FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CX/LAC/2018/0016** **MAN/00CX/LSC/2018/0060**
Property	**:**	**Various at Gatehaus Block, Leeds Road Bradford BD1 5BQ**
Applicant	**:**	**Ms. Majida Sabir**
Representative	**:**	**In person**
First Respondent	**:**	**Yorkshire Ground Rent Ltd**
Second Respondent	**:**	**OPW Ground Rents Ltd**
Representative	**:**	**Brethertons Solicitors**
Type of Applications	**:**	**Application for determination as to liability to pay an administration charge: Schedule 11 Paragraph 5 of the Commonhold and Leasehold Reform Act 2002** **Application for determination of liability to pay and reasonableness of service charges : s27A Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge John Murray** **Aisling Ramshaw FRICS**
Date of Determination	**:**	**8 November 2021**
Date of Decision	**:**	**3 December 2021**

DETERMINATION

Determination

The Tribunal determines that

A. the service charges for the years under review within these proceedings being 2014, 2017, 2018 and 2019 are reasonable and dismisses the application

B. the administration charges for the years under review have been the subject of determination in the County Court and consequently the Tribunal has no jurisdiction to consider them.

BACKGROUND

1. The applicant issued two applications on the 22nd December 2018 in relation to six apartments and car parking spaces at the Gatehaus, Leeds Road Bradford, BD1 5BQ

   (a) 134: 2 bed flat, 1 car park space

   (b) 154: 2 bed flat, 1 car park space

   (c) 180: 3 bed flat, 1 car park space

   (d) 201: 3 bed flat 1 car park space

   (e) 202: 1 bed flat 1 car park space

   (f) 327: 2 bed flat 2 car park space

2. MAN/00CX/LAC/2018/0016: an application for an order pursuant to Schedule 11 Paragraph 5 of the Commonhold and Leasehold Reform Act 2002 as to the liability to pay administration charges.

3. MAN/00CX/LSC/2018/0060: an application for an order pursuant to s27A Landlord and Tenant Act 1985 for a determination as to the liability to pay and reasonableness of service charges.

4. MAN/00CX/LAC/2018/0016: Administration Charges: The applicant stated that the managing agent had been applying administration charges of varying amounts, including late payment of service charges, administration costs etc. The applicant states that even when service charge payments had been made by direct debit, administration charges were added on due to mismanagement and unclear costs. The applicant states that there is no mention in the lease of administration costs or administration fees and seeks a refund of charges paid. The application did not identify the administration fees she wishes to challenge.

5. MAN/00CX/LSC/2018/0060: Service Charges: The Applicant sought an order for the past service charge years 2012, 2013, 2014, 2015, 2016, and 2017, and for the current or future service charge years 2018, 2019, 2020, 2021, 2022 and 2023.

6. The First Respondent was responsible for service charges until 3 and 6 of July 2018; thereafter the Second Respondent was responsible.

DIRECTIONS HEARINGS

7. An initial directions hearing was held on the 15 June 2019.

8. The First Respondent was directed to produce a spreadsheet of all those service charges and administration charges which have been the subject of earlier determination by the Court. Whilst a spreadsheet of service charges was produced, no spreadsheet of administration charges was produced.

9. The Applicant was directed to produce a statement of case specifying in respect of each year concerned, the total service charges and the total administration charges the Applicant objects to and to notify the Tribunal in writing if she wished to apply for an order under s20C Landlord and Tenant Act 1985 in relation to the service charge case, as she has applied for an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

10. The matter was listed for further directions on 19 October 2019 to consider the parties representations in respect of the Tribunal's jurisdiction and what service charges and administration charges fell to be determined by the Tribunal.

11. On 19 October 2019 the Tribunal determined that service charges for the service charge years 2014, 2017, 2018 and 2019 might be reviewed within these proceedings, other years having been the subject of earlier determinations. The Applicant agreed that future years could not be the subject of determination, no charges having been at that point raised. The Tribunal would consider the payability of administration charges for all years under review.

12. The parties were ordered to produce documentation and statements; the Applicant was ordered to send a schedule setting out the service charges and administration charges she objected to, her reason for objecting to them, and what, if anything she was prepared to offer to pay for the charges, together with a supplementary witness statement in support. The Respondent was to reply and file witness statement to the Applicant's statement within 21 days if so desired and respond on the Scott Schedule.

13. The Applicant failed to file supplemental statement and at the request of the Respondent an order was made by the Tribunal barring the Applicant from submitting further witness evidence on 6 February 2020 as she had failed to do so in accordance with the directions.

14. The case was to be listed for Hearing and a site inspection. Owing to the Global Pandemic the Hearing was not listed until more than two years after the second directions hearing. No site inspection was arranged. The hearing was arranged (with the consent of the parties) to be conducted by Video Hearing.

15. The Applicant Ms. Majida Sabir appeared in person, but was assisted by Mr. Nick Peterken, legal representative. The Respondents were represented by Ms. Rebecca Ackerley of Counsel; Mr. Tom Dugdale of managing agents Rendall and Rittner appeared as a witness.

THE LEASES

16. The Applicant is the leasehold owner and/or joint leasehold owner of Apartments 134, 154, 180, 201 202 and 327,together with parking spaces 16,32,37,39,76, 98 and 99 all held on long leases of various dates from late 2007/early 2008 and originally made between Gate Haus Limited, Asquith Properties Limited and the Applicant with Wajida Shabir, and in some instances Mohammed Sabir and Arifa Shaheen, and some instances Roy Boardman.

17. The evidence of the Respondent (via Mr. Dugdale of managing agent Rendall and Rittner) was that the pertinent clauses of the leases were identical and were as follows:

18. By way of Clause 3.1 the Applicant covenanted to pay the service charge; Clause 3.1 "*The Tenant covenants with the Landlord*;

    3.1.1 to pay the Rent reserved by Clause 2 of this lease…

    3.1.2 to pay the Service Charge to the Landlord as additional rent…

    3.1.3 to pay the Landlord as additional Rent and within 14 days of written demand…a fair reasonable and proper proportion attributable to the premises of the costs incurred by the Landlord in insuring the Development and providing insurance cover against the other risks referred to in Clause 5 of this lease.

    3.1.4 to make all payments referred to in this sub-clause and all other payments due to the Landlord under this Lease without any deduction (except as required by law) or counterclaim and without exercising any right of legal or equitable set off"

19. Service Charge is defined within the Apartment leases as "*the monies payable by the Tenant for the provisions of services in accordance with Schedule 4*".

20. Schedule 4 sets out the Service Charge provisions. Parts B, C and D of Schedule 4 detail the services to be provided by the Respondent and to be paid by the Applicant.

21. Part A of Schedule 4 sets out how the service charge is to be paid by the Applicant, in particular;

22. Paragraph 3.1 "*The Tenant shall pay a provisional sum in respect of the Tenant's proportion for each Account Year to be determined by the Landlord…by equal instalments in advance…And…*

    3.1.2 if it [the Tenant's Proportion] exceeds the provisional sum paid by the Tenant the excess shall be paid to the Landlord within 7 days of written demand…

    3.2.2 when the Tenant's Proportion for each Account Year is fixed, if it is less than the provisional sum paid by the Tenant the overpayment shall be credited to the Tenant's account for the then current Account Year or if the Term has come to an end shall be repaid to the Tenant.

3.4 the Landlord may vary the Tenant's Proportion…"

23. the Applicant, pursuant to Paragraph 4.5 of Schedule 4 is to also contribute towards a serve fund.

24. The Service Charge dates are defined as "*1st January, 1st April, 1 July and 1st October…*"

25. The Tenant's Proportion is defined as "*Tenant's Part 'B' Proportion means 3.6% (Building Common Parts Costs)*".

26. The Applicant's proportion in respect of Part 'B' is different with each lease. A breakdown of the relevant percentages can be found at page 2 of the undated document titled 'Summary of pertinent terms in the lease together with service charge percentage'. For completeness I have set them out again below:

	Apartment 134	Apartment 135	Apartment 180	Apartment 201	Apartment 202	Apartment 327
Part "B" Proportion	1.62%	1.62%	2.71%	3.37%	2.56%	3.63%
Part "C" Proportion	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%

27. The Insurance Premier is defined as "*the proportion of the insurance premium attributable to the Premises payable by the Landlord pursuant to clause 5 of the lease*".

28. By way of Clause 4.2, subject the Applicant paying the Service Charge the Respondent shall:

"4.2.1 keep the Building Common Parts and the Platform Common Parts adequately cleaned, repaired, decorated, maintained and (where necessary) replaced and renewed;

4.2.2 provide any of the other services set out in Schedule 4 that the Landlord reasonably considers necessary or appropriate at any time…"

29. By way of Clauses 3.14 and 3.16 the Applicant covenanted to pay administration fees:

30. Clause 3.14 "*To be responsible for and to indemnify, the Landlord against:*

3.14.1 all actions, claims, proceedings, costs, expenses and demands made against or incurred by the Landlord as a result of:

(a) any act, omission or negligence by the Tenant or any other occupier of the Premises or anyone at the Premises with the express or implied authority of any of them; or

(b) any failure to comply with its obligations under this Lease;…"

31. Clause 3.16 "*To pay the Landlord on demand on a full indemnity basis all costs, charges and expenses (including solicitor's surveyors", bailiffs, and*

other professionals fees) Incurred by it for the purposes of, incidental to or in the reasonable contemplation of:

3.16.1 the preparation of service of a notice under Section 146 and 147 of that Act even if forfeiture is avoided unless a competent court order otherwise;…

3.16.4 the enforcement or remedying of any breach of the Tenant's obligations under this Lease whether or not court proceedings are involved;…

3.16.6 the recovery of any monies due under this Lease

Together in each case (but not in the case of 3.16.3 and 3.16.5) interest at the Interest Rate from the date of expenditure by the Landlord to the date of repayment"

32. Mr. Dugdale confirmed that he had read all the car parking space leases and found them also identical in terms of the pertinent terms which he set out as follows:

33. By way of Clause 2.1 "*The Tenant hereby covenants with the Landlord that the Tenant will at all times during the said Term perform and observe the covenants provisions and stipulations set out in the Forth Schedule and observe the Regulations set out in the Fifth Schedule*".

34. by way of the Forth Schedule, paragraph 1 "*The Tenant covenanted to pay the Rent and the Service Charge on the 1st day of January in every year…*"

35. The Service Charge is defined as *"(subject always to the provisions of paragraph 9 of the Forth Schedule) the sum of £125,000 per annum and any increases in the Service Charge Review Provisions together with VAT as chargeable payable in consideration for the provision of the Services*".

36. The Service Charge Review Provisions are defined as "*the provisions for the review of the Service Charge in the Seventh Schedule*" [Seventh Schedule, paragraph 1.4 the Rent Review is every fifth anniversary, the first being 1st January 2012].

37. Paragraph 9 of the Forth Schedule allows the Respondents to demand at any time during the service charge year any further costs incurred to meet the costs of the services provided by the Respondents under clause 4 and 5 of the leases and for the Applicant to pay this within 28 days of receipt of the demand.

38. The Services are defined "*the services and items of expenditure set out in Clause 4 and the provisions of the insurance cover referred to in Clause 5*". The Respondent's obligations to carry out services listed within clause 4 are subject to the Applicant paying the service charge, as per clause 4.1.

39. By way of Clause 2.2 and the Forth Schedule, paragraph 3, the Applicant covenanted to pay administration fees:

40. Clause 2.2 "*The Tenant (with the object of affording to the Landlord a full and sufficient indemnity…) hereby covenants with the Landlord that the Tenant…will at all times hereafter duly observe and perform fulfil and keep the Subjections so far as aforesaid and will indemnity and keep indemnified the Landlord…from and against all actions cost claims demands and liability in respect of any future breach non-observance or non-performance of the same or any of them as far as aforesaid*"

41. The Fourth Schedule, paragraph 3: "*The Tenant covenanted to pay to the Landlord all costs, charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in connection with the recovery of the arrears of Rent and Service Charge and enforcing breaches of the Tenant's Covenants and the Regulations or for the purposes of or incidental to the preparation and service of any notice or proceedings under section 146 or 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court*".

THE LAW

42. The relevant legislation is contained in of sections 19, 27A and s20C Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the relevant paragraphs of which read as follows:

s19 Limitation of service charges: reasonableness.

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

s27A Liability to pay service charges: jurisdiction.

(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.

43. (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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper 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—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(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.

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

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

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

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

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

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

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

Liability to pay administration charges

5 (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

SUBMISSIONS

44. Counsel for the Respondent in opening submissions told the Tribunal that a Receiver had been appointed for apartments 134 154 201 and 202, and their associated car parking spaces. Apartments 134 and 202 had been repossessed. She referred to the Upper Tribunal case of Gateway Holdings v McKenzie 2018 UKUT 371. She stated that whilst the Applicant could make an application to the Tribunal she would receive no benefit in relation to those properties as the Receiver had paid the arrears in relation to those properties.

45. The Applicant pointed out that the Receivers had not paid it on her behalf, but paid the service charges which she disputed, and added it to her indebtedness. She could not be considered to have gained anything, and still want to challenge the charges. She objected that the Respondent had asked the bank for the money and the bank paid. The bank should not have paid the service charges.

46. The Tribunal did not accept the Gateway case was authority that prevented the Respondent from challenging her service charges. She clearly remains liable for them through the receiver; this is different to challenging the service charges of a predecessor lessee.

47. In her application the Applicant asked the Tribunal to decide if the platform common charges were appropriate, whether the car park service charges were appropriate, and whether the works and services provided were to a reasonable standard. She also asked the Tribunal to decided "what are the landlord's procedures for assessing and controlling costs" and "Car Park service charges have increased?", although this appeared to be a statement rather than an application.

48. As a further comment she stated that a surveyor had said the property had dropped in value due to structural faults in the building and the landlord had failed to carry out the repair of the building within a reasonable time and consequently costs of repair were higher. The common parts have damp, poor ventilation, poor security and were badly maintained. The car park tended to

flood and air conditioning vents about the car park spaces resulted in fluid leaking onto car parking spaces rendering the car parks unusable. She asserted that the landlord was responsible for the structure, building walls, roof, foundations and drain and this repair work was not to be passed to the leaseholders.

49. The Respondent had filed a statement by Tom Dugdale of Rendall and Rittner, managing agent for the Second Respondent company, dated 4th March 2020. Mr. Dugdale confirmed that his duties included management of the service charge.

50. He referred to the summary of pertinent terms in the lease with service charge percentage prepared by the Respondent and included in the bundle and adopted the content in his statement as witness evidence. The pertinent terms were not objected to by the Applicant and are set out in the earlier part of this judgement.

51. He outlined the contractual (leasehold) relationship between all parties. Braemar Estates (Residential) Limited had been appointed agent but later became part of Rendall and Rittner, who remained in place as managing agents.

52. The Applicant had been barred by an Order of the Tribunal dated 6 February 2020 from filing supplementary evidence as she had failed to file a witness statement in support of the Scott Schedule. The Tribunal did however have her Scott Schedule to consider, and with the agreement of the parties went through the service charges referred to therein and asked the Applicant to make any submissions to support her evidence and the Respondent afforded the right to reply based upon their own evidence, as follows:

Cleaning

53. The Applicant stated that the property was found to be littered and there was vandalism throughout; cleaners were rarely seen and it could not be claimed that they were present 6 hours a day Monday to Friday. She said that witness statements could be provided by other Tenants (the weren't). It had been observed that the caretaker would also be the handyman/cleaner. It was not a luxury apartment it smelt and had not improved in any way. She said that complaints were made to the managing agents and to the caretaker, but he would say that he had other things to do. She told the Tribunal that she would visit every couple of months, as she had a family member in one of the flats. She would park in the car park, and there was an issue where it leaked all the time, there was "always" rubbish in the corner, the bins were always overflowing, there was disused furniture, rubbish in the lift, and the carpets were all dirty.

54. Mr. Dugdale responded to this. He confirmed that in the accounts and expenditure report there were three blocks at the Gatehaus, broken down in the accounts in terms of the various services. The Applicant was not disputing an individual charge as such.

55. He agreed with the Applicant that on appearance the Gatehaus is not a luxury building, despite having been marketed by the original vendors as such, but he could confirm that the cleaning is going on. In 2014 the Agents used a cleaner/caretaker, but they now just use a cleaning company run by a leaseholder in the block. The confirmed that there are numerous areas of staining on the carpet, they certainly need replacing and communal areas need redecorating but not possible owing to the financial situation, as a result of leaseholders like the Applicant not paying their service charges. He readily agreed that the condition of the building is not ideal but cleaning was being carried out and had been "since day 1." Two cleaners on site all the time who in his opinion "do a very good job". The costs was £31300 for the estate for the year to dust, hoover, collect rubbish, mop hard floors, clean the post rooms, clean inside of windows in communal areas.

56. He said that the bin store had always been a challenge; there are no CCTV cameras to track down fly tippers. He said that the building was very challenging in terms of Anti-social behaviour; some flat owners were trying to rent via short term leases and Air BNB, which caused problems such as prostitution; people would break doors and leave rubbish around. In 2019 – a building manager Julie was employed who did not do cleaning to try to address some of these issues. She would walk around the buildings to check what was done. Mr. Dugdale said every time he visited, he would see the cleaners. He said that the hours charged were reasonable and that if residents wanted it tidier it would cost even more; the Applicant had provided no justification or comparable estimate.

57. Mrs. Ackerley for the Respondent submitted that the test for the Tribunal was whether the costs have been reasonably incurred and carried out to a reasonable standard. The Tribunal had heard evidence supported by invoices. The Applicant was not in attendance day in day out; she had given evidence but gave no specifics that cleaning was not being done or evidence from other residents or even photos.

Window Cleaning

58. Again, the Applicant asserted she had never seen the window cleaner, and that witness statements from other tenants would be provided (they weren't).

59. Mr. Dugden confirmed that the windows had not often been cleaned due to the complex nature of the building, but charges had not been made when cleaning had not been carried out. The windows should be cleaned once a year, and the budget was set for one clean a year. Window cleaning was done in 2014 and then in 2017 and 2018. The figures in the Applicant's Scott schedule were budgeted figures, not actual figures; he referred the Tribunal to the accounts, where this could be seen. When budgets were not spent, funds collected often ended up being used in other areas such as repairs and maintenance.

Communal Electricity

60. The Applicant asserted that the charges were much higher than they should be. She said that the lighting should be movement sensitive and not left on 24

hours; energy saving bulbs should be used. Energy providers should be reviewed every year to reduce costs and up to date utility meters readings provided. She said the costs should be half what they were.

61. Mr. Dugden pointed out that the Respondent had not questioned charges before despite receiving the accounts every year. It might be possible to put different light systems in place and it was being considered, but the Building has had no funds to do it and they would need to do a s20 consultation to do this. The budget in 2017 was £7k less, but always budgeted based on previous year.

Lift Maintenance

62. The Applicant asserted that the amount charged wasis excessive for 3 lifts. She stated that maintenance should be for call out charges and repairs and inspection not for consultancy

Management Fees

63. The Applicant asserted that management fees of £150 per flat were excessive; the service was poor in resolving issues; no regular visits were made to make sure the level and quality of services were up to a good standard. She said that management fees per apartment can be as low as £10 per annum (she referred to flats she owned where the Landlord was the Council). She said that a reasonable charge would be £50 per year.

64. Mr. Dugdale told the Tribunal that he looks after a number of blocks across the country. The Gatehaus was a difficult block, with anti social behaviour fire safety issues, etc. It was "rife "with issues such as prostitution when they took over management of the building. He said that the went "above and beyond" with the work done on this block. Building was not well designed or executed. They had arranged for works to fire stopping and fire doors Compartmentation and emergency lighting; supervision of this work was included in management fees, no extra charge was made.

65. **Caretaker**

66. The Applicant stated that the caretaker hadn't been present on the premises as advised. There had been numerous occasions when the door has been locked and no one present. Phone-calls went unanswered. Security has been poor in the complex and when issues were reported rarely resolved. Numerous break-ins and acts of vandalism.

67. Mr. Dugdale confirmed that the caretaker would often be out on site, doing his job, and the costs in his view were invoiced and reasonable.

68. **Fire Maintenance**

69. Fire door seals were failing and fire extinguishers were missing.

70. Mr. Dugdale said that there were no fire extinguishers in the building. All doors are checked on a regular basis, and he had worked closely with the fire service following an arson attack on the car park. A Fire Risk Assessment was carried out annually, and a Type 3 intrusive survey had been done. The Landlord is a large institutional landlord and took fire safety very seriously.

General Repairs and Maintenance

71. The Applicant said that there had been no consulting over maintenance charges of £250; general maintenance was to a poor standard. There were walls with holes, excessive damp in the properties, the carpets smelt. Ceilings outside 201 and 202 had electric wires exposed. The intercom had not been working since building constructed. The history of neglecting the property cannot be passed through a service charge. She said that the costs of repair work had increased due to landlord delay in acting to repair damage, those costs are not "reasonably incurred." There has not been any maintenance carried out since the building made however charged every year. No notice of repairs sent. High charges for major repairs should not be an issue with brand new apartments for at least 10 years, and the Freeholder should pay. Insurances claims were made due to structural defects but repairs not carried out in reasonable period.

72. Mr. Dugdale said that no major repairs requiring consultation had been carried out; he agreed the common areas were not great, but no charges had been made for works not done. There had been phenomenal vandalism, and much money spent on reactive repairs; but the Landlord could not build up a body of money. Property owners were in negative equity and consequently they could only spend money on essentials and reactive works. Some residents preferred to kick doors in rather than use the intercom. The Gatehause is a problematic building with low funds. Mr. Dugdale said that the issue under review was repair in 2017. There was a breakdown in the transaction report and invoices are before the Tribunal. No particular invoices are challenged.

Car Park Cleaning

73. The Applicant stated that the car park was often found to be littered, cleaners were rarely seen and it could not be claimed that they were present 6 hours a day Monday to Friday. She said that witness statements could be provided by other Tenants (they were not) and that on numerous times squatters had lived in the car parks. She said that the costs e should be included in the apartment cleaning and no costs should be charged at all.

74. Mr. Dugdale responded that the costs could not be charged in the apartment charges – the services were carried out under separate leases. Again he pointed to the audited accounts, the invoices delivered and that the building was difficult to manage, prone to vandalism and poor behaviour by tenants of sublet apartments. The costs he said were reasonable in all the circumstances.

Communal Electricity

75. The Applicant asserted charges were much higher than they should be: the lighting should be movement sensitive and not be left on 24 hours. Energy

saving bulbs should be used. Energy providers should be reviewed every year to reduce costs. She said that a reasonable amount would be £40. This was the amount quoted in 2018

Management Fees

76. Excessive management fees per car park. Service poor in resolving issues. This should be included in the apartment management cost. Reasonable amount would be £50 ex vat

Roller Shutter

77. There were occasions for long periods when the shutters did not work. Shutter not functional for the last 3 years prior to 2014. Correspondence from Breamer on June 20th 2014 acknowledged the problem after years and replacement was carried out 25th November Leading to vehicles being vandalised and numerous break in. Stopped working again in 2015 and 2016

Maintenance

78. The Applicant said that maintenance had been poor. There was water in car parks on the lower floor due to drainage problems and they were unable to use them. She said that there were corrosive leaks above spaces 98 and 99 and they were unusable as cars would be damaged if left underneath them. She said that service charges should be refunded according to lease clause 5.9.1 in the case of inability to occupy then charges should cease to be payable until the premises were repaired. Both spaces cannot used simultaneously. The spaces were too small to be used as Car Park; the government recommend minimum space of 4.8m by 2.4m; the spaces were too small to be able to open car doors No maintenance had occurred and corrosive substances still leaked onto cars. She said that CCTV had been installed at a cost of £5910 which should have been installed at construction and not a cost of leaseholders.

79. Mr. Dugdale responded that there was a separate management agreement and a separate fee for the apartments and the car parking spaces. There was a serious issue with two of the car parks which are underneath vents and they had corrosive liquid because water went through slabs and can damage paintwork. This was proving incredibly difficult to resolve and given all the other issues at the property had not been possible to prioritise, but only maintenance works that had been carried out had been charged for. The size of the car parking spaces or what was provided at construction were not an issue of service charge payability.

Insurance

80. The Applicant stated that there was no mention of insurance costs. They should be included as there are discrepancies on cost and what is charged in leaseholders. Mr. Dugdale stated that insurance did not form part of the service charge and consequently was not under consideration.

THE DETERMINATON

81. The Tribunal considered the service charges over the years and the Applicant's objections in detail, line by line. The Tribunal had sympathy for the Applicant, who had invested in what was marketed as a high end residential development in a prominent position in the city of Bradford. Unfortunately what she was promised was not what was delivered. The Building has been dogged with problems over a number of years, from issues with the original build quality, scale of car parking spaces, and perhaps due to its location has been prone to trespass, vandalism and fly tipping. According to Mr. Dugdale some of the tenants of sublet apartments did not treat the communal areas with respect. Difficulties in recovering service charges meant that the managing agents were only able to deal with the most pressing issues of responsive repair and crucial health and safety items, and not gather funds to improve the visual impact of the Building.

82. However the issues with the Building did not in themselves impact the payability of the service charges.

83. The Applicant having set out her concerns in the Scott Schedule, the Respondent had answered those concerns, and provided detail in submissions and evidence about how contractors were chosen, costs managed, and evidenced by invoices which were provided. The Respondent had set out their case supported by evidence that the service charges were due and payable, and the Applicant did not produce sufficient evidence to demonstrate that the services she had charged for had not been provided in accordance with those costs. No other witness statements were provided or comparable evidence to show the services could have been delivered at lesser cost. The Tribunal was satisfied that the costs were raised for services chargeable under the lease, were evidenced by invoices, and were reasonable in amount.

84. The Tribunal found that all administration charges imposed by the Respondent upon the Applicant have been the subject of earlier County Court proceedings and consequently the Tribunal had no jurisdiction to determine them.

85. No application was made for an Order under s20 C Landlord and Tenant Act 1985 by the Applicant in her application or subsequently therefore no order was made. Had any application been made the Tribunal would have declined to make one.

J Murray
Tribunal Judge
3 December 2021