FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2022/0298**
Property	**:**	**27 Chandlers Avenue, London SE10 0SN (Flats 117, 120, 123)**
Applicant	**:**	**Bernadette Byrne (Flat 117) Laura Sanchez and Enrique Munoz Jimenez (Flat 120) Hadya Al Alawi (Flat 123)**
Representative	**:**	**Ms Byrne, Mr Munoz and Ms Al Alawi all represented themselves**
Respondent	**:**	**London and Quadrant Housing Association**
Representative	**:**	**Victoria Osler, Counsel**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge (s27A Landlord and Tenant Act 1985)**
Tribunal members	**:**	**Judge Rosanna Foskett** **Mr Kevin Ridgeway**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**6 April 2023**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the Applicants for service charge deficits:

a. Flat 117: deficit of a total of £1042.89 is payable, covering the years ended 24 March 2018, 2019 and 2020 (i.e. each of the 3 years referred to in the Application Notice and Schedule in the PDF bundle).

b. Flat 120: deficit of £596.59 is payable for the year ended 24 March 2020 (which was the only year for which Flat 120 made a challenge in the Schedule at page 24 of the PDF bundle and the Skeleton Argument at page 26 of the PDF bundle).

c. Flat 123: deficit of £932.77 is payable, covering the years ended 24 March 2018, 2019 and 2020 (i.e. each of the 3 years referred to in the Application Notice and Schedule in the PDF bundle).

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Landlord's representative confirmed at the hearing on 27 February 2023 that the Landlord's costs of the tribunal proceedings would not be passed to the lessees through any service charge and accordingly the tribunal did not need to consider or make an order under section 20C of the Landlord and Tenant Act 1985.

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 Applicants in respect of the service charge years ended 24 March 2018, 2019, 2020 (Flats 117 and 123) and in respect of the service charge year ended 24 March 2020 (Flat 120).

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person at the hearing (as recorded at the top of this Decision) and the Respondent was represented by Ms Victoria Osler of counsel. The Respondent's representatives, Mr Adrian Shaw and Ms Priscila Maffei attended.

4. The Tribunal had before it 3 bundles, one from each Applicant. At 4.23pm on Friday 24 February 2023, the Respondent's solicitors had apparently emailed a Respondent's bundle to the Tribunal. That had not been available to the Tribunal prior to the hearing and there were technical difficulties in accessing it during the hearing. However, during the lunch adjournment, the Tribunal was able to access the Respondent's bundle as well. The Applicants had had access to the Respondent's bundle as they were copied into the email of 24 February 2023 and had apparently looked through the bundle over the weekend.

5. Immediately prior to the hearing, the Respondent handed in a Skeleton Argument accompanied by 3 authorities.

6. The Tribunal asked the Applicants whether they wished to proceed, despite the provision of new documents by the Respondent, and they indicated that they did. The Respondent also confirmed that it was not repeating an application for (i) an adjournment and (ii) the joinder of the superior landlord which had previously been made by letter to the Tribunal on 20 February 2023.

7. The tribunal did not inspect the property. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. All 3 Applicants made submissions to the Tribunal and were all given the opportunity to ask questions (limited to the matters in issue in the proceedings) of Mr Shaw of L&Q. The Tribunal also asked Mr Shaw various questions, to which he gave answers, sometimes assisted by Ms Maffei.

9. The Respondent's representative was given the opportunity to ask questions of the 3 Applicants but did not wish to do so.

10. Following conclusion of the submissions and questioning, the Respondent's representative was given the opportunity to make closing submissions and the 2 Applicants who remained in the tribunal (from Flats 117 and 120) in the afternoon were given the opportunity to respond to the Respondent's submissions.

11. The Tribunal accordingly considered:

    (i) The 3 bundles provided by each of the Applicant's;

    (ii) The Respondent's bundle;

    (iii) The Respondent's Skeleton Argument and attached authorities;

(iv) Limited oral evidence given at the hearing in relation to matters in issue in the proceedings;

(v) The submissions made by the Applicants and the Respondent.

The background

12. 27 Chandlers Avenue is a 3-storey purpose-built block of flats, comprising 16 individual self-contained flats with private balconies. The block is situated on a residential estate and has its own car park and communal garden. The freehold of the estate is owned by GLA Land and Property Ltd ("GLA"). Greenwich Peninsula Estate Management Company Ltd ("Peninsula") provide management services in respect of the estate to GLA. GLA granted a long lease of the whole block to Knight Dragon M0115 Ltd ("Knight Dragon") on 20 August 2014 and on 27 November 2014, Knight Dragon granted to the Respondent ("L&Q") a lease of the property which included all 3 of the Applicants' flats for a term of 250 years ("the Superior Lease"). Under the Superior Lease, Peninsula is "the Manager" (with L&Q as the "Tenant" and Knight Dragon as "the Landlord").

13. Peninsula sub-contracted their management functions under the Superior Lease to Pinnacle Property Management ("Pinnacle") for some years up to 2019 and after that to Lee Baron.

14. Ms Byrne has a shared ownership lease of Flat 117, Ms Sanchez and Mr Munoz have a shared ownership lease of Flat 120 and Ms Al Alawi had a shared ownership lease of Flat 123 but now owns 100% of that lease having "staircased" her interest in 2021.

15. Under the Superior Lease, L&Q as Tenant was obliged to pay Peninsula as Manager a proportion of "Maintenance Expenses" (as defined in the Superior Lease, but essentially meaning various costs relating to the estate). Schedule 7 of the Superior Lease set out the way in which L&Q's proportion of Maintenance Expenses was to be calculated – this was by reference to an account of Maintenance Expenses to be prepared each year and served by Peninsula on L&Q.

16. Under the leases of the individual flats, the leaseholders were obliged to pay "Service Charge" (as defined) to L&Q as landlord, which included sums due by L&Q under the Superior Lease, and were obliged by clauses 2 and 7 to pay the Service Charge by equal monthly payments in advance on the first day of each month.

The issues

17. The relevant issue for determination was whether service charge deficits demanded from the leaseholders of Flats 117, 120 and 123 were

payable by the Applicants as a result of the operation of section 20B Landlord & Tenant Act 1985.

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

Findings

19. Peninsula sent L&Q notices under section 20B(2) in respect of the block in which the 3 subject properties are situated for the service charge years ended 24 March 2018, 24 March 2019 and 24 March 2020 on the following dates respectively:

    (i) 24 September 2018;

    (ii) 23 September 2019;

    (iii) 23 September 2020.

20. Those notices (which were initially not all in the bundles but were provided by the Respondent during the course of the hearing) complied with the requirements of section 20B(2). Mr Munoz asked questions of L&Q's representative about whether those notices were compliant with section 20B(2) because in his submission a total sum was needed. L&Q showed the Tribunal the notices and they attached a summary breakdown of service charges for the whole estate. The Tribunal is satisfied that they complied with the requirements of section 20B(2) such that Knight Dragon (acting by Peninsula) had protected itself as against L&Q against being unable to recoup service charges even though they had been incurred by Knight Dragon more than 18 months ago and had not yet been demanded from L&Q on behalf of Knight Dragon.

21. It is common ground that the section 20B(2) notices sent to L&Q by Peninsula were not provided to the 3 Applicants in this case until some time after June 2022. Whilst L&Q appeared to accept that it would have been "good practice" to notify leaseholders of the flats in the block of Peninsula's position in relation to the service charges for the years ended 24 March 2018, 2019 and 2020, L&Q did not accept – and the Tribunal agrees – that there was no legal obligation on L&Q to do so.

22. On 9 June 2021, Peninsula served a demand on L&Q for the balance owed by L&Q for service charges for the years ended 24 March 2018, 2019 and 2020. Whilst some of the costs covered by those demands will have been incurred more than 18 months before service of the demand, the section 20B(2) notices sent in September 2018, 2019 and

2020 to L&Q were sufficient to bring Peninsula's demands within the exception to the limitation period set out in section 20B(1).

23. On 19 July 2021, L&Q emailed a group email address of residents at 27 Chandlers Court to say that Lee Baron (now managing agent) had sent on behalf of Peninsula invoices for the deficits for previous service charge years and that this would result in deficits which would need to be paid by the leaseholders. According to Mr Munoz, he and Ms Sanchez did not receive this email, which is entirely consistent with the fact that they did not move to Flat 120 until July 2020. Ms Al Alawi gave evidence that she did not receive it. Ms Byrne could not be sure whether she had or had not received it. L&Q did not produce any evidence to show whose email addresses were within the group which received the 19 July 2021 email. Nothing turns on that.

24. On 28 September 2021, L&Q sent a service charge demand for the relevant proportion of the deficit to Ms Al Alawi (Flat 123): this was provided in full at pages 267-272 of the Respondent's PDF bundle.

25. On 13 June 2022, L&Q sent a service charge demand for the relevant proportion of the deficit to both Ms Byrne (Flat 117) and Mr Munoz/Ms Sanchez (Flat 120): these were provided in full at pages 829-836 (Flat 117) and pages 207-214 (Flat 120) of the Respondent's PDF bundle.

The law

26. Section 20B Landlord & Tenant Act 1985 reads as follows:

> *(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.*

27. Costs are not "incurred" for the purpose of section 20B on the rendering of services, but instead on the presentation of an invoice or payment of a demand: Burr v OM Property Management Ltd [2013] HLR 29 at paragraphs 11-15, *per* Lord Dyson MR with whom Elias and Patten LJJ agreed.

28. L&Q was content to proceed on the basis of the earliest of these 2 alternatives (i.e. the presentation of an invoice by Peninsula) for the purpose of these proceedings and accordingly there was no need to engage with the debate left open by the Court of Appeal in Burr as to whether an invoice or payment was the appropriate date.

29. Peninsula sent its invoice demanding payment to L&Q dated 9 June 2021. The Tribunal accepts L&Q's evidence that it paid this invoice on 29 September 2021 and was sent the BACS remittance by email shortly after the hearing by Ms Maffei. Whilst L&Q was unable to say definitively when it received the 9 June 2021 invoice, it must have done so at some point between then and 29 September 2021 as the only sensible inference is that L&Q would not have paid such significant sums to Peninsula without a supporting invoice having been issued.

30. Accordingly, the Tribunal finds that L&Q "incurred" the costs owed to Peninsula for the purposes of section 20B on 9 June 2021 at the earliest. The demands which effectively passed those charges on (by way of recharge) to the 3 Applicants were therefore served within 18 months of their having been "incurred" by L&Q.

31. No Applicant has suggested that the service charge demands for each of the 3 Applicants by which L&Q sought to recharge those charges (which were provided in full in the Respondent's PDF bundle) were not compliant with the contractual provisions in the lease and applicable statutory provisions.

Calculations of amounts

32. The Tribunal asked L&Q's representative how the deficit would be calculated for each flat on the basis of the documentation before the Tribunal.

33. L&Q's representative gave evidence that the invoice of 9 June 2021 set out the amount of the deficit for the service charge years ended 24 March 2018, 2019 and 2020.

    (i) For the year ended 24 March 2018, the total figure across the estate of £15,944.72 needed to be divided between 79 flats = £201.83 per flat.

    (ii) For the year ended 24 March 2019, the total figure across the estate of £26,195.06 needed to be divided between 79 flats = £331.58 per flat.

    (iii) For the year ended 24 March 2020, the amount was set out for each flat separately:

(a) Flat 117: £509.51

(b) Flat 120: £596.59

(c) Flat 123: £399.39

34. Therefore, the total deficit amounts payable in respect of the following years are as follows:

(i) Flat 117: deficit of a total of £1042.89 is payable,[1] covering the years ended 24 March 2018, 2019 and 2020 (i.e. each of the 3 years referred to in the Application Notice).

(ii) Flat 120: deficit of £596.59 is payable for the year ended 24 March 2020.

(iii) Flat 123: deficit of £932.77 is payable,[2] covering the years ended 24 March 2018, 2019 and 2020 (i.e. each of the 3 years referred to in the Application Notice).

35. The Tribunal notes a point that was mentioned by way of explanation by L&Q's representative, namely that the service charge demands sent to Flats 117, 120 and 123 on 13 June 2022 (Flats 117 and 120) and 28 September 2021 (Flat 123) contain charges post-24 March 2020, but those are not the subject of any of the Application Notices and the Tribunal does not comment on them.

Name: Judge Rosanna Foskett
Mr Kevin Ridgeway **Date:** [ ] 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.

[1] £201.80 + £331.58 + £509.51 = £1042.89

[2] £201.80 + £331.58 + £399.39 = £932.77

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

(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.

Section 20C

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

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

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

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).