



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

Case Reference : CHI/43UF/LSC/2023/0063

Property : 1A The Driftbridge, Reigate Road, Epsom,
Surrey, KT17 3JZ

Applicant : Mr Matthew Bennett (Flat 1A)

Representative : In person

Respondent : Derri Properties Limited

Representative : Mr Roger Taylor, Director

Type of Application : Landlord and Tenant Act 1985 s.27A
(service charges)

Tribunal Members : Judge Mark Loveday
Mr Bruce Bourne MRICS
Ms Jayam Dalal

Date and venue of hearing : 15 December 2023,
Havant Justice Centre

Date of Decision : 14 February 2024

DETERMINATION

Introduction

1. This matter concerns liability to pay service charges for 1A The Driftbridge, Reigate Road, Epsom, Surrey, KT17 3JZ. The applicant is the lessee of the flat, and the respondents are freehold owners of the block.

Background

2. The Driftbridge, Reigate Road, Epsom, Surrey, KT17 3JZ is a mock-Tudor style hotel c.1930 which has been extended and converted into 24 flats. Access to the flats is now provided through two entrances. The lobbies in each have wooden floors, with carpeted stairs and landings in two upper floors. There is car parking and a grass strip to the front of the premises, and a larger car park, some landscaped areas and a bin store to the rear. The flat comprises a 1-bedroom property on the ground floor at the rear of the premises.
3. By an application dated 2 June 2023, the applicant sought a determination of liability to pay service charges under s.27A Landlord and Tenant Act 1985 (“the Act”). The challenge was to relevant costs in the 2017-22 service charge years. The applicant further sought orders pursuant to s.20C of the Act and para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. Directions were given on 5 October, 18 October and 28 November 2023. The matter was listed for hearing at the Havant Justice Centre on 15 December 2023. The applicant produced a statement of case which identified each of the heads of cost which were challenged: see Appendix A to this determination. The respondents also provided a statement of case dated 8 November 2023.
5. Many of the objections by the applicant were simply on the basis that the respondents had failed to disclose copies of invoices and receipts for expenditure. However, on 6 November 2023, the applicant visited the managing agents’ office and inspected some supporting documentation. Consequently, the applicant did not pursue several items of challenge at the hearing itself. The decision below deals only with the remaining items in issue.
6. At the hearing, the applicant appeared in person, and the respondents appeared by Mr Roger Taylor, a director of the freehold owner.

The Lease

7. By a lease dated 20 February 2015, the flat was demised for a term of 125 years from 1 October 2013. Clause 5 of the lease included conventional obligations on the part of the lessee to pay an interim service charge and any balancing service charge. The service charge was calculated as a “due proportion” (which in the applicant’s case meant one twenty-fourth) “of the expenses and outgoings set out in the Fifth Schedule hereto properly incurred by the Lessor” in each calendar year. Material extracts from the Fifth Schedule appear at Appendix B to this determination.

Issue 1: Janitorial Services

8. The hearing bundle included annual statements headed “service charge, ground rent and expenses summary” which set out the relevant costs incurred by the respondents in each year. The applicant challenged the costs incurred for “janitorial services” which appeared in each of these accounts, details of which are given in Appendix A.

The case for the parties

9. The applicant’s application alleged that he had not had sight of any receipts for payment for janitorial services or a breakdown of these costs. He further suggested the costs related to cleaning three sets of stairs and mopping the floors. Alternative estimates had been obtained for £2,500 for this work, but the respondents had refused to change cleaners. The applicant believed the respondents owned the cleaning company that was used. The applicant relied on an estimate for cleaning the common parts from Cleaning Guru (Guru Cleaning Properties Ltd) dated 10 October 2023 which amounted to £3,744pa per week¹ (incl. VAT). This was calculated based on £20 per hour for a 3hr visit but excluded cleaning materials. The service included dusting surfaces, vacuuming floors, and mopping hard floor areas. There was another estimate from Contract STB Property Group Ltd dated 24 March 2023 for £3,640 for weekly cleaning of common parts and monthly internal window cleaning. Finally, there was a quotation from STB Property Group Ltd dated 24 March 2023 for fortnightly cleaning at £1,872 (incl. VAT) or £3,744pa for weekly cleaning. At the hearing, the applicant stated that he went to the flat frequently in 2017 and had not seen any cleaners. The premises did not look clean, although he accepted that he had not had to go through the main part of the premises to get to the flat. Nothing had changed after 2017. He confirmed his challenge was on the basis that the cleaning costs were not reasonably incurred under s.19(1)(a) of the Act.
10. Mr Taylor is a Chartered Surveyor and Director of the respondent, as well as a Director of the managing agents Bells Southfields Ltd. As with many of the other of the costs in issue, the “janitorial services” were provided by Bells Southfields Ltd. Mr Taylor referred to invoices for relevant costs that had been provided to the applicant after the claim was issued. These included invoices from Bells Southfields Ltd which corresponded with the expenditure on janitorial services for the 2017-21 service charge years. There was also an invoice for £8,800 for janitorial services provided in 2022. which slightly exceeded the amount charged to the lessees. The invoices were all undated, and in the same form with only manuscript additions to differentiate between them in each year. The invoices referred to “The provision of janitorial services to the above-mentioned property carried out by various operatives in accordance with the attached specification and as detailed thereon” and a copy of the specification was provided. This specification included:
 - a. Weekly hoovering of carpets and timber floors, dusting of balustrades and window ledges, clearing of mailboxes, minor maintenance, rubbish

¹ The applicant miscalculated this as £3,456 including VAT. In fact, £60/week x 52=£3,120 excl. VAT.

- removal from external areas (including the car park) spot cleaning of carpets,
- b. fortnightly cleaning of internal windows, tidying bin store area, checking the utilities cupboards and the entrance doors.
11. Mr Taylor contended that cleaning was carried out, because he checked his files and there was no evidence of complaints by lessees. In essence, he argued that the janitorial services provided by Bells went beyond mere cleaning of the internal common parts. The external cleaning generated considerable work, including the 23 car parking spaces and the bin cupboard. There was a real problem with fly tipping and problems caused by tenanted flats. The janitorial services also included spot carpet cleaning. But he accepted the cost of janitorial services had been an area of concern. The respondents had therefore suggested to the lessees' forum that they should submit the specification to any cleaning company of their choice and provided they are a reputable company with the appropriate insurers, it would be more than happy to switch on 1 January 2024 if the price warrants such a move. At the hearing, Mr Taylor accepted the respondents had never previously opened the janitorial services to tender. He accepted that one of the quotations provided by the applicant looked quite competitive. But his explanation for the discrepancy was that he was quite sure that alternative cleaning contractors would not provide as good a level of service as the current provider.

Discussion

12. The essence of the applicant's case is that cleaning costs exceeded the appropriate market rate. The approach where a lessee relies on alternative competitive quotations was considered by the Upper Tribunal (Lands Chamber) in *Cos Services v Nicholson* [2017] UKUT 0382 (LC); [2018] L.&T.R. 5. The Upper Tribunal repeated the longstanding position that the burden under s.19(1)(a) of the Act is on the landlord to satisfy the tribunal on the balance of probabilities that the costs in question have been reasonably incurred. It said at [48] to [49] (in relation to the costs of insurance premiums) that:
- “48. [a tribunal] must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they “compare like with like”), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.
- “49. ...It is however necessary for the landlord to satisfy the Tribunal that invocation of a block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them”.

On the particular facts of *Cos Services*, the Upper Tribunal found at [67]-[68]

that:

“67. It remains a mystery, having heard the evidence adduced by both parties, why there is such a discrepancy between the premiums charged to tenants under the landlord’s block policy and the premiums obtainable from other insurers on the open market. It a mystery which the landlord has been wholly unable to explain.”

“68. It is clear to the Tribunal that the insurance premiums being charged by the landlord to the tenants were excessive, in the sense that considerably lower premiums for similar protection could have been obtained elsewhere. Moreover, insofar as there may have been certain advantages with the NIG policy, they were so insubstantial that they could not justify the amount being charged.”

These principles, and the approach adopted by the Upper Tribunal, apply generally. They are not limited to the relevant cost of insurance premiums.

13. In this case, the tribunal starts with the terms of the lease of the flat. The recoverable service charge items include the relevant costs of various matters in Sch.5. Of these various matters, the most relevant is the cost in para 1(A) of Sch.5 which extends to the “cleaning” of:
- “(a) the main structure of the Building comprising the structure and exterior of the Building and ... and the window frames external doors and frames ...”
 - (b) the entrances staircases and all other parts of the Building enjoyed or used by the lessees of more than one of the flats in common with others (“the common parts”) including but not limited to the areas shown edged yellow on the plan or plans attached hereto.
 - (c) the parking spaces within the Building (including those parking spaces which are demised).”

There is then a repeat obligation to clean the common parts in para 1(C). It is therefore clear the landlord’s cleaning liabilities extend to the parking areas, bin stores and other external parts.

14. The next consideration is the landlord’s explanation of the process by which the particular cleaning contract was selected, with reference to the steps taken to assess the current market. And on that, the tribunal finds the landlord’s explanation wholly unsatisfactory. There is, of course, nothing to prevent a landlord from selecting its managing agent’s ‘in house’ cleaners as contractors, and that does not render the costs automatically unreasonable under s.19(1)(a) of the Act. But where it does this, there is obviously a potential conflict of interest which calls for a particularly clear explanation of how the landlord and its agent were satisfied that the costs were not excessive. By the respondents’ own admission in this case, they have never tested the market. It is not for the lessees to benchmark the costs for 2017-23 (as the respondents appear to suggest should happen for the 2024 service charge year). It is for the landlord to test the market to ensure that the cleaning services provided by its managing agent were competitively priced.

15. Against this background, the tribunal is satisfied that there is a striking discrepancy between the charges made by the managing agents for janitorial services and the three quotations obtained from other cleaning contractors on the open market. For the 2023 service charge year, the average of weekly cleaning costs in the applicant's quotations was £3,640-£3,744. The sum charged by Bells Southfields was £7,635.29, which is almost exactly double the figures given in the alternative quotations. The respondents' explanation for the discrepancy is that the quotations do not include external cleaning, and that the quality of cleaning is almost certainly better with Bells. As to the point about external cleaning, this is correct: see Sch.5 to the Lease. But the additional scope of the work included in the Bells specification cannot explain all the difference. Even if one were to allow an extra 1hr/week for cleaning the car park and bin store, this is unlikely to add more than £20 week + VAT to the Cleaning Guru estimate (or £1,252pa). There would still be a striking discrepancy.
16. Applying the reasoning in *Cos Services*, it follows that the respondents have failed to satisfy the tribunal that the amounts sought to be charged to the tenants for janitorial services were "reasonably incurred".
17. To arrive at a reasonable cost for the janitorial costs for 2017-22, the tribunal starts with the quotation of £3,744pa given by Cleaning Gurus, which is the same figure as the estimate given by STB Property Group Ltd. We add an estimated £300pa for cleaning materials and an additional £1,248 for 1hr/wk for cleaning the external areas. This gives a 2023 cost of £5,292pa.
18. It is likely that inflationary pressures would have meant the costs of providing janitorial services in previous service charge years would have been lower. But in the absence of any evidence, the tribunal adopts this figure for each of the 2017-22 service charge years. Applying the Flat 1 apportionment of 1/24, the applicant's contribution for janitorial services in each of the 2017-22 service charge years is therefore limited to £220.50.

Electrical repairs

19. The service charge summary included electrical repair costs of £2,869.00 (2017) and £589.15 (2021).

The case for the parties

20. In the application form, the applicant sought proof of both sets of electrical repair costs. By the time of his statement of case, the challenge was limited to the 2017 costs of £2,869. When he went to the agent's office, the applicant was not shown any receipts for the 2017 electrical works, and he therefore did not think any works were carried out. He said he could not say whether these costs had been incurred or not.
21. The respondents' statement of case suggested that electrical repairs were always carried out by a fully qualified electrician that the agents generally used, who was not only an experienced electrician but who carried the appropriate insurance cover. At the hearing, Mr Taylor stated that no invoices or receipts

were available for 2017 because the agents had moved offices and all the receipts for that year had been mislaid.

Discussion

22. The question for the tribunal is not whether the 2017 electrical repair costs were reasonably incurred, but rather whether (on the balance of probabilities) they were incurred at all. The primary evidence of this would be the 2017 invoices or receipts, but the respondent said they had been mislaid. Absent this primary evidence, the service charge summaries themselves are secondary evidence that the costs were incurred. This is also consistent with the fact that there were invoices in the bundle to support other electrical repair costs in other service charge years. Absent any positive evidence that the respondents did not incur any electrical repair costs in 2017, on balance, the tribunal finds these costs were incurred.

General Services/General maintenance

23. The 2017 service charge summary included General Services costs of £2,869.00. The 2018-22 summaries included General Services or General Maintenance costs as they appear in Appendix A.

The case for the parties

24. The applicant's argument in relation to the 2017 General Services was that without sight of the invoices or receipts for these costs, he could not say whether these costs had been incurred or not. By contrast, he accepted the receipts and invoices in the bundle added up to £3,565.94 in 2018 and later years. The applicant's statement of case questioned the details given in the invoices and suggested they were "excessive". In reality, the repairs were carried out by Mr Gary Taylor, who was also the cleaner and the electrician. Others were carried out by London & Continental Securities Ltd, a company of which Mr Roger Taylor was again a director. The applicant asked for 50% to be disallowed. At one point at the hearing, the applicant suggested no general repairs were carried out, but he accepted there was no evidence that that was the case.
25. The respondents' statement of case suggested that General Services included general maintenance works as requested by individual lessees. These were partly carried out by external contractors and partly by the agent's own internal workforce.

Discussion

26. The issue about receipts for expenditure in 2017 is dealt with in para 22 above.
27. The wider issue of the use of 'in house' contractors such as London & Continental Securities and Mr Gary Taylor is essentially the same issue raised above in relation to the janitorial services. The tribunal is concerned about the apparent lack of market testing of these services. But the main difference between 'General' and 'Janitorial' services is that the applicant has not

produced any competitive quotations for the latter. There is therefore no evidence before the tribunal that General Services costs have been excessive.

Garden Maintenance (2018)

28. The 2018 service charge summary included garden maintenance costs of £2,414.

The case for the parties

29. The applicant stated that he had originally been the gardener for the premises. He had charged £960pa until 2018. He referred to invoices in the bundle in 2018. He himself could have dealt with all this within his basic monthly fee.
30. Mr Taylor suggested the leaseholder forum was unhappy with the applicant's work as gardener and they recommended his contract be terminated. The respondents employed a new firm recommended by the forum. Mr Taylor referred to invoices from MB's Landscape Services Ltd which had a monthly contract for £100pm. There were additional items for hedge replacement (£68) and various items of rubbish clearance, fence repairs, painting of external staircases and removal of leaves (£1,346).

Discussion

31. These costs were incurred in employing external contractors, and invoices were provided. The applicant has provided no evidence in the form of alternative estimates for gardening services. The tribunal finds these costs were not excessive and they were reasonably incurred.

Rubbish removal

32. The 2019-22 service charge summaries included rubbish removal costs of £1,926, £865, £225, £780 and £740. There were invoices supporting these costs, which mainly related to removal of fly tipping and cleaning the bin enclosure.
33. The applicant's case was that he could have done this work much more cheaply, but he did not produce any independent quotations from contractors to support this. Absent such evidence, the tribunal finds these costs were reasonably incurred.

Accounting (2017-19 and 2022)

34. The service charge summaries in 2017-19 and 2022 included accountancy costs of £480, £960, £960 and £1,200.

The case for the parties

35. The applicant referred to clause 5(e)(i) of the lease, which stated that:

“(i) the certificate of the auditors for the time being of the Lessor as to the amounts payable by the Lessee from time to time in accordance with the provisions of this clause shall be conclusive and binding on the Lessee”. There was no auditor’s certificate in the annual summaries, and this was something the applicant wanted as cross-check.

36. At the hearing Mr Taylor argued that a full audit was inappropriate. It was more cost effective to prepare accounts ‘in house’ than to call in external accountants. There were no invoices because this was an ‘internal charge’ by Bell Southfields, which carried out the work.

Discussion

37. The tribunal does not agree with the applicant’s interpretation of clause 5 of the lease. Clause 5(e)(i) does not require the respondents to carry out an audit in each year, still less does it prevent them recovering the costs of accountancy.
38. However, that is not the end of matters. Mr Taylor accepted the charges for accountancy were for preparation of accounts by the managing agents, and that they had not used an external firm of accountants. The tribunal returns to this issue below.

Entry phone works (2019)

39. The 2019 service charge summary included a contribution of £4,800 towards the relevant costs of replacing the door entry system. However, the applicant’s objection related to an invoice for £720 from Mr Gary Taylor dated “August/September 2020” for two visits to the site. The first was to “deal with the preliminary Works required for the new entry phone system to be installed” and the second for “Attending after the installation of the phone entry system, to make good all works disturbed”.

The case for the parties

40. The applicant argued £720 was excessive for a checkup and that this should have been included in the basic fee management charges.
41. Mr Taylor argued that the invoice was not well worded. In fact, it related to works carried out on site, not a checkup or site visit.

Discussion

42. The tribunal agrees with the respondents on this. The invoice plainly related to works. Those works were outside the basic management fee ordinarily charged by a reasonable managing agent: see para 3.4 of the RICS Code referred to below.

Professional fees

43. The service charge summaries referred to professional fees of £1,337 (2018), £583.30 (2019), £1,935.83 (2020) and £580 (2021). Each was supported by an

invoice dated January 2020 from Bells Southfields for these charges, which were described as:

“To my professional charges in dealing with various management issues primarily relating to the supervision of repairs and building works at The Driftbridge where costs could not be absorbed within our normal management charge. For supervisory work my charge is at the rate of 10% of the contract sum”.

44. These invoices were rendered in January of the relevant year, which suggests they related to major repairs and building works that required supervision in the previous 12-month period. If the managing agents’ 10% fee calculation was correct, the account should have shown works valued at £13,370 (2017-18), £5,833 (2018-19), £19,358.30 (2018-20) and £5,800 (2020-21).

The case for the parties

45. In his statement of case, the applicant argued there was no evidence of professional fees being incurred or work other than usual routine management.
46. Mr Taylor argued that additional fees for supervision of works fell outside the basic management fee for the premises. He was asked to identify the works which were supervised in 2018-2020 to enable the tribunal to understand the basis of the supervision fees shown in the invoices. Mr Taylor accepted there was nothing in the service charge summaries or invoices to support major works expenditure in the order of the figures given in para 44 above. Doing his best, Mr Taylor suggested that works described in the service charge summaries as “roofing” and “fire risk remedial works” required supervision by a surveyor.

Discussion

47. For the reasons given in para 60 below, the tribunal finds it is reasonable for the respondents to incur additional professional fees for the managing agents to supervise major works. Using its own experience, it is also reasonable to charge 10% of the cost of major works as a supervision fee.
48. However, as already explained, the fee invoices did not explain the basis of the supervision fees and Mr Taylor was unable to identify the works which were supervised for which the firm was paid its supervision fees. In any event, in each of years in question the supervision fees plainly exceeded 10% of any possible set of works which appeared in the annual service charge summaries.
49. Doing its best, the tribunal has identified the following as potentially being within the scope of “roofing” and “fire risk remedial works” relied on by Mr Taylor:
- a. 2019 roof repair £90.
 - b. 2020 roofing £1,897 and fire risk remedial works £2,627 = £4,524.
 - c. 2021 fire risk remedial works £2,320 and roofing/guttering/drains £1,885 = £4,205.

Of these, works valued at only £90 would not have required supervision by a Chartered Surveyor. The tribunal therefore allows professional fees of £452.40 in 2020 and £420.50 in 2021 for supervision of major works.

Legal fees (2020)

50. The service charge summary for 2020 included £720 for legal costs. Two invoices from Elm Legal Services for £350 were provided. They dealt with correspondence with Flats 13 and 19 to enforce payment of ground rent and service charge arrears.

The case for the parties

51. The applicant submitted that the legal fees were not recoverable under the terms of the lease. He referred to various provisions of the lease (such as clauses 3(5) and 9(1)), where specific reference was made to solicitors and legal costs. He pointed out that these words did not appear in Sch.5 to the Lease.
52. Mr Taylor contended that the legal costs of chasing the lessees for arrears fell within paras 6 and 8 of Sch.5. They were “other expenses” incurred “in and about the maintenance and convenient management and running of the Building”. They were also “services for the benefit of the building”.

Discussion

53. The tribunal does not agree with the respondents on this. The fees may well be recoverable from individual lessees under the forfeiture provision in clause 9(1) of the lease. But legal costs incurred in chasing defaulting tenants do not clearly relate to “maintenance” or the “convenient management and running” of a building. Neither are they services to the building. On the particular wording of these covenants, the legal costs are not recoverable from the lessees as a whole.

Management Fees

54. The management fees charged by Bells Southfields were the single largest or second largest item of cost in each year. The applicant challenged managing agents’ fees of £7,800 (2018-19), £8,400 (2020), £8,640 (2021) and £9,600 (2022). The application did not challenge the 2017 managing agents fees.

The case for the parties

55. The applicant argued in relation to various heads of expenditure in the annual summaries (notably accountancy and professional fees, above) that these costs ought properly to have been included in the basic management fee charged by the managing agents. In other words, it was not reasonable to incur additional fees for these under s.19(1)(a) of the Act. The applicant also argued the services provided by the agents within the basic fee were not of reasonable standard under s.19(1)(b). In his statement of case, the applicant suggested many invoices for costs were missing, the agents were partly charging a management fee to oversee their own activities, no service charge budgets were provided, and there was no communication with the lessees about annual budgets and works. From their perspective there was little management of the block. At the hearing, the applicant complained the standard of services was “poor”.

56. Mr Taylor accepted that none of these management charges was supported by invoices, and Bells Southfields had no written management agreement in place. He explained the management fees were calculated at the rate of £325 per unit for 2018/19, £350 per unit for 2020, £360 per unit for 2021 and £400 per unit in 2022. Mr Taylor further explained that there were no formal written budgets. The tribunal put to him that:
- a. A written management agreement was also required by para 3.2 of the RICS Service Charge Residential Management Code RICS Code (3rd ed); and
 - b. Budgets were a requirement of para 7.3 of the RICS Code.

He explained that the agency was simply an internal arrangement between managing agent and landlord, and it was not therefore necessary to have a formal agreement. Interim service charges were very much a matter of impression. The basic management fee “included everything” and he agreed with the tribunal that this meant it included everything within the menu of services in para 3.4 of the RICS Code that are usually provided for in an agent’s basic fee. Mr Taylor made an enthusiastic defence of the service provided to the lessees. The managing agents were available on the end of a phone, they dealt with anything within 24 hrs and sent people to respond to anything immediately.

Discussion

57. As far as the standard of services provided within the basic management fee under s.19(1)(b) of the Act, the applicant’s criticisms are wide ranging.
58. There was no management contract, management agreement or terms of agreement. Without such an agreement, the precise scope of the duties the managing agents would carry out as part of its basic fee could not be ascertained. Equally, the activities for which additional fees were chargeable were unclear. It is simply not good enough to say that the arrangements are an internal matter for the landlord and managing agent. Transparency about costs requires a clear paper trail of the contractual arrangements entered into by the landlord – particularly where it has links to the agents and other contractors. Moreover, without a contract, there is no objective benchmark to assess whether certain additional charges (e.g. for accounting and supervision, above) ought to have been included in the basic management fees.
59. Given the lack of basic contractual documents, the tribunal asked both Mr Taylor and the applicant whether they would adopt the menu of services in para 3.4 of the RICS Code which would ordinarily fall within the scope of a basic management fee, and the rather shorter list of items in para 3.5 where an additional charge would ordinarily be made. Both agreed to this approach.
60. As to accounts, the basic fee would ordinarily include the preparation of “service charge statements”, “annual spending estimates/budgets” and the circulation of “service charge accounts”: see para 3.4(c), (e) and (f). The tribunal has not been

shown any formal accounts in the sense of accounts which comply with Tech 03/11. The tribunal considers the rather basic service charge summaries fall within the scope of a managing agents work in preparing service charge accounts which fall within its basic fee: see paras 3.4(c), (e) and (f) of the Code. It follows that no separate charge may reasonably be made for accounting under para 3.5 of the Code. In short, the costs of accountancy in 2017-19 and 2022 referred to above were not reasonably incurred under s.19(1)(a) of the Act.

61. As to professional fees, the cost of “preparing specifications, obtaining tenders and supervising substantial repairs of works” is clearly specified in para 3.5 as services would ordinarily fall outside the basic fee. The tribunal rejects the applicant’s general argument in that respect.
62. Finally, there is the standard of services. The tribunal adopts the RICS Code as a benchmark against which the standard of reasonable service may be tested. It recognises that the dedicated staff employed by Bells Southfield are available for contact during ordinary working hours and they provide a good out of hours service (para 4.6 of the Code). There was no substantial criticism of their work on repairs and maintenance (Pt.9) and health and safety (Pt.8). The premises are insured (Pt.12). But against this, there are several aspects of management which fall seriously below basic standards of professional management as set out in the Code:
 - a. There was no written management agreement in place (para 3.2 of the Code). This is a serious failing, particularly where the relationship between the landlord and managing agent is not at arm’s length.
 - b. It is hard to see how managing agents can comply with the requirements of clause 5(a) of the lease provisions or operate a transparent and fair service charge regime without annual written budgets (paras 4.10 and 7.3).
 - c. There was a connection between the landlord and many of contractors selected without that connection being specifically declared to the respondent and the leaseholders in the annual accounts (para 10.1).
 - d. There were no obvious criteria in place for the selection of contractors or any process for market testing (para 10.2).
 - e. There is also a failure to tender for major services on a regular basis or to test the market for costs (para 10.2). This is particularly the case where services are provided by contractors connected with the respondents.
 - f. The record keeping was not efficient (para 4.10). Invoices have been lost for the period before 2018 and there were no invoices at all for important areas of cost such as the management fees.
 - g. The service charge summaries are not TECH 03/11 compliant (para 7.10), notwithstanding that the lease permits the respondents to recover the cost of accountants as part of the service charge.
 - h. As this decision shows, there has been systemic overcharging for service charges over the years.
63. In the light of the above, the tribunal considers the amount of service charge payable by the applicant for the services of the managing agents should be limited

by 30% under s.19(10(b) of the Act. This is proportionate to the agents' default. The limitation applies to the reduced level of basic annual managing agents' fees. Since it is evident the above failings are systemic and have occurred throughout the period of management, the limitation therefore applies to each of the 2007-22 service charge years.

Costs

64. The applicant applied for a limitation on costs under s.20C of the 1985 Act. He argued that the application had merit and that the respondents had not been forthcoming with documents.
65. Mr Taylor argued the applicant had failed to confirm the items in dispute or to prepare a proper hearing bundle in accordance with paras 15-16 of the further directions given on 28 November 2023.
66. Section 20C provides:

“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 a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

67. The Tribunal is conscious this is not a conventional costs jurisdiction, in that it is assumed the respondents have a contractual right to their costs of the proceedings under the terms of the lease. But it is nevertheless just and equitable to make an order under s.20C. The applicant has substantially succeeded in his application and his conduct of the proceedings does not fall below the expected standard of a litigant in person. The tribunal has made various observations about the conduct of the managing agents. The lack of transparency and failure to follow conventional service charge accounting procedures have contributed significantly to the need for an application to the tribunal.
68. The applicant also ticked the box on the application form for making an application under para 5A of Sch.11 to the 2002 Act. No administration charges have been sought, so the tribunal makes no order under para 5A.

Conclusions

69. For the reasons given above, the tribunal determines that the applicant is liable to pay service charges in respect of the following relevant costs:

	relevant cost	allowed	decision
2017	Janitorial services	£5,292	para 18 above

	Accountancy	£ nil	para 60 above
2018	Janitorial services	£5,292	para 18 above
	Management fee	£5,460	para 63 above
	Accounting	£ nil	para 60 above
2019	Janitorial services	£5,292	para 18 above
	Management fee	£5,460	para 63 above
	Accounting	£ nil	Para 60 above
2020	Janitorial services	£5,292	para 18 above
	Management fee	£5,880	para 63 above
	Legal Fees	£ nil	para 53 above
	Professional fees	£452.40	Para 49 above
2021	Janitorial services	£5,292	para 18 above
	Management fee	£6,048	para 63 above
	Professional fees	£420.50	Para 49 above
2022	Janitorial services	£5,292	para 18 above
	Management fee	£6,720	para 63 above
	Accounting	£ nil	para 60 above

70. Under s.20C of the 1985 Act, none of the costs incurred by the respondents in connection with proceedings before the tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant.

Judge Mark Loveday

16 February 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 A: RELEVANT COSTS CHALLENGED IN EACH SERVICE CHARGE YEAR

2017	Janitorial services	£11,400.00
	General services	£6,864.00
	Electrical repairs	£2,869.00
	Asbestos report	£500.00
	Fire risk assessment	£700.00
	Accountancy	£480.00
2018	Janitorial Services	£11,760.00
	General Services	£3,565.94
	Management Fee	£7,800.00
	Lighting Common Parts	£985.00
	Garden Maintenance	£2,414.00
	Rubbish removal	£1,926.00
	Accounting	£960.00
	Fire risk assessment	£960.00
	Professional fees	£1,337.00
	Electrical repairs	£2,838.00
2019	Management fee	£7,800.00
	Janitorial services	£11,760.00
	Lighting common parts	£962.00
	General services	£2,395.00
	Rubbish removal	£865.00
	Accounting	£960.00
	Professional fees	£583.30
	Fund for replacing entry phone	£4,800.00
2020	Management fee	£8,400.00
	Janitorial services	£10,800.00
	Lighting common parts	£1,126.00
	General services	£2,616.00
	Fire risk assessment	£2,688.00
	Professional fees	£1,935.83
	Legal fees	£720.00
	Roofing	£1,897.00
2021	Management fee	£8,640.00
	Janitorial services	£8,800.00
	General maintenance	£3,839.01
	Professional fees	£1,935.83
	Electrical repairs	£589.15
	Roofing/Guttering/Drains	£1,885.00
	Rubbish removal	£225.00

2022	Management fee	£9,600.00
	Janitorial services	£7,635.29
	Lighting common parts	£2,064.00
	General maintenance	£3,525.00
	Rubbish removal	£740.00
	Accounting	£1,200.00
	Roofing Drains	£2,378.00

APPENDIX B: LEASE SCHEDULE 5

Costs and Expenses to which the Lessee is to contribute by way of Service Charge

1.

(A) All maintenance repair amendment renewal cleaning and redecoration (including in particular decoration of the exterior of the Building so often as the lessor In its reasonable discretion may determine but not more than once in every three years) effected for the purpose of keeping in good and substantial repair

(a) the main structure of the Building comprising the structure and exterior of the Building and in particular the roofs roof structures foundations main walls and other main structural parts and principal Internal timbers and floor slabs thereof and window frames external doors and frames but nevertheless excluding therefrom

(i) all walls (other than structural walls) that are situate wholly within the demised premises

(ii) The internal faces of boundary walls enclosing the demised premises

(iii) the windows and other glass of and in the demised premises

(iv) The surface of any balcony terrace or patio comprised in the demises premises

(v) all portions corresponding to the foregoing in or appurtenant to the other flats in the Building

(b) the entrances staircases and all other parts of the Building enjoyed or used by the lessees of more than one of the flats in common with others ("the common parts) including but not limited to the areas shown edged yellow on the plan or plans attached hereto

(c) the parking spaces within the Butting (including those parking spaces which are demised)

(B) The maintenance in good working order and repair of

(a) all tanks sewers drains channels watercourses gutters rainwater soil pipes sanitary apparatus wires and cables under upon the Building and serving the same excluding nevertheless any which exclusively serve any one flat within the Building

(b) all apparatus serving the electric fitting appliances in the common parts

(C) The lighting and cleaning of the common parts

(D) The maintenance and renewal of any carpeting in the common parts and the hiring and maintenance of any entry phone systems to the Building and the installation and maintenance of any communal aerials

(E) The supply maintenance repair and renewal as need by of such firefighting equipment in the said common parts as the Lessor may deem desirable or necessary

PROVIDED THAT the Lessor shall not be liable to the Lessee for any defect or want of repair hereinbefore mentioned unless the Lessor has had notice thereof nor in respect of any obligation hereunder that is to be construed as falling within the ambit of the Lessee's covenants hereinbefore contained.

2. The cost of periodically Inspecting examining maintaining and overhauling any part of the Building for the purpose of performing the Lessor's obligations hereunder and any other costs properly incurred by the Lessor for the purposes of complying with such obligations.

3. All charges assessments impositions rates and other outgoings payable by the Lessor in respect of the whole of the Building

4. The cost of insuring the Building in accordance with the Lessor's covenant hereinbefore contained

5. The establishment and maintenance of a reserve fond to provide for any items of future capital expenditure foreseen by the Lessor including (but without prejudice to the generality of the foregoing) the external redecoration of the Building

6. The fees of the Lessor and of the Lessor's agents for the general management of the Building and all other expenses (if any! incurred by the Lessor m and about the maintenance and convenient management and running of the Building

7. All fees and costs incurred in respect of Ae yearly certificate and the accounts kept and audits made for the purposes thereof

8. All costs incurred in the provision and supply of such services for the benefit of the lessees of the Building as the Lessor shaft in its reasonable

discretion think fit and the costs of employing such staff as the Lessor shall require in connection with the performance of its obligations hereunder

9. When any repairs redecorations or renewals are carried out by the Lessor it shall be entitled to charge as the expenses or costs thereof its normal charges (including profit in respect of such work)

APPENDIX C: EXTRACTS FROM RICS RESIDENTIAL SERVICE CHARGE MANAGEMENT CODE (3RD ED)

3.4 Annual fee

Subject to the terms of any written contract, for an annual fee (where the level of service provided will normally have regard to the amount of the fee), a managing agent should normally carry out the following work:

- (a) prepare invoices for and collect service charges from leaseholders
- (b) instruct, with the client's consent, solicitors or debt recovery agents in the collection of unpaid service charges, subject to any statutory procedures that need to be followed. (Preparing for and attendance at courts/tribunals is not normally covered by the annual fee)
- (c) prepare and submit service charge statements and demand service charge contributions**
- (d) pay for general maintenance out of funds provided and ensure that service charges and all outgoing monies are used for the purposes specified under the lease and in accordance with legislation
- (e) produce annual spending estimates/budgets to calculate service charges and reserves, as well as administering the funds**
- (f) produce and circulate service charge accounts that comply with TECH 03/11 and supply information to leaseholders and any residents' association, liaising with and providing information to accountants where required**
- (g) administer building and other insurance if instructed and authorised, subject to Financial Conduct Authority (FCA) regulations
- (h) if instructed, on behalf of clients engage and supervise staff such as caretakers, gardeners and cleaners
- (i) arrange and manage contracts and services in respect of, for example, lifts, boilers and cleaning
- (j) arrange periodic health and safety, fire and other appropriate risk assessments in accordance with the statutory requirements and, where necessary, in liaison with the relevant public authorities
- (k) visit the property to visually check its condition and deal with minor repairs to Buildings, plant, fixtures and fittings. An appropriate frequency for visits should be agreed with the client and set out in the contract
- (l) deal reasonably and as promptly as possible with enquiries from leaseholders having regard to any requirements or constraints in the contract
- (m) keep records on leases having regard to the data protection legislation
- (n) keep clients informed of changes in legal requirements, including any statutory notices and other requirements of public authorities, and check compliance with lease terms; and
- (o) advise on day-to-day management policy.

3.5 Menu of charges

As part of the terms of engagement, you should have a 'menu' of charges for duties outside the scope of the annual fee. Examples include (this is not an exhaustive list):

- preparing statutory notices and dealing with consultations where qualifying works or qualifying long-term agreements are proposed

- **preparing specifications, obtaining tenders and supervising substantial repairs of works; and**
- attending courts and tribunal proceedings.