FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HN/LSC/2019/0036
Property	**:**	Flat 3, 7 Knyveton Road, Bournemouth, Dorset, BH1 3QF
Applicant	**:**	Gus Burton
Representative	**:**	Not represented
Respondent	**:**	Lindsay Park Properties Limited
Representative	**:**	Town & City Management Limited
Type of Application	**:**	Section 27A Landlord & Tenant Act 1985
Tribunal Members	**:**	Judge N P Jutton, Mr M J F Donaldson FRICS, Mrs J E S Herrington
Date and Venue of Hearing	**:**	5 August 2019 Hearing Room 9, Courts of Justice, Deansleigh Road, Bournemouth, BH7 7DS
Date of Decision	**:**	7 October 2019

DECISION

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1 **Introduction**

2 7 Knyveton Road, Bournemouth is a purpose-built block of residential flats consisting of two 1 bedroom flats and eight 2 bedroom flats. The Applicant is the lessee of Flat 3. The Applicant makes an application for a determination as to whether certain service charges demanded by the Respondent for the years ending 31 December 2016, 2017 and 2018 and estimated service charges for the year ending 31 December 2019 are payable and if so, whether they are reasonably incurred. As part of that application, the Respondent seeks a determination by reference to the terms of his lease as to the correct proportion of service charges payable that should be attributed to his property. The Applicant also seeks a determination as to whether all or any of the costs that may be incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by him.

3 **Documents**

4 The documents before the Tribunal comprised a bundle of documents which included the Applicant's application, the Applicant's lease, Directions made by the Tribunal, the Applicant's and the Respondent's Statements of Case, Witness Statement made by the Applicant, a number of authorities produced by the Applicant and further written submissions made by the parties in accordance with Directions made by the Tribunal following the hearing. References to page numbers in this Decision are references to page numbers in the bundle.

5 **The Inspection**

6 The Tribunal inspected the property on the morning of 5 August 2019.

7 7 Knyveton Road is a 3 storey property which has been converted into 10 residential flats. There is a car parking area to one side of the property and a bicycle store at the other side. The walls are rendered. There are UPVC windows. There is a pitched tiled roof. Present at the inspection were Mr Gus Burton the Applicant, and Ms Sarah Jones from the Respondent's Managing Agents, Town & City Management Limited. Mr Burton pointed out areas of exterior rendering to the building which he said were in need of repair. The Tribunal was shown the bin area adjacent to the car park. There are two bin stores, each should have two doors but in both cases only one door was in place. The Tribunal was shown three meter cupboards at the rear of the building and some cracking and recent repairs (incomplete) which appear to have been carried out to the boundary wall at the front of the building.

8 In the internal hallway the Tribunal was shown a water meter cupboard which was not locked (despite a sign on the front saying it should be kept locked), an electricity cupboard, a document box and internal meter cupboards outside each flat. The Tribunal was shown round the interior of Mr Burton's flat, Flat 3.

9 **The Law**

10 The relevant statutory provisions are to be found in sections 18, 19, 20C and 27A of the Landlord & Tenant Act 1985 (the 1985 Act). They provide as follows:

The 1985 Act

18 (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose –

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

19 (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the 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 (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any

specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20C (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the First-Tier Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made –.....

(ba) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

11 The Lease

12 A copy of the Applicant's lease appears at pages 13-38 of the bundle. The lease is dated 26 April 2011. It is for a term of 125 years from 1 January 2008.

13 Clause 2 of the lease sets out the provisions for payment of the service charge (referred to in the lease as 'Service Expenses'). Clause 2 provides as follows:

"2.1 The Service Expenses for each calendar year shall be estimated by the Managing Agents (acting as experts and whose decision shall be final) as soon as practicable after the beginning of the year and the Tenant shall pay the estimated contribution by two equal instalments on the 1 January and the 1 July in that year. The estimated Service Expenses for the entire calendar year 2011 shall be deemed to be £650 and the Tenant shall pay on the execution of this Lease an appropriate proportion of that sum on a day to day basis for the period for the date of this Lease to 31 December next.

2.2 As soon as reasonably practicable after the end of the calendar year 2011 and in each successive calendar year when the actual amount of the Service Expenses for the relevant year has been ascertained the Managing Agents shall give notice to the Tenant and (as the case may be) the Tenant shall forthwith pay the balance due of the service rent or be credited with any amount overpaid".

14 The term 'Service Expenses' is defined to mean the costs, expenses, outgoings and matters specified in schedule 4 to the lease. Schedule 4 sets out in detail the Service Expenses which include the expenses of maintaining, repairing, redecorating and renewing the roof, structure and common parts, lighting and cleaning the common parts, decorating the exterior of the building, maintaining the common grounds, insuring, payment of managing agents' fees and the provision of a reserve fund to meet *"part or all of any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs of this schedule which the Managing Agents anticipate will or may arise during the remainder of the Term".*

15 The landlord's covenants are set out at clause 6 of the lease and they include a provision at clause 6.17 as follows:

"That there will be supplied to the tenant not less frequently than once in every calendar year a summary of the Service Expenses for the previous calendar year (the first of which accounts shall relate to the year 2008) which summary shall also incorporate a statement of the amount (if any) standing to the credit of the Tenant in the books of the Managing Agents pursuant to paragraph 2 of part II of Schedule 4 after deducting any amounts appropriate in accordance with that paragraph and of the Tenant's share of the amount of interest (if any) credited to the reserve fund referred to in paragraph 14 of that schedule during the year covered by the summary".

16 **The Hearing**

17 Present at the hearing were the Applicant Mr Gus Burton and his father Mr Stephen Burton, and Ms Sarah Jones from the Respondent's Managing Agents, Town & City Management Limited.

18 The issues before the Tribunal relate to service charge payments for the years ending 31 December 2016, 31 December 2017, and 31 December 2018 and estimated or budget service charge payments payable in advance for the year ending 31 December 2019. There are also three further issues raised by the Applicant which in each case are relevant in whole or in part to the payment of service charges generally. Those three issues are firstly, how should the overall service charge (described in the lease as *"service expenses"*) be apportioned? Secondly, whether the Respondent could recover from the Applicant as part of the service charge the cost of repairs that were pre-existing at the time that the Applicant purchased his flat in 2015. Thirdly, whether the provisions of clause 2.1 of the lease have the effect of limiting the costs and standard of the cleaning of communal areas and of gardening in the future years.

19 **Apportionment of the Service Charge**

20 The Applicant says that by reference to clause 2.1 of the lease, the amount of service charge that the Applicant should pay should be *"an appropriate proportion"* of the overall *"service expenses"* (as defined in the lease) reasonably incurred by the Respondent. The lease is silent as to what that appropriate proportion should be.

21 The flats at the property the Applicant says, are of different sizes and values. That the Applicant's flat, Flat 3, is the smallest of the 2 bedroom flats (there is one other 2 bedroom flat of the same size). The apportionment, says the Applicant, should be based upon the internal floor area of each flat. There are two 1 bedroom flats at the property, Flats 1 and 2, the remainder are all 2 bedroom flats. The Tribunal was told that the leases of Flats 1 and 2 were the only leases which defined the proportion of service charge payable, they were each required to pay 7% of the overall service expenses. That in practice, the Respondent had divided the remaining 86% equally between the eight 2 bedroom flats. That the Applicant says is unreasonable. That the apportionment should reflect the different sizes of the flats.

22 The Applicant had obtained from the local Planning Authority, plans produced by the developer at the time the building was converted into flats (pages 77 and 78). Those plans set out the floor areas for each flat and applying those measurements, the Applicant calculates that the proportion of service expenses that he contends he should be paying for his flat by reference to floor areas should be 9.53%.

23 Ms Jones made the point that by reference to those plans, the floor areas for Flats 1 and 2 were different but nonetheless their respective leases each required the lessees to pay a proportion of 7% of the overall service expenses. That it was a perfectly reasonable approach the Respondent contends to divide the remaining 86% equally between the eight 2 bedroom flats. That meant that each 2 bedroom flat paid 10.75% of the overall service expenses. That if there was to be a change in the proportion payable by the lessee of Flat 3, there would have to be changes to the other seven 2 bedroom flats.

24 Mr Burton said that there would be no need in that event for Deeds of Variation of the remaining 2 bedroom flats. It would simply be a question of calculating by reference to floor areas what their respective proportion should be. He appreciated that the floor areas of Flats 1 and 2 were different but said that the difference was far smaller than the difference between say his 2 bedroom flat, Flat 3, and another 2 bedroom flat, Flat 8.

25 **The Tribunal's Decision**

26 The lease of Flat 3 (and it would appear of the other 2 bedroom flats as well) fails to identify the exact proportion or percentage of the overall service expenses that the lessee is required to pay by way of service charges. The Tribunal does not agree with either party that the amount of service charge payable in respect of Flat 3 should be defined by the

expression *"an appropriate proportion"* as set out in clause 2.1 of the lease. In the context of clause 2.1 in the view of the Tribunal, the words *"an appropriate proportion"* relate to the amount of service charge payment to be paid by the lessee during the very first year of the lease from the date that it was granted to the end of that financial year ie to 31 December 2011. The service charge for that first year is stated at clause 2.1 to be £650 and the reference to an appropriate proportion is to a pro rata calculation of that sum calculated on a day to day basis from the date of execution of the lease to 31 December 2011.

27 The fact that the lease is silent as to the share or proportion of service expenses that the lessee of Flat 3 should pay as a service charge means it falls upon the Tribunal to determine what would in its view be a reasonable proportion or percentage to pay. The Applicant says that a fair way of calculating a fair proportion would be by reference to floor areas. In the view of the Tribunal, that may well be the case. There are properties where the calculation of service charge contributions are calculated on that basis. The Respondent says it is perfectly reasonable (given that the service charge proportions for Flats 1 and 2, the two one bedroom flats, are fixed) to apportion the balance of the service expenses equally between the eight 2 bedroom flats. They may be of different floor areas (to a greater or lesser degree) but so are Flats 1 and 2, and each of those flats pay 7%.

28 The question before the Tribunal is whether or not it is reasonable to apportion the service expenses between the eight 2 bedroom flats equally and if it is not, whether it would be reasonable to apportion by reference to floor areas as the Applicant contends.

29 Although the Tribunal has some sympathy with the Applicant's argument, the approach of the Respondent to divide 86% of the overall service expenses equally between the eight 2 bedroom flats is not in the view of the Tribunal an unreasonable approach. It is not in the experience of the Tribunal uncommon for service charge contributions for blocks of flats to be apportioned by reference to the number of bedrooms. If the calculation of the proportion payable by the lessee of Flat 3 was reduced to 9.53%, then no doubt there would have to be adjustments made to the contributions payable by the lessees of the other seven 2 bedroom flats in order to ensure that the Respondent could collect 100% of the service expenses it reasonably incurred. That may no doubt, to a lesser or greater degree, cause unrest amongst the other lessees.

30 In the view of the Tribunal, a fair and reasonable proportion of the overall service expenses to be paid by the lessee of Flat 3 is 10.75% on the basis that Flats 1 and 2 (albeit flats of different floor areas) each pay 7% under the terms of their respective leases and the balance of 86% is shared equally between the remaining eight 2 bedroom flats (albeit again of differing floor areas).

31 **Historic Repairs**

32 The Applicant says that prior to his purchase of Flat 3, he noticed defects or wants of repair to the exterior of the building. For example, damage to the rendering of an exterior wall where it had been struck by a car (which

the Tribunal was shown during its inspection). He says he recalls seeing other marks and cracks to the rendering. It is wrong, the Applicant says, for the Respondent to claim for the costs of carrying out repairs from him as part of his service charge where such repairs were outstanding/required prior to his purchase of his flat. They were pre-existing. That where a disrepair is historic pre-dating his purchase, he says the cost of that repair should have been paid by the lessees (by way of a service charge) at the property at the time the disrepair first arose. That the burden of the service charge covenant to the extent that it relates to the cost of historic repairs, should not pass to him with the assignment of the lease to him. He makes reference to sections 3(2)(b), 23(1) and 24(4) of the Landlord & Tenant (Covenants) Act 1995 (the Act).

33 Section 3 of that Act provides as follows:

"3 (1) The benefit and burden of all landlord and tenant covenants of a tenancy –

(a) shall be annexed and incident to the whole, and to each and every part, of the premises demised by the tenancy and of the reversion in them, and

(b) shall in accordance with this section pass on assignment of the whole or any part of those premises or of the reversion in them.

(2) Where the assignment is by the tenant under the tenancy, then as from the assignment the assignee –

(a) becomes bound by the tenant covenants of the tenancy except to the extent that –

(i) immediately before the assignment they did not bind the assignor or

(ii) they fall to be complied with in relation to any demised premises not comprised in the assignment; and

(b) becomes entitled to the benefit of the landlord covenants of the tenancy except to the extent that they fall to be complied with in relation to any such premises".

34 Section 23(1) of the Act provides as follows:

"23(1) Where as a result of an assignment a person becomes, by virtue of this Act, bound by or entitled to the benefit of a covenant, he shall not by virtue of this Act have any liability or rights under the covenant in relation to any time falling before the assignment."

35 Section 24 of the Act provides as follows:

"24 (1) Any release of a person from a covenant by virtue of this Act does not affect any liability of his arising from a breach of the covenant occurring before the release.

(2) Where –

(a) by virtue of this Act a tenant is released from a tenant covenant of a tenancy, and

(b) immediately before the release another person is bound by a covenant of the tenancy imposing any liability or penalty in the event of a failure to comply with that tenant covenant,

then, as from the release of the tenant, that other person is released from the covenant mentioned in paragraph (b) to the same extent as the tenant is released from that tenant covenant.

(3) Where a person bound by a landlord or tenant covenant of a tenancy –

(a) assigns the whole or part of his interest in the premises demised by the tenancy, but

(b) is not released by virtue of this Act from the covenant (with the result that subsection 1 does not apply),

the assignment does not affect any liability of his arising from a breach of the covenant occurring before the assignment.

(4) Where by virtue of this Act a person ceases to be entitled to the benefit of a covenant, this does not affect any rights or his arising from a breach of the covenant occurring before he ceases to be so entitled".

36 Section 3 of the Act provides that on an assignment of a lease (described in the Act as a tenancy) the benefit and burden of all landlord and tenant covenants (as defined in the Act) shall pass on the assignment (clause 3(1)(b)). On the assignment of the lease of Flat 3 to him, the Applicant became bound by the tenant covenants (to include the covenant to pay a service charge) and became entitled to the benefit of the landlord's covenants (such as the landlord's covenant to repair).

37 Section 23(1) does not help the Applicant. In the event that a landlord is in breach of a repairing covenant, then until the repair is carried out as each day goes by the breach continues. It is a re-occurring breach. So where there is a need for a repair to be carried out by a landlord which arose prior to the assignment of a lease, the obligation on the landlord to carry out the repair continues past the date of the assignment and that breach can be enforced by the assignee. If the landlord then carries out works of repair albeit in respect of a want of repair that first occurred prior to the assignment, then provided the lease allows he can recover the cost of those repairs if reasonably incurred from the current lessee. Nor does Section 24(4) help the Applicant. It simply preserves the assignor's historic rights in relation to a breach that occurred prior to the assignment.

38 Accordingly, the Tribunal does not accept Mr Burton's contention that he should not be liable to pay by way of service charge contributions

(demanded after the assignment of his lease to him) such elements of those charges that relate to the costs of carrying out repairs to defects at the property which first occurred prior to the assignment of his lease to him.

39 **Limitations set by the Lease**

40 The Applicant refers to clause 2.1 of the lease and in particular to the provision that states that the estimated service expenses for the entire calendar year 2011 shall be deemed to be £650. That says the Applicant sets the standard and cost of the services to be provided by the Respondent under the terms of the lease. That the time spent on services such as the cleaning of communal parts and gardening and the cost of those services must be consistent with that envisaged at the time that the lease was granted. That the figure of £650 effectively set a standard which should be followed subsequently. The 2011 service charge accounts were not available, but there was for example a figure of £240 for gardening shown in the budget for 2012 which the Applicant says provides a reasonable guide. That, between 2012 and 2018 the figure for gardening had increased by 50% (page 63). Similarly the figure for cleaning of communal areas had increased during the same period by 227.38%. That the Applicant says is wrong. If the figure stated in the lease of £650 for the service charge for the year ending 2011 set as he contends the standard and cost of services to be provided, then reasonably such costs should only increase over time in line with inflation or with an index such as the Retail Prices Index. That the increase in charges for example for cleaning communal areas meant that either more work was being carried out than was required (and/or to a higher standard than was envisaged by the lease in 2011) and/or that the cost of such works was excessive (allowing for inflation substantially more than was envisaged by the lease in 2011).

41 Further, Mr Burton said that there was no need given the nature of the exterior of the property for the gardener to visit the premises every month of the year. That he worked too many hours. Alternatively that either meant he was not visiting enough in the summer or making too many visits in the winter. Further, it would be sufficient for the cleaners in the communal areas to visit monthly.

42 Ms Jones said that she was not sure whether the cleaners came fortnightly or monthly. However, it would be impossible for the Respondent to comply with its maintenance, repairing and cleaning covenants in the lease for a total figure of £650 per annum, which figure in addition would have to cover the Respondent's other obligations such as insurance.

43 Upon being questioned by the Tribunal, Mr Burton said he had no alternative quotes or estimates from third parties as to the costs of carrying out items such as gardening or the cleaning of communal areas.

44 **The Tribunal's Decision**

45 Clause 2.1 of the lease is not in the view of the Tribunal well drafted. It refers to estimated 'service expenses' for the entire calendar year of 2011 to be £650. It provides that the lessee will on the execution of the lease

pay an appropriate proportion of that sum for the balance of the year. In the view of the Tribunal, the reference to £650 was not intended by the draftsman to be a reference to the total service expenses for the entire building for that year but the proportion of those to be paid by the lessee of Flat 3. That because the total figure of £650 patently would not be sufficient to cover the service expenses, not least for example the buildings insurance. It is noteworthy that the estimated charge for the following year ending 31 December 2012 was £7632 (page 196).

46 The Tribunal does not accept the Applicant's submission that clause 2.1 sets the standard and/or cost of maintaining, cleaning or repairing the property. It is not necessary to construe clause 2.1 in the way that the Applicant seeks to do in order to understand and apply the provisions of the lease. The lease simply requires the lessee to pay a form of service charge by reference to service expenses, as defined in the lease incurred by the Respondent. The service expenses are set out at schedule 4 to the lease. They include the expenses of maintaining, repairing, redecorating and renewing the structure and common parts, of insuring, of decorating and so forth. The lease does not otherwise define or limit the standard or the costs of the works to be carried out by the Respondent and which make up the service expenses. The reference in clause 2.1 of the lease does not set some form of 'bench mark' for service expenses moving forward. The issue for the Tribunal in respect of each service charge year where any element of service expenses are challenged or questioned by the lessee is whether or not those elements are recoverable under the terms of the lease and if so, whether they are reasonably incurred. In determining whether a particular item of expense is reasonably incurred, the Tribunal is not assisted or restricted by the provisions of clause 2.1 of the lease. That clause does no more than (albeit poorly), fix a service expense figure for the first service charge year of the lease (or more particularly part thereof). It does not fix or limit the standard or costs of service expenses in subsequent years nor does it need to do so.

47 **Actual Service Charges year ending 31 December 2016**

48 **Reserve Fund £2500**

49 The Applicant says that his understanding was that the reserve fund figure of £2500 was calculated in order to provide sufficient funds for the Respondent to decorate the interior common parts of the premises. The Applicant says there had been an historic failure on the Respondent's part to anticipate those works and to collect service charge contributions to the reserve fund in previous years so as to build up a sufficient fund over a period of time. That the failure of the Respondent to do so meant that there was a substantial increase in the reserve fund contribution in 2016. The Applicant says in his Statement of Case that he does not contest the figure per se but that he should not be penalised for the historic failure of the Respondent to make adequate provisions to the reserve fund. Had historic provisions been made (albeit prior to the assignment of the lease of Flat 3 to him), then undoubtedly the reserve fund contribution in 2016 would have been substantially reduced and thus the burden on the Applicant. That the financial impact of such demand on lessees was a factor which should be taken into account in determining whether or not

the figure of £2500 was reasonably incurred. The Applicant says in his Statement of Case that there was in effect therefore historically a breach of covenant on the part of the Respondent for failing to provide for a reserve fund over a period of time which gave rise to a claim in damages against the Respondent which the Applicant would be entitled to set off against his service charge liability.

50 Ms Jones said that her company took over the management of the property in 2016 and there was she said, a lot of 'catching up to do'. As part of that, the Respondent was seeking to increase the amount of monies in the reserve fund to meet future periodic expenses.

51 **The Tribunal's Decision**

52 The Applicant does not contest the figure of £2500. The Tribunal agrees that the figure is not unreasonable. With hindsight the Respondent could well have sought a number of smaller contributions to the reserve fund over the years so as to build up a fund over a period of time and thus reduce the contribution in 2016. In principle, the contribution by a lessee over a period of time whether paid by way of a relatively small contributions each year or by one lump sum in one year, would presumably overall be the same. The Applicant would no doubt have known at the time that he purchased his flat in 2015 (by reference to historic service charge accounts that would normally have been produced to his solicitor) whether or not a reserve fund was in place and if so the extent of it. If the reserve fund was relatively minimal (if anything) he may have anticipated the possibility of an increase in future contributions to it.

53 The issue for the Tribunal is whether or not a contribution to the reserve fund of £2500 for the year 2016 is a service expense reasonably incurred. The Applicant does not contest the figure. The sum may well have been less for 2016 if larger (or any) reserve fund contributions had been collected in previous years. That does not mean that a demand of £2500 in 2016 was unreasonable. Nor does the Tribunal accept the Applicant's argument that an alleged failure on the Respondent's part to collect any or greater reserve fund contributions for previous years amounts to a breach of covenant on the part of the Respondent giving rise to an entitlement on the Applicant's part to claim damages to be set off against the service charges demanded. Clause 14 of schedule 4 to the lease allows the Respondent's Managing Agents to provide for a reserve fund to meet future anticipated expenses. There is nothing to support the allegation that an alleged failure on the Managing Agents' part historically to collect greater contributions towards the reserve fund amounts to a breach of that provision. In all the circumstances, the Tribunal determines that the sum of £2500 as a contribution to the reserve fund was reasonably incurred.

54 **Meter Doors £411.60.**

55 In his Statement of Case, the Applicant says that in 2016 four of the exterior meter doors at the property were vandalised and required replacing. At the hearing, he suggested that the number was three. He therefore questioned as to why, as he understood it, 20 utility meter doors had been replaced at a total cost of £411.60. At the hearing, an invoice was

produced that showed the number of doors that had been replaced was not 20 but 7. That was an invoice from a company called Home and Garden Medic dated 2 March 2016. Further, the Applicant says that the cost incurred in replacing each meter door was excessive. That the cost by reference to the invoice including VAT to include supply and fitting was £58.80 per door. The Applicant had obtained alternative quotes from the internet as to the cost of meter cupboard doors that ranged from £14.45 to £19.98 per door. Mr Burton said at the hearing that he felt that a figure of £20 per door would be appropriate.

56 Ms Jones said that her company had not been managing the property at the time that the work was carried out and therefore was not able to comment. She said she imagined however that the replacement of doors over and above those that had been damaged by vandals was carried out for aesthetic reasons.

57 **The Tribunal's Decision**

58 If 3 meter doors were damaged by vandals and required replacing, it is not clear to the Tribunal why it was felt necessary to replace 7 doors in total. There is no evidence to show that the additional doors were replaced for aesthetic reasons (which in the view of the Tribunal would not be a reasonable expense to incur). As to the cost of supplying and fitting replacement doors, the Tribunal notes the alternative quotes that the Applicant obtained from the internet. It also notes those are quotes for the supply only and not the fitting of doors. On the basis of the evidence before it and from its own experience, the Tribunal is of the view that a figure of £58.80 per door inclusive of VAT is unreasonable. The best that the Tribunal can do is to determine that a reasonable sum to pay for the supply and fitting of replacement doors is £30 per door including VAT, a total for 3 doors of £90; a reduction of £321.60.

59 **The Re-fixing of Top Control Arm and Fitting of Locks to Cupboard £102.40**

60 There was no evidence before the Tribunal or explanation as to why this work was required. If damage was caused, there was no evidence as to how it was caused. In all the circumstances, upon the basis of the evidence before it, there is nothing to suggest to the Tribunal that this expense was not reasonably incurred and the Tribunal therefore determines that the sum of £102.40 for this work was reasonably incurred.

61 **Cost of Replacing Keys £78 and £38.40.**

62 In May 2016, a cost was incurred of £78 for providing a key to a cupboard and £38.40 to *"obtain a copy of a key and deliver"*. The Applicant says that the cost of replacing lost keys is not a repair. That none of the lessees use or have keys to the water and electricity cupboards in the common parts. That the keys were presumably lost by the managing agents or their predecessors. That replacing the keys provided no benefit to the lessees. That the cost of replacing lost keys did not fall within the definition of service expenses in the lease.

63 Ms Jones said that it was possible that when her company took over the management of the property in February 2016, the previous managing agents had failed to hand over the keys. She was not managing the property at the time so she was not able to comment further.

64 **The Tribunal's Decision**

65 There was no evidence before the Tribunal to explain why it was necessary to incur the expense of obtaining new or replacement keys. There was no invoice. As far as it is understood, these are keys to provide access to the water and electricity cupboards in the communal hallway. Access to those cupboards is indirectly to the benefit of the lessees. Obtaining access is part of the maintenance and management of the property. In the circumstances, the Tribunal is satisfied that these were expenses that were reasonably incurred and may be recovered by the Respondent as part of the service expenses.

66 **Document Box £57.60**

67 The Tribunal was shown the document box during its inspection. This was supplied and fitted to the property in the communal hallway in March 2016 for a cost of £57.60. It is not, the Applicant says, a matter of maintenance and repair but the fitting of the box was an improvement. It was the fitting of something new which did not previously exist at the property.

68 Ms Jones said that the box was fitted to safely store documents relating to amongst other things the fire alarm system. She did not she said have boxes of that nature in any of the other properties that she manages. It was not she said however an improvement because it was installed for health and safety reasons. If the documents were not stored in the document box, they would otherwise have to be stored in the communal water meter or electrical cupboards. It was not she said 'over-kill' to have a separate document box as well.

69 **The Tribunal's Decision**

70 In the view of the Tribunal, the installation of a document box where none had existed before is an improvement. It does not fall within the service expenses provisions set out in schedule 4 of the lease. In particular, it is not an expense of maintaining, repairing, redecorating or renewing. It is not possible to maintain, repair or renew something which was not previously at the property. In the circumstances, the Tribunal determines that this item was not reasonably incurred and the cost of £57.60 should be deducted from the service charge account for this year.

71 **Unblocking of Toilets and Basins £144**

72 The Applicant says that there are no toilet or washing facilities to the common parts of the property. As such, these works must have been carried out to a toilet and basins in a particular flat. As such, the cost should be the responsibility of the lessee of that flat. If the Respondent chose to carry out such works, then the Respondent should be able to

recover the cost of those works solely from that lessee. Further, if a necessity for the works was occasioned by a lessee or lessees placing items into toilets or basins so as to block waste or soil pipes, then the lessee or lessees would be in breach of the terms of their lease and accordingly, the Respondent should be able to recover any costs incurred as a consequence direct from the lessee(s) concerned. That accordingly, it was inappropriate and unnecessary to pass these expenses to the service charge account.

73 An invoice for the works was produced from a company called Rescue Rod Limited dated 24 March 2016. It refers to blocked toilets and basins in Flat 7. It states:

"Problem appears to be blocked SVP, liaise with tenant, tenant removed boxing/plasterboard to expose internal communal stack, cut access into pipework, carry out further extensive spring screwing to clear, fit new access point for future clearing, tenant to reinstate boxing".

The invoice goes on to make a note of '*poor configuration of pipewor*k'.

74 The Tribunal asked the Applicant that if it were the case that the blockage was in the main communal pipe run, the communal soil vent pipe, and it could not be determined how the blockage occurred, did the Applicant accept in those circumstances that these costs would properly form part of the service expenses? Mr Burton confirmed they would. However, his case was that the blockage in this case must have been caused by an individual lessee. He noted that the said invoice refers specifically to Flat 7 and to blocked toilets and basins in Flat 7.

75 **The Tribunal's Decision**

76 Under the terms of the lease, the cost of maintaining and repairing conducting media forms part of the service expenses. Conducting media is defined as *"sewers, drains, pipes, wires, cables, ducts, gutters and any other type of conducting media or lengths or parts of the same respectively from time to time used for the passage of soil, water, gas, electricity or other services of any kind or of any fixtures or fittings connected to or forming part of any conducting media".* The invoice refers to a blocked soil vent pipe (described as an SVP). It makes reference to poor configuration of pipework. The work carried out appears to be carried out in Flat 7 because that was where the blockage manifested itself. In the view of the Tribunal these were works carried out to conducting media as defined in the lease and properly therefore are recoverable as part of the service expenses. There is no evidence that the blockage to the SVP was caused by any one or more lessees. In any event, even if that were the case, in the first instance, the expense of clearing the blockage is properly recoverable as part of the service expenses whether or not subsequently the Respondent would be able to obtain reimbursement from an individual lessee or lessees. In the circumstances, the Tribunal is satisfied that this expense was reasonably incurred.

77 **Refuse Collection £234**

78 The Applicant says that within the figure for refuse collection in 2016 is a figure of £48 for the removal of an estate agent's board left at the property. That says the Applicant is the responsibility of a third party, namely the estate agent. The Respondent should have pursued the estate agent to remove its board. That as such, the Respondent was wrong to include this item as part of refuse collection charges to be included within the service expenses.

79 Ms Jones said that it may be the case that the estate agent concerned simply would not remove the board. We do not know. That did not relieve the requirement on the part of the Respondent under the terms of the lease to remove the offending board as part of the refuse collection at the property.

80 **The Tribunal's Decision**

81 The Tribunal agrees with the Respondent. It is not disputed that the costs reasonably incurred by the Respondent in removing refuse from the common areas is part of the service expenses. As such, the cost of removing refuse provided it is reasonably incurred, is recoverable as part of the service expenses. Whether or not the Respondent is able prior to removing refuse or thereafter able in turn to recover the costs from a third party and if successful make a credit to the service charge account, is a different matter. In any event, it is not known why in this particular case the estate agent's board was left at the property. It is not known if enquiries were made of the estate agent concerned to remove the board and if so, what the response was. The fact is that the board formed part of the refuse that required removing and was removed at the expense of the Respondent and as such forms part of the service expenses recoverable. As such the Tribunal determines that the cost of removing the estate agent's board of £48 was reasonably incurred.

82 **Remaining Costs of Refuse Collection 2016 £186**

83 Mr Burton said that he accepted the difficulties faced by the Respondent's Managing Agents in policing rubbish that was left at the property. His view was that if a lessee let out their property (the Tribunal were told that the majority of flats at the property were subject to sub-tenancies) that if additional costs were incurred as a consequence for example by reason of sub-tenants leaving rubbish in the communal areas, then the costs of removing that rubbish should be met by the individual lessees concerned and should not form part of the service expenses. Mr Burton referred to an email dated 9 May 2019 from one Tom Woodley at the Managing Agents to him (page 143) in which Mr Woodley makes reference to refuse collection and states:

"This has to be removed to avoid environmental health getting involved. We can very rarely definitively prove who dumped it – or be able to recover the costs by legal action. So the costs fall back on to all leaseholders – who then sometimes receive a letter from us stating that

if they cannot control their tenants then the costs will fall back onto them as leaseholders".

84 Ms Jones said that was undoubtedly the case here. There may be a suspicion that refuse had been left at the property by third parties, and she said that fly tipping was not uncommon. Such third parties may well be sub-tenants but that there were real difficulties in proving who was responsible for the depositing of rubbish and recovering the costs of removal from them. The fact was that refuse could not be left in the common areas and the Respondent was obliged to clear refuse away in accordance with the terms of the lease.

85 **The Tribunal's Decision**

86 The Tribunal agrees with Ms Jones. The starting point is that refuse left in the common areas of the property needs to be removed. The Respondent is required to remove the refuse and the reasonable costs of doing so form part of the service expenses. Whether the Respondent is then able to recover such costs from third parties is a different matter. Even if the Respondent is successful, monies recovered will simply be a credit to the service charge account. However, in practice, proving who has deposited refuse and thereafter recovering the cost of removal from third parties is extremely difficult and undoubtedly in most cases would be disproportionate in terms of time and costs. In the circumstances the Tribunal is satisfied that the costs of refuse collection of £186 were reasonably incurred.

87 **Insurance Excess £250**

88 In his Statement of Case, the Applicant contended this was not recoverable under the terms of the lease. At the hearing an invoice was produced from Home and Garden Medic dated 4 November 2016 which referred to work carried out at the property following storm/water damage. There was a note endorsed to the invoice to the effect that the invoice, save for an excess of £250, was to be paid by the insurers. The Tribunal also referred the parties to clause 11 of schedule 4 to the lease that states that as part of the service expenses, there are included *"Any expenses and costs incurred by the landlord in connection with any insurance claim"*. In all the circumstances, at the hearing Mr Burton reasonably conceded and accepted that this sum was recoverable as part of the service expenses.

89 **Actual Service Expenses for the year ending 31 December 2017**

90 **Reserve Fund £3000**

91 For the same reasons as stated for 2016, Mr Burton said he contested this amount. That there had been a failure historically in his view by the Respondent to collect reasonable sums on account to pay into the reserve fund over a number of years. That he was being asked to pay a substantially increased contribution as a consequence. The Respondent he said must have a plan of action. There was no evidence of forward planning to show details of anticipated future works and the cost of those works. That there were in the bundle two reports from a Surveyor from a

company called Greenward Associates in 2017, but both post-dated the demand for payment of the reserve fund contribution as part of the estimated service charge for the year. He said that he had asked for quotes or estimates of anticipated future works but they had not been forthcoming.

92 Ms Jones said that prior to her company taking over the management of the property in 2016, the reserve contributions were very low. That it takes time to build a reserve fund. The aim she said was to increase the reserve fund gradually over a number of years. She accepted that there was an argument that historically ideally her predecessors should have sought greater annual contributions to the reserve fund. The intention she said was to have sufficient monies in the reserve fund to carry out external decoration and rendering works in the spring of 2020. Ms Jones made the point that when the Applicant purchased his flat in 2015, he no doubt would have been provided with a management enquiry pack which would have shown the amount in the reserve fund at that time. He would have been aware of the condition of the property from his own inspection. As such, he must have anticipated or reasonably should have anticipated that there would be future relatively major items of expense and the possibility of a rise in the contribution to the reserve fund.

93 **The Tribunal's Decision**

94 The lease provides for a reserve fund to be established and payment to be made into the reserve fund as part of the service expenses. The Tribunal accepts the Respondent's explanation that monies were currently being collected into the reserve fund to fund external works of decoration and rendering works to the property. For the reasons stated above in relation to 2016, the fact that there may allegedly with the benefit of hindsight have been insufficient contributions made in the reserve fund in previous years, did not mean that a contribution of £3000 for this year was unreasonably incurred. That in light of the anticipated works that were due to be carried out it was not an unreasonable sum to place into the reserve fund. As such, the Tribunal determines that the payment of £3000 for the reserve fund was reasonably incurred.

95 **Greenward Associates £499.57**

96 At page 100 is an invoice from Greenward Associates dated 18 January 2017 in the sum of £499.57 for inspecting the property and preparing a report on periodic maintenance. The report itself appears at pages 101-130. The Applicant says this was a wasted expense. That no action has been taken following the report. It is therefore now out of date and superfluous. It confers no current insight into the maintenance of the property. The advice contained in the report was not, Mr Burton said, acted upon. That as such, he said the report conferred no probative value. The report was couched in very general terms. All it did was to establish a state of disrepair at the time of the inspection. The report contained no real expert analysis. That it was very basic to the extent that it could have been produced by the managing agents themselves. By reference to the first page of the report (page 102) the purpose of it was to address *"periodic maintenance"*. That was something Mr Burton said which could

have been addressed by the Managing Agents and not something upon which it was necessary to consult a Surveyor.

97 Ms Jones made the point that this initial report did result in a further report/schedule of works in July 2017 (pages 132-137). However, she said that in her opinion that it was not reasonable or necessary to commission a report from a Surveyor to address *"periodic maintenance"*. That was something which fell within the role of the Managing Agents. In the circumstances, Ms Jones accepted that the costs incurred of £499.57 to produce the report were not reasonably incurred.

98 **The Tribunal's Decision**

99 In light of the acceptance made by Ms Jones at the hearing that these costs were not reasonably incurred, the Tribunal determines that the sum of £499.57 for the production of a Surveyor's report was not reasonably incurred and as such is not recoverable as part of the service expenses for this year.

100 **Surveyor's Report Greenward Associates £357.70**

101 The invoice is at page 131. It is to cover the cost of preparing a schedule of building works for proposed external decoration and maintenance works at the property. The schedule is at pages 132-137. It sets out what works are to be carried out. It makes reference to the standards to be complied with. It addresses the materials to be used.

102 Mr Burton said that the schedule was dated July 2017. That by the time the work set out in the schedule is carried out, it would be some 2½ years old. That it is out of date. As such in his view, the costs of commissioning the schedule were wasted costs. Further, in his view it was not necessary to use an expert Surveyor to produce such a schedule.

103 Ms Jones said that the schedule was produced to be sent to contractors to allow them to provide quotes for the works to be carried out on a like for like basis. It set out the works required and what materials were to be used. That if another schedule was produced today given the nature of the works, it would not differ. As such the schedule was not out of date. Indeed she had recently in the last 6-7 weeks sent the schedule out to contractors. The production of such a schedule was not something she said she could do herself or which she felt reasonably would fall within the expertise of Managing Agents.

104 **The Tribunal's Decision**

105 The Tribunal agrees with the Respondent. The works set out in the schedule are still required. The nature and extent of the works as described in the schedule will not have changed. The schedule sets out the technical details of the work to be carried out and the materials to be used. The expertise required to produce such a schedule necessitated the instruction of a Surveyor. It was not something that reasonably could be produced by a Managing Agent. Clearly it is sensible in the view of the Tribunal that contractors be sent the same schedule so that they could

quote on a like for like basis. That would assist the parties, no doubt as part of a consultation process, to determine which contractor to instruct. In the circumstances, the Tribunal is satisfied that the sum of £357.70 for the production of a schedule of works was reasonably incurred.

106 **Cardinus Risk Management £571.20**

107 There is at page 138 an invoice from a company called Cardinus Risk Management dated 25 January 2017, for two items. Firstly what is described as *"value at risk survey BCIS V2"* and secondly, a *"health and safety risk assessment"*. There is an email from Cardinus to the Managing Agents dated 23 March 2017 at page 139 which divides the invoice equally between those two items at a cost each of £238 plus VAT.

108 At the hearing Mr Burton said that he accepted that the value at risk survey at a cost of £238 plus VAT was reasonably incurred. He objected however to the cost of the health and safety risk assessment. Although he accepted it was reasonable and indeed proper to carry out periodic health and safety risk assessments, there would he said undoubtedly have been previous full inspections carried out and it was not necessary therefore to carry out a full assessment on every occasion, it should simply be a matter of updating the previous assessment. To carry out a full health and safety risk assessment on every occasion was in his view an unnecessary duplication of work. All that was required was a review. He did not accept that it would even be necessary on a review to re-inspect the property.

109 Ms Jones said that health and safety risk assessments were carried out every 2 years. That in accordance with advice received for example from the Dorset Fire and Rescue Service. That it was necessary upon every assessment to inspect the property.

110 **The Tribunal's Decision**

111 The Tribunal is satisfied that this expense was reasonably incurred. That where a health and safety risk assessment is carried out whether that be a full initial report or subsequent review, properly there should be an inspection of the property. That there was no evidence before the Tribunal to suggest that a fee of £238 plus VAT either to do a full assessment or just to review an assessment to include an inspection was unreasonable. Indeed, in the view of the Tribunal, from its experience on either basis the fee was reasonable. Accordingly the Tribunal determines that the total sum of £571.20 was reasonably incurred.

112 **Actual Service Charge year ending 31 December 2018**

113 **Reserve Fund £3000**

114 The Applicant contests this sum on the basis he said it was not reasonably incurred. That in the absence in his view of any costed plan for future works, there was no basis upon which this sum had been calculated.

115 **The Tribunal's Decision**

116 The Tribunal is satisfied this sum was reasonably incurred. The Respondent is entitled and indeed should build up a reserve fund. Works are anticipated to be carried out of external redecoration and rendering in the foreseeable future. Given the previous contributions to the reserve fund and given the nature of the proposed works to be carried out, there is no evidence before the Tribunal to suggest that this was not a reasonable provision to make as a contribution to the reserve fund in this year. The Tribunal determines the sum of £3000 as a contribution to the reserve fund was reasonably incurred.

117 Upon being questioned by the Tribunal, Mr Burton confirmed that he did not seek to challenge any other actual items of expenditure for the year 2018 as such, save to reiterate the general points he had made by reference to the cost of cleaning the communal parts and gardening by reference to clause 2.1 of the lease. Those are matters which the Tribunal has addressed above.

118 **Estimated Service Charges Year Ending 31 December 2019**

119 Following the hearing on 5 August 2019 the Tribunal made further Directions on 9 August 2019 allowing both Parties the opportunity to make further written submissions in relation to the estimated service charges for the year ending 31 December 2019. The Applicant made submissions which are dated 26 August 2019. The Respondent made submissions which are dated 19 September 2019.

120 **Reserve Fund £4,000**

121 The Applicant repeats submissions he made in relation to the reserve fund for previous years which have been addressed by the Tribunal above. For those reasons the Tribunal does not accept the Applicant's submission that he is not liable to make a contribution to the reserve fund to the extent that fund may be used to address repairs which first arose prior to the assignment of his Lease to him. Nor does the Tribunal accept the Applicant's submission that the contribution should be reduced because of an alleged failure on the Respondent's part to collect greater contributions (paragraphs 52 and 53 above).

122. The Applicant refers to an email from Ms Jones of 23 January 2019 (page 160) in which Ms Jones says that at that date there was in the reserve fund some £5,247.69 and that "*Once we have collected the £4,000 from this year, we would then be in a position to have both the internal and external redecorations completed at a budgeted/approximate amount of £9,000 (during 2020)*". The Applicant says that with reference to the accounts there should in fact be in the reserve fund a figure of £7,090 so the balance to be collected should not be £4,000 but £1,910. In short he says with reference to the draft accounts for the year ending 31 December 2018 that there was over £7,000 in the reserve fund and as the proposed works were to cost around £9,000 (as per Ms Jones' email) there is no need to collect £4,000. He says that it matters not whether in the accounts monies held by the Respondent are shown as a reserve fund or a service

charge account it is the total held which is relevant and that total should be available as a reserve fund.

123 The Respondent says that the service charge budget is addressed by taking into account the previous year's actual expenditure, any surplus or deficit from previous years and estimating future costs including planned major works. Planned major works the Respondent says may include works within a 10 year maintenance plan. That the allocation of £4,000 against the reserve fund in the 2019 budget is for planned major works. Those works include proposed external decoration and render repairs which as at March 2018 were estimated to cost around £9000. The Respondent says the actual figure in the reserve fund as at 31 December 2018 was around £5,200. The Respondent has obtained further estimates for the proposed works of external redecoration and render repairs the brief details of which are included within its further submissions. These are slightly lower than anticipated. The summary of estimates for the proposed works for the external works and render repairs range, including VAT, range from £6,180 to £11,928. The Respondent says that all contractors approached in June 2019 were provided with the same specification.

124 The Tribunal's Decision

125 The amount which the Respondent collects as part of the service charge contributions towards the reserve fund is not an exact science. As per the Lease it is collected by the Respondent to meet anticipated expenses which the Respondent's managing agents "*anticipate will or may arise during the remainder of the term*" (clause 14 of part 1 of the 4th Schedule). Ms Jones told the Tribunal that the Respondent was seeking to increase the amount of money paid into the reserve fund to meet future anticipated expenses. Those are not necessarily limited to the proposed works of internal and external redecorations and external render repairs. The Respondent says that the '*…allocation of £4,000 against the Reserve is for planned major works….*'. In all the circumstances on the basis of the evidence before it having full regard to the submissions made by the Parties the Tribunal is satisfied that a contribution to the reserve fund as part of the estimated service charge ending 31 December 2019 in the sum of £4,000 is reasonable.

126. **Grounds Maintenance £396 and Cleaning £555**

127. In his written submissions the Applicant repeats the arguments that he made before the Tribunal that these charges should be addressed by reference to those of 2012 and increased form that time in line with the Retail Prices Index. On that basis he says that the charges should be £280 for the cleaning and £200 for ground maintenance. He repeats the submissions he made at the hearing that less visits were required to the Property by both the gardener and the cleaners (paragraph 41 above).

128. **The Tribunal's Decision**

129. For the reasons set out at paragraphs 45 and 46 above the Tribunal does not accept the Applicant's submissions. No evidence has been produced by the Applicant in the form of alternative quotes or estimates for gardening or the cleaning of communal areas. Accordingly, upon the basis of the evidence before it and for the reasons set out above, the Tribunal determines that the sums of £396 for grounds maintenance and £555 for cleaning as set out in the service charge budget for the year 31 December 2019 are reasonable.

130. **Out of Hours £50**

131. This, as Ms Jones confirms in her email of 23 January to the Applicant (page 160) is a new item. The Applicant says that there is already an out of hours number on the noticeboard in the communal hallway at the Property. That the Lessees have not previously been precluded from contacting the agents out of hours. This item, the Applicant says, is not necessary. That there is no evidence that it would benefit the Lessees. That disrepair in communal areas does not require notice to be given as a matter of urgency to the Respondent. That repairs arising in individual flats is not the responsibility of the Respondent. There is, the Applicant says, no provision in the Lease which allows this item to be recovered.

132. **The Tribunal's Decision**

133. In the view of the Tribunal the ability of Lessees to telephone the Respondent's managing agents out of hours does have benefit to them. For example it allows them to report any immediate serious failure in the Conducting Media (as defined in the Lease) which affects all Lessees. Other examples could be vandalism to the communal entrance door or storm damage to the roof. Clause 12 of part 1 of schedule 4 of the Lease provides for other service expenses which may form part service charge. It provides for "*The cost of such other services as the Landlord may from time to time in his absolute discretion decide to provide for the general benefit of the tenants and occupiers of the Development*". ('The Development' is defined as the ten flats that comprise the property at 7 Knyverton Road).

134. In all the circumstances the Tribunal is satisfied that the cost of an out of hours service is of benefit to the Lessees and is recoverable as part of the service charge pursuant to clause 12 of part 1 of the Fourth Schedule to the Lease.

135. **Managing Agents' Fees**

136. The Applicant challenges the level of Managing Agents' fees for the years ending 31 December 2017 and 31 December 2018, and the estimated fees for the year ending 31 December 2019. Mr Burton submitted that there was a history of the Respondent wrongly failing to re-credit lessees with over-payments of service charges paid on account and of using monies in the reserve fund to make up shortfalls in relation to under-payments. That there was an historic failure on the part of the Respondent to reconcile the

budget with actual expenditure within a reasonable time so that lessees would have to wait for two years before being credited with sums overpaid. In 2015 there had been a surplus of £2927. That surplus had not however been credited back to the lessees until the preparation of the 2017 budget. That Mr Burton said, was a breach of the terms of the lease. Conversely, for the year ending 31 December 2016, the actual expenditure exceeded the estimated figure collected on account by £2515 and there was therefore a deficit for that amount. Rather than seeking payment of that deficit from the lessees at the end of that year, it was belatedly in Mr Burton's view added to the budget figures for the year ending 31 December 2018 (page 149). So there had been a failure on the part of the Respondent when determining the budget for 2017 to properly take into account the actual figures for 2016. That properly with reference to the lease, Mr Burton said, that any credits due back to lessees at the end of the financial year should be paid forthwith in the same way that any deficit was required to be paid by lessees to the Respondent forthwith.

137. Mr Burton confirmed that he raised these issues not because he sought any direct redress per se but because they were illustrative he said of poor management and as such were relevant to the question of the level of the managing agents' reasonable charges.

138. Mr Burton also made reference to an email from the Managing Agents to him dated 29 November 2018 (page 152) in which it is suggested that the agents' standard fee for a site was usually £1500 plus VAT. That the fee for this property equated to £215 plus VAT per flat. Mr Burton said that for 10 flats based upon the Managing Agents' standard minimum fee as stated in the email, the charge should be £150 plus VAT per flat. That he said should be the starting point which should then be further reduced to reflect what he believed was the sub-standard level of management for the last 3 years. When questioned by the Tribunal, Mr Burton confirmed that he had not tested the market. He had not obtained alternative quotes for the cost of managing agents.

139. In his written submissions in relation to the estimated service charge for the year ending 31 December 2019 Mr Burton repeats and expands upon the submissions referred to above. He refers to alleged areas of disrepair at the property. He says that the managing agents don't visit and inspect the property with sufficient regularity. That as a consequence there is delay in remedying disrepair and that is indicative of a poor level of management. That there is a delay in signing off the accounts each year, for example the accounts in the bundle for the year ending 31 December 2018 are still marked as draft. Ms Jones said there was clearly an error in the email of 29 November 2018. Further that reference to a fee for a site of £1500 plus VAT did not help determine what the standard fee per flat was. That the Managing Agents' fees for the last 4 years had been £2220 for 2016, £2320 for 2017, £2420 for 2018, and £2520 for 2019, all inclusive of VAT. In effect, there had been an increase each year of £10 per flat. Those fees, which equated to between £222 and £252 per flat including VAT, she submitted were reasonable.

140. **The Tribunal's Decision**

141. The Tribunal is unimpressed with the apparent delay on the part of the Respondent in addressing credits due to the lessees at the end of the financial year where budget payments exceed actual expenses incurred or in recovering deficits where actual expenses exceed the budget payments. There would also appear from the papers to be some delay in the production of the service charge accounts/summary of service expenses as required by clause 6.1.7 of the lease following the end of the service charge year. However, there was otherwise no evidence before the Tribunal to suggest that the Managing Agents were not reasonably and properly managing the property. There was no evidence that the Managing Agents' fees were unreasonable. Indeed, given the Tribunals knowledge of Managing Agents' fees as an expert Tribunal, and even if account were taken of the accounting delays referred to, in the view of the Tribunal the fees charged by the Managing Agents for the years 2017 and 2018 were not unreasonable. In the circumstances, the Tribunal is satisfied that the Managing Agents' fees incurred for the years ending 31 December 2017, 31 December 2018 and estimated for the year ending 31 December 2019 were reasonably incurred.

142. **Future Service Charges**

143. In his application to the Tribunal and in his written submissions of 26 August 2019 the Applicant asks the Tribunal to make a determination as to the amount of service charge that will be payable by way of estimated service charges for the years ending 31 December 2020 to 31 December 2022 inclusive. The Applicant suggests that the service charge budget for each of those years be limited to £12,000.

144. **The Tribunal's Decision**

145. This is not a matter which the Tribunal can determine. The Tribunal cannot determine estimated service charges for future years when those estimated charges are not yet known. The Tribunal has addressed the appropriate apportionment of service charge payable by the Applicant above.

146. **Section 20C Application**

147. As part of the application, the Applicant applies for an Order pursuant to section 20C of the 1985 Act that all or any of the costs that may have been 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 service charge payable by the Applicant.

148. Upon being questioned by the Tribunal, Ms Jones stated that the Respondent did not in any event seek to recover any costs or fees that had been incurred by it in connection with the proceedings before the Tribunal.

149. In all the circumstances, the Tribunal determines pursuant to section 20C of the 1985 Act that for the avoidance of doubt, any costs that have been 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 service charge payable by the Applicant.

150. **Other Matters**

151. At the conclusion of the hearing, Mr Burton indicated that he was minded to make an application both for reimbursement from the Respondent of fees paid by him to the Tribunal and for costs, pursuant to rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. The latter notwithstanding the fact that he had represented himself before the Tribunal. Mr Burton indicated that he had incurred certain disbursements. The Tribunal reminded the parties that an application for costs pursuant to rule 13 could be made at any time either during the proceedings or within 28 days after the date on which the Tribunal sends its Decision to the parties. The Tribunal also suggested that before an application for costs were made, the parties might find it helpful to consider very carefully the basis upon which they make that application. That in the circumstances, Mr Burton might want to delay consideration of making an application until he received the Tribunal's Decision, but that was entirely a matter for him. Mr Burton decided on balance that he would consider whether to make an application once he received the Tribunals decision.

152. If either party is minded to make an application for costs, they may find it helpful to first consider carefully the circumstances under rule 13(1)(b) of the 2013 Procedural Rules in which the Tribunal may make an Order for costs and in particular, have regard to the Decision of the Upper Tribunal (Lands Chamber) in the matter of **Willow Court Management Company (1985) Limited & Others v Mrs Ratna Alexander & Others** (2016) UK UT 0290 (LC).

153. **Summary of Decision**

154. The proportion of the total service expenses as defined in the Applicant's lease reasonably incurred by the Respondent and which may be recovered from the Applicant by way of service charges is 10.75%.

155. For the year ending 31 December 2016 and taking into account the adjustments to the service expenses incurred by the Respondent as set out in this Decision the total amount of service charge payable by the Applicant is £1,336.31.

156. For the year ending 31 December 2017 and taking into account the adjustments to the service expenses incurred by the Respondent as set out in this Decision the total amount of service charge payable by the Applicant is £1,183.08.

157. For the year ending 31 December 2018 and taking into account the adjustments to the service expenses incurred by the Respondent as set out in this Decision the total amount of service charge payable by the Applicant is £1,161.75.

158. The estimated service charge for the year ending 31 December 2019 payable by the Applicant is £1542.84.

159. The Tribunal determines pursuant to Section 20C of the Landlord and Tenant Act 1985 that all and any other 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 service charge payable by the Applicant.

Dated this 7th day of October 2019

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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.

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.