



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

Case Reference : **LON/00AQ/LSC/2022/0290**

Property : **Flat 7, Chandos Court, Whitechurch
Avenue, Edgware, London HA8 6HR**

Applicant : **Nileshkumar Shah**

Representatives : **Harshil Shah**

Respondent : **Assethold Limited**

Representative : **Mr R. Gurvits of Eagerstates Limited**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey
Mr Stephen Mason FRICS
Mr Clifford Piarroux (Lay Member)**

**Date and venue of
Hearing** : **3 April 2023 at 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **17 April 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that all service charges challenged by the applicant were found to be reasonable and payable other than regarding the service charges listed below.
- (2) The following service charges are unreasonable and are only payable as modified or extinguished by this determination: -

2018-2019

- (3) The window cleaning charge of £44.78 is disallowed in full.
- (4) Regarding the accounts preparation fee, the Tribunal substitutes £160 plus Vat for the block charge of £276; so, for the applicant this gives a charge of £24 inclusive of Vat.
- (5) The accountant charge of £45 is disallowed in full.

2019-2020

- (6) The window cleaning charge of £44.78 is disallowed in full.
- (7) Insurance - The Tribunal sets this charge at £2075 inclusive of management and brokerage giving an individual charge of £259.38.
- (8) Front gate repairs - the Tribunal is not satisfied that these charges are reasonable and payable and substitutes the sum of £250 inclusive of the admin charge making an individual charge £31.25 instead of £69.39.
- (9) Repair to external wall repairs - the Tribunal is not satisfied that these charges are reasonable and payable and substitutes the sum of £175 exclusive of the admin charge making an individual charge £21.88 plus 15% management fee.

2020-2021

- (10) The Insurance reinstatement valuation costs of £172.58 (gross £1380.64) is disallowed in full
- (11) Fire door inspection charge of £11.44 gross £91.52) is disallowed in full.

- (12) The FHS Risk Assessment of £63.72 (gross£509.76) is disallowed in full.
- (13) Regarding the accounts preparation fee, the Tribunal substitutes £180 plus Vat for the block charge.
- (14) The accountant charge of £60 is disallowed in full

2022-2023

- (15) Fire door service visit of £18.70 (gross£149.60) is disallowed in full
- (16) Electrical Visual Condition Report£44.08 (Gross £352.64) is disallowed in full)
- (17) Admin costs £480 (only for this lessee). disallowed in full.
- (18) DRS Referral fee £216.00 (only for this lessee) disallowed in full.
- (19) DRA Correspondence fee £474 (only for this lessee) disallowed in full.
- (20) BNO Repairs £72.70 (£581.56) and BNO Survey £146.61 (£1172.88). The Tribunal believes a charge of 50% of both items of the original charges to be reasonable and payable, i.e., £36.35 and £73.31 for this lessee.
- (21) Inventory report £10.62 £84.96 Tribunal disallowed it in full.

The applications and background

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Flat 7, Chandos Court, Whitchurch Avenue, Edgware, London HA8 6HR** (the property) and the liability to pay such service charge.
2. Flat 7, Chandos Court, Whitchurch Avenue, Edgware, London HA8 6HR is within a purpose-built block of eight flats. Mr Shah is the leasehold owner of the flat on the top floor of the block in which the property is located. The Respondent is the landlord being the freehold owner of the block in which the Property is situated.

3. The applications to the Tribunal were concerned with the reasonableness and payability of service charges with first a s.27A of the 1985 Act determination in respect of service charges arising in the property and in the second application the applicant seeks a determination pursuant to s.20c of the 1985 Act.
4. The respondent says that in breach of the terms of the Lease the applicant has failed to pay service charges as demanded by the respondent.
5. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

6. The face-to-face hearing took place on one day in April 2023, (3rd), when the respondent was to be represented by Mr Gurvits, from the managing agents and the applicant appeared in person, but assisted by his son, Harshil Shah. However, just before the start of the hearing Mr Gurvits contacted the Tribunal to advise the Case Officer that he could not attend that morning as he was experiencing a migraine. In an email he wrote “Just to confirm our conversation this morning and that due to a medical emergency I won't be able to attend the hearing. As this only occurred this morning I was unable to arrange for someone else to attend.” He did not ask for an adjournment. As the respondent was in attendance and was clearly ready to proceed and bearing in mind the overriding objective set out in the Rules of the Tribunal, the Tribunal decided to proceed bearing in mind that Mr Gurvits had supplied a skeleton argument setting out in detail his assessment of the case. Rule 34 of the Tribunal Rules states that if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) considers that it is in the interests of justice to proceed with the hearing. It was on this basis that the Tribunal went ahead with the hearing.
7. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions arising out of the Covid-19 pandemic.
8. The Tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous

directions. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded, and which were accessible by all the parties.

9. At the hearing the Tribunal the Tribunal identified the exact items that remained in dispute. These were clearly shown and listed in the “Schedule of Items in Dispute” to be found at pages 48 to 72 of the trial bundle and which contained comments thereon from both parties. The Tribunal then worked through these items by hearing and reading representations thereon from the parties.

Decision

10. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written and oral evidence and the surrounding documentation as well as the oral submissions provided at the time of the face-to-face hearing.
11. The Tribunal was required to consider service charges as listed in the trial bundle as being disputed service charges. The Tribunal will consider each contested item in turn by service charge year and or by subject matter.
12. The tribunal is required to consider which argument they prefer in their interpretation of the lease and service charge provisions and the payability of service charges for items in dispute. The tribunal therefore sought precedent guidance to support their decision-making process. The Supreme Court case of *Arnold v Britton and Others* [2015] UKSC 36 is extremely helpful in this regard. This case was about judicial interpretation of contractual provisions analogous to the dispute before the tribunal. The court held-

“that the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be gleaned from the language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate departure from the natural meaning; that commercial common sense was relevant only 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....it was not the function of a court to relieve a party from the consequences of imprudence or poor advice”.

13. Accordingly, the tribunal turned to the lease to try to identify what the parties had meant through the eyes of a reasonable reader. Each following heading is from the schedule of disputed service charges and is shown together with the item cost detailed in the same schedule. The amounts shown will first represent the amount said to be payable by the applicant and the second sum is the total for the eight flats in the building. Furthermore, it is the practice of the Managing Agent to add a 15% management fee or administration charge on every service charge levied. So, for example if there was a charge of £100 Eagerstates would add £15 on top of the actual charge. This is referred to when appropriate in individual items set out below and under consideration by the Tribunal. However, as a management charge the Tribunal does not consider the level to be excessive. It is within the range of such charges seen by the Tribunal for work of this kind.

2018-2019

Electric Bill £61.72, £493.76

14. In this regard the applicant asserted that the item was unreasonable as it was charged incorrectly. The applicant observed that “Total value of invoices received in FY 2018/19 totalled to £52.69, not £61.72. All Electric Bill invoices have been paid in full when received and the provided statement of accounts does not align”. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was wrong. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the electric bill, the Tribunal is satisfied that these charges are reasonable and payable.

Buildings Insurance £259.28, £2074.24

15. The applicant believes that the insurance premium for the year in dispute is excessive. The applicant did not provide alternative quotes from other similar insurers for this particular year. The respondent said that they had used a broker. Furthermore, the respondent was not required to find the cheapest quote.
16. The tribunal is satisfied that the respondent selected insurance companies of repute and that as such there is compliance with the

obligation to obtain a quote from a reputable company. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not have to accept the cheapest quotation, but the landlord must insure with a reputable company as is the case in this dispute. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote.

17. Accordingly, the Tribunal accepted that there was no requirement on the landlord to find the cheapest quote. In the absence of comparable evidence from the applicant for very similar blocks and alternative premium quotations for an exact like for like cover it is difficult for the tribunal to say the premium charged is unreasonably incurred. This left the tribunal with little alternative other than to confirm the adequacy of the premiums charged, which it now does. Accordingly, the item listed to insurance is approved as reasonable and payable.

Window cleaning £44.78 £358.24

18. Although listed as an item in the service charge budget, in fact no authority exists for this work in the leases of the flats in this block. Indeed, the windows are demised to the tenants and are therefore the responsibility of the tenants. Although charges were incurred by the respondent, they are not payable and indeed in a subsequent year the respondent conceded the point. Therefore, the Tribunal makes a determination that the charge is disallowed in full.

Gutter repair works £158.42, £1267.36.

19. The applicant said of this charge, “Gutter repair works were completed in 07/2019 and again in 11/2019. This is seen as excessive and unreasonable works. The works completed in 07/2019 were paid in full to the sum of £119.48”. No satisfactory evidence of the nature of the second works was supplied by the respondent. In the absence of any such evidence the Tribunal can only find the payment made of £119.48 to be reasonable for this applicant, (block charge £955.84).

Insurance reinstatement costs £221.25 £1770.00

20. This was an assessment of value by a Chartered Surveyor for insurance purposes. The Tribunal was satisfied that this was a proper form of expenditure. The Tribunal were also satisfied with the level of the charge bearing in mind the final figure included the management

charge of 15% and vat. In the circumstances the Tribunal believes the charge for this year to be reasonable and payable.

Accounts preparation fee £34.50 £276.00

21. The managing agents are entitled to a fee for the preparation of accounts. However, the form of accounts supplied was simplistic and crude and not in the standard format for annual accounts. The ones produced were prepared by Eagerstates. Of these the applicant commented that “there are numerous errors within the statement of accounts”. Accordingly, the Tribunal was not satisfied that the charge was reasonable. The Tribunal substitutes £ 160 plus vat for the block charge of £276 so for the applicant this gives a charge of £24 inclusive of Vat.

Accountant £45 £360

22. Although listed as an item in the service charge, in fact no involvement of an accountant could be seen in the evidence in the Trial Bundle. Indeed, the applicant confirmed that no accounts prepared by an accountant had ever been prepared despite being requested by the applicant. The Tribunal was not satisfied that there had been any involvement of an accountant in the accounts shown to the Tribunal and therefore the charge is disallowed in full.

2019-2020

Window cleaning £44.78 £358.24

23. Although listed as an item in the service charge budget, in fact no authority exists for this work in the leases of the flats in this block. Indeed, the windows are demised to the tenants and are therefore the responsibility of the tenants. Although charges were incurred by the respondent, they are not payable and indeed in an email exchange the respondent conceded the point. Therefore, the Tribunal makes a determination that the charge is disallowed in full.

Buildings insurance £475.34 £3802.72

24. The applicant says that the amount charged represents a 100% increase in annual buildings insurance from 2018-2019 to 2019-2020. This is seen as an unreasonable increase as the building has not seen a material change and an appropriate tender for insurance has not been completed. The respondent in this regard says “Insurance – the

Applicant does not appear to argue that the cost is unreasonable. The argument as set out, is that the management fee is excessive. The management fee was charged at 15% and this is not an unreasonable fee. There appears to be confusion about the increased sum insured, which also resulted in an increased premium but it is clear that this is based on the certificates and the sums insured as per the Reinstatement Cost Assessment.”

25. The charge is anomalous. It is way above insurance fees for previous and subsequent years. Interestingly the applicant did produce an alternative insurance quote from a reputable insurance company for the year 2022 and for the same cover where the premium was £1607.10, excluding any markups for management and brokerage. The applicant again stated that no insurance details were properly provided even though they were repeatedly requested of the managing agents. The Tribunal were not satisfied that the charge made was reasonable when compared to other years and the alternative quote provided. The Tribunal therefore sets this charge at £2075 inclusive of management and brokerage giving an individual charge of £259.38.

Front gate repairs £69.39 £555.12

26. Moving on to the item entitled front gate repairs the applicant stated that all that was done for this charge was the provision of new gate hinges. The applicant asserted he had a quote for the supply and fixing of a new gate for £575 thus making the charge for mere hinge replacement look to be an excessive charge. Having perused the evidence in the Trial bundle and having considered all oral submissions on these repairs, the Tribunal is not satisfied that these charges are reasonable and payable and substitutes the sum of £250 inclusive of the admin charge making an individual charge of £31.25.

Repair to external wall £261.08 £2088.64

27. With regard to the external wall repairs this related to a front boundary wall. The applicant says the work was done to a poor standard using the old bricks. The applicant supplied an alternative quote where the total was £175 for “Built brick wall to extend existing wall, right side only to required width, approximately 9 inches in width.” In the light of the applicant’s evidence and photographic evidence available to the Tribunal and the alternative quote the Tribunal was not satisfied that this was a reasonable charge. It substitutes as a total for all 8 lessees £175 in total to which may be added the 15% admin charge

2020-2021

Buildings insurance £243.86 £1950.88

28. The applicant believes that the insurance premium for the year in dispute is excessive. The applicant did not provide alternative quotes from other similar insurers for this particular year. The respondent said that they had used a broker. Furthermore, the respondent was not required to find the cheapest quote. In the absence of comparable evidence from the applicant for very similar blocks and alternative premium quotations for an exact like for like cover it is difficult for the tribunal to say the premium charged is unreasonably incurred. This left the tribunal with little alternative other than to confirm the adequacy of the premiums charged, which it now does. Accordingly, the item listed to insurance is approved as reasonable and payable.

Electric bill £9.01 £72.08

29. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was wrong. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the electric bill, the Tribunal is satisfied that these charges are reasonable and payable.

Insurance reinstatement £172.58 £1380.64

30. This was an assessment of value by a Chartered Surveyor for insurance purposes. In this regard the applicant asserted that "It should be noted that an assessment was completed in 2019 and since then, there has been no material change to the building thus a re-assessment is seen as unnecessary." The Tribunal agrees with this assessment. An industry norm would dictate that a valuation this soon after the previous occasion was inappropriate and unreasonable. Accordingly, the Tribunal disallows this charge in full.

Fire Health and Safety testing £5.45 £43.60

31. This was a charge for fire health and safety testing but represents a monthly charge. The annual charge is therefore £523.20. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was incorrect. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the testing involved in this charge, the Tribunal is satisfied that these charges are reasonable and payable.

Gutter cleaning £44.25 £354

32. The applicant observed that “Gutter works were completed in 2019 and as such, gutters do not need cleaning on an annual basis. This is seen as an unreasonable charge especially as there is no foliage that reaches over the top of the building to allow for foreign materials to build up and cause blockages requiring a clean.” Despite there being no real evidence one way or the other the Tribunal felt on the balance of probabilities that this charge was reasonable and payable.

Fire door inspection £11.44 £91.52

33. The applicant said that there were no fire doors in the internal part of the building and the front door was just a usual plastic type entrance door. So, the position is as the applicant asserted “There are no fire doors within communal areas of the building and as such, a fire door inspection is not chargeable under the lease. All fire doors as entry doors to flats are the responsibility of the leaseholder. There are no fire doors within communal areas of the flat and as such, a fire door inspection is not chargeable under the lease. All fire doors as entry doors to flats are the responsibility of the leaseholder.” The Tribunal disallowed this charge in full as being unreasonable given the absence of relevant doors.

2021-2022

Drain service £30.09 £240.72.

34. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was incorrect. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the drain service bill, the Tribunal is satisfied that these charges are reasonable and payable.

CCTV survey £79.65 £637.20

35. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was incorrect. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the CCTV survey bill, the Tribunal is satisfied that these charges are reasonable and payable.

Drain survey £41.04 £328.32.

36. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was wrong. Therefore, having perused the evidence in the

Trial bundle and having considered all oral submissions on the drain service bill, the Tribunal is satisfied that these charges are reasonable and payable.

FHS Risk Assessment £63.72 £509.76

37. This is a fire health and safety risk assessment. No report after this assessment was ever disclosed to the applicant despite requests for it. In any event these assessments would normally only arise every three years or so. In these circumstances and especially in the absence of any disclosed professionally prepared report this charge is unreasonable and is disallowed in full.

Buildings insurance £524.62 £4196.91

38. Of this charge the applicant observed that “-100% increase in annual buildings insurance from 2020/21 to 2021/22. This is seen as an unreasonable increase as the building has not seen a material change and an appropriate tender for insurance has not been completed.”
39. The charge is anomalous. It is way above insurance fees for previous years. Interestingly the applicant did produce an alternative insurance quote from a reputable insurance company for the year 2022 and for the same cover where the premium was £1607.10, excluding any markups for management and brokerage. The applicant again stated that no insurance details were properly provided even though they were repeatedly requested of the managing agents. The Tribunal were not satisfied that the charge made was reasonable when compared to other years and the alternative quote provided. The Tribunal therefore sets this charge at £2075 inclusive of management and brokerage charges giving an individual charge of £259.38.

Accounts preparation fee £67.50 £540

40. The managing agents are entitled to a fee for the preparation of accounts. However, the form of accounts supplied was simplistic and crude and not in the standard format for annual accounts. The ones produced were prepared by Eagerstates. Of these the applicant commented that “there are numerous errors within the statement of accounts”. Accordingly, the Tribunal was not satisfied that the charge was reasonable. The Tribunal substitutes £ 180 plus vat for the block charge.

Accountant

41. Although listed as an item in the service charge, in fact no involvement of an accountant could be seen in the evidence in the Trial Bundle. Indeed, the applicant confirmed that no accounts prepared by an accountant had ever been prepared despite being requested by the applicant. The Tribunal was not satisfied that there had been any involvement of an accountant in the accounts shown to the Tribunal and therefore the charge is disallowed in full.

Notice of Proceedings £120 (only for this lessee)

42. This was a charge issued by the respondent in connection with unpaid service charges. However, these charges were disputed, and the respondent plainly knew this. As the applicant observed “This is not chargeable under the lease and the managing agent had been notified that various items were in dispute with FTT paperwork being drawn up to allow for mediation.” The Tribunal considered this to be an unreasonable charge and disallowed it in full.

2022-2023

Drain inspection. £16.82 £134.56

43. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was incorrect. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the drain inspection bill, the Tribunal is satisfied that these charges are reasonable and payable.

Drain works £1742.57 £13,940.56.

44. The Tribunal was not satisfied that there was any or sufficient evidence that this sum was incorrect. Furthermore, the applicant did not produce to the Tribunal any alternative quote or nominated an alternative company to provide a quote at the time of the s.20 consultation. Therefore, having perused the evidence in the Trial bundle and having considered all oral submissions on the drain works bill, the Tribunal is satisfied that these charges are reasonable and payable.

Fire door service visit £18.70 £149.60.

45. The applicant said that there were no fire doors in the internal common parts of the building and the front entrance door was just a usual plastic type entrance door. So, the position is as the applicant asserted “There

are no fire doors within communal areas of the flat and as such, a fire door inspection is not chargeable under the lease. All fire doors as entry doors to flats are the responsibility of the leaseholder. There are no fire doors within communal areas of the flat and as such, a fire door inspection is not chargeable under the lease. All fire doors as entry doors to flats are the responsibility of the leaseholder.” The Tribunal disallowed this charge in full as being unreasonable given the absence of relevant doors.

Electrical Visual Condition Report £44.08 £352.64

46. The applicant said of this expenditure “Electrical Visual Condition Report was completed by the managing agent. This is not a recognised or recommended piece of work by government or NICEIC. The NICEIC & government state that an annual EICR should be completed by an appointed trained professional and no further works would be required for operation of a safe electrical system.” The respondent said nothing about this report in the schedule passing between the parties. The Tribunal was not satisfied that this was a proper and reasonable expense and therefore disallowed the charge in full.

Admin costs £480 (only for this lessee)

47. This charge was raised by the respondent in connection with unpaid and disputed charges. Of these the applicant stated “Admin costs associated to the use of a debt recovery agency are not chargeable under the lease. The agent had been notified various items will be going to FTT and still elected to move forward with a debt recovery agency. The debt recovery agency have been told the outstanding matters are with the FTT for resolution and any further action has been stopped. Furthermore, from the various statement of accounts received, there have been numerous inaccuracies with raise credibility of statements provided.” The respondent said nothing about this report in the schedule passing between the parties. The Tribunal was not satisfied that this was a proper and reasonable expense and therefore disallowed the charge in full.

DRA Referral fee £216.00 (only for this lessee)

48. These costs appear to be costs associated with the use of a debt recovery agency. Of this charge the applicant observed that “The agent had been notified various items will be going to FTT and still elected to move forward with a debt recovery agency. The debt recovery agency have been told the outstanding matters are with the FTT for resolution and any further action has been stopped.” The respondent said nothing

about this report in the schedule passing between the parties. The Tribunal was not satisfied that this was a proper and reasonable expense and therefore disallowed the charge in full.

DRA Correspondence fee £474 (only for this lessee)

49. These were also costs associated with the debt recovery agency. The applicant challenged the charge for the same reasons as set out above. The respondent said nothing about this report in the schedule passing between the parties. The Tribunal was not satisfied that this was a proper and reasonable expense and therefore disallowed the charge in full.

Insurance reinstatement costs £110.63 £885.04

50. This was an assessment of value by a Chartered Surveyor for insurance purposes. The Tribunal was satisfied that this was a proper form of expenditure for this service charge year and bearing in mind the dates for the previous examples of this expense. The Tribunal were also satisfied with the level of the charge bearing in mind the final figure included the management charge of 15% and vat. In the circumstances the Tribunal believes the charge for this year to be reasonable and payable.

BNO Repairs £72.70 £581.56 and BNO Survey £146.61 (£1172.88)

51. A BNO is the organisation that owns or operates the electricity distribution network within a multiple occupancy building, between the intake position and customers' installations. A BNO may be a building owner, landlord, developer or similar function in control of a building infrastructure at that given time. The applicant asserted that he had not been supplied with the survey alleged to have been obtained for this work. The applicant also said that there were key failings with the electrical system resulting in emergency works of which he was aware. Therefore, he offered 50% in this regard. The respondent provided no response in the schedule passing between the parties. In these circumstances the Tribunal believes a charge of 50% for both items of the original charges to be reasonable and payable, i.e., £36.35 and £73.31 for this lessee.

Inventory report £10.62 £84.96

52. This was a somewhat mysterious item as the applicant had requested a copy of the report or inventory but had received nothing from the respondent. So, neither he nor the Tribunal could review the nature of

this activity. In the absence of any evidence to support the claim the Tribunal could only find it to be an unreasonable charge and therefore disallowed it in full.

Application for a S.20C order

53. The applicant made an application under section 20C of the Act, i.e., preventing the respondent from adding the legal costs of these proceedings to subsequent service charge accounts. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985.
54. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.
55. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge.
56. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them. This is particularly in the light of the partial success on the part of the applicant and the respondents' failure to supply formal certified or audited annual service charge accounts and the respondent's failure to supply other reports mentioned in this decision as well as the respondent's failure to reply to reasonable enquiries made by the applicant.
57. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal considered all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the original hearing.

Application under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002

58. There was also an application under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002. In the circumstances set out above the tribunal considers it is therefore just and equitable to make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, extinguishing the applicant's liability to pay an administration charge in respect of the respondent's costs of the proceedings.

Name: Judge Professor Robert
Abbey

Date: 17 April 2023

Appendix of relevant legislation and rules

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.

ANNEX - 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 (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.