FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LSC/2024/0034**
Property	:	**Flats 1, 2,3 & 1 173a & Flat 1 175 Abbeville Road London SW4 9JJ**
Applicants	:	**K & C Ray (Flat 1, 173a)** **J Swinburn (Flat 2, 173a)** **D & K Hughes-Hallett (Flat 3)** **E Grieg-Gran (Flat 1, 175)**
Representative	:	**Mr J Swinburn**
Respondent	:	**Assethold Limited**
Representative	:	**Eagerstates Ltd**
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** **Mrs S Phillips MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**11 July 2024**
Date of decision	:	**9 August 2024**

DECISION

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.

(3) The tribunal orders the tenants' liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (the **'2002 Act')** be extinguished.

Background

1. The applicants sought a determination under section 27A of the Landlord and Tenant Act 1985 (the **'1985** Act') as to whether the following service charges are payable:

   Actual charges for the year ending 31 December 2023:

(a) Insurance	£2,439.26
(b) Fire, Health & Safety Testing, Services & repairs	£1,200
(c) Chimney works	£810
(d) Repairs to Stair Edge	£570
(e) Scaffolding for removal of falling window sill	£800
(f) Drone Survey of Roof	£300
(g) Roof Works as per Section 20 Notice	£12,154
(h) BNO Works	£606.22

   Estimated charges for the year ending 31 December 2024:

(i) Fire, Health & Safety Testing, Services & repairs	£1,200
(j) Fire, Health & Safety Risk Assessment	£450

2. By the date of the hearing the amount to be paid for the roof works had been agreed and therefore was no longer before the tribunal to determine.
3. The applicants had applied to the Tribunal previously. The decision dated 24 November 2023 (ref: LON/00AY/LSC/2023/0179) (the **'previous decision**') involved service charges in relation to the year ending 31 December 2023. Two items appear to overlap, namely the insurance and the Fire, Health & Safety Testing. However, the charges challenged in the previous case in these categories were only estimates, whereas the charges challenged in this case are actual charges based on past expenditure. Therefore, the Tribunal is satisfied that there is no overlap.

4. The applicants also seek an order for the limitation of the landlord's costs in proceedings under s20C of the 1985 Act and an order to reduce or extinguish the tenants' liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (the **'2002 Act')**

5. By Directions dated 12 March, amended 13 May 2024, the applicants were directed to provide their case to the respondent by 28 March 2024 and the respondent to provide its case to the applicants by 17 May 2024, with the applicants having a right of reply by 14 June 2024. The parties were warned of the consequences of failing to comply with the directions.

The hearing

6. Mr Swinburn represented the applicants at the hearing, which was also attended by Professor and Mrs Ray. The respondent did not appear but was represented by Mr White of counsel. Ms Porter attended as an observer.

7. As in the previous case and stated in the previous decision (paragraph 12), as the respondent did not attend the hearing it was not able to provide assistance to the tribunal in ascertaining the facts or answering questions about the statements made on its behalf. Mr White of counsel for the respondent was able to provide assistance on the law and in identifying the respondent's previously articulated positions on issues but, as previously stated, this does not replace the respondent's knowledge. Counsel was unable to respond to factual points raised by the applicants and the tribunal.

The Property

8. The property which is the subject of this application is described in the application as two four storey houses, converted into flats. The ground floor of each house is used as commercial units. There are two first floor flats (Flat 1, 173a and Flat 1 175) and two two-floor maisonettes (flats 2 and 3 173a)

9. Assethold Limited is the headlessee of the property, and the applicants' immediate landlord. The freeholder is Paradian Limited.

10. No party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

11. The applicants hold long leases of their flats which require their landlord, Assethold Limited, to provide services and the tenants to contribute towards the costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

The issues

12. In their statement of case the applicants submitted that a number of the items included in the service charge accounts are not payable by the applicants as they are not chargeable under the terms of the leases or, if chargeable, the sums demanded are unreasonable.

13. In their statement of case the applicants requested that the tribunal order that funds that had been incorrectly paid to the respondent should be repaid within 30 days.

The tribunal's decisions

14. The tribunal reached its decision after considering the applicants' oral and written evidence, the respondent's response in the Scott Schedule, the documents referred to in that evidence, and taking into account its assessment of the evidence. It had regard to the fact that no one from the respondent, nor Mr Gurvits of Eagerstates, the respondent's managing agents, attended the hearing and therefore was not available to be cross-examined on the statements made in the Scott Schedule.

15. The tribunal also had regard to the submissions made by Mr Swinburn and Mr White at the hearing.

16. The applicants referred the tribunal to the previous decision. This is not binding on the tribunal but, if appropriate, the tribunal has had regard to it in reaching its decisions.

17. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

18. The tribunal has made determinations on the various issues as follows.

Insurance May 2023/24 £2,439.26

19. The applicants gave evidence that it is the freeholder who arranges the insurance of the buildings with the respondent contributing 50% of the premium, which is then charged to the individual flat tenants.

20. The applicants drew the tribunal's attention to the quotes they had asked several brokers to provide on the basis of the risks against which the landlord is obliged to insure under the terms of the leases. They set the quotes obtained out in a chart which showed that the average percentage difference between the cost of the premium for the current insurance and their quotes was 29% less.

21. The applicants submitted that the applicants should not be obliged to pay for risks not required to be covered by the terms of their leases.

22. The applicants drew the tribunal's attention to the statement in the previous decision that that tribunal was concerned that the freeholder was not obtaining competitive quotes.

23. The applicants invited the tribunal to determine that a reasonable premium would be £500 less than that demanded, in light of the determination in the previous decision that the premium be reduced by £500.

24. For the respondent Mr White submitted that the actual insurance premium was less than the estimated premium of £2,838.28 referred to in the previous decision, but was unable to say why. He referred the tribunal to the Quotation from Allianz in the bundle which quotes the premium of £2,464.91.

25. Mr White submitted that while the respondent may not charge an unreasonable premium, the premium need not be the cheapest available. Mr White submitted that the difference between the applicants' quotes and the actual premium might be because the actual premium covers terrorism.

Tribunal's decision

26. The tribunal determines that a reasonable premium for the year May 2023 to May 2024 is £2,464.91.

Reasons for the tribunal's decision

27. The estimated insurance premium the subject of the previous decision included loss of rent insurance in the sum of £60,000, whereas the actual policy effect for the year with Allianz does not include loss of rent insurance. Loss of rent insurance is not relevant to the residential elements of the building and it is therefore correct that this is excluded.

28. The obligation in the leases, at clause 7.2 of the lease of Flat 1 173a Abbeville Road, is that

> *'the landlord will keep or procure that the Development is kept insured in the full replacement value thereof against loss or damage by fire, aircraft, explosion, lightning, tempest storm, flood and other comprehensive risks normally insured against in the case of premises of the same or similar nature'.*

29. The tribunal finds that it is not outside the 'comprehensive risks normally insured' against for terrorism to be covered, and notes that the comparable quotes obtained by the applicants did not include terrorism.

30. The respondent has again provided no evidence that it or the freeholder tested the market before placing the insurance has obtained competitive quotes before placing the insurance, although the tribunal notes that the actual insurance for the year in question was not placed with the company from whom the quote was obtained for the estimated charge in the previous decision.

31. The previous decision found that an estimated insurance premium of £2,338.28 was reasonable. In the circumstances the tribunal finds that the actual charge of £2,439.26 is within the bounds of a reasonable charge for the actual insurance premium.

Fire, Health & Safety Testing, Services & repairs

32. The sums demanded by the respondent are £1200 for December 2022 - December 2023 , and an estimate of £1,650 for December 2023 to December 2024. The estimate for the year to December 2024 includes a charge of £450 for a Fire Health & Safety Risk Assessment.

33. Mr Swinburn referred the tribunal to the previous decision and submitted that a reasonable charge for this testing, etc should be £350.

34. Mr White referred the tribunal to invoices in the bundle which showed that JHB Fire Services were charging for monthly Fire Health and Safety testing at £48 per month, and that ESP were charging £336 per half year for six monthly fire alarm service of 3 detectors, emergency light service of 3 lights and light checks. Accordingly the amount charged for the year to December 2023 was the standard charges evidenced by these invoices.

35. As to the increase in the estimated sum for the year to December 2024 Mr White submitted that this might be as a result of the inflationary environment.

The tribunal's decision

36. The tribunal determines that it is reasonable to charge for monthly fire testing by JHB Fire Services and that the monthly charge of £48 (£576 per annum) is reasonable.

37. The tribunal determines that the amount of £672 per annum payable in respect of servicing to Essential Safety Products ('**ESP'**) to be reasonable.

38. The tribunal determines that a reasonable amount payable in respect of estimated Fire, Health & Safety servicing by ESP for the year to December 2024 is also £672.

39. The tribunal determines that a reasonable sum for the estimated charge for a Fire Health & Safety Risk Assessment in 2024 is £350.

Reasons for the tribunal's decision

40. The tribunal does not know what evidence was before the previous tribunal when it reached its decision, and reminds the parties that the decision is not binding on this tribunal who has to consider the evidence before it.

41. The invoices from JHB Fire Services are stated to be for 'Monthly Fire Health & Safety Testing'. It is not clear to what testing the invoices refer but the tribunal finds that it is reasonable to infer that the testing relates to ensuring the fire system is operating correctly on a monthly basis. A monthly charge of £48 for this service is reasonable. This is not the same as a fire health and safety risk assessment nor is it the same as the six-monthly servicing.

42. The invoices from Essential Safety Products (ESP) are stated to be for six monthly servicing and checks. These are supported by certificates as to what has been inspected and tested and the tribunal finds that they evidence that the work has been carried out. It finds an annual charge for this service of £672 to be reasonable. Again this is not the same as a fire health and safety risk assessment nor the monthly checks.

43. From the estimated service charge demand in the bundle the tribunal finds that the respondent is not increasing the estimate for the six monthly servicing checks by ESP. The tribunal finds an estimated charge of the same amount, namely £672 for these services, for the year to December 2024 to be reasonable.

44. There is no charge for a Fire Health & Safety Risk Assessment in the actual service charge for the year to December 2023. There is an estimated charge in the respondent's estimated service charge account for the year to December 2024 of £450 for 'Fire Health & Safety Risk Assessment'.

45. The tribunal agrees with the previous decision that for a property of this type risk assessments 18 monthly/two yearly are appropriate so that it is reasonable for the respondent to estimate for a risk assessment in the year to December 2024.

46. In the absence of any evidence from the respondent as to how it has determined an estimate of £450 for such an assessment the tribunal finds, having regard to the previous decision, that an estimated charge of £350 would be reasonable.

Chimney works £810

47. The respondent relied on the existence of an invoice for £810 and a photo which it stated showed that work had been done. Mr White submitted that that the fact that scaffolding had not been used was not evidence that the work had not been done.

48. Mr Swinburn submitted that there was no visual evidence that any work had been done to the chimney. He submitted that it would not have been possible to undertake the work without scaffolding and that no scaffolding had been erected. The only alternative access to the roof would be through the top flat and no such access had been sought. The existence of an invoice (on which the respondent relies) is not evidence that the work has been done. Mr Swinburn gave evidence that two years ago certain leaks had been dealt with by a contractor for the applicants.

The tribunal's decision

49. The applicants are not liable for this charge

Reasons for the tribunal's decision

50. The limited inconclusive photographic evidence before the tribunal shows some work has been done to the chimney but not when. The Tribunal find that there is no evidence before it that any work was done in 2023. The Tribunal do not find the invoice to be conclusive that the work was done, only that an invoice was issued.

Repairs to Communal Stair Edge £570

51. Mr Swinburn submitted that there was no visual evidence that any effective work had been carried out to the stair edge, referring the tribunal to photographs which he stated were taken in December 2023 after the work had been invoiced. Mr Swinburn submitted that any work that might have been done would have to be redone in their entirety.

52. Mr White submitted that the work had been carried out, referring the tribunal to photographs in the bundle, and 'white line' on one photograph of work having been undertaken. He referred the tribunal to the need for the work having been identified in the Planned Preventive Maintenance Schedule prepared by JMC Chartered Surveyors in March 2022.

The tribunal's decision

53. There should be no charge to the service charge for work done to the communal stair edge.

Reasons for the tribunal's decision

54. The tribunal find no evidence before it that work has been done to the communal stair edge to any standard that would justify any charge. Mr Gurvits might have been able to assist the tribunal had he attended the hearing but he chose not to. The existence of an invoice is not evidence that the work has been done and the photographic evidence provided by the respondent is not conclusive of work having been carried out.

Scaffolding for removal of falling windowsill - £800.00

55. Mr Swinburn gave evidence that that the need to treat the falling windowsill was as a result of poor workmanship by the respondent's contractor in the previous service charge year. The work that the contractor carried out failed within one year of it being undertaken. Mr Swinburn referred the tribunal to an e mail in the bundle from one of the respondent's employees in which he had stated that the contractor, SFM, who carried out the original work to the left handside window, would deal with any works required to it at their own cost.

56. Mr White submitted that there was no evidence that the scaffolding was required as a result of work to the said 'left handside window'.

57. Mr Swinburn referred the tribunal to photographs provided by the respondent in the bundle as evidence that the work was to the left handside window.

The tribunal's decision

58. There should be no charge to the service charge for scaffolding.

Reasons for the tribunal's decision

59. The tribunal accepts Mr Swinburn's evidence that the applicants were told by the respondent that SFM were going to undertake the work to the left handside windowsill at their own cost

60. The photographic evidence before the tribunal as to which window necessitated the scaffolding is inconclusive but the service charge account for December 2022/2023 makes no charge for work undertaken to any window that year.

61. The tribunal therefore finds that it was the left handside window to which work was required, as stated by Mr Swinburn., as otherwise there would have been a charge for the work to the windowsill itself.

62. The tribunal finds that if the repair work to the window itself was to be carried out at SFM's cost any costs ancillary to that work should also be borne by it.

Drone survey £300

63. Mr Swinburn submitted that as a maintenance schedule had been prepared in March 2022 there was no need for a drone survey the following year, and there was no evidence that such a drone survey had been carried out.

64. Mr White submitted that the charge of £300 for a drone survey was more reasonable than a traditional survey, that might have required scaffolding

at a potential charge of £800. If work had been carried out to the roof since the maintenance schedule was undertaken it was not unreasonable to do a drone survey to check the work carried out. He submitted that the tribunal should rely on the invoice as evidence that the work had been carried out.

The tribunal's decision

65. The cost of the drone survey should not be charged to the service charge.

Reasons for the tribunal's decision

66. The invoice of itself is not evidence that the survey was carried out. The invoice refers to a report on findings. The report might have provided evidence that the survey was carried out but no report has been provided by the respondent. Again it would have assisted the tribunal if Mr Gurvits had attended the hearing.

67. In the absence of any evidence that the drone survey was carried out the cost should not be charged to the service charge.

68. **BNO Audit £744 and BNO works £606.22**

69. Mr Swinburn submitted that the work undertaken by BNO London Limited was a duplication of work undertaken by Property Run (Contracts) Limited for which they invoiced £102, and that that company had found '*no electrical HSE issue*' at the property. BNO's audit was undertaken 23 days after the Property Run (Contracts) Limited's inspection.

70. As to the works undertaken by BNO Mr Swinburn submitted that these were unnecessary as Property Run (Contracts) Limited had not identified the need for any work. Mr Swinburn gave evidence that in 2022 Property Run (Contracts) Limited had carried out works to the communal electricity distribution cupboard to conform with BS7671. The BNO works are expressed to be necessary to bring the installation into line with 'current regulations'. As the respondent has not shown any change in the regulations between 2022 and 2023 Mr Swinburn submits the BNO works were unnecessary.

71. Mr Swinburn submitted that Building Network Operator (BNO) audits are typically to be carried out on a BNO distribution board. He said there was no such distribution board at the subject property. He submitted BNO London Ltd carried out an inspection of the consumer unit and flat installations, which is outside the remit of a building network operator. Since BNO London Ltd are not NICEIC registered they are not accredited to carry out any inspection against which work can be carried out. Mr Swinburn submitted that the work carried out amounted to improvement and as such was not recoverable under the leases.

72. Mr White referred the tribunal to the BNO invoice in the bundle dated 13 September 2023, which sets out in detail the work which they carried out by reference to its quote QU-0165. He submitted that it was unlikely that

BNO fabricated the work it said it had carried out. If it was accepted that the work had been done, the applicants had not challenged the reasonableness of the cost.

The tribunal's decision

73. The tribunal finds that it was reasonable for the respondent to undertake the BNO audit, and subsequently the works recommended by that audit.

74. In the absence of any challenge to the sums expended the tribunal finds these to be reasonable.

Reasons for the tribunal's decision

75. Clause 6(2) of the lease of Flat 1 173a requires the landlord at all times to keep meters wires and cables (other than those exclusively serving the individual flats) in good and substantial repair. Clause 6(5) gives the landlord discretion to do all works installations acts matters and things necessary for the proper maintenance safety and administration of the property.

76. BNO stated that the works were necessary to comply with current regulations and there is no evidence before the tribunal to contradict that. If the works fell outside the parameters contemplated by clause 6(2) the tribunal finds on the evidence before it that they fall within the parameters of clause 6(5), as necessary for the safety of the property.

77. The tribunal finds that the BNO works were not referred to in the previous decision. It finds from the evidence before it that the work undertaken by BNO (with specific reference to the meter) differed from the work undertaken by Property Run (Contracts) Limited, which related to work to repair the time delay switch. There was no evidence before the tribunal as to whether or not BNO were NICEIC registered.

78. In the absence of any evidence that a BNO audit had been undertaken in the recent past the tribunal do not find it unreasonable for the respondent to have commissioned the BNO audit and undertaken the works recommended by it.

Applications under s.20C and paragraph 5A

79. In the application form the applicants applied for an order under section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 of the 2002 Act.

80. Mr White invited the tribunal to make no orders if the decision was not wholly in favour of the applicants.

81. Mr Swinburn submitted that the respondent had failed to engage with the applicants right up to the date of the hearing and that any costs in

connection with the proceedings had been incurred as a result of this failure to engage with the applicants.

82. The tribunal finds that Mr Gurvits failed to engage in the process. Having done so might have prevented the need for a hearing. In particular, it was not of assistance to the tribunal that Mr Gurvits did not attend the hearing.

83. In the circumstances the tribunal determines that it is just and equitable for an order to be made under s20C of the 1985 Act, so that none of the costs of the proceedings incurred by the respondent in connection with the proceedings be added to the service charge.

84. The tribunal also determines, for the same reasons, that it is just and equitable for an order to be made under paragraph 5A of Schedule 11 of the 2002 Act that none of the costs incurred by the respondent in connection with the proceedings be charged to the applicants as an administration charge under the leases.

Repayment of funds

85. In their statement of case the applicants requested that the tribunal order that funds that had been incorrectly paid to the respondent should be repaid within 30 days.

86. The tribunal does not have the jurisdiction to make such an order.

Name: Judge Pittaway **Date:** 9 August 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).