FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UG/LSC/2023/0025**
Property	**:**	**110 Northfields, Norwich, Norfolk, NR4 7EU**
Applicant	**:**	**John Docherty**
Representative	**:**	**In Person**
Respondent	**:**	**Norwich City Council**
Representative	**:**	**Tony Harris**
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 Bernadette MacQueen** **Sarah Redmond, MRICS**
Venue	**:**	**Remote Hearing via Cloud Video Platform (CVP)**
Date of Hearing	**:**	**20 March 2024**
Date of Decision	**:**	**25 March 2024**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £489.45 is payable by the Applicant in respect of the service charges for the years 2021/2022. This is made up firstly of two charges that were not disputed by the Applicant namely £97.92 for services benefitting the property and £39.36 for services benefitting the estate. Secondly, the Tribunal has determined that £179.44 is payable for block repairs and £172.73 for management fees. This totals £489.45 for service charges for 2021/2022.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) 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 for the reasons set out in this decision.

(4) The Tribunal makes an order under the Commonhold and Leasehold Reform Act 2002, Schedule 11 paragraph 5A, that there is no liability to pay the landlord's administration charge in respect of litigation costs for the reasons set out in this decision.

The Application

1. The Applicant sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), section 20C of 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 by the Applicant in respect of the service charge years 2021/2022.

The Hearing

2. The Applicant appeared in person at the hearing and the Respondent was represented by Tony Harris, with Jon Pederson, Home Ownership Officer employed by the Respondent appearing as a witness. The hearing was held remotely via Cloud Video Platform (CVP).

3. Directions were given by Judge Wyatt on 15 December 2023 for parties to complete a schedule in the form attached to the directions as well as preparing documents to form a bundle of documents to be used for the hearing. Unfortunately, the parties were unable to agree the hearing bundle and so a bundle consisting of 70 pages and a bundle of authorities consisting of 25 pages were submitted by the Respondent and a bundle consisting of 148 pages was submitted by the Applicant.

4. 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.

The Background

5. The property which was the subject of this application is 110 Northfields, Norwich, NR4 7EU (the Property).

6. The Applicant held a long lease of the Property dated 9 January 1995 (the Lease) which required the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. A copy of the Lease was at pages 33 to 41 of the Respondent's bundle. The relevant provisions of the Lease included Clause 4(3) and Schedule C. The Applicant was required to pay a fair share of the reasonable expenditure of the Respondent. The terms of the Lease were not in dispute.

The Issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2021/2022 relating to the block repairs charge and leaseholder management fee.

   (ii) Whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act.

8. The parties completed a Scott Schedule which summarised the issues as follows:

Item	**Cost**	**Tenant's comments**	**Landlord Comments**
Block Repair	£179.44	Unreasonable/excessive profit taking by Norse.	Of the 31.66% figure for overheads and profit 28.81% is overheads and 2.85% is for profit. We do not believe this figure is

			unreasonable or excessive.
Management Fee	£172.73	Landlord incorporated block repairs costs into management fee calculation	As per leaseholder's association: management fee is apportioned by total service charge cost. We previously used a flat fee for repairs but 1TT Tribunal (Vs Holton) disallowed this method as there was a risk of double charging. Therefore repairs were included in the same apportionment calculation to ensure fair apportionment with no risk of double recovery.
Section 20 notice		The Real cost of the block repair exceeds £250 when the management fee levy is added.	Management fee costs are not related to repair costs; total service charge costs is used for apportionment only. If all leaseholders have the same repair costs there is no difference between this

			method and not using repair costs at all.

9. Having heard evidence and submissions from the parties and considered all the documents provided, the Tribunal made determinations on the various issues as follows.

Block Repairs Charge - £179.44

10. The Applicant set out his position within the documents included in his bundle. In particular, the Applicant referred the Tribunal to page 45 of his bundle where a breakdown of the repair costs was given. In his oral submissions to the Tribunal, the Applicant confirmed that the block repairs in question were carried out following a report from a resident at the Property that the roof was leaking over the chimney breast. To complete the necessary repair, scaffolding was required to be erected. The total net cost of the work was shown as £980.87 on the invoice provided by the Respondent to the Applicant. However, the total cost of this block repair was shown in the service charge schedule sent to the Applicant as £1,291.41 (page 45 of the Applicant's bundle). The Applicant told the Tribunal that he requested further detail about this and said that he was told by the Respondent that the difference between the two sums was attributable to the contractor's overheads and profit. When the Applicant sought further clarification from the Respondent as to who claimed these profits and overheads he told the Tribunal that Jon Pedersen on behalf of the Respondent, confirmed by email dated 8 December 2022 that 31.66% was added to the cost of £980.87 for overheads and profits by Norse (the Respondent's property repair contractor). In his substantive response (page 141 of the Applicant's bundle) the Applicant stated that it was not until the Tribunal proceedings commenced that the Respondent clarified that this 31.66% consisted of 28.81% overheads and 2.85% profit.

11. The Applicant argued that the addition of this 31.66% was not reasonable. In particular, the Applicant pointed out that £648.30 of the £980.87 charge was attributed to TC Garrett scaffold. He argued that TC Garrett would have included a profit element to their invoice and therefore leaseholders were paying a profit element twice - firstly within the TC Garrett invoice and secondly within the profit element charged by Norse. The Applicant described this as "double-dunking" which he said was unreasonable. The Applicant confirmed that he did not have any issue with the amount charged by TC Garrett, his issue was with the 31.66% profit/overheads element.

12. Additionally, the Applicant explained that he had asked on numerous occasions for a copy of the contract between the Respondent and Norse so he could see how the figures were calculated, and in particular how the 31.66% element was calculated, however he had not been provided with the contract. At page 55 of the Applicant's bundle he included Norse's costing summary, however he stated that this was not a contract, invoice or receipt, and in any event was out of date, making it impossible to see how the figures had been arrived at for the purposes of evaluation. The Applicant therefore stated that this made it impossible for him to see the reasonableness of the service charge.

13. On behalf of the Respondent, Jon Pederson in his evidence confirmed that the Respondent had a commercial relationship with Norse and this was a contract where costs, including profit, were agreed. He stated that it was for Norse to determine how it would fulfil its contractual obligations to the Respondent and this could include sub-contracting work. In the block works, the subject of this service charge, Norse had chosen to subcontract with TC Garrett but this was a commercial arrangement between Norse and TC Garrett of which the Council had no part.

14. At paragraph 12 of Jon Pederson's witness statement (page 29 of the Applicant's bundle) he confirmed that the 31.66% overhead and profit figure was a commercially agreed figure between the Respondent and Norse. This figure was broken down to 28.81% for overheads and 2.85% for profit. This breakdown allowed for the work that was involved in commissioning and overseeing work as well as other work required under the contract. It was the Respondent's position that the service charge was fair and reasonable.

15. In response to the Applicant stating that he had not had sight of the contract between the Respondent and Norse, Jon Pederson stated in evidence that the Respondent had entered into a Qualifying Long-Term agreement with Norse and at that time there would have been a consultation process with tenants and this which would have included explanation of the nature of the contract. Whilst the Applicant stated that he was not aware of this consultation, the Respondent confirmed that this took place.

16. With regards to the Summary of Costs at page 55 of the Applicant's bundle, Jon Pederson confirmed that the summary was not out of date because the contract with Norse had been extended and therefore this Summary of Costs covered the period to which the disputed service charge related.

Tribunal Decision – Block Repairs Charge

17. The Tribunal found that the service charge for block repairs of £179.44 was reasonable. The Respondent entered into a contractual relationship

with Norse and the Tribunal accepted the evidence of the Respondent that this arrangement had a 31.66% charge made up of 28.81% overheads and 2.85% profit. Whilst the Tribunal understood the Applicant's argument that any subcontractors used by Norse would include an element of profit because it was a commercial arrangement, the charge for block repairs reflected the actual charge from Norse. The Respondent had the contractual arrangement with Norse and the service charge the Applicant was required to pay was an apportionment of that charge. The Tribunal considered the work involved in the repair and noted that this involved the erection of scaffolding as well as the repair work and determined that the charge of £179.44 for this repair was reasonable.

18. The Tribunal therefore accepted the calculations set out by Jon Pedersen at paragraph 10 and 11 of his witness statement (pages 28 and 29 of the Respondent's bundle) as to how the block repairs had been apportioned and charged and found this charge to be reasonable.

Management Fee - £172.72

19. The Applicant told the Tribunal that he believed that, until 2021/2022, the total costs of services that were used to calculate the management fee did not include block repair costs, however, since the introduction of te new formula that the Council used for 2021/2022, block repairs were now included. Further, the Applicant stated that the decision to incorporate block repairs costs into the formula was done without consultation or informing the leaseholders. As a result of this, the Applicant stated that his management fee charges had increased, and the Applicant described this as adding a "54% levy". The Applicant felt that the change in formula had resulted in the management fee becoming unfair and unreasonable. Additionally, the Applicant stated that the new charging formula breached the Leaseholder Association code of practice, which he included an extract of at pages 78 to 82 of his bundle.

20. The Respondent set out the reasons behind the management fee calculation changing. In particular, the Respondent outlined the work with the Norwich Leaseholders Association to establish a different method of charging management fees and included the report completed by Plus Four Market Research Limited - the Leasehold Management Fee Review Report in 2011 (a copy of the Report was included at pages 54 to 67 of the Respondent's bundle). The Respondent also confirmed that it had consulted with the Partnership Action Group (PAG) and included notes from a meeting held on 7 April 2011 (pages 20 to 21 of the Respondent's bundle).

21. The Respondent further confirmed that following a First-tier Tribunal (Property Chamber) decision in Alice Holtom and others v Norwich City Council heard on 8 June 2022, the way the management fee was charged had been changed. This was because the Tribunal determined in that case that the administration charge the Respondent levied was not

recoverable as there was some overlap and risk of double recovery with the management fee and the lease did not allow recovery of the administration fee. The Respondent therefore no longer applied a flat fee administration charge to leaseholders and leaseholders were no longer charged with this element of the cost. The Respondent explained that the new formula now included the repair costs in the figure used to apportion the management fee but now only included the cost of management reasonably incurred for the specific services that it was entitled to charge for under the lease.

22. The Respondent therefore concluded that the 54% levy that the Applicant was disputing was actually the apportionment percentage that was used to calculate the leaseholders' fair share of the Applicant's reasonable management costs based on the level of service charge for a particular period. The Respondent confirmed that this 54% was the percentage used for apportionment across all of the Respondent's leaseholders.

23. Further the Respondent stated that repair costs were now included in the figure used to apportion the management fee meaning that a leaseholder who had fewer repair costs would pay less of the management fee when compared to leaseholders who have had more repair costs.

24. Jon Pedersen set out the calculation of the management fee at paragraph 20 of his witness statement (page 31 of the Respondent's bundle) as follows:

Total Costs (21/22)	£305, 789.00
Total Service Charges (21/22)	£563, 902.95
Apportionment Costs	54.227%
Service Charges	£316.72
Calculated proportion	£172.73

Tribunal Decision – Management Fee

25. The Tribunal found that the management fee was reasonable. The Tribunal did not accept that the management fee was an additional 54% levy and instead accepted the evidence of Jon Pedersen on behalf of the Respondent and in particular the calculations of the management fees as set out in paragraph 20 of Jon Pedersen's witness statement (page 31 of the Respondent's bundle). The formula used meant that the

management fees related to the management costs incurred for specific services and were therefore directly proportionate to the level of services a leaseholder had used in the particular service charge period.

26. Whilst the Respondent asserted that if the management of the leasehold portfolio was outsourced by the Council to the private sector the management fees charged to leaseholders would be higher, neither party provided any evidence of alternative quotes. However, the Tribunal, using its expert knowledge, found that a management fee of £172.73 was reasonable.

27. In relation to the consultation the Respondent undertook, it was clear that whilst this process was not without difficulty, the Respondent attempted to engage with leaseholders. With that said, the Tribunal noted that the way the management fee was calculated was not explained in the service charge notice (pages 44 to 49 of the Respondent's bundle) and an explanation would have been beneficial to leaseholders.

Statutory Consultation – Section 20 Notice - Landlord and Tenant Act 1985

28. The Applicant stated that the inclusion of the cost of repair work took the repair cost to £300 and therefore a section 20 notice was required.

29. The Respondent stated that the Applicant was confusing two issues and the threshold was not passed and so the need to consult for the works to the chimney at 110 Northfields did not arise. The block repairs and management fees were separate issues.

Tribunal Decision – Section 20 Notice - Landlord and Tenant Act 1985

30. The Tribunal found that the threshold for statutory consultation was not met and accepted the evidence of the Respondent.

<u>Tribunal's Decision</u>

31. The Tribunal determines that the sum of £489.45 is payable by the Applicant in respect of the service charges for the years 2021/2022. This is made up firstly of two charges that were not disputed by the Applicant namely £97.92 for services benefitting the property and £39.36 for services benefitting the estate. Secondly, the Tribunal has determined that **£179.44 is payable for block repairs and £172.73 for management fees.** This totals **£489.45** for the 2021/2022 year.

Application under s.20C of the 1985 Act

32. In the application form the Applicant applied for an order under section 20C of the 1985 Act for the Tribunal to make an order that costs incurred in connection with proceedings before the Tribunal were not to be included in the amount of any service charge payable by the tenant. Having heard the submissions from the parties and taking into account of the Tribunal's reasons, the Tribunal makes a section 20C order. This is because the Tribunal considered the statement of service charges for 2021/2022, along with the guidance note (pages 44 to 47 of Respondent's bundle) and noted that it did not contain any detail as to how the management fee had been calculated. Given this was a change from the previous year's calculation, a further explanation could have been provided to assist leaseholders.

33. Additionally, the Tribunal noted that confirmation as to how the 31.66% was divided into 28.81% overheads and 2.85% profit for the block repairs charge was not provided to the Applicant until the Tribunal proceedings had started. This detail could have been provided at an earlier stage to assist the Applicant.

34. The Tribunal therefore finds that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Application under Paragraph 5A of Sch 11 CLARA 2002

35. In the application form, the Applicant made an application for an order to extinguish the tenant's liability to pay an administration charge in respect of litigation costs. For the reasons given in relation to the section 20C order (above), the Tribunal makes this order.

Costs

36. The Applicant made an application for the cost of his time as well as other expenses including photocopying and postage. The application was made on the basis that the Applicant said he had to bring this matter to the Tribunal because the Respondent had not been open and transparent.

37. The Respondent also made an application for costs on the basis that 54% levy alleged by the Respondent does not exist. The Respondent also made reference to a "without prejudice" offer made by the Applicant to

the Respondent that if he withdrew his application the Council would not pursue costs.

38. The Tribunal does not make a costs order. The Tribunal considered Rule 13 of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013 (as amended) and finds no basis upon which to make an order for costs given the findings made above.

Name: Judge Bernadette MacQueen **Date:** 25 March 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).