



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

Case reference : **LON/00AG/LSC/2023/0324
LON/OOAG/LAC/2023/0017**

Property : **Flats 2 and 3 Brunswick Mansions
London WC1N 1PE**

Applicants : **(1) Girish Gupta Ltd
(2) Brunswick Mansions Management
Company Ltd**

Representative : **Mr David Peachey**

Respondent : **Triplerose Ltd**

Representative : **Mr Piers Harrison**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985 and
administration charges under Schedule
11 para 5(1) Leasehold and
Commonhold Reform Act 2002**

Tribunal members : **Judge N O'Brien and Tribunal Member
A Flynn**

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

Date of decision : **21st March 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the total sum of £2,316.24 in relation to buildings insurance is payable by the Respondent in respect of flat 3 for the years 2021 and 2022.
- (2) The tribunal determines that the total sum of £2,292.90 is payable by the Respondent in respect of buildings insurance for flat 2 for years 2021 and 2022.
- (3) The tribunal determines that the sum of £3,096.14 is payable to the second Applicant as an administration charge for the period 1st July 2020 to 15th August 2023.

The applications

1. By an application notice received by the tribunal on 18th August 2023 (reference LON/00AG/LSC/2023/0324) the first and second Applicants seek 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 2021 to 2023.
2. By an application notice dated 17th August 2023 (reference LON/00AG/LAC/2023/0017) the second Applicant additionally seeks a determination pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the Respondent’s liability to pay an administration charge.

The property

3. Brunswick Mansions (the building) is a mansion block, comprising 15 self-contained flats. The first Applicant has been the freeholder of the building since 2017. The second Applicant is the management company named in the leases. The Respondent is the leasehold owner of flats 2 and 3 which are located on the ground and lower ground floor of the building.

The leases

4. The leases, which are tripartite in structure, and are both dated 2 May 2006 for terms of 999 years, are in the same terms apart from their percentage service charge contributions.
5. Under the terms of both leases the Management Company covenants to maintain the building and clean and provide services to the common areas (clause 5(1) and (2)).

6. By clause 4(4), it is the lessor, not the Management Company, who convenes to insure the building. The lessee covenants with both the lessor and the Management Company to pay (by way of further rent) a service charge for insurance (clause 3(1)(b)), as well as the other expenditure of the Management Company (clause 3(2)(a)).
7. The third schedule sets out the Management Company's expenses and outgoings and they include the following:
 - “reasonable costs and proper fees and costs (including legal fees) of the Lessor's agents (which may be a company connected or associated with the Lessor) or the Management Company for the collection of rents and service charge ... and for the general management of the building” (paragraph 7);
 - “all other proper charges assessments and other outgoings ... payable by the Management Company and/or the Lessor ...” (paragraph 16)
 - “the reasonable cost of doing all such other acts matters and things as shall be necessary or advisable for the proper maintenance and administration or inspection of the Building (including ... the appointment and remuneration of ... solicitors...)” (paragraph 19).
8. The service charge percentage is 7.9615% for flat 2 and 8.0425% for flat 3 (Clause 1(8) and fifth schedule, part 3, in each lease).
9. Clause 3(2)(d) of the leases obliges the tenant to pay service charges to the management company. The charge is based on an estimate prepared by the management company and is payable in advance on 1st January and 1 July of each year.
10. Clause 6(3) of the leases provides for the payment of daily interest at 4% above base rate on any sums outstanding for more than 7 days to either the lessor or to the management company. Any sums paid as interest pursuant to this provision are paid into the building's service charge account as income.

The hearing

11. The first and second Applicants were represented by Mr Peachey at the hearing. The Respondent was represented by Mr Harrison.
12. On the morning of the hearing the tribunal was supplied with skeleton arguments prepared by each counsel and 2 additional schedules of interest which had been served by the Applicants on the Respondent the day before the hearing.

13. Neither party requested an inspection and the tribunal did not consider that one was necessary.
14. The tribunal heard oral evidence from Mr Gupta, a director of the first Applicant. We additionally considered his statement which is in the bundle. We also read a witness statement from Ms Chelsea Berlin on behalf of the second Applicant but she was not called to give oral evidence as by the start of the hearing it became clear that none of her evidence was contested. We also read a witness statement prepared by and heard oral evidence from Mr Moskovitz, a director of the Respondent.

The background

15. The Applicants initially sought a determination in respect of all service charges payable in respect of both flats for the years 2021 to 2023. It is common ground that from July 2020 until November 2023 the Respondent did not make any payments at all towards its liability to pay service charges and consequently the application sought a determination in respect of all incurred service charges for both flats for the years 2021 to 2022 and all budgeted service charges for the year 2023. A determination was sought in respect of all demands issued by the second Applicant to the Respondent between 1 July 2020 and 15 August 2023. It is common ground that these demands were for service charges payable in advance and were based on estimates.
16. This is the second application made pursuant to s.27A LTA 1985 before this tribunal involving these parties and these flats. In 2020 the Respondent to this application issued its own application for the determination of service charges for the years 2015 to 2020 (case reference LON/00AG/LSC/2020/0170). The decision of the tribunal resulted in a substantial reduction in the sums payable by the tenant in relation to the cost of buildings insurance and management fees for the years 2019 to 2020. In addition the tribunal on that occasion granted an application made by the tenant pursuant to s.20C LTA 1985 and disallowed the costs of those proceedings.
17. In the course of these proceedings the parties have significantly narrowed the issues in dispute. In particular the Applicants agreed, in its response to the points raised by the Respondent in the Scott schedule served pursuant to the tribunal's directions dated 13 September 2023, to reduce the charge for management fees for the years 2021-2023 to a total of £960.24 per annum for both flats. This was the sum that the tribunal previously determined would have been reasonable for the year 2020. The Applicants also conceded in the Scott schedule that the Respondent should be issued a credit with regard to the legal costs which were previously disallowed by the tribunal pursuant to s.20C LTA 1985, but not until 2024. They accepted that the sum of £7238.30 would be reasonable for buildings insurance for the year 2023. In the Respondent's reply it accepted that the charges sought under the headings professional and company fees, health and safety, entry system, reserve fund and electricity for the relevant years were reasonable and payable and accepted that the sum of

£7,238.30 was a reasonable charge for buildings insurance for the year 2023. It accepted the concession made in relation to management fees.

18. At the start of the hearing the parties identified the remaining issues for determination as follows:
- (i) The reasonableness of the service charges for 2021 and 2022 relating to buildings insurance; and
 - (ii) The payability of an administration charge consisting of contractual interest which the second Applicant asserts is payable by the Respondent in relation to arrears of service charges for both flat 2 and flat 3
19. 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.

Matters remaining in dispute- Insurance

20. The sums initially sought by the first Applicant in relation to the cost of buildings insurance were as follows (for the whole block);

2021	£30,033
2022	£23,540
2023 (est.)	£25,000

21. We note at this stage that the tribunal previously found that the reasonable cost of building insurance for this block would have been £12,000 for the years 2019 to 2020.
22. As set out above, the Applicants conceded that the sum of £7,238 would be reasonable for the year 2023 prior to the hearing. No concession was made in relation to the cost of insurance for 2022 or 2021. This concession was based on an alternative quotation obtained by the first Applicant on 17th November 2023, obtained through an alternative broker; Ferguson Green Insurance Services. It appears that the Applicants have used the same insurance broker; St Giles Insurance and Finance Services Ltd (St Giles) to purchase insurance for the building for several years. In the course of Mr Gupta's evidence he clarified that the quote he had obtained from Ferguson Green was not for a full year, and this is borne out by the policy document included in the bundle at page 103 which states that the period of cover is from 15th November 2023 to 11 May 2024, just short of 6 months. Nevertheless Mr Peachey confirmed in the course of the hearing that his client would not seek to go behind the concession relating to 2023. In its reply the Respondent had accepted that the reduced

sum sought for 2023 was reasonable in amount and therefore we need not consider the cost of buildings insurance for 2023 any further.

23. Mr Gupta told the tribunal that as far as he was aware the reason for the striking difference between the quote obtained through the new broker and the quotes previously obtained through St Giles was the level of excess payable in relation to water damage. In his witness statement he explains that Ferguson Green recommended accepting an increased excess for water damage claims. The effect of increasing the excess for water damage to £5000 was to 'wipe out' the effect of the block's claims history as most historical claims made for water damage were at about this figure. This, he believed, explains the significant difference in the quote his company had previously obtained through St Giles for the year 2023 and the quote he recently obtained through the alternative broker.
24. In its comments in the Scott schedule the Respondent contended that the sum of £8500 per annum would be reasonable for buildings insurance for the years 2021 and 2022. This is based on one quote it obtained in October of 2023. This quote is set out in a short email sent to the Respondent from the Respondent's own broker obtained from Allianz. The tribunal has only been provided with one alternative quote from the Respondent. It includes an excess of £100,000 per claim for flood damage. It is therefore not 'like for like', and of limited use for the purposes of comparison. Further the tribunal has not been provided with any policy documents to enable us to carry out a full comparison of the cover provided; all we have seen is a short email from the Respondent's broker summarising the cost, the cover and the proposed excess figures.
25. The tribunal previously determined that a reasonable figure for insurance for this block for the years 2019 to 2020 would have been £12,000 per annum. Mr Peachey for the Applicants invited us to disregard the previous findings of the tribunal on the grounds that they were for different years and were based on a different, older, claims history. He submitted that due to the dearth of reliable alternative evidence before the tribunal on the last occasion, it was required to base its assessment on a 'stab' at what would be a reasonable sum in respect of buildings insurance for the years then under consideration. The evidential difficulties that faced the tribunal in determining the last application have been replicated in the present. The first Applicant (Respondent in the earlier case) has again relied on market testing carried out by its previous broker St Giles to support the contention that the sums claimed for insurance were reasonable. The Respondent (Applicant in the previous case) has again relied on one quote obtained through their preferred broker indicating that they could obtain insurance for significantly less from Allianz.
26. The obligation on the landlord in respect of purchasing insurance is to achieve a reasonable outcome. The landlord is not under an obligation to show that the quote obtained was the lowest that could be obtained. Further a tenant who wishes to challenge the cost of insurance must show that the any alternative quotes they rely on are genuinely comparable (see *Cos Services v Nicholson* [2017] UKUT 328).

27. It is unfortunate that Mr Gupta did not consider seeking alternative quotes from a different broker earlier than he did, particularly in the light of the striking difference between the determination of the tribunal for the year 2020 and the cost of building insurance, purchased again through its original broker, for 2021 and 2022. The tribunal considers that the first Applicant could and should have done this for the years 2021 and 2022. We were struck by the similarity between the tribunal's assessment of the reasonable annual cost of buildings insurance in December 2021 and the actual quote for 6 months' cover obtained by the first Applicant in November 2023, taking into account the fact that insurance premiums, and in particular building insurance, have increased since 2021. Doing the best we can, and having regard to our expertise as a specialist tribunal, we consider that the sum of £14,400 per annum would be reasonable for the years 2021 and 2022. This means that the total sum payable by the Respondent in respect of insurance for flat 2 for the years 2021 and 2022 together is £2,292.90. The total sum payable by the Respondent in respect of buildings insurance for flat 3 for the years 2021 and 2022 is £2,316.24.

Administration Charge

28. The second Applicant seeks to recover as an administration charge interest due on service charge arrears which it maintains accrued to both accounts from 1 July 2020 to 15 August 2023. It seeks interest on arrears in the sum of £1,756 in respect of Flat 3 and £1,738.17 in respect of flat 2. A schedule of interest calculations appears in the bundle at page 419 and 420.
29. It is common ground that the Respondent did not pay any service charges at all from July 2020 until November 2023 when it paid the sum of £20,000 in respect of both flats. It is common ground that all sums demanded at 6 monthly intervals from 1st July 2020 were all outstanding as at the date on which the interest has been calculated namely 15 August 2023. The Respondent has not disputed in principle its obligation to pay interest at 4% above base rate on all unpaid sums due under the terms of the lease.
30. The second Applicant accepts that it was obliged to credit the Respondent's service charge accounts in the light of the previous determination of the tribunal in December 2021 which substantially reduced the service charges payable by the tenant in respect of the years 2019 to 2020. The credits due to the tenant related to;
- (i) legal fees disallowed by the tribunal pursuant to s20C LTA 1985
 - (ii) Management fees; and
 - (iii) Buildings insurance.
31. The resulting credits reduce the interest payable in respect of the arrears from the date at which they are applied to the account. Initially the Applicants argued that the credits should be applied to the account in the accounting year following the tribunal's determination, save for the credit due in respect of the disallowed legal costs which it contended should be credited to the account in

the 2024 accounting year, being the accounting period after the Upper Tribunal's dismissal of its appeal against the lower tribunal's costs decision. In the course of the hearing Mr Peachy conceded that the service charge accounts should have been credited with an adjustment immediately after the previous determination of the tribunal for the years 2018 to 2020. It was not entirely clear to this tribunal whether he accepted that this was also the position as regards the disallowed legal costs.

32. At the start of the hearing Mr Harrison invited the tribunal to dismiss the claim for interest on the grounds that the applicants had failed to serve a proper schedule showing how the claim for interest is calculated as ordered by the tribunal in the amended directions dated 13th September 2023. The Applicants informed us that the schedule which appears at page 419 of the bundle was served in accordance with the amended directions dated 13th September 2023. It is true that the schedule in the bundle is not as clear as it could be. However on close inspection it does set out the interest rate (4% above base rate being the rate provided for in the lease). It is clear from the calculations that interest is being charged at a daily rate and is not compounded. The schedule does not set out what provisions of the lease entitled the applicant to charge the interest claimed as directed by the tribunal, although this was set out in the original application notice.
33. The Respondent did not raise any issue with the interest schedule served by the second Applicant pursuant to the order of 13th September 2023 until Mr Harrison served his skeleton argument the day before the hearing. The Respondent has been in possession of that schedule since October 2023. The tribunal considers that it is too late now to argue that the claim for interest should be struck out due to non-compliance with the directions. In any event the tribunal considers that there has been substantial compliance with that specific direction and there are no good grounds to strike out the claim.
34. The directions also included a standard direction requiring the tenant to complete a Scott schedule setting out its challenge to the entitlement to interest, and any challenge to the amount. The directions further required the landlord to complete the adjacent column with its response to the issues raised by the tenant.
35. The Respondent complied with that direction and raised the following issues in the Scott schedule in relation to the claim for interest;
 - (i) The Applicant had failed to apply credits to the account due to it following the previous determination of the tribunal;
 - (ii) It would be unreasonable to penalise the Respondent for its unwillingness to make payment given the failure of the Applicant to have any regard to the decision of the tribunal relating to the years 2018-2020, when it sent out its service charge demands for the years 2021-2023;
 - (iii) The Respondent is not liable to pay interest on sums previously determined to be unreasonable by the tribunal;

- (iv) The schedule does not state what interest rate has been applied.

The Respondent did not respond substantively to the figures set out in the Applicants' interest schedules, nor has it provided any alternative calculations.

36. In his skeleton argument Mr Harrison sought to raise 3 further points in relation to the interest claim. In addition to his submission that the claim for interest should be struck out for non-compliance with the directions, he argued that no balancing exercise between the actual and estimated service charges had been carried out since April 2019, meaning that the tribunal could not be satisfied that the arrears shown in the running account are accurate. He also argued that there was no evidence that the landlord had supplied the tenant with a fair summary of the annual expenses or that the annual account had been properly certified in accordance with the terms of the lease. None of these points were raised in the Scott schedule and in the view of the tribunal it is too late to seek to raise them the day before the hearing, not least because the complaint raised by the second and third of Mr Harrison's new points is not that the management company has failed to comply with the lease but that it has failed to prove that it has complied with the lease. The Respondent has not explained why these new points were not raised in the Scott schedule as directed. To allow the Respondent to rely on these points, raised for the first time on the day before the hearing, would unfairly prejudice the landlord, and the other leaseholders who would otherwise have the benefit of interest being paid into the service charge account.
37. The tribunal considers that the first point raised by the Respondent in the Scott schedule is correct. The second Applicant concedes that the interest calculations should give credit for sums which ought to have been credited to the Respondent's account following the tribunal's determination in relation to the years 2019 to 2020. We agree that the correct approach is to recalculate interest to the Respondent giving full credit for the reductions made by the tribunal from the date of the decision i.e. 6th December 2021. These sums should have been credited to the Respondent's account as soon as the decision was made available and it was clear that the respondent had been overcharged for the years 2019 to 2020. The determination of the tribunal was final, and any overpayments would have been recoverable by the Respondent by proceedings in the county court from the date of that determination (see *Termhouse (Clarendon Court) Management Ltd v Al Baljaa* [2022] W.L.R. 1529 at 31).
38. The second Applicant concedes that a credit is due to the respondent's account in relation to the disallowed legal fees, but contends that it is not due until after the end of the financial year ending 31st December 2024 as the decision of the Upper Tribunal was not received until February 2023 (see witness statement of Chelsea Berlin para 19). Mr Harrison contends at paragraph 11 of his skeleton argument that the Respondent's service charge account should have been credited in the relevant year i.e. in 2021.

39. This tribunal concludes that there is no reason why the Respondent's account should not be credited with the disallowed legal fees from the date of the tribunal decision i.e. from 6th December 2021.
40. As regards the second of the four points raised by the Respondent in the Scott schedule, the tribunal has no jurisdiction under Schedule 11 of the CLRA 2002 to reduce a non-variable administration charge on the grounds that it is unreasonable. As regards the third point, the previous decision of the tribunal did not concern the estimated service charges for the years 2021 to 2023 and the respondent has never applied to the tribunal for a determination as to the reasonableness of the service charges demands for those years. Interest has been charged by the second Applicant not in respect of specific items of expenditure but on estimated service charges demanded in advance from 1st July 2020 to 15th August 2023 which it was entitled to demand under the terms of the lease, and which the respondent has never directly challenged. As regards the fourth point, the schedule does state the interest rate applied, although it is easy to miss as the font is tiny.
41. The total credit owed to the respondent in respect of service charges for the years 2019 and 2020, using the figures set out in the Applicant's schedules at pages 419 and 420, is £5,288.01. The additional credit due to the Respondent's account in respect of the legal fees for both flats is £1,268.96. The total credit due to the respondent in respect of both flats on 6th December 2021 was therefore £6556,97. Mr Peachey has helpfully supplied the tribunal with the relevant interest rates inclusive of base rate from 1st July 2020 to August 2023. The total interest due on the applicable credit from 6 December 2021 to 15 August 2023 is £719.35 . The accounts had already been credited with the sum of £318.25 and therefore the amount of interest due has to be reduced by a further £401.10, giving a final figure of £3,093.47.

Section 20C LTA 1985 / Paragraph 5A Schedule 11 CLRA 2002

42. The Applicants and the Respondents agreed with the tribunal's suggestion that the Respondent's costs applications should be dealt with once the parties had the opportunity to consider the tribunal's determination in relation to service charges and administration charges. The parties are to make written submissions, following which the tribunal will determine the Respondent's costs applications on the papers. Directions for the s.20C and paragraph 5 A applications are provided under separate cover.

Name: Judge N O'Brien

Date: 21st March 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).