FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2023/0324** **LON00AG/LAC/2023/0017**
Property	**:**	**Flats 2 and 3 Brunswick Mansions London WC1N 1PE**
Applicant	**:**	**Girish Gupta Ltd** **Brunswick Mansions Management Company Ltd**
Representative	**:**	**Dale and Dale Solicitors**
Respondent	**:**	**Triplerose Ltd**
Representative	**:**	**Scott Cohen Solicitors**
Type of application	**:**	**Application under s20C LTA 1985 and Paragraph 5A of Schedule 11 to the CLRA 2002**
Tribunal members	**:**	**Judge Niamh O'Brien** **Tribunal Member A Flynn MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision (costs)	**:**	**9 May 2024**

DECISION

© CROWN COPYRIGHT

Decisions of the Tribunal

(1) The Tribunal allows the applications for orders under s20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in part. The Tribunal orders that 50% of the costs of incurred by the Applicants in respect of both applications may be taken into account in determining the amount of (1) the service charges payable by the Respondent and (2) the Respondent's liability to pay litigation costs as defined by paragraph 5A of the CLRA 2002.

(2) The Tribunal orders the Respondent to reimburse the Applicants in respect of the tribunal fees paid in respect of both applications.

The application

1. The Applicants sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (LTA 1985) as to the amount of service charges payable by the Respondent in respect of the service charge years 2021 to 2023. Separately the Second Applicant sought a determination pursuant to paragraph 5 of Schedule 11 Commonhold and Leasehold Reform Act (CLRA 2002) as to the Respondent's liability to pay an administration charge. Both applications were heard together at a hearing which took place on 6 March 2024.

2. It is common ground that as at the date of issue of both applications the Respondent had not made any payments towards its service charge account since June 2020. Consequently the s.27A application initially sought a determination in respect of all service charges payable in respect of both flats for the years 2021 to 2023. The application under paragraph 5 of Schedule 11 to CLRA 2002 related to contractual interest which the Second Applicant claimed in respect of arrears on the service charge accounts for both flats.

3. By the date of the hearing the parties had significantly narrowed the issues in dispute between them, although there remained some dispute as to which issues had been conceded in the course of the proceedings and which remained to be determined. At the start of the hearing the tribunal concluded that the only issues which remained to be determined were:

   (i) the reasonableness of the service charges for the years 2021 and 2022 in respect of buildings insurance; and
   (ii) The amount of the contractual interest recoverable as an administration charge.

4. In a written decision dated 21 March 2024 the Tribunal determined that the sums sought in respect of buildings insurance for both years were

excessive and reduced them by approximately 50%. In relation to the claim for interest the First Applicant sought contractual interest in the sum of £3494 in respect of both flats. The Tribunal determined that the sum of £3,093.47 was due as interest under the terms of the leases.

5. At the end of the hearing the Tribunal invited both parties to make written submissions in respect of the Respondent's applications for determinations under s20C of the LTA 1985 and Paragraph 5A of Schedule 11 to CLRA 2002 in respect of the costs of the proceedings following receipt of the decision. Both parties provided the Tribunal with written submissions.

The law and relevant authorities

6. Section 20C of the LTA 1985 as amended provides:

(1) A tenant may make an application for an order that all or any of the costs incurred or to be encouraged by the landlord in connection with proceedings before the… first tier tribunal… are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The court or tribunal to which the application is made may make such order in the application as it considers just and equitable in the circumstances.

Paragraph 5A of schedule 11 to the CLRA 2002 provides:

(1) A tenant of a dwelling in England may apply to the relevant court tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers just and equitable.

7. In *The Tenants of Langford Court (Sherbani) v Doren Ltd LRX/37/2000* HH Judge Riche QC set out the principals upon which the s20C discretion should be exercised:

> 31. *In my judgement the primary consideration that the LVT should keep in mind is the power to make an order under section 20C should only be used in order to ensure that the right claim costs as part of service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not in any event be recoverable by reason of section 19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which is heard the litigation giving rise to the costs can avoid arguments under section 19 but its purpose is to*

give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants, or some particular tenant, should have to pay them.

8. In *Re SCMLLA (Freehold) Ltd [2014]UKUT 58 (LC)* Martin Roger QC sitting in the Upper tribunal observed:

> *An order under section 20C interferes with the parties' contractual rights and obligations and for that reason or not to be made lightly or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances.*

9. The importance of considering the consequences of the order was reinforced in *Conway v Jam Factory Freehold Limited [2013] UKUT592* (LC) where it was emphasised that in any application for section 20C it is essential to consider what will be the practical and financial consequences for all of those who will be affected by the order and to bear those consequences in mind when deciding on the just and equitable order to make.

10. In *Church Commissioners v Derdabi [2010] UKUT 380 (LC*) HHJ Gerald considered the approach which the Tribunal should take in cases where the tenant has partially succeeded, and the tribunal is considering reducing the costs recoverable by the landlord;

> 22. *Where the landlord is to be prevented from recovering part only of his costs via the service charge, it should be expressed as a percentage of the costs recoverable. The tenant will still of course be able to challenge the reasonableness of the amount of the cost recoverable, but provided the amount is expressed as a percentage it should avoid the need for a detailed assessment or analysis of the costs associated with any particular issue.*
>
> 23. *In determining the percentage it is not intended that the tribunal conducts some sort of mini taxation exercise rather, a robust, broad brush approach should be adopted based upon the material before the tribunal and taking into account all relevant factors and circumstances including the complexity of matters an issue and the evidence presented and relied in respect of them, the time occupied by the tribunal and any other pertinent matters. It would be a rare case where the appropriate percentage is not clear. It is the tribunal seized with resolving the substantial issues which is best placed determined all of these matters.*

The parties' respective submissions

11. In summary the Respondent submits that both Applicants have behaved unreasonably and oppressively in ignoring the previous findings of the tribunal in case ref LON/00AG/LSC/2020/0170 as to the reasonableness of service charges levied for the years 2017 to 2020 in particular as regards management fees and buildings insurance. It submits that it has again succeeded in obtaining significant reductions in the charges relating to buildings insurance in these proceedings Further it highlights the fact that the Second Applicant only agreed to bring the management fee in line with the tribunal's prior determination after service of the Respondent's statement of case in these proceedings. The Respondent submits that the Second Applicant's concession that the Respondent was entitled to a credit on the service charge account in respect of the legal costs of the previous proceedings came late in the day and in any event it wrongly sought to delay the application of that credit to the account, leading to an inflated interest claim.

12. In its written submissions the Respondents appears to seek further disclosure of documents relevant to the shared liability between the First and Second Applicants in respect of legal costs. It is not entirely clear whether the Respondent is making an application for disclosure now, whether it is flagging its intention to make an application for specific disclosure in a further application under s27A, or whether it is simply making a rhetorical point. In any event it is difficult to see if this is an application for further disclosure what order the tribunal could usefully make at this stage of these proceedings.

13. The Respondent points out that it successfully applied for orders under s20C LTA 1985 and paragraph 5A sched.11 CLRA 2002 in the previous proceedings and submits that the case for the same in these proceedings is even stronger as the Applicants have ignored the previous findings of the tribunal on that occasion.

14. In summary the Applicants submit that no order limiting the ability of the landlord to recover costs should be made. They point to the fact that the Respondent paid nothing at all between June 2020 to November 2023. They point to repeated requests made by the Second Applicant for at least part payment in respect of its ongoing liabilities, which were met with demands that the sums claimed in respect of management fees and insurance be reduced in line with the previous determination of the tribunal. The Applicants submit that the determination of the tribunal in respect of management costs and insurance for the years 2017 to 2020 has no bearing on what would be a reasonable charge for these items for the years 2021 to 2023. They also submit that the Respondent behaved unreasonably in the course of the hearing by seeking to re-open matters which it had already conceded, such as the management fee, and in seeking to argue for the first time at the hearing that the interest claimed was not payable at all and that the application under paragraph 5 of schedule 11 to CLRA 2002 should be struck out.

Reasons for the Decision.

15. Having considers the submissions made by all parties the Tribunal considers that it should make the orders sought by the Respondent but limited to 50% of the costs of the proceedings. The tribunal accepts that the previous decision did not set a binding precedent however it is clear that both the First and Second Applicants ignored its detailed determination as to the reasonableness of the service charges levied in particular in relation to management fees and buildings insurance for the years 2017-2020. It continued to levy charges which were completely at odds with the thrust of that decision with no clear justification. Further we are perplexed as to how the First Applicant could have concluded that it was justified in charging interest on legal costs that had been disallowed by the tribunal in 2021.

16. Had the Respondent behaved in a reasonable manner we would have had no hesitation in making the orders it seeks. However, the Respondent's conduct in this matter has been poor. It failed to make any payment at all towards its ongoing liabilities for over 3 years. We note that the Respondent's service charge liability amounted to approximately 16% of the total annual expenditure for Brunswick House, and we accept that the Applicants had no choice but to apply to this tribunal, as the Respondent's refusal to pay anything at all for over 3 years was affecting the second Applicant's ability to manage the block effectively. It is apparent that in reality the Respondent's dispute related to 2 specific items of annual expenditure; the management fees and the buildings insurance. However, the correspondence relied on by the Applicants indicates that the Respondent would not countenance paying even a reasonable proportion of what it owed until all matters were settled to its satisfaction. We do not consider that it was justified in withholding all payments until after disclosure took place in these proceedings. As an entity well-versed in service charges and service charge disputes it would have been well aware of its statutory right to inspect relevant invoices should it wish to do so. Furthermore, the tribunal was unimpressed with the Respondent's attempt to re-open matters which it had previously conceded, and to raise new legal arguments in relation to the recoverability of interest on the evening of the hearing.

17. Both the Respondent and the Applicants conducted themselves in an unreasonable manner. We bear in mind that in making an order under both s20C and paragraph 5A we are not only interfering with the parties contractual rights, we are also potentially increasing the financial burden on other leaseholders in Brunswick House, however their rights to apply to this tribunal under s27A LTA 1985 and/or paragraph 5A sched.11 CLRA 2002 are not affected by this determination. Additionally, we bear in mind that the Second Applicant's only source of income is the service charges paid by leaseholders.

18. We were not invited by either the Respondent or the Applicants consider making different orders in respect of the two applications before the Tribunal and the issues of conduct outlined above apply equally to both.

19. The First and Second Applicants have sought reimbursement of the tribunal fees. Rule 13 (2) of the Tribunal Procedure Rules permits the tribunal to award part of the fees. We consider that the Respondent should reimburse 50% of the tribunal fees to the Applicants in relation to both applications, for the reasons set out above.

Name: Judge O'Brien **Date:** 7 May 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).