FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00BK/LSC/2024/0206** **LON/00BK/LAM/2024/0024**
Property	**:**	**Ground Floor Flat, 229 Sussex Gardens, London, W2 2RL**
Applicant	**:**	**Ms Shelley Sinclair**
Representative	**:**	**In person**
Respondents	**:**	**231 Sussex Gardens RTM Limited (1)** **231 Sussex Gardens Freehold Limited (2)**
Representative	**:**	**Ms Rebecca Ackerley of Counsel**
Type of applications	**:**	**Application under s.27A Landlord and Tenant Act 1985** **Application under s.24 of the Landlord and Tenant Act 1987**
Tribunal members	**:**	**Judge N Hawkes** **Mrs E Ratcliff MRICS** **Mr O Miller BSc**
Date and venue of hearing	**:**	**8, 9 and 10 January 2025 at 10 Alfred Place, London WC1E 7LR with a reconvene for decision making on 20 January 2025**
Date of decision	**:**	**26 February 2025**

DECISION

Decisions of the Tribunal

(1) In application reference LON/00BK/LSC/2024/0206, the Tribunal makes the determinations under the various headings below.

(2) In application reference LON/00BK/LSC/2024/0206, the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that 50% of the costs incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

(3) In application reference LON/00BK/LSC/2024/0206, the Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 50% of the Applicant's liability, if any, to pay an administration charge in respect of the Respondents' costs of these proceedings.

(4) The Tribunal's decision making in application reference LON/00BK/LAM/2024/0024 is adjourned to take place after the proceedings with Claim Number K01CL499 in the County Court at Central London have been finally determined.

(5) The parties are directed to send the Tribunal a copy of the order fixing the trial date in the County Court proceedings **within 7 days of receipt**.

(6) The parties are, in any event, directed to provide the Tribunal with a written update concerning the progress of the County Court proceedings **by no later than 5pm on 28 April 2025.**

(7) For the avoidance of doubt, the evidence is closed, and no party has permission to make any further representations to the Tribunal concerning application reference LON/00BK/LAM/2024/0024 pending receipt of the Tribunal's final decision.

The applications

1. The Applicant's property, Flat 1, 229 Sussex Gardens, London, W2 2RL ("Flat 1"), is part of a building which is known as and situate at 229-233 Sussex Gardens, London, W2 2RL ("the Building").

2. The Second Respondent, 231 Sussex Gardens Freehold Limited, holds the freehold interest in the Building. Despite its name, the First Respondent, 231 Sussex Gardens RTM Limited, is not a right to manage company pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002. It was joined as a party to the leases of individual flats

in the Building granted by the First Respondent with the intention that it would be responsible for providing the necessary services to the building.

3. The Applicant, Ms Shelley Sinclair, currently holds a long lease of Flat 1, which was granted by the Second Respondent on 12 June 2010 ("the Lease"). The term of the Lease is 999 years from 12 June 2010 and the lease is registered under Title Number NGL913294.

4. There are two applications concerning 229-233 Sussex Gardens, London, W2 2RL before this Tribunal.

5. The first application is an application under reference LON/00BK/LSC/2024/0206 in which the Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether certain service charges are reasonable and payable.

6. The Tribunal is grateful to the Applicant for providing a bundle index with page references for the PDF and the hard copy versions of the hearing bundle, both of which were used during the hearing.

7. The service charge year runs from 1 April to 31 March and the issues in dispute are as follows:

    (i) whether the actual service charges claimed for the service charge years 2022/3 and 2023/4 and/or the advance service charges claimed for the year for 2024/25 are reasonable and payable by the Applicant;

    (ii) whether an administration charge in the sum of £2,500 is payable by the Applicant; and

    (iii) whether orders under section 20C of the 1985 Act and/or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") should be made.

8. The second application is an application under reference LON/00BK/LAM/2024/0024 for the appointment of a manager pursuant to the provisions of the Landlord and Tenant Act 1987 ("the 1987 Act").

9. The Respondents contend that the Applicant's Lease is forfeit and that she therefore does not have the standing necessary to make the second application.

10. The Tribunal has been informed that, on 11 August 2022, the Second Respondent served a notice pursuant to section 146 of the Law of Property Act 1925 on the Applicant and that, on 21 April 2023, the Second Respondent issued forfeiture proceedings against the Applicant in the County Court at Central London under Claim Number K01CL499 ("the County Court proceedings"). The Applicant filed a Defence and the trial was originally listed to take place 12 December 2024, but was subsequently adjourned. So far as the Tribunal is aware, the new trial date has not yet been fixed.

11. The Respondents were content for the Tribunal to hear the evidence and argument in respect of the appointment of manager application, whilst maintaining their position that this application should be immediately dismissed because the Applicant's Lease is forfeit and she therefore does not have the necessary standing to make this application. By section 21 of the 1987 Act, a "tenant of a flat" has the right to make an application for the appointment of a manager.

The hearing and inspection

12. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 8, 9 and 10 January 2025. The Tribunal reconvened, in the absence of the parties, to carry out its decision making on 20 January 2025.

13. The Applicant appeared in person at the hearing and Ms Ackerley of Counsel represented the Respondents. The Applicant was accompanied by Mr Davies, her husband. Ms Ackerley was accompanied by Mr Chris Peters, a Director of Inspired Property Management Ltd ("IPM") who are the current managing agents of the Building; by Mr Rupert McCowan, who is a Director and Co-Chairman of the Respondent companies and a lessee of one of the flats at the Building; and by Mr Gavin Rankin, who is also a Director and Co-Chairman of the Respondent companies and a lessee of one of the flats in the Building.

14. The proposed Tribunal appointed Manager attended the hearing on 8 and 10 January 2025, in accordance with instructions given to her by the Tribunal.

15. An inspection took place on the morning of 8 January 2025, prior to the start of the hearing. The people listed above attended the inspection (the proposed Manager had not been required to attend and she arrived part-way through the inspection).

16. The Tribunal explained that submissions could not be received at the inspection but that the parties could point out anything which they wished the Tribunal to see. Any relevant submissions could then be made at the hearing.

17. The Tribunal inspected the front and rear exterior of the Building, various internal communal areas, and the interior of Flat 1. The Building comprises three converted Victorian terrace town houses, which form part of a long terrace of similar properties, and it contains thirteen flats.

18. Flat 1 has its own private entrance and three other flats also appear to have private entrances. The communal entrance serving the remaining flats is accessed via a central front door at 231 Sussex Gardens. The internal communal areas are generally in reasonable order.

19. The Building has brown brick, solid external walls with stucco work at ground floor level and a slate tile hung mansard roof with dormer windows behind a low parapet stucco wall. There are stucco porticos to the three original front entrance doors, iron railings protecting access wells to the basement areas, and there is a balcony at first floor level with cast ironwork balustrade. The Building is over six floors in total: basement, ground floor and 4 further floors and it is Grade II listed.

20. The exterior of the Building is in poor condition and in urgent need of repair and redecoration to prevent further deterioration and to return the exterior to a reasonable standard. The windows are wooden and, in places, visibly rotten. The stucco work has notable algae growth and signs of pollution, and there is obvious cracking to the parapet rendering and in other places.

21. The hearing began on 8 January 2025, following the inspection. At the commencement of the hearing, the parties were informed that they could rely upon anything in the hearing bundles which was relevant to the issues within the Tribunal's jurisdiction. It was also explained that they should present the entirety of their cases orally at the hearing.

22. This was so that everyone would know exactly what the other party's case was and how it was being presented, and so that any party with an alternative viewpoint would have the opportunity to make oral representations to the Tribunal in response to each point which was being raised. The Tribunal has considered all the submissions that were made but will only refer below to those which it is necessary to set out in order to understand this decision.

23. Before the first witness was called, the Applicant applied orally to rely upon some additional documents which were not included in the hearing bundles. Ms Ackerley agreed on behalf of the Respondents to the Applicant's application, insofar as it concerned any documents which had been served by the Respondents in these proceedings in accordance with the Tribunal's Directions. The Tribunal then determined, by consent, that any such documents would be admitted in evidence.

24. There is a long history of litigation concerning the parties. The Tribunal has been informed that proceedings under section 27A of the 1985 Act were issued in 2014, 2017 and 2021. As stated above, there are currently forfeiture proceedings in the County Court. For clarity, this decision will focus on the issues which are currently before this Tribunal.

25. At the conclusion of the hearing, the Tribunal informed the parties that, whilst no party had permission to file any additional evidence or to make any additional representations concerning these Tribunal proceedings, copies of any Court orders made in the County Court proceedings should be sent to the Tribunal.

The Tribunal's determinations

The application pursuant to section 24 of the 1987 Act

26. Rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") includes provision that:

> *(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.*
>
> *(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.*
>
> *(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—*
>
> *…*
>
> *(i) decide the form of any hearing;*
>
> *(j) adjourn or postpone a hearing;*

27. Rule 3 of the 2013 Rules includes provision that:

> *(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
>
> *(2) Dealing with a case fairly and justly includes—*

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

28. The Tribunal determines that it is fair and just in accordance with the overriding objective to adjourn the Tribunal's decision making in the appointment of manager proceedings, pursuant to rule 6(2)(j) of the 2013 Rules, until after the conclusion of the County Court proceedings.

29. This Tribunal does not have jurisdiction to determine whether any right to forfeit the Applicant's Lease has been waived (as opposed to whether a covenant has been waived) or to determine whether relief from forfeiture should be granted. For this reason, no evidence or argument was heard on these issues.

30. It is in the interests of justice that any such issues are finally determined in the County Court proceedings before this Tribunal determines the appointment of manager application, as would have happened had the County Court trial, which was due to take place on 12 December 2024, not been adjourned.

31. This Tribunal cannot otherwise know whether the Applicant will be a tenant of Flat 1 after the conclusion of the County Court proceedings. If it subsequently becomes apparent that the Lease is currently forfeit but relief from forfeiture is granted before the Tribunal reaches its decision, the determination of the appointment of manager proceedings after the grant of relief from forfeiture is likely to be more cost effective for the parties and for the Tribunal than requiring the Applicant to start fresh proceedings under the 1987 Act after the grant of relief from forfeiture.

In any event, the position cannot be ascertained until after the conclusion of the County Court proceedings.

32. For these reasons, the Tribunal's decision making in case reference LON/00BK/LAM/2024/0024 is adjourned to take place after the County Court proceedings have been finally determined.

The application pursuant to section 27A of the 1985 Act

33. By paragraph 2 of Schedule 3 to the Lease, the Applicant covenanted to pay 10.97% of the expenses estimated by the Second Respondent Management Company as likely to be incurred in the forthcoming service charge year in connection with services specified in clauses 1 to 10 of Part C of Schedule 7.

34. At paragraph 2(a) of Schedule 3 to the Lease, there is provision for the Second Respondent to recover sums from the Applicant to reflect any underfunding of the service charges. Paragraph 2(b) of Schedule 3 of the Lease includes provision for the Second Respondent to hold any excess payments to the credit of a surplus sinking fund to be used exclusively towards future service charge expenditure for the services set out in clauses 1 -10 Part C Schedule 7. There is also provision for a reserve fund to be set up in respect of future major works.

35. The service charge items which are in dispute are listed in a Scott Schedule and they fall under the headings which are set out below. Where there is a dispute concerning their payability under the terms of the Lease, the Tribunal has concluded below that the issue of payability has already been determined by a previous Tribunal and cannot be re-litigated.

External Works Reserve Fund Contributions

36. Although the funds are held in a single bank account, four reserve funds have been set up and it is common ground that the Applicant is required to contribute to the reserve fund for future external major works.

37. The Applicant contends that her reserve fund contributions should be limited to £1,000 in reliance upon a decision dated 22 June 2022 of a differently constituted Tribunal ("the 2022 Tribunal Decision").

38. The 2022 Tribunal Decision concerned the actual service charges for the service charge years 2017/18, 2018/19, 2019/20, 2020/21 and the estimated service charges for the year 2021/22. For these periods, the Applicant's annual reserve fund contribution was limited to £1,000.

39. The RICS Service Charge Residential Management Code (3rd Edition) ("the RICS Code") includes provision at paragraph 7.5 that:

The level of contributions for simple schemes should be assessed with reference to the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.

The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy agreement does not make any other provision, is to take the expected cost of future works, including an allowance for VAT and fees, and divide it by the number of years which may be expected to pass before it is incurred.

The level of contributions should be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals. This will vary for each scheme depending on complexity, age, condition and the relative size of funds held.

40. The amount of any reserve fund contributions can vary over time with reference to the factors which are set out RICS Code. Accordingly, a Tribunal determination that a certain level of contribution is reasonable in one period is not determinative of the level of contribution that will be reasonable in future periods when the circumstances and the evidence before the Tribunal may be different. For these reasons, the Tribunal is not satisfied that the Applicant's reserve fund contributions are limited to £1,000 per year in respect of the service charge years which are before this Tribunal by virtue of the 2022 decision.

41. The amount of the external reserve fund contributions which are sought from the Applicant are as follows:

2022/2023 – Total figure: £16,000.00 Applicant's proportion: - £1,755.20 (actual service charge)

2023/2024 – Total figure: £26,000.00 Applicant's proportion: - £2,852.20 (actual service charge)

2024/2025 – Total figure: £26,000.00 Applicant's proportion: - £2,852.20 (estimated service charge)

42. Accordingly, the total external reserve fund contributions being sought from all lessees in respect of these years is £68,000.

43. Mr Peters gave evidence that IPM did not carry out a calculation in accordance with the RICS Code in order to ascertain the appropriate level of the reserve fund contributions. However, it was apparent from the Tribunal's inspection that the condition of the exterior of the Building is poor and in need of urgent maintenance, and from the tender documents and from Mr Peters' oral evidence that the cost of that the external repairs may be in the region of £300,000. The work is due to commence in 2025 and it is reasonable to provisionally budget for a cost in the region of £300,000 now that the tender process has taken place.

44. Mr Peters gave evidence that, as at 7 January 2025, IPM held cash in the sum of £93,319 for all reserve fund purposes. We accept this evidence. The Applicant contends that, as at 24 March 2023, there should have been cash in the sum of approximately £141,000 in the external repairs reserve fund. She was informed that the cost of the proposed work to the exterior of the Building would be in the region of £200,000, but this was before the tender process had taken place.

45. The issue for this Tribunal is whether it is reasonable for £68,000 to be collected through the actual and estimated service charges over the relevant period in anticipation of the proposed external major works programme.

46. Paragraph 7.5 of the RICS Code should have been followed and the Applicant was correct in contending that the reserve fund contributions should have been backed up by a calculation. However, it is apparent from the Tribunal's inspection that the exterior of the Building is in poor condition and in urgent need of repair and redecoration.

47. Having considered the current condition of the Grade II listed Building, the tender specification of works, the evidence concerning the reserve fund, and applying our general expert knowledge and experience as an expert Tribunal, we are satisfied that it is reasonable to collect £68,000 on account of the major work to the exterior of the Building which is due to commence in 2025.

48. Accordingly, the Tribunal finds that the service charges which have been demanded under this heading are reasonable and payable. For the avoidance of doubt, this determination only concerns reserve fund contributions and we express no opinion as to whether or not the final cost of the proposed major work is likely to be reasonable.

Gas costs and gas reserve

49. The contributions sought from the Applicant under this heading are as follows:

2023/2024 - Total figure: £34,000.00 Applicant's proportion: - £3,729.80 (actual service charges)

2024/2025 - Total figure: £29,000.00 Applicant's proportion: - £3,181.30 (estimated service charges)

Schedule E – Boiler Reserve

2023/2024 - Total figure: £1,200.00 Applicant's proportion: - £131.64 (actual service charges)

2024/2025 - Total figure: £1,200.00 Applicant's proportion: - £131.64 (estimated service charges)

50. The Applicant has disconnected Flat 1 from the communal boiler system which serves the Building (together with various neighbouring buildings), having installed an individual boiler in Flat 1.

51. In *Willow Court Management Co (1985) Ltd v Alexander, Sinclair v 231 Sussex Gardens Right to Manage Ltd, Stone v 54 Hogarth Rd, London SW5 Management Ltd* [2016] UKUT 290 (LC), the Upper Tribunal recognised that Flat 1 is not connected to the communal boiler system and ruled as follows regarding the true interpretation of the Applicant's Lease (emphasis supplied):

"72. Ms Sinclair's flat has its own entrance and does not share common parts with other flats in the Building. Nor is the flat provided with heating from the communal heating system which serves both the Building and other buildings on the Church Commissioner's former estate. Before 2012 hot water, but not heating, was supplied to Ms Sinclair's flat from the communal boiler but this service was discontinued in 2012 when she upgraded her own boiler to provide hot water as well as heating.

...

110. The drafting of these provisions is somewhat opaque but we are satisfied that:

- ***(a) The obligation to pay 10.97% relates to the costs of the central boiler for the heating system and includes its provision, maintenance and operation;***
- *(b) The obligation to pay that 10.97% continues until "each flat" meaning all of the flats have installed individual boilers;*
- *(c) The "fair proportion" of costs relates only to the provision of hot water to the taps in individual flats and not to the provision of hot water for the purposes of heating. This is clear because of the specification of "hot water to the taps" in clause 11 of part C and also because of the clear distinction between the proviso in*

clause 2 (where the obligation to pay for hot water ceases where a lessees gets their own hot water system) and the definition of Reserved Property (where the obligation to pay for maintenance etc. and hot water for heating does not so cease until each flat has its own separate system);

- *(d) That Miss Sinclair was charged 10.97% of the cost of the provision of hot water to the taps in her flat until 2014 but was reimbursed the cost from 2012 until 2014 to reflect the fact that she had installed her own hot water system in 2012 and that this reflected the lease terms.*

111. We therefore dismiss Ms Sinclair's appeal in respect of the hot water issue, although for different reasons from those given by the FTT. Ms Sinclair's complaint was that the Management Company had failed to reduce the heating costs below 10.97% despite the fact that she received no heating. Since ***we are satisfied that Miss Sinclair was obliged to pay for the heating costs under the terms of the lease despite the fact that she had her own heating system****, that claim cannot succeed."*

52. The Applicant submits that the First Respondent is estopped from claiming any heating costs from her because she was not billed for the heating costs from 2012 to 2023. In support of this submission, she relies upon *Sanderson v Cambridge Park* [2018] UKUT 182 (LC), a case concerning estoppel by convention, a copy of which she has helpfully provided in her digital hearing bundle.

53. However, the facts of that case are very different from those of the present case. At paragraph 23 of the judgment, the Upper Tribunal stated (emphasis supplied):

"In summary, this Tribunal considers that ***in the absence of any express obligation in his lease to contribute to the costs of communal heating****, the appellant's conventional estoppel liability was conditional on that heating being provided to the Flat, and that such continuing liability terminated when, through no fault on his part, the appellant disconnected the Flat from the communal heating system in response to the respondent ceasing to provide adequate heating to the Flat in and after 2008."*

54. In the present case, in having regard to the background of extensive litigation between the parties, it would be difficult to infer any shared common assumption, with the intention of affecting the parties' legal relationship, to the effect that the Applicant would not have to pay her share of the communal heating charges.

55. Further, the Applicant did not refer to any specific evidence of detrimental reliance during the course of the hearing or explain why it

would be unconscionable for the Respondents to assert the true legal position. Accordingly, the Tribunal is not satisfied that the elements of estoppel by convention are made out.

56. The Respondents have accepted in the Scott Schedule and at paragraph 54 of their Statement of Case that part of the budgeted sum relates to hot water (that is, hot water to taps rather than to radiators) and they have stated that they will credit 50% of gas charges to reflect this. Mr Peters gave evidence that the district heating system serves multiple buildings and that the company which oversees the district heating system bills the subject Building a proportionate amount of the total cost. Unfortunately, there is no breakdown differentiating between the heating costs and the hot water costs. Mr Peters said that the Applicant would be charged 10.97% of 50% of the relevant costs. He gave evidence that 50% of the total bill had been attributed to heating and 50% to hot water but the Respondents did not seek to put forward any reasoned basis for this 50/50 split.

57. Mr McCowan gave evidence that, when he moved into the Building, all of the flats were connected to the communal system. However, as flats were renovated, some of the lessees installed their own individual boilers. He stated that, at the present time, the lessees of four flats (including himself) have completely disconnected the heating and hot water supply serving their flats from the communal system. Four flats continue to receive heating and hot water via the communal system and about five flats have some kind of "cross-over" such as their own individual boiler to supply an extra bathroom.

58. Mr McCowan said that, on renovating his flat, he saw that from one supply pipe entering his flat some of the water went to heat the radiators and some of it went to the hot water taps. He did not know what percentage of the hot water served the taps and what percentage served the radiators. He described a "spiders' web" of pipes dating from the Edwardian era.

59. On being questioned by the Applicant, Mr McCowan accepted that a single former supply pipe to Flat 1 had been capped off, and this was something which the Tribunal also saw during the course of the inspection. Mr McCowan also accepted that the radiators in the common parts were hotter than those in Flat 1 at the time of the inspection. Mr McCowan was a careful and considered witness and we accept his evidence on the balance of probabilities.

60. The Respondents have failed to provide any evidence in support of their contention that 50% of the communal gas bill relates to the heating costs. We have not been provided any evidence concerning the number of radiators served by the communal heating system, the number of hot water taps served by the communal heating system, the number of bedrooms in each category of flat or concerning floor areas. Doing our

best on the extremely limited evidence available we find that the Applicant's share should be reduced to 10.97% of 40% of the total bill.

61. In the absence of any evidence in support of the Respondents' case that the energy bills comprise 50% gas used for heating and 50% gas used to supply hot water to the flats that are still connected to the system, we have resolved any doubts in the Applicant's favour. There supply of energy for heating is seasonal and we noted that the common parts radiator was hot on inspection. Further, there was no evidence that individual boilers are being used to supply heating in the hybrid flats. Accordingly, on the extremely limited evidence available, we find on the balance of probabilities that the appropriate way to split the gas bill is 40% for heating and 60% for hot water.

62. The sums payable by the Applicant are therefore as follows:

2023/2024 - Total figure: £34,000.00 Applicant's proportion: - £1,491.92

2024/2025 - Total figure: £29,000.00 Applicant's proportion: - £1,272.52

63. The Tribunal was not referred to any evidence that the lessees of the flats which remain connected to the communal system have complained that the service is not being provided to a reasonable standard.

64. In all the circumstances, we are satisfied that the boiler reserve costs, which have been claimed from the Applicant and which are set out above, are payable in full.

Fire Alarm Costs

65. The Applicant submits, in reliance upon the 2022 Tribunal Decision, that any service charge costs relating to the installation and maintenance of the fire alarm systems at the Building are not payable by her.

66. At paragraph 42 of the 2022 Decision, the Tribunal held:

"As we have considered previously, we find that in respect of Ms Sinclair's obligations under her lease, she has no contractual liability to pay towards the installation or maintenance of the fire alarm systems for all the years in dispute. As such her contribution for these items is to be reduced to zero for all relevant years."

67. We accept the Applicant's submission. As is stated at paragraph 43-23 of Phipson on Evidence 20th Ed. (to which the parties were referred at the hearing):

"A final adjudication of a legal dispute is conclusive as between the parties to the litigation and their privies as to the matters necessarily determined, and the conclusions on these matters cannot be challenged in subsequent litigation between them."

68. Unlike the reserve fund contributions, the interpretation of the Lease is not a matter which can vary from year to year. Accordingly, the 2022 Tribunal's determination on the issue of the true interpretation of the Lease, insofar as it concerns the costs of the installing or maintaining of the fire alarm systems, is binding and nothing is payable by the Applicant under this heading.

Insurance excess £2,500

69. The Respondents seek to recover an insurance excess from the Applicant such an administration charge pursuant to paragraphs 2(b) and (c) of Schedule 5 of the Lease, by which the Applicant covenanted as follows:

2. REPAIRS BY LESSEE

During the continuance of the said term keep the interior of the demised premises (including…pipes radiators (if any) and the water and sanitary apparatus…and all fixtures fittings and other appurtenances thereof) substantially repaired maintained renewed amended cleansed…

PROVIDED:

(a) that notwithstanding any defect or want or reparation which may have existed at the date of this Lease the foregoing covenant shall be construed and have effect as if the said interior of the demised premises had then been in such order and condition and state of repair as is required by the express provisions hereof; and

(b) that the Lessee will indemnify the Lessor and the Management Company against any claim loss damage or expense caused to the Lessor or to the Management Company by reason of any breach of the repairing obligation on the part of the Lessee; and

(c) the Lessees repairing obligation under this clause shall not extend to matters covered by the insurance policy referred to in clause 3 of part C of Schedule 7.

70. Mr Rankin gave evidence, which the Tribunal accepts on the balance of probabilities, that water emanating from the bathroom in Flat 1 caused damage to the flat below. Remedial work was carried out. An insurance claim was made and an excess in the sum of £2,500 was payable under

the Respondents' insurance policy for the Building. The Applicant questioned why the lessee of the flat below did not mention this to her. He was not available to be questioned and, in any event, and there was no requirement for him to communicate with the Applicant directly.

71. The Applicant gave oral evidence on this issue. She accepted that there had been a leak from under her bath but said it was an accident. She agreed that she had sent an email to Sloan Management (the previous managing agents) stating: *"There was a leak from my bath which the handyman fixed"*. The Applicant stated that she did not know how the leak was caused.

72. We accept the Applicant's evidence that she did not intentionally cause water to damage the flat below. However, on the limited evidence available, we find as a fact on the balance of probabilities that the water penetration was caused by a breach of the covenant to keep the interior of the demised premises substantially repaired and maintained. The demised premises are likely to have been out of repair for there to be a need for the handyman to fix the leak coming from under the bath and they are likely to have been substantially out of repair to give rise to the need to carry out remedial work in the flat below resulting in an insurance claim of in excess of £2,500.

73. Accordingly, we find that the sum of £2,500 is payable by the Applicant as an administration charge.

Legal fees

74. The 2022 Tribunal decision includes provision that:

"The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, that 50% of any costs incurred as part of this application are not to be treated as 'relevant costs' for future service charge years."

75. The Applicant states in the Scott Schedule: *"I have been overcharged legal fees. I am only liable for my proportion of 50% of the cost"*. The Respondents' response in the Scott Schedule is as follows: *"The invoice has been attached to the Respondent's Statement of Case at Appendix 'L'. The invoice does not relate to proceedings culminating in the 2022 FTT decision and so the Applicant's liability is not limited to 50%."*

76. Ms Ackerley stated on behalf of the Respondents that the only legal fees which the Respondents are claiming within the service charge years which are before this Tribunal are costs of the 2022 Tribunal proceedings in the sum of £3,000. The Tribunal was informed that the sum of £3,000 is less than half of the legal costs which were incurred in connection with the 2022 Tribunal proceedings. Applying the Tribunal's general

knowledge and experience, this is highly likely to be the case and the Applicant did not seek to claim otherwise. The Applicant's share of the sum of £3,000 is £329.10.

77. We accept that it follows from the 2022 Tribunal Decision that the sum of £329.10, representing 10.97% of less than 50% of the costs of the 2022 proceedings is payable by the Applicant. The Applicant's liability to pay legal costs through the service charge in the period under consideration by this Tribunal is limited to £329.10.

78. We note that the Respondents' position at the hearing and in their Statement of Case differed from their position as set out in the Scott Schedule which is likely to be confusing for the Applicant.

Applications concerning costs

79. Section 20C of the 1985 Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a residential property tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

80. 27. Paragraph 5A of Schedule 11 to the 2002 Act provides that:

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

81. The question for the Tribunal under both section 20C and paragraph 5A is what is "just and equitable". These provisions provide the Tribunal with a wide discretion to exercise having regard to all the circumstances of the case.

82. As regards the principles to be applied in determining these applications, in *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), His Honour Judge Rich QC stated in respect of section 20C:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances … Where, as in the case of the LVT there is no power to award costs, there is no automatic expectation of an order under s.20C in favour of a successful tenant…"

83. His Honour Judge Rich QC stated that relevant factors would include "the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise".

84. In *Schilling v Canary Riverside* (LRX/26/2005) His Honour Judge Rich QC reconsidered and reaffirmed the principles in Doren. He also stated, in the context of a service charge dispute, that weight should be given "to the degree of success, that is the proportionality between the complaints and the determination".

85. Having considered all of the circumstances of this case and, in particular: the Tribunal's finding that paragraph 7.5 of the RICS Code has not been followed; the absence of any reasoning to support the Respondents' decision to split the gas bill 50/50 and the reduction secured by the Applicant on this point; the finding in the Applicant's favour on the issue of the fire alarm costs; and, as regards the legal costs, the difference between the Respondents' position at the hearing and in the Statement of Case and their position in the Scott Schedule; the Tribunal determines that it is just and equitable to make the following orders:

    (i) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that 50% of the costs incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
    (ii) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 50% of the Applicant's liability, if any, to pay an administration charge in respect of the Respondents' costs of these proceedings.

86. The Tribunal was not asked to make findings as to whether or not legal costs may be recovered as a service charge and/or as an administration charge pursuant to the terms of the Lease and it makes no such findings.

Name: Judge N Hawkes **Date:** 26 February 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).