FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LSC/2024/0149**
Property	**:**	**Flat 57 Riverside Apartments, Goodchild Road, London N4 2BA**
Applicants	**:**	**Mr Julian Thirsk and Ms Emma King**
Representative	**:**	**In person**
Respondent	**:**	**Berkeley Seventy Seven Ltd**
Representative	**:**	**Mr Carl Fain of Counsel instructed by Forsters LLP**
Type of Application	**:**	**For a service charge determination pursuant to Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge P Korn** **Mr S Mason FRICS**
Date of hearing	**:**	**17 and 18 December 2024**
Date of Decision	**:**	**3 January 2025**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

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Decisions of the tribunal

(1) The £293.08 charge for the frese cartridge / frissor restrictor (under the 'heating/water' head of charge) is not payable.

(2) The tribunal notes that there is no longer any dispute in relation to the communal water charges and that the Respondent has agreed to apply a credit to the Applicants' service charge account once the accounts have been finalised for 2022/23 and 2023/24.

(3) The management fees for 2019/20 are reduced by £15.48 and the management fees for 2020/21 are reduced by £73.15. The management fees for the other years in dispute are payable in full.

(4) The other service charges which have been challenged by the Applicants are fully payable.

(5) The Applicants' applications for a cost order under section 20C of the Landlord and Tenant Act 1985 and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 are both refused.

Introduction

1. The Applicants seek a service charge determination in relation to the Property pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**"). The application concerns various service charges between account years 2018/2019 and 2023/2024.

2. The Applicants are the leasehold owners of the Property and the Respondent is their immediate landlord. The Applicants' lease ("**the Lease**") is dated 29 May 2012 and is for a term of 999 years less 10 days.

3. The Applicants challenge the cost of the following items:

- window cleaning charges;
- fire protection charges;
- cost of general repairs;
- cost of maintaining the 'green' roofs;
- heating/water plant maintenance charges;
- pest control charges;

- cost of maintaining water feature;
- electricity charges;
- communal water charges;
- concierge costs; and
- management fees.

General comments on Applicants' written submissions

4. The Applicants were not legally represented and, whilst there is of course no obligation to obtain legal advice, the lack of professional support has had a significant impact in this case on how the application has been presented. The Applicants' written submissions (including what has wrongly been labelled as a 'skeleton' argument) are very long and detailed, but much of that detail is unhelpful or is focused on the wrong issues. Furthermore, as explained at the hearing, the manner in which their supporting documentation has been presented is contrary to the tribunal's written directions and was exceptionally unhelpful, and it was not realistic to expect either the tribunal or the Respondent to have gone through the extremely laborious process envisaged by the Applicants in order to access and absorb all of the detailed information that the Applicants believed to be relevant to their case. As it is, much time has been wasted by the tribunal in accessing information which then proved to be irrelevant, and there is a limit to what the tribunal is able to do with its finite resources. The summary of service charge submissions below is therefore limited to such relevant submissions as were reasonably accessible and/or referred to at the hearing.

Summary of service charge submissions and tribunal's analysis

Window cleaning

5. The Applicants state that in 2015 and 2017 a number of their windows and end caps were damaged by the Respondent's then contractor, Aquamark, using abseiling as the access method to clean the windows. In the Applicants' submission abseiling was not the approved or designed method of access as the architects for the estate, Rolfe Judd, had set out in a manual that only the use of a cherry picker was approved. From 2021/22 the newly appointed managing agent Rendall & Rittner appointed EcoKleen to clean the windows, again by abseiling despite the Applicants voicing their objections, and according to the Applicants EcoKleen then knowingly caused further damage on two separate occasions, the last being in November 2021. Since then, there has been no cleaning of the windows of the Property even though the

Respondent continues to charge the Applicants. Cleaning of all other parts of the building continues by abseil with no regard for the damage that this method can cause.

6. The Applicants also contend that by cleaning the windows in the way that it has the Respondent has voided the manufacturer's warranty. Their evidence for this proposition is not easy to piece together and is one of many examples where the Applicants have raised a point but have made it very difficult and very time-consuming for the Respondent and the tribunal to work out what the Applicants' supporting evidence is and whether that supporting evidence is credible, relevant and sufficient. At the hearing Mr Fain for the Respondent managed to establish that the document being relied on by the Applicants in this case was an email dated 26 April 2018 from Neil O'Brien to Tim Harris.

7. In his witness statement, Jose Luis Vasques Pires ("**Mr Vasques**"), Head of Estates East London at the Berkeley Group, notes that the Applicants insist that the windows should only be accessed by use of a cherry-picker, but he states that the Respondent's managing agents consider that abseiling is the best access approach.

8. Mr Vasques notes that the window cleaning strategy for the block produced in 2011 by Rolfe Judd is included in the hearing bundle and that it suggests an approach to cleaning, maintaining and repairing each block based on the design of the relevant building. It is a historic document which provides guidance rather than serving as a mandatory approach that must be adhered to. The window strategy suggests alternative methods of cleaning the block (described as Building B in the document) in paragraph 3.00 as follows: *"all parts of Building B are cleaned either by cherry picker or from balconies or terraces accessed via each flat separately … Facades along Woodberry Grove where there are no terraces … [and] along the green route public area apart from the tower… will be cleaned by cherry picker … Windows in the upper floors of Building B will be cleaned using an abseiling system where the cherry picker is unable to reach"*. He does not agree with the Applicants' contention that the window strategy requires a cherry picker to be used. Rather, it recognises that it is possible to clean the windows at the block by cherry picker or by abseil and recommends the use of abseil where a cherry picker is impractical.

9. Mr Vasques' understanding is that each new managing agent has considered the window strategy but has decided that in the interests of good estate management the windows at the block should be cleaned by abseil for reasons of cost and logistics. He states that if a cherry picker was to be used there would be an additional cost to the service charge of £3,950 plus VAT per clean (and he has included in the hearing bundle a copy of a quote obtained from EcoKleen for the work in September 2021). He also understands that there are practical problems with

using a cherry picker; for example, there are areas where the load of a cherry picker would be too great or impact upon the landscaping. Also, in 2021 the managing agents did arrange for some of the Applicants' windows to be cleaned with a cherry picker in order to try and resolve the issue but the cherry picker could not reach one or more of the Applicants' windows and it was necessary to use a telescopic pole to carry out the clean. The Applicants then complained that the clean was ineffective and left water droplets on the window. A copy of the correspondence is included in the hearing bundle. No other residents in the block have complained about the use of abseiling to clean the windows.

10. At the hearing the Applicants stated that they were being charged for window cleaning but that their own windows were not being cleaned. Mr Vasques said that this was because they were refusing to allow the contractor access to clean their windows as they were not prepared to agree to the windows being cleaned by abseiling. When the point was put to them by Mr Fain, they accepted that the Lease did not state that window cleaning could not be done by abseiling.

11. Regarding the Applicants' contention that the Respondent has voided the manufacturer's warranty, Mr Fain asked Mr Thirsk about the email dated 26 April 2018 from Neil O'Brien to Tim Harris on which Mr Thirsk confirmed he was relying. In that email Mr O'Brien states as follows:

"If the cleaning and maintenance regime to the Cladding and external gaskets of the building is not adhered to, the system will not work correctly, it will not drain effectively and will find other weak areas to drain from. We feel the above issue is further exacerbated by the following finding below:

57 Riverside has drilled holes into and fixed blinds to the transoms and possibly the mullions of the Curtain walling system. This indicates the source of the problem. The areas above the transom and within the mullions are ventilated wet zones, the transom has been pierced and now allows water ingress.
No other apartment has blinds or curtains installed within the curtain walling system. All other apartments have fixed to the bulkhead detail (we assume as per design).
Lindner facades cannot find correspondence requesting technical assistance regarding the installation of these blinds or the routing of the cords or cables. This technical advice is stated in the Operational manuals in NOTE 3 of the cleaning and maintenance section, supplied at Hand-over. Excerpt below.
NOTE 3: *Whenever specialist procedures/works identified herein, are required please contact our Maintenance Department as follows, to ensure that the warranties provided are not invalidated.*

By fixing to the transoms and mullions the warranty and guarantee

referred to in earlier correspondence has been now been invalidated. We cannot offer any further assistance regarding the ingress into 57 Riverside".

12. Mr Fain put it to Mr Thirsk that this email did not show that the Respondent had invalidated the warranty by using abseiling, but Mr Thirsk disagreed.

<u>Window cleaning – tribunal conclusion</u>

13. The Applicants have not sought to argue that windows other than their own have not been cleaned. Nor have they sought to argue that the cleaning of other residents' windows has been sub-standard or has not been value for money. It is clear under the terms of the Lease that the Applicants are obliged to pay their service charge percentage of the (reasonable) cost of cleaning all of the windows.

14. The Applicants' argument appears to be that they should not have to contribute towards the cost of window cleaning to the extent that their own windows have not been cleaned. If there had been evidence to show that the Respondent had instructed a contractor to clean all other windows but not to clean those of the Applicants then this could potentially have given rise to a legal remedy, albeit that there would need to be legal argument and analysis as to whether that remedy would be a simple reduction of the service charge or whether some other remedy would be more appropriate. However, in this case the evidence indicates that the Respondent has not refused to clean the Applicants' windows; rather, the Applicants have refused access. The reason for the refusal of access is that the Applicants are not prepared to allow the Respondent's contractor to clean the windows using abseiling, and they say that this is because this method has caused their windows to be damaged and/or it is against Rolfe Judd recommendations to use abseiling and/or because the use of abseiling has invalidated the warranty.

15. We do not accept the Applicants' arguments. They are obliged to pay their proportion of the costs of window cleaning, and it has been their choice to refuse to allow their own windows to be cleaned. Having considered the window strategy and the email correspondence shown to us, we do not accept that the Applicants have demonstrated that the Respondent was not entitled to use abseiling, and we do not accept that the email relied on by them constitutes proof that the abseiling will have invalidated the warranty and guarantee referred to in email correspondence. The window strategy is contained in an old document and therefore the thinking may have changed slightly over time, but in any event it does not state that abseiling cannot be used and indeed expressly allows for abseiling to be used in certain circumstances. It also does not set out any specific adverse consequences of using abseiling by way of warning. As regards the email of 26 April 2018, on

any reasonable interpretation of that email it cannot be read as making a statement that the warranty and guarantee being referred to was invalidated specifically by the use of abseiling.

16. Therefore, the window cleaning charges are fully payable.

Fire protection

17. The Applicants state that in June 2017 they were made aware by the managing agents for the first time that we were living in a "stay put in a fire" building. The Applicants raised concerns about this issue, but the concerns were dismissed. In 2018 the Applicants undertook their own investigation and produced a fire safety report dated 25 June 2018 which was sent to the Respondent and London Fire Brigade. In August 2018 the Respondent appointed City Fire Proofing to undertake fire stopping works that the Applicants had identified in the report as being needed and these works encompassed other buildings on the KSS1 development. The work was charged to leaseholders as a service charge for maintenance rather than being treated as a defect for which the Respondent would have responsible at its own cost.

18. The Applicants add that the annual Fire Risk Assessments (FRAs) highlighted fire compartmentation issues as far back as 2013 and that the last FRA provided to them in 2020 it continued to identify several unaddressed fire risk issues. No further FRAs have been provided by the current managing agent since 2021.

19. The Applicants have also made a number of other comments in their 'skeleton' argument but which do not lend themselves to being easily summarised.

20. Mr Vasques states that there have been routine fire safety protection maintenance works at the block and the estate throughout the years of challenge to ensure that fire safety duties are complied with. The works include (a) planned preventative maintenance such as ongoing servicing and of fire safety systems, active systems (e.g. fire alarm, emergency lights, fire extinguishers and wet and dry riser testing) and passive systems (e.g. fire doors and fire-retardant spray), with both the Fire Safety Act 2021 and the Building Safety Act 2022 significantly increasing the requirements around fire doors, (b) consultancy and compliance, including the carrying out of fire risk assessments, specialist fire safety consultancy fees and compliance with The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 and (c) remedial costs, which covers remedial work to deal with regular wear and tear and completing fire risk assessment actions.

21. To the best of Mr Vasques' knowledge, any fireproofing works identified as defects/install issues would have been carried out at the

Respondent's own cost. In a letter dated 25 June 2018, the London Fire Brigade confirmed that the block was "broadly compliant" in terms of the Regulatory Reform (Fire Safety) Order 2005 with respect to the common parts. Further fire compartmentation works were carried out in 2020, these being fire stopping works to the risers above the door frames in the common parts. These works were paid for by the Respondent and not charged to the service charge.

22. Fire risk assessments were carried out throughout the period 2018/19 to 2023/24. The current managing agents use a tracking system to ensure each recommendation is actioned to completion as soon as is practical and they also provide regular updates to the leaseholders.

23. The Respondent adds that under the Lease the Applicants' front door is demised to them and it is therefore their own responsibility to maintain it. It follows, in the Respondent's submission, that it is the Applicants who are the "responsible person" under section 3(b) and/or who have a duty under section 5(4) for the purposes of sections 8-22B of The Regulatory Reform (Fire Safety) Order 2005. The Applicants have not, they state, been charged as a service charge any costs that fall within Schedule 8 to the Building Safety Act 2022.

24. At the hearing Mr Vasques said that no enforcement notices had been served in relation to any fire protection breaches. He was also able to refer the tribunal to example invoices in the hearing bundle evidencing the incurring of fire protection costs. The Applicants said at the hearing that copies of the 2018/19 and 2019/20 fire risk assessments were not in the hearing bundle, and they also felt that the findings of the reports that they had seen were not being implemented.

Fire protection – tribunal conclusion

25. Based on the information before us, the Applicants' lengthy submissions on fire protection are in our view misconceived. To the extent that the complaint is about non-implementation of the findings of fire risk assessments, if true this would or at least might constitute a breach of covenant for which there might be a remedy in the county court but it would not constitute a justification for reducing the service charge. Their argument about there being a defect for which leaseholders should not be required to pay has not been properly evidenced.

26. The Applicants complain that not all of the fire risk assessments are in the hearing bundle, but given the nature of the Applicants' case and the way that it has been presented it will have been very difficult for the Respondent to work out what should or should not have been included in the hearing bundle. It is not in our view appropriate to reduce the service charge for this reason alone, especially given the opaque nature

of the Applicants' service charge challenge insofar as it relates to fire protection. In addition, the sums being challenged are modest ones.

27. In the absence of a clear service charge challenge insofar as it relates to fire protection, the Respondent has in our view done its reasonable best to counter that challenge. Mr Vasques has provided information about the work carried out and about items that were dealt with but not charged to the service charge. The Respondent has also provided an analysis of responsibility under the Lease (in relation to the front door) and under the Regulatory Reform (Fire Safety) Order 2005 and has cross-referred to relevant Home Office guidance.

28. In conclusion, these charges are fully payable.

<u>General repairs</u>

29. The Applicants state that since 2012 there has been no redecorating or carpet replacement in the communal spaces apart from the ground floor lobby area and the 8th Floor where the Respondent's "show flat" is situated. The current managing agents assured the Applicants that redecoration would be undertaken in the Spring of 2022, but in practice they only contracted for the carpets to be washed for the first time in 12 years in 2024 and no redecoration was undertaken.

30. The Applicants also state that there has been a consistent leak in the car park basement since 2015. After testing the water in December 2017, it was found by a contractor to contain nitrates that are found in ground soil and it was considered that tanking to the basement had failed. The Respondent has not addressed this and continues to allow the leak to degrade the building. The Applicants add that an additional water leak is coming from the water feature and that this leaks constantly across the car park floor when the water feature is in use, causing a potential health and safety issue as well as incurring higher costs of water for leaseholders and degradation of the building.

31. Mr Vasques states that general repairs covers a wide range of maintenance and repair items. He understands that the increase in costs in 2019/20 may have been because two sets of costs were mistakenly included in this cost category, namely (i) mechanical and electrical planned preventative maintenance and (ii) an entryphone-related project which should have been included into the reserves schedule. He has been told that this error did not impact the aggregate sums due from the Applicants.

32. Mr Vasques accepts that there has been no redecoration of the communal spaces since 2012 apart from (i) cleaning the carpets in 2024 and (ii) the ground floor lobby area and the 8th floor of the block and that therefore these are the only two redecoration costs that have

been charged to the service charge. He understands the lack of redecoration to be due to the changes in managing agents but understands that the current agents do intend to redecorate the communal spaces once the 2022/23 and 2034/24 service charge accounts have been finalised.

33. With regard to the subject of leaks, the Respondent denies that there has been a consistent water leak in the car park basement since 2015. Mr Vasques understands that a leak was reported in 2017 following a period of very heavy rain, and the managing agents arranged for a mesh tray to divert the water in order to resolve the issue. Since that date, all further reported leaks have been dealt with promptly. He acknowledges that there have been leaks from the water feature into the car park basement. In 2023, the water feature was trespassed upon and vandalised. The trespasser stood on a pipe which caused water ingress into the car park basement and the managing agents instructed Sandhurst to repair the pipe and fix the leak. A copy of Sandhurst's job report is in the hearing bundle. In 2024, the water feature was retiled in an effort to resolve a leak into the car park basement. The Respondent paid for these works and is not recharging the leaseholders. There is also occasional water ingress into the car park basement during periods of strong wind because there is a strong wind tunnel effect at the estate which causes water to backflow into the void beneath the water feature and into the car park below. He states that it is difficult to resolve this issue. As it only occurs when there are high winds and as the water ingress is minimal, he understands that the managing agents have not committed the funds to resolve the problem at this stage because the cost would be disproportionate.

General repairs – tribunal conclusion

34. Again, the Applicants' case is in our view misconceived. They complain of a lack of redecorating or recarpeting but there is no evidence that they have been charged for that non-decoration and non-carpeting. Regarding the complaints about leaks, the mere existence of leaks is not evidence that the general repairs element of the service charge is not payable. The Applicants were unable to show at the hearing that any of their arguments amounted to persuasive evidence that the general repairs service had been sub-standard or unreasonably expensive, and the Respondent has provided sufficiently good responses and supporting documentation to deal adequately with the points made by the Applicants.

35. We accept that the Respondent has not produced a copy invoice to cover every general repair, but given the range and nature of the Applicants' case there has to be an element of proportionality as to what information and documentation it is reasonable to expect the Respondent to have produced.

36. In conclusion, these charges are payable in full.

Green roof

37. The Applicants state that no maintenance of the green roof surrounding their terrace took place for 7 years after they moved in. Then, finally, in 2019 the Respondent agreed to start maintaining the green roof when a budget had been allocated. The appointed contractor weeded the area and then added a fertiliser to aid the regeneration due to the degradation of the green roof. The Applicants state that the fertiliser had grass seed in it which took over the green roof and overwhelmed the last remaining specialist green roof plants and that due to the contractor's negligence the green roof for the two adjoining buildings 56 and 57 Riverside Apartments needed to be completely replaced. However, despite the Applicants having received assurances in relation to this matter, no maintenance or replacement of the green roof has ever been undertaken. Nevertheless, the Respondent continues to charge the Applicants for green roof maintenance.

38. Mr Vasques states that there are four grass roofs at the block, one of which (the "**AGR**") can only be accessed via the Property. He understands that throughout the years of claim the three other grass roofs have been maintained by the managing agents but they have had difficulty maintaining the AGR. In 2018/19 and 2020/21 there was no maintenance of any of the grass roofs but no sums were charged. In 2019/20, the agents carried out maintenance to the grass roofs other than the AGR and the Applicants were charged a fair and reasonable proportion of those costs in accordance with the terms of the Lease. The agents also tried to arrange maintenance of the AGR. For example, in June 2019 they arranged for Bartholomew Landscaping to attend, but the Applicants were dissatisfied with this as Bartholomew were only prepared to spray weed killer and remove larger weeds whereas the Applicants had understood that they would carry out an assessment of the green roof for its condition and replacement. A copy of the relevant correspondence is in the hearing bundle.

39. Mr Vasques adds that in FYE 2021/22 to 2023/24 the managing agents arranged maintenance of the other grass roofs at the block and again the Applicants were charged a fair and reasonable proportion of those costs. The agents also made several attempts to agree a maintenance plan for the AGR with the Applicants and to obtain access through the Property to the garden to carry out the works. In April 2021, the Applicants alleged that Lindner had damaged the AGR during an attempt to replace windows at the block by abseiling from the grass roof, and so in order to move the matter forward, the managing agents agreed to *"make… good and maintain in full"* [the grass roof] and *"wherever feasible… to have the grass roofs put back to their original spec"*(see copy email in the hearing bundle) even though according to the agents there has been no actual admission of damage by the

contractor. However, despite that offer it has proven difficult for the agents to arrange for the replacement works to the AGR to be carried out. In 2021, Jonathan Walton of Walton Garden Design was asked to provide a quote, but after consideration he decided not to carry out roof works at the estate. Further quotes were obtained in December 2021, but these quotes were significantly higher than the managing agents' budget based on Jonathan Walton's figures. The agents offered to maintain the AGR in the interim, but the Applicants have insisted that the entire roof must be replaced (see copy correspondence in the hearing bundle). The managing agents' view is that there is no need to replace the roof, only to maintain and repair it, which has not been possible due to lack of access.

40. At the hearing Mr Thirsk said that the Applicants had allowed the Respondent's contractor access to the AGR, but Mr Fain referred him to an email dated 27 April 2021 from Mr Thirsk to Mr Sandy in which he said *"Following our conversation this morning, I requested that you confirm that both 56 & 57 Green roofs would be completely replaced. Until you confirm this I cannot agree to access of the works being undertaken"*.

<u>Green roof – tribunal conclusion</u>

41. In the years where sums have been charged to leaseholders for maintenance of the green roofs the sums charged have been very modest, and the Applicants have failed to show that the sums charged are unreasonable.

42. If there had been evidence to indicate that the Respondent had instructed a contractor to maintain all other green roofs but not to maintain the AGR then this could potentially have given rise to a legal remedy, albeit that there would need to be legal argument and analysis as to whether the remedy would be a simple reduction of the service charge or whether some other remedy would be more appropriate. However, in this case the evidence indicates that the Respondent has not refused to maintain the AGR; rather, the Applicants have refused access. As for the reason for the refusal of access, on the basis of the information before us we do not consider the Applicants' refusal to have been reasonable. The Respondent offered to make good damage which its contractor had not admitted it was at fault for, and the Respondent tried through its managing agents to offer a maintenance plan. The reason for the lack of maintenance in our view is the Applicants' unwillingness to consider any option other than their own preferred solution. Based on the information before us, we consider that it is the Applicants who have acted unreasonably, not the Respondent.

43. In conclusion, these charges are payable in full.

Heating/water plant maintenance

44. The Applicants state that ELCO, the manufacturer of the Heat Interface Unit (HIU), found that ever since the building was constructed the communal hot water system has not provided a sufficient hot water flow rate to the Property to allow the HIU to operate as designed. The result, they say, is that they cannot use both showers at the same time and that the bath cannot be supplied with sufficient hot water to ever be used. The Respondent has offered to replace the HIU, but ELCO have stated that it is the communal hot water flow rate that is causing the failure. The Applicants also state that throughout 2017 and thereafter the communal hot water has failed on numerous occasions resulting in no hot water at all and that at one point the Applicants had no hot water or heating for more than two weeks.

45. In addition, the Applicants state that Boxall fitted a frese cartridge / frissor restrictor to the hot water inlet in 2016 under the direction of the Respondent and that it had subsequently 'seized' and was no longer working. This cartridge balances the hot water flow to each flat and was fitted to balance the hot water supply throughout all of the flats. Boxall removed the faulty cartridge to restore heating and hot water but never replaced it due to the ongoing hot water issues. However, the Applicants were charged £293.08 via the service charge on 1 May 2019 even though the replacement valve has never been fitted and this device is the responsibility of the Respondent not the leaseholder.

46. Mr Vasques states that the Applicants have issued a claim in the High Court against other Berkeley companies in relation to alleged defects with the heating supply. That claim is being defended. In relation to the Applicants' complaint about the maintenance of the heating supply, he understands that sporadic interruptions have occurred to the heating supply and is told that this has been down to asset lifespan, mechanical breakdowns and natural plant associated part replacements. Where there have been issues with the heating supply, the managing agents have sought to resolve them as quickly as practicable.

Heating/water – tribunal conclusion

47. The Respondent has not dealt with the Applicants' challenge to the cost of the frese cartridge / frissor restrictor to the hot water inlet, a challenge which was repeated at the hearing. The evidence before us indicates that the Applicants were charged £293.08 for a device that was removed because it did not work and was not replaced. It follows that this sum is not properly payable.

48. In relation to the Applicants' complaint about the hot water system, this would seem to encroach on the territory of the proceedings currently taking place in the High Court and in any event the Applicants have not

shown that it is properly to be regarded as a service charge payability issue. As for the Applicants' other, more generalised complaints, there is insufficient hard evidence before us to demonstrate that the service provided was a substandard one such that any of the specific charges should be reduced.

49. In conclusion, the charge for the frese cartridge / frissor restrictor in the sum of £293.08 is not payable, but the remainder of the charges under this head of charge are payable in full.

Pest control

50. The Applicants state that the building is located opposite the Woodberry Down Reservoir and since 2012 has suffered from an infestation of spiders. In July 2014 the building was fogged by the managing agent at the time, which promptly addressed the issue. Several years later the infestation returned, but the Respondent's various managing agents have failed to address it. The Applicants are being charged for pest control each year, but they state that they have not seen this issue addressed.

51. Mr Vasques' understanding is that the managing agents have carried out routine monthly pest control inspections across the estate throughout the period of challenge and that the Applicants have been charged a fair and reasonable proportion of these costs. He has no knowledge of any infestation of spiders but understands that there are no current pest control issues at the estate. The last pest control inspection was carried out on 15 August 2024 by Ark Pest Control, and a copy of their report confirming that there are currently no infestations is in the hearing bundle.

52. At the hearing Mr Fain referred the tribunal to copy invoices in the hearing bundle relating to pest control.

Pest control – tribunal conclusion

53. The Applicants have not sought to argue that the charges for pest control that have been levied would be unreasonably high for a competent pest control service or that the Respondent has failed adequately to deal with any problems with rodents such as mice. The complaint is solely that the Respondent has failed to deal with an alleged spider infestation. One problem for the Applicants is that no other residents appear to have complained at any time about there being a problem with spiders, and the Applicants have provided no hard evidence themselves (such as, but not limited to, an expert report or good quality dated photographs) to demonstrate that there has been a problem with spiders. In any event, the Applicants have not been charged anything for dealing with spiders.

54. In conclusion, these charges are payable in full.

Water feature

55. The Applicants state that the water feature was left to degrade over several years and that due to the lack of maintenance the tiling on one side of the wall fell away creating a health and safety issue. This resulted in the whole feature being retiled and sealed at significant expense to leaseholders. In addition, the water feature is also causing leaks in the building, and on one occasion the contaminated water from the water feature severely flooded the waste bin area.

56. Mr Vasques states that in the period of challenge the managing agents carried out maintenance of the water feature every year. The main costs were for planned preventative maintenance, water treatment, and repair. Following requests from residents, a more enhanced maintenance programme was put in place from 2022/23 onwards, which caused the maintenance costs to increase. The age of the feature also meant that further reactive works were required. The Applicants have been charged a fair and reasonable proportion of the costs. He adds that due to its age the water feature was retiled and resealed in 2024. Although it was not obliged to, the Respondent decided to pay for these works and is not seeking to recover them through the service charge.

Water feature – tribunal conclusion

57. The Applicants' claims that the water feature was left to degrade and is causing leaks within the building are not supported by hard evidence. The Applicants have also not shown that the cost of maintenance would have been lower if the Respondent had maintained the water feature in a different way or that any of the alleged problems have led to higher service charges. The charges themselves have not been challenged as too high for the work done, the charges are quite modest and on the basis of the evidence before us they seem reasonable.

58. In conclusion, these charges are payable in full.

Electricity

59. The Applicants state that there are insufficient electricity meters installed within the estate to monitor and meter the usage per block, car parking basement and communal area effectively. Charges should not fluctuate because of significant difference in usage but should remain static and only be affected by any changes in the electricity rate being charged by the supplier.

60. In response, Mr Vasques states that he does not agree that the electricity meters installed in the development are insufficient to monitor the electricity effectively. The electricity is measured per block, and each block has its own supply. The fluctuations referred to by the Applicants are as a result of each person in the block using different amounts of electricity and so the charges do not remain static throughout the year. Moreover, the increases reflect the worldwide increases in electricity prices after the global energy crisis in 2021 to 2023. He considers that the meters monitor the costs accurately and do not overcharge leaseholders.

61. At the hearing, Mr Fain referred the tribunal to a table in the hearing bundle prepared by Premier Estates showing that car park electricity is apportioned separately. Mr Vasques clarified his comment about people using differing amounts of electricity by stating that electricity consumption went up when people were at home more (for example because of more home working) and therefore using services such as the lifts more often.

Electricity – tribunal conclusion

62. We are unconvinced by the Applicants' challenges to these charges. They have provided no comparable evidence to show that the charges are significantly higher than on a comparable block, nor have they provided any expert or other objective evidence. One key issue as regards reasonableness of charge is whether the charges are reasonable when averaged out over the period, given that there is a range of possible reasons why charges might fluctuate, and the Applicants have failed to show that the charges are unreasonable in the context of the number and type of facilities that consume electricity (such as lifts). In addition, the global energy crisis has increased costs and there is no hard evidence before us to indicate that the charges – when averaged out – are unreasonable.

63. In conclusion, these charges are payable in full.

Communal water

64. The Applicants state that due to the close proximity of their building to the water feature the amount of metered water used is disproportionately high compared with other blocks within the estate. The water supplied to their building is also being used to clean shared estate areas such as the basement car park without the cost being shared across the entire estate.

65. In response, the Respondent states that Thames Water accept that there has been a fault within the meters and that consequently there will be no liability for water charges in the relevant years. The

Respondent will apply a credit to the Applicants' service charge account once the accounts have been finalised for 2022/23 and 2023/24, and Mr Vasques agreed at the hearing that this would be confirmed in writing.

66. Therefore, there is no dispute to determine in relation to communal water.

Concierge

67. The concierge is not located within the Applicants' building but in a different building called Residence Tower located 100 metres away. Therefore, in the Applicants' view it is not acceptable to charge them as high a proportion of the cost of this service as is charged to those living in Residence Tower. The Applicants do not benefit from the security provided by having a 24/7 concierge person in the building in which they are located, and the intercom for their building has no facility to view callers. Parcels are not left in the Applicants' building and so they have to collect parcels from Residence Tower. Also, when there are any issues with lifts, door entry phones etc these are addressed automatically by the concierge in relation to Residence Tower, whereas the Applicants have to report each issue. The parcel collection service is fraught with issues because the cupboard used to store parcels is overly hot and this causes any temperature-sensitive items to be damaged. Also, several complaints have been made about members of staff being unprofessional in their roles, and most have gone unaddressed with no reply.

68. Mr Vasques states that the Respondent charges the Applicants a fair and reasonable proportion of the cost of the concierge services. There is only one concierge in the estate, and he/she is stationed in the largest block, namely Residence Tower. However, the concierge provides the same services to all residents and therefore all leaseholders are charged their service charge proportion of the cost. The services that the concierge provides includes (a) parcel management, (b) a key holding service, (c) being the first point of contact for any queries or request, (d) providing information and advising visitors and contractors, (e) administration and compliance tasks and (f) access and allocated parking notifications. The concierge does not provide security services.

69. In relation to the issue of storage of parcels, Mr Vasques states that the storage room is not designed to store temperature-sensitive items. It is for this reason that the managing agents have a policy in place whereby the concierge staff have been told to refuse to accept food parcels. To the best of his knowledge this is followed and enforced.

70. In relation to the Applicants' complaints about concierge staff, Mr Vasques asserts that the concierge staff provide their service to a reasonable standard and the Respondent does not accept that members

of the concierge staff have behaved in an unprofessional manner. If a complaint is made by one of the residents it is taken seriously, and the managing agents deal with any such complaints promptly and in a discreet manner. Due to confidentiality and GDPR implications, it would be inappropriate for the Respondent to update the leaseholders on the outcome of any complaints.

Concierge – tribunal conclusion

71. The Applicants' complaints do not, in our view, demonstrate that the service has been sub-standard or that the cost of the service has been unreasonably high. It is not realistic for there to be a separate concierge in every building; this would be prohibitively expensive for all leaseholders, including the Applicants, and therefore a choice had to be made as to where the concierge should be located and it was logical to station the concierge in the largest block.

72. We do not accept that the concierge should be expected to make special arrangements for the storage of temperature-sensitive items. In relation to the Applicants' other complaints, they are not specific enough to be capable of being properly tested. Practical problems arise on any estate, and it is not the job of management to ensure that no problems ever occur. Furthermore, it will always be possible to argue that a specific service provides slightly more benefit in practice to some leaseholders than to others, but it is rarely practical from an estate management perspective to apportion each charge in a different manner. Ultimately, we do not accept that the Applicants have demonstrated that they have received a poor quality service or have been charged an unreasonable amount.

73. In conclusion, these charges are payable in full.

Management fees

74. The Applicants state that it is evident from the various specific complaints noted above that the managing agents have not fulfilled their duty and are failing to address numerous issues that have gone unresolved for many years. In addition to the points raised above, the Applicants have concerns about an alleged failure by the Respondent to progress an insurance claim regarding damaged windows, the causing of further damage to windows in 2021, leaking windows and window-frames, the lack of audited accounts for the years 2021/22 onwards, and what they have described as instances of incorrect billing.

75. The Applicants add that their multiple complaints remain unaddressed to a point where the current managing agent has refused to deal with their current or any future concerns.

76. The Respondent acknowledges that there have been changes of managing agents, but in its opinion Premier Estates were performing to a reasonable standard overall prior to their being removed as managing agents. The reason why they were removed is that a section of the residents considered that it may be possible to achieve a better service from another provider in the market and therefore they asked the Respondent to re-tender the contract and to be allowed to have some input into the selection of the new managing agents. At the end of the selection process, the majority of the residents that provided feedback preferred Navana as the new managing agents and the Respondent accepted this decision. Later on, following a performance review, the Respondent decided to terminate Navana's contract and appoint Rendall & Rittner instead. This, states Mr Vasques, was largely because from January 2021 Rendall & Rittner were already on the wider estate managing Phase 2 and were also acting as managing agents on several other Berkeley estates, and therefore the Respondent had good reason to believe that they would be well placed to manage complex developments like this estate.

77. At the hearing, Mr Fain for the Respondent referred the tribunal to several examples of detailed explanations that the managing agents had provided in relation to service charge budgets, accounts and/or apportionments and examples of concerns raised by the Applicants being dealt with. He also referred to the sheer volume of complaints made by the Applicants and submitted that the problem was not with the Respondent failing to reply to each new complaint; instead what was happening was that the Respondent was providing a comprehensive reply but the Applicants did not accept or agree with the reply and therefore they repeated their complaint.

78. Also at the hearing, whilst still maintaining that Premier Estates and Rendall & Rittner had done a good job, the Respondent accepted that Navana had underperformed and that this was why they had been replaced.

Management fees – tribunal conclusion

79. In relation to the performance of Premier Estates and Rendall & Rittner as managing agents, the Applicants have made a number of complaints but – with the possible exception of the point below about the accounts – we are not persuaded that those complaints amount to evidence of poor management. The Applicants' complaints about the managing agents' responses in connection with the window cleaning and the green roof have already been referred to above, and in our view on the basis of the information before us those dealings are more indicative of unreasonableness and inflexibility on the part of the Applicants than they are of unreasonableness on the part of the managing agents.

80. The Applicants have highlighted the fact that various problems have arisen from time to time, but they have not demonstrated that the managing agents have failed to deal with these problems in a reasonable manner. They complain that the managing agents do not respond to their emails, but we have seen examples of the managing agents replying and several examples of the managing agents providing detailed explanations of service charge budgets, accounts and/or apportionments. The Applicants were unable at the hearing to demonstrate that specific reasonable concerns raised by them had simply been ignored or else dealt with in a clearly sub-standard manner, and from the correspondence that we have seen it appears to be more a case of the Applicants not liking the responses that they have received.

81. The Applicants have also failed to show that any other leaseholders have had concerns. Their answer to this point is that other leaseholders are afraid to come forward, but the tribunal cannot simply rely on the Applicants' assertion that other leaseholders are quietly concerned about the standard of management. And whilst it is possible that the standard of management under Premier Estates and/or Rendall & Rittner has indeed been poor, we cannot make a finding that this is the case in the absence of better supporting evidence.

82. In relation to the accounts, we note that Rendall & Rittner have so far failed to organise service charge accounts for 2022/23 or for 2023/24. Whilst this would appear to constitute a management failing, the only challenge to the management fees in respect of these years at this stage can be to the estimated fees as we do not yet have figures for actual fees. Estimated fees can only be challenged on the basis that they represent an unreasonable estimate; they cannot be challenged on the basis of the quality of service provided precisely because they are mere estimates. Once the 2022/23 and 2023/24 accounts have been finalised it will be possible for the Applicants at that stage to challenge the reasonableness of any actual charges set out in those accounts if they wish to do so.

83. The position is different in relation to Navana, because (a) it is common ground between the parties that Navana's standard of management was poor and (b) the challenge is to actual – not just estimated – charges. There is not much by way of detailed evidence before us as to Navana's management, and Navana will have carried out a range of services of value to leaseholders, so all that the tribunal can do in the circumstances is to make a very broad-brush reduction to reflect the agreed point that Navana's management could have been better. In the circumstances, the management fees charged to the Applicants whilst Navana were the managing agents are reduced by 20%. As Navana were appointed at the beginning of February 2020 and were removed at the beginning of November 2020 their tenure straddles two separate service charge years, 2 months in 2019/20 and 7 months in 2020/21. The management fees for 2019/20 were £464.38, and these are therefore reduced by 20% for 2 months (i.e. 20% x £77.40) which is

£15.48. The management fees for 2020/21 were £626.96, and these are therefore reduced by 20% for 7 months (i.e. 20% x £365.73) which is £73.15.

84. The management fees for 2019/20 are therefore reduced by £15.48 and the management fees for 2020/21 are reduced by £73.15. The management fees for the other years in dispute are payable in full.

Cost applications

85. The Applicants have applied for a cost order under section 20C of the 1985 Act ("**Section 20C**") and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

The relevant parts of Section 20C read as follows:- *(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".*

The relevant parts of Paragraph 5A read as follows:-*"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

86. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under his lease.

87. Whilst the Applicants have been successful on a couple of relatively small points, they have been unsuccessful on most points. It is possible that with some professional support their application would have been stronger on other issues as well, but the tribunal can only judge the application on the evidence and information before it. Based on that evidence and information, we are not persuaded that the Applicants had a strong case. On the contrary, whilst the Respondent's management is not perfect and whilst Mr Vasques for the Respondent did not have detailed answers to all questions that were posed, there is some evidence of the managing agents deciding to write off certain costs and of their trying to deal with complaints from the Applicants in a constructive manner. The tribunal's overall impression has been that the Applicants have had unrealistic expectations and have been totally

inflexible on issues on which they would have been better advised to show an ability to compromise.

88. In the circumstances, it would not be appropriate to make a cost order against the Respondent and accordingly the Applicants' Section 20-C and Paragraph 5A cost applications are both refused.

Name: Judge P Korn **Date:** 3 January 2025

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,

(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.