FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2022/0325**
Property	**:**	**Flat 1, 30 Upper Berkeley Street, London W1H 5QE**
Applicant	**:**	**Mr Modud Ahmad Ansar**
Representative	**:**	**Mr Shafaat Khan (under a Power of Attorney)**
Respondents	**:**	**Mr David Abeless, Mr Gabriel Abeless and Mr Simon Abeless**
Representative	**:**	**Mr Charles Knapper, solicitor, of Curtis Whiteford Crocker Solicitors**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Mr J Naylor MRICS MIRPM**
Date of hearing	**:**	**22 May 2023**
Date of Decision	**:**	**19 June 2023**

DECISION

Description of hearing

This has been a face-to-face hearing. The decisions made are set out below under the heading "Decisions of the tribunal".

Decisions of the tribunal

(1) In relation to each of the service charge years 2015/16 to 2021/22 inclusive:

- the porterage charges are not payable at all by the Applicant;
- the Applicant's contribution towards the cleaning charges is limited to £100 per year;
- the Applicant's contribution towards the management fees is also limited to £100 per year.

(2) All of the other charges challenged by the Applicant in relation to the service charge years 2015/16 to 2021/22 inclusive are payable in full.

(3) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicant that none of the costs incurred by the Respondents in connection with these proceedings can be charged direct to the Applicant as an administration charge under his lease.

(4) The tribunal also makes an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Applicant that no more than 50% of the costs incurred by the Respondents in connection with these proceedings can be added to the service charge.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges.

2. The Property is a flat within a town house containing 6 flats.

3. The service charge items disputed by the Applicant are listed in a 'Scott' Schedule and are expanded on in a statement of case. The challenges cover the years 2015/16 to 2021/22. Broadly the same issues arise in relation to each service charge year, and therefore the summary below of the parties' respective submissions is broken down by category of service rather than by year.

The issues and the parties' respective submissions

The parties each made written submissions on the issues, and the issues were also discussed at the hearing. The parties' respective submissions are summarised below.

General point re accounts and bank statements

4. In written submissions Mr Khan expressed certain concerns about the changing of bank accounts and about certain entries on the bank statements. At the hearing he claimed that false bank statements had been provided by the Respondents and that the Respondents had fraudulently pretended that the accounts had been issued by their accountants. He explained why he considered the bank statements to be suspicious and pointed to items of alleged duplication.

5. Mr Knapper responded by referring to the bank statements in question and dealing with each point raised. He said that what appeared to be duplication could be simply explained by the fact that the bank statement in question was a rolling bank statement. He also commented on the other points raised. Mr Khan appeared to accept the points made by Mr Knapper and, having received a warning from the tribunal about the level of proof needed to demonstrate fraud, did not pursue these points further.

Cleaning

6. Mr Khan stated that he had spoken to the regular cleaner in 2014 who had told him that she would charge him £10 per hour if he required any cleaning. This had caused him to ask the managing agents why leaseholders were seemingly being charged much more than £10 per hour. He also stated that he had given the managing agents a recommendation of a cleaning company that charged £10 per hour and that he had complained to the Respondents about the level of charges. He added that between 2020 and 2021 no cleaning had been done for much of the year due to the COVID-19 pandemic but that leaseholders had still been charged £3,200 for the 2020/21 year. At the hearing he said that he believed that the cleaning was being done in-house by the managing agents.

7. In a written witness statement, Ms Laura Malik of Square Estate Management Limited – the Respondents' managing agents – stated that between 2020 and 2021 cleaning had been carried out wherever possible, that some extra cleaning had taken place once lockdowns were lifted, and that £200 had been deducted for the 2020/21 year.

8. At the hearing Mr Knapper for the Respondents said that the cleaning charges worked out at just over £60 per week, and this was for the communal areas for 6 flats.

Roof replacement

9. Mr Khan questioned how the Respondents knew that the roof needed replacing, and he also suggested that £30,000 was an unreasonably

high cost for roof replacement. In addition, as the roof replacement took place in 2019, he questioned why further roof works were necessary in 2021 and 2022. Mr Khan also referred the tribunal to an estimate for roof replacement for only £15,000 that he had obtained himself.

10. At the hearing Mr Knapper, referring to the relevant part of the hearing bundle, stated that surveyors had inspected the roof, prepared a section 20 notice, reviewed the leases and then sent out section 20 notices and tenders. He said that Mr Khan had raised no issues during the consultation process. Regarding Mr Khan's alternative estimate, Mr Knapper noted that the estimate was given on the basis of an inspection of the roof but he noted from the dates in the narrative that the firm giving the estimate must have inspected the roof after it had already been replaced, and therefore it was a meaningless estimate.

11. Regarding Mr Khan's objections about the carrying out of further repairs, Mr Knapper said that his instructions were that none of the repairs was carried out after the roof was replaced. In addition, the Respondents' cost allocation practice was to include roof repair and fire alarm maintenance in the same category, and he took the tribunal to the relevant section of the Respondent's bundle showing that at the relevant time there was consultation on the carrying out of fire alarm works.

Consultation

12. Mr Khan stated in written submissions that there had never been any consultation regarding the ongoing yearly service charges. At the hearing he said that his particular concerns related to the contracts for cleaning, for the managing agents, for the porter and for the building insurance. He assumed these to be long-term contracts, and there had been no consultation. He had asked the Respondents previously to provide copies of the contracts, but they had failed to do so.

13. The Respondents did not make any written response to the Applicant's written submissions on consultation. At the hearing Mr Knapper for the Respondents said that there were no qualifying long-term agreements.

Building insurance

14. In written submissions Mr Khan raised a concern as to the increase in the building insurance. At the hearing he said that the issue in relation to building insurance was in fact part of a general concern about lack of consultation.

15. Mr Knapper said at the hearing that the insurance contracts were one-year contracts and therefore could not be qualifying long-term agreements. Also, the Applicant had put forward no comparable evidence to show that the premiums were unreasonably high for any of the years of dispute.

Porterage charges

16. Mr Khan said at the hearing that, aside from the issue of consultation, the porterage charges were unreasonable because there was no need for a porterage service in a building of this nature.

17. Mr Knapper said that the role was not really that of a porter and that the word 'porterage' was probably a misdescription of what the job entailed. The job involved investigating and reporting on building issues to the managing agents who could then look into them further. The porter went to the building twice a week and the cost worked out at about £25 per week.

Managing agents' fees

18. Mr Khan said at the hearing that, aside from the issue of consultation, the service from the managing agents was poor. The agents did not oversee anything that happened in the building, no information was ever provided, and communication had been poor since 2016. He commented that he had only found out for the first time at the hearing what the porter's role was.

19. Mr Knapper said that the managing agents' fees worked out at about £8 per flat per week. The managing agents arranged insurance and had organised consultation on major works. His instructions were that the managing agents had dealt with any proper concerns raised by the Applicant, and he commented that the Applicant's statement of case did not set out the Applicant's exact concerns about management. He added that in certain instances the managing agents had paid for services using their own resources and then recovered the money from leaseholders later.

Repairs generally

20. Mr Khan said that no breakdown of the various costs had been provided. Mr Knapper responded that receipts had been provided on 17 October 2022, and Mr Khan accepted this.

21. Mr Khan then commented on specific items. He asked why the Respondents were billing for the cost of a hoover and Ms Malik said that it was bought for the building. He then asked about the security cameras, and Ms Malik said that they had been installed for general

security purposes, not for the more limited purpose that he had assumed in relation to the post. Regarding the charge for drain cleaning, Mr Khan said that he had not seen any drain cleaning and that the drains could only be cleaned by gaining access through his flat, but Ms Malik said that there was another access point.

Accountancy fees

22. Mr Khan withdrew this challenge at the hearing on behalf of the Applicant.

Cross-examination of Ms Malik

23. Mr Khan was given the opportunity to cross-examine Ms Khan on her evidence. No specific points worth noting arose out of that cross-examination. The tribunal asked Ms Malik about the arrangements regarding cleaning, porterage and the contract with the managing agents. She said that there were no written contracts and, after some discussion, she confirmed that the oral contracts in relation to these services were all on a rolling basis.

Tribunal's analysis

General point re accounts and bank statements

24. Based on the information before the tribunal, there is no credible evidence of fraud on the part of the Respondents in relation to the accounts or the bank statements.

Cleaning

25. Leaving to one side the issue of consultation, the Applicant has provided insufficient evidence that the cleaning was sub-standard or that the charges were unreasonably high. It may well be the case that there was less cleaning whilst the country was in full or partial lockdown due to the pandemic, but the Applicant has failed to show that he paid too much for the service provided. Mr Khan's conversation with a cleaner in 2014 does not constitute persuasive evidence that the charges were too high, and nor is his assertion that there existed a cleaning company that charged £10 per hour in the absence of any specification or any information about the cleaning company in question.

Roof replacement

26. Mr Khan's assertion that the cost was too high appears to be based on little more than a general feeling. He has no expertise in these matters

and appears not to have consulted any experts at the time. The alternative quote obtained by him once the roof had already been replaced is of little value, and it is hard to see why a reputable roof specialist would have quoted on that basis. The challenge to the cost of the roof replacement therefore fails.

27. On the separate question of whether roof repairs were carried out after the roof was replaced and – if so – what this says about the reasonableness of the cost of those works or the standard of the roof replacement works, the evidence before the tribunal is both thin and unclear. In response to the Applicant's objections the Respondents assert that no roof repair works were carried out after the roof was replaced, and they point to what seems a slightly eccentric method of cost allocation involving the amalgamation of fire alarm costs and roof costs into one category. However, there is no indication in the Applicant's written statement of case that there was a specific concern about possible further roof works, and the Applicant has not provided any compelling evidence that repairs were carried out shortly after the roof was replaced or that – even if this did happen – the cost was unreasonable and/or the original roof replacement works were sub-standard. Accordingly, on the evidence before us, this challenge also fails.

Building insurance

28. Again leaving to one side the issue of consultation, the Applicant challenges the reasonableness of the cost of the building insurance but does not support his challenge with any evidence. There is no comparable evidence from other buildings nor any alternative quotes. We have considered the cost of the building insurance as charged to leaseholders, and on the basis of the information before us there is no proper basis for declaring the amount to be unreasonable (subject to any issue regarding consultation, as to which see later).

Managing agents' fees

29. Mr Khan has raised various concerns about the quality of management. Whilst he has not provided the tribunal with much detailed evidence, he has produced some limited evidence of disrepair and some limited evidence of poor communication. The annual fees are £3,000 for the building for each year of dispute, which works out at £500 per flat. This would be on the outer edge of what is reasonable for a good and full service. However, we do have some concerns about the quality of the service based on Mr Khan's limited but credible evidence. In addition, there is no evidence before us that the managing agents have done all that much work for their £3,000 per year.

30. Taking what is necessarily a broad-brush approach and subject to the separate issue of consultation (as to which see later), based on the

tribunal's knowledge of the market and taking into account the concerns about the quality of aspects of the service, we consider that a reasonable fee would be £300 per flat.

Porterage charges

31. By the Respondents' own admission, the porter used by them is not actually a porter. It seems that his role is to investigate and report on building issues to the managing agents, although this seems to have been unknown to Mr Khan and it is an unorthodox way of managing a building. In principle the role would appear to duplicate part of the managing agent's role, thereby leading to a risk of double charging for the same service. However, the key issue in our view is whether the combined cost of the managing agents and the porter was reasonable for the service provided.

32. The managing agents have been charging £3,000 per year for the building for each year of dispute and the porterage charges have been £1,300 for each year of dispute. The aggregate of these amounts is £4,300 per year which works out at just over £715 per flat. This in our view is unreasonably high, given that the porter's role is limited to matters that one would expect a managing agent to be able to take care of. We have already reduced the managing agents' fee to £300 per year in respect of the Property (i.e. the Applicant's flat) and we do not consider that a further charge for porterage is justified on top of this. Therefore, the porterage charge is disallowed in its entirety.

Repairs generally

33. Mr Khan raised a few issues at the hearing in relation to repair and they were answered by Ms Malik. We are satisfied that these answers dealt with the queries well enough that there is no proper basis on the evidence before us for concluding that any of these items is not payable.

Accountancy fees

34. Mr Khan withdrew this challenge and therefore it is no longer a point in dispute.

Consultation

35. In relation to the building insurance, the Respondents submit that each insurance contract is only for a year and that therefore it cannot be a qualifying long-term agreement ("**QLTA**"). We accept that it is normal practice for building insurance contracts to be only for a year, and there is no evidence before us that the building insurance contracts were for any longer period. Therefore, on the basis of the evidence before us the

building insurance contracts were not QLTAs and there was no statutory requirement to consult leaseholders.

36. However, in relation to the contracts for the managing agents, the porter and the cleaning, the position would seem to be different. At the hearing, it was accepted on behalf of the Respondents that all of these contracts had been in place on a rolling basis. Whilst none of the contracts was in writing, a contract does not have to be in writing to be a QLTA. The Respondents' representatives have not sought to argue that the position has changed over time. The evidence therefore indicates that each of these contracts has been a QLTA from and including the first year of dispute, assuming that each one fits the definition of a QLTA.

37. The Respondents' representatives accepted at the hearing that there had been no statutory consultation on any of these contracts at any stage, but for obvious reasons they did not want these contracts to be characterised as QLTAs. Under subsection (2) of section 20ZA of the 1985 Act *""qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months"*. Subsection (3) then states that the Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement in the circumstances prescribed by those regulations.

38. Paragraph 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("**the 2003 Regulations**") sets out certain categories of agreement that are not qualifying long term agreements, but none of these exceptions apply to our case. One of the categories is contracts of employment, but there is no evidence before us that any of these services has been provided pursuant to a contract of employment. There is also nothing in the 1985 Act or the 2003 Regulations to indicate that an unwritten contract cannot be a QLTA.

39. Our conclusion, based on the evidence before us, is that the contracts for the managing agents, the porter and the cleaning were all QLTAs for all of the years of dispute, namely from 2015/16 to 2021/22 inclusive. The Respondents have neither complied with the consultation requirements in relation to these contracts nor applied for dispensation.

40. Section 20(1) of the 1985 Act states that *"Where this section applies to any … 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 agreement, or (b) dispensed with in relation to the … agreement by … the appropriate tribunal"*. Subsection (5) of section 20(1) deals with the mechanism for setting the amount to which contributions of tenants will be limited in these circumstances, and

subsections (6) and (7) then state that the contribution will be limited accordingly. Under paragraph 4(1) of the 2003 Regulations, *"Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100"*.

41. Accordingly, by virtue of section 20(1) of the 1985 Act the Applicant's contributions to the managing agents' fees, the porterage charges and the cleaning charges must be limited. And by virtue of paragraph 4(1) of the 2003 Regulations, read together with section 20 of the 1985 Act, they are limited to £100 per year per service (i.e. £100 for managing agents' fees, £100 for porterage charges and £100 for cleaning charges) by reason of the failure to consult.

42. This limitation is in addition to any other limitations set out within this determination. In particular, for the reasons given earlier, the porterage charges are not payable at all.

Cost applications

43. The Applicant has applied for a cost order under section 20C of the 1985 Act ("**Section 20C**") and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

44. The relevant parts of Section 20C read as follows:-

(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 … the First-tier 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 …".

45. The relevant parts of Paragraph 5A read as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

46. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under his lease.

47. The Applicant has been successful on some of the issues in dispute, and those on which he has been successful are very significant. His success on those issues comfortably justifies the making of the application. In these circumstances we do not consider that it would be fair for the Applicant to be charged directly for any of the Respondents' legal fees as an administration charge. However, a significant number of the Applicant's challenges have been quite weak, and it seems to us that if the Applicant had just focused on his strong points the whole process could have been quicker and cheaper in terms of legal costs. In addition, unsubstantiated claims of fraud were made against the Respondents, and these did not do credit to the Applicant. Therefore, we do consider that the Applicant should make some contribution towards the Respondents' legal costs by way of service charge, to the extent that the legal costs are recoverable as service charges under the terms of the Applicant's lease.

48. Accordingly, we make the following cost orders:

- a Paragraph 5A order in favour of the Applicant that none of the costs incurred by the Respondents in connection with these proceedings can be charged direct to the Applicant as an administration charge under his lease.

- a Section 20C order in favour of the Applicant that no more than 50% of the reasonable costs incurred by the Respondents in connection with these proceedings can be added to the leaseholders' service charges.

Name: Judge P Korn **Date:** 19 June 2023

RIGHTS OF APPEAL

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

B. 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.

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

D. 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.

APPENDIX

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 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 agreement, or (b) dispensed with in relation to the … agreement by … the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any … 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 … under the agreement.

(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 … 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 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 … is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.

Service Charge (Consultation Requirements) (England) Regulations 2003

4(1) Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.