FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2022/0255**
Property	**:**	**10 West Officer Quarters, Parade Ground Path London SE18 4BT**
Applicant	**:**	**Mr Christopher Ward**
Representative	**:**	**n/a**
Respondent	**:**	**Durkhan Estates Ltd**
Representative	**:**	**Ben Haseldine instructed by Vanderpump & Sykes Solicitors**
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 N O'Brien** **Tribunal Member S Mason BSc FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**8 July 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the applicant as a service charge in respect of the drainage contract for the Academy Estate

(i)	2015	£11.01
(ii)	2016	£11.01
(iii)	2017	£11.01
(iv)	2018	£16.51
(v)	2019	£16.51
(vi)	2020	£16.51
(vii)	2021	£16.51
(viii)	2022 (est)	£16.51

(2) The tribunal determines that aside from sums claimed from the applicant in relation to the drainage contract, the sums demanded for the years 2015 to 2021 as a service charge, and the estimated service charges for 2022 were payable, reasonably incurred, and reasonable in amount for the reasons set out in this decision.

(3) The tribunal finds that the sums demanded for buildings insurance for the years 2017 to 2021 in respect of West Officers Quarters are reasonable and payable.

(4) The tribunal finds that the administration charges of £60 and £300 in respect of late payment are recoverable.

(5) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985

(6) The tribunal does not make an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act.

(7) The tribunal does not make an order requiring the respondent to reimburse the tribunal fees paid by the applicant.

(8) This matter will now be referred back to Warwick County Court to consider those matters over which the tribunal has no jurisdiction, in particular the applicant's claim for damages and for rectification of the lease, the respondent's counterclaim and the costs of the county court proceedings.

The application

1. The Applicant seeks 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 payable in the service charge years 2015 to 2021. He also challenges the payability and reasonableness of the insurance charges for the years 2017 to 2021.

2. Proceedings were originally issued in the Warwick County court under claim No.H7QZ8Y4W. This matter started as a sparsely pleaded claim for £5756 in damages for overpaid service charges, and in the alternative a claim in restitution. The claim was defended and subsequently transferred to this tribunal, by order of District Judge Bull dated 4 August 2022

3. The Applicant subsequently raised a number of issues in his statement of case filed in these proceedings over which the Tribunal has no jurisdiction namely a claim for damages and for rectification of his lease. This decision pertains only to the payability and reasonableness of the service charges charged by the respondent pursuant to the terms of his lease.

The hearing

4. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Haseldine of counsel. We heard oral evidence from the applicant and from a Mr Michael Doyle on behalf of the respondent.

5. In addition we had the benefit of reading skeleton arguments filed by both parties and a 1385-page electronic bundle. On the evening before the hearing the respondent filed an additional 85-page bundle. We were told that most of that additional bundle consisted of invoices that already been disclosed, and the only new documents in the supplemental bundle were schedules based on those invoices. On that basis we permitted the respondent to rely on the documents it contained, insofar as they summarised existing evidence and did not seek to introduce new evidence.

The background

6. The property which is the subject of this application is a one-bedroom flat in a building known as West Officers Quarters, which in turn forms part of a mixed tenure estate which has been built by the respondent on the site of the Old Royal Military Academy in Woolwich, London. Construction of the Academy Estate took place between 2009 and 2014 and the applicant purchased the property in January 2014.

7. Neither 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.

8. The Applicant holds a long lease of the property which requires the landlord to insure the building and provide services in relation to this building and the estate in which it is situated, and the tenant to contribute towards those costs by way of a variable charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. The issues which the applicant actively seeks to raise in these proceedings have been difficult to discern. His claim started out as a sparsely pleaded damages claim contained in a civil claim form issued in the County Court Business Centre. This claim was allocated to the small claims track but was later transferred to the tribunal on the grounds that it concerned service charges. In the tribunal proceedings he has filed a 70-paragraph statement of case entitled 'particulars of claim' dated 5th March 2024, a 7-page reply dated 17 May 2024, a witness statement dated 24 May 2024 and a skeleton argument dated 30 May 2024. In these documents he has sought to raise a multiplicity of differing issues including the Unfair Terms in Consumer Contract Regulations 1999 and their effect on the recoverability of charges in relation to building insurance and the costs of maintaining the playground, a meeting hall, and a meeting room on the estate. In his particulars of claim he seeks rectification of the Land Register, damages and also disputes his liability to pay service charges and insurance costs for the years 2022 and 2023 pursuant to s21A of the 1985 Act and s20B of the 1985 Act. In his particulars of claim and in his witness statement he took issue with the percentage contribution applied to his flat by the respondent.

10. At the start of the hearing the parties and the tribunal together identified the relevant issues for determination as follows:

    (i) The correct percentage contribution chargeable to the applicant under the terms of his lease in respect of the building costs and the estate costs;

    (ii) The payability of charges relating to playground maintenance, service charges for the estate office, rent for the estate office and the insurance for the building for the years 2015-2022;

    (iii) The reasonableness of the charge for insurance for 2017 to 2022.

    (iv) The reasonableness of all other charges for the years 2015 to 2022.

11. 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 are set out below.

Percentage contribution

12. Clauses 3(1) and 3(2) of the lease oblige the tenant to contribute and pay '*a fair and reasonable proportion to be conclusively determined by the landlord'* of the landlord's costs in providing the services set out in Part I to III of the 5th Schedule of the lease . The 5th schedule to the lease provides for a common parts charge (Part I), a Building Charge (part III) and an Estate Charge (Part III).

13. The applicant in his statement of case stated that the Respondent calculates the due proportion of the estate and building costs by equally dividing the total cost by the number of properties on the estate and in the building. It is his case that this is unfair and unreasonable because the result is that he is required to pay the same proportion as the leasehold owners of other much larger properties on the estate. He suggests that apportioning the charges by reference to the number of bedrooms in each property would be fair and reasonable as this is likely to reflect the number of occupants in each property.

14. The respondent's case is that the method adopted by the respondent is reasonable and is not to be rendered unreasonable merely because other methodologies more favourable to the applicant could be imagined.

15. In *Aviva Investors Ground Rent Limited v Williams [2023] UKSE* 6 and others the Supreme Court held that the tribunal's powers to regulate a landlord's discretionary powers of apportionment between different leaseholders are limited to considering whether the apportionment is carried out in accordance with the terms of the lease and is otherwise rational.

The tribunal's decision

16. In the tribunal's view the terms of the lease give the landlord a wide and on the face of it unfettered discretion in relation to apportionment. It is not irrational to apportion the relevant charge equally between the properties on the estate and in the building. It is a commonly encountered apportionment method and has the benefit of being clear and understandable. Furthermore there is no evidential basis for the assertion that that the actual costs of supplying services to each property is directly proportional to the number of bedrooms it contains.

Playground Maintenance, Estate Office Costs

17. The applicant took issue with the payability of the annual charges levied for playground maintenance and the costs attributed by the responded to the estate office.

18. Paragraph 10 of Part III of the 5th Schedule to the lease obliges the respondent to maintain the children's play area on the estate. Consequently this is a cost that the applicant is obliged to contribute towards by virtue of clause 3(3) of the lease. The applicant argues that this is an unfair term because no one in his property would ever have any use for the playground as it is a one-bedroom property (see paragraph 16.6 of the Particulars of Claim).

19. We heard no argument as to whether the 1999 regulations applied to this lease and/or whether it applied to some clauses or to all of them. Assuming for the moment that Regulation 5 of the 1999 Regulations applied, the tribunal can see no basis for finding that clause 3(3) of the lease to be unfair. It simply sets out the applicant's liability to contribute towards the estate costs. Paragraph (j) of the Second Schedule to the lease permits the tenant and the tenant's licensees to use the communal landscaped areas and gardens on the Estate. This includes the play area. Whether or not the applicant or his visitors choose to make use of this facility is not relevant to the fairness of the clause requiring the applicant to contribute to its upkeep.

20. In his skeleton argument the Applicant took issue with the recoverability of the rent and service charge for the estate office which serves the Academy Estate. The cost of the estate office rent is £6,000 per annum for each of the years in dispute. The essence of his complaint was that the respondent had entered into a sham agreement to lease the office to a related company call Zest Living Ltd which then rented the estate office back to the respondent. He also asserts that the lease did not permit the respondent to charge him for an office and asserted he had no need for the office nor any right to use it (para 7 of his skeleton argument). On that basis he maintains that the rent of the estate office is not payable under the terms of his lease. Alternatively, he asserts that the cost was not reasonably incurred because the respondent was in effect using an affiliated company to charge itself rent which it then sought to recover from the leaseholders.

21. Mr Doyle in his oral evidence accepted that Zest Living was related to the respondent but denied that the arrangement was a sham. He confirmed that the respondent remained the freeholder in relation to the building in which the estate office is situated, but explained that the building, including the estate office, has been leased in its entirety on a commercial basis and for a premium to a registered social landlord, who in turn sublets the Estate Office to Zest Living Ltd, again on a commercial basis. Zest Living in turn rents the unit to the respondent for use as an estate office for the whole of the Academy Estate. He explained that the office counted as one of the 327 units on the estate for the purpose of calculating the service charge contributions towards the estate costs.

22. By clause 3(5) of the lease the tenant covenanted to contribute and pay such percentage as the landlord shall determine;

> *"of the costs charges and expenses of employing staff… including the cost of working and/or living accommodation including rent or provision of working and or living accommodation on the estate.*

Consequently, the applicant is obliged under the express terms of his lease to contribute towards the cost of staff working accommodation located on the estate. We accept Mr Doyle's evidence as regards the status of the estate office and accept that the true 'owner' of the estate office for practical purposes is the social landlord which has purchased a long lease of the whole building in which it is situated, and who consequently is entitled to sublet the same on a commercial basis.

23. Mr Doyle further explained that the office is counted as a unit for the purposes of calculating service charge contributions for the whole estate in respect of the estate costs. If it did not, the estate costs would be split between 326 units and not 327 units as is its current practice. We note that this point was made by the Respondent in its responses in the Scott schedule completed by both parties. The applicant has not engaged with this point nor sought to argue that that this method of apportionment is unreasonable or disadvantages him financially.

The tribunal's decision

24. The tribunal is satisfied that the sum charged in respect of the estate office rent was payable as a service charge. We do not accept that the arrangement is a sham. Further the applicant does not seek to argue that the sum charged for the estate office as rent is unreasonably high. At £6000 per annum it seems to the tribunal that were the respondent to rent similar work accommodation for its staff outside the estate the rent would be considerably higher. We are not satisfied that the applicant is financially disadvantaged by the decision of the respondent to treat the estate office as a unit, to pay that unit's portion of the estate cost and then to recharge that cost to the leaseholders; if it did not do so the applicant would be paying 0.3067 % of the total estate costs as part of his service charge and not 0.3058%. Consequently, the cost of the same is reasonably incurred and is recoverable pursuant to clause 3(5)(g) of the lease.

Insurance 2017-2021

25. According to the applicant the sums demanded by the respondent from the applicant in respect of insurance have increased from £303.78 in 2015 to £1,340 in 2023. These figures come from appendix 8 to the Particulars of Claim but it is not clear whether the applicant is challenging the contribution he has been required to make in respect of West Officer's Quarters alone, or the insurance costs for both the building and the estate in which it is situated. The cost of building insurance is not included in the

Scott schedule completed by both parties, although some charges relating to estate insurance are included. We have only been provided with certificates of building insurance for West Officers Quarters for the years 2017-2021. They show that the annual cost of building insurance has increased from £12,232 in 2017 to £24,548 in 2021. It is the applicant's case in general terms, as set out in his witness statement at paragraphs 36 to 40 is that the insurance purchased by the respondent in respect of the building and in respect of the estate is wider than is permissible under the terms of his lease. In particular he asserts that it was not open to the respondent to purchase insurance against escapes of water, as opposed to flooding due to natural causes. The applicant asserts that the respondent has made insurance claims in relation to flooding incidents which were attributable to the respondent's poor construction methods. He points to a large number of escapes of foul water affecting the basement floor of West Officers Parade between 2014 and 2018 which were the subject of insurance claims, and which appear on the claims history prepared by the respondent which appears as Appendix 6 to the particulars of claim. He further asserts that it was not open to the respondent to insure against escape of water under the terms of the lease and that consequently the additional cost of this insurance is not recoverable from him.

26. Pursuant to Clause 7(d) of the lease the respondent covenanted to;

> *'insure and at all times during the term to keep insured the building and the common parts of the estate against fire explosion lightning earthquake storm flood bursting and overflowing of water tanks in apparatus subsidence heave and landslip and such other risks as are normally available under a comprehensive policy of insurance and such other risks as a landlord shall from time to time reasonably think fit to the full reinstatement value…'*

27. Mr Ward has raised a number of complex arguments as to whether the wording of clause 7(d) was wide enough to permit the landlord to purchase buildings insurance which are based on lines of authority concerned with whether a specific peril was or was not covered by a clause in a charterparty or insurance policy. These do not assist the tribunal in any way. In our view the words '*such other risks as are normally available under a policy of insurance and such other risks as the landlord shall from time to time reasonably think fit to the full reinstatement value'* puts the matter beyond doubt. It seems to this tribunal that the above clause is wide enough to cover water damage caused by escape of water and affords a large margin of appreciation to the respondent as regards what risks it insures against. In our view a fully comprehensive buildings insurance policy would generally insure against escape of water. We do not consider that the cost of insuring against escape of water was unreasonably incurred and was recoverable under the terms of the lease.

28. As regards the reasonableness of the sums sought, we have been provided with the certificates of insurance for the years in question in respect of West Officers Parade only. The best counter evidence provided by the applicant

is an online buildings insurance quote from Admiral in respect of the applicant's flat alone for £311 for this year. Any useful comparator would have to be in respect of West Officers Parade as a whole and would have to take into consideration the building's claims history. We have not been provided with any useful comparators by the Applicant which would permit us to say that the premiums which the respondent paid for the years in question are unreasonable. The applicant in his particulars of claim (para 39) complains that the respondent failed to comply fully with the directions of 19 December 2023 which required it to disclose details of the claims history sufficient to permit the applicant to obtain a 'like for like quotation' by 2nd February 2024. The document disclosed by the respondent appears at Appendix 6 to the particulars of claim and it would appear that the applicant has been in possession of it for some time. Had he considered that the disclosure was not sufficient to permit him to obtain a 'like for like' quotation, he should have raised this earlier, either with the respondent itself and if this did not resolve matters, with the tribunal.

Reasonableness of Service Charges

29. The applicant challenges the reasonableness of the following charges;

	2015	2016	2017	2018
Office supplies	£365		£606	£986
Office IT	£365	£1093	£693	£766
Office service charge	£413	£670	£435	£419
Office Rent	£6000	£6000	£6000	£6000
Drainage contract	£12,677	£8611	£7,455	£24,027
Playground	£982	£270	£584	
Estate insurance				£10,035
Engineering insurance				£489
Office equipment maintenance				£2744

Reserves(WOQ)			£5000	£5000
Electricity (WOQ)				£1150

	2019	2020	2021`	2022(est)
Office supplies	£2445			
Office Sundries	£547		£836	£692
Office IT	£484	£527	£506	£755
Office maintenance		£3144	£3402	£4,385
Office service charge	£471	£766	£4288	
Office Rent	£6937	£5036	£6000	£6,000
Drainage contract	£7,704	£15,408	£23,958	£23,500
Engineering Insurance			£2,292	
Estate Insurance	£10,055	£10,055	£22,079	
Playground	£982	£332	£528	
Accountancy		£1062		
Reserves (WOQ)			£6,500	

Electricity (WOQ)	£1074	1150		
Admin fee			£60	£300

30. The reasons for challenge are set out in the Scott schedule completed by the respondent. It is to be noted that some items are challenged on the basis that they 'appear high.' Others, most notably the office maintenance and IT costs are regarded with scepticism by the applicant, however for the most part the respondent has provided invoices which support most, although not all, of the sums claimed. We are entitled to assume unless the contrary is shown, that the sums set out in the audited accounts were actually spent by the respondent and any doubts that could have existed in this regard have been answered by the provision of supporting invoices in respect of most of the items under challenge. We remind ourselves that the burden is on the applicant to show that the costs are unreasonable and we consider that save as set out below, he has failed to adduce any evidence and relies on his impression that the costs appear high.

31. We do not consider that the sums sought in respect of reserves for West Officer Quarters were unduly high given the total annual expenditure indicated on the relevant accounts.

31. We were initially concerned about the sudden jump in the cost of electricity to the communal areas of West Officer Quarters from 2017 to 2020. The applicant attributes this to the running of pumps to remove floodwater from the basement flats in the building which in turn he attributes to the respondent's shoddy workmanship. We are not in a position to say if this is the case or not but if it is it does not mean that the sum is unreasonable in amount. While it is open to the tribunal to reduce a specific service charge on the grounds that it is higher than it would have been due to a breach by the landlord of its obligations under the lease, it is not open to the tribunal to reduce it on the grounds that it is due to some other default on the part of the landlord.

32. Likewise we were initially concerned about the sudden jump in the cost of estate insurance in 2021. However, in the absence of any 'like for like' comparator evidence, there are no grounds to reduce it. Again if the applicant considered that he had not been given sufficient information from the respondent to obtain such a quote, or that the respondent had not complied with the disclosure direction, he should have raised the issue with the tribunal and if necessary made an appropriate application.

33. The one charge where the applicant has obtained a 'like for like' quote is in relation to the drainage contract. We note that the applicant has obtained an estimate for annual inspection of the drains to the whole

estate from a drainage company. That company estimates that its fees for an annual CCTV inspection of the drains, would be between £3,000 and £4,500 per annum, plus VAT. This estimate was based on a plan of the whole estate. The respondent's response in relation to each year as set out in the Scott schedule is 'The Defendant installed the drainage onsite as per the planning requirements. The drainage is signed off by Building Control and there is no evidence presented to the contrary." This does not assist the tribunal to understand why the annual cost of its drainage contract is so much higher. We consider that an appropriate cost would have been £3600 for the years 2015 to 2019 and £5,400 for the years 2020 to 2022, inclusive of VAT. Given that the applicant is responsible for 1/327th of the cost, the effect on his liability to pay service charge for those years is minimal.

34. The Applicant challenges the recoverability of 2 administrative fees of £60 and £300 which he says were wrongly imposed when he declined to pay service charges for the years 2021 and 2022 due to a failure on the part of the respondent to supply summaries under s.21 of the 1985 Act. It is his case that he was entitled to withhold payment pursuant to s.21A of the 1985 Act. The respondent does not accept that it failed to supply the summaries but in any event as the Respondent points out s21A of the 1985 Act is not yet in force and consequently the applicant was not entitled to withhold service charges. Consequently those sums are recoverable pursuant to Clause 2(r)(ii) of the lease.

Application under s.20C and refund of fees

30. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

31. In the Particulars of Claim and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act and under Paragraph 5A of the 2002 Act. Notwithstanding the fact that the Applicant has been partially successful we do not consider that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act or Paragraph 5A of the 2002 Act. The Respondent has to the greater extent been the successful party in these proceedings, bearing in mind the width of matters which the applicant has sought to raise in these proceedings and the substantial number of items which the applicant has sought to challenge. This determination only applies to the costs of proceedings before this tribunal.

The next steps

32. The first-tier tribunal (property chamber) has no jurisdiction over the claim for damages or restitution contained in the Claim Form. It has no jurisdiction in respect of the claim for rectification of the register raised in these proceedings, or in respect of the county court costs. It has no jurisdiction in respect of the counterclaim insofar as it cannot order the applicant to pay such charges as may be outstanding. This matter should now be returned to the Warwick County Court for further case management directions.

Name: Judge O'Brien **Date:** 8 July 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).