FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2023/0220**
Property	**:**	**14 Thanet House, 29 Westbourne Terrace, London, W2 3UN**
Applicant	**:**	**Elena Koutrouchi**
Representative	**:**	**Jonathan Upton of Counsel**
Respondent	**:**	**Westbourne Property Management Limited**
Representative	**:**	**James Sandham 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**
Tribunal members	**:**	**Mr A Harris LLM FRICS FCIArb** **Mrs A Flynn MRICS** **Mr J Francis QPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**4 December 2023**

DECISION

Decisions of the tribunal

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

The application

1. The Applicant seeks 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 2020, 2021, 2022 and advance charges for 2023 .

The hearing

2. The Applicant gave evidence and was represented by Mr Jonathan Upton of counsel at the hearing and the Respondent was represented by Mr James Sandham of counsel who called Mr Christopher Nigel Conway, a director of the Respondent to give evidence.

3. At the start of the hearing the tribunal pointed out there had been significant non-compliance with directions in that bundles had been submitted late and were incomplete when submitted. There appear to have been a failure to disclose all relevant invoices and the 2020 accounts were not in the tribunal papers even though these ran to over 1400 pages. The tribunal will not be referring to every document submitted in what amounted to 3 separate bundles.

4. The directions required the Applicant to identify for each service charge year the item and amount in dispute and why the amount was disputed and what amount if any the Applicant would pay for that item. The schedule submitted for the hearing simply required the Respondent to prove every item of expenditure. The tribunal stated it would not be going line by line through each years service charge accounts as this would not be an efficient use of the tribunal's time.

5. Counsel for both parties helpfully agreed that as the same issues appeared in several years it will be appropriate to proceed issue by issue rather than chronologically.

The background

6. Thanet House is a purpose-built block of 21 flats and one commercial unit set behind a private roadway in Westbourne Terrace. The

Respondent freeholder of the building is a lessee owned company Westbourne Property Management Ltd (Westbourne). The company owns a number of buildings fronting onto Westbourne Terrace and the board is made up of directors with each building voting for a director to represent it on the board. The Applicant was a director for a number of years up to December 2020.

7. This is an unhappy dispute which appears to have its origins in events which took place that while acting as a director, the Applicant was embroiled in an acrimonious dispute with another leaseholder which resulted in the Applicant obtaining an injunction and damages. The Applicant believes that the directors of Westbourne supported the other leaseholder and are now waging a vendetta against her. She believes she is treated less favourably than other leaseholders in the building and that issues she raises are ignored. She requires a determination from the tribunal to ensure that Westbourne respect statutory rights.

8. The tribunal reminded the parties it was there solely to deal with the reasonableness and payability of service charges and not with any other matter.

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

10. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

11. The issues were identified by the parties in a Scott Schedule and both counsel had helpfully produced skeleton arguments.

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

The Lease

13. The Flat is demised by a lease dated 15 October 2016 ("the Overriding Lease") made between (1) WPML and (2) the Applicant for a term of 954 years ending on 24 December 2969. The Overriding Lease incorporates the terms of a lease dated 29 January 1971 (as varied by deeds of variation dated 22 November 1971 and 21 April 1986) ("the Lease") made between (1) Bulawayan Properties Ltd (as landlord); (2)

Molton Builders Limited (as tenant); and (3) Cadogan Square Properties Ltd (as Managers).

14. Under clause 3 of the Lease the lessee covenanted with the Managers (currently Westbourne):

15. (A) To pay and contribute 5% of the expenses incurred by the Managers under clause 5(A) whenever the circumstances shall reasonably require the execution of any of the works referred to during the said term And to pay the Managers such contribution within 7 days of the Managers requiring payment

16. (B) In the manner hereinafter provided to pay to the Managers 5% of the reasonable costs and expenses anticipated to be incurred by the Managers in compliance with their obligations under clause 5 (other than sub-clause 5(A)) and all other costs and expenses incurred in the management of the said building of which the Flat forms a part including any shortfall as compared with income for any previous accounting periods such payments to be made by four equal quarterly payments in advance on the usual quarter days in each year.

17. The parties are in dispute as to how this clause should be operated.

18. Clause 5 requires the managers in a proper manner and at reasonable cost to perform the following services

(A) To keep in a good and substantial state of repair properly painted or otherwise decorated the roof chimney stacks chimney gutters stack-pipes eaves and outside walls and entrance doors and other outside part of the said building and the entrance hall lift staircases landings and passages foundations main structure mean timbers and all the main drains and water pipes and sanitary ware and water apparatus thereof (except as regards damages caused by or resulting from any act or default or negligence wilful or otherwise of the Lessees their servant agents or licensees to any pipes or sanitary or water apparatus within the Flat).

(B) To keep the Building and the landlord's fixtures and fittings insured.

(C) To use their best endeavours to enforce payment of the sum referred to in clause 3 from the other lessees of the Building and to enforce observance by such lessees of the covenants on the part of those lessees with the Managers in the leases of their flats.

(D) To keep the common parts of the Building properly lit and to discharge the electricity account in respect of electricity so consumed.

(E) To keep the common parts of the Building properly cleaned and tidy and the floors of such common parts suitably covered.

(F) To procure that refuse be removed from the Flat at times to be agreed between the Managers and the lessees.

(G) At all reasonable times during the day to maintain an adequate supply of hot water to the hot water taps in the Flat.

(H) To keep the Flat adequately heated.

Accounting principles

19. The Applicant argues that clause 3 (B) provides that the managers should prepare a budget for the coming year for all items other than those which fall within clause 5 (A) and that the budget should be invoiced to leaseholders on a quarterly basis.

20. Clause 5 (A) is concerned with building repairs and the lease requires the managers to incur the costs of repair and then invoice the leaseholders who are required to pay within 7 days. The lease does not allow repair costs to be included in the quarterly payments.

21. The Respondent says that the explanation is that the accounting mechanism is concerned with timing. The 5 (A) works are important works and it makes no sense to budget in 4 quarterly payments for small items but only to recover costs of repairs which could be quite significant after they have been incurred. The Respondent says that the explanation is that if unexpected major building works are required over and above the budget the costs can be recovered at the time. There is no power under the lease to borrow funds and there is no reserve fund. It makes no sense for the managers to incur potentially substantial building repair costs without having the funds immediately to hand to pay for them.

The tribunal's decision

22. The tribunal prefers the interpretation given by the Respondents. Clause 3(B) means that an annual budget for the building is prepared which can include routine maintenance or anticipated repairs but if major works are required during the course of the year which have not been budgeted for the cost can be recovered. The interpretation advanced by the Applicant makes the building close to being unmanageable and contractors will be unwilling to undertake work if there is a doubt about there being paid on time. There is no evidence that this was the practice during the period when the Applicant was a director of the Respondent.

Reserves

23. The Applicant's case is that there is no express provision in the lease for the managers to operate a reserve fund. For example accounts for 2020 show a retained service charge surplus of £3826 and a major works reserve surplus of £2050.

24. The Applicant also says there is no express provision for the managers to repay any surplus or credit the lessees account to be set off against future demands. The Applicant is entitled to refunds of her share of these amounts.

25. The Respondent denies that a reserve fund is operated or that monies have been allowed to accrue without accounting for any surplus. The amounts above are included in year end accounts by reducing any shortfall on the accounts.

26. Amounts which are shown in budgets as reserves are perhaps more properly titled contingencies to allow a small margin for unforeseen expenditure.

27. The Applicant says that instead of providing for a contingency which is not allowed in the lease a percentage should be added to each budgeted item.

The tribunal's decision

28. The tribunal is not persuaded that the Respondent is operating a reserve fund that is not permitted under the lease. The tribunal accepts the Respondents explanation that surpluses are carried forward into the following year's accounts in assessing the amounts due rather than by showing individual refunds to each leaseholder. There is no evidence before the tribunal that a reserve fund is being operated of the type the tribunal normally sees where anticipated future capital expenditure is budgeted for over several years. It would be better practice to show this explicitly to avoid future disputes.

Roadway, gardening and refuse

29. The Applicant argues the cost of repairs to the roadway at the front of the building and garden areas are not recoverable under the terms of the lease. An estate gardening contribution of £734 appears in the accounts for 2021, refuse and external maintenance of £6244 in 2022 and budgeted external maintenance of £7700 in 2023. The Applicant argues that a liability is confined to building expenditure only.

30. The Applicant does not dispute that the Respondent owns the roadway outright which includes the gardens fronting the buildings 9 to 31 Westbourne Terrace. The roadway has roughly 40 parking spaces in it and the Respondents receives parking revenue from those spaces. The revenue is retained by the company but expenses are charged to the service charges.

31. The Respondent maintains the service road boundary wall and adjoining garden areas on behalf of the properties in the terrace, including those that fall outside its demise. In exchange, all properties contribute towards the common expenditure which includes street and basement area sweeping and cleaning, gardening, supply and maintenance of terrace lighting, external pest control, rental of council refuse bins for use by all residents and maintenance of the service road and boundary wall.

32. The Respondent says that the term building is not defined by the lease and the most natural reading is that it is a general reference to the structure serving flats without any precise demarcation of its boundaries. The phrase "other outside parts of the building" in clause 5 (A) contemplates an obligation on the part of the respondent to repair and maintain areas beyond the physical structure of the building. The term "the common parts" must be construed widely to reflect the evident intention to grant access to the flat at the date of grant.

33. The Respondent says that the Applicant asserts there is an implied easement by necessity for access but that the expenditure is not covered by the lease.

34. The Respondent says that the whole of the terrace is one estate and apart from 2 properties is in the ownership of the Respondent. Previously all of the properties were in the same ownership. The lease does not specifically reserve a right of access over the roadway without which it would not be possible to access the flat. If there is an implied right of access in the lease there must be corresponding obligations which go with it and which will be implied by equity. The Applicant is looking to have the benefit of the right of access without any obligations which go with it.

35. The Respondent relies on *Churchward v R (1865) L.R. 1 Q.B. 173* where Cockburn CJ said as follows:

"I entirely concur that although a contract may appear on the face of it to bind and be obligatory on one party, yet there are occasions on which you must imply—although the contract may be silent—corresponding and correlative obligations on the part of the other party in whose favour alone the contract may appear to be drawn up. Where the act done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would

there imply a corresponding obligation to do the things necessary for the completion of the contract."

36. The bin enclosure is sited in the garden area and as there is an obligation to deal with cleaning and refuse this supports the idea that the roadway and gardens are part of an estate scheme covering the terrace.

37. The Applicant says that the Respondent proposes to install an electric barrier and electric vehicle charging points and that the should not be charged to leaseholders.

The tribunal's decision

38. The tribunal mainly prefers the arguments on behalf of the Respondent. The tribunal acknowledges there is no specific reference to the roadway in the lease, but neither is there an express right of access over it or any reference to a bin enclosure. The lease refers to a flat on the the 3rd floor of the building situate at Thanet House 27, 29 and 31 Westbourne Terrace so at the very least the freeholder granting the lease must have owned the roadway in front of it otherwise it would have had no access. The lease grants a right of access over the entrance hall [lift] staircases and landings in the said building and such other passages therein as are not included in any apartments in the said building. The building is not otherwise defined.

39. The roadway is in the ownership of the Respondent which is wholly owned by the lessees and if the Applicant is correct then repair works to the access to the flats would need to be funded in some other way. The tribunal prefers the argument that that there is an implied estate scheme covering maintenance of garden areas and bin enclosures and the roadway but this does not extend to installing an electric barrier or electric vehicle charging points. The tribunal does not have the accounts of the company to determine how it deals with roadway revenue but as this is a leaseholder owned company the revenue must be accounted for to the leaseholders in that capacity or as shareholders.

2020 Accounts

40. In relation to the 2020 accounts, the Applicant makes a general point in that no accounts or invoices for 2020 have been supplied and it puts the Respondent to proof of expenditure. The Respondent has not satisfied the evidential burden and as there is no evidence, nothing is payable for 2020.

41. In reply, the Respondent states that the Applicant was a director of the company up to 8 December 2020 and so would have known what was included in the budget. Under section 27 A (4) (a) no application may

be made to the tribunal in respect of the matter which has been agreed or admitted by the tenant. In particular the Respondent relies on an email dated 24 November 2020 where she instructed the agents to raise a further ad hoc demand so that the company had sufficient funds.

Repairs £11,770

42. The Applicant disputes general repairs expenditure of £11,770 as no invoices have been supplied. The Respondent says these are attached to the witness statement of Mr Conway.

43. Of particular dispute is expenditure relating to an alleged unauthorised kitchen door at flat 1 which the Respondent says was boarded up on the instructions of the Applicant. This was apparently to prevent the occupants of flat 1 using a balcony which overlooked the flat occupied by the Applicant's parents. After the Applicant ceased to be a director, costs were incurred removing the boarding up and an undertaking obtained to cease using the balcony. The Respondent says that having approved the expenditure as a director, the Applicant has admitted her liability to meet the service charge pursuant to section 27 A (4) (a) or in the alternative the Applicant is estopped from denying liability.

44. The Applicant says it cannot be right that actions taken as a director mean that an individual leaseholder cannot challenge the actions of the company otherwise nobody would volunteer to be a director.

The tribunal's decision

45. The tribunal finds in favour of the Respondent in relation to this expenditure. The individual items of expenditure are shown in the witness statement of Mr Conway. The bulk of the expenditure was incurred at a time where the Applicant was a director of the Respondent and must have been aware of what was budgeted for. The tribunal accepts that work toun-board the door to flat 1 was undertaken to bring a dispute to an end which was done by obtaining the undertaking referred to above.

Legal and professional fees £22,341

46. The Applicant challenges the whole amount including a total of £4260 as fees incurred in connection with the dispute over the platform and kitchen door outside flat 1.

47. The Respondent says that costs of £4911 were incurred at the direction of the Applicant in relation to the balcony. Two invoices are challenged in relation to anticipated works for removal of the metal balcony of £3420 and £840. By her conduct, the Applicant authorised and approved the works and the cost thereof and by her conduct is admitted liability to meet the service charge. Alternatively the Applicant is estopped.

48. Mr Conway pointed out that the tribunal had previously determined legal fees are recoverable under the lease in another case and that the Applicant allocated a great many legal fees to service charge accounts in 2020 in relation to numerous disputes with other leaseholders. After the Applicant ceased to be a director the board took the view those costs have been unreasonably incurred and refunded all leaseholders in 2022.

49. The Applicant seeks the same action from the board in relation to this expenditure.

The tribunal's decision

50. The tribunal considers that the respondent is correct in this instance and that the Applicant authorised or otherwise knew about the expenditure and approved it. The tribunal considers the expenditure has been reasonably incurred and is payable.

Retained service charge surplus £3826 and major works reserve surplus £2050

51. These items are discussed at paragraphs 23 to 28 above and the sums are carried forward into the following year's accounts. There is nothing further to be refunded.

2021

Expenditure incurred under clause 5 (A) £36,556

52. the Applicant challenges repair expenditure in the 2021 accounts of general repairs of £23,280, boiler repairs of £8990, lift repairs and maintenance £3410 and roof maintenance and gutter clearance of £876.

53. The applicant says that she is only liable to contribute to such costs after they have been incurred and Westbourne are not entitled to recover such costs in advance. There has been no valid demand in respect of the expenditure demanding payment in 7 days and any such

demand issued now would be time barred by section 20 B (1) of the 1985 Act.

54. The Respondent agrees that the items of expenditure are correct but disputes the Applicant's interpretation of the accounting processes in the lease.

The tribunal's decision

55. The accounting principles are considered at paragraphs 19 to 22 of this decision. For the reasons set out in those paragraphs the tribunal prefers the view of the Respondent as to the accounting processes to be followed. If the applicant were correct leaseholders would be faced with a series of additional invoices during the year, payable within 7 days, every time a building repair was carried out in addition to the quarterly service charge. The tribunal therefore finds that this amount is payable.

Estate gardening contribution £734

56. The Applicant disputes liability to pay under the terms of the lease. Additionally the Applicant states that this sum includes some works on flat 20 which is owned by Westbourne.

57. The Respondent says that the expenditure on flat 20 was paid for from other resources and not charged to the service charge. By reason of the estate scheme roadway and gardening expenditure is recoverable.

The tribunal's decision

58. The Tribunal holds that this expenditure is recoverable. This issue is discussed in paragraphs 29 to 39 above and for the reasons given in those paragraphs this amount is recoverable within the service charge.

Electricity £1176

59. The applicant claims that invoices have not been disclosed and Westbourne is required to prove that the expenditure has been incurred. Further the electricity supply to the common parts has been used to supply appliances from the personal benefit and use of flat 18 and is not reasonably incurred. The tribunal is invited to adopt a commonsense broad brush approach to the assessment of this amount.

60. The Respondent refers to the witness statement of Mr Conway which provides the relevant information. The claim of electricity being supplied to flat 18 is minimal and is not properly particularised. In oral evidence it was said that the appliance concerned was a vacuum cleaner used on one occasion to clean the common parts.

The tribunal's decision

61. The tribunal finds that the electricity charges are payable. The Applicant admits the amount subject to an adjustment for use by flat 18. The tribunal finds that this is not proved and the amount is payable in full.

General repairs £23,280

62. The Applicant claimed that the Respondent had not provided invoices or narrative explanation.

63. The Respondent stated they provided this information as an exhibit to the witness statement of Mr Conway.

64. By the time of the hearing 3 items were disputed invoices for £792, £162, and £80 relating to plumbing or drainage issues..

65. On investigation, Mr Conway agreed that these items had been wrongly charged to the service charge and will be billed back to individual flat owners.

The tribunal's decision

66. By reason of the concessions made by both parties £22,246 is recoverable under this heading.

Pest control £1068

67. The Applicant challenges this expenditure and requires the Respondent to prove it is reasonable and payable.

68. The Respondent stated has provided the information in the witness statement of Mr Conway. Pest control is a service charge cost and from building of 21 flats and 3 commercial units costs totalling £1068 for a year are not considered unreasonable. In this particular year there was a cockroach infestation which increased the cost compared to previous years. 2 invoices are included in this year for £660 and £144 respectively with the balance being an accrual to the following year for an invoice due but not paid by the year-end in the sum of £264.

The tribunal's decision

69. The accounts for a number of previous years including 2017 to 2020 show pest control as an item which has been charged on a recurring basis including years where the Applicant was a director of the Respondent. The tribunal accepts the evidence of Mr Conway as to the

reason for the increase for this particular year and holds that this amount is recoverable.

2022

£681.68 demanded on 3 July 2023

70. The Applicant disputes liability to pay this invoice as there is no ability under the lease to charge a freestanding balancing charge. Freestanding charges can only arise in respect of building works under clause 5 (A).

71. The Respondent states that the shortfall at the end of the accounting year amounted to £17,042. The Applicant's contribution is therefore £681.68.

The tribunal's decision

72. The tribunal agrees that on a strict interpretation of the lease the Respondent is not able to raise interim demands except for work falling within clause 5 (A). However the tribunal finds that if there is a deficit from the previous year then the Applicant is liable to pay her proportion of that deficit and it therefore becomes a question of timing and accounting rather than liability.

Expenditure under clause 5 (A) £29,672

73. The following items of expenditure are agreed as total subject to liability.

general repairs £15,917

boiler repairs £1080

repairs and maintenance £5331

roof maintenance and gutters clearance £1100

refuse and external maintenance £6244.

74. The Applicant says it is not clear if external maintenance includes maintenance on the exterior of the building or if it relates to works and services on grounds and areas which are not part of the building. The former are recoverable under clause 3 (A) and 5 (A) but if the latter they are not recoverable at all. Refuse removal costs are recoverable.

75. Repeating the arguments above the Applicant content is only liable to pay repair costs after they have been incurred. There has been no valid contractual demand requiring payment after 7 days so the Applicant is not liable to pay.

76. The Respondent repeated its arguments in relation to an estate scheme pleaded above and repeats its arguments in relation to external repair works.

The tribunal's decision

77. For the reasons given above in paragraphs 19 to 22 in relation to clause 5 (A) and paragraphs 29 to 39 in respect of the roadway and gardens, the tribunal finds that these amounts are payable in full subject to the decision in paragraph 82 below.

Postage charges £24.60

78. The Applicant disputed liability for the sum and the Respondent has conceded that this is not chargeable.

General repairs £15,917

79. The Applicant required the Respondent to provide invoices or breakdown narrative explanation of the costs.

80. The Respondent provided this in the witness statement of Mr Conway and after discussion at the hearing the sum was accepted with the exception of an amount of £360 which the Respondent agreed should be removed.

The tribunal's decision

81. The tribunal finds that the sum of £15,557 is chargeable to the service charge.

Refuse and external maintenance £6244

82. The Applicant disputes liability to pay this for the reasons previously given.

83. The Respondent repeats its arguments regarding an estate scheme.

The tribunal's decision

84. For the reasons given in paragraphs 29 to 39 above the tribunal finds this amount is properly chargeable.

Roof works £32,087

85. The Applicant initially disputed liability on the basis that a section 20 consultation had not been carried out for this work. At the hearing it was accepted that a consultation had been carried out.

86. Liability for a demand of £2451.06 was disputed on the basis that the expenditure had not already been incurred and that this was based on a budget of 61,276.50. It is accepted that Westbourne is obliged to repair and maintain the roof and costs are recoverable when they have been incurred. The Applicant is not liable to contribute any amount in advance.

87. If the demand is held to be valid, Applicant the denies having received it. The Applicant proffered a cheque for £250 in full and final settlement which hasnot been presented.

88. The Respondent agrees that the Applicant account was debited by £2451.06. The respondent also agrees that the 2022 accounts show major work expenditure-roof works from the reserves in the sum of £32,087.

The tribunal's decision

89. For the reasons given in paragraphs 19 to 22 above the tribunal determines that anticipated expenditure on major building works can be budgeted for and does not have to be invoiced once the repair works have been incurred.

Portico balcony works £11,374

90. This item concerns a flat roof over flat 21 where the Applicant asserts she did not receive the section 20 consultation notice. Invoices were raised for the cost of the works in advance of the expenditure being incurred and are not chargeable.

91. The Applicant states that she tendered a cheque for £250 in full and final settlement of the invoices for this work. That cheque has been presented and as such constitutes a binding settlement if presented without objection.

92. The Respondent initially disputed that the cheque had been presented but on investigation at the hearing it was accepted that the cheque had been presented and therefore conceded the point.

The tribunal's decision

93. The Applicants liability for portico balcony works is capped at £250 in accordance with section 20 of the 1985 Act.

94. Reserves £32,159

95. The Applicant repeats the argument that the lease does not allow for a reserve fund and the applicant's contribution to reserve fund must be repaid or credited and set off against future service charge demands.

96. The Respondent denies it operates a reserve fund and the amount shown as reserves is used to offset any deficit in the following year and in this case the balance relates to major works where funds were collected following the section 20 process and invoiced by the contractor when completed. This balance relates to works due to be paid for but which hadn't been invoiced by the financial year end.

The tribunal's decision

97. The tribunal accepts the respondent's explanation particularly in view of its finding that the lease does not prohibit budgeting for repair works. The Applicant has asked that the surplus is used to offset future demands which is precisely what the Respondent are seeking to do.

Costs of retrieving CCTV footage of the Applicant

98. The Applicant asserts that such costs are not recoverable under the lease.

99. The Respondent says that the applicant has failed to identify any costs.

The tribunal's decision

100. No evidence was tendered on this point and the tribunal makes no findings.

2023

Service charge for quarter 125 December 2022 to 24 March 2023 £941.32

101. The Applicant's position is that although her statement of account shows a charge of £941.32 she has not received a demand for this sum and it is therefore not payable. Also the budget includes expenditure for repairing obligations under clause 5 (A) and despite the Respondents

claim it does not operate a reserve fund it includes £2000 for a reserve fund.

102. The Respondent states that invoices were sent to all leaseholders on 9 December 2022.

103. The Applicant denies receipt of the demand and further states that the evidence of Mr Conway is hearsay and not proof of service.

The tribunal's decision

104. The expenditure for the year was budgeted and as is indicated by the Applicants evidence she clearly knew what was budgeted. The tribunal does not agree that there is a once and for all opportunity to serve an invoice and that if some reason it goes astray it is not payable. It is the annual budget which is payable in 4 quarterly instalments and it is simply a matter of administration or if necessary agreeing a payment plan if the timing causes difficulty. The tribunal holds that this amount is payable.

Estimated expenditure under clause 5 (A) £27,350

105. This item repeats the arguments which have already been considered above and for the same reasons set out in paragraphs 19 to 22 above the tribunal holds that the Applicants proportion of this sum is payable.

External maintenance £7700

106. This is included in the total in the previous item and for the same reasons is recoverable.

Contingency fund £2000

107. The Applicant denies that a contingency fund payment is properly included in the budget and that this is not recoverable under the terms of the lease.

108. The Respondents indicates that the use of the word contingency is merely general language used to describe anticipated costs and expenses recoverable under the lease which have not been separately itemised in the budget or which are unforeseen.

The tribunal's decision

109. The tribunal agrees with the Respondent at the inclusion of a small contingency amount in a budget is a prudent thing to do and in any event it will all come out in the accounting wash up at the end of the year. The amount is recoverable.

110. Management fee £12,661.60

111. The Applicant's position was that this related to the appointment of managing agents under a qualifying long term agreement which was required to be consulted upon. At the hearing it was accepted on behalf of the Applicant that the management agreement was not a QLTA. And it was accepted the amount is payable.

Appropriation of payments made in respect of service charge demand for quarters 2 and 3 of £844.32 per quarter

112. The Applicant states that by an email from her solicitors BDB Pitmans to the managing agents HML she would make 2 payments of £844.32 for the service charge demands due on the March and June quarter days but these have not been allocated in the manner directed. The Applicant seeks a determination that no further service charges payable in respect of these periods.

113. The Respondent states that the the March quarter charge was appropriated as requested but the June payment was not. Mr Conway agreed to raise this with the agents.

The tribunal's decision

114. The tribunal notes that the Respondent will correct the account as requested but makes no further findings in relation to that period.

Equitable set-off of damages for breach of landlords obligation to maintain the gutters £1542

115. The Applicant has provided evidence that due to blocked gutters outside her flat water ingress was occurring which caused damage internally. As the Respondents were slow to clear the gutters, she was forced to arrange this herself and to arrange for the necessary remedial work to be done internally at a cost of £480. The Applicant also claimed legal fees of £1042 as a consequential loss in dealing with the matter.

116. The Respondent states there was a gutter cleaning contract in place in 2022 and gutters and hoppers were cleared in May and November. The incident is unfortunate one off incident and contrary to her assertions it was dealt with on 19 April 2023. The service charge accounts for 2022 show roof maintenance and gutter clearance costs of £1100.

117. In evidence Mr Conway accepted that hoppers get blocked from time to time.

The tribunal's decision

118. The fact that the hoppers were blocked on a one-off occasion did not mean that damage did not occur and while there is a gutter cleaning contract in place it was caught out on this occasion. The tribunal finds that the Applicant has made the case for an equitable set-off of £1542.

Arrears management fee £108

119. The Applicant states that these are not recoverable under the terms of the lease.

120. The Respondent states that the lease provides for the landlord to use their best endeavours to enforce payment of the sums referred to in clause 3. It is common practice across the industry to charge late payment fees to encourage leaseholders to pay service charges when they are due.

121. In discussion at the hearing the Respondent conceded that there was no provision in the lease for such a charge and that it is not due.

The tribunal's decision

122. The arrears management fee of £108 is not chargeable.

123. Applications under section 27 (A)(3)

124. The Applicant believes that the Respondent intends to incur significant costs in relation to roadway works including installing electric barriers, the garden and vaults. The Applicant seeks a determination under section 27(A) (3) as to whether such expenditure would be recoverable from the Applicant under the lease. This issue is dealt with above at paragraphs 29 to 39 and the tribunal has nothing further to add on this point.

125. The Applicant also seeks a determination that if costs were incurred on the installation of heat/smoke detectors inside each flat no service charge would be payable by the applicant. For the avoidance of doubt it is admitted that in principle a service charge would be payable in respect of the installation of heat/smoke detectors in the common parts.

126. The tribunal declines to make a determination on this point. The section states that *"an application may 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 service charge will be payable for the costs…"

127. The question raises a general point and is not a proposal of a specified description. There is no current fire risk assessment in relation to the building. The law and practice in this area has undergone significant changes in the recent past following the Grenfell fire and the passing of the Building Safety Act and associated legislation. The point can be raised to a tribunal in future when there is a firm proposal.

Application under s.20C and refund of fees

128. At the end of the hearing, the parties agreed that any applications for costs under rule 20 C or for refund of fees would be done in writing once this decision has been issued.

Name: A Harris **Date:** 4 December 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

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

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