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

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| **Case Reference** | **:** | **LON/00AE/LSC/2024/0247** |
| **Property** | **:** | **163 Quadrant Court, Empire Way, Wembley HA9 0EY** |
| **Applicants** | **:** | **Ms Siobhan Morris** |
| **Representative** | **:** | **In person** |
| **Respondents** | **:** | **Notting Hill Genesis Housing Association (1) and Aviva Investors Ground Rent Holdco (2)** |
| **Representative** | **:** | **Mr Tom Owen, Disputes & Consultation Manager of Notting Hill Genesis representing first Respondent (second Respondent not represented)** |
| **Type of Application** | **:** | **For a service charge determination pursuant to Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal Members** | **:** | **Judge P Korn**<br>**Mrs A Flynn MRICS** |
| **Date of hearing** | **:** | **4 March 2025** |
| **Date of decision** | **:** | **10 March 2025** |

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**DECISION**

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## Description of hearing

The hearing was a face-to-face hearing.

## Decisions of the tribunal

(1) The service charges which are the subject of this application are payable in full.

(2) It is hereby recorded that the First Respondent accepts that the Applicant is not under an obligation to contribute towards the reserve fund in any of the years of challenge.

## Introduction

1. The Applicant seeks a service charge determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**"). The application concerns the service charges for the years 2019/20 to 2023/24 inclusive in relation to the Property. The Property is a flat within a purpose-built block ("**the Building**").

2. The Applicant is an assured tenant and holds a tenancy agreement ("**the Tenancy Agreement**") in relation to the Property. The Tenancy Agreement is dated 12 April 2010 and was originally made between Paddington Churches Housing Association (1) and the Applicant. Notting Hill Genesis Housing Association ("**the First Respondent**") is the Applicant's current landlord.

3. The First Respondent itself holds a lease of a number of flats within the Building (including the Property but not including any common parts of the Building). The First Respondent's own current landlord is Aviva Investors Ground Rent Holdco ("**the Second Respondent**"). The Second Respondent has taken no part in these proceedings aside from sending someone to observe the case management hearing that took place on 6 August 2024.

## Applicant's written case

4. The Applicant states that when she moved into the Property in 2010 the service charge was £21.28 per week. The service charge has now increased to £133.64 per week. As a result of the increases, she states that living in the Property has become unaffordable, putting her and her children at risk of becoming homeless. She also does not agree with or does not understand the Respondent's service charge apportionment for the Property.

5. The Applicant also states that the services provided at the Building have seriously declined over the past five years and that she has made the

First Respondent aware of this decline through multiple emails and at board meetings.

6. The Applicant refers to various clauses within the Tenancy Agreement. In particular, she states that under clause 1.9 the First Respondent can only vary the Tenancy Agreement with the consent of the tenant (i.e. the Applicant) and that therefore the First Respondent cannot increase the service charges without her consent and/or without consulting with her.

7. In a separate position statement, the Applicant breaks her case into specific categories. First of all, she states that the First Respondent has apportioned the service charges incorrectly by charging her 2.95% of 49.2% of the total service charges for the Building. She then goes on to state that the First Respondent later admitted that mistakes had been made. Secondly, she states that she is owed a refund in relation to various 'non-recoverable' service charges. Thirdly, she asks for an explanation from the First Respondent as to why she has been billed for certain 'residential and commercial' services as well as for purely residential services. Fourthly, she objects to being required to pay towards wider estate services.

**Respondents' written case**

8. Mr Owen for the First Respondent states that when he visited the Building in November 2020 the common parts appeared to be well-maintained. He reported a few minor repair issues to the estate-based staff, and he received no written complaints from residents regarding the repair issues which indicated to him that they had been resolved quickly. He adds that the housing officer and property manager both complete regular estate inspections of the Building, the neighbouring block and the grounds and that in their opinion the estate is well maintained and managed.

9. The First Respondent has served annual service charge demands and reconciliation documentation in line with the Tenancy Agreement and the 1985 Act. In each year it has estimated the service charge based on information available in connection with costs recoverable under the service charge schedule in the Tenancy Agreement. The service charge is made up of costs incurred by either the First Respondent or the Second Respondent in delivering the services required under the Tenancy Agreement (or required by the superior lease and recoverable under the Tenancy Agreement).

10. The First Respondent has paid service charges as demanded by the Second Respondent under the superior lease in good faith. The Second Respondent's agent, FirstPort, has provided breakdowns of each budget and available final accounts.

11. Under clause 1.3 of the Tenancy Agreement, the Applicant agrees to pay a weekly service charge. Under clause 1.8, the First Respondent may review the service charge annually and may vary the weekly charge to take a prior surplus or deficit into account. The Applicant's apportionment has always been approximately 1.5% (to one decimal place) of the First Respondent's share of the Building's management and maintenance costs as defined by the Tenancy Agreement and superior lease. This apportionment is relatively low compared with other two-bedroom flats in the Building, as can be seen on pages 699-702 of the hearing bundle. A list of leaseholders' apportionments of the Second Respondent's service charge is also in the hearing bundle and it shows the First Respondent's share to be 34.03% of the residential costs and 29.58% of the communal residential & commercial costs. This schedule was included by the Second Respondent in its 2022 service charge budget.

12. The Tenancy Agreement contains a service charge schedule which is in the hearing bundle. It includes virtually all items of expenditure that the Second Respondent might incur in maintaining, managing, insuring, and repairing the common parts of the Building and the estate. Based on her 'Scott' schedule entries for each year from 2019/20 to 2023/24 inclusive, the Applicant accepts that she is obliged to contribute towards the Second Respondent's costs of maintaining and managing the Building in line with the service charge schedule of the Tenancy Agreement. The parties disagree over the apportionments, but the First Respondent believes that the Applicant has not taken the full sum incurred by the Second Respondent into account for each line of expenditure. An example of this can be seen by comparing the Second Respondent's 2019 final accounts (page 572 of the hearing bundle), the Second Respondent's apportionments (page 804) and the 2019/20 recoverable charges breakdown (page 138) with the Scott schedule (page 526). Taking the example of staff employment, in 2019 the Second Respondent incurred £248,527.62 in staff costs as shown on the 'S1' residential schedule, towards which the First Respondent had to contribute 34.03%, of which the Applicant had to contribute 1.45% (percentages rounded to 2 decimal places). The Applicant erroneously claims that the relevant costs were less than £85,000 in 2019, and the Applicant has apparently made similar calculation errors in each subsequent year's Scott schedule.

13. The Second Respondent has not engaged with these proceedings.

## Inspection

14. The tribunal members inspected the Property and parts of the Building and wider estate in the morning prior to the hearing in the presence of the Applicant, Mr Owen and others. The Applicant pointed to cracks in some of the Building's internal walls, hallway carpets which she said had never been cleaned, marks on hallway flooring, mould on her

bathroom ceiling, thin plastering and cracks on her own walls, and her inability to gain access to the basement without specific permission.

**Discussion at hearing**

15. Mr Owen talked the tribunal through how he understood the service charge calculations and apportionments to work. Specifically in relation to combined residential and commercial costs, he said that the First Respondent's own percentage was only slightly less than for pure residential as there were very few commercial units as a percentage of the whole. He also said that the First Respondent agreed with the Applicant that her service charge percentage was (and should be) 1.46%.

16. Mr Owen was asked by the tribunal to clarify how much the First Respondent believed to be payable by the Applicant by way of service charge in each year of challenge and he said that these figures were as follows:-

- 2019/20 £2,568.27
- 2020/21 £2,505.36
- 2021/22 £3,794.96
- 2022/23 £2,610.92
- 2023/24 £4,230.43.

17. The Applicant said that she should not be contributing towards residential management fees, residential general maintenance or the reserve fund. She also felt that she should not be contributing towards any 'residential and commercial' services other than communal area heating. Mr Owen agreed that she should not be contributing towards the reserve fund but added that this was confirmed by the relevant table in the hearing bundle and that the First Respondent agreed that this item was not chargeable. However, in relation to all of the other items mentioned earlier in this paragraph Mr Owen said that they were covered by the Tenancy Agreement and were payable.

18. In relation to building insurance premiums, Mr Owen said that the main charges were under 'residential and commercial' simply because the Building is part commercial (and therefore the premiums for the Building are shared between residential and commercial tenants). He accepted that in some years there was an additional insurance charge just labelled 'residential' and although the Second Respondent had not provided detailed information on this point his understanding was that

these much smaller sums were likely to be the excess payable on individual claims or something similar.

19. In relation to how the Tenancy Agreement deals with proposed increases in the level of service charge, the tribunal pointed out to the Applicant that the Tenancy Agreement does not prevent the First Respondent from increasing the service charge without the tenant's consent. Clause 1.9(c) of the Tenancy Agreement provides that the Agreement itself can be varied with the tenant's consent, but under clause 1.8 the service charge can be increased (not more often than once a year) without the need to obtain the tenant's consent. Any such increase does, though, need to be notified to the tenant (i.e. the Applicant) at least 28 days before it comes into effect. At the request of the tribunal, Mr Owen then referred the tribunal to each written notice of increase in the hearing bundle.

20. The Applicant then referred the tribunal to the written witness statements from Glory Nyero, Chair of Wembley Park Residents Association (WPRA), and Rushabh Shah, the Secretary of WPRA. Glory Nyero's statement talks about hikes in the service charge, communication errors, lack of transparency and unresolved complaints. Rushabh Shah's statement talks about similar issues.

21. At various stages during the hearing there were discussions prompted by the Applicant's extreme unhappiness at (a) the level of the service charges, (b) the fact that repeated accounting errors had been made by the First Respondent over the years, causing the First Respondent to have to make a series of refunds and (c) what the Applicant felt was the very confusing way in which the First Respondent had provided information to her as to how much was payable and what her apportionment was and why she was obliged to pay for certain items.

## **Tribunal's analysis**

22. Based on the Applicant's written submissions and the discussion at the hearing, the tribunal's view – as explained at the hearing – is that some of the points raised by the Applicant are not relevant to the payability of the service charge. In addition, some other points raised by her are not persuasive for other reasons. We will take the Applicant's points one by one.

23. The Applicant notes that the service charge has increased significantly over the years. However, in order for the tribunal to be able to determine that any particular service charge item in any one year is unreasonably high it needs more detailed argument from the Applicant as to why that charge should be reduced. Examples of relevant arguments were mentioned by the tribunal at the hearing. Service charge items can be challenged on various grounds, including but not limited to the following: (a) that a specific service has been provided in

a sub-standard manner, (b) that the cost is unreasonably high compared to the cost that someone else would charge for that service or item, or (c) that the service charge item in question is not recoverable under the terms of the Tenancy Agreement. Some arguments need to be accompanied by supporting evidence, e.g. an alternative quotation. Service charges go up for various reasons, some of which are perfectly legitimate and reasonable, and the Applicant has not advanced or evidenced any persuasive arguments to demonstrate that the service charges are higher than would be reasonable.

24. We do note that the Applicant has provided witness statements from the Chair and Secretary of WPRA, but these statements are both much too general to serve as a persuasive analysis as to what would be a reasonable level of service charge.

25. In relation to the apportionments, we have much sympathy for the Applicant as we have seen information provided by the First Respondent which has been put together in quite a confusing manner. In addition, the First Respondent has made significant errors, and Mr Owen has not denied this. However, it is not the tribunal's role to reduce the service charge in order to punish a landlord simply for a previous lack of clarity or for previous errors. Based on the information provided by the First Respondent in written submissions as explained at the hearing, we are not persuaded that the apportionments are incorrect. In other words, the Applicant has not persuaded us that she should be paying a smaller percentage than the First Respondent says she should be paying. As explained at the hearing, if her argument is that the First Respondent has actually charged a higher percentage than it itself believes is payable then this is something that falls outside the tribunal's jurisdiction. The argument would then be that she had been overcharged as a matter of simple accounting, and any remedy would be in the county court.

26. On the general point of any failure to cure accounting errors made by the First Respondent and any failure to pay refunds due to the Applicant, what is the appropriate legal remedy depends on whether there is a dispute between the parties as to what is **payable**. Based on the evidence and submissions before us, we are not persuaded that there is a live dispute as to what is payable. If the issue is that the Applicant is due a refund which the First Respondent accepts is payable but which has not yet been paid, again the Applicant's remedy is in the county court.

27. As regards the Applicant's argument that the quality of services has declined, without more specific detail (including an analysis as to why and how this renders the level of service charge unreasonable) we are unable to make a finding in her favour on this point. If her point here is that the First Respondent is in breach of its obligations under the Tenancy Agreement and that she wants the First Respondent to be

required to remedy any breaches, then again her remedy would be in the county court. However, before going to the county court it would be prudent for her to take independent legal advice as to her chances of success.

28. As regards the Applicant's argument that under clause 1.9 of the Tenancy Agreement the First Respondent cannot increase the service charges without her consent, this is incorrect. The relevant part of clause 1.9 effectively prohibits the landlord from varying the Tenancy Agreement without the tenant's consent, but increasing the service charges is not a variation of the Tenancy Agreement itself. Increases in the service charges are covered by clause 1.8 and they do not need the tenant's consent. Increases do need to be notified to the tenant (i.e. the Applicant) at least 28 days before they come into effect, but the evidence before us indicates that the Applicant was notified on each occasion.

29. The Applicant has objected to paying certain categories of charge, but she has not provided a persuasive reason as to why she should not have to pay them. With the exception of contributions towards the reserve fund, we are satisfied that all of the categories of charge fall within the list of services attached to the Tenancy Agreement for which she can be charged. We also accept Mr Owen's explanation as to why building insurance premiums are charged under 'residential and commercial', and we accept that it is right that the Applicant should pay towards estate services from which she derives some benefit.

30. Specifically in relation to the reserve fund, Mr Owen referred us to the relevant pages in the hearing bundle which confirmed that the Applicant was not obliged to contribute towards the reserve fund. He also confirmed that the First Respondent accepted that the Applicant was not under an obligation to contribute towards the reserve fund in any of the years of challenge.

31. The Applicant's concerns about accidental overcharging and confusing communication could possibly have formed the basis for an argument that the First Respondent's management fees are too high for the quality of service provided, but the Applicant has not specifically challenged the management fees.

32. Notwithstanding the above comments, we wish to place on record that the Applicant came across as a principled person who was struggling to afford to pay the service charge. She was also clearly upset by all of the accounting errors and was genuinely seeking clearer information. However, on the basis of the evidence and arguments before us we are unable to make a determination that the service charges challenged by the Applicant are unreasonable.

## Costs

33. Mr Owen for the First Respondent stated at the hearing that the First Respondent was not seeking to recover from the Applicant any costs incurred by it in connection with these proceedings whether through the service charge or otherwise.

34. The Second Respondent has not engaged with these proceedings and therefore cannot have incurred any costs.

**Name:** Judge P Korn **Date:** 10 March 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.