FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MA/LSC/2023/0046**
Property	**:**	**105 Wordsworth, Bracknell, Berkshire RG12 8YE**
Applicant	**:**	**(1) Mr Karol Fudalej** **(2) Mrs Dorota Fudalej**
Representative	**:**	**Unrepresented**
Respondents	**:**	**Abri Group Limited (formerly Silva Homes Limited)**
Representative	**:**	**Katherine Traynor**
Type of application	**:**	**Application for a determination of liability to pay and reasonableness of service charges**
Tribunal	**:**	**Judge A. Arul** **Mrs S. Redmond Bsc ECON MRICS**
Date of hearing	**:**	**10 February 2025**
Date of decision	**:**	**11 April 2025**

DECISION AND REASONS

Decisions of the Tribunal

(1) The Tribunal determines that, for the purposes of section 27A of the Landlord and Tenant Act 1985, a fair proportion of the service charge payable in respect of the Property is 5.88%. The determination relates to service charges for the financial years ending 31 March 2023, 31 March 2024 and 31 March 2025.

(2) The Applicants have lost the right to challenge the service charges for the financial years ending 31 March 2021 and 31 March 2022. The Tribunal has no jurisdiction to determine the application in so far as it relates to those service charge periods.

(3) The application for an order requiring reimbursement of Tribunal fees is refused.

REASONS

The Application

1. By an application dated 23 October 2023, the Applicant leaseholders seek a determination under section 27A of the Landlord and Tenant Act 1985 as to the liability to pay and reasonableness of service charges for the property at 105 Wordsworth, Bracknell, Berkshire RG12 8YE ("the Property"). The application relates to the five respective service charge years ending 31 March 2021 through to 31 March 2025.

2. On 6 September 2024, the Tribunal gave Directions in this matter, as varied or supplemented on 30 September 2024, 25 October 2024 and 7 January 2025.

The hearing

3. The hearing took place remotely using the CVP platform.

4. The First Applicant, Mr Karol Fudalej, attended on behalf of both Applicants; the Second Applicant did not attend. The Respondent was represented by Miss Katherine Traynor of counsel. An employee of the Respondent, Mr Adam Perryman, was also in attendance throughout the hearing.

5. The documents before the Tribunal comprised an Applicants' bundle of some 50 pages and a Respondent's bundle of some 183 pages. Miss Traynor had not seen the Applicant's bundle. On inspection, it appeared to the Tribunal that the Respondent had incorporated all of the same documents into its bundle. The Tribunal therefore predominantly referred to the Respondent's bundle throughout the hearing for ease of

reference. The Tribunal also received a skeleton argument from Miss Traynor, which had been sent to the Tribunal over the preceding weekend. Mr Fudalej confirmed that he had received and read this but was invited to request further time should he wish to (which he did not).

6. The Tribunal raised with the parties a preliminary point as to the status and stance of the other leaseholders in the block within which the Property is situated. The Tribunal had directed on 25 October 2024 that the other leaseholders be served with notice of the application. Miss Traynor confirmed that the Respondent had complied with this direction and, during the course of the hearing, provided a copy of the cover letter which her instructing solicitors had sent to each leaseholder.

7. The position regarding the leaseholders and tenants of flats 107-109 and 111-113, as explained by Miss Traynor, can be summarised as follows.

7.1 Flats 107, 108 and 112 are occupied by social housing tenants and the Respondent covers service charges applicable to each.

7.2 Flats 106 and 110 have leases which do not provide for a variable service charge and are thus outside of the Tribunal's jurisdiction.

7.3 Flats 105 (the Property), 109, 111 and 113 are owned by leaseholders who at some historical time have exercised a statutory right to buy or are successors to such a person. They have a direct financial interest in the outcome of these proceedings as their respective leases provide, in principle, for a variable service charge to be paid to the Respondent.

8. The Tribunal is satisfied that notice of these proceeding has been given to the leaseholders and tenants of flats 107-109 and 111-113 but that none have indicated an intention to participate or otherwise engaged with the proceedings. Miss Traynor does not act for them and only represented the Respondent freeholder. The Directions given on 25 October 2024 required notice to be given; no order was made joining those persons. The proceedings therefore continue with the Respondent as the only responding party.

9. The Tribunal sought as a further preliminary point to clarify the issues and evidence it would go on to hear. It was clear that central to the dispute is a comparison of the Property with the other flats, yet neither of the parties had presented satisfactory evidence enabling such a comparison. For example, there were no lease plans, a measured survey of size or occupancy details. Neither of the parties had produced a witness statement. There was also a challenge to jurisdiction based upon a contention that the Applicants should be taken to have accepted the service charges for the years in question.

10. The Tribunal therefore proposed to deal with matters by inviting Mr Fudalej to provide very limited evidence on two factual issues arising from the application and the response. These two issues were: (1) why the Applicants believe that the Property is smaller than the other flats, and (2) when they first protested about the rate of service charge to the Respondent. This was not entirely new evidence but, instead, expanded upon the assertions made in the application. Miss Traynor expressed reservations about this approach, rightly noting that the primary burden of proof lay with the Applicants, no witness statement had been served by them and that she had not been able to prepare cross examination.

11. The Tribunal took the view that it could not determine the matter without understanding the parties' respective positions on the size of all of flats in the block. This was notably given that Miss Traynor stated that the Respondent did not accept the accuracy of the Energy Performance Certificates presented by the Applicants in the hearing bundles. The Tribunal noted that it had a discretion to probe the evidence, sometimes in an inquisitorial type way where justice required, in order to properly understand the facts. The application had made clear the assertion that the Property was smaller than other flats in the block, so the Respondent knew this was the case it was to answer. It was asserted by the Respondent that payments made, and delay, amounted to an admission or acceptance of the service charge rate and the Tribunal needed to understand Mr Fudalej's explanation in reply by reference to the emails produced by both parties. This was more fairly done in evidence, so that Miss Traynor would have the chance to challenge it, rather than in submissions when she would have less opportunity to do so.

12. Having regard to the overriding objective in Rule 3 of the Tribunal Procedure Rules to deal with cases fairly and justly, including ensuring that the parties are able to participate in the proceedings, the Tribunal permitted Mr Fudalej to give evidence on the limited basis described above. This was on the issue of: (1) why he believed the Property was smaller than the other flats and (2) when he first protested to the Respondent about the service charge percentage. Mr Fudalej gave this evidence and Miss Traynor cross examined him upon it.

13. No inspection of the Property was requested, and the Tribunal did not consider that one was necessary to determine the issues.

14. Mr Fudalej was asked to confirm that the Applicants had not made an application to the Tribunal under Section 20C of the Landlord and Tenant Act 1985 requesting an order that the Respondent should not be allowed to recover such costs or any application for reimbursement of his fees for these proceedings. He confirmed that the Applicants were pursuing neither. However, at the end of the hearing, when asked if he fully understood what had been asked of him, he indicated that he wished to make an application for reimbursement of fees.

15. Before moving to submissions, the Tribunal reiterated its concerns that there was no information presented to it about the block and individual flat sizes (save for the EPCs), or the estate charges relevant to the four blocks of which the Property is comprised within one. There was a brief adjournment whilst Miss Traynor explored this further with Mr Perryman however it was clear that no such information was immediately available (nor part of the housing stock transfer to the Respondent) and specific flat information would involve a significant cost to procure, requiring leaseholder engagement. It would, of course, also take time to obtain.

The Issues

16. The issues to be determined in this case are whether:

14.1 The current service charge percentage applicable for the Property as determined by the Respondent of 11.11% is a fair proportion of the service charge for the years 2021 to 2025 inclusive – and, if not, what is a fair proportion; and

14.2 The Applicants have agreed or admitted, or are to be taken to have agreed or admitted, or are otherwise prevented in law from challenging, the above apportionment (a) at all, or (b) for those years where they have paid i.e., those service charge years ending 31 March 2021 and 31 March 2022.

15 In relation to the first issue, the Applicants invited the Tribunal to make a determination as to whether the apportionment for the service charge years 2021 to 2025, in respect of the Property, is fair and reasonable. The main issue between the parties is whether the apportionment of 11.11% is fair with regard to the size of the Property in correlation with the other flats. The Applicants contend for an apportionment of 5.5% of the service charges for the respective years (and certain major works referred to in the papers as MW36 and MW37). The Applicants do not challenge the cost or standard of work. Whilst, during the hearing, some mention was made of individual items in service charge invoices, the Tribunal understands that this was to illustrate the alleged unfairness between flats rather than a direct challenge to the value or quality of the relevant works. To the extent that the Applicants' sought to go beyond that, it was outside the application in any event and no request to amend was made.

16 In relation to the second issue, the Applicants have paid service charges falling due to date. The Respondent contends that this precludes a challenge to the rate applied, in perpetuity, or, at least for the years to which those payments relate.

17 The Applicants also raised issues about their ability to pay a higher amount of service charges but this is not a factor that can play a role in

the Tribunal's decision as to the level of service charges. The Tribunal can only look at the liability for, and fairness of, those charges.

The Property and Lease

18 The Respondent is the registered freehold proprietor of the land known as Part of Home Farm, Bracknell, Berkshire. It became the proprietor following a housing stock transfer from Bracknell Forest Borough Council said to have taken place on 9 April 2008. This land includes four blocks, of which one is known as Wordsworth.

19 Wordsworth comprises nine flats. As has been mentioned, only some of the flats are liable under their leases to pay a variable service charge to the Respondent.

20 The Applicants are the leaseholders of the Property pursuant to a lease dated 12 June 2000, made between (1) Bracknell Forest Borough Council and (2) Mrs Alice Maidman, (the "Lease"). The demise was for a term of 125 years from and including 12 June 2000, at a rent of £10 per annum. The Applicants acquired the leasehold interest thereunder on 22 March 2021.

21 The Property is a studio flat. The other eight flats are two bedroomed.

22 The relevant provisions of the Lease are as follows:

22.1 Clause 1 states that the service charge shall be: *"A fair proportion of the costs incurred by the [Respondent] in meeting its obligations under Clause 4.2 of this Lease and of insuring the property and providing the services listed in the Fourth Schedule hereto (including the carrying out of external decorations."*;

22.2 Clause 3.1.3 includes a covenant by the lessees to pay the service charge and any improvement contribution in accordance with the provisions of the Fourth Schedule;

22.3 Clause 3.1.4 includes a covenant by the lessees to repay an appropriate proportion of the expenditure incurred in relation to the building and/or common parts and lists out the categories of items;

22.4 Clause 4.2 includes a covenant by the freeholder to keep the structure and exterior of the building (including the Property) in repair and to maintain and repair any other property over which the lessees have rights under the Lease;

22.5 The Fourth Schedule deals with services charges and paragraph 3(c) makes provision for the expenses and outgoings which are recoverable as service charges under the Lease.

The Law

23 The law applicable in the present case is as follows:

24 Section 19 of the Landlord and Tenant Act 1985 states the following:

19.— Limitation of service charges: reasonableness.

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 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.*

   ....

25 The Tribunal's jurisdiction to address the issues in section 19 is contained in section 27A Landlord and Tenant 1985, which states the following:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]2 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]2 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.

.....

26 In construing the meaning of words used in the Lease, the Tribunal is concerned to identify: *"What a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"*. In making this determination the Tribunal must focus: *"on the meaning of the relevant words…in their documentary, factual and commercial context."* (Lord Neuberger in the case of *Arnold v Britton* [2015] UKSC 36 at [15]) .

27 The Tribunal was referred to a number of authorities specifically on the interpretation of service charge provisions within Leases and on the principle of admission/affirmation arising from section 27A(4)(a) and 27A(5) of the Landlord and Tenant Act 1985. These are addressed in the discussion below.

The Applicants' case

28 Mr Fudalej gave evidence on the two concise points on which permission was given as mentioned above.

29 On the question of why he believed his flat was smaller than the others, Mr Fudalej stated that he had a concern in 2021 over the number of windows in respect of which charges were being made. He made reference to a photograph showing the Property. He relied upon the EPCs as demonstrating the size of the flats and referred to copies in the bundle. He had prepared a summary of this information, also in the bundle. He maintained that there was a size ratio of 1 to 2 as between his flat and the others. He had not been into the other flats, save for a passing visit to flat 112.

30 On the question of when he protested to the Respondent about the service charge percentage, he said that this was in 2023. He had noticed a 76.3% increase to service charges in two years i.e., a rise from £885 to £1,560 over the period 2021 to 2022. He said that he looked for help and information when he discovered this. He made reference to an exchange of emails in the bundle running from 5 August 2023 to 28 September 2023. In these emails he raised a query with the Respondent about how it had arrived at the charges. It was eventually made clear to him that 11.11% was the contribution rate. He said that he had not challenged this earlier as he believed that his contract required payment. Under cross examination he conceded that he had received the service charge estimate and invoice for the year to 31 March 2021 prior to or around the time of purchase and, at the time of issue, for 31 March 2022 and 31 March 2023. He conceded that these documents referred to the 11.11% being applied and that he had not challenged this. He maintained that he did not understand at that time how charges were split between the flats. He conceded that he did have a copy of the Lease and did know the Applicants were liable to pay a fair proportion of the service charges. He confirmed that his first challenge was by way of the emails of August and September 2023. He said that he did not have the information which he has now as to the size of the flats. He was referred in cross examination to the Lease and conceded that it did not refer to the square metre/feet size of the flats. He said that the Lease did not refer to an equal split of service charge between flats either. He relied on the EPCs but confirmed that he had not made enquiries with the assessor. He that confirmed he has measured his own flat but had not been in the other flats or measured them.

The Respondent's case

31 The Respondent did not rely on witness evidence. It relied on the documents in its bundle and the Tribunal was helpfully taken through these by Miss Traynor. In particular, the Lease, service charge demands and communication between the parties as referred to above.

32 The Respondent's position was that the Applicants must satisfy the Tribunal that the apportionment equally between the nine flats (being 11.11% each) is not fair. It was asserted that they had not done so.

33 The Respondent's primary position is that the Applicants have lost the right to challenge the practice of apportioning equally due to inaction. The right was either lost in perpetuity or it was lost for 2020-2022 due to multiple payments without protest or qualification during a period when the Applicants had access to the relevant information (e.g., the service charge demands). They waited a long time before making a challenge. If this is accepted then it was submitted that the Tribunal has no jurisdiction to make a determination in relation to those service charges. Several authorities were cited, principally *G&A Gorrara Ltd v Kenilworth Court Block E RTM Co Ltd* [2024] UKUT 81 (LC).

34 On the issue of apportionment, the Respondent's position was that Clause 1 of the Lease gives the Respondent a discretion to choose any contractually permissible apportionment method. The meaning of 'fair' involves an objectively reasonable assessment, which includes a consideration of the outcome for the lessees. We were referred to *Bradley v Abacus Land 4 Ltd* [2024] UKUT 120 (LC) at [50] to [52].

35 On the issue of flat sizes, it would not necessarily be logical to argue that a two bedroomed flat would cause greater wear and tear to the internal and external common parts, and calculation by floor area would be more complex and subject to argument as to what measurement of floor area should be used.

36 Miss Traynor asserted that the apportionment proposed by the Applicants would not be fair. It would ignore the use and benefit of the common parts of the internal and external building, weighing more heavily on other leaseholders.

37 Miss Traynor noted the absence of expert evidence and that the EPC certificates were not definitive. For example, details of the assessor and their methodology were not known. There was no basis on which the Tribunal could make a finding of flat size.

38 For the Respondent, it was argued that the apportionment method adopted by it had the benefit of simplicity and transparency. It was not arbitrary or capricious. It had been longstanding. It need only be a fair proportion.

The Tribunal's determination

39 The Tribunal is required to determine the question of what a fair proportion of service charge for the Property should be and whether the Applicants have agreed or admitted the apportionment for some or all years on the civil standard of proof, i.e., on the balance of probabilities.

40 The Applicants referred to the impact of the decision on future major works, in particular roofing works. This is not relevant to what is fair.

41 It is common ground that the Applicants are responsible for paying a service charge and that the Lease provides for a fair proportion of costs incurred.

42 The Applicants clarified that they were not challenging accounts or costs or fees and not seeking repayment of sums paid. The Applicants made no challenge to the level of costs, standard of work, nor the right to charge internal and external expenditure.

43 The Application invites the Tribunal to substitute the apportionment for the 2021-2025 service charges to what is fair and reasonable. If this is done, that apportionment would apply retrospectively to sums already paid and to the major works MW36 and MW37.

44 There were two principal issues between the parties. Acceptance and fair proportion.

Acceptance

45 On the issue of acceptance, section 27A(4)(a) of the Landlord and Tenant Act 1985 prevents a challenge to apportionment if the Applicants are taken to have agreed or admitted the service charges. The Applicants had made a number of payments towards the major works without any indication that those payments were being made under protest. The case of *Shersby v Grenehouse Park Residents Co Ltd* [2009] UKUT 241 (LC) supports Miss Traynor's proposition that the payments could constitute an implied admission.

46 Under s27A(5) of the Landlord and Tenant Act 1985, the Applicants are not to be taken to have agreed or admitted any matter by reason only of having made any payment. On the question of whether there is more than a mere payment, the Applicant's acquired their flat in 2021 and the service charge estimates and invoices for 2021 and 2022 made reference to 11.11%. This, in the Tribunal's judgment, is sufficient to put the Applicant's on notice of the methodology adopted. The Applicants say that they did not have relevant information. The Tribunal finds that they knew what was being charged and the percentage. All information was available from service charge invoices and estimates so a challenge or at least further enquiry could have been made. Whilst it is noted in paragraph 50 of the *Gorrara* case that unqualified payment or payments alone do not meet the requirements of section 27A(4)(a), and delay is not the only relevant factor, the availability of information is a relevant factor. The Applicants paid the sums as demanded with no challenge for two years. Their explanation is that they did not know how they were calculated but paid them anyway. There was no suggestion of non-receipt. It was only later when there were increases when they looked into how the service charge invoices were arrived at. The first enquiry, and then challenge, came in August and September 2023.

47 The Tribunal finds that the Applicants can be taken to have agreed or admitted the service charges for 2021 and 2022. It therefore has no jurisdiction to determine the service charge for those years, pursuant to Section 27A(4)(a) of the Landlord and Tenant Act 1985.

48 The Tribunal does not consider that such payments bind the Applicants to the methodology adopted or, in any event, in perpetuity. The statutory jurisdiction is for determination of a service charge unless it is taken to be agreed or admitted. This in itself suggests that each service charge levied must be considered on its own merit.

49 The Tribunal therefore finds that it has jurisdiction to determine the service charge percentage for 2023, 2024 and 2025.

Percentage

50 Miss Traynor pointed us to the burden on the Applicant to prove that the apportionment of 11.11% is not fair. We remind ourselves that the decision should be made on the evidence and the burden of proof relied upon as a last resort. We were referred to paragraphs 27 and 28 of *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC. This cites from *Yorkbrook Investments Ltd v Batten* (1986) 18 HLR 25. Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this: *"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."* Thus, in practical terms, the Applicants must establish a case on the face of it and the Respondent must meet the allegations. Ultimately, the Tribunal must consider the whole of the evidence.

51 The parties respectively highlighted that the Lease refers neither to size of the flats nor to a percentage. This does not take matters forward on the issue of fairness i.e., whether the Respondent has exercised its discretion properly. We accept Miss Traynor's proposition that the Respondent can decide and apply the proportion and the tests are whether this is contractually legitimate and a rational decision. We were referred to the case of *Williams and others v Aviva Ground Rent*

Investors GP Ltd [2023] UKSC 6 on this point. We accept the proposition that the decision need not be a reasonable one, it must only be rational; these are different things.

52 The Tribunal was referred to the case of *Hawk v Eames* [2023] UKUT 168 (LC) which, at paragraph 45, confirms this contractual legitimacy point. In other words, there is no statutory restriction on a freeholder's power to make any apportionment so any concepts of fairness, reasonable or otherwise must derive from the wording in the Lease itself.

53 We were referred to the case of *Braganza v BP Shipping Ltd* [2015] UKSC 17, although it was not in the authorities' bundle provided. Paragraph 23 cites from another case, *Hayes v Willoughby* [2013] UKSC 17, [2013] 1 WLR 935. Lord Sumption says at paragraph 14: *"Rationality is not the same as reasonableness. Reasonableness is an external, objective standard applied to the outcome of a person's thoughts or intentions. ... A test of rationality, by comparison, applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse."*

54 The Applicants must therefore satisfy the Tribunal that the determination by the Respondent is arbitrary, capricious or defies logic.

55 The Applicants asserted that any quotations for works are based on size and the Respondent should take care and be transparent by measuring the units. The Tribunal rejects this analysis as it wrongly focuses on individual costs rather than an interpretation of the Lease that applies across all service charges. The Applicants also referred to the rate of service charge being proportionate. This may be their use of the terms 'proportion' and 'proportionate' interchangeably. For the avoidance of doubt, there is no express mention of proportionality in the Lease in relation to the apportionment of service charge.

56 The Applicants asserted that they could not access the communal hall, having no passcode. This was given in submissions rather than evidence, however it was not challenged and the Tribunal was referred to a photograph showing that the Applicants access to the building was separate to other flats.

57 The Tribunal accepts the Respondents submission that the EPCs may not be 100% accurate when citing internal floor sizes. The 31sqm cited for the Property against 82sqm for other flats, and with most above 70sqm supports the Applicants' case that their flat is considerably smaller and half, or less than half, the size of all of the others. It is not an ideal situation when the Tribunal did not have more precise evidence from

either party but it is satisfied that, on the balance of probabilities, the Property is approximately half the size, or lower, of the other flats.

58 The Applicants contention that 5.5% is a fair proportion is based on the simple logic was that, in broad terms, their flat is half the size of the others.

59 In essence, the Respondent has an unqualified discretion to determine what is fair, as long as it is not arbitrary or capricious. Miss Traynor invited us to find that the decision was inherited, the Respondent stepped into the shoes of the previous freeholder, it was an established percentage, it did not know the sizes of each flat, it had acted in good faith, there was no attempt to deceive and it had not taken irrelevant factors into account. It was contractually permissible to apply the same percentage to each flat and not without logic or made on a whim. An even split is not unusual. In effect, to be irrational, it would need to be a decision no reasonable landlord would make.

60 The Tribunal's view is that the decision is irrational and not one which a reasonable landlord would make. A reasonable landlord would make themselves aware of the sizes of the flats before making, or adopting, a determination and exercising its contractual power under the Lease.

61 The Tribunal is concerned at the dearth of information about flat sizes and the block – that goes to the heart of whether it is rational to clarify before continuing. Lease plans for other flats not produced by the Respondent which would have assisted. The Respondent said that it did not have them following acquisition of Property. That may be so but the question is whether it is rational to continue an arbitrary percentage without that enquiry. The Tribunal's view is that it is not. The Property is one of nine. It was common ground that it was much smaller than all of the others. It was also common ground that all others were two bedroomed and the subject flat a studio flat. It was not challenged that the Applicants could not access communal areas. There were stark differences between the one flat in issue and all the other eight. Those, in the Tribunal's view, are not matters which can or should be ignored. It defies logic to do so, and doing so merely because that is how it has always been is, in the Tribunal's view, arbitrary.

62 The Tribunal is mindful that it was not asked to determine the fairness or otherwise of contributions toward service charge made by other flats; or, indeed, the impact of its determination upon those flats. We observe, however, that the totality of the units, arriving to 100% of the service charges, must be considered in order to arrive at an accurate contribution for the Property. Based on one half-unit size (i.e., 8.5 units sharing 100% of the service charges), the Tribunal determines that 5.88% (rounded down from 5.8823%) is a fair proportion for the Property for the service charge years mentioned. The remaining eight

units would bear the remaining 94.12% of each service charge demand in accordance with the terms of their respective leases.

63 On this basis, the Tribunal concludes that a fair proportion of the service charge for the Property in respect of the service charge years 2022, 2023 and 2024 is 5.88%.

64 At the end of the hearing, Mr Fudalej raised payment terms, if the Applicants were liable to 11.11%, they might need some indulgence from the Respondent. This may have less significance given the Tribunal's findings. To its credit, the Respondent had already referred to this in correspondence and Miss Traynor indicated that it was something the Respondent would consider in the usual way for all its leaseholders face with larger than usual service charges. The Tribunal has no power to make such an order that financial sums are paid in a particular manner or form. However, it encourages discussions between parties toward resolution of any disputes.

65 No application for a refund of fees was made in the application. Mr Fudalej indicated at the start of the hearing that he was not seeking a section 20 order or reimbursement of fees. When asked by the Tribunal at the end of the hearing he asked that the Respondent should reimburse the application fee and hearing fee (£300 in total).

66 The Respondent was not given fair notice of the fees application in the application notice or even at the start of the hearing. The Tribunal has discretion under Rule 13(2) of the Tribunal rules to consider a fees award of its own volition. The Applicants have not been wholly successful for all the service charge years challenged. The application for fees is refused.

Name: Judge A. Arul Date: 11 April 2025

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).