FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY

Case reference	**:**	**MAN/00FF/LSC/2022/0096**
Properties	**:**	**Flats 2 & 4, Galtres Chambers, 2, 4 and 6 Coppergate, York YO1 9NR**
Applicants	**:**	**Nicholas & Juliet Atton**
Respondent	**:**	**General Property Partnerships Limited**
Type of Application	**:**	**Landlord and Tenant Act 1985 - s27A and 20C Commonhold and Leasehold Reform Act 2002 Schedule 11 paragraph 5A**
Tribunal Members	**:**	**Tribunal Judge S Moorhouse LLB Mr WA Reynolds MRICS**
Date of Decision	**:**	**30 May 2024**

DECISION

DECISION

Service Charge

1. The service charges in issue in these proceedings (summarised at paragraph 18 and described more fully in the later sections of this document) are payable by the Applicants, with the following exceptions:-

2. The total service charges payable by the Applicants in respect of the Properties in relation to the service charge years 2014-2017 (inclusive) and 2019, in relation to the fees of CBRE Management, are reduced by the amounts set out in the final column of the table at Schedule 2.

3. The insurance charge (of which an apportioned sum of £229 was charged in respect of the Properties) relating to the service charge year 2018, is not payable.

4. The Applicants' contribution to the total cost of £2,664 for repairs and maintenance in relation to the service charge year 2020 is limited to the sum of £250 in respect of each of the Properties.

Costs

5. The tribunal makes an Order pursuant to section 20(c) of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in relation to these proceedings are not to be regarded as relevant costs to be taken into account in determining the service charge payable by the Applicants or by the other persons specified in the section 20(c) application (namely Paula and Simon Elliott of Flat 1).

6. The tribunal makes an Order pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any costs incurred by the Respondent in relation to these proceedings shall not be recoverable from the Applicants by way of administration charge.

REASONS

The Application

7. The application is made under section 27A of the Landlord and Tenant Act 1985 ('the Act') by Nicholas Atton and Juliet Atton ('the Applicants') in respect of the service charges for the calendar years 2014 to 2021 inclusive invoiced to them on behalf of their landlord General Property Partnerships Limited ('the Respondent') in relation to their investment properties known as Flats 2 & 4, Galtres Chambers, 2, 4 & 6 Coppergate, York YO1 9NR ('the Properties').

8. The application was submitted to HMCTS on 8 September 2022. Directions were issued initially on 21 December 2022. Following a Case Management Conference held on 17 March 2023 additional Directions were issued dated 13 April 2023. Further Directions were issued on 19 December 2023. The application included two further Applicants, Simon Elliott and Paula Elliott however it was taken forward by the Applicants alone in relation to the Properties only. The various Directions and submissions reflect this.

9. The Applicants requested a decision on the papers and the Respondent did not object. Having regard to Rules 3 and 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Procedure Rules') the tribunal considered that it would be able to decide the case on the papers given that it had a Scott Schedule completed by the parties, supporting documentary evidence and the power to direct the submission of additional representations and documents as required.

10. Further Directions were indeed issued by the tribunal dated 20 March 2024 and further submissions received in response.

11. The tribunal considered it unnecessary to inspect the Properties given the issues to be determined and the fact that photographic evidence had been submitted where a party considered this to be helpful.

The Issues

12. The Properties comprise two residential flats in a mixed use building at 2, 4 and 6 Coppergate comprising ground floor cafe and barbers with a total of 4 residential flats in the converted office space on the first and second floors.

13. Copy leases relating to the Properties were received in response to the tribunal's Further Directions. The term is 125 years from the date of the lease, being 31 January 2014 for Flat 2 and 3 June 2014 for Flat 4.

14. The lease provides (at paragraph 4 of the Fifth Schedule) for an account of the 'Maintenance Expenses (distinguished between actual expenditure and reserve for future expenditure)' to be prepared as soon as is practicable in relation to each calendar year. The landlord is to serve on the tenant a copy of the account and a certificate by a qualified accountant should the landlord choose to do so or if requested in writing by the tenant.

15. Equal contributions to the landlord or managing agent's estimate of the Maintenance Expenses are payable on the usual quarter days and any shortfall is to be paid by the tenant within 21 days after the service of the accountant's certificate in relation to the service charges for the calendar year. Any overpayment is to be credited against future payments due from the tenant to the landlord (paragraph 5 of the Fifth Schedule).

16. The Scott Schedule sets out the matters in issue in relation to the service charge years in issue. Additionally the years 2022 and 2023 have been included and the Applicant included within the papers the question of whether these could be included in the tribunal's determination or whether a separate application would be required. The Respondent commented that whilst 2022 and 2023 did not form part of the ongoing dispute, they had nevertheless continued to engage with the Applicants and transparently provided details and costs in response to the additional queries.

17. In the absence of an express application to amend the original application by the addition of two further service charge years or a response to such an application to amend, and in the circumstances that have been described, the tribunal's determination is limited to the years in issue within the original application.

18. The first issue within the Scott Schedule recurs from year to year. Overall the issues can be summarised as:

    (a) Fees charged by CBRE Management (2014-2020 inclusive)

    (b) CBRE Health & Safety fee (2014)

    (c) Orbit Management Fee (2021)

    (d) Insurance (2018)

    (e) Repairs & maintenance costs (2020)

    (f) Site management resources (2021)

    (g) Health & Safety fee (2021)

19. The tribunal addressed the 'actual' service charges in issue. Representations from the parties as to whether service charge estimates in any particular year had been reasonable in amount were irrelevant to this exercise.

20. The Applicants' liability under the terms of the lease to contribute to expenses of this nature and the apportionment of these were only in issue in relation to item (d) which concerned the alleged treatment of insurance costs in 2018 as a charge to residential leaseholders only, and item (g) where the Applicants argued that the Respondent should have met certain costs itself as a business expense. The issues in relation to item (e) concerned the statutory requirement for consultation in relation to repairs and maintenance in 2020 under section 20 of the Act and repair priorities. In relation to items (a), (b), (c), and (f) the Applicants contended that the amount of the fees in issue was excessive and unreasonable.

21. The tribunal's remit is defined within section 27A of the Act. Extracts from section 27A, and from section 19 of the Act are included in Schedule 1.

Determination

Fees charged by CBRE Management (2014-2020 inc.)

21. The fees charged by CBRE management for 2014 to 2020 (inclusive) were stated by the Respondent to relate to the work and time put in by the agent to managing the mixed use building including costs of a surveyor (minimum 2 site visits per year), accountant and credit controller together with back of house function (including out of hours service for emergencies) to set, maintain, review and reconcile/certify the service charge and reserve fund, and maintain bank accounts. The fees for the building had been apportioned pursuant to the lease, the Applicants being charged a 13.1313% share for each of their two Properties.

22. The fees were exclusive of the separate charges made by Garness Jones as the managing agent for the residential common parts.

23. The Respondent provided at page 42 of the Respondent's statement of case a comparator with respect to management fees for a similar building (White Horse, Saffron Walden). The Tribunal notes that the management fees for the

comparator are for the building as a whole and that the Respondent compares these fees with the total management fees for Galtres Chambers on a similar basis.

24. The tribunal considers the Respondent's comparable evidence to be relevant to the present case. It is noted that the comparator property comprises 6 residential units and one commercial unit whilst Galtres Chambers has 4 residential units and two commercial units. For 2023, total management fees were £4,120 for the comparator property and £3,582 for Galtres Chambers however, the comparator property included one more unit of accommodation and had a total service charge budget for 2023 of £17,579 vs £10,510 for Galtres Chambers.

25. The tribunal accepts that there are fixed costs associated with property management functions so management fees should not necessarily be proportionate to the service charge budget. Overall, the tribunal considers the comparator management fees to be broadly supportive of those for Galtres Chambers in 2023.

26. Whilst the management fees in respect of the residential common parts of Galtres Chambers do not concern the tribunal as they are not challenged by the Respondent through the Scott Schedule, the tribunal has nevertheless considered these fees alongside the management fees for the building as a whole (by reference to the Breakdown of Common Services at pages 16 & 17 of the Respondent's statement of case) when considering the disputed CBRE Management fees.

27. The tribunal notes that the CBRE management fees in 2018 were broadly in line with the average annual cost of the later CBRE/Orbit and Orbit management fees for 2020 to 2023 and, as a broad based assessment which the tribunal considers proportionate to the nature of the matter at hand, the tribunal adopts that level of fees (i.e. the CBRE fees for 2018) as being reasonable in the years prior to 2018, and in 2019. The CBRE fees for 2020 do not appear excessive, being £16.30 lower than the figure the tribunal has adopted. The results of this exercise are summarised in a table at Schedule 2.

28. CBRE's management fees relate to the building as a whole and as such a 13.1313% share is payable via service charge in relation to each of the Properties. The table identifies the reductions in the Applicants' share of CBRE's management fees for 2014-2017 (inclusive) and 2019. These reductions total £2,200.54.

CBRE Health & Safety fee (2014)

29. The Health & Safety fee in 2014 challenged by the Applicants is stated by the Respondent to relate to an initial inspection by CBRE's facilities manager for a health and safety review. The fee of £690 related to the entire building and the Applicants were charged 13.1313% in relation to each of the Properties.

30. Pursuant to the tribunal's Further Directions the Respondent confirmed that the figure of £690 included £15.38 for public liability insurance and an invoice from RFM relating to facilities management for the main element of £675 was supplied.

31. The tribunal considered it to be entirely reasonable for an initial inspection for a health & safety review to be a carried out in the course of managing the building. There was no comparative evidence before the tribunal to suggest that the work involved should have been undertaken more cost effectively and the amount in issue was below the threshold requiring consultation under section 20 of the Act. There was no evidence to suggest 'double-counting' in relation to the public liability insurance element.

32. In these circumstances the tribunal considered the costs of £690 to have been reasonably incurred and the Applicants' share of £181.19 to be payable.

Orbit Management Fee (2021)

33. Orbit Management took over management responsibility for the building from CBRE from 2021. As CBRE had done, they provided the services of a surveyor (minimum 2 site visits per year), accountant and credit controller together with back of house function (including out of hours service for emergencies) to set, maintain, review and reconcile/certify the service charge and reserve fund, and maintain bank accounts. The Respondent highlights additional costs incurred as a consequence of non-payment of budgeted service charge and the additional cost of administering and implementing a consultation exercise under section 20 of the Act in relation to the repair and decoration of the windows.

34. As with CBRE, the fee was exclusive of the separate charges made by Garness Jones as the managing agent for the residential common parts

35. As has already been indicated in the context of the tribunal's determination of the CBRE management fees and the tribunal's acceptance of the comparator information, the tribunal considers the 2021 management fee for Orbit to be reasonably incurred. It is in fact lower than the fee in 2023, the year to which the comparator information related.

Insurance (2018)

36. The insurance cost in 2018 is challenged by the Applicants on the basis that it should be a building charge and not charged solely to the residents. It is not contended that the costs are irrecoverable under the terms of the lease, or that they would fall outside the statutory definition of service charge (which can be found at section 18 of the Act).

37. The Respondent submits that the amount stated, of £435, relates to the residential parts of the building and does not include the premium for the commercial parts. It is stated by the Respondent that the costs were incorrectly charged along with service charge items related to the residential common parts by Garness Jones, but that if this was corrected the same amount would nevertheless be payable.

38. The lease definition of 'Maintenance Expenses' includes amounts payable by or on behalf of the landlord for carrying out the obligations specified within clause 6 as well as the Fifth Schedule. Clause 6 includes the landlord's insurance obligations. Part 1 of the Fifth Schedule is headed 'The Tenant's Proportion of the Maintenance Expenses'. The tribunal interpreted the lease as intending that

insurance costs should be met in part by the tenant as part of the Maintenance Expenses and that the 'Tenant's Proportion' definition should apply.

39. There are in fact two 'Tenant's Proportion' definitions. In the Fifth Schedule this is defined as a 'Fair Proportion' which is defined earlier as being '*a reasonable proportion of the relevant expense based upon the use made or benefit received by the relevant service and the total net internal area of the relevant apartments using or benefitting from such service, such proportion to be determined by the Landlord or its managing agents and such determination shall be final and binding on the Tenant and not open to challenge, save in the case of manifest error*.'

40. The second definition of 'Tenant's Proportion' is within the definitions section and specifies percentages. Essentially 26.3514% applies to expenses relating to the residential common parts and 13.1313% applies to expenses related to the building as a whole. In these circumstances, the tribunal determined that the intention of the parties to the lease had been that the more specific definition of 'Tenant's Proportion', incorporating fixed percentages, had been intended to apply.

41. The total amount charged to the Applicants for the two Properties came to £229.26. This is calculated by applying the percentage of 26.3514% applicable to expenses relating to the residential common parts, the insurance costs having already been divided between the commercial and residential elements. On the information before the tribunal the insurance costs related to the building as a whole and therefore 13.1313% of the total would be payable in respect of each of the Properties.

42. In the tribunal's Further Directions the Respondent was directed to provide documentary evidence of the total insurance cost for the entire building for 2018. In response the Respondent clarified that the insurance included in the service charge budget had not been buildings insurance after all but an anticipated cost for property owners liability insurance. Transaction listings had been reviewed by the Respondent's current agent and it had been found that no charge had been placed through this category.

43. In these circumstances, even though the initial challenge by the Applicants related to apportionment and not whether the cost had been incurred, the tribunal accepts the Respondent's submission that there was no 'actual' charge and disallows the cost of £435, of which £229 had been allocated via service charge in relation to the Properties.

Repairs & Maintenance Costs (2020)

44. The repair and maintenance costs in 2020 totalling £2,664 were challenged by the Applicants on the basis that there was no section 20 consultation. 26.3514% of these costs had been apportioned to each of the Properties as they related to the residential common parts. The total payable by the Applicants had therefore been £1,404. It was also contended by the Applicants that there were (and still are) other areas of the building requiring more urgent attention and this expenditure could have been put to better use.

45. On the latter point there was no contention that the works that were carried out were unnecessary or substandard, or that the cost incurred was excessive for the works in question. The contention was that other works had not been carried out which were more urgent. It was the tribunal's remit to determine whether the service charges that were in issue were payable. In doing so it was unnecessary for the tribunal to determine whether there were other priorities.

46. On the consultation issue, the Respondent stated that each element was a separate instruction falling below the section 20 threshold. This contention is supported by the varied nature of the different elements - cleaning, electrical, replacing door furniture and decorating.

47. In the tribunal's Further Directions the Respondent was directed to provide copies of the individual contracts and invoices for the various works. No contracts were supplied however the Respondent did supply an invoice issued by STC Maintenance Limited for the sum in issue of £2,664. This was stated to relate to 'internal decor, front door decor, new kick plate, new entrance lights x 2 and grout cleaned to entrance tiles'.

48. Given that a single invoice was issued by a single company for the amount in issue, and there is no documentary evidence available to the tribunal to support the Respondent's contention that there was a separate instruction in relation to each element, the tribunal finds that the costs related to qualifying works within the meaning of section 20 of the Act and that the statutory consultation requirements applied.

49. In the absence of any contention by the Respondent that the consultation requirements were met, or any evidence that they were, and in the absence of any dispensation by a tribunal in respect of the consultation requirements, the tribunal limits the amount recoverable in respect of each of the Properties to £250.

Site Management Resources (2021)

50. A fee for facilities management in 2021 totalling £1,000 (of which 13.1313% was apportioned to each of the Properties) was challenged by the Applicants on the basis that it would have been unnecessary had the building been properly maintained and in any event as being excessive and unreasonable.

51. The Respondent stated that the fee related to the services of a facilities manager to handle any health & safety issues and a building surveyor to prepare a scope of works for window maintenance.

52. In the tribunal's Further Directions the Respondent was directed to provide a copy of the contract appointing a facilities manager and a copy of the invoice(s) for the fee. The tribunal received a copy of 4 fee invoices issued by Orbit Facilities Management Limited totalling £1000, issued in advance of each quarter. The fees are described as 'site management resources fees'. The Respondent also provided a copy of the agreement for property management services entered into between the Respondent and Orbit Property Management Birmingham Limited.

53. In the absence of any comparative evidence from the Applicants as to the cost of facilities management, or any compelling evidence that the services were (or should have been) unnecessary, the tribunal finds the total fee of £263 for the Properties to have been reasonably incurred, and to be payable.

Health & Safety Fee (2021)

54. A fee of £1,020 (of which 13.1313% was apportioned to each of the Properties) was charged in 2021 in relation to a review of statutory compliance, including a Fire Risk Assessment to assess fire compartmentation between flats and the commercial units. This was necessary as a consequence of the letting of one of the ground floor commercial units as a cafe with cooking facilities. The Applicants challenged the charge on the basis that it was attributable to a business decision by the Respondent to apply for planning permission for change of use and let the ground floor unit in this way - the fee should have been met by the Respondent as a business expense.

55. It was not in issue that statutory compliance expenses relating to the building are rechargeable as service charge, nor do the Applicants contend that the fee was unreasonable having regard to the work carried out. The tribunal considered that the Applicants' liability for such costs was not negated simply because the risk profile had changed with the letting of a ground floor cafe, nor was the Respondent prevented from taking this course of action. It was in the interests of all the residents that the fire compartmentation was assessed in the light of the change in risk profile.

56. Accordingly the tribunal considered the fee to be payable.

Overall Determination

57. Overall therefore the tribunal made the adjustments described above and summarised in paragraphs 1-4 of this document to the service charge items in issue in these proceedings. These adjustments total £3,333.54.

Costs

58. Section 20(c)(1) of the Act enables a tenant to apply for an order that all or any of the costs incurred, or to be incurred, in connection with the proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the tenant or any other person specified in the application. By virtue of section 20(c)(3) the tribunal may then make such order as it considers just and equitable in the circumstances. The Applicants indicated within their application form their intention to apply for such an order and additionally specified Paula and Simon Elliott of Flat 1 as 'other persons' to be included in the section 20C application.

59. Section 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 permits a tenant to apply for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs, including costs in proceedings in the First-tier Tribunal. The tribunal may make whatever order on the application it considers to be just and equitable. The Applicants indicated within their application form their intention to apply for such an order.

60. Whilst the Applicants were not successful in respect of every item in dispute, the tribunal nevertheless determined significant reductions to the service charges levied across several items. The tribunal therefore considered it reasonable that the Respondent does not seek to recover the costs incurred in relation to these proceedings from the Applicants or the other persons named by them as part of the service charge, or from the Applicants by way of administration charge.

S Moorhouse

Tribunal Judge

Schedule 1

Extracts from legislation

Landlord and Tenant Act 1985

Section 19

(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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(Subsections (1), (2), (3), (4)(a) and (5))

(1) An application may be made to a 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) .....

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

Schedule 2

CBRE Management Fees (2014-2020 inc)
Tribunal's calculations by reference to 2018 Fee

A	B	C	D	E	F	G	H
Year	CBRE/Orbit Management Fee (inc Site Mgt Resources)	Provider	Total Management Fee (inc CBRE/Orbit/Garness Jones)	Tribunal CBRE	Difference (B-E)	% for 2 Atton Flats	Refund
2014	£5,160.00	CBRE	£5,644.00	£3,120	£2,040	26.2626%	£535.76
2015	£5,475.00	CBRE	£6,027.00	£3,120	£2,355	26.2626%	£618.48
2016	£4,800.00	CBRE	£5,388.00	£3,120	£1,680	26.2626%	£441.21
2017	£4,800.00	CBRE	£5,880.00	£3,120	£1,680	26.2626%	£441.21
2018	£3,120.00	CBRE	£3,984.00	£3,120	£0	26.2626%	£0.00
2019	£3,744.00	CBRE	£4,632.00	£3,120	£624	26.2626%	£163.88
2020	£3,103.70	CBRE/ORBIT	£4,081.70				
						TOTAL	£2,200.54