FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LSC/2023/0140**
Property	:	**Flat 6 Oaks Court, 226-228 Cann Hall Road London E11 3NF**
Applicant	:	**Mr F A Khan**
Representative	:	**NR Legal Solicitors**
Respondent	:	**Cann Hall Limited**
Representative	:	**Brady solicitors**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge Pittaway** **Mr S Mason BSc FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**4 October 2023**
Date of decision	:	**11 October 2023**

DECISION

Decisions of the tribunal

(1) The service charges demanded for the service charge years 2014/2015 and 2015/2016 are not recoverable.

(2) The service charges demanded for the service charge years 2016/2017 to 2020/2021 are recoverable but not currently payable.

(3) The estimated service charges for the years 2021/2022 and 2022/2023 are recoverable but not currently payable.

(4) The current basis of apportionment of the service charge is reasonable.

(5) The Tribunal makes no determination as to the reasonableness of the sums charged by way of service charge in the years in question.

(6) The Tribunal makes no determination in relation to s20C.

(7) The Tribunal makes no determination on costs.

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 / Respondent in respect of the service charge years 2015/16 to 2022/23, the total value in dispute stated in the application to be £9,303.49.

The hearing

2. The Applicant appeared and was represented by Mr Brueton of counsel at the hearing. The Respondent was represented by Mr Clacy, a director of the Respondent. Mr S Ahmad, a tribunal appointed interpreter, interpreted for Mr Khan at the Hearing.

3. The Tribunal had before it, at the start of the hearing, a bundle of 633 pages, the Applicant's skeleton argument (9 pages) with supporting authorities and the Respondent's skeleton argument (4 pages) with supporting authority. Mr Brueton drew the Tribunal's attention to a Statement of Case that the Applicant had received from Mr Clacy but which was not in the bundle. Copies of this were made available to the members of the Tribunal who had the opportunity of considering during a brief adjournment.

4. The Tribunal heard evidence, through the interpreter Mr Ahmad, from the Applicant, Mr Khan. Ms Derveni, self-employed as a case worker with

Vectra Freehold Management Ltd ('**Vectra**'), the Respondent's managing agent, gave evidence for the Respondent.

5. The Tribunal heard submissions from Mr Clacy and Mr Brueton.

The background

6. The Property is described in the application as a two-bedroom flat. It is described in the lease of the Property dated Lease dated 5 January 1988 (the '**1988 Lease'**) as a being on the second floor of the Building. By a lease dated 10 May 2006 (the '**2006 Lease**') a new lease of the Property was granted on the same terms as the 1988 Lease save as to the term and the rent.

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

8. The Applicant has been the tenant of the Property under the 2006 Lease since March 2014. By incorporation of the terms of the 1988 Lease the 2006 Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The relevant provisions of the 1988 Lease will be referred to below.

9. Until 30 March 2018 the Property was managed by Horizon Properties Ltd ('**Horizon')**. Since 1 April 2018 it has been managed by Vectra.

The issues

10. Mr Brueton, in his skeleton argument, identified the issues for determination by the Tribunal to be

- Whether the Respondent has made valid service charge demands pursuant to the Lease and the 1985 Act
- Whether the amounts demanded are reasonable on the basis of the current basis of apportionment used by the Respondent's managing agents
- Whether the amounts demanded are reasonable in any event in light of what the Applicant says are the failure to provide basic services at the Property.

11. Mr Clacy also raised as an issue as to the relevance of s20B.

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Has the Respondent made valid service charge demands?

13. Mr Brueton submitted that the service charges claimed by the Respondent landlord are not payable because they do not conform to the requirements of a service charge statement set out in the Fourth Schedule of the 1988 Lease. In particular the Applicant alleges that the demands were not accompanied by the required certificate from an accountant. Mr Brueton referred the Tribunal to statements of account, statement of expenditure, certificate of expenditure and estimated budget reports included in the bundle.

14. In her witness statement Ms Derveni set out that, while Vectra had been managing agents of the Property, the service charge demands were issued after the accounts had been prepared in each service charge year. The accounts are prepared by a chartered accountant on the basis of the invoices and bank statements and they list all the services undertaken for the year.

15. Ms Derveni gave evidence that in each service charge year the service charge demand is accompanied by the accounts. The Tribunal was referred by Ms Derveni to the letter dated 9 June 2022 addressed to Mr Khan at 55 Grove Crescent Road (the correspondence address given for him in the application before the Tribunal) in which the service charge for the period 26 December 2020 to 25 December 2021 was demanded. This states, 'Please find enclosed the accounts prepared for period 26 December 2020 to 25 December 2021.' The letter states that it has also been sent to him via e mail and gives an e mail address. The accounts themselves were not included in the bundle. Ms Derveni stated that such letters were only issued after the accounts had been certified by the accountants. Ms Derveni had not believed it necessary for the accounts to be included with the letter in the bundle. Ms Derveni stated that the accounts would have been included with the letter.

16. Mr Khan stated that he had not received the accounts for the service charge year 2020/21, or any other year.

17. Mr Brueton, while accepting that the decision was not binding on this Tribunal, invited the Tribunal to adopt the approach taken by Judge Martyński in *Cann Hall Limited v Wang* LON/00BH/LSC/2017/0162 (***'Wang'***), which related to flat 7 in the same building. In particular he referred the Tribunal to paragraph 30 of the decision, in which Judge Martyński stated that in the absence of a certificate from an accountant that the Certificate of Expenditure was a fair summary of expenditure as required by the Fourth Schedule the sum demanded in that Certificate of Expenditure was not currently payable.

18. Mr Brueton submitted that the service charge demands sent to his client were not proper service charge demands as they were not accompanied by an accountant's certificate.

19. Mr Brueton referred the Tribunal to the letter from Tish Leibovitch Ltd dated 29 September 2023 before the Tribunal, which sought to provide retrospective certification of the expenditure incurred in the service charge years from 2015/16 to 2021/22. He submitted that it could not do so as it had not accompanied each relevant statements of expenditure. He queried to whom the letter from Tish Leibovitch Ltd of 29 September 2023 was addressed. The letter stated that the accountant's procedures were based on a check be reference to a 'sample'. Mr Brueton submitted that as final demands they were not sufficiently itemised.

20. Mr Brueton cited the dicta of Arden LJ in in *Skelton v DBS Homes (Kings Hill) Ltd* [2017] EWCA Civ 1139 at paragraphs 20 and 21:

> *"[20] […] We have not been shown any authority for the proposition that as a matter of contract law the [late] delivery of the estimate validated the demands in this case as of the date of the demand.*
>
> *[21] If in the situation in this case, the tenant receives a windfall, that is the result of the landlord not having complied with the terms of the lease for service of a valid demand."*

21. Mr Clacy submitted that the letter of 29 September from Tish Leibovitch Ltd had only been provided to support the Respondent's position that the accounts had been certified.

22. Mr Clacy submitted that s20B was relevant if the Tribunal found that it was a requirement that the service charge statements were not accompanied by the accountant's certificate. He submitted that the Applicant had been notified within 18 months of the expenditure incurred so that s20B(2) applied.

The tribunal's decision

23. The service charges demanded for the service charge years 2014/2015 and 2015/2016 are not recoverable.

24. The service charges demanded for the service charge years 2016/2017 to 2020/2021 are recoverable but not currently payable.

25. The estimated service charges for the years 2021/2022 and 2022/2023 are recoverable but not currently payable.

Reasons for the tribunal's decision

26. Paragraph 1(4) of the Fourth Schedule of the 1988 Lease defines a "Service Charge Statement" as

> *"an itemised statement of:*
>
> *a. The expenditure on services for a year (or on the first occasion a shorter period) ending on the Twenty-fifth day of December*
>
> *b. The amount of the Service Charge due in respect thereof (any apportionment necessary at the beginning or end of the term hereby granted shall be made on the assumption that the expenditure on services is incurred at a constant daily rate) and*
>
> *c. Sums to be credited against that Service Charge being the Interim Service Charge Instalments paid by the Tenant for that year or period and any Service Charge excess from the previous year or period accompanied by a certificate that in the opinion of the Accountant preparing it the statement is a fair summary of the expenditure on services set out in a way which shows how it is or will be reflected in the Service Charge and if sufficiently supported by accounts receipts and other documents that have been produced by him"*

27. The underlining in paragraph c. above is that of the Tribunal. While it is included in paragraph c. the Tribunal finds that, in order for the words to make sense, they must cover paragraphs a. and b. as well.

28. Paragraph 2 of the Fourth Schedule requires the landlord to *"keep a detailed account of the expenditure on services and shall procure that a Service Charge Statement is prepared for every such year or period by an independent member of the Institute of Chartered Accountants in England and Wales"*

29. The tribunal finds that the accounts prepared by Tish Leibovitch Ltd had been prepared by an appropriately qualified accountant. The bundle contains a letter from Tish Leibovitch Ltd dated 11 May 2023 which confirms that they are instructed by Vectra to prepare the service charge accounts for Oaks Court, and that Marc Green, a director of Tish Leibovitch Ltd and a fellow of the Institute of Chartered Accountants of England and Wales, is responsible for the work undertaken.

30. The Tribunal finds that there is nothing in the evidence before it to suggest that the accounts did not constitute a 'fair summary' of the expenditure, as required by the 1988 Lease. It finds that the accountants checking the same by use of a 'sample' does not make the same unfair.

31. Neither party distinguished between the position when Horizon was managing agent and the position since Vectra took over but the Tribunal finds it appropriate to do so.

32. There is no evidence in the bundle before the Tribunal of what, if any, certification was issued by an accountant or received by the Applicant during the period of Horizon's management. While not binding on it the Tribunal notes the finding of Judge Martińsky in *Wang* that for the service charge years 2013/14 to 2015/16, there was no certificate from an accountant in respect of the service charges demanded at the Oaks Court. This decision relates to the period when Horizon were the managing agents.

33. Section 20B of the 1985 Act ('the 18 months' Rule') provides:

> *(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.*
>
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, 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.*

34. There is no evidence before the Tribunal as to when any details of the expenditure in the years 2014/15 and 2015/16 were sent to the Applicant. There is no information before the Tribunal in respect of the year 2014/15. The bundle contains an 'Income and expenditure account for the year ended 24 December 2016' (pp228 -231) but it is undated and not accompanied by any evidence that it was sent to the Applicant or when. The Tribunal is therefore unable to consider whether s20B might have been relevant to the service charges for the years 2014/15 and 2015/16, and it therefore finds that the service charges demanded for the service charge years 2014/2015 and 2015/2016 are not recoverable.

35. None of the accounts before the tribunal in respect of the years from 2016/17 to 2020/2021 were accompanied by a contemporaneous certificate from Tish Leibovitch Ltd. Having regard to the dicta in *Skelton* the Tribunal finds that the letter of 29 September 2023 from Tish Leibovitch Ltd cannot retrospectively make the statements Service Charge Statements as they have to be accompanied by the Accountant's certificate. Further that letter did not comply with the requirements of the 1988 Lease. It did not state that in each year the service charge statement was a fair summary of the expenditure on services nor that the accounts are set out in a way which shows how the expenditure is or will be reflected in the Service Charge, or that the expenditure has been sufficiently supported by accounts receipts and other documents produced to the accountant.

36. Turning to the applicability of s20B of the Act, the Tribunal prefers Ms Derveni's evidence that the service charge demands sent out for the years 2016/2017 to 2020/2021 were accompanied by the accounts prepared by Tish Leibovitch Ltd. The covering letters in the bundle refer to the accounts being enclosed with demands, and were sent by both post and e mail to Mr Khan. The Tribunal has seen no evidence that this was not the case.

37. The Tribunal finds that the Applicant was notified within the period of 18 months beginning with the date when the relevant costs in question were incurred that those costs had been incurred for the service charge years 2016/2017 to 2020/2021. Accordingly s20B(1) does not apply.

38. The service charges demanded for the service charge years 2016/2017 to 2020/2021 are therefore recoverable but not currently payable.

39. The application includes application in respect of the estimated service charge for the years 2021/2022 and 2022/2023. Neither party made any submission in respect of these. The letter of 24 November 2021 from Vectra in the bundle states that the estimate for the year 2021/2022 of £1,344.80 is based on the accounts for the year 2019/2020 because the accounts for 2020/2021 were not then available and that there would be a reconciliation of the estimate once the Certificate of Expenditure for the year to December 2021 was available. The sum stated to be in dispute for the year 2022/2023 is stated to be £1,668.23, the actual service charge demanded of the Applicant for the year 2020/2021.

40. Paragraph 1(3) of the Fourth Schedule of the 1988 Lease defines the 'Interim Service Charge Instalment' as, '*a payment on account of Service Charge of One hundred and fifty pounds (£150) per annum until service of the first Service Charge Statement and thereafter of one eighth of the Service Charge shown on the Service Charge Statement last served on the Tenant*'

41. The Tribunal finds that the Applicant has complied with the requirements of the 1988 Lease in calculating the estimated expenditure. The Applicant will be liable to pay these sums provided that the Respondent provides Service Charge Statements in accordance with the terms of the 1988 Lease in respect of the years upon which these estimates are based.

Reasonableness of the current basis of apportionment of the service charge.

42. The tribunal heard evidence from Ms Derveni as to the basis upon which the service charge is currently apportioned.

43. Ms Derveni confirmed that Flats 1 to 8 (the original flats in the building) and Flats 9A to 9D (9A to 9C being converted in 2014 from the basement of

the original building and 9D adjacent to it) share an internal communal area. Flat 10 (constructed in 2019 adjacent to the original building and on top of studio Flat 9D) has its own entrance. All 13 flats share a car park and external communal area.

44. Flat 10 contributes a 'reasonable contribution' to the total expenditure forming the service charge. Flats 9A to 9D each contribute ¼ of 1/8 of the total expenditure. Flats 1 to 8 each pay 1/8 of the balance of the total expenditure once the contributions from Flats 10 and 9A to 9D have been deducted from it. This is despite their respective leases providing that each of Flats 1 to 8 should contribute 1/8th of the total expenditure. Each now contributes less than 1/8th.

45. Ms Derveni gave evidence that each of Flats 9A to 9C are one bedroom flats, and Flat 9D is a studio flat. Flat 10 is a one bedroom flat.

46. Mr Clacy submitted that under the terms of the leases the landlord was entitled to add units to the building without being under an obligation to alter the service charge paid by Flats 1 to 8. Mr Clacy submitted that the addition of flats in the basement did not increase the floor area of the building and that there had been no significant increase in the total expenditure. The Respondent was not obliged to reduce the percentage of total expenditure paid by each of Flats 1 to 8. He referred the Tribunal to the decision in *Morgan v Fletcher and others* [2009]UKUT 186 (LC) as authority for the proposition that the Tribunal did not have jurisdiction to vary the computation of service charges under a lease where the aggregate of the service charge recovered was 100% of the total expenditure. In this instance the (previous) landlord had reduced the contributions of Flats 1 to 8 in an attempt to be reasonable even though it was not under an obligation to do so.

47. Mr Brueton submitted that there was no expert evidence before the Tribunal as to the impact of Flats 9A to 9D and Flat 10 on total expenditure. He referred the Tribunal to paragraph 33 of *Wang* where Judge Martińsky assumed that the four extra flats had increased total expenditure by 50%, submitting that the creation of Flat 10 would have further increased the total expenditure. Mr Brueton submitted that the Tribunal should therefore reduce the amount payable by Flat 6 by between 40 and 45% as a reduction of 1/3 had been allowed in *Wang*.

The tribunal's decision

48. The Tribunal finds that the current basis of apportionment of the service charge to be reasonable.

Reasons for the tribunal's decision

49. The definition of 'Property' in the 1988 Lease is by reference to the landlord's registered title numbers. The definition continues, '.....*which is being developed as 8 residential flats*....' The Tribunal finds that it is the reference to the landlord's registered title numbers that defines the 'Property' not the description of the then development. There is no provision in the 1988 lease which prevents the landlord from creating further units in the building, or adjacent to it. And there is no provision in the 1988 Lease requiring the landlord to reduce the percentage service charge paid by each of Flats 1 to 8 in the event that further units are built.

50. The Tribunal has the benefit of accounts for a number of years since the creation of the additional four flats, and indeed since the creation of Flat 10. These do not evidence a 50% increase in the total expenditure as assumed by Judge Martińsky in *Wang*.

51. The Tribunal finds that the Landlord could have created the extra flats without making any reduction in the 1/8th of expenditure on services contemplated by paragraph 1(2) of the 1988 Lease.

52. The contributions from the 13 flats add up to 100% of the expenditure. The Tribunal does not understand the basis upon which the previous landlord elected to charge Flats 9A to 9D ¼ of 1/8 of the total expenditure but by doing so it has reduced the percentage which the Applicant is contractually bound to contribute to the services.

53. The Tribunal therefore finds the current basis of apportionment to be reasonable.

The reasonableness of the sums charged by way of service charge in the years in question

54. The Applicant indicated that he wished to challenge various service charges on the basis that there were not reasonably incurred. The Tribunal heard evidence from Mr Khan that he had undertaken work at his own cost on that part of the roof which is over Flat 6.

55. Mr Clacy submitted that the Scott Schedule provided by the Applicant had not referred to works undertaken by the Respondent being unsatisfactory.

56. Mr Brueton referred the Tribunal to the photographs in the bundle as evidence that the landlord was not properly maintaining the building, and to the fact that Mr Khan had had to undertake work to the roof above his flat.

The tribunal's decision

57. The Tribunal makes no determination as to the reasonableness of the sums charged by way of service charge in the years in question.

Reasons for the tribunal's decision

58. The Applicant provided no evidence to substantiate his allegation that the services provided by the landlord were not undertaken to a reasonable standard. His complaint was to work which he considered the landlord should have carried out, not the standard to which any work undertaken was done, or its cost.

Application under s.20C

59. The Applicant did not request that the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, and Mr Brueton confirmed this at the hearing..

Costs

60. Both parties provided schedules of costs immediately prior to the Hearing.

The tribunal's decision

61. The Tribunal makes no determination as to costs.

Reasons for the tribunal's decision

62. As the Tribunal explained at the hearing it is not a 'cost shifting' tribunal.

63. If either party wishes to make an application for costs they should make the necessary application to the Tribunal with an explanation as to why he/ it considers the application to be appropriate.

Name: Judge Pittaway **Date:** 11 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).