



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

Case reference : **LON/00AW/LSC/2022/0288**

Property : **Ground Floor Flat, 31 Lennox Gardens,
London SW1X 0DE**

Applicant : **Lennox Gardens Properties Limited**

Representative : **Ms Erkman**

Respondent : **31 Lennox Gardens Freehold Limited**

Representative : **Mr R Whitehouse (Counsel)**

Type of application : **Determination of the reasonableness of
and liability to pay service charge**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Ms J Mann MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 April 2023**

DECISION

Decisions of the Tribunal

- 1 The Tribunal determines that the s.20 consultation in service charge year 2020/21 undertaken by the landlord's agent satisfied necessary statutory procedure. It finds that a supplementary sum of £8,809.11 levied on the leaseholders in service charge period 2020/21 following the major works is not reasonable and should be reimbursed to the leaseholders.
- 2 The Tribunal determines a reasonable and payable charge for the insurance premium for the property for service charge year 2021/22 as £18,073 18.
- 3 A supplementary charge of £18,073 was made of the leaseholders during service charge year 2021/22. This was not reasonable and should be reimbursed to the leaseholders.
- 4 A schedule is at Appendix B which presents the payable and reasonable advance budget service charges for year 2022/23. A budget sum of £92, 523 is deemed reasonable for this service charge year.
- 5 The Tribunal reserve their determination of the s.20C of the LTA 1985 and paragraph 5A of schedule 11 of the 2002 Act application.

The application

1. The Applicants sought a determination pursuant to s.27A of the Landlord & Tenant Act 1985 ('**the 1985 Act**') and schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('**the 2002 Act**') as to the amount payable as a service charge and the reasonableness of the administration charges for years 2021, 2022 and 2023. They also apply for a s.20C Order under the provisions of the 1985 Act.
2. The Applicants made an application to Tribunal dated 16 September 2022 and directions were subsequently issued on 4 October 2022.
3. The Directions issued on 4 October 2022 identified the following matters in dispute:
4. Service charge period 2020/21:
 - i) Whether the Respondent has complied with the consultation requirements under s.20 of the 1985 Act for the external refurbishment of 31 Lennox Gardens.
 - ii) Whether the services/works provided or undertaken were within the Respondent's obligations under the lease and whether the costs of services/ works are payable by the Applicant under the lease.
 - iii) Whether the costs of the services/works are reasonable.
 - iv) In relation to the external refurbishment works whether the contract price, supervision and management fees were reasonable.
5. Service charge period 2021/22:

- i) Whether the insurance premium was reasonable.
6. Service charge period 2022/23:
- i) Whether the advance service charge budget was reasonable.
 - i) Whether the services/works listed in the budget are within the Respondent's obligations under the lease.
 - i) Whether the costs of services/works are payable by the Applicant under the lease.
 - i) Whether the advance service charges are reasonable.
7. General:
- i) Whether an order under s.20C of the 1985 Act and/or paragraph 5A of schedule 11 to the 2002 Act should be made.
 - ii) Whether an order for a reimbursement application/hearing fee should be made.

The Hearing

- 8. The Applicant was represented by Ms Erkman, and Ms Krakutovska. The Tribunal was told that Ms Krakutovska was a property specialist employed by 31 Lennox Gardens Freehold Limited through the company Kudox.
- 9. The Respondent was represented by Mr Whitehouse, Counsel of 3PB Chambers. In attendance was Mr G Gzarycki, the management agent of Quadrant Property Management Ltd ('Quadrant'). Mr Ben Warburton, Partner, Hammond Bale LLP Solicitors also attended as an observer.
- 10. The Tribunal was told that Quadrant was instructed to manage the property in early-2022. They replaced the previous property management agent – Marler & Marler – who the Tribunal understands had managed the property for many years.
- 11. The Hearing was held at Alfred Place and all named parties attended in person.
- 12. Neither party requested an inspection and the Tribunal did not consider one was necessary, nor would it have been proportionate to the issues in dispute.

Issues in dispute

- 13. Ms Erkman addressed the Tribunal about inclusion of further matters to be determined by the Tribunal, including disputes over service charges in years not identified in the application. The Applicant had not brought this request to the Tribunal prior to the hearing.
- 14. The Respondent Counsel advised that they were not made aware of the supplementary items in dispute prior to the hearing. The Applicant claimed

they had advised the Respondent prior to the hearing but not in writing. No evidence was adduced to Tribunal that the supplementary items were raised with Tribunal or the Respondents at any time prior to the hearing.

15. A skeleton argument submitted to Tribunal by Counsel for the Respondent did not refer to supplementary matters.
16. After careful review of the submission by Ms Erkman the Tribunal decided not to allow the supplementary matters in dispute to be addressed at the hearing.
17. Ms Erkman also advised the Tribunal that the Respondent had not complied with the disclosure requirements of the Directions. Ms Erkman claimed that the Direction at paragraph 2 of the Directions had not been satisfied by the Respondent. This Direction required the Respondent to send to the Applicant all relevant service charge accounts, budgets and demands for the years in dispute.
18. The Respondent through the managing agent's representative said that these invoices were not available. The managing agent alleged they had not been supplied to Quadrant by the certifying accountant of the previous managing agent. The managing agent accepted that this Direction had not been satisfied. At a hearing recess the managing agent enquired the status of the outstanding accounts from the accountant. He told Tribunal they awaited financial information from the outgoing agent and were not completed.

The property

19. The subject property is a six-storey purpose-built block of mansion flats containing six self-contained dwellings. It is built in the Queen Anne style of red brick and stucco and dates from 1884. The property is Grade II Listed and is within the Hans Place Conservation Area. Lennox Gardens is a desirable location and considered a premium area of inner London.

The law

20. The relevant legal provisions are set out in the Appendix to the Decision.

The issues

Statutory compliance with S20 of the 1985 Act

21. Ms Erkman contended the Respondents failed to comply with the Statutory consultation procedure of s.20 of the 1985 Act:
22. Ms Erkman told the Tribunal that consultation documents were not provided by the managing agents.
23. This assertion was contradicted by the Notices provided in the Respondent's bundle. A compliant Notice of intention dated 6 November 2020 was included at p.89-91 of the bundle; a compliant Notice of estimates dated 30 March 2021 was included at p.93-95; a compliant Notice of

Commencement, giving notice the works were due to start from week commencing 31 August 2021 was provided at p.97.

24. These Notices provided an explanation as to why the works were allocated to the contractor. The Notices stated:

'The works were anticipated to take 13-weeks ... Return Property Services had been selected to carry out the external renovations of 31 Lennox Gardens as they are able to commence these works in the most suitable manner.'

25. Ms Erkman referred the Tribunal to p.22 of the bundle authorities which contained The Service Charges (Consultation Requirements) England Regulations 2003 Sch 4. At clause 6.1 (a) of the statutory procedure Ms Erkman claimed that the explanation provided in the commencement Notice was inadequate, in that it did not satisfy the requirements of s.6.1 (a).

26. Mr Whitehouse contended that the test of whether s.6.1 (a) was satisfied was whether or not the leaseholders have suffered any prejudice as a consequence of the explanation provided in the Notice.

Tribunal findings

27. s.6.1 (a) of the Service Charges (Consultation Requirements) England Regulations 2003 schedule 4 states:

1. *'Where the landlord enters into a contract for carrying out of qualifying works he shall within 21-days of entering into the contract by notice in writing to each tenant and the recognised tenants' association (if any): -*

(b) state his reasons for awarding the contract or specify the place and hours at which a statement of these reasons may be inspected and there he received observations to which in accordance with paragraph 5 he was required to have regard to, summarise the observations and set-out his response to them;'

28. The Tribunal has reviewed the Notice of Commencement (p.97 of the bundle) and, although the justification for the appointment of Return Property Services is brief and lacking in detail, the Tribunal is unable to identify any prejudice through any inadequacy or lack of detail provided in this Notice.

29. Ms Erkman for the Applicant confirmed to Tribunal that she had reviewed the content of the Respondent's bundle and accepted that the appropriate Notices had been served.

30. The Tribunal's finding is that the s.20 consultation complied with the statutory procedure.

Payability and reasonableness of the service charges in dispute

Payability of the charges

31. The Tribunal has reviewed the Respondent's obligations under the lease as set-out 4.2.1 (a) and (b) (p.379 of their bundle). The costs of the services are payable by the applicant pursuant to clauses 3.6 and Schedule Five of the lease (p.374 and p.393 respectively of the Respondent's bundle).
32. The Tribunal accepts the submission by the Respondent that the service charges made following the s.20 consultation were payable.

Reasonableness of the charges

33. The estimates arising from the tender exercise were included at p.93 of the Respondent's bundle. The second cheapest tender was issued by Return Property Services and amounted to £130,965.20. This included an administration fee of 2.5% payable to the managing agent and a project management fee of 10% of contract value.
34. The Tribunal accepts that a market test of this tender was carried out and these returns were a fair and reasonable outcome from this exercise. The Tribunal is not provided with any compelling evidence that the contract price provided by Return Property Services was not a market rate for the work.
35. The Tribunal was told that these charges were accepted by the Applicant and they were paid after the demand was received from the previous managing agent (p.306 of the bundle).
36. The Tribunal was told that subsequent sums were levied on the Applicant amounting to approximately £6,013.54 to meet the Contract Administrator's costs, together with a sum of £2,795.57 to pay the contractor retention.
37. The Tribunal was told these charges were because all funds collected by Marler & Marler (amounting to £129,139) had been spent. Mr Gzarycki told the Tribunal that Quadrant had had no alternative but to issue further demands to satisfy these outstanding accounts.
38. Mr Whitehouse did not contradict this submission by the managing agent.

Findings of Tribunal

39. The Tribunal do not accept that the supplementary sum of £8,809.11 was reasonably demanded. There were no invoices provided in the hearing bundle for the charge. The Respondent provided no cogent justification for the supplementary charges, other than the failure of the previous managing agent to adequately account for the spend on this work. The Tribunal determines these charges are not allowable.

40. The Tribunal confirmed that the original contract price, supervision and management fees were reasonable, but the supplementary charges were not reasonable and are therefore disallowed.

Reasonableness of the insurance premium charge for 2021/22

41. Ms Erkman challenged the reasonableness of the charge made for the insurance premium in 2021/22. Ms Erkman told the Tribunal that the premium for the year 2021/22 was £18,073, which had been demanded and the Applicant had paid the proportion due by the leaseholder to the managing agent.

42. Ms Erkman however explained the Applicant disputed the sum on two counts, namely: the reasonableness of the charge; and that a supplementary charge had been made by the managing agents amounting to a sum equal to the original sum, namely £18,073.

43. Ms Erkman contended that the charge was excessive for insuring this property and alternative insurance could have been obtained at a significantly lower price.

44. Ms Erkman claimed the supplementary amount was a double charge.

45. Ms Erkman provided comparable premium detail gathered from 38 Lennox Gardens and a quote for the subject property provided by a broker – Fowler Penfold. Ms Erkman claimed the premiums were collected on a like-for-like basis and represented reasonable comparable data. Ms Erkman further claimed that the premium for 38 Lennox Gardens was for a similar size property and in the order of £8,939. The premium and quote provided were therefore in the order of 50% of that charged by the managing agent for the subject property.

46. Mr Whitehouse told the Tribunal the premium and quote were not like-for-like. Mr Gzarycki told the Tribunal the subject property was subject to an ongoing personal liability claim and his enquiries had revealed that potential insurers were reluctant to take on the risk at this property. Mr Gzarycki had asked several insurers to offer quotes for the insured risk, but none was willing to accept the unknown risk arising from the outstanding claim. Mr Gzarycki also told Tribunal that there was a history of claims at this property.

47. Mr Whitehouse referred Tribunal to *Hounslow LBC –v– Waaler [2017] EWCA Civ* and that a Respondent landlord has a margin of appreciation when assessing whether any course of action was reasonable. Mr Whitehouse said a number of outcomes might each be reasonable and it was then for the landlord to choose between them. The landlord was entitled to choose the insurance policy sought to ensure the property is fully insured and such action was necessary to satisfy the terms of the lease.

Findings of the Tribunal

48. The Tribunal acknowledged the significant difference in insurance premium charged for the subject property compared to adjacent and nearby similar

properties. Tribunal also noted the lower quote provided by the insurance brokers Fowler Penfold for building insurance of the subject property.

49. In assessment of the reasonableness of an alternative insurance premium it is essential that the property cover offered is on a like-for-like basis. The claims history for the building, together with the outstanding personal liability claim undermined the comparability of the quotes submitted to Tribunal.
50. The Tribunal relies upon the guidance provided in LBC –v– Waaler [2017] EWCA Civ. This authority describes how the Landlord has discretion in selection of appropriate service providers, that the Landlord is not required to accept the cheapest quote and the assessment of the reasonableness of any charge by the Landlord has a “margin of appreciation”.
51. It is for the reasons listed above that the Tribunal find the insurance charge of £18,073 as evidenced by the invoice submitted in the bundle is reasonable.
52. Tribunal accept it was common ground between the parties that a supplementary charge of £18,073 was made of all the leaseholders, as evidenced by the a copy of service charge demand submitted at p.310 of the bundle. This charge was justified by the current managing agents due to the lack of funds in the property service charge account at handover by the previous managing agent.
53. The Tribunal finds that this is a wholly unacceptable justification for making the supplementary charge as described by Mr G Gzarycki and Mr Whitehouse and the relevant proportion of the sum payable by the applicant is disallowed.

Whether the advance service charge budget for 2022/23 was reasonable and payable:

54. The Tribunal was told that the Applicant disputed a number of service charges included in the service charge budget (pp.40-52).
55. The largest item of the budget related to the contribution to the reserve fund of £60,000.
56. Ms Erkman referred Tribunal to the amounts of projected reserve fund contributions required of the leaseholders. Ms Erkman told the Tribunal that she did not dispute the managing agent's right to collect contributions to the reserve fund. However, Ms Erkman disputed the need for these monies and the quantum. Ms Erkman claimed the monies were required to refurbish the lift but that the lift repairs and works had been carried out in 2018/19/20/21. A sum of £19,578 had been allocated to lift improvements. Ms Erkman claimed the works proposed would renew rather than repair the lift.
57. Mr Whitehouse referred Tribunal to a lift engineer's report at bundle pp.258-262. The Respondent also relied upon the subsequent tender analysis dated 12 March 2021. The tender returns from four quotes for the

anticipated lift works ranged from £101,536 to £250,087.50 including fees and VAT. On the basis of these returns he contended the provision of a budget of £140,000 was entirely reasonable.

58. Mr Whitehouse then explained to the Tribunal that the s.20 procedure, in respect of the proposed works, was initiated on 13 January 2021 and had now been completed. The leaseholders responded with no observations following the Notice of Intention submitted to leaseholders on 6 April 2021.

Findings of the Tribunal

59. The Applicant did not dispute the s.20 procedure had been carried out, satisfactorily progressed and completed.

60. Under the s.20 procedure there was an opportunity for all leaseholders to comment and to challenge the intention of the managing agent and their clients. This was not done.

61. The opportunity to review the efficacy of the works was available to the leaseholders under the statutory procedure. This opportunity was not embraced and it is not for the Tribunal to now retrospectively review the intention of the works, or the reasonableness of the costs.

62. The submissions made support the contention that a full market pricing test was carried out on the basis of the specification provided by a consultant lift engineer. No evidence was provided that this process was not satisfactorily followed or that it did not represent market prices.

63. The Tribunal finding is that the reserve fund contribution for the lift is reasonable and payable.

Other budgeted service charges in dispute

64. A Scott schedule was submitted to the Tribunal that listed a number of other items included in the budget for 2022/23 that are in dispute by the Applicant.

65. The parties offered submission to Tribunal on each of the entries and table is provided in Appendix B listing the items in dispute. A summary of the comments made by each of the parties is shown in this table, together with the Tribunal's finding.

Tribunal Findings

66. Details of all the allowed sums is provided at Appendix B.

67. The Tribunal accepts that a property of this type has high maintenance costs and therefore a general maintenance sum is reasonable given the nature and type of building.

68. The Tribunal did not accept the submission by the Applicant that the cleaning costs could be reduced to a single weekly visit. This type of property needs regular cleaning but a reduced sum is deemed reasonable.

69. The managing agent was not able to justify the estate maintenance sum in its submission. Mr Gzarycki explained to Tribunal that this sum was included as a precautionary measure to offset any likely charges made by Savills. This sum is not allowed.
70. The estate service charge is disallowed. The managing agent was unclear as to the purpose of this charge. There was no compelling evidence for the sum proposed.
71. The evidence submitted by the Applicant on the Fire Safety charges was opinion rather than fact. There was no compelling reasons why the proposed sum for fire safety maintenance is reasonable and this sum is allowed in part.
72. The matter of insurance premium was discussed at length and the proposed sum is accepted. The Tribunal has reviewed the relevant lease clauses and agreed with the Respondent that these sums are chargeable. The Tribunal also accepts that they are reasonable.
73. In respect of lift maintenance, this is a small provision and it is accepted as reasonable.
74. The Tribunal has considered the submissions in respect of lift repairs and notes that it is the intention of the Respondent to carry out substantive repairs. The lift repair allocation is reduced to £5,000.
75. It is noted that there is currently no telephone to the lift and it was recommended in the most recent inspection report. This sum is allowed.

S20c Costs

The applicants made a s.20C of the 1985 Act and paragraph 5 (a) of the 2002 Act application to restrict the recharge of costs to leaseholders of this application to Tribunal.

76. The Tribunal reserve a decision on these applications for four weeks, following issue of this decision.
77. The parties can make any further submissions on costs, following receipt of this Decision. The Parties should make any further written submission on Costs within four weeks of issue of this Decision on substantive matters.

Name: Ian Holdsworth
Valuer Chairman

Date: 12 April 2023

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie, 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.

Appendix A

The law

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 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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (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.

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 21B

- (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.
- (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.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Appendix B

Scott schedule

SCHEDULE

DISPUTED SERVICE CHARGES YEAR 1 JUL 2022- 30 JUN 2023 BUDGET

| | | | |
|-----------------|------------------------|-----------|--|
| Case Reference: | LON/00AW/LSC/2022/0288 | Premises: | Ground Floor Flat, 31 Lennox Gardens, London, SW1X 0DE |
|-----------------|------------------------|-----------|--|

| ITEM | COST | APPLICANT'S COMMENTS * | RESPONDENT'S COMMENTS * | LEAVE BLANK (FOR THE TRIBUNAL) | SUM ALLOWED |
|---------------------|--------|--|---|--|-------------|
| Company Costs | 420 | Not chargeable under the Lease | | | Nil |
| General Maintenance | 10,000 | Not reasonable in amount – no reason has been given for this 400% increase | This has been discussed in the Respondent's Statement of Case. Incurred under 4.2.1. 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease | This sum is not reasonable, as no justification given for increase. The Tribunal allow £2500 (same as previous year) | 2,500 |
| Cleaning | 5,300 | Not reasonable in amount. The cleaning cost should not exceed £2,600 | Incurred under clauses 4.2.1(a)(iii) and (v), 4.2.2(b), 4.2.2(A), 4.2.2(B)(ii) and 4.2.2(D) and recoverable under clause 3.6 and 5 Schedule to the lease. Reasonableness dealt with in Respondent's Statement of Case | This sum is not reasonable as cleaning costs currently £80pw x 52 = £ 4160. (invoice 277, 280, 282, 283) The Cleaning costs are to be £2,600 | 2,600 |
| Estate maintenance | 500 | Not chargeable under the Lease – tenants are | Incurred under clauses 4.2.1. 4.2.2 and recoverable under clause 3.6 and schedule 5 | This is deemed chargeable under lease 4.2.2 (f) page 382 but not reasonable in | Nil |

| | | | | | |
|-------------------------|--------|---|---|---|--------|
| | | billed and pay these directly to Welcome Trust | of the lease. It is not clear what is meant by being billed separately by the Welcome Trust | amount as leaseholder separately billed by Welcome Trust and no monies paid by managing agent/freeholder to Welcome Trust The whole sum is disallowed. | |
| Estate service charge | 2,000 | Not chargeable under the Lease – tenants are billed and pay these directly to Welcome Trust | Incurred under clauses 4.2.1, 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. It is not clear what is meant by being billed separately by the Welcome Trust | Chargeable under lease but not reasonable in amount as leaseholder separately billed by Welcome Trust and no monies paid by managing agent/freeholder to Welcome Trust The whole sum is disallowed. | Nil |
| Fire Safety Maintenance | 3,000 | Not reasonable in amount. It has been doubled from year before | Incurred under clauses 4.2.2(c) and 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. There are a multitude of reasons for this expenditure - servicing, emergency lighting installations and replacement, detectors and panel works. The Applicant has not said why they believe the sum to be unreasonable in any detail | There are limited invoices for previous year expenditure (278) £ 324 for call outs re alarms. If a substantial repairs/renewal required the charge will need to go through s20 consultation. The sum claimed is not reasonable but tribunal allow £ 2600 based on audited expenditure of £2550 in 2021 (no audited accounts for y/e 22) | 2,600 |
| Insurance | 18,073 | Not reasonable in amount. Includes reinstatement | Incurred under clauses 4.2.1(c), 4.2.2(D) and recoverable under clause 3.6 | This sum is accepted as reasonable. The justification is provided in | 18,073 |

| | | | | | |
|--------------------------------|--------|---|--|---|-------|
| | | cost of £8m which is high and rent cover for £3,460,014 which is unreasonable. The premium should not exceed £8,000 | and schedule 5 of the lease. Reasonableness dealt with in Respondent's Statement of Case | determination for insurance charges | |
| Directors & Officers insurance | 250 | Not chargeable under the Lease | Incurred under clauses 4.2.1(c) and 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. No dispute as to reasonableness | This is chargeable see 4.2.1 © (iv) page 379/380. And recoverable under clause 3.6 (page 374) and schedule 5 (page 393). The sum is accepted as reasonable. | 250 |
| Lift Maintenance | 1,000 | Not reasonable in amount | Incurred under clauses 4.2.1(a), 4.2.2(d) and 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. No information as to why the Applicant considers this unreasonable | This sum is reasonable and accepted. The applicant referred to LOLER report page 427-428 but there were observations and recommendations listed in part 5 of the LOLER report on page 278, albeit that it passed the minimum safety requirement on the day of assessment. | 1,000 |
| Lift Repairs | 8,0000 | Not reasonable in amount | Incurred under clauses 4.2.1(a), 4.2.2(d) and 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. No information as to why the Applicant considers this amount unreasonable | Amount £ 8000 see pg 312. In previous year actual expenditure has ranged from almost £12,000 to £660. Major lift works planned in 2025 The tribunal determine a sum of £5,000 is reasonable. | 5,000 |

| | | | | | |
|------------------|--------|---|--|---|--------|
| Lift telephone | 500 | New charge. | Incurred under clauses 4.2.1(a), 4.2.2(d) and 4.2.2(D) and recoverable under clause 3.6 and schedule 5 of the lease. No information as to why this is disputed | This sum is allowed it is both payable and reasonable. | 500 |
| SF Contributions | 60,000 | New charge. This is extortionate. In particular given the question marks surrounding general reserve fund, external reserve fund and the attempt of interim charge non should be allowed. | This issue has been dealt with in the Respondent's Statement of Case in detail | Chargeable under lease 4.2.2 (d) page 382 and 4.2.2 (C) sinking fund This sum is payable and allowed as reasonable. See determination for further reasons and justification but summary below. Lift condition survey report 2017 (page 121) followed by tender analysis (134), tender summary costs comparison (137). Pg 219 summary of works required and pg 226 onwards. Notice of intention to carry out qualifying works (258) 13 Jan 21 262 notice of estimates No representations made by leaseholders. Liftworks programmed for 2025. The cheapest tender in 2021 £137 073.69 (page 262) | 60,000 |

- *1) Chargeable under lease?
- *2) Reasonable in amount/ standard?
- *3) Correctly demanded?