



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/43UD/LSC/2023/0101**

**Property** : **1 Pinewood House, 115 Epsom Road  
Guildford, GU1 2LE**

**Applicants** : **Rasheeda Syed**

**Representative** : **N/A**

**Respondent** : **David Crispin Webber**

**Representative** : **N/A**

**Type of Application** : **Determination of liability to pay and  
reasonableness of service charges  
(section 27A Landlord and Tenant  
Act 1985)**

**Tribunal Member** : **Judge R Cooper  
Mr P Smith FRICS  
Ms T Wong**

**Date of Hearing** : **18/01/2024**

**Date of Decision** : **29/02/2024**

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**DECISION**

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In summary, the service charges payable by Ms Syed in respect of 1 Pinewood House, 115 Epsom Road, Guildford, GU1 2LE for the service charge years 2015/16 to 2022/23 are as follows for the reasons more particularly set out below:

| <b>Year</b> | <b>£</b>      |
|-------------|---------------|
| 2014/15     | <b>374.24</b> |

|         |               |
|---------|---------------|
| 2015/16 | <b>0.00</b>   |
| 2016/17 | <b>247.95</b> |
| 2017/18 | <b>431.07</b> |
| 2018/19 | <b>504.76</b> |
| 2019/20 | <b>433.23</b> |
| 2020/21 | <b>551.40</b> |
| 2021/22 | <b>476.92</b> |
| 2022/23 | <b>430.97</b> |

The Tribunal declines to make a decision in relation to the 2023/24 service charge year.

Orders are made under s20C of the Landlord and Tenant Act 1985 ('the 1985 Act') and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that the costs (if any) of these proceedings may not be recovered through the service charge or as an administration charge.

Mr Webber is to pay the application and hearing fees to Ms Syed in the sum of £300.00.

*In this decision references to the page number of the documents are referred to thus [ ].*

### **Background**

1. On 20/07/2023 Ms Syed applied to the Tribunal for determination as to the liability to pay and reasonableness of service charges in respect of 1 Pinewood House, 115 Epsom Road, Guildford, GU1 2LE ('the Property') for the years 2014/15 to 2023/24 (inclusive) under s27A Landlord and Tenant Act 1985 ('the Act'). She also applied for orders that Mr Webber's costs of the tribunal proceedings should not be recoverable through future service or administration charges (under section 20C of the Act ('section 20C') and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('paragraph 5A')), and for him to pay the costs of her solicitor and the application and hearing fees.
2. A case management hearing took place on 18/10/2023 following which the parties agreed to mediation. Mediation proved unsuccessful and directions were then given on 23/11/2023 which have largely been complied with.
3. There was no inspection of the Property.

### **The Issues for the Tribunal**

4. The principal issue for the Tribunal to determine is whether the service charge for the Property is reasonable and payable in each of the accounting years from 2014/15 to 2022/23 inclusive, and for the future costs demanded in respect of 2023/24.

## **The Property**

5. Pinewood House comprises two modern blocks of flats built in 2012 on the site of one large house and garden. Each block contains five flats, the top floor being a large penthouse flat. 1 Pinewood House (the Property) is a ground floor flat in one of the blocks and is owned by Ms Syed. Although she initially resided in the flat, she now lets it out to tenants. Mr Webber is the freeholder of the block. He is also the leaseholder of four flats in the block which he too lets to tenants.
6. The two blocks face onto a carpark at the front which is surrounded by planted beds (several of which are raised). As the land on which it sits is below the level of the road, there is a bank of earth at the end of the carpark which is retained by railway sleepers. These have rotted over time and are in need of replacement.
7. At the rear of the blocks is a large garden laid largely to grass. Along the boundary of the property are a number of large mature trees.
8. The property was not inspected by the Tribunal. No application for an inspection was made, and it was not considered necessary. Some photographs have been provided and are in the bundle.

## **The lease**

9. The Tribunal had before it a copy of the lease for 1 Pinewood House, the flat belonging to Ms Syed. The lease is undated but is granted for a term of 125 years from and including 1/07/2013. All the leases in the Property are said to be in the same or similar terms.
10. In summary the relevant provisions of the lease are as follows:
  - (i) By clause 2.3 the lessee covenants to pay as rent
    - (a) The Rent
    - (b) The Insurance Rent
    - (c) The Service Charge

The terms Rent, Insurance Rent and Service Charge are all defined in the recitals. The Service Charge is defined as '*fair and reasonable proportion as defined by the landlord of the Service Costs*' and Ms Syed's proportion is defined as 1/12<sup>th</sup>. The Service Costs are defined as the list of the costs set out in Part 2 of Schedule 7.

- (ii) The Rent Payment Days are the 25<sup>th</sup> May and 29<sup>th</sup> September each year, and the Tenant is to pay both the rent and the estimated service charge for the year in advance in equal amounts on the Rent Payment Days (Clauses 1 and 2 of Schedule 4). Clause 2.3 of Schedule 4 provides for a balancing payment at the end of the Service Charge year if the estimate was insufficient to cover the actual costs incurred (or a credit if the estimate was too high).

- (iii) Part 2 of Schedule 7 provides that the Service Costs are the total of
- (a) *'all the costs reasonably and properly incurred or reasonably or properly estimated by the Landlord to be incurred of:'* and there follows a list which includes *'providing the Services'* (which are in the list in Part 1 of Schedule 7), the *'supply and removal of electricity, gas, water, sewage and other utilities...'*, and money to be set aside as a reserve or sinking fund and so on.
  - (b) *'the costs, fees and disbursements reasonably and properly incurred of:'* and there follows a list which includes *'managing agents...for carrying out and provision of the Services, or, where managing agents are not employed, a management fee for the same'* as well as provision to pay for accountants and *'others...retained...to act on behalf of the Landlord in connection with the building or provision of the Services.'*
  - (c) & (d) include matters such as taxes, rates and VAT
- (iv) Part 1 of Schedule 7 contains a list of the Services. The list is comprehensive and includes:
- *'Cleaning, maintaining, decorating, repairing and replacing the Retained Parts'*,
  - *'lighting the Common Parts and the Parking Spaces'*, and
  - *'maintaining any landscaped and grassed areas of the Common Parts'*.
- (v) The Landlord's covenants are contained in Schedule 6. In relation to insurance, they include covenants to:
- *'effect and maintain insurance...against any of the Insured Risks with a reputable insurer for an amount not less than the Reinstatement Cost'*,
  - serve a notice on the Tenant confirming the gross cost of the annual insurance premium payable in respect of the Building, giving notice of how the Insurance Rent has been calculated and when it is due.
  - provide the Tenant with *'a copy of the insurance policy and schedule'* on request,
  - notify any changes in cover,
  - *'use reasonable endeavours to procure that the insurance policy contains a non-invalidating provision...in respect any act or default of the Tenant or...other occupier'*, and
  - *'procure that the interest of the Tenant and its mortgagees are noted on the insurance policy'*.

The Reinstatement Cost is defined in the Recitals as the *'full cost of reinstatement of the Building as reasonably determined by the Landlord's insurance provider from time to time...'*

The Insurance Risks are defined in the Recitals as *'fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else, loss of rent, service charge and insurance rent and any other risks which the Landlord reasonably decides to insure against from time to time'*

- (vi) In relation to the Service Charge the Landlord covenants in Schedule 6 to
- provide the Services (subject to the Tenant paying the Service Charge)(Clause 4.1),
  - provide an estimate of the service charge costs for the year *'before or as soon as possible after the start of the Service Charge Year'* (which in this lease runs from 1<sup>st</sup> May each year to the 30<sup>th</sup> April the next)(Clause 4.2),
  - provide a certificate of the Service Costs and Service Charge as soon as possible at the end of the year (Clause 4.3)
  - keep accounts, records and receipts relating to the Service Costs and permit the Tenant to inspect (Clause 4.4)

### **The Law**

11. The law relevant to this application is set out in full in the appendix to this decision.
12. Section 18(1) of the 1985 Act defines 'service charge' as 'an amount payable by a tenant ... which is payable, directly or indirectly, for services ... and ... the whole or part of which varies or may vary according to the relevant costs'. Section 18(2) defines 'relevant costs' as 'the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.'
13. Under s27A of the 1985 Act the Tribunal has the jurisdiction to determine whether a service charge is payable and, if it is;
  - (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.

14. A service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard (s19 of the 1985 Act). When service charges are payable in advance, no more than a reasonable amount is payable.
15. Under s20C of the 1985 Act a leaseholder may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal 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.
16. A leaseholder may also apply to the Tribunal under paragraph 5A of the 2002 Act for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs".

### **The hearing**

17. Ms Syed and Mr Webber attended the hearing in person, and both gave evidence and made submissions. Ms Syed was accompanied by a friend, Martyn Bridger, who assisted her at points during the hearing.

### **The Documents**

18. The Tribunal considered the appeal bundle (474 pages) and Ms Syed's statement of case provided the afternoon before the hearing. In his final submissions, Mr Webber handed up references to authorities he wished to rely on. Whilst this document should have been provided to both the Tribunal and Ms Syed in advance, the Tribunal must apply all relevant caselaw and is aware of the decisions in any event.

### **Discussion and reasons for the decision**

#### The application

19. Ms Syed's case is contained in her application [1-18], witness statement [74-79], response [94-95] and the statement of case served by email late on 17/01/2024.
20. In summary, she claims that the service charge paid for the years 2014/15 to 2022/23 should be repaid to her in full (£8,594.69). She also claims the ground rent paid for the same period should be repaid in full (£2,250), together with legal costs (£2,298.00 which she paid to her solicitors and £300 representing the costs for her application to the Tribunal). She says there have been numerous breaches of the lease terms, a failure to comply with the law in relation to the contents of the service charge, ground rent demands and consultation. She says Mr Webber has breached s42 of the Landlord and Tenant Act 1987 in

relation to the reserve fund. In relation to the service charge costs themselves, she says there are discrepancies between service charge demands and the actual invoices, poor quality work or services, a failure to adequately insure, and unrecoverable sums on account of late service of service charge demands.

21. Mr Webber's case is set out in his witness statement [80-93]. In summary, he disputes Ms Syed's claim. He says that he only ever billed for moneys that were expended on Pinewood House. He says her complaints are unfounded and simply a means of avoiding making payment, and that Ms Syed consistently paid a year or two late. Works and services were not of a poor standard, he dealt patiently with all her demands, and had changed some contractors (such as the gardener) to appease her. In relation to his management of the block, he provided excellent value for money and saved the leaseholders significant sums.
22. In his submission to the Tribunal, Mr Webber said Ms Syed could not challenge the reasonableness of the service charge as she had paid the service charge amounts and had not expressly done so on protest, thereby admitting them. Furthermore, he said her earlier claims were too old. In relation to claimed breaches of the lease, he said her remedy would be a claim for damages and the breaches did not invalidate the demand for service charges which remained payable.

#### Discussion and conclusions

23. Having considered the evidence as a whole, the Tribunal made its decision for the following reasons.
24. Dealing first with Mr Webber's submission that the Tribunal could not consider the reasonableness of service charges because Ms Syed had paid without protest. Whilst she may not have used the words 'without prejudice' or 'payment under protest' it is clear that Ms Syed has protested the service charges at every turn and frequently referred to past protests or disputes. The Tribunal finds that she continued to dispute the charges whilst making payment and therefore cannot be said to have admitted the charges were reasonable.
25. As regards his claim that Ms Syed's complaints regarding breaches of the lease were not within the jurisdiction of the Tribunal, we agree to an extent. For the reasons set out below in relation to the Reserve Fund, the Tribunal accepts that Ms Syed's claims were not within the jurisdiction of the Tribunal. Furthermore, a claim for damages for breach of contract or costs, are not within the purview of the Tribunal (save by way of a set-off). However, principally, Ms Syed's claim relates to complaints about the reasonableness of the service charges and the question about whether works or services were of a reasonable standard. Both of those issues clearly fall within the Tribunal's jurisdiction under ss19 and 27A of the 1985 Act.

26. Turning to the issues in dispute, the Tribunal found from the documentary and oral evidence that the quality of Mr Webber's administration of the block management was poor and disorganised. The Tribunal accepts that Ms Syed was demanding in her email correspondence, and no doubt it created work for Mr Webber in responding. However, on balance the Tribunal found that many of the issues she complained of he brought on himself. He did not appear to keep proper accounts or records. He provided service charge demands late, for the wrong periods and not in accordance with the provisions of the lease (which provides for two equal instalments in advance, in May and September during the service charge year, and then an appropriate balancing payment or credit at the end of the service charge year when the exact expenditure is known). Mr Webber provided duplicate service charge demands with different figures, and the invoices he provided did not always match the expenditure claimed. The service charge demands themselves failed to comply with the requirements of s21B of the 1985 Act. Mr Webber also failed to undertake many steps that a prudent manager would (such as to build up a reserve fund for major future works) or respond effectively to concerns raised.
27. Whilst Mr Webber says that he was patient and responded to Ms Syed's concerns, the Tribunal found this was not made out in many of the areas Ms Syed complained of. Whilst he did respond to some emails, the Tribunal found that he did not always take action that was appropriate.
28. By way of example, the Tribunal found that Ms Syed (and others) repeatedly raised with Mr Webber the fact that the service charge demands were not served on her in accordance with the lease, and that no estimate of expected costs was provided before the start of the service charge year. The evidence produced shows this was an issue raised with him from at least February 2017. Despite Mr Webber's apparent confirmation on 20/02/2017 [239], 29/08/2017 [229] and 3/06/2021 [441] that he would in future issue service charge demands in accordance with the lease, none of the service charge demands to the date of the hearing were compliant. Mr Webber simply issued invoices after the end of the service charge year for the costs incurred. Therefore, demands were made (sometimes many months after the end of the service charge year [177]) without leaseholders having the opportunity to plan for the likely expenditure or spread payments over the year.
29. Similarly, 21B of the 85 Act requires prescribed information to be provided to leaseholders in the service charge demand, failing which they are unenforceable. That is a simple step required by law. As a landlord Mr Webber should understand his legal obligations. However, it was not until 22/07/2023 that Mr Webber retrospectively served the required 'summary of tenants' rights and obligations' information in respect of service charge demands from 2014 [147]. Until that time, the leaseholders had all had the right to withhold payment of the service charge.



30. To address Ms Syed's concerns regarding the insurance, Mr Webber could simply have provided her with a copy of the insurance policy showing that her interest (and that of any mortgagee) were noted, if that were indeed the case. Again, the Tribunal found that concerns raised about the insurance on several occasions from 19/05/2021 [185], but even by the date of the hearing, no adequate evidence had been provided to her or the Tribunal that her interest was noted.
31. The Tribunal also found that some of the service charge documents provided by Mr Webber to the Tribunal were not consistent with the service charge demands exhibited by Ms Syed. For example, the 2020/21 service charge summary provided by Mr Webber [292] also included an estimate of charges for the 2021/22 service charge year. However, the estimate does not appear on the copy of the service charge summary provided to Ms Syed on 17/05/2021 [113]. In the light of Mr Webber's admission that he had produced documents to the Tribunal that he confirmed were only prepared by his accountant recently but the dates of which appeared to have been falsified as they indicated they were prepared each year from 2019 [464 to 468], the Tribunal concluded the documents provided by Ms Syed were more likely to be reliable.
32. Notwithstanding Ms Syed's concerns regarding management of the property, however, Pinewood House is not a right to manage property, and the leaseholders do not own a share of the freehold with Mr Webber. It is, therefore, for Mr Webber to make such decisions in accordance with the lease as he sees fit, subject only to his statutory duties including (a) the duty to consult in certain defined circumstances and (b) the requirement that costs are reasonably incurred and works or services are of a reasonable standard.
33. The Tribunal, therefore, cannot, for example, interfere in his decision to choose to provide spotlights rather than low level lighting in the carpark that Ms Syed seeks, unless the spotlights themselves did not provide lighting to a reasonable standard. The Tribunal finds that Ms Syed has not provided evidence demonstrating that the lighting was inadequate.
34. The duty to consult
35. It is clear from her email correspondence with Mr Webber that Ms Syed is of the view that she and other leaseholders had a right to be consulted on all aspects of the management of Pinewood House. Whilst it may be good practice for a freeholder to consult with leaseholders, the statutory right to be consulted only applies in relation to 'qualifying works' where the cost to the individual leaseholder exceeds a prescribed amount (currently £250) and 'qualifying long term agreements' where the cost to the individual leaseholder exceeds £100 (s20 of the 1985 Act). The consequences of a failure to consult simply prevents the freeholder from recovering any sum greater than the prescribed limits
36. The Tribunal was satisfied having considered all the evidence that in the period 2014/15 to 2022/23, there were no works where the cost to Ms

Syed as an individual leaseholder exceeded £250. Whilst the Tribunal considered that potentially the agreement for lift maintenance might be a qualifying long-term agreement, Ms Syed does not contribute to the cost, so any failure to consult (if required) would have no impact on the service charge she is required to pay. We found no evidence of any other long-term agreement of 12 months or more. Whilst it may be that the future works required to replace the rotten sleepers in the carpark may exceed the prescribed limit, at the date of the hearing those works had been put on hold until new managing agents were appointed. Mr Webber confirmed they would follow the consultation required by s20 of the 1985 Act. For the reasons set out below we decline to make a decision regarding the reasonableness of future service charge for the 2023/24 year.

37. The Tribunal was satisfied, therefore, that for the period under consideration in this application it was for Mr Webber to choose the works that should be undertaken in any particular service charge year, which contractors to use and the brief they were given, subject only to the proviso that costs were reasonably incurred, and any works or services undertaken were to a reasonable standard (s19 of the 1985 Act).

#### The reserve fund

38. Whilst the lease allows the freeholder to include a sum each year in the service charge demand, so as to build up a reserve or sinking fund, Mr Webber has not done so on a regular basis. In one service charge year, the sum of £200.00 was requested as a contribution to a sinking fund, and in another £100.00. Ms Syed has sought on a number of occasions information regarding the bank account in which those moneys are held, and for details of the current balance. She disputes what she has been told by Mr Webber. It appears as a consequence of the ongoing disagreement about the moneys held in the reserve fund Mr Webber has repaid to her at least £200.00.
39. The Tribunal is satisfied that it does not have jurisdiction to consider the dispute as regards the money in the reserve fund as it is effectively a breach of trust claim and the Tribunal lacks jurisdiction in this regard as confirmed in Solitaire Property Management Company Limited v Holden [2012] UKUT 86 (LC). Such a claim would need to be brought in the County Court.

#### Insurance

40. Ms Syed says the property is not adequately insured, and the interests of the leaseholders are not noted. The Tribunal accepts on the balance of probabilities that Pinewood House has been insured by Mr Webber at all material times and that premiums were paid. However, it finds that Mr Webber failed to serve a copy of the insurance certificate on Ms Syed each year in accordance with the lease, and despite her requests that he do so he has never provided her with a copy of the policy. The Tribunal finds Mr Webber has also failed to demonstrate that Pinewood House is

either adequately insured for the reinstatement costs or is insured against all the risks required by the lease or that the leaseholder's (and any mortgagee's) interest had been noted by the insurer on the policy (as required by the lease).

41. Mr Webber had not provided a copy of the insurance policy in the appeal bundle, and the certificates provided to Ms Syed for 2020/21 and 2023/24 [379 and 421] do not note her or the other leaseholders' interests. The certificate simply records Mr Webber as the policyholder and that the cover is for '*2 blocks of residential flats let to professionals*'. The Tribunal infers that the leaseholders' interests have not been noted throughout the relevant period, because it would have been a simple matter for Mr Webber to demonstrate.
42. In his evidence to the Tribunal Mr Webber confirmed that there had been no independent valuation to ascertain the rebuild costs of the two blocks during the period in question or at all. He had only, belatedly, sought advice from the insurance company itself (which had resulted in an increase in cover in 2023 from reinstatement costs of £1,679,347 to £2,182,242).
43. A failure to insure adequately and in accordance with the lease is a serious matter and one that has potentially put the leaseholders (and their mortgagees) at risk. As has been made clear (for example in Cos Services Ltd v Nicholson [2017] UKUT 382 (LC)) the onus is on the landlord to demonstrate that premiums have been reasonably incurred.
44. The Tribunal finds on balance that Mr Webber has not demonstrated the property is insured adequately or that it is insured against all necessary risks in accordance with the lease, or that all the leaseholders' interests (and those of their mortgagees) were noted on the insurance. Accordingly, the Tribunal finds that Mr Webber has not demonstrated that the premiums charged to the service charge account were reasonably incurred. It therefore discounts them by 100% across all years save for 2014/15 and 2015/16 for the reasons set out below.

#### Gardening

45. Ms Syed in her application disputes the costs charged to the service charge account in relation to gardening. In summary, she says the standard of the gardening was inadequate, that costs were excessive, and not always supported by invoices. Whilst there was limited photographic evidence regarding the standard of the garden, it was clear from the email evidence that Ms Syed had raised the issue of the standard of gardening on a regular basis with Mr Webber since at least 2019.
46. The decision regarding the type of gardening work that should be undertaken, and the contractor chosen is a matter for Mr Webber, subject only to the question of reasonableness. The Tribunal accepts Mr Webber's evidence that the leaseholders may hold differing views about the garden; that some might want highly decorative planting whilst

others might want the garden simply maintained. The lease itself only provides for '*maintaining any landscaped and grassed areas of the Common Parts*' [62]. The Tribunal found, from the photographs provided by Mr Webber in the summer of 2023 [86 to 87] that the gardening appeared to be of a reasonable standard at that time. Flower beds appeared to be clear of weeds, the grass was cut and there was no apparent evidence of '*overgrown paths, weeds, moss covered paths, poor quality and maintenance of the lawn*' [150] that Ms Syed claimed in June 2023.

47. The Tribunal found that whilst the gardening services provided in 2021/22 and 2022/23 may not have been to the highest standard, they were to a reasonable standard and costs were reasonably incurred. Although Nicky Webber is a relative of Mr Webber, he confirmed that she is horticulturally qualified. The Tribunal found her hourly fee of £30 is not unreasonable. The Tribunal concluded the figure of around £2,500 p.a. claimed for maintaining the large garden is not unreasonable. It also found the costs claimed in the service charge for 2021/22 and 2022/23 were supported by invoice evidence. The Tribunal accepted that moss accumulation on paths or overgrown beds might indicate gardening was not to an acceptable standard. However, there was no clear evidence as to how long this had been a problem, no photographs indicating it had been an ongoing issue. Although Ms Syed said the photographs at [242 and 243] were taken in December 2023, the Tribunal found it likely they were taken on different occasions. This is because some showed a situation before and after work or other intervention had taken place (for example the repair of a light or the removal of timber sleepers). It did not find them indicative of significant problems with the standard of gardening.
48. However, in relation to the earlier service charge years, the Tribunal concluded that the gardening costs incurred were excessive and/or works were not to an acceptable standard. In his evidence, Mr Webber confirmed that the gardener employed until 2021 (Simon Payne) was a friend. There was no formal written agreement as to the gardening services that were to be carried out. The clear impression given by Mr Webber was that he left it to the gardener to decide for himself what work he did or not. Mr Webber was vague about how often he was due to attend or how many hours were undertaken. Although he said the gardener came every 6 to 8 weeks and there were 3 gardeners each time, this was not supported by the invoices. Mr Payne's invoices for 2019/20 simply provided for a regular payment of £400 per month without any breakdown showing the number of hours worked or the number of gardeners [269 to 272]. Furthermore, the Tribunal found that, notwithstanding his oral evidence to the contrary, Mr Webber's email of 15/07/2020 [191] clearly indicated that he was personally dissatisfied with the state of the garden, he felt '*badly let down*' and had therefore sacked the gardener.
49. The Tribunal found the full gardening costs for the service charge years up to and including 2019/20 to be unreasonably incurred and/or the

gardening not to be to a reasonable standard. Furthermore, apart from the invoices for 2019/20, Mr Webber had not provided invoices to support the amounts claimed and he was unable to explain the reasons for the discrepancy. For example, in 2018/19 the sum of £8,284.80 was charged to the service charge, but invoices were supplied to Ms Syed which only totalled £6,292.80. The Tribunal concluded that a sum of £2,500 was appropriate for each of the years up to and including 2019/20 (save for 2015/16 for the reasons set out below in paragraphs 56 to 58).

#### Block management fee

50. For each of the service charge years (except 2015/16 and 2016/17) a figure of £1,000 was charged to the service charge account as the management fee. For each of the years, save for 2017/18 to 2019/20 service charge years, the Tribunal was satisfied that Mr Webber had undertaken the property management role in respect of the two blocks himself. However, from May 2017 he employed Winkworth (also known as Guildford Estates) to undertake the management of the blocks [227]. Mr Webber's oral evidence was that a management fee of £1,000 pa was agreed with them. However, that was not consistent with the invoice at [290] which, as Ms Syed rightly pointed out, had the wrong VAT figure.
51. The Tribunal found that a management fee of £1,000 for managing two blocks that comprised 10 separate flats was low in comparison with the industry average. However, the Tribunal was satisfied for the reasons set out above, that management was not carried out by professional agents, and Mr Webber's administration of the management of the block was not to a reasonable standard. The Tribunal concluded it would be reasonable for the management fee to be reduced by 10%
52. The fee of £1,200 charged for the 2015/16 and 2016/17 was unsupported by invoices. Accordingly, the Tribunal concluded it should also be reduced to £900 p.a. for those years.

#### Water

53. The parties were agreed that the only water supplied at the Property chargeable to the service charge was one tap for the sole use of the gardener. Ms Syed's evidence was that the tap was locked. It was clear from the evidence that Ms Syed had complained about excessive water charges and the Tribunal saw no reason to doubt that in the absence of any action from Mr Webber she had taken it upon herself to contact the water company directly. They had advised that the bills included waste removal costs. We found this consistent with a change to the charges from hundreds of pounds per year to tens of pounds from 2019/20. We therefore concluded that for the years prior to 2019/20 the water costs were not reasonably incurred, because the leaseholders were being charged for services they neither received nor required, and Mr Webber had not taken reasonable steps to control expenditure. £50 per annum was deemed appropriate.

## Electricity

54. The evidence before the Tribunal indicated Ms Syed had been raising concerns regarding the electricity costs at the property regularly throughout the period in question. The Tribunal found on the evidence before it that in each of the service charge years from 2019/20 to 2022/23 there was a significant discrepancy between the charges claimed for electricity for the two blocks and the invoices and bank statements showing what payments were made. The charges applied to the service charge account, appeared to be based on an end of year meter reading from which Mr Webber estimated the overall charges [274]. However, there was no documentation supporting that analysis and Mr Webber was unable to provide a coherent explanation for how he estimated the end of year costs or the discrepancy between the figure claimed and the invoicing. Given that the excess charge (of several hundred pounds) appeared to carry forward in each of those years, without adequate documentation, the Tribunal concluded that only the costs demonstrably incurred could reasonably be applied to the service charge.

### **The service charge years**

55. Dealing with the service charge years in turn, the Tribunal reached its decision for the following reasons.

#### 2014/15

56. Ms Syed sought a determination in respect of this year, in which she was said to have paid £374.24. This was a proportionate share of the £500.00 fixed sum payable under the term of the contract for her purchase of 1 Pinewood. The Tribunal finds this reasonable and payable.

#### 2015/16

57. Mr Webber confirmed in evidence that the service charge summary for the period 1/2/2015 - 30/03/2016 and 1/04/2016 - 1/02/2017 was not served on Ms Syed until 16/02/2017. There was no evidence before the Tribunal that he had notified her at any earlier time that costs were being incurred that would be payable as service charge. A further service demand for this period was made on 24/04/2017 for a different period (1/02/2015 - 30/03/2017).
58. The Tribunal was satisfied that no service charge was payable by Ms Syed for any of the costs incurred between 1/02/2015 and 16/08/2016 by virtue of s20B of the 1985 Act. Accordingly, the sum charged to Ms Syed for the 2015/15 service charge year of £927.45 (being 1/12 of £11,128.38) is not recoverable from her.

2016/17

59. As set out above, the costs for the period 1/04/2016 to 16/08/2016 are not recoverable from Ms Syed.
60. In relation to the period 17/08/2016 to 30/03/2017 (or 30/04/2017) the Tribunal found that Mr Webber had provided no evidence demonstrating that the costs claimed from the leaseholders had been incurred. Although he might have lost his laptop, the Tribunal was satisfied that at the very least he would have been able to get copies of his bank statement and so could have verified payments he claims to have made. In view of the discrepancies in later service charge years, described elsewhere in this decision, the Tribunal did not accept Mr Webber's oral evidence that he only ever claimed for money that had actually been expended.
61. Whilst Ms Syed says that none of the costs should be payable, the Tribunal finds this not to be the case. There is no suggestion from her that no maintenance was carried out at all. Whilst it is unfortunate, and Mr Webber has not done all he could to demonstrate payments made, the Tribunal accepts he is in some difficulty on account of his lost laptop.
62. When looking at matters in the round, the Tribunal concluded it was reasonable for there to be a global reduction of 50% of the service charge for the period 1/4/2016 to 30/03/2017 both to reflect the unrecoverable costs to 16/08/2016 and the failure to adequately document the costs claimed. In addition, the Tribunal applied the further reductions in relation to the insurance, gardening, management fee and water for the reasons set out above.
63. In addition, no amount was allowed for accountancy fees for this year. Had accounts been prepared, no doubt they could have been provided to the leaseholders and to the Tribunal, but they were not. The Tribunal also discounted the boiler costs charged to the service charge. There is no evidence of any boiler in the common parts and no such charge has been applied in any later year. Accordingly, the Tribunal found that only £2,975.35 was chargeable to the service charge account for the 2016/17 service charge year and Ms Syed's 1/12<sup>th</sup> share is £247.95 as set out below.

| <b>Service Charge line item</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|---------------------------------|-----------------------|-----------------------|
| Building insurance              | £1,592.59             | £0.00                 |
| Garden maintenance              | £6,528.00             | £1,250.00             |
| Fire alarm                      |                       |                       |
| Maintenance & repairs           | £321.00               | £160.50               |
| Management fee                  | £1,200.00             | £450.00               |
| Cleaning                        | £969.00               | £484.50               |
| Electricity                     | £1,210.68             | £605.34               |
| Water                           | £128.32               | £25.00                |

|                             |                   |                  |
|-----------------------------|-------------------|------------------|
| Accountancy                 | £600.00           | £0.00            |
| Boiler service              | £2,311.20         | £0.00            |
| <b>Total non-lift costs</b> | <b>£14,860.79</b> | <b>£2,975.35</b> |

2017/18

64. The Tribunal applied the reductions in relation to the insurance, gardening, maintenance fee and water for the reasons set out above.
65. In relation to the cleaning costs claimed in this year, Mr Webber provided no invoice to support the claim, and the email correspondence supports Ms Syed's oral evidence that for at least 6 months the cleaners were not attending the property. Mr Webber appears to have dispensed with the cleaners' services. Accordingly, the Tribunal finds that the cleaning fee should be reduced by 50%
66. Whilst the fire alarm costs in this service charge year were not supported by an invoice, the Tribunal was satisfied that in every other service charge year from that year on, the amount claimed did match the invoice provided. The Tribunal concluded it was more likely than not this figure was, therefore, an accurate one properly chargeable to the account.
67. In relation to electricity, for the reasons set out above the Tribunal found Mr Webber unable to adequately explain the discrepancy between the amounts claimed and the invoices provided. The Tribunal therefore allowed the amount of £1,012.38, as it had been supported by evidence of payments made.
68. The Tribunal concluded that the sum of £5,172.78 was, therefore, the amount that was reasonably chargeable to the service charge account, and Ms Syed's share was £ 431.07 as set out below.

| <b>Service Charge line item</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|---------------------------------|-----------------------|-----------------------|
| Building insurance              | £1,815.35             | £0.00                 |
| Garden maintenance              | £6,180.00             | £2,500.00             |
| Fire alarm                      | £230.40               | £230.40               |
| Maintenance & repairs           | £480.00               | £480.00               |
| Management fee                  | £1,000.00             | £900.00               |
| Cleaning                        | £573.00               | £0.00                 |
| Electricity                     | £1,924.75             | £1,012.38             |
| Water                           | £200.23               | £50.00                |
| <b>Total non-lift costs</b>     | <b>£12,603.73</b>     | <b>£5,172.78</b>      |



2018/19

69. The Tribunal applied the reductions in relation to the insurance, management, gardening and water for the reasons set above.
70. In relation to the cleaning charges, the full amount claimed was not supported by invoices or other evidence of payment. The Tribunal, therefore, concluded that £533.00 was reasonably incurred as it was objectively supported.
71. The Tribunal found that the sum of £ 6,057.13 was, therefore, the amount that was reasonably chargeable to the service charge account, and Ms Syed's share was £ 504.76 as set out below.

| <b>Service Charge line item</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|---------------------------------|-----------------------|-----------------------|
| Building insurance              | £1,893.91             | £0.00                 |
| Garden maintenance              | £8,284.80             | £2,500                |
| Fire alarm                      | £310.80               | £310.80               |
| Maintenance & repairs           |                       |                       |
| Management fee                  | £1,000.00             | £900.00               |
| Cleaning                        | £733.00               | £533.00               |
| Electricity                     | £1,763.33             | £1,763.33             |
| Water                           | £473.97               | £50                   |
| <b>Total non-lift costs</b>     | <b>£14,459.81</b>     | <b>£6,057.13</b>      |

2019/20

72. The Tribunal applied the reductions in relation to the insurance, management and gardening for the reasons set above. In relation to water, although the charges were minimal, Mr Webber was unable to demonstrate by reference to his bank statements that such a payment had been incurred, and the Tribunal therefore did not allow this item.
73. In relation to the cleaning charges, the full amount claimed was not supported by invoices or other evidence of payment. The Tribunal, therefore, concluded that only £559.00 was reasonably incurred as it was objectively supported.
74. In relation to electricity, for the reasons set out above the Tribunal found Mr Webber unable to adequately explain the discrepancy between the amounts claimed and the invoices provided. The Tribunal therefore allowed the amount of £389.18, as it had been supported by evidence of payments made.

75. The Tribunal concluded that the sum of £5,198.71 was, therefore, the amount that was reasonably chargeable to the service charge account, and Ms Syed's share was £ 433.23 as set out below.

| <b>Service Charge line item</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|---------------------------------|-----------------------|-----------------------|
| Building insurance              | £2,048.63             | £0.00                 |
| Garden maintenance              | £6,276.00             | £2,500                |
| Fire alarm                      | £850.53               | £850.53               |
| Maintenance & repairs           |                       |                       |
| Management fee                  | £1,000.00             | £900.00               |
| Cleaning                        | £660.00               | £559.00               |
| Electricity                     | £1,074.25             | £389.18               |
| Water                           | £38.71                | £0.00                 |
| <b>Total non-lift costs</b>     | <b>£11,948.12</b>     | <b>£5,198.71</b>      |

2020/21

76. The Tribunal applied a reduction in relation to the insurance and management fee for the reasons set out above.
77. In relation to water charges, although Ms Syed said no invoice was provided to her, Mr Webber was able to demonstrate by reference to his bank statements that such a payment had been incurred, and the Tribunal therefore allowed this item.
78. In relation to electricity, for the reasons set out above the Tribunal found Mr Webber unable to adequately explain the discrepancy between the amounts claimed and the invoices provided. The Tribunal therefore allowed the amount of £657.16, as it had been supported by evidence of payments made.
79. As to the fire alarm the amounts in Mr Webber's service charge summary (£3,593.33 [292]) differed from that sent to Ms Syed on 17/05/2021 (£3,749.33 [113]). However, from the invoices and payments showing in Mr Webber's bank account for that year, the Tribunal was satisfied that only the sum of £820.20 had been spent in relation to the fire alarm and this sum was allowed.
80. As to the cleaning charges, the full amount of £738.00 claimed was not supported by invoices or other evidence of payment. The Tribunal, therefore, concluded that £704.00 was reasonably incurred as it was objectively supported.
81. The sum of £6,616.75 was, therefore, the amount reasonably chargeable to the service charge account as set out below, and Ms Syed's share was £551.40 .

| <b>Service Charge line item.</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|----------------------------------|-----------------------|-----------------------|
| Building insurance               | £2,272.11             | £0.00                 |
| Garden maintenance               | £3,460.00             | £3,460.00             |
| Fire alarm                       | £3,749.33             | £820.20               |
| Maintenance & repairs            |                       |                       |
| Management fee                   | £1,000.00             | £900.00               |
| Cleaning                         | £738.00               | £704.00               |
| Electricity                      | £1,044.94             | £657.16               |
| Water                            | £75.59                | £75.59                |
| <b>Total non-lift costs</b>      | <b>£12,339.97</b>     | <b>£6,616.75</b>      |

2021/22

82. The Tribunal applied a reduction in relation to the insurance and management fee for the reasons set out above.
83. The bank statement Mr Webber provided as his evidence for this service charge year relates to 2022/23 [339] and Ms Syed appears not to have been provided with the bank account for that year either. As the charges claimed for water are also not supported by an invoice and cannot be ascertained from the bank account, the sum claimed is disallowed.
84. In relation to electricity, for the reasons set out above the Tribunal found Mr Webber unable to adequately explain the discrepancy between the amounts claimed and the invoices provided. The Tribunal therefore allowed the amount of £981.69, as it is supported by evidence of payments made.
85. The sum of £5,722.98 is, therefore, the amount reasonably chargeable to the service charge account, and Ms Syed's share is £476.92.

| <b>Service Charge line item.</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|----------------------------------|-----------------------|-----------------------|
| Building insurance               | £2,555.00             | £0.00                 |
| Garden maintenance               | £2,641.00             | £2,641.00             |
| Fire alarm                       | £408.29               | £408.29               |
| Maintenance & repairs            |                       |                       |
| Management fee                   | £1,000.00             | £900.00               |
| Cleaning                         | £792.00               | £792.00               |
| Electricity                      | £1,048.15             | £981.69               |
| Water                            | £47.62                | £0.00                 |
| <b>Total non-lift costs</b>      | <b>£8,492.06</b>      | <b>£5,722.98</b>      |

|  |  |  |
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2022/23

86. The Tribunal applied a reduction in relation to the insurance and management fee for the reasons set out above.
87. In relation to electricity, the Tribunal found Mr Webber unable to adequately explain the discrepancy between the amounts claimed and the invoices and payments shown. The Tribunal therefore allowed the amount of £149.69, as it had been supported by evidence of payments made.
88. The Tribunal, therefore, concluded that the sum of £5,171.69 is the amount reasonably chargeable to the service charge account as set out below, and Ms Syed's share is £430.97.

| <b>Service Charge line item.</b> | <b>Amount claimed</b> | <b>Amount allowed</b> |
|----------------------------------|-----------------------|-----------------------|
| Building insurance               | £3,167.25             | £0.00                 |
| Garden maintenance               | £2,164.00             | £2,164.00             |
| Fire alarm                       | £384.00               | £384.00               |
| Maintenance & repairs            | £732.00               | £732.00               |
| Management fee                   | £1,000.00             | £900.00               |
| Cleaning                         | £842.00               | £842.00               |
| Electricity                      | £632.21               | £149.69               |
| Water                            | £0.00                 | £0.00                 |
| <b>Total non-lift costs</b>      | <b>£8,921.46</b>      | <b>£5,171.69</b>      |

2023/24

89. Although in her application, Ms Syed asked the Tribunal to consider the reasonableness of charges yet to be applied to the service charge account for 2023/24, the Tribunal declines to do so. A proper estimate of charges was not provided to the leaseholders in accordance with the lease in advance of the service account year. It is clear that some additional repair work will be chargeable to the service charge account in relation to works to retain the earth bank in the carpark, the extent of which is not yet known. In these circumstances it is not possible for the Tribunal to consider the reasonableness or otherwise of future charges.
90. It would be hoped that Mr Webber, in preparing the 2023/24 service charge account will take account of the Tribunal's findings and produce relevant information to demonstrate the reasonableness of charges he claims.

## **Costs applications**

91. Ms Syed asks the Tribunal to reimburse costs she has paid to obtain legal advice. The Tribunal, however, is in general a no costs forum, and there is no entitlement to obtain reimbursement of solicitors' costs incurred in obtaining advice.
92. The Tribunal can, however, make orders under section 20C and paragraph 5A preventing Mr Webber from recovering the cost of the tribunal proceedings from the leaseholders either via future service charges, or via an administration charge as she requests.
93. An order under either section 20C or paragraph 5A only has significance if there are provisions in the lease that allow the costs of the tribunal proceedings to be recouped through a service and/or administration charge. It should be noted that the Tribunal has made no express finding on this issue.
94. In deciding whether to make an order under either section 20C or paragraph 5A the Tribunal must consider what is just and equitable in the circumstances. The circumstances can include the conduct of the parties and the outcome of the proceedings.
95. The result of this application is that Ms Syed has been found liable to pay some service charges when she claimed she should not have to pay any service charges or rent. However, the key factor affecting our decision is that in the dispute between the parties over the reasonableness of the services charges, she has been successful in her application to the extent that in every service charge year except 2014/15 she has succeeded in challenging all or some of the charges. We have also made findings that the management of the property has been less than satisfactory throughout this period, and Mr Webber has repeatedly failed to deal adequately with issues that have arisen. Ms Syed was entitled to make this application, and whilst she holds unrealistic expectations about her rights as a leaseholder to be consulted on each and every matter relating to the service charge, the freeholder is required under the terms of the lease to keep proper accounts and to make insurance documents and invoices available on request for the leaseholders to determine whether costs have reasonably been incurred. His failure to do so has, in the main, been a significant reason for the Tribunal's determination that he may not recover all the costs claimed.
96. On that basis the Tribunal determines that it is just and equitable for orders to be made that
  - (a) to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these 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 Applicants, and

- (b) the Applicants shall not be liable to pay an administration charge in respect of those costs.
97. In respect of the application fee of £100 and the hearing fee of £200 for the same reasons the Tribunal orders that Mr Webber repay these to the Ms Syed.

**Judge R Cooper**  
**29/02/2024**

### **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First- tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

### **Appendix – the Law**

The Landlord and Tenant Act 1985 Act (as amended) provides:

#### ***Section 18 Meaning of “service charge” and “relevant costs”***

*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 Limitation of service charges: reasonableness**

*(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 provision 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 20c Limitation of service charges: costs of proceedings**

*(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....the First-tier Tribunal....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 person specified in the application. ...*

**Section 27A Liability to pay service charges: jurisdiction**

*(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 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.*

*(4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.*

...

**Paragraph 5A to Schedule 11 of the 2002 Act (as amended) provides:**

*Limitation of administration charges: costs of proceedings*

*(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*

*(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable*

..