FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HY/LSC/2021/0091/SS
Property:	The Old Rectory, Malmesbury Road, Chippenham, Wiltshire SN15 1PR
Applicants:	John Stamford (Flat 1) Kim Wills (Flat 2) Tony Morris (Flat 3) Gareth Watkins (Flat 4)
Representative:	Mr Stamford
Respondent:	Trimac Properties Limited
Representative:	Ms S J Davey of Ten Management Company
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants application for the determination of reasonableness of service charges for the years 2018 to 2021.
Tribunal Members:	Judge A Cresswell (Chairman) Mr M Woodrow MRICS
Date and venue of Hearing:	26 April 2022 by Video
Date of Decision:	4 May 2022

DECISION

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The Application

1. This case arises out of the Applicant tenants' application, made on 29 September 2021, for the determination of liability to pay service charges for the years 2018 to 2021 inclusive.

Summary Decision

2. The decisions of this Tribunal, which follow, in respect of the payability of items of expenditure covered by the service charge demands for 2018 onwards will become operative subject to the Respondent re-serving the demands (showing the figures resulting from the Tribunal's Decision) together with a summary of the rights and obligations and showing also the name and address of the landlord.
3. The Tribunal finds that service charge expenditure for the year 2018 should be apportioned on the basis of the calculations made by Mr Stamford to reflect the time which each leaseholder had been in residence as a leaseholder in the property in 2018.
4. The Tribunal finds that no payment is due by the Applicants for Greensquare costs.
5. In respect of electricity demands to 2021, the Respondent is required to reflect the figures calculated by the Tribunal in its re-issued demands.
6. The costs of accountancy are reasonable and payable.
7. The £113 invoice from Lock Genie is not payable.
8. The Tribunal reduces the charge payable to date for management fees by half.
9. The Tribunal allows the Applicants' application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application by way of service charge or administration charge.
10. The Tribunal orders the reimbursement of fees paid by Applicants in the sum of £300 to be split equally between the Applicants.

Preliminary Issues

11. The Tribunal does not have jurisdiction to order that accounts should be completed in a particular manner, but can comment upon the practical effect of the manner used by a landlord. Nor can the Tribunal order that payments made by tenants should be properly accounted for; its role is rather to state what should be paid.

Inspection and Description of Property

12. The Tribunal did not inspect the property but saw photographs of it on publicly accessible websites.

Directions

13. Directions were issued on 9 December 2021.
14. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
15. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by the Applicants Mr Stamford and Ms Mills and by the Respondent's managing agent Ms Davey. At the end of the hearing, Mr Stamford and Ms Davey told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.
16. The Tribunal has had regard in how it has dealt with this case to its overriding objective:

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

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

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

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

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

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

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

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

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

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

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

Ownership and Management

17. The Respondent is the owner of the freehold. The property is managed for it by Ten Property Management Limited. Dates of ownership by the leaseholders are as follows: Kim Wills – 27 June 2018, John Stamford – 21 August 2018, Tony Morris – 25 October 2018 and Gareth Watkins – 26 June 2019

The Lease

18. Mr and Mrs Stamford hold Flat 1 under the terms of a lease dated 2018, which was made between Trimac Properties Limited as lessor and John Stamford and Sarah Jane Stamford as lessees. The Tribunal understood this lease to be representative of all 4 leases at the property.

19. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central**

Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill [2012] UKUT 373 (LC)).

20. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:
Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> 15. *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.*

21. Clause 1 of the lease contains the following definitions:

> **Service Charge:** a fair and reasonable proportion determined by the Landlord of the Service Costs.
> **Service Charge Year**: is the annual accounting period relating to the Services and the Service Costs beginning on 1 January in each during the Term provided that the Landlord may from time to time (but not more than once in any calendar year) change the date on which the annual accounting period starts and shall give written notice of that change to the Tenant as soon as reasonably practicable.
> **Service Costs**: the costs listed in Part 2 of Schedule 7.
> **Services**: the services to be provided by the Landlord and listed in Part 1 of Schedule 7.

22. **Schedule 4** contains the **Tenant Covenants**

2. Service Charge

2.1 The Tenant shall pay the estimated Service Charge for each Service Charge Year in equal instalments on each of the Rent Payment Dates or such other frequency as may be agreed between the parties from time to time.

2.2 In relation to the Service Charge Year current at the date of this lease, the Tenant's obligations to pay the estimated Service Charge and the actual Service Charge shall be limited to an apportioned part of those amounts, such apportioned part to be calculated on a daily basis for the period from the date of this lease to the end of the Service Charge Year. The estimated Service Charge for which the Tenant is liable shall be paid in equal instalments on the date of this lease and the Rent Payment Days during the period from the date of this lease until the end of the Service Charge Year.

2.3 If, in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference on demand. If, in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant's next instalment of the estimated Service Charge (and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited.

2.4 Without prejudice to paragraph 3.1(c) of Schedule 4, where the Landlord provides any Service by reason of the damage to or destruction of the Retained Parts by an Insured Risk, the costs of that Service shall not be included in the Service Charge.

The Rent Payment Dates are 25 March and 29 September in each year.

23. **Schedule 6** contains Landlord Covenants; paragraph 4 reads as follows:

4. Services and service costs

4.1 Subject to the Tenant paying the Service Charge, to provide the Services.

4.2 Before or as soon as possible after the start of each Service Charge Year, the Landlord shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year.

4.3 As soon as reasonably practicable after the end of each Service Charge Year, the Landlord shall prepare and send to the Tenant a certificate showing the Service Costs and the Service Charge for that Service Charge Year.

4.4 To keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the Accounts, records and receipts by appointment with the Landlord (or its accountants or managing agents.

4.5 If any cost is omitted from the calculation of the Service Charge in any Service Charge Year, the Landlord shall be entitled to include it in the estimate and certificate of the Service Charge in any following Service Charge Year. Otherwise,

and except in the case of manifest error, the Service Charge certificate shall be conclusive as to all matters of fact to which it refers.

24. Schedule 7 reads as follows:

Schedule 7 Services and Service Costs
Part 1. The Services
1 Services
The **Services** are:
(a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts;
(b) lighting the Common Parts and the Parking Spaces and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;
(c) cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;
(d) cleaning, maintaining, repairing, operating and replacing security machinery and equipment (including closed circuit television) on the Common Parts;
(e) cleaning, maintaining, repairing, operating and replacing fire prevention, detection and fighting machinery and equipment and fire alarms on the Common Parts;
(f) cleaning, maintaining, repairing and replacing refuse bins on the Common Parts;
(g) cleaning the outside of the windows of the Building;
(h) cleaning, maintaining, repairing and replacing signage for the Common Parts;
(i) maintaining any landscaped and grassed areas of the Common Parts:
(j) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

Part 2. Service costs
1. Service Costs
The Service Costs are the total of
(a) all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:
(i) providing the Services;
(ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts;
(iii) complying with the recommendations and requirements of the insurers of the Building (insofar as those recommendations and requirements relate to the Retained Parts);
(iv) complying with all laws relating to the Retained Parts, their use and any works carried out at them, and relating to any materials kept at or disposed of from the Common Parts;
(v) complying with the Third Party Rights insofar as they relate to the Retained Parts;
(vi) putting aside such sum as shall reasonably be considered necessary by the Landlord (whose decision shall be final as to questions of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services; and
(vii) taking any steps (including proceedings) that the Landlord considers necessary to prevent or remove any encroachment over the Retained

Parts or to prevent the acquisition of any right over the Retained Parts (or the Building as a whole) or to remove any obstruction to the flow of light or air to the Retained Parts (or the Building as a whole);

(b) the costs, fees and disbursements reasonably and properly incurred of:
(i) managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same:
(ii) accountants employed by the Landlord to prepare and audit the service charge accounts; and
(iii) any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services

(c) the costs of the salaries and employer costs (including pension, welfare and insurance contributions) and uniforms of cleaning and maintenance staff for the Building and of all equipment and supplies needed for the proper performance of their duties;

(d) all rates, taxes, impositions and outgoing payable in respect of the Retained Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building); and

(e) any VAT payable by the Landlord in respect of any of the items mentioned above except to the extent that the Landlord is able to recover such VAT,

Procedural Issues

25. The Applicants raised a number of procedural issues.
26. The Tribunal does not have jurisdiction in respect of Section 21 Landlord and Tenant Act 1985.
27. The relevant law is set out in Section 21B Landlord and Tenant Act 1985 and the cases to which the Tribunal will refer.

Section 21B Landlord and Tenant Act 1985

28. Under Section 21B of the 1985 Act, a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. A tenant may withhold payment of a service charge which has been demanded from him if that is not complied with in relation to the demand.
29. Ms Davey accepted that demands to date had not been accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
30. As can be seen from reference to **Roberts v Countryside Residential (South West) Ltd** (2017) UKUT 386 (LC), the failure to serve a summary of the rights and obligations can be cured by re-serving the demand together with a summary of the rights and obligations.
31. The decisions of this Tribunal, which follow, in respect of the payability of items of expenditure covered by the service charge demands for 2018 onwards will become operative subject to the Respondent re-serving the demands (showing the figures resulting from the Tribunal's Decision) together with a summary of the rights and obligations and showing also the name and address of the landlord.

The Law

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

33. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

34. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

35. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of the Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

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

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

"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The

tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."

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

64. In **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J said: 27. *As is consistent with other decisions as to what is meant by "reasonableness", in determining the reasonableness of a service charge the LVT has to take into account all relevant circumstances as they exist at the date of the hearing in a broad, commonsense way giving weight as the LVT thinks right to the various factors in the situation in order to determine whether a charge is reasonable. The test is "whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem… All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable" per His Honour Judge Mole QC in Regent Management v Jones [2010] UKUT 369 (LC) .*

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

37. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:
    1) To make no reduction, thereby leaving the costs as they were;
    2) To adjourn to allow the landlord to provide evidence, or
    3) To adopt the **Country Trade** "robust, commonsense approach".

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

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

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

38. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost.*
39. The relevant statute law is set out in the Annex below.

Apportionment

The Applicants

40. The Applicants say that as ownership transferred from Peter Triggs of Trimac Properties to the current residents during 2018 and 2019, the service charges costs in this period have not been allocated appropriately between all 5 parties.
41. In 2018 the ownership was John Flat 1 18%, Kim Flat 2 25%, Tony Flat 3 9%, Gareth Flat 4 0%, Landlord 48%. Costs have been pro-rated between residents, but did not consider the landlord's share who was in possession of the flats until sale. So, service costs for this period incurred by all (eg. electricity, cleaning) should be pro-rated according to ownership days.

The Respondent

42. The Respondent says that the initial 2018 service charge forecast which the individual apartment legal completion figures were based on, was a projected figure. At the end of 2018, these figures were reviewed against the actual costs and credits were incorporated in the 2019 service charge demand. Subsequently there appeared to be a building insurance double charge which has been offered as a refund and the Greensquare costs which were ultimately never claimed but were invoiced at the time and so were accrued.

The Tribunal

43. The Tribunal noted that Ms Davey did not challenge the calculations made by Mr Stamford to reflect the time which each leaseholder had been in residence as a leaseholder in the property in 2018 and determines that service charge expenditure for that year should be apportioned on the basis of those calculations.
44. More widely, the Tribunal records the agreement of the parties that each leaseholder is responsible for 25% of service charges.
45. One of the specific items of service charge demanded by the Respondent related to Greensquare. The Tribunal was told that Greensquare is a housing association, from which the landlord purchased the property. Ms Davey told the Tribunal that Greensquare owns the freehold of 3 garages together with a flat above those garages and that Mr Stamford and Ms Wills have a long lease of one of the garages each.
46. The Tribunal noted that there was real confusion about the charges sought to be levied by the Respondent in respect of charges passed to it by Greensquare, which the Tribunal was told was for insurance of the garages. Apart from the concern as to why the two leaseholders without a garage should pay towards their insurance by a third party, Ms Davey was unable to point to any clause of the lease or any other evidence which required the two garage holders or the two non-garage holders to pay for the insurance of the garages effected by the third party, Greensquare, or which required any of the Applicants to pay any of Greensquare's costs.
47. From what the Tribunal could see, the use of the garages formed part of the rights associated with the property demised to Mr Stamford and Ms Wills by their leases.
48. The Tribunal finds that no payment is due by the Applicants for Greensquare costs; the Tribunal can make a Decision only on the basis of the evidence before it.

Allocations to Wrong Year

The Applicants

49. The Applicants say that 2019 electricity costs are allocated in the wrong year.
50. Electricity costs in 2019 are for period 11 October 2018 to 9 January 2020. Bill for 11 October 2018 to 28 March 2019 for £329.81 (Bundle 1 page 158) should be split with £159.02 being allocated in 2018 electricity costs and £170.79 being allocated into 2019 electricity costs. Total for 2018 £242.02 and Total for 2019 £797.78. (Bundle 1 page 79)
51. They note electricity costs have been very variable due to large convection heater being installed into communal hallway. This is no longer used as it consumes excess electricity.
52. 2019 window cleaning costs allocated in wrong year. Window cleaning costs incurred on 11 December 2018 (Bundle 1 Page 133) for £62 are accumulated in 2019.

The Respondent

53. The Respondent told the Tribunal that there are refunds each year. Ms Davey accepted that a small element of costs for electricity had been moved to 2019. Any disparities are picked up the following year. She had paid bookkeepers to check the accounts.

The Tribunal

54. The Tribunal believed that the Applicants had been involved in too much "detective work" here. The important figures are contained in the invoices and there should, generally, be no requirement to analyse meter readings and energy provider charges.
55. The Applicants complained particularly about an account of 29 March 2019 which covered electricity usage between 11 October 2018 and 28 March 2019. The Tribunal

found it quite proper for the Respondent to include this account within the service charge year 2019. In any event, it is not possible to disaggregate the 2018 usage from this bill without guesswork or approximation. Further, the lease allows the Respondent landlord under paragraph 4.5 of Schedule 6 to the lease to claim expenditure in a following year.

56. In relation to the 2019 window cleaning costs, the Tribunal notes that the invoice for 11 December 2018 was issued on 21 January 2019. The same considerations as detailed in relation to 2019 electricity apply here. The 5 invoices for 2019 amount to £231, the same figure as in the accounts.

Overstated Charges Not Supported by Receipts

The Applicants

57. The Applicants say that the 2018 Insurance costs are shown in service charge accounts at £350. Note 2018 accounts have only just been formally generated at a cost of £600! (See Bundle 1 Page 181).
58. Insurance costs are paid directly to Trimac and payment request are shown in Bundle 2 page 43. This is double counted.
59. Payments to Trimac for 2018 insurance was made on 19 Feb 2019 as part of larger £616.10 payment.
60. Payments are detailed in payments made section Bundle 2 page 10.
61. Electricity costs are not totalled correctly in accounts.
62. In 2021 bills show £257 accounts show £364.
    - 21 January 2021 to 14 April 2021 (Bundle 1 Page 168) shows costs of £132.87
    - 15 April 2021 to 2 August 2021 (Bundle 1 Page 169) shows costs of £78.49
    - 13 August to 12 October 2021 (Bundle 1 Page 170) shows costs of £20.72
    - Meter reading was 19118 on 12th October
    - Meter Reading was 19131 on 28 Jan 2021 estimated at £25.44 based on standing charges and 13 units of electricity
    - An accurate yearly expenditure estimate of £257.52
    - Accounts show electricity costs for 2020 (Bundle 1 page 191) at £364 *(actually y/e 2021)*.
63. Cleaning fees in 2021 receipts show £33.12 (Bundle 1 Page 130 and 131) accounts show £186 (Bundle 1 Page 191).
64. Greensquare costs which receipts show £492 for period between 2017 and 2021 (Bundle 1 Page 154 are shown in accounts as £385 (2018), £770 (2019) and-£770 and £492 (2020) which total £877. (Bundle 1 Pages 181, 183, 187).
65. Previous Greensquare cost statements are superseded by 12/01/2021 statement. The balance on this statement was £583.98 and then the garage charge estimates have been refunded leaving a total of £492.22. Unsure why they have credited and then debited the same amount. Balance of account is £492.22. (See Bundle 2 page 18).
66. Greensquare costs show refund of garage insurance costs (See Bundle 1 Page 154) yet Flat 1 and Flat 2 have been charged £45.88 in 2019. (See Bundle 2 Page 55-56).

The Respondent

67. The Respondent said that it had provided invoices to show what had been spent and that those invoices had been audited by accountants. All costs are genuine.

The Tribunal

68. The Tribunal notes that payments of insurance are not included within the service charge provisions of the lease, but are instead regulated separately as Insurance

Rent. Accordingly, the Tribunal has no jurisdiction in relation to the demands for the costs of insurance.

69. The Tribunal's own analysis of the electricity invoices reveals the following:
    - Year ending 31 Dec 2018 - shown in accounts £83. No bills provided but figure not challenged.
    - Y/E 31 Dec 2019 - £957 shown in accounts. Bills provided covering period 11 Oct 2018 - 9 Jan 2020 total £956.80.
    - Y/E 31 Dec 2020 - £549 shown in accounts. Bills provided covering period 10 Jan 2020 to 20 Jan 2021 total £485.36. This reflects the bill emailed subsequent to the hearing which combined/amended the two bills issued in April & July 2020 (of £259.30 & £194.73) and replacing them with charges of £144.23 and £127.14. As £259.30 had already been paid, this left the balancing charge of £12.07 still due.
    - Y/E 31 Dec 2021 - £364 shown in accounts. 3 bills in bundle total £232.08 but these only cover the period up to 12 Oct 2021. There would have been another bill issued in January 2022 but that hasn't been provided within the bundle. Based on the quarters bill issued 12 months earlier, an additional £132 doesn't sound unreasonable but the Respondent needs to show the Applicants that such is the case.
70. In respect of electricity demands to 2021, the Respondent is required to reflect the above figures in its re-issued demands.
71. See paragraph above in respect of the Greensquare costs.

Provisional or Final Costs?

The Applicants

72. The Applicants say that Service costs are estimated at the beginning of the service charge year and contain provisional costs; final year end accounts are expected to be final. But these still contain provisional figures. Please see water costs on Bundle 2 page 56; note there are only 4 water meters for the old rectory, one per flat.
73. Ms Wills made the point that figures were not adjusted until the following year and that an insurance charge continued incorrectly to be carried forward.

The Respondent

74. The Respondent said that the demands in 2018 were necessarily a guesstimate. From 2019, the Respondent had looked back and worked out figures from there. In January, it makes a provisional demand, which is adjusted in June when the next demand is sent out and the situation is subsequently reviewed in December.

The Tribunal

75. The Tribunal can only advise the Respondent of the need to ensure that demands are made in accordance with the terms of the lease, such that at the start of the year provisional figures are as accurate as possible and that the final figures are clear and relate to actual expenditure resulting in either further demands or allowances.

Cost of Accountancy

The Applicants

76. The Applicants say that Accountancy costs (£600) incurred in 2021 for period 2018, 2020 and 2021 were not sanctioned by the residents. Please see email (Bundle 2 Page 37). Residents feel they should have control over costs incurred.
77. As accountancy contains provisional figures and errors, the residents do not consider these costs reasonable.

The Respondent

78. The Respondent told the Tribunal that the Respondent had initially used its owner's bookkeeper. However, he had made a mistake about insurance, which had led Ms Davey to seek a number of quotations for the work. In the event, her own accountant had come in as cheapest and he had been used as a result.

The Tribunal

79. The Tribunal told the Applicants that it is for the Respondent to choose an accountant and it has no requirement to consult the Applicants as to its choice.
80. The Tribunal noted that Ms Davey had spoken of the accounts being audited but, as she accepted, there was no evidence that an audit, in its truest sense, had ever taken place. The Tribunal did note that one set of accounts had been the subject of an independent examiner's statement, but that is not the same as an audit.
81. An auditor must act in accordance with the guidance of the ICAEW (Institute of Chartered Auditors of England and Wales). ICAEW's Tech 03/11 makes clear at Appendix E of Tech 03/11:
    Where an audit is required, it should be carried out in accordance with International Standard on Auditing (ISA) 800 Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks.
82. Most recently, accountancy costs were some £300 per year which, on the face of it, did not appear to be an unreasonable cost. That being so, and there being no comparative costs supplied by the Applicants and given the findings by the Tribunal in relation to a number of the disputed costs in the Respondent's favour, the Tribunal cannot say that the charge of £300 per year is an unreasonable one.
83. The Tribunal notes that the process of audit is an expensive one and where such small sums as pertain here are involved in a small building, the costs of an audit could outweigh any benefits. The lease here does not require the accounts to be audited, but allows for the costs of audit to be recovered via the service charge.

Sinking Funds not contained in a separate account

The Applicants

84. The Applicants complain that Sinking Funds (£600) are not kept in a separate account.
85. The 1987 Landlord and Tenant Act section 42 requires a reserve fund containing service charge monies must be held on trust, in a designated account in a relevant financial institution.
86. Monies held in both reserve funds and sinking funds must be held in separate accounts to monies collected through the regular, periodic service charges.

The Respondent

87. For the Respondent, Ms Davey said that she had not anticipated being involved in the service charge or management for any considerable period. She accepts that sinking funds should be held in a separate account.

The Tribunal

88. The Tribunal merely records that a sinking fund should be held on trust in a separate bank account in accordance with Section 42 of the 1987 Act and the RICS Code.

Snagging Costs Charged as Service Costs

The Applicants

89. The Applicants say that many snagging items (£575) that were defects upon taking ownership of property have been passed off as maintenance items under service charges.
90. For example, the lock repair receipt for which they were charged (£113) clearly states

that the external door lock to the communal area which was newly installed as part of the renovation, was not installed correctly.

91. On 8 January 2019, Lock Genie £113 invoice clearly states (Bundle 1 page 147, Bundle 2 page 34) Removed recently fitted handle and lock case to find screws missing from case. Re-secured case with new screws and refit. Fitted new cylinder and replaced handle.
92. 6 April 2019 strip and clean front entrance quarry tiles £24. (See Bundle 1 page 148) This was a snagging item as renovation debris needed to be cleaned from exterior walkway tiles.
93. 21 Aug 2019 Fill hole in cellar, paint board in cellar, remove and replace cement flashing on roof. £222. Hole was left in utility room stairs to basement and needed to be filled and painting as was not concluded. Flat 1 roof was leaking since moving in see email (Bundle 1 page 96 (2 Dec 2018) and Bundle 2 page 38-40 and Bundle 1 picture page 98 and 99)
94. 3 October 2019 £20 Patio Slab (Bundle 1 Page 150) Replaced cracked slab not installed correctly.
95. 28 October repairs to roof £96 (Bundle 1 page 151) Further repairs to leaking roof over flat 1
96. 16 Dec 2019 fill gaps in cellar and fit draft excluders to doors. £96 (more snagging in utility area) (Bundle 1 page 152)
97. All items are considered snagging.
98. Have recently just had to pay a professional roofer to repair roof at a cost of £1215 as water was continuing to leak into kitchen and bedroom of flat 1 (please see estimate and invoice from roofer (Bundle 2 page 32-33). Please note repairs above to flat 1 roof have been performed by a property repair company not a roofer.

The Respondent

99. The Respondent indicated initially that there were no snagging issues.
100. Ms Davey said that the lock was not a new lock and that the door was damaged. The building was independently inspected and passed by the building inspector and architect prior to it being taken over by the Respondent and everything was in order. The Respondent has agreed to refund some of the queried costs in the sum of £192.
101. The front entrance quarry tiles in issue was an old slate and might have required remedial works at any time. There was no requirement for a draught excluder.
102. Ms Davey told the Tribunal that there was an agreement with the contractors that they would deal with snagging issues and that the Respondent could have gone back to the contractor.

The Tribunal

103. The Tribunal found that there was no clear evidence before it about the front entrance tiles such as to show that the Respondent could have had these attended to by the contractor without charge.
104. The lock was clearly new and clearly could have been resolved as a snagging issue as there was a failure to fit it properly. That being the case, and given Ms Davey's evidence that the Respondent could have approached the contractor to effect a snagging repair, the Tribunal finds this element not to be payable.
105. In relation to one of the so-called snagging demands, the invoice covered works to the cellar and the roof. There was no evidence before the Tribunal to establish that the roof was a snagging issue and no way for the Tribunal to disaggregate the costs of the works to the cellar, even had this been a snagging issue. Accordingly, these costs are payable.

106. There was no evidence before the Tribunal to show that the gaps or draught excluder were part of the specification for the works, such that they cannot be described as snagging works and are, accordingly, payable.

Management Charges

The Applicant

107. The Applicants say that management service costs have increased from £500 in 2019 to £600 in 2020 and 2021. With impolite and poor service, the residents do not consider the costs reasonable.

The Respondent

108. For the Respondent, Ms Davey said that she did not think her charge was unreasonable. She reached the charge after looking at other managing agents and what they charged for similar buildings and agreed the charge with the Respondent.

The Tribunal

109. The Tribunal noted that the management charges were £500 in 2019 and had gone up to £600 or £150 per flat. Those figures did not seem upon their face to be unreasonable for a property of this nature and there was no comparative evidence provided by the Applicants to show that a lower cost was normal for properties of this nature.

110. However, there were clear deficiencies in the management here. The Respondent had failed to provide receipts (in breach of the terms of the lease) and answers which could have resolved many of the issues and removed the need for the Applicants to come to the Tribunal. There were poor accounting practices too, including not holding a sinking fund in a separate account and the issuing of service charge demands in a manner not consistent with the law. Further, the Respondent was seeking to charge Greensquare invoices for insurance of the garages, which showed that it was again not familiar with the terms of the lease. The Tribunal further notes the attempts by the Respondent to claim interest on sums which were not overdue because they become due only once lawful demands are made of the Applicants.

111. Given such poor management, the Tribunal reduces the charge payable to date by half.

Section 20c and Rule 13 Costs and Paragraph 5A Application and Fees

112. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings and for repayment of the fees paid to bring these proceedings.

113. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a … … leasehold valuation tribunal, ….are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge

payable by the tenant or any other person or persons specified in the application.

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

Commonhold and Leasehold Reform Act 2002 Schedule 11 Paragraph 5A Limitation of administration charges: costs of proceedings

(2) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(3) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(4) In this paragraph—
(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"):

Rule 13 (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

Section 20C

114. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).
115. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).
116. The Applicants submitted that it had been necessary for them to apply to the Tribunal for a determination.
117. The Tribunal has weighed up the relevant factors here. It notes that the Applicants had not received lawful demands and had to come to the Tribunal to get the matter resolved. It noted also that the lack of access to receipts, in breach of the terms of the lease, was a major factor. The application had also highlighted that the sinking fund was not held in a separate account and that the Respondent was seeking to charge interest on sums which were not due.
118. Taking a rounded view, the Tribunal allows the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

Paragraph 5A

119. For the same reasons the Tribunal allows the Applicants' application under Section 20C above, the Tribunal allows their application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicants in this or any other year.

Fees

120. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*

> *"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."*

121. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicants with the fees paid by them. There appears to the Tribunal to have been no other viable option open to the Applicants to resolve the issues save by making their application to the Tribunal. The Respondent is ordered to pay the sum of £300 to the Applicants in equal shares in reimbursement of fees.

RIGHTS OF APPEAL

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

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

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

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

ANNEX

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

Section 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Landlord and Tenant Act 1987

47 Landlord's name and address to be contained in demands for rent etc

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the Landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be

treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

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

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

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

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

19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

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

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a postdispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.