FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LSC/2021/0236**
HMCTS code	:	**P: PAPERREMOTE**
Property	:	**Stockwell Green URC, 62-64 Stockwell Road, London, SW9 6JQ**
Applicant	:	**United Reform Church (Southern Synod) Trust Ltd**
Representative	:	**Forbes Dean Associates**
Respondents	:	**Carole Allsop (Flat 62A)** **Georgina Cooper (First Floor Flat, No.64)** **Ekta Malhotra (Second Floor Flat, No.64)**
Representative	:	**In person**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal member	:	**Judge Robert Latham**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**10 December 2021**

DECISION

On 26 November 2021, the Tribunal issued a draft decision. The parties were given the opportunity to make any representations on this by 10 December 2021. No party has done so. The Tribunal is therefore reissuing this as its final decision.

Covid-19 pandemic: description of hearing

This has been a remote on the papers which has been not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because the Applicant requested a paper determination and no party has requested an oral hearing. The Applicant has prepared a bundle totalling 109 pages.

The Application

1. The United Reform Church (Southern Synod) Trust Ltd ("the Applicant"), seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge years 2019, 2020 and 2021. The application has been issued on behalf of the Applicant by Jonathan Dean MRICS, a surveyor with Forbes Dean Associates.

2. The claim relates to the insurance charges which the Respondents are liable to pay in respect of the flats which they occupy at Stockwell Green URC, 62-64 Stockwell Road, London, SW9 6JQ ("the Building"). The building comprises a period detached building constructed on three floors. The ground floor comprises the Stockwell Green United Reform Church. There is a separate hallway and staircase leading from Stockwell Road to a landing from which there is access to 62a Stockwell Road and 64 Stockwell Road (first floor Flat), both of which are on the first floor. The staircase continues up to the second floor where 64 Stockwell Road (second floor Flat) is situated.

3. The relevant lessees are as follows:

   (i) 62a Stockwell Road: Carole Allsop;

   (ii) First Floor Flat, 64 Stockwell Road: Georgina Cooper

   (ii) Second Floor Flat, 64 Stockwell Road: Ekta Malhotra

4. In its application form, the Applicant frames the question that it requires the Tribunal to determine. It refers to the two provisions in the lease with regard to insurance, namely "Clause 3(xiv)(A)" and "Clause 3(ii)(A)(v)" and states: "A determination is required by the Tribunal as to whether the appropriate proportion should be on sixth or 10%". The following insurance contributions are identified: (i) 2019: £413.20 or £247.92; (ii) 2020: £3331.83 or £199.06; and (iii) 2021: £281.69 or £168.98. The Applicant raises the further question: "The insurance premium was not demanded or collected for many years previously. Can the freeholder reclaim past insurance contributions?".

5. This Tribunal does not answer academic questions. It rather determines whether service charges which have been demanded are payable and reasonably. The sole issue in this case seems to be the payability of sums demanded in respect of insurance.

6. On 15 July 2021, the Tribunal issued Directions. These were amended on 21 July. By 19 August, the Applicant was directed to disclose the relevant demands for payment. On 12 August, the Applicant emailed the following documents to the Respondents (at p.51-68 of the Bundle):

(i) Renewal Invoices issued to Stockwell Green URC by Edwards Insurance Brokers: (a) £1,879.18 for the period 22 January 2019 to 22 January 2020, dated 11 January 2019 (at p.52); (b) £1,990.61 for the period 22 January 2020 to 22 January 2021, dated 18 December 2019 (at p.53); and (c) £1,689.79 for the period of 12 months from 22 January 2021, dated 20 January 2021 (at p.54).

(ii) An invoice for a reinstatement valuation report dated 17 May 2019 (p.56).

(iii) An email dated 12 November 2018 which Mr Dean sent to the Respondents enclosing invoices submitted to Stockwell Green URC dated 19 December 2012; 20 December 2013; 16 December 2014; 4 January 2016; 4 January 2017; 20 December 2017 (at p.60-65). It seems that Mr Dean was seeking to make each of the Respondents liable for 20% of the insurance premiums paid by Stockwell Green URC between 22 January 2013 and 21 January 2019 (see p.59).

It is to be noted that the email dated 12 November 2018 is the only service charge demand upon which the Applicant seeks to rely.

7. By 23 September 2021, the Respondents were directed to send the Applicant their cases in response:

(i) In an email, dated 22 September 2021, Ms Malhotra (at p.69) provided a number of documents. This includes a Schedule (at p.49) in which she challenges her liability to pay the sums demanded for 2018, 2019 and 2020 on the ground that she is only liable for 10% of the sums demanded. She further states that the landlord had been advised that it could not backdate its claim for insurance by more than 18 months. She also attaches emails passing between her Solicitor, Yatin Patel, and Mr Dean (at p.70 -79). It is apparent that there have been with without prejudice discussions about varying the leases. Mr Dean admitted in an open email, dated 24 December 2020, that the Applicant could not backdate service charge demands by more than 18 months (at p.78).

(ii) In an email dated 23 September 2021 (at p.81), Ms Allsop makes the following response in respect of the claim for insurance: “I bought the

flat in 2000 and have been paying insurance myself all this time. I was never informed that I was covered until the dispute arose. I have paid thousands of pounds in insurance over the last 20 years and feel it would be unfair to pay for the times when I was unaware of being covered by the church's insurance". She attaches a number of documents at p.83-96. The Applicant accept that Ms Allsop insured her flat between 2001 and 2019.

8. By 14 October, the Applicant was directed to serve its Statement of Case in Response. On 28 September (at p.97-108), Mr Dean emailed the three Respondents the following:

(i) A Statement (at p.98-10). Mr Dean contends that a "reasonable proportion" for each lessee should be 1/6 (16.67%). 50% should be attributed to the Church and the remainder split equally between the three tenants. He suggests that the lease has been "unfairly drawn". He argues that the 18 month rule does not apply as the insurance premiums are reserved as rent. He seems to rely on the invoices submitted to Stockwell Green URC by Edwards Insurance Brokers as the relevant insurance demands from the tenants (at p.52-54). He further refers to the ability of the landlord to engage managing agents. This is outside the scope of this application.

(ii) A Reinstatement Valuation, dated 12 March 2019 (at p.101-7). P.A.Veness suggested an apportionment of 17.5% for Flat 62A and 16.25% for the other two flats. However, none of the parties have argued for this apportionment based on square footage.

(iii) a number of photographs (at p.108-109).

9. Paragraph 7 of the Directions permitted the Respondents to send a supplementary reply to the Applicant. None of the Respondents have elected to do so. On 1 November, the Applicant filed a Bundle of Documents totalling 109 pages.

The Lease

10. The Applicant has provided a copy of the lease for 62A Stockwell Road. The Applicant states that all the leases are in a similar form. The lease is dated 10 November 1980 and was granted by Graham Robert John Payne. Ms Allsop acquired the leasehold interest in 2000.

11. The lessee's covenants are set out in clause 3 (emphasis added):

(i) By Clause 3(ii)A(v), the lessee covenants to "pay to the lessor by way of additional rent a sum equal to 10% of the expenses of: ..... (v) the cost of insuring the building in accordance with Clause 4(iv)(a) hereof

insurance against third party and public liability risks in respect of the premises if such insurance shall in fact be taken out by the lessor."

(i) By Clause 3(B)(xiv), the lessee covenants to "pay to the lessor on demand a reasonable proportion of the cost incurred by the lessor in keeping the building insured in the joint names of the lessor and the lessee from loss or damage by fire flood and other risks and special perils normally insure under a householders comprehensive policy together with architects and surveyors fees and two years of loss of rent".

12. The lessor's covenants are set out in clause 4 (emphasis added). By Clause 4(iv)(a), the lessor covenants to "at all times throughout the tenancy to keep the demised premises insured against loss or damage by fire in some insurance office of repute in such sum as the lessor may be advised is the full replacement value and to make all payments necessary for the above purpose within 7 days after the same shall respectively become payable and to produce to the tenant on demand (but not more than twice in any calendar year) the policy of such insurance and the receipt for the last such payment in respect of the policy and to cause all money received by virtue of such insurance (less insurance against loss of rent) to be forthwith laid out in rebuilding and reinstating the demised premises so far as such monies received are sufficient for that purpose PROVIDED THAT the lessor's obligations under this covenant shall cease if the insurance shall be rendered void by any act or default of the lessee".

The Law

13. Section 18 of the Landlord and Tenant Act 1985 defines "service charge" and "relevant cost":

> "(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.”

14. Section 19 provides that any service charges must be reasonable:

(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 provision 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.

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

15. Section 27A specifies the jurisdiction of this tribunal to determine the liability of a leaseholder to pay service charges:

“(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."

16. Section 20B provides for Limitation of service charges: time limit on making demands:

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

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

17. Section 21B requires a Notice of Tenant's Rights to accompany demands for service charges:

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Landlord and Tenant Act 1985 Page 31

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

The Tribunal's Determination

18. The Tribunal must determine this application on the basis of the submissions made by the parties and the documents on which they seek to rely. The Applicant requested a paper determination. No party has requested an oral hearing.

19. The lease which has been provided is dated 10 November 1980 and was granted by Grasham Robert John Payne. The Tribunal has not been informed when the United Reform Church (Southern Synod) Trust Ltd acquired the freehold interest. Mr Dean complains that the leases have been unfairly drawn. It ill beholds a landlord to make such a criticism. The original lease was drafted by the landlord. Any person who subsequently acquired the landlord interest should have had due regard to the rights and obligation which they were acquiring.

20. Any landlord must operate the service charge provisions in accordance with the terms of the lease. Parliament has intervened to provide statutory safeguards for tenants. A landlord must comply with these obligations. It is apparent that in the past, the landlord has failed to operate the service charge provisions in accordance with the lease and statute. Any landlord must accept the consequences of its failure to do so. It may well be that the Applicant Company has been managed by charitable trustees. Any person assuming such a role must be aware of the obligations that they are assuming. It is not a role that anyone should assume lightly.

21. This Tribunal is asked to interpret the terms of this lease. The leading authority is *Arnold v Britton* [2015] AC 1619. The interpretation of a contractual provision, including one as to service charges, involves identifying what the parties had meant through the eyes of a reasonable reader. Save in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. The less clear the relevant words are were, the more the court can properly depart from their natural meaning. However, it should not to embark on an exercise of searching for drafting infelicities in order to facilitate a departure from the natural meaning. Commercial common sense was only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date on which the contract was made. Moreover, the

purpose of contractual interpretation is to identify what the parties agreed, and not what the court thought that they should have agreed. It is was not the function of a court to relieve a party from the consequences of imprudence or poor advice.

22. The Tribunal does not consider that there is any conflict between the two insurance provisions in the current lease:

(i) Clause 3(ii)A(v), permits the landlord to take out a policy in respect of third party and public liability risks. It is unclear whether the landlord has done so in this case. The Tribunal has not been provided with the relevant insurance policies. Where the landlord has taken out such a policy, the drafter of the lease considered that the three lessees should only bear 30% of the cost. The rationale would seem to be that there would be potentially be a greater liability of any visitor to the ground floor church facilities suffering an accident than a visitor to one of the three flats. The lessor has a discretion as to whether to take out such a policy.

(i) By Clause 3(B)(xiv), the lessee covenants to pay to the lessor on demand a reasonable proportion of the cost incurred by the lessor in keeping the building insured in the joint names of the lessor and the lessee from loss or damage by fire, flood and other risks and special perils normally insure under a householder's comprehensive policy together with architects and surveyor's fees and two years of loss of rent. This is a normal buildings insurance policy. It is to be noted that any such policy must be taken out in the joint names of the lessor and the lessees. Again, the Tribunal has not been provided with copies of the relevant policies. There is authority from the Upper Tribunal that a failure to insure in accordance with its obligations under the lease (i.e. in the joint names of lessor and lessees), the cost is not recoverable (see *Green v 180 Archway Road Management Co Ltd* [2012] UKUT 245 (LC) and *Atherton v MB Freeholds Ltd* [2017] UKUT 497 (LC).

23. As stated, the Applicant has not provided the Tribunal with copies of the relevant insurance policies. It is possible that the policies cover both the traditional buildings insurance and third party and public liability risks. In such circumstances, the landlord would need to ask the insurer to apportion the premium payable in respect of each risk. The landlord would then need to determine how the respective premiums should be charged to the tenants.

24. The Tribunal is satisfied that the premiums which range between £1,689.79 and £1,990.61 are not unreasonable for a property of this nature. Indeed, none of the tenants seem to suggest that they are. Further, the proposed apportionment of 16.67% of the building insurance to the three tenants seems to be a "reasonable proportion".

25. The Tribunal is asked to determine that the sums demanded for the years 2019/20, 2020/21 and 2021/22 are payable and reasonable. The Tribunal is unable to determine this on the material which has been made available to it. The Tribunal has not been provided with a copy of the demands which the landlord has issued to the tenants. The landlord has not satisfied the Tribunal that the landlord has taken out policies in the joint names of lessor and lessee. It is unclear whether the policies cover both building insurance and public liability. If so, there is no evidence as to the apportionment of the premium in respect of these two risks. Any demand would be a demand for payment of a service charge. The demand would need to be accompanied by the requisite Summary of Rights and Obligations as prescribed by section 21B of the 1985 Act (see [17] above). There is no evidence that a lawful demand has been made. The invoices issued by Edwards Insurers Brokers to Stockwell Green URC (at p.52-55) are not service charge demands issued by the landlord to the tenants.

26. The Applicant seeks a further determination in respect of the tenants' liability to pay any service charge in respect of insurance premiums prior to 2019. It is accepted that no lawful demands were made. The terms of section 20B are quite clear (see [16] above). The 18-month time limit prescribed by section 20B of the 1985 Act applies to any liability for insurance. This is a service charge. It is apparent that the Applicant has been advised on the effect of this provision. It is surprising that Mr Dean has felt it appropriate to seek a second opinion from this Tribunal.

Refund of fees

27. The Applicant has paid tribunal fees of £100. In the light of the Tribunal's findings, it would not be appropriate to make any order for these fees to be refunded.

Judge Robert Latham
10 December 2021

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).