



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

Case Reference : **MAN/00FF/LSC/2021/0079**

Property : **LAMBERT COURT, BUCKINGHAM COURT and
BISHOPHILL SENIOR, YORK**

Applicants : **IAIN LONGSTAFF and WENDY LONGSTAFF and
LEASEHOLDERS OF FLATS 1, 2, 3, 6, 7, 8, 9, 10
LAMBERT COURT
FLATS 11, 18 BUCKINGHAM COURT and
FLATS 35, 37, 43 BISHOPHILL SENIOR**

Respondent : **ACCENT HOUSING LIMITED**

Type of Application : **Application for orders under sections 27A and
20C, Landlord and Tenant Act 1985 and
paragraph 5A of Schedule 11 to the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **A M Davies, LLB
N Swain, MRICS**

Date of Decision : **11 November 2022**

DECISION

- 1) The Applicants' service charge accounts are payable as originally charged save for the figures shown in bold type in the table below which shall be substituted for the original service charge figures shown in brackets, each Applicant's contribution being one twenty seventh.

	£ y/e 31 3 2018	£ y/e 31 3 2019	£ y/e 31 3 2020	£ y/e 31 3 2021	£ y/e 31 3 2022
Home Owner Communal Repairs		2293.68 (2970.90)	716.85 (3666.89)		
Replacement doors and windows					89971.90 (97209.90)
Management fee	8000.00 (8520.62)	8000.00 (10260)	6750.00 (10260)	8000.00 (9730)	8000.00 (9720)
Fire safety		2095.16 (3897.64)		2095.16 (2790.77)	2095.16 (2828.49)

- 2) Pursuant to section 20C of the Landlord and Tenant Act 1985, the Respondent may not include its costs of or incidental to this application in the service charge account of any resident at the Property.
- 3) No order is made in respect of the application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

REASONS

1. The Applicants are long leaseholders of flats at a scheme owned and managed by the Respondent ("Accent"). The scheme comprises Lambert Court, Buckingham Court and Bishophill Senior in York, but the estate is referred to generally as Lambert Court.

2. Leases at the scheme are available for purchase by people aged 55 or older. The Tribunal was told that many of the residents are considerably older. There is a warden call system, but no warden or manager resident on site.
3. Mr Longstaff who with his wife is the leaseholder of Flat 5 Lambert Court initiated the application under section 27A of the Landlord and Tenant Act 1985 (“the Act”) for a determination as to service charges payable by the Applicants. The other listed Applicants consented to and joined in the application. Mr Longstaff represented the Applicants in correspondence and at the hearing. Accent was represented at the hearing by its solicitor Ms James of Trowers & Hamblins LLP assisted by its in-house solicitor Ms Mahmood .
4. The application was lodged on 12 August 2021. In addition to the application under section 27A Mr Longstaff sought an order under section 20C of the Act on behalf of all residents at the scheme to prevent Accent from adding its costs of these proceedings to the Applicants’ service charge accounts. He further applied for an order that the Applicant’ costs should not be recovered from him by way of administration charges, but no costs were specified in his application and the matter was not pursued.

THE LAW

5. Section 18 (1) of the 1985 Act defines a service charge as “–
 - 18(1) 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.....
 - (3) For this purpose –
 - (a) “costs” includes overheads.....”
6. Section 19 of the 1985 Act limits service charges as follows:
 - “(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.”

7. In considering the payability of service charges, the tribunal first examines the wording of the lease which sets out the contractual obligations entered into by the landlord and tenant.

THE LEASE

8. The Tribunal was provided with a sample lease, and understands that the general terms apply to all Applicants. There are 27 leaseholders at the scheme, and all service charges are divided equally between them.
9. The lease seen by the Tribunal creates a term of 99 years from an unspecified date. So far as particularly relevant to this application it provides as follows:
 - Clause 3.4 the tenant is responsible for glazing to doors and windows;
 - Clause 3.12 the tenant is to replace doors and windows when necessary;
 - Clause 5.3 the landlord is to maintain, repair, redecorate and renew as necessary the exterior parts of the scheme and the structure of the buildings, including all doors and windows “on the outside of the flats within the Building” except the glazing.
 - Clause 5.5 the landlord is to keep the communal areas adequately lighted, cleaned and heated;
 - Clause 5.7 the landlord is to provide a warden service, which may be off-site;
 - Clauses 7.3, 7.7 service charges are to be computed before the start of the service charge year (which begins on 1st April) and will comprise the expenditure likely to be incurred and such amount as the landlord estimates is appropriate as a contribution to a reserve fund;
 - Clause 7.5 the service charge account is to be certified by the landlord’s accountants at the end of the year, and a balancing payment or credit is to be applied;
 - Clause 7.6.2 the service charge comprises all expenditure reasonably incurred by the landlord in connection with the repair, management, maintenance and provision of services for the Building and structure of the Building;

Clause 7.6.2 if any work is carried out by an employee of the landlord then the landlord may charge a reasonable allowance for the cost of such work.

THE SCHEME

10. The hearing took place by video link, and the Tribunal did not visit Lambert Court. Photographs were provided. The estate was built of brick under concrete tile roofs in or about 1992. Doors and window frames are timber. It is an enclosed estate with a single vehicular entrance and front and back doors into the three main blocks. Most of the building is two-storey, although flats 5 and 6 are single storey. The landlord supplies the TV aerials in the roof space. There is parking for 16 cars adjacent to the estate, for which permits are provided by City of York Council and obtained for leaseholders by Accent.
11. Each flat has the use of a door entry system. Some flats have bow windows and some have external “patio” doors. There are no internal communal facilities.
12. There are no private gardens but there is communal planting (shrubs, trees and flower beds) both within the estate and along some of the outer walls. Planted areas are, in the main, bordered by brick walls and/or black metal railings. Exterior lighting is in the form of poles carrying either 2 or 3 ornate lanterns. There are different levels and no lifts, but the external and ground floor interior passages are suitable for people with mobility issues.
13. The Tribunal finds that the overall impression given by the photographs supplied is of a well-designed and well maintained estate. At the hearing Mr Long, Accent’s Home Ownership Officer, described the scheme as “gold standard” and explained that there were no social or physical problems which necessitated the number of site visits and level of supervision that some estates required.
14. Accent provides an online “Rant and Rave” service to the leaseholders. Where a defect has been reported, the reporting leaseholder is sent a Rant and Rave form once the repair has been carried out and can report back as to whether the repair is considered satisfactory. More generally, all leaseholders – perhaps assisted by their families where necessary - are able to use the Rant and Rave system to report to Accent issues relating to services etc on the scheme. At the hearing Accent’s

representatives stressed that Rant and Rave was the system that should be used for reporting faults, and that Accent relied upon leaseholders using this system to provide notice of disrepair.

REPAIRS

15. In September 2019 Mr Longstaff reported water ingress through his ceiling. 4 tiles needed to be replaced. Accent instructed its responsive repairs contractor ESH to do the work. Mr Longstaff requested information about the cost of this repair which was to be added to the service charge. After considerable investigation and pressure on the part of Mr Longstaff, Accent refunded £809 to the service charge account some two years later by way of acknowledgement that there had been an error in invoicing. This incident led Mr Longstaff, who accurately describes himself as one of the youngest and most capable of the leaseholders at the scheme, to enter into a detailed investigation of all the repairs, the cost of which was charged to the leaseholders in the year ending 31 March 2020. The service charge item for repairs in that year amounted to 3,666.89, or £135.81 per leaseholder.
16. In 2017 Accent awarded ESH a five year contract for responsive repairs in its north east region, following a procurement process carried out under the Public Contract Regulations (2015). It was agreed that all work would be costed pursuant to the NHF schedule of rates (SOR) version 6.1 and that in addition a discount of 5% would be applied to all invoices. The procedure is for Accent to supply an order with an outline of the repair to be undertaken or the report to be prepared. ESH attends site, carries out the work and invoices for it, identifying the relevant SOR code. Accent should check that the correct SOR code has been quoted and charged for with the discount applied, and then pass the invoice for payment and for inclusion in the service charge account.
17. It became apparent to Mr Longstaff that this system was failing, at the expense of the leaseholders. Incorrect SOR codes were being used by ESH, and consequently charges for repairs were higher than they should have been. He provided the Tribunal with details of instances where this had occurred in the year to 31 March 2020 and invited the Tribunal to apply the appropriate reduction. He further claimed that as the reduction he sought amounted to approximately 80% of the repair costs for that year, the same percentage reduction should be applied for all years specified in his application, namely y/e 31 March 2017 – 2021 and the

estimated budget for y/e 31 March 2022. The Tribunal does not accept this argument, and has limited its determination to the specific repair items concerning which Mr Longstaff supplied evidence and representations at the hearing.

18. In response to each of the repair items listed below, Ms James for Accent told the Tribunal (1) that as the SOR allowed for some interpretation ESH had been entitled in most instances to use the codes it had chosen, and (2) that the 5% discount had been applied to many of the costs items, but not all. She said that Accent had recently taken this failure up with ESH, who were to check their records with a view to applying the discount where this had been missed.
19. The Tribunal finds that the SOR are designed to be specific, and that they rarely allow for interpretation. The intention of the SOR is that contractors and their customers are able to identify the correct charging code for the work that has been done.
20. Ms James did not cross examine Mr Longstaff or challenge his evidence, save as appears below. The repair costs given below include VAT.
21. **Weatherboard:** ESH charged £42.13, applying the SOR code for 15 metres of preparation and application of masonry paint. A new weatherboard needed to be painted to match the door. The correct code is for decorating fascias, soffits and similar timber items not exceeding 300mm, code 438002. Deducting 5% and adding VAT, the correct price is £7.60.
22. **Inspect and repair letter box:** ESH charged £97.86, applying the SOR codes for inspection and renewing letter plate and knocker. The correct codes are for inspection and refixing the loose letter box. Mr Longstaff produced a photograph showing this repair, which involved the application of mastic. Applying the correct codes 398001 and 392513, and after deducting 5% discount and adding VAT, the correct price is £18.11.
23. **Renew external lightbulb:** Although queried by Mr Longstaff, there was no evidence that this work was not done. The charge was £55, applying the code 856603 which allowed for two bulbs. The correct code for one bulb is 856609, giving a price after deducting 5% and adding VAT of £51.63.

24. **Test electrics and report; renew bulb to bulkhead:** ESH charged £120.56 using the code for a complete test and report on a domestic installation. They did not apply the 5% discount to their invoice. SOR 895002 should have been claimed for post-repair testing. Adding for the renewing of two bulbs, this would give a price after discount and VAT, of £93.33.
25. **Replace 8 bulbs to external lamps:** ESH charged £748.70 using a code for renewing the light fittings and multiplying this by 12. However the order was for 8 bulbs. The correct code is SOR 857019, giving a total after discount and VAT of £114.46.
26. **Replace bulbs to external lamps:** The order states “wrong lights attended to previously”. ESH charged £22.48 under the code for inspecting electrics. At the hearing it was common ground that no charge was to be made for correcting previous errors. Nothing should have been charged for this work.
27. **Re-setting one corner brick:** ESH charged £31.76 using the SOR code for raking out and repointing brickwork to a depth of at least 12mm. The correct code is 103303, which gives a price after discount and VAT of £5.21.
28. **Re-setting 2 loose corner bricks:** ESH charged £95.28 using the same code as above, and for 3 bricks. The correct code is as above, giving a price after discount and VAT of £10.42.
29. **Re-setting 3 corner bricks:** ESH used the same code again and charged £50.15. The correct code gives a charge of £15.63 including discount and VAT.
30. **Re-setting loose bricks at bin store:** ESH charged £23.68, using a code for inspecting leadwork on a roof. The 5% discount was not applied. The correct code as above, and allowing for 2 bricks, is £10.42.
31. **Adjust door catching on carpet:** ESH charged £104.96 under a code for “overhaul external door and frame complete, refix all ironmongery”. The 5% discount was not applied. A plastic water bar needed replacing under SOR code 341923, giving a correct price after discount and VAT of £8.03.

32. **Adjust door to bin store not closing flush:** ESH charged £99.72 under an SOR code for “overhaul external door and frame complete, refix all ironmongery”. The correct code is 324101, for easing and adjusting the door and the price after discount and VAT is £15.46.
33. **Repair to guttering:** ESH charged £79.30 for this, but the order states that this area of guttering had been repaired previously. There should therefore be no charge for a correction.
34. **Ridge tiles:** ESH were asked to hack out and re-bed loose ridge and valley tiles. They charged £24.92 under a code for inspecting leadwork on a roof and did not apply the discount. Mr Longstaff told the Tribunal that the work to the tiles had never been done and this was not challenged by Accent. In the absence of any other evidence, there should therefore be no charge for this item.
35. **Re-hang gate:** This was a metal gate. ESH charged £245.32 under an SOR code for renewing 9 sections of a softwood rail on timber fencing. The correct code was 023009 – repair ease and adjust metal gate, for which the price after discount and VAT is £21.61.
36. **Investigate and repair trip hazard:** ESH charged £55.82 for lifting and replacing 2 square meters of pre-cast concrete slab. They did not apply the discount. Mr Longstaff, whose evidence was not contested, said that the work was done to only one paving slab. The correct code is 007005, for which the price after discount and VAT is £9.76.
37. **Blocked gutter:** ESH charged £69.77 under SOR codes for renewing a Pvcu gutter union and cleaning and flushing out debris along a whole elevation. They did not apply the discount. Mr Longstaff told the Tribunal that there was no permanent repair, but that mastic had been applied to the gutter. He also said that ESH’s policy was only to work on the specific area to which they had been directed, and not to carry out any additional work. The correct code appears to be SOR 603903, for re-making a loose or leaking Pvcu joint, the cost of which after discount and VAT should have been £6.02.

38. **Hole in roof above Flat 1:** ESH charged £138.24 under codes which provided for re-fixing more than 10 tiles, applying flashband as a temporary repair, and cleaning out the gutters on the whole elevation. No discount was applied. Mr Longstaff said that the only work done was a flashband repair. His photograph indicated that a small number of tiles was involved. The cost should have been limited to the flashband repair, which after discount and VAT amounts to £17.60.
39. **Easing bin area doors:** ESH charged £118.08 under codes which described an overhaul of an internal door and frame, removing all ironmongery, and redecorating a metal door. No discount was applied. Mr Longstaff said that the door was not painted, and redecoration was not included in Accent's order. The correct SOR code is 324101 for easing and adjusting the door, and the price after discount and VAT is £15.46.
40. **Loose slate on roof and breach of secondary lining:** ESH charged £85.56 under a code for renewing stepped lead flashing not exceeding 225mm. They did not apply the discount. The correct code for replacing two concrete tiles under SOR code 201301 would, after discount and VAT, give a price of £29.97.
41. **Re-lay raised paving flag:** ESH charged £145.08 under the correct SOR code for re-laying the flag, but with the addition of an SOR code for clearing up an exceptionally littered and overgrown garden. There was no such work carried out. No discount was applied to the invoice. The correct code for the work done gives a figure after discount and VAT of £9.76.
42. **Damage to plastic brick vent:** ESH charged £65.71 under a code for "cut or form opening in wall and insert PVC vent". No discount was applied. The correct charge including discount and VAT was £12.28, under the SOR code 115011 for supplying and fixing PVC or aluminium vent.
43. **Leaking gutter near Flat 4:** ESH charged £68.96 under codes for re-aligning a Pvcu gutter and cleaning the gutter on the whole elevation. No discount was applied. Mr Longstaff told the Tribunal that no re-alignment was carried out and the gutter along the whole elevation was not cleaned. This was not challenged. The correct charge appears to be under SOR 603905, which after discount and VAT gives a price of £10.66.

44. **Blocked gutter near Flat 10:** ESH charged £28.07 under the SOR code for cleaning the gutter along the whole elevation. No discount was applied. Mr Longstaff said that this was not done, and it appears that clearing the obstruction locally should be allowed for under SOR code 603905 as above, giving a price of £10.66.
45. **Re-point and re-bed ridge tiles above Flats 16 – 18:** ESH charged £24.10 under a code for inspecting leadwork on a roof. An incorrect discount of under 5% was applied. Mr Longstaff said that the work had not been done and this was not challenged. The cost should therefore be nil.
46. **Roof repair at Flat 5:** ESH's incorrect invoice for £809.28 in relation to this work has already been reimbursed to the service charge account. Mr Longstaff says that the remaining charges do not reflect the work carried out. ESH included in this cost -
- (a) £87.70 (a reduction, after being challenged, from £262.14) for disconnecting electricity after severe water penetration, burst pipe or flooding, repair and reconnect, test and provide a report and NICEIC test certificate. Mr Longstaff confirmed that the only electrical work done was to isolate a light fitting, and that there was no severe water penetration. The correct charge for this is SOR code 856103: isolate, reconnect supply, renew TRS cord pendant flex on a lamp rose. The cost after discount and VAT would be £18.50.
 - (b) £40.14 for cleaning a gully and gutter. Mr Longstaff says that he always cleans the gutters and gullies at Flat 5, and this was not challenged. The work was not ordered and was not done. There should have been no charge.
 - (c) £198.33 for repairing a leaking lead valley, removing and refixing tiles, and renewing lead covering to a bay window roof. Mr Longstaff says that none of this work was done. There should have been no charge.
 - (d) £23.68 for inspecting, testing the roof and reporting. Mr Longstaff said that when it rained again it became clear that the leak had not been repaired, and that there had been no inspection and testing. There should be no charge.

(e) £320.11 for removing 8 square metres of slates and fixing with copper nails. Mr Longstaff's photograph shows that an area of 8 square metres would amount to perhaps over 300 tiles. He says that the leak required replacement of only 4 tiles, and that at most some 20 tiles were removed and replaced during the work, which he witnessed. None of this was challenged. The SOR code for renewing up to 10 plain concrete tiles (not slates) is 201309, the cost of which after discount and VAT would be £29.97.

47. **TV Aerial:** In the year ending 31 March 2020 ESH charged £1058.64 for repairing a TV aerial under the SOR code for "TV Aerial: Loft installation complete" for which the price would be £88.22. Due presumably to a typing error, ESH charged (and Accent paid) £882.20 plus VAT. Accent claim that a booster was replaced. Mr Longstaff said that it was an amplifier which would cost no more than £150. The Tribunal did not see an invoice but Ms James confirmed that a 5% discount had not been applied. The correct code for the work is SOR 871515 the cost of which after discount and VAT would be £77.66. Allowing for the price of an amplifier Mr Longstaff suggested that a reasonable price would be approximately £200, and the Tribunal accepts that figure as an appropriate cost for this repair.

48. The explanation for the overcharges offered at the hearing by Ms James and by Mr Long for Accent was that the invoices had "slipped through", or that the most accurate SOR code available had been used to describe the work undertaken. The Tribunal finds that ESH were careless in failing to apply the correct codes and in Accent were careless in failing to check and identify the errors. The Tribunal was told that the invoices were checked by Accent at the end of each year but if this occurred it was badly done in more than one year. As a result there was a regular and sustained practice, whether or not deliberate, of overcharging the Applicants.

49. The overcharges calculated by the Tribunal amount to £3,627.26, not less than £2,950.04 of which relates to a single service charge year, 2019 - 2020. The repair bills for other years were not checked systematically as part of this application. The oral and written evidence before the Tribunal was chaotic and did not enable the Tribunal to identify the years in which Accent overcharged the leaseholders by £677.22 as identified at paragraphs 36 to 45 above. These overcharges have been

removed from the reactive repairs figure for the service charge year ending 31 March 2019, in the expectation that once Mr Longstaff's investigations became apparent in 2019/2020 Accent are likely to have instituted more careful scrutiny of ESH invoicing.

50. As stated above, the Tribunal has not applied the equivalent percentage reduction to the other years for which the Applicants requested a review of the cost of repairs in the service charge account. It is to be hoped however that Mr Longstaff's considerable efforts on behalf of the Applicants has resulted in Accent reviewing its policies and procedures and ensuring that monies spent on behalf of its residents are properly incurred. Ms James told the Tribunal that Accent had recently asked ESH to review its invoices for inconsistencies in applying the agreed discount, and that this check was ongoing. However by the date of the hearing Accent had not taken up the overcharges with ESH despite the fact that Mr Longstaff's evidence about them was not challenged. Ms James said that this would now be done.

51. **Replacement of doors and windows:** After some years of complaints by the leaseholders, Accent agreed that the softwood doors and windows at the scheme should be replaced. Planning permission was required and was delayed for some years. During this time Accent twice served section 20 consultation notices on the leaseholders but were unable to proceed with the work. The third and final section 20 notice provided for ESH to do the work. Because of the 5 year contract held by ESH the leaseholders did not have an opportunity to suggest an alternative contractor under the usual section 20 procedure. The sum quoted for the work, including VAT and materials, was £97,209.90. The description of the work to be carried out was replacement of "patio doors and windows". Mr Longstaff told the Tribunal that the residents assumed this included the Velux windows. He relies on an email from Accent dated October 2020 stating "As discussed, the Velux windows are to be measured separately, I'll confirm when this will happen, but we will of course ensure they are replaced as part of the programme.". The replacement of Velux windows was not included in the ESH quotation. Unfortunately it appears that Accent has still not included "as part of the programme" the replacement of these windows.

52. The work was undertaken in the spring of 2021 and the cost has appeared in the service charge account for the year ending 31 March 2022. Mr Longstaff submitted that the quotation provided by ESH and the final invoice include the cost of supplying and fitting 7 doors which were neither required nor supplied. At the hearing neither party provided costs for these doors. The Tribunal finds that the cost of supplying and fitting 7 doors is to be removed from the service charge account. Calculating this cost from ESH's quotation breakdown which indicates that the cost of a door was £620 and the cost of fitting was £250 per unit, the amount by which this invoice should be reduced is £7,238 after the addition of VAT. The Tribunal considers the resulting price a reasonable cost for the work undertaken. The Tribunal was not willing to accept as a direct comparable the quotation from EYG supplied by Mr Longstaff, since that company had not had the opportunity to measure all units and had quoted for the provision of 4 windows only. It was not possible to extrapolate from this the cost of supplying windows and doors to the whole scheme.
53. Mr Longstaff informed the Tribunal that some leaseholders experienced problems with their doors and windows following installation. These appear to be dealt with by Accent as they are reported. The Tribunal had no evidence on which it was willing to base any further general reduction in the installation costs.
54. Ms James argued that the actual cost of the replacement windows and doors to the leaseholders was only £87,209.90 as Accent had agreed to contribute £10,000 to the service charge account. This sum has been credited to the reserve fund in the year ending 31 March 2022 rather than being paid to the current leaseholders. After hearing the parties on this point, the Tribunal finds that the contribution of £10,000 was an acknowledgement of the inconvenience suffered by the leaseholders during the years when their windows and doors were in poor repair. It was not a reduction in the cost of replacing the windows and doors, the full amount of which – as quoted for in the section 20 notice - has been paid by current residents of the scheme.

GROUNDS MAINTENANCE

55. Mr Longstaff queried the cost of grounds maintenance at the scheme, as paid to Accent's contractor Malc Firth. Malc Firth was appointed for a period of 5 years after the regulation tendering and procurement process. On Malc Firth taking on the contract the annual cost rose from £1378 in year ending 31 March 2017 to £2066 the following year, and there have been modest increases annually since then. The increase between 2017 and 2018 results from the pricing structure of the former contract, which was negotiated in 2012.
56. Mr Longstaff claimed that the cost of grounds maintenance was too high in view of alleged defects in the service, including a spillage of chemicals on the tarmac path which the contractors have not been able to eradicate.
57. After hearing the evidence and considering the documents and photographs provided, the Tribunal concludes that the cost of grounds maintenance is reasonable, and that overall the standard of work is also reasonable. The chemical spillage does not directly affect the residents' enjoyment of their properties and should not affect the service charge under this heading.

CLEANING PAVINGS

58. In the year ended 31 March 2019 Accent arranged to have the exterior hard surfaces on the scheme cleaned by their approved contractor Northern Restoration, at a cost of £942. Believing this cost to be high, Mr Longstaff obtained alternative quotations in or about March 2022. A quotation from Clear Shine Window Cleaning is not necessarily from a company which would meet Accent's requirements for health and safety procedures, insurance etc. A quotation was also obtained from Northern Restoration, who quoted £695. This appears to be a VAT exclusive figure, and VAT would bring the cost to £868. The Tribunal has no evidence as to whether there was more competition in 2022 than in 2019, or whether there were other factors to explain the reduction in price. The original service charge cost, £942, is accepted as a reasonable cost for this work.

WARDEN CALL SYSTEM

59. Accent received maintenance reports on the warden call system each year. Although Mr Longstaff argued that there had been a delay in replacing the system, this is not borne out by the documents provided to the Tribunal. There was no recommendation to replace the system until 2019, and it was replaced in 2020 with an up to date digital system.
60. There is a credit of £479.10 in the service charge account to 31 March 2022, indicating that as one would expect there was no maintenance contract charge payable for the new system in the year following installation.
61. The Tribunal had no evidence that the new system was unreasonably delayed, or that the cost was unreasonably high. There was no evidence that the system did not work well. There is therefore no reduction to be made in the service charges under this heading.

FIRE SAFETY

62. Prior to the hearing, the parties had agreed that where the service charge for fire safety exceeded £2095.16 in any year after year end 31 March 2018 it was to be reduced to that figure. This results in reductions as follows:

y/e 31 March 2019	£1,802.48
y/e 31 March 2021	£695.61
y/e 31 March 2022	<u>£733.33</u>
Total:	£3,231.42

CLEANING

63. Cleaning and window cleaning services at the scheme are provided by Ideal Cleaning Services under a 5 year contract. The cost in the year ended 31 March 2017 was £2300, which increased under new contract terms in the following year to £3502.27. At a meeting with Accent in February 2018 the residents requested that cleaning take place monthly to reduce the cost. They were assured at the time that this would take place with effect from the following April, but in the event it appears that Accent were unable to negotiate a change to the contract terms until year ending 31 March 2021 when the cleaning took place on a fortnightly basis. Accent capped the cleaning costs in the service charge accounts for the previous years at £1887.60 and each resident was credited with the overpayment. Mr

Longstaff says that this cap was not agreed, and that the cleaning costs were still too high. Subsequently there have been further negotiations resulting in a further reduction in the work undertaken, as requested by the leaseholders, to 2 hours per month and a consequential reduction in the cost.

64. The Tribunal considers that cleaning costs indicated in the service charge accounts as varied by agreement between the parties have been reasonably incurred and are reasonable for the work undertaken.

EXTERIOR PAINTING

65. The railings and other external parts of the scheme) other than the doors and windows of the flats) were re-decorated in 2018 following service of a section 20 notice. The work was undertaken by Bagnells Group at a cost of £9531.23. Within this figure Mr Longstaff queried the need for high level access at a cost of £1503.60 and also the sum of £783.60 included in Bagnell's invoice for removal of vegetation to permit access to the railings. He suggested that there was no area of exterior painting that could not be reached from the ground or the inside of the building, and that if the shrubs were properly pruned there should be no need for the clearance of vegetation. He estimated that at the hourly rate which he said was £23 plus VAT according to the SPONS schedule of rates for ground staff the total number of hours for clearing vegetation alone was 33, which he thought excessive.
66. Ms James said that the cost was not based on an hourly rate, and that ensuring access to railings in order to paint was not necessarily the same as keeping shrubs tidy. Mr Long for Accent advised that there were 4 entrances to the scheme which required high level access, and that the cost given in the section 20 notice had not been queried by residents at the time.
67. The Tribunal finds that although on the high side, this cost is not unreasonable given the number of railings to be prepared and painted. There was no indication that this work had not been carried out to a good standard.

ACCOUNTANCY

68. Mr Longstaff questioned the accountancy costs in the service charge accounts, on the ground firstly that there was a big increase from £345.52 in year ending 31 March 2018 to £699.30 in the following year and secondly that his analysis of

overcharged repair costs demonstrated that the accountants were not scrutinising expenditure.

69. Ms James pointed out that certification of accounts annually was required by the lease, and that the accountants were also involved in responding to section 21 requests for information from the leaseholders. She acknowledged that the accountancy work was contracted by Accent on a national basis and divided between all its estates but pointed out that Mr Longstaff himself had admitted elsewhere that the practice of obtaining costs benefits by awarding national contracts was ultimately beneficial and acceptable. Although Mr Longstaff thought that it was unfair for the scheme to pay the same amount as leaseholders who enjoyed facilities such as laundry, guest rooms, lifts etc, the costs per leaseholder per year were low. For the current year, the cost would be £675 or £25 per leaseholder.
70. The Tribunal finds that the cost of accountancy is reasonable for the work undertaken. It is not the job of accountants to undertake the kind of forensic investigation that Mr Longstaff has achieved, and the service charges under this heading are therefore payable.

MANAGEMENT FEES

71. Before management fees were dealt with at the hearing, Ms James represented to the Tribunal that Accent intended to apply for leave to appeal against the decision of Judge Elizabeth Cooke in *Howe Properties (NE) Limited v Accent Housing Limited* [2022] UKUT 273 (LC). Ms James invited the Tribunal to adjourn consideration of this issue until the outcome of that appeal was known, in order to avoid the possibility of a further appeal on the same issue.
72. After considering this application, the Tribunal determined to hear the present application, and to decide it on the basis of the law as it stands, i.e. as set out by Judge Elizabeth Cooke in *Howe Properties*. No application for leave to appeal had been made at the time and there was no certainty that it would be made, or that leave would be granted. It was not appropriate to adjourn consideration of the management fees for an indeterminate period.

73. Accent charged management fees for the scheme on the basis of their tiered system. As there were no shared facilities at Lambert Court, the scheme qualified for tier 4 charges. £315 per flat was charged in y/e 31 March 2017, and for each of the years ending in 2018, 2019 and 2020 the charge had been £380 per flat. For the years ending in 2021 and 2022 this charge was reduced to £360 per flat.
74. The lease provides that all service charges, including management fees, must be calculated on the basis of costs actually incurred during the year. While costs incurred under long term qualifying contracts such as grounds maintenance, cleaning and repairs are excluded, management costs are subject to the same procedures as other service charges. At the start of the year there should be an estimate of expenditure during the forthcoming 12 months, and at the end of the year there should be a calculation of the sum expended with a consequential payment or repayment to balance the account.
75. Mr Longstaff argued for a management fee amounting to 15% of service charges incurred in the year, on the basis that this method of calculation has been endorsed in the past by RICS and previous decisions of the Property Tribunal. However in recent years this method of calculating management fees has generally been abandoned because of the uncertainty it affords to landlords and tenants alike. Moreover, calculating management fees on this basis does not meet the requirement in *Howe Properties*, in which (at paragraph 27) the learned judge states that Accent “*will have to calculate the Annual Service Charge for each of the leases by adding its direct and indirect management costs to the [service charge] figures it already has and then dividing the whole amount by [the percentage payable per leaseholder].*” Judge Cooke acknowledged that the parties were also at liberty to reach a different agreement, such as an agreement to use 15% “as a proxy”. However she pointed out that she could not impose such a proxy figure, and neither can this Tribunal.
76. Mr Longstaff also argued forcefully that Accent should not be permitted to charge the full management fee that might otherwise be payable, in view of its failure to scrutinise its contractors’ repair invoices, as indicated above. He recited management failings, some of which (such as failure to supervise the quality of repairs to pointing) have not been accepted by this Tribunal and a number of

which have been confirmed, such as Accent's inexplicable failure to check ESH invoicing.

77. This Tribunal was not provided with any information as to Accent's direct and indirect costs of managing Lambert Court in the years since 2017. As noted above, the lease includes the costs of management in the definition of service charges and allows the Applicant to charge a "reasonable allowance" if its own employees carry out the work. This differs from the wording of the lease considered in *Howe Properties* which specifically allowed the inclusion of a profit element. Although not stated, a reasonable profit should be included when interpreting the term "reasonable allowance", but this Tribunal has not been provided with any information as to what profit margins might be expected by Accent.
78. The lack of information provided leaves the Tribunal with the task of relying on its own experience of managed estates to assess a reasonable cost for managing this scheme, including the cost of services which are not mentioned in the service charge accounts, such as obtaining parking permits, legionella testing, arranging insurance and managing the provision of utilities to the scheme. On the other hand, Lambert Court is acknowledged to be problem-free and there is a heavy reliance on the Rant and Rave system which permits Accent to manage the scheme reactively rather than proactively. Overall, the Tribunal considers that a management charge of £8000 per year is reasonable, save for the year ending 31 March 2020 when there were serious failures to oversee repair costs. In that year, the management fee is reduced to £6750.

COSTS APPLICATIONS

79. It is unfortunate that Accent have not responded more positively to Mr Longstaff's investigation, particularly since his conclusions were, in the main, unchallenged. He was obliged to make this application in order to obtain the repair cost reductions to which the leaseholders were entitled.
80. Ms James confirmed that Accent would not seek to add their costs of the application to the service charge account, and a section 20C order is therefore made for the benefit of all leaseholders on the estate.

81. The Tribunal was not given any information to suggest that Accent's litigation costs were being or would be charged to Mr Longstaff and he did not identify any "particular administration charge" to which his application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 might apply. No order is made in respect of that application.

Mrs A Davies, Tribunal Judge

11 November 2022