FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/LSC/2022/0368**
HMCTS code	**:**	**Face-to-face Hearing**
Property	**:**	**36 Sheengate Mansions, 243 Upper Richmond Road West, Mortlake, London, SW14 8QS**
Applicant	**:**	**Tranhome Management (Sheengate Mansions Limited)**
Representative	**:**	**Cassandra Zanelli (Solicitor and Director, Property Management Legal Services Limited)**
Respondent	**:**	**Kate Anne Benest**
Representative	**:**	**In person**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. Richard Waterhouse FRICS** **Mr. O. Miller**
Date and Venue of hearing	**:**	**22 May 2023 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**23 May 2023**

DECISION

Decisions of the tribunal

(1) The Tribunal is satisfied that the amount of service charges due from the Respondent for the year end 30 September 2021 was £1,614.30.

(2) The amount of service charges due from the Respondent for year ending 30 September 2022, was £9,547.52.

(3) In so far as sums in excess of these amounts were demanded from the Respondent, as detailed in paragraph 15, 18, 22-26 of the Submissions on Behalf of the Applicant in Reply to the Respondent's Response, the Applicant that the Respondent's contributions in succeeding accounting periods will be reduced by £366.70 (the surplus for the year ending 30 September 2021) and £331.39 (which is the surplus for the year ending 30 September 2022).

(4) The amount of the service charges due from the Respondent for the year end 30 September 2023 is £3,000. If, once the accounts are prepared, the "on account" demands made exceed the actual spend for which the Respondent is liable, the excess amount must be credited to the Respondent in accordance with cl. 4(C) of the Lease and/or s.19(2) Landlord and Tenant Act 1985.

(5) The application pursuant to s.20C is dismissed.

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 whether service charges are payable.

2. The Applicant is a lessee-owned and controlled management company, in respect of Sheengate Mansions, 243 Upper Richmond Road West, London, SW14 8QS.

3. The Respondent is the registered proprietor of the leasehold interest of 36 Sheengate Mansions, 243 Upper Richmond Road West, Mortlake SW14 AQS ("the **Property**").

4. On 15 December 2022, Judge Powell gave Directions and set the matter down for hearing on 24 April 2023. The Directions stated that the issues identified were:
(a) years ending 30 September 2021, 2022 and 2023 with a total value in dispute at 22/11/22 of £9,313;
(b) whether the works are within the landlord's obligations under the lease/whether the cost of the works are payable by the leaseholder under the lease;

(c) whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee.

5. Various Directions were given, including as to bundles for the hearing.

6. On 14 February 2023, the Directions were amended (some of the dates were changed). The amended directions included a requirement that the Applicant was to prepare a bundle of relevant documents (in a file, with index and page numbers). If the parties were unable to agree a single bundle, each party was to send one copy of their own bundle (filed, with index and page numbers) to the other party by 17 April 2023. The hearing of the applicant was listed for today.

7. There was a Case Management Hearing on 15 March 2023. The order from this hearing stated, among other things, that the final hearing would be limited to:
(a) The Applicant establishing the payability of service charge demands for the years ending 30 September 2021, 2022 and 2023, including whether the works are within the landlord's obligations under the lease/whether the cost of works are payable by the leaseholder under the lease;
(b) The Respondent's challenge to those demands on the basis that they have not been calculated properly, leading, she says, to the overpayment of service charges on her part.

8. The order stated that the final hearing would not consider:
(a) the extent of disrepair to the roof and guttering of the building, liability for any such disrepair, damage and consequential loss to the Respondent arising from it or any potential set-off against the service charges claimed against her. All such claims for disrepair and damages are left to the County Court;
(b) whether there was an agreement made orally on 11 April 2022 by which the Applicant agreed to treat the major works levy of £7,813 as part payment towards any compensation that the Respondent may be entitled to in respect of damage and disrepair to her flat;
(c) Questions relating to the calculation of service charge years prior to those under consideration in these proceedings, namely, the years ending 30 September 2021, 2022 and 2023;
(d) Any issues relating to the corporate governance of the Appellant company or the conduct of its directors or allegations of victimisation of the Respondent; or
(d) Any issues as to the reasonableness of the service charges claimed in these years (e.g. not the contract price, supervision and management fee, the amounts charged for the works and other services and/or the standard of such works or services).

Documentation

9. The parties have provided the following documents: The Appellant provided a bundle of documents (362 pages). Reference: "A1___".

10. The Respondent provided a number of separate documents, which were provided in advance of the hearing, including documents said to have been omitted from the Applicant's bundle and the Tribunal has had regard to these documents. On the morning of the hearing, the Tribunal was provided with a further bundle (incorporating some of the documents already provided) which was in excess of 1,400 pages. The Tribunal informed her that it was not prepared to start reading a bundle of over 1,400 pages and so would not have regard to it, but that if there was a document that she particularly wished to rely upon, the Tribunal would consider admitting it, on an individual basis. One document was provided at the conclusion of the hearing (containing an email from Mr. Sweeting dated 19 October 2022 and a response from the Respondent on the same date) and the Tribunal said that it would consider that document.

11. After the hearing on 23 May After the hearing, the Respondent emailed the Applicant and the Legal Officer (on 23 May 2023) with further documents and making reference to documents said to have provided in the previous bundles (including that of the Applicant referred to above, which the Tribunal did not have regard to). Ms. Zanelli replied to this email on 24 May 2023 stating that the Management Pack sent by the Applicant related to 34 Sheengate Mansions, that she could not see the relevance of the documents, but if the Tribunal was going t have regard to those documents, she would wish for an opportunity to respond.

12. Ms. Benest sent a further email dated 25 May 2023 stating, among other things, that:

(a) The application was vexatious and malicious;
(b) The Applicant had reneged on an oral agreement and colluded with the managing agent to "slap down" the Respondent;
(c) Making various allegations concerning alleged threatened legal action – the Respondent stating that she had not threatened legal action;
(d) The managing agent had been in breach of the lease;
(e) Another leaseholder was in arrears of service charges.

13. None of these matters are relevant to the substantive decisions before the Tribunal (having particular regard to the order from the Case Management Hearing, making clear what the Tribunal would and would not consider (and stating that it would not consider any issues relating to the corporate governance of the Appellant company or the conduct of

its directors or allegations of victimisation of the Respondent) and so, although they have been taken into account, they are not material to our decision.

Documentation

14. The Applicant was represented by Ms. Cassandra Zanelli, Solicitor and Director, Property Management Legal Services Limited. The Respondent, Ms. Kate Anne Benest, appeared in person.

15. Ms. Zanelli presented the case on behalf of the Applicant. She went through the service charge demands, the clauses of the lease which she said applied to the individual charges and the mechanism by which the Respondent's share was calculated. She was then asked some questions by Ms. Benest, including as to the major works charges made in the year ending 30 September 2022. After lunch, the Tribunal heard from Ms. Benest, who said, among other things, that she did not owe the Applicant anything until 2022. She said that she thought she had complied with the terms of her lease and did not owe service charges. She said that she had never refused to pay the service charges and had been doing what she could to pay. She admitted the charges for the major works in 2022 were outstanding, but that, as she understood it, she did not owe the Applicant anything in 2021.

16. Ms. Zanelli took Ms. Benest to the lease, and in particular clause 4B which required two "equal half-yearly payments in advance" and the service charge demands of 7 September 2021 (A111) and 8 March 2022 (A109) and it was put to her that she had an obligation to make the payments demanded. Ms. Benest said that this was not how major works had been charged in the past, it had been done by way of a levy, which was not demanded in October or April, but in May ,and was to be done by way of one payment. Mr. Owen of the Tribunal asked her whether, however it had been charged previously, she accepted she still had to pay the major works charges, and she replied that she agreed that the money was still owed. She reiterated that she believed she had acted in compliance with her lease and did not expect to receive pre-action correspondence. Ms. Zanelli then asked a few questions of Ms. Benest.

17. As Ms. Benest was acting in person, it was suggested that Ms. Zanelli give her closing submissions first, so that Ms. Benest would know what she ha to respond to and Ms. Zanelli agreed to this (it having been agreed that if there was anything said by Ms. Benest that she needed to respond to, Ms. Zanelli could do so).

18. Ms. Benest stated, among other things, that she had never refused to pay the service charges and as to whether they were payable under the lease,she said that "everyone knows you have to pay service charges". She said that she felt the application to the Tribunal had only been made as she had challenged the Applicant.

19. In our decision, we have focussed on the documents to which we were referred during the course of the hearing.

The Applicant's Lease

20. The Applicant acquired her interest in the Premises on 1 November 1999 (A47). There is no dispute that her occupation of the Premises is on the same terms as the lease (A49) dated 14 December 1977 between (i) Sheengate Mansions Limited: the Lessor; (ii) the Respondent: the Managers and (iii) Mr. Wiltshire: the Lessee. The lease is for a term of 125 years from 1 January 1989.

21. By Clause 4(A) (A57), the Lessor covenants with the Managers that s/he will:

> *"in manner hereinafter provided pay to the Managers such per centum as specified in Paragraph 8 of the Particulars (hereinafter called "the Contribution") of the reasonable costs and expenses incurred by the Managers in compliance with their obligations under Clause 6 hereof and of all other costs and expenses incurred in the management of the Building together with the Insurance and other Premiums payable by the Managers to the Lessors whether under the terms hereof or by way of separate agreement together with such monies as the Managers shall deem appropriate to build up a reasonable reserve to meet the maintenance expenditure of subsequent years (hereinafter called "the Expenditure").*

22. Paragraphs 8 (A49) of Particulars stated that the tenant's share of the total expenditure is 3.13% per annum.

23. By Clause 4(B) (A57), the "Contribution" was to be paid upon demand by two equal half-yearly payments in advance on the first days of April and October in each year the first of such payments being a proportion of the Contribution from the date hereof until the 30th day of September next to be paid on the execution hereof.

24. By Clause 6 (A59) and in consideration of the covenants on the part of the Lessors and Lessee hereinbefore contained, the Managers covenanted with the Lessors and Lessees as a separate covenant (but subject as provided in Clause 7 that so long as the Contribution is received by them in full they would in a proper manner and at reasonable cost perform the following services:

> *"(a) To maintain and keep in good and substantial repair and condition;*
> *(i) the main structure of the Building including the principal internal timbers and the exterior walls and any other structural*

walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise of any other flat in the Building)
(ii) all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this Lease be enjoyed or used by the Lessee in common with the owners of tenants of the other flats in the Building;
(iii) the Common Parts;
(iv) the boundary walls and fences of the Building
...
(vi) all other parts of the Building not included in the foregoing sub-paragraphs (i) to (v) and not included in this demised or the demise of any other flat or part of the Building
(b) As and when the Managers shall deem necessary
(i) to paint the whole of the outside wood iron and other work of the Building
...
(c) To keep clean and where appropriate lighted the Common Parts and to keep clean the windows in the Common Parts and where appropriate to furnish the Common Parts in style and manner as the Lessors shall from time to time in their absolute discretion think fit
(d) To pay and discharge any rates (including water rates) taxes duties assessments charges impositions and outgoings assessed charged or imposed on the Building and the curtilage thereof as distinct from any assessment made in respect of any flat in the Building but including the rates (including water rates) assessed on any flat or flats or accommodation whether in the Building or not occupied or used by any caretaker porter maintenance staff or other person employed by the Manager in accordance with the provisions of sub-clause (e) of this Clause hereof and also all or any other outgoings payable in respect of such accommodation
...
(h) (i) To employ at the Managers discretion a firm of Managing Agents to manage the Building and discharge all property fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents and the Contribution in respect of the Building or any parts thereof
(ii) To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building
...
(k) To maintain any existing rented fire extinguishers and install such further extinguishers as the Manager may from time to time consider necessary and pay all charges in connection with the installation and maintenance thereof
...

(n) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors and the Managers may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building"

25. The Common Parts as defined by cl. 1(5) (A50) as:

> *"all main entrances passages landings staircases (internal and external) gardens gates access yards roads footpaths parking areas and garage spaces (if any) passenger lifts (if any) means of refuse disposal (if any) and other areas included in the Title above referred to provided by the Lessors for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessors are entitled to the reversion".*

26. The First Schedule (A64) states:

> *"Cost are to be apportioned as follows:-*
> *Each flat- 3.13%*
> *In respect of repairs carried out to the main structure (excluding re-decoration, main roof, window frames, glazing pipes and services etc above 1st floor level) service pipes, ducts and other matters as defined in the lease as being joint with commercial premises on ground floor, 66% of costs are chargeable to the Management Company and 33% remains liability of the Lessor as defined in the lease".*

The Background

27. The Applicant is the management company and is responsible for the residential elements of the Building, which has three storeys. The ground floor has commercial lets (and which now has some residential elements, but they fall within the freeholder's responsibility), the first and second stories have 32 residential units, 16 on each floor.

28. The application (A39) states that the Respondent has failed in her contractual obligation to pay service charges to the Applicant, in the sum, as at the date of the application of £9,313 and it seeks a declaration pursuant to s.27A(1) in relation to the previous service charge years, together with a determination pursuant to s.27A(3) in respect of the current service charge year (year ending 30 September 2023).

The Law

29. Section 18 of the Landlord and Tenant Act 1985 provides:

"(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 service, 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 estimate 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.

30. Section 19 of the 1985 Act provides:

"(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"

31. Section 27A provides:

"(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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

> (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

32. The consultation requirements which are required by section 20 of the 1985 Act and which are applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in the leading decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
>
> Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
>
> Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
>
> 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

The Issues

33. As was made clear at the start of the hearing that, pursuant to the order made at the Case Management Hearing, the Tribunal was only considering the following issues:
(a) The Applicant establishing the payability of service charge demands for the years ending 30 September 2021, 2022 and 2023, including whether the works are within the landlord's obligations under the lease/whether the cost of works are payable by the leaseholder under the lease;

(b) The Respondent's challenge to those demands on the basis that they have not been calculated properly, leading, she says, to the overpayment of service charges on her part.

34. The Applicant's case is set out, primarily, in the "Preliminary Submissions on Behalf of the Applicant" (A37) and the "Submissions on Behalf of the Applicant in Reply to the Respondent's Response" (A120).

35. The Respondent's position is principally set out in her "Statement of Case" (A150) and her "Submissions on Behalf of the Respondent in Reply to the Applicant's Response to Respondent's Response of 9th March 2023".

Year ending 30 September 2021

36. The "Statement for Service Charges and Costs for the Year Ended 30 September 2021" (A102) show that the total service charge costs were £63,417 (p.102).

37. The items being charged for were:

38. Cleaning and window cleaning: The Tribunal is satisfied that this falls within cl. 6(c) and/or cl. 4A of the lease and is payable.

39. Electricity: The Tribunal is satisfied that this falls within cl. 6(d) and/or cl. 4A of the lease and is payable.

40. Repairs and maintenance of drains and gullies: The Tribunal is satisfied that this falls within cl. 6(a)(ii) and/or cl. 4A of the lease and is payable.

41. Repairs and maintenance of electrical: The Tribunal is satisfied that this falls within cl. 6(a)(ii) and/or cl. 4A of the lease and is payable.

42. Repairs and maintenance of door lock and entry system: The Tribunal is satisfied that this falls within cl. 6(a)(vi) and/or cl. 4A of the lease and is payable.

43. Repairs and maintenance of gutters: The Tribunal is satisfied that this falls within cl. 6(a)(ii) and/or cl. 4A of the lease and is payable.

44. Repairs and maintenance of windows: The Tribunal is satisfied that this falls within cl. 6(a)(i) and/or cl. 6(a)(vi) and/or cl. 4A of the lease and is payable.

45. Garden, maintenance and tree work: The Tribunal is satisfied that this falls within cl. 6(e) and/or cl. 4A of the lease and is payable.

46. Fire and emergency lighting: The Tribunal is satisfied that this falls within cl. 6(c) and/or cl. 6(n) and/or cl. 4A of the lease and is payable.

47. Accountants' fees: The Tribunal is satisfied that this falls within cl. 6(h)(ii) and/or cl. 4A of the lease and is payable.

48. Management fees: The Tribunal is satisfied that this falls within cl. 6(h)(i) and/or cl. 4A of the lease and is payable.

49. Insurance: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

50. Company secretarial: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(h)(ii) and/or cl. 6(n) of the lease and is payable.

51. Bank charges: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

52. Sundries: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

53. Under the terms of the lease (First Schedule, A64), the landlord was to contribute 33% of the total sum due (£63,417), excluding, as relevant for 2021, those items set out at A139. The landlord's contribution was £11,842, leaving £51,575 to be divided between the 32 leaseholders, for which the Respondent was liable for 3.13%, which is £1,614.30.

54. In fact, the sum of £1,981 was demanded from the Respondent, split over two demands. The first was dated 3 September 2020, for £948 (A129) and the second was dated 4 March 2021 (p.113) for £1,033. The Respondent accepts that the difference of £366.70 must be credited to the Respondent's account.

55. The amount of service charges due from the Respondent for the year ending 30 September 2021, was therefore £1,614.30.

Year ending 30 September 2022

56. The "Service Charge Income and Expenditure Account for the Year Ended 30 September 2022" (A131) show that the total service charge costs were £63,673 (excluding major works, which are dealt with below).

57. The items being charged for were:

58. Insurance: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

59. Electricity: The Tribunal is satisfied that this falls within cl. 6(d) and/or cl. 4A of the lease and is payable.

60. General maintenance: The Tribunal is satisfied that this falls within cl. 6(a) of the lease and/or cl. 4A and is payable.

61. Roof and guttering maintenance: The Tribunal is satisfied that this falls within cl. 6(a)(i)-(ii) and/or cl. 4A of the lease and is payable.

62. Drains maintenance: The Tribunal is satisfied that this falls within cl. 6(a)(ii) and/or cl. 4A of the lease and is payable.

63. Rubbish removal: The Tribunal is satisfied that this falls within cl. 6(n) and/or cl. 4A of the lease and is payable.

64. Entry-phone maintenance: The Tribunal is satisfied that this falls within cl. 6(a)(iii) and/or cl. 6(a)(vi) and/or cl. 4A of the lease and is payable.

65. Fire safety: The Tribunal is satisfied that this falls within cl. 6(c) and/or cl. 6(n) and/or cl. 6(k) and/or cl. 4A of the lease and is payable.

66. Pest control: The Tribunal is satisfied that this falls within cl. 6(c) and/or cl. 6(n) and/or cl. 4A of the lease and is payable.

67. Garden, maintenance: The Tribunal is satisfied that this falls within cl. 6(e) and/or cl. 4A of the lease and is payable.

68. Tree surgery: The Tribunal is satisfied that this falls within cl. 6(e) and/or cl. 4A of the lease and is payable.

69. Cleaning: The Tribunal is satisfied that this falls within cl. 6(c) of the lease and is payable.

70. Cleaning windows: The Tribunal is satisfied that this falls within cl. 6(c) and/or cl. 4A of the lease and is payable.

71. Managing agent fees: The Tribunal is satisfied that this falls within cl. 6(h)(i) and/or cl. 4A of the lease and is payable.

72. Accountancy: The Tribunal is satisfied that this falls within cl. 6(h)(ii) and/or cl. 4A of the lease and is payable.

73. Sundry: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

74. Bank charges: The Tribunal is satisfied that this falls within cl. 4A and/or cl. 6(n) of the lease and is payable.

75. Under the terms of the lease (First Schedule, A64), the landlord was to contribute 33% of the total sum due (£63,673), excluding, as relevant for 2021, those items set out at A141. The landlord's contribution was £8,254, leaving £55,419 to be divided between the 32 leaseholders, for which the Respondent was liable for 3.13%, which is £1,734.52.

76. The demand of 7 September 2021 (A111) demanded £1,033 for service charges. The demand of 8 March 2022 (A109) demanded £1,033 for the service charges. The total amount demanded from the Respondent was therefore £2,066. The difference between the amounts demanded and the amount ultimately due from the Respondent is £331.39, which the Applicant accepts has to be credited to the Applicant.

77. There were also charges for major works within this service charge year for: The demand of 7 September 2021 (A111) demanded £3,906.50 for the major works and the demand of 8 March 2022 (A109) demanded £3,906.50 for the major works. The total amount demanded for the major works was therefore £7,813.

78. The charges for the major works are service charges (see s.18 of the 1985 Act above), but they were charged separately on the demands.

79. A Notice of Intention was sent on 10 December 2020 (A136). On 30 March 2021 (A88) a Statement of Estimates was sent (A91). The cheapest contractor was Weaver & Co, who was contracted to do the works. The total cost was estimate to be £249,734. That sum was divided by the 32 residential flats which come within the management company's ambit, which was £7,804.19 per flat.

80. Ms. Benest raised an issue that she thought she had been charged twice for the amount paid to Lewis Berkley. Ms. Zanelli confirmed that the sum of £11,297 (A103) paid to Lewis Berkley was paid from the reserve fund, but did not form part of the service charges for the year end 30 September 2021 (i.e. it was not part of the £63,417 shown on the Statement of Service Charges and Costs for the Year Ended 30 September 2021 (A102)). The 32 flats were charged for this amount (as well as the other major works costs) in the year end September 2022 and the £11,297 was reimbursed to the reserve fund. The reason for this was that Lewis Berkley had done work and incurred costs even before the major works had started and because the residents pay the service charges in advance and on account and the freeholder pays in arrears. Ms. Benest also queried the sum of about £4,000 paid from the current account, but the Applicant confirmed that there was no double-charge in respect of their amount either.

81. The Tribunal is satisfised that service charges of £7,804.19 for the major works were due from the Respondent. We are satisfied that the Applicant complied with the statutory consultation and that this sum was payable.

82. The amount of service charges due from the Respondent for year end 30 September 2022, was therefore £1,734.52 (for the Respondent's share of the itemised service charges) plus £7,813 for the major works. Total £9,547.52.

Year ending 30 September 2023

83. The current service charge year does not end until 30 September 2023 and so accounts have not yet been drawn. The service charge demand for 8 September 2022 (A107) is for £1,500 (in respect of £500 for the reserve fund and £1,000 service charges on account) plus a balance brought forward of £7,813 said to be outstanding from previous demands (the two demands in respect of the major works), which have been dealt with already. It appears from the "Submissions on Behalf of the Applicant in Reply to the Respondent's Response" that the demand due on 1 April 2023 would also be for £1,500 (£500 for the reserve fund and £1,000 for service charges on account). The document from the Respondent (A168) makes clear that there is no dispute in respect of the reserve fund of £500 due on 1 October 2022 (demand dated 8 September 2022) and no dispute in respect of the reserve fund amount due on 1 April 2023.

84. Ms. Zanelli stated that the demands are identical to those in 2022 save for the major works charges made in 2022 and that the estimate service charges are based on the budget which is set based on the previous year's expenditure.

85. The Tribunal is satisfied that the sums are not greater than is reasonable, they have been lawfully demanded and are due under the terms of the lease.

S.20C

86. In the email the Respondent sent on 23 May 2023 (referred to above), the Respondent stated that she had previously asked that no costs order be made against her and for costs not to be taken into account in determining the amount of service charges potentially payable following the Tribunal's decision. She stated that she neglected to make this application at the hearing but asks the Tribunal to consider her application under s.20C of the 1985 Act.

87. In her email of 24 May 2023, Ms. Zanelli invited the Tribunal to reach its decision on the substantive matters and to give directions for submission

as to the s.20C issue. The Tribunal considered this but decided instead to invite written submissions (the parties were informed on 30 May 2023). The Respondent was to provide written submissions by 6 June 2023 and there was provision for the Applicant to provide submissions in response (and only in response) 7 days thereafter. No written submissions have been received from the Respondent and the Tribunal therefore deals with the application on the basis of the information already before it.

88. Section 20C provides:

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … 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.

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

89. The purpose of section 20C is to give the Tribunal the power to prevent a landlord actually recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal. The discretion given to the Tribunal is to make such order as it considers just and equitable. 71. In Tenants of *Langford Court (Sherbani) v Doren Limited* LRX/37/2000, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC) made the following remark:

"28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."

90. In *Conway & Others v Jam Factory Freehold Ltd* [2013] UKUT 0592 (LC), which was a case involving a tenant owned management company, Martin Rodger QC, Deputy President of the Upper Tribunal (Property Chamber), said that:

"75. In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, 17 and to bear those

consequences in mind when deciding on the just and equitable order to make."

91. The Applicant submitted as follows:

92. First, that she was not informed that Mr. Sweeting of Sweetings Property Management (who attended the hearing and answered some questions that were put to the Ms. Zanelli) would be giving evidence. She refers to a document, a form LPE1 (which the Tribunal have looked at in light of this email) which stated that the Respondent was threatening legal action against the Applicant. She also refers to WhatsApp communications with Mr. Standing and Miss. Aldridge which she states showed that she believed that the cost of the application was being "covered by" the Respondent. The Applicant also refers to difficulties she said she had with regards to documentation she wished to rely upon.

93. The Tribunal has also had regard to the contents of the email of 25 May 2023 from the Applicant, but must bear in mind the contents of the order of 15 March 2023.

94. The Tribunal has taken all of this into account. Ultimately, the Applicant has not succeeded in her claim. Taking into consideration all of the circumstances of the parties, the impact and the outcome of the Application, it would not be just or equitable to make the order sought by the Applicant.

95. The Tribunal dismisses the Application for an order under Section 20C. It does not find it either just or equitable to make any order limiting the Respondent's ability to recover its costs as relevant costs.

Judge Sarah McKeown
9 June 2023

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).