FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HB/LSC/2020/0105
Property:	20, 22 & 24 Gloucester Road, Bishopston, Bristol BS7 8AE
Applicant:	20, 22, 24 Gloucester Road Residents Association
Representative:	Wendy McGuiness
Respondent:	Adriatic Land 1 (GR3) Limited
Representative:	Ms Rebecca Acklerly, counsel instructed by J B Leitch Solicitors
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenant's application for the determination of reasonableness of service charges for the years 2019/2020 and 2020/2021 and 2021/2022. Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay administration charges) Tenant's application for the determination of reasonableness of administration charges for the year 2020.
Tribunal Members:	Judge A Cresswell Mr M Woodrow MRICS Mr L Packer
Date and venue of Hearing:	28 November 2022 by Video
Date of Decision:	11 December 2022

DECISION

The Application

1. This case arises out of the Applicant tenants' application, made on 26 October 2020, for the determination of liability to pay service charges for the years 2019/20 to 2021/22 inclusive.

Summary Decision

2. The Tribunal has determined that, notwithstanding it has considered the payability of the individual elements challenged by the Applicant, none of the service charge demands is payable.
3. The Tribunal allows the Applicant's application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application by way of service charge or administration charge.
4. The situation here is crying out for dialogue between the parties so as to avoid yet more painful litigation which, to date, has done little to draw the parties together.

Preliminary Issues

5. There has been an earlier case involving the parties, leading to a Decision dated 30 December 2019. That "*earlier Decision*" details much of the background, some of which this Tribunal does not repeat because the parties have access to the earlier Decision. The Tribunal takes the earlier Decision as its starting point.
6. There was a number of issues raised by the Applicant, which were not pursued at the hearing, after having heard relevant evidence. Those issues are not dealt with substantively in this determination because they were not further pursued by the Applicant.
7. **James Scicluna v Zippy Stitch Ltd & Ors** (2018) CA (Civ Div) (Longmore LJ, Underhill LJ, Peter Jackson LJ):
   Where the parties to tribunal proceedings had agreed a list of issues, the matters to be determined in the substantive hearing and on any appeal were properly to be limited to those agreed issues.
8. The Tribunal concentrated only upon the issues raised by the parties. **Fairman and Others v Cinnamon (Plantation Wharf) Limited** (2018) UKUT421: "It is not an inquisitorial tribunal but makes its decision based upon the issues, arguments and evidence before it. Whilst it no doubt could of its own volition make inquiries

and raise issues and call for evidence not ventilated by either party, if it does not do so it in my judgment is not open to a party to appeal the decision on the basis of issues and arguments which had not been put before it or, indeed, complain."

9. The Tribunal made its Decision based upon the evidence provided, whilst reflecting that the parties had failed to provide relevant evidence, such as copies of the other leases, which were said to be different in terms to the lease within the bundle. It notes that similar comments were made at the time of the earlier Decision. It has concentrated, therefore, upon the terms of the lease provided.

Inspection and Description of Property

10. The Tribunal did not inspect the properties. The properties in question were described in the earlier hearing as follows:
The Application relates to the eight residential units in the Properties. Four of these are in number 20, a large semi-detached building on four floors and they are known as the Basement flat, 20A, 20B and Flat 3 respectively. It is linked as a building to number 18 Gloucester Road which is not part of this application. Numbers 22 and 24 Gloucester Road are one building comprising two semi-detached houses, again on four floors. Number 22 has two flats or maisonettes, known as 22A and 22B; the two in number 24 are known as 24B and 24C. The entire frontage of all three properties consists of retail units, which are not the subject of the Application but do have an impact on the issues raised.
11. The earlier Decision has a detailed record of the visual inspection.

Directions

12. Directions were issued on various dates. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. In the event, the accounts for the year 2021 to 2022 were not completed; one result is that the Tribunal, for that year, was dealing with only budget figures, so that final demands for the elements concerned might be the subject of further challenge by the Applicant.
13. This determination is made in the light of the documentation submitted in response to the directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mr C McGuinnes and Mrs W McGuinnes for the Applicant and by Ms K Carruthers, Regional Manager for the Respondent.

14. The Tribunal has regard in how it has dealt with this case to its overriding objective:

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.
(4) Parties must:

(a) help the Tribunal to further the overriding objective; and
(b) co-operate with the Tribunal generally.

Ownership and Management

15. The Respondent is the owner of the freehold. The property is managed for it by Residential Management Group (“RMG”).

The Lease

16. The lease of Flat 3; 20 Gloucester Road ("the Lease") is dated 11 March 2005 and is for a term of 999 years from 1 July 2002. The "Estate" is defined as 18-24 Gloucester Road and the "Premises" as the Top Floor Flat; 20 Gloucester Road. The "Property" means the part of the freehold property owned by the lessor known as 20

Gloucester Road as shown edged red on Plan One and therefore appears to include that part of the café premises immediately in front of the residential old house. The "Building" is defined as that edged blue on Plan 1, namely the residential block or old house, excluding the retail frontage.

17. The various rights granted to the Lessee are subject to and conditional upon payment by the Lessee of the Lessee's share of the expenses. The Lessee covenants to pay the relevant share of those expenses as set out in the Fourth Schedule and further to pay on account in advance on 1 June each year the estimated amount of the contribution for the year in question. The Lessor is required to keep books of account for each year to 31 March. Each year, the estimated sums paid by the Lessor are then subject of an additional payment or a credit for monies not expended when the accounts are audited by a qualified accountant, the audited sums to be served on the Lessee by 30 September of the year of account.
18. The share of expenses to be paid by the Lessee is 8.3% of all the various listed items of expenses that the Lessor may incur with three exceptions. However, it should be noted that the insurance contribution is 8.3% of the cost of insuring the Estate; the repair contribution is 8.3% of the repair costs to the Building and also 8.3% of the expense of the painting of the exterior of the Building; and the share of any cost of complying with any statute or by-law is 8.3% of the costs relating to the 'Property excluding the ground floor shop'. The three exceptions (to an 8.3% contribution) all provide for a one twenty ninth contribution (about 3.45%) in respect of maintaining and keeping cultivated the communal gardens, the reasonable cost of employing managing agents for the Estate and the reasonable cost of employing a firm of accountants.
19. In accordance with the Fifth Schedule, "*the Lessor shall so far as is reasonable equalise the amount from year to year of the costs and expenses of the Lessors obligations by charging against such costs and expenses in each year and carrying to a reserve fund or funds such sums as may be reasonable by way of provision for future expenses liabilities or payments whether obligatory or discretionary.*"
20. The earlier Tribunal recorded as follows: "*The Tribunal did not receive a clear table of the service charge contributions of the eight flats that concern the Tribunal in this case, A list of the service charge apportionments was given for each of the three blocks, but this gives no clarity on how the service charge for the Estate, Property and Building respectively relate to each other nor do the percentages*

quoted appear to add up to 100%. Given that the Lessee of the Premises has to pay 8.3% of the costs relating to three different areas (Estate, Property, Building) and 3.45% of the costs of management and accountancy and of maintaining a communal garden no longer vested in the Respondent (and never actually charged), with two retail leases for four retail units involved and a building (Number 18) now managed by a Right to Manage Company as part of the Estate as defined, the complexity of assessing and dividing the costs incurred between the various heads of expense is clear.

21. *There was also an oft repeated assertion by the Respondent that the service charge contributions do not add up to 100%. No clear evidence was presented to the Tribunal to justify this assertion. Indeed, the Applicant pointed out an inconsistency in this assertion by reference to the management sales packs recently sent out by the Respondent to conveyancing solicitors. Here, the percentages of insurance and service charges were said to add up to 100%. At the previous hearing, the Respondent's solicitor provided copies of two commercial leases, one relating to the retail premises at 18/20 Gloucester Road and another to the three premises at 22-24. Gloucester Road. These reveal that the service charge charged on the commercial units is 'a fair and reasonable proportion' with such proportion to be determined by the landlord's surveyor by reference to the proportions of the internal floor area as bears to the aggregate internal floor area of the Building. So those leases did not assist in determining how the service percentages add up and if they add up to 100%, especially as both such retail leases appeared at first glance to have a defective definition of 'the Building'."*

22. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

23. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

> **Arnold v Britton and others** [2015] UKSC 36 Lord Neuberger:
>
> 15. *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to*

the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

Apportionment

24. The Second Schedule of the Lease says this:

Covenants by Lessee with Lessor

(2) To pay the shares set out in Column 2 of the Fourth Schedule save as may be varied in accordance with clause (3) (a) hereof of the expenses incurred by the Lessor in performing its obligations set out in Column 1 of the Fourth Schedule as well as of the discretionary works and other matters set out in such Schedule.

(3) (a) To pay on account of the Lessees obligations under paragraph (2) on the First of June each year such sum as the Lessor shall fairly estimate to be the likely amount of the Lessees contribution for that year and a proportionate part of such instalment calculated from the date hereof to the next day for payment shall be paid on the execution of this Lease.

(b) Within twenty one days after the service by the Lessor on the Lessee of a notice in writing stating the Lessees contribution for the year to which the notice relates (certified in accordance with the Fifth Schedule) to pay to the Lessor or credit the Lessor with the amount by which the certified contribution exceeds the said payments on account.

25. The unilateral decision by the Respondent to move away from the apportionment percentages in the lease created much concern for the Applicant. It was the main reason it brought this claim. It believed that the earlier Decision of the Tribunal had determined what percentages should apply.
26. Ms Carruthers gave varying explanations for the number of flats in 20, 22 and 24 Gloucester Road and the apportionment split; some were wrong, all were confusing. She had yet to visit the property. Her witness statement, served on the eve of the hearing, some 2 years plus since the application was made, said that she had taken over from Andrew Davis, but did not say when; during the hearing, she said that she had been involved since "last September".
27. Ms Carruthers told the Tribunal that an alteration to the percentage payments made the lease service charge fairer as each block is a different size. She said that it had been an incredibly complicated system, which the Respondent had changed for the benefit of the residents. She said that it had been discussed with the residents, but that she had no evidence that the residents were happy with the change.
28. Ms Ackerley made reference to provisions in leases which anticipate changes to apportionment by reason of further development of an estate, but that is not the situation here as there is no such clause within the lease. Clearly, the Respondent has exercised powers which are not available to it and in doing so has created considerable concern in the minds of the leaseholders.
29. Ms Ackerley argued that paragraph 3A is two-fold; the first part relates to paying on account and the second part says: "and", showing that it is separate and distinct and not to be read together.
30. The Tribunal finds itself unable to agree with Ms Ackerley as her submissions ignore the very clear wording of the provision.
31. The Tribunal finds that the provision does not give the Lessor carte blanche to change the percentages paid by the individual Lessees in accordance with the terms of their leases, but recognises that, in the first year of the lease, the sums demanded on account will not represent the actual percentages in a full year.
32. If it was intended that the Respondent could change the percentages, then this would have been clearly stated and would not be concerned solely with the on-account payments.

33. **No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd** [2021] EWCA Civ 1119 binds the Tribunal. In that Court of Appeal case, Henderson LJ said:

> "*The problem in the present case is that the Landlord failed to construe correctly and apply the service charge provisions contained in the Leases, against a backdrop of serious overcharging and defects in the system for metering the consumption of utilities at the Building.*
>
> *Moreover, as Ms Lesley Anderson QC leading Ms Lina Mattsson for the Tenant pointed out, the charges could never have constituted a valid service charge demand, because there was no explanation of how they were calculated, nor was the burden of the charges divided rateably between the flats and other parts of the Building in accordance with the relevant service charge percentages.").*

34. The Tribunal wishes to make clear that the apportionment of Service Charges must always for every year follow the percentages detailed in the leases, as detailed in paragraph 30 of the earlier Decision for the lease provided, which is repeated above.
35. Only if there is an agreed change in the terms of the leases or a successful application under Section 35 Landlord and Tenant Act 1987 can the terms be varied.
36. The effect of deliberately making demands using apportionments contrary to the terms of the lease is that, in the light of **No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd,** those demands are not payable. Although the Tribunal goes on to examine the individual elements challenged by the Applicant, any sums demanded will be dependent upon the Respondent being able to make fresh lawful demands.
37. The corollary to the Applicant being bound by the apportionments detailed within the leases is that, where the Respondent is entitled to claim charges in accordance with the terms of the leases, for example based upon a proportion of the estate costs, the Applicant cannot argue that only the building or buildings benefiting should be expected to contribute.

The Law

38. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.

39. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
40. The Tribunal has the power to decide about all aspects of liability to pay administration charges and can interpret the lease where necessary to resolve disputes or uncertainties. Administration charges are sums payable in addition to rent inter alia in respect of failure by a tenant to make a payment by the due date to the landlord. The Tribunal can decide by whom, to whom, how much and when an administration charge is payable. An administration charge is only payable insofar as it is reasonably incurred. The Tribunal therefore also determines the reasonableness of the charges.
41. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.
42. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice*

shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.

43. In **Enterprise Home Developments LLP v Adam** (2020) UKUT 151 (LC):

27. In Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25 Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this:

"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."

28. Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.

London Borough of Havering v Macdonald [2012] UKUT 154 (LC) Walden-Smith J: 27. *As is consistent with other decisions as to what is meant by "reasonableness", in determining the reasonableness of a service charge the LVT has to take into account all relevant circumstances as they exist at the date of the hearing in a broad, commonsense way giving weight as the LVT thinks right*

to the various factors in the situation in order to determine whether a charge is reasonable. The test is "whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem… All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable" per His Honour Judge Mole QC in Regent Management v Jones [2010] UKUT 369 (LC) .

28. "Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available".

44. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:

1) To make no reduction, thereby leaving the costs as they were;
2) To adjourn to allow the landlord to provide evidence, or
3) To adopt the **Country Trade** "robust, commonsense approach".

The first of these options would have been wrong in the light of the landlord's concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.

The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.

The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal's overriding objective.

45. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost.*

46. The relevant statute law is set out in the Annex below.

Audit and Accountancy Fees

YEAR END MARCH 2020 £2688

YEAR END MARCH 2021 £2769

Budget YEAR END MARCH 2022 £2853

The Applicant

47. The Applicant says that Year End Accounts show errors in all years with fundamental flaws arising from the inclusion of the commercial units in the service charge demands believed to be incorrect.
48. No documentation produced by Respondent to support.
49. Audited Accounts are not accurate.
50. Audited Accounts expense is unreasonable for this small estate with limited invoices.
51. During the previous Tribunal hearing, case reference CHI/00HB/LSC/2018/0109, it was highlighted that audited Year End Accounts had not been carried out as per leases.
52. Year end accounts for 2018-19 were first signed off on 9/8/19 with an accountancy bill of £390 (unaudited).
53. The same end of Year End accounts signed off for a 2nd time on the 19/11/19 altered with an accountancy bill of £2610 (audited). Same accountants used, therefore audited accounts were not put out to tender for competitive quotes. Audit cost too high for limited entries for a total of 8 flats.
54. Disputed and not trusted or realistic.
55. Poorly compiled with Headings not relevant to this estate. Lots of queries from leaseholders on this point.
56. Budget for Year end 31.03 20 has a two month overlap with Budget for year before and there is a two month gap before the Budget for year end 31 May 2021.

The Respondent

57. The Respondent says that these charges are payable pursuant to the Leases: Item 2 of Part II of the Fourth Schedule of the Leases. The Lease for 20 Gloucester Road differs to the other Leases, as it states the “reasonable” cost.

58. The costs are subject to a full audit as per the request of the leaseholders. The cost is an incurred cost and is a reasonable figure based on the audit required.
59. In accordance with *Enterprise Home Developments LLP v Adam,* it is for the party disputing the reasonableness of the sums to establish a prima facie case. The Applicant has not provided any evidence in respect of these comments.
60. Accountancy costs are not costs which require consultation.
61. The Respondent maintains such costs are reasonable and have been reasonably incurred.
62. Furthermore, RMG/internal accounting fees are costs that have been incurred by the Landlord's Managing agent as a result of additional work required in respect of the accounts.
63. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
64. With regards the Applicant's comments concerning apportionment, the Applicant acknowledges that there are deficiencies in the apportionment and this is addressed by the Respondent within their statement of case.
65. Budgets are not a service charge item. Despite the preceding, the Applicant has not provided an explanation in respect of her comments that the headings are not relevant to this estate.

The Tribunal

66. Failure to audit the service charge accounts might possibly be a factor relevant to the performance of the landlord/managing agent of its duties, but it should be noted that an audit process is a costly exercise because it involves far more than simply compiling the accounts. An auditor must act in accordance with the guidance of the ICAEW (Institute of Chartered Auditors of England and Wales). ICAEW's Tech 03/11 makes clear at

    3.1.4 Where a lease that has been drawn up since 1980 refers to an audit then this is what should be undertaken.

    Appendix E of Tech 03/11, says:

    Where an audit is required, it should be carried out in accordance with International Standard on Auditing (ISA) 800 Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks.

67. The accounts for 2020/2021 record that they have been prepared in accordance with ISA.
68. The Tribunal notes that the Applicant complained previously that the accounts were not audited.
69. The sums involved for the audit do appear to be on the high side, but the Tribunal was provided with no comparable figures from other providers by the Applicant and did not feel able to say that the charges were unreasonable. Accordingly, the charges for audit would be payable.

Electricity

Year Ending 2020 A refund of £3844

Year Ending 2021 £434

Budget Year Ending 2022 £550

The Applicant

70. The Applicant says that the electricity invoices from three different suppliers together with Credit Notes over the period has made this Head of Expenditure so complicated the Applicant asks that any outstanding demand for electricity to the leaseholder's service charges are written off. Only Block 20 leaseholders are liable, no supply to Block 22 & 24.
71. This account has been mismanaged since 2010.
72. Clearly regular customer meter readings have not been obtained by the Property Manager. Ongoing evidence that bills have not been paid on time or in full. Excessive standing charges have resulted.
73. Respondent was previously advised by the last Tribunal to resolve the complex billing with the supplier and to produce a clear bill for electricity used.
74. Email from Property Manager, Andrew Davis, RMG 23 Apr 2021 reveals many management errors under different especially re Landlords Electricity supply going to commercial units, which it doesn’t.
75. Timer switches in Block 20 upper communal entrance are defective, lights are on 24 hours a day, not able to be switched off using much more electricity than necessary.
76. It is accepted that a budget of approx. £300 per annum is realistic, but the account still hasn't been addressed correctly.
77. Leaseholders would like to see the latest invoice to be able to see where this account is now. All they have sight of is a bill one year behind.

78. All charges for electricity are disputed until RMG can bring clarity to this long-standing dispute. The Default Tariff is due entirely to lack of prudent management of this account for landlord supply.

79. Whatever the total the invoices are coming to, they are more than 3 times the proper cost on a cheaper tariff. The leaseholders will not pay the enhanced Default tariff charges, so all bills need to be reduced by 2/3rds and the difference picked up at the cost of the Respondent. The electric light switches being stuck on mean consumption is circa 90% more than the figure should be. Please work out a fair compromise to reduce this cost down to what would be fair and acceptable

The Respondent

80. The Respondent says that such costs are payable pursuant to the Leases: Item 3(a) of Part I of the Fourth Schedule and Item 6 of Part II of the Fourth Schedule.

81. The Lease for 20 Gloucester Road differs to 22 and 24 Gloucester Road as Item 3(a) of Part I of the Fourth Schedule states that the Landlord is required to maintain not only electrical supply and communal lighting, but also fire smoke or emergency lighting systems and communal door entry system if fitted.

82. The Applicant is therefore obligated to pay for the base electricity costs pursuant to the relevant leases.

83. The Applicant has failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.

84. YEAR ENDED 2020

    Invoice ending 9370

    The Landlord submits that the credit notes are not costs incurred as part of the service charge and therefore not accepted as an appropriate disputed item.

85. Invoice ending 9016

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt.

86. Invoice ending 5233

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt.

87. In relation to the service charge accounts for the year end 2020, with regards to the Electricity values, the Respondent is awaiting further information with regards to the discrepancy which equates to £1,104.00 and shall provide a further response accordingly.

88. YEAR ENDED 2021

    Invoice ending 2751

89. The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt.

90. Invoice ending 2304

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available.

91. The Landlord submits that the credit notes are not costs incurred as part of the service charge and therefore not accepted as an appropriate disputed item. Invoice 130001704081 therefore does not form part of the service charges in dispute.

92. Eon Invoice dated 1 July 2021 covers the period between 5 December 2020 - 13 May 2021 and has previously been supplied on 24 June 2022 pursuant to Tribunal Directions.

93. The Respondent's agent does not appear to have received an invoice for the period 26 October 2020 and 5 December 2020.

94. YEAR ENDED 2022

    Invoice ending 7610

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available.

95. Invoice ending 0667

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available

96. Invoice ending 5892

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available.

97. Invoice ending 0003

    The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available

98. Invoice ending 0005

The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases. The Landlord's agent can only arrange payment of invoices upon receipt and subject to funds being available

99. In respect of the timer switches, the Applicant has not actually set out what costs are challenged/disputed.

100. Notwithstanding the above, on 22 October 2020, the Property Manager noticed that the light switch was sticking and attempted to fix the same in order to keep leaseholder costs down to a minimum. However, there were issues with attending the property due to lockdown.

101. The Property Manager attended on 3 December 2020 and fixed the light switch. It is not believed that the £300 is excessive and is line with anticipated expenditure. This is an estimate based on the size of the development of £100 per block due to size of block. They are budgeted sums and any overpayment will be credited to the leaseholders upon completion of the accounts.

102. Such costs are payable pursuant to the Leases: Item 3(a) of Part I of the Fourth Schedule and Item 6 of Part of the Fourth Schedule.

103. The Lease for 20 Gloucester Road differs to 22 and 24 Gloucester Road, as Item 3(a) of Part of the Fourth Schedule states that the Landlord is required to maintain not only electrical supply and communal lighting, but also fire smoke or emergency lighting systems and communal door entry system if fitted. The Applicant is obliged to pay for the base electricity costs pursuant to the relevant leases.

104. Ms Carruthers told the Tribunal that the Respondent had been subject of a contract, but was now with Good Energy and on a better tariff.

The Tribunal

105. The Tribunal heard evidence that only block 20 has a landlord's supply, with one resident in another block reporting that his own private supply is used more widely, including to power the fire control equipment. The Tribunal also heard that a commercial unit was not attached to the fire control equipment.

106. An absence of electrical supply will lead to a negation of the protection afforded by the system in place at the premises. The relevant circuit breaker could trip or the supply be interrupted by accident or the consumer unit could develop a fault. An inability to access the consumer unit in such circumstances places the occupants of the flats at a significant risk, a risk which could be avoided by siting the electricity supply for the fire control equipment within the common area.

107. Under the Regulatory Reform (Fire Safety) Order 2005, the Respondent is required to get rid of or reduce the risk from fire as far as is reasonably possible and provide general fire precautions to deal with any possible risk left.
108. All that being said, the Tribunal was unable to resolve into any semblance of order, the very confusing situation relating to the electricity charges.
109. The Respondent sought, properly, to reclaim the costs of electricity provided for common use subject to the contract it had made with provider(s). One resident may have also been providing electricity for common purposes, thereby balancing out any complaints about excessive rates.
110. What is clear is that the Respondent needs to urgently examine the electricity supply to safety controls, and at the same time ensure that meters are read regularly and bills checked.
111. In the above circumstances, the Tribunal finds the electricity charges would be payable.

Cleaning Contract

YEAR END MARCH 2020 Nil

YEAR END MARCH 2021 £496

YEAR END MARCH 2022 £600

The Applicant

112. The Applicant says there is no evidence of cleaning undertaken from appearance of communal areas.
113. No evidence of cleaners' attendance via signature board in any block. No cleaners ever seen on site. These bills appear too cheap to be realistic, so they do not appear to be valid for that reason either.

The Respondent

114. The Respondent asserts that such sums are payable under Item 6 of Part II of the Fourth Schedule of the Leases.
115. The Respondent asserts that it has provided the necessary underlying invoices to substantiate the costs incurred. However, it shall continue to investigate whether they have any further information in this regard.

116. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
117. Cleaning was carried out by Enlan Ltd and operatives attend on a fortnightly basis on contract. The contractor provided invoices to confirm attendance.

The Tribunal

118. The Tribunal was mindful that the photographs produced by the Applicant pre-dated and post-dated the relevant period, so was not swayed by the filth evident thereon.
119. There is no suggestion here that the Respondent has been dishonest and it has produced relevant invoices.
120. There is little work to be done and, relative to that, the contract is reasonably priced. The work was performed each fortnight, which means that the premises could get very grubby between visits.
121. In these circumstances, the Tribunal finds itself unable to say that the sums demanded for works done and works anticipated are other than reasonable and would be payable. The payment of the anticipated sum for year ended 2022 would, of course, have to take account of the fact that no cleaning took place from September 2021; this could possibly be sorted out when fresh demands are made in the correct percentage apportionment.

General Repairs and Maintenance

YEAR END MARCH 2020 £342

YEAR END MARCH 2021 £570

Budget YEAR END MARCH 2022 £750

The Applicant

122. The Applicant says that various invoices relating to work on estate believed unnecessary, or alternatively more expensive than required.
123. JLB gutter clearance, no evidence this work has been carried out. Photos show plants growing out of downpipes and guttering to rear of Block 24 since date of visit.

The Respondent

124. The Respondent asserts that such costs are recoverable pursuant to Item 2 of Part 1 and Item 6 of Part II of the Fourth Schedule of the Leases.
125. The Lease for 20 Gloucester Road differs to 22 and 24 Gloucester Road, as Item 2 of Part 1 of the Fourth Schedule refers to the Building as opposed to the Property, as well as the Item including provision for the staircases landings and all other parts shared with other premises, and well as including Item 2(c) whilst the other Leases do not.
126. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
127. YEAR END MARCH 2020

    Invoice ending 986

    This is allocated to General Repairs.
128. Invoice ending 032

    This is allocated to General Repairs and across all 3 buildings.
129. Invoice ending 1289

    Credit Note dated 24/06/2019 relates to the period 30/05/2017-30/05/2018 therefore does not appear within the service charge accounts for 2019. The Applicant is directed to the Expenditure Report for 2020 which shows the removal of this credit from this accounting year.
130. On the Service Charge year end accounts for 2020, Grounds Maintenance equates to £199.02 made up of the following invoices: 1388798-£55.02, 1582978-£48.00,1602529-£48.00, 1613400-£48.00

    Invoices previously disclosed.
131. YEAR END 2021

    Invoice ending 522

    The Respondent asserts that it has provided the necessary underlying invoices to substantiate the costs incurred. However, it shall continue to investigate whether they have any further information in this regard.
132. Invoices ending 901, 842 and 938

    The Respondent has disclosed the relevant invoices in support of the costs incurred as is required.

133. It is for the Applicant to establish a prima facia case for disputing the reasonableness of the sums sought. The Applicant has failed to provide any evidence in respect of the comments made.
134. YEAR ENDED 2022

    In accordance with *Enterprise Home Developments LLP v Adam,* it is for the party disputing the reasonableness of the sums to establish a prima facie case. The Applicant has not provided any evidence in respect of these comments
135. The Respondent asserts such costs are reasonable and have been reasonably incurred.
136. Any non-urgent work is not being completed due to no funds being available.
137. Budgeted amounts are considered sensible and are based on anticipated expenditure not actual. Budgets are based upon previous years and past expenditure and the increase as a consequence of numerous non-urgent items not being completed due to lack of funds
138. The Lease for 20 Gloucester Road differs to 22 and 24 Gloucester Road, as Item 2 of Part I of the Fourth Schedule refers to the Building as opposed to the Property, as well as the Item including provision for the staircases landings and all other parts shared with other premises, and well as including Item 2(c) whilst the other Leases do not.

The Tribunal

139. The Tribunal was asked to look at a number of invoices, the first of which was conceded as being payable.
140. As regards the second, this was an invoice for £180 for a new keysafe. The Applicant pointed to this being a repeat expenditure, but the Tribunal saw that the other invoice related to a keysafe for the electricity cupboard. Whilst this invoice was more expensive than the other, there was nothing upon its face to suggest that it was not a reasonable cost. The Tribunal finds that the keysafe invoices are reasonable and would be payable in the sums of £180 and £106.26.

Fire Defence

YEAR END MARCH 2020 £1,212

YEAR END MARCH 2021 £726

Budget YEAR END MARCH 2022 £720

The Applicant

141. The Applicant says that fire visits were not notified to leaseholders with enough notice for private areas to be accessed.
142. LPM have a contract for periodic visits to all three blocks. Fire Zone charts have not been corrected since the last Tribunal.
143. Block 22 and 24 Fire Panels are connected to a residential supply, as advised at the earlier Tribunal.
144. LPM only realised this in one of their last visits where it is highlighted. This is a defective maintenance and contract. No electricity supply is assured for Fire Panels in Block 22 and Block 24.

The Respondent

145. The Respondent asserts that these items are recoverable pursuant to Item 3 of Part I of the Fourth Schedule of 20 Gloucester Road Lease and also under Item 6 of Part 11 of the Fourth Schedule of the Leases.
146. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
147. YEAR ENDED 2020 The attendance on 29 August 2019 related to 3-hour drain down test of the emergency lighting in accordance with BS 5266. This resulted in a letter report being provided to RMG which included suggested works. (See Appendix 1).
148. Invoice ending in 6663. The relevant underlying invoice has been provided confirming replacement of 1 emergency LED lighting fitting as per M&E report.
149. Invoice ending in 365. Invoice confirms call out related to assessing the performance of the fire alarm. This was outside the scope of the general contract and undertaken on a needs basis.
150. Invoice ending in 511 The Respondent is making further investigations in this regard, given that the Property Manager at the time has now left.
151. November 2019 visit

    This related to a periodic service which was provided to all 3 Blocks as is evident by the Fire Alarm Testing Reports (See Appendix 2).
152. January 2020 contract visit

    This related to a 1-hour drain down test undertaken on 8 January 2020 (See Appendix 3).
153. YEAR END 2021

The Respondent asserts that it has provided the necessary underlying invoices to substantiate the costs incurred. However, it shall continue to investigate whether they have any further information in this regard.

154. YEAR END 2022

The Respondent asserts that it has provided the necessary underlying invoices to substantiate the costs incurred. However, it shall continue to investigate whether they have any further information in this regard.

155. In accordance with *Enterprise Home Developments LLP v Adam,* it is for the party disputing the reasonableness of the sums to establish a prima facie case. The Applicant has not provided any evidence in respect of these comments.

156. Fire defence maintenance is completed quarterly. The communal panel is connected to the properties. RMG now inform residents of each visit, which includes visits to each property where possible. Not every property needs to be checked on every visit providing that access is gained once in a 12-month period.

157. The Applicant does not state that the works have not been completed, but that they have not been completed correctly. However, the Applicant has not explained how they are incorrect.

The Tribunal

158. The Tribunal heard evidence about a number of relevant invoices. The only remaining issues thereafter, related to the Respondent's claimed failure to organize visits by its safety contractor such as to cover more than one issue at a visit rather than having multiple visits within a close period of time.

159. The Tribunal could see that urgent matters required urgent attention and that it would be not likely for the contractor also to have time to conduct the regular phased visit works at the same time.

160. Accordingly, the Tribunal finds that all sums would be payable. Whilst the late discovery by LPM of the private supply to the fire control system reflects badly upon them, it is not, of itself, sufficient, the Tribunal finds, to reduce the cost of their various invoices.

<u>Health and Safety</u>

YEAR END MARCH 2020 £462.93

YEAR END MARCH 2021 £603

Budget YEAR END MARCH 2022 £2,390

The Applicant

161. The Applicant says that reports detail incorrect information about the three buildings.
162. Report recommendations were not followed by Managing Agent.
163. An email from Property Manager, Andrew Davis, RMG dated 23 April 2021 reveals a H&S error. He states H&S must include Commercial units, but the H&S report particularly excludes the commercial units; see Osterna H&S report dated 12/10/2021 page 7/48 (Bundle page 637).

The Respondent

164. The Respondent says these sums are payable pursuant to the Leases: Item 3 of Part II of the Fourth Schedule and Item 6 of Part II of the Fourth Schedule. The Lease for 24 Gloucester Road differs to 20 and 22 Gloucester Road with regards to Item 3 of Part II of the Fourth Schedule.
165. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
166. The Respondent affirms that the commercial units are charged for health and safety.
167. YEAR END 2020

    The Fire Risk assessment is completed in line with Article 9 of the Regulatory Reform (Order). A copy of the assessment has previously been provided.
168. It is unclear what the Applicant is asserting in regards to "Commercial Units do not pay service charges as an annual charge and never have". This is incorrect and the commercial units at Gloucester Road do contribute to the service charges as is evident within the Annual Accounts. The Applicant is required to provide a further explanation in this regard.
169. YEAR END 2021

    Invoice 1718340 in respect of Block 24 has previously been disclosed, but a further copy is attached at Appendix 4
170. YEAR END 2022

    Invoices ending in 336, 337 and 338

    The Applicant is put to strict proof as to the allegation that the report is "blatantly incorrect".
171. Invoices ending in 509, 510 and 511

Original invoice contains various blocks therefore for accounting purposes split invoices are created. This is common practice in the industry.

172. The Lease for 24 Gloucester Road differs to 20 and 22 Gloucester Road with regards to Item 3 of Part Il of the Fourth Schedule.

The Tribunal

173. The Tribunal can see that Health and Safety surveys are a legal requirement of a landlord.

174. The minor errors within the report complained of by the Applicant are insufficient to conclude that there was a poor inspection. The absence of an inspection of the commercial parts leads to a lesser charge and the absence thereof cannot be laid at the door of the inspector.

175. Accordingly, the Tribunal finds the charges made would be payable.

Gardening and Landscaping

YEAR END MARCH 2020 £199

YEAR END MARCH 2021 £591

Budget YEAR END MARCH 2022 £200

The Applicant

176. The Applicant says that there is no garden at the premises, only exterior concrete paths.

177. There is no evidence of this service being required or undertaken.

178. Invoices do not insert the apparent property receiving this work. Actual work is not itemised wherever it is said to be done.

179. There is insufficient detail or proof of work.

180. This work should not be prioritised in front of defective security and Health and Safety matters of much more serious consequence.

The Respondent

181. The Respondent asserts that these sums are payable pursuant to Item 6 of Part II of the Fourth Schedule of the Leases.

182. In accordance with *Enterprise Home Developments LLP v Adam,* it is for the party disputing the reasonableness of the sums to establish a prima facie case. The Applicant has not provided any evidence in respect of these comments.

183. The Landlord maintains such costs are reasonable and have been reasonably incurred.
184. The Respondent asserts that it has provided the necessary underlying invoices to substantiate the costs incurred. However, it shall continue to investigate whether they have any further information in this regard
185. The Applicant has notably failed to present any evidence, by way of comparative quotes or the like, that the costs are unreasonable or that they have been unreasonably incurred.
186. Costs in previous budgets went under a separate heading. It is subject to a contract and monthly visits by the contractor at £48 per month. There is an additional provision for noncontract work.
187. A new line item was provided to ensure the budget is open and transparent.

The Tribunal

188. The Tribunal could not be satisfied that any of the works here claimed for had been performed.
189. Firstly, the invoices all referred to gardening when both parties agreed that there was no gardening as such to be done.
190. Secondly, and more importantly, there was no property address on the invoices such as to identify it with the premises here.
191. Accordingly, the Tribunal finds these charges not to be payable.

<u>Administration and Penalty Fees</u>

YEAR END MARCH 2020 7 x £160 + 7 x £38 =£1386

The Applicant

192. The Applicant says that all parties of the Applicant (the leaseholders) have been in permanent dispute with the Respondent since the last Tribunal determination upon refunds owed to the Service Charge.
193. RMG confirmed these penalty payments/admin charges levied on the demands not being paid would not be charged whilst the accounts were still in dispute. Ref: email from Andrew Davis of RMG of 28 April 2020.
194. The sums are not recoverable under the terms of the lease.

The Respondent

195. The Respondent asserts that the such costs are recoverable pursuant to item 5 of Part II of the Fourth Schedule of the Leases.

196. The Respondent is not prohibited from recharging such costs during the course of the proceedings between the parties.

197. The Respondent affirms that RMG confirmed that, as a gesture of goodwill, the late charges would be removed on that one occasion following demands being paid. The demands were not paid, therefore, the charges were not removed.

198. Administration fees relate to debt collection for non-payment of service charges. The Administration charges were budgeted before this application was made.

The Tribunal

199. Paragraph 5 of Part II of the Fourth Schedule to the Lease says that the Lessee should pay: *The whole or a fair proportion in the circumstances giving rise to such expense* in relation to *5. All expenses costs and fees reasonably incurred by the Lessor in any proceedings or contemplated proceedings or dispute relating to the Property or any part of it or with the Lessee to the extent that such expenses costs and fees are not paid by the other party to such proceedings.*

200. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines that an "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 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.*

201. For sums to be recoverable as administration charges under the terms of the lease, the provision allowing such should be clearly expressed.

202. Here there was evidence that the Respondent had passed recovery to its solicitor.

203. The charges could properly be seen as representing expenses incurred by the Lessor in a dispute with the Lessee.

204. There was no suggestion that the sums were unreasonably high.

205. However, they relate to Service Charge demands which do not comply with the terms of the lease by reason of the apportionment applied. As such, they are not lawful demands and, it follows, that administration charges relating to their non payment are not reasonably incurred so not payable (**No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd** [2021] EWCA Civ 1119)

206. Accordingly, the Tribunal finds the sums not to be payable.

Management Fees and Legal Fees

YEAR END MARCH 2020 £1584, but £850 after a credit of £709

YEAR END MARCH 2021 £1606 £900 (Legal fees)

Budget YEAR END MARCH 2022 £1654 Postage: £95

The Applicant

207. The Applicant says that there has been overall neglect of the properties. There have been no regular periodic checks of their condition or any work undertaken. Basic description of buildings layout and other information for H&S inspection incorrect. There has never been any meaningful communication with leaseholders, emails go unanswered.

208. There is a big turnover of Property Managers leading to lack of continuity. Previous Tribunal determination and refunds due to Applicant have been incorrectly interpreted and applied by Management with no understanding of leaseholders' concerns over this and lack of fairness. This has led to the current 'impasse.'

209. Leaseholders' wishes and priorities over better management have not been acknowledged.
Unnecessary bills are raised as a result of Property Manager inattention. Failure to prioritise work eg security neglected resulting in communal door keys going missing, security lights not repaired, intercom not repaired, but cleaning invoices raised?

210. Management rationale and logic is missing. Abuse of the lease in unilaterally altering service charge percentages without consultation and regardless of Applicant's dispute against this.

211. Failure to confirm right of access and use of communal garden facilities with neighbouring agents, leading to ill feeling between neighbours on site.

212. Failure in providing security from the street to properties.

213. Respondent continues to insist Commercial units need to pay regular service charges, but Respondent has failed to produce any service charge receipts from these units to prove their tenants do pay their demands believing they are properly charged and due.

214. Legal fees from FTT current dispute added to service charge and contested. Service charge demands 'are based on management costs anticipated expenditure' for which Block 20 leaseholders (as others) are liable. Yet the audited account shows no charges for Block 20, how can this be correct?
215. Postage Charges are now separated out of Management fees for this year without warning and apparently now an extra. What postage is undertaken? All communication is via email to leaseholders.

The Respondent

216. The Respondent points out the difficulties in maintaining a property in the face of a refusal by the Lessees to pay Service Charges. Ms Carruthers accepted that there were no significant repairs and that cleaning and gardening had ceased in September 2021.
217. The Respondent says that such sums are payable pursuant to Item 1 of Part II of the Fourth Schedule of the Leases.
218. The Lease for 20 Gloucester Road differs from 22 and 24 Gloucester Road as Item 1 of Part II of the Fourth Schedule refers to the reasonable cost of employing managing agents or a surveyor for the Estate, as opposed to the cost of employing managing agents or a surveyor for the Property as per the Leases for 22 and 24 Gloucester Road.
219. The Respondent asserts that management has continued at the development, albeit hindered due to the dispute with the Applicant and lack of funds available.
220. Furthermore, the Applicant has failed to present any evidence, by way of comparative quotes of the like, that the costs are unreasonable or that they have been unreasonably incurred.

YEAR ENDED 2020

221. The fee is £850 inc VAT per annum. The management fee is competitive with market value. The Respondent does accept that some repairs have taken time to resolve, as it stands there is no funds to undertake the repairs. This is due to the fact that the demands have not been paid by the Applicant.
222. The Applicant appears to have missed a credit of £709.00 which is apparent within the expenditure report for 2020. This results in the total expenditure in respect of Management Fees being £850.00 as per the accounts.

223. Regarding the service charge accounts for year ending 2020, the Management Fee on page 2 of the accounts records £850.00 therefore it is unclear what the Applicant's submission is in this regard.

224. Regarding the service charge accounts for the year ending 2020, Management Fees have not been recharged to Block 20 therefore do not appear as a charge for this block.

YEAR ENDED 2021

225. This sum is the management fee for the block. The managing agent charges around £150.00 per apartment/unit.

YEAR ENDED 2022

226. The Respondent asserts that management has continued at the development, albeit hindered due to the dispute with the Applicant and lack of funds available.

227. The end of year accounts are still being finalised after which all necessary adjustments shall be made accordingly.

228. Legal Fees

The Respondent asserts that such costs are recoverable pursuant to item 5 of Part II of the Fourth Schedule of the Leases.

229. The Respondent is not prohibited from recharging such costs during the course of the proceedings between the parties.

230. Postage

The Respondent asserts that postage costs are payable pursuant to Item 6 of Part II of the Fourth Schedule of the Leases.

231. In accordance with *Enterprise Home Developments LLP v Adam,* it is for the party disputing the reasonableness of the sums to establish a prima facie case. The Applicant has not provided any evidence in respect of these comments

232. The Respondent asserts that such costs are reasonable and have been reasonably incurred.

233. Furthermore, no consultation is required with regards to proposed budgets and works.

The Tribunal

234. The Tribunal needs to balance here the difficulty in managing a property when leaseholders have decided not to pay Service Charge demands. The Tribunal said the following in the earlier Decision:

235. *60. The management fees charged by RMG for the year ending 31 March 2019 are modest - only £1,513. The Tribunal has decided not to reduce those fees. The Applicants, through Mrs McGuinness are not asking for cheaper management but better management and recognise that this may have to be paid for. The Tribunal hopes that improved management with a clear planned programme to deal with the problems that require attention will be forthcoming.*

236. Sadly, there appears to have been no improvement; indeed, the situation has become worse.

237. The Tribunal agrees that the management fee charged would be reasonable if all of the management services were being performed and to a good standard. The Applicant also agrees and would be willing to pay more for a better service.

238. Sadly, Ms Carruthers was unable to tell the Tribunal the details of the management agreement between the Respondent and the Management Company, so the Tribunal had to do its best with limited information.

239. The biggest error by the management company was to unilaterally alter the lease percentages of apportionment. Fair or not, the lease percentages are those agreed to by the parties and they give a measure of certainty. The casual way in which the change was communicated to the leaseholders and the paucity of explanation was far below the standard of communication to be expected of a managing agent. This poor communication was also evident in letting the Applicant know the identity of the property manager.

240. The company clearly does not understand the electricity supply issues. It has not reconciled the source of supply and still believes that it is acceptable for fire control systems to be powered from a private source, which might not be accessible in the event of a power failure, a serious health and safety matter. It did not even acknowledge the private supply issue until it was reported to it by LPM by an invoice of 23 February 2022 some years after that company had become involved itself in safety issues at the property.

241. The management company properly arranged a Health and Safety audit, yet failed thereafter to remedy all of the faults identified. Whatever the situation regarding payment of Service Charges, the primary duty of ensuring a safe environment remains paramount.

242. Whilst appreciating that Ms Carruthers was relatively new to her role, it appeared to the Tribunal that the confusion as to the number of units and the current apportionment was symptomatic of a company out of touch with its property.
243. There was no schedule of visits presented or any assurance that the claimed quarterly visits took place.
244. There was no evidence of the management agreement, as stated above.
245. The Respondent said that other leases differed to the lease in the bundle, but did not think to provide those other leases, and did not comprehensively say how they differed, giving the distinct impression that it did not know or care.
246. The photographs of the building, whilst pre-dating and post-dating the essential time period, paint a picture of a property in agony.
247. The Tribunal also takes account of the fact that the company is operating in a situation where funds are being withheld. On the one hand that limits the work actually done, but on the other hand it does make it very difficult for the company to perform all that is expected of it.
248. The company has kept accounts (and charged separately for same) and organised fire and health and safety surveys and arranged in the past for cleaning and some minor works.
249. It has wasted monies on the provision of accounts which do not reflect the percentages in the lease, so that any expenditure on remedying that situation should be met by the Respondent and cannot reasonably be demanded of the Applicant, whether the extra costs arise from work by the managing agent or by the auditor.
250. The Tribunal has concluded that the overall sum properly payable for management fees in each of the 3 years in question (before the credit refund for year ending 2020) should be limited to £1,000 inclusive of VAT.
251. The legal fees are subject to the order made by the Tribunal later under Section 20C and Paragraph 5A.
252. Ms Carruthers told the Tribunal that postage, which had previously been included within the management fee, was separated out so as to incentivise those who agreed to communication by email. This logic was, however, flawed because it was not clear that there would be differential charges for those using and not using email.
253. Indeed, the innovation appeared very much to the Tribunal to be an attempt by the management company to increase its income. Indeed, Ms Carruthers accepted that this was possibly the case after embarking upon the explanation about email usage.

She properly accepted that there was nothing she could show to demonstrate that the extra charge was reasonable or fairer for the Applicant. She could not point to anything relevant in the management agreement, which, as stated, the Tribunal never saw.

254. In the above circumstances, the Tribunal finds the charge for postage not to be reasonable or payable.

Section 20c and Paragraph 5A Application

255. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.

256. The relevant law is detailed below:

Section 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 … … leasehold valuation tribunal, ….are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

257. *The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

Commonhold and Leasehold Reform Act 2002 Schedule 11 Paragraph 5A 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—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in

connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Section 20C

258. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

259. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the*

order, and to bear those consequences in mind when deciding on the just and equitable order to make." (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

260. Ms Ackerley said that the Respondent was entitled to employ solicitors. The Respondent had tried to liaise and to respond to the questions raised without a hearing. They had engaged in mediation and an attempt to settle the proceedings. They had conducted themselves in a transparent manner. She invited the Tribunal to make a part order in the event that the Applicant was only partially successful.

261. The Tribunal has weighed up the relevant factors here, including the submissions made by Ms Ackerley.

262. The Tribunal notes that the Applicant was wholly successful in its challenge to the unilateral apportionment change made by the Respondent, which represented a substantial and unsettling breach of contract on its part. The Applicant had over a long period queried the Respondent's apportionments but had made no progress on the issue. As a result, apportionment was that single issue which clearly occasioned the application and the Tribunal has found the application to have been well made in that respect. The case simply had to be brought to resolve that major issue. As the Tribunal indicated earlier, the hopes of the earlier Decision that matters might be improved were not realized in good part because of the Respondent's unilateral change to the clear terms of the lease. Although rendered somewhat academic by the Tribunal's decision as to the lawfulness of the demands, the Tribunal notes too that the Applicant has also been partly successful in its other challenges, notably in respect of the management fee.

263. Taking a rounded view, the Tribunal finds the application to have been unavoidable and reasonable, and allows the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

264. For the sake of clarity, this decision means that the £900 in legal fees featuring above under Management Fees and Legal Fees is not payable.

Paragraph 5A

265. For the same reasons that the Tribunal allows the Applicant's application under Section 20C above, the Tribunal allows its application under Paragraph 5A, so that

the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicant in this or any other year.

RIGHTS OF APPEAL

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

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

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

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

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—
(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19 Limitation of service charges: reasonableness

(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.

27A Liability to pay service charges: jurisdiction

(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-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 postdispute 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 of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Paragraph 1 of Schedule 11 contains the definition of an administration charge for the purposes of the schedule.

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,

or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

The Act goes on to provide:

(1) a charge is a 'variable charge' if it is neither –

(a) specified in the lease, nor

(b) calculated in accordance with a formula specified in the lease (paragraph 1(3))

and

(2) that a *variable* administration charge is payable only to the extent that the amount of the charge is reasonable (paragraph 2).