



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

Case reference : **LON/00AW/LSC/2023/0111**

Property : **Flat 2, 70 Holland Park, London W11
3SL**

Applicant : **69/70/71 Holland Park Limited**

Representative : **Mr Howard Lederman – Counsel
instructed by Pearlmans Solicitors**

Respondent : **Ms Alison Smith**

Representative : **none**

Type of application : **Determination of the liability to pay and
the reasonableness of service charges**

Tribunal members : **Judge Mark Jones
Ms Jane Mann MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **04 March 2024**

Date of decision : **04 April 2024**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the sums payable by the Respondent as service charges in respect of Flat 2, 70 Holland Park, London W11 3SL (“**Property**”) for the following service charge years are as follows:

Service charge year	Amount Payable £
25/3/19 - 24/03/20	5,416.00
25/03/20 - 24/03/21	5,477.00
25/03/21 - 24/03/22	2,104.00
25/03/22 24/03/23	- nil

The application

1. The Applicant landlord seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the amount of service charges payable by the Respondent in respect of the service charge years 2019, 2020, 2021 and 2022.

The Hearing

2. The Applicant was represented by Mr Howard Lederman of counsel at the hearing.
3. The Respondent did not attend the hearing, while her acquaintance Ms Cheryl Prax was present as an observer.

Preliminary Matters

4. The Tribunal is satisfied that the Respondent was aware of the proceedings and the hearing, against the background summarised below.
5. Following correspondence received from acquaintances of the Respondent, including Ms Cheryl Prax and Mr Jake Gibilaro, the

hearing listed for 12 September 2023 was postponed by the order of Regional Judge Powell dated 11 September 2023 which directed that the Respondent “...*must by 18 December 2023 obtain and file a medical report from a suitable psychiatric or psychological expert as to her mental capacity to conduct the proceedings...*” The Tribunal is satisfied that that order was hand-delivered to the porter at what appears to be the Respondent’s home address, at Apartment 5, Highgrove Point, Frognal Rise, Hampstead London NW3 6PZ (“**Highgrove**”).

6. That order was made following correspondence received from acquaintances of the Respondent, including Ms Cheryl Prax and Mr Jake Gibilaro.
7. No report was filed, leading to Deputy Regional Judge Carr’s further directions on 12 January 2024, listing the matter for hearing on 4 March 2024. Those directions were emailed to Ms Prax and Mr Gibilaro and, as noted above, Ms Prax attended the hearing.
8. Thereafter, the evidence of Mr Pomeranc, solicitor for the Applicant, which the Tribunal accepts, shows that his firm wrote to the Respondent both at the Property and by recorded delivery to the Highgrove address on 25 January 2024 advising her of the 4 March 2024 hearing date. A further letter dated 16 February 2024 informing the Respondent of that hearing date was sent to the Property and hand-delivered to the Highgrove porters lodge on 16 February 2024.
9. Insofar as correspondence from the Respondent’s acquaintances raised a potential issue of the Respondent’s incapacity, the Tribunal has no evidence before it in relation to such matters. The obligation to demonstrate any want of capacity to conduct proceedings falls upon the party alleging it, against the presumption of capacity arising from s.1 of the Mental Capacity Act 2005. Absent the report directed by Judge Powell, or any other evidence, the legal presumption is that the Respondent possesses capacity to conduct proceedings and, if she wishes, to provide instructions.
10. The Tribunal, accordingly, considered it appropriate to proceed with the hearing in the absence of the Respondent.

The background

11. The Property which is the subject of this application is a ground-floor flat in a row of 3 houses divided into flats, 69, 70 and 71 Holland Park. 70 Holland Park contains some 9 flats, including the Property.

12. 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.
13. The Applicant is the freehold proprietor of 69, 70 and 71 Holland Park. Its title to 70 Holland Park registered under title no. 230143
14. The Respondent holds a long lease of the Property dated 12 October 1972, for a term expiring on 24 June 2070 ("**Lease**"). The Respondent became the registered proprietor of her leasehold interest on 27 October 1994, registered under title no.NGL215531.
15. At all material times, Quadrant Property Management Limited ("**Quadrant**") have been the managing agents of the lessor.

Procedural background

16. The landlord's application was dated and filed with the Tribunal on 14 March 2023.
17. The Tribunal gave directions on 16 May 2023, which were circulated to the parties. Those directions identified the issues to be determined as:

"the payability and reasonableness of service charges for the years 2019 to 2022 inclusive, sum said to be owing is £37,526."
18. The directions provided for various procedural steps to be taken by the parties in preparation for the hearing, including for the Respondent to send to the Applicant by 27 October 2023 various documents, including a schedule detailing any challenges to the sums claimed by the Applicant and the basis for such challenges, a statement setting out the Respondent's case if liability to pay was in issue, any witness statements of fact relied upon and alternative quotations, if available, for the provision of services and insurance at the property. The Respondent did not do so, serving nothing prior to the hearing date to indicate whether she did, or did not agree with the various sums claimed.
19. The Applicant relied upon Grounds in the form of a witness statement dated 14 March 2023 of Ms Deseley West, a former senior property manager employed by Quadrant. By the date of the adjourned hearing, Ms West had left Quadrant's employment and was believed to be travelling overseas. In anticipation of these matters, a copy of her Grounds was re-signed by her and witnessed on 30th October 2023. Her evidence was admitted as hearsay, pursuant to a Hearsay Notice dated 27 February 2024. Exhibited to that statement of grounds was a substantial bundle of contemporaneous documents.

20. The Applicant also relied upon statements of grounds from Mr Pomeranc, dated 14 March 2023 and 7 July 2023, augmented by his further statement dated 28 February 2024, each bearing a statement of truth.
21. The Tribunal heard evidence from Mr Pomeranc at the hearing. The Tribunal also gave permission to the Applicant to call Mr Glen Hardingham MRICS, the author of a report upon the condition of the Property, dated 28 September 2022, albeit that that gentleman's evidence was confined to that issue, and did not address the application in respect of service charges.

The Scope of the Tribunal's Jurisdiction on the Application

22. The Tribunal is asked to determine the reasonableness under s.19 of the 1985 Act, and liability to pay service charges under section 27A of the 1985 Act for the above years for the Property by the Applicant. The Tribunal has not seen any evidence or observations from any other leaseholder, and this Decision should not be treated as binding any other leaseholder. The Tribunal has only considered those service charges and other charges that are mentioned in the application and the Applicant's witness statements. The Tribunal has not considered whether other charges that may have been levied against the Applicant are payable.
23. The Tribunal does not have power to consider a claim for repayment of ground rent, which is referred to in the successive service charge demands and accounts exhibited to the Applicant's witness statement. Ground rent is not a service charge or an administration charge. This does not mean the Tribunal disagrees or agrees with the Applicant. Parliament has not instructed the Tribunal to deal with disputes about ground rent and this issue will not be covered by this Decision.
24. The Tribunal has considered the witness statements provided on behalf of the Applicant, the application form and the various documents exhibited, and which formed the hearing bundle of some 456 pages. The Tribunal has also considered the evidence given at the hearing by Mr Hardingham and Mr Pomeranc, addressed above, and is grateful to each witness for his evidence. The Tribunal was assisted by Mr Lederman's oral submissions, augmented by a helpful written skeleton argument.
25. The Tribunal has considered whether individual service charge costs were reasonably incurred, or services provided to a reasonable standard under section 19 of the 1985 Act. It also has power to determine whether sums are payable under section 27A of the 1985 Act, whether under the terms of the lease or by another law. Where a service charge may be payable before the relevant costs were incurred,

under section 19(2) of the 1985 Act the Tribunal is also permitted to consider whether the amount charged in advance is reasonable.

Provisions in the Lease relevant to service charges

26. Clause 5 of the Lease contains a series of repairing and maintaining covenants on the part of the lessor, including maintenance and decoration of common parts of the building, including water and gas pipes, sewers and drains. The lessor is required to maintain a supply of hot water to the Property. By clause 5(1) the lessor is required to insure the building against the usual risks, and further clauses permit the employment of a caretaker and managing agents.
27. The Applicant is authorised by clause 4(2)(h) to require of lessees, including the Respondent, advance contributions to a reserve fund, in respect of reasonable anticipated expenditure of a periodic or recurring nature.
28. By clause 4(2) of the Lease, the Respondent is obliged to contribute by way of service charge to the expenditure incurred by the Applicant as landlord in respect of clause 5 for 70 Holland Park. The proportions of the total expenditure for which she is liable are 10.703% for general expenditure, and 19.738% for boiler expenses. The Tribunal was informed, and accepts, that the discrepancy arises where some flats have their own provision for hot water.
29. Clause 4(2)(i) provides for an additional contribution to be paid by the lessee annually upon the lessor's managing agent certifying any shortfall between the sums paid on account and the actual expenditure incurred.

The Respondent's Position

30. As summarised above, the Respondent provided no grounds to dispute the charges claimed.
31. The Tribunal has, nevertheless, carefully considered the sums charged for each of the years in question, in order to determine the issues on the application.

The Law

32. Section 18 of the 1985 Act defines "*service charges*" and "*relevant costs*":

- (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.*

33. S.19 of the 1985 Act deals with limitation of service charges:

- (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.*

34. S.27A of the 1985 Act deals with the liability to pay service charges:

- (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.*

Decision

35. Under the clauses identified above in the Lease, as modified by the Variation, the Respondent covenanted to pay a service charge to the Applicant, at the rate demanded, in this case on a quarterly basis save for buildings insurance, which was payable annually. Such sums are defrayed against the actual expenditure incurred by the Applicant in complying with its obligations under the Lease.
36. The Respondent is liable under the Lease to pay 10.703% of the overall costs to the Applicant of complying with its covenants in the Lease and of employing managing agents, and 19.738% of its expenses for repairing, maintaining and providing hot water from the boiler.
37. The Tribunal notes the evidence of Ms West that Quadrant stopped sending service charge demands to the Respondent in April 2021, on legal advice.

25 March 2019 to 24 March 2020

38. The Tribunal has seen the service charge accounts for the year ended 31 March 2020. All items appear to the Tribunal to have been properly included.
39. Where there is a slight disconnect between the end date on the accounts of 31 March, and in the service charge demands which run from 25 March in the first year to 24 March in the second, the Tribunal assesses the latter as the appropriate period for determination of the service charges payable in each service charge year.

40. The Tribunal has seen some, but not all of the quarterly demands for the period, which the Applicant submits should be read against the evidence of Ms West, and the running account total maintained by Quadrant, setting out all heads of expenditure and the dates of each demand. Based upon the consistency of the demands that have been produced with the information contained in that running account, giving appropriate consideration to the fact that Ms West's evidence was adduced as hearsay, and considering the contents of the letter of claim dated 28 April 2021, against the fact of no evidence in rebuttal having been produced by the Respondent, the Tribunal accepts, and finds as a fact on the balance of probabilities that the demands were sent to the Respondent on or about the dates specified.
41. The Tribunal is informed by the Applicant, and finds as a fact, that on the reverse of each application is a summary of the tenants' rights and obligations.
42. The Tribunal notes that the demands sent to the Respondent included the sum of £1,132.40 in respect of legal fees of Chandler Harris, a firm of solicitors from which the Applicant had obtained advice. Those are not recoverable as service charges under the Lease.
43. Removing those fees and requests for payment of ground rent, the Tribunal finds that demands for payment were properly made in respect of the following sums:

	Period	Description	£	Total £
(1)	25/3/19 - 23/6/19	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	387.00	
		¼ maintenance charge	<u>544.00</u>	1,163.00
(2)	25/3/19 - 24/3/20	Annual building insurance	764.00	764.00
(3)	24/6/19 - 28/9/19	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	387.00	
		¼ maintenance charge	<u>544.00</u>	1,163.00
(4)	29/9/19 - 24/12/19	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	387.00	
		¼ maintenance charge	<u>544.00</u>	1,163.00

(5)	25/12/19 - 24/3/20	1/4 reserve fund	227.00	
		1/4 boiler insurance	5.00	
		1/4 boiler expenses	387.00	
		1/4 maintenance charge	<u>544.00</u>	1,163.00
				5,416.00

44. The Tribunal notes that on 11 November 2019 payments were made against the Respondent's account by 5 BACS transfers in the total sum of £6,660.50. The Applicant was unable to assist the Tribunal with the precise source of those funds, which were properly applied to reduce the balance of the arrears she owed. The payment, of course, does not influence whether or not sums charged were reasonable in amount, reasonably incurred and correctly demanded.
45. The Tribunal also notes that a credit of £449.95 was applied to the Respondent's account on 20 August 2019, but takes no account of this figure in calculating the service charges due for the year from 1 April 2019, where the credit related to a refund of sums paid for the previous year, to 31 March 2019.
46. From the evidence provided, in the absence of any contrary representation from the Respondent, the Tribunal finds that under the terms of the Lease a service charge was payable by the Respondent to the Applicant. On the evidence presented, the sum of £5,416.00 claimed by the Applicant for the year to 24 March 2020 was reasonable in amount and properly incurred.

25 March 2020 to 24 March 2021

47. The Tribunal has seen the service charge accounts for the year ended 31 March 2021. All items appear to the Tribunal to have been properly included. Once more, where there is a slight disconnect between the end date on the accounts of 31 March, and in the service charge demands which run from 25 March in the first year to 24 March in the second, the Tribunal assesses the latter as the appropriate period for determination of the service charges payable in each service charge year.
48. The Tribunal again accepts, and finds as a fact on the balance of probabilities that the demands were sent to the Respondent on or about the dates specified, and that on the reverse of each demand is a summary of the tenants' rights and obligations.
49. The Tribunal finds that demands for payment were properly made in respect of the following sums:

	Period	Description	£	Total £
(1)	25/3/20 - 23/6/20	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	347.00	
		¼ maintenance charge	<u>589.00</u>	1,168.00
(2)	25/3/20 - 24/3/21	Annual building insurance	805.00	805.00
(3)	24/6/20 - 28/9/20	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	347.00	
		¼ maintenance charge	<u>589.00</u>	1,168.00
(4)	29/9/20 - 24/12/20	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	347.00	
		¼ maintenance charge	<u>589.00</u>	1,168.00
(5)	25/12/20 - 24/3/21	¼ reserve fund	227.00	
		¼ boiler insurance	5.00	
		¼ boiler expenses	347.00	
		¼ maintenance charge	<u>589.00</u>	1,168.00
				5,477.00

50. From the evidence provided, in the absence of any contrary representation from the Respondent, the Tribunal finds that under the terms of the Lease a service charge was payable by the Respondent to the Applicant. On the evidence presented, the sum of £5,477.00 claimed by the Applicant for the year to 24 March 2021 was reasonable in amount and properly incurred.

25 March 2021 to 24 March 2022

51. The Tribunal has seen the service charge accounts for the year ended 31 March 2022. All items appear to the Tribunal to have been properly included. Once more, the Tribunal assesses the period 25 March to 24 March as the appropriate period for determination of the service charges payable in each service charge year.

52. The Tribunal accepts, and finds as a fact on the balance of probabilities that a demand dated 14 April 2021 was sent to the Respondent on or

about that date specified, and that on the reverse is a summary of the tenants' rights and obligations.

53. The Tribunal then notes the evidence of Ms West, contained in paragraph 8 of her witness statement, that Quadrant ceased sending demands for service charges to the Respondent in April 2021 following receipt of legal advice. Having found that the 14 April 2021 demand was sent, the Tribunal takes this evidence as being intended to mean that no demands were sent *after* April 2021.
54. The sums demanded by the 14 April 2021 demand, which the Tribunal finds were properly made, were:

	Period	Description	£	Total £
(1)	25/3/21 - 23/6/21	¼ reserve fund	227.00	
		¼ boiler expenses	441.00	
		¼ maintenance charge	<u>531.00</u>	1,199.00
(2)	25/3/20 - 24/3/22	Annual building insurance	905.00	905.00
				<u>2,104.00</u>

55. The bundle contained no documents, whether by way of application for payment or otherwise, demonstrating that any further sums had been demanded from the Respondent after the demand dated 14 April 2021, covering the period 25 March 2021 to 23 June 2021.
56. In his oral submissions Ms Lederman confirmed that the Applicant made no applications for payment, and served no invoices or other demands upon the Respondent following that document, on the advice of its solicitors.
57. Section 48 of the Landlord and Tenant Act 1987 ("**LTA 1987**") provides that no rent or service charge will be due from any tenant of premises which are or include a dwelling, which definition would include the Property, unless the landlord has served on the tenant a written notice giving the tenant an address in England or Wales at which notices (including notices in proceedings) can be served on the landlord by the tenant.
58. In *Dallhold Estates (UK) Pty Ltd v Lindsay Trading Properties Inc* [1994] EGLR 99, CA, the Court of Appeal held that this meant that rent was not due until the s 48 notice was served. As for rent, so as for service charges.

59. In addition to the above requirement, ss 46 and 47 of LTA 1987 impose requirements for rent and service charge demands addressed to residential tenants. Insofar as is relevant to this case, the requirements include that every demand must set out the name and address of the landlord. Unless a receiver or manager is administering the service charge under a court order (which is not the case here), no service charge will be payable on a demand which omits the above information until that information is supplied in writing (s 47(2) of the LTA 1987).
60. Furthermore, s 21B of the 1985 Act, inserted by the Commonhold and Leasehold Reform Act 2002 requires any demand for service charges to be accompanied by a summary of the tenant's rights and obligations concerning service charges, using the wording prescribed in regulations. The tenant's obligation to pay is suspended until this requirement is satisfied. The current required wording is set out in the Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 and the Service Charges (Summary of Rights and Obligations and Transitional Provision) (Wales) Regulations 2007.
61. It follows that the Respondent was under no obligation to pay any service charges that were not properly demanded of her by way of service of a demand that complied with the above statutory provisions.
62. From the evidence provided, in the absence of any contrary representation from the Respondent, the Tribunal finds that under the terms of the Lease a service charge was payable by the Respondent to the Applicant. On the evidence presented, the sum of £2,104.00 claimed by the Applicant for the year to 24 March 2021 was reasonable in amount and properly incurred.
63. Where no further demands were made, no further sums were payable by the Respondent.

25 March 2022 to 24 March 2023

64. The same principles apply to this service charge year. No applications for payment, invoices or other demands have been made of the Respondent for that year.
65. Where no demands were made, no sums are payable by the Respondent, as matters stand.
66. In respect of the period for which no demands were served, in both the year to March 2022 and to March 2023, Mr Lederman invited the Tribunal to determine that the sums claimed and shown in the account were reasonable and would be payable if a dispensation were occurred.

67. The Tribunal declines to make a determination in relation to a wholly hypothetical scenario, noting that the sums claimed for the year ending 2023 include some £9,137.27 in respect of external decorations and a further £7,777.78 relating to a withdrawal of a concession in respect of the same sequence of works, together totalling some £16,915.05. While the Tribunal makes no determination in this regard, it notes that these appear to be major works engaging the consultation requirements of sections 20 and 20ZA of the 1985 Act and the Service Charges (Consultation Requirements)(England and Wales) Regulations 2003. In his letter to the Respondent dated 22 July 2022, Mr Pomeranc of Pearlmans expressly stated that the Respondent had not been served with the statutory consultation notices in respect of these sums which were, instead, demanded as a price of avoiding forfeiture. The Tribunal considers that it would require further evidence in relation to these matters before it could make any sort of determination as requested by counsel.

Name: Judge Mark Jones

Date: 04 April 2024

Rights of appeal

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

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

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

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

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

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