FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CQ/LSC/2023/0016**
Property	**:**	**Meridian Point Friars Road Coventry CV1 2LB**
Applicant	**:**	**Mr Mark Stride and the 14 additional applicants listed in the Schedule**
Representative	**:**	**Mr Mark Stride**
Respondent	**:**	**Marden Ltd**
Representative	**:**	**Lodders, Solicitors**
Type of application	**:**	**(1) An application for a determination of liability to pay and reasonableness of service charges Section 27A of the Landlord and Tenant Act 1985.** **(2) An application for an Order under section 20C of the Landlord and Tenant Act 1985.** **(3) An application for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal members	**:**	**Judge C Goodall** **Mr D Satchwell FRICS**
Date and place of hearing	**:**	**Paper determination**
Date of decision	**:**	**28 May 2024**

DECISION

Background

1. The application concerns the payability and reasonableness of budgeted service charges for costs associated with building safety in the 2023 and 2024 service charge budgets for the Property.

2. Meridian Point is a seven storey building in Coventry with 31 residential flats, let on long leases.

3. Mr Stride is a long leaseholder. He is joined in this application by 14 other long leaseholders, two of whom own 2 flats. The 15 Applicants therefore own 17 flats between them. The freeholder is the Respondent. The Property is managed by HLM.

4. The application was dated 15 August 2023. The question asked in the application was whether budgeted expenditure of £27,000 in the 2023 service charge budget to fund various works can be passed on to the service charge payers in the light of new building safety legislation, and if so whether the sums charged were reasonable. The application therefore concerns, in part, consideration of the Building Safety Act 2022 (the "BSA").

5. Both parties have provided documents and statements setting out their respective cases. Neither has asked for a hearing. The Tribunal has not considered that in relation to the limited questions we are considering that there is a need for a hearing. This determination is accordingly made on the basis of the documents and submissions made by the parties.

6. Our decision is as set out in the paragraphs below, for the reasons which we now explain.

The documents

7. The Tribunal has worked from the following documents:

    a. The application form;

    b. Comments in support of the application dated 15 August 2023;

    c. A document sent under cover of a letter dated 15 December 2023 from the Respondent providing its explanation for the £27,000 service charge provision and referring to various appendices ("the Respondent's December submission");

    d. A paginated document comprising 163 pages containing the appendices ("the December Appendices");

    e. The Applicant's seven page statement of case ("the Applicant's Case") dated 15 January 2024 explaining his objections to the budgeted charges demanded;

f. The Respondent's six page response to the Applicant's statement of case dated 2 February 2024 ("the Respondent's Reply").

The Property

8. We were informed that the Property is two joined purpose-built blocks of flats, one rising to seven storeys and the other to five storeys and containing 31 residential flats. Neither party ventured any evidence or opinion as to whether it is a higher-risk building (as defined in section 65 of the BSA) or a relevant building (as defined in section 117 of the BSA) or a high-rise residential building (as defined in the Fire Safety (England) Regulations 2022) ("the Fire Regulations"). The distinction is important when considering the application of the BSA and the Fire Regulations to the charges in dispute.

9. In a previous FTT decision under references BIR/00CQ/LDC/2022/0006 and BIR/00CQ/LSC/2022/00 (primarily concerning service charges for a waking watch) ("the 2022 FTT Decision"), it appears that the Respondent received conflicting advice on this question, but the more recent advice was that it measured at least 18m in height and was considered to be a higher-risk building. As this is a paper determination, the Tribunal will work on the assumption that this is correct and the whole Property is to be considered as one higher-risk building under the BSA.

The application

10. The application was dated 15 August 2023. It asked two questions concerning the 2023 service charge year, in relation to a budget provision for additional surveys and assessments / professional fees of £27,000:

    a. To determine that the £27,000 costs that are the subject of the provision would not be reasonably incurred, given they are for [the Respondent] as the Responsible Person / Building Owner to fund to remedy non-compliance with new building safety / fire safety laws and therefore cannot reasonably be passed on to the leaseholders via the service charge, and

    b. If, however, the Tribunal concludes that some of these costs can be passed on via the service charge, to determine the £27,000 is likely to be excessive.

The disputed budgeted expenditure

11. In 2023 and 2024, the Respondent has budgeted to spend the sums shown in table 1 (taken from p75 of the Respondent's December appendices).

Table 1 – budgeted expenditure on fees and services for 2023 and 2024

	2023 (£)	2024 (£)
Glazing survey	2,500.00	
Structural survey		10,800.00

Annual fire door inspection – apartment doors	600.00	
Quarterly communal fire doors inspection	500.00	
Gap analysis for safety case		17,055.60
Mandatory occurrence reporting system	550.00	
Building safety case documentation	16,200.00	20,040.00
Building drawings		1,018.80
Cause and effect matrix	1,500.00	
Premises information box	1,500.00	
Wayfinding signage	750.00	
Fire strategy	1.500.00	9,708.00
Resident information packs	800.00	1,920.00
Actual fire risk assessment	600.00	
Totals	**27,000.00**	**60,542.40**

12. Pages 75 & 76 of the Respondent's December appendices also contains some figures for actual expenditure in 2023. It also has an additional column listing budgeted expenditure for 2024 for health and safety.

13. The Application did not ask for a determination of the payability of actual costs in either 2023 or 2024, and we will make no comment or determination in relation to them.

14. Neither did the Application ask for a determination of either the budgeted expenditure of £60,542.40 set out in the table above, or for a determination of what the Applicant informed us had been charged as an additional budgeted service charge of £20,000 for health and safety costs in the 2024 budget.

15. In paragraphs 5, 19, and 23 of the Applicant's Case however, the Applicant clearly requests that the Tribunal consider the budgeted expenditure for 2024 set out in the above paragraph.

16. In paragraph 4 of the Respondent's Reply, it is stated that the Respondent would be content for the Tribunal to make a determination in relation to this additional budgeted expenditure. We are willing to do so, as will appear below, to assist the parties.

17. The Respondent's reply sets out the breakdown of the additional budgeted sum of £20,000 for health and safety as follows:

- Health and Safety Risk Assessment - £655 plus VAT
- Fire Risk Assessment - £655 plus VAT
- Legionella Survey - £655 plus VAT
- Fixed Wiring Test - £300 plus VAT
- Quarterly communal fire door inspections - £2,808 plus VAT
- Annual flat door inspections - £806 plus VAT

- Estimated remediation works following above inspections – c.£13,000.

18. This means that the budgeted expenditure on fees and services in issue between the parties in this determination is expanded to include the original 2023 budget of £27,000, the budget of £60,542.40 for 2024, and the budget for health and safety costs in 2024 of £20,000. We describe these three elements under consideration as the Provisions.

The Leases

19. We have been informed that the leases are in identical form save for property specific individual content.

20. They are in conventional form, granting a 99 year lease of an individual flat for a premium and a rising ground rent of £190 pa for the first 33 years of the term.

21. The freeholder covenants to maintain the building in which the flats are located and to provide certain services (as set out in the Sixth Schedule). The lessees each covenant (in clause 3.7) to pay a reasonable amount towards the service charge to cover the total expenditure incurred by the freeholder in providing the services. Those services include (taken from the Sixth Schedule):

    1. The compliance by the landlord with every notice regulation requirement or order of any competent local or other authority or statute in respect of the Estate (but not in respect of the individual dwellings where these are the responsibility of the owners)

    17. Providing firefighting equipment appliances and any other signs or notices required by the local fire officer the landlord or insurers of the building and the cost of repair maintenance and renewal of the same and in the event of damage to or destruction of the whole or any part of the building or adjoining building to pay to the landlord forthwith on written demand a fair amount of if appropriate the whole if any insurance excess applicable to the damage concerned to which the reasonable decision of the landlords surveyor shall save in the case of manifest error or an error of law be conclusive [Note: the last five lines appear to contain typographical errors]

    19. Carrying out any other works or providing services or facilities of any kind whatsoever which the landlord or its managing agent may from time to time consider desirable for the purpose of maintaining or improving the services or facilities in or for the Estate

Law

22. Sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the

lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.

23. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    a. The person by whom it is or would be payable
    b. The person to whom it is or would be payable
    c. The amount, which is or would be payable
    d. The date at or by which it is or would be payable; and
    e. The manner in which it is or would be payable

24. Section 19(1) of the Act provides that:

    "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

    and the amount payable shall be limited accordingly."

25. Section 19(2) of the Act provides that:

    "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."

26. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten [1985] 2EGLR100 / Daejan Investments Ltd v Benson [2011] EWCA Civ 38*).

27. When interpreting a written contract, the Tribunal has to identify the parties' intention by reference to what a reasonable person having all the relevant background knowledge would understand the terms to mean. We have to focus on the meaning of the words in their context and in the light of the natural meaning of the clause; any other relevant provisions; the overall purpose of the clause and the lease; the facts and circumstances

known by the parties at the time; and commercial common sense (*Arnold v Britton* [2015] UKSC 36).

Building Safety Act - Remediation costs for certain defects

28. Sections 116 – 122 and Schedule 8 of the Building Safety Act 2022 (the "BSA") provide statutory protections for certain lessees which eliminate or restrict the service charges payable by lessees for remediation costs arising from relevant defects.

29. The BSA is heavily dependent upon definitions, which have to be carefully applied, to identify the exact nature of the service charge protections. The key definitions relevant in this case are:

    a. A lease is a "qualifying lease" if—

        (a) it is a long lease of a single dwelling in a relevant building,

        (b) the tenant under the lease is liable to pay a service charge,

        (c) the lease was granted before 14 February 2022, and

        (d) at the beginning of 14 February 2022 ("the qualifying time")—

            (i) the dwelling was a relevant tenant's only or principal home,

            (ii) a relevant tenant did not own any other dwelling in the United Kingdom, or

            (iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease [section 119(2) of the BSA];

    b. "Relevant building" means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—

        (a) is at least 11 metres high, or
        (b) has at least 5 storeys.

        This is subject to subsection (3) [Section 117(2) of the BSA – Subsection (3) does not require to be set out in this case];

    c. "Relevant defect", in relation to a building, means a defect as regards the building that—

        (a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

        (b) causes a building safety risk [Section 120(2) of the BSA];

    d. "Relevant works" means any of the following—

(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

"The relevant period" here means the period of 30 years ending with the time this section comes into force. [Section 120(3) of the BSA]

e. "Building safety risk", in relation to a building, means a risk to the safety of people in or about the building arising from—

(a) the spread of fire, or

(b) the collapse of the building or any part of it

f. "Relevant measure", in relation to a relevant defect, means a measure taken—

(a) to remedy the relevant defect, or

(b) for the purpose of—

(i) preventing a relevant risk from materialising, or

(ii) reducing the severity of any incident resulting from a relevant risk materialising [Schedule 8 para 1(1) of the BSA];

g. "Relevant landlord" means the landlord under the lease at the qualifying time or any superior landlord at that time [Schedule 8 para 2(4) of the BSA];

30. Schedule 8 contains the following protections in respect of any qualifying building irrespective of whether it is a higher-risk building:

a. In relation to a lease of any premises in a relevant building, no service charge is payable in respect of a relevant measure relating to a relevant defect if a relevant landlord is responsible for the defect or is associated with a person who is responsible [Schedule 8 para 2(2)]. Note that this protection does not require that the lease has to be a qualifying lease;

b. No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the relevant

landlord's group net worth was above limits set out in para 3 of Schedule 8 of the BSA [Schedule 8 para 3];

c. No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the value of the qualifying lease was less than £175,000 (outside Greater London) [Schedule 8 para 4];

d. If a service charge is otherwise payable under a qualifying lease in respect of a relevant measure relating to any relevant defect, subject to issues concerning the timing of a service charge demand, a maximum sum of £10,000 (outside Greater London) can be charged [Schedule 8 paras 5 & 6];

e. If a permitted maximum service charge is payable under the preceding paragraph, only one tenth of that maximum charge can be demanded in any period of 12 months ending on the day the service charge fell due [Schedule 8 paras 7];

f. No service charge payable under a qualifying lease can be levied for cladding remediation – that is the removal or replacement of ant part of a cladding system that forms the outer wall of an external wall system and is unsafe;

g. No professional or legal costs are payable under a service charge for advice in relation to the potential liability of any person incurred as a result of a relevant defect;

Higher-risk buildings

31. Part 4 of the BSA makes provisions concerning the management of building safety risks as regards occupied higher-risk buildings.

32. "Building safety risk" means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—

    (a) the spread of fire;

    (b) structural failure;

    (c) any other prescribed matter. [Section 62 of the BSA]

33. "Higher-risk building" means a building in England that—

    (a) is at least 18 metres in height or has at least 7 storeys, and

    (b) contains at least 2 residential units. [Section 65 of the BSA]

34. In broad terms, the BSA requires an accountable person to be identified who will have responsibility for the building. A regulator has been set up to register all higher-risk buildings. The accountable person must assess the building safety risks arising in the building at regular intervals and take all reasonable steps to prevent a building safety risk materialising and reduce the severity of any incident resulting from such a risk materialising [Sections 83 – 84 of the BSA].

35. An accountable person must prepare a safety case report which contains any assessment of the building safety risks and provide a copy to the Regulator [Section 85 – 86 of the BSA].

36. Sections 87 – 90 contain duties of the accountable person relating to obtaining and providing copies of information about the building, including an obligation to establish and operate an effective mandatory occurrence reporting system [Section 87(5) & (6)].

37. Section 91 requires the accountable person to prepare a residents engagement strategy for promoting participation in the making of building safety decision.

38. Section 112 of the BSA amends the Landlord and Tenant Act 1985 by adding sections 30C – 30H to the Act. Section 30D is a provision that adds new implied terms into all leases for more than 7 years under which a tenant has to pay a service charge. The new terms are that all such leases now contain a term that has the effect that the matters for which the service charge is payable under these leases now include the taking of any building safety measures.

39. "Building safety measures" means any of the following:

    (a) applying for registration of a higher-risk building in accordance with section 78 of the Building Safety Act 2022;

    (b) applying for a building assessment certificate in accordance with section 79 of that Act;

    (c) displaying a building assessment certificate in accordance with section 82 of that Act;

    (d) assessing building safety risks in accordance with section 83 of that Act;

    (e) taking reasonable steps in accordance with section 84 of that Act (management of building safety risks), other than steps involving the carrying out of works as referred to in section 84(2);

    (f) preparing and revising a safety case report in accordance with section 85 of that Act;

(g) notifying the regulator of a safety case report, and giving a copy of a safety case report to the regulator, in accordance with section 86 of that Act;

(h) establishing and operating a mandatory occurrence reporting system, and giving information to the regulator, in accordance with section 87 of that Act;

(i) keeping information and documents in accordance with section 88 of that Act;

(j) giving information and documents to any person in accordance with section 89, 90 or 92 of that Act;

(k) complying with any duty under section 91 of that Act (residents' engagement strategy);

(l) establishing and operating a system for the investigation of complaints in accordance with section 93 of that Act;

(m) giving a contravention notice to a resident, and making an application to the county court, in accordance with section 96 of that Act;

(n) making a request to enter premises, or making an application to the county court, in accordance with section 97 of that Act (access to premises).

Fire Safety (England) Regulations 2022

40. The Fire Regulations came into force on 23 January 2023. They provide new duties in respect of high-rise residential buildings.

41. A high-rise residential building is defined in Regulation 3. It is a building containing two or more sets of domestic premises that is at least 18m above ground level and which has at least seven storeys. The Regulation contains measuring protocols that are not identical to those in the BSA.

42. The duties in the regulations are upon the person responsible for a high-rise residential building include (summarising – the full text should be consulted for the relevant detail):

a. Installation and maintenance of a secure information box containing specified information (Reg 4);

b. Preparation of a record of the design of the external walls of the building, including materials from which they were constructed (Reg 5);

c. Preparation of floor plans for each floor of the building (Reg 6);

d. Monthly checks of lifts and a duty to take steps to rectify any faults identified and make the record of the checks available to residents (Reg 7);

e. Ensure there are clear markings of floor identification, described as wayfinding signage (Reg 8).

f. Provide the local fire and rescue authority by electronic means with the documents specified in regulations 5 & 6.

43. A duty is also imposed on a responsible person in relation to a building which contains two or more sets of domestic premises, and which contains common parts through which access would be required in case of emergency to:

a. Provide information on fire safety instructions to residents in a conspicuous part of the building, including instructions relating to evacuation, and to provide a copy to residents (Reg 9);

b. Provide information about fire doors (Reg 10(1) – (3)).

44. A duty is imposed on a responsible person in respect of a building which contains two or more sets of domestic premises, and which is above 11 metres in height to:

a. Undertake, and keep a record of, checks on fire doors at the entrance of individual domestic premises at least every 12 months;

b. Undertake checks on any fire doors in the communal areas of the premises at least every 3 months (Reg 10(4) – (7).

The Applicants' case

45. The Applicant does not believe the Respondent can include the Provision within the service charge because (inevitably this is a summary):

a. The overarching principle of the post-Grenfell legislation is to put the moral, legal, and financial onus for keeping buildings safe upon the freeholder, whereas the Respondent is seeking to charge the lessees for the costs of complying with legislative requirements;

b. The Tribunal should apply the spirit of the law rather than the exact letter of the law when considering its determination;

c. The costs of the budgeted charges are relevant measures required to remedy relevant defects and therefore cannot be passed on to service charge payers;

d. The rationale for this approach is that if costs need to be incurred in order to comply with legislation, there must be a defect in the current status, so that the costs are "to remedy a defect";

e. An example is that if floor plans for the Property do not exist, then the Property does not comply with legislation and is therefore defective, requiring that a relevant measure be taken to remedy that defect;

f. It is the Respondent's obligation to comply with the BSA, and it must be correct that discretionary costs to put it in the position of being able to comply should be at its own cost;

g. If that is wrong, the charges are excessive. The Respondent has chosen to appoint the more expensive adviser against an alternative contractor from whom it requested a quote.

46. On the final point above, the Applicant is referring to quotations for the supply of services contained in the December Appendices obtained by the Respondent. These indicate:

a. Contractor 1 (quote dated 5 May 2023)

Safety Case Gap Analysis and Safety Case Report £11,666

Mark up of floor plans - £849

Preparation of a retrospective building fire safety strategy - £8,090

Sample Compartmentation Survey - £3,000

Structural survey - £9,000

Opening up building (if required) - £1,200

Resident Engagement Strategy - £1,600

Review of Safety Case Report - £2,547

Total - £37,952

b. Contractor 2 (Quote dated 24 July 2023)

Applicability review - £2,124

Initial Safety Case report development - £10,409

Year 2 safety case review / update - £3,645

Total - £16,178

47. The Respondent elected to proceed with contractor 1, which appears to be substantially more expensive than contractor 2.

48. These points are not the full extent of the Applicant's criticisms of the Respondent. He also pointed out the criticism of the Respondent

contained in the 2022 FTT Decision, in which the FTT determined that an application for waking watch costs from Government Funds was not competently progressed. He states that the Respondent's incompetence has caused distress, and their actions have been unfair and unempathetic to the lessees. These criticisms are denied by the Respondent.

The Respondent's case

49. The Respondent's case is that the charges included in the Provision arise under section 85 of the BSA and under the Fire Regulations (specifically regulations 4, 6, 8, and 10).

50. The Applicants cannot rely upon the statutory protections contained in Schedule 8 of the BSA as the charges in the Provision are not relevant measures to cure a relevant defect.

51. There is a contractual basis, in paragraphs 1, 17, and 19 of Schedule 6 of the leases which obliges the Applicants to pay the charges included in the Provision.

52. So far as the challenge to the quantum of the charges is concerned, the Respondent has drawn the Tribunal's attention to the following:

    a. The costs included in the Provision were for compliance with entirely new legislation, so a "best guess" approach had to be taken;

    b. There are a limited number of contractors with the capability of providing the required quality of professional advice to the Respondent;

    c. In an HSE document dated 1 October 2023 concerning the building regulators charging scheme, an hourly rate for work had been quoted at £144 per hour;

    d. In government guidance on creating a safety case for a high-rise residential building, the extent of work required had been set out, the Respondent's agent had estimated that around three weeks of work was required.

53. The Respondent submits that the charges included in the Provision are reasonable and proportionate and the Tribunal should determine them to be recoverable.

Discussion

54. This is an application under section 19(2) of the Act for a determination of whether service charges payable before the costs are incurred are greater than is reasonable. No evidence was before the Tribunal of the final outcome of the service charge accounts for 2023. We will not consider the limited amount of evidence before us about actual expenditure in 2023 (primarily on fire door repairs), as foreshadowed in paragraph 14 above, because it does not appear to us that that is the focus of the Application. If

lessees wish to challenge the inclusion of such costs when the 2023 or 21024 accounts are produced, they may make an application under section 27A of the Act at that point.

55. The issue for us to determine is whether the sums budgeted for in the Provisions are payable.

56. We firstly consider whether, apart from the new statutory protections in Schedule 8 of the BSA, the sums in the Provisions would be contractually due from the Applicants.

57. We are satisfied that paragraph 1 of the Sixth Schedule of the Leases is wide-ranging enough to include all of the costs arising under section 83 – 93 of the BSA in the Provisions. The costs of compliance by the landlord with every statute in respect of the Estate are recoverable from the lessees under that clause. We are satisfied that the new and extensive statutory obligations arising from sections 83 – 93 of the BSA fall under this wording.

58. We need to determine whether the costs in the Provisions for specific compliance with the Fire Regulations also fall within the contractual obligations in the Leases.

59. There is no doubt that the obligations in the Fire Regulations are statutory and would fall within paragraph 1 of the Sixth Schedule of the Lease. The question is whether the Fire Regulations apply to the Property.

60. In paragraph 10 above, we determined to treat the Property as a higher-risk building under section 85 of the BSA. It is not axiomatic that it is also a high-rise residential building under regulation 3 of the Fire Regulations. The definitions of these two terms is not identical and although both definitions contain a reference to a height of 18m, the measuring protocols are not identical either. Neither party provided evidence to us on this point, though it was clearly implied in the Respondent's submissions that it believes the Property is a high-rise residential building under the Fire Regulations.

61. We will make our determination on the assumption that this is correct. We are not able to make a finding to that effect as there is no evidence before us to confirm either way. If this is wrong, again, this decision would need to be reviewed.

62. Accordingly, we determine that costs arising from compliance with sections 83 – 93 of the BSA and from the Fire Regulations are contractually chargeable to the lessees of the Property.

63. If we were in doubt, we also note that certain specific costs are now payable under service charges by virtue of section 30D of the Act, including costs associated with compliance with section 83 to 93 of the BSA. Section 30D therefore brings them within the permitted charges

allowed to be made under the Leases even if there were doubt about the reach of paragraph 1 of the Sixth Schedule (which in our view there is not).

64. This brings us to consideration of whether Schedule 8 of the BSA provides any protection to the lessees from the costs set out in the Provisions.

65. The answer to this question depends on whether those costs are the costs of relevant measures to remedy a relevant defect. If they are, they cannot be included within a service charge. However, our view is that they are not.

66. A relevant defect is a defect in a building that arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works which causes a building safety risk (see paragraphs 32(a) – (e) above). Relevant works are works relating to the construction or conversion of the building (so as to ensure there is no risk from fire or collapse) as is set out in sub-paragraph (a) of the definition, and which in our view drives the correct interpretation of sub-paragraphs (b) and (c) as well.

67. We have a very clear view that what the BSA is seeking to achieve in these provisions is to prevent lessees being charged the building costs arising from required works needed to avoid the spread of fire or the collapse of a building (see definition of relevant defect).

68. None of the costs set out in the Provisions fall within that category. Schedule 8 does not apply to the proposed charges in the Provisions.

69. Schedule 8 of the BSA does not protect service charge payers from the costs arising from the regulatory requirements in sections 83 – 93 of the BSA or the Fire Regulations if the person incurring those costs has a contractual right to pass them on to the lessees.

70. Our next task is to determine whether the costs set out in the provisions are costs to be incurred in complying with statute and regulation. Neither party has provided a line by line analysis of the costs by reference to the regulations that justify them. We can only make general comments, and we have reached a general conclusion as will appear below.

2023 budgeted costs of £27,000

71. Looking firstly at the 2023 budgeted costs, we do not know why a glazing survey was required. Neither party has commented on this item. Fire door inspections are required under regulation 10 of the Fire Regulations so a provision is reasonable. A mandatory occurrence reporting system is required under section 87 of the BSA. A building safety case is required under section 85 of the BSA. We do not know what is meant by a cause and effect matrix. A premises information box is required under regulation 4 and wayfinder signage is required under regulation 8 of the Fire Regulations. Resident information packs are required under regulation 9. Fire risk assessment on buildings have been required in any event for many years.

2024 budgeted costs of £60,542.40

72. It is arguable that the cost of a structural survey and a gap analysis would be required for the Respondent to comply with sections 83 and 84 of the BSA. The need for a building safety case was identified above in relation to 2023. Building drawings would be needed to comply with regulation 6 of the Fire Regulations. A fire strategy would reasonably be necessary to comply with the obligation in section 91 of the BSA. Resident information packs are required, as identified above, to comply with regulation 9 of the Fire Regulations.

The health and safety budget for 2024 of £20,000

73. The budgeted items in paragraph 18 above total a little over £20,000. Apart from the fire door inspections, none of the budgeted items appear to us to be excessive or unreasonable in the light of our experience and expertise in property management. So far as the fire door inspections are concerned, it is the cost of quarterly communal fire door inspections that raised our eyebrows the highest. However, neither party has given us any evidence of the nature or quantity of the fire doors. The need to carry out the inspections arises from regulation 10 of the Fire Regulations, so inspection in principle is reasonable.

74. Having commented on the Provisions generally, we now need to decide whether there is a basis for determining that any of them should not reasonably have been included in a budget.

75. We observe that there is supportive justification for budgeting for some cost arising from the need to comply with the BSA and the Fire Regulations, both of which are fairly recent.

76. Generally, the Tribunal would look to the Applicant in a section 19(2) case to have provided alternative quotes for the items disputed. There were none. This is therefore not a case for fine-tuning a budget. We can and do, however, have to consider whether when we consider it overall, it is in roughly the right ball-park for anticipated expenditure.

77. For 2023, we make no change to the budgeted sum, as accounts will presumably be produced fairly soon. Any variation to the 2023 budget, even if there were a strong case for varying it, would therefore require more administrative work which would be unlikely to be cost-effective.

78. The truth is that the new obligations imposed on the responsible person in control of both higher-risk buildings and high-rise residential buildings will take some time to bed down. It is difficult to criticise the Respondent for including costs in principle that may possibly turn out to have been unnecessarily included within the Provisions.

79. We cannot however find any explanation from the Respondent that justifies the extent of the budget for 2024. The quotes for professional advices referred to in paragraph 46 above cannot support a budget over

two years of around £87,000 for these costs when the highest quote was in the region of £37,000. Very few of the costs of gearing up for BSA compliance would be likely to recur annually. Our view is that a reasonable budget sum for 2024 would be £30,000.00 rather than c£60,000.00. Together with the 2023 budget of £27,000, the Respondent has adequate provision, in our view, for the possible BSA and Fire Safety compliance costs it faces. **We therefore determine that the budget for 2024 should be reduced overall by the sum of £30,542.40.**

80. The Applicants' do not necessarily save any money as a result of this determination. If the Respondent in fact needs to spend more than is budgeted and has a good case for justifying that that expenditure is reasonably incurred for services of a reasonable standard, the 2024 actual expenditure outcome will be higher than the budgeted sum but will still be payable by the Applicants.

81. Apart from this one amendment to the 2024 budget, the remaining budgeted sums contained in the Provisions are in our view reasonable estimates.

82. The Applicant has placed reliance in this case on the argument that there is a general sense that landlords (or perhaps more accurately developers) have been responsible for building defects which have increased the risk of fire or danger, and so morally, and within the "spirit" of the law, lessees should not have to face any costs arising from regulatory measures brought in to reduce that risk.

83. The Tribunal does not have a role in determining what it would like the law to be. We must identify and interpret the law that is actually in place to the facts as they are presented to us. We fully understand the sentiment behind the Applicant's argument, but it is not one we can adopt. Our determination is based on our understanding of the letter of the law.

84. Likewise, despite understanding the point made by the Applicant that we have mentioned in paragraph 48 above, our task is not to determine the level of the Respondent's competence or otherwise, or to reflect any distress experienced by the Applicants in our decision.

Costs

85. The Applicants have applied for costs protection orders under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

86. A section 20C order would prevent the Respondent from charging any of its costs of these proceedings to the service charge. The Tribunal has discretion to make whatever order it considers just and equitable in the circumstances.

87. No costs could be charged to the service charge anyway unless there is a provision in the lease allowing this. Neither party has made submissions as to the terms of the lease on this point.

88. If there is a right under the lease to charge the Respondent's legal costs of this case to the service charge, for the Tribunal to deny that right is an interference with the Respondent's legal rights and our discretion should therefore be exercised with care.

89. There is a case for a limited adjustment to the Respondent's ability to recover all of its costs in this case under the service charge, if indeed the leases permit this, as we have adjusted the 2024 budget sum. We determine that we will make a section 20C order to the effect that **twenty five per cent (25%) of the Respondents costs of these proceedings (if they are payable under the lease) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants in these proceedings**.

90. A paragraph 5A order operates to prevent the Respondent from claiming its costs from any individual under any provision in the Lease which allows the Respondent to demand the costs from a particular lessee. Again, our discretion is to make such order as is just and equitable.

91. Our view is that it would not be just and equitable for the Respondent to seek to recover all of its costs from a single, or selected, lessees. It can do so from the service charge, subject to our section 20C order made above. **We do therefore make an order in favour of all the Applicants under paragraph 5A that any litigation costs arising from the proceedings before this Tribunal in this case are extinguished.**

Appeal

92. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)

Appendix

Additional Applicants

Lisa Yang
Alan Wong (2 flats)
Yang Ming
Fiji Ahmandinejad
Andrew & Kate Bennett
David Cox
Janush Skopowski (2 flats)
Dean Stoner
Gazella Moradi
Gary Wayne
Rob Hunt
Richard Charlesworth
Caroline Watkins
Damian Kaczor