FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LSC/2019/0006**
Property	**:**	**Flats at Arthaus Apartments, 205 Richmond Road, London E8 3FF**
Applicant	**:**	**Mr Erez Levon and others**
Representative	**:**	**Mr Erez Levon of Flat 31 in person**
Respondent	**:**	**Hazlewood Properties Limited**
Representative	**:**	**Mr Bastin of Counsel**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge W Hansen (chairman)** **Mr Lewicki FRICS** **Mr Miller**
Date of hearing	**:**	**10 & 11 July 2019**
Date of this Decision	**:**	**29 July 2019**

DECISION

Decision

(1) The Tribunal determines that all the service charges claimed for 2014-2017 inclusive are payable and reasonable save that:

(a) The total cost for concierge services for 2016 shall be reduced from £145,532 to £116,425;

(b) The total cost for concierge services for 2017 shall be reduced from £159,558 to £127,646;

(c) The total cost for common parts cleaning services for 2016 shall be reduced from £36,222 to £23,000;

(d) The total cost for common parts cleaning services for 2017 shall be reduced from £40,659 to £23,500.

(2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.

Introduction

1. By this application dated 20 December 2018 Mr Erez Levon and 19 other tenants ("the Applicants") of the Arthaus Apartments, 205 Richmond Road, London E8 3FF ("the Property") seek to challenge a variety of service charge items covering the period 2014-2017. Although the application refers to 2018, the Applicants did not pursue any challenge in relation to 2018.

2. The relevant parts of the Landlord and Tenant Act 1985 ("LTA") are contained in the Appendix to this decision.

3. The Property was converted in or about 2011 from a warehouse into a mixed use development comprising restaurants and offices on the ground floor, offices and residential units on the first and second floors, and exclusively residential units on the upper floors (Floors 3-5, now 6 following recent

further development). There were originally 68 private flats but there are now 70.

4. The residential units with which this application is concerned were let on long leases in 2011 by the then landlord Findon Urban Lofts (BBB) Limited. A specimen of one such lease was included in the bundle. It is a lease dated 26 August 2011 for a term of 999 years from 1 January 2011 which contains provision for the payment of a Service Charge in accordance with Schedule 7. Schedule 7 identifies the Services to be provided at 7-3 and by 7-2.5 the tenant is obliged for each financial year to pay the Service Charge Percentage identified at 1.1.23 (being a fair and reasonable percentage) of the Landlord's Expenses identified at 1.1.12. It is unnecessary to set out the detailed terms of the lease as no point has been taken in relation to the service charge machinery in the lease and no suggestion has been made that the service charge items claimed are not, in principle, recoverable under the terms of the tenants' respective leases, subject to their reasonableness. The focus of the challenge is on the reasonableness of the charges.

5. The Applicants were represented at the hearing by Mr Levon, the tenant of apartment 31. The Respondent was represented by Mr Bastin of Counsel. We are bound to say at the outset that the case was very poorly prepared on both sides. Whilst making due allowance for the fact that Mr Levon was acting in person, there were a number of errors in the Scott Schedule, a lack of adequate explanation of which particular items were disputed and why, and a lack of evidence in the form of alternative quotations or otherwise to support many of the challenges. Many of the challenges amounted to little more than a contention that the charges had gone up significantly and were "excessive". This is not really good enough without more. The Respondent had disclosed all the underlying invoices well in advance of the hearing but no attempt had been made by the tenants to analyse the invoices. At our suggestion Mr Levon did attempt to analyse the invoices following the conclusion of day 1 of the hearing but this was really too little too late. In fact, he accepted that, generally, there were receipted invoices to support many of the sums claimed and sensibly abandoned a number of the challenges, having belatedly analysed the invoices. However, even where he suggested that there were not invoices to support any particular item of alleged expenditure, we cannot be confident that his analysis was complete or reliable. We prefer to rely on the

accounts as a more reliable basis for assessing whether the costs claimed were in fact incurred: see e.g. Basis of Report and Report of Findings at page 364. However, the accounts do not assist on the issue of whether costs were reasonably incurred or whether the services provided were of a reasonable standard. However, the Respondent must also take some of the blame for the preparation of the case. Under paragraph 1(4) of the 2013 Procedure Rules the parties must (a) help the Tribunal to further the overriding objective; and (b) co-operate with the Tribunal generally. We did not feel that the Respondent complied with this obligation. We were left with many unanswered questions about things as basic as when the number of private flats increased from 68 to 70.

6. There were a large number of challenges to the apportionment of the total expenses between the residential and commercial parts of the Property (see page 183). We were unpersuaded by these challenges. The leases provide for a fair and reasonable proportion. In many instances the tenants contended for an apportionment of 70% instead of 79%. This is tinkering at the margin. Overall, we were not persuaded that any sound case was made for altering the apportionments used by the landlord. It seems that these are kept under review, as is appropriate, but we think it inappropriate on the facts of this case to substitute our view for that of the managing agents on any particular apportionment.

7. Against that background, we turn to consider the items in dispute and we proceed by reference to the numbered items in the Scott Schedule.

8. (1). The dispute in relation to Item 1, relating to management fees, is an example of many of the criticisms we have raised above. The challenge lacks clarity. The Applicants say, "*There is a mismatch in the way that management fees are calculated and how these are then apportioned to the service charge*". It appears that the management charges are based on a flat rate of £250.80 including VAT per flat. This figure is then multiplied by the number of flats, 68 or 70 depending on when the additional 2 flats were added. The total charge is then apportioned between the 68 or 70 private flats. The example we were given was Flat 65. The total charge was apportioned on the basis of floor area using a percentage of 2.054%. However, that assumed there were 68 flats. The revised percentage when there were 70 flats was

1.9646% (page 222). However, we do not know when 68 became 70 flats and the parties were unable to assist. There was no challenge to the flat rate management fee of £250.80 including VAT which, for the avoidance of doubt, we consider reasonable. Nor was there any challenge to the percentage apportionments. Accordingly, as indicated to the parties, we cannot resolve this dispute, if indeed there is a residual dispute.

9. (2), (3). This challenge to accountancy fees was abandoned.

10. (4), (5). This challenge relates to the cost of concierge services. The tenants' case was that these costs have gone up at a time when the service provided has "*seriously degraded*". The total costs for these services (before apportionment) were £114,421 for 2014, £115,706 for 2015, £145,532 for 2016 and £159,558 for 2017. The actual sums charged to the private apartments were £98,742 for 2014, £101,627 for 2015, £123,584 for 2016 and £125,460 for 2017. The focus of their challenge was to the years 2016 and 2017. Insofar as there was a challenge to earlier years, we were unpersuaded. There was a limited challenge to the basis of apportionment (page 183) but we are unpersuaded as to this. However, there is, in our judgment, substance to the underlying challenge for the years 2016 and 2017. Mr Awan of Sandrove Brahams, the managing agents from 2015 to 2018, told us that his firm conducted an audit of all services in 2015 and concluded that the concierge service was not up to standard. He said that a large number of people were coming into the Property without having their credentials checked and that a number of the concierge staff were unlicensed. On this basis, a new contract was entered into with CS Services Group with effect from 1.1.16 which provides for 1 person 7am-7pm and 1 person 7pm-7am. Mr Levon, who was the only tenant to give oral evidence, said that there had previously been two concierge staff on duty during the day and one at night, whereas there was now only one member of concierge staff during the day (and one at night) yet the cost had gone up. Mr Awan told us that the contract was put out to tender although we note that the tenants have repeatedly asked for documents relating to the tendering process and these have not been supplied. There is, we find, a lack of transparency from the Respondent around this issue and we were not persuaded by Mr Awan's evidence that the level of service had gone up. On the contrary, we accept Mr Levon's evidence that the number of concierge staff has gone down and that the service provided has deteriorated,

as indeed might be expected from the fact that there are now less concierge staff during the day. On balance, despite the lack of comparable evidence, we have concluded that the Applicants have persuaded us that the sums charged for concierge services for 2016 (£145,532) and 2017 (£159,558) are unreasonably high and we propose to reduce them by 20% to reflect the fact that during the day there is now only one member of concierge staff which has resulted in a poorer level of service than was previously available at lower cost. We therefore conclude that a reasonable charge for concierge services for 2016 is £116,425 (80% of £145,532) and a reasonable for concierge services for 2017 is £127,646 (80% of £159,558). No change is made to the apportionment as between the residential units and the commercial units.

11. (6). This related to health and safety and the challenge was limited to 2015 when there was a spike in the charge to the private apartments from £3,284 to £17,491. We are not persuaded by this challenge. The invoices showed that there had been a health and safety assessment in 2015 and that work was carried out to implement the recommendations. There is a total lack of evidence on the tenants' side to make good this challenge.

12. (7), (8), (9), (10). This related to electricity charges. The Applicants came close to abandoning this challenge but ultimately did not do so, although they acknowledged their difficulties. Again, there is lack of evidence to support this challenge.

13. (11), (12). These items were a generic challenge to the charges for so-called soft services questioning the increase in costs and the apportionment but this challenge is best dealt with by reference to particular services charged for (see below).

14. (13), (14). These items relate to access control and CCTV. The tenants accepted that there were invoices to evidence the relevant expenditure. There were no alternative quotations provided. The tenants acknowledged their difficulties. Again, there is no meaningful evidence to sustain a challenge.

15. (15), (16), (17). This challenge relates to common parts cleaning and Mr Levon confirmed that it related only to the years 2016 and 2017. The tenants' case was, again, that these costs have gone up at a time when the service provided

has "*seriously degraded*". Mr Levon told us that the upkeep and cleanliness of the common parts had seriously declined and drew our attention to correspondence evidencing complaints in this regard dated 21 November 2016 and 17 February 2017. The total costs for these services (before apportionment) were £35,383 for 2014, £22,849 for 2015, £36,222 for 2016 and £40,659 for 2017. The actual sums charged to the private apartments were £26,198 for 2014, £15,648 for 2015, £29,163 for 2016 and £31,970 for 2017. We noted in particular that the reduced charge for 2015 followed complaints by the tenants and resulted in a level of cleanliness that they were happy with. Yet what happened thereafter, according to Mr Levon, is that the costs went up and the standards of cleaning went down. Mr Awan of Sandrove Brahams, the managing agents from 2015 to 2018, told us that his firm conducted an audit of all services in 2015 and concluded that the cleaning service was not up to standard. He went out to tender and the contract was awarded to CS Services Group with effect from 1.1.16 (page 383). The contract price was £28,800 + VAT. That contract refers to a specification but no one was able to provide us with that specification. However, Mr Awan told us that the new cleaners provided 28 hours of cleaning per week. That equates to an hourly rate of £19.78 + VAT per hour. The Applicants provided rival quotations with an hourly rate varying between £11.49 + VAT and £12.50 per hour. Mr Awan in his evidence said that these quotes were not comparable but we are not persuaded that there was anything special about the cleaning requirements for this building. We note that the actual charge for 2014 was £12 + VAT per hour according to the PMR invoice provided to us. Having regard to the fact that a satisfactory level of cleaning service was being provided in 2015 for £22,849 and having regard to the alternative quotations available and Mr Levon's evidence about the declining standard of cleaning, which we accept, we are satisfied that the charges for common parts cleaning for 2016 and 2017 are unreasonably high. The evidence suggests that a comparable level of service to that provided in 2015, which we find was to a reasonable standard, could have been provided in 2016 and 2017 at £12 + VAT per hour or thereabouts. Based on 28 hours of cleaning a week, which we consider reasonable, this produces a total of £20,966.40 inclusive of VAT by way of example. This is very close to the figure of £22,849 for 2015. On this basis we conclude that a reasonable sum for common parts cleaning for 2016 is £23,000. To allow for inflation of about 2%, we consider a reasonable figure

for 2017 to be £23,500. No change is made to the apportionment as between the residential units and the commercial units.

16. (18), (19). This challenge related to rubbish removal and bin hire and was abandoned by the Applicants.

17. (20). This challenge related to pest control and was abandoned by the Applicants.

18. (21), (22). This challenge related to landscaping costs and as pursued before us, the Applicants having considered the supporting invoices overnight, the challenge was really to the apportionment of these costs as between the commercial and residential parts. We reject this challenge. All tenants benefit from the landscaping. The residential tenants account for approximately 75% of the total floor area and they pay 68% or less of these costs which we consider reasonable.

19. (23), (24). This challenge related to the entry phone system and was abandoned by the Applicants.

20. (25), (26). This challenge related to internal lighting and was abandoned by the Applicants.

21. (27). This challenge related to the intranet and was abandoned by the Applicants.

22. (28). This challenge related to water hygiene and was abandoned by the Applicants.

23. (29). This challenge related to emergency lighting. There were supporting invoices but they did not distinguish between internal lighting and emergency lighting. We were satisfied, having regard to the Respondent's observations in the Scott Schedule, that this charge was reasonable.

24. (30). This challenged related to fire equipment and related only to 2017. We noted that there was a fire risk assessment conducted in June 2017 and this

charge related to carrying out the recommendations contained in that assessment. As the Respondent explained in the Scott Schedule, this is not an annual cost. It covered the costs of a fire risk assessment and "consequential actions taken upon the Fire Officer's recommendations". Mr Awan told us that this consequential work and we accept his evidence and find that this was a reasonable cost reasonably incurred.

25. (31), (32), (33), (34). This related to lift maintenance. The Applicants persisted in challenging the figure for 2017 only on the basis that they could not find invoices to support the whole of the sum claimed, although they did not identify invoices for quarterly lift maintenance and various call-outs. We were not persuaded that the Applicants had made good their challenge to this item. The figure is vouched for in the accounts and we consider it reasonable.

26. (35). This related to general repairs. Again the challenge which was maintained ultimately was to the apportionment of the total costs between the residential and commercial parts. The Applicants noted, for example, that approximately £15,000 had been spent on repairs to the Ground Floor toilets which were used primarily by the patrons of the commercial premises. However, there was no challenge in the Scott Schedule to the apportionment and for the reasons already given we do not uphold any challenge to the apportionment and consider the overall costs reasonable in the context of this Property.

27. (36), (37). This challenge related to insurance costs and was abandoned by the Applicants.

28. QLTAs? The final issue we had to decide was whether the various agreements referred to in paragraph (8) of the Applicants' Statement of Case were Qualifying Long Term Agreements (QLTA) within the meaning of s.20ZA(2) o the Landlord and Tenant Act 1985. We confine ourselves to considering the Applicants' pleaded case and the agreements referred to therein. As defined in s.20ZA(2) a QLTA is

> *"… an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months".*

29. In considering whether any agreement is a QLTA, the deciding factor is the length of the minimum commitment – the agreement must last more than 12 months: see e.g. *Corvan (Properties) Limited v. Abdel-Mahmoud* [2018] EWCA Civ 1102 at [37]-[39].

30. Applying that test, we are satisfied that none of the agreements under challenge are QLTAs, as none of them were for a term of more than 12 months.

31. Section 20C. The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). Whilst the Applicants have succeeded in relation to 2 quite substantial items, namely concierge services and common parts cleaning, they have lost on all the other items and took what we considered to be an unreasonable "kitchen sink" approach to the litigation, challenging everything or virtually everything when the challenge should have been much more focused. At least a day of Tribunal time could have been saved if the Applicants had taken the trouble to look at the invoices in good time before the hearing, rather than only on the first night after day 1 of the hearing. In the circumstances, and having regard to our conclusions above, we decline to make such an order. We would however emphasise the fact that the issue under section 20C is not whether any costs said to have been incurred are reasonable. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of section 19 of the Landlord and Tenant Act 1985. However, that is an issue, if it arises, that should be considered on a separate application under section 27A.

Name: Judge W Hansen **Date:** 29 July 2019

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal].

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA(2)

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

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.