FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00BK/LSC/2020/0124**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flat 1, 1 Montagu Place, London W1H 2EW**
Applicant	**:**	**Mr. Stephen Elliott**
Representative	**:**	**Not represented**
Respondent	**:**	**One Montagu Place Ltd.**
Representative	**:**	**Mr. Tony Hymers of Burlington Estates**
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 Stuart Walker (Chairman)** **Mr. Stephen Mason BSc FRICS**
Date and venue of Hearing	**:**	**20 January 2021 – video hearing**
Date of Decision	**:**	**19 February 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 Applicant in respect of the service charges demanded for the years 2019 and 2020 are as follows;

2019	£6,739.73
2020	£8,455.71

(2) 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 allowed but only to the extent that 50% of those costs may not be recovered.

(3) 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 allowed, but only to the extent that 50% of those costs cannot be recovered.

(4) The Respondent is ordered to re-imburse the Applicant 50% of the fees incurred by him for issuing this application and having it heard.

Reasons

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by him in respect of the service charge years ending on 31 December 2019 and 2020.

2. In the course of the hearing, the Applicant sought an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act and in his application he sought an order to reduce or extinguish his 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.

3. The application was made on 24 May 2020. It identified charges in respect of a number of different matters which are set out below and do not need to be itemised here. It was first considered by Judge N. Carr on 29 May 2020. The Tribunal was aware that the Applicant had previously made an application to the Tribunal under reference LON/00BK/LSC/2019/033 in which the Tribunal had made a reasoned decision as to the interpretation of the lease. Judge Carr directed a letter to be sent to the Applicant requiring him to set out

what he sought and on what basis. The Tribunal had a copy of this letter and the previous determination.

4. There then followed an oral case management hearing conducted by telephone on 30 July 2020, following which directions were given. The directions required the parties to complete schedules in respect of the disputed charges and for the provision of hearing bundles by them. These directions were complied with. The case was allocated to the paper track for determination on the papers during the week commencing 30 November 2020. In fact, it came before the Tribunal on 17 December 2020 when it was decided that the issues were not sufficiently clearly explained in the papers for a paper determination to be appropriate and arrangements were made for a remote video hearing.

5. A lengthy Scott Schedule was prepared by the parties and the Applicant and Respondent both provided bundles. The Applicant provided a bundle A1 comprising 107 pages and a bundle A2 which was not paginated. As is often the case the page numbers written on bundle A1 do not coincide with the electronic page numbers. References to page numbers in bundle A1 in what follows are to the handwritten numbers. The Respondent provided a bundle of 235 pages comprised of appendices A to S. However, the documents provided were not through-paginated or even internally paginated within each appendix. References to documents in the Respondent's bundle in what follows are to the relevant appendix. The final version of the completed Scott Schedule is at pages 3 to 20 of bundle A1.

6. In the course of the hearing Mr. Hymers also made available to the parties and the Tribunal copies of the service charge budgets for the years 2018 to 2020 inclusive and copies of the service charge demands for the period from 28 February 2018 to 4 December 2020 inclusive.

The Hearing

7. The Applicant attended in person. The Respondent was represented by Mr. Tony Hymers of Burlington Estates, the managing agents.

8. 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

9. The property is a two-bedroom flat in a converted townhouse in central London.

10. Although no evidence of title was produced, there was no dispute that the freehold of the property is owned by the trustees of the Portman Family Settled Estates, that the Respondent holds the property on a long lease from the freeholder, and that the Applicant in turn holds the property on a further long lease – with a term of 76.25 years less 3 days from 25 March 1985 - from the Respondent.

The Lease

11. The lease is at Appendix D. There was no dispute about the interpretation of this document. By clause 3.01 of the lease the Applicant covenanted to pay the rents. By clause 1.02 the rents mean the rents ascertained in accordance with the Second and Fourth Schedules. Provision is made at Part III of the Fourth Schedule for the calculation of service charges. The service rent is 2/7ths of the service charge for the whole building (clause 4.2 of the Fourth Schedule). At the hearing, the Applicant accepted that all the charges in dispute at the hearing were in principle recoverable under the terms of the lease and that the only issue was that of reasonableness.

MATTERS IN DISPUTE

12. The documents before the Tribunal made some suggestion that the Applicant was disputing matters from service charge years prior to 2019 (see, for instance, page 25 in bundle A1). The Tribunal sought clarification of this, and the Applicant confirmed that he was only contesting the 2019 and 2020 service charge demands.

2019 SERVICE CHARGE YEAR

13. Although the Scott Schedule contained a number of lengthy commentaries by the parties, the Tribunal did not find it to be the most helpful document. It therefore approached the case by reference to the service charge accounts and invited the Applicant to explain his dispute, if any, in relation to each item. The summary of costs for the building for the 2019 service charge year is at page 31 of bundle A1. The various items set out there are as follows.

Buildings Insurance

14. The sum set out in the summary for buildings insurance was £1,967. The Applicant accepted that this was the actual cost of the buildings insurance for the relevant period and there was no dispute as to the reasonableness of this charge. The issue raised by the Applicant was that the sum budgeted for in advance for 2019 was considerably higher (£3,950).

15. This was a case where the Tribunal was considering an actual cost rather than a budget item. It was satisfied that the reasonable cost for buildings insurance for the 2019 service charge year was the total sum set out in the year-end accounts, to which there had been no challenge. It was, therefore, satisfied that the sum payable was 2/7ths of £1,967, ie £562.

16. The Tribunal noted that paragraph 6.6 of the Fourth Schedule of the lease requires any over payment of any estimated service charge to be credited to the tenant against the next service charge payment. However, the role of the Tribunal is simply to determine whether or not service charges are payable. To the extent that there is a dispute between the parties as to whether an appropriate credit has been made under this clause, it is a dispute that the Tribunal has no jurisdiction to resolve.

Directors' Insurance

17. The year end costs for 2019 included an item for directors' insurance costs in the sum of £281. This had been disputed by the Applicant on the basis that it was not provided for under the terms of the lease. This was accepted by the

Respondent in the Scott Schedule (see page 20 in bundle A1) and so the Tribunal was satisfied that no sum was payable under this head.

Insurance Valuation

18. The year end costs included an item for insurance valuation of £792. The Applicant accepted that this was the charge actually incurred for obtaining an insurance valuation (see page 25 of bundle A1). No challenge was raised in respect of the reasonableness of this charge and so the Tribunal was satisfied that it was payable. The Applicant's share is £226.29.

Electricity

19. The sum for the 2019 service charge year is, in fact, a credit and there was no dispute about this.

Cleaning

20. The total expenditure on cleaning set out in the year end accounts was £2,962. This was not commented on in the Scott Schedule nor referred to in the Applicant's statement of case. At the hearing he made it clear that he did not challenge this amount. The Tribunal therefore concluded that this was a reasonable charge and that it was payable. The Applicant's share is £846.29.

General Maintenance

21. Although the Applicant said in his statement of case that the total sum for the 2019 year of £3,348 was challenged because the total sum had not been shown in the invoices provided to him, at the hearing he made it clear that he was not challenging this sum. The Tribunal was, therefore, satisfied that this was a reasonable charge which was payable. The Applicant's share is £956.57.

Pest Control and Fire Health and Safety

22. There was no challenge to these amounts, which totalled £1,116. The Applicant's share is £318.86 which is reasonable and payable.

Management Charges

23. The amount charged by the managing agents for the 2019 service charge year was £8,679. The Applicant's case was that this was an excessive amount. In support of his contention, he provided a number of proposed comparables. He provided specifications from Principia Estate and Asset Management, Ringley Management Services, Urang, and Westbourne Block Management Ltd. These were provided as additional documents. In bundle A1 he summarised the services offered by each in a table and their standard charges (see pages 59 and 60). There was no indication that he had provided any information to those providing quotes as to the specific nature of the property involved. Rather, he had provided generic examples of the standard terms of business of each company. The basic fees quoted ranged from £1,625 per annum plus VAT to £2,500 per annum plus VAT.

24. Mr Hymers gave evidence to the Tribunal about the management charges. He said that in 2015 the fee had been £2,140 per annum but it had increased to £4,800 per annum in 2016 and to £8,400 per annum in 2017 and 2018. By 2019 the cost had risen to £8,679. He commented that the fee had not been baulked at by other tenants.

25. The Tribunal found Mr. Hymers' evidence about why the fee was justified to be somewhat contradictory. Initially he said that the figure was high because there was a substantial amount of additional work required for this property. This was because numerous and growing requests were received from the Applicant – roughly 40 or 50 pieces of correspondence per year in 2019 compared to 10 to 15 in 2016. He also said that there had been additional work involving action against other tenants.

26. However, this was inconsistent with two other items of evidence. Firstly, the sum charged was no more than the base fee of £7,231 plus VAT – a total of £8677.20. As the Applicant pointed out at page 60 of bundle A1. The management agreement with Burlington Estates provides for an additional charge at an hourly rate for "*answering leaseholder queries additional to those to be reasonably expected and where excess work arises due to this*" (see page 13 of the Burlington Estates agreement provided as a separate document provided by the Applicant). It is clear that no such charge has been made, so it is difficult to see that the charge is as high as it is because of excessive demands by the Applicant or other leaseholders.

27. Secondly, despite what he had already said, Mr. Hymers went on to say that the charge was a minimum fee. Burlington Estates did not normally deal with smaller blocks anymore, he said, and this was the minimum fee for a building of this size, and that they would not be able to manage the property if this fee were not payable. That is clearly inconsistent with the charge being what it is because of excess work being required.

28. Mr. Hymers invited the Tribunal to consider that the company was based in central London and so was in close proximity to the property and so could respond quickly. He also pointed out that their rating with the Royal Institution of Chartered Surveyors was always good or outstanding. He considered that a management fee of £1,735 per flat per year was reasonable. When asked about the comparables provided by the Applicant, he observed that at least three of them had associated companies who would undertake maintenance work etc. and so additional charges may be raised in that context. He argued that Burlington Estates has a smaller portfolio and is able, therefore, to provide a higher quality service, whereas other companies are managing more units and are not therefore able to provide such a dedicated service.

29. The Tribunal considered in its professional opinion that the comparables put forward by the Applicant were very much an indication of what can be obtained at the bottom end of the market. It also considered that it was not unreasonable for a landlord to employ managing agents that provided a higher quality of service albeit at a higher cost. However, there comes a point where the additional cost is no longer justified. In the Tribunal's professional opinion, the sum charged - £7,231 plus VAT - was excessive. It found it noteworthy that the sum charged had increased roughly fourfold in the period from 2015 to 2019 yet the sum now being charged was still regarded as a minimum figure.

30. Whilst it would not be reasonable for the Tribunal to require the landlord to obtain the very cheapest managing agents in the market, it was satisfied that a reasonable figure for managing this property to a high standard would be £3,750 per annum plus VAT, making a total of £4,500. The Applicant's share of this sum is £1,285.71. The Tribunal therefore concluded that the reasonable and payable sum for management charges is that sum and not the sum sought by the Respondent.

Company Secretarial Fees

31. The year end costs for 2019 included an item for company secretarial fees of £373. This had been disputed by the Applicant on the basis that it was not provided for under the terms of the lease. This was accepted by the Respondent in the Scott Schedule (see page 9 in bundle A1) and so the Tribunal was satisfied that no sum was payable under this head.

Entryphone

32. There was no challenge to this charge, which was for a total of £330. The Applicant's share was £94.29, and this sum is reasonable and payable.

Legal and Professional Fees

33. The Tribunal was informed that the charge made under this head - £3,150 in total – was not in issue as the payability of legal fees had already been determined by the Tribunal in its previous decision. The Tribunal had concluded that the lease did not permit the recovery of legal costs other than those recovered in forfeiture proceedings.

34. It is clear from this decision that legal costs cannot be recovered as a service charge and that the only such costs that can be recovered are those recoverable under clause 3.20 of the lease. This clause makes provision, distinct from the service charge recovery from all tenants, for recovery of legal costs from the specific leaseholder in question in connection with the preparation and service of notices under section 146 of the Law of Property Act 1925. The charge is an administration charge as defined in paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

35. There was no suggestion that a section 146 notice had been prepared in respect of the Applicant. There was also no suggestion by the Respondent that the sum charged was for anything other than legal fees which the Tribunal had already determined were not recoverable. It follows that this sum was not payable by the Applicant.

Accountancy

36. There was no challenge to the accountancy fee of £696 which was charged in 2019. The Applicant's share is £198.86 and this is payable by him.

Reserve Fund Contribution

37. This charge was the source of the greatest dispute between the parties. There was no doubt that the lease provided for charging contributions to the reserve fund which is to be used towards expenditure which is likely to occur at intervals of greater than a year (paragraph 5.1.13 of the Fourth Schedule). The

Respondent sought to charge a total of £20,000 to this fund in the 2019 service charge year.

38. The Applicant's case had two elements. The first was that the extent of the projected works – and hence the likely costs to be borne by the reserve fund – were excessive. The second was that insufficient account had been taken of the sums already held in the reserve fund and, if such account were taken, the amount sought was unreasonable.

39. The Tribunal considered the first of these elements as follows.

40. The Respondent's case was based on an asset management plan ("the AMP") that had been prepared by Chartes – a firm of chartered building surveyors and project managers – which appears as Appendix O in the Respondent's bundle. In this plan the projected expenditure for the years 2021 to 2023 is given as £55,393.80, £8,203.80 and £105,124.80 respectively, making a total of £168,722.40 to be spent by the end of 2023. Thereafter the projected expenditure for the next four years drops to less than £7,000 for each year. The Respondent's position was clearly explained in the Scott Schedule (at page 11 of bundle A1) as follows;

> "*It is therefore prudent to collect £20,000 each year to build up a cash balance to avoid raising high demands in line with RICS*"

41. The AMP sets out proposals for works to the roofs, the elevations, internal common parts, mechanical and electrical works, boundaries, and asbestos, with separate provision for scaffolding/temporary access.

42. The Applicant has provided an extremely detailed commentary on the AMP which is set out in the Scott Schedule and elsewhere. However, much of this commentary ignores the fact that it is not possible to subject a long-term projection of this kind to a highly detailed forensic examination. The AMP is dealing with future contingencies and future budgets, it is not a detailed specification of works which will definitely take place. Rather, it is a broad indication of what kinds of work are likely to be required in the medium to long-term. It is necessary, therefore, to allow for a considerable degree of scope for contingencies.

43. Despite this, the Tribunal considered that in some respects the scope and cost of the proposed works went beyond what was reasonable. In some cases, the proposed costs were in respect of items of routine maintenance which would more appropriately be included within the annual general maintenance budget (which in 2020 was set at a sum of £3,200). It also bore in mind that paragraph 5.2.13 of the Fourth Schedule of the lease prescribed that the reserve fund was intended for items of expenditure which were likely to occur at intervals of more than one year, yet some of the items included were annual inspections. Examples are as follows;

- Annual inspections to the roof to remove leaves and accumulated dirt budgeted at a total of £1,750 for each of the years 2021 to 2023
- Allowance for minor repairs to roof surfaces and associated areas budgeted at a total of £500 per year in 2021 and 2022 and £1,850 in 2023

The Tribunal also concluded that roof repairs were unlikely to be necessary in the period to 2023 given that works had only recently been carried out in accordance with the 2017 specification of works provided by Brasier Freeth – which appears in the Applicant's bundle A2. The scope of the work set out there includes renewal of the slate covering to the main roof and repairs to dormers, rooflights and parapets, repointing and repair to parapet walls and chimney stacks, and renewal of the flat roof covering (para 1.2).

44. The Tribunal also had concerns about allowances made in the AMP for repairs to the stucco render which were described as "*over and above minor decorative attendance*" to both the front and rear elevations in the total sum of £2,250 in 2023. This was because the Brasier Freeth works also included extensive works to the external render and stucco finishes (see paras 3.15 to 3.17) and so it is unlikely that further repairs would be required by 2023.

45. In other respects, the items were described as optional and/or the projected likely costs appeared to the Tribunal to be excessive. The Tribunal had particular concerns about the sums allowed for the washing down of brickwork and the repointing and repair of brickwork to the front and rear elevations, the gable flank elevation and the flank return with No. 2 Montagu Place. The totals provided for these works were £1,250 in 2021 and £20,250 in 2023, making a total of £21,500. This work is described in the AMP as "*works that are 'desirable' but not essential. Could be considered improvements'*. The Tribunal considered that the categorisation of the repair and repointing of the brickwork as being merely desirable suggested that substantial work was not required and also that the total budget for such works was in excess of what was likely to be needed. Other works given this categorisation include the provision of lead capping to coping stones and the installation of a lightning conductor.

46. The total of the sums specified above alone is £31,850 even without the addition of preliminaries, contingencies, professional fees and VAT as set out in the AMP.

47. The Tribunal bore in mind that it is reasonable to make a considerable allowance for contingencies and to give the landlord considerable scope when considering medium to long-term plans such as the AMP. However, even bearing this in mind, having considered the issues identified above – which are examples only – it concluded that a figure of £100,000 would be a more realistic indication of likely future expenditure required by 2023 rather than the £168,000 odd proposed.

48. The second part of the Applicant's case was that insufficient account had been taken of the sums already in the reserve fund. He relied on the summary of costs for the 2019 service charge year (page 31 in bundle A1) which stated that on 31 December 2019 there was an aggregate of £108,201.32 standing to the credit of the tenants. He also relied on the case of Caribax Ltd (and others) -v- Hinde House Management Co. Ltd [2015] UKUT 0234 (LC) as authority for the proposition that where there is sufficient credit in a reserve fund to pay for costs then the landlord had no legitimate recourse to tenants for further amounts.

49. The Tribunal sought to establish what the actual sums held in the reserve fund were. However, the evidence of Mr. Hymers in particular was far from clear and the documents also did not seem to be consistent. An issue also arose with regard to legal costs. As explained above, the Tribunal had previously concluded that these were not recoverable though it appeared that some had in fact been recovered and these sums had not yet been repaid. Mr. Hymers argued that therefore the total held in the reserve fund was considerably less.

50. In view of the lack of clarity on this issue the Tribunal agreed that the Respondent should have until 29 January 2021 to provide further evidence and submissions to the Tribunal on this point with the Applicant being given until 5 February 2021 to respond.

51. Further submissions were, in due course, received from both parties.

52. The Tribunal began by considering the documents originally provided. The summary of costs at page 31 of bundle A1 has already been referred to. The following page is a balance sheet as at 31 December 2018. This appears to show that reserves held were £85,502.64. However, it is clear that this is not the sum held in the reserve bank account – which is said to be £27,485.36. The figure is simply the total of current assets less liabilities, of which some £53,000 is service charges in arrears.

53. At page 36 of bundle A1 are the notes to the financial statement at the end of 2019. These state that a reserve fund of £85,503 was brought forward from 2018 to which the sum charged in 2019 of £20,000 has been added less £15,000 in respect of legal demands, with a year-end balance of £88,144. This is, of course, significantly different from the statement at page 31 that there was an aggregate of £108,000 available. However, if one looks at the balance sheet as at the end of 2019 (page 3 of the Respondent's Appendix N) it states that a total of £108,201.32 is held in the client bank account but that current liabilities, including credits for legal fees of £27,000 result in total assets exceeding current liabilities by £88,143.90. These are described as the reserves held.

54. The further evidence and submissions from the Respondent included the service charge certified accounts for the years 2017 to 2019 inclusive, the budgets for the same years, the legal fees budget for 2018, the legal fees re-imbursed, and statements from the service charge account and the reserve fund account as at the end of 2019. The total of the sums held in the bank in both accounts was the same as the figure given as the total in the client bank account at the end of 2019.

55. In the further submissions contained in the e-mail from the Respondent enclosing the additional documents it is said that the actual sums expended on legal fees which should have been re-imbursed was £19,873.54 as this was the sum actually expended. What had in fact happened was that the budget charged for legal fees in the same period (£27,000) had been credited back to the tenants and this was an error.

56. In his further submissions the Applicant argued that in fact the total legal costs had been well in excess of the sum claimed, and that they amounted to a total of £62,165, of which £23,571 had been recovered, leaving a total of £38,594 which was charged to the tenants. His argument was that the tenants were, therefore, owed more by way of a re-imbursement.

57. The Tribunal bore in mind the limited scope of its jurisdiction. Its only role is to decide what service charges are reasonable and, therefore, payable. It has no jurisdiction to settle accounting disputes between the parties. Whether sums which are payable have or have not been paid and whether or not tenants are owed money by the landlord are not questions for the Tribunal, and anything set out in this decision cannot be regarded as in any way determining those issues.

58. The Tribunal also noted the slightly paradoxical situation that the greater the refund which had to be paid, the less the amount of money available to the landlord to put towards the AMP and so the weaker the Applicant's argument becomes on the reasonable level of contributions to the reserve fund.

59. In all the circumstances, and for the purposes of this decision only, the Tribunal decided to adopt the approach taken by the Respondent. It is clear that at the end of 2019 the total available to spend was reduced by £27,000 to cover legal refunds, with the resulting reserve being roughly £88,000. The Respondent now says that the amount of the refund should be only £19,873.54, or roughly £7,000 less. It follows from this that the amount of the reserve should be roughly £7,000 more, or about £95,000.

60. The Tribunal also, though, bore in mind that £20,000 of this reserve sum was made up of the contribution to the reserve for the 2019 year itself, so the starting point should really be a sum of £75,000.

61. Whilst the Tribunal bore in mind the case of Caribax, the terms of the lease in that case were different. In that case the lease expressly provided that all expenditure had to come first from the reserve fund. In this case the reserve fund is for a more limited and defined purpose and the Tribunal did not accept that the terms of the lease required the reserve to be fully committed before any further contributions could be required to add to it.

62. As previously explained, the Tribunal concluded that £100,000 would be needed to fund the AMP works by 2023, and this money would need to be obtained in the four service charge years 2019 to 2022 inclusive. Given the starting point of £75,000, this meant raising at least £25,000 for the reserve fund in those years.

63. Allowing a further margin for contingencies, the Tribunal therefore concluded that the appropriate figure for the contribution to the reserve fund should be £7,500 for each year, giving an additional sum of £30,000 by 2023.

64. It followed that it concluded that the reasonable and payable sum for the reserve fund contribution for 2019 was £7,500 of which the Applicant's contribution is £2,142,86.

Other Items

65. There was no challenge to the other items of expenditure in the 2019 summary of costs, which totalled £378, of which the Applicant's share is £108. This sum is reasonable and payable.

Conclusion

66. It follows from what is set out above that the total amount of the service charges which are reasonable and payable by the Applicant for the 2019 service charge year is £6,739.73.

2020 SERVICE CHARGE YEAR

67. The Tribunal bore in mind that for this period it was considering budget items rather than actual expenditure. It used as its starting point the Respondent's statement of anticipated service charge expenditure for the period 1 January 2020 to 31 December 2020 which was provided to the Tribunal in the course of the hearing. The budget contained items in two Schedules, A and B. The Schedule A items contained in the budget were as follows.

Cleaning Communal Areas

68. The budgeted sum was £3,500. This compared to an actual figure of £2,962.05 the previous year. The Applicant raised no challenge to this figure and the Tribunal concluded that it was reasonable, and the Applicant's share was payable by him.

Pest Control

69. Although the budgeted sum of £775 was considerably higher than the previous year's actual (£180) the Applicant raised no challenge to this sum and the Tribunal considered it a reasonable budget allowance. The sum is reasonable, and the Applicant's share is payable.

Electricity

70. The Applicant raised no challenge to the budgeted sum of £1,000 for electricity and the Tribunal was satisfied that the Applicant's share was reasonable and payable.

Buildings Insurance

71. The Respondent sought a budget of £3,000 for insurance for 2020. This was despite the previous year's actual figure being more than £1,000 less at £1,966.90. The Applicant contended that this budget figure was excessive. No cogent explanation was put forward by the Respondent for the level of increase. The Tribunal agreed with the Applicant and considered that a budget of £2,500 was reasonable and allowed for a reasonable level of year-on-year increase. The Applicant's share of £2,500 is reasonable and payable.

DSO Insurance

72. As with the previous year, the Respondent accepted that this item was not recoverable under the terms of the lease and so nothing is payable under this head.

Entryphone Maintenance, General Maintenance, Fire health and Safety

73. The budgeted sums for these items were £500, £3,200 and £1,000 respectively. The actuals the previous year were £330, £3,347.65 and £936 respectively. No challenge was made to these items and given the previous year's actuals the Tribunal was satisfied that the sums were all reasonable and the Applicant's share was payable.

Management Fees

74. The sum sought by the Respondent for management fees was £8,984, which was close to the sum claimed the previous year. The Applicant's case was that this sum was excessive. The parties' arguments were the same as set out in the Tribunal's consideration of this item in the 2019 service charge year set out above.

75. For the same reasons as set above, the Tribunal considered that the management charges claimed were excessive. It considered that the figure of £4,500 including VAT was already on the high side in 2019 so no increase for the following year was justified.

76. The Tribunal therefore concluded that the reasonable figure for management charges in the 2020 budget was £4,500, of which the Applicant's share was payable by him.

Remaining Items Schedule A

77. With the exception of company costs which, as in 2019, the Respondent accepted were not recoverable, there was no challenge to the remaining budget items in Schedule A and the Tribunal was satisfied that these items were all reasonable and the Applicant's share was payable.

78. This gives a total reasonable budget under Schedule A of £18,095

Schedule B

79. The only item in Schedule B was a budget of £4,000 for professional fees. The Tribunal accepted Mr. Hymers' explanation that these were professional fees in connection with the preparation of the AMP. There was no objection to this item and the Tribunal considered it reasonable.

Reserve Fund

80. In addition to these budget items the Respondent also sought a further contribution to the reserve fund in 2020 of £20,000. For the reasons already given the Tribunal concluded that the appropriate figure for 2020, as for 2019, was £7,500.

Totals

81. It follows that the total reasonable service charges for 2020 are £29,595. The Applicant's 2/7ths share of this sum is £8,455.71. This is the total reasonable and payable sum for this year.

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

82. The Applicant applied in the course of the hearing for an order under section 20C of the 1985 Act, having already applied for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

83. At the hearing the Applicant argued that it would be unreasonable for the Respondent to recover their costs of resisting the application through the service charge.

84. On behalf of the Respondent Mr. Hymers argued that with a couple of exceptions which had already been conceded, the Respondent's position was a reasonable one. He argued that much of the hearing had been taken up with arguments which were not relevant to the Tribunal's jurisdiction – in particular the issue of the re-imbursement of legal fees – and that also in many respects the Applicant had simply misunderstood the issues – especially with regard to the fact that the 2019 figures in dispute were actuals rather than budget amounts.

85. The test for whether orders should be made under section 20C and paragraph 5A is whether or not the making of such an order is just and equitable. The Tribunal bore in mind the history of the proceedings. It also had regard to the relative success achieved by the parties. It concluded that both parties had had a degree of success. Although the Applicant had succeeded in reducing two of the more significant items in the service charges, much of his case was based on 2019 budget figures which had been superseded by the actuals, about which in the end he conceded he had no dispute, and much time and effort had been dedicated to issues which were not relevant to the Tribunal's jurisdiction. In the end the Tribunal concluded that both parties could have done better.

86. It therefore concluded that the just and equitable course was to make an order under section 20C preventing the Respondent from recovering 50% of the costs it had incurred in these proceedings through the service charge. Although, given the previous Tribunal's conclusions in relation to the recovery of litigation costs under the terms of the lease, it may not be necessary, the Tribunal also allowed the application under paragraph 5A limiting the landlord's ability to recover litigation costs as an administration fee to the extent that only 50% of those costs cannot be recovered for the same reasons.

87. For the same reasons again, the Tribunal also ordered the Respondent to re-imburse the Applicant one half of the fees he has incurred to have this application issued and heard.

Name: Tribunal Judge S.J. Walker **Date:** 19 February 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.