



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

Case Reference	:	CHI/00HG/LSC/2021/0046
Property	:	10 Wyoming Close Little America Plymouth Devon PL3 6SU
Applicant	:	Mr Nigel Pinto
Respondent Representative	:	Plymouth Community Homes (PCH) Miss Jennifer Lloyd (Tozers Solicitors LLP)
Type of Application	:	Reasonableness of service charges Sections 27A and 19 of the Landlord and Tenant Act 1985 (the Act) Orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA)
Tribunal Members	:	Judge C A Rai (Chairman) Mr M J F Donaldson FRICS MCI Arb MAE Mr M R Jenkinson
Date and venue of Hearing	:	21 September 2021 Full Video Hearing held remotely
Date of Decision	:	19 October 2021

DECISION

1. The Tribunal finds that the sums charged by the Respondent in respect of service charges are reasonable for 2017/2018, 2018/2019, 2019/2020 and 2020/2021.
2. The Tribunal was unable to make a determination in respect of 2016/2017.
3. The Tribunal finds that the amount demanded on account of the service charge for 2021/2022 is reasonable.
4. The Tribunal cannot make any determination in respect of 2022/2023 and 2023/2024.
5. The Tribunal makes an Order under section 20C of the Act that costs incurred by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
6. The Tribunal makes an Order under paragraph 5A of Schedule 11 to CLARA extinguishing the Applicant's liability to pay a particular administration charge in respect of litigation costs.
7. The reasons for its decisions are set out below.

Background

8. Mr Pinto, the Applicant, made an application to the Tribunal dated 14 May 2021. He asked for a determination as to the reasonableness of the service charges for 2016 – 2021 (past years) and in respect of 2022 – 2024 (future years). The service charge year runs from 1 April until 31 March in each year. The tribunal has considered the application on the basis that Mr Pinto is referring to the service charge year ending in the year to which he has referred in the application. Mr Pinto also applied for orders limiting payment of Landlord's costs under section 20C of the Act and Paragraph 5A of Schedule 11 to CLARA.
9. References later in this decision to “disputed years” refer only to those years in respect of which the Tribunal has been able to make a decision being those years referred to in paragraphs 1 and 3 above.
10. The costs which Mr Pinto disputed are those he described as “costs to sewer pipe unblocking as these should have been charged to Fund A and not Fund C. All these costs would have been avoided if the pipe had been repaired immediately” [Page 20]. The terms of his lease provide for costs relating to the estate to be charged to Fund A and shared between all occupiers and for costs relating to leasehold blocks within the estate to be charged to either Funds B or C (see paragraphs 58, 59 and 61 below).
11. Mr Pinto is the current owner of the Property which was originally demised under a long lease dated 1 September 1988 made between Jephson Second Housing Association Limited and Colin William James Pinto, for a term of 125 years from 1 November 1981 at an annual rent of £10, (the Lease). The Property is a ground floor flat, within a block of eight flats, defined in the Lease as a “Walk-in Block”.

12. Plymouth Community Homes, the Respondent, acquired the freehold of the Property from Stonewater (successor to the original freeholder) on 12 December 2016. The Property is part of an estate in Plymouth known as “Little America” originally built around 1945. The Respondent owns or has control of the freehold of 189 properties within the Development (defined as including all the houses, flats and Reserved Property which is effectively everything within the Respondent’s title). The Development is a mixture of properties held on long leases and assured tenancies within Title Number DN53500.
13. The Tribunal made Directions dated 24 June 2021 which required, amongst other things, that the Respondent provide the Applicant with copies of all invoices relating to the works carried out and associated with drainage.
14. The Hearing was a remote hearing which was consented to by all parties. The form of hearing was **(V)** video fully remote. Mr Jenkinson, a member of the Tribunal, participated using an audio connection because of an internet connection failure.
15. A face to face hearing was not considered practical because of the Covid-19 pandemic. The documents to which the Tribunal was referred were contained in an electronic bundle comprising 271 pages supplied to the Tribunal prior to the Hearing. Page references in square brackets in this decision are to the electronically marked numbered pages in that bundle.

Applicant’s submissions

16. Mr Pinto confirmed to the Tribunal that he does not dispute his liability to pay service charges. He said that he made the application because he considered that the Respondent has not dealt with the repair of failing sewer and drainage pipes promptly or effectively over past years.
17. Mr Pinto said that the expenditure on drainage repairs over past years is much higher than it would have been, had the Respondent properly investigated the cause of blockages in the drains, instead of simply unblocking them. He said this has resulted in costs being incurred which could, and should, have been avoided.
18. Mr Pinto also disputed the reasonableness of some of the costs incurred by the Respondent in carrying out investigations and repairs. He said he had sought to obtain copies of the invoices relating to the drainage repairs for a long time but only recently received copies from PCH. He believed that the invoices were eventually disclosed only in response to the Tribunal Directions.
19. A comparison of the repair costs of different sewers and drains within the Development led Mr Pinto to conclude that some repairs were disproportionately expensive. Furthermore, he said that the Respondent has not allocated the costs of drainage repairs consistently to Fund A. Sometimes costs have been incorrectly allocated to Fund C.
20. Mr Pinto accepted that the Respondent has already attempted to remedy some of its mistakes but insisted, notwithstanding the adjustments, the costs are not reasonable.

21. On a personal level, he told the Tribunal that, on several occasions, he has had to cope with cleaning up when raw sewage backed up through the drains serving his flat, which was unpleasant.
22. The Tribunal asked him about the period of his claim, explaining that the earliest invoice disclosed in the bundle is dated 30 March 2017. The Respondent stated that it has no information that would enable it to respond to any disputed charges which were incurred prior to it acquiring the Development in December 2016.
23. Mr Pinto accepted that there is no evidence in the Bundle which would enable the Tribunal to consider the reasonableness of the 2016/2017 service charges.
24. Mr Pinto also accepted that the Tribunal could not make a determination for any future years for which no demand has yet been issued. Therefore, he accepted that the only future year it can consider is 2021/2022.
25. Mr Pinto said that all of his complaints regarding service charges stem from two distinct problems. Firstly, the failure of the drains serving the Block within which the Property is situate and secondly the excessive cost of those repairs by comparison with costs of repairing other drains within the Development. These problems have been exacerbated by a recurrent failure by the Respondent to allocate costs incurred for the repair of the drains to the appropriate service charge fund.
26. Mr Pinto stated that he believed that if he had not applied to the Tribunal the Respondent would not have provided him with copies of the invoices despite having a statutory obligation to do so. He considers it was unreasonable for him to have had to apply to the Tribunal to force the Respondent to re-examine how it allocated service charge costs, provide him with the information he was legally entitled to receive and remedy errors in relation to the correct allocation of the service charges to the appropriate service charge funds.
27. Mr Pinto also suggested that whilst it is difficult for him to identify that any particular invoice is unreasonable, he does not believe that the costs incurred are consistent throughout the development.
28. Mr Pinto had compared invoices relating to works carried out at 5 Nevada Close [Page 253] - £955 for works carried out 16.10.20/17.10.20. That invoice from Lanes Group plc refers to quotations (which were not disclosed) however Mr Tasker's statement referred to it being for the replacement of three metres of pipework at a depth of one metre. He said that those costs were reasonable but that the costs invoiced by Lanes Group plc for works at 10 Wyoming Close on the invoice dated 22.07.21, which was for £2,132.40, [Page 251], which he considered to be comparable, are not.
29. Mr Pinto confirmed that he had not seen the works at Nevada Close although he said he was able to examine the works at Wyoming Close. He suggested that PCH should have identified potential problems with a second pipe serving Wyoming Close when it repaired the first pipe [Page 35].

30. Mr Pinto also suggested that there is not enough supervision of drainage works whilst these are carried out. He also questioned if PCH were satisfactorily assessing whether or not the cost of the works represented value for money. He suggested that the costs of drainage works were a “free for all”.
31. In response to questions from the Tribunal, Mr Pinto said that Stonewater, the previous freeholder had commissioned a CCTV survey of the drains serving his property in 2015 or 2016. However, he said he had no knowledge of what happened and who examined any report that was produced. He said that subsequently no action was taken. He believed that had it been, the subsequent blockages of his drains may not have occurred. He said that PCH did not commission a CCTV drainage survey until August of 2018. He suggested to the Tribunal that his drains would regularly block three times each year.
32. Prior to summarising his case Mr Pinto suggested that the decision taken by PCH to “absorb” some misappropriated service charges was because of what he referred to as the “six months” rule. However following questions from the Tribunal, following which it was explained, and he accepted, that he had misunderstood that rule.
33. When summing up his case, Mr Pinto repeated that he had made the application because he believed that PCH had mismanaged the way in which it dealt with blocked drainage. He considered that the costs incurred during the disputed service charge years would have been less, had a swifter examination of the problem causing drain blockages taken place. Therefore he considers the cost of repairs are unreasonable as the extent of the repairs would have been reduced had PCH investigated sooner. He said that he would not have been provided with copies of all the relevant invoices relating to drainage repairs unless he had applied to the Tribunal. He also believed that the adjustments to the allocation of the costs of the drainage repairs to the wrong service charge fund may not have been corrected.

Respondent’s submissions

34. Miss Lloyd stated that the Respondent could not assist the Tribunal by providing it with any information for the service charges incurred in 2016/2017. PCH had no records or information prior to 2017/2018. That was reflected by the absence of any breakdown of the charges on the 2016/2017 demand [Page 178].
35. In relation to the subsequent years, PCH has accepted that service charges relating to drainage costs have not always been allocated to the correct service charge fund. Miss Lloyd said PCH also accepted there has been some duplication of charges, which has now been addressed. PCH is satisfied that all drainage expenses fall within Fund A. Appropriate adjustments and refunds are identified in the Respondent’s statement. She said that PCH will recredit the service charge fund with regard to all duplicated invoices.
36. Miss Lloyd said that she would ask the representatives from PCH, both of whom have provided witness statements, to address Mr Pinto’s particular comments regarding value for money and the quality and suitability of works.

37. Miss Lloyd identified the invoices which had been duplicated and those which had been allocated to the wrong service charge fund. She said that PCH accepted that costs of repairing or replacing drainage should be allocated to Fund A. She stated that this was a correct interpretation of the obligations contained in the Lease. She also identified some of the duplicated invoices and explained that those costs related to a culvert within the Development. All necessary adjustments have been made to the service charge funds and this is reflected in the invoices reproduced in the bundle. The Tribunal was referred to page 250 of the bundle which is a list showing credits totalling £525.81 for six invoices relating to works completed between 12 February 2018 and 12 February 2020 all of which refer to 7 – 12 Wyoming Close.
38. Miss Lloyd attempted to explain the why some invoices, for what appeared to be similar works, are for different amounts. She referred to the invoice from Lanes Group Plc for £612 dated 12 May 2020 [Page 248] which referred to 18 Wyoming Close and the invoice for £2,132.40 from the same company dated 22 July 2020 which referred to 10 Wyoming Close [Page 251].
39. Miss Lloyd said that Mr Tasker, a Repairs Supervisor in the Minor Works Team, had compared the works undertaken by the contractor and explained why the costs were so different. The initial work, prompted by a call out regarding a blocked drain, was to clear the blockage. Subsequently a survey was carried out. The works to 10 Wyoming Close were for the replacement of part of the drainage line and are not comparable to the earlier works to 18 Wyoming Close.
40. Miss Lloyd has set out the Respondent's interpretation of the Lease which underlies the allocation of the service charge costs in its reply to the Applicant's case and accepted that the Tribunal would need to confirm that the Respondent was allocating costs correctly and in accordance with the provisions of the Lease.
41. Mr Burgoyne, Commercial Premises & Leasehold Manager for PCH confirmed that PCH had been supplied with limited information regarding the service charge when the freehold was transferred to it in 2016. He considers that the first "proper" service charge year was 2018/2019. He accepted that there had been some failures with regard to PCH accounting. The breakdown of the costs allocated to Funds A and C for responsive and general repairs in 2017/2018 both refer to two amounts of £116.40 on 20 March 2018 [Pages 201 and 202]. The charge of £116.40 should not have been duplicated and the charge should have been distributed to Fund A. He said that PCH intended to refund the double entries and charge the correct service charge fund. Mr Burgoyne explained that the culvert referred to on that invoice is within the wooded area and that the charge does not relate to works to the Block within which the Property is located. Nevertheless, all costs should have been charged to Fund A, not Fund C.
42. Mr Burgoyne said that all mis-postings of service charges to Fund C will be corrected and the appropriated adjustment in charges will be reflected in subsequent invoices. He also said that Mr Pinto has now received copies of all the drainage invoices he had previously requested.

43. The Tribunal asked Mr Burgoyne how commissioned works were supervised and if a “supervision” log was kept. He said that the minor works team undertakes minor repairs. There are different supervisors. More complicated works are passed to a suitably skilled contractor. The contractors used by PCH are on their approved list and will have been identified following a tender procedure. He suggested that the work carried out in June 2021 required a lining procedure which only a limited number of contractors could carry out. That was the reason for choosing a specialist contractor.
44. Mr Burgoyne said that he believed that PCH has sought to address all the issues raised by Mr Pinto in a fair and reasonable way. He said that its procurement processes are designed to deliver value for money as well as ensuring that it appoints contractors with appropriate skills and experience to carry out the required works. He had set this out in his written statement [Page 64].
45. Mr Burgoyne said that when PCH took over Little America from Stonewater it had reviewed the administration of the service charge, to ensure it was compliant with the Lease. An issue with the recharge of drainage costs to Funds B and C had been identified and was subsequently addressed. Charges made to those funds have subsequently been allocated to Fund A. As a gesture of goodwill some incorrectly charged invoices have been “absorbed by PCH” and not recharged.
46. Mr Burgoyne acknowledged that some invoices had been charged to both Funds A and C during 2017 and 2018. He said payments made from Fund C will be recredited.
47. Mr Burgoyne has recorded in his statement that PCH underwent a service charge audit in March 2020 which resulted in an “adequate assurance” No recommendations were made in relation to the areas disputed by Mr Pinto [Page 61 (paragraph 18)].
48. The Tribunal was referred to photographs within the bundle which showed a blue water pipe crossing a second pipe which was referred to as “knuckle joint”. These photographs show that a manhole cover was subsequently installed on the surface to facilitate access to the drains [Page 37]. This was described by Mr Burgoyne as specialist works.
49. Mr Tasker is a Repairs Supervisor in the Minor Works Team at PCH. In his statement, which he verbally confirmed was correct, he had omitted to complete the first paragraph, presumably intended to confirm that his responsibilities included supervision of works at Wyoming Close.
50. Mr Tasker’s statement referred to a survey of the drainage line at 7 – 12 Wyoming Close and that an initial quotation for £7,587 plus VAT had been received. There is no copy of that quotation in the bundle. He said that because of the amount of the quotation the work was referred back to the minor works department and the departmental management team sought further quotations and thereafter accepted a quotation for £4,457 plus VAT. Work was carried out between 24 and 26 June 2021.

51. He said that he had reviewed the information regarding drainage costs which Mr Pinto had questioned. He had concluded that the works at 5 Nevada Close related to an excavation of only one metre and were solely clearance. He said the works at 10 Wyoming Close involved a depth of between 1.5 and 2 metres. It was a more complex repair involving the installation of a specialist lining. It had been necessary to dig out the entire drainage line. He said, “there are few companies in the Southwest able to invest in the equipment and staff to carry out this procedure”.
52. Mr Tasker also disputed that any damage to other drains was caused by PCH contractors. Mr Pinto had suggested, in his written response, that the use of heavy equipment could be a contributory factor but later denied that he intended to “blame PCH” for causing additional damage [Page 59].
53. The Tribunal concluded, following Mr Tasker’s response to its questions, that whilst repair works are supervised, no formal log records were maintained recording the identity of the supervisor. Lanes Group plc and Aqua Rod are the two contractors used regularly by PCH and were chosen following a tender process undertaken in accordance with a “National Protocol”. Mr Tasker said that only a limited number of specialists can undertake the drain lining process.
54. In summarising the Respondent’s case Miss Lloyd accepted that the application by Mr Pinto has identified a variety of issues relating to the accuracy of the service charges. She said however, that the invoices disclosed do not support Mr Pinto’s contention that there have been between 2 and 4 blockages every year. She said quotations for works are always obtained prior to expenditure being authorised by PCH. Some efforts have been made to examine and compare estimates. A public tender exercise is undertaken before the contractors are appointed to the Respondent’s list.
55. Neither Miss Lloyd nor the representatives from PCH were able to offer any explanation of another anomaly identified by the Tribunal in the service charge accounts regarding the estimated communal electricity charge for 2018/2019.

The Lease and the Law

56. The Lease of the Property obliges the lessor to provide specified services and for the lessees to contribute an equal share of the costs within Fund A, and in the case of Mr Pinto who is a lessee of a Walk-in Block, a 1/48 share of the costs allocated to Fund C. The lessor anticipates the costs it will incur before the beginning of each service charge year and collects a payment on account from the lessees. The service charge years run from 1 April to 31 March straddling two calendar years.
57. At the end of each service charge year, following a reconciliation of the costs, the lessor supplies a statement showing the service charges collected, the service costs spent and the difference between the two figures. It provides the Applicant with a service charge account showing any balance underpaid or any credit due. Credits and debits are set against or collected with the “on account payment” due for the next year.

58. The Lease refers to specified service charge expenses. Fund A, defined in Part I of the Seventh Schedule is for money expended or reserved by the lessor for periodical or cyclical expenditure or anticipated future liability with an expressed intention of limiting fluctuations in the annual service charge and includes:-
- a. Maintenance and repair of any roads, footpaths, pavements and street lighting not publicly maintained including cleaning and a provision for renewal and replacement
 - b. Keeping sewers drains or watercourses within the Development including all Service Installations in good repair and condition
 - c. Keeping the Reserved Property neat and tidy well maintained and where appropriate planted and painted
 - d. Keeping any facilities, including buildings, provided by the lessor for employees or workmen in good repair
 - e. Payment of all rates and taxes and other outgoings assess or charged on the Reserved Property
 - f. Reasonable fees incurred for the management and administration of the Reserved Property
 - g. Keeping records of costs and expenses incurred to include accountancy costs and audit and certification of its records
 - h. Costs associated with professionals such as architects, surveyors, solicitors and advisors necessary to enable it to comply with its obligations
 - i. Insurance of the Reserved Property including liability to employees
 - j. Provision and maintenance of equipment necessary to enable it to provide services
 - k. Costs and expenses associated with compliance with statutory responsibilities
 - l. Costs of enforcing observance of covenants by occupiers, tenants or lessees
 - m. Costs of preparing and supplying copies of regulations
 - n. Value added tax incurred
 - o. Costs associated with compliance with its covenants
59. Fund C, defined in Part III of the Seventh Schedule is for money expended or reserved by the lessor for periodical or cyclical expenditure or anticipated future liability with an expressed intention of limiting fluctuations in the annual service charge and includes:-
- a. Maintenance and repair including improvement of the Blocks of flats including service areas forecourts drying areas footpaths bin areas hedges fences and structural features which are part of the buildings
 - b. Painting and redecoration of external parts and shared access doors as well as internal common parts
 - c. Costs of employing workmen to carry out necessary services
 - d. Costs associated with professionals such as architects, surveyors, solicitors and advisors necessary to enable it to comply with its obligations
 - e. Costs of insurance of the Blocks of flats including liability to employees
 - f. Cleaning and lighting common parts of and serving the Blocks
 - g. Payment of all rates and taxes and other outgoings assess or charged on the Reserved Property

- h. Costs and expenses of abating any nuisance and those associated with compliance with statutory responsibilities
 - i. Costs of enforcing observance of covenants by occupiers, tenants or lessees
 - j. Reasonable fees incurred for the management and administration of the Blocks
 - k. Keeping records of costs and expenses incurred to include accountancy costs and audit and certification of its records
 - l. Keeping any facilities, including buildings, provided by the lessor for employees or workmen, in good repair
 - m. Costs of preparing and supplying copies of regulations
 - n. Costs relating to supplying and maintaining firefighting appliances for the buildings
 - o. Costs associated with and relating to communal television aerials
 - p. Costs of supplying any other reasonable and necessary equipment or services to the Blocks
 - q. Value added tax incurred
 - r. Costs associated with compliance with its covenants
60. As is usual in long leases, the lessor's obligations are subject to and conditional upon the lessee paying the ground rent and his share of the costs reserved by the Lease (Clause 6 [Page 71]).
61. Mr Pinto is obliged to pay a 1/189 share of the Fund A expenses and 1/48 share of the Fund C expenses. The lessor is obliged to certify the expenses incurred in each service charge year. It is entitled to charge a management fee and a discretionary amount towards estimated future costs taking into account the life expectancy of installations construction works and the landlords fixtures and fittings.
62. In summary, Mr Pinto is obliged to pay a variable service charge to cover all expenses incurred by the Respondent in maintaining and providing services to the Development. The Lease contains a detailed description of which costs are allocated to Fund A and shared between every property within the Development and which costs are allocated to Fund C and shared between the lessees and occupiers of the Walk-in Blocks of flats.
63. During the Hearing, the Applicant contended and the Respondent accepted, that all costs associated with the repair of sewers and drains should be allocated to Fund A and therefore shared equally between 189 occupiers or owners within the Development. PCH confirmed that it had not always allocated the costs of repairs to the correct fund but suggested that it had endeavoured to recredit the Fund C account and debit the Fund A account to correct the errors it had identified.
64. Section 27A of the Act enables an application to be made to the Tribunal for a determination as to whether a service charge is payable and the timing and identity of the paying and receiving parties.

65. Sections 18 and 19 of the Act provide both a definition and limitation of service charges. Relevant costs (18)(3)(c) are costs in relation to a service charge in the period during which these are payable, whether or not incurred or to be incurred in that period or an earlier period. Under section 19 these are to be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred, and where incurred, only if the works are of a reasonable standard.
66. Section 20C provides that an applicant may make an application that all or any costs incurred by the landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by a tenant.
67. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA) enables a tenant to apply for an order extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

Reasons for the Decision

68. Mr Pinto has demonstrated, which is not denied by PCH, that the service charges for the Property during the disputed years have included recurrent costs relating to the repair of drains serving the Walk-in Block within which it is located, culverts within the Development and other drains serving other Blocks.
69. He stated that many of those costs incurred have been allocated to the wrong service charge fund. This has increased the annual amount he was liable to pay because he pays a 1/189 share of the costs allocated to Fund A shared between every property on the Development and a 1/48 share of the costs allocated to Fund C shared between every property within a Walk-in Block.
70. PCH have accepted that some costs have been wrongly allocated between service charge funds and requested that the Tribunal confirm its interpretation of the Lease.
71. The Tribunal is satisfied that all costs associated with the repair of drains which do not exclusively serve a property within the Development are recoverable from the occupiers of the Development from Fund A. Therefore, no communal drainage invoices should have been, or should in the future be, allocated to Fund C.
72. PCH is obliged to keep sewers drains or watercourses within the Development including all Service Installations in good repair and condition.
73. The Second Schedule to the Lease defines Buildings as including "all sewers drains and pipe wires ducts or conduits not exclusively used solely for the purposes of the Flat or any flat....." [Pages 76-77].
74. Service Installations are defined as "all sewers drains channels pipes watercourses gutters wires cables supports junctions amplifiers pipes soakaways and all or any other apparatus used for the supply of water gas electricity telephone or telecommunications signals or for the disposal of foul or surface water on the Development other than such installations solely serving the Flat" [Page 68].

75. Therefore, unless a drain exclusively serves a particular flat or other property within the Development, any costs associated with its maintenance and repair are shared equally between all the properties within the Development.
76. Neither party has suggested that any of the invoices relating to repairs works carried out on drainage do not relate to “shared” drainage.
77. Mr Pinto has suggested that because PCH have, in his view, been tardy in investigating and identifying the cause of problems with the drainage serving his Block the that costs incurred in rectifying problems are unreasonable.
78. The reply to the Application, submitted by Miss Lloyd on behalf of PCH, lists the costs incurred by PCH to repair drains between 23.05.17 and 25/26/21 [Pages 30 – 31].
79. The total amount of those costs is £13,275 between October 2017 and June 2021. Mr Pinto’s share of 1/189 amounted to a contribution of £70.24. The Tribunal does not find that this is an unreasonable amount for the cost of drainage repairs over five service charge years, whilst noting that the service charge year 2021/2022 is current.
80. Furthermore, the Tribunal was told that a small credit has been made by the Respondent to Fund A with regard to some costs because it accepted that it has intermittently charged some costs to Fund C instead of Fund A. The Tribunal has referred to this in paragraph 41 above. This credit of £525.81 is shown in the Estate Charge Summary for Fund C supplied with the Applicants invoice for service charges for 2020-2021 [Pages 240 and 244].
81. Although Mr Pinto suggested that drainage repair costs for Wyoming Close were disproportionately more expensive than those incurred for repairs to other drains there is no physical evidence which supports his suggestion. Neither has he been able to supply actual evidence that the costs incurred would have been less if the need for repair had been identified earlier.
82. The Tribunal accepted that the evidence that full disclosure of the invoices relating to drainage work did not occur before Mr Pinto made his application. Mr Pinto’s Application also appears to have prompted PCH to re-examine the service charge funds and the allocation of charges between Funds A and C. This has resulted in the corrections, to which both Miss Lloyd and Mr Tasker referred when addressing the Tribunal.
83. Following the Hearing and in response to Further Directions the Respondent confirmed it does not oppose the applications for orders under Section 20C of the Act and paragraph 5A of Schedule 11 to CLARA.
84. The Tribunal makes an order under Section 20C of the Act that any costs of PCH relating to these proceedings are not relevant costs which can be recovered as service charges.
85. The Tribunal also makes an order under paragraph 5A of Schedule 11 to CLARA extinguishing the Applicant’s liability to pay a particular administration charge in respect of litigation costs.

86. In his statement Mr Burgoyne said that the Service Charges were audited in 2020, however the Tribunal identified an anomaly with regard to the estimated charge for communal electricity referred to in the Fund C Estimate for 2018/2019 [Page 203 of £2,000 and the estimated figure shown on the Estate Charge Summary of £3,500 [Page 213]. That summary also shows the adjustment between actual costs and the estimated costs. Therefore, the calculation of the difference between estimated costs collected on account and actual costs may be incorrect.
87. This anomaly has not influenced this decision as the communal electricity costs were not disputed by the Applicant. In his evidence Mr Burgoyne confirmed that the service charge audit result was adequate and contained no recommendations relevant to the areas which Mr Pinto had disputed (See paragraph 47 above).
88. The Tribunal hopes that in the future PCH will increase its efforts to ensure that the allocation of service charges between the three funds referred to in the Lease is correct and that the accuracy of its service charge estimates and accounts is regularly reviewed.

Judge C A Rai
Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.