FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2023/0151**
Property	**:**	**21 Crawford Buildings, Homer Street, London W1H 4NZ**
Applicant	**:**	**Armad Taherifard**
Respondent	**:**	**City of Westminster**
Application	**:**	**Determination of payability of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Timothy Cowen** **Mr Anthony Harris LLM FRICS FCIArb**
Date of Decision	**:**	**26 January 2024**

DECISION

Decision of the tribunal

The Tribunal determines that the actual service charges for the years and the estimated service charges for the years are payable by the Applicant to the Respondent with the following adjustment to the amount charged in respect of cleaning costs:

Actual cleaning costs

Year	Cost claimed (£)	Determined cost (£)
2018-2019[1]	228.13	205.31
2019-2020	205.75	185.17
2020-2021	210.76	189.68
2021-2022	263.27	201.07

Estimated cleaning costs

Year	Cost claimed (£)	Determined cost (£)
2022-2023	269.86	206.09
2023-2024	297.13	226.91

REASONS FOR THE DECISION

The Flat

1. This application relates to 21 Crawford Buildings ("the Flat") a one bedroom flat on the lower ground floor of a late Victorian block of 47 flats, nine of which (including the Applicant's Flat) are held under long leases.

The Lease

2. The Applicant is the leasehold owner of the Flat pursuant to a lease dated 7 January 2019 for a term of 125 years commencing on 6 October 1992 ("the Lease"). The Lease was granted to the Applicant jointly with Nasrin Arasteh. The Respondent is the freehold owner of the building.

3. By clause 3(A)-(D) of the Lease the lessee covenanted to pay to the lessor average annual estimated service charges and then a balancing payment on

[1] This year's figures need to be subjected to further apportionment for part of the year during which the Applicant was not yet a leaseholder

demand. The actual service charge amount is required to be "a fair and reasonable proportion (as determined by the Lessor) of the total monies properly and reasonably expended by the Lessor in respect of various specified and defined items.

4. The service charge provisions of the Lease are drafted in a way which is very confusing and not at all easy to interpret. There are provisions for a period referred to as "the Reference Period" which does not appear to be defined fully anywhere in the Lease. There are provisions for fixed specified estimated service charges for certain periods and it is not clear how to apply those provisions.

5. The Applicant's application was not based on any aspects of those interpretation issues. We noticed them during the course of our pre-reading and the hearing. Although the lease provisions were discussed during the hearing, neither party had prepared to make submissions on those matters and we therefore did not hear full argument about them.

6. It would not be fair for us, in these circumstances, to make any decision on what may be a complex issue of interpretation. We therefore proceeded on the basis that estimated and actual service charges were payable under the Lease for the period covered by the application. We have therefore concerned ourselves in this decision only with the specific challenges made by the Applicant in the application.

7. We stress however that this decision does not preclude any issues of interpretation from being raised in any other forum and our decision here is limited to whether the service charges are "payable" within the terms of section 27A of the Landlord and Tenant Act 1985 and only with relation to the issues discussed below.

The Application

8. The Applicant has applied to this Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination of his liability to pay service charges.

9. The application relates to actual service charge for the following years:

   2018-2019
   2019-2020
   2020-2021
   2021-2022

   and estimated service charges for the following years:

   2022-2023
   2023-2024

10. The application form singles out the following charges as being challenged:

- Contract cleaning
- Repair and maintenance
- Supervision and management
- Building Insurance

11. The application form also included a challenge to the percentage of the block service charge which has been charged to the Applicant. He claimed that the overall percentages exceed 100%.

The Issues

12. Since the same issues arise in each of the years which are challenged, we dealt at the hearing with the matter on an issue by issue basis, rather than a year by year basis.

13. The Tribunal heard the parties at a face to face hearing. The Applicant appeared unrepresented. The Respondent was represented by a member of its legal department. We had the benefit of a hearing bundle prepared by the Respondent.

14. The issues are as listed in paragraph 10 above and we will deal with each of them in turn as follows.

Apportionment: Percentage payable by the Applicant

15. The Respondent has invoiced the Applicant for 2.899% of the block charge for all the items in issue throughout the period covered by this application.

16. The Respondent's evidence was that the percentage was calculated using what they called a "bedspace methodology". First, the Respondent assesses each of the rooms designated as bedrooms in each of the flats. It divides them into 1 bedspace bedrooms (ie the smaller type) and 2 bedspace bedrooms (the larger type). The distinction is based on the floor area of each bedroom. It does not relate to how many actual beds are in each room or how many people actually sleep there. Nor does it take account of any other room in the flat in which people might sleep or which might have beds in them.

17. In other words, the Respondent has a way of distinguishing between flats based on the size of the rooms designated as bedrooms.

18. It is clear that the bedroom in the Applicant's Flat is of sufficient size to be allocated as a 2-bedspace bedroom. Since there is only one bedroom in the Applicant's Flat, his Flat is designated as a 2-bedspace Flat.

19. The same exercise in carried out for each of the flats in the block which then gives a total of the number of bedspaces in the entire block. In this case: 69. Each flat then pays a fraction calculated as the number of bedspaces in the flat divided by the total number of bedspaces in the block. That fraction is expressed as a percentage and that gives for the Applicant a fraction of 2/69 which is 2.899%.

20. The Respondent's evidence was that it uses the same methodology in respect of all the 22,000 dwellings (including 9,000 long leases) most of which also require a "fair and reasonable proportion".

21. The Applicant does not contest the measurements or the arithmetic. He contends that the method chosen is not fair and reasonable for the following reason. A flat with a slightly smaller bedroom than his would be classified as a one-bedspace flat and would therefore pay 1/69 rather than his 2/69. In other words, a one bedroom flat with a slightly smaller bedroom would pay only 50% of the service charges which the Applicant pays. The Applicant submits that this is unfair.

22. The Respondent gave evidence that there had been an historical error in the calculation of percentages at the Applicant's block. This had only affected flat 23, the lessee of which had been overpaying as a result. The Respondent had reimbursed the lessee of flat 23 for the overpayment. The Respondent showed in its evidence that the anomaly did not affect the amount which had been charged to the Applicant, for which no adjustment needed to be made.

23. Finally, the Respondent referred us to a previous decision of the Leasehold Valuation Tribunal *City of Westminster v Leaseholders of 3-5 Orsett Terrace* [2010] in which the Tribunal had considered the bedspace methodology and had decided that it was within the range of methodologies which would produce a fair and reasonable proportion, while acknowledging that there may be other methodologies for achieving other fair and reasonable proportion calculations.

24. It is also to be noted that there is a page attached to the Lease headed "Explanatory notes for Appendix B" which sets out the bedspace methodology and specifies that the resulting percentage for the Flat would be 2.899% for the first five years after the date of the lease. All of the years in question are within that period. The Respondent additionally relied on the fact that the Applicant would have been aware of the method of calculation of the percentage before entering into the Lease, because of these explanatory notes.

25. We have decided that the percentage apportionment of 2.899% is fair and reasonable, both within the meaning of the terms of the Lease and within the meaning of section 19 of the Landlord and Tenant Act 1985. We remind ourselves that there may be other possible methodologies of calculation which are also fair and reasonable and some of them may produce a more favourable result for this Applicant. But the test is whether the method

adopted by the Respondent is within the range of reasonable calculations. We also have in mind that all methodologies when applied over a block of multiple flats will produce anomalies which may seem less fair in individual cases.

26. The Applicant is arguing for an apportionment based on area of each flat. In our judgment, such a method may be superficially more equitable, but it may also produce anomalies. Flats on different floors, for example, may have more or less benefit from different types of services. Larger flats with less usable space may practicably be able to house fewer people than some smaller flats.

27. It is also relevant that in order to adopt the apportionment methodology, the Respondent would have to conduct an expensive exercise of surveying and measuring the area of all 47 flats in the block.

28. Ultimately, the Respondent has adopted a consistent method which recognises that the number of people living in (or capable of living in) each flat is a significant indication of the share of communal resources which can be used by each flat and of the impact on the fabric of the building caused by each flat.

29. Although we are not bound by the decision in the *Orsett Terrace* case on this point, we do take account of the fact that the Tribunal in that case also regarded the bedspace methodology as within the range of fair and reasonable methods for calculating apportionment.

30. After the hearing, the Applicant sent us a weblink to the Statutory guidance on Technical housing standards – nationally described space standard (Published 27 March 2015) from the government's planning website. They show that the bedspace calculation system is used in the planning system for some purposes. We have considered this document (with the Respondent indicating that it did not object) and we do not think it adds anything relevant to the matter.

31. Taking all of this together, we have decided that the bedspace methodology which produces a 2.899% apportionment for the Applicant's flat is reasonable.

Contract cleaning

32. The actual cleaning costs over the years for the block (taken from the Respondent's statements of actual expenditure for each year) are as follows:

Year	Cost (£)
2018-2019	7,869.11
2019-2020	7,097.19
2020-2021	7,270.08

2021-2022	9,081.56

33. The estimated cleaning costs over the years for the block (taken from the Respondent's statements of estimated expenditure for the relevant years) are as follows:

Year	Cost (£)
2022-2023	9,308.60
2023-2024	10,249.55

34. The Applicant raises two challenges to the cleaning costs:

a. He says that the quality of the cleaning service is poor and inadequate.

b. He says that, aside from the lack of quality, the costs are unreasonably high.

Standard of cleaning

35. On the first of these issues, the Applicant gave evidence that carpets were not cleaned as regularly as they should have been and were in poor condition as a result. He said that he spoke to one of the cleaners about why the carpets were not shampooed as frequently as they should be and was told that there was not sufficient time.

36. We accept the Applicant's evidence on this point. In particular we were satisfied that cleaning tasks were not performed at the time and with the frequency they should have been.

37. The Respondent explained the cleaning schedule and process conducted by its contractor, Pinnacle. The bundle contained its cleaning schedule and cleaning inspection reports from 2020-2023.

38. The Respondent also gave evidence that, in response to the Applicant's claim, a sign-in sheet has been introduced to regulate whether tasks were being carried out when they should be. While we acknowledge the Respondent's laudable efforts to improve the system, this illustrates the failings in the previous system and further bolsters the Applicant's case that cleaning has not been adequate.

39. Doing the best we can with our specialist knowledge and expertise, we have assessed that as a result of the deficient standard of cleaning **the Applicant has been charged 10% more for cleaning costs than the value of what he has received**.

Cost of cleaning

40. The Applicant points out that the cleaning costs have risen by 47% over the period of 5 years covered by the claim. His case is that this indicates an unreasonable increase of cost.

41. The Respondent's case is that the cost of cleaning decreased when it appointed Pinnacle for the year 2019/2020 (as can be seen from the tables above) and then it "increased naturally" thereafter by steps of between 2-10%.

42. The Respondent does, however, acknowledge that the cleaning costs increased very sharply (by 27%) in the year 2021/2022. The Respondent explains this increase as being "due to the introduction of the London Living Wage".

43. The London Living Wage is not a statutory requirement for private firms or for government. It is a rate calculated and published by the Living Wage Foundation which campaigns for its adoption. It is generally higher than the national minimum wage. For example, the current national minimum wage for workers over the age of 23 is £10.42 per hour. The current London Living Wage is £13.15. That is a difference of about 26%.

44. The Respondent's representatives at the hearing conceded that it was under no statutory obligation to introduce the London Living Wage. They told the Tribunal that it was a decision taken by the council's elected representatives and then handed down to the relevant department (which in this case employs Pinnacle).

45. The Tribunal asked the Respondent its reasons for adopting the London Living Wage ("LLW") and in particular whether the decision was made because of concerns that it would be difficult to recruit cleaners for a wage lower than LLW. Respondent's representative said that he was not aware of any such concern. The Respondent's position at the hearing was simply that the council had taken the decision and that the relevant department had implemented it.

46. Where there the cost of an item of expenditure has been "reasonably incurred" within the meaning of section 19 of the Landlord and Tenant Act 1985, we must be guided by the principles set out in paragraph 37 of the Court of Appeal's judgment in *Waaler v Hounslow London Borough Council* [2017] EWCA 45 which are as follows:

> "...whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome ... If the landlord has chosen a course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable."

47. Before going further, it is necessary to stress that the decision made by the Council is a policy decision made by elected representatives. It is not our function to assess whether that decision was correct as a matter of policy. We are not expressing any view on the desirability of the London Living Wage itself. We are simply applying the law (as set out above) to the decision making process and its outcome in the context of a private leaseholder, namely the Applicant, paying service charges.

48. We must consider the process of decision making. In the absence of any evidence of the reasons for the Council's decision, we only have the fact that this was a political decision made by elected representatives. In our judgment, that by itself is not enough to satisfy the requirement for a reasonable process. Of course, a political decision made by a local authority is capable of amounting to a reasonable decision making process within the meaning of *Waaler,* but it is in our judgment necessary to examine the reasons behind the decision. A reasonable process which increases service charges needs to have some relation to the property itself and the management of the estate and the interests of the leaseholders. We have no evidence that any such considerations were part of this decision. We simply do not know what considerations led to this decision. It is a matter of common knowledge that political decisions can sometimes be made out of political expediency or as part of a compromise between political parties or factions within parties. We simply have no evidence or information about what led to this decision. Therefore, taking reasonable process on its own, we have no evidence at all that any reasonable process was followed in the taking of this decision. We may have reached a different conclusion if we had been presented with evidence of the reasons for the decision, but we were not.

49. We turn to the question of the outcome of the process. The outcome of the decision made by the council to start paying the London Living Wage to its cleaning contractors was simply to increase the cost of cleaning with no increase in the quantity or quality of the cleaning service itself. The Respondent did not submit or offer evidence that there was any such increase in the service. The Respondent also did not submit or testify that the increase in cost would prevent any decrease in the cleaning service. In effect, the Applicant was being asked to pay more for the same employees of the same contractor company to do the same job solely because the council had made a political decision.

50. In our judgment, the assessment of reasonable outcome must also relate to the relationship of landlord and tenant and the management of the estate. In the absence of any evidence (or even argument) that the increase in wages has led to a better quality of cleaning service, we are simply left with the bare facts that the cost of the cleaning has increased with no increase in the level or quality of service. In our judgment, that cannot be said to be a reasonable outcome.

51. It follows that we have decided on the particular evidence (or lack of it) in this case, that the increase in cost attributable to the decision to adopt

the London Living Wage was not reasonable. Therefore that portion of the cleaning costs element of the service charge is not payable.

52. We again emphasise that this is not a decision about the reasonableness of the adoption of a London Living Wage in principle. It is a decision on the particular facts and evidence of this case.

53. As a result of our decision on cleaning costs, we would:

a. replace the 27% increase between 2020/2021 and 2021/2022 with a 6% increase (being the rough median of the usual yearly increases); and then

b. reduce all of the totals for each year by 10%.

Actual cleaning costs

Year	Cost claimed (£)	Cost after replacing 27% increase(£)	Cost after reduction by 10% (£)	Applicant's adjusted share at 2.899% (£)
2018-2019	7,869.11	7,869.11	7,082.20	205.31
2019-2020	7,097.19	7,097.19	6,387.47	185.17
2020-2021	7,270.08	7,270.08	6,543.07	189.68
2021-2022	9,081.56	7,706.29	6,935.66	201.07

Estimated cleaning costs

Year	Cost (£)	Cost after replacing 27% increase(£)	Cost after reduction by 10% (£)	Applicant's adjusted share at 2.899% (£)
2022-2023	9,308.60	7,898.95[2]	7,109.06	206.09
2023-2024	10,249.55	8,696.74[3]	7,827.07	226.91

Repair and maintenance

54. Under the category of repairs and maintenance, the Applicant made only one challenge. He said that some of the items were costs of works and repairs which should have been claimed under an insurance policy. In response to questions during the hearing, the Applicant was unable to identify which items should have been paid for by an insurance claim nor was there any evidence relating to his allegation.

55. We therefore reject the Applicant's challenge to the amounts charged in relation to repairs and maintenance.

[2] 2.5% increase on previous year in line with costs claimed for those years
[3] 10.1% increase on previous year in line with costs claimed for those years

Supervision and management

56. The actual supervision and management costs over the years for the block (taken from the Respondent's statements of actual expenditure for each year) are as follows:

Year	Cost (£)
2018-2019	6,681.05
2019-2020	7,904.46
2020-2021	7,366.78
2021-2022	6,795.26

57. The estimated supervision and management costs over the years for the block (taken from the Respondent's statements of estimated expenditure for the relevant years) are as follows

Year	Cost (£)
2022-2023	7,438.22
2023-2024	10,597.09

58. The Applicant's case is that the standard of supervision and management is very poor. His evidence for this is a range of anti-social behaviour which has been occurring in and around the block. This includes drug taking, noisy parties, dangerous dogs and delivery workers leaving bikes inside the building. The Applicant says that this makes him feel unsafe and uncomfortable and he is worries about the safety of his vulnerable son. The Applicant says that in the past the Respondent provided a better housing manager.

59. The Respondent's case was that the supervision and management element of the service charges relates to the overheads and costs of the services provided by the Respondent for the benefit of all residents of the block. This includes general estate management, consultation with residents and handling enquiries. The Respondent gave evidence of the method of calculation of the overheads which were attributed to this item.

60. In essence, the Respondent's employees are required to spend a certain amount of time carrying out specified tasks of supervision and management and complete a spread sheet periodically to record that time. The Respondent's evidence was that this was automatically "checked" by the spreadsheet software in the following way: the employee could not submit the completed spreadsheet if the recorded hours did not match the number of hours which that employee was required to spend on the respective tasks. It seems to us that this method makes no sense and is more likely to lead to abuse and inaccuracy than a system without this form of "check". Essentially, an employee who has performed less than the required number of hours is encouraged to overstate their hours simply in order to be able to submit their timesheet.

61. Nevertheless, in this case we do not have evidence that the number of hours spent on supervision and management were falsely inflated. We simply note the inherent danger of that in the system as described to the Tribunal at the hearing by the Respondent.

62. The Respondent's evidence was also that it was aware of the increase in anti-social behaviour and has been responding to that in the current year. It has conducted a restructuring of the relevant department, increased levels of staffing and has added more housing offices to improve the service and with the aim of making the council staff more visible at the block. The Respondent's case was that this is what explains the sharp increase in estimated costs for the current year.

63. After considering the evidence and submissions of the parties on this issue, we accept the Applicant's evidence but we have decided that his challenges are not valid. They betray a misunderstanding of the purpose and scope of supervision and management. The obligation of the Respondent under the lease is not to guarantee the absence of anti social behaviour, but rather (under clause 6(A)) to "manage the Property in a proper and reasonable manner". In our judgment, that means that the Respondent is required to respond to an increase in anti-social behaviour by spending more on resources designed to combat those problems and alleviate their effects. In other words, the increase in anti-social behaviour is a good reason for an increase expenditure on supervision and management. We take note of the fact that (in the Tribunal's experience) tackling anti-social behaviour is very difficult for a landlord which ultimately does not have the powers of duties of a police force.

64. We have noted above some problems in the Respondent's method of recording time spent on this issue and allocating cost. As a result, we have checked the amounts charged against our expectation (based on the Tribunal's experience and expertise) of the level of supervision and management charges in a case like this. All of the years prior to the current year, the cost of this element falls within the range of 10-15% of total expenditure. This is what we would expect and is within the reasonable range. The estimated charges for the current yea (2023-2024) come out at 17% which is higher than expected, but is explainable by the increase in the provision of services to tackle the anti-social behaviour problems, which we also regard as reasonable.

65. Of course, the service charges we have considered for the most recent two years are estimates. Our decision does not relate to the actual charges (whatever they may turn out to be) and does not prevent a future determination of these actual charges.

66. In the circumstances, we reject the Applicant's challenge to the service charge element relating to supervision and management.

Building Insurance

67. The Respondent’s evidence was that the building insurance, which was previously a block charge, is now an individual cost charged to each flat following the commencement of a new insurance contract with Avid Insurance in January 2019. We understand that this insurance policy covers the whole of the Respondent’s housing stock. This followed a section 20 consultation process which predated the Applicant’s ownership of the Lease.

68. The amounts charged to the Applicant for the relevant years are as follows:

Actual

Year	Cost (£)
2019-2020	211.99
2020-2021	216.18
2021-2022	261.87

Estimates

Year	Cost (£)
2022-2023	300.34
2023-2024	393.87

69. The Applicant's case is that the large increases in 2021/2022 and thereafter are not reasonable.

70. The Respondent replied that there were always a very limited number of insurers (4-5) who are prepared to insure local authority housing stock and that since the Grenfell disaster that has been reduced to one insurer. We accept that evidence which accords with the Tribunal's experience.

71. In addition we have taken account of the recent sharp increases in rebuild costs of around 20% generally in our experience. We also take account of the fact that the insurance market has hardened considerably over the same period.

72. Taking all of that together, we have reached the view that the increases in insurance premium are justifiable and reasonable and the Respondent has had no alternative but to pay the premiums demanded by its insurer. There is no evidence that it could have obtained a lower premium.

Conclusion and costs

73. For all the reasons set out above, we have made the determination set out at the beginning of this decision.

74. Given that the Applicant has achieved only a very small reduction in service charges after making a large number of challenges (most of which have been rejected) we have decided not to make any order in his favour under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Name: Judge T Cowen **Date:** 26 January 2024

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).