FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/LSC/2022/0074**
Property	**:**	**Flat 1, 140 York Road, Southend-on-Sea SS1 2EA**
Applicant	**:**	**Ivana Baltic**
		Unrepresented
Respondent	**:**	**Long Term Reversions (Harrogate) Limited**
Representative	**:**	**Paul Fuller, of Counsel**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	**:**	**Judge K. Saward** **Miss M. Krisko BSc (EST MAN) FRICS**
Date of hearing	**:**	**5 June 2023**
Date of decision	**:**	**16 June 2023**

DECISION AND REASONS

Description of hearing

This has been a remote hearing which was consented to by the parties. The form of remote hearing was to be CVP Video. However, having initially connected to the video by mobile phone, the Applicant subsequently decided to participate by telephone. The hearing proceeded as a hybrid of CVP/telephone. A face-to-face hearing was not held because it was not practicable, and no-one requested the same.

DECISIONS

(1) The Tribunal has no jurisdiction to make a determination on the service charges levied in respect of buildings insurance and management fees for 2020/21, the matter having already been the subject of determination by the County Court. This part of the claim is struck out under rule 9(2) of the Tribunal Procedure Rules 2013.

(2) The Applicant's case made in reference to the Building Safety Act 2022 has no reasonable prospects of success and is struck out under rule 9(3) of the Tribunal Procedure Rules 2013.

(3) The Tribunal determines that the sums of £595.11, £342.92, £350.00 and £350.00 for buildings insurance were reasonably incurred and reasonable in respect of the service charge years 2017/18, 2018/19, 2019/20 and 2021/22, respectively.

(4) The Tribunal determines that the sums of £95.94 for the service charge year 2017/18 and £115.00 in each of the service charge years 2018/19, 2019/20 and 2021/22, were reasonably incurred and reasonable.

(5) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the Tribunal proceedings that may be passed to the lessees through any service charge are limited to no more than 50% of the costs incurred.

REASONS

The application

1. By application dated 12 December 2022, the Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges levied in respect of buildings insurance and management fees in respect of the property for the service charge years 2017/18 to 2021/22. The service charge years run from 1 April until 31 March in the following year.

2. The sums in dispute are:

Service charge year	Buildings insurance	Management fees
2017/18	£595.11	£95.94
2018/19	£342.92	£115.00

2019/20	£350.00	£115.00
2020/21	£350.00	£115.00
2021/22	£350.00	£115.00

The background

3. The property which is the subject of this application is described by the Applicant as a ground floor, 1 bedroom flat within a Victorian house situate at 140 York Road. The house has been converted into three flats with communal areas. The Applicant is the leaseholder of the flat held under a lease dated 18 May 1984 for a term of 99 years from the date thereof. The Respondent is the freeholder on whose behalf the property is managed by Pier Management Ltd.

4. Neither party requested an inspection, and the Tribunal did not consider one was necessary or proportionate to the issues in dispute.

5. The lease of the property requires the landlord to provide services and the leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below.

Documents before the hearing

6. The Tribunal received a single bundle of documents composed of some 210 pages. In summary, the bundle contains: title documents, the application, Applicant's case (including witness statements from Ivana Baltic and Ian Taylor), Respondent's case (including witness statement of Sarah Willis), Applicant's reply, Tribunal directions and orders, and additional correspondence.

7. The Applicant submitted a late supplemental bundle of 11 pages including a second witness statement from Ian Taylor and documents said to be extracted from previous County Court proceedings. At the hearing, the Respondent's advocate initially disputed inclusion of all these documents. He later revised this position and raised no objection to their inclusion in the interests of expediency. This was on the basis that submissions would be made in closing.

8. Prior to the hearing, the Respondent's advocate produced a skeleton argument and copies of the legal authorities referred to therein. The Applicant sent an email in response along with a document described as an "open letter" and copies of photographs of the electricity cover.

9. The Tribunal has noted the content of all these documents.

Preliminary matters

10. The Applicant experienced technical problems at various stages during the hearing when her telephone connection was lost. On each occasion, the Tribunal paused proceedings until the Applicant re-joined the hearing. The Tribunal was careful to ensure that the Applicant did not miss any part of the proceedings by checking the last thing she had heard and requiring anything said thereafter to be repeated.

11. At the start of the hearing there were some preliminary matters that the Tribunal needed to address. These included applications made by the Respondent to strike out the proceedings on various grounds.

12. The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules") are relevant. Under rule 9(2) the Tribunal *must* [my emphasis] strike out the whole or a part of the proceedings or case if the Tribunal (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal). The Tribunal resolved to hear arguments over its jurisdiction first.

Whether the 2020/21 charges have been determined by a court

13. The first point arising is whether the Tribunal has jurisdiction to determine the service charges for buildings insurance and management fees for the year 2020/21 given previous litigation on these matters.

14. Under section 27A(4)(c) of the 1985 Act, no application may be made under sub-section (1) or (3) which has been the subject of determination of a court. Sub-section (1) concerns the determination of payability of a service charge. Subsection (3) concerns a determination of whether a service charge would be payable for costs incurred, such as those for insurance or management.

15. Proceedings were issued by the Respondent against the Applicant in the Southend County Court under claim no. G40YY502 on 26 November 2020 for non-payment of service charges and administration charges of £757.00. At the final hearing on 3 May 2022, the Applicant was ordered to pay the buildings insurance for the year 2020/21, a reminder charge, interest and costs. The Court did not make an award against the Applicant for the 2020/21 management fee, costs for guttering repairs and other administration charges.

16. Thus, the management fee for 2020/21 has already been disallowed by the County Court and judgment entered against the Applicant for the amount of the 2020/21 buildings insurance premium. It follows that an

application could not be made to the Tribunal for these matters under section 27A because they have been the subject of a determination by a court. Accordingly, the Tribunal has no jurisdiction over the 2020/21 claim now made under section 27A.

17. As there is no jurisdiction, the Tribunal cannot determine the 2020/21 management fee. This part of the claim must be struck out under rule 9(2).

Whether the charges have been agreed or admitted

18. The next issue concerns whether the Tribunal has jurisdiction in relation to the disputed charges for the three preceding service charge years between 2017/18, 2018/19 and 2019/20.

19. The Respondent states that the charges were settled on demand without challenge. As such, it is argued that the 2017-2020 charges were admitted, and the Applicant is debarred from challenging the same.

20. Under section 27A(4)(a), no application under subsection (1) or (3) may be made in respect of a matter which has been admitted or agreed by a tenant. But, by virtue of section 27A(5), the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

21. In this regard, the Tribunal's attention is drawn by the Respondent to the legal authorities in *Cain v London Borough of Islington* [2015] UKUT 117 (LC); and *Shersby v Greenhurst Park Residents Company Limited* [2009] UKUT 241 (LC).

22. In *Cain*, HHJ Gerald referred to section 27A(4) and (5) and made plain that whether or not agreement or admission can be implied or inferred from payment made will always be a question of fact and degree in every case. Then, at paragraph 18:

"*Looking at the reasoning behind this provision, no doubt the reason why the making of a single payment on its own, or without more, would never suffice is that such will often be insufficiently clear but also, in the peculiar area of landlord and tenant, it is common enough for tenants to pay (even expressly disputed) service charges so as to avoid the risk of forfeiture and preserve their home and the value of their lease. But the reason why a series of unqualified payments may, depending on the circumstances, suffice is because the natural implication or inference from a series of unqualified payments of demanded service charges is that the tenant agrees or admits that which is being demanded … Self-evidently, the longer the period over which payments have been made the more readily the court or*

tribunal will be to hold that the tenant has agreed or admitted that which has been demanded and paid. It is the absence of protest or qualification which provides the additional evidence from which agreement or admission can be implied or inferred."

23. In *Shersby*, agreement or admission was found to be established from a combination of a series of payments over a period of time coupled with (a) substantial delay before challenge, and (b) other proceedings in which the applicant tenant had the opportunity to and could have challenged those elements. The tenant was found to have not only made the payments for 1997-2004 (inc) but waited until the 2007 application before seeking to challenge them. In the meantime, the tenant had made a separate application to the tribunal raising various other matters. It was the combination of repeated payments without complaint or reservation coupled with the lapse of time and express challenging of certain other matters (but not the disputed payment) that led the tribunal to conclude that the charges must have been agreed or admitted.

24. As emphasised in *Cain* [at paragraph 20], *Shersby* was a particularly strong case because there was a finding akin to an abuse of process, it being established that all issues in dispute should be raised when the matter comes before the court. It, however, should not be treated as authority that there must be something additional to a series of unchallenged payments over a period of time. Whether that will suffice depends upon the circumstances.

25. The Respondent also relies upon the doctrine of estoppel to contend that the Applicant should be estopped from challenging the service charges as being contrary to the implied act of acceptance when payments were made without objection. The Respondent further raised the principle in *Henderson v Henderson* [1843] to the effect that the Applicant should not be permitted to raise a claim for charges paid prior to the County Court litigation which ought properly to have been raised in that previous action.

26. In this instance, it was not until the Tribunal application was made in December 2022 that issues were raised by the Applicant over buildings insurance premiums and management fees levied as service charges going back to 2017/18. Over 5 years had elapsed since the earliest payment. However, it was not an excessively long period of time. Whilst the Applicant initially told the Tribunal that she thought she had raised concerns in the County Court proceedings in respect of the preceding 3 service charge years, this was strongly refuted by the Respondent's advocate. The Applicant then explained that she thought only the 2020/21 service charges were before the County Court and pointed out that she had not initiated the proceedings but was defending herself.

27. It occurs to the Tribunal that the Applicant was clearly not conversant with legal proceedings or their scope. The County Court proceedings concerned only one service charge year. As a litigant in person the Applicant cannot be expected to realise that a counterclaim or claim by way of set-off for earlier service charge years was an option available to her. Unlike the tenant in *Shersby*, the Applicant did not institute her own separate and earlier proceedings while omitting the currently disputed service charges. Rather, the Applicant was an unrepresented defendant in County Court litigation without the benefit of legal advice.

28. In all the circumstances, the Tribunal is not satisfied that the combination of the Applicant's failure to raise a counterclaim in the earlier County Court action, the payments and delay in raising a dispute, suffice in this case for the Applicant to be taken to have agreed or admitted the 2017/18 – 2019/20 charges for the purposes of section 27A(4)(a) of the 1985 Act or to be estopped in her claim. The application for strike out of the proceedings on this ground fails.

Application to strike out on other grounds

29. The Respondent argued that the claims for all service charge years should be struck out on the basis that the Applicant had provided little to no evidence in support of her assertions, which in any event, do not go to the issues in the application (namely, whether the disputed charges were reasonable and/or reasonably incurred). According to the Respondent, the application singularly fails to disclose grounds in fact or law for challenging the disputed charges.

30. As such, the Respondent submits that the application should be struck out pursuant to rule 9(3)(d) and/or rule 9(3)(e) as being frivolous or an abuse or process or otherwise disclosing no reasonable prospect of success. In addition, the Respondent referred to non-compliance with Tribunal directions under rule 9(3)(a).

31. Pursuant to rule 9(3) the Tribunal *may* strike out the whole or a part of the proceedings or case if-

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or part of it;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse or process of the Tribunal;

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

32. On 30 January 2023, the Tribunal directed the Applicant by 17 February 2023 to complete a schedule (in the form provided) of the items and amounts in dispute with reasons, and the amount of any amount (if any) the Applicant considered reasonable to pay for that item. By the same date, the Applicant was further required to provide a witness statement setting out the provisions in the lease, any legal submissions and any other matters relied upon along with copy documents relied upon. The directions contained a warning that failure to comply may result in the Tribunal striking out all or part of the Applicant's case under rule 9(3)(a) of the 2013 Rules.

33. When the Applicant failed to adhere to the timescales within the directions, further directions were issued by the Tribunal on 28 February 2023 extending the timescales for the submission of statements and documents to 16 March 2023.

34. The Applicant's witness statement of 15 March 2023 describes disputes with the Respondent's managing agents from 2016 after challenging high insurance and administration charges. The Applicant expresses grievance that the managing agents have not addressed her complaints, including those arising from disputes with neighbouring tenants. Dissatisfaction is expressed with what the Applicant considers to be general reluctance on the Respondent's part to undertake routine maintenance. These are quite generic comments.

35. However, amongst these complaints, reference is made to the management agents having done little work to justify the managements costs. The Applicant goes on to identify two sources of specific complaint relating to the fireproof cover for electrical equipment in the shared hallway installed in 2017 which "has proven to be inadequate" and "seriously obstructive" and the unauthorised replacement of the carpet in the communal hallway by neighbouring tenants.

36. These same points were identified in the Applicant's completed Scott Schedule (Annex 1 document) in which three comments are made. Firstly, that the electric cover was installed incorrectly. Secondly, that the carpet/linoleum in the communal hallway was installed "unlawfully". Thirdly, that both aforementioned issues remain uncorrected.

37. The Applicant produced a 'statement' dated 14 April 2023, which she confirmed at the hearing to be her statement of case. This was produced some time after the deadline. It refers to the freeholder's reluctance to do any repairs to the building, described as "historic neglect", with no repairs to the façade since the Applicant's acquisition in 2007. The Applicant asserts that she was not consulted, and proper procedures not followed when flooring was replaced by a neighbouring tenant.

38. The Applicant is critical of the standard of work when installing the electric cover which she says obstructs access to the fuse box for her property. She also describes the fitting of a carpet in a communal area as a trip hazard.

39. It was not until 12 May 2023, that the Applicant produced a supplemental bundle with a selection of additional documents.

40. The Tribunal notes that the Applicant has failed to comply with directions in a timely manner and has sought to add to her case piecemeal. This alone does not justify a strike out of the claims in this case. Ultimately, it was possible for the Respondent to glean the matters in dispute from the information taken as a whole. The Respondent may consider these matters to be without merit, but issues are raised concerning the management of the building, and thus the associated fees, along with the insurance.

41. The case is not altogether cogent and contains various irrelevancies, including details of neighbour disputes. Nevertheless, account must be taken of the Applicant being a litigant in person who cannot be expected to articulate her case as well as a party paying for professional representation. It does not mean that the application is frivolous, an abuse of process or without reasonable prospects. Enough information is given to disclose a possible basis of claim.

42. Having regard to the overriding objective within rule 3 of the 2013 Rules to deal with cases fairly and justly, the Tribunal considers that the threshold has not been reached to warrant a strike out of the proceedings on the grounds pleaded and it would be unjust to do so.

Building Safety Act 2022

43. As part of the Applicant's claim, it is suggested that the case involves issues under Schedule 8 to the Building Safety Act 2002, but the application discloses no defects with the building falling within section 117 of that Act.

44. Case management directions issued by the Tribunal on 30 January 2023 required the Applicant to provide an explanation to both the Tribunal and Respondent (by 8 February 2023) of matters raised under the Building Safety Act 2022 and confirming the height from ground level and number of storeys of the building.

45. By email on 6 March 2023, the Applicant confirmed the height of the building above ground is between 9-10 metres and has 3 storeys above ground. That being so, the property does not fall within the definition of a "relevant building" for the purposes of the 2022 Act as it is neither at least 11 metres high, nor is it at least 5 storeys (section 117(2)).

46. At the hearing, the Applicant continued to maintain that the 2022 Act is relevant. However, the Act does not apply because the property is not a "relevant building". Accordingly, there is no reasonable prospect of the case succeeding on this ground, which is struck out under rule 9(3)(e).

The issues

47. The recoverability of the charges under the terms of the lease are not in dispute. Save for identifying the relevant provisions, the Tribunal does not consider payability further. Having dealt with preliminary matters, the Tribunal identified the relevant issues for determination as follows:

(i) whether the relevant service charges were reasonably incurred/reasonable for the service charge years 2017/18, 2018/19, 2019/20 and 2021/22;

(ii) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made; and

(iii) whether an order for reimbursement of Tribunal fees should be made.

The lease

48. The lease includes the following provisions of particular relevance to the issues before the Tribunal.

49. Clause 2 contains the lessee's covenants. They include, at clause 2(2), the duty to pay and discharge and keep the lessor indemnified from and against all existing and future rates taxes duties charges assessment and outgoings. At clause 3.(d) the lessee further covenants to pay to the lessor from time to time on demand as a contribution towards the costs charges expenses and management fees incurred by the lessor in carrying out his obligations under the Fifth Schedule. At clause 7, the lessor covenants to perform and observe the obligations in the Fifth Schedule.

50. The Fifth Schedule provides that, subject to the due performance by the lessee of his obligations to contribute to the maintenance charges, the lessor will fulfil the obligations that follow. They include at paragraph (1)(C) a duty whenever reasonably necessary to maintain, repair, redecorate and renew the communal areas. At paragraph (4), the lessor must keep the building insured, which may be through such agents (if any) as the lessor shall nominate. Then, at paragraph (10) the lessor will employ managing agents to manage the building if and during such times as the lessor thinks fit and pay all

proper fees charges and expenses payable to such agents in connection therewith.

51. Paragraph 5(B) of the First Schedule specifies that the lessee's per centage of the maintenance charge is 20%.

Evidence heard

52. The Applicant, Ms Baltic, gave oral evidence. She was supported by her husband Mr Taylor who also reinforced her account on issues regarding the fuse box and communal hallway carpet. Both were cross-examined by the Respondent's advocate.

53. Mrs Willis, the Head of Portfolio Management at Pier Management Ltd and managing agent for the period in the application, was called to give evidence by the Respondent and answered questions put by Ms Baltic.

54. Both parties took the opportunity to make a closing submission.

55. Details of the evidence heard are encompassed within the analysis below.

Buildings insurance - £595.11 (2017/18); £342.92 (2018/19); £350.00 (2019/20) and (2021/22)

56. As set out above, the buildings insurance premium for service charge year 2020/21 does not fall for consideration. The Tribunal must focus on the charges in the preceding three years dating back to 2017/18 and the subsequent year of 2021/22.

57. It is conjecture on the Applicant's part that the buildings insurance would have been invalidated due to fire risk posed by the faulty installation of the electrical cover/damage to fuse box or from a trip hazard created by a buckling carpet in the communal hallway. Reference is also made to front door keys being handed out, but this is similarly unsubstantiated in terms of any effect upon the insurance.

58. The Respondent had a contractual duty under the lease to effect insurance. Copies of certificates of insurance effected with AXA Insurance covering the periods from 1 July 2017 through to 30 June 2022 are produced. Insurance brokers were utilised whose letter of 5 April 2023 summarises how an extensive market exercise was undertaken at the policy renewal in 2018. Of the ten insurers

approached, the most competitive and lowest premium was accepted. A market exercise was repeated upon renewal in 2019. The brokers state that real estate market conditions changed significantly in 2020 and positive terms were negotiated for renewal in 2020 and 2021.

59. Whilst the contributions may seem high for a 1-bedroom flat, the Applicant has not produced any alternative quotes or evidence to indicate that the amount of the premiums was unreasonable.

60. It follows that the Tribunal finds that the buildings insurance charges for the disputed years were reasonably incurred and reasonable.

Management fees - £95.94 (2017/18) & £115.00 (2018/19),(2019/20) & (2021/22)

61. No consideration will be given to the management fees for 2020/21 which have already been disallowed by the County Court and credited to the Applicant's service charge account.

62. The first main limb of the Applicant's case concerns access to her electricity meter, which she says could not be replaced because it is obstructed by the electricity cover fitted in March 2017. She attributes this to poor management.

63. The second main limb of the Applicant's case concerns the unauthorised replacement and condition of the communal hall carpet. The Applicant describes it of inferior quality to the one replaced, and it proceeded to "buckle" presenting a trip hazard.

64. Photographs are supplied of both the carpet and electricity cover.

65. The Respondent's advocate argued that at its very highest, the Applicant's remedy is for alleged breach of contract and disrepair to be pursued as a separate claim/counterclaim. Whilst the Applicant did refer to a breach of the landlord's covenants, the key point emerging and which she emphasised orally, was that the claim is for unreasonable charges. In essence, the Applicant's case is that the management fees were unreasonable due to a lack of management. This arises principally from what the Applicant says is an ongoing failure to resolve a safety issue with the electricity cover and delay in replacing the hall carpet.

66. The Tribunal dismisses the Respondent's argument that section 19(1)(b) is not engaged. The management fees are not "works" but section 19(1)(b) is not limited to works. It refers to the "provisions of services *or* the carrying out of works". The agents are providing a

management service on behalf of the landlord for which a management fee is charged. Under section 19(1), the issue for the Tribunal is whether the management fees were reasonably incurred, and the management service was of a reasonable standard.

The electric cover

67. The Applicant's supplemental bundle contains a communication from Pierpoint, the managing agents, of 20 January 2020 which refers to the leaseholder erecting a cupboard. It is not clear on its face if this is the same cupboard that houses the electrical equipment. In any event, Mrs Willis confirmed that the electric cover works were undertaken by Pier Management following a health and safety assessment. She has not personally been to the property but denied that any repair was needed.

68. The Respondent's position in this regard is set out in its statement of case. It states that the Applicant has offered no evidence of damage to the fuse box or that access is obstructed. The Respondent claims to be unaware of any essential services put to jeopardy by the electrical cover. It says the electric panels have been boxed in with fire resistant materials to prevent the risk of fire spread in line with the recommendation of a heath and safety survey, a copy of which is supplied, dated 25 May 2015.

69. The Applicant's supplemental bundle contains an "Important safety notice" from npower dated 17 December 2020. It records that a prepayment meter could not be installed above 1.8m as there was no means to install it at a lower point due to "cupboard obstruction". It adds: "Will need to re-site meter + meter board". No mention is made of the Applicant's existing meter being obstructed or damaged.

70. Moreover, there is a lack of supporting evidence that the Respondent was alerted to any issue with the electric cover prior to 2020. There would be no basis to make a deduction from the management fee between 2017/18 to 2019/20 for a management failure if the concerns had not yet been recorded. Even if the Applicant has complained since 2017, the Tribunal cannot establish if there is in fact an obstruction requiring remedial action in the absence of supporting evidence when the Respondent denies categorically that a problem exists. The position cannot be gleaned from the photographs.

71. A fairly comprehensive 'asset site inspection & general risk assessment' was conducted for the Respondent on 18 October 2022 by 'centrick', the new managing agents since August 2022. Various items of concern are flagged, but nothing is identified with regard to the electric cover.

72. There is simply insufficient evidence to indicate that the management service was not provided to a reasonable standard due to matters pertaining to the electric cover.

The carpet

73. Issues over the hall carpet did not arise until December 2020 onwards and so this could not justify the claim going back to previous service charge years. The management fees have already been disallowed and credited for service charge year 2020/21. That leaves the claim for 2021/22.

74. It is undisputed that the carpet in the communal hallway was replaced by neighbouring tenants in December 2020 and this was likely to be a breach of the lease. Mrs Willis confirmed that Pier Management had contact with the lessees, not their tenants, and were made aware that the hall carpet had been replaced without the Respondent's permission.

75. The Applicant complains of the lack of action by the managing agents in addressing the unauthorised works. It is the Respondent's position that it took the view not to take enforcement proceedings and to maintain/replace the carpet as and when needed. It noted that no loss had occurred to others with the relevant leaseholder having met the costs of the replacement carpet. This was a reasonable position to take. The Respondent was not compelled to initiate enforcement action.

76. In her application, the Applicant states that the carpet is "now buckling" indicating it had not occurred immediately. Quite when the Respondent was alerted to the carpet having become a trip hazard is unclear, but it is recorded in the Respondent's own 'asset site inspection and risk assessment' dated October 2022. The Applicant confirms that the carpet was replaced in April 2023 and suggests that this has only occurred due to the Tribunal proceedings. Whether or not that is so, there is no application before the Tribunal in respect of the 2022/23 service charge.

77. Once the carpet was flagged 'red' as an internal trip hazard within the general health and safety risk assessment of October 2022, the Respondent was clearly on notice that action was required. There is no substantive evidence of a failure to reasonably manage in terms of the carpet, prior to this time.

78. Even if there were failings before 31 March 2022, it is appropriate to look at the level of fees charged when considering whether the management fees were reasonable. The Tribunal considers that the management fees were much lower than the usual market rate.

Furthermore, throughout the disputed period, clearly the managing agents were providing services by arranging insurance, undertaking some repairs, invoicing, and providing other services, such as dealing with leaseholder communications. Whilst the managing agents did not provide all services as required by the lease (e.g., no budgets, accounts or reserve fund), the fees correspond with the level of service provided.

79. The Applicant is aggrieved that she was not consulted before the works to replace the carpet were undertaken. The fact remains that the Respondent was not obliged to notify the Applicant in advance of the works in the communal area for which it is responsible. If a contribution exceeding £250 per leaseholder was to be sought for qualifying works, then the consultation requirements under section 20 of the 1985 Act would have been triggered, but no issues are raised in this regard.

80. Various points are taken by the Applicant over anti-social behaviour by neighbouring tenants between 2018 and ongoing into 2021. Importantly, matters raised late in the supplemental bundle were before the County Court whereupon the 2020/21 management fee was disallowed. They cannot be relied upon again. It is further noted that a counterclaim by the Applicant for damages for deprivation of the right to enjoy the property and being placed at personal risk was struck out by the County Court on 7 December 2021. Permission to appeal was refused on 3 February 2022. The same matters cannot be re-litigated through these proceedings.

81. The Tribunal does have concerns over the standard of maintenance including a series of areas identified as in poor condition within the Respondent's site inspection report of October 2022. Notwithstanding those concerns, the Tribunal finds on the evidence presented that the management fees for the disputed years were reasonably incurred and reasonable.

Conclusion

82. The Tribunal concludes that the relevant service charges for buildings insurance and management fees were payable under the lease and reasonably incurred/reasonable.

83. Although the Tribunal has not been satisfied there was basis for this claim to succeed, it is noted from the photographs supplied that the building looks to be in a very poor and neglected condition with various signs of disrepair. Numerous risk assessment improvements are identified within the October 2022 report. Without imputing liability in any future claims, these proceedings should have highlighted wider concerns over the condition of the building and the Respondent is alerted to the need for the building to be actively managed.

Applications under s.20C and paragraph 5A.

84. There is no provision within the lease for the Respondent to recover its costs in this application from the Applicant as an administration fee. Accordingly, no order is made under paragraph 5A of the 2002 Act.

85. Potentially, costs of the proceedings could be recoverable by the Respondent as a maintenance charge pursuant to paragraph 1(9)(a) to Schedule 5 of the lease. The Respondent resists the making of an Order under section 20C of the 1985 Act preventing the recovery of the cost of these proceedings through the service charge. The Respondent maintains that the Applicant has sought to re-litigate matters decided by the County Court and ought to have been raised in those proceedings. The Respondent describes the Applicant's case as vague and incoherent and points to her failure to comply with case management directions, with documents submitted in piecemeal fashion including a substantial bundle on 15 May 2023, less than 1 month before trial.

86. The Applicant responded to complain about the Respondent's submission of a skeleton argument on the last working day before the hearing with numerous attachments, giving little opportunity for them to be considered. The Applicant posed the question of who would deal with her grievances if not the Tribunal.

87. The skeleton argument provided early notice of how the Respondent intended to argue the case and did not raise new matters. However, the legal authorities should have been submitted earlier.

88. Although the application has failed (and struck out in part), the Respondent advanced lengthy arguments taking up hearing time in an attempt to strike out the entire proceedings, which did not succeed. In all the circumstances, the Tribunal considers it just and equitable to limit recovery of the Respondent's costs through the service charge to 50%.

89. Fees normally follow the event. Given that the Applicant has not succeeded in her application, no award is made in respect of the Tribunal application/hearing fees.

Name: Judge K. Saward Date: 16 June 2023

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

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 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 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..... 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) ……..

(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 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Building Safety Act 2022

Section 116

(1) Sections 117 to 125 and Schedule 8 make provision in connection with the remediation of relevant defects in relevant buildings.

(2) In those sections—

(a) sections 117 to 121 define "relevant building", "qualifying lease", "the qualifying time", "relevant defect" and "associate";

(b) section 122 and Schedule 8 contain protections for tenants in respect of costs connected with relevant defects, and impose liabilities on certain landlords;

(c)…

(d)…

(e)…

Section 117

(1) This section applies for the purposes of sections 119 to 125 and Schedule 8.

(2) "Relevant building" means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—

(a) is at least 11 metres high, or

(b)has at least 5 storeys.

This is subject to subsection (3).

Section 118

(1) This section applies for the purpose of section 117.

(2) The height of a building is to be measured from ground level to the finished surface of the floor of the top storey of the building (ignoring

any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms).

(3) When determining the number of storeys in a building—

(a) any storey below ground level is to be disregarded;

(b) any mezzanine floor is to be regarded as a storey if its internal floor area is at least half of the internal floor area of the largest storey in the building which is not below ground level.

(4) In subsection (2) "ground level", in relation to a building, means—

(a) the level of the surface of the ground immediately adjacent to the building, or

(b) where the level of the surface of the ground on which the building is situated is not uniform, the level of the lowest part of the surface of the ground immediately adjacent to it.

(5) For the purposes of subsection (3) a storey is "below ground level" if any part of the finished surface of the ceiling of the storey is below the level of the surface of the ground immediately adjacent to that part of the building.