FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/LSC/2019/0207**
Property	**:**	**Flat H, Pampas Court, 13 Waterway Avenue, London SE13 7GB**
Applicant	**:**	**Mr David Fisher**
Representative	**:**	**N/A**
Respondent	**:**	**London and Quadrant Housing Trust**
Representative	**:**	**Ayesha Omar of Counsel**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Mr P M J Casey MRICS** **Mr C Gowman MCIEH**
Date and venue of Hearing	**:**	**5 December 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15 January 2020**

DECISION

Decisions of the tribunal

(1) The tribunal determines that all of the disputed items of service charge expenditure, save for the balcony repairs at £163.40 and the associated management fee of £16.34 in 2018/19 are payable by the applicant in respect of the service charges for the years 2017/18 and 2018/19.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicant in respect of the service charge years 2016/17, 2017/18 and 2018/19.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant appeared in person at the hearing and the respondent was represented by Ayesha Omar of Counsel.

The background

4. The property which is the subject of this application is a 2 bedroomed second floor purpose built flat in a block of 19 similar flats constructed circa 2007. It is known as Flat H, Pampas Court, 13 Waterway Avenue, London SE13 7GB ("the property").

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The applicant holds a long shared ownership lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. A case management conference was held on 12 September 2019 attended by both parties at which it was established that the issues in dispute for the service charge year 2016/17 were external lighting and management fee, for 2017/18 buildings insurance, fire protection and management fee, and, for 2018/19 (for which final accounts were not available) fire protection and management fee. Directions for the conduct of the proceedings were issued the same day which among other things required the applicant tenant to complete a schedule listing the disputed service charge items with comments as to the reasons for the dispute and the respondent landlord to then enter their response. On the schedule the applicant raised no issues for the 2016/17 service charge year because the respondent had conceded that it would not be charging him for external lighting works and the associated management fee. He did however include an additional item for 2018/19 relating to balcony repairs and the associated management fee.

8. At the start of the hearing we were asked if the evidence of Ms Hamilton-Crooks as per her witness statement could be heard as soon as possible as she had child caring duties at home. Ms Omar was happy to let the witness statement stand so long as the allegation of damage was not part of Mr Fisher's case. He confirmed it did not and we told the witness she could leave if she wished.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows. No issues remained outstanding for the 2016/17 service charge year.

Service charge item & amount claimed
Buildings insurance - £177.50 for 2017/18, £195 for 2018/19

10. The applicant raised no issue with his obligation under his lease to pay the respondent landlord the cost it incurred in insuring his flat nor with the arrangements it made to effect that insurance. His sole complaint was that the £58.47 increase in his contribution from 2016/17 was unjustified and unreasonable. He was not satisfied that the reason given to him for the increase of a poor claims record was correct as the poor record in 2013/14 did not lead to this sort of increase. He provided no evidence of alternative quotations for the cover provided though in truth this would have been difficult for him to do but he did not provide any quotations for "stand alone" cover had he been required to effect his own insurance.

11. Ms Omar called evidence from Ms Guila Artusa, a Risk and Insurance Manager at London & Quadrant whose witness statement is dated 23 October 2019. She explained that Pampas Court was insured under

a block policy covering the whole of London & Quadrant's shared ownership portfolio. It was subject to competitive tendering every 3-5 years. Under the contract with the current insurer, Brit Global Speciality, premium rates are fixed but the amount of the premium varies because of changes to the rebuild cost of the insured portfolio, fluctuations in insurance premium tax and, especially pertinent in this case, the claims loss ratio not exceeding 75%. This ratio in 2016/17 was 161% and the total cost of the insurance increased to £3,630,000. This premium is apportioned equally to each of the 18,615 properties covered and would have resulted in each paying £195 but London & Quadrant gave all leaseholders a discount for 2017/18 reducing this sum to £177.50. Ms Omar referred in her submission that this amount was both reasonable and reasonably incurred to the Upper Tribunal (Land Chamber) decision in Avon Estates (London) Limited and Sinclair Gardens Investments (Kensington) Limited [2013]UKUT 0264 (LC) of which she supplied a full copy.

The tribunal's decision

12. The tribunal determines that the amount payable in respect of buildings insurance is £177.50 for 2017/18 and £195 for 2018/19.

Reasons for the tribunal's decision

13. The tribunal is satisfied that whilst the respondent's insurance arrangements do give them commercial and management advantages they do not result in the applicant being required to pay an excessive amount. We are also satisfied that the large increase over 2016/17 is entirely due to the poor claims ratio of the portfolio but in our knowledge and experience gained from hearing many similar cases the premium contributions the applicant has been asked to pay are in line with what would be expected in the market and are hence both reasonable and reasonably incurred.

Service charge item & amount claimed
Management Fees - £178.55 for 2017/18, £162.38 for 2018/19

14. The applicant originally only disputed the management fees relating to the heads of expenditure he disputed but London & Quadrant accepted that the challenge was to the whole management fee for both 2017/18 and 2018/19. At the hearing it became clear that what was shown on the service charge statements as "L & Q Admin fee (Homeowners)" in the sumof£70 for each flat per annum was also part of management fees and we have included this in the sums challenged. The applicant's case is that the elements of the management fee ascribed to the items he has disputed have not been reasonably incurred and that the management fee itself is unreasonable being based on a percentage of expenditure in that it encourages unnecessary works to be undertaken/invented because London & Quadrant make a profit from

the management charges. He addressed some such items of work under specific headings dealt with below.

15. Ms Omar called evidence from Ms Laura Coulter, a service charge Team Manager, whose witness statement is dated 24 October 2019. As well as addressing the specific heads of expenditure disputed by the applicant she also dealt with the management fee. Clause 7(5) of the lease allows the respondent to recover all reasonable fees charges etc payable to persons engaged to manage the property but also allows where such work is carried out by an employee of the landlord that there may be included in the service charge a reasonable allowance for the landlord for such work. London & Quadrant employs staff to manage its property. It had previously made a 15% of service charge costs management fee but for the past few years had introduced a fixed fee of £70 per annum to cover central/head office management functions with 10% charged on those matters supervised, commissioned etc by local managers (but not insurance or sinking fund or management amounts). In submission Ms Omar said the fee was competitive when compared with third party managed sites. The applicant had not given any evidence of fee quotes from residential management companies nor had he complained about the standard of the service provided save possibly in relation to the locks. However because of the concession in regard to balcony repairs (see paragraph 18 below) the fee for 2018/19 should be reduced by the 10% fee attached to those works and be reduced by £16.34.

The tribunal's decision

16. The tribunal determines that the amount payable in respect of management fees is £178.55 for 2017/18 and £146.04 for 2018/19.

Reasons for the tribunal's decision

17. There is no evidence that London & Quadrant seek to use management fees as a source of profit or as an income stream by undertaking unnecessary work. The level of the fee is well within what would be expected to be charged by a residential management company to provide, manage and supervise the quite extensive range of services London & Quadrant provides to the block.

Service Charge Item and amount claimed
Balcony repairs £163.40 for 2018/19.

18. Ms Omar said the applicant's claim that the cost of balcony repairs should have been claimed under the builders' warranty and not through the service charge was only raised after the case management conference. Though she took no objection to this she explained London & Quadrant thought it an issue on which they would need to adduce expert evidence but had been unable to do so in the time. In the

circumstances they were prepared to concede in these proceedings that this sum and the associated 10% management fee were not service chargeable.

Service Charge Item and amount claimed
Fire protection works £204.66 for 2017/18

19. The applicant's dispute regarding this item is that the works were done before the fire risk assessment was carried out so how could they be justified. The respondent provided the invoices which indicated the works carried out which were claimed to be within the landlord's lease obligations and the fire risk assessment report which shows three inspection dates the first pre-dating the works.

The tribunal's decision

20. The sum of £240.66 is payable as claimed.

Reasons for the tribunal's decision

21. It appeared to the tribunal that works commenced on the recommendations of the fire risk assessment report following the first inspection. The report is clearly an ongoing one which is updated at intervals. There is no reason why works could only be authorised after the last date shown. They clearly fall within the landlord's obligations under the lease and in our view the costs are reasonable and reasonably incurred.

Service Charge Item and amount claimed
Fire protection works £2.04 for 2017/18

22. The applicant claims that the work done to remove a mechanism from the locks that allowed tenants to lock these communal landing access doors from the "flats side" were unnecessary and had placed occupants' security at risk. The respondent said it took this action on the advice of the London Fire Brigade and exhibited the relevant correspondence in the hearing bundle as well as providing an explanation in Ms Coulter's witness statement.

The tribunal's decision

23. The sum of £2.04 is payable by the applicant.

Reasons for the tribunal's decision

24. We are satisfied that the respondent took this action on the advice of the fire brigade and as such acted reasonably and the cost was

reasonably incurred. That occupants' security from intruders might have increased slightly has to be weighed against increased safety in the event of fire by removing possible source of delay in the fire services ability to access all parts of the building.

Application under s.20C and refund of fees

25. At the end of the hearing, the applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant.

26. In the application form and at the hearing, the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it would not be just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

27. The reason for both these decision is that the applicant was determined to have his "day in court" but provided no evidence that in our view supported his "over-arching argument" that London & Quadrant has become a developer rather than a housing trust and that it is a bonus-driven company where a profit seeking culture from service charges and management fees is encouraged to the detriment of residents.

Name: P M J CASEY **Date:** 15 January 2020

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

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 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.

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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

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

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

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

(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 matter of an application under sub-paragraph (1).