FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LSC/2023/0048**
Property	**:**	**635A Garratt Lane, London SW18 4SX**
Applicant	**:**	**Mr Medhat Eltaher**
Representative	**:**	**In person**
Respondent	**:**	**Shaftesbury DC Limited**
Representative	**:**	**Mr Richard Davidoff (Aldermartin, Baines & Cuthbert – Managing Agents)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Jeremy Donegan** **Mrs Sarah Phillips MRICS (Valuer Member)**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**31 August 2023**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following service charges are payable by the applicant to the respondent:

Advance charge (29/09/2021 - 28/09/2022)	£4,685.07	
Advance charge (29/09/2022 - 28/09/2023)	£10,417.80	
		£15,102.87
Less		
Applicant's set-off	£5,664.00	
		£9,438.87

(2) These service charges became payable on 17 March 2023.

(3) The Tribunal determines that the following administration charge is not payable by the applicant to the respondent:

01/09/2022 Brady Solicitors £360.00

Background and procedural history

1. The applicant is the long leaseholder of 635A Garratt Lane ('Flat A'), which forms part of 635 Garratt Lane ('the Building'). The respondent is the freeholder of the Building, which is managed by Aldermartin, Baines and Cuthbert ('ABC').

2. The Building is a three-storey (plus basement), mid-terrace property, with a two-storey rear addition. A commercial unit occupies the basement and front part of the ground floor. This is used as a dental surgery and has its own street entrance. There are three flats spanning the ground, first and second floors. Flat A is two-storey and is at the rear of the ground and first floors. The three flats have a separate, shared street entrance with internal common ways.

3. The applicant seeks a determination of advance service charges for Flat A, pursuant to pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'). He also seeks orders under s.20C of the 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').

4. These are not the first proceedings between the parties. The applicant submitted a previous s.27A application in September 2022, seeking a determination of advance service charges for 2021/22. This was issued with case reference LON/00BJ/LSC/2022/0279 ('the 2022 Application'). Directions were issued on 11 October 2022 and the case was listed for a final hearing on 10 March 2023.

5. Following mediation the applicant sent an email to Mr Richard Davidoff of ABC on 13 December 2022, stating:

"*The parties of 635A Garratt Lane have decided to proceed with settling the service charges dated 2021-2022.*

However, before proceeding we request for a date, in writing, to be established for the major works to commence."

It appears this settlement was not finalised, as the applicant did not lodge a consent order or notice of withdrawal. Rather, the proceedings were deemed withdrawn due to his failure to pay the Tribunal hearing fee, pursuant to rule 11 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'). A deemed withdrawal order was issued to the parties on 05 January 2023.

6. The applicant made an application to reinstate the 2022 Application on 23 January 2023. The grounds of that application are recited below:

"In the month of December 2022, my wishes were to close the case as the management agency (respondent) showed good will through mediation. However, as soon as I confirmed to the respondent my intention to drop the case, they have more than doubled the outstanding service charges from £12,395.07 to a grand sum of £27,411.81 across 21-222 and August 222-23. With payment for August 22-23 being unusually demanded in advance by 25th January 2023 without any breakdown of cost or Section 20 consultation process – as such I have no choice but to request for the case to be re-instated."

Mr James Earnshaw of ABC objected to reinstatement in an email dated 25 January and the reinstatement was refused by Deputy Regional Judge Carr on 02 February 2023. The refusal letter states:

"It now appears from the correspondence that the charges disputed are the fresh charges made in January 2023. Those were, of course, not part of the application made in 2022.

It seems to me in the circumstances there are no grounds to reinstate the 2022 proceedings. The Applicant may make a fresh application for the charges that have subsequently been demanded, as they formed no part of the 2022 proceedings.

I therefore refuse the application to reinstate."

7. The applicant submitted a further s.27A application ('the 2023 Application') on 03 February 2023. At panel 7, he asked the Tribunal to determine service charges for 2021/22 and 2022/23. He provided further details at pages 10-14, listing various charges including:

"17/08/2022 – Late Payment Administration Charge: £90.00

01/09/2022 – Brady Solicitors Issue of Letter Before Action + Associated Costs: £360.00"

Both these items are administration charges within paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), rather than service charges.

8. The Tribunal issued directions on 17 February 2023. Paragraph (4) identified the following issues for determination:

"*As well as challenging ordinary recurring service charges the Applicant challenges administration charges for late payment and advance service charges in excess of £14,000 for works which the Applicant considers are cosmetic. The Applicant challenges the phasing of the works and the need for instalment payments (although this is not strictly within the Tribunal's jurisdiction). Finally the Applicant also challenges the apportionment for the major works.*"

9. Direction 3 required the applicant to send a schedule to the respondent identifying the item and amount in dispute, the reason(s) why the amount is disputed and the amount, if any, he would pay for that item, by 21 April 2023. A template schedule was attached to the directions.

10. The 2023 Application was listed for face-to-face hearing on 21 July 2023, but this was converted to a hybrid hearing at the respondent's request.

11. In addition, the respondent is pursuing a County Court claim against the applicant for ground rent and service charges arrears totalling £31,133.07, plus interest and costs. Those proceedings were issued in the County Court Business Centre in February 2023 under claim number K7AY886A. During the hearing, the applicant said he had filed a defence. It appears those proceedings have been stayed.

The law

12. The relevant legal provisions are set out in the appendix to this decision.

The leases

13. The original lease of Flat A was granted by Carmine Properties Limited ("t*he Landlord*") to the applicant ("*the Tenant*") on 16 March 1990 for a term of 99 years from 1989.

14. The rents are reserved at clause 1(2). The Tenant must pay:

"…the yearly rent set out in the Fourth Schedule…such yearly sum to be payable by yearly installments (sic) in advance without deduction on the 29th day of September in each year of the said term…AND ALSO PAYING as additional rent

(a) In respect of the total annual sum expended by the Landlord in each year of the term in carrying out its obligations a

reasonable due proportion of the total sum to be expended by the Landlord under Clause 3(3) hereof and

(b) *A sum or sums of money equal to the reasonable due proportion of the amount or amounts from time to time paid by the Landlord for the insurance of the Building and other matters pursuant to the provisions of Clause 3 hereof*".

15. The lease-plan shows Flat A originally had one-bedroom. It has since been extended into the rear garden and now has two bedrooms.

16. The Tenant covenants are at clause 2 and include the following obligations:

"(11) (a) Pay all expenses (including solicitors costs and surveyors fees) incurred by the Landlord incidental to the preparation and service of a notice under Section 146 or 147 of the Law of Property Act 1925 or any other notice pursuant to the terms of this Lease notwithstanding that forfeiture shall be avoided otherwise than by relieve granted by the Court.

...

(d) Pay all reasonable costs and expenses incurred by the Landlord including all professional fees and expenses incurred by the Landlord including all professional fees and expenses in connection with any steps in connection with or procuring the remedying of any breach of covenant on the part of the Tenant.

...

(17) to pay and contribute the further or additional rent reserved by Clause 1 hereof to the Landlord within fourteen days of notice in writing being served by the Landlord specifying that the Landlord has incurred or intends to incur the expense stated in the written notice in meeting his obligations under this Lease and if required so to do by the Landlord to make yearly payments on the same days as hereinbefore provided for payment of rent on account towards accrued and accruing and future liability of the Tenant hereunder as the Landlord shall reasonable require."

17. The Landlord's covenants are at clause 3. These include obligations to insure the Building (sub-clause (2)) and:

"*(3) Subject to contribution and payment by the Tenant to the Landlord will maintain in good and substantial repair and condition the external structure roof and foundations of the Building of which the Demised Premises form part and all such gas and water pipes cisterns and electric cables and wires in under or upon the Building and all*

other services and all entrance halls, staircases, passageways and landings as are enjoyed by or used by the Tenant in common with the Landlord or any other tenants or occupiers of any part or parts of the Building."

18. Clause 4 contains various declarations, including:

"*(i) That the Landlord may set aside such sums of money as the Landlord shall reasonably require to meet such future costs as the Landlord shall reasonably expect to incur performing its obligations in this lease PROVIDED THAT any sums so collected shall be kept by the Landlord in a separate fund but the Landlord shall not be under any responsibility to place any monies so set aside on deposit nor to account to Tenant for interest on such monies so set aside irrespective of how long such monies remain in such separate fund*."

19. The lease was extended on 20 November 2018, pursuant to section 56 of the Leasehold Reform, Housing and Urban Development Act 1993. The extension was effected by a deed of surrender and re-grant between the then freeholder, Dr Marcel Fung and the applicant. The term was extended to 189 years from 24 June 1989 and the ground rent was reduced to a peppercorn. There were no variations to the Tenant's covenants, the Landlord's covenants, or the declarations.

20. It is also necessary to refer to the lease of the commercial unit. This was granted by Dr Fung (the "*Landlord*") to Perfect Smith Earlsfield Limited (the "*Tenant*") on 01 February 2016, for a term of 15 years from that date and ending on 01 February 2031. Various definitions are at clause 1.1, including:

""Building"	*635 Garratt Lane, London, SW18 4SX as shown edged red on Plan 1*
""Tenant's Proportion"	*40%"*

21. Clause 11.1 provides:

"The Tenant shall pay the Landlord on demand the Tenant's Proportion of all costs payable by the Landlord for the maintenance, repair, lighting, cleaning and renewal of all Service Media, structures and other items not on the Building but used or capable of being used by the Building in common with other land."

22. The Landlord's repairing covenant is recited below:

*"**26 Landlord's covenant for repair***

26.1 The Landlord shall use its reasonable endeavours to keep those parts of the Building that afford support and protection for the Property (other than any parts of the Building that are part of the Property or have been let to another tenant) in a reasonable state of repair. Without

prejudice to its obligation under clause 8, the Landlord shall not be obliged to carry out any repair where the need for any repair has arisen by reason of the occurrent of an Insured Risk.

26.2 *The Tenant shall pay the Landlord on demand the Tenant's Proportion of the reasonable and proper costs incurred or properly estimated by the Landlord to be incurred by the Landlord in keeping the structure and exterior of the Building and the Service Media belonging to the Landlord as it (other than any parts of the Building or Service Media that are part of the Property or have been let to another tenant) in good repair and condition and in redecorating the exterior of the Building as often as is reasonably necessary. Without prejudice to its obligations under clause 8, the Tenant shall not be required to make any payment under this clause in respect of any work carried out by the Landlord by reason of the Landlord's obligations in clause 8."*

23. In summary, the Tenant of Flat A must pay "*the reasonable due proportion*" of the Landlord's costs in complying with the repairing obligations at clause 3.3 of that lease. The Tenant of the commercial unit must pay 40% of the Landlord's costs in complying with the repairing covenants at clause 26.2 of that lease.

The hearing

24. The applicant appeared in person and was accompanied and assisted by his son, Mr Nader Eltahar. Mr Davidoff appeared for the respondent, remotely, by video conferencing.

25. The parties failed to agreed a joint hearing bundle and lodged separate (digital) bundles. The respondent's bundle did not include an index, their statement of case or witness statement. Rather these were lodged separately. All of this made navigating the documents unnecessarily difficult.

26. Mr Davidoff also lodged a skeleton argument dated 15 July 2023, which foreshadowed an application to strike out part of the applicant's case.

27. Neither party requested an inspection, and the Tribunal did not consider one necessary.

28. At the start of the hearing, I spent some time clarifying the issues. This was necessary, as the applicant's schedule of disputed service charges was extremely limited. It did not identify specific items/amounts in dispute, give supporting reasons or state the amount he would pay, if any, for each disputed item. Rather, he simply indicated that none of the

advance charges were chargeable under the lease, reasonable in amount/standard or correctly demanded. This was at odds with his witness statement, which focused on the scope, cost and apportionment of proposed major works, the involvement of the respondent's solicitors and a potential set-off arising from roof leaks into Flat A.

29. In his skeleton argument, Mr Davidoff referred to the Court of Appeal's decision in ***32 St John's Road (Eastbourne) Management Co Ltd v Gell [2021] EWCA Civ 789*** and the Upper Tribunal's decision in ***Enterprise Home Developments LLP v Adam [2020] UKUT 151 (LC)***. At paragraph 28 of ***Enterprise***, the Deputy President said:

"*Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same service could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions*."

Mr Davidoff submitted the applicant had not adduced evidence of fact to establish a prima facie case in relation to general day to day management costs in the service charge budgets. Rather, the applicant had only challenged the proposed major works.

30. I also investigated the respondent's ability to recover management fees under the terms of the lease. This was prompted by a document headed "*LEASE REVIEW*" in their bundle, which states such fees are not recoverable. Mr Davidoff explained that ABC always instruct their solicitors to advise on lease terms when taking on new managements. In this case the solicitors advised that management fees are not recoverable. He relayed this advice to the respondent, who asked him to try and recover the fees from the service charge fund. He also consulted counsel, informally who advised the fees are recoverable based on the Lands Tribunal's decisions in ***London Borough of Brent v Hamilton [2006] LRX-51-2005*** and ***Norwich City Council v Marshall [2008] LRX-114-2007***.

31. I then dealt with the strike-out application. Mr Davidoff submitted the Tribunal had no jurisdiction to the determine the 2021/22 advance charges as these had been agreed in the applicant's email of 13 December 2022 (s.27(4) of the 1985 Act). Alternatively, the inclusion of these charges in the 2023 Application was a ***Henderson v Henderson*** abuse of process as they also had been included in the 2022 Application, which had been "*struck out*". Mr Davidoff asked the Tribunal to strike out the 2021/22 element of the case and restrict the hearing to the 2022/23 advance charges.

32. The applicant said his offer to settle the 2021/22 advance charges was conditional upon a successful insurance claim for the leaks into Flat A. Further, the amount of these charges had changed since his email.

33. It is necessary here to summarise the service charge budgets and advance demands, to give some context. The original 2021/22 demand was dated 09 March 2022, for £12,395.07. This was based on a budget of anticipated expenditure, in three parts. The first page detailed total anticipated expenditure for the Building, including a major works item of £29,520. The expenditure is then split between two schedules, with Schedule A detailing costs attributable to all units (commercial and residential) and Schedule B listing costs specific to the residential flats. The full cost of the major works was allocated to Schedule B. The demand was based on Flat A paying one-fifth of the Schedule A expenditure (£9,572 excluding a reserve fund item) and one-third of the Schedule B expenditure (£31,442).

34. ABC issued a revised 2021/22 demand on 16 February 2023, for a reduced sum of £9,836.07. It is based on an amended budget, with an increased major works item of £32,145 with £25,755 allocated to Schedule A and £6,390 to Schedule B. This increased the Schedule A expenditure to £35,327 and reduced the Schedule B expenditure to £8,312. Copies of both demands and budgets were included in the respondent's bundle.

35. Mr Davidoff explained the amended figures in his oral evidence. The Schedule A item represents half the anticipated cost of proposed external works, including scaffold charges, professional fees, and VAT. The Schedule B figure is the full cost of health, safety, and fire risk assessment remedial works to the internal common ways ('the FRA Works') that were completed in April 2023.

36. It appears the major works item was also misallocated in the 2022/23 budget, but the Tribunal is unable to check this, from the documents provided. The respondent's bundle included two copies of this budget, but these were identical with £25,755 allocated to Schedule A for major works and £9,300 allocated to Schedule B. The totals in each schedule were also the same (£33,989 Schedule A and £10,860 Schedule B). However, the sums demanded from the applicant differed. The original demand was dated 02 September 2022, for £14,526.80. The revised demand is dated 16 February 2023 for £10,217.80. This represents one-fifth of the Schedule A expenditure (excluding the reserve item) and one third of the Schedule B expenditure.

37. Mr Davidoff also explained how the £25,755 figure was calculated. This represents half the anticipated cost of external works to the Building (£51,510), including scaffold charges and VAT. This was taken from the lowest tender, as part of the statutory consultation with leaseholders (s.20 of the 1985 Act). ABC included half the cost in the amended

2021/22 budget and half in the amended 2022/23 budget, to assist the leaseholders. They hope to undertake this work later this year once the applicant pays his contribution. The leaseholder of the other two flats has paid his contributions. The £9,300 figure is for further internal works that will be deferred to next year and was not challenged by the applicant.

38. Following a short adjournment, I informed the parties that the Tribunal was unwilling to strike-out the 2021/22 element of the 2023 Application. The applicant's email of 13 December 2022 showed an intention to settle the original advance charges. He contends this was conditional. Mr Davidoff appended the email to his skeleton argument but not the earlier or later correspondence. It is debatable whether the email, on its own, amounted to an agreement or admission for the purposes of s.27A(4) of the 1985 Act. However, it is unnecessary to decide this point, as ABC issued a revised demand on 16 February 2023, based on an amended budget. This was after the deemed withdrawal of the 2022 Application. The sum claimed in the revised demand has not been agreed or admitted and can be determined under s.27A(1). Further, there is no ***Henderson v Henderson*** abuse of process, as the 2022 Application concerned the original demand and was not determined by the Tribunal. Rather it was deemed withdrawn. There are no grounds to strike out part of the 2023 Application under Rule 9 of the 2013 Rules.

39. I also identified the following issues for determination by the Tribunal:

(a) whether the management fees are recoverable under the terms of the lease,

(b) the reasonableness and payability of the administration charges,

(c) the scope, timing, reasonableness and payability of the major works contributions, and

(d) whether the applicant is entitled to set-off any sums against the service charges, arising from the water leaks and damage to Flat A.

40. During the hearing, I directed the parties to provide additional documents and information required to determine the issues. The applicant lodged a draft of the 2018 deed of surrender and re-grant, an undated covering letter, an official copy of the leasehold register dated 16 March 2019 and an email from Brady Solicitors LLP ('Brady') dated 20 November 2018. At my direction, he subsequently lodged an official copy of the deed and confirmed that Brady acted for him on the lease extension. Mr Davidoff supplied an official copy of the lease of the commercial unit, details of the insurance settlement for internal damage to Flat A and case references for the authorities on management fees (***Brent*** and ***Norwich)***.

41. Having heard evidence and submissions from the parties and considered all the documents provided, the Tribunal makes the following determinations.

Major works

42. It is convenient to deal with the anticipated works first, as this is the main item in dispute and the other items are linked. The works were described in the s.20 notice statement of estimates, dated 26 July 2022, as "*External redecorations to include window repairs and redecorations, elevational pointing and render repairs, drains, gutters and gullies and water services repairs and replacements. Front door and surrounds redecorations and repairs and other necessary ancillary repairs.*"

43. The lowest tender was from Kaloci Limited ('Kaloci'), for £56,000 plus VAT (including the FRA Works) and dated 18 March 2022. Their priced specification includes a substantial sum (£20,400) for main roof works, including renewing the rear elevation main roof and rear elevation mono-pitched roof. It includes £7,750 for works to the internal common ways and the entrance door for the flats. The total, excluding FRA and internal works, is £42,925 plus VAT (£51,510).

44. The applicant spoke to an undated statement, in which he challenged the need for these works, the timing, and anticipated cost. In the Tribunal application form he also challenged the original apportionment between the various units. In his oral evidence, he agreed the revised apportionment in the amended budgets. Work to the structure, exterior and roof of the Building is split between the flats and the commercial unit (Schedule A) with Flat A contributing one-fifth. Work to the internal common ways is split between the three flats (Schedule B), with Flat A contributing one-third. The applicant also agreed the sum claimed for major works in Schedule B of the amended 2021/22 budget (£6,390). This relates to the FRA Works that have been completed.

45. As to the need for, and timing of, the anticipated works the applicant relies on a building survey report from Ms Anna King MRICS of Tim Greenwood & Associates dated 05 June 2019 ('the Greenwood Report'). This was prepared for the respondent prior to their purchase of the freehold.

46. Section 3.0 deals with the roof structures and explains the main roof is of pitched construction, clad with slates and clay ridge tiles. There is a rear addition at ground and first-floor levels.

47. The applicant attached considerable weight to sections 3.4, 3.5 and 3.12, which are repeated below:

> *"3.4 The roof coverings are in serviceable but modest condition. There are a limited number of slipped/cracked slates noted, which should be replaced. Due to the age of the property it is unlikely that there is any felt beneath the coverings and any damaged slates are likely to allow water to ingress the roof void.*

We were not able to carry out an internal inspection so could not verify this.

3.5 The terracotta ridge tiles to the central ridge appear to be in fair condition. There are minor undulations noted to the ridge, which is typical of a building of its age. The ridge tiles lining the top of the parapets are also in a fair condition and no issues were noted with them from ground level.

3.12 The rear elevation roof slope has a number of missing and slipped slates which should be replaced."

48. Sections 3.13-3.117 describe the rear addition in the following terms:

"3.*13 There is a rear addition to the property on ground and 1st floor level. The first half of the addition adjoining the main building appears to be original to the main building's construction and has a pitched roof. The brickwork beyond that addition suggests that this was extended further in more recent years and we understand this has a flat roof."*

3.14 The pitched roof section of the rear elevation is a mono-pitched structure and from the very limited vantage points available, appears to be clad in slates, which we assume match those to the main roof. The junction of the roof and rear wall of the main building, and also the top of the mono-pitched roof and the parapet above, are detailed with cement fillets.

3.15 The pitched roof was not accessible to inspect and therefore it is unknown the condition of the slates, however, if its condition is similar to that of the main roof, then it is likely that some slates will need replacement.

3.16 The detailing to the top and side of the pitched roof, which includes this cement fillets, is poor. The cement is non-flexible and as a result, cracks are visible, which over time will allow water ingress to occur. It is recommended that these are replaced with flexible flashings, such as lead.

3.17 The roof behind the mono-pitched structure we believe is flat and from vantage points available, and appears to be covered in felt. The nature, detailing and condition of the roof is unknown as access was not available to inspect it."

49. Sections 4.0 deals with rainwater goods. The gutters and downpipes are described as "*serviceable*", but Ms King identified various minor defects.

50. Section 5.0 deals with soffits and fascias. There is a low-level soffit and fascia to the shop front, which require some repairs. There are timber fascias to the second-floor eaves level and first-floor rear addition, to the rear, which "*are both in poor decorative order*" but "*appear to be serviceable*". Ms King recommended repair and redecoration works.

51. Section 6.0 deals with walls. The front elevation brickwork is "*in serviceable condition*" but localised repointing is recommended along with the removal of redundant fixings. The brickwork to the rear is also "*serviceable*" but repairs are required to some poorly sealed openings. There are other potential issues that require investigation or minor repairs.

52. Section 7.0 deals with windows and doors with the only notable defects being an ill-fitting entrance door for the commercial unit, poor decorative condition of the vertical timber framework for the shopfront glazing and a poor quality and cracked entrance door for the flats.

53. Based on the Greenwood report, the applicant contended the bulk of the major works are unnecessary and cosmetic in nature. Repairs to the main roof are not required at present, as the coverings are in "*serviceable but modest condition*" and the report does not mention any need to replace the roof. It refers to missing, slipped, and cracked slates, which should be replaced but there is no need for a new roof. Further, slates have been replaced in the rear addition pitched roof, since the report was prepared, and this will reduce the works required.

54. The applicant also referred to photographs in the Greenwood report. He contended the external condition of the Building is consistent with the neighbouring properties and the works should be deferred.

55. As to the anticipated cost of the works, the applicant relied on an alternative tender from Green Construction London Limited ('Green'). They have undertaken previous work for him, including the rear extension to Flat A and are his preferred contractor. They produced a tender for £58,000 plus VAT (including the FRA works), dated 16 May 2022. This was more than the Kaloci tender (£56,000 plus VAT) but Green offered to match Kaloci's figure in an email to the applicant dated 30 July 2022. Despite being the (joint) lowest tenderer ABC are unwilling to appoint them, which the applicant finds suspicious.

56. During the hearing, I pointed out the original Green tender was higher than the Kaloci tender, which suggests the latter is reasonable. The applicant appeared to accept this but still believes Green should be appointed.

57. The applicant also referred to repairs to the large rear wall in his garden, which he had arranged during the summer of 2022 (after the Greenwood report). He submitted this should reduce the scope and cost of the major works.

58. Mr Davidoff spoke to a witness statement dated 15 May 2023. He is a managing director of ABC, which specialises in residential leasehold block and estate management. ABC were instructed to manage the

Building on 24 March 2021 and a copy of their management agreement was included in the respondent's bundle. They subsequently instructed their solicitor to undertake the lease review to ensure they manage the Building in accordance with the leases.

59. In his statement, Mr Davidoff explained ABC's procedures for demanding service charges. Advance charges are based on budgets of anticipated expenditure which, in turn, are generally based on the budget and expenditure in the preceding year and the estimated cost of proposed works in the forthcoming year. Reserve contributions are based on the estimated cost of proposed works in future years, and the amount held in the reserve fund.

60. Mr Davidoff also addressed the errors in the original budgets and demands for 2021/22 and 2022/23. Tenders were obtained for the major works, based on a comprehensive specification. It was decided to undertake the FRA works first, as these were most urgent. The former property manager for the Building, Mr Motiwala, incorrectly assigned the full cost of the major works (external and internal) to Schedule B in the budgets. This error was discovered when he was replaced. Mr Davidoff asked the new property manager to issue credit notes against the incorrect demands and to redraft the budgets with external works allocated to Schedule A and internal works to Schedule B.

61. Mr Davidoff alleged the Building was in disrepair when ABC took over the management, due to prolonged neglect by the previous freeholder who "*only did the bare minimum*". Following their purchase of the freehold, the respondent obtained a planned maintenance schedule from Greenwood ('the Greenwood Schedule'), which is separate to the Greenwood Report. This was prepared following an inspection of the Building on 08 September 2020 and recommended various repairs, with advice on the phasing/timing of these repairs. It was then used in the preparation of the major works specification, by an independent building surveyor. A copy of the Greenwood Schedule was included in the respondent's bundle but was faint and difficult to read. At my direction, Mr Davidoff supplied a clear copy on 10 August 2023.

62. In his oral evidence, Mr Davidoff stated he had not seen the Greenwood Report until he received the applicant's bundle. Up until that time, he had only seen the Greenwood Schedule. However, the report does not support the applicant's case. It identifies various external defects, which are more than cosmetic. Further, it was prepared back in June 2019 and the condition of the Building has deteriorated since then. There were no roof repairs between June 2019 and March 2022, during which period there have been heavy winds. The planned external works are required now and are normal cyclical works.

63. Mr Davidoff also addressed the s.20 consultation and significance of the Green tender. The notice of intention was issued on 25 June 2021 with

a response deadline for nominations/observations of 30 July 2021. The applicant made no nomination in this period. Green emailed Mr Motiwala ten months later, on 25 April 2022, stating they had been nominated by the applicant and requesting the specification. This was emailed to them the same day and they produced their tender, for £58,000 plus VAT on 16 May 2022. This was after the other tenders but was still included in the statement of estimates dated 26 July 2022, which stated ABC's intention to instruct Kaloci. Green subsequently offered to reduce their tender to £56,000 plus VAT, to match Kaloci's figure. The respondent was unwilling to accept this offer, as Green had the unfair advantage of seeing the other tenders.

64. In response to my questions, Mr Davidoff explained that ABC are charging 10% of the contract price for arranging and supervising the major works. There is no additional charge for any work by external surveyors. Rather their fees are absorbed in the 10% fee.

The Tribunal's decision

65. The major works item of £25,755 in Schedule A of the amended 2021/22 budget is disallowed in full.

66. The major works item of £25,755 in Schedule A of the amended 2022/23 budget is allowed in full.

67. The major works item of £9,300 in Schedule B of the amended 2022/23 budget is allowed in full.

Reasons for the Tribunal's decision

68. The starting point is to consider s.19(2) of the 1985 Act, which provides "*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.*" Put another way, advance service charges are only payable to the extent they are reasonable. This acts as a filter and precludes the recovery of unreasonable amounts.

69. Given the contents of the Greenwood Report and Greenwood Schedule it is reasonable for the Respondent to undertake the planned external works. The exterior was generally in satisfactory condition at the time of the report but that does not mean maintenance/repairs are unnecessary. The respondent is obliged to keep exterior in "*good and substantial repair and condition*" pursuant to clause 3(3) of the lease and the best way to achieve this is to undertake proactive repairs based on professional advice. Further, three years have elapsed since the report, and the Building is bound to have deteriorated during this period. There

have been no external works save for the 2022 repairs to the rear addition pitched roof and rear garden wall.

70. The major works specification is based on the Greenwood Schedule and their recommendations on the phasing/timing of the repairs. It is entirely reasonable for the respondent to follow Greenwood's recommendations.

71. The external works detailed in the specification do not include repairs rear garden wall. They do include renewing the rear addition mono-pitched roof. This means the 2022 repairs to this roof (see paragraphs 82, 87b and 80, below) will reduce the scope of the major works and should reduce the final bill. However, it is still reasonable to use the Kaloci tender to calculate the major works item in the revised 2021/22 and 2022/23 budgets. If the final bill is lower than the tender then this will be reflected in end of year accounts (following completion of the works).

72. The applicant did not challenge the scope or cost of the planned works to the internal common ways and the entrance door for the flats (£9,300), all allocated to Schedule B in the revised 2022/23 budget. Further, he agreed the allocation of the major works in the revised budgets and his liability to pay one-fifth of the Schedule A works and one-third of the Schedule B works.

73. The Tribunal finds the amount of the Kaloci tender (£56,000 plus VAT) is reasonable. This is £2,000 lower than the Green tender which acts as a sense check. Green later offered to reduce their tender to £56,000 plus VAT but only once they knew Kaloci's figure. This is contrary to competitive tendering and the respondent acted reasonably in refusing this offer. Tender selection is a matter for the respondent and the applicant cannot insist on the use of his preferred contractor.

74. Clearly there was an error in the original 2021/22 budget and demand, as the cost of the external works was incorrectly allocated to Schedule B. This was corrected in February 2023, part way through the service charge year. The Tribunal accepts ABC's figures/methodology, including their 10% charge for arranging and supervising the major works. The major works item in Schedule A of the revised 2022/23 budget (£25,755) is reasonable and payable, as is the major works item in Schedule B (£9,300).

75. The position is different for 2021/22, as the revised budget and amended demand were issued five months after the year end. The inclusion of £25,755 for planned external works is entirely artificial, as the financial year had already ended. It was unreasonable to include this item in the revised budget when ABC knew the works had not been undertaken in 2021/22. The outcome would have been the same had ABC included this item in the 2021/22 reserve provision, which they did not. It is

unreasonable to retrospectively increase reserve contributions, several months after the year end.

76. All of this means the major works item (£25,755) in Schedule A of the revised 2021/22 budget is not reasonable or payable. Having said that, ABC can reasonably include this sum in Schedule A of the 2023/24 budget, in which case the applicant will be liable to contribute one-third as part of his 2023/24 advance charge.

Leaks into Flat A

77. This issue arises from damage caused by Storm Eunice in February 2022 that led to the failure of the pitched roof over the master bedroom in Flat A. This caused leaks through the ceiling when it rained. The applicant reported the leaks to Mr Motiwala on 03 March 2022, querying if the damage would be covered by insurance. Mr Motiwala responded immediately, and an insurance claim was submitted. The claims handler, Lynsey Osborne of St Giles requested two estimates for the repairs and any emergency repair invoices. Mr Motiwala also queried if there were emergency repairs. The applicant replied in an email timed at 16:26 on 03 May, explaining there had been no emergency repairs and he would obtain quotes once insurance cover had been established.

78. Further emails followed, culminating in one from Mr Motiwala timed at 17:33, stating "*We will be arranging for a contractor to attend the site to investigate the issue. They would also require access inside your property to ascertain the root cause of the problem and the areas it affecting internally as well.*" It appears the contractor, Archers Building & Construction ('Archers'), undertook roof repairs on 22 March 2022. They raised an invoice on this date for £1,800 plus VAT, addressed to the respondent care of ABC, with the following narrative:

"The following works have been completed:

- *Attend site after reports of water ingress from roof,*
- *Replace tiles & flashing ripped up by recent storm Eunice,*
- *Leave roof in water tight condition."*

In his oral evidence, Mr Davidoff referred to this an *"invoice for temporary repairs to the roof".*

79. For reasons that are unclear, there was no progress on the insurance claim until November 2022. In an email dated 16 November 2022, Mr Earnshaw of ABC asked the applicant for access to Flat A so a roofing contractor could get onto the flat roof. He went on to say:

"I have also reviewed our records and note that you also had an issue with water ingress earlier this year. From our records it would appear that while an insurance claim was opened no quotes were received in regards to carrying out redecoration works to your flat. As such can

you confirm if this has taken place, as if not I am more than happy to obtain quotes on your behalf to progress and close out the matter."

80. The applicant responded on 23 November in the following terms:

"*Thank you for your email regarding the repairs of rear elevation roof and water ingress damage which was caused to the interior of my flat, I can confirm that the repairs have already been completed. I have already contacted Mr Motiwala at you're your office previously regarding an insurance claim for the cost of repairs, I haven't heard anything until now, could you please advise me on this issue*."

81. Further correspondence ensued, with Mr Earnshaw requesting repair invoices on several occasions. This culminated in an email from the Applicant dated 22 December 2022 stating, "*I have contacted green construction a number of times, and still waiting for the invoice*."

82. The applicant's bundle included photographs of water damage to a ceiling, presumably the main bedroom, in Flat A. It also included two invoices from Green, both dated 29 December 2022, for works completed on 17 April 2022. The first is for "*Roofing Works*" totalling £2,420 plus VAT (total £2,804) and the second is for "*Leaking roof redecoration*" totalling £2,550 plus VAT (£3,060).

83. At paragraph 14 of his statement, the applicant complained that ABC were "*uncooperative and refused to submit an insurance claim, saying that adverse weather events are not covered by insurance*."

84. At paragraphs 15-17, he went on to say:

"15. After several back-and-forth along with weeks of dealing with unrepaired leaks in sleeping quarters, the applicant contracted a company to repair the roof for 635 Flat A out-of-pocket, as the management agency insisted it was not covered by the insurance.

16. This was emergency issued causing flooding in sleeping quarters and great distress for the applicant in his home to deal with for weeks and it was not treated as such a matter of urgency by the management agency. This resulted in further damage to the ceilings and walls of the master bedroom and the staircase of Flat A which was also contracted out-of-pocket by the applicant to redecorate Flat A.

17. Several months later the management agency told the applicant that the damages was indeed covered by the insurance and that they made yet another mistake concerning the role of being a 'management agency', but the applicant had already paid out-of-pocket to the contractor hired, due to the nature of the emergency of water pouring through the ceiling during every

period of rain (nearly daily basis during February/March at the time this had happened).”

85. During the hearing, Mr Davidoff said the insurers had made a payment for the internal redecoration of Flat A but nothing for the roof repairs, as the latter were not covered. ABC have retained the settlement funds in their client account, rather than accounting to the applicant, on the advice of their solicitors. Mr Davidoff supplied details of the settlement in his email of 22 July 2023, explaining the insurers had paid £2,860 on 24 February 2023. This represents the redecoration costs (£3,060) less a £200 excess.

86. Mr Davidoff disputed the set-off claim for roof repairs, as the roof was repaired by Archers in March 2022, one month before the repairs described in the Green invoice and nine months before the invoice. He did not expressly challenge the veracity of this invoice but invited the Tribunal to draw their own conclusions. He queried why these repairs were not referred to in the Green tender for the major works and suggested Green had trespassed if they had been on the roof.

87. In reply, the applicant said Archers repaired a different roof section, above the dental surgery. He chased Mr Mutiwala, by telephone, for repairs to the section above his flat that was the source of the leaks. He was told the insurers would not pay for these repairs as the damages was an “*Act of God*”. He therefore arranged his own repairs and instructed Green in April 2022. The repairs were billed and paid at that time. The December 2022 invoices are replacements, obtained for the insurers.

The Tribunal’s decision

88. The applicant is entitled to set off the full amount of the Green invoice for “*Roofing Works*” (£2,804 including VAT) against the advance service for Flat A for the years 2021/22 and 2022/23**.**

89. The applicant is entitled to set off £2,860 of the Green invoice for “*Leaking roof redecoration*” against the advance service for Flat A for the years 2021/22 and 2022/23**.**

Reasons for the Tribunal’s decision

90. The Tribunal accepts the applicant’s evidence on the leaks, in its entirety. There was no evidence from Mr Mutiwala to rebut it. The Tribunal finds:

    (a) Archers undertook temporary repairs to a different section of roof to that repaired by Green.

    (b) Mr Mutiwala failed to arrange repairs to the section above the main bedroom in Flat A, despite being chased by the applicant.

(c) Given this failure, the applicant instructed Green to repair this section and paid £2,804 for these repairs.

91. The respondent, as the freeholder of the Building, is liable to maintain the roof "*in good and substantial repair and condition*" pursuant to clause 3(3) of the lease. They breached this obligation by failing to arrange urgent repairs when the roof damage was reported to them on 03 March 2022. The applicant acted reasonably and mitigated his losses by arranging and paying for these repairs. He is entitled to recoup the full cost of the repairs (£2,804) and can set this sum off against his service charge liability.

92. The roof repairs did not amount to a trespass to the respondent's property, as the applicant was exercising his common-law right of self-help. There was no reason for Green to mention these repairs in their tender for the major works, as the major works do not extend to the rear addition roof.

93. Had ABC arranged these repairs, they could have recovered the cost from the service charge account (subject to any s.20 consultation issues). Potentially, they can do so now subject to the '18-month rule' at s.20B of the 1985 Act.

94. The Tribunal finds the internal damage to Flat A was caused by roof leaks, the applicant instructed Green to redecorate the affected areas and paid £2,860 for this work. The respondent's insurers have settled the bulk of the redecoration costs. ABC should have notified the applicant, and accounted to him, upon receipt of the insurers' payment. The funds remain in their client account but are held on trust for the applicant. He is entitled to set these funds (£2,560) off against his service charge liability. He is not entitled to the £200 excess, as this was deducted by the insurers and the respondent is only liable for the sum paid to ABC.

95. The total sum to be set off for the two Green invoices is £5,664.

Management fees

96. The revied service charge budgets for 2021/22 and 2022/23 each include anticipated management fees of £1,680, all allocated to Schedule A. This represents a standard charge of £1,400 plus VAT (£350 plus VAT per unit) per annum.

97. The sole issue is whether the management fees are contractually recoverable under Flat A's lease. ABC's solicitors advised they are not, as evidenced by their lease review. Mr Davidoff contends the fees are recoverable, based on the Lands Tribunal's decisions in ***Brent*** and ***Norwich***. In his email of 22 July 2023, he also referred ***Wembley***

National Stadium Ltd v Wembley London Ltd [2008] 1 P. & C.R.

98. The lease makes no mention of management fees or the use of managing agents. The Tenant is liable to pay, as additional rent, "*a reasonable due proportion*" of (a) the total sum expended by the Landlord in complying with clause 3(3) and (b) the amount/s paid by the Landlord for insuring the Building pursuant to clause 3 (clause 1(2)).

99. Clause 2(17) requires the Tenant "*To pay and contribute the further or additional rent reserved by Clause 1 hereof to the Landlord within fourteen days of notice in writing being served by the Landlord…".*

100. Clause 3(2) obliges the Landlord to insure the Building and clause 3(3) obliges them to maintain various parts of the Building "*in good and substantial repair and condition*".

101. The applicant did not challenge the amount of the management fees. Rather, the only issue is whether they are contractually recoverable. Mr Davidoff contends they are recoverable, as they are part and parcel of the costs of complying with the Landlord's obligations.

The Tribunal's decision

102. The applicant is liable to pay one-fifth of the advance management fees claimed in the 2021/22 and 2022/23 service charge budgets (£1,680 per annum).

Reasons for the Tribunal's decision

103. ***Brent*** concerned a right to buy lease where the tenant was liable to pay a reasonable part of "*the expenditure incurred by the Council…in fulfilling the obligations and functions set out in Clause 6 hereto*". At paragraph 11 the President of the Lands Tribunal said, "*To be recoverable the expenditure must be incurred by the council in fulfilling the obligations and functions set out in clause 6…To the extent that expenditure is so incurred it is recoverable; and whether it is so incurred is a question of fact.*" He went on to say, "*If repairs are carried out or windows painted or staircases cleaned someone will have to be paid for doing the work and someone will have to arrange for the work to be done, supervise it, check that it has been done and arrange for payment to be made. Since the council can only act in these respects through employees or agents it will have to incur expenditure on these tasks. If it does incur such expenditure, the lessee will be liable to pay a reasonable part of it.*"

104. ***Norwich*** also concerned a right to buy lease. The tenant was liable to pay a fair share of "*the reasonable expenditure of the Council…in*

complying with its obligations under clause 6(1), (2) and (9).” Again, the President concluded that supervision and management costs in complying with these obligations were recoverable. However, costs outside the scope of clause 6(1), (2) and (9) were not.

105. A similar approach was taken by the High Court in ***Wembley,*** but this involved a commercial, rather than residential, lease.

106. Having regard to the decisions in ***Brent*** and ***Norwich***, the Tribunal finds the respondent can recover management fees for arranging insurance and complying with the maintenance obligations at clause 3(3). It can also recover management fees for obtaining insurance and maintenance quotes, paying for these services, undertaking s.20 consultations (where necessary), maintaining a designated bank account, demanding service charges, and arranging and issuing annual accounts, pursuant to clause 3(17).

107. A copy of ABC’s management contract was included in the respondent’s bundle. Appendix 2 lists the standard services covered by their £1,400 plus VAT fee. This includes various services that <u>might</u> be outside the scope of clause 3(3), such as “*Attending to normal routine enquiries from lessees/owners*”, “*Keeping records in relation to tenancies and other relevant matters relating to the Property/properties*”, “*Advising generally on management policy*” and “*Answering Lessee Account Queries*”. This was not explored at the hearing and would require detailed analysis and legal argument. Further, the Tribunal is determining advance service charges, based on anticipated expenditure, rather than end of year charges based on actual expenditure.

108. In the Tribunal’s experience, a management fee of £350 per unit is relatively modest for a block such as this. The advance management fees of £1,680 per annum are reasonable and payable, notwithstanding that some of the services might be outside the scope of the lease. This does not preclude the applicant from raising scope arguments on a separate s.27A application to determine the actual management fees once he receives the year end accounts.

<u>Administration charges</u>

109. The respondent has demanded two administration charges from the applicant, ABC’s late payment fee of £90 and Brady’s fee of £360 for a letter before action and associated costs. Both charges include VAT.

110. During the hearing, Mr Davidoff waived ABC’s fee “*as a gesture of goodwill*”. This meant the Tribunal only had to determine Brady’s fee. Neither bundle included the letter before action or any invoice from Brady. The applicant acknowledged that Brady had written to him on two occasions but suggested this was unnecessary. Mr Davidoff said

Brady had been instructed on a "*no win, no fee*" basis. There was no evidence as to the terms of their conditional, or contingency, fee agreement.

111. Mr Davidoff submitted that Brady's fee is recoverable from the applicant pursuant to the s.146 costs clause in the lease (clause 2(11)(a)). There is further provision to recover Landlord's costs under clause 2(11)(d)).

The Tribunal's decision

112. Brady's fee of £360 is not payable by the applicant.

Reasons for the Tribunal's decision

113. Brady's fee is said to have been incurred on 01 September 2022. This is surprising as they did not know the outcome of the case at that time. If Brady are acting on a no win, no fee basis they can only raise an invoice upon the conclusion of the case and only if the respondent wins in accordance with the conditional, or contingency, fee agreement.

114. In any event, the Tribunal has found the advance service charges for 2021/22 and 2022/23 only became due on 17 March 2023 (see paragraph 120, below). This was more than six months after Brady's fee. It appears they wrote to the applicant on or about 01 September 2022. If so, no advance charges were due to at that time and their letter/s were premature.

115. The respondent has not established any grounds to recover legal costs from the applicant. The Brady fee is disallowed in full.

116. Before leaving this issue, it is appropriate to highlight a potential conflict of interests in that Brady acted for the applicant on the 2018 lease extension but now act against him on the service charges. Not only did they write to him in 2022, but they also act for the respondent on the County Court proceedings. The parties may wish to take this up with Brady.

Summary

117. The Tribunal has disallowed the major works item in Schedule A of the revised 2021/22 budget but allowed the management fee in full. The adjusted Schedule A total is £9,572. The applicant is liable to contribute £1,914.40, being one-fifth of this sum. The applicant is also liable for £2,770.67, being one-third of the Schedule B total. This means the recoverable advance charge for Flat A for 2021/22 is £4,685.07. This figure includes the reserve contribution of £200.

118. The Tribunal has allowed the major works items and management fee in the revised 2022/23 budget. The applicant is liable for one-fifth of Schedule A anticipated expenditure (£6,797.80) and one-third of Schedule B anticipated expenditure (£3,620) so the recoverable advance charge for Flat A for 2022/23 is £10,417.80. Again, this figure includes the reserve contribution of £200.

119. The Brady administration charge of £360 is not payable by the applicant.

120. Finally, it is necessary to determine when the advance service charges became payable. Nothing is due on the original demands, as ABC issued credit notes and amended demands. The adjusted charges only fell due when the applicant received the amended demands. These are dated 16 February 2023 but there was no evidence of when they were served on the applicant. In his statement, he said ABC admitted mistakes on 17 March 2023. The Tribunal takes this to be the date he received the amended demands and determine the adjusted charges became payable on 17 March 2023.

Section 20C and Paragraph 5A

121. At the end of the hearing, Mr Davidoff stated the respondent would not seek to recover any costs of these proceedings from the applicant or the service charge account. In the light of this concession, the Tribunal makes no orders under s.20C of the 1985 or paragraph 5A of the 2002 Act. But for this concession, the Tribunal would have made s.20C and paragraph 5A orders as the applicant has succeeded in part. His service charge liability has reduced substantially, taking account of the set-off, and the Brady administration charge has been disallowed. Further, these proceedings were largely triggered by errors in the original service charge budgets. In the circumstances, it would not be just and equitable for the applicant to pay any part of the respondent's costs of the 2023 Application.

122. There was no application for a refund of any Tribunal fees paid by the applicant.

The next steps

123. This decision disposes of the 2023 Application. The County Court proceedings still need to be resolved. The Tribunal has determined administration and service charges that form part of those proceedings but is unable to determine the other issues in that case. The parties are encouraged to try and agree those issues to avoid further litigation.

124. The Tribunal has determined the advance service charges for 2021/22 and 2022/23 and the date these charges became payable. It is open to either party to pursue a further s.27A application to determine actual service charge expenditure for these two years once the year end

accounts are produced. They are also encouraged to try and agree these charges.

Name: Tribunal Judge Donegan **Date:** 31 August 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 Meaning of "service charge" and "relevant costs"

(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 Limitation of service charges: reasonableness

(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 Limitation of service charges: consultation requirements

(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 Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

...

Section 27A Liability to pay service charges: jurisdiction

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of "administration charges"

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

Limitation of administration charges: costs of proceedings

5A

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

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Overriding objective and parties' obligation to co-operate with the Tribunal

3. - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes –

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it –

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must –

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

...

Striking out a party's case

9. - (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must 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) in relation to the proceedings or case or that part of them.

(3) The Tribunal must strike out the whole or 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 that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or part of them), or the manner in which they are being conducted,

to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

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

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph 3(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that –

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings; or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

...

Fees: non-payment

11. - (1) In any case where a fee is payable under an order made under section 42 of the 2007 Act (fees), the Tribunal must not proceed further with the case until the fee is paid.

(2) Where a fee remains unpaid for a period of 14 days after the date on which the fee is payable, the case, if not already started, must not be started.

(3) Where the case has started, it shall be deemed to be withdrawn 14 days after the date on which the Tribunal sends or delivers to the party liable to make payment a written notification that the fee has not been paid.