FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UL/LSC/2022/0104
Property	:	9 Weirview Place, Godalming, Surrey, GU7 1DE
Applicant	:	Mr Stephen King
Representative	:	
Respondent	:	G & O Securities Limited
Representative	:	Mr Ashir Adnan Urbanpoint Property Management
Type of Application	:	Applications to determine service charges– section 27A Landlord and Tenant Act 1985 Applications that costs not be recoverable as charges- section 20C Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	:	Judge J Dobson Mr M J F Donaldson FRICS
Date and venue of hearing	:	17th April 2023
Date of Decision	:	30th June 2023

DECISION

Summary of the Decision

1. **In respect of the remaining 11 items in dispute from the Applicant's application concerning service charges for 2021 pursuant to section 27A of the Landlord and Tenant Act 1985, the Tribunal determines that items 10, 14 and 21 are not payable as service charges and items 9, 16, 16, 18, 19, 20, 22, 23 and 24 are payable. Items 29 is payable to a reduced sum. Item 28 involved no service charge sum in 2021.**

2. **The Tribunal grants in part the Applicant's applications pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 such that 50% of the Respondent's cost of the applications may not be recovered as service charges or administration charges.**

3. **The Respondent shall pay to the Applicant the application fee of £200 within 14 days of issue of this Decision. The Applicant shall bear the hearing fee.**

The Background

4. The Applicant is the lessee of 9 Weirview Place, Godalming, Surrey, GU7 1DE ("the Property"). The Respondent is the Freeholder of Weirview Place ("the Building"). The Building is a three- storey former office building converted into a block of flats in or about 2016 and further developed subsequently. There are 50 flats, including the 14 added during the later work to the second floor, the other 36 being within the original block.

The Application and history of the case

5. The Applicant sought determination of service charges for the service charge year ending 2021 by application dated 16th September 2023. [3-14]. The costs originally in dispute in respect of which the Applicant was required to pay a portion by way of service charges amounted to £26,103.02. The application identified that the percentage portion payable by the Applicant was 1.3385%, so would have been £349.39. Whilst there are various other lessees, they were not parties to the proceedings and so, irrespective of whether they have on the one hand accepted or admitted the service charges or on the other hand have not, they and sums demanded from them fall outside the scope of this Decision. If they had also applied, the position would be different.

6. 29 items were originally said to be in dispute, at overall costs ranging from £78 to £8256.00. Items 11- 24 were said to have been wrongly allocated and 25-29 were indicated to be challenged as supporting documents had not been provided. The application suggested that there may be other items capable of being disputed but as those have not been identified there is nothing for the Tribunal to determine about them.

7. The Applicant specifically sought the Tribunal to determine and/ or otherwise order that:

   i) the Respondent shall not allocate costs of internal flat repairs or items as a result of its development projects to the costs payable as service charges;
   ii) the Respondent reimburse costs wrongly allocated; to determine whether flats having internal repairs paid for by all lessees are owned by the Respondent;
   iii) determine whether water leak costs have been wrongly charged.
   iv) the Respondent shall not drip-feed information relating to this case, make promises to send information in a timely manner and not do so making the application to the tribunal difficult and require frequent revisions;
   v) the managing agent shall not charge costs associated with this case to the lessee
   vi) the audit paid for be revealed and be adequate to show that costs are proportionate and properly allocated
   vii) "Advise whether the landlord, knowingly mis-allocating funds is committing fraud." (retaining the Applicant's original words in full in this instance).

8. Within the application form, the Applicant also made an application for an order under section 20C of the Act that the costs of the proceedings should not be recoverable by the Applicant as service charges and an application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the title of which will continue to be used in full), for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished.

9. Directions were given following a case management hearing on 25th January 2023, following an online mediation which reduced but did not fully resolve the issues raised in the application. It is important nevertheless to record that the Respondent was recorded in those Directions as having conceded some 16 items of service charge challenged by the Applicant and its was additionally stated that the Respondent would reverse the service charges for those items. In addition, 2 further items were no longer pursued by the Applicant. That left, it was recorded, 11 items in dispute for determination. The 11 items in issue related to a total overall cost of £10,446.00 and the Applicant's share of those would at first blush be £139.82 in total. However, the Applicant is recorded to have stated that the circumstances relating to 4 of the items remains relevant to other items requiring determination and so documentation was sought in relation to them.

10. Further Directions were required in respect an application by the Applicant for disclosure of documents by the Respondent. Directions given in 14th February 2023 required the Respondent to provide full disclosure of all circumstances and documents relating to an insurance claim, varying other dates as required. Further Directions on 27th February 2023 noted that an invoice for works and confirmation of funds received from the

insurer had been provided to the Applicant. Whilst it was implicit that did not entirely comply with the previous Directions, the Tribunal observed that it considered that "a disproportionate amount of its time …… is being spent on this point" and did not provide for any further disclosure.

11. A Scott Schedule produced contained 14 entries for the above 15 matters remaining in dispute and requiring determination or said to be relevant to the dispute. By far the largest item related to cost of insurance and a related item, although those were included in the 4 items for which the Applicant required documentation but not part of the 11 items for determination.

12. The Directions provided for the Applicant to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Applicant produced a PDF bundle amounting to 293 pages in advance of the final hearing (although pages [199- 290] were copies of insurance documentation).

13. On the day of the hearing and following the hearing, the Applicant sent an email to the case officer, copying in the Respondent and stating that only the insurance excess had been conceded. More particularly, it was said that 2 items had been withdrawn by him, 13 had been conceded and 14 were in dispute, the conceded items being stated to be 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 15 and 25, whereas the items remaining in dispute were said to be 9, 10, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28 and 29.

14. A difficulty with that was that the extent of the ongoing disputed items had not been clarified in the hearing and the Applicant had not identified prior to the email that the 11 items identified in the Directions were not all of those relevant such that the content of the Directions was wrong. However, the parties presented their cases in the hearing about the additional 2 items, 28 and 29 and indeed their written cases covered the items, so whilst the Tribunal's understanding of the reason for that was not what it turned out to be, in the event the Tribunal received the information that it needed in order to determine the items.

15. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so, not least given the limited nature of the service charge sums which the Tribunal was required to determine. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering.

16. This Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made

for the purpose of deciding the relevant issues remaining in these applications. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

17. There has been a rather longer delay in this Decision being produced than the usual and longer than the target date. It is only appropriate to sincerely apologise to the parties for the delay since then and for any frustration and inconvenience arising. The Tribunal does so.

The Lease

18. The lease ("the Lease") of the Property (the description also used in the Lease) was provided [55- 96]. It is dated 7th January 2016 between the Respondent and a previous lessee who the Tribunal understands to be the mother of the Applicant. The term of the Lease is 125 years. The Property is described as a ground floor flat.

19. Service charges are defined as the "Tenants Proportion" of "Service Costs". The Tenants Proportion is defined as "such fair and reasonable percentage as the Landlord shall determine and notify the Tenant from time to time". The specific percentage of 1.3385 is that percentage as identified by the Applicant (the appropriateness of which was not in dispute in this application). Service Costs are defined as the costs listed in Part 2 of Schedule 7.

20. Insurance costs [62] are defined in 1.2.12 as being the proportion of the cost of premiums and other fees and expenses reasonably incurred.

21. The Retained Parts include the main structure, the areas between ceilings and the floors above, windows except within the Property, common parts and usual elements outside of the Building itself such as parking spaces.

22. Various Services to be provided by the Respondent are set out in Part 1 of Schedule 7, including:

> "1.1.1 cleaning, maintaining, decorating, repairing and replacing the Retained Parts and remedying any inherent defect"

23. The Service Costs are set out in Part 2 of Schedule 7 and are (paragraph 1.1.1) the total of the "all of the costs" of fulfilling various obligations set out, including:

> "1.1.1.1 providing the Services

24. In addition, paragraph 1.1.2 provided that the Service Costs include:

> "the costs, fees and disbursements reasonably and properly incurred of:

1.1.2.1 managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same;
1.1.2.2 accountants employed by the Landlord to prepare and audit the service charge accounts; and
1.1.2.3 any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services"

25. Schedule 4 of the Lease sets out the Tenant Covenants, which include payment of the estimated Service Charge for the given year by two equal instalments on 1st January and 1st July (paragraph 2.1) and payment on demand of the balance where the actual Service Charge exceeds the estimates (paragraphs 2.3). The rest of the service charge mechanism is provided in paragraph 4. That includes the Respondent sending an estimate of the Service Costs for the Service Charge year and an estimate of Service Charges as soon as possible after the start of each Service Charge Year and then after the end of the Year preparing and sending a certificate showing (actual) Service Costs and Service Charges.

26. In addition, there is a covenant (paragraph 7) for the lessee to pay on demand the Respondent's various costs as set out "in connection with or in contemplation of" for example the enforcement of any of the Tenant's Covenants and matters in relation to notices and forfeiture.

The relevant Law

27. Essentially, pursuant to section 18 of the Act, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.

28. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

29. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

30. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

31. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute, and none were referred to by the parties.

32. However, examples of relevant authorities for the purpose of this Decision and the key points arising from them are set out below:

Forcelux v Sweetman [2001] 2 EGLR 173

There are two elements to the answer to the question of whether the cost of any given service charge item is reasonably incurred, namely

i. Was the decision-making process reasonable; and
ii. Is the sum to be charged reasonable in light of the evidence?
The second element was stated to be particularly important.

Lord Mayor and Citizens of Westminster v Fleury and Others [2010] UKUT 136 (LT)

The first element principally involves a consideration of whether the proposed method is a reasonable one in all the circumstances, even if other reasonable decisions could have been made. However, that is not a complete answer to the question and other evidence should be considered.

The London Borough of Hounslow v Waaler [2017] EWCA Civ 45

The process is relevant but to be tested against the outcome. The fact that the costs of the work will be borne by the lessees is part of the context to whether the costs have been or will be reasonably incurred and interests of the lessees must be conscientiously considered and given the weight due, although they are not determinative- the lessees have no veto and are not entitled to insist on the cheapest possible means of fulfilling the landlord's objective. Reasonableness is to be determined applying an objective test.

Garside v Maunder Taylor [2011] UKUT 367 (LC)

The nature and location of the property and the amount demanded in previous years, in particular any significant increase and the financial impact on the tenants are relevant to the question of whether costs have been reasonably incurred. So too, the degree of disrepair and the urgency or otherwise of work being undertaken.

Plough Investments v Manchester City Council [1989] 1 EGLR 244.

The lessees are not entitled to require the landlord to adopt a minimum standard of repair, the choice being the landlords' provided it is reasonable, but on the other hand, the lessor could only recover for what were truly repairs. That assumes of course no lease provision allowing recovery in respect of improvements, although it has been said there is no bright line between repairs and improvements.

33. In respect of how the landlord addresses required works, the question is whether the method adopted was a reasonable one in all the circumstances. That is to say, one of what may be a number of reasonable courses, even if other reasonable decisions could also have been made**.** The correct answer to the question of works being reasonable is fact sensitive and can only be answered by considering all the evidence relevant in light of the provisions in the Lease.

The Hearing

34. The Tribunal's original intention was for the application to be determined on the papers. The Applicant sought an oral hearing. The hearing was conducted at Havant Justice Centre in person.

35. Mr King the Applicant represented himself. He was accompanied by Ms Janice Pickford. The Respondent was represented by Mr Ashir Adnan, accompanied by Mr Arjun Nath. There were two observers.

36. The Tribunal received written witness evidence from Mr King [16- 20 and 26-27] and Mr Nath [21- 25]. Oral evidence was given by the Applicant insofar as matters stated by him amounted to evidence of factual matters rather than submissions about written evidence. The Applicant did not give specifically separate evidence from the witness box in the circumstances of this hearing and hence the distinction was less clear than often appropriate, but the Tribunal adopted a procedure consistent with the issues to be determined and the value of them. Oral evidence was given on behalf of the Respondent by Mr Nath, whose role was distinct from that of Mr Adnan.

37. The Tribunal is grateful to all of the above for their assistance with these applications.

38. The Applicant raised a preliminary issue in respect of insurance which he had added into the Scott Schedule and comprised one of the entries on the Scott Schedule, although related to two of the original item numbers in the application which had it was understood by the Tribunal had been conceded or not pursued, but in fact related to item 28 which was not conceded and so going beyond the 11 items referred to above. The Applicant asserted that the large insurance claim would affect subsequent insurance premiums increasing them and that he had received no meaningful information. However, the Tribunal was not persuaded that had any impact on service charge items in dispute for the service charge year in question, 2021. Indeed, the Applicant accepted that it would not.

Consequently, the Tribunal did not consider that disclosure of any additional documents in the course of the proceedings was proportionate.

39. The Applicant also wished the Tribunal to address the items conceded, he said in closing submissions, there having been no formal agreement. He was not happy with a lack of clarity. He re-iterated his opinion that items had been wrongly allocated where the worst that happened for the Respondent was that items were wiped off the service charges. Mr Adnan said that the items had been agreed. He was concerned at the allegation of misappropriation of funds, which the Respondent did not accept. As the Tribunal identified, there had been a private agreement and the Tribunal did not have details of why and how that had been reached.

40. The Tribunal's jurisdiction is to determine matters within its jurisdiction which remain in dispute and in need of determination. The Tribunal is unable to deal with matters falling outside of the scope of those relevant in making that determination.

41. The Tribunal is happy to repeat that 13 of the original items of Service Charges which were challenged by the Applicant were stated to the Tribunal during the earlier history of the case to be conceded by the Respondent and so not payable by the Applicant. It can do no more in these circumstances.

42. The Tribunal took each item remaining in dispute in turn and in numerical order, hearing from each party about the given item before moving on to deal with the next item. The parties were able to make any additional comments at the end of dealing with the items.

43. The Tribunal did not inspect the Property. The Tribunal was content that the nature of the Building and any matters in respect of which there was a need for visual evidence were demonstrated by photographs such that it was not necessary to inspect in order to the determine the matters remaining for determination.

Consideration of the Disputed Service Charge Issues

44. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The cases were set out in writing, supplemented by recorded oral evidence and submissions. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the individual items below. The numbering reflects the item numbers in the Applicant's original application. The amounts are the overall Service Costs and the Applicant's share, being 1.3385%.

9) Lightwell Repairs (£3,600.00 x 1.3385 = £48.19)

45. This was the largest remaining disputed item.

46. The Applicant asserted that the works needed to clean the lightwell were a consequence of the building works to develop the second floor of the

Building (the Applicant referred to the third floor but it was apparent that involved counting the ground floor as the first). Debris had fallen or been thrown into the lightwell.

47. In response to a question from the Tribunal, Mr Nath clarified that there had been scaffolding in the lightwell and stated that the Building had been cleaned after the works. He added that after removal of the scaffolding there had been cleaning to the lightwell at all floor levels and to the artificial grass to the bottom.

48. Mr Nath was clear in his evidence that the cleaning due to the pigeons was separate to that from development works to the second floor and related scaffolding. Mr Nath said that pigeons and/ or other birds had obtained access to the lightwell from above and once they were at the bottom of the lightwell they struggled to get (up and) out. He stated that there had been pigeons and mess from pigeons which had been the subject of complaints.

49. The Applicant contended that there had been a willingness on the part of the Respondent to charge matters to service charges inappropriately. Mr Nath stated that a very small number of invoices had been queried, which he said had been conceded because the Respondent did not want to charge for matters not appropriate. He asserted that misallocation was a consequence of sheer volume of items.

50. It was apparent from photographs [126] that there was debris and dirt from the works to the second floor, which was not in any event in dispute and did not of itself provide any answer, although attending to that would not have been properly chargeable as service charges. The question was whether there had been separate cleaning subsequently which was properly chargeable as service charges.

51. The Tribunal considered that Mr Nath came across well in respect of this item. There was no other specific evidence presented of damage due to birds or pigeons, although netting had been fitted, but on balance the evidence was sufficient for the Respondent to demonstrate this item to be reasonable.

52. There was no argument advanced that the item would not be payable under the Lease if the Respondent's case was accepted and nor was there any issue raised as to the amount of the Service Cost for the item or any alternative cost offered. The invoice was included [125]. In the absence of any challenge and supporting evidence, the Tribunal accepted the costs of the various individual items to be reasonable. The Tribunal considered the amount could be high but had no insufficient evidence on which to form any firm opinion of that as correct even if it had been required to do so, which it was not.

Decision

53. The Tribunal determined that this item was payable and the amount was reasonable.

10) Asbestos Survey (£402.00 x 1.3385% = £5.38)

54. The Applicant noted that the 2012 Asbestos Regulations were in force at the time of the original development and again when the top floor was developed. He asserted that any survey was required for the purpose of the development works but not otherwise and there was a duty to obtain such a survey then. He also stated that a survey was undertaken after the top floor works were complete and there was no asbestos identified. He therefore contended that there was no need for the survey charged for. The Applicant's share is a very modest sum.

55. Mr Nath did not accept that a previous survey had been undertaken. He stated that the Respondent had been asked by buyers and sellers of the flats whether asbestos is present in the Building and that the Respondent was unable to answer without obtaining a report. He argued it was therefore a cost of managing the Building.

56. The report following the survey in question was contained in the bundle [127-146]. No asbestos was found. There was a related invoice from Key Asbestos Services Ltd [127].

57. The Tribunal applying its expertise noted that there would be a need for an asbestos report in respect of a building built before 2000, assuming there to be none already in existence. In contrast, there was no need for a report in respect of a building built more recently. The Tribunal did not consider there to be a need to obtain comments from the parties. The Tribunal applied the law rather than finding any additional evidence.

58. The Tribunal agreed with the Applicant that it was at least likely that there would have been a need for an asbestos report at the time of conversion of the Building and/ or the time of development of the second floor, assuming the Building to pre- date 2000 (and not to need a report at all otherwise). The Tribunal was not persuaded by the Respondent's explanation nor that there had been shown to be a need for a report which was not required at the time of previous works.

59. In any event, the Respondent's agent said that they needed to obtain a report because the Respondent, their principal, had not responded in respect of whether there already was one.

60. That is as presented a rather glaringly a failing on behalf of the Respondent to let its agent know about relevant documentation held. It may well have been the agent would have known that no report was required because there already was one if only the Respondent had replied informing its agent. The nature and extent of the request(s) by the agent was not made clear.

61. Irrespective of whether there was already a report or not, the Tribunal does not regard a decision to obtain report because of a lack of reply, where that lack of reply is from the party acted for. In any event, the responsibility for

the agent's action lies with the Respondent, the party which had failed to reply.

62. Most pertinently, the decision was not just to obtain a report in those circumstances but to then charge the cost of that report to the Applicant and other lessees.

63. The Tribunal did not consider that the decision to obtain a report in the circumstances was reasonable or that the obtaining of the report was demonstrated to be reasonable such that the cost should be allowed as service charges.

Decision

64. The Tribunal determines this item of cost not to be demonstrated to be reasonable.

14) Wet rot (£558.00) and 21) Survey by Peter Cox (£360.00) (total x 1.3385 = £12.23)

65. The Applicant's case is that there is wet rot present (the reference to dry rot in the application form having been in error). His written case asserted that there ought not to be wet rot a few years after the conversion works and suggested a problem with ventilation to otherwise with the works.

66. The survey was provided [168 – 181].

67. In the hearing, the Applicant said that either there was a failure at the time of the development or if there was excess water through the floor of the flat, which was in the ownership of the Respondent, that was still the responsibility of the Respondent not recoverable as Service Costs.

68. Mr Nath explained that there was damage to the flooring of Flat 14 owned by the Respondent and let to tenants. The Respondent asked Peter Cox to investigate and that the cause of the problem established was a leaking water tank within Flat 14. Reference was also made to Flats 13 and 16. The net effect of involvement of insurers and accounting matters was indicated by Mr Adnan and Mr Nath to be no charge to the lessees, as the Tribunal understood it, although the statement of Mr Nath had indicated that the insurance excess would be charged.

69. The Respondent failed in response to the Applicant's challenge to explain any basis on which the works fell within Service Costs and so was payable by the Applicant as Service Charges. The Tribunal was not persuaded that the charges were payable. The Tribunal was concerned that the approach taken on behalf of the Respondent to the cost and Service Charges was not objectively an appropriate one, lacking logic and failing identifiably to consider whether the items were properly chargeable as Service Charges or not.

70. No challenge had been brought in respect of the sums themselves (invoices at [156] and [167]), but the Tribunal did not need to consider the reasonableness of the sums in any event, having disallowed the items.

Decision

71. The Tribunal determines these items of cost not to be demonstrated to be payable or reasonable.

18) Blocked gutters (£2,760.00), 16) Damp (£660.00), 17) Water tests on balcony (£168.00), 19) Water leaks, mastic applied, (£240.00), 20) Water leaks, further sealing (£240.00), 22) Water Ingress gutters cleaned (£480.00), 23) Water ingress (£78.00), 24) Gutter cleaning (£900.00) (total £5,526.00 x 1.3385 = £73.97)

72. These items were taken collectively second in the hearing as including the second largest item (18) of those remaining in dispute and all being related. This was the item, or more accurately collection of items, on which the longest time was spent. There were various relevant invoices [particularly 163].

73. Damp (16) was said by the Applicant to be in the upper part of the main entrance to the Building (so at first floor level and below the new second floor), that the gutters (18) were not subject to debris or in need of repair and that the other items were part if the generic water leakage problem. He contended that there continue to be leaks which he asserted were from the top floor. He accepted the gutters to be a potential source.

74. Water ingress was identified in Flats 19, 23 and 36 and indicated by a report in the bundle to ingress beneath balcony doors.

75. The Applicant's case was essentially that there had been leaks since the development of the second floor. Since then, the Respondent had been trying different things to resolve the problem. He referred to the terrace of a second- floor flat being above the first floor one, to standing water which he said was the fault of the development and he asserted that there had been poor quality development. However, when the Tribunal sought clarification, the Applicant could not link any flats with water on the terrace specifically.

76. The gutters were the original aluminium ones from when the office block had been developed, Mr Nath said. They were not part of the new build of the second floor. He described them as being a foot deep and half a foot wide, some of which are on top of the bays. That is why he explained they were not replaced, which the Applicant had queried. The gutters are at the edge of the first- floor level (as well as there being gutters to the edge of the more recent smaller second floor level).

77. The Applicant also contended that the gutters ought to be in good condition, to which Mr Nath responded that they had been for the first

years but there had been wear and tear. The Applicant also queried delay in payment of the contractor, to which Mr Nath explained that the contractor had exhausted cheaper options and the Respondent had delayed payment in case the subsequent works were not successful. However, he said that there had not been further leaks and so the payment had been made.

78. The Respondent stated that gutters in question had not only been sealed but also had been relined. Mr Nath said that had occurred to one side and as other approaches had been exhausted. He repeated the content of his written statement that the issues had been resolved.

79. The Tribunal found the approach of putting felt in a gutter to be unusual. The Tribunal nevertheless accepted that identifying the place at which water penetrates can be difficult and that various investigations and efforts may be required. A particular difficulty is that the place at which water comes out may be quite different to the place where it goes in, for want of a better way of expressing the point clearly. The Tribunal also considered in its experience that in the event of uncertainty as to the source of water penetration, the starting point would commonly be to attempt simple solutions and to go on to more detailed investigations and potentially more expensive works if the initial attempts were not successful.

80. The Tribunal also carefully considered the Applicant's arguments about the second- floor development and cannot rule out any impact. However, the Tribunal did not determine that any element of the issue had been demonstrated by the available evidence to form part of the development works to the second floor or to relate to the earlier conversion works, which such evidence as was available to the Tribunal indicated had been completed some while before the difficulties identified arose.

81. The Tribunal determined that nothing undertaken by the Respondent was identifiably unreasonable as to the works. The Respondent had sufficiently justified the approach taken and the Applicant had failed to demonstrate his case as to any cause of the problems.

82. The Applicant's case was presented as those items not being reasonable at all. No challenge was made separately to the cost of the items and no alternative cost was offered. In the absence of any evidence to the contrary, the Tribunal accepted the costs of the various individual items as reasonable.

Decision

83. The Tribunal determined that these items of cost to be payable and the amount reasonable.

28) Insurance Payment received by Respondent- £7, 506.00 (no payment required of Applicant)

84. The Tribunal refers to the preliminary matter in respect of disclosure raised by the Applicant and addressed above, which it is unnecessary to repeat other than to re-iterate that the Tribunal was not persuaded that the insurance matter had any impact on service charge items in dispute for the service charge year in question, 2021 and the Applicant accepted that it would not. for the avoidance of doubt.

85. The payment followed an insurance claim made by the Respondent, which the Applicant asserts ought not to have been made because he says that the leak which caused the need for repair and redecoration was the responsibility of the Respondent and/ or its contractors. However, as there is no cost to the Applicant in the relevant service charge year, there is nothing within the jurisdiction of the Tribunal in this case and hence there is no purpose in saying any more about the matter.

86. The Tribunal finds that there was no cost incurred in the service charge year which requires determination.

29) Audit fee (£804.00 x 1.3385% = £10.76)

87. The cost of an audit was the other item previously understood as conceded by the Respondent and not requiring determination, although was listed in the Applicant's email following the hearing as a matter requiring determination about which the parties had presented their cases in the hearing.

88. The Respondent's position as established was that the accountant checked invoices, but Mr Adnan conceded that there was not an audit, that expenses were not verified. The assertion made by the Applicant that there was a failure on behalf of the auditor demonstrated by the concessions was affected by that. If there had been an audit which missed the incorrect posting of several items, the Tribunal would have held real concerns about the auditor. However, merely checking that there were invoices and the figures correct did not carry the same level of work or responsibility so the fact that it was not apparently identified that items were charged which, the Tribunal infers from the concessions, ought not to have been does not produce the same level criticism of the work undertaken. The Tribunal did not consider that work explained to have been undertaken could properly be described as an audit.

89. As the Lease (paragraph 1.1.2.2) [92] provides for Service Costs for preparing and auditing accounts, the Tribunal determined the cost of checking invoices fell within that provision. If the provision had only referred to the cost of an audit being chargeable as service charges, the cost of the work actually undertaken would not have been so chargeable.

90. The Tribunal regarded the costs to be towards the top end for the work it understood to have been undertaken and for a building of the size of the Building, although it also noted that the cost of an actual audit would be expected to be significantly higher. Nevertheless, the Tribunal considered that for costs towards the top end of a range of reasonable prices for the

work indicated, the Tribunal would have expected more careful than average checking and overall considered the costs to therefore be greater than reasonable in the circumstances here.

91. Consequently, the Tribunal considers a reduction appropriate and taking matters in the round determines that a reduction by 20% is appropriate with the resulting fee of £643.20 and contribution by the Applicant of, the slightly lower figure than originally, of £8.61.

Decision in respect of disputed items

92. The effect of the above findings and determinations is that the Tribunal allowed the service charges disputed by the Applicant and requiring determination at items 9, 16, 17, 18, 19 ,20, 22, 23 and 24 with charges to the Applicant for those items of £122.16. The Tribunal allowed £8.61 of the original £10.76 for item 29. The Tribunal disallowed the service charges to be determined at items 10, 14 and 21 with charges to the Applicant of £17.61. There was no sum to allow or disallow in respect of item 28.

The other questions posed by the Applicant in his application

93. It will be seen that the above addressed the first (in part) and third questions posed by the Applicant and more general issues as to reasonableness and payability of service charges insofar as remaining in dispute and requiring determination. The fifth question is addressed below. The fourth question was essentially addressed to the extent which was considered appropriate by way of the Directions issued in this case.

94. The part of the first question that relates to reimbursement of costs is not a matter in respect of which the Tribunal has jurisdiction. The sixth question fell away on the Respondent's concession as to that item. The Tribunal ceased to be able to consider the matter at that time. The second question about ownership of flats is not a matter for the Tribunal and can be ascertained by obtaining copies of the relevant titles at the Land Registry if so desired.

95. The seventh question also falls outside of the Tribunal's jurisdiction. However, the Applicant's statement indicated that asserted knowing mis-allocation of costs was the main driver for the application, combined with seeking the Applicant's managing agent-which he said facilitated that approach- to cease to act as such. The Applicant expressed concern that the freeholder had little to lose by wrongly charging items because if a lessee then went to the trouble of challenging items to the Tribunal, the only impact may be the disallowance of the given item or items.

96. Whilst it may be unsatisfactory for the Applicant that the matters which could be addressed were limited in the manner explained, that is the simple reality. It follows that the Tribunal has no basis for determining the questions in the immediately- above paragraph and so says nothing more about them.

Applications in respect of costs and fees

97. As referred to above, applications were made by the Applicant that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985. In addition, an application was made pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act that the costs of the Applicant's application should not be recoverable as administration charges.

98. Mr Adnan said in closing that he wished the costs of the hearing to be passed on as service charges. He did not refer to other costs of the application. He contended that the Respondent had proposed a meeting to resolve matters and had made an offer which had been rejected and that the amount involved was small.

99. The Applicant agreed that there had been a meeting. He said that his motivation had not been to obtain money from the freeholder but rather to uncover wrongdoing.

100. Section 20C (3) of the 1985 Act, provides "the … Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances". The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.

101. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:

> "although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).

102. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger QC suggested that, when considering such an application under section 20C, it was:

> "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make".

103. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income but that is not relevant to the position here. Whilst

there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

104. The Tribunal has stated previously and does so again that the amount of time and cost involved in this case is far out of proportion to the amounts in dispute. However, to an extent that cuts both ways, impacting both on the extent to which matters merited pursuing- especially the smaller items- and the extent to which the Respondent might have made other concessions. Insofar as the outcome may be of interest to other lessees, including the observers, they were not parties and so are not relevant in respect of the value of the dispute. In a similar vein, insofar as the Respondent may be concerned about the impact on service charges charged to other lessees, that is not part of the dispute for determination.

105. It is relevant that the Respondent accepted the application to have merits in respect of 16 items and the Service Costs in relation to those comprised almost £16,000 of just over £26,000 such costs originally challenged, so even in respect of those alone, the Applicant achieved a good deal of success with the application in the relatively early stages. It was plainly appropriate for the Applicant to make his application in light of those significant concessions and just as plainly there had been sums charged as Service Charges which ought not to have been or which at least the Respondent felt it could not or at least would not defend, hence accepting over- charging as service charges.

106. However, it also highly relevant that the Applicant achieved very little success with matters not conceded by the Respondent, expending vastly disproportionate time and resources, including public time and resources, to achieve a reduction in service charges of only a further £19.76. The majority of the Applicant's challenges to matters not conceded by the Respondent failed. The majority of time was expended after the Respondent's concessions had been made.

107. Additionally, whilst noting that uncovering wrongdoing, where it is exists, is a creditable aim, it is not the purpose of Tribunal proceedings and such proceedings should be pursued for the purposes they are intended for, namely, to determine whether service charges are payable and if so, then what sum is reasonable. They ought not to be issued for other reasons. If the Applicant was unclear as to the extent of the jurisdiction before applying to the Tribunal, that was the time to find out.

108. Hence, whilst the Tribunal referred a little above to potential other concessions by the Respondent as a matter of practicality, there was arguably little basis for that in terms of actual merits.

109. The Tribunal addresses not only costs of the hearing but any other costs of the proceedings, for the avoidance of uncertainty and any future proceedings.

110. Taking matters together, the Tribunal considers that there was merit in the application and significant concessions were made by the Respondent

demonstrating that. That produces the outcome that, overall, it is just and equitable to reduce the amount of the Respondent's costs incurred in relation to the Applicant's application to an extent. However, it is not just and equitable to disallow such costs as service charges or administration charges entirely in light of the Applicant's relative lack of success in the case following the Respondent's relatively early concessions.

111. The section 20C and paragraph 5A applications are therefore allowed to the extent that 50% of the Respondent's cost of the applications may not be recovered as service charges or administration charges.

112. If Mr Adnan sought to make an application for costs to be recoverable other than as service charges and pursuant to The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, that was not apparent and will need to be the subject of a costs application now that the substantive decision has been issued, in the event that the Respondent should seek to pursue any such application.

113. In terms of fees for the application, given the concessions and the above comments about the original application, the application fee of £200 shall be paid by the Respondent to the Applicant. However, given the very modest additional success on the part of the Applicant following the concessions and that continuing with the case to hearing was not merited by the sums in issue and still less by the extent of success with those, the Tribunal does not order repayment of the £100 hearing fee.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk

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

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.