FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LSC/2022/0099
Property	**:**	Flat 3, 43 Grand Parade, Brighton BN2 9QA
Applicant	**:**	Elza Aleksandrova
Representative	**:**	In person
Respondent	**:**	Powell & Co Investments Ltd
Representative	**:**	Mr Sean Powell, Director
Type of Application	**:**	Landlord and Tenant Act 1985 s.27A (service charges)
Tribunal Members	**:**	Judge Mark Loveday Mr N Robinson FRICS Ms J Dalal
Date and venue of hearing	**:**	21 April 2023, 23 June 2023 and 28 September 2023, Brighton Tribunal Centre
Date of Decision	**:**	22 November 2023

DETERMINATION

Introduction

1. This matter concerns liability to pay service charges for Flat 3, 43 Grand Parade, Brighton BN2 9QA. There is a history of disputes involving this particular property. On 11 January 2022, a previous tribunal determined liability to pay service charges for the service charge year ending 24 June 2020 (2019-20) and the interim service charges for the 2020-21 service charge year (CHI/00ML/LSC/2021/0049). By an application dated 25 August 2022, the Applicant lessee challenged liability to pay ground rent and service charges for 2020-21 and 2021-22 as well as the 2022-23 interim service charges. The application form also sought orders under s.20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002.

2. In essence, for the reasons given below, the Tribunal rejects each of the Applicant's challenges to the 2021-22 service charges and the 2022-23 interim service charges.

Background

3. As explained below, the Tribunal inspected the premises on 21 April 2023. The property comprises a Victorian mid terrace house on basement and four upper storey property that has been converted into 5 self-contained flats. The Tribunal was shown the entrance hall, staircase, a mezzanine room and Flat 3. The common parts were clean, the fire alarm panel in the hallway indicated that the system was operating correctly and there were up to date inspection records. Attention was drawn to the matwell just inside the front door which was deeper than the mat thickness and therefore potentially a tripping hazard. The mezzanine room is part of the landlord's retained property (as with the staircase) and particular attention was drawn to damp staining at high level, indicating a historic or actual water leak. From the rear bedroom of Flat 3, one could see a downpipe above the mezzanine room, which apparently had previously been defective. But at the time of inspection the downpipe appeared satisfactory with a retaining screw securing a male section of pipe to a female section.

4. Each flat is let on a long lease. The lease of Flat 3 was originally granted on 9 May 1987 for a term of 99 years, but in July 2007 a deed of variation was executed which purported to extend the term to 999 years. The Applicant produced a copy of this deed, which had the effect of creating a new lease incorporating the terms of the 1987 Lease.

5. The Respondent is the freehold owner of 43 Grand Parade. The Applicant states in her application that she is the leaseholder of Flat 3. However, there is some suggestion in the papers that she is the joint lessee with her son Mario. Certainly, the decision of the Upper Tribunal (Lands Chamber) in *Powell & Co Investments Ltd v Aleksandrova and Alexander* [2021] UKUT 10 (LC), lists Dr Mario Alexander as joint lessee of the flat. However, at no stage has anyone sought to join Dr Alexander as a party to this application.

6. The service charges in dispute comprise the two most recent service charge years at the date of the application and the interim service charges for 2022/23. Demands for payment were included in the hearing bundle. A balancing charge for 2020/21 was demanded for payment on 16 December 2021. The 2021/22 balancing service charges and the 2022/23 interim charges were apparently demanded for payment on 8 July 2022.

The Lease

7. The 1987 Lease contains a conventional service charge provision at clause 3(2) by which the lessee covenants to pay 18% of the annual costs expenses and outgoings incurred by the lessor in complying with its obligations in Sch.4, as supplemented by various provisions in Sch.5.

8. The Sch.4 obligations include a duty at para 3 to repair the structural parts of the building:

"… including the roof roof timbers balconies…. main walls and external parts thereof and the foundations thereunder any garden and rear area walls … and all paths cisterns tanks sewers watercourses drains pipes wires gutters ducts and conduits not used solely for the purposes of the flat or any one of the other flats in the Building and any communal television aerial …"

There is a further obligation at para 10:

"To carry out with due works to the building, but not to any of the flats therein which may be required to comply with any statutory notices or provisions effecting the same"

Finally, Sch.4 is subject to a proviso:

"PROVIDED ALWAYS that the Lessor may alter or modify the services referred to in this Schedule … if by reason of any change of circumstances during the term hereby granted such alteration or modification is in the opinion of the Lessor reasonably necessary or desirable in the interests of good estate management or for the benefit of the occupiers of the Building".

9. The Fifth Schedule contains a list of the expenditure and other matters to which the lessee must contribute through the service charge. These include, at para 1, the expenses of maintaining repairing and redecorating and renewing:

"(b) Internal common ways landings and staircases floor coverings and carpets fixtures and fittings refuse buns used in common and electricity wires and switches".

10. Clause 3(2) explains how the service charges is to be paid:

"The service charge shall be calculated and paid in accordance with the following provisions:

(a) [two half-yearly payments on account]

(b) on or as soon as possible after the twenty fourth day of June in each year the respective annual costs expenses and outgoings of the matters referred to in sub-clause (i) of this clause shall be calculated and if the Lessee's share of such annual costs and expenses and outgoings under the provisions hereinbefore contained shall fall short of or exceed the aggregate of the sums paid by him on account of his contribution the Lessee shall forthwith upon production of a

certified account pay to or shall be refunded by the Lessor the amount of such shortfall or excess as the case may be …

…"

Procedural history

11. Before turning to the substantive issues, it is necessary to say something about the unfortunate procedural history of the present application. Directions were given on 29 November 2022, when it was noted that "this is the latest in a long line of applications involving these parties". The Deputy Regional Judge struck out any consideration of ground rent for the relevant years and gave directions for a determination of the remaining issues on the papers. On 6 January 2023, the Applicant filed a statement of case, which identified several issues for the relevant service charge years. The Respondent met this with a witness statement from Mr Sean Powell, one of its directors, dated 24 January 2023, and which exhibited various service charge accounts and demands for payment. The Applicant filed a statement in reply dated 3 February 2023 . The parties also prepared a Scott Schedule which identified some 17 issues for determination. Before passing on from the statements of case, it should be said that the Applicant's Statements of Case are confused. They contain very many allegations, often alleging serious criminality on the part of the Respondent and making frequent references to statutory provisions not relied upon at the hearing or referred to in the Scott Schedule. It was for this reason, that as a matter of case management, the Tribunal used the Scott Schedule as a basic framework for resolving the issues between the parties rather than relying primarily on the Statement of Case.

12. Although the Respondent was content to have a paper determination, the matter was listed for a conventional oral hearing at Havant Justice Centre on 21 April 2023 with a time estimate of one day. In the meantime, the Applicant applied for specific disclosure, which was refused on 19 January 2023. On 7 February 2023, the Applicant applied for directions that bundles should be in paper form (rather than electronic). That application was again refused on 9 February 2023, and the Applicant therefore proceeded to prepare both electronic and paper bundles for the hearing.

13. On 8 April 2023, the Applicant applied (1) to cancel the hearing and revert to a paper determination or (2) to move the venue of the hearing to Brighton and to schedule an inspection of the subject property on 21 April. The gist of these applications was that (1) the Applicant had hearing difficulties, which meant she could not easily follow matters at a hearing and (2) she had an orthopaedic appointment in Brighton on that date at 8.00am. The Deputy Regional Judge responded to these applications by moving the hearing to the Brighton Tribunal Centre, with an inspection at 10:15am and a hearing at 11:30am.

14. The inspection and hearing therefore proceeded on 21 April 2023. The Applicant appeared in person and the Respondent appeared by its director, Mr Powell.

15. At the outset, it was agreed the issues between the parties were as set out in the Scott Schedule, although the Tribunal permitted the Applicant to raise three

additional points omitted from the schedule but which appeared in the Applicant's statement of case. On the first day, the Applicant made opening remarks and addressed each of the issues, completing her submissions late in the afternoon. Mr Powell began his response, but since the time estimate for the hearing proved woefully inadequate, a second day was required to conclude matters.

16. There were considerable difficulties finding an early date and a suitable venue for the resumed hearing. Eventually, a hearing was fixed for 13 June, again at the Brighton Tribunal Centre. The parties were notified on 13 May 2023. On 12 June, the Respondent attempted to put in some further evidence for the hearing. The Applicant immediately responded with an email stating that "I am very stressed today, less than 20 hours before the trial, and I cannot understand it at all and I do not have time to search for a legal advise in order to prepare myself for tomorrow". She asked the Tribunal to reject the new evidence but did not seek an adjournment.

17. Both the Applicant and Mr Powell duly attended the resumed hearing on 13 June. Mr Powell continued his submissions. However, the Applicant appeared visibly distressed, and at the point where Mr Powell had just completed submissions in relation to Issue 11 in the Scott Schedule, the Applicant asked for a short adjournment. During that adjournment, she was taken ill, HMCTS staff called an ambulance, and the Applicant was apparently taken to hospital. In these circumstances, the hearing plainly could not continue.

18. In due course, the Tribunal made enquiries about whether and when it would be possible to resume the hearing and there was email correspondence about the venue and the new date. The Respondent suggested that Dr Alexander could (as joint lessee) attend in the Applicant's place. On 26 June, the Applicant rejected that suggestion. She had different medical appointments in July and August, but any date in the last week of September would be "fine". She hoped her health would get better and she would provide a medical certificate if there were any further problems. A resumed hearing was therefore fixed for 28 September in Brighton, which was within the window suggested by the Applicant.

19. Nothing further was heard until the day before the further re-scheduled hearing. On 27 September 2023 at 9:47, the Applicant emailed the Tribunal with a request to adjourn for a further 6 weeks. The email suggested that the Applicant had been diagnosed with depression and enclosed a copy of an assessment letter from a High Intensity Specialist dated 19 July 2023. The letter did not refer to the hearing, or to the ability of the Applicant to attend or participate in proceedings. There was also a letter fixing a telephone appointment with a trainee Psychological Wellbeing Practitioner on 27 September at 17:30, which was late in the afternoon of the proposed hearing date. The Tribunal declined to vacate the date but indicated that it would consider an application for an adjournment at the start of the hearing on 27 September. The Applicant was strongly advised to seek legal advice / representation even at this late stage. On 27 September at 18:04, the Applicant emailed to say she was very disappointed that the Tribunal Judge refused an adjournment. She stated she felt very ill and could not attend the hearing.

20. The hearing therefore proceeded on 28 September 2023 at Brighton Tribunal Centre. The Tribunal delayed the start of the hearing while enquiries were made by staff about whether the Applicant wished to attend by telephone. She declined to do so.

21. The Tribunal therefore decided to continue the hearing without the Applicant. In doing so, it bore in mind the overriding objective in Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Its reasons for continuing in the absence of the Applicant were:

a. The date set for the resumed hearing was within the window suggested by the Applicant herself.
b. The Application to adjourn was made very late indeed. No explanation was given for the lateness of the application. Neither was any explanation given for the Applicant remaining silent between the diagnosis on 19 July 2023 and 27 September 2023.
c. The specialist's letter did not suggest the Applicant was unable to attend a hearing and the medical appointment was by telephone and outside the Tribunal's sitting hours. Neither provided any reason why the Applicant could not attend an 'in person' hearing starting at 10.00am.
d. A hearing spread over three dates between 8 April and 28 September 2023 was already at the very limits of what could be considered just. The Tribunal could not give proper consideration to the many issues raised by the Applicant if oral submissions were spread over a period of over 7 months. The almost inevitable result of an adjournment would be to abandon the hearing and start again, wasting the costs and resources of the parties and the resources of the Tribunal. Three hearing days and an inspection would have been wholly wasted. This would not be just and equitable both in terms of tribunal time, or fair to Mr Powell, who had already travelled from London to Brighton to attend the two previous hearings.
e. The Applicant had already made lengthy oral submissions and submitted two statements of case in writing. Her own case was not curtailed in any substantial way. The only prejudice to the Applicant was not being able to respond to the Respondent's arguments or to cross-examine Mr Powell on any factual evidence. But although this may have caused some prejudice, it did not prevent the Applicant substantially participating in the proceedings. Indeed, the Tribunal had already given the Applicant considerable leeway to raise points orally for the first time which were not mentioned in the Scott Schedule.
f. The overriding objective specifically enjoins the Tribunal to avoid delay. The delays in this case had already been exceptional.
g. The Tribunal had already gone to some lengths to accommodate the Applicant's specific needs. This included the switching of the previous hearing venue from Havant to Brighton.
h. The Applicant was offered reasonable alternative means of participating, including a late offer of telephone attendance and the suggestion that her son should appear for her. Indeed, Dr Alexander should in all probability have been a party to proceedings in the first place as joint lessee.

Although the Tribunal has sympathy with the Applicant's evidently complex health issues, that is not, by itself, decisive. Her health needs have to be balanced against the other specific considerations in rule 3. The hearing either had to

continue, or it would in all probability have had to be abandoned and a part-heard matter restarted all over again.

22. The Tribunal will deal with each of the various issues in turn.

Issue 1: Electrical Works

23. In the Scott Schedule, the Applicant challenged costs of £200 and £790 incurred during the 2020-21 service charge year for an "electrical certificate". The Applicant suggested this was a "double charge", and at the hearing she clarified she was only challenging the additional cost of £790.

24. There is a copy of a NICEIC Electrical Installation Condition Report dated 20 November 2020 prepared by Hashtag Electrics of Harrow, which recommended certain action to be taken. There is then an estimate, with the same date, for £790 from the same contractors, for removal of the main distributor board in the building and replacing circuit breakers and meter tails. This is followed by an email exchange between the Respondent and Hashtag Electrics about the quotation. On 20 November 2020, Hashtag Electrics invoiced the Respondent £790 for the works in the estimate and for the NICEIC certificate. Finally, there is an Electrical Installation Certificate dated 3 December 2020 confirming the work was completed.

The case for the parties

25. The two arguments advanced in the Applicant's statement of case were that:

a. The Condition Report suggested the electrical system was "generally in good condition" and annual risk assessments had not shown any need to upgrade the board. The whole electrical system had been renewed in 2018/19, and the surveyor at the time did not recommend work to be carried out to the distributor board.

b. It was unreasonable for Mr Powell to "create a job for a friend's electricians in order to facilitate them after the lockdown". Alternatively, the Respondent had hired the electrician for Mr Powell's father's flat, which the freeholder was letting out at the time.

26. To support her first argument, the Applicant referred to a Fire Safety Report from 4site Consulting dated 20 October 2020, which did not suggest there was any need for electrical works (other than an inspection). The Tribunal drew the Applicant's attention to Parts 3 and 6 of the Electrical Installation Condition Report. These noted that the electrics were estimated to be 25 years old. Although (as the Applicant had said) the electrics were "generally in good condition" it qualified this by stating that the system needed "upgrading to the 18th Edition Standard". In particular, the main distribution board was "potentially dangerous" on at least three counts, and it required "urgent remedial action" (principally to deal with mixed makes of circuit breaker and a lack of fire stopping). The Applicant nevertheless maintained there was no real need to undertake works to the circuit board. As to the second argument, the Applicant said the Respondent hired an electrician from London. The reasonable cost should have been half of the sum of £790. Finally, and as an

additional point, the Applicant suggested at the hearing that the Lease did not permit the recovery of costs relating to circuit board.

27. The Respondent submitted that it was a legal requirement for the common parts to have a NICEIC certificate, and that the electric installations failed when tested. The cost of remedial works had to be incurred to obtain the certificate. As to the cost of the works, there were no alternative quotations to suggest the costs was excessive. The contractor did a lot of work for the Respondent, was happy to travel to Brighton for work and did not charge VAT. The costs were recoverable under para 1(b) of Sch.5 to the Lease or under the sweeper clause in para 10 of Sch.4. Mr Powell also mentioned another property the Respondent owned which had caught fire due to poor electrics. He was therefore extremely aware of health hazards and fire safety for all the Respondent's buildings to ensure they complied with health and safety requirements.

Discussion

28. The Applicant's main arguments raise questions under s.19(1)(a) of the Landlord and Tenant Act 1985. The question is whether the £790 costs were reasonably incurred.

29. The Applicant's main argument here is simply unsustainable. The Electrical Installation Condition Report clearly and unambiguously states that the distribution board was "potentially dangerous" and required "urgent remedial action". Those were the works for which Hashtag Electrics quoted, and they were the works which were carried out. As the Respondent stated, the works needed to be completed to obtain a safety certificate. It was plainly reasonable for the Respondent to incur the costs of the works to the distribution board.

30. As to the second argument, there is simply no evidence that Mr Powell created work "for a friend's electricians" to help them out financially after the lockdown. Neither is there any evidence that the Respondent hired the electrician to carry out work in Mr Powell's father's flat. These are both serious allegations which need to be supported by something more than a mere assertion.

31. There is again no evidence that Hashtag's costs were too high. £790 is not obviously excessive for electrical works, and there is no specific evidence the Respondent could have procured a local electrician at less cost. As Mr Powell pointed out, the Applicant produced no alternative estimates for the work.

32. Finally, the Tribunal will briefly deal with the contention (first raised at the hearing) that the costs were not recoverable under the Lease. The Tribunal finds the works to the distribution board were repairs to "electricity wires and switches" within the meaning in para 1(b) of Sch.5 to the Lease and/or works to "comply with any statutory notices or provisions effecting the same" within the meaning of para 10 of Sch.4. The references to "wires" and "conduits" in para (1) of Sch.4 is apt to extend to distributor board, and there is also the sweeper clause at the end of Sch.4. In any event, the Tribunal is in no doubt these costs are recoverable under the terms of the Lease.

Issue 2: Dehumidifier

33. In the Scott Schedule, the Applicant challenged costs of £150 incurred the 2020-21 service charge year for a dehumidifier. The papers include an invoice dated 8 October 2020 from National Property Management to supply a dehumidifier for £150.

The case for each party

34. The Applicant's case in the Scott Schedule was that the dehumidifier cost was "not in [the] lease", and the Applicant's statement of case argued (para 6(7)) that the Lease does not make any provision for the purchase of appliances. She also alleged the apparatus disappeared after the small room was cleaned, and that if the leaseholders had to pay for it, the dehumidifier should have stayed in the building. Instead, it was removed by the freeholder and used for its own business.

35. Mr Powell explained that the Respondent acquired the building in 2016. In 2018/19, it commenced major works to remedy years of decay. The brickwork in the store cupboard was saturated. In 2020 the Respondent bought (rather than hired) a dehumidifier, because the brickwork required a long period of drying out. Unfortunately, someone in the building kept on unplugging it, so the dehumidifier took much longer to dry out the room than would otherwise be the case. He did not accept the landlord had removed the appliance and used it for its own business. The dehumidifier may have disappeared, but the Respondent had not taken it.

Discussion

36. The Applicant's main argument, namely contractual recoverability, must fail. Under para 3 of Sch.4, the lessor is obliged to keep the structure of the Building, including the main walls, in "good and tenantable repair and condition". The drying out of damp from the brickwork to the store is undoubtedly covered by this obligation. How the landlord chooses to comply with its obligation is a matter for the Respondent; a director or employee may carry out works, it may choose to employ contractors, use its own equipment, hire equipment, buy equipment, etc. It is unrealistic to suggest the Respondent could possibly comply with its obligations without someone (whether staff, Directors or contractors) buying or hiring plant, tools, supplies etc. The power to purchase or hire equipment is so obvious that it goes without saying. It is therefore an implied term that the Respondent may purchase equipment to enable it to comply with para 3 of Sch.4 to the Lease – and that it may recover the costs of doing this from the lessees.

37. As to the other argument, Mr Powell denies the Respondent removed the dehumidifier and used it for its own business. The Applicant has produced no evidence to support the allegation, and the Tribunal finds as a fact that Respondent left the apparatus on site.

Issues 3 and 14-16: Insurance

38. Four items in the Scott Schedule relate to insurance:

(1) Issue 3 refers to "Insurance 2021/2022" costs of £1,674.68;
(2) Issue 14 refers to PIB Insurance 2022/23" of £1,991.97;
(3) Issue 15 refers to "PIB Insurance 2021/22" of £1,674.68; and
(4) Issue 16 refers to "PIB Insurance 2020/21".

It was accepted that all four items related to building insurance premiums and that two were duplicates. The 2020-21 service charge accounts show a figure of £1,581.99 for Buildings Insurance 21 July 2020 – 19 July 2021 and the 2021-22 service charge accounts show a figure of £1,674.68 for Buildings Insurance 21 July 2021 – 19 July 2022. Despite the confusion, it was accepted at the hearing that these were the two sets of relevant costs which were under consideration. Insurance 2022/23" of £1,991.97 Issue 15 to "PIB Insurance 2021/22" of £1,674.68 and Issue 16 to "PIB Insurance 2020/21".

39. Evidentially, in addition to the service charge accounts, there is an email from the brokers PIB insurance dated 29 June 2021 confirming "the 43 Grand Parade premiums were" £1,581.99 in 2020-21 and £1,396.79 the year before. There are also summaries of cover for 43 Grand Parade Brighton for the 2020-21 , 2021-22 and 2022-23 insurance years . The 2020-21 insurance year summary does not state the premium. But the 2021-22 insurance year summary gives a total premium (including IPT) of £1,674.68 and the 2022-23 insurance year summary gives a total premium (including IPT) of £1,991.97. In each case, cover was placed by the brokers with Covea Insurance.

The case for each party

40. In the Scott Schedule, the Applicant said she objected to payment "until receipt given". In her statement of case (para 6(9)) she accepted there was a letter from an insurance broker supporting the suggestion that premiums had been paid, but this was "arguable, because it is not the same as an insurance certificate". The "presented letters and emails from the insurance broker" were "not acceptable". The Applicant suggested the Respondent did not provide a receipt for payments to the insurers because "very likely this has been done to avoid tax payments by the insurance company and our Freeholder is not supposed to be part of any similar crimes or activities". At the hearing, the Applicant confirmed that her case was "that the landlord did not spend money on insurance".

41. The Respondent relied on the above evidence to show premiums were paid. Mr Powell explained that cover was obtained as part of a block policy for the Respondent's portfolio of investments.

Discussion

42. It is a question of fact whether the Respondent actually incurred the cost of the insurance premiums which appear in the service charge accounts for the two years. But the Applicant's case on this is implausible and wholly unsustainable. The argument is implausible, because it is hard to see how a broker would continue to produce summaries of cover each year if premiums were not paid in previous years. The suggested "criminal" tax avoidance scheme on the part of the insurance company is also far-fetched, and unsupported by any evidence. The argument is unsustainable, because the documentary evidence is overwhelmingly to the effect that premiums were paid. The summaries of cover,

the broker's email and the entries in the service charge accounts each year are clear evidence that the Respondent paid the insurance premiums.

43. The Tribunal finds, as a matter of fact, that the Respondent incurred and paid the insurance premiums for the 2020-21 and 2021-22 insurance years. It also notes that a not dissimilar objection was unsuccesfully made in relation to previous years' insurance costs: see FTT decision at paras 11-12.

Issue 4: Fire alarm

44. There is an invoice from Brighton Fire Alarms dated 14 March 2022 for £162. The invoice relates to "1 x REPLACEMENT PANEL FASCIA COVER" and replacement of two batteries and it is endorsed as being paid on 6 April 2022. The Respondent also produced a copy of a receipted quotation from Brighton Fire Alarms dated 19 October 2020 to provide routine testing of fire safety systems.

The case for the parties

45. In the Scott Schedule, the Applicant referred to s.20B of the 1985 Act, describing the cost as an "old bill". The Respondent's case in the Scott Schedule was that the invoice was "less than a year old" when the relevant costs were included in the 2021-22 service charge accounts.

46. In oral submissions, the Applicant developed a different argument, namely that the costs of replacing the panel fascia cover and batteries were not reasonably incurred because they (i) could have been claimed on the building insurance, or (ii) formed part of the routine maintenance agreement with Brighton Fire Alarms.

47. Mr Powell explained at the hearing that these costs were not part of the annual fire alarm contract, which was basically limited to routine testing of the fire system, not the replacement of parts.

Discussion

48. Section 20B(1) of the 1985 Act provides that:

"(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred."

49. In this case, the invoice from Brighton Fire Alarms was dated 14 March 2022, and the Tribunal finds it was paid on 6 April 2022. The relevant costs were therefore incurred on the latter date. The demand for payment of the balancing charges for the 2021-22 service charge year was made on 8 July 2022 (see above). Section 20B(1) does not therefore prevent recovery of the fire alarm costs.

50. As to the suggestion the costs fell for payment under building insurance, it is hard to see how they are risks covered by a conventional building insurance policy. Neither were the costs included in the annual testing agreement with Brighton Fire Alarms. The quotation dated 19 October 2020 is for an annual fire alarm test, 6 monthly fire alarm tests, annual emergency lighting tests and weekly fire alarm tests. Clauses 4.2 and 4.3 of the standard terms and conditions attached to the quotation require the customer to pay additional fees for the cost of any "works", "repairs and replacements". Neither argument therefore supports the contention that the costs were not reasonably incurred under s.19(1) of the 1985 Act.

Issue 5: Locksmith

51. There is a receipted invoice from LBP Locksmiths for £69 dated 15 April 2022 . The charge was for work described as "serviced and lubricated oval barrel as not working correctly with tenants key and all working now".

The case for the parties

52. The Applicant's case in the Scott Schedule was merely that the invoice was unreadable. But in her statement of case (para 6(4)) she argued "it seems that someone from the other leaseholders had a private problem with his key" and that "the locksmith was called privately". At the hearing, the Applicant suggested the barrel was operating correctly, so this was a "false invoice".

53. The Respondent referred to a clear copy of the invoice, which Mr Powell contended was a genuine invoice for work to the main street door lock.

Discussion

54. Once again, the suggestion is the invoice dated 15 April 2022 was "false". This is a serious allegation, but no evidence at all has been produced to support this contention. The Tribunal accepts it was genuine.

55. As to the suggestion a lessee called out the locksmith, that makes no difference at all. Repairs and maintenance of the street door lock are plainly within the landlord's repairing obligations in Sch.4 to the Lease. The invoice says the "oval barrel" within the lock mechanism was not operating correctly, so this is a defect within the landlord's repairing obligations.

Issue 6: Gutter repairs

56. There is a receipted invoice from Guttering Repairs Ltd dated 13 October 2021 for £190. The gutter repairs are described as "works to Flat 3, 43 Grand Parade, Brighton BN2 9QA Reset existing pipe including small screw on flat roof above electrical storage room".

The case for the parties

57. In the Scott Schedule, the Applicant suggested this cost was "barred under S.19". This was apparently an argument that the gutter repair costs were not

reasonably incurred under s.19 of the 1985 Act and that nothing should be allowed for these costs. In her statement of case (para 1(8)) the Applicant stated that the charge should be paid personally by the Respondent. It was a very small job involving just one screw to join two pipes together that had been dislocated by the Respondent's builders. In any event, the job should not cost more than £50. At the hearing, the Applicant explained that building work was carried out to this part of the roof in 2019. She did not know whether the builder had repaired the gutter in 2019, but she saw evidence of damp in 2022, and it was a "logical inference" the builder had damaged the gutter. The works were not checked out when they were completed. The Applicant said there had been considerable involvement by the local authority environmental health service because the leak had caused damp to the flat – although the Applicant accepted she had produced no evidence of these matters to the Tribunal.

58. In the Scott Schedule, it appears the Respondent mistakenly took the reference to "S.19" to mean s.20B of the 1985 Act. It did not therefore deal with the allegation that the costs were not reasonably incurred. But at the hearing, Mr Powell observed that "this is Brighton; it's windy". The gutter had not been damaged by the builders but had simply deteriorated over time. He suggested the gutter repair came some 4 years after the building work was completed to this part of the roof. There had been no complaints about the gutter before, and his office was particularly efficient in what it did. The works were supervised by a surveyor, and the supervisor would not have left this unless he was happy.

Discussion

59. This item is relatively minor, since the Applicant's contribution is only £34.20 (18% of £190). It can therefore be dealt with fairly briefly.

60. There is no suggestion the gutter repair works carried out in 2021 were not of a reasonable standard under s.19(1)(b) of the 1985 Act.

61. As to s.19(1)(a) of the 1985 Act, it may well be that the Applicant has a claim for damages arising from breach of the Respondent's repairing obligations which could be set off against the service charges. But no counterclaim has been formulated or argued, and in any event, this is not a consideration under s.19(1)(a) of the 1985 Act.

62. The primary allegation is that the repair costs are not reasonably incurred because the Respondent's builders cause damage to the gutter. That does not of course make it unreasonable for the Respondent to remedy the defect or for it to incur costs in 2021 to do so. The mischief lies (if any) in the Respondent failing to ask the builder to return to site or to pass on the claim for £190 to its former contractor. But the Tribunal does not consider that either provides a basis for finding that the costs were not reasonably incurred. Given the evident need to prevent damp, the Respondent's decision to arrange repair through its own contractors was a rational one. Equally, the decision not to pass on the bill to the contactors was not irrational. The Applicant has not produced evidence from a surveyor to say who caused the gutter to come loose, or when it became loose – and the Respondent thinks it is unlikely that its former builders were at fault. A minor item such this, where liability was unclear, is therefore unlikely

to merit a claim against a builder after it has left site, irrespective of who caused the damage.

63. Finally, there is the question of whether the costs were excessive. The Applicant says that a bill of £190 for replacing a screw is excessive. But the invoice is of course not just a bill for replacing a screw. It is for resetting the existing pipe including a small screw. The contractor needs to travel to site, gain safe access to the gutter, assess what gutter fixings are needed, reset the gutter, screw it down and then clear up afterwards. There are also insurance and other employment overheads and tax. A call out charge of £190 is not manifestly excessive for minor gutter works, and the Applicant has produced no alternative estimates to suggest the work could have been done more cheaply.

Issues 7 and 8: Door access system

64. There is an invoice from IPS Fires & Security for £92.40 dated 4 April 2021, which is the Annual Maintenance Charge for a BS EN 50133 Access Control system. The invoice states it covers one visit per year. There is also a receipted invoice from National Property Management dated 5 October 2020 for £160 to "Rectify Fault on Intercom System – Powered and tested - All ok".

The case for the parties

65. In both instances, the Applicant says in the Scott Schedule that the invoices are "not valid for Flat 3". In her statement of case (para 6(2)), she states that the annual maintenance charge is not payable because the Freeholder has failed to connect Flat 3 to the entry system in breach of the terms of the Lease. Since the Respondent has failed to comply with the Lease, the leaseholder is not obliged to pay for this charge. At the hearing, the argument was simply that since she was not connected to the door access system, the Applicant received no benefit from the £92.40 charge. She also accepted the arguments in relation to the repairs in October 2020 were the same as for the annual maintenance charge.

66. Once again, in the Scott Schedule the Respondent misunderstood these as arguments under s.20B of the 1985 Act. But it also went on to say that the Lease makes Flat 3 responsible for the upkeep of the door entry system and that whenever the Respondent sends engineers, the Applicant is never available. At the hearing, Mr Powell said the only reason the Applicant was not connected to the door access system was that she failed to meet appointments.

Discussion

67. First, para 7 of Sch.4 to the Lease requires the Respondent to keep in good working order and condition a "door answering telephone system … in the building". It follows that the Applicant is clearly required to contribute to the cost of that service and the two invoices. The question of benefit is irrelevant to the contractual obligation.

68. Secondly, it is also irrelevant who is at fault for Flat 3 not being connected to the door access system. If it is the Applicant's fault, this cannot possibly affect her obligation to contribute to the costs of maintaining the communal system

or repairing it. If it is the Respondent's fault, the Applicant's remedy is to seek specific performance of the landlord's obligations in Sch,4 to the Lease and to claim (or counterclaim) damages. Such a damages claim might be set off against the service charges, but no damages claim has been formulated or argued. Similarly, the existence of a counterclaim is not a consideration under s.19(1)(a) of the 1985 Act.

69. It follows that the Tribunal rejects the objection to the relevant costs of door access maintenance and repairs.

Issue 9: Electric certificate

70. The Scott Schedule referred to a disputed cost of £790 for an "electric certificate". It was accepted at the hearing that this was effectively the same as Issue 1 above. For the same reasons given above, the Tribunal finds this cost is payable.

Issues 10 and 11: Brighton Fire Alarms

71. There are invoices from Brighton Fire Alarms dated £506.40 and £62.40 dated respectively 19 October and 15 December 2020. The first is an invoice for the annual fire alarm testing (for the year ending 31 October 2021) referred to above. The second is for a call out on 25 November 2020. The report attached to the invoice gives the reason as a "power fault" traced to a blown fuse on the control panel.

The case for the parties

72. In the Scott Schedule, the Applicant simply states that these costs are "not known". At the hearing, the Applicant referred to paragraph 4.2.27 of the 4site Consulting health & safety risk assessment report (dated 9 October 2020) which suggested that "records available indicate that not all fire alarm systems inspections, testing and maintenance are being carried out as no evidence of weekly testing was available". Since no tests had been carried out, the costs had not been incurred.

73. Mr Powell referred to the test record sheets which were visible in the hallway on inspection. Whatever it said in the 4site Consulting report, as far as he was aware, BFA carried out weekly testing as required. One of the Respondent's staff checked the sheets in all their properties on a regular basis and reported any missed visits. As to the repairs, they had been carried out, and the contractors were unlikely to have issued a fake invoice in such details.

Discussion

74. The Applicant raised no substantial argument about repair costs of £62.40, and the Tribunal finds that the Applicant is liable to pay her contribution to these costs.

75. As to the suggestion that the service charges provided by the contractors were not of a reasonable standard, because some weekly fire safety checks were

missed, the Tribunal first notes that weekly checks were not the only services provided under the agreement: see above. Indeed, the health and safety report did not suggest no testing was carried out. Secondly, it is clear 4site Consulting based their conclusions on the lack of visible records of weekly testing, which is not the same as saying that weekly tests did not take place. Finally, and more significantly, the costs in question related to testing for the period from 1 November 2000, which was after the 4site report was prepared. As was clear to the Tribunal from the inspection of the hall, at some point after October 2020, the Respondent acted on para 4.2.27 of the 4site Consulting report, and arranged for records of weekly tests to be kept and displayed in the hallway. The Tribunal also accepts the Respondent now has a system in place to check these record sheets. On balance, the Tribunal finds that tests were carried out as set out in the contract with Brighton Fire Alarms.

76. The Tribunal therefore also rejects this objection to the service charges.

Issue 12: Health & safety

77. A figure of £300 appears in the 2020-21 service charge accounts for "Fire Risk Assessment". There is an invoice from 4site Consulting dated 21 October 2020 for the health & safety risk assessment mentioned above. It should be said that the report runs to some 40 pages.

The case for the parties

78. The Applicant's case in the Scott Schedule was that this was "not necessary". In her statement of case (para 6(20)), she suggested the report was for an "unknown purpose" and "therefore illegal". In her oral submissions to the Tribunal, the Applicant stated that the report was "unnecessary" because the landlord did not act on the recommendations in the report.

79. The Respondent contended in the Scott Schedule that the report was a legal requirement and that the report was "full". In his oral submissions on 28 September 2023 (in the absence of the Applicant), Mr Powell repeated that it was a legal requirement to have a fire risk assessment. He took the Tribunal through the six recommendations in section 3.8 of the 4site Consulting report and explained what the Respondent had done in relation to each.

Discussion

80. Whether it was a legal requirement or not to have a fire risk assessment, the Tribunal is satisfied that it is reasonable to incur the cost for this kind of report at periodic intervals under s.19(1)(a) of the 1985 Act. Moreover, it is wholly irrelevant to this question whether the landlord later acts upon the recommendations in the report or not. The costs of the report itself are still reasonably incurred.

Issue 13: Building reinstatement valuation

81. The 2020-22 service charge accounts show costs of £350 incurred for a "Surveyor Valuation Fee". There is an invoice from Vivid Surveyors Ltd dated 8

September 2020 for £350 for "preparation of Building Reinstatement Valuation".

The case for the parties

82. The Applicant's statement of case (para 6(6)) suggested the surveyor's fee was "illegal", as it was not covered by para 4(c) of Sch.5 to the Lease. At the hearing, her attention was drawn to para 4(8) and the proviso to Sch.4 to the Lease. The Applicant accepted the proviso allowed the landlord to recover the cost of periodic insurance valuations, so this argument was not pursued. However, she raised an additional point, namely that the costs were not reasonably incurred because the previous revaluation had been carried out as recently as 2018.

83. In oral submissions, Mr Powell addressed the new argument by denying the previous revaluation had occurred as recently as 2 years before. He thought it was more likely to have been in 2016/17.

Discussion

84. The evidence here is very poor. It would not be difficult for either party to have produced evidence to show conclusively when the last insurance valuation occurred. Absent any such evidence, the Tribunal does not find the Applicant has discharged the evidential burden to show even a *prima facie* case that the costs were not reasonably incurred.

Issue 17: email p.77

85. The Scott schedule raises a question about an email. At the hearing, the Applicant confirmed this was not in issue.

Additional issue 1

86. As explained, the Tribunal permitted the Applicant to refer to three additional matters mentioned in her statement of case, but which did not appear in the Scott Schedule. The first of these related to the relevant costs of management in both service charge years. The 2020-21 service charge accounts showed a fee of £1,140 for management of the building including VAT. The 2021-22 service charge accounts showed a similar management fee.

87. The Tribunal notes that the previous FTT looked at management fees for 2019-20, and considered that a fee of £1,140pa was not excessive: see para 86 of decision. It was also aware that "the freehold and managing agent are under common ownership by Mr Powell".

The case for the parties

88. The Applicant's statement of case (para 6(7)) accepts that the Respondent is entitled under the Lease to employ "Managing Agents" to collect service charges and generally manage the building and that it can reflect these costs in the service charges. But for the two service charge years under consideration the Applicant makes an additional argument which was not before the last FTT. It

is said there was no contract between the freeholder and the managing agent in either service charge year. In her oral submissions, the Applicant suggested this was contrary to the RICS Service Charge Residential Management Code (3rd Ed) and the costs were therefore unreasonable. Moreover, the cost was over £100 per flat, and since the agreement was not limited to a less than a year, it was a qualifying long term agreement ("QLTA") within the meaning of s.20 of the 1985 Act and subject to the annual cap on recoverable costs.

89. In his oral submissions, Mr Powell openly accepted there was no written management agreement. The premises were managed by a separate company, Powell and Co Management Ltd. The management charge amounted to £228 per flat per year. As to whether it was a QLTA, the agreement was in fact a periodic agreement.

Discussion

90. This is the most difficult issue in this application, and the Tribunal has allowed it to be raised in order to explain the position to the parties going forward.

91. The starting point is that the Respondent's failure to have a written management agreement in place is undoubtedly a breach of the RICS Code. Para 3.2 states:

"Contract (management contract/management agreement/terms of engagement)

You should give written confirmation to your client. This should include details of your fees and expenses, of your business terms and the duration of your instructions. You should give your client these details before the client is committed or has any liability towards you. The contract should clearly state the scope of the duties you will carry out and specify all activities for which an additional fee is chargeable. A basic summary of your terms and duties, including all fees, should be made available to leaseholders on request."

The Applicant is correct on this point.

92. The Applicant is again correct to suggest that failure to comply with the RICS Code is frequently taken into consideration on matters of reasonableness under s.19 of the 1985 Act: see *Tanfield on Service Charges & Management* (5th Ed) at para 16-11. For example, a failure by the managing agent to provide information to lessees under Ch.13 of the Code is not infrequently a ground to find that management services are not of a reasonable standard under s.19(1)(b). But a breach of the Code is not in itself punishable by a reduction of service charge liability. The Tribunal must still be satisfied the breach has a consequence under s.19(1)(a) or 19(1)(b) of the 1985 Act. In in the former case, the recoverable relevant costs may only be limited by applying the two-stage test approved in *Hounslow v Waaller* [2017] EWCA Civ 445; [2017] 1 WLR 2817.

93. Despite the clear breach of the RICS Code, the Tribunal finds that the breach has not resulted in any excessive service charges. The management charges are not manifestly excessive, and there is no evidence before the Tribunal of alternative quotations from other agents that they could do the work more

cheaply. If there had been, no doubt the absence of written terms and conditions on the part of Powell & Co Management might be a relevant consideration in an assessment under s.19(1)(a) of the 1985 Act. Equally, although the failure to have a written management agreement could be said to be a clear breach of professional standards, it is hard to see the standard of services provided to the lessees under the terms of their leases in this case have been affected by the absence of a written management agreement. The basic "services" in the premises such as maintenance and insurance, are still delivered to lessees to the same "standard", whether or not there is a written management agreement in place.

94. That is not to absolve the Respondent from culpability. Having a written management agreement is good practice. Future tribunals might (with different evidence) take the lack of a management agreement into account to reduce service charges under s.19 of the 1985 Act. And of course, a breach of the Code is a ground for making of a management order under s.24(ac) of the Landlord and Tenant Act 1987. However, s.19 is not there to punish landlords for breaches of best practice or professional standards. Its purpose is to avoid leaseholders paying excessive service charges. And there is no evidence the service charges are excessive in this case.

95. As to the argument about the QLTA, this can be dealt with shortly. If a contract is not in writing for a specified term, it will generally be treated as a periodic agreement, with the period depending on the frequency of payment. A periodic oral annual agreement is not generally treated as a QLTA: *Bracken Hill Court at Ackworth Management Co Ltd v Dobson* [2018] UKUT 333 (LC); [2019] HLR 27. This is not therefore a QLTA.

96. Again, this challenge fails, notwithstanding the clear breach of the RICS Code.

Additional Issue 2: Certification

97. The decision in *Powell & Co Investments Ltd v Aleksandrova and Alexander* [2021] UKUT 10 (LC) is mentioned above. In that case, the Upper Tribunal decided that in previous years, the Respondent had failed to comply with the lease requirements for certification of service charge demands, and that this was a condition precedent to liability. The gist of the decision is at paras 31-32:

"31. There is no document in this case which purports to certify the liability of the respondents under clause 3(2)(b). Z Group's report of its factual findings does not refer to the liability of any individual lessee, nor does the managing agent's certificate which refers only to the service charge expenditure. The certificate contemplated by the Lease is a bespoke document for each lessee, showing their individual liability, and it appears no such document has ever been certified."

32. I therefore agree with the FTT's conclusion that the costs incurred by the appellant which it found to have been reasonably incurred are not yet payable. I disagree that those costs will become payable when the service charge accounts alone are certified. What is missing is an account, certified by a Chartered Accountant, stating the individual Lessee's share of total expenditure, the payments made on account, and the resulting shortfall or surplus. Once that document is provided (with the necessary statutory information) the respondents will "forthwith" be required by clause 3(2)(ii)(b) to pay the certified amount."

The case for the parties

98. In her statement of case (para 6(5)), the Applicant argued that no certificate had been provided for the 2020-21 service charge year. The certificate was not signed or dated. She also argued that the certificate was late, having been given on 8 December 2022, and the costs were irrecoverable under s.20B of the 1985 Act.

99. The Respondent relied upon the certificate for the year ending 24 June 2021 which is in the bundle.

Discussion

100. As explained by the Upper Tribunal, the basic requirements of clause 3(2)(b) of the Lease are that there must be a bespoke document certified by an accountant which deals with the liability of the individual lessee. That liability is the liability of the Lessee under the provisions hereinbefore contained": see Upper Tribunal decision at [28].

101. The certificate relied upon by the Respondent is such a document. The certificate states that:

"We can confirm that this service charge accountants certificate has been in compliance with the terms set out in the lease and, where this does not deviate from the lease, in accordance with section 21(5) of the Landlord and Tenant Act 1985.

Following the Tribunal judgement, we have prepared a breakdown of the costs apportioned to the relevant properties as above.

We hereby certify that, according to the information available to us, The attached statement of service charge expenditure records the true cost to the landlord or providing services to the property for the year."

Although the word "certificate" appears in relation to the overall service charge expenditure for the block, the previous paragraph refers expressly to the apportioned costs for the "relevant properties" (in this case Flat 3). The body of the certificate gives the Flat 3 "Deficit/Surplus" of £1,106.61, which is the "shortfall or excess" referred to in clause 3(2)(b). Although the wording of the certificate could certainly be improved upon, in the Tribunal's view it meets the basic requirements of a certificate under the Lease. Moreover, the certificate is given by Z Group Chartered accountants, which (unlike in the Upper Tribunal case, where the certifier was the managing agent) is a permitted certifier under clause 3(2)(b) of the Lease. There is nothing in this provision of the Lease which requires the certificate to be signed or dated.

102. The other point is s.20B of the 1985 Act. Given the way the point was raised, the Tribunal has very little evidence about the dates that costs were incurred or the date the demand was given. It accepts time stops under s.20B(1) when a contractually proper demand is made, although it is not necessary for the demand to state an accurate figure for service charges: see cases cited in Tanfield on *Service Charges and Management* at paras 30-12 to 30-13. On the evidence available, the relevant service charge year ended on 24 June 2021,

when the last of the relevant costs were incurred. If the contractually compliant certificate/demand was given on 8 December 2022 (as alleged by the Applicant) that is (slightly) less than 18 months after the last of the relevant costs were incurred. It therefore appears the bulk of the relevant costs were incurred outside the 18-month period permitted by s.20B(1).

103. However, that is not the end of matters. Section 20B(2) of the 1985 Act provides that s.20B(1) shall not apply if "the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge" within the relevant 18-month period. In this instance, the 2020-21 service charge accounts mentioned above referred to a brought forward deficit for Flat 3 of £1,191.11. As explained, the Respondent demanded payment of the balancing service charges on 16 December 2021, and the demand stated that it was accompanied by the 2020-21 service charge accounts. It therefore appears the tenant was notified in writing that the costs in the service accounts had been incurred, and that she would subsequently be required under the terms of her lease to contribute to them by the payment of a service charge. The Tribunal considers s.20B(2) was therefore met on 16 December 2021, and that the 18-month restriction in s.20B(1) does not apply.

Additional Issue 3: Summary of rights and obligations

104. The final issue in relation to service charges was an allegation by the Applicant that none of the service charge demands was accompanied by a summary of rights and obligations, contrary to s.21B of the 1985 Act.

105. Mr Powell responded that it was his universal practice for demands to be accompanied by the appropriate summaries. He referred to the letters accompanying the demands on 16 December 2021 and 8 July 2022 which stated that they enclosed "Tenant's rights and obligations". Other demands dated 21 July 2020, 8 December 2020, 7 July 2021, etc., also included a footnote "*Please find attached to this invoice your service charge rights and obligations*".

106. In the light of the documentary evidence, the Tribunal is satisfied the relevant service charge demands were accompanied by summaries of rights and obligations under s.21B of the 1985 Act.

Interim service charges

107. The Application includes a challenge to the payability of the 2022-23 interim service charges. This has largely been overtaken by events, since the 2022-23 service charge year is now complete. But for the sake of completeness, it should be said that no specific challenges were made to any of the elements of the 2022-23 interim service charges. The Tribunal finds they are payable.

Costs

108. The Applicant applied for a limitation on costs under s.20C of the 1985 Act. Mr Powell indicated that the Respondent would not be seeking to include in the Applicant's service charges any relevant costs incurred in connection with proceedings before the Tribunal. Neither would it seek to recover any costs from

the Applicant directly. In the premises, it is unnecessary to consider the s.20B application. For the same reason, it makes no order under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002.

Conclusions

109. For the reasons given above, the Tribunal rejects all challenges to the 2020-21 and 2021-22 service charges and the 2022-23 interim service charges.

Judge Mark Loveday
22 November 2023

Appeals

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

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

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

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