



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AY/LSC/2023/0179**

Property : **Flats 1, 2 and 3 and Flat 1 173a and 175
Abbeville Road London SW4 9JJ
Joe Swinburn (Flat 2, 173a)
Kausik and Claire Ray (Flat 1, 173a)**

Applicants : **David & Kirsten Hughes-Hallett (Flat 3
173a)
Edward Grieg-Gran (Flat 1, 175)**

Representative : **None**

Respondent : **Assethold Limited**

Representative : **Mr L Gibson**

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
Mr D Jagger MRICS
Mr C Piarroux JP**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **7 November 2023**

Date of decision : **24 November 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sums demanded in the 2020 service charge year in respect of works to the ground floor electrical intake cupboard are reasonable and payable.
- (2) The tribunal determines that the total aggregate costs payable by the Applicants in the 2020 service charge year in respect of Fire, Health & Safety Services and Fire, Health & Safety Risk Assessment is £350 in total.
- (3) The tribunal determines that the management fees demanded in respect of the 2020, 2021, 2022 and 2023 service charge years are reasonable and payable.
- (4) The tribunal determines that the sums demanded in relation to common parts cleaning in respect of the 2021, 2022 and 2023 service charge years are reasonable and payable.
- (5) The tribunal determines that the total aggregate costs payable by the Applicants in the 2021 service charge year in respect of Monthly Fire Health and Safety Testing, Fire Health and Safety Risk Assessment, and Fire Alarm & Emergency Lighting Service is £350 in total.
- (6) The tribunal determines that that no amount is payable by the Applicants in the 2021 service charge year in relation to the fire alarm works, as per the Section 20 Notice.
- (7) The tribunal determines that the cost of EICR remedial works demanded in the 2021 service charge year is reasonable and payable.
- (8) The tribunal determines that the reasonable amount chargeable in respect of insurance chargeable for the 12 months from May 2022 (and charged in the 2022 service charge year) is £2,203.12 and the total amount payable in that year in respect of additional insurance for the 12 months from May 2021 (and charged in the 2022 service charge year) is £255.
- (9) The tribunal determines that the total aggregate costs payable by the Applicants in the 2022 service charge year in respect of Monthly Fire Health and Safety Testing, Services and Repairs, Fire Risk Assessment, and Health and Safety Risk Assessment is £350 in total.
- (10) The tribunal determines that no amount is payable by the Applicants in the 2022 service charge year in relation to roof works, as per the Section 20 Notice.

- (11) The tribunal determines that that no amount is payable by the Applicants in the 2022 service charge year in relation to remedial works to the electrical riser cupboard or the installation of fire retardant boarding/sealant in relation to that cupboard.
- (12) The tribunal determines that only £414 is payable by the Applicants in the 2022 service charge year in respect of parapet wall cleaning, joints inspection, brickwork etc.
- (13) The tribunal determines that the cost of downpipe cleaning and the removal of vegetation demanded in the 2022 service charge year is reasonable and payable.
- (14) The tribunal determines that only £414 is payable by the Applicants in the 2022 service charge year in respect of the removal of paint and the redecoration of windows and doors.
- (15) The tribunal determines that only £360 is payable by the Applicants in the 2022 service charge year in respect of cleaning stone works and filling cracks.
- (16) The tribunal determines that the reasonable amount chargeable in respect of insurance in the 2023 service charge year is £2,338.28.
- (17) The tribunal determines that the total aggregate costs payable by the Applicants in the 2023 service charge year in respect of Fire, Health & Safety Testing, Services and Repairs and Fire Risk Assessment is £350 in total.
- (18) The tribunal determines that the contribution to the repair fund estimated for the 2023 service charge year is reasonable and payable.
- (19) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicants as lessees through any service charge.
- (20) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Applicants' Leases.

The application

1. The Applicants seek 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 ending 31 December 2020, 2021, 2022 and 2023. A Scott Schedule was completed by both parties identifying the issues in dispute.

2. During the hearing the Applicants agreed that the following sums listed as in dispute were reasonable and payable:

- (i) Roof Works in the 2021 service charge year, as per the Section 20 Notice - £2,393.04
- (ii) Replacement of RCD, Install Surge Protective device and electrical remedials in the 2022 service charge year - £723.71

These items were not considered by the tribunal further.

3. The following items were disputed for the service charge year ending 31 December 2020:

- (i) Works to ground floor electrical intake cupboard - £1,020
- (ii) Fire, Health and Safety Service - £312
- (iii) Fire, Health and Safety Risk Assessment - £350
- (iv) Management fee - £1,161.60

4. The following items were disputed for the service charge year ending 31 December 2021:

- (i) Common parts cleaning - £717.36
- (ii) Monthly Fire Health and Safety Testing - £322.64
- (iii) Fire Health and Safety Risk Assessment - £300
- (iv) Roof Works as per Section 20 Notice - £2,393.04

- (v) Fire Alarm Works as per Section
20 Notice - £4,800.24
 - (vi) EICR Remedial Works - £828
 - (vii) Fire Alarm & Emergency
Lighting Service - £216
 - (viii) Management fee - £1,171.20
5. The following items were disputed for the service charge year ending 31 December 2022:
- (i) Insurance - £2,703.12
 - (ii) Common parts cleaning -
£694.16
 - (iii) Fire Health and Safety Testing,
Services and Repairs - £1,463.28
 - (iv) Additional Insurance for 2021/2
- £1,530.00
 - (v) Fire Risk Assessment - £415.20
 - (vi) Roof Works as per Section 20
Notice - £9,440.00
 - (vii) Health and Safety Risk
Assessment - £350
 - (viii) Remedial Works to Electrical
Riser Cupboard - £550
 - (ix) Replacement of RCD, Install
Surge Protective device and electrical remedials - £723.71
 - (x) Installation of fire retardant
boarding/sealant - £690
 - (xi) Parapet Wall Cleaning, joints
inspection, brickwork etc - £828
 - (xii) Downpipe cleaning and removal
of vegetation - £498
 - (xiii) Remove Paint and re-decorate
windows and doors - £828

- | | |
|-------|-----------------------------------|
| (xiv) | Cleaning Stone works, fill cracks |
| | - £720 |
| (xv) | Management fee - £1,180.80 |
6. The following items were disputed for the service charge year ending 31 December 2023:
- | | |
|-------|--|
| (i) | Insurance - £2,838.28 |
| (ii) | Common parts cleaning - £750 |
| (iii) | Fire Health and Safety Testing, Services and Repairs - £1,300 |
| (iv) | Fire Risk Assessment - £450 |
| (v) | Management fee - £1,190.40 |
| (vi) | Repair Fund (if needed) - |
- £1,000

The background

7. This application relates to 173A and 175 Abbeville Road, SW4 9JJ. Two houses have been converted to create commercial units on the ground floor which do not contribute to the service charges. On the first floor, there are two flats (Flat 1, 173a and Flat 1, 175). On the second floor, there are two maisonettes: (Flat 2, 173a and Flat 3, 173a).
8. The application has been issued by Joe Swinburn who is the tenant of Flat 2, 173a. The other parties comprised within the Applicants subsequently confirmed that they wished to be joined as parties to the application.
9. The Applicants are all long leaseholders, holding their interests pursuant to leases in materially the same form. The immediate reversion to the lease is vested in the Respondent, there is also a freeholder which holds the reversion to the Respondent. Services are provided by the Respondent whilst insurance is provided by the freeholder.
10. The Property is managed by Eagerstates Limited on behalf of the Respondent.

The lease

11. The leases provide that the tenant is to pay by way of service charge an interim and final service charge pursuant to clause 5 of the lease. The tenant's proportion of the costs is a fixed percentage proportion of the service costs incurred by the landlord.

The Tribunal's determination

12. The Respondent did not attend the hearing but was represented by counsel. By not appearing, the Respondent was not able to provide assistance to the tribunal in ascertaining the facts or answer questions about the statements made on its behalf. Counsel on its behalf was able to provide useful assistance on the law and in identifying the Respondent's previously articulated positions on issues but this does not replace the Respondent's knowledge. Counsel was unable to respond to factual points raised by the Applicants. Mr Swinburn appeared on behalf of the Applicants.
13. The documents that the tribunal was referred to are in a bundle of 776 pages, the contents of which the tribunal have noted. The bundle included the Applicant's statement of case and the Scott Schedule.
14. Having considered all of the documents provided and heard the submissions made by the parties, the tribunal has made determinations on the various outstanding issues as follows.

Service charge sums in dispute

15. The tribunal has broadly considered the various issues in chronological order. In doing so it has endeavoured to batch similar issues across the four years in dispute.

Works to the ground floor electrical intake cupboard

16. Works were carried out to this cupboard in 2020 and £1,020 charged to the tenants in that year. The Applicants have challenged that quantum as unreasonable and also questioned the quality, given subsequent further works carried out. The Respondent has asserted that the cost was reasonable and pointed out that no alternative quotes have been provided by the Applicants.
17. Further works were then carried out to this cupboard in 2022, with £550 being charged for remedial works and £690 for the installation of fire retardant boarding and sealant. The Applicants argue that these should have been encompassed within the initial works which in any event should not have required remediation within two years, given an appropriate level of use. Photographs were provided showing the cupboard and the works but there was no evidence to suggest an inappropriate level of use or why remediation was required.

18. The tribunal finds that the original works were reasonable to carry out and finds the amounts charged for them to be reasonable if carried out to a reasonable standard. It finds that their failure within two years is not reasonable and so should not be charged to the tenants who rightly expect these to have been carried out to a reasonable standard having paid on that basis. It further finds that the insulation should have been carried out as part of the original works and within the price paid. The costs of doing these works subsequently should therefore not be charged to the Applicants.
19. Accordingly, the tribunal determines that (i) the sums demanded in the 2020 service charge year in respect of works to the ground floor electrical intake cupboard are reasonable and payable and (ii) no amount is payable by the Applicants in the 2022 service charge year in relation to remedial works to the electrical riser cupboard or the installation of fire retardant boarding/sealant in relation to that cupboard

Fire and Health & Safety charges

20. The Applicant has challenged the frequency and quantum of fire and health and safety related testing and related activities carried out and charged to the tenants every year. In 2020, there was a charge of £312 for Fire, Health and Safety Service and £350 for Fire, Health and Safety Risk Assessment. In 2021, there was a charge of £332.64 for Monthly Fire health and Safety Testing, £300 for Fire Health and Safety Risk Assessment and £216 for Fire Alarm & Emergency Lighting Service. In 2022, the Respondent charged £1,463.28 for Fire, Health and Safety Testing, Services and Repairs, £415.20 for a Fire Risk Assessment and £350 for a Health and Safety Risk Assessment. Finally, in 2023 it has charged £1,300 for Fire Health and Safety Testing, Services and Repairs and £450 for a Fire Risk Assessment.
21. The Respondent has argued that all these works are required by law and are reasonable in amount. The specific law was not identified but counsel for the Respondent argued that fire safety is something which landlords need to be aware of, especially post Grenfell and expenditure in this area is reasonable.
22. The tribunal agrees that it is prudent for the landlord to carry out a degree of fire and health and safety inspection and safeguarding but does not find the frequency and the duplication of inspections and other activities reasonable. This is not a tower block, just two floors of flats above commercial units. It is not correct that this level of activity is required by law. It is the tribunal's view that an inspection every 18 months to two years is appropriate, with any testing and repairs required as a result being addressed. It therefore finds that expenditure of £350 per annum on these activities in aggregate is reasonable, beyond that it is not.

23. The tribunal therefore determines that £350 per annum is the maximum recoverable from the tenants in relation to fire and health and safety services, including risk assessments, testing, servicing and repairs.

Management fees

24. The management fees charged by the Respondent's managing agents are £1,161.10 for 2020, £1,171.20 for 2021, £1,180.80 for 2022 and £1,190.40 for 2023. As a fee per unit, that works out as £242 plus VAT per unit in 2019, rising by about £2.50 a unit a year.
25. The Applicants argue that these fees are too high by about £40 per unit a year, compared with other cases they referred to. These were however properties with more units, allowing economies of scale. Counsel for the Respondent argued that a fee at this level was at the bare minimum for a property with so few units, arguing that there is a minimum below which an agent cannot economically go. No comparables for this Property have been provided.
26. The tribunal considered that the fees being were within a band of reasonable fees, with little room for downside. It is clear that services are being provided, albeit of variable suitability and quality. It accordingly finds that the management fees being charged are reasonable and payable.
27. The tribunal therefore determines that the management fees demanded in respect of the 2020, 2021, 2022 and 2023 service charge years are reasonable and payable.

Common parts cleaning

28. The Applicants argue that the internal common parts are small and it would be cheaper if the tenants cleaned these themselves. The Respondent argued that no comparables had been offered, it being accepted that it was difficult to get commercial cleaning companies to quote for this. Counsel argued that the landlord has an obligation to do the cleaning under the leases and so must do this to avoid potential claims.
29. The tribunal finds that the total amounts claimed for cleaning each year (£717.36 in 2021, £649.16 in 2022 and £750 in 2023) were all reasonable figures for the work being undertaken.
30. The tribunal therefore determines that the sums demanded in relation to common parts cleaning in respect of the 2021, 2022 and 2023 service charge years are reasonable and payable.

Works in 2021

31. The Respondent charged the tenants for three sets of works in 2021, comprising Roof Works as per Section 20 Notice (£2,393.04), Fire Alarm Works as per Section 20 Notice (£4,800.24) and EICR Remedial Works (£828).
32. The Applicants have accepted that the Roof Works are reasonable and payable. They argue however that the Fire Alarm works were an improvement but unnecessary, saying that the existing system worked and no surveys had suggested that an upgrade was required. No evidence was contained in the bundle in relation to the works or the fire surveys or risk assessments from the relevant year. Counsel for the Respondent argued that the leases allowed the landlord to recover the costs of all works carried out which are considered necessary in their absolute discretion for the safety of the Property. Mr Swinburn conceded that he did not object to at the time because he did not realise that he could.
33. The tribunal determines that there is no evidence to support the necessity for these works. As no one from the Respondent attended the hearing and without any evidence to the contrary, the tribunal had no choice but to accept the Applicants' case. It therefore determines that the Fire Alarm Works were not necessary and therefore the costs were not reasonably incurred. It accordingly determines that no part of the cost of these works (including any management fees) is payable by the Applicants.
34. The Applicants also argued that the EICR Remedial Works are not chargeable under the terms of the lease, the costs are unreasonable and the works are not to a reasonable standard. Counsel for the Respondent argues that the costs are recoverable under clauses 6(2) and/or 6(5) of the leases and the tribunal agrees with that argument. It is also clear from the evidence that there had been a failure which needed remedying. The Applicants accepted this position. Accordingly, the tribunal accepted that the full cost of these works was reasonable and payable by the tenants.
35. The tribunal determines that that no amount is payable by the Applicants in the 2021 service charge year in relation to the fire alarm works, as per the Section 20 Notice.
36. The tribunal determines that the cost of EICR remedial works demanded in the 2021 service charge year is reasonable and payable.

Insurance

37. The superior landlord insures the Property and the Respondent simply passes on the amounts charged to the tenants. These included an insurance premium in 2022 of £2,703.12, an additional premium for the previous year also charged in 2022 and a further premium charged in 2023 of £2,838.28 (the tribunal assumes that this relates to a different year to that charged in 2022 although both were characterised by the Respondent as “Insurance May 2022/23”).
38. The Applicants argue that the amounts charged reflect over-insurance and can be obtained more cheaply, as evidenced by separate quotations obtained on their behalf. The Respondent was not present to explain its knowledge of the process followed but in any event its argument is simply that it is not the one insuring and so has no influence over the amounts charged.
39. The tribunal noted that the average for the year 2022 from the quotations the Applicants had obtained was £1,722.89, around £1,000 cheaper than the amount charged. However, it also noted that the insurance quotations were not necessarily like for like with the existing policy, terrorism appeared to be excluded for example. It also noted that the respondent has duties to question the superior landlord about how it was insuring which did not appear to have done.
40. Taking the main insurance premiums for 2022 and 2023 and the comments made in relation to them in the round, the tribunal was concerned at the disparity between the Applicants’ quotes and the amount being charged by the superior landlord. It was also unclear whether the Respondent was ensuring that the superior landlord was obtaining competitive quotations and was not over-insuring. It therefore concluded that the premium in each year was £500 more than it ought reasonably to be there. It therefore deducted this amount from the premiums for these two years.
41. The tribunal also considered the additional premium charged in 2022. It appeared to it that the additional premium was £255 not the £1530 charged as this includes the commercial units and ground rent. Accordingly, it determines that the amount payable is £255.
42. The tribunal therefore determines that the reasonable amount chargeable in respect of insurance chargeable for the 12 months from May 2022 (and charged in the 2022 service charge year) is £2,203.12 and the total amount payable in that year in respect of additional insurance for the 12 months from May 2021 (and charged in the 2022 service charge year) is £255.
43. The tribunal determines that the reasonable amount chargeable in respect of insurance in the 2023 service charge year is £2,338.28.

Roof Works

44. Extensive roof works were carried out in 2021 and the Applicants have accepted that the cost of these works is reasonable and payable. Further works were carried out in 2022, totalling £9,440 including a management fee. The Applicants question the need for these works as they should have been covered by the previous works and these should have been done to a reasonable standard.
45. There was limited evidence in the bundle and the Respondent was not present to assist with questions. However, it was clear that there were issues with the earlier works, for example a cement fillet has been added which the tribunal considers should be lead; it is clear from photographs that the cement fillet has cracked and therefore needed to be replaced. It also appears to the tribunal that the contractor was given carte blanche to do what works it wanted without being held to a specification and supervision. There is similarly a lack of clarity as to what is covered by the two sets of works but there is nothing that the tribunal has seen which suggests that the 2022 were necessary beyond rectifying previous poor work. Finally it is apparent that there were questions about poor workmanship, for example windows could be seen to have had works and this can be seen to have failed within six months.
46. The tribunal is unable to identify any works which were necessary save to remedy failures in past works. Without any evidence of new work properly carried, it cannot support any sort of payments for such works.
47. The tribunal therefore determines that that no amount is payable by the Applicants in the 2022 service charge year in relation to roof works, as per the Section 20 Notice.

Other works in 2022

48. Four other sets of work were carried out in 2022, comprising £828 for parapet wall cleaning, joints inspection, brickwork etc; £498 for downpipe cleaning and removal of vegetation; £828 to remove paint and redecorate windows and doors; and £720 for cleaning stone works and filling cracks.
49. The Applicants argue that these works were done separately to avoid a consultation in relation to them but the tribunal sees no evidence to support this. In addition, they question the quality of the works, if done at all.
50. The tribunal has considered the evidence in the bundle relating to each of these items. It finds that the downpipe cleaning on an annual basis

reflects good management practice and finds the amount charged to be reasonable.

51. With the remainder of the works, it can see that something was done in each case but has concerns about the quality. Looking at the photographs on pages 171 to 174 and on pages 704 to 714 of the bundle, it is hard for example to identify any effective works to the windows and doors, Giving these concerns, the tribunal finds that only 50% of the cost should in each case be recoverable from the tenants.
52. The tribunal determines that only £414 is payable by the Applicants in the 2022 service charge year in respect of parapet wall cleaning, joints inspection, brickwork etc.
53. The tribunal determines that the cost of downpipe cleaning and the removal of vegetation demanded in the 2022 service charge year is reasonable and payable.
54. The tribunal determines that only £414 is payable by the Applicants in the 2022 service charge year in respect of the removal of paint and the redecoration of windows and doors.
55. The tribunal determines that only £360 is payable by the Applicants in the 2022 service charge year in respect of cleaning stone works, fill cracks.

Repair fund

56. The Applicant argued that there was no right for the Respondent to collect and maintain a repair or sinking fund under the lease but now accepts that this is within clause 5, as referred to above. The Respondent argued that this is payable under the lease and helps ensure there are sufficient funds on account for repair.
57. The tribunal agrees that a repair fund helps smooth costs and the Respondent is entitled to establish one. In addition, it finds the amount payable to it to be reasonable.
58. The tribunal determines that the contribution to the repair fund estimated for the 2023 service charge year is reasonable and payable.

Applications under s.20C and paragraph 5A

59. The Applicants have applied 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”).

60. The relevant part of Section 20C reads as follows:-

(1) “A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant...”.

61. The relevant part of Paragraph 5A reads as follows:-

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

62. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under their respective Leases.

63. In this case, the Applicants have been successful on the biggest substantive issues, in particular the major works carried out. The Respondent has not fully engaged in the process, for example by not attending the hearing. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

64. For the same reasons as stated above in relation to the Section 20C cost application, the Applicants should not have to pay any of the Respondent’s costs in opposing the application. The tribunal therefore makes an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Leases.

Name: Tribunal Judge Lumby **Date:** 24 November 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).