of £369.06) rather than £3705.60.

53. In 2018/19 Mr George notes that copies of two policies have been provided: a policy from NIG for buildings insurance with a premium of £3220.95, and a second policy from Markel with a premium of £504.00. He suggests that the second policy is for cover already provided by the first policy. There is also a letter from Premium Credit offering to renew the loan arrangement for payment of insurance premiums by 10 instalments, with a total of $4011.10 being payable.

54. Mr George has also obtained three quotes from other insurers which he says are on a "like for like basis". One is for the year 2017/18 and is a for a "Flat Owner policy" covering 14 flats at a premium of £2586.10. The other two quotes were obtained in 2020: one quote is for £2084.91 and the other is for £3024.95. The quotes are addressed to Pinewood

House Residents Ltd. They appear to be based on a similar level of cover to the buildings insurance policy taken out by the Respondent.

55. The Respondent says that the reason the bank statements show only some of the monthly payments in 2017/18 is because the first few payments were made direct by the developer, before the Respondent had its own bank account. The cost includes finance charges by Premium Credit as the Respondent had insufficient funds to pay the premium upfront. There is an accounting expense analysis sheet which lists all 10 monthly payments to Premium Credit, totalling £3705.60.

56. It is stated that the policy is arranged through a local independent insurance broker. The buildings insurance policy schedule for 2017/18 has been produced and shows a total amount chargeable (without finance costs) of £2947.81. The current policy for 2020/21 has also been disclosed with a premium (again without finance costs) of £2986.96.

57. The Respondent has also produced a copy of the Markel policy for 2017/18, the premium being £495.00.

58. The Respondent does not explain why the full disclosure requirements of the lease and statute have not been complied with, and no details about any commission have been provided.

<u>Determination</u>

59. It is not necessary for a landlord to show that the premium is the lowest that can be obtained in the market, but if challenged, a landlord should explain the process by which the particular policy has been selected, including steps taken to assess the current market: *Cos Services v Nicholson* [2017] UKUT 0382 (LC). The outcome must also be a charge that is reasonable.

60. The information provided by the Respondent is brief and lacks detail, but insurance was arranged through an independent broker which implies some level of market testing. The Tribunal bears in mind that it is unknown whether any commission was received by the Respondent but it cannot speculate. On the evidence before the Tribunal there is no evidence of commission of any kind and no adjustment can therefore be made for this.

61. The Tribunal notes that that the Markel policy provides cover to the Respondent for directors and officers liability and entity defence. There is no provision in the lease requiring the lessees to pay the cost of such insurance. Therefore, although such costs may be separately recoverable from the members of the Respondent if the company's constitutional documents so provide, they are not recoverable through the service charge.

62. The next issue is whether the actual cost of the buildings insurance is unreasonably high. In 2017/18 the cost was £2947.81; in 2018/19 this rose to ££3220.95. The quote obtained by the Applicants for 2017/18 is not comparable in that it is only for 14 flats, whereas the lease requires cover for the entire building. It is unknown how the market changed between 2017/18 and 2020/21 but the actual premium for the current year is very similar to the premium in 2017/18, and is less than one of the two other alternative quotes obtained by Mr George. The actual premium in 2018/19 is higher but not significantly so. The third quote obtained by Mr George is certainly for a much lower figure but it is out of line with the other two quotes. Looking at the evidence in the round, the Tribunal cannot conclude that the premiums were unreasonable.

63. Neither non -compliance with the disclosure requirements of the lease or statute, nor disputes about the policy wording, are reasons to disallow recovery of the cost of buildings insurance which has provided cover for the Applicants.

64. This leaves the question of whether the cost of credit, spreading the payments over the year, should be allowed. Mr George suggests that the Respondent did not need to arrange this because payments on account had been made in the previous year. However, as early as mid 2017 some lessees were already disputing the service charges. The Respondent did not hold reserves and the Tribunal finds it was reasonable to enter into a credit arrangement. Doing the best it can on the available evidence, comparing the actual cost of both the NIG and Markel policies with the total sum paid to Premium Credit, the cost of credit was approximately 9.28%. Applying this percentage to the actual cost of the buildings insurance results in the following figures, which will be allowed:

    2017/18: £3221.36
    2018/19: £3519.85.

Cleaning
2017/18: £3026.40
2018/19: £3026.40

65. The Applicants submit they should only have to pay a small proportion of these charges. They submit that the internal cleaning, gardening and window cleaning covered by this cost is not being carried out to a satisfactory service. Mr George questions, amongst other things, why the third party contractor is not incorporated, or registered for VAT, and the lack of documentary evidence that the Respondent is recording and checking all attendances. He complains that invoices are not paid in a timely manner.

66. The Respondent points out that the services are provided in the same way that the Tribunal found reasonable in its earlier decision. The

contractor does not need to be a limited company or registered for VAT if its turnover is below the VAT limit.

Determination

67. The Applicants' challenge to this expenditure has no merit. There is no evidence whatsoever that the services during these service charge years have not been carried out to a reasonable standard, or by a legitimate contractor. The accounts are prepared on an accrual basis, so it matters not that all costs noted have not yet been paid by the year end. The challenges made, and the detail in which they are made (not repeated here), are illustrative of an unreasonable and over-zealous approach being taken by the Applicants which is of no benefit to anyone. The costs are allowed in full:

    2017/18: £3026.40
    2018/19: £3026.40.

Lift telephone
2017/18: £251.83
2018/19: £445.07

68. These charges represent the monthly charges for the BT line in the lift, together with usage charges of c. £5.00 over the two years. Mr George suggests that BT is too expensive and that cheaper providers could be obtained. He queries why the charge in 2018/19 is so much higher than 2017/18, and says "there is no evidence of the lift telephone being used".

69. The Respondent refers to its expense analysis sheets, which show that the charges only commenced part way through 2017/18 and that the 2018/19 costs include some costs not charged to the previous year.

Determination

70. The BT bills are self-explanatory and satisfactory evidence of the usage. The Respondent does not have to use the cheapest provider and there is no evidence that these costs are unreasonable. They are allowed in full:

    2017/18: £251.83
    2018/19: £445.07.

Lighting and heating
2017/18: £797.18
2018/19: £29.20

71. This relates to the common parts. Mr George suggests that the charges are "not accurate to the usage incurred by tenants" bearing in mind the rebates from solar panels on the roof. He has made very detailed

mathematical calculations comparing what he believes is the usage shown by the bills and the usage in his own flat, and concludes that "nearly five times as much electricity is being consumed in the communal areas without any valid justification".

72. He also contends that "the Respondent has done nothing to ensure that every cost saving measure has been put in place to minimise the ultimate cost imposed upon lessees", and that the charges are being made on a "standard tariff". He queries whether a solar panel rebate of £57.65 in 2017/18 has been credited.

73. The Respondent has provided the copy invoices and analysis of all payments and solar panel receipts.

Determination

74. The Tribunal cannot be expected to carry out a forensic examination of the electricity charges and cannot accept Mr George's calculations at face value. There is no reliable evidence that less electricity is being used than as stated in the bills, or that the bills are inaccurate. Once the solar panel rebate credited in 2018/19, which included the previous year's receipts, is divided between the two years, the resulting bill is an average of just over £400.00 p.a. between the two buildings. As already explained, the Respondent does not have to "minimise the ultimate cost". The provider is British Gas, the Applicants have provided no comparable quote, and there is insufficient evidence that the charges are unreasonable. The charges are allowed in full:

2017/18: £797.18
2018/19: £29.20.

Management fees
2017/18: £2,125.00
2017/18: £2125.00

75. The Applicant quotes lengthy extracts from the Commonhold and Leasehold Reform Act 2002 relating to the "right to manage" and the Landlord and Tenant Acts of 1985 and 1987, and contends that because various provisions of these Acts have not been complied with, no management fees should be payable.

76. The invoice for each year is addressed to the Respondent and states that cheques should be payable to Errol Woodhouse. Mr George relies on the Tribunal's finding in the earlier decision that Mr Woodhouse was not employed as a managing agent, and held no position in the Respondent company. He contends that no fees should be recoverable.

77. The Respondent accepts that the fees relate to Errol Woodhouse's management, who is now the sole director of the Respondent. It has

produced letters from the lessees of 8 flats (half the total) expressing the wish to stay with the Respondent as a management company.

Determination

78. The references made to the Commonhold and Leasehold Reform Act 2002 are not applicable; the Respondent is not a right to manage company. The reference to the Landlord and Tenant Act 1987 is also in error (relating to rights of first refusal on sale of the freehold). The reference to the Landlord and Tenant Act 1985 pertains to a landlord's obligations under section 21, which are not before the Tribunal.

79. Schedule 7 of the lease allows the service charges to include "the costs, fees and disbursements reasonably and properly incurred of "managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same".

80. The costs in questions here are said to have been incurred by the Respondent in paying for management services provided and charged for by Mr Woodhouse. The Respondent is not "the Landlord" but this is a clear example of an error in drafting in the lease as it is the Respondent management company who is required to provide the services and therefore the Tribunal deems the reference to be to the Respondent.

81. The situation at the time of the previous hearing, dealing with service charge year 2016/17, was that a management fee had been included in the service charge accounts, but there was no evidence that the Respondent had actually incurred any cost or that Mr Woodhouse had charged for his services. The situation in the following two years now under consideration is different. Mr Woodhouse has carried out the day to day management and has invoiced the Respondent £2125.00 p.a. He did not become a director of the Respondent until November 2019, after the end of the 2018/19 service charge year. There is no evidence that he held any position in the Respondent during the relevant period. In effect, therefore, he was engaged by the Respondent (through Mr Upton as director) to manage the building. There is no evidence of any management agreement or formal appointment, but it is indisputable that management services have been carried out and no-one but Mr Woodhouse (with support from Mr Upton as an accountant) has been involved. In effect Mr Woodhouse has acted as a non-professional managing agent, and the lease does not prohibit such an arrangement. His fee of £2125.00 is very modest compared with the fee that would be charged by a professional, which is appropriate because the level of service has not been to a professional standard, particularly with regard to provision of information. However, looking at all the services provided, as evidenced by the expenditure found to be reasonably incurred, the Tribunal is satisfied that it is a reasonable fee for the management provided and that the cost should be allowed in full:

2017/18: £2,125.00
2017/18: £2125.00.

82. For future years Mr Woodhouse, now the sole director of the Respondent, cannot charge for his own time and work. However, if no outside management is employed the Respondent itself can make a charge, as provided in the lease.

Accountancy
2017/18: £300.00
2018/19: £300.00

83. Mr George objects to paying the accountancy fees for a number of reasons including (i) the accounts have been prepared by or under the direction of Mr Upton, who, as the Respondent's sole director, is not an "independent accountant" as required by the lease (ii) the commercial unit and Flat 15 (Mr Woodhouse's flat) may not have been required to pay their full contribution (iii) reliance on provisions in section 28 of the Landlord and Tenant Act 1985 and the Housing Act 1985.

84. The Respondent says that the 2016/17 accounts were amended to fully reflect the findings of the Tribunal in relation to that year (copy in bundle). There is an email showing that contributions due from Flat 15 and the commercial unit have been set-off against Mr Woodhouse's management fees.

Determination

85. Section 28 of the Act only applies to section 21/22 requests for information, and the quoted section of the Housing Act 1985 only refers to the sale of public sector houses. These provisions do not apply in this case.

86. Paragraph 3.3 of Schedule 6 Part II of the lease provides that "As soon as reasonably practicable after the end of each Service Charge Year, the Company shall prepare and send to the Tenant a certificate showing the Service Costs and the Service Charge for that Service Charge Year. The certificate shall be in accordance with the service charge accounts prepared and audited by the Company's independent accountants". The lessee must then pay any sum due over and above the estimated service charges already demanded on account. Paragraph 1(b) of Part II of Schedule 7 provides that the charges of accountants employed by the Company to prepare and audit the service charge accounts can be recovered through the service charge.

87. Mr Upton's firm has prepared the annual service charge accounts and provided a certificate. There is no individual's name on the accounts, so it is unclear if Mr Upton was the actual certifier.

88. It is unarguable that for service charge years 2017/18 and 2018/19, Mr Upton's firm was not independent, because during that period he was the sole director of the Respondent. However, the requirement for independently-prepared end of year accounts does not, under the lease, affect the payability of otherwise valid on account demands, and in neither 2017/18 nor 2018/19 did the actual costs exceed those required on account. Therefore the lack of compliance with the lease in this regard does not affect the Respondent's ability to rely on the accounts.

89. The issue is therefore whether the charges are challengeable because the accounts have, aside from the independence issue, not been prepared to a reasonable standard. There is no evidence of this.

90. The charge of £250.00 + VAT p.a. for preparing the accounts is reasonable and will be allowed in full:

    2017/18: £300.00
    2018/19: £300.00.

Bookkeeping and accounting software
2017/18: £480.00
2018/19: £523.20

91. Mr George objects to being charged for accounting software which he says should be part of overheads of the entity providing the bookkeeping service.

92. The Respondent says it is required to keep accounting records and that the software subscription cost is needed to do this.

Determination

93. The only invoices produced in relation to this cost are from Mr Upton's accountancy firm in the sum of £300.00 p.a. for "acting as bookkeepers". The software subscription is included in the Respondent's Expense Analysis at a cost of £18.00 pm rising later to £21.60 pm, payable to Quickbooks Online.

94. The lease requires the Respondent to keep books and records and the service charges can include (Schedule 7 Part II para. 1(c)) the costs of "any other person reasonably and properly retained by the Company to act on behalf of the Company in connection with the Building or provision of the Services". This wording is wide enough to permit the charges of Mr Upton's firm to be recoverable, given that Mr Woodhouse is not performing a bookkeeping service as part of his management fee. However, the software costs are incurred directly by the Respondent, and there is no provision in the lease which would allow them to be charged through the service charge. They may be separately recoverable from the members of the Respondent if the company's constitutional documents so provide.

95. Accordingly the recoverable expenditure under this head is reduced to:

2017/18: £300.00
2018/19: £300.00.

Health and Safety
2017/18: £1,414.00
2018/19: £370.00

96. The 2017/18 accounts include costs of £384.00 for a Fire Risk Asessment and detailed report, £660.00 for a Property Health and safety Review and Report and £370.00 for the dry riser annual inspection. The 2018/19 accounts include costs of £370.00 for the dry riser annual inspection. It is unclear why the first three items are noted in the 2017/18 accounts as they were invoiced and paid in the subsequent service charge year. Similarly the final cost was incurred and paid after the end of 2018/19. However, there are invoices supporting all the charges so it makes no real difference.

97. Mr George queries the need for this work and says that any costs should be borne by “the Developer”. He has also scrutinised the comments made in the Fire Detection and Alarm System report provided by the contractors and he questions the accuracy of some of these. He has asked for a copy of the Health and safety report but this has not been provided. He notes that the copy certificates provided only relate to one of the two blocks.

98. The Respondent says that all these reports relate to ongoing health and safety issues which will continue to be required.

Determination

99. The Respondent has legal obligations with regard to health and safety and fire protection. Under Part II of Schedule 6 of the lease the costs of complying with all laws relating to the Retained Parts are recoverable through the service charge. There is no evidence that any of the services provided in this category were unreasonable in any respect. The costs are allowed in full:

2017/18: £1,414.00
2018/19: £370.00.

Miscellaneous Costs
2017/18: £21.75
2018/19: £7.70

100. These appear to be postage charges. It is unclear what they are for or who incurred the cost, or under what provision in the lease they might be recoverable. The cost allowed is therefore:
2017/18: Nil
2018/19: Nil.

Repairs and Renewals
2017/18: £179.33
2018/19: £933.30

101. The 2017/18 charge relates to the cost of a new Waste Bin less a contribution of £35.87 made by Tandridge District Council, the original bin having been inadvertently crushed by the Council's refuse contractor. Mr George submits that the Respondent should have required the Council to pay the full replacement cost.

102. The 2018/19 charge covers a number of small items, including £415.80 for a lift maintenance contract, and £30.00 payable to another contractor for repair to the lift lock, which problem had caused the lift to be disabled. Mr George complains that a lift maintenance contract has been entered into without consultation with the lessees. He also considers that the separate lock repair costs of £30.00 should have been covered by the maintenance contractor as part of the annual cost. Other *de minimis* objections are made to various small charges.

103. The Respondent says that costs were incurred "wholly, exclusively and necessarily".

<u>Determination</u>

104. While it may have been theoretically possible to pursue a claim against the Council in respect of the bin, it does not follow that it was unreasonable not to do so. The sum involved is very small (about £10.00 per lessee). The Respondent is entitled to take a proportionate approach to such matters.

105. The modest cost of the lift maintenance contract does not engage the consultation requirements under section 20 of the Act, so the Respondent was not required to consult lessees. Whether or not it was possible to require the contractor to repair the damaged lift lock it cannot be regarded as unreasonable to pay someone else £30.00 to resolve the problem, which may well have been quicker. The other challenges are similarly unmeritorious and do not establish that any of the costs were unreasonably incurred at the time they were incurred.

106. The costs are allowed in full:

    2017/18: £179.33
    2018/19: £933.30.

Calculation of service charges

107.

	2017/18	**2018/19**
Insurance	3221.36	3519.85
Cleaning	3026.40	3026.00
Lift telephone	251.83	445.07
Light and heat	797.18	29.20
Management fees	2125.00	2125.00
Accountancy	300.00	300.00
Bookkeeping charges	300.00	300.00
Health and Safety	1414.00	370.00
Misc. costs	0	0
Repairs and renewals	179.33	933.30

108. The share of each flat lessee cannot be calculated as the Tribunal has no information as to the contribution required of the commercial unit, which must be deducted from the total before dividing the remaining sum equally between the 16 flats.

Applications re costs and fees

109. In deciding whether to make an order under section 20C of the Act or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Given that the Applicants have been wholly successful, and that the Respondent has made no submissions regarding costs, the Tribunal determines that:

(i) An order is made that, to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants, and

(ii) The Applicants shall have no liability to pay an administration charge in respect of the costs of this litigation.

110. A request has also been made that the Respondent reimburses the application fee of £100.00 and pays other out of pocket expenses incurred by the Applicants. This request is refused. Out of pocket expenses cannot be awarded. The result of the decision in this case is that the Applicants have been given a substantial windfall while the Respondent may well become insolvent. It is unjust to impose any additional financial obligation, particularly where the application fee per applicant lessee is just £12.50.

Concluding remarks

111. The Applicants, led by Mr George, may feel that they have been vindicated in their long-running battle with the Respondent and Mr Woodhouse. The Tribunal urges caution. The residents of a block of flats without a solvent or functioning management company may find themselves in real difficulty, both as regards day to day management and the marketability of their flats.

112. Nothing in this decision prevents lessees voluntarily making payments towards the 2017/18 and 2018/19 service charges.

Appeals

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

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

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

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