



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

**Case reference** : **LON/00AP/LSC/2022/0180**

**Property** : **Flats 1,3,4,5,14,15,16,18,19,22 and 23,  
Doran Manor, Great North Road,  
London. N2 0PB**

**Applicants** : **Mr James Hutton and the tenants of the  
other flats named in the application  
(with the exception of Mr Diamandis)**

**Representative** : **Mr Hutton**

**Respondent** : **Brickfield Properties Ltd.**

**Representative** : **Memery Crystal LLP**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Pittaway  
Mr O Dowty MRICS**

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

**Date of decision** : **27 February 2023**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

## **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") as to the amount of service charges and (where applicable) administration charges payable by the Applicants in respect of the service charge years from 1 April 2018 to 30 March 2022 and in respect of the budgeted charges for the year from 1 April 2022 to 30 March 2023.
2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act.

## **The hearing**

3. The hearing took place at 10 Alfred Place attended by Mr Hutton and Ms M Heugh, Ms P Hetherington, Mr K Shah of counsel, Ms K Seal and Ms E Witchowski of Memery Crystal (solicitors for the Respondent), Mr P Chappell, Mr F Miah and Mr C Hall.
4. The Applicants were represented by Mr Hutton at the hearing and the Respondent was represented by Mr Shah of counsel.
5. At the start of the Hearing Mr Hutton confirmed that Mr Diamandis, the former tenant of Flat 24, was not an applicant, although named in the Application. Mr Diamandis had sold his flat and the new tenant of Flat 24 had not joined in the application.
6. Mr Hutton provided a skeleton argument to the Tribunal prior to the hearing and the Tribunal was handed a skeleton argument by Mr Shah at the start of the hearing.
7. Immediately prior to the hearing it had become clear to the Tribunal that it had not seen the bundle of documents (in excess of 500 pages) provided by the Respondent. The Applicants had had access to this bundle prior to the hearing. When an electronic version of this was provided to the Tribunal it was unable to open it. The Respondent was able to provide the Tribunal with a hard copy of its bundle, and an

openable electronic copy subsequently. The start of the hearing was delayed while the Tribunal considered the Respondent's Statement of Case and the Witness Statement of Mr Paul Chappell, contained in the Respondent's bundle, and Mr Shah's skeleton argument.

8. The Tribunal had before it a Scott Schedule listing 173 heads of expenditure. During the Hearing it became clear that there was no issue between the parties in relation to a number of the items listed, often because the Applicants had now received invoices from the Respondent which clarified the recoverability/reasonableness of the sums in question.
9. There was no Statement of Case from the Applicants before the Tribunal other than the comments contained in the Scott Schedule. As this did not include a Statement of Truth from Mr Hutton the Tribunal asked him confirm that he believed the facts set out on behalf of the tenants in the Scott Schedule to be true. Mr Hutton so confirmed.
10. The Scott Schedule referred to an invoice and certificate from HCL Safety Limited (referred to at item 157 of the Scott Schedule) which the Applicants had not seen and was not in the Respondent's bundle. The Tribunal directed that this be provided to the Applicants after the Hearing and that the Applicants would then have seven days in which to make submissions in relation to it to the Tribunal.
11. The Respondent provided the Tribunal and Applicants with a copy of the HCL Certificate and invoice in accordance with the Tribunal's directions. On 5 December Mr Hutton confirmed that the Applicants, having now received a copy of the invoice, did not challenge the related itemised service charge cost of £370.80.
12. Given the time at which the hearing ended the members of the Tribunal reconvened on a separate day to reach its decision.

### **The background**

13. The property which is the subject of this application is described in the Application is a purpose built building of 24 flats, some of which are still owned the Respondent landlord.
14. The Tribunal was referred to photographs of the exterior of Doran Manor, provided in the Respondent's bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary.
15. The Applicants hold long leases of their respective flats. The Applicants' bundle contained a copy of the lease of Flat 5, Mr Hutton's flat. The lease requires the landlord to provide services and the tenant to contribute

towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate

### **The issues**

16. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) Whether the costs of certain works/services are reasonable, in particular in relation to their nature, their quality and any contract price;
  - (ii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of the 2002 Act should be made; and
17. The Tribunal Directions issued on 28 June 2022 (amended 21 September 2022) identified as an issue whether the Applicants were liable to pay for the identified services/works by reason of the terms of their leases. During the Hearing it became clear that the Applicants did not consider liability to pay to be an issue in relation to the majority of the works. Where it remained an issue this is referred to below.

### **The tribunal's decision**

18. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows. To the extent relevant the evidence and submissions are set out in the reasons for the Tribunal's decision.
19. The Tribunal is only concerned with the items on the Scott Schedule which have not been accepted by the Applicants. Section 27A(4) of the 1985 Act provides that it is not possible to apply to the Tribunal for a determination in respect of a matter which has been agreed or admitted by a tenant.
20. The Tribunal have referred to the lease of Flat 5 as setting out the standard service charge provisions in the leases. Neither party suggested that there was any significant variance between the service charge provision in this and the leases of the other Applicants. Where there were differences in the insured risks this is referred to below.
21. The relevant law is set out in the Appendix to this decision.

## **Reasons for the tribunal's decision**

### **Electricity charges**

22. The charges disputed by the Applicants set out in the Scott Schedule are
- £1,251.00 in the year to 31 March 2019
  - £1,421.00 in the year to 31 March 2020
  - £1,363.00 in the year to 31 March 2021
  - £1,450.00 in the year to 31 March 2022
  - Budgeted charge of £1,551.00 in the year to 31 March 2023
23. The Respondent stated that the actual charge for the year to 31 March 2020 was £1411.71, £1363.11 for the year to 31 March 2021 and £1,319 for the year to 31 March 2022. It supported these charges with invoices.
24. Mr Hutton submitted that the Applicants were not challenging the unit cost of the electricity (having now seen the relevant invoices which had not been provided previously) but the amount consumed because the communal internal lighting was left on all night and often during the day. The cost would be less if motion sensors were fitted.
25. Mr Shah submitted that it was reasonable for the lights to be left on at night in the interests of safety and to prevent tripping, and that motion sensors might fail. He referred the tribunal to an invoice in the bundle (dated 22/01/2019) as the only evidence of the lights being left on during the day as a result of the time clocks being out-of sync., which was remedied. Mr Shah submitted that it was for the tribunal to determine the reasonableness of the charges based on the current construction of the Property, i.e. without motion sensors.

### **The tribunal's decision**

26. The tribunal determines that the actual amounts payable in respect of communal electricity are the costs incurred by the Respondent in each year and the budgeted cost for the year to 31 March 2023, and that these costs are reasonable.

### **Reasons for the tribunal's decision**

27. On the evidence before it the tribunal finds that it is reasonable for the internal lights not to be on sensors. The tribunal finds that it should look at the cost incurred on the basis of the manner in which the electricity is currently supplied to the communal areas, without internal sensors.

## **Electrical repairs**

28. The charges disputed by the Applicants set out in the Scott Schedule are
- £1,264.00 in the year to 31 March 2019
  - £2,369 in the year to 31 March 2020
  - £1,759 in the year to 31 March 2021
  - £1,500 in the year to 31 March 2022
  - Budgeted charge of £1,500.00 in the year to 31 March 2023
29. The Respondent stated that the actual charge for the year to 31 March 2019 was £2,369.53 and £1,720.56 for the year to 31 March 2021. It supported these charges with invoices.
30. Mr Hutton accepted that the invoices provided explained the costs incurred. He did not challenge the costs as set out in the invoices but that the costs of repair were increased because of the length of time the lights were left on, increasing the amount of repair work required.
31. Mr Shah submitted that the Applicants had provided no evidence to substantiate a challenge to the reasonableness of the charges, having provided no alternative quotes for the work.
32. Mr Hutton stated that he had been unaware that he had to so respond on every item challenged and that there had not been time to obtain alternative quotes once the Applicants had received the invoices. He submitted that the issue raised a lack of transparency on the part of the Respondent in its failure to provide invoices earlier.

## **The tribunal's decision**

33. The tribunal determines that the actual amounts payable in respect of the electrical repairs are the costs incurred by the Respondent in each year and the budgeted cost for the year to 31 March 2023, and that these costs are reasonable.

## **Reasons for the tribunal's decision**

34. The Applicants did not challenge the necessity of the work (except by reason of the lights being on all night), the quality of the work undertaken or provide evidence to substantiate the claim that the costs would have been less if the lights were not on all night. The Applicants provided no alternative quotes.
35. In the absence of any evidence to the contrary the tribunal finds that the repair costs actually incurred by the Respondent are reasonable.

## **Plumbing costs**

36. The charges disputed by the Applicants set out in the Scott Schedule are
- £358.00 in the year to 31 March 2019
  - £1,968 in the year to 31 March 2021
37. The Respondent broke down the sum of £1,968 into
- £714 for supplying new stop cock on grass verge
  - £582 for re-routing pipework to outside drain
  - £672 for replacing a ball valve in Flat 15
38. The Respondent accepted that the charge of £672 for replacing the ball valve in Flat 15 was not a service charge item.
39. The Applicants challenged the reasonableness of the charge of £358 on the basis that the work was required by reason of poor pest control by the Respondent and the invoices for £714 and £582 on the basis that the cost of the work would have been less if the work had been carried out earlier.
40. Mr Shah submitted that the submission as to inadequate pest control was unsubstantiated by the Applicants. In relation to the other two invoices there was no evidence from the Applicants that the work could have been carried out more cheaply if done earlier.

## **The tribunal's decision**

41. The tribunal determines that the actual amounts payable under the heading, 'Plumbing costs', with the exception of the invoice for £672 which is not a service charge cost and for which the Applicants are therefore not liable by way of service charge, are reasonable. .

## **Reasons for the tribunal's decision**

42. There were invoices for all these costs in the bundle. The invoice for £358 shows that it related to the replacement of pipes in the loft, chewed through by an animal, but there was no evidence before the tribunal that the need for this work was caused by the Respondent having dealt with pest control inadequately in the past. As to the other two invoices the Applicants did not challenge the actual costs incurred in relation to the work undertaken and had provided no evidence that the work could have been done earlier or more cheaply.

### **External fabric**

43. The Applicants challenged the cost of £744 in the year to 31 March 2021 for repairs to external fabric on the basis that they did not know what the work consisted of. Mr Hutton submitted that further work should not have been necessary given the major works that had only recently been completed.
44. In its bundle the Respondent provided an invoice for this work, which was for repairing and rendering a wall. Mr Shah submitted that this was repair work undertaken over a year after completion of the major works referred to by the Applicants. It was work to a wall outside Flat 15 following a complaint by the tenant of that flat after completion of the major works.

### **The tribunal's decision**

45. The tribunal determines that the charge of £744.00 is reasonable.

### **Reasons for the tribunal's decision**

46. Having initially challenged this invoice in the Scott Schedule the Applicants did not pursue their challenge of the need for the work nor the actual cost, only whether it should have been necessary to undertake such work so soon after major works were completed. The tribunal find that there was no evidence before it that this work should have been included as part of the major works.

### **Doors/windows**

47. The charges disputed by the Applicants set out in the Scott Schedule are
- £2,030.00 in the year to 31 March 2020
  - £600.00 in the year to 31 March 2021
  - £1,000.00 in the year to 31 March 2022
48. The Respondent stated that the actual charge for the year to 31 March 2022 was £1,460. It supported the charges in the various years with invoices.
49. Mr Hutton submitted that the Applicants were not challenging the reasonableness of the individual invoices but rather the repeated need for repair work. If the doors had been properly fixed there should not be the need for so many repairs. He also referred to the fact that he had had three keys snap in the doors over a short period of time.



50. Mr Shah submitted that the invoices show that none of the work was repeat repair work (referring to the existence of six entrance doors), that there was no evidence of a general state of disrepair, or that the work was not done to a reasonable standard.

#### **The tribunal's decision**

51. The tribunal finds the charges levied by the Respondent to be reasonable.

#### **Reasons for the tribunal's decision**

52. Mr Hutton was not challenging the actual invoices but the repeated need for the work. On the basis of the evidence before the Tribunal (the invoices provided by the Respondent) the tribunal accepts the Respondent's submission that the invoices show that the work undertaken was not repeat work. The tribunal note Mr Hutton's complaint that he had three keys snap over a short period of time but would need more evidence to find that this substantiated the submission that the work had not been done to a reasonable standard.

#### **Pathways**

53. Pathways were referred to in the Scott Schedule and at the hearing, with specific reference to items being left on the pathways and not being cleared by the Respondent, Mr Hutton submitted that the issue in relation to the pathways was not an issue of the reasonableness of the charge (as no charge was levied) but rather that the lack of response by the Respondent in procuring the removal of items left on the pathways was evidence of the poor quality of management provided by the Respondent.

#### **The tribunal's decision**

54. There was no service charge item in relation to the pathways for the tribunal to determine, but the tribunal noted Mr Hutton's submission.

#### **Signage**

55. The Applicants challenged the charge of £261 charged in the service charge year to 31 March 2020. Mr Hutton submitted that during the external major works the signage had been replaced.
56. At the time of completing the Scott Schedule the Applicants had not seen the invoice which was subsequently provided by the Respondent. This showed that the charge was for the installation of three internal notice boards. Mr Shah submitted that their installation was not part of the

major external works and that the cost covered not only the cost of the three cork noticeboards but also the cost of their installation.

### **The tribunal's decision**

57. The tribunal finds this cost to be reasonable.

### **Reasons for the tribunal's decision**

58. The Tribunal accept, on the evidence before it, that the cost relates to the internal signs and not external signage and that the charge was not in respect of signage that formed part of the major external works.

### **General Maintenance**

59. The Applicants challenged the reasonableness of the budgeted cost of £1000 in the service charge year to 31 March 2023 for general maintenance on the basis that it is an uncategorised cost.
60. The Respondent submitted that this was the amount that had been allocated in the service charge budget for general maintenance for a number of years. It might not be used (as it was not in the service charge year to 31 March 2022) but that it was prudent and reasonable to budget for ad hoc general maintenance/repair items that might not fall within any of the usual service charge codes.

### **The tribunal's decision**

61. The tribunal find the charge to be reasonable.

### **Reasons for the Tribunal's decision**

62. The tribunal find that it is prudent and reasonable to budget for ad hoc items that do not fall within the standard heads of expenditure listed by the Respondent in its service charge accounts. While noting that the service charge accounts show that until 2021 the budgeted sum was £500, not £1000 as indicated by the Respondent as having been the charge for a number of years, the tribunal find that a budgeted charge per flat in the region of £41 for ad hoc maintenance/repair is not unreasonable.

### **Cleaning services**

63. The charges disputed by the Applicants set out in the Scott Schedule are
- £7,224.00 in the year to 31 March 2019

- £7,224.00 in the year to 31 March 2020
  - £7,085.00 in the year to 31 March 2021
  - £7,224.00 in the year to 31 March 2022
  - Budgeted cost of £7,500 in the year to 31 March 2023
64. Mr Shah referred the Tribunal to the contract with Swiss Clean in the Respondent's bundle which provides for cleaning the entrances stairs and communal areas three times a week for an unspecified length of visit. Given the work specification set out in the contract he submitted that the cost was reasonable.
65. Mr Hutton submitted that the Applicants had been requesting a copy of the contract cleaning without receiving it. He submitted that the cleaners are not doing the work for which they are contracted, and that the Respondent was not exercising sufficient control over the cleaners. He stated that the cleaners never undertook litter picking, referring the Tribunal to a photo in the bundles as evidence that litter had remained not picked up for 6 to 8 weeks.
66. Mr Shah accepted the evidence of the photo but submitted that it only evidenced a one-off issue. He further submitted that the contract limited litter picking to the front pathway, it did not include picking up litter from the garden.

### **The Tribunal's Decision**

67. The Tribunal find the cleaning costs to be reasonable.

### **Reasons for the tribunal's decision**

68. The Tribunal finds that the costs charged are not unreasonable for the work specified in the contract before the Tribunal. The contract in the bundle commences 1 April 2022 but that it was typical of the contracts placed by the Respondent was not challenged by the Applicants. The Applicants provided evidence of one possible failure to pick up litter but that was not sufficient evidence to challenge the overall reasonableness of the charges.

### **Pest Control**

69. The charges disputed by the Applicants set out in the Scott Schedule are
- £500 in the year to 31 March 2022
  - A budgeted cost of £750 in the year to 31 March 2023.
70. The Tribunal heard evidence from Mr Chappell, a chartered surveyor, who had acted as a consultant on the major external works which

involved over-hauling the roof and external elements of the building. In his witness statement he stated that he believed there had been a hole in the soffit/fascia board where squirrels had obtained access and that this was repaired by Mitre as part of the major works. In oral evidence Mr Chappell said that the works were completed in October 2019 and that the Landord had believed that the problem had been addressed.

71. Mr Hutton did not challenge the cost of the actual invoice for work carried out in the year to March 2022 but submitted that the work should not have necessary if the external major works had been completed properly. He stated that there was an ongoing issue with pests entering the attic and damaging the electrics.
72. Mr Shah submitted that Mr Chappell's evidence indicated that the problem had been addressed during the major works in 2019 and that it was possible that the squirrels could have chewed their way back in since then. The work covered by the invoice was in relation to work required after completion of the major works. He also submitted that the Applicants had provided no evidence as to the existence of current unrepaired gaps. Mr Shah submitted in in like of the experience in previous years it was reasonable to allow a budgeted sum for possible pest control in the year to March 2023.

### **The tribunal's decision**

73. The actual cost in the year to March 2022 and the budgeted cost in the year to March 2023 are reasonable.

### **Reasons for the tribunal's decision**

74. On the evidence before the Tribunal find that the necessity for the work in the year to March 2022 postdates the work carried out during the major works and that it was caused by reason of failure by the Respondent address the issue during the major works. The Tribunal also finds that in the circumstances it is reasonable to budget for possible pest control work in the budget for the year to March 2023.

### **Garden services (including garden extras)**

75. The charges disputed by the Applicants set out in the Scott Schedule are
  - £4,296 in the year to 31 March 2019
  - £3,153 in the year to 31 March 2020
  - £2,808 in the year to 31 March 2021
  - £2,808 in the year to 31 March 2022
  - Budgeted cost of £2,808 in the year to 31 March 2023

76. Mr Hutton challenged the reasonableness of the costs incurred in the years to March 2019 and 2020 on the basis that the fact that they are higher than the subsequent years suggests that the charges are not reasonable.
77. Mr Shah referred the Tribunal to the relevant invoices in the bundle which indicated that in the year to March 2019 there were two visits per month April to October (inclusive) and one visit a month during November to March (inclusive) by Olivetree. He submitted that the fact charges by another company, Chequers, in subsequent years were cheaper does not mean that Olivetrees' costs were unreasonable. The higher cost in the year to March 2020 was because Olivetree had the contract until July 2019 and Chequers took over in September 2019. The contract with Olivetrees was terminated at the request of the tenants.
78. Mr Hutton stated that the issue the Applicants had in the subsequent years was not the cost per se but whether the work was undertaken. He stated that litter picking was never undertaken. The services were not provided twice a month as claimed by the Respondent. He submitted that he did not believe that gardening was undertaken in 2021. Mr Hutton submitted that a reasonable charge would be  $\frac{1}{2}$  or  $\frac{2}{3}$  of the costs actually charged.
79. The Applicants also disputed an extra charge of £1818 charged in the year to March 2022.
80. The Respondent stated that this charge was incurred because the Chequers contract was terminated in June 2021. There was no gardening contract from June 2021 until Mad Cleaning were appointed in January 2022. The Respondent stated that the Applicants were due a refund for the period when there was no gardening contract. The extra gardening costs of £1818 were comprised in invoices from Mad Cleaning for gardening in June 2021 of £714, and for 'one off cleaning' in November 2021 of £684 and an invoice from CSG Usher's for tree works of £420.

### **The tribunal's decision**

81. The Tribunal find the costs levied by Chequers for gardening on the basis of twice monthly visits until June 2021 to be reasonable. Mr Hutton had provided no evidence to substantiate his suggested reduction of their costs. The Tribunal note that the Respondent will be making an allowance to reflect that the contract with Chequers was terminated in June 2021.
82. The Tribunal find that the gardening costs levied by Olivetrees were unreasonable and find that a reasonable charge in the year to March 2019 would be £2808 and in the year to March 2020 £2457.

83. The Tribunal find that it was reasonable for the Respondent to incur the extra gardening costs of £1818 in the year to March 2022 in the period when there was no gardening contract in place.

### **Reasons for the tribunal's decision**

84. In the absence of evidence as to failure to perform its contract the Tribunal finds that the charges levied by Chequers to be reasonable.
85. The charges by Olivetrees are sufficiently higher than those levied by Chequers for the Tribunal to find these to be unreasonable and the Tribunal find that for the years to March 2019 and 2020 a charge equivalent to that charged by Chequers would have been reasonable. The cost in the year to March 2020 is adjusted to reflect that there was no gardening in August 2019 and only one visit charged by Chequers in September 2019.
86. In the year to March 2022 there was no gardening contract between June 2021 and January 2022. In the period it is reasonable to incur one off gardening charges and these have not been challenged by the Respondents, other than to query to what the CSG Usher charge related. The invoice states that it relates to tree work and there is no evidence before the Tribunal to contradict what the invoice states.

### **TV/Phone Services**

87. The charges disputed by the Applicants set out in the Scott Schedule are
- £1,034 in the year to 31 March 2021
  - £1,050 in the year to 31 March 2022
88. The Respondent stated that these sums represented the expenditure on the annual maintenance of the entry phone and referred the Tribunal to the supporting invoices in their bundle.
89. Mr Hutton submitted these charges would not be challenged if the systems were working but that in both years the system had not been operating for Flats 7-16, and the charges were therefore unreasonable.
90. Mr Shah submitted that the contracts were for the provision and maintenance of the systems and that it was reasonable to have maintenance contracts.

### **The tribunal's decision**

91. The Tribunal finds the costs of the maintenance contracts to be reasonable.

### **Reasons for the tribunal's decision**

92. In the absence of evidence as to failure to perform its obligations under its maintenance contracts the Tribunal finds that the charges levied by Interphone to be reasonable.
93. The need for and timing of any repair works are matters that would fall to be charged for outside the scope of the maintenance contract and the Applicants did not challenge the cost of any actual repair works.

### **Insurance, including cover for terrorism**

94. The charges disputed by the Applicants set out in the Scott Schedule are
  - £8,168 in the year to 31 March 2021
  - £7,290 in the year to 31 March 2022
  - Budgeted cost of £8,985 in the year to 31 March 2023
95. The Respondent stated that the actual cost in the year to March 2022 was £8,820 and all are evidenced by the invoices in the bundle and that the insurance is placed by market tested review.
96. The Applicants challenged the premiums in that that for the year to March 2021 represented a 30% increase over the premium for the preceding year.
97. Mr Shah referred the Tribunal to the fact that a Fire Insurance Valuation had been commissioned in June 2020. Following a measured survey of the building and given the requirement to add VAT to the reinstatement cost the Declared Value had been increased.
98. Mr Shah confirmed to the Tribunal that the insurer is an independent third party and that the landlord receives no commission. Each property in any block policy is individually assessed.
99. Mr Hutton provided no alternative insurance quotes.
100. The Applicants also challenged the individual premiums for terrorism in all the years in question
  - £1848 in the year to 31 March 2019
  - £1,922 in the year to 31 March 2020
  - £2,617 in the year to 31 March 2021
  - £2,360 in the year to 31 March 2022
  - Budgeted cost of £2,879 in the year to 31 March 2023

101. Mr Hutton challenged the inclusion of terrorism as an insured risk submitting that the property is in an area of low risk to terrorism.

102. Mr Shah referred the Tribunal to paragraph 9 of the Respondent's statement of case which sets out Clause 5(5)(a) of the Lease of Flat 5 which contains the following covenant by the landlord,

*'Keep the Buildings .....insured against loss or damage by fire and such other risks as are normally covered by a comprehensive policy in at least such sums as the Lessor shall reasonably consider to be the full reinstatement value thereof so far as the Lessor is able to do so and as the Lessor may from time to time think fit under such policy or policies as the Lessor may from time to time in its absolute discretion select....'*

103. Paragraph 9 highlighted that the Leases of Flats 4,14,18,19,22 and 23 also contain an express mention of explosion.

104. Mr Shah referred the Tribunal to the decision in *Qdime Limited v Bath Building (Swindon) Management Company Limited & Ors* [2014] UKUT 0261 (LC) where it was held that the exercise of discretion in accordance with the RICS Code is a reasonable exercise of discretion and paragraph 12.5 the RICS Code of Practice which provides that, '*serious consideration should be given to the taking out of terrorism insurance*'.

### **The tribunal's decision**

105. The Tribunal find the insurance premiums to be reasonable.

### **Reasons for the tribunal's decision**

106. On the evidence before it, and with the Applicants providing no alternative insurance quotes, there is nothing before the Tribunal to lead it to find that the insurance premiums are unreasonable.

107. As to insuring against terrorism the Tribunal finds, following the decision in *Qdime* that this is covered by the use of the word 'explosion' in the leases where there is an express requirement to insure against 'explosion'. As for the other flats where explosion is not expressly referred to, in light of the recommendation to give serious consideration to insuring against terrorism set out in the RICS Code of Practice the Tribunal find that it is not unreasonable for the landlord to consider that covering against terrorism is within the risks normally covered by a comprehensive policy.

108. As the Applicants did not challenge the reasonableness of the terrorism premiums, only whether the landlord was reasonable in effecting such insurance, the Tribunal finds the premiums to be reasonable.



## **Management fees**

109. The charges disputed by the Applicants set out in the Scott Schedule are
- £3,456 in the year to 31 March 2019
  - £4,800 in the year to 31 March 2020
  - £6,000 in the year to 31 March 2021
  - £7,200 in the year to 31 March 2022
  - Budgeted cost of £7,200 in the year to 31 March 2023
110. Mr Hutton challenged the reasonableness of these fees on the basis that they are increasing at a rate considerably in excess of the rate of inflation. He submitted that there has not been effective management to a reasonable level. There had been no continuity of staff and poor communication. There had only been four meetings with the tenants since 2016 and on the question of the insurance premium the tenants had had to involve their MP before they obtained a response. Mr Hutton cited by way of example of poor management the ongoing problems that had existed with the gardening contractors. Mr Hutton submitted that there had been a lack of transparency, in that various invoices and contracts had only been made available following the commencement of the application to the Tribunal.
111. Mr Shah submitted that the management fees are charged for collecting service charge, management and provision of various services. He submitted that door repair and pest control pointed to active management, which does not have to be linked to the same identified person at all times. Mr Shah submitted that if the tenants had asked for the invoices these would have been provided. As for the increases in the rate the fees were nonetheless now at a market rate, with the budgeted figure for the year to March 2023 representing a monthly cost to each tenant of £25.

## **The tribunal's decision**

112. The Tribunal finds that a reasonable management fee in each year in question would be 70% of the fee charged.

## **Reasons for the tribunal's decision**

113. The Tribunal finds that a budgeted fee per flat of £300 p.a (and the actual fees in the previous years) would be reasonable if the property had been pro-actively managed. It finds on the evidence before it that the property has not been actively managed. There has been management but it appears, from the evidence before the Tribunal, to have been slow or reactive, and there has been a lack of transparency. There has been management but not sufficient to justify the full management fee.

**114. Reserve**

115. The charges challenged by the Applicants set out in the Scott Schedule are

- £50,250 in the year to 31 March 2020
- £50,250 in the year to 31 March 2021
- £59,000 in the year to 31 March 2022
- Budgeted cost of £75,000 in the year to 31 March 2023

116. In the Scott Schedule the Respondent explained that the contributions sought are based on a ten year capital plan, which includes internal works and fire protection, which are due to commence shortly and budgeted to cost £300,000. A Notice of Estimate is included in the bundle. The sums demanded have increased because the works are due to commence shortly and the landlord wishes to cover as much as possible of the cost from the reserve fund to limit the increase in the amount demanded in any year by way of service charge.

117. Mr Hutton submitted that based on the cost of the historic major works it would be more appropriate to be costing the works at 10% more than the major external works cost, say in the region of £210,000.

118. At the hearing Mr Shah submitted that the s20 Notice costing the works at £300,000 may already be out of date. These works are different to the historic external major works. They involve fire works in the roof.

**The tribunal's decision**

119. The Tribunal find the requested contributions to be reasonable.

**Reasons for the tribunal's decision**

120. In the absence of any alternative quote for the actual works proposed the Tribunal accept the Respondent's estimate of the cost of the works at £300,000.

121. Given the stated date by which the works are to commence it is not unreasonable for the landlord to seek to increase the reserve sum demanded every year. Whether the sums being demanded of the tenants are affordable is not a matter for the Tribunal, but the Tribunal would invite the Respondent to consider whether it may be possible to spread the cost of the works over a longer period, given that they are part of its 10 year capital plan and the costs, as demanded, do not appear to be spread over ten years.

## **Application under s.20C**

122. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties, in particular noting the degree of information that was only provided by the Respondent once the Applicants had made the application, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Pittaway

**Date:** 27 February 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).

## **THE LAW**

### **Landlord and Tenant Act 1985**

#### **Section 19 Limitation of service charges: reasonableness.**

(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.

#### **Section 27A Liability to pay service charges: jurisdiction**

(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.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a)in a particular manner, or
- (b)on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.