FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2024/0211**
Property	**:**	**Ground, lower ground and basement floors, 49 Eaton Place London SW1 8DE**
Applicant	**:**	**49 Eaton Place RTM Company Limited**
Representative	**:**	**J B Leitch Limited**
Respondent	**:**	**High-Targets Investments Business Limited**
Representative	**:**	**Bower Cotton Hamilton (Mr Murphy)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Pittaway** **Mr J Naylor FRICS FIRPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**23 September 2024**
Date of reconvene of Tribunal members	**:**	**21 October 2024**
Date of decision	**:**	**5 November 2024**

DECISION

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Decisions of the Tribunal

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

(2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Liverpool County Court.

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 and (where applicable) administration charges payable by the Respondent in respect of the service charge year 2022. .

2. Proceedings were originally issued in the Liverpool County Court under claim no. K30LV356. The claim was transferred to this tribunal, by order of District Judge Johnson on 21 May 2024, who ordered that all matters falling outside the Tribunal's jurisdiction should be decided by a Tribunal Judge sitting as a Judge of the County Court.

3. By Directions dated 30 May 2024 the Tribunal confirmed that the Tribunal would only deal with the issue of reasonableness and payability of service charges. Once the Tribunal had made its decision the case would be returned to the County Court for it to deal with the other matters outside the jurisdiction of the Tribunal.

4. The Directions directed the Respondent to prepare a statement of case by 28 June 2024 and the Applicant a statement in reply by 26 July.

5. Provision was made for the exchange of witness statements by 30 August.

The hearing

6. The Applicant was represented by Ms Ackerley of counsel at the hearing and the Respondent was represented by Mr Murphy of Bower Cotton Hamilton.

7. The hearing was a hybrid hearing. With the permission of the Tribunal Mr Knight gave his evidence by video.

8. At the start of the hearing the Tribunal had before it a bundle of 372 pages and a skeleton argument from Ms Ackerley of 7 pages.

9. The Tribunal heard evidence from Mr Knight and Mr Shapiro, and submissions from Mr Murphy and Ms Ackerley.

10. During the hearing Ms Ackerley referred to several cases which Mr Murphy had not had the opportunity of considering.

11. With the agreement of both parties the Tribunal directed that Ms Ackerley provide copies of the cases referred to the Respondent and the Tribunal, that the Respondent had until 30 September to make submissions on those cases and that the Applicant had until 3 October (extended on request to 10 October) to reply on the Respondent's submissions.

12. The Tribunal reconvened on 21 October (without the parties present) to reach its decision, on the basis of the documents in the bundle, Ms Ackerley's skeleton, the evidence and submissions heard at the Hearing, the submissions received in accordance with the Tribunal's directions of 23 September 2024 2and the cases referred to in those submissions, namely

- *Charles Knapper & Others v Martin Francis and Rebekah Franncis* UTCL [2017] UKUT 0003 (LC) (**'*Knapper*'***)*
- *Paddington Walk Management Limited v Governors of the Peabody Trust* [2009] 2EGLR 123
- *Dr and Mrs Schilling & others v Canary Riverside Development PTD Limited* [2005] EWLandLRX26 2005 ***('Schilling')***
- *23 Dollis Avenue 91998) Limited v Vejdani* [2016] UKUT365 (LC) ***('Dollis Avenue')***

The background

13. The flat which is the subject of this application is situated on the ground. lower ground and basement floors of 49 Eaton Place London SW1X 8DE (the **'Property'**).

14. 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.

15. The Respondent holds a long lease of the Property dated 16 January 2015 made between Grosvenor Estate Belgravia (1) the Respondent (2) which requires the landlord to provide certain services and the tenant to contribute towards their costs by way of a variable service charge. Provision is made for the payment of service charge on account in any year with a reconciliation at the end of the year. The specific provisions of the lease and will be referred to below, where appropriate.

16. The Applicant acquired the right to manage the building 49 Eaton Place ('**49 Eaton Place'**) and appointed Principia Estate & Asset Management Ltd ('**Principia**') as its managing agent.

<u>The issues</u>

<u>Preliminary issues</u>

17. Ms Ackerley raised as a preliminary issue the status of Mr Shapiro's report. She submitted that no permission had been obtained from the Tribunal to rely upon an expert report, that it set out matters not referred to in the Respondent's Statement of Case and that it had been served simultaneously with the Applicant's witness statement so that the Applicant had not been able to respond to the matters raised in it .

18. The Tribunal finds that there was no requirement for Mr Shapiro's witness statement to be provided before the Applicant's reply to the Respondent's case. Direction 7 provided for the simultaneous exchange of witness statements. The Tribunal determined that it would not grant permission for Mr Shapiro's report to be regarded as expert evidence but would treat the facts set out therein as a witness statement.

19. The sums the subject of the application to the County Court are estimated service charges for the year 7 April 2022 to 6 April 2023. Ms Ackerley submitted that as the actual service charges were now known the Tribunal should determine the service charge based on the service charge accounts and not the estimated sums.

20. The Tribunal finds that it can only consider the estimated service charge for the year to 6 April 2023. Its jurisdiction is limited to that which has been transferred to it by the County Court. It could only consider the actual service charge if there was a separate application before it to do so, and no such application had been made.

<u>Issues</u>

21. At the start of the hearing the relevant issue for determination by the Tribunal was the payability and/or reasonableness of the estimated service charge for the year 7 April 2022 to 6 April 2023, in the sum of £17,678.84 and an administration charge of £144.

22. The claim for the administration charge was withdrawn by the Applicant at the hearing.

23. The claim for £17,678.84 was made up of four demands for on account payments, two for £4,692.20 demanded in March and June, and two for £4,419.71 demanded in September and December 2022.

24. The total sum demanded was made up as follows

Building insurance	£18,631.00
Terrorism insurance	£5,601.00
Electricity	£8,000.00
Cleaning	£3,300.00
Health and Safety	£ 450
Fire Alarm	£9,372.00
Gardening	£ 450.00
Director's liability insurance	£ 267.00
Company Secretarial fees	£ 420.00
Registered office fees	£ 234.00
Management fees	£4,320.00
External repairs	£1,500.00
Out of hours emergency fees	£ 12.00
Audit fees	£ 480.00

25. Mr Murphy accepted at the Hearing that the estimates for external repairs, out-of-hours emergency fees and audit fees were reasonable, so that these were not before the Tribunal to determine.

The Tribunal's determinations

26. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows. In making its decision it has also considered the authorities to which it has been referred by Ms Ackerley, the representations by the Respondent on those authorities and Ms Ackerley's reply.

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

28. The Tribunal has not considered the evidence that it heard that is not relevant to an application relating to the payment of service charge on account, but which might have been relevant to an application in relation to actual service charge in the year in question.

Payability of certain items

29. In its Response to Details of Claim in the County Court, which is referred to in the Applicant's Reply to the Respondent's Statement of Case, and which was in the bundle before the Tribunal, the Respondent challenged the following items set out in the estimated budget on the basis that the costs are not recoverable by way of service charge under the lease and therefore could not form part of an estimated service charge.

- Health and safety
- Fire alarm
- Gardening
- Directors Liability insurance
- Company Secretarial fees
- Registered office fees.

30. In its Response to Details of Claim the Respondent asked the Applicant to prove that terrorism insurance is normally covered under a comprehensive insurance.

31. With reference to the charge for gardening the Respondent stated that the only garden at 49 Eaton Place is demised to it and it is responsible for its maintenance.

32. The Applicant's reply to the Respondent's Statement of Case stated that no charge for Health and Safety, for the Fire Alarm or for gardening was actually incurred in the year in question. In relation to gardening the Applicant submitted that there are flower boxes at the entrance to 49 Eaton Place which are maintained by the Applicant.

33. Insofar as the Director's liability insurance, company secretarial fees and registered office fees are concerned the Applicant referred the Tribunal to the RICS code which provides that managing agents may provide administration/company secretarial services to RTM company clients. It also referred the Tribunal to the Management Agreement between the

Applicant and Principia and submitted that these fees are part of the 'Other Services' contemplated by that agreement.

The Tribunal's decision

34. The tribunal determines that the Respondent is not liable to pay for any of the items referred to in paragraph 29 above.

35. Whilst not an item of expenditure contemplated by Schedule 4 of the lease the Tribunal would encourage the parties to seek to agree the installation of some form of fire alarm at 49 Eaton Place.

36. The Tribunal finds that the cost of terrorism insurance is payable under the terms of the lease.

Reasons for the Tribunal's decision

37. It is the terms of the lease to which the Tribunal must look to establish whether an item is payable by way of service charge. If it is not provided for in the lease as a service charge item it cannot be so recovered.

38. If the item can be a service charge items under the terms of the lease the Applicant is entitled to estimate a reasonable charge for these costs in its service charge estimate.

39. The obligation on the tenant to pay service charge is set out in clause 3.2 of the Lease which requires the tenant, *'to pay and contribute to the Landlord a proportionate part .....of the costs and expenses and matters mentioned in Schedule 4'*. Clause 3.3 provides that, '*....the Tenant shall (if required by the Landlord) on each quarter day pay to the Landlord.....such sum on account of the contributions payable by the Tenant under this clause as the Landlord or (as the case may be) the said chartered accountant shall certify as being a reasonable interim sum to be paid on account of the annual contribution....'*.

40. Schedule 4 does not provide for the recovery by the landlord of costs incurred by it in connection with health and safety, or the costs of gardening. Nor does Schedule 4 provide for the installation of a fire alarm at 49 Eaton Place. If the installation of a fire alarm was a statutory requirement it might be covered by paragraph 10 of Schedule 4 but the Tribunal has no evidence before it that what the Applicant was budgeting for was as a result of a statutory requirement.

41. None of the Directors Liability Insurance, Company Secretarial fees or Registered office fees are items of service charge expenditure contemplated by Schedule 4. They are costs which relate to the RTM company. The members of the RTM company may be liable to pay these

but not as items of service charge. The Tribunal finds that none of those estimated cost are payable.

42. Paragraph 2 of Schedule 4 provides for insuring, '*also against third party risks and such further or other risks (if any) normally covered under a comprehensive insurance as the Landlord shall determine'* (the underlining is that of the Tribunal.)

43. The superior landlord has determined that terrorism is normally covered under a comprehensive insurance as it is effecting insurance against it. The cost of such insurance is therefore payable as a service charge item.

S20 consultation

44. The Respondent accepted that the management fees would be recoverable under paragraph 6 of Schedule 4 of the lease. However the Respondent submitted that the actual agreement entered into by the Applicant with Principia was a 'long term qualifying agreement' for the purposes of 20ZA of the 1985 Act and that as the Applicant had not consulted with the Respondent before entering into the agreement the Respondent was not liable to pay a contribution of more than £100 per accounting period.

45. The Applicant referred the Tribunal to the decision in *Dollis Avenue* as authority for the proposition that it is not necessary to undertake consultation pursuant to section 20 of the 1985 Act prior to setting the budget or demanding on-account service charge.

The Tribunal's decision

46. The Tribunal finds that it was not necessary for the Applicant to consult the tenants pursuant to section 20 of the 1985 Act in respect of an agreement which may be a long term qualifying agreement prior to setting the budget or demanding on-account service charge.

Reasons for the Tribunal's decision

47. *Dollis Avenue* was a decision in relation to the payment on account in respect of qualifying works, rather than a long term qualifying agreement but the same principle applies.

48. At paragraph 33 of the decision in *Dollis Avenue* the Upper Tribunal found that, '*that the limitation in s 20 to the contribution payable by the tenant is referable to costs incurred by the landlord in carrying out the work rather than in respect of work to be carried out in the future. This is clear from the wording of ss 20(2) and 20(3).*

In the Upper Tribunal's view, '*there is no statutory limit to the amount that can be recovered by way of an on account demand under the lease other than under s 19(2). It is, in our view, not necessary that there should be a valid consultation process before a sum in excess of £250 can be recovered by way of a service charge in respect of intended works.*'

49. The Tribunal therefore does not have to consider whether the agreement with Principia is or is not a long term qualifying agreement. This might have been relevant to an application in relation to actual service charge in the year in question, in which case the Applicant might have entertained an application to dispense with the need to consult.

50. The Tribunal does however have to consider whether the sum demanded was reasonable.

Reasonableness of sums claimed

51. Ms Ackerley referred the Tribunal to *Metropolitan Property Realizations Limited v Silver* LRX/155/2007, *City of Westminster v Fleury* [2017] UKUT 136 (LC), and *L B Hounslow v Waaler* [2017]EWCA Civ 45 as authority for the proposition that for costs to have been reasonable incurred it is not necessary that they should be the cheapest.

52. Ms Ackerley referred the Tribunal to *Schilling and* submitted that it had established a prima facie case that the costs demanded were reasonable, by reason of the accounts and accompanying invoices, so that the burden of proving that the costs were unreasonable had shifted to the Respondent and that it had failed to do so.

53. In her skeleton argument Ms Ackerley confirmed that the costs for insurance and electricity included 'accruals paid for previous service charge years'. At the hearing it became clear that each of these budgeted sums included sums due from the Respondent in previous years but not yet paid.

54. In its Statement of Case the Respondent submitted that the following would be reasonable sums to be paid on account

- Buildings insurance £10,000
- Terrorism insurance £1,500
- Electricity £5,000
- Cleaning £1,500
- Management fee no sum suggested other than £100

The Tribunal's decision

55. The Tribunal determines that the following are reasonable estimated service charges for the year to 6 April 2023

Building insurance	£10,000
Terrorism insurance	£3,000
Electricity	£5,000
Cleaning	£2,600
Management fees	£2,500

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Reasons for the tribunal's decision

56. That a sum has subsequently been incurred, as evidenced by the actual service charge accounts, does not assist the Tribunal. As stated at paragraph 32 of *Knapper,*

'The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked.'

57. Neither party has pointed the Tribunal to satisfactory evidence as to what might have been considered a reasonable sum to be included. The Applicant has referred the Tribunal to authorities that confirm that the landlord does not have to use the cheapest cost available, but these do not of themselves establish a prima facie case that the sums sought by the Applicant are reasonable. The Respondent has provided alternative costs but without evidence to substantiate how these have been arrived at.

58. Clause 3.3 provides that, '*....the Tenant shall (if required by the Landlord) on each quarter day pay to the Landlord.....such sum on account of the contributions payable by the Tenant under this clause as the Landlord or (as the case may be) the said chartered accountant shall certify as being a reasonable interim sum to be paid on account of the annual contribution....'.* (the underlining is that of the Tribunal).

59. The Tribunal finds that to the extent that the sums demanded on account of buildings insurance and electricity include sums due from preceding

years these are not part of the '*annual contribution'*, and as such are not reasonable on account sums for the year to 6 April 2023.

60. Reference was made at the hearing to the buildings insurance sum including an accrual in the region of £8,000. The bundle contains the Grosvenor Flats Block Policy for the year 25 December 2021 to 24 December 2022, which quotes an annual policy premium of £10,059 and a terrorism premium of £2,842. This will have been in place at the time the budget for the period from 7 April 2022 was prepared on 4 July 2022, and the Tribunal finds it reasonable that the sums demanded on account of buildings and terrorism insurance should be in the region of the sums mentioned in that policy.

61. It is not clear from the evidence before the Tribunal as to why the Applicant estimated communal electricity charges of £8,000, nor to what extent this includes sums due from previous years. There are invoices in the bundle but all of them relate to periods after the estimated expenditure was produced on 4 July 2022. In the absence of better clarity from the Applicants the Tribunal is prepared to accept the Respondent's proposal of £5,000 as being a reasonable contribution.

62. There was no evidence before the Tribunal as to the basis upon which the Applicant budgeted £3,300 for cleaning the common parts or the Respondent £1,500. The Tribunal is an expert Tribunal and from its own knowledge and experience it would consider a budgeted charge of £50 per week for cleaning limited communal areas to be reasonable.

63. The Tribunal had before it the management agreement with Principia that the Applicant had entered into in March 2022. This confirms that there are three flats in the block and fixes a basis management fee per flat of £1,200 plus VAT. Clearly it is upon the basis of this agreement that the Applicant budgeted management fees of £4,320. From its knowledge and experience the Tribunal finds this to be such a high fee per flat as to be unreasonable. It has no evidence before it to substantiate such a high management fee. It would expect a fee per flat, even in the area in which 49 Eaton Place is located to be in the region of £650 plus VAT per flat, in the absence of exceptional circumstances, and none have been given here. It therefore finds an estimated management charge of £2,500 to be reasonable.

64. The Tribunal would remind the parties that this decision is limited to a determination on the payability and reasonableness of service charge paid on account. It has made no determinations on the payability and reasonableness of the actual service charge for the year to 6 April 2023.

The next steps .

65. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Liverpool County Court.

Name: Judge Pittaway **Date:** 5 November 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).