FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2019/0380**
Property	**:**	**82 Great Western Road Westminster W11 1AF**
Applicant	**:**	**Mr Lee Showman**
Representative	**:**	**None**
Respondent	**:**	**City of Westminster**
Representative	**:**	**Mr Tazafar Asghar of Counsel**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge S.19 & S.27A Landlord and Tenant Act 1985 and orders under S20C; AND Para 5 Schedule 11 Clara 2002**
Tribunal members	**:**	**Mr N. Martindale FRICS** **Mr S. Mason BSc FRICS**
Date of Hearing and venue	**:**	**27 January 2020** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**18 March 2020**

DECISION

Decisions

(1) The Tribunal found that there were no service charge costs levied in respect of any of the specific works items or the forthcoming major works project and which were challenged by the applicant for years 2017/2018 and 2018/19. The Tribunal therefore has nothing for which it is required to make a determination as to liability for those works, nor of the reasonableness and/or payability of costs arising.

(2) In view of the finding above the Tribunal declines to make an order under S.20C preventing the respondent adding the cost of their response to, preparation for and attendance at the hearing of this application, if the lease of the Property permits, to the service charge.

(3) In view of the finding above the Tribunal declines to make an order under paragraph 5 of Schedule 11 of Commonhold and Leasehold Reform Act 2002, preventing the respondent adding the cost of their response to, preparation for and attendance at the hearing of this application, if the lease of the Property permits, as an administration charge to the applicant.

(4) The Tribunal declines to order a refund by the respondent, of any of the applicant's application and hearing cost.

Application

1. The applicant seeks a determination pursuant to s.19 and s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), as to the reasonableness and amount of service charges payable by the Respondent in respect of certain items of works in service charge years and periods, 2017/2018 and 2018/19. The value of the service charges was stated by the applicant, to be £11,000.

2. The application also requested an order under S.20C and/or under paragraph 5 of Schedule 11, to prevent the landlord attempting to recover their costs arising from this application by service and/or administration charges.

3. Directions dated 31 October 2019 were issued by Tribunal Judge Professor Robert Abbey. The relevant legal provisions are set out in the Appendix to this decision. An oral case management hearing was held and Directions drawn up in consultation with those attending. The respondent attended; the applicant did not. It was unfortunate that the applicant did not attend as it would have served to clarify at a much earlier date the their concerns and therefore the extent and nature of items for this hearing to determine.

Hearing

4. The Directions provided for a hearing on 27 January 2020. There was a relatively compact bundle though the contents were confusingly laid out and the points the material provided were far from clear. At the hearing the applicant not having file a witness statement attempted to address the Tribunal on new and wide ranging views of the manner and methods adopted by the respondent in managing their estate and their dealings with the leaseholder including the applicant. The Tribunal declined to receive this material as had not been provided in the bundle. Its wide ranging nature added nothing to the specific service chare items already identified in the application form and Directions.

5. Some additional papers were offered by the parties on the day. It had been open for both parties to include such in their bundles but, they had omitted to do and the other party would have been at a disadvantage. Again the Tribunal was informed that such papers dealt with a range of other concerns that the applicant had about the respondent, the Property, works generally, other historic service charges and the historic and current estate management practices and style. Again none of this material directly dealt with the substance of the current application and were deemed unhelpful. The Tribunal declined to accept them.

Background

6. The Property is a post war 1960's, 'Brutalist' concrete faced and structured purpose built flat in a low rise 5 level Building. The Property appeared to be a split level maisonette on levels 2 and 3. It was set at the north end of the short terrace of similar flats in the Building. The Building is very close to Westbourne Underground station.

7. The applicant holds a long lease of the property. It requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

8. 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.

Issues

9. The clarity of the Directions was significantly impaired by the absence of the applicant at the case management hearing, however 6 issues were identified. 1. Service Charges were in dispute for years 2017/2018 and 2018/19 where the total costs had been £11,000. 2. Were the works the landlord's responsibility to carry out. If so, were the costs of doing so payable by the applicant under the lease. 3. Were the cost of these works reasonable ? 4. *"Issues regarding the condition of a skylight at the property and the charges arising out of "Project x108."* 5. Should a S.20C order be made ? 6. Should the respondent refund the applicant's Tribunal costs ?

10. Although the respondent sent copies of relevant service charge accounts and estimates for the years in dispute, the applicant did not identify from them individual works and costs in addition to or other than those he had already listed in the original application form under *"Service Charges in Question"*. In the absence of more specific content in the Directions the Tribunal had to revert to the original application form where the applicant had been required to provide *"A list of the items of service charge that are on issue (or relevant) and their value."* Although the applicant listed 6 items, no value was ascribed. The Tribunal could therefore only address these 6 specific works items: *"1. Skylight; 2. Rear Wall; 3. Patio Back Door; 4. Intercom; 5. Balcony Tiles; 6. Wooden Frame Windows throughout the Flat."*

11. Similarly to the absence of more specific content in the Directions, the Tribunal again had to revert to the original application form in respect of 'Project x108'. The description referred to future works where money had yet to be spent and which were or would be subject to consultation. The applicant was concerned that works carried out over a decade ago to the state should have lasted longer and that he should again be billed for what were seen as repeat or unnecessary capital works. This is where reference to the £11,000 appeared to come in. It was not an actual current bill in dispute but an approximate contribution sum to be sought from the applicant as part of these project works. The applicants raised other general questions in the application form, about for example, Council policy to complaints and their ability to recharge future expenditure. These are others raised here were not repeated in the Directions and in any case are not matters for the Tribunal to determine.

12. Two small and overlapping bundles were submitted. It was not obvious who had prepared which. Between them they contained the evidence and submissions from both parties. There was no clear Scott Schedule of items in dispute or their cost in either. The applicant did not challenge any other specific items of the service charges. None of the items concerned advance payments by the applicant based on estimates, only apparently, on actual works done and costs incurred by the respondent.

Service charge item & cost

13. The Tribunal heard from applicant and respondent in respect of each works item. Its decision with reasons, follows each.

14. **Skylight:** It was not disputed that the skylight was a window and on checking the lease provisions it was also agreed that responsibility to carry out repairs to such (excluding glass) fell to the respondent. It was also agreed that the proportionate cost of such could be included in the service charge to the tenant. At first the applicant disputed that any work had been done to the skylight by the respondent landlord. However on further enquiry the respondent explained and the applicant accepted, that a temporary repair had been completed to it by the respondent, subsequent to the making of this application to the Tribunal. The respondent also confirmed to the Tribunal that it had not, nor would, charge for this. A more permanent fix was yet to be

undertaken by the respondent and if required, would then be charged for. The respondent had not and did not seek an advance payment towards the possible cost of this item. It was likely that this would be a small job as part of the forthcoming Project X108.

15. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

16. **Rear Wall:** The applicant clarified that the defect and works required related to the seal between the floor to ceiling metal window frames and the rear wall on the lower floor of the Property. In line with the item above it was agreed that the respondent was responsible for such work. The respondent however, confirmed that no work had been carried out and no cost had been incurred by them. It was likely that this would be a small job as part of the forthcoming Project X108.

17. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

18. **Patio Back Door:** The applicant clarified that the defect was to the balcony 'patio' back door which formed part of the window frame in the rear wall of the Property (item above). On further discussion it was then noted and agreed by the applicant that under the lease the tenant was responsible for the maintenance of all external doors, including this one. It was not an element that the respondent could work on, the respondent confirmed that no work had been carried out and no cost had been incurred by them.

19. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

20. **Intercom:** The applicant clarified that the defect was to the intercom system between the Property and the outer ground floor communal door. It was agreed that the respondent was responsible for such work. The respondent however, confirmed that no work had been carried out and no cost had been incurred by them. It was likely that this would be a small job as part of the forthcoming Project X108.

21. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

22. **Balcony Tiles:** The applicant clarified that the defect was to the private balcony tiles. The balcony served only and indeed on reference to the lease plan was clearly shown to be part of the Property. On further discussion it was then noted and agreed by the applicant that under the lease the tenant was responsible for the maintenance of tiling to the balcony. It was not an element that the respondent could work on, the respondent confirmed that no work had been carried out and no cost had been incurred by them.

23. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

24. **Wooden Frame Windows throughout the Flat:** The applicant clarified that the defect and works required related to most of the other external window openings in the Property. As with the Rear Wall above, it was agreed that the respondent was responsible for such work. The respondent however, confirmed that no work had been carried out and no cost had been incurred by them. It was likely that this would be a job as part of the forthcoming Project X108.

25. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

26. **Project X108:** The applicant had raised in their application and it was separately noted in the Directions, the nature, timing, extent and cost of the works due under what appeared to have been a large forthcoming capital works scheme to the whole Building. It became apparent from the respondent that this scheme would very likely include repairs to the skylights, windows, intercom, as well as to many other items which had not been mentioned above or in the application but, which affected other common elements of the Building and other flats in particular.

27. The respondents explained that they had launched several earlier attempts to scope, configure, and consult the leaseholders on this forthcoming scheme. They confirmed that all earlier attempts which may have given rise to concerns by the applicant, had already been withdrawn. Instead they confirmed that its latest consultation iteration was still current and that there remained several days in which residents, including the applicant, could make representations to

the Council about it. It was unclear to the Tribunal if the applicant had made representations about earlier or about the latest version but, this was not the subject of the current application. The Council had not demanded advance payments on estimates from the applicant or other leaseholders.

28. The Tribunal concluded that other than the first S.20 consultation stage, the Council's works Project X108 had not proceeded further. The respondent confirmed that no work had been carried out and no cost had yet been incurred by them. The respondent also reminded the applicant of their entitlement to make representations on it soon.

29. **Decision:** As no charge had been made by the respondent to the applicant for this item, there was no cost and hence service charge element to determine as reasonable and payable by the applicant.

30. **S.20C Service Charge Decision:** In view of the findings above the Tribunal declines to make an order under S.20C preventing the respondent adding the cost of their response to, preparation for and attendance at the hearing of this application, if the lease of the Property permits, to the service charge to leaseholders.

31. **Paragraph 5 Schedule 11 Administration Charges Decision:** In view of the findings above the Tribunal declines to make an order un paragraph 5 of Schedule 11 of Commonhold and Leasehold Reform Act 2002 preventing the respondent adding the cost of their response to, preparation for and attendance at the hearing of this application, if the lease of the Property permits, as an administration charge to the applicant

32. **Refund by respondent of application and hearing costs Decision:** For the reasons given above, the Tribunal declines to order a refund by the respondent of any of the applicant's payments for costs to the Tribunal.

Name: Neil Martindale Date: 18 March 2020

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 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).