FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/LSL/2024/0500**
Property	**:**	**214A Walm Lane, London NW2 3BS**
Applicant	**:**	**Ms Looane Corin Daniel**
Representative	**:**	**Mr J Patel of Counsel Direct Access**
Respondent	**:**	**214 Walm Lane Management Ltd**
Representative	**:**	**Ms D Doliveux of Counsel instructed by LMP Law Ltd**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N Hawkes** **Mrs A Flynn MA MRICS**
Date and venue of hearing and reconvene	**:**	**16 and 17 April 2025 at 10 Alfred Place, London WC1E 7LR, with a reconvene for decision making on 12 May 2025**
Date of decision	**:**	**3 June 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) Any applications concerning costs may be made following receipt of this decision in accordance with the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The application

1. The Applicant is the lessee of 214A Walm Lane, London NW2 3BS ("the Property"). The Property is a ground-floor, one-bedroom flat in a house which has been converted into four flats ("the Building"). The Respondent is the freehold owner of the Building.

2. The Respondent is a lessee owned company. The Tribunal was informed that the Companies House database records that the Applicant was appointed director of the Respondent company on 11 April 2013. The Applicant was then the sole director of the Respondent company until 19 October 2020 when Ms Karima Harris was appointed a director. The Applicant resigned as a director of the Respondent company on 26 April 2021.

3. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether certain service charges are payable.

4. Any applications for concerning costs may be made following receipt of this decision in accordance with the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

5. An oral case management hearing took place in this matter on 19 November 2024. Following the case management hearing, written Directions dated 19 November 2024, and amended on 12 February 2025, ("the Directions") were issued.

6. At paragraphs (8) and (9) of the Directions it is stated that:

(8) The Respondent has the benefit of a county court default judgment dated 12th November 2021 for the 2021 service charge year (claim no: H8QZ9M0W). The Applicant claims to know nothing about it and yesterday applied to the court to set it aside. In the meantime, it is a valid judgment and the Tribunal has no jurisdiction to determine matters already covered by it.

(9) However, if the set-aside application were successful during these proceedings, it would be cumbersome and would probably cause delay

to start the dispute about 2021 from scratch. As part of the set-aside application, the Applicant argues that she has a defence with reasonable prospects of success, which means she knows her case and can set it out. Therefore, the Applicant may put that case in the Scott Schedule referred to below with the caveat that, unless and until the default judgment is set aside, the Tribunal cannot and will not rule on it. The Respondent may choose to answer substantively but is also entitled to rely on the judgment.

7. At the hearing, it was agreed that the default judgment covers the estimated service charges for the 2021 service charge year but that the Tribunal is being asked to make a determination in respect of the actual figures. Accordingly, the default judgment is no bar to the Tribunal determining the actual sums which are payable in respect of the 2021 service charge year and both parties invite the Tribunal to do so.

The hearing

8. The final hearing took place on 16 and 17 April 2025 at 10 Alfred Place, London, WC1E 7LR. Mr Patel of Counsel represented the Applicant at the hearing, on a direct access basis, and Ms Doliveux of Counsel, instructed by LMP Law Ltd, represented the Respondent.

9. The Applicant attended the hearing together with Mr Patel. Ms Doliveux was accompanied by Mr Bharath Sharma, Solicitor, and, on 16 April 2025, by Ms Karima Harris, who is a current director of the Respondent company. The Tribunal heard oral evidence of fact from the Applicant and from Ms Harris.

10. The hearing did not conclude in time for the Tribunal to carry out its decision making. Accordingly, the Tribunal reconvened on 12 May 2025, in the absence of the parties.

11. At the commencement of the hearing, the Applicant for permission to rely upon a witness statement dated 7 April 2025 which was served out of time.

12. Having considered the overriding objective pursuant to rule 3 of the 2013 Rules, the Tribunal determined that it was fair and just to permit the Applicant to rely upon this witness statement. However, this was on the basis that if, during the course of the hearing, it became apparent that the Applicant was relying upon new material which the Respondent was not in a position to respond to, the Respondent could argue that any such new material should be excluded from consideration.

13. 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, but that permission would need to be applied for and

granted by the Tribunal if the parties wished to rely upon any additional documents.

14. The Tribunal also stated that it was for the parties to present the entirety of their cases orally at the hearing. 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. In *Arrowdell Limited v Coniston Court (North) Hove Limited* LRA/72/2005, it was held at [23] that the Tribunal *"must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment.*"

15. The Tribunal has considered all the submissions that were made, and all of the evidence that was referred to during the course of the hearing. However, to keep this decision to a proportionate length, the Tribunal will only refer below to those matters which it is necessary to set out in order to understand the reasons for the Tribunal's decision.

The inspection

16. The Tribunal inspected the Property on the morning of 17 April 2025, in sunny weather. The inspection took place in the presence of the Applicant, Mr Patel, Ms Doliveux, and Mr Sharma. As was explained at the hearing, the parties could point out matters to the Tribunal during the inspection, but all evidence and argument would be presented to the Tribunal at the hearing.

17. The inspection was mainly external, but internal access was provided to Property and to a first floor flat, to enable the Tribunal to ascertain the comparative sizes of the flats.

18. The Building is a substantial Victorian, detached, double-fronted house with a ground, first and a partial second floor (as indicated by a dormer window) which has been converted into four flats. There is a splay bay on both the ground and first floors, to the left of the front door.

19. The Building stands on a plot which has two vehicular accesses routes from Walm Lane, where a dwarf brick wall forms the boundary. There is a gravelled parking area at the front of the Building in which there is a cracked manhole cover. To the front of the Building there is also a porch with marble steps leading up to a communal front entrance door.

20. The Building is constructed of brick with a slate roof. It is partially pebble dashed on the side and rear elevations. On the front elevation, the windows are sash windows. On the rear elevation and side elevations, there are UPVC windows as well as sash windows. Some of the brickwork was spalling and the pebble dash was cracked in places.

21. The Building is generally in need of maintenance, having suffered wear and tear for approximately twenty years. The roof is in need of attention, if not replacement, given its age. Some of the paintwork, particularly under the eaves, is in poor condition.

22. The down pipes appeared to be in a fair condition commensurate with their age but, because the Building was inspected during dry weather, it was not possible to inspect for potential leaks. The gutters showed signs of deterioration with fauna in several places and some signs of dampness visible just beneath the guttering. There were cracks in the marble steps of the porch and also a crack in the glass panel over the front door.

23. Communal gardens surround the Building. The Tribunal was unable to access the rear communal garden without going through the Applicant's flat (which has a rear door leading directly to the rear garden area) because there is a locked gate on one side of the Building and a very dense overgrown area on the other side.

24. The Tribunal was able, with difficulty, to pass through a section of communal garden immediately accessible from the Applicant's Property to another area of communal garden which has a lawn and a patio which are directly accessible via the rear door of the larger adjacent ground floor flat.

The preliminary issues

25. The service charge costs challenged in the Scott Schedule cover the service charge years 2019 to 2024.

26. The Respondent queried how it was open to the Applicant challenge service charges for the period up to 26 April 2021 when she was a director of the Respondent company and responsible for issuing the service charge demands. For most of this time, the Applicant was the sole director.

27. Further, the Respondent contended that the Applicant was reluctant to hand over service charge documentation to her successor and that she did not do so until after the Respondent had issued proceedings to compel her to provide relevant documents. The Respondent's representatives informed the Tribunal that, even now, the Respondent does not have all the service charge accounts or demands for the period when the Applicant was a director of the Respondent company.

28. At the commencement of the hearing, the Respondent applied for an order striking out the Applicant's challenge to the service charges claimed in the years 2019 to 2021 pursuant to rule 9 of the 2013 Rules on the grounds that the Applicant was director of the Respondent company at the material time; the Applicant has failed to provide the

Respondent company's current officers with sufficient material to enable the Respondent to justify the service charges which were claimed from lessees during the period when the Applicant was responsible for those the charges; and that the application for a determination in respect of those service charge years is therefore vexatious and/or an abuse of process.

29. The Applicant accepted that she was responsible for issuing the service charge demands for the years in question, which she instructed a Mr Fryer to prepare, but stated that she no longer has copies of the service charge demands which she issued. Accordingly, she cannot now disclose copies of those demands.

30. When asked how the Applicant could have failed to agree the service charge demands which she herself issued, the Applicant had no satisfactory answer. It is clearly likely, if not inevitable, that the Applicant has agreed the service charge demands which she herself issued, most of which were issued when she was the sole director of the Respondent company.

31. The Tribunal finds as a fact on the balance of probabilities that the Applicant has agreed her own service charge demands. The service charges demanded in respect of the years 2019 to 2021 are therefore payable by the Applicant and the Tribunal has no jurisdiction to determine this application insofar as it concerns the service charge years 2019 to 2021 (see section 27A(4)(a) of the Landlord and Tenant Act 1985).

32. The Applicant contends, as a second preliminary issue, that "proper certified service charge accounts" have not been prepared and certified by a Proper Officer, containing a summary of the expenditure incurred in the financial year and the proportion payable by the Applicant in accordance with the provisions Lease, and that therefore no service charges are currently payable.

33. Service charge accounts have been prepared which are certified by JPL Chartered Accountants, as follows:

"We certify that the above account has been prepared in accordance with the records, information and explanations supplied to us by Warmans Asset Management, Managing Agents, in respect of the year ended …"

34. The accounts contain a summary of the income and expenditure for the year in question and the accompanying Account Statement shows the amount payable by the Applicant.

35. When the Lease was entered into, on 28 April 2003, the landlord was the London Borough of Brent ("the Council"). The "Initial Period" which is referred to in the Lease came to an end after 5 years.

36. By Clause 4(A) of the Lease, the Applicant covenanted (emphasis supplied):

(i)During the Initial Period to pay to the Council the Lessee's estimated contributions in respect of works (including works for the making good of structural defects) itemised in Category C of the estimates provided with the Noice and the Lessee's estimated contributions in respect of improvements (if any) itemised in Category D of the estimates provided with the Notice together in each case with an Inflation Allowance

(ii) From the grant hereof for the remainder of the term hereby granted to pay the Council in advance such annual amount (hereinafter called the 'Advance Payment') as represents ***a reasonable part*** *of the estimated expenditure to be incurred by the Council during the Council's Financial year in fulfilling the obligations and functions set out in Clause 6 hereto.*

(iii) To pay to the Council on demand the amount which the Advance Payment paid by the Lessee in any of the Council's Financial Years is less than ***the reasonable proportion*** *payable by the Lessee of the total expenditure incurred by the Council during the said Financial Year in fulfilling the obligations and functions referred to in sub-clause (ii) above*

(iv) From the expiry of the Initial Period for the remainder of the term hereby granted to pay the Council on demand whether in advance or otherwise such amount as represents a ***reasonable part*** *of the Council's expenditure incurred or to be incurred upon the carrying out of major works of repair renovation or improvement to the Flat the Building and the fixtures fitting and installations therein.*

37. Clause 4B of the Lease includes provision that:

(iii) As soon as practicable after the end of the Council's Financial Year the expenditure incurred by the Council in fulfilling the obligations and functions set out in Clause 6 of this Lease shall be ascertained by a certificate (hereinafter called 'the certificate') signed by such officer as is nominated by the Council acting as an expert and not as an arbitrator.

…

(v) A copy of the certificate for each such Financial Year shall be supplied to the Lessee and shall contain a summary of the expenditure

incurred by the Council during the Financial year to which it relates and indicate the proportion thereof payable by the Lessee to the Council (hereinafter called "the service charge").

38. The accounts certified by JPL Chartered Accountants and the accompanying Statement of Account appear to comply with the requirements of a "certificate" which are set out at Clause 4B of the Lease. Although it is not expressly stated that the proportion payable by the Applicant is 25%, this is sufficiently clear from the figures.

39. Further, if the accounts and the accompanying Statement of Account could be said not to comply with the requirements of a "certificate", strict compliance with those requirements is not said to be a condition precedent to the obligation to pay at clause 4A. Accordingly, the Tribunal does not accept the Applicant's submission that nothing is payable because the Respondent has failed to produce a certificate which complies with Clause 4B of the Lease.

The Tribunal's determinations

Apportionment

40. As highlighted in bold above, the Applicant is required under the terms of the Lease to pay a reasonable part/reasonable proportion of the total service charge expenditure. Throughout the relevant period, the Respondent has charged each of the four flat 25% of the total service charge costs. This approach has been adopted for many years including from April 2013 to April 2021 when the Applicant was company director.

41. The Applicant contends that the Property is the smallest flat in the building, with a floor area of 50 square metres, and that Flat D is the largest, with a floor area of 114 square metres. The Applicant submits that the current system of apportionment is unreasonable and that she should pay 50/325 that is 15.4%, when the size of her flat is taken into account.

42. Ms Doliveux relied upon *Aviva Investors Ground Rent GP Ltd v Williams* [2023] UKSC 6 and submitted that the Tribunal has no jurisdiction to interfere with the Respondent's decision that the apportionment of 25% per flat is reasonable. Mr Patel disputed Ms Doliveux's interpretation of *Aviva,* but neither party referred to the decision of the Upper Tribunal in *Hawk Investment Properties Ltd v Eames* [2023] UKUT 168, which is summarised at paragraph 26.603 of *Emmet & Farrand on Title*, as follows:

"The operation in practical terms of the Supreme Court's decision in Aviva as to the effect of s.27A(6) of the 1985 Act has now been given detailed consideration in the Upper Tribunal by Judge Elizabeth

Cooke in Hawk Investment Properties Ltd v Eames [2023] UKUT 168. The case concerned a 1970s development of mixed commercial and residential premises (retail and restaurant units on the ground floor with residential maisonettes above and a carpark below ground floor level which any tenant could pay to use). The leases of the maisonettes included service charge provisions which originally required each tenant to pay by way of service charge a proportion of the landlord's costs of maintaining the whole building, calculated by reference to the rateable values of the lettable units (then a common basis for apportionment). The landlord's surveyor was required to calculate the apportionment every year before interim service charges were demanded for the current year, and it was then provided that if the rating system was thereafter "changed or abrogated so as to render" this method of apportionment "inoperable or manifestly inequitable," apportionment should be "calculated by some other just and equitable method to be conclusively determined by the Landlord's Surveyor". After domestic rates were abolished in 1990, the landlord calculated that, on the basis of the 1990 rateable values, the residential tenants should together pay 9.74% of the total service charge payable with the commercial tenants paying between them 90.26%. That apportionment was used for the next 30 years until the end of 2021, when the residential tenants were informed that the landlord's surveyor had determined a new method of apportionment, namely by reference to relative floor area of each unit. This was then a commonly used basis for apportionment but in this particular case it would result in the residential tenants' proportion suffering what the judge described at [67] as "a shocking increase" to 34.71% (in one of the units, an increase from £3,376.80 paid in the previous year to about £12,488.79 payable in the coming year). Unsurprisingly, the validity of the proposed new apportionment method was challenged by the residential tenants in the FTT, who decided (before the Supreme Court decision in Aviva) that it did not meet the contractual requirement that it be "just and equitable." On appeal (heard after the Supreme Court decision), the Upper Tribunal took the view that, under the law as it then stood, i.e. before it was changed by the Supreme Court, the FTT had taken the wrong approach and should have decided for itself what would be a just and equitable apportionment, because s.27A of the 1985 Act prohibited the landlord's surveyor from making that decision.

However, after the Supreme Court decision, so Judge Elizabeth Cooke said in the Upper Tribunal, the law is that the effect of s.27A is that the FTT retains jurisdiction to determine whether or not the proposed reapportionment, proposed by the landlord's surveyor in exercise of a valid exercise of its contractually conferred discretion, is indeed just and equitable as contractually required under the lease. All that s.27A does is to remove the lease provision that says that the landlord's surveyor's decision on that is final and unchallengeable. The result is that the tenant (and indeed the landlord) can always ask the FTT to decide whether any proposed new apportionment is indeed just and equitable: what it cannot do is to ask the FTT to decide for

itself what a just and equitable reapportionment would be. Nevertheless, although the FTT had not correctly applied the law as it then was, its decision accorded with the law as subsequently stated by the Supreme Court in Aviva, in that it reviewed the landlord's new apportionment rather than making its own decision ([61]), and decided that the new apportionment did not meet the contractual requirement of being a just and equitable apportionment ([62]). The landlord's appeal was therefore dismissed, with the result that the method of apportionment operated since 1990 would continue (presumably unless and until the landlord's surveyor proposed a new method of apportionment which the FTT determined, on application by either landlord or tenant, was just and equitable).

More broadly, Judge Elizabeth Cooke summarised the effect of s.27A of the 1985 Act in the light of the Supreme Court decision in Aviva as follows:

"47…the FTT has to assess whether service charges based on the new apportionment would be payable, and in making that decision it is assessing whether the apportionment has been carried out in accordance with the lease. In other words it is deciding whether the apportionment complies with the requirements of the lease.

48. Essentially the dispute is about what the lease requires.

49. To take a step back, imagine a lease where the apportionment of service charges was left to the landlord without qualification: "The lessee shall pay by way of service charge such proportion of the landlord's expenditure as the landlord shall determine." I think it could not be doubted that the effect of the decision in Aviva v Williams would be that the FTT would review the landlord's apportionment on the basis of rationality only. Neither the lease nor the statute requires the apportionment to have been reasonable, fair, or anything else.

50. What is the effect of a qualification such as the one in Aviva ("such part as the Landlord may otherwise reasonably determine") or the one in the leases in [the present case] ("some other just and equitable method to be…determined by the Landlord's Surveyor")?

51. On [the landlord's] interpretation of Aviva v Williams the additional words "acting reasonably" and "just and equitable" have no effect. What the lease requires is that the landlord shall make a decision, and so long as he does so rationally the FTT cannot change the decision.

52. It is very difficult to see that that can be right. It is particularly difficult to see that if the Landlord were to impose an apportionment method devised by its surveyor that was not "just and equitable" it would not be in breach of contract, since the lease specifically requires that the method be just and equitable.

53. I find that the respondents' interpretation of the standard of review to be carried out by the FTT [that the Supreme Court in Aviva did not find that the FTT's jurisdiction to review a decision about apportionment was limited to a rationality assessment under Braganza v BP Shipping Ltd [2015] UKSC 17, as to which see §26.356 above] is correct, for three reasons:

54. First, as just stated, to restrict the FTT to a rationality review would render redundant the additional words that the parties to the lease agreed to include. They wanted a new apportionment to be just and equitable. The parties to the lease in Aviva v Williams agreed that the landlord would act reasonably in making the apportionment. The parties to the lease in Windermere Marina Village Limited v Wild [2014] UKUT 163 (LC) specified that the tenant was to pay "a fair proportion", as did the parties to the lease in issue in Sheffield City Council v Oliver [2017] EWCA Civ 225. It is difficult to see how the landlord would not be in breach of contract if his new apportionment, in the present case, was not just and equitable; and for the landlord to be able to make a conclusive decision that his new scheme was just and equitable is to nullify the anti-avoidance provision of section 27A(6).

55. Second, that approach is consistent with what the Supreme Court did in Aviva. That is the inevitable conclusion on reading paragraph 33 of the Supreme Court's decision [quoted in §26.062 above]—unless one is to re-write it and read "rational" for "reasonable". It is vanishingly unlikely that that is what the Supreme Court intended. It is worth noting that Lord Briggs mentioned Braganza and a rationality review only twice, in paragraphs 15 and 16 where he was considering the background law rather than the facts of the case before the court. If he had meant to say that in reviewing this kind of decision the FTT is restricted to a rationality review regardless of the wording of the lease he would have said so and he would have explained why.

56. Third, this construction does not have the ill-effects identified by Lord Briggs in his paragraphs 19 to 26. The position for which the respondents argue is not that the landlord should have no power to make a new apportionment and that the FTT is to take on that task on the application of anyone at any time. Rather, the landlord has a discretion conferred by the contract to decide on a new apportionment, but the FTT in reviewing [the landlord's] decision is to assess whether it is just and equitable. There is no removal of the landlord's decision-making power and no possibility of the FTT being overwhelmed by applications or of the landlord's normal management powers being stymied."

Judge Elizabeth Cooke also gives an instructive assessment of the factual matters which persuaded her that the FTT was right to find that the landlord's new proposed apportionment was not "just and equitable" on the facts: see Hawk Investments at paras 63–82."

43. This decision, which is binding on the Tribunal, potentially assists the Applicant. However, the Tribunal has not invited further submissions from the Respondent because, applying *Hawk Investment Properties Ltd v Eames,* the Tribunal is not satisfied, on the limited evidence currently available, that 25% is not a reasonable part/reasonable proportion of the total service charge expenditure for the service charge years 2022 to 2024.

44. There was no expert evidence before the Tribunal on the issue of apportionment. The measurements relied upon by the Applicant were not agreed by the Respondent to be accurate and the Tribunal was not presented with precise agreed measurements of all four flats taken by a surveyor for the purpose of these proceedings (or with a joint statement from two experts setting out issues which are agreed and issues which are in dispute). It is noted that, when measurements are taken for the purpose of Tribunal proceedings, disputes can arise concerning what constitutes useable floor space, for example, concerning space in corridors or under eaves. The Tribunal was only able to inspect two of the four flats and does not know how many bedrooms each flat has.

45. Further, the Applicant herself applied the apportionment of 25% from April 2013 to April 2021 when she was responsible for issuing the service charge demands. For much of this time, she was the sole director of the Respondent company. The Applicant has not adequately explained why the apportionment of 25% was considered reasonable from 2013 to 2021, but not from 2022 to 2024 after the Applicant resigned as director.

46. For these reasons, the Tribunal is not satisfied, on the limited evidence currently available, the apportionment of 25% is not a reasonable part/reasonable proportion of the total service charge expenditure for the service charge years 2022 to 2024. Accordingly, the Applicant's share of the total service charge costs is 25% for these service charge years.

47. The challenges which were raised in respect of specific service charge items and the Tribunal's determinations in respect of those challenges are set out below.

Repairs and maintenance

2022

48. The sum of £294 is claimed in respect of this service charge year but the Tribunal was informed that the invoices which were before the Tribunal add up to £238.80. Accordingly, the Tribunal finds that the lower figure of £238.80 is payable.

2023

49. Ms Harris was questioned regarding the Respondent's instruction of Warmans to manage the Property and regarding Warmans' use of Grundy & Co to carry out repairs and maintenance work. The Tribunal accepts, on the balance of probabilities, Ms Harris' oral evidence that an efficient and cost-effective service has been provided to the Respondent by Warmans and Grundy & Co.

50. In any event, there are no alternative quotations before the Tribunal to potentially demonstrate that the charges for repair and maintenance work fall outside the reasonable range.

51. The total sum claimed under this heading for the service charge year 2023 is £1,741. Ms Harris did not know why there was an invoice for car and van hire £105. Accordingly, the Tribunal finds that the lower sum of £1,636 is reasonable and payable.

2024

52. The sum claimed under this heading for the 2024 service charge year is £1,674. Ms Harris was questioned regarding whether it was necessary to carry out emergency light and fire safety equipment testing on a monthly basis. Ms Harris gave evidence, which the Tribunal accepts on the balance of probabilities, that frequency of the testing is what was recommended by a fire safety expert. Accordingly, the Tribunal finds that the sum of £1,674 is reasonable and payable.

Insurance

53. The charges under this heading are as follows:

    2022: £ 757

    2023: £2,703

    2024: £3,059

54. The Applicant questioned whether terrorism cover is needed. There is no expert evidence before the Tribunal that it is unreasonable for the building insurance for the Building to include terrorism cover. Further, applying our general knowledge and experience as an expert Tribunal, it is usual to include terrorism cover throughout London, including in outer London and in the area where the Property is situated.

55. No alternative quotations have been provided to demonstrate that the cost of insurance falls outside the reasonable range. Accordingly, the

Tribunal finds that the charges in respect of buildings insurance in the sum of are reasonable and payable.

Legal and professional

2022

56. Initially, Mr Patel submitted that the cost of a section 20 consultation in the sum of £320 should be part of the management fee. However, after having been given the opportunity to review the managing agent's terms and conditions, he confirmed that this submission would not be pursued and that the legal and professional fees for the year 2022 are agreed.

2023

57. Mr Patel challenged a charge in the sum of £80 on the grounds that it was unsubstantiated by any invoice. The Tribunal accepts Mr Patel's challenge and finds that the charge in the sum of £80 is not payable.

2024

58. Nothing was charged in respect of legal and professional fees in the year 2024.

Cleaning

2022

59. The Applicant agrees cleaning costs in the sum of £68 for this service charge year.

2023

60. The sum of £943 is claimed for the year 2023 and there are 14 invoices for cleaning. The Tribunal accepts, on the balance of probabilities, the evidence of Ms Harris that cleaning was required 12 to 14 times a year. No alternative quotations have been provided to potentially demonstrate that the cost of the cleaning falls outside the reasonable range. Accordingly, the Tribunal finds that the charge of £943 is reasonable and payable.

2024

61. The sum of £970 is claimed. There were four instances of cleaning in the month of February. Ms Harris stated that she "guessed" that additional cleaning was required because the Building was particularly dirty.

However, she does not reside at the Building and she was not in a position to do anything more than speculate as to why there were four instances of cleaning in the month of February.

62. The Tribunal is not satisfied on the balance of probabilities that four instances of cleaning were required in the month of February but we are also not satisfied that the reasonable charges for cleaning in the year 2024 should fall below the reasonable charges for the previous year. Doing our best on the very limited evidence available, we therefore reduce the charges under this heading to £943.

Electricity

2022

63. The amount claimed is £117 but Mr Patel stated that the invoices add up to £116. This was not disputed by Ms Doliveux. Accordingly, the Tribunal finds that the lower sum of £116 is payable.

2023

64. The electricity charges in respect of 2023 are agreed.

2024

65. The amount claimed is £374 but Mr Patel stated that the invoices add up to £334.13. This was not disputed by Ms Doliveux. Accordingly, the Tribunal finds that the lower sum of £334.13 is payable.

Gardening

66. The Applicant's case is that rear communal garden is, practically speaking, not communal because it is difficult to access and that no charges for communal gardening should therefore be payable.

67. As stated above, the Tribunal was unable to access the rear garden without going through the Applicant's flat because there is a locked gate on one side of the Building and a very dense overgrown area to the other side. Both ground floor flats have rear doors leading out onto the rear garden, but it would be very difficult to access without going through one of the ground floor flats. Accordingly, the occupants of the upper two flats are currently unlikely to be able to freely use the rear communal garden.

68. The occupants of the upper two flats might have legal remedies if they are unable to freely access the communal rear garden. The Tribunal

cannot provide any advice and, whether or not this is the case, is a matter in respect of which they would need to take independent legal advice.

69. However, if (which is not in dispute) the relevant area is designated a communal area in respect of which charges for gardening may be claimed under the terms of the Lease, obstructing any lessee's current right of access would not alter the terms of the Lease and the gardens would remain a communal area which all lessees would be entitled to access. In any case, as stated above, the Applicant herself can access the communal rear garden via the rear door to her flat.

70. No alternative quotations have been provided to potentially demonstrate that the cost of gardening falls outside the reasonable range. Accordingly, the Tribunal finds that the charges claimed under this heading are reasonable and payable.

Fire and safety maintenance

71. The Applicant submits that costs relating to fire and safety maintenance are not payable under the terms of the Lease. No challenge was made to the reasonableness of the costs, and so no alternative quotations were provided.

72. The landlord is entitled to recover the costs of supervising and managing the Building "concerning repairs and maintenance renewals and decorations" (see clause 6(11)). Further, by clause 4A(iv) of the Lease, the cost of "improvement to the Flat the Building and the fixtures fitting and installations therein" is payable. Ms Doliveux submits that the cost of fire and safety maintenance falls within one or both of these clauses.

73. The Tribunal is satisfied that the fire and safety maintenance work is a reasonable and necessary improvement to the Building and that the costs claimed under this heading are therefore payable.

Sundry Expenses

74. Ms Harris was questioned concerning sundry expenses relating to the cutting of new keys to the Building in 2022. The Tribunal accepts on the balance of probabilities that her evidence that new keys were needed when the previous keys stopped working. Accordingly, we are satisfied on the balance of probabilities that the associated sundry expenses are reasonable and payable.

75. Mr Patel submitted that following costs relating to the operation of the Respondent company are not payable under the terms of the Lease: a payment of £13 to Companies House; an Information Commissioners' Office fee of £35; and Company Secretarial fees in the sum of £420 in the year 2022, in the sum of £470 in the year 2023, and in the sum of £453

in the year 2024. The Tribunal accepts this submission and finds that these sums are not payable through the service charge.

76. Ms Doliveux relies upon clause 6(11) of the Lease which requires the Respondent:

"*to supervise and manage the Building including liaison with technical staff within or without the Council concerning repairs and maintenance renewals and decorations and to administer and provide Certificates of Expenditure for the purposes of Service Charge and to keep accounts and have audits carried out for the purpose thereof and to administer the collection of the rents and service charges of the dwellings in the Building (except those let on secure tenancies).*

77. The Lease does not expressly state that costs relating to the operation of the Respondent company are payable through the service charge and, we do not accept that such a term can be implied, applying the ordinary and natural meaning of the words which are relied upon by the Respondent. We note that it was not contemplated when the Lease was entered into that the freeholder would be a limited company.

78. Mr Patel initially submitted that postal expenses are part of the fixed management fee but, after he had been given the opportunity to review managing agents' terms and conditions were reviewed, this challenge was not pursued.

79. The sum of £50 is claimed in respect of sundry expenses in 2023 but the Tribunal was informed that the only invoice is for £2.60. Accordingly, we find that the lower figure of £2.60 is payable.

Management fees

80. The management fees are claimed in the sum of £2,760 per year (£690 per flat). The Applicant relies upon one alternative quotation in the sum of £1,920 (£460 per flat) as demonstrating that these fees are unreasonably high.

81. There was no evidence before the Tribunal that the agent who gave the lower quotation had been informed of the longstanding history of service charge arrears in connection with the Building. Further, Ms Harris gave oral evidence, which the Tribunal accepts on the balance of probabilities, that three managing agents who she approached were unwilling to manage the Building due to the history of arrears.

82. In our judgment, one quotation in the sum of £1,920 from an agent who has not been shown to be aware of the history of arrears is insufficient to demonstrate that the management fees fall outside the reasonable range.

The Tribunal therefore finds that the management fees are reasonable and payable.

Accountancy fees

83. The Applicant contends that accounts have been produced which are not service charge accounts and/or which include a balance sheet when none is required and that the accountancy fees should therefore be reduced.

84. In the Tribunal's general knowledge and experience, it is not unusual for a balance sheet to be included with service charge accounts. Further, it has not been demonstrated on the balance of probabilities that the service charge accounts fail to comply with any provision of the RICS Service Charge Residential Management Code or with the guidance of the Institute of Chartered Accountants in England and Wales concerning service charge accounts.

85. No alternative quotations have been provided to potentially demonstrate that the cost of accountancy falls outside the reasonable range. Accordingly, the Tribunal finds that the charges claimed under this heading are reasonable and payable.

Name: Judge N Hawkes **Date:** 3 June 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).