



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case references : (1) LON/00AG/LSC2016/0224
(County Court Claim
C5DE906Q)

(2) LON/00AG/LSC/2019/0297
(County Court Claim
F40YX953)

(3) LON/AG/LSC/2019/0357

Property : Flat 63 O'Donnell Court, Brunswick
Centre, London, WC1N 1AQ

Applicant/Claimant : London Borough of Camden

Representative : Judge & Priestly LLP

Respondent/Defendant : Mrs Leela Ramsaroop

Representative : In person

Type of application : Liability to pay service charges

Tribunal member : Judge Amran Vance

HMCTS Code : P: Paper

Date of Decision : 19 April 2021

DECISION

Covid-19 pandemic: description of determination

This application has been determined on the papers at the request of the parties. A face-to-face hearing was not held because it was not practicable. A

remote video hearing was not possible because the Respondent lacked the necessary technology.

Numbers in bold and in square brackets below refer to pages in the hearing bundle provided by the Applicant.

Decision

- (1) The following sums are payable by Mrs Ramsaroop to London Borough of Camden in respect of **estimated** service charge costs:

Service Charge Year

Year ending 31 March 2014	£2,385.45
Year ending 31 March 2016	£2,431.39
Year ending 31 March 2020	£2,178.56

- (2) The following sums are payable by Mrs Ramsaroop to London Borough of Camden in respect of **actual** service charge costs:

Year ending 31 March 2014	£2,088.77
Year ending 31 March 2015	£2,023.75
Year ending 31 March 2016	£2,076.14
Year ending 31 March 2017	£1,885.65
Year ending 31 March 2018	£1,925.46
Year ending 31 March 2019	£2,034.75

Background

- (3) Mrs Ramsaroop is the original lessee of Flat 63 O'Donnell Court, Brunswick Centre, London WC1N 1AW, a grade II listed, mixed-use development comprising around residential 395 flats together with shops, cafes, restaurants a Waitrose supermarket and a cinema ("the Estate"). It contains two residential blocks, Foundling Court and O'Donnell Court ("the Blocks"). Foundling Court contains 210 flats and six office units. O'Donnell Court contains 185 flats and seven office units. It also includes an upper basement NCP car park and a lower basement comprising residential parking and service roads.
- (4) The Respondent ("Camden") holds a head lease ("the Head Lease") of Foundling Court and O'Donnell Court dated 26 February 1982, entered into between (1) Marchmont Properties Limited and (2) The London Borough of Camden, for a term of 99 years from 5 December 1973. Under the terms of the Head Lease, Camden is obliged to pay a service charge of 25% of the total cost of items of expenditure referred to in the Fourth Schedule of the Head Lease, as incurred by the Head Landlord, in discharging its obligations under the Head Lease.

- (5) Camden has granted three types of long leases to the residential lessees of flats in the Blocks, known respectively as 'Type A', 'Type B' and 'Type C Leases'. On 23 May 1988, Camden granted Mrs Ramsaroop and her husband (now deceased) a Type A Lease of the subject flat ("the Flat") for a term of 99 years from 5 December 1973.
- (6) The Type B and Type C Leases make express provision for the residential underlessee to contribute towards the Head Landlord's costs incurred in discharging its obligations under the Head Lease. No equivalent provision was made in the Type A Leases.

Mrs Ramsaroop's Lease

- (7) In the Respondent's Type A Lease, the lessee is referred to as "the Tenant", and Camden is referred to as "the Corporation". The Head Landlord is referred to as "the Superior Lessor".
- (8) The building is defined in Clause 1 as being the building "known as O'Donnell Court Brunswick Centre London WC1".
- (9) By Clause 1, Flat 63 ("the Flat") was demised to Mr and Mrs Ramsaroop for a term of 99 years less 5 days upon payment of "a yearly rent of £10.00 and the further and additional rent hereinafter mentioned to be paid by equal quarterly payments in advance on the Corporations quarter days in every year.....".
- (10) By Clause 2(3) the Tenant covenants:

"To pay to the Corporation without any deduction by way of further and additional rent a proportionate part of the reasonable expenses and outgoings including all VAT incurred by the Corporation in the repair maintenance renewal decoration and insurance and management of the said building and the provision of services therein and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called the "Service Charge") being subject to the following terms and provisions...."
- (11) Clause 2(3)(a) concerns finalisation of the actual service charges for each year and reads as follows:

"(a) the amount of the Service Charge shall be ascertained and certified by a Certificate (hereinafter called "the Certificate") signed by the Corporation's Director of Finance acting as an expert and not as an arbitrator annually and so soon after the end of the Corporation's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned".
- (12) The financial year is defined in Clause 2(3)(b) as being the period from 1 April in each year to the 31 March of the next year, or such other annual period as the Corporation determines.

- (13) Clause 2(3)(c) states that a copy of the Certificate for each financial year is to be supplied by Camden to the tenant on written request and without charge.
- (14) Clause 2(3)(d) specifies that the Certificate is to contain a summary of Camden's expenses and outgoings incurred in the financial year to which it relates, together with a summary of the relevant details and figured forming the basis of the Service Charge and the Certificate.
- (15) Apportionment of the Service Charge is addressed in Clause 2(3)(e) which reads:
- “The annual amount of the Service Charge payable by the Tenant as aforesaid shall be calculated either by
- (i) dividing the aggregate of the said expenses and outgoings incurred by the (Corporation in the year to which the Certificate relates by the aggregate of the rateable values (in force at the end of such year) of all the flats the repair maintenance renewal insurance or servicing whereof is charged in such calculation as aforesaid and then multiplying the resultant amount by the rateable value (in force at the same date) of the flat or
 - (ii) in the case of the items referred to in Clauses 5 10 and 11 of the Third Schedule hereto the provision of lighting to all communal areas the cost of repair and maintenance of any lift or lift shaft and the provisions of any refuse containers or sacks by dividing the total cost of each of the services referred to in this sub-Clause by the total number of flats for which such service is provided.”
- (16) Clause 2(3)(g) obliges the Tenant, if required by Camden, to pay with every quarterly payment of rent, “such sum in advance on account of the Service Charge as the Corporation shall specify at its discretion to be a fair and reasonable interim payment”.
- (17) By Clause 3(2) Camden covenants, “subject to the same not being the responsibility of the Superior Lessor under the terms of the Head Lease” to maintain repair decorate renew amend clean etc: (a) the structure of the building; (b) service media in under and upon the building; (c) boilers, heating and hot water apparatus in the building except those serving exclusively the flat and not part of a general heating system; (d) passenger lifts, lift shafts and machinery and the passages landings and staircases used by the Tenant in common with others; and (e) boundary walls and fences of and in the curtilage of the building.
- (18) By Clause 3(3) Camden covenants to keep reasonably clean and lighted the common parts of the building and to keep clean and tidy and to maintain the gardens, forecourts, roadways, pathways (if any) used in connection with the said building or adjoining or adjacent thereto being the property of the Corporation.

(19) By Clause 3(4) Camden covenants to provide hot water for domestic purposes by means of the communal boiler and heating installations serving the Estate as well as heating to the radiators from 1 October to 30 April in each year.

(20) By Clause 3(5) Camden covenants as follows:

“Provided that the Superior Lessor shall not insure from time to time to comprehensively insure and keep insured the said building and landlord’s fixtures therein against loss or damage by fire and such other risks as are usual in a comprehensive insurance policy for a property such as the Building....”

(21) The Third Schedule is entitled “The Corporation’s Expenses and Outgoings and other Heads of Expenditure in respect of which the Tenant is to pay a Proportionate Part by way of Service Charge”. It comprises 13 paragraphs. Included are the costs of: (a) maintaining repairing etc the building; (b) inspecting, maintaining, repairing etc. the domestic hot water, electricity, gas and water pipes and cables as well as the lifts serving the building; (c) insuring the building; (d) employing and providing accommodation for a caretaker in the building; carpeting, redecorating etc the common parts of the building; (e) any charges, assessments or other outgoings payable by the Camden in respect of all parts of the building; repairing etc and lighting all ways roads etc belonging to or used by the building in common with other premises or adjoining thereto; the upkeep of gardens etc (if any) used in connection with the building or adjoining or adjacent thereto; and Camden’s management charges for the building and for general management of the estate in which the building is situated at the rate of 10% if all other items included in the service charge.

(22) Paragraph 1 of the Third Schedule allows for the recovery of:

“The expenses of maintaining repairing redecorating and renewing amending cleaningthe said building and all parts thereof.....belonging and more particularly described in Clause 3(2) hereof”.

(23) Paragraph 2 allows for the recovery of:

“The cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot water systems and gas electricity and water pipes and cables serving the said building....”.

(24) Paragraph 3 allows for the recovery of:

“The cost (if any) of the gas oil electricity or other fuel required for the builder (*sic*) or boilers supplying the heating and domestic hot water systems serving the said building.....”

(25) Paragraph 4 allows for the recovery of “the cost of insuring and keeping insured....the said building and all parts thereof....”

(26) Paragraph 9 allows for the recovery of:

“The cost of the expense of making repairing maintaining rebuilding cleansing and lighting all ways roads pavements sewers drains pipes watercourses party structures party fences walls or other convenience which may belong to or be used for the said building in common with other premises near or adjoining thereto”.

Previous Litigation

(27) In application LON/00AG/LSC/2014/0661 some of the residential lessees with Type A Leases disputed their liability to contribute towards costs payable by Camden to the Head Landlord and sought a determination under s.27A Landlord and Tenant Act 1985 as to the payability of service charges demanded from them by Camden (“the 2014 Service Charge application”).

(28) Because of the scale and complexity of some of the issues raised in the 2014 Service Charge Application, the application was transferred to the Upper Tribunal which, in a decision dated 10 August 2016 (*Leaseholders of Foundling Court & O’Donnell Court v London Borough of Camden & Ors* [2016] UKUT 366 (LC)), determined several preliminary issues, including whether, when a tenant of a dwelling is obliged to pay a service charge to his or her immediate landlord in respect of the cost of works carried out by a superior landlord, the statutory consultation requirements imposed by Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 must be satisfied by the superior landlord or by the immediate landlord.

(29) The parties to the 2014 Service Charge Application subsequently reached a settlement in which the lessees who were a party to the application agreed to vary their Type A Leases to bring them in line with the provisions of the Type B and C Leases as regards recovery of Head Landlord’s costs. After that settlement, several other lessees with Type A Leases, but not Mr and Mrs Ramsaroop, agreed to the variation sought by Camden when their leases were extended under the Leasehold Reform, Housing and Urban Development Act 1993.

(30) In response to the 2014 Service Charge Application, Camden issued an application (LON/00AG/LVT/2015/0005) to this tribunal to vary the terms of the remaining 28 Type A Leases pursuant to section 35 of the Landlord and Tenant Act 1987, to make the same provision for recovery of the Head Landlord’s costs as provided for in the Type B and Type C leases (“the Lease Variation Application”). The only lessee who played an active part in that application was Mrs Ramsaroop. Camden’s primary argument was one of construction. It argued that Mrs Ramsaroop was required to make the contributions sought, without the need for any variation of her lease. The argument for a variation under section 35 was a secondary argument, relevant only if the appellant failed on its primary argument.

- (31) In a decision dated 12 August 2019, I rejected Camden’s primary argument, finding that unless there was express provision to the contrary in her lease, Mrs Ramsaroop’s obligation to contribute costs towards Head Landlord’s costs was limited to costs incurred in respect of O’Donnell Court, and not the wider Estate (as defined as defined in Clause 4(e) of the Head Lease). Camden’s appeal against that decision was refused by the Judge Cooke in *London Borough of Camden v Morath* [2019] UKUT 193 (LC).

Current Proceedings

- (32) The first two applications listed above concern County Court claims issued by Camden which have been transferred to the tribunal. Because of those transfers, the tribunal is required to make determinations under section 27A of the Landlord and Tenant Act 1985 as to whether estimated service charges are payable by Ms Ramsaroop for the service charge years ending 31 March 2014 (Claim F40YX953) and 31 March 2016 (Claim C5DE906Q).
- (33) The third application referred to above (LON/AG/LSC/2019/0357) is a tribunal application issued by Camden on 16 September 2019, seeking a determination as to Mrs Ramsaroop’s liability to pay actual service charge costs incurred for the service charge years 2013/14 to 2018/19 and the estimated costs for 2019/20.
- (34) The consequence of these several sets of proceedings is that I am required to determine Mrs Ramsaroop’s liability to pay to Camden:
- (a) estimated service charge costs for the service charge years ending 31 March 2014 and 31 March 2016;
 - (b) actual service charge costs for the years ending 31 March 2014 to 31 March 2019 inclusive; and
 - (c) estimated service charge costs for the year ending 31 March 2020.
- (35) I previously issued directions regarding these applications on 12 August 2019 [**A609**], 17 October 2019 [**A620**] and 13 February 2020 [**A625**]. In the 12 August 2019 directions, I directed that as the whole of the two County Court claims had been transferred to the tribunal, that the judge who eventually heard the cases, would deal with all the issues in the transferred claims that fall within the jurisdiction of the County Court alone, namely ground rent, interest and costs, under the tribunal’s Deployment Project, sitting as a County Court judge. However, at the Case Management Hearing (“CMH”) on 13 February 2020, I informed the parties that I considered there were now difficulties with doing so, as there are two sets of County Court claims and one tribunal claim to be determined. As costs were only claimed in one of the County Court claims, apportionment of costs across the cases would be practically difficult.

- (36) I therefore directed that at the final hearing of these applications the tribunal would determine only the question of payability of service charges, and the judge will sit only as a tribunal judge. I also indicated that after issue of the tribunal's decision, either party may request that the judge, sitting as a judge of the County Court, separately determines, liability to pay ground rent, interest and costs. If no such application is made, those issues will be remitted back to the County Court.
- (37) Following the 12 August 2019 directions, Camden served a statement of case [A81], together with a Scott Schedule showing a breakdown of the annual service charge payable by Mrs Ramsaroop [A99], and Mrs Ramsaroop served a Statement of Case in response [A308], together with a copy of the Scott Schedule with her manuscript responses [A306]. At the 13 February 2020 CMH, an examination of Mrs Ramsaroop's Scott Schedule and Statement of Case led me to conclude that the issues for the tribunal to determine were as follows:
- (a) have the service charge costs in question been properly demanded from Mrs Ramsaroop in accordance with the provisions of her lease, including whether Camden has complied with the certification requirements in Clause 2(3)(a)?
 - (b) have: (i) heating, hot water, and gas supply costs; and (ii) insurance costs been apportioned according to the provisions of her lease.
 - (c) are Camden contractually entitled to recover the following costs under the provisions of Mrs Ramsaroop's lease, as identified in the Camden's service charge statements and in its Scott Schedule? Mrs Ramsaroop's position appeared to be that they are only payable by her to the extent that they can be attributed to O'Donnell Court, and not the wider Estate:
 - (i) Caretaking Services – Estate;
 - (ii) Electricity charges – Estate;
 - (iii) Fire Protection Equipment – Estate;
 - (iv) Lighting Maintenance – Estate; and
 - (v) Repairs and Maintenance – Estate.
 - (d) whether costs in respect of (i) 'Caretaking services – Block' and heating; and (ii) 'heating/hot water/gas supply' were reasonable in amount and whether caretaking services have been carried out to a proper standard. These were the only challenges made to the amount of costs incurred or to quality of services; and
 - (e) is Mrs Ramsaroop liable to pay the costs identified as (Head) Landlord's costs in Camden's Scott Schedule. Her case was that she is only liable where if costs were incurred for the benefit to O'Donnell Court.

- (38) After the 17 October 2019 directions, Camden served an amended Statement of Case dated 8 November 2019 [A330] and an amended Scott Schedule. Mrs Ramsaroop then served a revised Statement of Case [A510] and a revised Scott Schedule [A546]. Camden also served a witness statement from Geraldine Littlechild, a Finance and Income Manager employed by Camden, dated 24 April 2020 [A638] in which Ms Littlechild responded to Mrs Ramsaroop's revised Scott Schedule.
- (39) In an email to the tribunal dated 3 June 2020, Camden's solicitor, Mr Oakley, stated that Camden had "*due to reasons of proportionality and cost, withdrawn its claim against Mrs Ramsaroop in respect of the Freeholder's costs claimed through the Applicant's service charge under the heading "Landlord's Costs"*".
- (40) Mr Oakley went on to say that as several items of costs charged had not been challenged by Mrs Ramsaroop, and the fields for Mrs Ramsaroop's challenge in the Scott Schedule had been left blank, Camden was proceeding, and its evidence was served, upon the basis that such items are not in dispute. The solicitor stated that when Mrs Ramsaroop was asked to confirm this replied she as follows

"I apologise for responding so late to your email below. This is because I have been without legal representation from the last CMC meeting. And due to the Covid 19 virus I have been in self isolation making matters even worst in addition to my many underlying health issues. I hope you understand that I have not been deliberately evasive but have done my best under the challenging circumstances.

The items left blank in the Scott schedule are still contested by myself to the extent that they fall within the issues set out in paragraph 6 of Judge Vance's summary. In particular but not limited to 6(a)."

- (41) Mr Oakley stated that in the absence of a challenge to the several of the service charge costs, Camden was proceeding on the basis that such items were only challenged under Mrs Ramsaroop's generic challenge on certification and form of demand.
- (42) Mrs Ramsaroop then provided a witness statement dated 17 July 2020 [A716]. On 5 August 2020, the tribunal's case officer wrote to the parties, at my request [A635], as follows:

"Both parties have requested that this application be determined on the documents provided and without an oral hearing. I would not normally have agreed to this but given Mrs Ramsaroop's difficulties with attending an oral hearing during this pandemic, whether in person, or by way of a remote hearing, and the length of time this dispute has been ongoing, I will agree to the proposal. Having reviewed the witness statements of the parties I agree with the Camden that the

factual issues in dispute are limited in scope and that they can fairly be dealt with by way of written questions and answers, rather than formal cross examination.

I therefore direct as follows:

(a) by 28 August 2020:

(i) Camden may write to the tribunal, by email, with a list of questions that they wish to ask Mrs Ramsaroop in respect of the evidence contained in her witness statement dated 17 July 2020 and may ask her to produce any documents in her possession or control which relate to any issue in the proceedings; and

(ii) Mrs Ramsaroop may write to the tribunal, by email, with a list of questions that they wish to ask Ms Littlechild in respect of the evidence contained in her witness statement dated 24 April 2020 and may ask her to produce any documents in Camden's possession or control which relate to any issue in the proceedings.

(b) Upon receipt of any questions provided by the parties in accordance with the previous direction, I will consider making an order under Rule 20(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and will issue further directions for the determination of the application."

(43) Mr Oakley wrote to the tribunal on 7 September 2020 [A595] raising four questions. No questions were raised by Mrs Ramsaroop. On 18 September 2020 I made an order under Rule 20(1)(b) [A637] requiring Mrs Ramsaroop to answer the four questions raised in Mr Oakley's letter of 7 September 2020 by 2 October 2020, following which the application would be determined based on the written documents provided by the parties. She did so by letter dated 2 October 2020 [A596].

(44) When Camden lodged the bundle of documents for the tribunal's determination it sought permission to rely upon a witness statement from Mr Dilip Shah, Acting Head of Caretaking & the Principal Caretaking Manager employed by Camden, dated 13 October 2020 [A733], in which Mr Shah responded to Mrs Ramsaroop's letter of 2 October 2020. I gave that permission on 5 November 2020, and directed that if Mrs Ramsaroop wished to make any written representations in response to Mr Shah's statement, she should do so by sending these to the tribunal and the Applicant by 16 November 2020. She responded on 15 November 2020.

Mrs Ramsaroop's Case

- (45) These claims have progressed over several years and Mrs Ramsaroop has, on various opportunities, been accorded the opportunity to set out her arguments against the payability of the service charges claimed by the Applicant. It would not assist to set out in detail the historic challenges raised. Instead, I proceed on the basis that her case, as currently pursued, is that articulated in her witness statement dated 17 July 2020 (prepared with the assistance of the Bar Pro Bono Charity) [A716], her revised Statement of Case [A510] and her revised Scott Schedule [A546].
- (46) In her witness statement and revised Statement of Case, Mrs Ramsaroop argues as follows:
- (a) the Applicant cannot rely merely on the general words in Clause 2(3) as founding the Service Charge liability. It must be able to demonstrate that each item in respect of which the service charge is claimed (including Estate costs) also falls within at least one of the paragraphs set out in the Third Schedule;
 - (b) the Applicant has not demanded service charges in accordance with the provisions of her Lease. She maintains that as Clause 1 of the Lease obliges her to pay “the further and additional rent hereinafter mentioned by equal quarterly payments in advance on the Corporation quarter days....” all service charge demands, both in respect of costs already incurred and sums demanded by way of advance payments, should stipulate quarterly payments. She contends that she has not received quarterly demands as required by her Lease and nor has the Applicant complied with Clause 2(3)(a) of her Lease as she has not been provided with Certificates signed by the Applicant's Director of Finance;
 - (c) with regard to heating, hot water, gas supply and insurance charges, the Applicant has not apportioned the sums payable by her in accordance with the provisions of Clause 2(3)(e)(i) of her Lease. The Applicant considers the apportionment method adopted by the Applicant incorrectly divides the costs incurred by the rateable value of the Estate, and then multiplies the resulting figure by the property rateable value. She appears to be arguing that the costs incurred should be divided by the rateable value of O'Donnell Court, as opposed to the whole Estate.
 - (d) Although, in her Scott Schedule, she states that the sums demanded for heating, hot water and gas supply are excessive, she does not expand on that bare statement in her statements of case or her witness statement. There is no evidence to support a challenge that these costs are excessive in amount and, to the extent that such an argument is pursued, if at all, I reject it.
- (47) Her challenges to the individual heads of expenditure, as set out in her witness statement, are:

- (a) Caretaking (Block costs) – over a period of many years, the standard of caretaking services has been poor, in particular, the hallway from the lift to her flat is covered in large amounts of bird droppings. She also contends that: (i) communal hallways are subject to regular flooding during rainfall due to poor drainage; (ii) there is a problem of mice and cockroach infestation in the block due to the rubbish that is left near the communal rubbish chute and by the lifts which is rarely addressed by the Caretaker; (iii) the level of service provided does not justify the costs incurred; and (iv) apportionment of caretaking costs should be as per the rateable value calculation set out in her Lease.
- (b) Caretaking (Estate costs) – no Estate costs are payable by her, only caretaking services in respect of her Block, O'Donnell Court, as per paragraph 5 of the Third Schedule
- (c) Electricity charges – (Estate costs) - no Estate costs are payable by her, only electricity costs in respect of her Block, O'Donnell Court. She also suggests that lights are constantly blowing bulbs because lights are left running all day, incurring unnecessary electricity costs;
- (d) Fire protection equipment – Estate costs - no Estate costs are payable by her, only the costs of equipment servicing her Block.
- (e) Lighting maintenance – Estate costs - no Estate costs are payable by her, only the costs of lighting maintenance regarding her Block, as per paragraph 1 of the Third Schedule, unless it can be shown that the costs concern the lighting of “[...] ways roads pavements [etc] which may belong to or be used for the said building in common with other premises near or adjoining thereto” under paragraph 9 of the Third Schedule.
- (f) Repairs and maintenance – Estate costs - no Estate costs are payable by her, only the costs of repairs and maintenance in respect of the Block, as per paragraph 1 of the Third Schedule. She identifies certain specific costs that she argues are unrelated to O'Donnell Court, and therefore not payable by her.
- (g) Repairs and maintenance – Block costs – although initially disputed, following breakdowns provided by the Applicant, Mrs Ramsaroop concedes that these costs are recoverable as part of the Service Charge in the amounts claimed in the invoices, subject to her arguments regarding the invalidity of the demands issued by Camden. Although, in her Statement of Case, Mrs Ramsaroop refers to a potential disrepair claim concerning water leaks into her flat, she did not pursue a counterclaim in either of the two County Court claims and she has not advanced the argument that costs demanded from her have arisen because of historic neglect of her building by Camden.

Camden's case

- (48) In its amended Statement of Case the Applicant states that Mrs Ramsaroop has paid nothing towards service charges since 8 March 2012, and that between 27 November 2014 and 4 March 2015 the Applicant has written off the sum of £22,165.80 from her service charge account.
- (49) Most of the contents of the Applicant's amended Statement of Case dated 17 October 2019 [A330] is devoted to an explanation as to how the Head Landlord seeks service charge payments from Camden and how part of the sums that Camden must pay to the Head Landlord are passed down to the residential lessees. However, Head Landlord costs are no longer relevant to these applications following Camden's solicitor, Mr Oakley confirming, on 3 June 2020, that Applicant was withdrawing its claim against Mrs Ramsaroop in respect such costs.
- (50) In her witness statement dated 24 April 2020 [A638], Mrs Littlechild, a Finance and Income Manager employed by Camden, provides an explanation as to what services are provided by Camden in respect of the heads of expenditure challenged by Mrs Ramsaroop in her revised Statement of Case and witness statement. She has also indicated why she considers some of those costs are payable by Mrs Ramsaroop by falling within one of the paragraphs of the Third Schedule.
- (51) In his short witness statement dated 13 October 2020, Mr Shah, the Acting Head of Caretaking & Principal Caretaking Manager at Camden responds to some of the points raised by Mrs Ramsaroop in her in her letter of 2 October 2020.

Reasons for Decision

- (52) I will first address Mrs Ramsaroop's submission that Camden has not demanded service charges in accordance with the provisions of her Lease because Clause 1 requires the provision of quarterly service charge demands. That submission reflects a misunderstanding of the terms of her lease. It is quite correct that Clause 1 and Clause 2(3)(g) stipulate that her payments are due on the quarter days in every year. However, Camden's practice, common to many local authorities, is to issue a demand in respect of the estimated service charge for the forthcoming service charge year, shortly before commencement of that year, with a further demand, or credit note, being issued once the actual costs for the year are ascertained, and the costs for the year reconciled. Camden is perfectly entitled to adopt such an approach provided that its demands indicate that payments are due on the quarter days.
- (53) That is what Camden has done. Its annual demands for estimated service charges contains the following wording:

“Paying your bill: Under the terms of the lease quarterly payments of £[amount] are due on 31 March, 30 June 30th September and 31

December [year]. Alternatively, you can pay by instalments over 10 months.”

- (54) As to Mrs Ramsaroop’s contention that Applicant has not complied with the Certification requirements of Clause 2(3)(a) because she was not provided with Certificates signed by the Applicant’s Director of Finance, there is no obligation on Camden to do so unless, and until, she makes a written request for a copy of the Certificate in accordance with Clause 2(3)(c). Her obligation to pay the service charges demanded is not, therefore, conditional on provision of a copy of the Certificate.
- (55) In any event, both Camden’s estimated service charge demands, and its reconciliation statements, include provision for “Certification Accounting and Audit”. There is nothing to suggest that Mrs Ramsaroop made written requests for copies of the annual Certificates, and given that the cost of auditing and certification appears on the demands and the reconciliation statements, I am satisfied, on the balance of probabilities, that Camden complied with its certification requirements under the Lease.
- (56) Turning to Mrs Ramsaroop’s arguments on apportionment, she contends that heating, hot water, gas supply and insurance charges have been incorrectly apportioned as the costs incurred should be divided by the rateable value of O’Donnell Court, as opposed to the whole Estate before the resulting figure is multiplied by the rateable value of her Flat. I do not agree.
- (57) Under Clause 2(3)(e)(i), Mrs Ramsaroop’s contribution towards these costs are to be apportioned by dividing the aggregate of the cost incurred by Camden by the aggregate of the rateable values of all the flats that are charged for the service, and then multiplying the resulting amount by the rateable value her flat.
- (58) The problem with Mrs Ramsaroop’s argument is that heating, hot water, and gas are supplied through a communal system servicing all the flats on the Estate and not just O’Donnell Court. As Ms Littlechild makes clear in paragraphs 6.13 to 6.16 of her witness statement **[A641]** Camden divides the total system cost incurred in respect of the Estate by the Estate rateable value and multiplies it by the rateable value of the Flat.
- (59) The total system cost to the Estate is the aggregate of the costs incurred by Camden in providing the services to the flats on the Estate. The Estate rateable value is the aggregate of the rateable values of all the flats in respect of which the service is charged. It would not be correct to use the rateable value of O’Donnell Court alone, as Mrs Ramsaroop suggests, because the services are not just provided to her Block, they are provided to all the flats on the Estate, including the lessees of Foundling Court. The requirements Clause 2(3)(e)(i) are therefore met, and the costs have been correctly apportioned.
- (60) The same is true in respect of the costs of insurance. As Ms Littlechild explains at paragraph 7 of her witness statement, the insurance premium

concerns only the residential units on the Estate. Camden therefore takes the premium for insuring the Estate and divides it by a reduced rateable value which omits the commercial units on the Estate. It then multiplies the resulting figure by the property rateable value. I consider this too complies with the requirements of Clause 2(3)(e)(i).

(61) Mrs Ramsaroop's challenges individual heads of service charge expenditure, I agree with her that for a head of expenditure to be payable by her it needs to fall within at least one of the paragraphs set out in the Third Schedule. Camden's case, as set out in Ms Littlechild's witness statement is that they do. It should be noted that except for block caretaking costs, Mrs Ramsaroop has not disputed the services provided for the costs in issue. Her argument is that the costs are not recoverable under the terms of her Lease. I first consider the Estate costs that Mrs Ramsaroop has disputed.

(62) Caretaking (Estate costs) – Camden contends that these costs are recoverable under paragraph 9 of the Third Schedule which provides for the recovery of:

“The cost of the expense of making repairing maintaining rebuilding cleansing and lighting all ways roads pavements sewers drains pipes watercourses party structures party fences walls or other convenience which may belong to or be used for the said building in common with other premises near or adjoining thereto”.

(63) At paragraph 9 of her witness statement, Ms Littlechild explains that refuse placed in rubbish chutes is deposited in refuse bins at located in the basement area. She states that the caretaker's duties in respect of Estate cleaning include rotating the full refuse bins; sweeping and washing the refuse areas in the basements; managing the storage of bulk items to the basement areas; moving refuse bins/bulk items to designated collection points in the access road; cleaning passageways in the basement areas leading to/from refuse chambers. These duties, she says are distinct from Block caretaking costs which, at paragraph 8, she states are set out in a schedule to be found at page **[A684]**.

(64) I agree with Camden that the Estate caretaking services described by Ms Littlechild at paragraph 9 of her witness statement fall within the ambit of paragraph 9 of the Third Schedule. As she explains in paragraph 3 of her witness statement, the basement areas of the Estate comprise an upper basement NCP car, as well as lower basement residential parking and service roads. Cleaning and maintaining the rubbish bins and the passageways leading to the refuse chambers in those basement areas, in my judgment, constitute costs of maintaining or cleansing ways, roads, or pavements used by the residents of O'Donnell Court in common with other premises near or adjoining it.

(65) Electricity charges – (Estate costs) – at paragraph 10 of her witness statement Ms Littlechild describes the costs included in the Estate

lighting charge as comprising lighting to the basement corridors, refuse rooms, exit ramps and roads, to enable caretakers to undertake Estate cleaning to these areas. Camden contends that these costs are recoverable under paragraph 9 of the Third Schedule. I agree, they comprise the costs of lighting ways, roads and pavements or other conveniences which belong to the building or used in common with other premises near or adjoining it.

- (66) I do not consider it likely, as Mrs Ramsaroop suggests, that lights servicing the Estate are constantly blowing bulbs because lights are left running all day. There is no evidence to support that contention, nor her assertion that unnecessary electricity costs are being incurred because lights are left on all day. The assertion is vague and unparticularised and I reject it.
- (67) Fire protection equipment – Estate costs – at paragraph 11 of her witness statement Ms Littlechild describes the costs included in this charge as being the carrying out of planned preventative maintenance, and repairs to fire protection installations and appliances located in the intake cupboards in the basement area, including monthly inspections to ensure that the appliances are in proper position, and that any appliance which is damaged or discharged is replaced. She states that all extinguishers are inspected annually and each extinguisher and fire blanket is maintained, charged and replaced in accordance with standards and statutory regulations.
- (68) Mrs Ramsaroop contends that she is only liable to contribute towards the costs of equipment that serve O'Donnell Court, for which she is asked to pay a separate contribution. I disagree. In my determination they are recoverable as costs of maintaining ways roads pavements used by the residents of O'Donnell Court in common with other premises near or adjoining it. The lower basement includes residential parking and service roads and regardless of whether Mrs Ramsaroop uses the residential parking area, it is clearly an area serving O'Donnell Court as well as neighbouring buildings, including Foundling Court.
- (69) Lighting maintenance – Estate costs - Ms Littlechild's evidence, at paragraph 12 of her statement, is that this head of expenditure covers the cost of Planned Preventative Maintenance, and the carrying out of repairs, to communal estate lighting and electrical installations. This includes sensor elements, time switches voltage relays, as well as lighting to basement areas, corridors, bin rooms, access roads, car parks/covered areas lighting, and landlord's plant room lighting, across the wider Brunswick Centre Estate.
- (70) In my determination, these costs described are recoverable under paragraph 9 of the Third Schedule as costs of maintenance or repairs to ways, roads, pavements, or other conveniences that used for O'Donnell Court, in common with other premises near or adjoining it on the wider Estate.

(71) Repairs and maintenance – Estate costs - at paragraph 13 of her witness statement Ms Littlechild describes the costs included in this charge as being the cost of repairs and maintenance work to the Brunswick Estate, include the clearing of main drains/sewers, repairs to estate lights, repairs in the basement area, repairs to boiler house, electrical switch room repairs etc. Camden argues that these items are rechargeable under paragraph 9 of Third Schedule which allows for the recovery of costs that include the repairing, maintaining, cleansing and lighting etc of ways, roads, pavements, sewers, drains and pipes that belong to or are used for the benefit of O'Donnell Court, in common with other premises near or adjoining it.

(72) She describes these repairs as set out below:

2013/14

Rectify blockage to main stack at O'Donnell Court which leading (*sic*) to main drainage in basement area.”.

2014/15

“Electrical testing to switch rooms located in basement area. Each switch room supply (*sic*) electricity to the lifts; door entry systems; lighting to communal entrances, corridors and terraces; car park lighting; lighting to refuse rooms, exit ramps and roads; power to plant rooms, sewage pumps, risers, CCTV, extractor fans etc. Costs relating to all meters are aggregated and apportioned based on the number of lights connected to each meter.

Rectify blockage to communal waste pipes at Foundling Court leading to service road and NCP car park.

Legionella testing to cold water storage system.”

2015/16

“Repairs to sump pump in boiler room.”

2016/17

“Replace lock to boiler room.

Asbestos testing.

Electrical testing to switch rooms located in basement area. Each switch room supply (*sic*) electricity to the lifts; door entry systems; lighting to communal entrances, corridors and terraces; car park lighting; lighting to refuse rooms, exit ramps and roads; power to plant rooms, sewage pumps, risers, CCTV, extractor fans etc. Costs relating to all meters are aggregated and apportioned based on the number of lights connected to each meter.”

2017/18

“Unblock drain in Portpool Lane. Under this item, Ms Littlechild says as follows “awaiting info from VS, Portpool Lane is nowhere near the Brunswick Centre”.

Replace lock to boiler room.

Repairs to broken step at entrance to Foundling Court from shopping centre.”

2018/19

“No estate repairs recharged.”

- (73) In my determination, with one exception, all the costs referred to in the previous paragraph are costs payable from Mrs Ramsaroop under paragraph 9, as costs incurred for the benefit of O'Donnell Court, in common with other premises near or adjoining it.
- (74) The schedule exhibited to Ms Littlechild's statement at **[A688-A715]** provides a breakdown of the costs allocated by Camden to Estate Repairs and maintenance. Almost all concern O'Donnell Court. A very small number refer to the wider Estate, such as the jet washing of a communal waste services pipe from the service road to the NCP car park in in June 2014 **[A689]**. However, the evidence indicates that the drainage, sewerage, water, heating/hot water, and electrical systems serving the Estate are all single communal systems, rather than separate services serving each Block. As such, the jet washing of the communal waste services pipe in my judgment is a cost recoverable from Mrs Ramsaroop.
- (75) Similarly, the pavement and steps serving the Estate benefit both O'Donnell Court in common with other premises near or adjoining it. Therefore, the costs of repairing the broken step and entrance between Foundling Court and the shopping centre in June 2017 **[A692]** are properly recoverable as Estate costs. I note that although Mrs Ramsaroop objects to paying towards this cost, the cost incurred is £213.94, and, once apportioned, her contribution will be negligible.
- (76) The one exception is the cost of unblocking the drain in Portpool Lane, which appears to have been incorrectly allocated. As Ms Littlechild identifies, Portpool Lane is nowhere near the Brunswick Centre. It is located about a mile away. The cost incurred, in the sum of £141.58, is therefore not payable by Mrs Ramsaroop. However, given that her contribution will be a matter of pennies it is not proportionate or necessary for me to disallow this single item of expenditure.
- (77) Caretaking (Block costs) – I am not persuaded, on the evidence provided, that the standard of caretaking services has been unreasonable or that the costs incurred have been excessive. The photographs exhibited to Mrs Ramsaroop's witness statement are generally poor in quality and, from what I can ascertain, do not demonstrate that the

hallway between the lift and her flat is covered in substantial amounts of bird droppings, or that there is a problem of mice and cockroach infestation.

- (78) In his witness statement, Mr Shah accepts that weekly sweeping balconies and landings may have temporarily slipped in the early months of the COVID-19 pandemic, when Camden was operating a reduced service, with priority given to more serious Health & Safety issues. He points out that sometimes the sheer volume of droppings can cause a mess, and that when this occurs it should be reported to the Camden's Pest Control team who can take measures such as arranging a specialist clean or placing anti-pigeon spikes on ledges. It also appears from Camden's solicitor's letter to Mrs Ramsaroop dated 7 September 2020 [A595] that one of her neighbours has been asked by Camden to stop feeding the pigeons.
- (79) I do not doubt Mrs Ramsaroop's evidence that there is a problem with pigeon droppings, which would obviously have been exacerbated by her neighbour feeding them. I appreciate that this, and seeing mouse droppings, would have been a source of distress for her. Whilst she has provided some photographs of rubbish items left for collection by the rubbish chute, I obviously cannot ascertain from the photographs how long these had been present when the photographs were taken.
- (80) However, outside of documents created for the purposes of this litigation, there is no documentary evidence in the hearing bundle of Mrs Ramsaroop, or other residents, complaining to Camden about these caretaking issues. If this was a long-standing problem, as Mrs Ramsaroop's suggests, I would have expected to see evidence of such complaints. Certainly, there is no evidence before me to suggest that Camden has failed to act on complaints made by residents.
- (81) On balance, I see no reason to doubt, and accept as true, Mr Shah's evidence that apart from in the early days of the current pandemic, sweeping of the balconies and landings took place weekly. I also accept as true his assertion that the caretaker checks the block daily, apart from at weekends, and removes rubbish from the communal areas.
- (82) The actual costs demanded by Camden from Mrs Ramsaroop amount to approximately £189 per annum, equivalent to about £3.65 per week. That is a very modest amount and I do not agree with her that such costs are excessive, or that the level of service provided does not justify the costs incurred. I determine that the costs in question are payable by her for each of the service charge years in dispute.

Calculation and determination of sums payable by Mrs Ramsaroop

Estimated service charge costs for the service charge years ending 31 March 2014

- (83) Camden's demand appears at [A441]. The total sum demanded from Mrs Ramsaroop was £3,053.01 plus a management charge of 10%. From

that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £843.41; and

(b) Mobile Security Patrol charges of £41.01.

(84) The estimated costs for this service charge year, payable by Mrs Ramsaroop is therefore £2,168.59 plus a 10% management charge, totalling **£2,385.45**.

Estimated service charge costs for the service charge years ending 31 March 2016:

(85) Camden's demand appears at **[A458]**. The total sum demanded from Mrs Ramsaroop was £3,115.29 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £875.48; and

(b) Mobile Security Patrol charges of £29.46.

(86) The estimated costs for this service charge year, payable by Mrs Ramsaroop is therefore £2,210.35 plus a 10% management charge, totalling **£2,431.39**.

Actual service charge costs for the years ending 31 March 2014

(87) Camden's demand appears at **[A444]**. The total sum demanded from Mrs Ramsaroop was £2,802.79 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £875.84; and

(b) Mobile Security Patrol charges of £28.07.

(88) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,898.88 plus a 10% management charge, totalling **£2,088.77**.

Actual service charge costs for the years ending 31 March 2015

(89) Camden's demand appears at **[A454]**. The total sum demanded from Mrs Ramsaroop was £2,707.28 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £860.34; and

(b) Mobile Security Patrol charges of £7.17.

(90) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,839.77 plus a 10% management charge, totalling **£2,023.75**.

Actual service charge costs for the years ending 31 March 2016

(91) Camden's demand appears at **[A461]**. The total sum demanded from Mrs Ramsaroop was £2,806.72 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £916.65; and

(b) Mobile Security Patrol charges of £2.67.

(92) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,887.40 plus a 10% management charge, totalling **£2,076.14**.

Actual service charge costs for the years ending 31 March 2017

(93) Camden's demand appears at **[A468]**. The total sum demanded from Mrs Ramsaroop was £2,382.78 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £665.08; and

(b) Mobile Security Patrol charges of £3.47.

(94) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,714.23 plus a 10% management charge, totalling **£1,885.65**.

Actual service charge costs for the years ending 31 March 2018

(95) Camden's demand appears at **[A475]**. The total sum demanded from Mrs Ramsaroop was £2,251.09 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(a) Head Landlord's Estate charges of £498.63; and

(b) Mobile Security Patrol charges of £2.04.

(96) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,750.42 plus a 10% management charge, totalling **£1,925.46**.

Actual service charge costs for the years ending 31 March 2019

(97) Camden's demand appears at **[A482]**. The total sum demanded from Mrs Ramsaroop was £2,332.59 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(c) Head Landlord's Estate charges of £482.45; and

(d) Mobile Security Patrol charges of £0.37

(98) The actual costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,849.77 plus a 10% management charge, totalling **£2,034.75**.

Estimated service charge costs for the year ending 31 March 2020.

(99) Camden's demand appears at **[A486]**. The total sum demanded from Mrs Ramsaroop was £2,482.07 plus a management charge of 10%. From that figure needs to be deducted the following costs, no longer being pursued by Camden:

(c) Head Landlord's Estate charges of £498.63; and

(d) Mobile Security Patrol charges of £2.93.

(100) The estimated costs for this service charge year, payable by Mrs Ramsaroop is therefore £1,980.51 plus a 10% management charge, totalling **£2,178.56**.

Remaining Matters

(101) As stated above, I previously directed that after issue of the tribunal's decision, either party may request that I, sitting as a judge of the County Court, separately determines, Mrs Ramsaroop's liability to pay ground rent, interest and costs and that if no such application is made, those issues will be remitted back to the County Court.

(102) When considering whether to make such an application Camden should have consideration to the fact that at a relatively late stage in these proceedings it elected to abandon its claim against Mrs Ramsaroop seeking Head Landlord costs amounting to roughly 30% of the service charges sought. That was after a substantial amount of work had been carried out in seeking to justify its entitlement to such costs. As a social landlord it will no doubt also wish to have regard to the question of whether it wishes to pursue a costs order against one of its more elderly long leaseholders.

Name: Amran Vance

Date: 19 April 2021

ANNEX - RIGHTS OF APPEAL

Appealing against the above tribunal decision

1. 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 date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking.