FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/LSC/2020/0143**
Property	**:**	**Bridge Court, Lea Bridge Road, London E10 7JS**
Applicant	**:**	**K Downing (Flat 5)** **M Webb (Flat 8)** **B Budding (Flat 14)** **N Watson (Flat 16)** **C Lobo (Flat 17)** **G Phillips (Flat 19)** **T Newick (Flat 22)** **A Martin (Flat 23)** **J Love (Flat 24)** **L Taylor (Flat 29)** **B Edwards (Flat 30)** **H Bowles (Flat 32)** **Y Jin (Flat 33)** **M Hynes (Flat 34)** **B Delbaen (Flat 42)** **M Giudice (Flat 43)**
Representative	**:**	**Mr R Bowles, husband of the lead Applicant, Mrs H Bowles**
Respondent	**:**	**Triplerose Ltd**
Representative	**:**	**Scott Cohen solicitors**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mr P Roberts Dip Arch RIBA** **Mr JE Francis**
Date and Venue of Hearing	**:**	**14th & 15th July 2021 and 13th & 14th September 2021; By video conference**
Date of Decision	**:**	**11th October 2021**

DECISION

1) The service charges challenged in these proceedings are reasonable and payable except for the following items:

    (a) All accountants' fees;

    (b) 50% of the charges for CCTV;

    (c) 50% of the charges for Cleaning;

    (d) 25% of the charges for General Maintenance;

    (e) All legal fees;

    (f) 50% of the Management Fees;

    (g) 50% of the charges for Refuse Removal.

2) The Tribunal orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 that the Respondent may recover no more than 20% of their costs of these proceedings.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. The Applicants are some of the lessees at the subject property, Bridge Court, of which the Respondent has been the freeholder since around 2010. The Respondent's agents during that time have been Y&Y Management.

2. On 1st June 2020 Mrs Bowles, the lessee of Flat 32, applied to the Tribunal for a determination of the reasonableness and payability of service charges levied by the Respondent in the 6 years from 2014 to 2019 inclusive. The Tribunal issued directions on 18th August 2020 but they were subsequently amended several times, including by the addition of the other Applicants.

3. The Tribunal initially heard the application on 14th & 15th July 2021 but the two-day time estimate turned out to be over-optimistic and a further two days were required on 13th & 14th September 2021. The hearing was conducted by remote video conference due to restrictions arising from the COVID pandemic. The attendees were:

- Mr R Bowles, with and representing Mrs H Bowles;
- Two Applicants, Ms Downing and Ms Martin, attended for long enough to give evidence;
- Ms Katie Helmore, counsel for the Respondent;

- Mr Yaron Hazan, property manager at Y&Y Management for the subject property; and
- Mr Josh Feiner of Block Cleaning Ltd, cleaning contractors.

4. Mrs Bowles, Ms Downing, Ms Martin, Mr Hazan and Mr Feiner had all provided witness statements and were made available for cross-examination.

5. The documents in front of the Tribunal consisted of:

- A paginated hearing bundle of 1,159 pages, with a separate index;
- A document entitled "The Tribunal's Jurisdiction" compiled by Ms Helmore; and
- An Opening Statement, also from Ms Helmore.

6. The Respondent also provided bundles of invoices during the hearing which the Applicants had previously had difficulties accessing. The Tribunal allowed them in, the Applicants not objecting, but had to refuse to allow some further documents produced by the Applicants because they were disclosed too late in the process.

The Property

7. Bridge Court consists of two buildings, each containing 24 flats. Bridge Court North fronts on to Lea Bridge Road, with four entrances to stairwells leading to the flats, and has commercial units at ground floor level. Bridge Court South is to the rear and has one central staircase. Between the two blocks is an area originally set out as communal gardens but later converted to use as a car park. Much of the current dispute has been generated by the use of this communal area, as described further below.

Previous Tribunal decisions

8. The Tribunal, including in its previous guise as the Leasehold Valuation Tribunal, has issued a number of previous decisions in relation to the subject property during the Respondent's time as freeholder:

- By a decision dated 30th August 2011 the Tribunal partially upheld a challenge from 5 lessees to some service charges (ref: LON/00BH/LSC/ 2011/0060 & 0196) but the Upper Tribunal quashed it on appeal on 7th May 2013 ([2013] UKUT 0257 (LC)). The application was remitted to the Tribunal but the lessees withdrew it.
- By decisions dated 10th July* and 16th November 2012 (ref: LON/00BH/ LSC/2012/0136 and LDC/2012/0024) the Tribunal determined together the payability of service charges challenged by another group of lessees and an application by the Respondent for dispensation from statutory consultation requirements.

* The interim decision dated 10th July 2012 was not provided to the Tribunal and did not otherwise appear to be available.

- On 27th January 2017 the Tribunal upheld the Respondent's allegation that the lessee of Flat 20 had breached the covenant in his lease requiring him to register the assignment of the lease to him (ref: LON/00BH/LBC/ 2016/0100).
- On 14th March 2018 the Tribunal upheld the Respondent's allegation that the lessee of Flat 2 had breached the covenant against hanging clothes or other articles outside his flat but dismissed other allegations of unauthorised alterations and nuisance (ref: LON/00BH/LBC/2017/ 0108).
- On 25th September 2018 the Tribunal determined that the RTM company formed by the lessees of Bridge Court South was entitled to exercise the Right to Manage under the Commonhold and Leasehold Reform Act 2002 (ref: LON/00BH/LRM/2018/0019). The right to manage was eventually acquired on 30th April 2019.
- On 31st October 2019 the Tribunal determined the amount of accrued uncommitted service charges to be paid by the Respondent to the RTM company and the amount of costs to be paid to the Respondent in respect of the exercise of the right to manage (ref: LON/00BH/LCP/2019/ 0008).
- On 11th February 2020 the Tribunal determined that administration charges arising from the Respondent's costs of county court proceedings against Mrs Bowles were mostly not payable (ref: LON/00BH/LAC/ 2019/0019).
- On 18th November 2020 the Tribunal determined an application by the Respondent to vary the leases in Bridge Court North in order to take account of the lessees of Bridge Court South having exercised their right to manage (ref: LON/00BH/LRM/2019/0011).
- On 7th February 2020 the Tribunal decided as a preliminary matter not to strike out an application to vary the leases of 16 applicant lessees so as to acknowledge the use of the communal areas as a car park and to give the lessees the right to use it as such (ref: LON/00BH/LVL/2019/0005). On 1st March 2021 the Tribunal refused the application after a full substantive hearing.

General Points

9. The parties set out their respective submissions on each of the disputed service charges for each of the years from 2014 to 2019 in a Scott Schedule. The Schedule was very useful but the objections to each head of service charge were identical for each year and so the Tribunal has recorded its decision under each head of service charge below rather than in the Schedule. However, before setting out the Tribunal's reasoning on the individual heads of service charge, there are some issues of more general application to consider first.

10. In its decision of 7th February 2020, the Tribunal noted,

2. Between the two blocks is an area which used to be a communal garden but is now a car park. Ms Bowles's lease and, presumably, the leases of the other Applicants contain no acknowledgment of the change. The relevant clause of Part II of the Second Schedule to the lease lists only the following right:

> The right in common with the Lessor and the other lessees in the Building to use any communal garden included in the title above mentioned and the pathways leading thereto whilst the same shall remain as such

3. The Respondent purchased the freehold in 2010 and asserts the right to manage the car park as it sees fit, including charging for its use. The Applicants assert that this has resulted in a "constant and pervasive vulnerability of lessees to anti-social and criminal behaviour … including but not limited to:

(a) Noise
(b) Threatening behaviour
(c) Litter
(d) Dumped cars
(e) Fly tipping
(f) Vandalism
(g) Graffiti
(h) Security breaches
(i) Drugs paraphernalia
(j) People urinating and defecating
(k) Feeling intimidated
(l) A cycle of degradation

11. Some time between 1986 and 1988, the then freeholder, Craftheath Ltd, arranged for two large raised flower beds to be removed to provide a parking area for residents of Bridge Court. By letter dated 27th January 2005 the then freeholder's agents stated,

> … it has been agreed with the Residents Association that once the car park has been re-surfaced and parking bays marked out, parking will only be allowed for owner-occupiers, i.e. leaseholders that actually live in the building. There will therefore be no parking for non-resident owners or for sub-tenants, or for any of the shop tenants. The car park will be controlled by The London Clamping Company … The owner-occupiers who will be entitled to park at the block will receive permits from us …

12. From the time the Respondent became the freeholder in 2010, they have asserted that the fact that they own the car park area means that they have the right to charge for use of it. On the face of it, that would appear to conflict with the lessees' easements over the car park area and the lack of any provision in the lease for such charges, as well as the consensual arrangement described in the aforementioned letter of 27th January 2005.

13. In his witness statement dated 19th January 2021, produced for earlier proceedings but included in the bundle for this case, Mr Hazan suggested that clause 3 of the lease expressly reserved the right to the landlord to deal with the land adjoining the building as it sees fit. However, as the Respondent has previously argued (in LON/00BH/LCP/ 2019/0008), "the Building" includes both blocks of flats and all appurtenant areas, so that clause 3 is not referring to the car park area but to land neighbouring the whole area included in the freehold title.

14. In its decision of 30th August 2011 (ref: LON/00BH/LSC/2011/0060 & 0196), the Tribunal stated (at paragraph 76 of its decision) that they did not consider it reasonable that the lessees should pay for parking and disallowed all clamping charges. This finding did not stand because the Upper Tribunal upheld the appeal against the Tribunal's whole decision, although the Upper Tribunal did not comment particularly on this issue.

15. Following the conclusion of those proceedings, the Respondent decided to turn the car park into one available for use by the general public. They contracted a company to run a "pay by phone" system, allowing anyone to park there for up to 24 hours, and to enforce it by issuing Penalty Charge Notices and chasing payment. Offending vehicles were supposed to be removed although the evidence showed at least one abandoned car remaining on site for a considerable period of time.

16. Mr Bowles successfully challenged a PCN in a court case heard on 8th January 2018 (*MET Parking Systems v Bowles*, Telford County Court, case no. D0HW28QV). He said the judgment was in his favour on the same basis as the Tribunal's decision of 30th August 2011 but it is not possible to check this because the bundle before the Tribunal only contained the transcript of the hearing, not of DJ McQueen's judgment.

17. In any event, the particular complaint of the Applicants in the current case is that the above-listed problems were caused by the Respondent's decision to turn the car park into one available for use by the general public, thereby inviting outsiders into Bridge Court's communal areas. They claim that this has prevented any effective management of the communal areas and has impacted on the service charges for CCTV, cleaning, maintenance, management and refuse removal.

18. The Applicants provided evidence of the problems and of who was responsible:

    (a) In her evidence, Mrs Bowles described how, from the time she bought her flat in 2014, the car park has been used as a place for young men to congregate in cars, to eat takeaway food and drink alcohol, leaving litter, playing loud music and taking and dealing drugs. This has often been through the night, making it difficult to sleep. The police declined to help on the basis that the car park was on private land.

(b) Ms Downing, who bought her flat in December 2015, described in her evidence how drug users and dealers would congregate in the car park, having come through the gate which was open and showing signs of neglect.

(c) The Applicants provided photos from 2017 which showed rubbish strewn across the car park (including a used condom) and the bin enclosure, an abandoned car, fly-tipping in sight of the entrance, graffiti, vandalised CCTV cameras, urine and excrement in the communal stairwell of Bridge Court South and the bin store, and non-residents using the car park, possibly to take drugs.

(d) The Applicants provided a diary of incidents of anti-social behaviour from July 2017 to March 2019, many supported by videos taken from their own CCTV camera (installed inside one of their flats) and put on a private channel on YouTube. It recorded non-residents in the car park fly-tipping, littering, creating noise in the car park by playing music loud or screaming, going through the bins, using the bin enclosure and the car park as a urinal, attempting theft of bikes, trying to get inside including by buzzing residents, congregating and drinking or smoking weed, drug dealing and using, racing/wheelspinning cars, using the car park as a work area for building works, and exposing themselves/leering at women. Some of the miscreants visited the car park regularly. Police were called on some incidents, although any attendance is not recorded, and on some occasions some residents felt brave (or reckless) enough to challenge the intruders themselves.

19. The Respondent had a number of points in reply:

(a) The current application is not about the rights each party have over the area used as a car park;

(b) The above-listed problems existed before the car park became public;

(c) The primary source of such problems is the residents themselves, particularly including sub-tenants of non-resident lessees;

(d) Bridge Court is an exceptionally difficult block to manage due to the lack of co-operation and poor behaviour from the residents; and

(e) The locality suffers from an unusually high incidence of anti-social elements, of which Bridge Court gets its share.

20. In its decision of 1st March 2021 (ref: LON/00BH/LVL/2019/0005) the Tribunal stated,

> 20. There is, in the opinion of the Tribunal, nothing in the leases that is at present unclear and unworkable. The applicant has an easement to use any communal gardens included in the title and the pathways leading thereto whilst the same shall remain as such. It is perhaps unkind to gardens to call the tarmacked land a garden but on a strict interpretation of the lease the applicant remains entitled to use the disputed area in accordance with the lease terms. This includes any pathways leading thereto. The lease does say “whilst the same shall remain as such”. The

> Tribunal takes this to refer only to the existence of pathways leading to the garden area. This being so the lessor must deal with the disputed land in the light of the applicants pre-existing rights. If the respondent fails to do so then the applicant may resort to the protection of the law such as an action for breach of covenant for quiet enjoyment or derogation from grant, but these are matters for another time and jurisdiction and not this Tribunal. There is no express right to park conferred on this Applicant. Other leaseholders do have such a right, but this is because they have purchased such a right and a deed of variation was disclosed to the Tribunal to confirm such an arrangement. The Tribunal also noted that there is only space for 23 cars to be parked within the disputed land and so it would raise new problems should each leaseholder (48) claim they have a right to park and then inevitably there would be too many cars for too little space.

21. The current Tribunal respectfully agrees with this analysis. The Applicants did not seek any relief in relation to the use of the car park in this application but, if they had, this analysis would mean that they are not entitled to it from the Tribunal because their remedy lies elsewhere. However, the parties' strict legal rights in relation to the car park area is far from the end of the matter.

22. The fact is that, on any common sense view, the change in use from a private car park to a public car park constituted a fundamental change in the character of the estate. The communal area ceased to be for the exclusive use of the residents and instead anyone who wanted to could not just enter the area but was invited to do so. Of course, the Respondent would say that people were only invited for the strict purpose of using the area as a car park but that is not realistic, for a number of reasons:

    (a) On the Respondent's own case, outsiders used to access the communal areas before it was made into a public car park even though they had no lawful purpose to do so.

    (b) It is impossible to police why outsiders accessing a public car park are doing so – unless and until it becomes obvious that a person on the site has no vehicle there, they could simply be on their way to or from their vehicle.

    (c) Payment for parking has been done remotely by phone or app so there have been no staff on site except for enforcement spot checks.

23. Further, having created a public car park from which they wished to earn an income, the Respondent was incentivised to keep the area freely accessible. There was a security gate at the street entrance to the car park which has been allowed to remain inoperable and in a state of disrepair for around 9 years. In his evidence, Mr Hazan set out various reasons why it would be difficult to install a suitable replacement gate and then to maintain it but, when asked directly why this had not been

done, he said his client, the Respondent, had instructed him not to, at least until recently when the lessees of Bridge Court South sought to exercise their right to manage.

24. It was asserted on behalf of the Respondent that they had no obligation to install or maintain the gate but that is not correct. Clause 5(2) expressly requires the Respondent to maintain the main entrances, driveway and communal gardens. Also, clauses 2(2)(a)(iii)(c) and 2(2)(a)(v) require the lessees to contribute to such maintenance. Repairing and maintaining the existing gate clearly comes within such obligations. The Tribunal accepts the Applicants' contention that leaving the gate in a state of disrepair in itself acts as an invitation for some people to access the area for their own anti-social purposes.

25. The Respondent also sought to resist the proposition that having a public car park would increase the maintenance costs for Bridge Court. In the Tribunal's opinion, the mere fact of the increased footfall, let alone the contribution of any anti-social behaviour, makes this proposition obviously true. The Respondent has never suggested that they should make any contribution to such maintenance costs from their car park income. This results in an arrangement by which the Respondent receives 100% of the profits from the public car park while the lessees bear 100% of the cost of maintaining that car park and any area affected by users of the car park. This is patently inequitable – it cannot have been contemplated when the leases were entered into that the service charges paid by the lessees could be used to enable the landlord to turn a profit from using the communal area as a public car park.

26. The Respondent relied on the evidence of Mr Hazan to support their claims that the problems existed previously, that residents were to blame and that the building was difficult to manage. However, the Tribunal had concerns about his evidence. Both in his witness statement and in oral evidence, he asserted there had been numerous and frequent incidents of poor behaviour by residents during his 9 years as the property manager, including many he had personally observed.

27. Unlike the Applicants, though, Mr Hazan could give no more than a few examples of specific incidents over that 9-year period. He provided virtually no dates or other details. The Tribunal would have expected to see letters, emails and file notes in which he recorded the problems and the action he and third parties, such as the police, took in relation to them but there were almost none.

28. He said he printed off CCTV images to support his action but the trial bundle contained a grand total of one (the quality of which was so poor that it was impossible to make anything out). He said he had provided such images to the police amongst the many times he co-ordinated with them but the few emails he exhibited referred to only 4 or 5 examples over a period of 6-7 years, not all of which involved any useful CCTV.

He said the police sent data requests but provided not one example or any other details.

29. He said the Respondent took legal action where they could against lessees but there are only two published Tribunal decisions alleging breaches of covenant, one of which only concerned a failure to register an assignment. In his witness statement, he gave 6 examples of when he said enforcement action was taken against some of the Applicants but 4 of those related to service charge arrears and keeping a pet without permission. Only one related to alleged anti-social behaviour. Mr Hazan said that the relatively frequent turnover of residents made enforcement more difficult but this is insufficient to explain the large gap between his claims of action and the evidence of what action he actually took.

30. Mr Hazan alleged that one resident stole the internet connection intended for the CCTV to use for his own flat. This is a serious matter and the miscreant must have been easily identifiable yet there was not a shred of evidence that he took any action whatsoever.

31. Mr Hazan exhibited examples of correspondence to lessees and residents which he said were examples of taking action against anti-social behaviour but there were only 7 letters from his 9 years as manager and they were nearly all examples of generic letters sent to all lessees or residents noting problems with refuse removal.

32. Mr Hazan also exhibited complaints in which residents alleged that issues they had observed were caused by other residents. He seemed to assume that, when a resident blamed other unspecified residents, they must be right despite the fact that the complaints mostly didn't specify why the complainant had blamed a fellow resident rather than non-residents. It is notable that several complaints also referred to matters, such as an abandoned car, which should be the responsibility of the Respondent or their agents, not the residents. Again, there was virtually no evidence as to what, if anything, Mr Hazan did to take action in relation to any of the complaints. None of the complainants were called as witnesses or provided any form of statement for these proceedings.

33. Mr Hazan alleged that there was drug dealing but provided no evidence of this, let alone that any residents were responsible. He claims to have liaised many times with the police but no evidence of any kind was forthcoming from the police.

34. Mr Hazan pointed to the fact that some of the problems took place behind the communal doors that should be locked. He referred to doors being propped open or residents allowing non-residents to tailgate them. However, this ignores the reality that residents will often not be in a position where they feel they can safely challenge the kind of anti-social people being referred to. The answer is to provide proper security for the site, not to expect residents to take it on themselves to challenge potential criminals.

35. Mr Hazan's attempt to point to the Applicants' alleged wrongdoing is instructive in another way. The Applicants conceded that the behaviour of some of their fellow residents over the years contributed to the problems of anti-social behaviour. However, the lack of evidence against the Applicants themselves and their considerable attempts to try to address the problems at Bridge Court, including through this case and the exercise of the right to manage, demonstrate that they are not part of the problem. In contrast, Mr Hazan gave them no credit for their efforts and didn't differentiate between residents when accusing them of anti-social and non-co-operative behaviour. His evidence gave the strong impression that he thought that all the residents, including the Applicants, were jointly responsible, if not equally to blame, for the problems which complicated his management of the property. He gave no indication that he realised that it was his job, as the professional manager of the property, to address those who were causing problems not just to make his task easier or meet his client's obligations, but to protect the interests of the residents who were not causing problems.

36. Above all else, the Tribunal was distinctly unimpressed with Mr Hazan's attempt to place responsibility on the residents for the unsatisfactory situation. He is the professional property manager with responsibility for managing the property. He is supposed to be knowledgeable and experienced in property management practice in a way that cannot be expected of the residents. While he is entitled to expect a degree of co-operation from residents, the primary responsibility for pursuing solutions is his, not theirs. It is worth noting that he called only two Annual General Meetings, at which issues could have been aired, in his 9-year tenure.

37. The Respondent relied on a passage from the Tribunal's decision dated 16th November 2012 (ref: LON/00BH/LSC/2012/0136 and LDC/2012/0024):

> 4. … What was apparent from that inspection and from the evidence which the Tribunal has heard is that the property is on the verge of being unmanageable. The entrance to the parking area at the back, between the block facing the road and the block at the rear is controlled by a very heavy-duty gate, which is operated by an electronic motor, so as to prevent the operation of the security measure of having a controlled gate. The precise way in which the gate was vandalised was unclear but it must have involved extreme force.
>
> 5. As a result of the gate being vandalised it had to be left open. This allowed various vagrants and criminal elements to gain access to the back (as was no doubt the intention of the vandalization of the gate). In turn this resulted in grave management problems, including people depositing human excrement around the back block.

6. Likewise at the front, there are repeated break-ins. These could only be avoided by installing solid metal doors, but that in turn would require significant expenditure, which the landlord does not have in the service charge account.

7. It is right to record that the managing agents appeared to be doing all they could in extraordinarily difficult circumstances. It is likely that the only permanent solution, given where the block is, would be to have 24 hour security on site, but the cost of that might well be unacceptable to the lessees. Instead the landlord has installed CCTV, which appears to have lead to some improvement, particularly in the amount of fly-tipping.

38. This decision is not binding. Although that Tribunal had the advantage over the current Tribunal of being able to inspect the site, that was over 9 years ago. It seems to the current Tribunal that it is unlikely the previous Tribunal would have maintained their high opinion of the manager's efforts in the light of the gate remaining unrepaired for 9 years and there being virtually no evidence of the CCTV's use. Further, it is impossible to see how anyone could sensibly have concluded that the appropriate response to such difficulties would not be to secure the car park but to turn it public.

39. The 2012 decision does not set out in much detail what led the Tribunal to its conclusion that the property was "on the verge of being unmanageable". The current Tribunal has to work on the evidence in front of it and the conclusion from that evidence is that the Respondent's decision to keep the car park insecure and to invite the public on to it means that it is impossible to put this to the test. Only when proper, comprehensive attempts are actually made to secure the site can it be truly assessed whether the property can be managed to a satisfactory standard.

40. As for the contribution to the anti-social behaviour from the locality, the Applicants asserted that the majority of local residents are decent and the general state of the local environs is attractive, safe and even loved. The Respondent presented no evidence to the contrary, let alone that the incidence of such behaviour is any different from or worse than any other locality in London.

Service charges

Accountancy fees

41. Y&Y Management employ accountants to report on the annual service charge accounts in accordance with standard and recommended practice in property management. Raffingers Stuart (later, Raffingers LLP), chartered certified accountants, charged £1,200, £1,320, £1,380, £1,410 and £1,440 and £720 respectively for reporting on the accounts for the years 2014-2019. In the Tribunal's opinion, bearing in mind its

knowledge of such charges, these charges are not unreasonable in amount.

42. However, at this property the lease has no clear power for the Respondent to employ accountants or to put their charges on the service charge. The Respondent asserted that the following clauses contained such a power:

> 2. THE Lessee … COVENANTS with the Lessor as follows, that is to say:-
>
> (2) (a) To pay and contribute to the Lessor one [48th][†] part of:-
>
> (viii) the cost of all other services which the Lessor may at its absolute discretion provide or install in the Building for the comfort and convenience of the lessees
>
> (x) the fees of the Lessor's Managing Agents for the collection of the rents of the Flats in the Building and for the general management thereof

43. The accountants are not the Lessor's Managing Agents and so their fees are not covered by clause 2(2)(a)(x).

44. A clause similar to 2(2)(a)(viii) was considered in *St Mary's Mansions Ltd v Limegate Investment Co Ltd* [2002] EWCA Civ 1491; [2003] HLR 24. At paragraph 50, Ward LJ stated,

> The ordinary and natural meaning of the clause is to allow the lessor to charge for other services he provides or installs in the building. It deals with physical facilities, not legal advice.

45. Each lease must be interpreted in its own context and the Court of Appeal was considering legal costs, not accountancy fees, so the Tribunal does not regard this statement as binding. However, the Tribunal respectfully agrees with Ward LJ's comment and believes it may be applied to clause 2(2)(a)(viii) in the current lease. Accountancy services are not physical facilities and do not come within this clause.

46. There is a strong argument that the omission of express provision for accountancy services is a flaw in this lease. However, that cannot, by itself, alter the meaning and effect of the words actually used. Therefore, service charges arising from these amounts are not payable.

CCTV

47. As noted by the Tribunal in 2012, the Respondent had CCTV installed. The Applicants are fully aware and supportive of the benefits of CCTV

[†] The lease before the Tribunal actually says "twenty-eighth" but this is thought to be a mistake and that 1/48th was intended, there being 24 flats in each block. In its decision dated 18th November 2020 (ref: LON/00BH/LRM/2019/0011) the Tribunal varied the leases in Bridge Court North to say "twenty-fourth" while Bridge Court South is subject to the right to manage.

at Bridge Court, given that they have installed their own in one of their flats and made extensive use of it to monitor the communal area, as referred to above. However, their complaint is that Y&Y Management have not been using the CCTV, whether because it was out of commission (as shown in one of the photos they provided of two cameras hanging uselessly off an outside wall) or otherwise. They dispute the reasonableness of the charges of £835, £745, £1,044, £1,107, £1,262 and £81 for the years 2014-19 respectively.

48. As confirmed by the Upper Tribunal at paragraph 50 of their decision of 7th May 2013 ([2013] UKUT 0257 (LC)), once the Applicants raised the issue, it was for the Respondent to ensure that they could properly establish the sums that had been claimed. They provided evidence of line rental by which the CCTV system would transmit data to be recorded but that would have to be paid whether or not the system was working or being used.

49. As far as the Tribunal is aware, for reasons already referred to above, it would have been easy for the Respondent to produce evidence of when and how often the CCTV was used. The absence of such evidence compels the conclusion that it was not working or being used for at least substantial periods of time. Obviously, it is not reasonable to charge for a system which could be used but is not.

50. In the circumstances, the Tribunal has concluded that a reasonable charge for the CCTV would have been no more than 50% of the charges for each year in dispute.

Cleaning common areas

51. The Respondent paid Block Cleaning Ltd, the cleaning contractors, £12,424, £12,222, £13,302, £12,870 and £14,046 for the years 2014-18 respectively and estimated the cost for 2019 at £13,400.

52. The Tribunal heard evidence on behalf of the Respondent about the cleaning from both Mr Hazan and Mr Feiner. The contractors were said to have visited 3 times a week (Mondays, Wednesdays and Fridays), spending no less than 1½ hours on site each time, and their work consisted of cleaning all the stairwells, corridors, external areas, the bin store, the bin store overspill and the car park, picking up litter and brushing back pebble stones. They also had to clear items thrown from windows by residents onto roof and canopy areas and regularly jet-washed the bin store. Having said that, the Respondent asserted that the main cleaning was indoors and the car park represented only a small part of the work.

53. Mr Feiner stated that his firm supplied all equipment and cleaning products. He said that fresh water was brought to the site but that there was a tap for more water. The parties spent much time at cross-purposes on this topic because the tap that Mr Feiner was referring to belongs to a particular lessee and, as far as the Applicants were aware, it was not available to the contractors.

54. Mr Feiner also said that he organised 2 or 3 visits a year, without charge, where 3 or 4 members of staff would clean all day.

55. As with Mr Hazan, Mr Feiner was unable to back up his evidence with documents. Of course, witness evidence is evidence just as much as documents are but, if documents exist which could be produced easily, inferences may be drawn from their absence which undermine evidence given orally.

56. There was no cleaning contract or specification. Mr Feiner said there were logs of cleaner visits and that he kept some but none were produced to the Tribunal (Ms Martin said she had seen logs which were incomplete, indicating that the cleaners had not visited every time they were supposed to). He said photos were taken of cleaning completed but no such photos were provided.

57. Mr Feiner also said that part of the cleaners' job was to report back any issues they noticed which Y&Y Management might need to follow up but there was no documentary evidence of any such reports, let alone any follow-up. He said that any concerns or complaints were passed to him and he investigated but, again, there was no evidence of this, including emails or letters to Y&Y Management.

58. The Applicants complained about the standard of cleaning. They produced a number of photos showing litter strewn about the external areas, the bin store in a mess and detritus on the internal floors. The Respondent pointed out that the cleaners could only be on site periodically and that rubbish could accumulate between visits. However, the photos supported the Applicants' assertions that some rubbish, dirt and sticky surfaces could be found immediately after the cleaners had been attending to the relevant area, sometimes so that the floors were still wet from mopping.

59. Ms Helmore, Mr Hazan and Mr Feiner tried to make much of statements from the Applicants that the cleaners just slopped buckets of dirty water around. The Applicants conceded that the cleaners did more than that. In the Tribunal's opinion, the Applicants' statement was a rhetorical flourish, used to express their dissatisfaction and frustration with what they saw as a poor service. Moreover, it was obviously meant as such and it is not to the Respondent's credit that they tried to make more of it than it was worth.

60. It is notable that the Respondent claimed there was no evidence that the car park directly caused any littering whereas the Applicants complained that the litter included the plastic bags which the parking enforcement company used to attach parking tickets to cars whose owners had not paid the requisite amount.

61. On the available material, the Tribunal prefers the Applicants' evidence as to the quality of the cleaning services, particularly in the light of the fact that the Respondent chose to make the job of Mr Feiner's employees significantly more difficult by inviting the public onto an

estate that was already struggling with the impact of outsiders and their anti-social behaviour.

62. In all the circumstances, the Tribunal has concluded that a reasonable charge for the cleaning would also have been no more than 50% of the charges for each year in dispute.

Fire Alarm Testing

63. According to the accounts, the expenses making up the service charges included:

- 2014 Fire Alarm Testing £360
- 2015 Health & Safety £1,500
- 2016 Fire Alarm Testing/Maintenance £540
- 2017 Fire Equipment Testing £2,520
- 2018 Fire Equipment Testing £1,254

64. The first point the Applicants made is that there have been no fire alarms to test. This is one of the numerous examples the Tribunal comes across in these sorts of proceedings of service charge accounts unhelpfully using an inaccurate description for a service charge category. "Fire Alarm Testing" turned out to be for emergency lighting testing.

65. The Applicants complained of the lack of evidence of fire or other safety work but the Respondent was able to produce a Fire Risk Assessment Report and a Health and Safety Risk Assessment Report, both by CEC Safety and dated 7th November 2017.

66. While it is understandable that the Applicants raised queries, they conceded these items on receiving an explanation of the charges on behalf of the Respondent.

General Maintenance

67. According to the accounts, the Respondent paid out £6,622, £3,005, £4,402, £9,659, £11,767 and £11,849 in General Maintenance for the years 2014-19 respectively.

68. The Applicants complained that, to the extent that any general maintenance took place, it consisted of repairing or replacing items broken or stolen by members of the public who would not have access if the site were not open due to the car park. They also argued that maintenance work was of a poor standard.

69. The Respondent replied that general maintenance included the costs of minor repairs such as replacements and repairs to locks, doors, glass, telephone sockets, supply of light bulbs, drain charges, removal of graffiti, pipe replacement and other repairs of a minor nature which were carried out as and when necessary.

70. The Tribunal has no doubt that, while there would have been some general maintenance required in any event, the use of the estate by outsiders who took advantage of the open nature of the site increased the quantity of general maintenance. Precise quantification is impossible. In all the circumstances the Tribunal has determined that a reduction of 25% in the general maintenance charges for each year in dispute would put them at a level which is reasonable in amount.

Insurance

71. The buildings insurance premiums were £16,963, £17,697, £19,064, £20,046 and £25,576 for the years 2014-2018 respectively as shown by the accounts and the insurance documents included in the bundle. The Respondent uses brokers who they say tested the market each year.

72. The Applicants queried the increases in the premiums, particularly from 2017 to 2018, and compared the amounts unfavourably to the amount charged by the RTM company after it took over management. In fact, the RTM company's charge was only an estimate by their agents. The Applicants had no alternative quotes or other evidence to challenge the reasonableness of the charges. Therefore, the Tribunal has determined that the service charges arising from the insurance premiums are payable.

Legal & Professional Fees

73. The accounts included the sums of £462, £8,927, £632, £279, £17,054 and £39 for "Legal & Professional Fees" for the years 2014-2019 respectively. The Applicants asserted that there was no power in the lease to put such expenses on the service charges.

74. Clause 2(2)(a)(iii) of the lease obliges the Applicants to contribute their share of maintaining, repairing, decorating and renewing the structure and other parts of the building, the estate and its services. On an estate of this size, it is not feasible for a landlord to comply with their maintenance obligations without the occasional assistance of a surveyor. The Tribunal has no doubt that this clause was always intended to encompass the cost of employing a surveyor for such purposes.

75. Mr Hazan exhibited the invoices of the surveyors he instructed:

- Guardian Surveyors LLP 31st July 2014 £1,200
- Guardian Surveyors LLP 31st March 2015 £9,127.31
- Simon Levy Associates 4th October 2017 £600
- Simon Levy Associates 30th January 2018 £1,316.88
- Simon Levy Associates 1st February 2018 £322.50
- Guardian Surveyors LLP 29th March 2018 £3,960
- Simon Levy Associates 27th September 2018 £600

76. The Tribunal cannot identify any clause which allows legal costs to be put onto the service charge, much in the same way as for accountancy fees already considered above. Therefore, any part of the Legal & Professional Fees which relate to legal costs is not payable.

77. The surveyors' fees above do not correspond to the amounts for Legal & Professional Fees in the accounts so it is possible that some surveyors' fees were categorised elsewhere. However, even if all the surveyors' fees are accounted for in this category, that still leaves £10,266.31 unaccounted for and presumably attributable to legal costs which may not be added to the service charge.

Management Fees

78. Y&Y Management charged £15,000, £15,000, £15,500, £16,200, £17,280 and £17,856 for its services to the property for the years 2014-2019 respectively.

79. The Applicants conceded that these would normally be considered reasonable amounts for management fees for an estate of this size. Based on its specialist knowledge and experience, the Tribunal would agree.

80. However, the Applicants argued that Y&Y Management's charges were unreasonable in the light of the other defaults they highlighted. Their complaints and the Respondent's responses have already been addressed above, save that Mrs Bowles and Ms Downing also complained that Mr Hazan often did not respond to communications and other attempts to engage and gave the impression that he was not listening to their concerns. Mr Hazan denied this and asserted his belief that he is a good manager but, for reasons already discussed, the Applicants' evidence on this is preferred.

81. The Tribunal is satisfied that the management of Bridge Court has been unsatisfactory during the Respondent's time as freeholder. This is to a significant extent the Respondent's fault – it was not Y&Y Management which made the car park public. In the circumstances, the Tribunal has determined that the management fees should be reduced by 50%.

Refuse Removal

82. Refuse removal incurred costs of £3,310, £4,920, £2,863, £2,218, £2,261 and £648 for the years 2014-2019 respectively. This is a common enough category for service charges and involves dealing with refuse which is not taken away in the normal course of the local authority's regular visits for refuse disposal.

83. However, as already considered, Bridge Court suffered from fly-tipping, littering and interference with the bin store which significantly increased the time and expenditure required in removing refuse. For reasons already set out, the Respondent must bear considerable

responsibility for this and the Tribunal has determined that these charges should be reduced by 50%.

Major Works

84. In 2015 the Respondent incurred sums of £67,304 and £296,371 on major works which required consultation in accordance with section 20 of the Landlord and Tenant Act 1985, plus Y&Y Management's fee of 6% and the surveyor's fee of 10%.

85. The lease provides:

> 2. THE Lessee … COVENANTS with the Lessor as follows, that is to say:-
>
> (2) (a) To pay and contribute to the Lessor one [48th][‡] part of:-
>
> (ix) such sums as the Lessor shall reasonably consider necessary from time to time to put to reserve to meet the future liability of carrying out major works to the Building or the Flat with the object as far as possible of ensuring that the contribution shall not fluctuate substantially in amount from time to time

86. The Applicants argued that putting large sums in a single year so that the service charge fluctuated substantially constituted a breach of this term. In and of itself, this is not a breach because that would amount to a guarantee that the service charge would never fluctuate substantially and that is not what this clause provides. In any event, the task for the Tribunal is to consider whether the charge is reasonable in total, not whether it should have been paid over a longer period of time.

87. According to the Applicants, the 2015 works were, in large part, to replace a roof which had been replaced only 10 years previously. However, they had no evidence as to those previous works. The Respondent was entitled to work from the expert evidence they had at the time that the roof had reached a state which required replacement. The Applicants had no expert evidence to contradict that relied on by the Respondent.

88. The Applicants argued that the condition of the roof was down partly to the Respondent failing to prevent residents accessing the roof for their television aerials or satellites. While there was some evidence that such activity by residents was an issue, there was insufficient evidence to establish that it affected the need for the works, let alone that appropriate action on behalf of the Respondent would have avoided that level of damage.

[‡] The lease before the Tribunal actually says "twenty-eighth" but this is thought to be a mistake and that 1/48th was intended, there being 24 flats in each block. In its decision dated 18th November 2020 (ref: LON/00BH/LRM/2019/0011) the Tribunal varied the leases in Bridge Court North to say "twenty-fourth" while Bridge Court South is subject to the right to manage.

89. The Applicants also argued that some parts of the major works specification were not completed, including repointing and replacement of broken brickwork and the repair of a wooden partition that contains the front door of Bridge Court South. However, the Applicants did not direct the Tribunal's attention to any documents which would show that these elements were included in the specification, let alone any evidence that these items were not attended to.

90. The Applicants further argue that the works took longer than they were supposed to but they did not suggest that this resulted in any higher service charges. Mr Hazan said that the contractors had even been penalised for going over the planned time, resulting in a saving on the cost of the works.

91. The Tribunal has not gone into a detailed description of the works in question because the Applicants' challenge was on these limited grounds. The Tribunal has determined these grounds are insufficient to question the payability of these sums.

92. There had been much discussion in the hearing about the status of forms signed by some of the Applicants which included the following statement:

> I have also obtained legal advise [*sic*] and confirm that I understand that by singing [*sic*] this form I admit that the sums charged are reasonable and due and I have no dispute over them.

93. The form also dealt with a number of other matters and it is clear to the Tribunal that at least some of the signatories did not direct their minds to the significance of this statement, tacked as it was on the end. However, to the extent that it was relevant, the Tribunal is satisfied that these so-called "admissions" did not assist the Respondent. They were signed following receipt of estimates in advance of the completion of the works and the final account and could only amount at most to a concession that the signatory would not challenge the reasonableness or payability of the estimates. They left unaffected the right of the signatory to challenge the reasonableness or payability of the service charges arising from the actual costs known and charged after the provision of the final account.

2019 accounts

94. The Applicants challenged a further sum for major works of £12,665 which was apparently incurred in 2019. Ms Helmore clarified that the 2019 amounts being challenged were only estimates and the work represented by this sum was not going ahead due to the exercise of the right to manage in relation to Bridge Court South.

95. The Applicants have not challenged the reasonableness of the 2019 estimates as such but rather sums which appear in other documents

which appear to represent actual charges to 30th April 2019, the cut-off for the start of the right to manage.

96. Ms Helmore argued that the Tribunal should do no more in relation to 2019 than determine the reasonableness of the estimates. This seems somewhat pointless as the Respondent would not be able to recover the full amount. The estimates did not take account of the right to manage, having been compiled before that happened. However, the consequences are now known. The service charges should now be calculated in accordance with what is set out further below and what the parties now know, including this Tribunal determination.

Ground Rent Overpayment

97. The Applicants queried a sum of £18.36 charged to Mrs Bowles but the Respondent conceded it rather than arguing over such a small sum.

Calculation of credits/refunds

98. Each of the Applicants is entitled to a determination of the amount payable by them individually but, unfortunately, the Tribunal does not have the details from which such a calculation may be made. The Respondent has provided the dates on which each Applicant became a lessee and that is important because the Tribunal is only determining the payability of charges which have actually been demanded from each Applicant. However, the Tribunal does not know each Applicant's apportionment/share and how charges were apportioned for the service charge year in which each Applicant acquired their interest.

99. Having said that, it should be possible for the Respondent to make the requisite mathematical calculation and for the parties to agree on the disposition of any relevant sum, e.g. by credit against arrears or future liabilities or by a refund. In the unlikely event that the parties are unable to agree the precise credits or refunds to be provided to an Applicant, they are at liberty to apply to the Tribunal for this issue to be determined.

Costs

100. The Applicants sought orders under section 20C of the Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 that the Respondents may not add their costs of these proceedings to the service charges. On the Tribunal's findings above, there is no power to put legal costs onto the service charge but that does not dispose of the matter.

101. The Applicants have succeeded on the many issues, but not all of them. The Respondent bears the primary blame for allowing this dispute to end up in litigation which had to reach a full final hearing to be concluded. In all the circumstances, and assuming that the Respondent is entitled to pass on any of their costs, the Tribunal orders that the

Respondent may recover no more than 20% of their costs of these proceedings.

Name: Judge Nicol **Date:** 11th October 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions 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.

Section 20C

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

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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