FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2023/0128**
Property	**:**	**Flat O Welford House 114 Shirland Road W9 2BT**
Applicant	**:**	**Welford House Freehold Company Limited**
Representative	**:**	**Corker Clifford LLP**
Respondent	**:**	**Quentin Parry**
Representative	**:**	**None**
Type of application	**:**	**For the determination of the payability and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge H. Lumby** **Ms M Krisko FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**29 September 2023**
Date of decision	**:**	**20 October 2023**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the service charge payable by the respondent for the service charge year ended 31 December 2021 is £1,516.67.

(2) The tribunal determines that the service charge payable by the Respondent for the service charge year ended 31 December 2022 is £1,594.48.

(3) The tribunal determines that the two sums demanded from the Respondent for the service charge year ended 31 December 2023 (being the sum of £1,922 in respect of budgeted expenditure and the sum of £1,541.37 in respect of major works) are both reasonable and payable.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years ended 31 December 2021 and 2022 and the amounts demanded in respect of the service charge year ending 31 December 2023.

2. The Respondent has not replied to any communications in relation to this case and was as a result disbarred from taking any further part in the proceedings.

The background

3. The property is a flat located on the third floor of a purpose built building, comprising two blocks with a total of 16 flats. There is also a large commercial unit on the lower ground floor, let to the Institute of Psychoanalysis. The building is Grade II listed.

4. The Respondent is a long leaseholder, holding his interest pursuant to a lease dated 10th July 1987 for a term of 125 years from 25 December 1986. The freehold reversion to the lease is vested in the Applicant.

5. The Applicant is a company owned by the leaseholders in the building, acquiring the reversion in September 2021. Before that, they had acquired the Right To Manage the residential parts of the building in 2018, using a separate RTM company.

6. Following its acquisition of the freehold, all of the leaseholders (except the Respondent) were granted new 999 year leases with a revised

service charge regime, which incorporated the commercial unit on the lower ground floor. This regime worked on the basis of three separate pots of expenditure, covering first the residential areas, secondly the commercial areas and finally the building as a whole. The service charge was calculated on this basis, including the charges made to the Respondent. However, this new regime should not apply to the Respondent, as his lease had not been changed.

7. The Respondent has a long record of not making service charge payments. The tribunal was informed that his mortgagees has previously made payments on his behalf, up until mid 2021. The Applicant now wishes to seek to forfeit the Respondent's lease but needs a determination on the amounts payable before doing so.

The lease

8. Clause 5(1) of the lease provides that the service charge is to be a proportion of the costs expended by the landlord in the maintenance and management of the building (other than the commercial element) in accordance with schedule 6 of the lease.

9. The proportion the tenant is to pay is fixed by the proportion the property's rateable value represents as a proportion of the whole residential area. These rateable values have not been provided but historically the Respondent has been charged 5.65% of costs. The tribunal accepted that this was the correct proportion.

10. The service charge is payable in advance as reasonably required by the landlord with provisions for balancing payments or credits.

Tribunal determination

11. As referred to above, no communications were received from the Respondent who did not attend the hearing. Mr Michael Croker of Croker Clifford LLP appeared for the Applicant. Croker Clifford LLP are the managing agents. The documents that the tribunal was referred to are in an initial bundle of 92 pages, the contents of which the tribunal have noted. Prior to the hearing, the tribunal raised with the Applicant concerns as to the documentation provided and whether it was sufficient to allow it to make a determination. A further bundle of 44 pages was provided prior to the hearing, containing additional service charge information, the contents of which were also noted by the tribunal. The tribunal was satisfied that this, combined with the answers provided by Mr Croker during the hearing was sufficient to allow it to make its determination

12. The tribunal raised as a preliminary issue whether the invoices provided were in compliance with sections 47 and 48 of the Landlord

and Tenant Act 1987 and whether the Respondent had in each case been provided with a schedule of his rights and obligations, as required by section 21B of the Landlord and Tenant Act 1985. The Applicant provided covering letters to the invoices showing that the invoices were in compliance with those sections.

13. Having considered all of the documents provided and heard the submissions made by the Applicant, the tribunal has made determinations on the various outstanding issues as follows.

2021 service charge

14. The tribunal reviewed the service charge accounts for the year ending 31 December 2021 and asked Mr Croker various questions. It was confirmed that:

- the cleaning was not carried out under a long term contract; there were sets of internal common parts and these were all cleaned by the cleaners.
- the electricity cost related to internal and external lighting and reflected the actual amounts incurred.
- the management fees, at £500 plus VAT were on the high side. The building had a difficult service charge history and the owners wanted a good service and were prepared to pay for that. It was noted that the owners were the leaseholders of the building.
- the insurance only related to the residential area and that regular revaluations were carried out.
- both this year and the 2022 service charge included costs relating to the RTM company which had briefly managed the building. This was owned by the leaseholders of the residential parts of the building. Mr Croker agreed that these costs, whilst were not expressly recoverable as service charge items, were company costs associated with the RTM company and as such recoverable from the owners.

15. The tribunal first considered the RTM company costs and whether these were recoverable. It accepted that as they were costs associated with the management of the residential areas, they were recoverable and so should be included in the service charge, even after the RTM company's role had ceased. All other costs were recoverable pursuant to the service charge provisions of the Respondent's lease.

16. The tribunal considered that none of the costs charged (including in relation to the RTM company) were patently unreasonable and so accepted them as reasonable. The Respondent had been charged 5.65% of the costs, which was the correct proportion. As a result, it

determined that an amount of £1,516.57 was payable for the service charge year ending 31 December 2021.

2022 service charge

17. The tribunal next considered the information provided for the service charge year ended 31 December 2022. This was the first year that the service charge covered the whole building, including the commercial element. There were three pots of costs, the residential only, the commercial only and shared costs. This was in line with the new forms of lease the other leaseholders had (although not the Respondent). The amounts charged to the Respondent had been calculated on this new basis. It was accepted that there is no right to vary the percentage payable in the Respondent's lease.

18. The Respondent's share of the costs would need to be calculated on the basis of his lease and therefore using the new basis was incorrect. The tribunal therefore considered what the correct percentages for each of the pots should be, this could then be applied to the actual amounts, giving the amount payable by the Respondent.

19. It was accepted that the same proportion would be payable in respect of the residential only pot, being 5.65%. Nothing would be payable in relation to the commercial element. In terms of costs relating to the building as a whole, it was necessary to ascertain what percentage of those costs were applicable to the residential area. The Respondent would then be liable for 5.65% of the amount generated by that percentage.

20. Mr Croker stated that the commercial area was 25% of the building as a whole. This was accepted by the tribunal. Accordingly, the residential parts would be liable for 75% of the shared costs, with 5.65% of that amount payable by the Respondent.

21. Having ascertained the basis for charging, the tribunal then considered the amounts charged. It had already considered the costs relating to the RTM company above and was satisfied that these were reasonable and payable. All other sums demanded were payable pursuant to the service charge provisions in the Respondent's lease. The insurance costs had risen substantially and it asked about this increase. Mr Croker explained that it was as a consequence of a circa £200,000 claim for a flood in 2021, although no evidence was provided in relation to this. He also stated that the broker was required to seek other quotations and so was satisfied that this was a competitive premium. Based on the information provided and the responses given, the tribunal was satisfied that none of the costs charged (including in relation to the RTM company) were patently unreasonable and so accepted them as reasonable.

22. Once satisfied that the costs incurred were payable and reasonable, the tribunal then applied the ascertained proportions to the separate pots of expenditure. The residential only costs amounted to £14,535.96 in total of which 5.65% was payable by the Respondent; this gives an amount payable by him of £821.28. Nothing was payable by him in relation to the commercial element.

23. Turning to the shared pot, the total costs were £18,246.72. 75% of this was apportioned to the residential area, giving £13,685.04. The Respondent was liable for 5.65% of this, amounting to £773.20.

24. The tribunal therefore determines that the amount payable by the Respondent in respect of the service charge year ending on 31 December 2022 is £1,594.48, being the sum of £821.28 and £773.20.

2023 service charge

25. The tribunal finally considered the service charge year ending 31 December 2023. Two amounts had been invoiced, on an account charge for the year, using the same three pots and separately a contribution towards major works. The tribunal looked at these two separately.

26. All sums referred to were payable pursuant to service charge provisions of the Respondent's lease. The tribunal determined that there were no patently unreasonable sums within the service charge budget and therefore determined that the amounts included were reasonable. It therefore applied the same methodology to ascertaining the amount payable by the Respondent as determined above.

27. The total for the residential only pot was £17,213.90, applying 5.65% to this gives an amount payable by the respondent for this section of £972.59. Nothing was payable for the commercial only pot. The total for the shared costs pot was £22,405, the 75% allocation to the residential section gives £16,803.75, of which the Respondent is liable for 5.65%; this is £949.41.

28. The tribunal therefore determines that the amount payable by the Respondent on account in respect of the service charge year ending on 31 December 2023 is £1,922, being the sum of £972.59 and £949.41.

29. Turning to the separate major works invoice, this related to works to the balconies and walkways to the rear of the building. These are works for which the Respondent is liable to contribute pursuant to his lease. A dispensation was obtained pursuant to section 20ZA of the Landlord and Tenant Act 1985 in relation to the consultation requirements for these works. No evidence of the costs incurred or the quality of the works carried out has been provided but by the same token there has been no challenge to these either. The amounts charged appear to the

tribunal to be reasonable, in the absence of any evidence to the contrary.

30. The works relate to an area providing roof cover for the commercial unit and over which the residential leaseholders have access. They are therefore being correctly treated as a shared cost pursuant to the new service charge arrangements. The amount payable by the Respondent therefore needs to be determined using the same methodology as referred to above.

31. The cost of these works was £36,374.50, giving the 75% share for the residential areas of £27,280.88. The Respondent's share is 5.65% of this, giving an amount payable by him of £1,541.37.

32. The tribunal therefore determines that the amount payable by the Respondent in respect of the major works invoiced in the service charge year ending on 31 December 2023 is £1,541.37.

Applications under s.20C and paragraph 5A

33. No applications were made for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A") and so this was not considered by the tribunal.

Name: Tribunal Judge Lumby **Date:** 20 October 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).