In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) and in the COUNTY COURT AT Bromley sitting at 10 Alfred Place, London WC1E 7LR

Tribunal Case Reference	:	**LON/00AH/LSC/2021/0279 & 0386**
County court claim no	:	**G64YX960**
Property	:	**Flats 1-6, 47 Westow Street, London SE19 3RW**
Applicants	:	**Tom Rawle (Flat 1)** **Thomas Rybinski (Flat 2)** **Samina Yaqub (Flat 3)** **Magdalen Ashman (Flat 4)** **Jason Isaacs (Flat 5)** **Michelle Brown (Flat 6)**
Respondent/ Claimant	:	**Westow Street Developments Ltd**
Defendant	:	**Thomas Rybinski**
Type of Application	:	**Payability of service charges**
Tribunal	:	**Judge Nicol (also sitting as a District Judge of the County Court)** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	:	**20th & 21st September 2022** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1st December 2022**

ORDERS AND REASONS

Determination of the Tribunal:

(1) The service charges claimed by the Respondent from the Applicants for the years 2017-2021 inclusive are reasonable and payable, except for the following amounts:

(a) £35 in relation to the installation of a dummy camera in 2018;

© CROWN COPYRIGHT

(b) £96 in relation to a notice board invoiced by Kaya Construction on 19th April 2018;

(c) The amount charged by Peter Bahari in 2018 for the fitting of FB2 locks;

(d) A duplicate invoice for £150 from Peter Bahari;

(2) The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985.

Order of the county court:

Upon the Tribunal's determination above,

IT IS ORDERED THAT:

(1) The Defendant shall pay the Claimant the total sum of £2,108.56 claimed in the county court proceedings in relation to the years 2018 and 2019, plus interest of £215.69;

(2) The Defendant shall further pay the Claimants' costs of the proceedings, summarily assessed in the sum of £1,200.

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

Reasons

1. The Applicants are the lessees of 6 of the 9 flats at the subject property, the other 3 being retained by the Respondent and let out to tenants. The Respondent is the freeholder whose managing agents are Stock Page Stock ("SPS").

2. There are two proceedings which have been heard together:

- On 1st July 2020 the Respondent issued a claim against one of the Applicants, Mr Rybinski, in the county court for alleged service charge arrears of £2,108.56 from 2018-19, interest and costs. Mr Rybinski admitted part of the claim only.
- On 25th July 2021 the Applicants applied to the Tribunal for a determination as to the payability of service charges for the years 2017-2021 under section 27A of the Landlord and Tenant Act 1985.

3. On 23rd September DDJ Mohabir transferred the county court claim to the Tribunal to be consolidated with the Applicants' application and dealt with as a "deployment case" by the Tribunal. The Tribunal issued directions accordingly on 17th January 2022.

4. The Tribunal heard the two cases together on 20th & 21st September 2022. The attendees were:

- 3 of the Applicants, Mr Rybinski, Ms Brown (first day only), and Ms Ashman – all of them contributed to the hearing but Mr Rybinski was their principal representative; and
- Mr Fowler and Mr Jones from SPS for the Respondent.

5. The documents before the Tribunal consisted of a bundle of 1,024 pages in electronic form, split into 5 parts, prepared by SPS. Unfortunately, there were errors in the bundle, including invoices relating to another property while some of the invoices relating to the issues in dispute were missing. Also, most of the documents were indexed as appendix numbers rather than described or named. The Tribunal did its best to work round these problems.

6. The Respondent appointed SPS as their agents with effect from 1st January 2018 in place of the previous agents, Fifth Street. By Mr Rybinski's calculation, the service charges rose by around 300% thereafter. This is certainly enough to raise questions and it is entirely natural that lessees faced with such an increase would look to find out what had happened and to query whether it was necessary. However, there have been a number of problems with the Applicants' approach:

   (a) An increase in service charges is, in the absence of any other factors, as likely to be because previous charges were too low, perhaps due to deficiencies in the services, rather than because the later ones were too high. The Applicants seemed to start from the latter position and the former possibility never seemed to occur to them. This is despite SPS specifically responding to Mr Rybinski's query in 2018 as to how they justify the increase in service charges by stating that there were works required in law which the previous agents had not done and that they had set up a sinking fund for future works.

   (b) The Applicants found it difficult to understand the answers provided to their questions. They found what appeared to be discrepancies and errors and couldn't understand why SPS did not accept their position. There were two possibilities here. Either there was something deficient in the Applicants' understanding or SPS were acting incompetently and communicating poorly. Again, the Applicants seemed to start from the latter position and the former possibility rarely appeared to be a serious possibility for them.

   (c) Therefore, throughout this dispute, the Applicants have believed that charges had been increased without justification and that the agents were not responding as they should to their complaints. It is understandable that this would be frustrating and annoying. The Applicants particularly objected to SPS inviting them to take their complaints to this Tribunal for a definitive ruling rather than sorting them out to the Applicants' satisfaction. However, that is no justification for some of the language used. For example, at various times the Applicants accused SPS of "extortion", "fabrication", "profiteering", negligence and deliberately providing false information. This understandably strained the professionalism of SPS staff, resulting in responses which were sometimes abrupt or which betrayed the

annoyance being felt at being faced with such behaviour. The fact is that both parties are in an ongoing relationship and that relationship is likely to be more effective for all involved if communications are conducted using moderate and less emotive language.

Lease

7. The Tribunal was provided with a copy of Mr Rybinski's lease which was apparently on the same terms as those of the rest of the Applicants. Section 8 provided for service charges. Each year, the Respondent is to estimate the forthcoming expenses on the basis of which each lessee is to pay an estimated service charge in two instalments in advance of the expenditure. At the end of the year, the Respondent is to prepare and certify accounts and then charge any excess to the lessees or credit any surplus.

8. The Applicants objected to particular service charges from each of the 5 years from 2017 to 2021 inclusive. They are dealt with in turn below.

2017

9. The 2017 accounts (Appendix 12 to the Applicants' Statement of Case) were enclosed with SPS's letter of 2nd September 2020 (Appendix 6), responding to the letter dated 4th August 2020 from the Applicants' then solicitors, Judge & Priestley. They had been compiled by Fifth Street. They only contained 4 items of expenditure:

- Accountancy £250
- General Repairs £459.50
- Management Fees £900
- Refuse Removal £42

10. On handover, Fifth Street gave SPS the account balances for each lessee, including any payments on account made to that point. SPS used this information to compile Lessee Statements, i.e. statements of each lessee's service charge account (Appendix 5 to the Respondent's Statement of Case).

11. The Applicants objected to the amounts given as the opening balance on each Lessee Statement on the grounds that they were "arbitrary". The Applicants also claimed that payments on account were not credited against the figures demanded and that there had been no accounts or certificate.

12. The accounts have been provided and, as Mr Fowler asserted, constitute the certificate as well. The opening balances were not arbitrary in that they were based on information received from Fifth Street in good faith which was not challenged by the Applicants. Mr Rybinski understood the sum of £363.68 listed in the first demand he received, dated 12th February 2018, constituted his opening balance when in fact it was the end of year balancing charge for 2017.

13. The Applicants appeared to be suggesting that all their accounts should have started from a nil balance but it is highly unlikely that all their accounts would have been exactly in balance while one agent was handing over to another precisely at the end of an accounting year. While it is not impossible that all 6 Applicants had accounts in perfect balance, the Tribunal would need some evidence to displace the information relied on by SPS but the Applicants did not seek to provide any.

General Repairs & Maintenance

14. The Applicants objected to an invoice of £1,460 from S Kit for clearing the area around the rear fire escape. They pointed out that the land belonged to a neighbouring property and claimed that the owners of that land should be responsible for both the clearing and the cost of doing so.

15. The Respondent replied that the London Fire Brigade had contacted them directly, not SPS, and required them to clear the fire escape for the safety of the residents of the building. The work was necessary and the invoice was paid.

16. In the Tribunal's experience, lessees often misunderstand the approach to costs incurred due to third party actions. It may well be that the third party is morally or legally responsible for any costs so that they should bear them, not the lessees. However, if the third party does not address the issue promptly, the landlord may be in breach of the lease if they just wait indefinitely rather than do the works themselves. Further, having carried out the work, it might not be possible to get the third party to pay for it. They might not have the money. They might fail to respond or even refuse to pay and it might cost more money than it is worth to sue them for it.

17. In this particular case, the Respondent had no choice but to do the work as it was necessary for essential fire safety. Further, it was not clear who was responsible for the area in question. The Respondent understands that it belongs to a local factory and made enquiries but have not received a substantive response. Nevertheless, clearing work has only been done on one additional occasion (see below under <u>*2018*</u>) and the problem has not otherwise recurred. The Tribunal is satisfied that the work was reasonable and the resulting service charge is payable.

Replacing Lighting

18. The Applicants' Statement of Case contained a table listing the items in dispute by year and with cross-references to the paragraph numbers later in the Statement of Case which detailed their objection to each item. For 2017, the table listed "Replacing Lighting" at a cost of £537. The cross-reference was to paragraph 4.4.6. However, that paragraph was about an alleged discrepancy in the 2019 accounts (addressed further below). The Applicants said nothing about this item during the hearing. Therefore, the Tribunal has no basis on which it can determine that the charge is unreasonable or not payable.

2018

Fire Doors

19. SPS obtained a fire risk assessment dated 17th July 2018 from Mike Colborn Associates. Amongst other matters, the doors to the electrical intake position and the lobbies to the ground and top floors were identified as not being fire doors (section H1 of the Report). SPS arranged for the doors to be replaced by Peter Bahari Building Contractors. The work was invoiced for £2,240 on 2nd October 2018.

20. The Applicants obtained quotes for fire doors from Wickes which were cheaper than those fitted at SPS's instruction. However, a landlord is not obliged to go for the cheapest option. The contractor had to source the doors himself. There is no suggestion that his work was inadequate. SPS had seen his work before and were confident that he would do a good job. The Tribunal is satisfied that the charges are reasonable.

21. The Applicants also pointed out that SPS used the contents of the reserve fund to pay for replacement fire doors. The Respondent replied that the lease permits this under clause 8.4.6 of the lease. These works were essential and the Tribunal is satisfied that the reasonableness and payability of any service charges were unaffected by the source of the funding.

22. When inspecting the invoices at SPS's offices, the Applicants identified an invoice for disposal of 3 doors. They understood this to be a further charge related to the installation of the 3 fire doors. It is not clear what the Applicants object to in relation to this invoice. They do not suggest that the work was not done nor that it was otherwise unreasonable. The Peter Behari invoice did not list removal of the old doors as part of the cost of his service and there is no basis for assuming that it should. The service charges arising from these invoices are payable.

General Repairs & Maintenance

23. The invoice for the installation of the fire doors mentioned the installation of a dummy camera but neither the Applicants nor SPS could locate such a dummy camera, suggesting it might not have been installed or that the residents have not received the benefit of one. The Applicants did not indicate how much they thought this one item was worth so the Tribunal had to calculate it themselves. A dummy camera can be purchased for around £10 and installation time would be unlikely to exceed 15 minutes. Therefore, the Tribunal has calculated that £35 should be deducted from the total expenditure for 2018.

24. The Applicants identified 5 invoices pertaining to or including, amongst other works, the supply and installation of various notices or signs. Their objection was that they "do not feel these costs are reasonable in amount or reflected in the work performed." However, their "feelings" do not constitute a basis for disputing these invoices. Havng said that, Mr Fowler could not explain why the noticeboard, of which there is only one,

was referenced in two invoices and he conceded that a Kaya Construction invoice dated 19th April 2018 for £96 should be credited back to the service charge account. Otherwise, the invoices are reasonable and payable.

25. The one other invoice for clearing the fire escape area was from Kaya Construction for £264. It mentioned a tree. The Applicants asserted that there was no tree. Whether the tree was mentioned in error is not clear. Nevertheless, the amount charged is reasonable for the work, irrespective of whether a tree was actually involved.

26. The Applicants alleged that FB1 locks were supplied and fitted by Shield Responsive Repairs but then replaced in the same year by Peter Bahari with FB2 locks. Mr Fowler said this was organised by a member of SPS staff, James Roach, who has since left the organisation. He could not justify why new locks had been installed so recently after the previous installation. In the circumstances, the Tribunal has no choice but to say that the cost of the second installation is not reasonable and must be deducted from the service charge expenditure.

27. There was a duplicate invoice for £150 from Peter Bahari. The Respondent conceded that this was an error for which the Applicants have been credited.

Cleaning

28. The Applicants objected to some invoices for cleaning being included in one year's accounts when the work in question was done in a previous year. While it is true that such practices can be misleading, it does not result in a lessee having to pay any more than they would otherwise have to pay. Indeed, they may end up with an extra year to pay towards the costs. The fact is that invoices do not always arrive neatly within the year to which they relate. Different accountants and agents deal with such events differently but there is nothing necessarily wrong with putting an invoice in the year in which it arrives rather than in the year when the work it relates to was carried out.

29. The Applicants claimed that the property was not properly cleaned throughout 2018. After SPS took over, they found the existing cleaners had given notice and stopped attending to the property. SPS appointed new cleaners, Doves, in June 2018. It seems highly likely that there had been no cleaning for some time to that point.

30. It is common for lessees representing themselves before the Tribunal to misunderstand the effect of a failure of service. If a landlord is obliged to provide a service and fails to do so, they will normally be in breach of the lease. However, the Tribunal is not considering breaches of the lease or losses which might have resulted but rather the reasonableness and payability of service charges. A nil or low service charge will normally be an entirely reasonable charge when there is no or a relatively poor or intermittent service.

31. In this case, the Respondent asserted that the Applicants were charged only for the services actually provided. In the circumstances, the £672 charged in the 2018 accounts for cleaning is reasonable and the resulting service charges are payable.

32. The quality of the cleaning was also challenged for later years and that is dealt with below.

Accounts

33. The Applicants objected to the fact that the 2018 accounts were not delivered until March 2020. SPS explained that this was due to their accountant falling ill with chronic fatigue syndrome for a long time and that they had since changed their accountants. The Applicants alleged in paragraph 4.5.2 of their Statement of Case that "This is complete fabrication and slander." This is a good example of the Applicants' poor use of language. This is a serious charge against a professional organisation but they did not have anything to back it up other than pure speculation.

34. Obviously, such a delay is not conducive to the good conduct of the service charge account but it does not render the accountancy charge unreasonable or not payable. The work was actually done and has to be paid for. The fact that the lease specifies when such work is to be done does not mean that a charge for late accounts is not payable.

Management Fees

35. The Applicants alleged that SPS's appointment has been detrimental to all lessees and tenants and there has been no improvement in the service to warrant the fees charged, namely £2,700 in 2018 (£300, inclusive of VAT, per unit), £2,754 in 2019 and £2,808 in 2020.

36. The Applicants said they were prepared to pay at the same rate as they had been doing for the previous agents, Fifth Street. In the 2017 accounts, they charged £900. This is just £100 per unit which is way below the market rate for managing a block of this size (the cost per unit tends to be lower the larger the block is).

37. The fact is that SPS's fees per unit are well within the range found in the market. The Applicants would need to rely on something else to establish that the fees were not reasonable. To that end, they set out a number of incidents of what they alleged constituted negligence or mismanagement by SPS which are considered in turn below.

38. A set of keys was discovered in the communal areas. The keys were to the front doors of the individual properties. The Applicants pointed out that this would be a serious breach of security.

39. However, SPS said they have never possessed such a set of keys. The reason the Tribunal believes them is that, as they said, it would be highly unusual for the managing agents of a building like this one to have keys

to individual front doors. Their ability to access the flats is governed by the lease and, as would be expected, there is no provision in the lease which would permit the Respondent to provide their managing agents with a set of keys of this type. It is typical of the Applicants that they refused to believe SPS when told this, despite having no reason to think they were not telling the truth.

40. There was a blockage to the main stack and the subsequent leak resulted in water damage to some commercial and residential units. Mr Rybinski was dissatisfied with the speed of SPS's response and paid for Pimlico plumbers to do emergency work. The Respondent paid for this by crediting the cost against Mr Rybinski's service charge arrears. The Respondent also covered the insurance excess of £250. This means that the Applicants were not charged anything for the remedial work, nor do they claim they suffered any other loss as a result of the leak.

41. The Applicants pointed to email correspondence in August 2019 as establishing that SPS failed to respond promptly. In fact, it demonstrates the Applicants' inability to hear what they were being told. In an email dated 12th September 2019, Mr Fowler stated, "Our contractor was there straight away. Mark our surveyor investigated 20th August." Mr Rybinski responded later the same day stating, "The leak occurred on the 10 August 2019 … I would argue, sending a contractor to address a leak … on the 20 August 2019 does not constitute being there 'straight away'." Mr Rybinski clearly conflated two separate matters, namely when the contractor attended and when the surveyor attended.

42. In the email correspondence, Mr Rybinski set out what he said happened, including that SPS asked him to investigate the leak and liaise directly with Paddy Power. According to him, he did as asked without objection. It is difficult to see what, in the circumstances, he is claiming SPS did wrong.

43. During the hearing, Mr Rybinski also pointed to water spilling down the outside of the building and to a plastic water bottle which had been left in place despite clearly being a very temporary and, at best, partial solution. SPS arranged for some work to cover up some water damage but otherwise have not dealt with the problem. However, the Applicants are all in substantial arrears with their service charges. SPS have little money to work with and certainly no money to carry out substantial works. The Applicants cannot both criticise SPS's failure to attend to such problems while simultaneously denying them the resources with which to do so.

44. In October 2018 the fire alarms were reported to SPS as being faulty. They were going off and disturbing the residents. According to emails which were not written by any of the Applicants, residents in the building were dissatisfied with the response to their complaints and disconnected the fire alarms. SPS then circulated an email stating that their contractor had attended to fix the fire alarms but later found that they had been disconnected.

45. The Tribunal has a problem here in that the Applicants rely entirely on emails written by other people (other than their first names, the Tribunal does not even know who these people are). This is multiple hearsay. Neither the Respondent nor the Tribunal has had the opportunity to question these people. The evidence leaves open the possibility that the fire alarms were not faulty but, unknown to some residents, were being set off by some cooking or other activity by another resident. Also, they mention complaints being made not to SPS but to Residenzia, presumably the agent for the 3 flats let out on short tenancies, so it is not clear if and when SPS became aware of the problem. What is clear is that some residents took it upon themselves to interfere with the fire safety provison in the building, leaving it and themselves in an insecure position in the event of a fire.

46. To the uninitiated, the chronologies provided by the writers of the emails seem sufficiently detailed to damn SPS but the Tribunal has seen more than enough examples of apparently cogent evidence that breaks down when subjected to a few simple questions. In the circumstances, the Tribunal cannot be satisfied that the fire alarm problem reveals any mismanagement on the part of SPS.

47. The Applicants alleged that SPS failed to take action following the fire risk assessments dated 17th July 2018 and 8th March 2021, in particular in relation to two items.

48. Firstly, the Applicants alleged that SPS allowed there to be no valid EICR certificate in place for the 5 years from 2016 to March 2021 in contravention of the Electrical Safety Standards in the Private Sector (England) Regulations 2020. However, these Regulations did not apply during that period and do not apply to long leases at any time.

49. Secondly, the Applicants alleged that SPS failed to enforce controls on managing contractor access but did not provide any evidence of this. SPS pointed out that they have internal systems to vet contractors and they maintain relationships of trust with many of them over considerable periods of time. Further, the report of the fire risk assessment only referred to such controls in circumstances where there would be naked flames. SPS denied that there had been any naked flames on site so that the controls were irrelevant – the Applicants had no contradictory evidence.

50. To the extent that SPS had failed to action any further matters in the reports, again the problem is that the Applicants have left them without sufficient funds by not paying their service charges.

51. The Applicants made complaints to the Ombudsman. In his response, the Ombudsman noted that SPS's letterhead mentioned membership of ARMA at a time when they were not a member. Again, this provides an example of the Applicants' poor language as they accused SPS of "masquerading" with false claims. The true situation was much simpler

– SPS's membership had lapsed for a time. They had been members and became members again.

52. Similarly, SPS used the Safeagent logo before they were members and the Applicants again made much of this. In fact, SPS were required to have Safeagent's complaints system in place before becoming members. Again, there was nothing sinister or deliberately false in SPS's actions.

53. In the circumstances, the Tribunal is not satisfied that the Applicants have made out their claims of mismanagement by SPS.

<u>*2019*</u>

Cleaning

54. The Applicants alleged that the cost of cleaning has increased from around £1,040 per year by a factor of around 105%. The 2019 accounts showed the cost of cleaning at £3,333.60. Again, the Respondent asserted that the Applicants were charged only for the services actually provided. This included extra services which were provided separately from the main cleaning contract, namely graffiti removal, a deep clean, and rubbish removal.

55. The Applicants obtained a quote from an alternative contractor, Clean A Way (£50 per visit) and two quotes for alternative management services which included provision for cleaning, Lime Property Management (£55 per visit) and Colmore Gaskell (who would use Clean A Way). However, the quotes have so little detail that it is impossible to work out if they are comparable to the existing cleaners. Mr Fowler said SPS is willing to consider alternative cleaners but would need to see their specification and evidence of suitable insurance.

56. As well as the cost of the cleaning, the Applicants objected to the quality of the work. They alleged that the cleaners parked in one-hour bays and used equipment carried on their backs whereas previous cleaners had a cupboard containing suitable materials. The Tribunal is not clear why either point may constitute a criticism of the current cleaners. By bringing their own equipment on their backs, they absorb the cost of that equipment within their charges and obviate the need for any storage on site.

57. The Applicants pointed to photos which appeared to show the stair carpet in a dirty condition, allegedly just a day after the cleaners had completed their wallchart showing they had attended. However, it is more difficult to judge this as a measure of the cleaners' effectiveness than the Applicants imagine. At these prices, the clean would not be thorough and only happens once a fortnight. Dirt can be brought in at any time, even immediately after a cleaner has been. The carpet is not new and would be expected to show some discolouration. While the photos do show the carpet in an unacceptable state, the Tribunal is not satisfied that this means that the cleaners' charges are unreasonable.

58. The Applicants alleged that the total cost of the cleaning made this service subject to the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 because they exceeded the threshold of £250 per flat. However, this misunderstands the requirements. The threshold is not determined in hindsight, after it is known that a few extra unanticipated cleaning charges happened to have pushed the costs high enough. The threshold is engaged when the total costs of a putative single contract or project are estimated in advance to be over the limit which is rarely the case with cleaning and is not the case here.

General Repairs & Maintenance/Accounts

59. The Applicants alleged that there is a discrepancy between the total of expenditure in the service charge accounts and the total of the invoices provided in both 2019 and 2020. They didn't provide details so the Respondent could not check what they were referring to. However, as Mr Fowler pointed out, there is no reason to think that the accountants didn't do their job checking the invoices and adding them up. The Tribunal accepts that the accounts are accurate in accordance with the accountants' duties and calculations. The accountancy charges of £462 and £474 for 2019 and 2020 respectively are reasonable.

<u>2020</u>

60. The Applicants' objections to service charges for 2020 have been subsumed in the Tribunal's consideration of service charges in earlier years, as set out above.

<u>2021</u>

61. The service charges for the previous four years from 2017 to 2020 were considered on the basis of actual costs. The year 2021 is challenged on the basis of the budget produced by SPS containing the estimated charges for the year.

General Repairs & Maintenance

62. The Applicants objected to the estimate for General Repairs and Maintenance on the basis of the sweeping phrase, "As demonstrated, these works are typically obfuscated through convoluted invoicing and documentation, which often includes exaggeration, fabrication and/or duplication of works."

63. In the Tribunal's opinion, the Applicants have demonstrated nothing of the sort. The invoicing and documentation appears standard and involved no exaggeration, fabrication or duplication (other than one invoice for which the Applicants have been credited).

Sinking/Reserve Fund

64. SPS have sought contributions to a reserve fund for works to the property which are required on a longer scale than one year. They previously sought £2,000 per year but have increased this to £7,000 for the current year. The increase has resulted from Mr Jones producing a 15-year CapEx plan, set out in a spreadsheet, which suggested that greater funds would be needed than had previously been anticipated.

65. The Applicants have alleged that the amount being collected for the sinking fund is unreasonable and should be limited to £2,000. They have provided no basis for this whatsoever. They pointed out that SPS has yet to carry out any major works, despite having issued a section 20 notice on 28th February 2020, but that is actually a reason in favour of, not against, a sinking fund and for the carrying out of works.

66. In previous correspondence Mr Rybinski referred to maintenance and repair works to the façade as unnecessary so that they could be put off. However, a responsible landlord complies with their maintenance and repairing obligations by planning for a regular cycle of maintenance, and building up the funds to pay for it, rather than allowing the building to deteriorate gradually. SPS have prepared just such a plan.

67. It should be remembered that the contents of a sinking fund are not lost to the lessees. Any major works programme will cost whatever it costs – the lessees will have to pay the total amount one way or the other. By collecting the funds incrementally over the years in a sinking fund, SPS can make it easier for lessees to plan their expenses and for them to plan the works themselves. If the Applicants don't pay into a sinking fund now, they will find themselves with a very large, single bill to pay at the end of any works.

68. The building in which the Applicants' flats are located include some commercial units at ground floor level. SPS split any appropriate costs between the commercial and residential units on a 25/75 basis. For example, the buildings insurance is split in this way. The Applicants anticipated that there would need to be such a split on any major works programme and sought the Tribunal's determination as to what the appropriate split should be. However, this is premature. It is unknown whether any works will affect the commercial units, let alone what the costs might be. At present, there is no reason to think that a 25/75 split is wrong but that would have to be considered in the light of actual proposed expenditure.

Costs

69. The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be permitted to add any costs of these proceedings to the service charge. However, the Respondent has almost entirely succeeded and it would be iniquitous to make such an order.

70. The Respondent, as the Claimant in the county court proceedings, sought £1,200 in costs and £215.69 in interest. They estimated that both are

actually significantly higher if they were carefully and fully calculated but were prepared to limit their claims to these sums. As the sole judge of these matters, Judge Nicol is satisfied that these are modest amounts and should be awarded in full. The Applicants mentioned that they had previously offered £600 for the Respondent's costs in without prejudice correspondence but that was clearly just a negotiating stance without any particular mathematical basis.

Name: Judge Nicol **Date:** 1st December 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

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

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

Section 19

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

  and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

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

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

(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

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

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).