FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2024/0629**
Property	:	**Flats 20, 10 and 16 Pioneer House, 46 Britannia Street, London WC1X 9~~HJ~~JH**
Applicant	:	**(1)Ms G Girardi (Flat 20) (2 Mr A Alaarag and (3)Ms A Aiche (Flat 10) (4) Mr W George (Flat 16)**
Representative	:	**Ms Girardi (lead applicant)**
Respondent	:	**Notting Hill Genesis**
Representative	:	**Mr Tom Owen**
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 O'Brien, Mr S Mason FRICS, Mr C Piarroux**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	:	**27 March 2025**
Date of decision	:	**22 April 2025**
Date of amended decision	:	**28 May 2025**

DECISION

We exercise our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 correct the clerical mistake, accidental slip or omission set out below Our amendments are made in bold red type. We have corrected our original Decision because it contained typographical errors and incorrectly set out the dates of the subject works and amounts demanded towards the reserves. None of the corrections have any bearing on the substance of the determination.

Decisions of the tribunal

(1) The tribunal determines that the sum of £0 is payable by the Applicants to the Respondent in respect of the sums demanded as contributions towards the reserve fund for the years 2023/2024 and 2024/2025.

(2) The tribunal determines that the sums of £250 per annum per flat is payable by the applicants as a management fee for the years 2023/2024 and 2024/2025.

(3) The tribunal determines that it has no jurisdiction in respect of the service charges relating to the cost of an electronic gate and door entry system in 2017/2018.

(4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the Respondent's costs of these tribunal proceedings may be passed to the Applicants through any service charge or as an administration charge.

(5) The tribunal determines that the Respondent shall pay the Applicants £330 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees.

The application

1. By an application sent to the tribunal on 29 September 2024 the First Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by her in respect of the service charge years 2017/2018, 2022/2023, 2023/2024 and 2024/2025. The application was amended to add the Second, Third and Fourth Applicants on 14 November 2024 however no formal application was made to add them to the proceedings. They were formally added to the proceedings, with the consent of the Respondent, at the hearing.

The hearing

2. The First Second and Third Applicants attended the hearing in person and the Respondent was represented by Mr Tom Owen, its disputes manager. Two further employees of the Respondent, Ms Harris and Ms Diamond also attended the hearing.

The background

3. The building which is the subject of this application is a purpose-built block in Central London consisting of 38 flats. The majority of the flats

are let to social tenants but the leasehold interest of ~~10~~ 7 of the 38 flats have been sold pursuant to the Right to Buy. Ms ~~Giraldi~~ **Girardi** purchased Flat 20 in 2005, Mr Alaarag and Ms Achie purchased Flat 10 in March 2022 and Mr George purchased Flat 16 in 2019. The Respondent is the freeholder of the building and is a registered provider of social housing.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary.

5. The Applicants each hold a long lease of their respective flats which requires the Respondent to provide services and the Applicants to contribute towards the costs by way of a variable service charge. The lease also obliges the Applicants to contribute towards a reserve fund in respect of future costs. The specific provisions of the lease will be referred to below.

The issues

6. At the start of the hearing the parties agreed that the relevant issues for determination were as follows:

   (i) The payability and/or reasonableness of service charges demanded of the First Applicant for the year 2017/2018 relating to

   - Cost of a new door entry system
   - Cost of electric gate

   (ii) The payability and reasonableness of the contributions demanded from all Applicants in respect of the reserve funds for the years 2023/2024 and 2024/2025

   (iii) The reasonableness of the management fee demanded from all Applicants for the years 2023/2024 and 2024/2025

7. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Cost of door entry (£74.30) and electric gate (£4.34) 2017/2018

8. Mr Owen submitted that the Tribunal had no jurisdiction in respect of these items as they had been paid by Ms ~~Giraldi~~ **Girardi** and remained unchallenged for a substantial period of time prior to the issue of this application. He told us that the relevant purchase orders could now not be found. Ms ~~Giraldi~~ **Girardi** informed us that leaseholders had complained about these costs in 2019 in the course of a meeting but could not say with certainty if she had challenged her liability to pay

these charges prior to the issue of these proceedings. Ms ~~Giraldi~~ **Girardi** was concerned that the leaseholders may have been charged twice for these works.

The tribunal's decision

9. Section 27A(4) of the Landlord and Tenant Act 1985 provides that no application may be made in respect of a service charge that has been agreed or admitted by the tenant. S27A(5) provides further that the tenant is not to be taken to have agreed or admitted that a service charge is payable because he has paid it. However where a service charge is paid and not challenged for a substantial period of time the tenant may be taken to objectively accepted that it was payable and reasonable (see *Cain v Islington [2015] UKUT 0117 (LC))*. In this case the amount in dispute is less than £80 and a substantial period of time on any view has passed between payment being made and the application. In our view Ms ~~Giraldi~~ **Girardi** by waiting so long to challenge these two items would have reasonably appeared to have agreed them. We agree that we have no jurisdiction in respect of this challenge.

The Reserve Fund

10. The central issue in these proceedings relates to two major works projects and in particular the method the Respondent used to recoup the leaseholders' share of the cost of those works. The works in question relate to the complete replacement of a lift in **2021-2022** ~~2017-2018~~ and the refurbishment of the internal and external retained and common parts of the block in ~~2021-2022~~ **2017-2018**. It is common ground that in principle the Applicants were liable to contribute towards the costs of those major works projects pursuant to the terms of their respective leases via a service charge. It is also common ground that the Respondent never made any formal service charge demand in respect of the cost of either of those projects; they were not included in either the actual or estimated service charge demands for any of the relevant years. Instead the Respondent used funds held in a lessee reserve fund to cover their share of those costs. However, the leaseholders' liability to contribute towards the cost of the works significantly exceeded the amounts that were held in the leaseholder reserve fund; the collective liability of all the leaseholders of Pioneer House to contribute towards the lift replacement was ~~£26,299~~ **£16,171** and their collective liability to contribute towards the cost of the refurbishment was ~~£16,171~~ **£26,299** At the start of the service charge year 2017 the reserve fund was in credit to the sum of £5,504.78. By the end of the service charge year 2022-2023 it was £32,765.15 in deficit. There is no evidence that the leaseholder reserve fund was actually held in a separate account and the while we refer to that fund being in 'deficit', that in reality is a reflection of an accounting exercise on the part of the Respondent.

11. The demands made of ~~the leaseholders~~ Ms Girardi towards the reserve fund were for £120 between ~~£35 and £45~~ between the years 2017/2018 and 2021/2022~~.~~ However in the estimates for year 2023/2024 and

2024/2025 the leaseholder sinking fund contribution increased to £300 and £400 per flat respectively.

12. The effect of this is that the sinking fund contributions demanded for the years in dispute i.e. 2023-2024 and 2024-2025 have been used to cover the cost of major works that were completed some time in the past. We were not told why the Respondent decided to recoup the costs in this way rather than recovering the cost directly as a service charge. It seems likely that no direct service charge demand can now be made of any of the leaseholders in respect of the cost of those works as the 18-month time limit for making any such demand permitted by s20B of the Landlord and Tenant Act 1985 has long expired, and we have no evidence that any notice has been served pursuant to s20B(2) of that Act after those costs were incurred.

13. We have been provided with a copy of the lease in respect of Flat 20. It is not asserted that the relevant service charge provisions of the leases for flats 10 and 16 differ in any material way. By Clause 7.2 the leaseholder covenanted to pay a service charge as rent

> *By equal payments in advance… PROVIDED ALWAYS THAT all sums paid to the Landlord in respect of that part of that part of Service Charge Provision as relates to the Reserve Fund referred to in Condition 7.4(b) hereof shall be held by the Landlord in trust for the leaseholder until applied towards the matters referred to in Condition 7.4(b) and all such sums only shall be so applied'*

14. Clause 7.4(b) provides that the service provision shall consist of a sum comprising

> *An appropriate amount as a reserve for or towards such of the matters specified in Clause 7.5 as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term or at intervals of more than one year*

15. Clause 7.5 contains sets out the expenditure to be included in the service charge and includes the costs incurred by the landlord in maintaining, managing and insuring the building.

16. Ms ~~Giraldi~~ **Girardi** on behalf of the applicants accepted in principle that the leaseholders were liable to contribute towards the cost of the major works in question had there been a service charge demand in respect of them. Her objection was one of principle; neither she nor any of the other leaseholders had the opportunity to challenge the reasonableness of the works undertaken or the reasonableness of their cost because no service charge demand in respect of her share of the costs has ever been made or would ever have been made; instead the Respondent has 'debited' the leaseholder share of the costs from the leaseholder reserve fund and substantially increased the reserve contributions which it has sought to

recoup from the leaseholders for 2023/2024 and 2024/2025. She is also concerned about the fact that the leaseholder reserve fund is in deficit and is likely to remain in deficit for some time, leaving the leaseholders of Pioneer House potentially exposed to large demands for payment for future cyclical works or large unforeseen future costs. The Applicants accept in principle that an annual contribution of £250 per annum towards a reserve fund would be reasonable but in respect of future costs only, not in respect of costs that were incurred in the past and in respect of which no service charge can now be demanded. They ask that the tribunal direct the Respondent to recredit the sums it removed from the sinking fund and to expunge the debits from that fund in respect of both sets of major works.

17. Mr Owen submitted that we had no jurisdiction to consider issues relating to the reserve fund and directed us to the decision of the Upper Tribunal (Lands Chamber) in *Solitaire Management Company v Holden and Ors* [2012] UKUT 86 (LC)). In that case His Honour Judge Nicholas Huskinson allowed an appeal against a decision of the Leasehold Valuation Tribunal which had held that the Landlord had acted in breach of trust when it used a reserve fund to cover shortfalls between the estimated service charge demands and the actual costs incurred. He held that the Leasehold Valuation Tribunal had no jurisdiction to investigate whether a reserve fund had been wrongly depleted by a landlord where that issue was not relevant to its determination of the amount of service charges payable under s.27A of the Landlord and Tenant Act 1985.

At paragraph 32 he observed;

> *It is puzzling as to why the LVT considered in these circumstances that it should examine the reserve funds provision in the way it did. The LVT did not consider the reserve funds position for the purpose of deciding a question arising under Section 27A as to how much was payable as service charge in any given year. In another case it could theoretically become relevant, for the purpose of deciding how much was payable by way of service charge by a tenant in a particular year, to decide questions regarding the status of money in the reserve funds. For instance if in a particular year a tenant argued that less should be demanded for a particular heading of expenditure because reserve funds should have been drawn upon for some or all of that head of expenditure, then the situation regarding such reserve funds could become relevant to decide this question under Section 27A – including consideration (if the landlord's case was that there was no money in the reserve fund to draw upon) of the question of whether the landlord had improperly spent the reserve funds in some unauthorised manner. However in a hypothetical case such as that the situation regarding the reserve fund is something which needs to be decided for the purpose of deciding a question expressly within the LVT's jurisdiction, namely how much is payable by way of service charges by a tenant in a particular year. In the present case the*

LVT do not purport to suggest that any decision they reached in respect of the reserve funds impinged upon how much was payable by way of service charges in any of the years which were under consideration by them

The tribunal's decision

18. In contrast to other landlords, the money held in the leaseholder reserve fund in this case is not held on statutory trust pursuant to s.42 of the Landlord and Tenant Act 1987 as that provision does not apply to registered social landlords by virtue of s.58 of that Act. However the Respondent covenanted to hold the reserve fund on trust for the lessees by Clause 7.1 of their respective leases. The tribunal agrees with the Respondent that it has no jurisdiction to make a determination as to whether the Respondent's dealings with the reserve fund amount to a breach of its duties as trustee. Nor does it have the power to order the Respondent to deal with the reserve fund in any particular way. However, we consider that this is the kind of 'hypothetical case' envisaged by the Upper Tribunal in *Solitaire Management v Holden* (above) where the lawfulness of the way in which the landlord has used money held in a reserve fund is directly relevant to the payability and reasonableness of specific service charges; in this case the contributions demanded by the Respondent towards that fund for the years 2023/2024 and 2024/2025.

19. Mr Owen accepted that the sums paid by the leaseholders towards the sinking fund for the years in dispute were used to recoup the cost of works that were undertaken in the past. However the lease only obliges the leaseholders to contribute towards a reserve in respect of costs which are '*likely to give rise to expenditure after such Account Year*' i.e. towards costs which will arise in the future. In the view of the tribunal the sums demanded in respect of the reserve fund in 2023/2024 and 2024/2025 were not payable under the terms of the lease because they were used, and were intended by the Respondent to be used, to cover the cost of past works and not potential future costs. Further it was not reasonable for the respondent to make those demands when it was always its intention to put the money into a fund which was in deficit due to past expenditure.

Management Fee

20. The Applicants challenged the payability and reasonableness of the flat rate management fee charged by the Respondent in 2023/2024 and 2024/2025. They referred us to the decision of the Court of Appeal in *Howe Properties (NE) Ltd v Accent Housing [2024] EWCA 297* which concerned whether a tiered rate management charge was payable as it was not provided for under the terms of the lease.

21. Clause 7.1(d)ii of the lease in this case provides that the service charge includes '*such reasonable flat rate charge which the landlord notifies the leaseholder of and which is necessary to cover the Landlord's direct and indirect costs incidental to the management of the building'*. There is no doubt therefore that the respondent is entitled to charge a flat rate management fee.

22. The only remaining question is whether the charge of £300 per annum for the years 2023/2024 and 2024/2025 was reasonable. In our view it was not. While it may be, as Mr Owen submitted, within the range to be expected in central London we bear in mind that this is a social housing block owned and run by a social landlord. Further we consider that the Respondent has not acted reasonably as regards the reserve fund and has not dealt with the many queries raised by the leaseholders regarding the debits to the reserve fund in a clear and transparent way. Section 19(2) of the 1985 Act provides that a service charge demanded in respect of a service is not reasonable if the service in question was not of a reasonable standard, and that the amount payable shall be limited accordingly. We do not consider that the management service was of a reasonable standard insofar as it related to the reserve fund and the demands made in respect of it and we reduce the amount payable in respect of each flat to £250 for each of two years in dispute.

Application under s.20C and refund of fees

23. At the end of the hearing, the Applicant made an application for a refund of the fees that they had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

24. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act.2002. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for both orders to be made, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge.

Name: N O'Brien **Date:** 22 April 2025
28 May 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).