



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AG/LSC/2024/0219**

**Property** : **347 Grafton Road, London, NW5 4BJ**

**Applicant** : **Lara Khoo**

**Representative** : **In person**

**Respondent** : **London Borough of Camden**

**Representative** : **Mr Madge-Wyld (counsel)**

**Type of application** : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Tueje  
Mrs Flynn MA MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **31<sup>st</sup> October 2024**

**Date of decision** : **23<sup>rd</sup> December 2024**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal makes the determinations set out at paragraph 53 below.
- (2) The applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are refused.

## **THE APPLICATION**

1. By an application dated 28<sup>th</sup> May 2024, Ms Khoo sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable in respect of internal works required as part of the Respondent’s major works to replace the communal heating system, namely the installation of radiators, pipework and associated apparatus.
2. The Tribunal issued a directions order dated 20<sup>th</sup> June 2024, which also listed the final hearing on 31<sup>st</sup> October 2024.

## **THE BACKGROUND**

3. The Application relates to 347 Grafton Road, London, NW5 4BJ (the “Property”), a three bedroom purpose built split-level flat. It is within a Block (the “Block”), being one of five blocks situated on an estate of 529 flats, known as the Weedington Estate.
4. The lease is dated 21<sup>st</sup> May 2001, for a term of 125 years commencing 21<sup>st</sup> May 2001. Numerous provisions under the lease are referred to, and/or relied on by the parties, the most relevant of which are set out below.
5. The Property is described in the First Schedule to the lease as follows:

*The Premises include the surface of the floors above the joists or other supporting floor structure and the surface of the floor of the balcony (if any) and the ceiling of the Flat up to but excluding the joists or other supporting floor structure or beams to which the ceiling is attached and all walls save the exterior walls and wall dividing it from any other flat or from the common halls staircase landings steps and passages in the Block (but including the surface of such walls within the Flat and the glass of the windows of the Flat and door and door frames and all wires pipes cables conduits sewers and other conducting media serving exclusively the Flat) together the Private Garden (if any) together with the Landlord’s sanitary apparatus and appurtenances installed therein or affixed thereto*

6. According to the particulars and definitions in the lease, the “Service Charge” is defined as follows:

*All those reasonable costs overheads and expenses and outgoings incurred or to be incurred by the landlord in connection with*

- (a) the management and maintenance of the estate*
- (b) the carrying out of the Landlords obligations and duties and providing all such services as are required or appropriate to be provided by the Landlord under the terms of the lease*
- (c) the repair and maintenance, renewal, decoration insurance and management of the Block including all such matters set out in the Fifth Schedule*

7. The lease also breaks the service charge down into three categories, Category 1 Services are defined as follows:

*These include all matters concerning the management and maintenance of the Estate for which the Landlord is responsible or for which expenditure has been properly incurred by the Landlord (excluding those matters relating to repairs or improvements as defined in Category 2 Repairs and Category 3 Improvements respectively set out below) but including without prejudice to the generality thereof the following services (if any) which may be provided by the Landlord:*

...

- Communal heating lighting cleaning refuse storage*

8. The particulars of the lease define the Block as:

*The building or part of the building in which the Flat is situated together with any other building or buildings on the Estate which are physically linked for the purpose of the provision of services*

9. Section 3 of the lease contains the tenant's covenants, and includes clause 3.10.1, which states:

*Throughout the Term and from time to time and at all times to keep the Flat and everything demised therein and the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed in or affixed to the Flat and the window glass thereof (but excluding any portion thereof which the Landlord covenants herein to repair) with all necessary reparations cleansing and amendments whatsoever well and substantially repaired cleansed maintained and renewed damage by any risk against which the Landlord shall have insured ... and to replace from time to time all Landlord's fixtures and fittings and*

*appurtenances in the Flat which may be or become beyond repair at any time during or at the expiration or sooner determination of the Term*

10. Clause 3.15 also prohibits the tenant from making alterations to the Property internally or externally without the landlord's prior written approval.

11. Section 4 contains the landlord's covenants, in particular, clause 4.2 reads:

4.2 *Subject to the payment by the Tenant of the Ground Rent and the Specified Proportion of the Service Charge and provided that the Tenant has complied with all the covenants agreements and obligations on his part to be performed and observed to maintain repair redecorate renew and amend clean repoint paint grain varnish whiten and colour as applicable the following:*

...

4.2.2 *The sewers drains channels watercourses gas and water pipes electric cables television aerials and wires and supply lines and all other conducting media in under and upon the Block save and except where such items exclusively serve the Flat*

4.2.3 *The boilers and heating and hot water apparatus (if any) in the Block save and except such items (if any) as may be now or hereafter installed in the Flat serving exclusively the Flat and not comprising part of a general heating system serving the Block*

12. The supply of heating and hot water is dealt with at clause 4.4, which states:

*Provided only that the amenities hereinafter in this sub-clause mentioned are provided to all the Flats in the Block at the date hereof but not otherwise and subject as hereinafter set out at all times during the Term to supply hot water for domestic purposes to the Flat by means of the boiler and heating installations serving the Block and also from the 1st October to the 30th April inclusive in each year to supply hot water for heating to the radiators fixed in the Flat so as to maintain a reasonable and normal temperature*

13. Finally, and further to the particulars of the lease, the Fifth Schedule sets out the items of expenditure the leaseholder is liable to pay for by way of

service charges. Mr Madge-Wyld refers to paragraphs 1 and 2 of the Fifth Schedule, which state:

1. *The expenses of maintaining repairing redecorating and renewing (or replacing as appropriate) amending cleaning repointing painting graining varnishing white and in or colouring the Block and all parts thereof including the glass in all windows (other than the interior surface of the windows of the Flat) and window frames and all the appurtenances apparatus and other things thereto belonging including those items described in Clauses 4.2 and 4.3*
  2. *The cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot water systems and gas electricity and water pipes and cables serving the block and the lifts Lift shafts and machinery therein (if any)*
14. The Respondent has engaged Butler & Young Associates to implement a programme of major works to replace the existing communal heating and hot water system supplying heating and hot water throughout the Block, including to the Property. Once completed, the existing system of the Respondent providing block-wide heating from 1<sup>st</sup> October to 30<sup>th</sup> April will cease. In its place, residents will have complete autonomy to control the timing and temperature of the heating within their own flat.

### **THE HEARING**

15. Ms Khoo was not legally represented at the hearing. She relied on her own evidence in support of the application, and evidence from her father, Mr Charles Khoo, an architect. He had prepared a witness statement dated 29<sup>th</sup> July 2024, and while he was not questioned by Mr Madge-Wyld, Mr Khoo supported Ms Khoo. Although he wasn't cross examined, and despite Mr Madge-Wyld's objections, we acceded to Mr Khoo's request to briefly address us.
16. The Respondent was represented by Mr Madge-Wyld, counsel. Mr Frank Foxen, a qualified mechanical engineer, prepared a witness statement dated 4<sup>th</sup> September 2024 and gave oral evidence on behalf of the Respondent.
17. Both parties sought to rely on expert evidence. In Ms Khoo's case, this was evidence given by her father, Mr Khoo, an architect who has been registered with the Royal Institute of British Architects and the Architects' Registration Board since 1982. Mr Foxen is employed by Butler & Young Associates as a mechanical associate, and specialises in heating, ventilation and air conditioning.
18. The Tribunal was provided with the following documentation:

- 18.1 An electronic hearing bundle comprising 714 pages;
  - 18.2 A 5-page skeleton argument on behalf of Ms Khoo;
  - 18.3 A 10-page skeleton argument on behalf of the Respondent;
  - 18.4 A 3-page document titled 347 Grafton Road – Breakdown FINAL DRAFT; and
  - 18.5 A 1-page document titled 347 Grafton Road – Charges Summary FINAL DRAFT.
19. Before dealing with the substantive issues, Mr Madge-Wyld proposed that Mr Foxen gives evidence first. He submitted that as an expert, Mr Foxen could explain the technical issues relevant to the case, which would assist the Tribunal to understand the evidence presented during the hearing. Mr Madge-Wyld confirmed that some of that evidence could be provided during cross examination of Mr Khoo. However, Ms Khoo objected to Mr Foxen on the grounds that she wanted an opportunity to present her evidence first, and as a litigant in person, she would be disadvantaged if the Respondent presented its evidence first.
20. The Tribunal had regard to rule 6(1) allowing the Tribunal to regulate its own procedure. We took into account that it's not uncommon for an expert to give evidence first for the reasons Mr Madge-Wyld stated. But in our judgment, it would be consistent with the overriding objective to allow Ms Khoo to present her evidence first for the following reasons:
- 20.1 It is an accepted and common practice for an Applicant to present their evidence first;
  - 20.2 Ms Khoo, as a litigant in person, argued that she would be disadvantaged if there was a departure from the usual practice; and
  - 20.3 For the Tribunal to have an early opportunity to understand the technical issues in the case, Mr Madge-Wyld could deal with this when cross examining Mr Khoo. In the end, Mr Madge-Wyld elected not to cross examine Mr Khoo.

## **THE ISSUES**

21. The application relates to certain items of the service charge expenditure for the year ending March 2023 which in total was £7,813.29, and the year ending March 2024 which in total was £11,285.85. In particular, Ms Khoo disputes approximately £3,327.24, which is the estimated cost in respect of the internal works required within the Property to replace the communal central heating system. Ms Khoo asserts the lease does not require her to accept the Respondent's proposed choice and location of radiators exclusively serving the Property, that she is entitled to choose her own. Also, she says the Respondent's plans, including its choice of radiators and pipework, were unsuitable and would cause unnecessary damage to the Property.

22. Therefore, the issues the Tribunal has identified are:
- 22.1 Under the terms of the lease, is the Respondent entitled to recover, by way of service charges, from Ms Khoo, the cost of replacing the radiators, pipework and associated apparatus within the Property.
- 22.2 Is it reasonable for the Respondent to select the design and decide on the location of the radiators and pipework within, and which exclusively serve the Property, over Ms Khoo's preference.
23. The Tribunal reached its decision after considering the parties' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence. We also took into account correspondence between the parties contained in the hearing bundle.
24. This determination does not refer to every matter raised in these proceedings, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised, or documents not specifically mentioned, were disregarded.

### **THE LEGISLATIVE FRAMEWORK**

25. The relevant statutory provisions are set out in the Appendix below.
26. The definition of service charges at section 18 includes the costs payable in respect of insurance and management, among other things.
27. Section 19(1) limits the amount recoverable as service charges to an amount that is reasonably incurred, and for works or services carried out to a reasonable standard.
28. Section 27A(1) empowers the Tribunal to determine whether a service charge is payable.

### **THE PARTIES SUBMISSIONS**

#### **The Claimant's Submissions**

29. At page 9 (also page 9 of the hearing bundle), in the application form, Ms Khoo sets out the dispute as follows:

*Both years ending 2023 and 2024 relate to the same major works costs (they have been split across two years). I am not disputing the costs which relate to the HIU connection to an upgraded communal system. However, I am disputing approximately £3,327.24 which relates to the internal works part of the installation, including central heating and*

*radiators which I am in disagreement with Camden. This figure was provided on 22/11/2022 by the project manager Helen Barrett when consent was given (but later retracted) for me to employ my own suitably qualified engineer to install the pipework and radiators within my flat. To date I am unclear on the precise costs of the internal fit-out for a three bedroom flat and it is likely this figure will have increased due to overspecification on central heating, specifically the size and number of radiators (from 5- 8).*

30. The application continues (see page 10)

*I am currently in a dispute with my landlord (Camden Council) about major works being carried out on our heating and hot water system, specifically the internal works within my flat. Camden or upgrading the communal heating system across the estate and installing a Heat Interface Unit (HIU) which will connect my flat to the upgraded communal system. My landlord is enforcing the installation of radiators in my flat that are unsuitable, too large and provide excessive heat output compared to the contractor's minimum heat requirements.*

*I have tried to mediate by offering to purchase and have Camden's contractors install alternative radiators (same manufacturer) with heat output to match the minimum heat requirements. However, Camden has denied this. ...*

*I believe that under the terms of my lease Camden does not have the power to force me to pay for the installation of their chosen radiator, which are unsuitable for my flat. I believe that my landlord is in breach of my lease since the radiators are fixtures and fittings which exclusively serve my flat and part of the Premises covered by my lease.*

31. Another aspect of the Respondent's plans for the location of radiators within the Property is to fix them to external walls under windows, which Mr Khoo says is not good practice

32. As stated, Ms Khoo asserts that the lease supports her position. In particular, in the application and her skeleton argument, she relies on the following provisions:

32.1 The First Schedule, according to which, radiators, as fixtures exclusively serving the Property demised to her under the terms of the lease, the Respondent cannot compel her to have a different fixture.

32.2 The Fifth Schedule sets out the service charge expenditure which the Respondent may recharge to Ms Khoo. She asserts the Fifth Schedule covers central heating apparatus serving the block, but does not refer to the radiators or individual fittings within the



Property. Having discussed the matter with the manufacturer and carried out her own research, she reinforces this point in her skeleton argument, which reads (see paragraph 3.1):

*The installation of a Heat Interface Unit (HIU) within my flat creates an independent closed circuit system. This separation, confirmed by the HIU manufacturer (Worcester and Bosch, see appendices 16 and 17), prevents any impact on the primary communal system or additional maintenance demands.*

32.3 Clause 3.10.1 imposes an obligation on Ms Khoo to maintain and replace as necessary, fixtures and fittings within the Property, demonstrating that the radiators are her responsibility.

32.4 Under clause 4.2.3 the Respondent is obliged to maintain boilers and heating apparatus within the block except where these are installed in, and exclusively serve, the Property, and they are not part of the general heating system. Ms Khoo states the radiator is an item which is in, and exclusively serves, the Property, it does not serve the block, and so no maintenance obligation is imposed on the Respondent.

32.5 Finally, as regards the lease, clause 3.24 Ms Khoo states that by clause 3.24 she has the right, subject to obtaining the Respondent's consent, to replace its fixtures and fittings with a substitute of at least an equivalent kind, quality and suitability. She argues her chosen replacement radiators meet these requirements, and will have TRVs which can be used to control the temperature. Both in her application and witness statement she states:

*The radiators I propose match Cenergist's (the contractor) technical requirements, are from the same manufacturer, are of higher value and are actually a closer match to the required heat output specifications for each room. Cenergist have over specified on radiators with an excessively large radiator in the main bedroom which would interfere with my electric sockets and two radiators in the living room and Kitchen which are too large for the windowsills at 600 mm high. It also appears that Cenergist and Camden have substantially increased their specification on the number of radiators since our negotiations last year. In short, I am not opting out (neither partially nor fully) or disconnecting from the heating system. I have made a perfectly reasonable request to use radiators of my choosing whose characteristic and performance are entirely adequate for the intended purpose, if not better, and Camden is acting unreasonably by not consenting to my suggested, alternative proposals.*

33. Ms Khoo argues that the Respondent has adopted an unreasonable “pick and mix” approach. For instance, insisting on controlling of the design

and layout of radiators and pipe work, while allowing some other leaseholders to retain certain elements of their existing installations. She argues this is inconsistent compared to the Respondent's insistence that it selects the radiators, pipework and other apparatus to be installed in the Property.

34. Ms Khoo's position is supported by Mr Khoo, who has been involved in numerous discussions with the Respondent. In his witness statement he says (at paragraph 6):

*After 2 years of negotiation and 4 meetings, CENERGIST finally issued an M&E layout for 8 radiators on 25/04/2024 just over 1 month before works were to commence 10 June 2024 to Lara's block. Having reviewed the radiator sizes and location, see attached 2nd Photo file (26/07/2024) which shows that radiators are inappropriate with little design consideration given to sizing, location and over specification of heat output. I have explained during my above meetings which took place in winter months, JAN & FEB that due to the southerly orientation of flat 347 with no overshadowing, existing radiators are more than adequate. Existing pipework is lagged with box cladding over so there cannot be latent heat consideration to existing room temperature.*

35. Mr Khoo's concluding remarks, in the final paragraph of his witness statement, are:

*Flat 347 is part of 5 block of contemporary flats within the Weedington Estate approved in 1972 as Areas 7 and 8. At 6.3 hectares it is the largest piece of the Gospel Oak Redevelopment and was designed during the golden era of Camden Housing under Sidney Cook its borough Architect. This period of enlightened housing is acknowledged internationally for its unsurpassed Architectural values. Many residents remarked on the beauty and spaciousness of the flats and it is a travesty that Camden being a heritage custodian is engaged in vandalising many of these gems. Within this estate, the blocks are designed with services cores which Camden and its contractor are not utilising. Instead new M&E ducting are routed through hallways exposing unsightly pipe works and lowering ceiling from a modest 2.3M height to a low 2.1M. See Appendix 6, 2nd photo file, photos 10 and 11. These mendacious acts are well documented in many press releases over the years covering many other estates of architectural merit.*

36. Noting that the Respondent relies on the decision in *Levitt v Camden LBC [2011] UKUT 366 (LC)*, Ms Khoo argues that her case is distinguishable. She submits components were found to be integral to the communal heating system in *Levitt*. However, she contends in her case, the HIU isolates radiators in the Property from the communal heating system. She also points to a documented history of delays and poor communication in her case, which was not raised in the *Levitt* case.

37. The delays and poor communication Ms Khoo refers to include, following a meeting at the Property on 26<sup>th</sup> January 2024, Ms Khoo requested drawings for the internal design on 1<sup>st</sup> February 2024. She sent 3 reminders, and on 24<sup>th</sup> April 2024 received the requested drawings, which were dated 1<sup>st</sup> February 2024. She is also aggrieved that an initial agreement to her choosing the layout of the radiators within the Property, was subsequently withdrawn.
38. At page 12 of the application, Ms Khoo sets out the orders she is asking the Tribunal to make, which are as follows:
- 1) *A revised invoice for the major works, offsetting my costs (£1692.61 including VAT) for purchasing new suitable radiators for the upgraded heat network.*
  - 2) *A direction to Camden as landlord to engage with me in a professional and timely manner in order to give consent to the installation of radiators of my choosing at my own cost and expense. These are 5 new radiators (with TRVs to regulate room temperature) to be installed as per previously agreed layouts, of the same manufacturer (Stelrad), which meet minimum heat output requirements and are of the correct size and shape to fit my living room/kitchen windowsill dimensions and bedroom walls.*
  - 3) *Meanwhile a direction to Camden to desist from continuing to imply withdrawal of services of hot water and heating to my flat.*
39. In her witness statement, Ms Khoo explains how the above objections engage section 27A. She states:
- *Camden are forcing me to pay for the installation of a radiators which are unsuitable for my flat and will cause damage to the property.*
  - *Camden, as landlords, are unreasonably imposing additional costs on my flat by way of over-specification of internal central heating works and higher future energy consumption, which I will be liable for.*

#### The Respondent's Submissions

40. The Respondent relied on the Upper Tribunal case of *Levitt* involving a lease with identical wording to the lease in this case. The *Levitt* case also involved a dispute regarding the leaseholder's contribution towards the cost of internal works required as part of the upgrade of the communal heating system.

41. Amongst the quotations from that case in Mr Madge-Wyld's skeleton argument, is the following:

*While the isolating valve enables a flat to be isolated from the communal system, that does not stop the cylinders, radiators and pipes within the flat being part of the general heating system. There is a single heating system serving the whole of the building. The cylinders, radiators and pipes within the flat serve that individual flat but still form part of the general heating system serving the whole of the building.*

42. Mr Madge-Wyld also relies on *Re Kennistoun House [2010] UKUT 194 (LC)* where the lease was in all material respects the same as in the current case, where the Upper Tribunal also decided Camden was entitled to recover from its leaseholders the cost of internal works in respect of the central heating system. The *Kennistoun* case was referred to and followed by the Upper Tribunal in the *Levitt* case.
43. Mr Madge-Wyld argues that in light of these authorities, and pursuant to the Fifth Schedule, the Respondent is entitled to recover the cost of replacing the communal heating system from leaseholders, including Ms Khoo's proportion of these costs.
44. He continues that, as Ms Khoo requires the Respondent's consent before making any alterations to the Property, this demonstrates she has no right to select the radiators installed within the Property.
45. Furthermore, Mr Madge-Wyld submits, the Tribunal has no power to direct the Respondent to allow Ms Khoo to choose the radiators installed within the Property.
46. The Respondent's primary position it is entitled to select the radiators and pipework installed within the Property, but that additionally it is reasonable and appropriate that for the Respondent to do so.
47. In his oral evidence, Mr Foxen of Butler & Young, explained how the new communal system works. A simplified and summarised account is that heat is generated in the boiler in the central plant room on the Estate. That heats the hot water, being the primary circuit of water flowing through the pipes within the Block up to the isolating valve just inside the Property. The isolating valve allows Ms Khoo to isolate the heating system within the Property from the communal heating system. The hot water flowing within the Property's heating system, is the secondary circuit. The Heat Interface Unit uses a heat exchanger to transfer heat from the primary circuit to the secondary circuit without mixing the two water supplies. The secondary circuit gives up its heat to heat radiators within the Property, which emit that heat.

48. Also, according to Mr Foxen's oral evidence, while the communal heating and the heating within the Property are two separate heating systems, they are inextricably linked. For instance, he said the size and design of a radiator within the Property affects how much heat it will give up. If it is too small it gives up an insufficient amount of heat, meaning the return flow temperature will be higher. This would not be addressed by using the TRVs as these control room temperature. In his written and oral evidence, Mr Foxen also states that smaller system distribution pipe is necessary to achieve the required heat output. Therefore the choice of radiators and pipework will affect the temperature of the primary circuit return flow which goes back to the central boiler because heat is transferred between the primary and secondary circuits via the HIU. So whereas the system is designed to operate on a return flow temperature at 40 deg C, a higher return temperature will result in heat loss.
49. The Respondent also relies on the *Camden Heat Networks: Design Supplement* document, in particular paragraphs 3 to 4.4. It states that one of the four core principles of the design is minimising losses from the heat network (paragraph 3). At paragraph 4.1 it states that the length of pipework affects the amount of heat loss.
50. It continues (at paragraph 4.4):
- In particular, given that 50% of the heat network is made up of the return flow, it is important to ensure that return temperatures are as low as possible.*
51. Mr Foxen explained that fitting radiators underneath windows can improve heat circulation resulting in more efficient distribution of heat. He also explained why some leaseholders may retain part of their existing pipework. That has been agreed where the Respondent considered the cost of replacing that pipework would be disproportionate, and subject to the pipes withstanding pressure testing. As to the Respondent initially giving consent to Ms Khoo installing the radiators and pipework within the Property, but later withdrawing that consent, he said the project was evolving. Therefore, it was only later it became apparent that it would not be feasible for Ms Khoo to arrange that part of the installation herself.
52. Mr Madge-Wyld, on behalf of the Respondent, invited the Tribunal to dismiss the application.

## **DETERMINATION**

### **The Tribunal's Decision**

53. Our decision is that under the terms of Ms Khoo's lease, the Respondent is entitled to recover the cost of installing within the Property its choice

of radiators, pipework and all associated apparatus. We also consider the Respondent's estimated cost of this work, at £3,327.24, is reasonable.

### Reasons for the Decision

54. In our judgment, under the provisions of the lease the Respondent is responsible for replacing radiators within the Property. Clause 4.2 of the lease contains the Respondent's repairing covenants. Sub-clause 4.2.2 relates to communal services. However, by sub-clause 4.2.3, the Respondent's repairing obligation applies to boilers, heating and hot water apparatus in the Block and installed in the Property. The only exceptions under clause 4.2.3 is that the Respondent is not responsible for any boilers, heating or hot water apparatus that both exclusively serves the Property *"and not comprising part of a general heating system serving the Block."*
55. So while the replacement radiators will exclusively serve the Property, they are part of the general heating system serving the Block. In concluding that the radiators within the Property are part of the communal heating system, we note it is common ground that the secondary circuit is a closed circuit system which can be isolated from the communal heating system, and that the timing and temperature of the heating is controlled by Ms Khoo. However, we accept Mr Foxen's unchallenged expert evidence that the secondary circuit, which heats radiators within the Property, derives its heat from the communal boiler, which heat is transferred from the primary to the secondary circuit via the HIU. The pipes through which the secondary circuit flows, and the radiators which emit the heat are all part of the communal heating system. That is because the ultimate source of the heat within the Property is the communal boiler.
56. We have taken into account the expert evidence of Mr Khoo. We note he is an experienced and accredited architect. But unlike Mr Foxen, Mr Khoo is not a heating specialist. Therefore where there is a dispute between them, we prefer Mr Foxen's evidence. We also prefer Mr Foxen's evidence over the information obtained from the manufacturer. Mr Foxen has direct knowledge of the Estate, the Block and the Property as a result of his involvement in implementing these major works on behalf of his firm.
57. Ms Khoo relies on the tenant's covenants at clause 3.10.1, by which she is required to maintain, repair and replace the Respondent's fixtures and fittings which are installed within the Property. She therefore argues it is not for the Respondent to replace them, nor to select its choice of replacement. However, that covenant expressly excludes any fixtures and fittings which the Respondent has covenanted to repair. And as stated, we find that by clause 4.2.3 the Respondent has covenanted to repair boilers, heating and hot water apparatus, and radiators are heating apparatus.

58. We note our interpretation of the lease that it is the Respondent's responsibility to replace the radiators, pipework and other apparatus is consistent with the Upper Tribunal's decisions in *Levitt* and *Kennistoun House* relating to leases with the same wording as the lease in this case.
59. We consider our conclusion is further reinforced by clause 3.15 which requires Ms Khoo to obtain the Respondent's written consent before making any internal alterations. That clause is inconsistent with Ms Khoo having the right to choose the design and location of the replacement radiators and pipework.
60. In our judgment, it follows that if the Respondent is responsible for replacing the radiators, pipework and associated apparatus, it has the right to choose the design and location of the replacements that are installed.
61. As to Ms Khoo's liability to pay for these internal works, we consider these fall within the definition of the Service Charge set out in the particulars of the lease because it relates to the Respondent's obligation under the lease to replace the heating system and provide heating and hot water.
62. Furthermore, the Respondent's reasonable costs and expenses resulting from replacing the communal heating system, of which we consider the radiators and pipework within the Property form part, are also covered by the Service Charge, which applies to the Items of Expenditure in the Fifth Schedule. Paragraph 1 of the Fifth Schedule expressly applies to "*those items described in Clauses 4.2 and 4.3*". As stated, we find that the internal works are covered by the Respondent's repairing obligations at clause 4.2, in particular sub-clause 4.2.3.
63. As to Ms Khoo's contention that the costs are unreasonable, we do not consider that is well founded.
64. Based on Mr Foxen's evidence, we consider the Respondent's grounds for choosing the design and layout of radiators and pipework installed in the Property are reasonable because they will minimise heat loss, which is a core design principle of the replacement heating system. While the Respondent has allowed some leaseholders to retain certain elements of their existing pipework, it considers that is the most proportionate approach. This indicates the Respondent was willing to agree to leaseholders' requests as far as was practicable. That is further demonstrated by its initial agreement to allow Ms Khoo to arrange certain internal works herself. We therefore accept the Respondent's evidence that it was impracticability that led to it withdrawing its previous consent. We also accept Mr Foxen's expert opinion as a heating specialist regarding the benefits of locating radiators underneath windows.

65. To the extent that it is relevant to a determination under section 27A, we consider the Respondent's level of engagement and communication is adequate. We note that it has visited the Property 4 times in connection with these major works and there have been numerous e-mail exchanges between the parties. While there may have been occasions when Ms Khoo would have liked a faster response, we have taken into account that hers is one of many flats on the Estate affected by these major works. Ms Khoo has also expressed some frustrations with changes that have been made, but again, we consider that is not uncommon in a project on this scale.
66. Ms Khoo also complains that so far she has only received an estimated figure for the disputed works. However, the major works have not yet been completed, so the Respondent is unable to confirm the final amount. By paragraph 5 of the Fourth Schedule, the Respondent may seek payment of a reasonable sum for anticipated future expenditure. So the Respondent is not precluded from seeking payment of Ms Khoo's proportion of the major works even though the actual cost is not yet known.
67. As to the terms of the order Ms Khoo requests:
- 65.1 Her request for a revised invoice is based on her assertion that the Respondent is not entitled to reject her choice of radiators, which assertion we consider is not well founded.
- 65.2 The Tribunal does not have jurisdiction under section 27A to direct the Respondent engages with Ms Khoo in any particular way.
- 65.3 The Tribunal also does not have jurisdiction to direct the Respondent desists from allegedly implying it will withdraw heating and hot water services to the Property.
- 65.4 It follows from the above that we do not consider the costs of the internal works the Respondent seeks to recover from Ms Khoo are unreasonable, nor do we consider the Respondent selecting the design and location of pipework, radiators and other apparatus to be unreasonable.

### **Costs**

68. In light of our determination, the applications under section 20C and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are refused.

Name: Judge Tueje

Date: 23<sup>rd</sup> December 2024



## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## APPENDIX

### Extracts from the Landlord and Tenant Act 1985

#### **18.— Meaning of “service charge” and “relevant costs”**

- (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.*

#### **19.- Limitation of service charges: reasonableness**

- (1) *Relevant costs shall be taken into account in determining the amount of service charge payable for a period—*
  - (a) *only to the extent that they are reasonably incurred, and*
  - (b) *where they are incurred on the provision 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.*

#### **27A Liability to pay service charges: jurisdiction**

- (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.*