



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

**Case reference** : **LON/00AH/LSC/2021/0393**

**HMCTS code  
(paper, video,  
audio)** : **Face-to-Face**

**Property** : **154 Sylvan Road, London SE19 2SA**

**Applicant** : **Esther Cawley**

**Representative** : **N/A**

**Respondent** : **Sylvan Estate Management Company  
Ltd**

**Representative** : **Mr B Cornelius of Concept Property  
Management**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Tagliavini  
Mr K Ridgeway MRICS**

**Venue & hearing  
date** : **10 Alfred Place, London WC1E 7LR  
26 May 2022**

**Date of decision** : **8 June 2022**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that all service charges for the periods 2018/2019 and 2019/2020 are reasonable and payable by the applicant.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges are payable by the Applicant in respect of the service charge years 2019-2020.

## **The hearing**

2. The Applicant was unable to attend the oral hearing but agreed that the tribunal should go ahead with the hearing in her absence. The Respondent was represented by Mr B Cornelius of Concept Property Management.
3. At the beginning of the hearing the tribunal identified the correct respondent and substituted Sylvan Estate Management Company Ltd as the freeholder for Concept Property Management under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
4. The applicant relied upon a bundle of documents of 47 pages. The respondent relied upon a document of 6 pages. However, the applicant’s bundle of documents with an extended Schedule of items in dispute was served on a few days before the hearing thereby disadvantaging the respondent. However, Mr Cornelius agreed that the tribunal should consider the items listed by the applicant on this extended Schedule in order to dispose of the application.

## **The background**

5. The property which is the subject of this application is a maisonette flat on the ground and first floors in a block of 20 flats and forms part of a large estate comprising 222 properties in total of which 198 are flats or maisonettes with houses making up the remainder. The applicant is charges either 1/198 (Flats and Maisonettes Schedule) or 1/222 (Estate/All Properties Schedule) depending upon how they have been incurred. There are no block costs and therefore the applicant is not

charged for her share of the works relating to the 20 flats/maisonettes in her block but is charged a 1/198 share of the costs incurred by all blocks.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicant holds a long lease dated 28 April 1983 of the property made between Sylvan Co-Ownership Housing Society Limited ('the lessor') and Sylvan Estate Management Company Limited ('the Manager') and Peter Jacobs and Elaine Sidki granting a term of 999 years with effect from 29 September 1982. The lease provides that Sylvan Estate Management Company are to (and did) acquire the freehold and are to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing, the tribunal identified with Mr Cornelius the relevant issues for determination. The tribunal noted that in the original application received by the tribunal the applicant challenged only the service charges for 2019. However, in the application included in the applicant's hearing bundle the application stated that service charges for 2019 to 2020 were challenged and the tribunal agreed with Mr Cornelius that this expanded period could properly be dealt with. No information was provided by the applicant about the 2022 service charge year although briefly referred to in her Statement and therefore, this was not dealt with as part of the application.
9. The tribunal considered the payability and/or reasonableness of service charges for 2019 to 2020 concerning the following heads:
  - (i) Cleaning
  - (ii) Refuse collection
  - (iii) Insurance
  - (iv) Maintenance charges
  - (v) Reserves
  - (vi) Auditing costs
  - (vii) Other legal and professional charges

### **The tribunal's decisions and reasons**

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Cleaning costs**

11. The tribunal finds these costs incurred in the periods 2018/2019 and 2019/2020 are reasonable and payable by the applicant.
12. The tribunal accepts the evidence of Mr Cornelius that the cleaning takes place on the exterior surfaces only i.e., external walkways and staircase. Mr Cornelius told the tribunal that T.F. Beales carries out the cleaning on an 'ad hoc' basis and attends the site on request by the on-site maintenance manage/caretaker (Richard Hicks). On average, T.F. Beales is on site either three half-days per week or two full days, depending on what is required and set out in a monthly time sheet/schedule. Any complaints about the cleaning are 'fed back' to the caretaker who in turn resolves any issues with T.F. Beales.
13. During the pandemic lockdown in 2020 the tribunal accepts that there was a 10-day period during which cleaning was not carried out while a way to work safely was put in place. Further, the tribunal finds that since the Covid-19 pandemic cleaning of the walls and handrails has been added to the cleaning schedule in addition to the use of disinfectant.

### **Refuse collection**

14. The tribunal finds the costs of refuse collection (incorporated into the cleaning costs) for the periods 2018/2019 and 2019/2020 are reasonable and payable by the applicant.
15. The tribunal finds that larger estate has a number of problems with 'fly tipping' the costs of which can be charged to the lessees. The tribunal accepts Mr Cornelius' evidence that during the Covid-19 lockdown(s) the amount of refuse and fly tipping increased due to the increased number of deliveries and people working from home. The tribunal accepts that the use of CCTV on the Estate was not approved by the residents due to issues of privacy and therefore identifying or deterring 'fly tipping' remains a long-term problem.

## **Insurance**

16. The tribunal finds the costs of insurance for the periods 2018/2019 and 2019/2020 are reasonable and payable.
17. The tribunal accepts Mr Cornelius' evidence that the Estate suffered from subsidence in the 1995 which has had a long-lasting effect on insurance costs and the unavailability of alternative quotes and insurers. The tribunal accepts that due to need for extensive underpinning works a large excess of £150K for underpinned blocks and £75K excess for those blocks that have not been underpinned has been applied. The tribunal also accepts that an annual report from a structural engineer is required by the insurer in order to monitor the condition of the blocks on the Estate.
18. The tribunal finds that the inclusion of 'terrorism' in the schedule of insurance is reasonable as the subject Estate is inside the M25 and covers such activities as bomb making

## **Maintenance costs**

19. The tribunal finds the maintenance costs incurred in the periods 2018/2019 and 2019/2020 are reasonable and payable by the applicant.
20. The tribunal finds that due to the size and history of the Estate an on-site maintenance manager/caretaker is reasonably required. The tribunal finds that the past historic neglect of the Estate has caused reactive repairs to be required while major works projects are carried out or are planned. The tribunal finds that Mr Hicks is not employed by Concept Management Company but is an independent contractor, contracted by the respondent.

## **Audit fees**

21. The tribunal finds the costs of auditing were not incurred in the periods 2018/2019 and 2019/2020 and therefore were not passed onto the applicant. The tribunal finds the accountant's fees in the preparation and certification of service charge accounts to be reasonable and payable by the applicant.
22. The tribunal accepts the respondent's explanation that audit costs were not incurred and that these costs relate to the preparation of service charge accounts and the respondent's company accounts by the respondent's long-term accountants John Kilvey & Co. as required for the proper management of the site/Estate

### **Legal and professional fees**

23. The tribunal finds the legal and other professional fees for the periods 2018/2019 and 2019/2020 to be reasonable and payable by the applicant.
24. The tribunal finds that clause 3(ii)(f) of the lease permits the respondent to charge to the lessees 'such other expenses as the Manager may incur in the exercise of its objectives as set out in the Memorandum of Association of the Company.'

### **Reserves**

25. The respondent accepts that the collection of a reserve fund is not permitted by the terms of the lease.
26. The tribunal finds the inexact use of the term 'reserves' has caused confusion and accept that this term is used to refer to any year end surplus and retained as 'Estate Reserve' and 'Flats and Maintenance Reserve.' However, the tribunal finds that clause 3(ii)(e) refers to the 'creating such reserves as to the Manager may seem prudent.'

### **Application under s.20C and refund of fees**

27. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the respondent and considering the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

**Name:** Judge Tagliavini

**Date:** 8 June 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).