FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AT/LSC/2020/0322**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**Flats 65, 91 and 106, 120 Wood Lane, Isleworth, Middlesex TW7 5FG**
Applicants	**:**	**Flat 65: Ms E Davis-Taylor** **Flat 91: Mr A Odukoya** **Flat 106: Mr M Goodwin**
Representative	**:**	**In person**
Respondent	**:**	**A2 Dominion Homes Limited**
Representative	**:**	**Ms V Osler of counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Date of hearing	**:**	**15 March 2021**
Tribunal members	**:**	**Judge Pittaway** **Mr S Mason BSc FRICS**
Date of decision	**:**	**24 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

The documents to which the tribunal were referred are in a bundle of 568 pages, the contents of which the tribunal noted. At the hearing the tribunal were advised that a revised bundle had been provided. This was not before the tribunal who were advised that it was not necessary to have reference to it.

The tribunal decision and reasons are set out below.

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the applicants

Item	Total Amount payable(of which each applicant is responsible for 4.1667%)
Service charge year 2018/2019	
Fire system equipment maintenance	£2,482.72
Lift repair and maintenance fee	£1,193.06
Electrical lighting and testing on site	£168
Communal repairs	£1,104.34
Block cleaning	£5,500
Management fee	£2,340
Service charge year 2019/2020	
Electrical lighting and testing on site	£602.30
Block cleaning	£5,500

Management fee	£3,060

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant / Respondent in respect of the service charge years..

The hearing

2. The Applicants appeared in person and represented themselves. The Respondent appeared was represented by Ms Osler of counsel.

3. Ms Davis-Taylor had stated that the application was made on her behalf and on behalf of seven other named applicants but the tribunal had no signed application from any other applicant, nor evidence that they had appointed Ms David-Taylor to represent them. Mr Odukoya and Mr Goodwin attended the hearing and, with the agreement of Ms Osler applied to be joined as parties. The tribunal, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 joined Mr Odukoya and Mr Goodwin as applicants.

The background

4. The properties which are the subject of this application are three flats. The flats are held under 99-year Shared Ownership leases. 120 Wood Lane is configured in the shape of an "L". the horizontal leg is occupied by 24 leasehold flats, including the applicants. The vertical leg houses social tenants. The blocks are divided where the two legs of the "L" meet, and separated by way of shared fire doors.

5. No 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.

6. The applicants' leases contain an obligation at clause 3(2)(c), '*to pay the Service Charge in accordance with clause 7*'. Under clause 7(2) this is paid monthly in advance. Clause 7 also sets out the methodology by which the service provision is computed. Each applicant pays 4.166% of the service provision, which is generally described at clause 7(5), *'the relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance improvement and provision of services to the Building'.*

The issues

7. At the start of the hearing the parties identified the matters for determination to be the reasonableness of expenditure incurred by the Respondent on the following:

- Management fee
- Fire system equipment maintenance (to include expenditure on fire doors)
- Lift repair and maintenance fee
- Electrical and lighting testing on site
- Communal repairs
- Block cleaning

8. While the application stated that it related to the service charge years 2018/2019 and 2019/2020 the majority of the sums set out in the evidence before the tribunal related to the service charge year 2018/2019.

9. The tribunal heard evidence from Ms Marina Kelly, a Leasehold Team Manager of A2 Dominion Homes Limited, assisted by Mr Osman, a Leasehold Property Manager of A2 Dominion Homes Limited. Having heard the evidence and submissions from Ms Osler on behalf of the respondent and from each of the applicants, and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Liability to pay and reasonableness of service charge

10. Ms Osler submitted that the applicants did not dispute that they are under an obligation to pay the service charge, and this was not disputed by the applicants.

11. Accordingly the issue before the tribunal was the reasonableness of identified sums.

The sums in issue

The tribunal's decision

12. The tribunal has to decide whether the sums charged by the respondent were reasonable.

13. The tribunal was not assisted by either party as to these actual amounts of the sums in question. The sums demanded by the Respondent for the identified items in dispute were incorrectly shown in the Respondent's statement of case. The tribunal believes that this was because the Applicants' Statement of Case did not make it clear that the amounts referred to in it for each item were amounts that the applicants were claiming back from the service charge that they had paid on account, not the amounts charged. The amounts charged are apparent from the Statements of Service Charge Income and Expenditure Accountin the bundle before the tribunal to be the following

Item	Total Amount charged (of which each applicant is responsible for 4.1667%)	Amount proposed by applicants
Service Charge year 1 April 2018 – 31 March 2019		
Fire system equipment maintenance	£2,482.72	nothing
Lift repair and maintenance fee	£1,193.06	nothing
Electrical lighting and testing on site	£168	nothing
Communal repairs	£2,352.30	£1,182
Block cleaning	£11,667.48	£4,666
Management fee	£4,680	£867 (based incorrectly on a management fee of £3,465.63 of which the applicants said they would pay 25%)

Service Charge year 1 April 2018 – 31 March 2019		
Electrical lighting and testing on site	£602.30	Nothing
Management fee	£6,120	Unknown as not dealt with in applicant's statement of case.

Reasons for the tribunal's decision

14. The tribunal has limited its determination for 2019/2020 to the items specifically referred to in the applicant's statement of case and any other items referred to in oral evidence. The tribunal understand that other items may not have been challenged because the applicants had not received the relevant supporting invoices, but absence of invoices should not prevent an applicant challenging a sum it considers to be unreasonable.

Service charge items

15. The applicants did not challenge that the expenditure on the identified items of expenditure fell within the heads of expenditure that the respondent might recover by way of service charge.

On the individual sums challenged;

Fire system equipment maintenance and fire doors

16. The applicants submitted that there had been no maintenance of the fire system equipment at all during the year 2018/19 and that the respondent had not provided any evidence on fire safety. Ms Kelly gave evidence that the fire system had been maintained in 2018/2019, referring the tribunal to the invoices from Millwood Servicing Limited for that year in the bundle and confirming that the sum of £2,482.72 claimed related to the leaseholder block alone. She explained that Millwoods attended the property five time a year, for quarterly checks and an annual draindown. Ms Davis-Taylor referred Ms Kelly to the e mail of 2 February 2019 from the Station Commander of Heston Fire Station in the bundle as supporting her submission that Millwood were failing to perform its obligations under its contract. Ms Kelly explained that the issues highlighted in that e mail, such as items stored outside flats or items requiring repair were not matters for Millwood.

17. Insofar as the fire doors separating the leaseholders block from the social housing block are concerned Ms Davis-Taylor questioned Ms Kelly as to why the fire doors had not been sealed or changed to prevent access to the leaseholders' block from the social housing block. Ms Kelly explained that the doors could not be blocked, they have to be maintained as a means of escape in case of fire given the travel distance to other means of escape in the social housing block. Ms Kelly referred to the Report of 29 January 2021 of the Housing Ombudsman Service in the bundle, in particular the statement, in paragraph 29, that the interconnecting doors and main front door were found to be secure and in working order. Ms Kelly said that remained the position. Mr Goodwin questioned Ms Kelly as to what Millwood were doing to ensure the fire doors were fully functioning. Ms Kelly explained that the fire doors were outside Millwoods remit and fall under 'communal repairs'.

18. The applicants challenged the charge of £2,482.72 levied in 2018/19 for fire system maintenance on the basis that Millwood did not attend at the property and that it did not undertake certain works, with specific reference to the fire doors.

19. There was no evidence before the tribunal to support the applicants' assertion that Millwood did not attend at the property, which is the basis upon which the applicants have challenged its charge. The applicants have not challenged the sum itself as being unreasonable. The tribunal finds, on the basis of the invoices from Millwood and Ms Kelly's evidence, that Millwoods did visit the property. The tribunal also accepts that the maintenance of the fire doors falls outside the scope of Millwood's contract.

20. The tribunal therefore find the sum of £2,482.72 to be reasonable.

Lift repair and maintenance fee

21. Ms Kelly confirmed that the sum of £1,193.06 which the applicants consider unreasonable for lift repair and maintenance relates to the service charge year 2018/19. The tribunal was referred to a set of invoices from Axis elevators in the bundle which were monthly invoices for a group of lifts stated to be scheduled to the invoices but which schedule was not in the bundle. Ms Kelly explained that these invoices covered the leasehold flats, and this was not challenged by the applicants. Ms Kelly stated that the contract with Axis was for scheduled maintenance and unlimited call-outs. Again this was not challenged by the applicants.

22. On being questioned by Ms Davis-Taylor Ms Kelly said that she was unaware of any general policy of allowing the social housing tenants to use the leaseholders' lift, although she was aware of one occasion when permission was given for it to be used. Ms Kelly said that repair was covered by the fixed contract sum. There was no extra cost to the

leaseholders for Axis having to undertake repairs where the damage had been caused by the social housing tenants.

23. Ms Davis-Taylor submitted that the leaseholders were being asked to pay for repairs caused by the use of the leaseholders' lift by social housing tenants.

24. Ms Osler submitted that the applicants' complaint about lift repair and maintenance fee was actually a complaint about lift use by the social housing tenants not a challenge to the reasonableness of the sum charged.

25. The tribunal find that the sum of £1,193.06 is a reasonable charge for lift repair and maintenance in 2018/19. It accepts Ms Kelly's evidence as to the terms of the contract, and that there was no additional charge to the leaseholders if Axis was called out to repair damage caused by the social housing tenants, which was the basis of the applicants' challenge to the reasonableness of the sum charged.

Electrical lighting and testing on site

26. The applicants submitted that it was unreasonable for the respondent to charge for electrical lighting and testing when the respondent had provided no evidence of this having been done. The applicants provided no evidence for their submission. Mr Odukoya submitted that some light detectors had remained not working for a year but he had not provided a witness statement and could not be examined on this submission. Mr Osman accepted that some light sensors on floor 2 might not have been working for two years but the repair ahd been reported to the repairs department. Ms Kelly put this failure down to a breakdown in communications. Ms Osler invited the tribunal to accept Ms Kelly's evidence that the work had been undertaken.

27. No sum for this charge was referred to in the applicant's statement of case but at the hearing Ms Kelly referred to the charge for year 2018/19 being £168 and for the year 2019/20 being £602.30, the latter made up of two charges, one to replace an emergency light fitting and the other for repairs to communal lighting. There was an invoice from Advanced Maintenance UK Ltd for £168 but no invoices in the bundle for 2019/20. Mr Odukoya questioned Ms Kelly as to this absence and she said that the invoices provided related to 2018/19 because that was the service charge year primarily challenged in the applicant's statement of case. Mr Goodwin asked Ms Kelly if £602 was a reasonable charge for the work undertaken and if there was a system of auditing repairs. Ms Kelly said that the respondent had a rigorous schedule of costings, that the respondent undertook ad hoc audits of repairs and that repairs were monitored by a repair team.

28. In the absence of evidence to the contrary the tribunal accept Ms Kelly's evidence evidence that electrical lighting and testing had occurred in 2018/19, and that the charge of £168 is reasonable.

29. It is unfortunate that the applicants' statement of case did not challenge items in service charge year 2019/20 as that would have required the respondent to provide invoices for that year, in accordance with the tribunal's directions of 15 December 2020. The absence of the invoices does not preclude the tribunal from considering whether the charge is reasonable, and in the light of the evidence heard from Ms Kelly the tribunal consider the sum of £602.30 to be reasonable.

Communal Repairs

30. For the applicants Mr Odukoya submitted that the applicants had only seen 9 invoices for communal repairs for 2018/19 and that on the basis of those invoices a reasonable charge for communal repairs was £1182 (a refund from the total of £2,352.30 being sought by the applicants). Mr Odukoya did not challenge the sums in the invoices that he had seen.

31. In its statement the respondent says that it has attached the invoices for the communal repairs in 2018/19. These include invoices from Millwood Servicing Limited and Axis Elevators. In the bundle there is a spreadsheet showing 22 entries items claimed a 'communal repairs' in the sum of £2,352.30. The tribunal heard evidence from Ms Kelly that communal repairs were undertaken by Pyramid Plus London with AST being used for repairs to the door entry system and CCTV.

32. Ms Osler submitted that the applicants were not complaining about the quality of the work but that the total cost had not been substantiated by invoices.

33. The tribunal note that the sum of £2,352.30 claimed by the respondent includes charges by Millwood and Axis elevators. These are removed from the second page of the respondent's schedule which appears to describe communal works. That leaves ten items of work, totalling £1,104.34. The tribunal finds that the sum claimed by the respondent appears to double-count the charges of Millwood and Axis.

34. The tribunal find that a reasonable sum for the communal repairs in 2018/19 is £1,104.34.

Block cleaning

35. The sum charged for block cleaning in 2018/19 was £11,667,48. The applicants submitted that a reasonable sum for block cleaning would be £4,666. In their statement of case they submit that they have reduced

this figure due to the cleaners not attending over the Christmas/New Year period 2019/2020.

36. The tribunal herd evidence from Ms Kelly that the cleaning contract is with Rose Property Services and that the cleaners attend the leaseholders' block on Tuesdays. Ms Kelly believes that the cleaners attended over the Christmas/New Year period in 2019/20 stating that she had access to vehicle tracking information that substantiated this. Ms Kelly also stated that she had done spot checks as to whether the block had been cleaned on Tuesday afternoons/Wednesday mornings. Mr Osman added that there were monthly site inspections.

37. Ms Osler submitted that the Christmas/New Year period when the applicants say there was no cleaning was outside the service charge year 2018/19, and that the tribunal should accept Ms Kelly's evidence that the cleaners had attended during this period.

38. The application before the tribunal refers to the service charge year 2019/20 as well as the previous year. The bundle before the tribunal contained details of the actual block cleaning for 2019/20, showing the actual cost to have been £14,094.36. The tribunal are therefore able to consider whether the sums for block cleaning on both years are reasonable.

39. There is no vehicle checking information for the cleaners in the bundle. The tribunal do not doubt that Ms Kelly believes that the cleaners attended during the Christmas period 2019/20 but equally have regard to the submissions, particularly by Mr Odukoya, that they did not.

40. The tribunal finds that a cost in the region of £224 per week in 2018/19 and £271 per week for the service charge year 2019/2020 to be unreasonable. Based on the tribunal's knowledge and experience it considers that an appropriate charge for cleaning in each year would be £5,500.

Management fee

41. The accounts in the bundles show the management fee charged for 2018/19 was £4,680 and for 2019/2020 was £6,120. Ms Kelly referred to both years in her evidence, as representing a charge to each leaseholder in £2018/19 of £195 and in 2019/2020 of £255. Ms Kelly explained that the charge was based of the costs of the respondent, the leaseholders access to staff, the inspections carried out and dealing with complaints. Ms Kelly accepted that the respondent had not be good at meeting with the leaseholders, in part ascribing this to the pandemic. In 2019 it had been agreed there should be quarterly meetings and these had not occurred. Ms Kelly expressed a desire for better engagement going forward.

42. The applicants' statement of case alleges that management did not carry out regular site visits, they did not investigate the anti-social behaviour incidents reported by the applicants and they did not repair or were dilatory in repairing wants of repair. Ms Kelly stated that where there are acts of vandalism at the block these are not recharged to the tenants .

43. On being questioned about delays in repairs to the social housing lifts Ms Kelly said the respondent was waiting for parts. On disabling of doors Ms Kelly said they were disabled because of vandalism.

44. Mr Goodwin submitted that if there were regular inspections the respondent would be aware of the issues that were concerning the leaseholders. Ms Davis-Taylor submitted that the anti-social behaviour experienced by the leaseholders in their block pointed to a need for better management. Mr Goodwin submitted that the fact that outstanding issues were not addressed and invoices not provided pointed to inadequate management. Mr Odukoya submitted that failure to provide invoices as directed, excessive cleaning charges, failure to visit and deal with anti-social behaviour, lack of communication all point to inadequate management.

45. The tribunal notes that at paragraph 50 the Report of the Housing Ombudsman Service states that there was no maladministration by the landlord in respect of the complaints regarding the landlord's response to the residents' reports concerning misuse of the fire doors, but that at paragraphs 34 and 35 the Report commented on the lack of communication from the landlord with the tenants and the need to manage the tenanats' expectations.

46. Insofar as the fire doors connecting the leaseholders block with the social housing block are concerned the tribunal note that paragraph 29 of Housing Ombudsman Service's report referred to the respondent's Leasehold Department was exploring alternatives to manage the misuse of the interconnecting doors to be discussed with the tenants if they came up with a solution. The tribunal would encourage the respondent to pursue this exploration further.

47. In the Withdrawal Order of 21 March 2019 made in relation to Flat 65 it was noted that it had been stated that there would be regular meetings between the respondent and the tenants. In giving evidence at the hearing Ms Kelly accepted that these had not occurred. The tribunal appreciate that the applicants feel frustrated by the lack of communication with them by the Respondent, which is not good management.

48. It is unfortunate that the Respondent did not provide the invoices to the applicants for the year 2019/2020, even if the applicants did not specifically refer to that year in their statement of case. Again this points to a lack of communication by the Respondent with the leaseholders.

49. Ms Kelly explained the basis of the management charge was based on the costs of the respondent, the leaseholders access to staff, the inspections carried out and dealing with complaints. There was no evidence before the tribunal as to how the respondent's costs were calculated nor what element of the total management charge these comprised. By Ms Kelly's admission access to staff had clearly not been as good as intended, and there was evidence that the respondent was slow in dealing with complaints. This suggests poor management.

50. The tribunal have no reason to doubt that the respondent and its contractors carried out the inspections referred to by Ms Kelly, even if the relevant attendances were not advised to the leaseholders.

51. If the respondent had undertaken all the functions set out by Ms Kelly the management charge for both years might be reasonable. The evidence before the tribunal is that not all the functions outlined were conducted in a reasonable manner. The tribunal is also concerned that the sum claimed for 'communal repairs' is in excess of that which should have been claimed, and that the respondent had not realised that the sums set out in the applicants' statement of case were not the sums charged by way of service charge but rather sums being requested by way of refund. This points to inefficient management. It is therefore appropriate to reduce the management charge. On the basis of their case the applicants suggested a reduction of 75% for the year 2018/19 and made no suggestion for the year 2019/2020. The tribunal do not find that the applicants have made out their case in its entirety. The tribunal find, on the basis of the evidence before it, that a reduction of 50% is more than appropriate.

Administration charges

52. The application refers to an application being made under Schedule 11 but in fact there were no administration charges in dispute, the tribunal heard no evidence on administration charges and makes no determination under this Schedule

Application under s.20C

53. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Pittaway **Date:** 24 March 2021

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).