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

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| **Case Reference** | **:** | **LON/00BG/LBC/2019/0117** |
| **Property** | **:** | **Flat 50, Aegon House, 13 Lanark Square, London E14 9QD** |
| **Applicant** | **:** | **Hannah James** |
| **Respondent** | **:** | **Glengall Bridge Management Ltd** |
| **Type of Application** | **:** | **Liability to pay service charges** |
| **Tribunal** | **:** | **Judge Nicol<br>Mr SF Mason BSc FRICS<br>Mr JE Francis** |
| **Date and venue of hearing** | **:** | **19th-20th July 2021 by remote video conference** |
| **Date of Decision** | **:** | **31st August 2021** |

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**DECISION**

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(1) The service charges levied by the Respondent for the years 2016-2018 inclusive are payable by the Applicant save for those arising from the following costs incurred by the Respondent:

(a) £928 for professional fees in 2017;

(b) The costs of £21,970.11 incurred in 2016 and categorised as "Survey Fee" is reduced to £4,394.

(2) The Tribunal declines to make a determination in respect of service charges for 2019 and all parties are at liberty to seek such a determination hereafter by means of a fresh application.

(3) The Tribunal will decide any costs issues without a hearing on the documentation provided in accordance with the following directions:

(a) Both parties shall, by **13th September 2021**, inform the Tribunal and the other party whether they intend to make any costs applications.

(b) If either party informs the Tribunal that they intend to make such an application, that party shall, by **20th September 2021**, email to the other party and to the Tribunal written representations on costs and any supporting documents not already before the Tribunal.

(c) If any party wishes to apply for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the representations must be accompanied by a full statement of the costs claimed and any supporting evidence that such costs have been incurred.

(d) The party receiving such representations shall, by **4th October 2021**, email to the other party and to the Tribunal any representations in reply.

(e) Thereafter, the Tribunal will determine any costs issues and issue their written decision to the parties.

Relevant legislative provisions are set out in the Appendix to this decision.

## Reasons for Decision

1. The Applicant applied on 15th March 2019 for a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges for the years 2016-2019 inclusive sought by the Respondent, the leaseholder-owned management company. The proceedings have been tortuous since, with superior landlords and other leaseholders joining in but then leaving at various points. The remaining parties attended for a hearing on 29th March 2021 but it could not go ahead. Instead, the Tribunal ordered some limited further disclosure and made arrangements for a new hearing.

2. The hearing eventually took place on 19th and 20th July 2021 by remote video conference. The attendees were:

- The Applicant;
- Ms Sherry Fard, Lewis Nedas, representing the Applicant;
- Mr Ruslan Akhmetshin, a leaseholder and a witness for the Applicant; and
- Mr Ashwani Kaushik and Mr John Wild, directors of the Respondent company, who both made representations on behalf of the Respondent.

3. The Tribunal had in front of it the following documents in electronic form:

- Final bundle, 849 pages, prepared by Ms Fard;
- An Excel spreadsheet containing a Scott Schedule which listed the matters in dispute for each of the years 2016-2018 and summarised the situation for 2019 (for which there were no accounts), with the parties' respective points set out in separate columns;
- Invoice bundle, 1,666 pages, again provided by Ms Fard but unindexed;
- Additional bundle, 106 pages; and

- The Applicant's revised Skeleton Argument;
- The Respondent's Closing Submissions; and
- A document entitled "2016-19 Bank Statements" which consisted of a long list of service charge transactions compiled by Mr Kaushik – although it was only submitted on the second day of the hearing, the Applicant had no objection to its admission.

4. The Applicant, Mr Akhmetshin and Mr Kaushik gave live evidence and were subjected to cross-examination. Ms Fard also asked the Tribunal to take into account statements from witnesses who did not attend, namely Mr David White (formerly an Applicant), Mr John Dowland (resident at the sister block, Balmoral House) and Ms Barbara Cesana (a former resident at Balmoral House).

*Preliminary issue*

5. Before the Tribunal could hear the substantive matters, the Applicant objected that the Respondent had failed to disclose the bank statements as ordered by the Tribunal on 16th December 2019 and again on 29th March 2021.

6. Mr Wild pointed to an email dated 14th July 2021 from the Respondent's managing agents, HAUS, which stated,

> Unfortunately we cannot send you original bank statements as we have a Universal Bank Account for Haus.
>
> The bank statements have all been verified year on year by an external accountant and the SC year end accounts are evidence of such.

7. In the light of this information, the Respondent thought the best they could do was to provide, in April, a Property Balance Sheet containing a list of relevant transactions from the bank account. The problem is that this was not a statement from the bank and so did not comply with the Tribunal's order. The Respondent made no attempt to have the order varied or discharged.

8. From the Applicant's point of view, the Respondent had already admitted using the Reserve Fund to help fund a claim to enfranchise the freehold and the Applicant suspected that there were other examples of the misapplication of service charge funds, such as the refurbishment of the interior of Mr Kaushik's flat. She and other leaseholders, including Mr Akhmetshin, wanted the bank statements to be able to see what payments had been made and to whom. Ms Fard asserted that HAUS could have provided a redacted version of their bank account in order to remove references to other properties.

9. In the event of a breach of directions, the Tribunal has a number of powers. There was no suggestion that the Tribunal should use its power to debar the Respondent. Ms Fard submitted that the Applicant was after clarification and would want to see a formal statement from HAUS

explaining why bank statements were unavailable. This would likely require the hearing to be adjourned again, albeit that Ms Fard submitted it would only need to be short.

10. In the Tribunal's opinion, it would be disproportionate to adjourn the hearing again. A formal statement repeating the contents of the above-quoted email would be unlikely to provide any more information than is already available. Moreover, the Applicant's allegation that service charge funds have been deliberately used to fund Mr Kaushik's personal expenses amounts to an allegation of fraud in which HAUS and their accountants would also have had to participate – a redacted bank statement would not resolve this allegation but rather lead to questions as to what had been redacted.

11. In the circumstances, and having taken time for consideration, the Tribunal determined that it has the best available evidence to decide the issues raised by the Applicant and the request for further evidence to be supplied and/or for an adjournment was rejected. The parties were briefly informed and the hearing proceeded to the substantive application.

12. The Respondent sought to introduce some documents from Companies House which they said showed the Applicant trying to install herself as a director of the Respondent and of the company set up to pursue enfranchisement. However, they seemed of limited relevance to the issues before the Tribunal and so they were not considered or taken into account.

*Issues*

13. Aegon House is a 10-storey building (inclusive of the basement) with flats numbered up to 52 on the first to eighth floors – the Respondent has stated that there are 47 flats but a health and safety report carried out on 30th March 2018 by Colborn Risk Management Ltd stated that there are 56.

14. Aegon House has two neighbouring blocks, Balmoral House and Marina Point, which are part of the same estate. Lanark Square Ltd own the freehold of the whole estate and the head lease for the three buildings. Melrose Apartments Property Ltd hold a lease which is superior to Lanark Square's lease.

15. The Respondent used to be responsible for managing Balmoral House as well as Aegon House, but they now have different arrangements.

16. Melrose manage the common areas of the estate and the underground car parks. They bill the Respondent for these services and the Respondent passes on those costs through the service charge to the Applicant and her fellow leaseholders in addition to the charges for services provided by the Respondent.

17. LPI Group Ltd, the owner of ground floor premises at Balmoral House, had previously applied to become an Applicant in these proceedings. They had since dropped out but Ms Fard pointed to paragraph 6 of their statement of case (labelled as a witness statement from the sole director, Mr Charalambos Georgiou) as summarising the points the Applicant wished to raise:

(a) The arbitrary and unjustified increases in service charges;

(b) The poor state of repair of both Aegon House and Balmoral House, notwithstanding the service charge increase;

(c) The way in which the service charges have been spent by [the Respondent];

(d) The lack of transparency by [the Respondent] regarding its service charge expenditure; and

(e) The conduct of the directors of [the Respondent], notably Ashwani Kaushik and John Wild.

18. In relation to the last issue, the Applicant's skeleton argument also set out a lengthy list of allegations of breaches of the Companies Act against the Respondent's directors. The Tribunal explained that its jurisdiction is limited and it would not be able to determine these allegations. For example, it was suggested that Mr Kaushik and Mr Wild might have abused the proxy vote system to get themselves elected as directors but, quite apart from the lack of relevant evidence, the Applicant's remedies for such matters lie outside the Tribunal.

19. It became clear from Mr Akhmetshin's evidence, as well as the Applicant's submissions, that they had become discontented with the Respondent's management when their service charges increased by around 50% from 2016 to 2017 – the accounts show the total expenditure increased from £112,766 in 2016 to £160,538 in 2017. Both of them strongly asserted that such an increase demonstrated, in and of itself, that the Respondent was not competent to manage the property and was not in control of the expenditure on services for the building. They pointed to the fact that many leaseholders, including themselves, found it difficult to adjust to such wide variations between service charge years. In particular, Mr Akhmetshin said he would have to sell his flat if the Tribunal upheld the service charges.

20. The Tribunal has a great deal of sympathy for leaseholders facing significant and unexpected increases in their service charges. It is only to be expected that such leaseholders would query such increases, forcefully if necessary, and would be extremely disappointed if any response fell short of what they wanted in terms of limiting the size of any increase.

21. However, it is one thing to ask the question. It is another to listen to the answer, particularly when it is an answer one doesn't wish to hear. The accounts show clearly that the increase in the service charges was almost entirely due to a large increase in the estate charges, from nothing in

2016 to £53,455 in 2017. The estate charges arise from costs incurred by Melrose in managing the common areas of the estate, including the underground garage. The Respondent has no direct control over such costs and, for the most part, has little choice but to pass them on through the service charge.

22. Whatever the levels of the Respondent's competence or control, this particular increase cannot constitute evidence against them. Despite this evidence, neither the Applicant nor Mr Akhmetshin thought that there was any basis for moderating their criticisms of the Respondent.

23. The Applicant, Mr Akhmetshin and Mr White all complained bitterly about apparently fruitless attempts to obtain information from the Respondent and their agents. They alleged that the Respondent continually refused to provide AGM minutes, the accounts or access to relevant documentation. Mr Akhmetshin referred to one occasion when he sent his proxy, Mr Chris Marron, to an appointment to inspect documents at HAUS's offices but he was refused entry.

24. If true, such a lack of communication and transparency would constitute poor practice on the part of both the Respondent and HAUS. However, the extensive email correspondence included in the documents did not support the claim. The emails contained numerous complaints where various leaseholders told each other that information had not been released to them but none from a leaseholder to the Respondent or HAUS asking for information and none from the Respondent or HAUS refusing to provide it, with one exception.

25. In January 2019 one leaseholder, Ms Gorana Renovica, emailed HAUS to say she would like to understand the 2019 budget and how her service charges had been calculated. Mr Darren Speck of HAUS responded in a puzzled way indicating that he thought the budget breakdown already provided should be sufficient. This provides an example of why the Tribunal would need to see the actual requests for information and the actual response from the Respondent or HAUS since, in this particular instance, HAUS's response appears reasonable enough.

26. The fact is that the Applicant has now had the relevant documents for some time. The Applicant maintained her case in respect of all service charge items listed in the Scott Schedule and the Tribunal has gone through each of them and made decisions in accordance with the reasoning set out below.

*2019*

27. The application purported to relate to the service charges in 2019, as well as in 2016-18. The Applicant also mentioned 2020. However, the Tribunal was simply not given the information from which to determine anything in relation to these later years. There were no accounts for 2019 and little in relation to the budget. The parties addressed their submissions towards the actual expenditure incurred in 2016-18. In the circumstances, the Tribunal felt unable to make any meaningful

determination in relation to service charges in 2019. If this decision provides insufficient guidance to allow the parties to settle any dispute in relation to 2019 or later years, they can, if they wish, make a further application.

*Service Charges*

*Insurance*

28. The Applicant challenged the payments for building insurance of £14,390.92 in 2016 and £12,344.10 in 2018 on the basis that such a sum "feels excessive". She had no evidence beyond her "feeling". There were no alternative quotes.

29. The Respondent pointed out that insurance costs had previously been higher, £21,938.54 in 2015. They had instructed a broker to test the market, as a result of which they were able to bring the premiums down.

30. In the circumstances, the Tribunal is satisfied that the insurance costs were reasonable and the resulting service charges are payable.

*Management Commission/Building Manager Commission/Estate Charge*

31. The Applicant challenged the payments for Management Commission of £16,200 in 2016 and Building Manager Commission and Estate Charge of £2,840 and £53,455.31 respectively in 2018 because it was not clear what they were for.

32. As referred to above, when something appears in the service charges which a service charge payer does not understand, it is entirely understandable and even sensible to question it but the answer should also be given proper consideration. The Applicant (and her witness, Mr Akhmetshin) found it difficult, if not impossible, to do this time after time. This item is an example.

33. The Respondent explained that these were payments to Melrose in respect of estate charges. They accepted that the name given to these charges was unfortunately misleading – it would have been more transparent and comprehensible for the likes of the Applicant if the Respondent's accounts had referred to them as "Estate Charges".

34. The service charges include such sums in accordance with paragraph 2 of Part I of the Sixth Schedule to the Applicant's lease. They are clearly payable.

35. In her statement of case, the Applicant accepted that these items are estate charges but said she had not received a breakdown. In the event, the Final bundle, prepared by her solicitor, included at page 413 onwards a detailed breakdown of the estate charges in a letter dated 20th January 2017 from Melrose to the Respondent. The Applicant did not seek to challenge any item in that breakdown. The Tribunal had no basis on which to question the reasonableness of the estate charges.

*Managing agent fees*

36. The Applicant challenged the payments for managing agents' fees of £10,000 in 2016, £9,866.63 in 2017 and £14,817.84 in 2018.

37. D&G used to manage the block but, in 2016, following considerable discontent amongst the leaseholders with their services, management was moved to HAUS – according to the documents, Mr Kaushik spent considerable time on this for which a number of leaseholders expressed their gratitude.

38. Both the Applicant and Mr Akhmetshin complained bitterly as to the standards of management under HAUS, particularly over an alleged failure to respond to phone calls and emails. The Applicant also claimed there were breaches of HAUS's management agreement, double-charging and a poor attitude. In her statement of case, the Applicant complained about a lack of certain services:

(a) A window not being repaired;
(b) The lift not being repaired "for several years";
(c) Inadequate fire safety provisions;
(d) A lack of fire extinguishers on some floors in the block; and
(e) A fire door being held together by a piece of string.

39. However, in all the documentation provided for this hearing, they were unable to move beyond mere assertions and actually provide evidence of these matters. Even if their allegations were true, the Tribunal is unable to act in the absence of evidence. Examples include:

(a) The Applicant alleged that the common parts were not maintained to a reasonable standard as shown by some photos. There were only a few photos which did not show much other than a boarded-up window with no evidence as to how long the window had been in that condition.
(b) Some of the photos were of communal areas outside the block. The Applicant also complained about the state of the garage areas. The Respondent pointed out that these areas were Melrose's responsibility, not theirs. Indeed, this was pointed out to the Applicant in email correspondence dating back several years but she had clearly forgotten or chosen to ignore the information.

40. Some indication of the difficulties involved in managing these properties came from Balmoral House. One leaseholder at Balmoral House challenged HAUS as to why the lift wasn't working. HAUS responded that they didn't have enough money for the lift repair due to leaseholders withholding their service charges. In the absence of compelling circumstances justifying such a stance, the Tribunal has little sympathy for leaseholders who both withhold their service charges, even those they admit they owe, and then complain about the resulting low levels of service.

41. The average cost per unit (assuming 47 flats) for the managing agents' fees varies between £175 plus VAT in 2017 and £263 plus VAT in 2018.

From its own expert knowledge and experience, the Tribunal is aware that this is within the range of such costs in the market. In the absence of any evidence of a poor management service beyond mere assertion, the Tribunal is bound to find that the service charges arising from these fees are reasonable and payable.

*Out of hours emergency service/24hr Emergency Line*

42. The Applicant challenged the payments for the Out of hours emergency service/24hr Emergency Line of £420 in 2016, £419.88 in 2017 and £360 in 2018 on the basis that it "is not a real service and they are unable to help with any real emergencies which are dealt with by ambulance, police and fire brigade."

43. This is one of several examples where the Applicant has misunderstood the nature of the service provided. This is a typical service charge for blocks of flats. It is not intended to replicate the work of the emergency services but to provide a service out of hours for the matters within the Respondent's obligations under the lease. For example, if significant water penetration were to start outside office hours, any affected leaseholder could call this service and the problem would be attended to despite HAUS's staff having left work for that day.

44. Further, this service is similar in nature to insurance. It is only there in case something goes wrong. It might never be used but that is not indicative that it is not essential.

45. The Tribunal is satisfied that service charges arising from these costs are reasonable and payable.

*Professional fees/Legal Advice*

46. The Applicant challenged the payments for professional fees and legal advice of £805.91 in 2016, £928 in 2017 and £597 in 2018.

47. The Respondent explained that the professional fees were payable to JB Leitch in order to recover service charges from leaseholders who had not paid in accordance with their obligations under their leases and to provide advice as to the validity of an EGM of the leaseholder members of the Respondent company.

48. However, the charge of £928 in 2017 was apparently for a loan to those managing the neighbouring block, Balmoral House, to defend proceedings in the First Tier Tribunal. The Respondent sought to say that this was payable under paragraph 2.5 of Part I to the Sixth Schedule but the whole of paragraph 2 relates to charges to cover costs incurred by the superior landlord. The Tribunal could not identify any provision in the Applicant's lease which could make her liable for service charges arising from such a loan.

49. This is an example, along with enfranchisement costs considered below, of the Respondent not understanding the limits of the uses to which they

may put service charge funds. The Respondent is the trustee of service charge funds and they may not be applied to anything other than what is provided for in the relevant lease, even if the Respondent genuinely believes that the funds are being applied for the benefit of the leaseholders and even if the funds are only applied in the form of a loan, to be paid back.

50. The Applicant alleged that "reckless and negligent spending on behalf of the directors has led to a number of leaseholders seeking legal advice and witholding the service charges wholly or partially." There are two problems with this allegation:

(a) Mr Akhmetshin said in evidence that he had exercised his right to withhold service charges. In fact, there is no such "right" – Mr Akhmetshin referred to section 21A of the Landlord and Tenant Act 1985 which does contain such a right in certain circumstances but that provision has never been brought into force. There may be a set-off against such charges arising from a counterclaim for sums payable by the Respondent to a particular leaseholder and service charges may not be owing if the Respondent had failed to give proper notice of a leaseholder's liability for such charges in accordance with relevant statutory provisions, but these do not constitute a "right" to withhold service charges. Many tenants seem to think that withholding rent or service charges is an appropriate course of action when landlords do not act as they wish them to but it is almost never effective in getting them to act in a way more favourable to the tenant.
(b) The Applicant has not established that the Respondent has engaged in any spending that could be characterised as "reckless" or "negligent", whether at the instance of the directors or otherwise.

51. Clause 10.1 of the Applicant's lease permits the Respondent to employ solicitors in the interests of good estate management and the costs are payable as part of the service charges. The Tribunal is satisfied that the professional fees of £805.91 in 2016 and £597 in 2018 are reasonable and payable.

*Service Charge Account Fee/Accountancy & Audit Fees*

52. The Applicant challenged the payments for accountancy fees of £2,400 in 2016 and £2,000 in 2018 on the basis that the accounts were not audited and the fees "feel excessive". Again, she did not provide any alternative quotes.

53. The Respondent provided copies of the accounts which are in standard format. For a building of this size, the fees are reasonable in the Tribunal's expert opinion. There is no basis for the Tribunal to find other than that they are reasonable and payable.

*Set-up Costs*

54. The Applicant challenged the payment for set-up costs of £300 in 2016 because she was not clear what it was for. The Respondent explained it

was an additional fee charged by HAUS when they took over the management of the building. The Tribunal agrees with the Respondent that this is not uncommon industry practice and is satisfied that it is reasonable and payable.

*Water Rates*

55. The Applicant challenged the payments for water rates of £11,765.48 in 2016 and £16,607.29 in 2017 on the basis that apportionment by floor area rather than by number of permanent residents was unfair.

56. In the Tribunal's opinion, the idea of keeping track of all permanent residents in the building is not feasible. Using floor area is not perfect but it is a reasonable and certain proxy. The Tribunal is satisfied that service charges arising from payment of the water rates are reasonable and payable.

*Water Treatment/Tank Works, Water Hygiene Maintenance and Booster Pump Maintenance*

57. The Applicant challenged the payment in 2016 for Water Treatment/ Tank Works of £372 and, in 2017, for Water Hygiene Maintenance of £3,045.95 and Booster Pump Maintenance of £330 on the basis that any such water supply services should be the responsibility of the water supplier, Thames Water.

58. This is another example of the Applicant not understanding what is involved in a particular service. Again, the services in question do not replicate those which are the responsibility of an outside organisation such as Thames Water. In any block of this size, there will be internal provision for the water supply beyond that of the water supplier, such as water storage tanks and booster pumps, including treating that water to ensure it remains safe for use by the residents and boosting the water pressure so that it reaches the upper floors of the building. The Tribunal is satisfied that such costs are reasonable and the resulting service charges are payable.

*Cleaning*

59. The Applicant complained that the cleaning in Aegon House was inadequate despite the following expenditure on the cleaning contract:

- 2016 £10,573.05
- 2017 £8,785.98
- 2018 £8,325.43

60. Somewhat in contradiction, the Applicant also suggested that the cleaning could be done in 7 hours, once per week, at a charge of £9 per hour. She did not provide any alternative quotes to support such figures.

61. The Respondent pointed out that the building has entrance halls, two staircases, the landings and two lifts. The cleaners have to clean them,

rotate 5 heavy communal bins, putting them outside for collection and then returning them, check the bin chutes and report back any issues, all at an industry-standard £11.50 per hour plus VAT.

62. The Applicant again provided no evidence as to the alleged inadequacy of the cleaning. Having said that, weekly cleaning is bound to allow for some dirt to accumulate between visits. The question is not whether the service provides immaculate common areas but whether the service is reasonable given the price paid. The Tribunal is satisfied that it is and that the resulting service charges are payable.

*Communal Entryphone/Satellite/Door Entry System*

63. The Applicant challenged the payments for the door entry system of £5,365.16 in 2016, £4,775.82 in 2017 and £2,676 in 2018 on the basis that, "It doesn't cost anything to maintain the entryphone or to change codes." Unfortunately, this shows the Applicant's ignorance of such matters. Door entry systems require maintenance just like any other equipment in the building.

64. The Respondent explained that a hire contract for the system had been signed on 24th March 1997 for a term of 20 years for an annual fee of £3,548 plus VAT. This contract also covered maintenance of the satellite TV system. When the contract came to an end, the Respondent took advantage to install a cheaper and more efficient entry system operated using fobs rather than a code.

65. The Applicant objected to the installation of the fob system as "totally frivolous and unnecessary". She maintained this in her representations to the Tribunal even after being informed of how it had saved money rather than incurring additional expense.

66. The Tribunal is satisfied that this expenditure is entirely reasonable and the resulting service charges are payable.

*Cleaning Windows*

67. The Applicant challenged the payments for cleaning windows of £1,344 in 2016, £2,515.95 in 2017 and £2,976 in 2018 on the basis that residents could do it themselves using long sticks. Again, the Tribunal believes this shows the Applicant's ignorance of the practicalities of such matters. Relying on residents and having them use long sticks to clean the windows is not realistically feasible.

68. The Applicant also asserted that the quality of the cleaning was poor but, again, provided no supporting evidence. The Tribunal is satisfied that these charges are reasonable and the resulting service charges are payable.

*Fire Precautions/Fire Alarm Maintenance/Fire Risk Assessment*

69. The Applicant complained that fire safety was inadequate despite the following expenditure:

- 2016 £3,336.05
- 2017 £12,041.70
- 2018 £2,506.97 and £813.60

70. In particular, the Applicant pointed to a lack of fire extinguishers in some areas which she asserted was against the law. She did not provide any details of any such law. To the Tribunal's knowledge, practice now leans against the provision of fire extinguishers so that residents focus on leaving a burning building rather than trying to use extinguishers to fight fires against which they would be ineffective.

71. The Applicant asserted that the fire brigade could provide much of the same service for free but, yet again, she is demonstrating her ignorance of such matters. Again, such expenditure does not replicate what the fire brigade provides.

72. The documents before the Tribunal included a fire risk assessment and a health and safety assessment which addressed fire safety matters, carried out at different times. There were also invoices showing that fire safety equipment was monitored and maintained. The Tribunal has no basis on which to consider this expenditure as anything other than reasonable so that the resulting service charges are payable.

*Repairs & Maintenance*

73. The Applicant challenged the following payments for general repairs and maintenance:

- 2016 £20,189.36
- 2017 £23,913.42 and £4,980.56
- 2018 £26,582.26 and £473.36

74. The Applicant made a general assertion that this expenditure was "absolutely inadequate". However, as was explained during the hearing, the Tribunal is not the place to challenge inadequacy of service. Under the Landlord and Tenant Act 1985, the Tribunal looks at the reasonableness and payability of service charges. If repairs have not been done, there are no costs of such repairs and no resulting service charges. If an inadequate service is provided but the charges are proportionate to that service, then those charges are reasonable.

75. The Applicant challenged the following items as being frivolous and unnecessary:

(a) Purchases of flowers and artificial plants. The Respondent replied that the cost is minimal compared to the overall cost of general repairs and maintenance and, in any event, is paid for by one of the directors.

(b) A camera used by one of the directors. In 2017 Mr Kaushik purchased a Bosch inspection camera and a thermal imaging camera to locate a source of a leak. Not only was this successful but the insurers contributed to the cost. Mr Kaushik also later bought a GoPro camcorder for use by a surveyor inspecting the building. It appears that Mr Kaushik was acting in accordance with a regular practice whereby he incurred expenditure and then was paid back by through HAUS. This is not good practice unless there is express prior approval for the expenditure but, in this instance, the expenditure was relatively minor and justifiable. The cameras remain available for use on behalf of the leaseholders.
(c) A dehumidifier. Similarly, it was bought to address the consequences of a leak and is now available for use by other leaseholders. Again, the expenditure was relatively minor and justifiable.
(d) An acrylic display stand costing £137. The Respondent bought this to display notices to residents. Yet again, the expenditure was relatively minor and justifiable.
(e) A diffuser refill for £165. The Applicant asserted that one could be bought for £20. In fact, this expenditure was not for one such refill but several. Having said that, even if the Applicant had made out a case on this point, it is trivial and would have made virtually no difference to her service charge.

76. The Applicant made a general assertion that there had been unnecessary works but did not identify any, save for a couple of items. Firstly, she alleged that the amount for 2017 included expenditure on a luxury refurbishment of Mr Kaushik's flat. In fact, a close examination of the Respondent's income and expenditure showed that £11,506.57 was received from the insurers on 29th September 2017 shortly before £9,250 was paid to Mr Kaushik on 9th October 2017. The difference was to recompense the Respondent for the costs of track and trace work for the relevant problem, including the aforementioned cameras. According to an invoice dated 20th July 2017 from MD Contractors, Mr Kaushik was charged £11,350 for the work to his flat. He said he paid the difference in cash to the contractors from his own pocket.

77. For a director of the Respondent to have arranged for his flat to be refurbished from the service charge would be a fraud on the service charge account with which the managing agents and the accountants would have had to co-operate. This is a sequence of highly unlikely events, given that the unpaid directors of this kind of management company just do not have the power to force professionals to take part in such fraud while those professionals would have nowhere near sufficient motive to jeopardise their entire careers for such relatively small sums. Given how unlikely it is, the Tribunal would need compelling evidence in support of such an allegation. The Applicant did not just fall short of establishing her case on this point but in fact had no evidence in support whatsoever. There is nothing wrong with asking the question about service charge expenditure but when the point has been reached where there is no evidence to support this kind of allegation, then it must be dropped. It is both a waste of time and an unjustifiable smear on the reputation of others to pursue it further.

78. The charge for 2018 included the installation of water meters which the Applicant alleged could have been done by Thames Water for free. The Respondent replied that the building has suffered from regular water leaks, resulting in a number of claims on the insurance. Meters were installed to monitor the leaks and have been successful in reducing them. This should have a positive impact in due course on the insurance premiums, as well as cutting down on the repairs budget. The Tribunal is satisfied that this expenditure is reasonable and the resulting service charges are payable.

*Lift Repairs & Maintenance*

79. The Applicant claims the lifts were not repaired, despite the accounts showing the following sums for Lift Repairs & Maintenance:

- 2016 £6,691.81
- 2017 £10,862.01
- 2018 £8,069.98

80. The Applicant also alleged that the charges are excessive and callout fees should be within the lift maintenance contract. Again, she did not provide any alternative quotes to support her allegation.

81. The Respondent replied that the lifts are over 20 years old and prone to breaking down, while the contract does not include callout fees. The contract is the basic economy version to try to save costs.

82. As far as the Tribunal can tell, these amounts were incurred on lift repairs and maintenance. It is understandable that a leaseholder would query the expenditure because the lifts are not continually in operation while significant amounts are being expended. However, by itself that does not mean any charges are unreasonable. The Applicant has again resorted to bare assertions and the Tribunal has no basis on which to conclude that the costs are unreasonable or that the service charges should not be payable.

*M&E Maintenance*

83. The Applicant challenged the payments for mechanical and electrical maintenance of £3,693.08 in 2016 because she is not clear what it is. The Respondent explained that it is for maintenance of items such as water pumps, smoke vents and fire extinguishers. The Tribunal is satisfied that the costs were reasonably incurred and the charges are payable.

*Pest Control*

84. The Applicant challenged the payments for pest control of £443.31 in 2016, £583.05 in 2017 and £589.58 in 2018 on the basis that the local council would provide such services for free. Somewhat in contradiction to this, she also said that she had paid out for some pest control in her flat.

85. This is another example of the Applicant's ignorance of the extent of available services. Local councils do not provide pest control services for entire blocks of flats and this category is included in virtually every service charge for residential blocks in London. These are modest amounts. They do not guarantee that any flat will be pest free – pests are just too common in London. The Tribunal is satisfied that such costs are reasonable and the resulting service charges are payable.

*Refuse collection contract/Refuse removal*

86. The Applicant challenged the payments for refuse removal of £1,051.75 in 2016, £553.27 in 2017 and £296.33 in 2018, again on the basis that this is a service provided by the local council for free.

87. Yet again, the Applicant does not understand the limits of local council services. This is a normal category of service charge to cover the removal of large items left by residents and others and the bin chute system already mentioned above. The local council's service is limited to weekly collections of household waste previously put into bins. The Tribunal is satisfied that such costs are reasonable and the resulting service charges are payable.

*Bank Charges*

88. The Applicant challenged a payment for bank charges of £4.40 in 2016 on the basis that bank services are free in the UK. While they are normally so for individuals, they are not normally so for corporate or business accounts. The Tribunal can see nothing objectionable about this small charge.

*Survey Fee*

89. The Applicant challenged a payment of £21,970.11 in 2016 for a survey, alleging that it related solely to a claim for enfranchisement (buying the freehold and any superior leasehold interests) being conducted by the Respondent's directors on behalf of some of the leaseholders.

90. The Respondent had commissioned the survey following an indication from the freeholder that they intended to carry out major works costing around £2m and they used it in successfully resisting the proposed expenditure. However, it was conceded that the survey and some of the costs included within this total were for the purposes of considering both the acquisition of the right to manage and enfranchisement, not just for Aegon House but also for the neighbouring blocks of Balmoral House and Marina Point. The Tribunal pointed out, and Mr Kaushik and Mr Wild accepted, that this is not a lawful use of service charge funds, as already referred to above, although they did say the money was used as a loan and will be paid back when the enfranchisement project is sufficiently in funds.

91. The documents in front of the Tribunal did not include the relevant survey but they did include two invoices from JPC Law of £3,352.68 and

£3,600 expressly for the purpose of work in connection with a possible enfranchisement.

92. There is no doubt that the Respondent wrongly applied service charge funds but the Tribunal does not have the material for a precise calculation of how much of this item should be allocated to the service charge account of Aegon House. Despite the Respondent acting wrongly, there is no question of applying a sanction or punishment since that is not the Tribunal's role. The only question is what amount is reasonable and payable.

93. The only part of this item which the Tribunal can be sure gives rise to a service charge is that part of the survey which related to whether major works were required to Aegon House. The Tribunal estimates that no more than 20% would be so applicable, which results in a charge of £4,394.

*Postage/Couriers*

94. The Applicant challenged the payments for postage and couriers of £611.46 in 2017 and £11.79 in 2018 on the basis that all communication with leaseholders could be done by email and through the online portal of the agents, HAUS. Unsurprisingly, the Respondent pointed out that not all leaseholders have access to email or the online portal. They also pointed out that they had managed to reduce these costs substantially from 2017 to 2018. The Tribunal is satisfied that these costs are reasonable and the resulting service charges are payable.

*Costs*

95. The Applicant sought orders under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule to the Commonhold and Leasehold Reform Act 2002 that the Respondent may not add their costs of these proceedings to the service charges or seek them from the Respondent. She also reserved the right to apply for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

96. However, the parties accepted at the hearing on 20th July 2021 that their submissions on any costs issues would benefit from having seen the Tribunal's substantive decision. Therefore, this decision includes directions for any costs issues to be determined later on the papers, without a further hearing.

**Name:** Judge Nicol **Date:** 31st August 2021

## Appendix of relevant legislation

## Landlord and Tenant Act 1985 (as amended)

### Section 18

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

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

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

### Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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