FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AS/LSC/2024/0116**
Property	**:**	**62 Rydal Way, South Ruislip, Middlesex, HA4 0RU**
Applicant	**:**	**Mr. Philip Green**
Representative	**:**	**In person**
Respondent	**:**	**A. J. A. Taylor and Company Ltd**
Representative	**:**	**Mr. Cullen**
Type of application	**:**	**An application under sections 27A and 20C Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	**:**	**Judge Sarah McKeown** **Mr. John A Naylor FRICS, FIRPM**
Date and Venue	**:**	**14 August 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**27 August 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal strike out the following items (references are to the Schedule of Disputed Service Charges):

(a) 2022:
(i) Item (1) – Flat rate Estate charge;

(ii) Item (2) – Inadequate maintenance of the mansion;

(iii) Item (3) – Accounts, invoices and payments do not comply with the lease requirements;

(b) 2023:

(i) Item (3) – Flat rate Estate charge;

(ii) Item (4) – Maintenance of garage exteriors, guttering, rainwater pipes, decoration;

(iii) Item (5) – Accounts, invoices and payments do not comply with the lease requirements.

(2) The Tribunal finds as follow:

(a) In respect of 2022:

(i) The charge to the Applicant of 10% addition to the cost of building insurance, which was £30.99, is not due and owing;

(b) In respect of 2023:

(i) The charge to the Applicant for raking out and repointing the failed areas above balcony door and above the window to no. 62 in the sum of £27 are not due and owing;

(ii) The charge to the Applicant of 10% addition to the cost of building insurance in 2023, which was £35.52 is not due and owing.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) The Tribunal does not make an order under para. 5A, Schedule 11 of the Commonhold and Leasehold Reform Act 2002

(5) The Tribunal does not make an order in respect of the Applicant for a refund of the tribunal fees paid by the Applicant.

References are to page numbers in the bundles provided for the hearing.

The Application – X1

1. The Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and

Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable and reasonable. The application seeks to challenge service charges in 2022 and 2023. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish his liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

2. 62 Rydal Way, South Ruislip, Middlesex, HA4 0RU ("the Property") is a two-bedroom first and second floor maisonette in a purpose-built block of flats. The block has 4 flats and 8 maisonettes.

3. The Applicant is the long lessee of the Property and the Respondent is his landlord. The original lease of the Property was dated 30 September 1966. In 2020, a new lease was granted pursuant to the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 on the terms of the original lease, subject to certain specified variations.

4. On 9 April 2024 the Tribunal gave directions (X40). It was noted that the following were the issues in respect of service charge years 2022-2023:

   (a) The extent of the estate on which the service charge is based;
   (b) Whether all sums included in the service charge are service charge items;
   (c) Liability to pay a flat rate "Estate Charge;
   (d) Reasonableness of cost of maintaining garage exteriors;
   (e) Effect of failure by landlord to comply with the lease requirements in relation to accounts, invoices and payments;
   (f) Liability and reasonableness of 10% additional charge on insurance premium;
   (g) Whether the landlord has complied with the consultation requirement under s.20 of the 1985 Act;
   (h) Whether an order under s.20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made;
   (i) Whether an order for reimbursement of application/hearing fees should be made.

5. Directions were then given for the progression of the case.

Documentation

6. The Tribunal has been provided with a bundle of documents, comprising a total of 216 pages. This includes a Schedule (X48), the Applicant's witness statement (X61) and the witness statement of Mr. Thompson (W1), a director of Sebright Property Management Limited, which undertakes management of various properties on the estate in which the Property is located.

The Hearing

7. The Applicant attended the hearing in person. The Respondent was represented by Mr. Cullen, Counsel.

8. At the outset of the hearing, the Respondent made an application to strike out various parts of the application. The application to strike out was made orally, but the points relied on were, largely, set out in the Respondent's response to the Schedule (X48) and the witness statement of Mr. Thompson (W1). The application was as follows:

9. It was said that items (1) and (3) in relation to 2022 and items (3) and (5) in relation to 2023 should be struck out as those issues had already been determined by the Court.

10. The Respondent relied on s.27A Landlord and Tenant Act 1987, which states, among other things:

> (4) No application under subsection (1) or (3) may be made in respect of a matter which-
>
> (c) has been the subject of determination by a court…

11. The Respondent also relied on The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 9(2) which states that the Tribunal must strike out the whole or part of the proceedings or case if the Tribunal does not have jurisdiction in relation to the proceedings or case or that part them and does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

12. The Respondent relied on the claim brought by the Respondent against the Applicant in or about February 2024 (D57), in respect of which default judgment was granted on 28 February 2024 (D59). This claim was in respect of service charge arrears for January 2022-December 2023. The claim was said by Mr. Thompson (W4, para. 17) to be for the outstanding charges as at February 2024 as set out in the statement of

account at (I31). It was said that this showed that the claim related to the charges due from 5 July 2022 to 19 December 2023.

13. The Applicant said that the claim form was sent to the wrong address (the address on the claim form was a previous address he used for correspondence, and he had informed the Respondent, through Sebright of an updated address) and that the claim did not refer to him. He said that the first he knew of it was in the course of these proceedings. He confirmed that he had not made an application to set aside the judgment. It is noted that there was reference to the County Court claim in the Respondent's responses to the Schedule and in the witness statement of Mr. Thompson.

14. The Respondent, in reply, said that the default judgment stood, and it had not been challenged or set aside – it was therefore a validly obtained judgment and by the provisions of the 1985 Act and the Tribunal rules, the Tribunal could not go behind it. The issue had been determined by the Court and that determination had not been challenged and had not been set aside.

15. It was also submitted by the Respondent that the Tribunal must strike out item (2) of the schedule in relation to 2022 and item (4) in relation to 2023 as the Tribunal did not have any jurisdiction to make the orders sought. The Respondent relied on the earlier decision of the Tribunal between the Applicant and the Respondent dated 12 July 2021 (D23). In that application the Applicant sought to pay a "reasonable cost for work done" but did not seek any reduction in the sums payable, instead he relied on the Respondent's repairing covenants and asserted that the Respondent was in breach of covenant and asked the Tribunal to determine what works should be undertaken by the Respondent. The Tribunal found:

"21. This application has been brought under section 27A of the Landlord and Tenant Act 1985 and the Tribunal does not have jurisdiction under section 27A to make an order requiring a landlord to undertake work to a building…".

16. The Applicant said that he knew the Tribunal could not order the Respondent to do works, but he was seeking confirmation that the Respondent was required to do works to save him going to the County Court every time works was done, so that the Respondent was on notice that they were liable for costs incurred by the Applicant because of the Respondent's negligence. He said he was asking the Tribunal to go as far as it could in establishing that the Respondent was liable for remedial work.

17. The Respondent submitted that the Tribunal should strike out item (4) of the schedule in relation to 2022 and item (6) in relation to 2023. He relied on rule 9(3)(c) of the Tribunal Rules, which states that the

Tribunal may strike out the whole or part of the proceedings or case if the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal.

18. The Respondent relied on the decision of 12 July 2021 (D23), in particular para. 8-18. The Tribunal found that:

"... the cost of the insurance against third party-risks is the cost of the policy which covers third party risks notwithstanding that the policy may also cover other risks. The purpose of the 10% is to cover the landlord's administration expenses and, both at the time the lease was entered into and now, the administration expenses are not incurred on an item by item basis but in arranging the policy as a whole".

19. It is said that the previous decision involved the same facts, the same lease and the same point. The Respondent also relied on the fact that the Applicant sought to appeal the decision, but permission to appeal was refused (D31).

20. The Applicant said that none of the invoices provided by the Respondent mentioned third-party insurance. He said that the insurance requirements were in two different parts of the Lease. The Lease put the obligation on the Respondent to provide building insurance. The Lease was written in 1966, which was a different environment to now, and at that time, third-party insurance was not normally part of the building insurance. He said that his insurance broker said in 2022 that modern insurers offered third-party insurance at no extra cost. He said that payment for the building insurance was due in the March or September after it has been taken out. The entitlement to 10% arose from the Fourth Schedule, which did allow a charge of 10% if third-party insurance was obtained: the payment structure for that was by annual account at end of every year with the first half payment due the following June (he believed 24th) and the second half was due on 24 December. The Applicant said that this made the two insurance components distinct.

21. The Applicant said that the different payment schedules meant that the two insurance provisions (third-party and building insurance) were different: the third-party was mentioned in the Fourth Schedule as an optional extra that the landlord could purchase, but the building insurance was a separate item, which did not have a 10% uplift and was an obligation of the landlord.

22. In respect of the Tribunal's earlier decision, he said that the Tribunal had rolled the building insurance and third-party insurance together and said that the 10% was applicable to the full building insurance, but the implication was that the building insurance came free with third-party insurance – he said that actually it was the other way around. He said that unless the Respondent could say what the cost of the third-party

insurance was, there was no liability to pay10% of anything. That is, the 10% could not be calculated unless the third-party insurance was identified as an optional extra.

23. The Applicant said that if the invoice for 10% was given at the same time as the invoice for the building insurance, this was not following the provisions of the Fourth Schedule. When the Lease was written, building insurance and third-party insurance were two different items. He said that he understood that if it was determined that third-party insurance had been taken out, the Tribunal had ruled that 10% was due on the whole (i.e. building insurance and third-party insurance), but that they should not be considered together.

24. The Tribunal then gave a short ruling, with some reasons, on the strike out application – the decision with full reasons is set out below.

25. After the Tribunal gave its decision on the strike out application, the hearing then proceeded on the remaining items, which were item (4) in respect of 2022 and items (1), (2) and (6) in relation to 2023.

26. The Applicant gave evidence and was cross-examined.

27. In respect of the charge of 10% in respect of the insurance, the Applicant relied on the submissions he had made in resisting the application to strike out the two applicable items. He also said as follows:

28. His liability for 10% only applied to third-party insurance and the Tribunal's previous determination was on that basis that only if third-party insurance was obtained could the 10% be charged at all. There are different payment schemes and billing after purchase is not allowed under Schedule 4 – it should be billed twice a year (half on each invoice) about 12 months later and as the insurance was procured in late March, this would work out as an invoice being raised about 15 months for first half payment and 21 months for final amount.

29. The Applicant was taken to the invoices for insurance at I37, I39 and I41 and he confirmed that they set out the premium and administration charge. He was asked if he confirmed that the policies were in place at the relevant time that the invoices levied. He responded initially that he could only assume so, but then said that he could not confirm this as he had asked for copies, but they had not been provided. He was taken to page D9 and he confirmed that it was his belief this document was sent to his insurance broker, Mr. Andrew Davies. It was put to him that it related to an AXA insurance policy which was the same insurer as the most recent policies. The Applicant said that Gallagher was an insurance broker, not an insurer, but he confirmed that the insurer, i.e. AXA Insurance, was the same as on the current invoices. He agreed that D10 made reference to a third- party policy. It was put to him that it was

likely that, as there was a third-party policy in 2019-2020 with AXA Insurance, it was likely that the same policy was maintained. The Applicant responded that they were different policies, that the Respondent had changed the policy and if it was the same, it would have continued with the same policy, so it was likely something had changed. He said that he believed it was a group insurance policy covering several properties.

30. He was asked if he accepted that the Lease contained provision for 10% administration fees and the Applicant said that was the case if third-party insurance was purchased as an "add-on". He said that there were differences between when the Lease was drafted and what was normally included as optional extra now, and this was why the Lease mentioned the building insurance and third-party insurance separately. It was put to him that the Respondent was obliged to secure two policies or to cover those two points and the Applicant said that there was an obligation on the Respondent but, on true construction of the Lease, if there is a policy for building insurance and third-party insurance was also obtained, then a 10% administration charge was appropriate. He said that there was an obligation under the Lease for the Respondent to obtain building insurance, but the third-party insurance was optional and because of that it attracted an administration charge – there was no obligation on the Respondent to obtain third-party insurance. To be entitled to charge the 10%, the Respondent had to identify the cost of any third-party insurance.

31. The Tribunal asked if the Applicant accepted that third-party insurance had been obtained and the Applicant said that it may be, but his broker could not quote a price for insurance as he did not own the Building. He said that the broker's opinion was that third-party insurance was an option which normally people took up. The Applicant said that if a building insurance policy was obtained, the risk of claim on third-party insurance may not amount to enough to justify an increase of premium or there may be no increase at all – he said that is there was no charge for the third-party insurance, then there could be no charge to him, as 10% of £0 was £0.

32. In respect of the charge of £225 for works, the Applicant referred to the schedule of works (A3) which referred to a date of 20 March 2023 for "Works: Rake out and repoint failed areas above balcony door above window no. 62". The Applicant said that the works above the back door to the Property did not take place as shown in the photograph at D22. He said that he was originally asked for permission for contractors to access the balcony – he said the balcony was not his, so his permission was not needed, but the director wrote back stating that it was a mistake.

33. In respect of the works said to have been done at the front (to the brickwork above the Property's window) this related to the window on the first floor of the Building. The area which is said to have been the

subject of works is circled in red on the photograph at D19 but it was made clear during the hearing that the Respondent was not saying that this was a photograph of the building after the works had been carried out, it was an earlier picture of the Building, before the works are said to have been carried out, but the circle has been added to show where, on the Building, it is said that works were carried out. The Applicant said that the older photographs which show the Property with a brown door (D15, D16, D19 – which were the same photograph with some mark-up) and they predated the change of front door which was made in or about March 2021 (I7). The photographs of the Property with a blue door (D17, D62) were after the change of door. The Applicant said that the photographs at pages D22 and D62 were taken this year. He accepted that there was nothing on them which confirmed this, but he had asked the tenant to take photographs and the tenant had taken these photographs – it was taken between the time of the application and now. He said that these photographs confirmed that the works said to have been done, had not been done.

34. The Applicant told the Tribunal that he does not live at the Property but had returned there in the past 2 years, although he could not recall exactly when. He said that he thought a tenant was living at the Property in March 2023. He confirmed that there were no dates on the photographs. He said that the data at page D17 related to photograph D15, but agreed that there was nothing on the data or the photograph which confirmed that.

35. The Applicant was taken to the letter at page D2 and it was put to him that he had accepted that he was liable for 1/12th of work to the main structure of the Building and that he offered to pay his share, being 1/12th. The Applicant accepted that, in general, his share for works to the main structure was 1/12th. He was taken to the response to that letter at page D3 and it was put to him that the Respondent agreed that the Applicant's share was 1/12th and that since that time, that was the proportion which had been applied (Mr. Cullen clarifying that the Applicant had only been charged 1/12th of the £225). The Applicant said that on the invoice, everything was "mashed together". He said that his understanding of the Lease was that walls were included in the demised premises and that he contended that the charge related to the window and flat 60 and so should be borne by that flat rather than everybody as a whole. He agreed that the letters confirmed that his appropriate share was 1/12th but with the exceptions noted in his letter. He said that the Respondent had not replied to his letters, he had no reply until 2023 and still the response did not address individual items or the issue of collective responsibility. He said that Sebright handled as 58 units, in three different blocks and the property was one part of twelve units in the Building. All he was responsible for was that, not a share relating to 58 units or three buildings.

36. It was suggested by the Applicant during the hearing that this charge of £225 was covered by the County Court Judgment. The Respondent confirmed that its position was that it was not.

37. Mr. Thompson did not attend the hearing and did not give evidence. The Tribunal was told of his personal circumstances as to why he had not attended. The Tribunal was asked to accept the evidence given in his witness statement as it was signed by a Statement of Truth.

38. The Tribunal heard submissions from the parties, which were as follows:

39. The Respondent submitted that the Tribunal's jurisdiction was statutory and, in this application, was pursuant to s.27A and s.27CLandlord and Tenant Act 1985 and it had no inherent power to answer questions (*Cain v LBI* 2015 UKUT 0117 (LC)). There were, therefore, only two relevant questions – whether the charges were payable under the Lease and whether the amount charged was reasonable.

40. As to the 10% insurance charge, it was said that the Tribunal should adopt the same interpretation of the Lease as the Tribunal in the previous decision, and significant weight should be attached to it as the facts and Lease were the same, as was the insurance policy (or at least it was the same structure of policy), and as permission to appeal was refused.

41. It was said that the third-party insurance was included in the policies and factored into the price. It was said that the single policy covered both items and there were some costs involved in obtaining insurance. Where the cost was occasioned by the taking out of the policy, no matter what the proportion, a 10% charge was applicable, and it applied to the whole policy.

42. As to the works, it was said that £225 was charged on the schedule and there were two items of work, one above the balcony and one above the window to the Property. Mr. Cullen said that the Tribunal cannot be sure when the photographs were taken and there was no evidence from either party to clarify the extent of the work. The "recent" photographs relied on by the Applicant could have been taken the same day the front door was changed or at any point thereafter, there was no date or reference on them to assist. The Applicant's evidence was that they were supplied by the tenant, but there was no email, text or other correspondence to show the date that they were sent. The Respondent's position was that the work was carried out and this evidence should be preferred given that the Applicant does not live at the Property and he had no photographs to show the extent of work. It was the Applicant who had to prove his case and the lack of evidence should count in the Respondent's favour – the Applicant could have provided photographs with dates or some other evidence in support. He accepted that if he was liable for the works to the brickwork, his share would be 12% of the total cost.

43. The Applicant said that it was incumbent on the Respondent to provide evidence of the works. He said that the last time he was at the Property, in December 2023, and at that time the brickwork above the ground floor window (that belonging to no. 60) had been repaired, but other than that there had been no work in the area at any time since 2021. In respect of the insurance, he said that none of the invoices for the insurance mention that there is third-party insurance, which was a requirement if the Respondent wanted to charge the 10%. For the Respondent to be entitled to the 10%, it would have to confirm that third-party insurance had been taken out. He said that the issue was whether the 10% was due on the whole policy premium as third-party insurance had been obtained as an optional extra in addition to the obligatory policy which would attract a surcharge. It was said that there was no evidence of a price difference had been provided and investigation of the particular policy indicated that third-party cover was included as at worst a "No cost" option and at best automatically.

Decision on strike out application

44. The Tribunal did strike out item (1) in relation to 2022 and item (3) in respect of 2023, pursuant to s.27A(4) Landlord and Tenant Act 1985 and rule 9(2) of the Tribunal Rules (both referred to above) - these related to the flat rate estate charge. The Tribunal did not have jurisdiction as they had been the subject of a determination by the Court (D59-D60). There was, at the time of the hearing, no application to set aside or otherwise challenge the order giving judgment in default. It therefore remained a valid order and determination of liability by the County Court. Any issues as to service of the County Court proceedings were outside the jurisdiction of the Tribunal, but, as stated, at the date of the Tribunal hearing, no application had been madfe in the County Court in respect of the order of 28 February 2024.

45. In *Marlborough Services Ltd v Leitner* (2018) UKUT 230 (LC) the Upper Tribunal found that default judgments were a determination of the court and service charges in relation to that year could not be challenged as the First-tier Tribunal had no jurisdiction to hear it.

46. The subject of the County Court claim was outstanding charges from January 2022-December 2023, which was confirmed by Mr. Thompson and the statement at page I31 – it is noted that this particular statement runs to a period after the date of the default judgment, but only covers charges up to 23 January 2024, i.e. it covers the charges which were the subject of the claim. It was also clear from the invoices that the figures encompassed the estate charges:

(a) I11 - Invoice dated 5 July 2022 (demand date 1 January 2022) included estate costs of £150.88;
(b) 115 – Invoice dated 19 December 2022 demand date 1 July 2022) included estate costs of £123.31;
(c) I20 – Invoice dated 12 June 2023 (demand date 1 January 2023) included estate costs of £164.16;
(d) I24 – Invoice dated 15 December 2023 (demand dated 12 June 2023) included estate costs of £85.24.

47. The position was the same in respect of item (5) in relation to 2023, which related to relate to "accounts, invoices and payments". It was clarified with the Applicant that this was actually a challenge to the demand for £120 dated 19 December 2023 (I28). This was encompassed in the County Court claim and the default judgment as confirmed by Mr. Thompson and the statement at page 131, which included the £120 charge.

48. In respect of item (3) in respect of 2022, which was said to relate to "accounts, invoices and payments", as stated above, the only challenge to a demand for £120 was in respect of the demand dated 19 December 2023. There was, therefore, no charge in relation to 2022. This item was, therefore, struck out.

49. The Tribunal also struck out item (2) in respect of 2022 and item (4) in relation to 2023, by which the Applicant sought an order clarifying the extent and/or enforceability of the Respondent's repairing obligations under the Lease. The application has been brought under section 27A of the Landlord and Tenant Act 1985 and the Tribunal does not have jurisdiction under section 27A to make a declaration as to the Respondent's repairing obligations under the Lease and any obligation on the part of the Respondent to compensate the Applicant for alleged negligence in carrying out works, which are not the subject of a service charge which is sought by the Respondent and challenged by the Applicant in the application.

50. The Tribunal did not strike out item (4) in relation to 2022, nor item (6) in relation to 2023, in respect of the 10% charge for the building insurance and so the hearing proceeded in relation to those items. The Tribunal took the view that it was open to the Applicant to argue that there were different facts in this case (compared to those in before the Tribunal in LON/00ASL/SC2021/0055) and/or that there were reasons why that decision did not mean that these charges were due and owing.

51. No application was made to strike out item (1) and (2) in respect of 2023 and so the Tribunal and so the hearing proceeded in relation to those items

The Leases – X14, X31

52. The original Lease is dated 30 September 1966 and is between the Respondent (Lessors), R. P. Taylor Limited (the Builder) and Mr. and Mrs. Sarin (the Lessee): X14.

53. The Lease includes provision at clause 1 that the lessee shall pay the rent payable under the Lease is £20 by equal half-yearly payments of £10 on 25th March and 29 September, plus "further or additional rent from time to time a sum or sums of money equal to the due proportion of the amount which Lessors may expend in effecting or maintaining insurance of the Mansion against loss or damage by fire and such other risks (if any) as the Lessors think fit as hereinafter mentioned such last-mentioned rent to be paid without any deduction on the half-yearly day for the payment of rent next ensuring after the expenditure thereof". It is said that the "due proportion shall be taken as the ratio which the rateable value of the demised premises bears to the sum of the rateable value of all the flats maisonettes and garages comprised in the Mansion and insured by the Lessors…".

54. The Mansion is defined as follows:

"the freehold property comprised in the title above referred to together with the block of four flats eight maisonettes and associated garages erected or in course of erection on part thereof and the curtilage thereof all which premises (comprising two areas) are shown for the purposes of identification only on the plan annexed hereto and thereon edged red and are hereinafter referred to as 'the Mansion'".

55. The Lease was from 25 March 1966 for a period of 99 years.

56. By cl. 3(1)(a) the Lessee covenanted to pay the rent during the term at the times and in the manner provided by the lease.

57. By cl. 3(1)(d) the Lessee covenant to pay "all costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessors for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act, 2015 notwithstanding forfeiture may be avoided otherwise than by relief granted by the court".

58. By clause 4(b), the Lessee covenanted to contribute and pay a due proportion of the "costs expenses outgoing and matters respectively mentioned in accordance with the provisions of the Fourth Schedule".

59. By clause 5, the Lessors covenanted as follows:

60. By sub-clause (b), to procure that all parts of the Mansion are insured and kept insured against loss or damage by fire and such other risks (if any) as the Lessors think fit in some insurance office or offices of repute in the total sum of £60,000 or such greater sum as the Lessors think fit.

61. By sub-clause (d), to maintain, repair, redecorate, and renew: (a) the main structure and in particular the foundations, roof, gutters, and rainwater pipes of the Mansion; (b) the gas and water pipes, drains and electric cables and wires in under and upon the Mansion and enjoyed or used by the Lessee in common with the owners, lessees and occupiers of the other flats and maisonettes; (c) the two external staircases at the ends of the Building and the balcony at first floor level at the rear of the Building enjoyed or used by the Lessee in common with the lessees of other maisonettes in the Building; (d) the perimeter boundary walls and fences of the Mansion in so far as they belong to the Mansion and are not the responsibility of any lessee; and (e) the access ways shown coloured brown-hatched-black on the plan.

62. By sub-clause (e), to, as far as practicable:

    (i) Keep clean and reasonably lighted the said staircases balcony and other parts of the Mansion so enjoyed or used by the Lessee in common; and

    (ii) Keep the paths shown coloured yellow on the said plan in good repair and condition.

63. By sub-clause (g), not to construe more than four flats, eight maisonettes and twelve garages on the property referred to in the Lease as "the Mansion".

64. By paragraph 4 of the Fourth Schedule to the Lease, the lessee is required to contribute to:

    "4. The cost of insurance against third-party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessors".

65. Paragraph 8 of the Fourth Schedule states that the contribution of the Lessee in respect of anything appertaining to the Mansion shall be one twelfth of the total except that in the case of paragraphs 5, 6 ad 7 of the Schedule, the contribution of a Lessee of a maisonette and a garage shall

be one eight of the total and the contribution of the Lessee of a flat and a garage shall be zero. The Lessee shall also bear a rateable proportion of the expenses incurred from time to time of making repairing maintaining upholding rebuilding cleansing and scouring all party and other walls including foundations gutters sewers drains pipes and wires belonging to or used or capable of being used by the Lessee in common with the owners lessees or occupiers of the other flats maisonettes and garages in the Mansion.

66. Paragraph 9 of the Fourth Schedule states that an additional 10% shall be added to the costs, expenses, outgoing and matters referred to earlier in the Schedule for administration expenses. When any repairs redecorations or renewals are carried out by the Lessors they shall be entitled to charge as the expenses or costs therefore their normal and reasonable charges (including profit) in respect of such work.

67. By paragraph 13 of the Fourth Schedule, the contributions and payments in respect of accounts taken pursuant to paragraph 8 are due and payable by equal half-yearly instalments on 24 June and 25 December immediately following the service of every notice under paragraph 10.

68. There is a 2020 Lease (X31) between the Respondent and the Applicant, leases the Property from 25 March 1966 for a term of 189 years. It is said that there is no "Estate rent charge burdening the Property". There is a Deed which is supplemental to the Lease which confirms that the Original Lease was, at that time, vested in the Applicant. It is said (cl. 2) that the Lease is made upon the same terms and subject to the same exceptions, restrictions, rights, covenants, provisos and conditions as contained in the Original Lease, except as to the rent and terms of years, so that the "new" Lease shall be construed and take effect as if such exceptions, reservations, rights, terms, covenants, provisos and conditions were repeated in the "new" Lease with such modifications only as set out in clause 3 and the Schedule as were necessary to make them applicable to this demise and the parties to the "new" Lease.

69. By clause 4, the parties covenants to observe and perform all the covenants and conditions on their part entered in the Original Lease as modified.

70. The 2020 Lease sets out a new clause 5(b) in relation to insurance and a paragraph 3 in the Second Schedule. The new clause 5(b) still provided that the Lessor will procure that all parts of the Mansion are insured and kept insured against loss or damage by fire and such other risks (if any) as the Lessors think fit in some insurance office or offices of repute in the total sum of £60,000 or such greater sum as the Lessors think fit.

The Law

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

> "(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of, or in addition to the rent –
>
> (a) Which is payable, directly or indirectly, for service, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
> (b) The whole or part of which varies or may vary according to the relevant costs.
>
> (2) The relevant costs are the costs or estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
>
> (3) For this purpose –
>
> (a) 'costs' includes overheads, and
>
> (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

72. Section 19 of the 1985 Act provides:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly.
>
> (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise"

73. Section 27A provides:

> "(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
>
> (a) the person by whom it is payable,
>
> (b) the person to whom it is payable,
>
> (c) the amount which is payable,
>
> (d) the date at or by which it is payable, and
>
> (e) the manner in which it is payable
>
> (2) Subsection (1) applies whether or not any payment has been made.
>
> (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
>
> (a) the person by whom it would be payable,
>
> (b) the person to whom it would be payable,
>
> (c) the amount which would be payable,
>
> (d) the date at or by which it would be payable, and
>
> (e) the manner in which it would be payable.
>
> (4) No application under subsection (1) or (3) may be made in respect of a matter which –
>
> (a) has been agreed or admitted by the tenant,
>
> (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
>
> (c) has been the subject of determination by a court, or

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

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

74. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said that "reasonableness" has to be determined by reference to an objective standard, not the lower standard of rationality.

75. Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides as follows-

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

76. Paragraph 2 of Schedule 11 to the Act provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

77. Paragraph 5 of Schedule 11 to the Act provides as follows-

(1) An application may be made…for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) …

(4) No application under sub-paragraph (1) 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) …

Service Charges and Administration charges

Previous application and County Court claim

78. In LON/00ASL/SC2021/0055 (D23) the parties were the same as in the instant application. The Applicant challenged the addition of 10% to the insurance premium and it was said that it was not permitted by the Lease. The Tribunal found that the cost of the insurance against third-party risks is the cost of the policy which covers third-party risks notwithstanding that the policy may also cover other risks. The purpose of the 10% is to cover the landlord's administration expenses and, both at the time the lease was entered into and now, the administration expenses are not incurred on an item-by-item basis but in arranging the policy as a whole.

79. The Applicant relied on the repairing covenants in the Lease and asserted that the Respondent was in breach of covenant and asked the Tribunal to determine what work should be undertaken by the Respondent.

80. The Tribunal decided that it did not have jurisdiction under s.27A to make an order requiring a landlord to undertake work to a building. It was said that the Applicant may wish to obtain independent legal advice

concerning any legal remedies which he may have if the Respondent is in breach of the repairing covenants in the Lease.

81. The Applicant's application for permission to appeal was refused on 16 August 2021 (D31).

82. The Respondent issued a claim against the Appellant (D57 – claim number L8QZ691C) for the sum of £1,279.84 service charge arrears for the period January 2022 to December 2023, including £480 costs said to have been incurred in contemplation of forfeiture and/or pursuant to the terms of the lease . Default judgment was entered in respect of that claim by order dated 28 February 2024 (D59).

The extent of the estate on which the service charge is based

83. The Tribunal did not go on to consider this as the items relating to estate charges were struck out for the reasons given above.

Compliance with s.20 Landlord and Tenant Act 1980

84. The Tribunal did not go on to consider this as this issue only arose in relation to the estate charges, which were struck out for the reasons given above.

Whether all sums included in the service charge are service charge items

85. The Tribunal did not go on to separately consider this as, of the items remaining for determination by the Tribunal, the issue only arose in relation to items (1) and (2) in respect of 2023 and, in the course of considering those items, the Tribunal considered whether the disputed charge was a service charge item.

2022

Item (4) - 10% addition to cost of building insurance paid as rent

86. The Applicant's position (X59) is that the Respondent has retained the obligation to provide the require building insurance, and it erroneously

adds a 10% fee for fulfilling that obligation on the basis that inclusive third-party cover is an additional chargeable expense under para. 4 of the Fourth Schedule. The Applicant's witness statement (X61) states that there is no provision for a surcharge of 10% on the insurance costs under cl. 1(b) and 5(b) of the Lease. The Fourth Schedule contains provision for a 10% surcharge on the cost of the works done to cover the Respondent's administration and this is said to be approximately £40 per annum rising.

87. The Respondent's position (X52) is that under para. 4 and para. 9 of the Fourth Schedule, the Respondent is required to pay 10% of the cost of insurance against third-party risks "for the landlord's administration expenses". In case LON/00ASL/SC2021/0055 the Tribunal had construed the Lease and held that the cost of the insurance against third-party risks is the cost of the policy which covers third part risks notwithstanding that the policy may also cover other risks. It is said that the purpose of the 10% is to cover the Respondent's administration expenses, and at the time the Lease was entered into and now, the administration expense are not incurred on an "item by item" basis but in arranging the policy as a whole.

88. The Lease (clause 1) requires that the Applicant pay a "due proportion" of the amount spent by the Respondent in insuring "the Mansion" (i.e. the block of four flats, eight maisonettes and the associated garages and the curtilage thereof). There is an obligation (cl. 5(b)) on the Respondent to keep the Mansion insured.

89. By clause 4(b), the Applicant has to pay a due proportion of the items mentioned in the Fourth Schedule, which includes (para. 4) the "cost of insurance against third-party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessors". There is, therefore, no obligation on the Respondent to take out insurance against third-party risks in respect of the Mansion. If, however, such insurance is taken out and costs, expenses, outgoing are incurred in respect, by para 9 of the Fourth Schedule, the Respondent is entitled to an additional 10%.

90. As stated in the decision of the Tribunal dated 12 July 2021, the cost of the insurance against third-party risks is the cost of the policy which covers third-party risks notwithstanding that the policy may also cover other risks and the purpose of the 10% is to cover the landlord's administration expenses and, both at the time the lease was entered into and now, the administration expenses are not incurred on an item by item basis but in arranging the policy as a whole. The Tribunal found that the cost of the insurance against third-party risks was the cost of the policy which covered third-party risks, notwithstanding that the policy may also cover other risks.

91. In refusing permission to appeal (D32) the Tribunal said that it had found that the cost of insurance against third-party risks is the cost of the policy which covers third-party risks notwithstanding that the policy may also cover other risks. It also said that it was not necessary for the Tribunal to require the Respondent to establish the additional cost of the third-party cover or to provide evidence that "the obligatory insurance was payable without third-party cover". In that case, however (decision at D26, para. 14) the Tribunal had evidence that the Respondent had obtained an insurance policy per year which included both insurance against third-party risks and buildings insurance. It had a witness statement from Ms. Taylor which stated:

"… The buildings policy that I have taken out relates to fire and other risks including property owners' cover. It would be artificial and unrealistic to divide the insurance premium between buildings risk and third-party risks…".

92. As noted by the Tribunal at paragraph 18 of its decision, it found that there was insurance in place against third-party risks.

93. In the instant application, however, there is no evidence of insurance against third-party risks. As noted above, the Respondent asks us to accept that there is on the following basis: there was such insurance in 2019 (D10), the insurer in that instant was AXA Insurance UK Plc and the insurance policies for the years in issue has been with AXA Insurance (I8 for 1 April 2021-31 March 2022) and I37 – for 1 April 2022-31 March 2023). The Tribunal cannot be satisfied of this. In the earlier Tribunal case, the Tribunal had the written witness evidence referred to, but there, Mr. Thompson's witness statement does no more than seek to rely on the earlier decision.

94. The Tribunal finds that there are different factual circumstances in the instant application when compared with the previous application. The obligation on the Applicant to pay the 10% charge only arises if there is third-party insurance: the previous Tribunal found there was, but we are not so satisfied in respect of years 2022 and 2023.

95. For those reasons, we find that the charge to the Applicant in respect of his share of the 10% charge is not due and owing. The charge in 2022 was £30.99 (I37).

<u>2023</u>

Item (1) - Charge for repair of wall belonging to flat 60 Rydal Way that supports front wall of property that is responsibility of tenant of no. 60

and (2) Charge for repair of unspecified brickwork assigned to the Property - £225

96. It was clarified during the hearing that there was one total charge of £225 in respect of items (1) and (2) and the Applicant had only been charged 1/12th of that amount

97. The Applicant states that the wall in question supports his front wall and is the responsibility of the tenant below (no. 60).

98. The Respondent states that the wall in question does not support the Applicant's front wall, the wall in question is directly above the window of the Property. The cost relates to repairs to the brickwork above a window to the Property. The cost was divided between the 12 flats at 46-48 Rydal Way, so the Applicant was charged £18.75. The total invoice was for £450, and was for two items of work, but only one of the jobs was relevant to 46-48 Rydal Way. It is also said that the Applicant is responsible to pay the costs, expenses and other outgoings in accordance with the Fourth Schedule.

99. The witness statement of Mr. Thompson states that the repair was to the lintel directly above one of windows belonging to the property and he referred to a photograph highlighting the lintel that was repaired and he said that it falls within scope of the Property.

100. In response, the Applicant said that the wall does belong to no. 60 and does support the wall. He said that as originally billed, this item was included in the work above the back door of the Property and no evidence of such work was visible.

101. The Applicant states that the charge has not been explained as being required, no notice of work to be done was given, nor evidence that work was done. It is said that permission for access was sought but for the walkway that is shared, and no permission was granted. The notice was withdrawn as a mistake. The Respondent states that this appears to relate to the same matter as above.

102. By clause 5(d) of the Lease the Respondent has to keep in repair the main structure of the Mansion, which would include the exterior brickwork which it is has been repaired.

103. Such repair work would therefore fall within paragraph 8 of Schedule 4 and would be payable by the Applicant pursuant to clause 4(b). The difficult is that,

104. The Tribunal acknowledges that it is for the Applicant to prove the matters set out in his application – the Tribunal has his evidence that, as at the end of 2023, the works said to have been done had not been carried

out. We also have his oral evidence that he asked his tenant to take photographs, which s/he did and the Applicant told the Tribunal that they are the photographs at pages D22 and D61-62, which do not, in the view of the Tribunal, show any work to the material areas. Mr. Thompson (W5, para. 21) states that the repairs were done, but it is not clear where this information has come from.

105. On balance, the Tribunal finds that the works were not carried out and therefore the Applicant is not liable for his share of the charge of £225 - 1/12th of this amount is £27.

Item (6) - 10% addition to cost of building insurance paid as rent

106. For the reasons set out above in relation to 2022, we find that the charge to the Applicant in respect of his share of the 10% charge is not due and owing. The charge in 2023 was £35.32 (I39).

Costs

107. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

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

108. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.

109. The relevant part of paragraph 5A reads as follows:

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

110. The Applicant said, in relation to costs, that the reason the application had been made and the hearing was necessary was due to a lack of response from Sebright, that he had raised issues a long time ago and had had no reasonable response. He said that initially invoices were split over units over which he had no interest and mentioned items that could relate to the Building in which the Property is situate. He said that the

application was not frivolous, it had taken time to produce the bundle and attend today.

111. Mr. Cullen submitted that the starting point was that the costs were recoverable under the provisions of the Lease. He said that the application was in large part concerned with issues which had been struck out – either as the Tribunal did not have jurisdiction or because the items were covered by the County Court judgment. Only two issues remained, in respect of two years and those issues would not have required a day's hearing. Having regard to the manner in which the application had been brought, the Respondent should be allowed to recover its costs and so no orders pursuant to s.20C or para. 5A should be made. The Tribunal was a "no cost" jurisdiction and there was no reason to depart from the terms of the Lease.

112. Mr. Cullen made reference to an application for costs pursuant to r.13 of the Tribunal Rules, but it was established that the Tribunal did not have a copy of the cost schedule which he had, the Applicant had not seen a copy of any such cost schedule and it was conceded that there was no mention of such a potential application in Mr. Thompson's witness statement. He therefore did not make any such application.

113. The Applicant has succeeded in respect of some of the charges disputed, but the Tribunal has struck out most of the items challenged, leaving the total value of the disputed items in the sum of £93.51. As stated above, the Applicant was alerted to the County Court claim in the Respondent's responses to the Schedule and the witness statement of Mr. Thompson. The Applicant will have been aware of the decision of the Tribunal dated 12 July 2021 since that decision was issued (he was clearly aware of it as he sought permission to sppeal). Despite this, the application was made and pursued to the date of the hearing. The Tribunal therefore does not make an order under s.20C.

114. No order under paragraph 5A of Schedule 11 to the 2002 Act is made, for largely the same reasons and as no administration charge was left subject to challenge once the Tribunal had struck out the items identified above.

115. The Tribunal does not make an order for refund of the fees that he had paid in respect of his application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal has regard to the matters set out in herein and has had regard to the relative success of the Respondent: *Cannon v 38 Lambs Conduit LLP* [2016] UKUT 371 (LC), as well as to the values involved in the application as a whole and the value of the items left after the Tribunal struck out the items set out above.

Judge Sarah McKeown
27 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)