



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/00KF/LIS/2021/0016**

HMCTS : **Telephone**

Property : **Flat 1, 30 St Andrews Road, Shoeburyness,
Southend on Sea, Essex SS3 9HZ**

Applicants (Tenant) : **Helen Wheatley**

**Respondent (Landlord &
Freeholder)** : **Long Term Reversions (Harrogate) Limited**
Managing Agent : **Blue Property Management UK Limited**

Type of Application : **1) to determine the reasonableness and
payability of Service Charges (section
27A Landlord and Tenant Act 1985)**
**2) for an order to reduce or extinguish the
Tenant's liability to pay an administration
charge in respect of litigation costs
(Paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform Act
2002)**

Tribunal : **Judge J R Morris
Ms Alison Flynn MRICS**

Date of Application : **8th July 2021**
Date of Directions : **1st December 2021**
Date of Hearing : **17th February 2022**
Date of Decision : **21st March 2022**

DECISION

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Remote Telephone Hearing

This determination included a remote telephone hearing together with the papers submitted by the parties which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as telephone proceedings because it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that the Service Charge costs of £1,478.80 incurred for the for the 8-month period from 1st November 2020 to 30th June 2021 are reasonable. Assuming that the Applicant's contribution is 20%, the Tribunal determines that the Applicant's contribution to this sum is £295.76 and is reasonable and payable.
2. The Tribunal makes an Order extinguishing the Applicants' individual 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.

Reasons

Background

3. On 8th July 2021 the Applicant applied for:
 - a) A determination under section 27A of the Landlord and Tenant Act 1985 as to whether the service charges incurred for the 8-month period from 1st November 2020 to 30th June 2021 were reasonable and payable. At the time of the Application the total in dispute was in the region of £350.00 assuming that the Applicant's contribution is 20% of the total of £1,756.00.
 - b) An order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. Directions were issued on 1st December 2021. It was noted in those Directions that the dispute arose following the transfer of management from Pier Property Management Limited to the Blue Property Group in November 2020. There was no dispute that the handover was poor to non-existent and this may have exacerbated the dispute, particularly as the Applicant stated that she had already paid

management fees to March 2021 and therefore there is a period where management fees have been sought by both companies.

5. When the Application was issued only interim charges had been sought and therefore the claim was stayed to allow final accounts to be prepared. This resulted in halving the amount sought but the Applicant indicated that she still wanted to proceed with her application.
6. A telephone case management conference was arranged for 1st December 2021 prior to the issuing of Directions. Only Mr Popperwell of Blue Property Management UK Limited attended and he indicated the Respondent's willingness to discuss whether an agreement might be reached in relation to the items in dispute. The procedural Judge expressed the view that she hoped an agreement could be reached as the costs of these proceedings would far outweigh the disputed service charge.
7. The Respondent may claim its costs through the Service Charge unless pursuant to an application by the Applicant under section 20C of the Landlord and Tenant Act 1985 the Tribunal determines it equitable that it should not. Such order would depend upon the outcome of the proceedings. It is noted that no application under section 20C has been made.
8. The Directions required:
 1. The Respondent to provide:
 - a) a statement of the fees for the Accountants and Management and repairs and management cover;
 - b) an account of the service charges demanded and the payments made by the Tenant.
 2. The Applicant to provide a response to the Respondent's statement setting out the reason for the challenge.
9. The parties complied with Directions and a hearing by telephone conference was held on 17th February 2022 at the request of the Applicant.

The Law

10. The Law relating to these proceedings is set out in Annex 2 and should be read in conjunction with this Decision and Reasons.

The Leases

11. A copy of the Lease relating to Flat 1 was provided. The Lease is dated 3rd April 1989 between Regisport Plc (1) Lessor and Andrew Grimwood and Linda Ann Humphries (2) Lessee for a term of 999 years from 1st July 1988.
12. The relevant parts of the Lease are:
13. Clause 3 The Lessee Covenants with Lessor as follows: -
 - (ix) To pay to the Lessor all costs charges and expenses including Solicitors' Councils' and Surveyors' costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under sections 146 or 147 of the Law of Property Act 1925 or any

enactment or modification thereof including in particular all such costs charges and expenses of an incidental to the preparation and service of a Notice under the said sections and incidental to the inspection of the Demised Premises and the drawing up of the Schedule of Dilapidations such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

14. Clause 4 The Lessee hereby covenants with the Lessor and also for the benefit of the dwelling owners that throughout the term the Lessee will: -
 - (iv) Pay the Interim Charge and Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such charges to be recoverable in default as rent in arrear

15. Clause 5 The Lessor with intent to bind himself and his successors in title the persons for the time being entitled to the reversion of the Demised Premises immediately expectant on this Lease hereby covenants with the Lessee as follows: -
 - A To keep in good and substantial repair and condition: -
 - (a) The Main structure
 - (b) All such gas and water mains and pipes drains waste water ...
 - (c) The Common Parts
 - (d) The boundary walls and fences of the Building
 - (e) All other parts of the Building not included in the foregoing paragraphs (a) (b) (c) and (d) and not included in this demise or in the demise of any other dwelling or part of the Building

 - F
 - (a) To employ at the Lessor's discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof
 - (b) To employ all such surveyors Builders Architects Engineers Tradesmen Accountants and other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building

16. The Fifth Schedule – the Service Charge
 - (1)
 - (i) Total Expenditure means the total expenditure incurred by the Lessor in any accounting period in carrying out his obligation under Clause 5(v) of this Lease and any costs and expenses reasonably and properly incurred in connection with the building including without prejudice to the generality of the foregoing (a) the costs of employing Managing Agents and Solicitors as and when required (b) the costs of any Accountant Surveyor or other person employed to determine the total expenditure and the amount payable by the Lessee hereunder (c) other Lessor's reasonable management fees of dealing with the management of the Building and surrounding land comprised within the Lessor's title

 - (ii) The Service charge means such percentage of the total expenditure as is specified in paragraph 7 of the particulars or (in respect of the Accounting Period during which the Lease is executed) such proportion of such

percentage as is attributable to the period from the date of this Lease to the 30th day of June next following

- (iii) The interim charge means such sum to be paid on account of the Service Charge in respect of each accounting period as the Lessor or his Managing Agents shall specify at their discretion to be fair and reasonable Interim Payment
- (2) ...
- (3) ...
- (4) If the Interim Charge paid by the Lessee in respect of any Accounting Period exceeds the Service Charge for that period the surplus on the Interim Charge so paid over and above the Service Charge shall be carried forward by the Lessor and credited to the account of the Lessee in computing the Service Charge in succeeding Accounting Periods as hereinafter provided.

Description

- 17. The Tribunal did not inspect the Building in which the Property is situated but obtained the following description from the parties written and oral representations, photographs provided by the Applicant and the Internet.
- 18. The Building is a two-storey detached house converted into 5 flats, two on the first floor and three on the ground floor. Built in the early 20th century with additions at the time of conversion in the late 1980s, the Building has brick elevations to the front and rendered elevations to side and rear under a pitched tile roof. It is double fronted with square bays on each side of the timber front door. The windows are upvc frames with double glazed units.
- 19. Externally, there are communal grounds comprising a walled front garden laid to grass with three gateways, two pedestrian and a vehicular opening to a driveway which leads to parking at the rear. The car park is edged with trees and shrubs.
- 20. Internally, access to the main part of the Building is via the front door to a hallway off which are Flats 1 and 2 and stairs rising to a landing off which are flats 3 and 4. Flat 5 is in an extension to the rear of the building and has its own front door. There is no separate landlord's electricity supply. The power to the lighting to the hallway, stairs and landing is from one of the Flats.

Evidence

- 21. A hearing was held by telephone conferencing on 17th February 2022 which was attended by Ms Helen Wheatley, the Applicant and Mr Jason Popperwell, Property Manager and Mr Mark Phillips of the Landlord's Managing Agent, representing the Respondent.

Service Charge

- 22. The Applicants and the Respondent, through its Managing Agent, each provided a Statement of Case together with various supporting documents. Both parties confirmed their written representations at the hearing.

23. The Respondent provided accounts for the period ending 30th June 2021 in accordance with the Directions:

24. Expenditure Spread Sheet including invoices:

Invoice Date	Supplier	Invoice	Details	£
1. Accountants Fee				
30/06/21	Blue Accounting Limited	Accrual	Account Preparation	325.00
30/06/21	Beaumont Chapman	Accrual	Accounts Certification	120.00
			Total	445.00
5. Management Fee				
31/12/20	Blue Property Management UK Ltd	14366	Management Fees	246.58
01/01/21	Blue Property Management UK Ltd	14367	Management Fees	125.00
01/02/21	Blue Property Management UK Ltd	14368	Management Fees	125.00
01/03/21	Blue Property Management UK Ltd	14369	Management Fees	125.00
01/04/21	Blue Property Management UK Ltd	14370	Management Fees	125.00
01/05/21	Blue Property Management UK Ltd	14371	Management Fees	125.00
01/06/21	Blue Property Management UK Ltd	14372	Management Fees	125.00
			Total	996.58
6. Repairs and Maintenance				
01/06/21	CDP Maintenance	INV0005	General Tidy Up	300.00
			Total	300.00
7. Client money Protection				
01/12/21	Blue Property Management UK Ltd	12161		12.00
			Total	12.00
8. Postage				
22/01/21	Blue Property Management UK Ltd	12602	Postage Cost - January	0.86
24/02/21	Blue Property Management UK Ltd	13439	Postage Cost - outstanding	0.94
			Total	1.80
Total Service Charge Expenditure				1,755.38

The expenditure Spread Sheet included heads of expenditure against which there was no charge. The above only sets out those against which there was a charge made in the period in issue and the numbers relating to the head of expenditure correspond with those attributed to them in the full list.

25. **Income and Expenditure Accounts for the Period Ending 30th June 2021 (8 Months)**

Income	£
Contributions from Residents	4,731
Other Income – Bank Interest	-
Insurance Credits	(957)
Electricity Credits	(100)
Cleaning Credits	(180)
Fire Risk Assessment Credit	<u>(240)</u>
Total	3,254

Expenditure

Accounts Fee	445	
Management Fee	997	
Repairs & Maintenance	300	
Client money Protection	12	
Postage Costs	2	
Total		1,756

Surplus 1,498

26. Applicant's Statement of Account:

Date	Description	Demand £	Receipts £	Balance £
19 Jan 21	Building Insurance Credit	-191.62		-191.62
19 Jan 21	Service Charge 02/11/20 – 31/12/20	94.25		-97.37
19 Jan 21	Service Charge 01/01/21 – 30/06/21	852.02		754.65
19 Jan 21	Cleaning Communal Areas	-36.00		718.65
19 Jan 21	Fire Risk Assessment	-48.00		670.65
19 Jan 21	Electricity	-19.93		650.72
25 Feb 21	Arrears Admin Charge	50.00		700.72
19 Mar 21	Arrears Admin Charge	50.00		750.72
09 Apr 21	Payment		100.00	650.72
12 Apr 21	Letter Before Action	90.00		740.72
12 Apr 21	Interest	30.23		770.95
07 May 21	Payment		550.00	220.95
02 Jun 21	Service Charge 01/01/21 – 30/06/21	454.70		675.65
05 Aug 21	Arrears Admin Charge	50.00		725.65
20 Aug 21	Arrears Admin Charge	50.00		775.65
03 Sep 21	Payment		454.70	320.95
13 Sep 21	Letter Before Action	90.00		410.95
13 Sep 21	Interest @ 22%	20.18		431.13
03 Dec 21	Service Charge 01/01/22 – 30/06/22	454.70		885.83
	Closing Balance			885.83

Applicant's Case

27. The Applicant stated that there was an urgent need for repairs which should have been done when the Managing Agent took over 15 months ago. She said she had had an estimate of £50.00 for a repair to be carried out on the window sill of the Property which she said should be undertaken as part of the Service Charge.
28. She said that security lights had been installed in the hallway which she considered were unnecessary. She said that she had held the long lease on her flat for 18 years during which time the previous Managing Agent, Pier Management, did not charge Service Charges. Only charging for what was actually done.
29. The Applicant said that the Leaseholders were not informed that a Managing Agent would be employed and were not ready for the high charges. The Ground Rent and Insurance are still paid to Pier Management who collects on behalf of the Landlord.
30. The only sum spent on the Building has been £300.00 which was for gardening and amounted to one visit in 15 months.
31. Photographs provided by the Applicant depicted:
 1. Brick gated pillar with missing and displaced bricks on catch side
 2. Unkempt garden
 3. Main entrance to the flat with stripped tiles and trip hazards
 4. Unkempt garden
 5. Front garden lawn.
32. Dr Abraham Ayantunde provided a witness statement in which he said that he bought Flat 4 in February 2021 which he let to sub-tenants. He said that they had complained to him about the unkempt gardens, inadequate care of the fences and trees surrounding the Building. He said he had complained to the Managing Agent on two occasions by e mail in May and August 2021 but had not seen a positive change.
33. He said that a Fire Risk Assessment had been commission by the previous owner of his Flat which identified a number of issues that required urgent attention. Dr Ayantunde said that he had raised these in the course of his purchase of the Flat with the Managing Agent and again by email after purchase, but these issues have not been taken seriously and no action has been taken to rectify the situation, which puts the health and welfare of the residents at risk.
34. Dr Ayantunde provided email correspondence with Mr Popperwell the Property Manager for the Managing Agent. The first email dated 5th May 2021 in which he said that:
 1. The garden is overgrown and unkempt and needs attention.
 2. The keys to the electricity consumer box cupboard are not available and that these were required in order for an Electricity Installation Condition Report to be carried out in order that legislative requirements can be met as his Flat is let.
 3. The Fire Risk Assessment issues required urgent attention and asked when they would be addressed.

35. Mr Popperwell replied on 12th May 2021 stating the gardening was to be carried out that week and then on a rota for a monthly attendance. The Agent said that they did not have an electric cupboard key but were inquiring from the freeholder and would contact Dr Ayantunde as soon as they received the keys. With regard to the Fire Risk Assessment being carried out the Agent said that a meeting would be called in the next couple of weeks to discuss the matter further.
36. Dr Ayantunde emailed again on 6th August 2021 stating that he had been informed by his tenants that the promised gardening had not been carried out.
37. Mr Popperwell replied on 11th August 2021 saying that the contractor recommended by a leaseholder had been instructed to carry out the work but had not done so to the required standard and therefore his contract was terminated for further work. He went on to say that the Agents were currently seeking quotations from new contractors to carry out work at the Building but it was proving very difficult to obtain quotations from contractors. He added that there were two in the pipeline at that time which they hoped to receive shortly. Once these were reviewed, they would look to giving instructions as soon as possible. He apologised for the inconvenience.
38. Photographs provided by Dr Ayantunde depicted:
1. Gas meters and housings unattended and not secured
 2. – 14. Unkempt garden and fences
 15. Unkempt garden hedge compared with that of neighbours
 16. – 17. Main entrance to the flat with stripped tiles and trip hazards
 18. – 20. Building structures in a state of lack of maintenance
39. At the hearing the Applicant, Mrs Wheatley, confirmed her Statement of Case. She said that she had been a long leaseholder for 18 years and during that time the Tenants had managed perfectly well. The hallway and landing were very small and Tenants did their own cleaning as and when needed. For example, the Tenant of one of the ground floor flats had regularly vacuumed the hallway. There was no need for a cleaner. She went on to say that she saw no reason for emergency lighting, the escape route was clear to all residents. Each Tenant has their own keys and each Flat has its own front door. An asbestos survey had been carried out 5 years ago and yet the report had not been seen by the Tenants.
40. Mrs Wheatley said that service charges had been demanded based upon an unrealistic budget. Items were charged for such as cleaning which has never taken place, electricity which is not charged and insurance which is collected for the Landlord by Pier Management Ltd not the Blue Property Management UK Ltd, the Managing Agent. Mrs Wheatley said that the excessive demand had left £1,498.00 surplus which should be returned to the Tenants.
41. In summary she submitted that the charges for both accountancy and management were excessive as nothing had been done since the Managing Agent took over.

Respondent's Case

42. The Respondent's Managing Agent provided a Statement of Case as follows:

Accountants' Fees

43. The Managing Agent said that each development it manages has a standard accounting format. An external supplier is contracted to put together the accounts for various systems. In this case it is Blue Accounting UK Limited whose staff are qualified at technical and professional level. These can include the Agent's property management system (Block Online), Xero or various utilities or insurance portals to gather information and work with internal departments or external suppliers to ensure these are accurate. This may mean looking at previous years' creditors and debtors and information following through accounts year on year to ensure accuracy to customers.
44. The accounts are then presented to the Property Manager for approval and sign off. Once approved by the Property Manager the accounts are sent to Beaumont Chapman another external accountant for certification who complete a 23-point work programme to check against a sample of invoices to ensure the accounts are accurate. Beaumont Chapman may then ask questions of Blue Accounting UK Limited
45. The Managing Agent said that a benchmarking exercise is carried out before appointing the accountancy. Two other quotations, one at £540.00 and another at £560.00. Blue Accounting UK Limited provide their services on a sliding scale based on the size of the development. This Development is in the 5–10 unit band. Across the whole portfolio the average charge is around £450.00 which is cheaper than the benchmarked companies and less than the usual price of £100.00 per hour.
46. At the hearing Mr Philips confirmed what was said in Statement of Case adding that in accordance with the Association of Residential Management Agents (ARMA) the Blue Group carry out a benchmarking exercise in respect of both its accounting and management companies. The Accounting Company is independent and carries out work for a number organisations which are quite separate from the Blue Group.

Management Fees

47. Management fees are structured and follow the ARMA standard. The management costs and relevant duties is summarised as follows (a copy of the duties was provided):
 - Administration:
 - Office costs including rent, utilities, computers, contracts, stationery;
 - Staff costs including salaries, National Insurance, pensions, training, insurance.
 - Duties:
 - Negotiate, agree and manage service contracts e.g., for gardening and cleaning;
 - Tender, negotiate, instruct, monitor and pay contractors for services and repairs;
 - Provide emergency cover;
 - Inspect and ensure compliance regulations regarding health and safety and fire risk;
 - Prepare a planned maintenance programme
 - Collect and enforce payment of service charges;
 - Keep records of receipts and payments.

48. The Management fee is £1,500 per annum which is £300 per unit.
49. At the hearing Mr Philips said that although there were outstanding works such as gardening and repairs it was not for want of trying that the Managing Agent had been unable to get these works done as soon as it took over.
50. He said that there had been considerable difficulties in respect of obtaining funds and accounts from the outgoing agent. In addition, there was a dearth of contractors prepared to carry out works during 2020 and early 2021. The Managing Agent during this time had tried very hard to engage contractors to carry out ongoing work such as gardening and to provide quotations for one off work such as repairs. He said that the apparent lack of progress in these areas was not a fair reflection of the time and effort that the Managing Agent had undertaken during the period in issue. The managing Agent was doing more not less than would normally be required for managing the Building.
51. Mr Philips said that much was now expected of Managing Agents and that ARMA had stated that a minimum fee of £1,000 should be charged.
52. Mr Popperwell supported Mr Philips's comments about the difficulty in maintaining services and getting work done during the pandemic and that this demanded more work not less. Mr Popperwell agreed that repairs were needed and that on taking over the management of the Building he had been busy assessing what work was required and drawing up plans for obtaining tenders. He said that the extent of the external and internal work that was needed would certainly incur costs for which a consultation procedure under section 20 of the Landlord and Tenant act 1985 would be required. By way of illustration, he referred to external dilapidations such as the window sills, front steps and tiles and boundary fencing. Following Fire Risk and Health and Safety Assessments emergency lighting would need to be installed and fire doors fitted to the flats to ensure the Building complies with legislation. A landlord's electric power supply was needed. Currently the electric light in the hallway is run from one of the flats and there is no electric socket for use by contractors in the hallway or on the landing.
53. With regards to the gardening in particular Mr Popperwell said he had held a meeting with Tenants and a sub tenant on a short let had offered to clear the garden and to maintain the grounds. Due to the difficulty of getting contractors to quote and the deteriorating state of the garden, it was agreed the vegetation would be cleared at a cost of £600. Unfortunately, the work was too much for the sub-tenant and was not completed to a satisfactory standard. The parties agreed a price of £300.00 for the work that had been done. Mr Popperwell said that a contractor was now in place.
54. Mr Popperwell said that with regard to the budget, when the Managing Agent, Blue Property Management UK Ltd took over, no information or past accounts were provided by the outgoing agents. As a result, the Managing Agent had to assess from experience the items for which costs were likely to be incurred in the year ahead. These items are commonly electricity, cleaning, gardening, insurance and an allowance for repairs. In the event it was found that these costs were not incurred and therefore credit have been given. The £1,498.00 surplus referred to by the

Applicant is held in a Service Charge Trust Account for the Tenants and will be drawn upon as and when Service Charge costs are incurred.

55. The Tribunal referred the parties to paragraph (4) of the Fifth Schedule which states that surpluses are to be carried forward to the succeeding Accounting Periods of the Service Charge years.
56. It was submitted that the Management Fees demanded were reasonable as a fair reflection of the work that had to be carried out during the period in issue.

Invoices

57. There are a couple of small invoices for postage and an invoice of Client Protection Insurance which ensures each development has sufficient cover for their client account money (the Service Charge Trust Fund).
58. There is also a single repairs and maintenance invoice where a contractor was sent to the Development to generally tidy up the grounds and site as it was in a poor state when the Managing Agent took over.

Decision re Service Charge

Accountancy Fees

59. The Tribunal found that paragraphs 1 (1) (b) of Schedule 5 of the Lease authorised the cost of employing an accountant to be charged to the Service Charge. The Tribunal considered the evidence submitted by the Respondent's Managing Agent regarding fees and engaging Beaumont Chapman to independently certify the accounts. No alternative quotations were provided by the Applicant.
60. The Tribunal found that it is not unreasonable for a Respondent to engage an accountant in addition to a managing agent. The role of and related fees charged by the managing agent are considered under that heading in these Reasons. However, from the list of Duties provided it was apparent that the preparation of the Service Charge Accounts was treated as separate from the role of management and this is taken into account when determining the reasonableness of the management fee.
61. In the absence of evidence to the contrary and in the knowledge and experience of the Tribunal the Accountancy fees of £445.00 (£325.00 + Certification Fee of £120.00) for the year ending 30th June 2021 are reasonable and payable.

Management Fees

62. The Tribunal found that paragraphs 1 (1) (a) of Schedule 5 of the Lease authorised management fees to be charged.
63. The Tribunal considered all the evidence adduced. It was accepted that the Managing Agent had spent time in attempting to instruct contractors to have work done and it appreciated that for the period in issue it had been difficult to obtain quotations from contractors, much less engage them. Nevertheless, the Tribunal

found that the management duties were limited in respect of this Building although a full management fee was being charged.

64. The Tribunal appreciated that the standard of services did not always reflect the amount of work undertaken by managing agents during the pandemic. In 2020 contractors were not available due to legislative restrictions and in 2021 materials were in short supply and availability of contractors was limited due to demand. Meanwhile, the management of the Building continues and Mr Popperwell has not been idle in assessing what work needs to be done and services provided, nevertheless there is a balance to be struck between management fees and outcome in the form of services such as gardening and completion of repairs. In the present case the management fee includes budgeting and collection of service charges as well as assessment and planning for future works. However, there is no insurance to arrange or ground rent to collect as this is still done by Pier Management for the Landlord.
65. In considering the amount of the fees the Tribunal noted that the Building was relatively small in management terms with only five contributors. However, there is an optimum unit charge for management in order to meet the basic overheads even though the size and service arrangements may be relatively modest. Taking into account the comments above as to the standard of management shown by what has and has not been done, the Tribunal determined in the knowledge and experience of its members, that a charge of £216.00 per unit inclusive of VAT (£180.00 + £36.00 VAT = £216.00) is reasonable giving an annual figure of £1,080.00.

Client Money Protection Insurance

66. The Applicants raised no objection to paying for the Client Money Protection Insurance at a cost of £12.00 per annum.
67. The Tribunal found that this insurance is to the advantage of the Applicants. It is not known whether or to what extent the Managing Agent has professional indemnity insurance which would protect client monies. The insurance should cover this risk for a modest premium and so is determined to be reasonable and payable.

Repairs and General Maintenance

68. The Applicant did not provide any alternative quotations for gardening. The Respondent accepted that the garden had become overgrown and had employed a contractor to clear the garden for £600.00 and to continue to maintain the garden. Both Applicant and Respondent agreed the work was unsatisfactory and therefore the Managing Agent would only pay £300.00 for what had been done and terminated any agreement for future work. From the Photographs it was apparent that some basic work had been carried out for which, in the absence of evidence to the contrary £300.00 appeared a reasonable quantum meruit.

Summary

69. In summary, taking the above into account, the Tribunal determines the following Service charge as reasonable and payable for the period in issue:

	Item	£
1.	Accountants Fee	445.00
5.	Management Fee for period in issue (8 months) Based on 5 units @ £216.00 per unit = £1,080.00 per annum	720.00
6.	Repairs and Maintenance	300.00
7.	Client money Protection	12.00
8.	Postage	1.80
	Total Service Charge Expenditure for period in issue	1,478.80

70. Therefore, the Tribunal determines that the Service Charge costs of £1,478.80 incurred for the 8-month period from 1st November 2020 to 30th June 2021 are reasonable. Assuming that the Applicant's contribution is 20%, the Tribunal determines that the Applicant's contribution to this sum is £295.76 and is reasonable and payable.
71. The Tribunal noted that there were a number of administrative charges in the Applicant's statement of account. In the absence of either an application or evidence adduced to determine the reasonableness and payability of Administration Charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 the Tribunal finds that these charges are not within its jurisdiction and makes no determination in respect of them.

Decision re Paragraph 5A of Schedule 11

72. The Applicant applied for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.
73. The provision enabling a landlord to claim its costs directly from a tenant is an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from the tenant.
74. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicants.
75. The Tribunal found that the only provision in the Lease which places personal liability on the Applicant Tenant for legal costs is under Clause 3 (ix). Under that Clause the Applicant covenants to pay the Respondent Landlord's costs charges and expenses incurred in respect of any proceedings under sections 146 or 147 of the Law of Property Act 1925. As these proceedings are not under sections 146 or 147 of the Law of Property Act 1925 the Tribunal finds that there is no provision in the Lease enabling the Landlord to reclaim its costs against the Tenant as an individual.
76. Notwithstanding there being no provision in a lease, for the avoidance of doubt, a tribunal is able to make an order under paragraph 5A of Schedule 11 of the 2002 Act if it is satisfied that it is just and equitable to do so. In deciding whether or not to do so

the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.

77. The Tribunal found that neither party had acted unreasonably in these proceedings. Taking into account the previous manner in which Service Charges were levied and the unsatisfactory manner in which the hand over to the present Managing Agent had been conducted and the lack of services, notwithstanding they were due to difficulties of circumstances, it was understandable that the Applicant should question the service charge in issue. In addition, the outcome was not, as is usually the case, all one way or the other. The parties should therefore pay their own costs.
78. The Tribunal therefore makes an Order for the same reasons extinguishing the Applicants' 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.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
 - (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 provision 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.
4. Section 27A Landlord and Tenant Act 1985
 - (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

5. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 leasehold valuation tribunal or the First-tier 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 the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

6. Schedule 11 Commonhold and Leasehold Reform Act 2002 relating to reasonableness of Administration Charges

Paragraph 1 Meaning of “administration charge”

- (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.

Paragraph 2 Reasonableness of administration charges

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

Paragraph 5 Liability to pay administration charges

- (1) An application may be made to a 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 a leasehold valuation 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 subparagraph (1).

- 5 A Limitation of administration charges: costs of proceedings
 - (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—