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| A black and white logo  Description automatically generated with low confidence |  | **FIRST-TIER TRIBUNAL****PROPERTY CHAMBER** **(RESIDENTIAL PROPERTY)** |
| **Case Reference****Property****Applicant****Respondent****Representative****Respondent’s Solicitor****Type of Application****Tribunal****Date of Hearing****Venue:**  | **:****:****:****:****:****:****:****:****:****:** | CHI/00HA/LSC/2024/0027 Garden Maisonette, 13 Marlborough Buildings, Bath, BA1 2LXAlison Callahan13 Marlborough Buildings (Bath) Management Company LtdJack Webb, of CounselStone KingDetermination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985 Judge David Clarke Jo Coupe FRICSMichael Jenkinson2 December 2024Bath County Court and Tribunal Centre2 December 2024 |

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**DETERMINATION AND STATEMENT OF REASONS**

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**DETERMINATION**

**The Tribunal determines that:**

**1. Under the terms of the Lease, all expenses in relation to fire alarm installation, repair and maintenance, and all expenses relation to fire alarm testing and fire safety assessment incurred by the Respondent, fall within the general service charge set out in the Fifth Schedule to the Lease, being within clauses 1(iii) or clause 7 of that Schedule, and to which the Applicant contributes one-third.**

**2. Expenses relating to emergency lighting within the communal hallway and staircase fall within clause 1(iv) of the Fifth Schedule to the Lease and therefore within the saving clause of the heading to that Schedule. They are therefore expenses to which the Applicant makes no contribution. It is therefore necessary in future for the Respondent to separate out expenses relating to emergency lighting and expenses relating to fire safety issues.**

**3. No estoppel of any description has been established by either party against the other. In particular, there was no promise or representation made by or on behalf of the Respondent, as a representation on which she could rely. The Tribunal is unconvinced by the Applicant’s assertion that she relied on any such promise or representation.**

**4. By virtue of section 20B (1) of the 1985 Act, the Applicant is not liable to pay a share of expenses relating to fire alarm maintenance and testing where they were included, wrongly, within the internal service charge for earlier accounting years and no demand for payment was given to her within a period of eighteen months after they were incurred (unless some written notification was given to her within that 18-month period that those costs had been incurred).**

**5. The totality of the expenses of managing the Building are chargeable under clause 8 of the Fifth Schedule and such expenses therefore fall within the general service charge to which the Applicant contributes one-third.**

**6. The management fees charged by the current managing agents, SPG, are not unreasonable. There is no, or at least insufficient, evidence that the service provided by this firm of agents is unreasonable.**

**7. There is no provision in the Lease to permit a reserve fund to be established for the Building.**

**8. The budget for the year 2024-25 should be reduced by a total of £2,294 (namely by £2000 on the repairs contingency and £294 in respect of fire testing) but is otherwise confirmed as reasonable.**

**9. The application to make an order under section 20C of the Landlord and Tenant Act 1985 in the Applicants favour is refused.**

**10. The application to make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2022 in the Applicants favour is refused.**

**STATEMENT OF REASONS**

**The Application**

1. This application (“the Application”) for a determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) was made by Alison Callahan (“the Applicant”) on 10 February 2024. The Applicant is the long leaseholder of the garden flat or maisonette in a property known as 13 Marlborough Buildings. The Respondent to the Application is 13 Marlborough Buildings (Bath) Management Company Ltd in whom the freehold of the property is vested. The Respondent is a residents management company with four members, namely the Applicant and the three long leaseholders of the maisonette and two flats above the Applicants property. Those members are Mr Marcus Arundell of the ground and first floor maisonette, Ms Jennifer Faulkner of the second floor flat and Mr Harvey Packham of the top floor flat.

2. The service charge items that the Applicant puts in issue, for the accounting years 2021/22 and (primarily) 2002/23, were listed as:

1. Treatment of the general (or external) service charge surplus.
2. The proper allocation of the costs of fire alarm servicing.
3. The proper allocation of the costs of fire alarm maintenance.
4. The proper allocation of the cost of weekly fire alarm testing.
5. The reasonableness of the management fees charged including the quality of the service provided.
6. A cost charged relating to windows and doors.
7. The validity of the charge made in respect of window cleaning.

At or prior to the hearing, the issues relating to windows, doors and window cleaning were settled by agreement between the parties and the Tribunal does not need to address those two matters.

3. The Application also asked the Tribunal to make a determination in relation to accounting years 2023/24 and 2024/25 in respect of the same service charge issues relating to fire alarm matters and management fees. Subsequent to the Application, the Applicant also brought into issue the question of whether a reserve fund could be established under terms of her Lease as desired by the Respondent. Before the hearing, the Respondent conceded that there is no right under the Applicant’s Lease to establish a reserve fund and the only issue is, in the absence of a reserve fund, the extent to which the Respondent may include in annual budgets a level of contingency.

4. The Application also made an ancillary application under section 20C of the 1985 Act and an ancillary application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2022 (“the 2002 Act”).

**The Property**

5. The Property, known as the garden maisonette, is contained within an historic Grade 2 listed terraced house known as 13 Marlborough Buildings, Bath (“the Building”). The Tribunal was not asked to inspect either the Property or the Building as a whole but was able to obtain a good understanding from photographs, plans attached to the Lease of the Property, and a description. The Property is situated on a small part of the ground floor, and on the lower ground, basement and sub-basement floors of the Building. It includes the garden at the rear of the Building. The only part of the ground floor included in the property is a door and utility room or lobby giving access to the stairs down to the lower floors. However, the property also enjoys an external staircase to an entrance door on the lower ground floor. The ground floor door and staircase of the Property open into the main access hall and staircases to the other three properties in the Building.

6. The Applicant made it clear that she only uses the internal ground floor door to visit the main hallway to collect her post. Otherwise, she uses the lower ground floor entrance to her home. The ground floor main doorway is used by the other three leaseholders in the Building.

**The Lease**

7. By virtue of a lease (“the Lease”) dated 1 December 2000 the Property was demised for a term of 999 years from 29 September 1998 at an annual rent of £50 with an additional insurance rent equal to one third of the cost of insuring the Building. The terms of the lease relevant to this Application are as follows.

1. The Applicant as Lessee under the Lease covenants to pay the Service Charge and the Interim Service Charge in accordance with the service charge provisions set out in the Sixth Schedule to the Lease (clause 4(ii)).
2. Among the Lessors covenants is one to maintain repair decorate and renew the main entrances passages landings and staircases of the building so enjoyed or used by the lessee in common (clause 5(d)(iv); and one to keep clean and reasonably lighted the passages landings and staircases and other parts of the building enjoyed or used in common (clause 5(e).
3. The Fifth Schedule to the lease sets out the costs and expenses and matters in respect of which the Lessee is to contribute a one third part. There are 11 such clauses and include matters such as repair, decorating the exterior of the Building, and other matters that do not impact this determination. Those that do so are set out in paragraphs 8 and 9 below.
4. The Sixth Schedule sets out the service charge provisions. The details are in paragraphs 10 and 11 below.

8. The costs and expenses are set out under the Fifth Schedule in respect of which the Applicant as Lessee of the Property is to contribute a one third part – but there is an express saving:

 ‘save that no contribution shall be paid in respect of the expenses referred to in

clause 1(iv) and clause 2.

Clause 1 (iv) reads:

The expense of maintaining repairing redecorating and renewing:

(iv) the main entrances passages landings and staircases of the property so enjoyed and used by the lessee in common

Clause 2 provides:

The cost of cleaning and lighting the passages landing staircases and other parts of the Building so enjoyed or used by the lessee in common.

9. The remainer of the items listed in the Fifth Schedule are matters to which the Applicant must pay one third of the total cost. Of those listed, the following are relevant to this determination:

1. The expenses of maintaining and repairing redecorating and renewing: . . . . . . . . . (iii) the gas water pipes drains electric cables and wires used in common by any two or more flats in the property.

7. All other expenses (if any) incurred by the Lessor in and about the maintenance and proper running of the Building.

8. The reasonable fees and disbursements properly charged by any managing agents employed by the Lessor in respect of the Building. . .

11. Any other expenses which the Lessor may reasonably incur in respect of the management of the Building.

10. The Sixth Schedule to the Lease, clause 1, provides for an accounting year ending on the 31 March in each year. By virtue of clause 2, Expenses are defined as the cost to the Lessor of the items set out in the Fifth Schedule. The Service Charge percentage under paragraph 3 in respect of the Property is one third of the Expenses. Interim Payment is defined by clause 4 of the Sixth Schedule as such amount as in the opinion of the Lessor’s surveyor fairly represents one-fifth of the estimated Expenses for the current accounting year.

11. The Sixth Schedule then sets out, in paragraph (1) (the bracketed paragraphs follow the clause numbered 1-4) that the amount of the Expenses are to be determined by reference to the accounting year. There is to be notification in advance of, or early in, each accounting year of the Interim Service Charge and the Applicant as Lessee is then to pay that Interim Service Charge by quarterly payments (paragraphs (2) and (4). Finally, it is provided in paragraph 5 that there should be a service charge account furnished showing the Service Charge payable in any accounting year and:

“if in any Accounting Year the amount of the Service Charge is found to be less than the Interim Service Charge paid by the Lessee in respect of that Accounting Year the excess shall be refunded by the Lessor to the Lessee or (at the option of the Lessor) credited against the Interim Service Charge for the following Accounting Year and if the amount of the Service Charge is found to be greater than the sum of the Interim Service Charge paid by the Lessee in respect of that Accounting Year the Lessee shall pay the balance due in respect of that Accounting Year on the next quarter day following notification of the account of the Expenses and Service Charge’

12. Looking at these provisions of the Lease as a whole, it appears that the service charge is divided into two components, even though the Lease does not specifically so provide for any named division. The parties have termed the two separate elements as the ‘external charge’, for all matters except those included in clauses 1(iv) and 2 of the Fifth Schedule; and the ‘internal charge’ which covers expenses falling within clauses 1(iv) and 2. The Tribunal prefers to refer hereafter to them as the ‘general service charge’ and ‘internal service charge’, since items other than those external to the building may be included in the general service charge (such as repair to pipes drains cables and wires used in common by two or more flats in the Building).

13. The two maisonettes in the Building have leases where they contribute one third of the general service charge and the two flats contribute one sixth each. Under the terms of her Lease, the Applicant contributes one third of the costs incurred but nothing towards internal service charge. The internal charge is then payable by the other three leaseholders within the Building. The Tribunal was told that the ground and first floor maisonette contributes 50% and the second and top floor flats contribute 25% each to matters included within the internal service charge to which the Applicant does not contribute.

**Relevant history and background**

14. The witness statement of Jennifer Faulkner provided the Tribunal with some historical background. When Ms Faulkner purchased her flat in August 2013, the Respondent company was managed ‘in house’ by the leaseholders with a previous owner of the top floor flat, referred to as Paul, who had a business background, attending to the necessary paperwork. When Paul sold the top floor flat to Harvey Packham, it was decided to engage a firm called Andrews Leasehold Management (“Andrews”) to manage the Building, and they commenced duties in January 2016. They did so, apparently very competently for a period. However, the individual attending to the work of managing the Building left Andrews in June 2017 and there was general dissatisfaction with the replacement agent who seemed very inexperienced. There were also problems with the accounts. The leaseholders eventually sought a replacement agent and after looking at several companies and asking for recommendations chose a firm called Bath Leasehold Management Ltd (“BLM”), recently established by a person who seemed very experienced. BLM took over on 1 April 2021, just after the Applicant purchased her Property.

15. The completion of the Applicant’s purchase was in May 2021. Though this was after Andrews ceased to be the managing agent, the Leasehold Property Enquiries form that was issued to the Applicant in respect of her purchase was completed by three members of Andrews staff between late November and early December 2020. It was therefore the budget for 1 April 2020 to 31 March 2021 that was seen by the Applicant. The internal service charge budget for that year included a sum of £161 for emergency lighting maintenance and a further £161 for fire alarm maintenance. Jennifer Faulker in her witness statement says that fire alarm maintenance had been in the general service charge until 2019 and that the move to the internal service charge two costs of £161 was not noticed until the dispute came to a head in 2023.

16. For a summary of the relevant background after the date of the Applicant’s purchase, the Tribunal draws on the Applicant’s witness statement as well as that of Jennifer Faulkner. The Applicant comments that the firm BLM rapidly expanded and the accounts became a muddle. In particular, there were clear errors in the costs allocated to the internal service charge when they should have been allocated to the general service charge. Jennifer Faulkner says that these incorrectly allocated costs included the management company charges and the house insurance premium as well as (in her view) costs relating to fire alarm maintenance and fire alarm testing. It was during 2021 and 2022 that the difference of approach to the costs relating to firm alarm maintenance and testing came into prominence with the Applicant contending firmly that all such costs fell to be included in the internal service charge while the other three directors contending clearly by March 2023 that fire alarm testing and maintenance should be part of the general service charge payable by all. It is fair to record that in the period prior to March 2023 there is some evidence that one or more of the other directors accepted that some aspects of fire safety costs might be appropriate for the internal charge.

17. It was when the costs relating to fire safety increased significantly that the contrary views about allocation between the two service charges headings became a major disagreement between the directors. The increase was primarily the result of the Fire Safety Act 2021 which, amongst other matters strengthening fire safety in multi occupancy buildings, introduces some mandatory testing of fire alarms in communal hallways. BLM advised that the Building was one that required mandatory weekly fire alarm testing and such tests started in September 2023. Jennifer Faulkner says that the local fire officer indicated that testing was required. The Applicant strongly however contended, from April 2023, that she was not obliged to contribute to those testing costs and in any event the testing was a cost that was unreasonably incurred since there was no urgent requirement for such testing for the Building.

18. There were a considerable number of emails in this period from the Applicant, and Jennifer Faulkner says that these included complaints from the Applicant about BLM. It was shortly thereafter that BLM resigned as agents though there is no clear evidence of connection between these two events. On 27 September 2023, a meeting of the directors to discuss issues ended in acrimony. In the end, BLM agreed to continue as agents until a replacement was in post but did resign finally in January 2004 with only one month’s notice.

19. The Respondent looked at a number of possible companies to act as managing agents and on 4 February 2024 agreed to appoint a firm called SPG Property Ltd (SPG), a firm with a chartered surveyor, Spencer Gower, as its principal. The Applicant protested at this appointment contending that the fees for management were excessive and provided a tender from an alternative firm, Fraser Allen. The reasonableness of the management fees charged by SPG are in dispute in this case. The Respondent asked the Applicant not to send communications directly to SPG to allow a single channel of communication to SPG from the Respondent. However, it was said by Jennifer Faulkner that the Applicant did continue to communicate with SPG. An on-line AGM in June 2024 was not successful and the SPG representatives left the meeting abruptly. SPG later terminated their contract with the Respondent but remain in post for the time being.

**Summary of the Applicant’s case**

20. In respect of the fire alarm and related safety issues, the Applicant centred her case on the terms of the Lease that specifically exclude the expenses of maintaining repairing redecorating and renewing the main entrances passages landings and staircases of the property so enjoyed and used by the lessee in common and the cost of cleaning and lighting the passages landing staircases and other parts of the Building so enjoyed or used by the lessee in common. She submitted that this exclusion extended to any fixtures and fittings included in the common hallway and also extended to routine safety activities. She claimed that there was no language elsewhere is the Lease that imposed on her any obligation to contribute to the costs of the fire alarm or fire safety matters.

21. In support of that basic submission, she referred to the leading case of *Arnold v Britten* [2015] UKSC 36 and claimed that including the fire alarm costs in the internal service charge would fit within the natural and ordinary meaning of the words in the Lease. She also cited four decisions of the First-tier Tribunal (detailed and discussed in paragraphs 33-36 below) which she submitted supported her submission.

22. In the event that her submissions on the proper interpretation of the Lease did not succeed, the Applicant further argued that a promissory estoppel applied. She submitted that a figure in the budget supplied to her at the time of her purchase, including fire alarm costs in the internal schedule, was a representation on which she had relied to her detriment and the estoppel thereby applied to exclude her from any future fire alarm costs if they properly fall within the general service charge. While the amount might have been small, she said that she did rely upon it.

23. With regard to the management fees now payable to SPG, the Applicant submits that no reasonable landlord would have agreed the fee chargeable, citing *Waverly Borough Council v O’Leary* (1990) without at least due diligence on the agent being appointed. She claimed that if due diligence had occurred, the firm would not have been appointed since the RICS principal was a self-employed commercial property surveyor whose experience did not extend to residential property matters. It was also noted that paragraph 8 of the Fifth Schedule to the Lease reinforces the principle that managing agent’s costs must be reasonable. The Applicant further claimed that the services of SPG had not been of a reasonable standard but without supporting evidence.

24. Finally, in respect of the 2024/25 budget, she claimed that the amounts were knowingly overstated in contravention of section 19(2) of the 1985 Act.

**Summary of the Respondent’s case**

25. Initially, the Respondent’s position statement sought to establish that the Applicant as owner of the garden maisonette was obliged to pay towards all costs incurred by the Respondent. This ignored the clear words set out in the saving clause at the commencement of the Fifth Schedule to the Lease stating that the Applicant was not obliged to pay for cost items under clause 1(iv) and 2 of that Schedule – see paragraph 8 above. Wisely, this position was abandoned by Counsel for the Respondent at the hearing. However, the position statement does make reference to paragraph 1(iii) of the Fifth Schedule requiring the Applicant to pay towards maintenance and repair of shared cabling, wires and other connections used by two or more flats in the Building.

26. The Respondent’s written statement of case was poorly presented. The ‘primary’ contention – that the Applicant was barred by an estoppel by convention - was abandoned halfway through the hearing and various not very appropriate issues about evidence, largely inapplicable to tribunal proceedings, were not followed up at the hearing. More pertinently, the Respondent considered that the principles established in *Arnold v Britten* resulted in the fire alarm costs in the internal service charge not fitting within the natural and ordinary meaning of the words in the Lease. Moreover, it was submitted that the draftsperson of the exclusion would have had in mind a specific set of matters to be excluded so that other incurred costs should be included within the general service charge. The cases on which the Applicant relies were said to be distinguishable.

27. At the hearing Counsel referred to clauses 7 and 11 of the Fifth Schedule to the Lease as the proper clauses for allocation of costs of fire alarms and fire safety issues and argued that the Applicants position on promissory estoppel were wrong in law and that the representation, such as it was, was so minor that it could not found, or provide the basis for, an estoppel and could not have influenced a decision to purchase.

28. The Respondent argued that the fees charged by SPG were reasonable and the amount that the total exceeded that previously charged by BLM was not excessive and that the Leasehold Advisory Service had indicated that the amount of the difference did not make was what being charged unreasonable. Counsel further pointed out that the other three directors had provided good reason for engaging SPG on the terms that had been agreed.

**Fire Alarm and Fire Safety issues**

29. The Tribunal records the concession by the Respondent that all costs relating to emergency lighting are covered by, and fall within, clause 2 of the Fifth Schedule to the Lease and so fall to be charged to the internal service charge to which the Applicant does not contribute. This concession was correctly made. The issue for the Tribunal is therefore to determine whether costs relating to installation of fire alarms, and maintenance and periodic testing of such alarms fall to be charged within the general service charge or the internal charge.

30. The starting point for the Tribunal’s determination has to be an examination of the meaning of the relevant terms of the Lease. In that regard, the Tribunal, as both parties submitted that we should do, must take full account of the guidance contained in the leading case of *Arnold v Britten* [2015] UKSC 36. It is the unanimous view of the Tribunal that the natural and ordinary meaning of the words ‘expenses of maintaining repairing redecorating and renewing the main entrances passages landings and staircases of the property so enjoyed and used by the lessee in common’ (clause 1(iv))) and ‘the cost of cleaning and lighting the passages landing staircases and other parts of the Building so enjoyed or used by the lessee in common’ (clause 2) are limited to what is actually described in those words. They do not extend to fire alarms and maintenance or other fire safety issues such as periodic testing. Clause 2 is clearly limited to cleaning and lighting. In clause 1(iv), what is to be maintained repaired and renewed are the passages, landing and staircases. The Applicant does not benefit from the passages, landings and staircases to the three other flats. She does benefit from the Building having fire alarms.

31. This conclusion based on the natural meaning of the words used is reinforced by a number of other factors.

1. Unlike in other cases that the Applicant referred to the Tribunal, the Lease specifically provides (in clause 7 of the Fifth Schedule) for ‘all other expenses if any in and about the maintenance and proper and convenient management and running of the Building’. Costs relating to fire alarms and safety can sit naturally within this provision. The Applicant in her Reply to the Respondent’s case argued that clause 7 is a ‘sweeper clause’ because of the inclusion of the words ‘if any’ and considered that the case of *Arnold v Britten*, at paragraph 15 of Lord Neuberger’s judgement means that all expected expenses would be captured under the preceding clauses 1-6. However, clause 7 is not a sweeper clause. There are further clauses relating to management fees (clause 8), reasonable costs to be added when repairs are undertaken (clause 9) and relating to tax (clause 10). The sweeper clause is clause 11 covering ‘any other expenses that the Lessor may incur in respect of management of the Building’.
2. It is unfortunate that no reference was made at the hearing to clause 1(iii) of the Fifth Schedule which refers to the expenses of maintaining and repairing redecorating and renewing the gas water pipes drains electric cables and wires used in common by any two or more flats in the property. Expenses under this clause are to be included in the general service charge for which the Applicant contributes a one-third part - even if the costs are to benefit only two (or indeed three) other flats. Though neither party argued the point, the clause is clearly within the terms of the Lease that the Tribunal is required to interpret so as to identify the intention of the original parties to the Lease - *Arnold v Britten*, at paragraph 15. The Tribunal concludes that the installation of fire alarms would require some electric wires or cabling and such a cost, if not covered by clause 7, does also fit into clause 1(iii). There are therefore two clauses which can cover the fire alarm costs which do not naturally fit into clause 1(iv).
3. The Lease does not specifically set up two separate service charge Schedules. Instead, the Applicant is to contribute a one third part ‘save that no contribution shall be paid in respect of the expenses referred to in clause 1(iv) and clause 2’. The Tribunal’s view is that this a saving clause which throws these specific costs onto other leaseholders in the Building. It should therefore be construed against the Applicant if there is any ambiguity. But the Tribunal considers that it need not rely on that approach – it considers that the meaning of clause 1(iv) is clear and there is no ambiguity. The Tribunal also accepts the Respondent’s submission through Mr Webb that the draftsperson of the exclusion would have had in mind a specific set of matters to be excluded so that other incurred costs should be included within the general service charge.

32. The Applicant referred the Tribunal to four decisions of the First Tier Tribunal which she submitted were decisions that fire alarm expenses had been payable only by leaseholders who used the communal entrances and staircases and were therefore authorities that such charges should be included within clause 1(iv). While the Tribunal is not bound by previous decisions of its own, this Tribunal naturally treats such determinations with considerable respect. But each case very much depends on the exact terms of the lease in question and the context of the decision. After careful reading of the cases cited by the Applicant, the Tribunal considers that each of those four cases are clearly distinguishable on their facts and in particular that the terms of the relevant leases in those cases are quite different to the terms of the Lease that the Applicant holds.

33. The decision in *231 Sussex Gardens Right to Manage Ltd v Sinclair* (2022)was the case on which the Applicant particularly relied. It was held that a leaseholder, with a flat that had no access to internal common parts and whose Lease did not require service charge contributions to four of the five service charge schedules but only for the regular charges, was not liable to contribute to fire alarms and smoke detectors that had been installed into the flats that did have access to the internal common parts. Unfortunately, the exact relevant wording of the subject lease in question is not set out in the determination. But it is clear that the subject lease in the case had different wording to that of the other flats and that various obligations to contribute to the expenses of the internal common parts was missing. It was not a case where there was other relevant clauses such as clause 1(iii) and 7 as in the Lease and there were separate schedules not just a saving clause. Therefore, the facts and terms of the relevant leases are distinctively different and the *Sinclair* case does not assist in the ascertainment of the meaning of the service charge provisions for this Building.

34. The case of *Thomas and Watkins v Geneva Investments* (2022) is relatively briefly reported especially in relation to the exact terms of the Lease in that case. Apparently the ‘terms of the lease are narrowly drawn in relation to what is recoverable’ and the service charge was seemingly limited to structural parts of the building, conduits used in common and boundary walls. There was no clause into which fire protection and alarm maintenance could be fitted. As discussed in paragraph 31 above, there are in our case other possible clauses in the service charge schedule that do include fire alarm and fire safety issues.

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35. *Paddock v Sutcliffe House (London Road, Bath) Management Company* (2023) was a decision made by a panel that included two members of this Tribunal. It was determined that the applicant in that case was not obliged to make any contribution at all to any major works (which included some fireproofing works) to the interior entrances, passages, landings and staircases in Sutcliffe House because he only had to do so if where they were soenjoyed or used by the lessees in common. It therefore looks at first glance to have similarities with the issues in this case. But Mr Paddock had no legal right to enter any of the internal passages or stairs and indeed physically he could not do so as he had no key. Moreover, it was a very unusual lease requiring the service charge to be a ‘fair proportion’ rather, as in this case, specified proportions. It was also a case where the subject property was a house attached (only one adjoining wall) to the side of another house attached by one wall to the main building that had been converted into flats so fire alarms in the main building would inevitably be separate from Mr Paddock’s house. The decision is therefore clearly distinguishable.

36. The Applicant cites *Arnott v Waterglen Ltd* (2021) as authority for the fact that heat sensors located inside flats by doors opening into the common hallway were held to be part of the communal fire alarm and charges shared accordingly. What the case decides, where all leases paid the same service charge and there was no clause exempting anyone from internal access charges, was that fire safety works required by the Fire Service that involved hybrid works in both communal areas and in the flats were payable under the service charge as necessary for the proper safety of the building. Mr Arnott had refused, as he was entitled to, to give access to his flat so no work was done for him but he was required to pay his share of the overall work including work in other flats. The Applicant in this case points out that the decision in *Arnott* was not influenced by involvement of shared wires. But it is of no assistance in determining the proper interpretation of the provisions of the Lease.

37. In the judgement of the Tribunal, none of these cases provides support in favour of the Applicant on the fire alarm issue when considered in the light of the terms of the Lease in this case. Thus, the Tribunal does not consider that its view set out above in paragraphs 30-32 on the proper interpretation of the Lease on the way fire alarm issues should be dealt with within the service charge need be adjusted in any way in the light of the previous decisions cited.

38. The Applicant both in her witness statement and orally at the hearing pointed out that the significant increase in fire safety costs incurred by the Respondent relate to fire alarm testing. This has been done weekly as advised to the Respondent. The Applicant suggests, quoting two unnamed fire service technical officers, that weekly testing is not required for this Building (paragraph 4 of her witness statement) whereas Jennifer Faulkner in her witness statement (at paragraph 48) says that Ian Strand from Avon Fire Service confirmed by an email that the fire alarms did need to be tested weekly in the Building. Without direct evidence, the Tribunal is not able to decide if weekly testing is required and is unable to determine whether weekly testing is required for the Building. The Tribunal therefore suggests that the Respondent obtains a definitive ruling and perhaps considers whether the residents can do the test themselves or test at (say) monthly intervals. But it is clear to the Tribunal that fire alarm testing expenses fall within the general service charge.

39. It is also worth pointing out that the Fire Safety Act 2021 and the regulations made thereunder are directed, as the Applicant pointed out, to protect properties that share a communal entrance. In this building, the Applicant does have a doorway into the communal hallway which might be the better exit in case of a fire. In any event she does have access to the communal hallway and therefore her maisonette falls (notwithstanding the terms of her Lease) within the sort of property that the new regulations were designed to cover.

40. The final argument raised by the Applicant in support of her interpretation of the terms of the Lease was to refer the Tribunal to the Lessor’s covenants in Clause 5 of the Lease. She pointed out that the terminology of clause 5(d)(iv) and clause 5(e) were identical to the clauses 1(iv) and 2 in the Fifth Schedule. She maintained that this meant that expenses relating to fire issues should be included within clause 1(iv) of the Fifth Schedule since there was no Lessor’s covenant into which fire issues could be fitted. This argument fails on the simple ground that the purpose of covenants by lessors on the one hand and matters to be included in a service charge schedule on the other are quite different. Not every aspect of good block management is able to be the subject of a lessor’s covenant and not every usual covenant by a lessor is appropriate to be included within a service charge schedule. But in any event, the Lessor in this case does covenant to maintain electric wires and cables used in common in the exact same wording as clause 1(iii) of the Fifth Schedule.

**Estoppel**

41. Both parties, in their Statements of Case, sought to rely on an estoppel by convention. The Applicant contended that at the time of her purchase there was a common understanding that all fire alarm expenses should fall within the internal service charge. The Respondent contended that that by the Applicant making payments in 2023/24 of the charges in relation to fire alarms that she now disputes, an estoppel by convention arose against her. At the hearing, both parties strongly challenged the reasoning of the other and eventually both parties agreed to withdraw their respective claims that an estoppel by convention arose. This was sensible. Neither case as presented looked sustainable. The Applicant could not really claim such an estoppel when the entries into the 2020-21 budget were made by the then agent in error and similarly the Respondent could not establish an estoppel in circumstances where the Applicant was clearly disputing charges so could not have acted on an assumed state of facts or law.

42. However, the Tribunal does have to determine whether the Applicants submission that a promissory estoppel arises in her favour so as to give her immunity from all present and future charges relating to fire alarms and fire safety. She bases her case on the service charge budget from 1 April 2020 t0 31 March 2021 which was supplied to her as an appendix to the LPE1 (Leasehold Property Enquires form) as part of the conveyancing process when she purchased. The form was presumably supplied to her representative by the solicitors or conveyancers for the vendor of the maisonette who would probably have obtained it direct from Andrews as the then agents. This budget indicated that an annual cost of £161 in relation to fire alarm maintenance was included in the internal service charge. The Applicant claims that this was a promise or representation on which she relied to her detriment and so she can be exempted from all future fire alarm charges (which this Tribunal holds are properly due from her at one-third of the total).

43. The Tribunal determines that no such estoppel has arisen for a number of reasons:

1. A statement in a budget prepared by a managing agent, probably supplied by a vendor’s solicitor, cannot amount to a promise or representation by or on behalf of the Respondent.
2. The Applicant stated that she relied on the figures in the budget and that she would not have purchased if they had not been there. The Tribunal does not accept that there was such reliance. The Tribunal does accept that it was important for her that there was an internal service charge and that she was exempt from cleaning lighting and repairing the hallways and staircases. She could ascertain from the terms of the Lease that that was the position. However, she could also see from the Lease that there were matters in all the clauses except 1(iv) and 2 of the Fifth Schedule that were expenses to which she had to contribute – which included clauses 1(iii), 7 and 11. She would also see that fire alarm and fire safety issues were not specifically mentioned in the Fifth Schedule. In these circumstances, if the Applicant really did feel fire alarm issues were absolutely critical to her purchase, then she would have sought a firm assurance to that effect from the Respondent. Without such evidence, there is insufficient evidence of reliance. The Tribunal also notes that although she stated that she relied in a similar fashion when purchasing other properties, no evidence was forthcoming to provide details.
3. The Applicant does not claim that there is a proprietary estoppel (which might mean that there did not need to be a promise or representation). But in any event in the context of a purchase of a property of significant capital value, where the amount is £161 and the Applicant’s one third liability would be £53.66, it is hard to accept, even if there was some sort of promise and clearer evidence of reliance, that an estoppel that applies for all future accounting years could be said to arise.

44. The Tribunal concludes on the estoppel claim that it does not consider that there was any promise or representation made by or on behalf of the Respondent, or that the Applicant treated it as a representation on which she could rely. The Tribunal is unconvinced by the Applicant’s assertion that she relied on any such promise or representation. No estoppel of any description has been established.

**Determination on fire issues and section 20B of the 1985 Act**

45. The Tribunal therefore determines that all expenses relating to fire alarm installation, repair and maintenance, and all expenses relation to fire alarm testing and fire safety assessment, fall under the terms of the Lease within the general service charge set out in the Fifth Schedule and to which the Applicant contributes one-third.

46. Expenses relating to emergency lighting fall within the internal service charge and within the saving clause of the heading of the Fifth Schedule to the Lease and are therefore expenses to which the Applicant makes no contribution. It is therefore necessary to separate out expenses relating to emergency lighting and expenses relating to fire safety issues.

47. By virtue of section 20B (1) of the 1985 Act, where relevant costs are incurred more than 18 months before a demand for payment of the service charge is served then a tenant or leaseholder is not liable to pay so much of the service charge that reflects the costs so incurred. That means that notwithstanding this determination, the Applicant is not liable to pay a share of expenses relating to fire alarm maintenance and testing where they were included, wrongly, within the internal service charge. Only if there was some written notification to her within that 18-month period, that those costs had been incurred and that she would be required under the terms of her lease to contribute to them would she be liable to pay (section 20b(2). There does not appear to be any such notification but it would be open to the Respondent to claim the costs from the Applicant if it can clearly show that such a written notification exists.

**Management fees**

48. The Respondents have had three managing agents over the past four years. In Jennifer Faulkner’s witness statement, there are occasions when she is complimentary of the service received. But there have been errors, most significantly when Andrews allocated fire alarm expenses in the budget to the internal charge when previously they had been in the general service charge and the then leaseholders did not notice the change. One could argue that that error has been a reason for much of the dispute between the parties. But the only issue before the Tribunal for decision relates to the management fees agreed by the Respondent to engage the firm SPG and their performance as agents. The Tribunal needs to decide if the level of fees are reasonable and whether the performance of the agents falls below the standard expected so that the fee is unreasonable.

49. In her position statement, the Applicant argued that, since she is exempted from the cost of the communal hallway, then the management fees should be divided proportionally between the general and internal charges. This claim does not appear in her Statement of Case and by the hearing the Applicant conceded that under the term of the Lease the totality of management fees were to be charged in full to the general service charge. This concession was sensibly made as it is clear that management fees fall to be charged under clause 8 of the Fifth Schedule and therefore come within the general service charge.

50. The primary claim of the Applicant is that SPG should not have been appointed if due diligence had been undertaken before appointment. She claims the amount of the fee is unreasonably high, that she provided the Respondent with quotes from two alternative potential managing agents, namely Fraser Allen and HML. She included these tenders in full in the bundle of documents. One of these, from HML was for an annual fee of £2,500 plus VAT and the other from Fraser Allen at a fee of £2,250 plus VAT, reduced from an original tender at £2,500. The Applicant’s witness statement also refers to a ‘lower quote of £1,517 plus VAT’ but it is unclear what is the name and details of the firm which gave this tender or whether this was pursued. The only reference at the hearing was to the Fraser Allen tender. The Applicant requested that she be permitted to raise some queries with SPG before appointment. She was not permitted to do so. Later, she ascertained that the Chartered Surveyor, and firm principal, was, in her words, ‘narrowly focused as a specialist commercial property valuer’. On that basis she contended that there is no value in having as managing agent a firm with an RICS qualified surveyor if the person concerned was not an expert on residential property. She put forward instead a firm (Fraser Allen) that had no RICS chartered surveyor among its team.

51. The Tribunal needs to record that the Applicant makes a series of serious allegations against Spencer Gower, the principal of SPG, in language that was sometimes inappropriate and which should not have been made, as much of what was stated was not relevant to the issues before the Tribunal. It is at odds with her measured approach in the rest of the paperwork and at the hearing.

52. The Respondent’s position is that, as Jennifer Faulkner records, they needed to find a new agent quite quickly in February 2024 as BLM had terminated their contract with only one month’s notice. SPG came with recommendations from the Respondent’s accountant and from a property nearby that was managed by them. The Respondent did look at several other companies but it was noted at the hearing that it is not easy to find good agents for buildings with only four properties. The other directors did ‘check out’ the firm of Fraser Allen after their tender was supplied by the Applicant but ‘they were not keen’.

53. The Respondent is satisfied with SPG as agents. Harvey Packham says in his witness statement says that ‘they were doing a great job in difficult circumstances’. In her witness statement, Jennifer Faulkner notes that although the Applicant considered BLM to have been better, ‘the other owners are pleased with SPG’. The Respondent notes that the charge for the current accounting year is £3,000 plus VAT but the figure includes the weekly fire alarm testing which is costed at £600 plus VAT. This means a comparative charge of £2,400 plus VAT sits comfortably alongside the HML tender of £2,500 plus VAT.

54. The Tribunal determines that the fee of SPG agreed to by the Respondent is a reasonable fee. The tender from HML indicates that that it reflects a market rate. The tender for Fraser Allen is only £150 less than the comparative fee of SPG once the weekly testing charge is taken into account. Even if the comparative figure is £3,000 plus VAT as against £2,250 plus VAT the Tribunal, applying its knowledge and expertise, concludes that the decision of the Respondent to accept SPG in preference to Fraser Allen is not unreasonable.

55. In her written documentation, the Applicant also submitted that SPG had failed to provide a service of a reasonable standard citing four reasons for this conclusion in paragraph 25 of her Statement of Case. None of these four issues, which in the event need not be detailed, were followed up by any written or oral evidence. In the bundle of papers, there is a paper from the Applicant headed ‘Complaints against SPG Property Ltd’ which relate solely to the Applicant’s interaction with SPG when there was water ingress into her basement and to an alleged failure of SPG to observe the RICS code. The paper said that ‘contractual failures’ will be explained at the hearing’. No such explanation was forthcoming.

56. Since the Applicant did not raise any issues about contractual failure at the hearing, nor did she set out elucidate the four issues claimed in paragraph 25 of her Statement of Case, and in the absence of specific evidence corroborating her claims, the Tribunal determines that the claim that SPG have not provided a reasonable service to justify their fee is not made out.

**Budget 2024-2025**

57. In her position statement, the Applicant contended that the service charge demand for 2024-25 was knowingly overstated with a view to increasing the surplus. In her Statement of Case, this was repeated, with reference to s 19(2) of the 1985 Act and a mention that the Lease in Schedule 6, clause 4, requires the ‘Interim Payment’ of the service charge to be one fifth of the estimated expenses. While there was little detail in the paperwork about what aspects of the budget were challenged, this was debated at the hearing.

58. Before noting the submissions on the figures within the budget, the Tribunal notes some of the background to financial issues. Firstly, it is clear that the three property owners other that the Applicant would like a reserve fund to be established but they have conceded that this cannot be done under the terms of their leases. Though a reserve fund would be very sensible in a Building that is of some age and listed as a heritage property, there is no provision in the Lease to permit a reserve fund so the Applicant is entitled to refuse. The Applicant rightly objected to any sort of reserve being created within the general service charge. A reserve fund for the general service charge can only be established by agreement of all four leaseholders (which may not bind successors in title) or (possibly) by an order of a Tribunal on application to change the terms of all leases within the Building.

59. The Lease also provides that there should be an account of expenses prepared at the end of each accounting year (Schedule 6, clause (5)). If the total amount of the interim charge is found to be less that the Interim Payment, then, at the option of the Lessor, the excess can either be refunded to the Lessee or credited against the Interim service charge for the following year. Initially, the Applicant was seeking some refund of surplus but this claim was dropped prior to the hearing. It is clearly the choice of the respondent to decide whether to refund or credit.

60. The Tribunal did not have any submissions from either party on the impact of the Interim Service charge being, in the Applicant’s case, one fifth of the estimated expenses rather than one third. If the same percentage reduction is found in the other leases in the Building this would mean that only three-fifths of what is needed for the year is payable – a potentially disastrous position for a resident’s management company that has no other resources.

61. The last preliminary point relates to provision within a budget of a reasonable contingency. A budget can properly plan for expected work during the year whenever it is clear such work needs to be done. But a prudent lessor can also reasonably provide for a contingency to cover unexpected expenses such as floods, water penetration, roof leaks or any other matter which, if it occurs, will require immediate expenditure. Moreover, if at any point, any leaseholder insists that the interim payment should only be one-fifth, or one-tenth, as the Lease, rather unusually and unhelpfully requires, than it would seem to the Tribunal that a contingency provision could be increased to permit payments that will need to be made before the end of year account can be prepared. For a property such as the Building, a contingency of around £4,000 might be a suitable sum. If unused, it can be rolled forward for the following years contingency without further contribution being needed.

62. On the detail of the 2024-25 budget, the parties did agree sensibly that the contributions to insurance of the Building should in future be collected separately as rent, as the Lease requires.

63. The Applicant challenged the budget amount of £3,300 for the management fee but did not pursue her claim in the paperwork that it should be nothing (on the basis of unreasonableness) but at the hearing submitted that it should be half the figure in the budget at £1,500. She suggested that the contingency for repairs should be reduced from £3,000 to £700. She also disputed that any fire alarm maintenance or testing, or fire risk assessment should be included in the general service charge and should be reduced in any event.

64. The Respondent did not accept any reduction in management fees and the Tribunal has already determined that the fee agreed with SPG is reasonable – see paragraph 54 above. The Respondent explained that a major aspect of the contingency for repairs related to the expectation that work would be needed to the Applicant’s maisonette after the flood. But the Applicant said at the hearing that it was now clear that no repair work was needed so the parties agreed to reduce the repair contingency to £1,000. After discussion of the budget figure of £954 for weekly fire alarm testing, it was agreed to reduce this to £660 as the monthly charge was now £55.

65. The Tribunal determines that the budget of the year 2024-25 should be reduced by a total of £2,294 (by £2000 on repairs contingency and £294 in respect of fire testing) but is otherwise confirmed as reasonable.

66. The parties did not seek at the hearing for the Tribunal to provide definitive figures for the level of service charges that are now payable in the light this determination. The Tribunal hopes that the parties, or the Respondent’s accountant, will be able to reach an agreed conclusion in the light of the established principles.

**The section 20C Application**

67. The Applicant made a subsidiary application under section 20C of the 1985 Act for an order that any costs incurred by the Respondent in the proceedings before this Tribunal are not to be included in the amount of any service charge payable by her.

68. The Applicant has not succeeded in her case on the main points that were finally at issue, namely the correct basis of charge for the totality of the fire alarm issues, her claim that an estoppel applied and the reasonableness of the management fees. She also did not succeed in her claim that management fees should be apportioned, conceding that issue before the hearing. On the other hand, she was right that the Lease does not provide for a reserve fund and that emergency lighting was to be included in the internal service charge, both issues conceded by the Respondent.

69. The Tribunal therefore considered whether the Applicant should have the benefit of a section 20C order that gave her some proportionate relief. However, the Tribunal notes that she declined mediation on the grounds, she said, that the mediator was not a lawyer. The Tribunal considers that many of the issues, including all those eventually conceded by one party of the other, could have been agreed at mediation perhaps leaving only the proper interpretation of the Lease to be resolved by a Tribunal. For that reason, the Tribunal considers that even a proportionate order under section 20C should not be granted. The Tribunal determines that an order under section 20C of the 1985 Act should not be made.

**The paragraph 5A of Schedule 11 of the 2002 Act Application**

70. The Application also made an ancillary application under paragraph 5A of Schedule 11 of the 2002 Act. For the same reasons as are set out for refusing an application under section 20C of the 1985 Act, the Tribunal declines to make an order under the 2002 Act.

**Right of Appeal**

71. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case (RPSouthern@justice.gov.uk ). The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

72. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

73. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

20 December 2024