FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UH/LSC/2020/0107**
Property	**:**	**Old School Place, Maidstone, Kent, ME14 1EQ**
Applicant	**:**	**Residents of 27-35 (excluding 32) Old School Place**
Applicant's Representative		**Miss J Saunders, No31 assisted by Mr. J Sloan, No29.**
Respondent	**:**	**Hyde Housing Association Limited**
Respondent's Representative	**:**	**Ms Emma Hardman of Anthony Collins, Solicitors, LLP**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor David Clarke** **Mr. Peter Turner-Powell, FRICS** **Mr. Leslie Packer**
Date of hearing	**:**	**8 and 9 March 2021**
Date of Decisions	**:**	**31st March 2021**

- **DETERMINATION AND STATEMENT OF REASONS**

DETERMINATION

1. In the light of concessions by the Respondent:

***In 2017-18*, it is determined that there was an incorrect charge in relation to estate lighting of £41.86. There were additional arithmetical errors amounting to 3 pence, making a total credit due in the year of £41.89.**

***In 2018-19*, it is determined that there was an overcharge of £330 for communal electricity, a duplication in respect of Fire Safety Charges of £413.36 and £38.90 charged in respect of responsive maintenance for the work not already begun, making a total overcharge and credit due for the year of £782.26.**

***In 2019-20*, it is determined that there was a duplicated charge in respect of cleaning amounting to £49.70, an invoice of £43.49 for electrical maintenance that had been incorrectly allocated, a charge for fire safety that had used an incorrect schedule of rate cost resulting in an overcharge of £369.21 and an incorrect allocation of the costs of tree works undertaken at a different location amounting to £1,507.02. During the hearing, it was further conceded that there was an overcharge of £30 in respect of responsive maintenance. The total overcharge and credit due for the year is £1,999.42.**

2. The Tribunal determines that the Applicants have demonstrated that the ground maintenance works in 2019-20 were not undertaken to a reasonable standard. It therefore disallows 50% of the annual fees total of £3,315 in that years, namely £1,657.50 which the Tribunal considers is a reasonable discount to reflect the poor standard of work. The total amount allowed in 2019-20 under the heading 'grounds maintenance' is therefore £3,694.63, being £2,037.13 covered by the invoice at Exhibit AA12 and £1657.50 for annual maintenance.

3. The Tribunal determines that the Respondents have not demonstrated good management for any of the years in question and that the management fee for each of the three years 2017-18, 2018-19 and 2019-20 should be reduced from 15% to 10%.

4. The Tribunal determines that an order should be made in favour of the Applicants under section 20C of the Landlord and Tenant Act 1985 in respect of all the costs incurred by the Respondent in connection with these proceedings. Such costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants.

5. The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to extinguish any liability of the Applicants to pay an administration charge in respect of litigation costs in these proceedings.

STATEMENT OF REASONS

Background

1. This Application, for a determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985 ("the Act"), was issued on 28 October 2020 by seven of the nine residents ("the Applicants") of 27-35 Old School Place, Maidstone, Kent, ME 14 1EQ. They were supported by a Mr. Paul Dadson who was the leaseholder at No 35 during the period in question. The Application was in respect of the three service charge years 2017-18, 2018-19 and 2019-2020, each such year ending on 31st March. The Applicants were represented at the hearing by Miss Joanna Saunders of 31 Old School Place and she was assisted by another resident, Mr. John Sloan. The Respondent to the Application is the Hyde Housing Association, a not-for-profit registered proprietor of social housing owning approximately 41,000 properties across England.

2. The Application is in respect of a three-storey block of nine flats known as 27-35 Old School Place ("the Property") which sits within a larger development of similar blocks, but only this building is owned and managed by the Respondent. An earlier application was made to the Tribunal by the Applicants and was heard by Judge D Dovar and Mr. K Ridgeway on 1 February 2018. A copy of that determination, case reference CHI/29UH/LIS/2017/0036 ("the 2018 Determination") was in the filed papers. It relates to the service charge years 2015-16 and 2016-17; it also ruled on the reasonableness of the estimated expenditure for the year 2017-18.

The Property and the Leases

3. It was not possible for the Tribunal to inspect the Property but there is a helpful description within the 2018 Determination following an inspection and the Tribunal had the benefit of a photo bundle supplied by the Applicants. There are also two plans attached to the Lease. In the absence of an inspection, this combined material gave the Tribunal a clear picture of the Property and the grounds in which it stands. The Property is of modern brick construction under a tiled roof. There are three flats on each floor of the Property. It sits within grounds that contain two external sheds, one for bins and one for cycles and a car parking area. The remainder consists of borders, footpaths, grass and trees and shrubs, some of the trees being mature.

4. The Tribunal was supplied with a copy of the lease of Flat 31 ("the Lease") as representative of all nine leases. It is dated 3 August 2001 and was granted by the Respondent. It is a type of 'staircasing lease' used by Housing Associations. The Building is defined as the building comprising the flats and the Premises is defined as the individual flat. The Common Parts are described as the common parts of the Building and the Development which includes 'any access areas gates fences steps pedestrian ways footpaths and access ways'. The 2018 Determination held that 'Development' was limited to the Property and its grounds as shown and delineated by a thick line on Plan A to the Lease.

5. The relevant clauses in the Lease are clause 5, which contains the covenants by the landlord to the leaseholder including one to repair and maintain the non-demised parts of the Development; and clause 7 which sets out the provisions relating to the service charge. The service charge is to include 'all expenditure reasonably incurred by the Landlord in connection with the repair, management maintenance and provision of services for the Building and the Development'. The Applicants informed the Tribunal that eight of the nine flats are now owned outright by the leaseholders.

Outline of the Applicants' case

6. The Application seeks a determination in respect of three service charge years ending on 31 March in 2018, 2019 and 2020. The Application set out a series of questions that the Applicants wished the Tribunal to decide under section 27A of the Act. None of those questions raised any dispute about the persons by who a service charge is payable, nor the person to whom it is payable but exclusively relate to the amounts payable. The Applicants raise issues as to the reasonableness of the amounts charged to them and the quality of the work done. In other words, the issues for determination by the Tribunal are whether the items within the service charge have been reasonably incurred and whether the services supplied, or the works done, are of a reasonable standard within s19(1) of the Act.

7. The Applicants' Statement of Case sets out the general basis of their argument before making specific comment on each of the items in issue. The overall basis of their submission can be summarized as follows:

(1) The 2018 Determination set out estimates for expenditure in that year for the purpose of the budget for that year. These were the amounts that that tribunal considered reasonable; but the actual charges levied for 2017-18 substantially exceed those budgetary amounts fixed by the 2018 Determination.
(2) The service charges for the three years in issue before the Tribunal are 51%, 54% and 310% greater respectively than the corresponding service charges determined by the Tribunal for the year 2016-17.
(3) The 2018 Determination reduced the maintenance fee within the service charge for 2015-16 and 2016-17 from 15% to 10% because it found that the service provided was not of a good standard. The Applicants contended that the standards and service have not generally improved, that some works and service were not done properly, and that the rectification of many items considered in 2018 remained outstanding.

8. These general contentions were then applied in detail to the items within the service charges that the Applicants disputed. The Tribunal considers those arguments in relation to those specific items below.

9. In their Statement of Case, the Applicants also contended that works that should have been done, particularly the decoration of common parts and external woodwork, had not been done even though the Sinking Fund for the Property contained a balance of over £44,000. They also complained that the Respondent had ignored a clear point on

the 2018 Determination that related to the charge for servicing the controlled door entry system and charged an amount substantially more than the amount determined.

Outline of the Respondent's case

10. The central submission was that the sums which are the subject of the Application are properly charged in accordance with the Provisions of the Lease and were reasonable and supplied to a reasonable standard. However, the Respondent conceded in their detailed consideration of the items in dispute that errors had been made and a total amount of £2,793.57 across the three service charge years was conceded to have been charged erroneously. These matters are listed below and considered in more detail at paragraph 23 below.

11. More specifically, the Respondent contended:

(1) It was not open to the Tribunal to compare service charges for the three years in question to those determined for 2016-17 and that the Tribunal had to make its decision only on the evidence presented to it in the documentation and orally at the hearing.

(2) All the services were provided by contractors who had been properly procured within the applicable regulations. The Tribunal was obliged, in the absence of evidence to the contrary, to accept that the cost of those services was reasonable.

(3) The utilization of the sinking fund held in relation to the Property was not a matter within the jurisdiction of the Tribunal.

(4) Each of the heads of charge could be specifically justified. Evidence to that effect was supplied with witness statements detailing procurement processes and copies of relevant invoices for the charges made.

The relevant applicable law – jurisdictional limitations

12. The jurisdiction of the Tribunal under section 27A of the Act is limited to consideration of the reasonableness of the service changes levied. The consequence is that there are two limitations that apply to the situation in this case.

13. Firstly, the Tribunal cannot in terms make any determination on matters that a leaseholder considers should have been completed under covenants in the lease even if the cost of such work would then be included as part of the service charge. The Tribunal cannot therefore rule on the concerns and claim of the Applicants that no internal decoration work has been done since 2002: or that external woodwork urgently needs attention; or that repairs to sheds have not been completed.

14. Secondly, the Respondent contends, correctly, that the Tribunal has no jurisdiction to examine the legality or reasonableness of any payments out of the reserve fund. This is clear from the wording of the Act and on the authority of *Solitaire Property Management Company v Holden* [2012] UKUT 86, a decision that is binding on a First-tier Tribunal. If a Tribunal cannot consider the payments out of such a reserve fund, it

certainly cannot consider a claim that payments that were not made should have been made from a sinking fund.

15. However, where the service charge includes an element for general management expenses, as is the case here, there being a 15% management fee charged for each of the three years, it is within a Tribunal's jurisdiction to consider whether the management of the property is question has been conducted to a reasonable standard to justify that element of a management fee.

The relevant applicable law – on evidence and cost comparison

16. The approach to considering the issue of the reasonableness of charges, or the issue of whether work has been done to a reasonable standard in a case under s27A of the Act is one that, as the Respondent submits, must be based on the evidence presented to the Tribunal either in the documentation or orally at the hearing. The Respondent relies on the comments made in the case of *Knapper v Francis* [2017] UKUT 3 in the Upper Tribunal, where Martin Roger QC, Deputy President, stated that:

> "The question of what sum ought reasonably to have been paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on the circumstances in existence at that date".

In short, the Tribunal must base its decision on all the evidence presented to it that is relevant to the issues of reasonableness.

17. The requirement that a Tribunal must act on the evidence before it is relevant to the Applicants' first two core submissions set out in paragraph 7 above. While the amounts found to be reasonably payable under the 2018 Determination provide context, the fact that the charges for the subsequent three years are significantly higher is not determinative, especially if evidence is forthcoming to justify the reasonableness of those charges in those years. Similarly, the 2018 Determination set the budgetary figures of 2017-18 and naturally based these on previous years. However, if evidence is now forthcoming that service charge costs for that year are considerably greater, and that evidence demonstrates that the charges are reasonable, then the higher actual costs can be justified.

18. The Tribunal is not aware of all the evidence – or the lack of it – that was before the tribunal in 2018. But a reading of the 2018 Determination shows that a dim view was taken of the case presented by the Respondent, with the phrase 'thin evidence' being repeatedly applied. The Respondent acknowledges that it did not provide very much supporting evidence to the tribunal in 2018. Very substantial documentary evidence has been supplied this time.

19. In their Reply to the Respondent's Statement of Case, the Applicants accept that the decision should be based on all the evidence presented to the Tribunal but continued to rely heavily on the level of percentage increases in service charges for each of the years compared to 2016-17. However, it is not sufficient just to point to such increases in the overall level of charge. Rather, it is necessary (as was done in the 2018 Determination)

to demonstrate that individual elements within that charge, on the evidence presented, have been unreasonably incurred or provided to an unreasonable standard.

20. It may be of assistance to the Applicants to summarise the position for the future. The relevant service charge costs in any service charge year are the relevant costs expended by the Respondent in accordance with the terms of the Lease. If they were properly expended at a reasonable cost and completed to a reasonable standard, then they are properly payable notwithstanding whether there is an increase, or indeed a decrease, in the amount as compared to previous years.

The relevant applicable law – on procurement

21. Where a local authority, or a private developer with an estate of properties, or large social housing provider such as the Respondent, is a landlord of many properties let to leaseholders, it is settled law that it is acceptable for such a landlord to provide services to its leaseholders by means of a major contract with a service provider, or series of service providers to deliver services to multiple properties. It is an acceptable way to deliver to its leaseholders the services it is obliged to provide under the leases: see (for example) *Norwich City Council v Redford* [2015] UKUT 30 and *A2 Housing Group v Taylor* (2006) LRX/36/2006. This does not mean that the leaseholders are disadvantaged since the landlord must still show that the procurement of its contracts was secured properly and at a reasonable price. It must also demonstrate that the method of allocation of cost to each block of flats or properties is fair and reasonable to ensure that one group of leaseholders is not assisting in paying costs incurred elsewhere. Finally, the delivery of such services must be in accordance with the terms of the leases of the property or block in question.

22. In this case, the Respondent has provided witness statements from relevant employees about the central contracts it has procured to deliver services to properties that include the Property at Old School Place. The Applicants have not challenged the validity of those contracts nor provided any evidence that any aspect of the service charge can be delivered at the same level of service but more cheaply by an alternative contractor. The Tribunal therefore accepts that the central contracts have been validly and reasonably concluded as this is the evidence provided. It remains however the case that the Respondent must satisfy the Tribunal that the way the charges under these contracts have been made, as they have been applied to the Property, is reasonable and that the services so delivered have been of a reasonable standard and in accordance with the terms of the Lease.

Service charge errors that are accepted

23. Following the issue of this Application, and submission of the Applicants' Statement of Case, the Respondent, in their own Statement of Case, acknowledged that there were a series of errors in the service charges made across all three of the service charge years. It was stated at the hearing that these matters 'had already been corrected' by a credit to the Applicants' service charge accounts. Given that the errors were only discovered and

conceded after the Application was made, it is right that the errors so found should be noted and recorded in the determination of the Tribunal.

24. ***In 2017-18***, it is determined that there was an incorrect charge in relation to estate lighting of £41.86. There were additional arithmetical errors amounting to 3 pence, making a total credit due in the year of £41.89.

25. ***In 2018-19***, it is determined that there was an overcharge of £330 for communal electricity, a duplication in respect of Fire Safety Charges of £413.36 and £38.90 charged in respect of responsive maintenance for the work not already begun, making a total overcharge of £782.26.

26. ***In 2019-20***, it is determined that there was a duplicated charge in respect of cleaning amounting to £49.70, an invoice of £43.49 for electrical maintenance that had been incorrectly allocated, a charge for fire safety that had used an incorrect schedule of rate cost resulting in an overcharge of £369.21 and an incorrect allocation of the costs of tree works undertaken at a different location amounting to £1,507.02, making a total overcharge in the year of £1,969.42.

Disputed service charge in 2016-17

27. Though this Application does not relate to the service charge year 2016-17, the Applicants complain that the Respondents have ignored a clear ruling in the 2018 Determination that related to the charge for servicing the controlled door entry system and charged an amount substantially more than the amount so determined. Thus, in the Appendix to the determination, which sets out the amounts of the recalculated service charges in the light of the ruling, the charge of the year 2016/17 in respect of the controlled door entry system is £29.85. The Respondent ignored this figure and charged the sum of £29.85 to each leaseholder – a total of £268.63.

28. The Respondent has argued that the sum of £29.63 is a mistake and pointed out that while there is no detail elsewhere in the 2018 Determination, it is clear a mistake had been made. It also argued that in any event the Tribunal has no jurisdiction in respect of the amount charged because it is not within the service charge years about which this Application is made.

29. At the hearing, the Tribunal gave its considered view on the issue, namely that the figure in the 2018 Determination was clear; that the Respondent, if it considered it incorrect on receipt of that determination in 2018, could easily have requested an amendment under the 'slip rule' contained in rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allowing correction of clerical mistakes, accidental slips or omissions. Not having done so, the Tribunal's view was that the Respondent was bound by the 2018 determination as it stood.

30. The Respondent accepted that view and indicated that it would abide by the 2018 Determination. It was therefore unnecessary to consider the jurisdictional point though,

if necessary, the Tribunal might have considered whether it was unreasonable in 2017-18 not to correct an error occurring in 2106-17.

Item in dispute in 2017-18 - Cleaning

31. The disputed amount for cleaning in 2017-18 was the first issue considered in evidence. While the amount in dispute is not large (the Respondent supported the service charge in full at £1,467.34 while the Applicants put forward a figure of £1,133.64 as being reasonable) the issue did raise a series of concerns of the Applicants that would be mirrored in their complaints relating to other matters.

32. Those concerns of the Applicants can be summarized as follows.

(1) The *quality of the work* was poor. Reference was made to the Respondent's schedule of expected works with the claim that the cleaners did not adhere to the specifications. It was said that (for example) carpets had not been vacuumed until recently; window cleaning was inconsistent; and bin areas were rarely disinfected.

(2) There was a *lack of clarity* about how the rate of charge for this Property, (with three floors and one communal hall and staircase) was calculated and the way the charge was apportioned by the block codes had never been explained.

(3) There was *no evidence of audits* of the quality of work done.

(4) The *recent improvements*, since the Application had been issued, highlighted the previous poor standards.

(5) There was *no response to complaints* to the contractor (Cleanscapes) by email, which was the way issues were to be raised.

Overall, the case was that while processes and systems looked good on paper, the reality of the service delivered was very different.

33. The Respondent could explain quite clearly how the contracts were procured, how the costs were allocated to a Property with a unique code, how the contractor submitted a global invoice, but a dedicated team could retrieve the invoices from the invoice pack and create a bespoke breakdown. It was conceded that miscoding did occur, and the aim was to improve accuracy. The sampling technique was explained. Ms. Akinwali, the contracts manager, said she was happy with the performance of Cleanscapes and explained that she had terminated contractors in other regions for poor performance. Any failures in relation to this Property would be identified by the local property manager and concerns escalated to her office. What was lacking was any evidence from any property manager responsible for the Property during the three service charge years in question.

34. The Tribunal determines that there is insufficient evidence that the cleaning at the Property was done to such an unreasonable standard to justify a reduction from the charge of £1,467.34, which is supported by the invoices. It is not enough, as explained in paragraph 7 above, simply to say the increase over the previous year is too high. There is (unlike concerns over grounds maintenance, see below) no significant photographic

evidence nor any written or email trail detailing concerns. But it is clear from the oral evidence that the standard of cleaning is right at the bottom end of what is adequate. The Applicants do not get a lot of cleaning, but it is at a cost of not a lot of money. The Tribunal hopes that future monitoring and recording of activity by the residents, and better auditing by the Respondent will secure improvements.

35. It is worth formally recording that one error made by the Respondent (see paragraph 24 above), namely, an incorrect charge in relation to estate lighting of £41.86 in 2017-18 could or should (the Tribunal was told) have been charged to cleaning. However, through Ms Hardman, the Respondent confirmed that it was not seeking to add this sum back in by way of an addition to the cleaning charge for the year.

Item in dispute in 2017-18 –communal electricity bills

36. The Applicants complaint here was straightforward. There had been such significant overcharges in 2016-17, from a failure of the Respondent to submit actual readings, that the 2018 Determination considered that there would be such substantial adjustments that the estimate in the 2017/8 budget was put at £0. But the actual charge is £231.39. The Applicants contended for £0.

37. The witness statement of Nagdir Jagvani, the Respondent's Energy Officer, was that invoices totaling £696.15 had been received and paid. The Statement of Case indicated that notwithstanding the total costs, only £231.39 was charged. The Tribunal was not told how this sum was calculated except that it accurately reflected the expectation in 2018 that the amounts would be substantially reduced.

38. Given that the Applicants did receive a substantial reduction in this service charge year, and in the absence of any other submissions or evidence to the contrary, the Tribunal determines that the charge of £231.39 is reasonable.

Item in dispute in 2017-18 –electrical maintenance

39. The amount in dispute is £952.53 (after an arithmetical adjustment of 1p). The Applicants suggested the correct sum should be £53.87. The only basis for the challenge of the Applicants was the amount of increase when compared to the amounts determined for 2017/18 and the Applicants put forward the estimate provided for in the 2018 Determination.

40. The Tribunal is satisfied from the evidence, witness statement of Mr. James Worrell, and from the invoices, that the sum of £952.05 was properly and reasonably incurred after due procurement. The amount is significantly increased because this was the year of the required five-yearly electrical inspection which cost £680.33. This is another example of a situation where the Applicants were not told in advance of why inspection this was necessary nor given the explanation of what the cost involved.

Item in dispute in 2017-18 - Fire safety

41. The amount charged is £2,187.06; the Applicants put forward the sum of £250. This latter sum was the amount allowed in 2018 Determination as an estimate. The Applicants additionally questioned the details that had been put forward, not knowing (for example) what an Automatic Vent Opening Test was, why so much was charged for testing emergency lights, and why they had been denied an invoice pack to assist in understanding of the charges.

42. The Respondent's evidence on fire safety was contained in the witness statement and oral evidence of Mr. Rory Alexander, the Fire and Safety Contract manager. His evidence explained how the contract apportions payment for each scheme according to the assets on site multiplied by the servicing frequency. The Applicants concerns were explained; the opening vent is designed only to open in a fire to release smoke and needs to be tested; the regular visits are statutorily required to test emergency lighting and fire detection; and the 'reactive' charge for visits included those arising off the back of a service. In response to questions from the Tribunal, Mr. Alexander defended the number of such visits explaining that lights and batteries did need replacing frequently and the contractor was moving to fix LED lamps with a longer life.

43. Though the Tribunal was concerned about the level of costs for reactive works for a development of the size of this Property, there is no doubt about the importance of fire safety and there was no evidence that any of the sums had been improperly charged. The Tribunal therefore finds the charges for fire safety are reasonable.

Item in dispute in 2017-18 – responsive maintenance

44. The Amount in dispute is £682.21. The Applicants' challenge was based on the increase in cost over the previous year and the failure to provide an invoice pack to be able to determine to what work the sum related. There was a particular complaint about a 'superglued' carpet which had caused a trip.

45. The witness statement and oral evidence of Mr. Mayne, the manager overseeing responsive maintenance, provided the evidence for Respondent's position. The Tribunal has some sympathy for the Applicants here. The description of the work by the Respondent is to use the word 'exclusion' – meaning the work (here on a leaseholder property) is not covered by a rate code. Work is described as an INVREC, short for invoice reconciliation. There is a minimum charge of £30 (£25 plus VAT) for all work undertaken. It seems none of this is explained to leaseholders. Invoices were produced to the Tribunal for work amounting to £682.21 and the photographs of the work done taken by the contractors. The work to a cracked drain was explained, not as a duplication of work, but a CCTV survey following the first inspection. It was submitted that a gluing of a fraying carpet as a temporary solution was a reasonable response.

46. The Tribunal comments that it is a pity that the effort of the Respondent to explain the position to the Tribunal was not matched by a similar effort to explain to the leaseholders prior to the Application. A refusal to supply an invoice pack may have been legal but was perhaps not sensible leading, as it did, to a long explanation in a hearing.

Nevertheless, the Tribunal finds the amount charged for responsive maintenance was properly incurred and is a reasonable sum.

Item in dispute in 2017-18 – buildings insurance

47. The amount in dispute is £1,206.90. The amount is challenged because of the increase above the estimate in the 2018 Determination of £980.55 and on the basis that no information had been supplied as to how the premium payable by the Applicants for the insurance of Old School Place had been calculated.

48. A full explanation of the way the block policy for the whole of the Respondent's housing stock was procured and the method for apportioning the premium to each Property was set out in witness statements and confirmed in oral evidence. That evidence was not specifically challenged, and the Tribunal accepts that the evidence of the Respondent demonstrates that the method of allocation of the premium, from a properly procured block policy, to the Property is reasonable.

49. The Applicants did not produce any comparative evidence to show what might be offered to them as insurance for the Property in the general market if they were managing the Property themselves. In the absence of such evidence, the Tribunal determines that the charge relating to insurance was reasonably incurred.

Item in dispute in 2018-19 - cleaning

50. The basis for the Applicant's objection was the same as for 2017/18, namely, that the costs had risen by more than inflation from 2016/17 (but the Tribunal notes that they were lower than in 2017/18) and that the standard of work was poor. Mr. Sloan said he had emailed Cleanscape, the contractor, with his concerns (but could not produce them) and had spoken orally with the then property manager. (On the following day, some evidence was produced about complaints about cleaning made by one of the Applicants, Mr. Paul Dadson).

51. The Tribunal has already made the point about increases year-on-year being only contextual (see paragraph 17) and therefore it is not a basis for unreasonableness when the charges for the work done is invoiced and properly procured.

52. As to the standard of work, Emma Oliver, for the Respondent, referred the Tribunal to the fact that there were regular cleaning audits. If the standard of cleaning were sub-standard, the cleaning would have been failed and there would have been a return to redo the work. There was no record that this had happened. Ms. Oliver accepted that the cleaner now signed in when working but historically this had not happened.

53. The problem for the Tribunal is, again, the lack of clear confirmatory evidence by way of photographs or written records. There is nothing to confirm the allegations of inadequate cleaning, and on the other hand no record of the results from audits or even if they were done. The Tribunal concludes again that there is insufficient evidence that

the cleaning at the Property was done to such an unreasonable standard to justify a reduction from the charge of £1,451.28.

Item in dispute in 2018-19 – fire safety

54. The original charge had been £2,031.29 for fire safety in this service charge year but had been reduced to £1,617.93 after deduction of £413.36 because a charge had been duplicated – see paragraph 25 above. The Applicants contended, again based on the amount determined in the 2018 Determination in respect of 2016-17, namely £250, that the charge should only rise by inflation and suggested a charge of £252.50.

55. For the reasons set out in paragraph 42 above, the Tribunal is satisfied that the frequency of testing is in accordance with best practice and the work done is evidenced by invoices. Though the Tribunal is again concerned about the level of costs for reactive works for a development of the size of this Property, there is no doubt about the importance of fire safety and there was no evidence that any of the revised sums had been improperly charged. The Tribunal therefore finds the charges of £1,617.93 for fire safety are reasonable; but notes that a significant erroneous charge that had been duplicated only came to light after the Application was made.

Item in dispute in 2018-19 - responsive maintenance

56. The original charge for responsive maintenance of £451.65 was adjusted to £412.75 after reduction of an erroneous charge of £38.90 (see paragraph 25 above) where work had been cancelled but still charged. The Applicants proposed paying nothing. They were dissatisfied for the work they did know about (to the bin store doors) and objected to a series of smaller charges on the basis they were not understood and because many had an extra charge to meet a 'minimum threshold value'.

57. The Respondent produced evidence and invoices, supported by the witness statement of Mr. Mayne, for all the work completed relating to various items including front door closing, lock repairs and lights not working. The minimum charge under the contract is £30 per visit hence the 'minimum threshold value' references. The repair work to the doors was completed and explained.

58. The Tribunal repeats its earlier comment that it is a pity that the effort of the Respondent to explain the position to the Tribunal was not matched by a similar effort to explain to the leaseholders prior to the Application. Nevertheless, the Tribunal finds the amount charged for responsive maintenance was properly incurred and is a reasonable sum.

Item in dispute in 2018-19 - Communal Electricity

59. The original communal electricity charge of £1,203.04 was disputed by the Applicants pointing out that the higher charges were apparently supported in the invoice pack where two (out of three) invoices related to two quite separate properties. In their Statement of Case, the Respondents acknowledged an overcharge of £330 (see

paragraph 25 above) and an undercharge after the failure of the then supplier to invoice (with both parties therefore benefiting). The Applicants did not then dispute the revised charge of £903.04.

60. But at the hearing, Mr. Nadir Jagvani candidly admitted that he was still not satisfied with the accuracy of the amounts charged as he would expect greater consistency. He undertook to do further work. The Tribunal comments that it hopes this further work, and the possible installation of more modern meters, might produce the consistency that is to be expected and that the Applicants deserve.

Item in dispute in 2019-20 – cleaning

61. The amount is dispute was originally £1,336.09 but was reduced by £49.70 to £1,286.39 when the Respondent identified an error with a duplicate invoice charged – see paragraph 26 above. Apart from that, the Applicants' concerns mirrored the complaints made in respect of previous years – the above inflation rate of cost increase over 2016-17, the lack of knowledge about any aspect of the cleaning contract and the fact that invoices supplied were not specific to the Property.

62. The Respondent having supplied full details of how the costs were made up in the witness statement of Ms Akinwale, with over £1,100 being the annual cost of the contracted cleaning and about £70 for window cleaning for the year, the Tribunal finds that the charges made of £1.286.39 are reasonable. For the reasons already given, the Tribunal further determines that there is insufficient evidence to show that the works were done to an unreasonable standard, see paragraph 34 above.

Item in dispute in 2019-20 – controlled door entry

63. The complaint for the Applicants about the cost of the charge for controlled door entry £502.79) was not only the amount of the increase since 2016-17 but the fact the amount nearly doubled from the previous year. They further complained that all the invoices supplied were generic for a nationwide suite of properties and there was no indication of how the sums had been apportioned to the Property.

64. While the Respondent acknowledged the 99% increase year on year, it submitted that the works undertaken are ad hoc works. The witness statement of Rory Alexander revealed that there were three charges invoiced by the contractor, Alphatrack Systems Limited, all for dealing with handset issues at flats within Old School Place. This means that the charges can be supported as reasonable, but the Respondent might not have needed to deal with these issues in a Tribunal hearing if the same information had been supplied earlier to the Applicants.

Item in dispute in 2019-20 – fire safety

65. Perhaps unsurprisingly, the Applicants challenged the sum of £3,692.20 in this service charge year for fire safety. The theme of the complaint was again on the high cost supported only be generic national invoices including one labelled 'Frankham RMS'

with an apportioned charge of £127.45 out of a total of £27,384. Naturally, the Applicants challenged the Respondents to justify these costs.

66. In preparing the Respondent's Statement of Case, yet another error was identified, this time an incorrect Schedule of Rate being applied that resulted in a sum of £478.05 being charged for monthly lighting instead of £108.84, and over charge of £369.21 – see paragraph 26 above). This is just the sort of error that should have been glaringly obvious in an audit but was only picked up because the Applicants brought these proceedings. Without identification, it would mean an unjustified over payment of £41 from each leaseholder.

67. The remaining charges were justified in the witness statement of Rory Alexander. The sum of £1,893.28 was for the monthly testing required by regulations and £1,193.39 for reactive works. Within that list, ten lamps were renewed at different times with renewal of batteries and other work featuring regularly. The Tribunal expressed its concern at so many visits being charged during the year and inquired if the charges might have been reduced by the necessary work being done in fewer visits at a therefore more efficient charge. Mr. Alexander explained that items fail at different rates and different pieces of equipment are required. He also explained that the current regulations require the work that has been done regardless of the size of a property or the number of flats involved. Notwithstanding its concerns, the Tribunal did not have the expertise to question these assertions; and the contract, like all that Hyde have in place, was properly procured. The Tribunal also recognizes the critical importance of fire safety to residents. In the absence of any evidence to the contrary, such as a quotation for the supply of fire safety services to the premises with charging rates that might indicate that these charges were excessive, the Tribunal determines the charges are reasonable.

Item in dispute in 2019-20 - ground maintenance

68. The Appellants challenge the service charge for ground maintenance only for the year 2019-20. The total amount charged in that year under this head was £6,352.15. However, in preparing their statement of case, the Respondent identified that the costs allocated for tree removal works were, as the Applicants had contended, for tree removal for a different nearby property. The sum of £1,507.02 was therefore conceded by the Respondent to be incorrect (see paragraph 26). Consequently, the disputed sum at the hearing was reduced to £5,352.13.

69. The bulk of the remaining total, namely £3,315, is made up of the monthly charge for ground maintenance works of £276.68 for 11 months and £271.52 for April 2019. The balance of £2,037.13 was for specified ground and tree works at the Property, supported by an invoice (Exhibit AA12) for such works.

70. In respect of the works covered by Exhibit AA12, the Applicants challenged the amount on the basis that they were unclear what works had been done and considered the cost exorbitant. However, the Respondent explained in oral evidence that the invoice did relate to tree works done in the financial year and the Applicants did not then

contend that the works had not been done nor did they provide evidence that the costs were unreasonable. In their Statement of Case, the Applicants contended that the cost of these tree works should have been paid for out of the reserve fund but did not pursue that contention at the hearing. The Tribunal comments that, though it is clear law that a Tribunal has no jurisdiction to question payments out of a reserve fund, it does have jurisdiction to consider the reasonableness of service charges. Therefore, when a cost is charged to a service charge for works, it might be unreasonable if in all the circumstances, there is clear evidence that the cost should be met from a reserve fund. But there is no sufficient evidence of that being the case here.

71. In respect of the monthly charge for maintenance, the Applicants disputed the charge contending it was unreasonable as the work completed had not been done to a reasonable standard within section 19(1)(b) of the Act. In support of that contention, in oral evidence and by reference to the photo bundle supplied, the Applicants relied on the following factors:

(1) The 2018 Tribunal decision referred to the very poor service of grounds maintenance at that time with evidence of poor landscaping, evidence that the Respondent could not rebut. The poor service had not improved.
(2) The Respondent sought to justify the level of service by stating that the contract was for 'grounds maintenance' and was not a gardening service. This conflicted with the Respondent's own Cleaning and Grounds Service Specification posted in the Property which required (inter alia) weeding, turning and hoeing flower beds, and pruning shrubs as well as clearing litter and sweeping leaves.
(3) Major issues identified in 2018 Tribunal decision had not been rectified at all, or inadequately. The potentially dangerous cracked pillar on the front boundary had not been repaired and other matters, such as the lifting of pavement due to tree root damaged had only been tackled in an inadequate way after this Application had been issued- so that the broken paving slabs had been replaced but the ground had not been levelled. Similarly, two metal poles in one of the borders had been complained about but no action taken until very recently.
(4) Mr. Sloan gave evidence that he had witnessed the contractor turning up and blowing leaves but nothing more. He contended that there was a disconnect between the published specification and what was being delivered. There had been what he described as 'historic negligence' with none of the service specifications being delivered with any consistency.
(5) Mr. Sloan was able to produce a copy of two emails, dated 8 August 2018 and 24 February 2020, in which he complained about the state of the ground maintenance.
(6) The photo evidence supplied supported the oral evidence given. The Tribunal could see a border consisting of rubble, with exposed pipework, there was no evidence of weeding, and the broken paving slabs and the cracked brick pillar were shown.

72. The Respondent's response was primarily contained within the witness statements and evidence from Ayo Akinwale, the Estates Services Contracts Manager and Emma Oliver, the Property Manager with overall responsibility for the Property. Ms Oliver, though employed by the Respondent since 2018, has only had responsibility for the

Property since March 2020. Ms Akinwale oversees the day-to-day performance of the ground maintenance works contracted across the portfolio of the Respondent's properties but conceded she had never visited this Property.

73. Ms Akinwale's oral evidence contended that the specification was being delivered and the contractors provided a good service 'on the whole' though she conceded that there was 'room for improvement'. She referred to monitoring meetings with the contractors. She contended that an Estate Manger would visit regularly. However, Ms Akinwale had never visited the Property (and, probably, her role with the Respondent did not require her to do so).

74. Ms Oliver was able to give the Tribunal evidence about her work since March 2020 and the Tribunal gained the impression that since taking over responsibility for the Property, she was attempting to address the issues raised, visit the Property more frequently, and engage with the residents. But, of course, she was not able to deal with the service charge year in question. What was singularly lacking was evidence for any of the service charge years before the Tribunal – except the Tribunal was told that in 2018-19 the Grounds Maintenance charge levied on the Property had, in error, been calculated at too low an amount and not fully charged which was the explanation as to why the 2019-20 figures had increased so substantially.

75. What was absent in the voluminous bundle of evidence was any assistance to the Tribunal to show how the Estate Manager during the years in question visited the property or dealt with issues. The only document produced on the second day of the hearing was an Estate/Block Inspection Form that merely listed items inspected with the comment 'no' to whether there should be follow up (except it was noted trees were overgrown). It offered no real assistance.

76. The Tribunal was surprised at, and not impressed by, the Respondent's argument that leaseholders could not expect gardening from a service charge item headed as 'grounds maintenance'. Firstly, the wording used in a service charge account does not of itself define or limit the scope of an item. Secondly, as the Applicants contended, the Respondent's own Cleaning and Grounds Service Specification posted in the Property (and contained in the hearing bundle) required various obviously gardening matters, including weeding, turning and hoeing flower beds, cutting and collecting grass and shaping and pruning shrubs, as well as clearing litter and sweeping leaves. Finally, and more importantly and significantly, the Lease provides, in clause 5(d)(v), for a landlord's covenant to 'sow and cut grass plant prune and generally care for all plants trees and shrubs and other matters in accordance with the requirements of the planning permission'. While neither party referred to that planning permission, it is clear to the Tribunal that the Lease requires a gardening service in accordance with that covenant. While it could be argued that the distinction between a 'grounds maintenance service' and a 'gardening service' might be a fine one, the Respondent's insistence that their duties are limited does not accord with what the Lease requires.

77. The Tribunal therefore concludes that the Applicants have demonstrated that the ground maintenance works in 2019-20 were not undertaken to a reasonable standard. It

therefore disallows 50% of the annual fees total of £3,315 in that year, namely £1,657.50 which the Tribunal considers is a reasonable discount to reflect the poor standard of work. The total amount allowed in 2019-20 under the heading 'grounds maintenance' is therefore £3,694.63, being £2,037.13 covered by the invoice at Exhibit AA12 and £1657.50 for annual maintenance.

Item in dispute in 2019-20 – responsive maintenance

78. The final challenge of the Applicants is to the £1,622.73 for responsive maintenance. The principal concern was the necessity, price and quality of work undertaken to guttering on both the Property and the cycle store and the high cost of replacing a simple padlock. The increase in overall costs compared to previous years was also highlighted.

79. The Respondent relied on the evidence that the work had been undertaken under a properly procured contract. The witness statement of Mr. Mayne exhibited the relevant invoices supported by photographs. On the second day of the hearing, Mr. Mayne conceded that the charge of £106.19 for the bin shed lock pad was too high, and that the correct charge should be £76.19, and so reducing the overall charge for the year by £30 to £1,592.73. In cross examination, the Applicants questioned how replacement of two light bulbs could amount to £48.78. The response was that the agreed sum for such work was £20 per light fitting and the work was more than just changing a bulb. When challenged that the cost of the guttering work was too high, the response was that such jobs are priced against the order in accordance with the contract. It was said that the Respondent was 'tied by the contract' which was obtained after competitive tendering.

80. While the Tribunal is uneasy about the level of charges, especially the charge of £802.56 for the guttering work to the bin shed, those costs are fully supported by the evidence. The complaint about the standard of work is not evidenced by written complaints at the time, nor by photographs. The Tribunal therefore determines that the charges are reasonable.

Management fees – all three years

81. The Respondent includes in its annual service charge a 15% management fee to cover the general costs of management and the Tribunal accepts from its knowledge and experience that a 15% level of management fee is a reasonable one for a management service that is good, or at least for one that is adequately reasonable. The Respondent pointed the Tribunal to para 1.22 of the Applicants' Reply to the Respondents' Statement of Case, where they said that '…the Applicants do not object to a 15% Management Fee providing the charges on which these fees are based are reasonable.' Questioned by the Tribunal, the Applicants said that their acceptance of a 15% fee was however on the basis that a reasonable quality of management would be provided, which they did not believe to be the case.

82. In the 2018 Tribunal decision, it was determined that the Respondent had not given a service that had been good and reduced the management fee to 10% of the actual costs

incurred and determined as reasonable by that Tribunal. In the light of the matters outlined above, the question is whether the service provided for the three service charge years 2017-18, 2018-19 and 2019-20 was good enough to justify the management fee of 15%.

83. The Applicants submitted that the proper level of management charge should be only 5%. They submitted that the failures identified in the 2018 Tribunal decision remained. Where there was need for proper repairs, the response was not to address the problem properly, but to do what was described as a 'sticking plaster' solution. Many matters had not been addressed including common parts redecoration, repairs to the plinth and pathways and installation of individual water meters. Good management would mean far fewer errors being identified. The Respondents systems and block codes did not give the Applicants confidence that they know what they were being charged for.

84. The Respondent contended that the evidence showed that the works had been done at a reasonable price and to a reasonable standard. The property was not in a terrible state and internal decoration was passable with redecoration scheduled for later in 2021. It denied the claim of historic neglect noting the limited evidence of the complaints said to have been made.

85. The Tribunal do not consider that the Respondent has demonstrated good management for the years in question for the following reasons:

(1) The level and number of errors identified by the Respondent itself after this Application was made are far higher than should be tolerated in a good or reasonable management system. Ignoring the two errors that were matters of an odd penny or two, there was one item of overcharge in 2017-18, three in 2018/19 and four in 2019-20 (and one more added at the hearing), a total of £2,793.57 overcharged. The Applicants' complaint about the incorrect charge for tree removal of £1,507.02 was not acknowledged and corrected until these proceedings were underway. Moreover, the Respondent acknowledged additional errors which were in favour of the Applicants during these three years. While they very properly indicated that they would not now seek to charge these matters, it does add to the impression of a management system for allocating and checking the correctness of charges made that is not fit for purpose.

(2) There is little or no evidence in the years in dispute of any medium, or long term, plan for maintenance, repair or redecoration of the Property. Proper management should include this, especially where there is a properly constituted reserve fund for major works, so that residents have the assurance that their service charge contributions to the reserve fund are to be properly used in due course.

(3) In the voluminous documentation provided by the Respondent there was a glaring gap. It is clear to the Tribunal that for a Respondent with so many properties the vital link between residents and the central management teams is the Property Manager assigned to each property or block. While Emma Oliver gave evidence for her role from March 2020 in relation to the Property, there was no evidence about the actions of her predecessors and Ms Oliver confirmed that there had been no 'handover' when she took over the Property. Moreover, the

evidence of the efforts by Ms Oliver to remedy the shortcomings since she took over rather emphases the lack of evidence relating to local management for the service charge years in question when there was so little response to obvious concerns.

(4) The Tribunal does not consider that the evidence demonstrates that the Applicants received good communication from the Respondent about how their services were charged out from the centralised contracts to enable them to understand how the budgets for each year were calculated or how service charges for items were justified. The Tribunal was referred by Mr. Lawrence to page 172 of the bundle and Annual Service Charge Estimate for the Property. But this does not clarify the hourly or other rates applicable under the various contracts, but only the total estimated cost for each head of charge and the individual allocation of the total to each flat. If clearer and more accurate information had been given, it might well have enabled some, or even most, of the issues raised by the Applicants to be answered satisfactorily without the necessity of proceedings.

86. The Applicants provided to the Tribunal a document entitled 'Hydewide Residents Eve Inspection Update' which opens thus: *'The aim of the inspection was to explore dissatisfaction in Hyde's Service Charges service – and to explore ways for the service to work more effectively so that resident satisfaction could be improved.'* This document, addressing all the Respondent's properties was not challenged by the Respondent – indeed the document emanated from them. The Tribunal does not consider that it should in any way rely on that documentation save to note that the issues raised by the Applicants in this case are clearly not unique and mirror the exact concerns raised in that document. While it is clear to the Tribunal that the Respondent is taking these concerns seriously across all its properties and seeking to improve and address those concerns, this does not excuse the poor management the Tribunal has identified relating to this Property between 2017 and 2020.

87. The Tribunal did consider whether the percentage of management fee for these three years should be reduced to 5%, as the Applicants contend, on the basis that it is a 'repeat offence' after a reduction to 10% in the 2018 decision. However, as there is some evidence of management improvement since 2018, the Tribunal determines that the management fee for each of the three years 2017-18, 2018-19 and 2019-20 should be reduced to 10% instead of 15% for the reasons set out above.

88. In paragraph 20 above, the Tribunal made a comment for the Applicants' benefit about the better way to view the charges made in any service charge year. In the same way, for the benefit of the Respondent, the Tribunal comments that if the Applicants received clearer information then they would be in a much better position to understand how their service charges are calculated. Their understandable concerns about how their block charges related to the area wide contracts might be assuaged if a clear year-to-come budget was supplied setting out how the regular charges for cleaning, fire inspection visits, and so forth are calculated for their Property; giving the rate of charge for unscheduled but necessary visits (including what the minimum charge will be); and what one-off charges (such as a five-year inspection) is due for that year. Similarly, the Respondent may have a system that is efficient for it as an organization (such as single

invoicing) but needs to ensure as well that it efficiently supplies information to its leaseholders about works that have been done and so demonstrate good management. Above all, it needs to build trust that its systems do not contain mistakes that only come to light when a Tribunal case is brought. The Tribunal trusts that the new procedures mentioned in evidence by Mr. Scott Lawrence to increase checks on coding and reduce errors achieve the improvement needed.

Application under section 20C of the Act

89. The Application included a further application under section 20C of the Landlord and Tenant Act 1985 for an order that the costs incurred by the Respondent in connection with these proceedings are not to be included in the amount of any service charge payable by any of the Applicants, being the persons on whose behalf the Application is made.

The Respondent initially opposed the making of such an order. However, at the hearing, the Respondent indicated that it would no longer oppose the making of such an order. Given the number of errors that came to light after the Application was made, the Tribunal considers that this concession was properly made.

90. The Tribunal therefore determines that an order should be made in favour of the Applicants under section 20C in respect of all the costs incurred by the Respondent in connection with these proceedings. Such costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants, being the persons on whose behalf this application is made.

91. The reasons for this order are as follows:

(1) The number of errors which came to light in the service charges imposed after the Application was made were substantial.
(2) The Applicants have succeeded on some of the other grounds set out in their Application.
(3) The Respondent does not oppose the order.

Application under the 2002 Act, Schedule 11, paragraph 5A

92. The Application also included an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This is an application for an order by the Tribunal to reduce or extinguish a tenant's liability to pay an administration charge in respect of litigation costs. An order under this section was not opposed by the Respondent and the Tribunal makes the order requested.

Closing remarks

93. The Tribunal wishes to express its appreciation for the very high quality of the bundles of documents produced by the parties.

94. The Tribunal hopes that the detailed discussion within this determination, and the guidance it gives, can be the basis of a more constructive relationship between the parties in the future.

Right 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 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 that the party who is making the application for permission to appeal is seeking.