		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	**:**	**MAN/00BY/LSC/2022/0044**
Property	**:**	**Apartment 80, 3 Royal Quay, Liverpool, L3 4EU**
Applicant	**:**	**Kings Waterfront (Management Company) Limited**
Applicant's Representative	**:**	**J B Leitch Solicitors**
Applicant's Counsel	**:**	**Mr James Castle**
Respondents	**:**	**(1) Ross Smith & Margaret Smith (2) Receiver Redbrick Survey and Valuation Limited**
Type of Application	**:**	**Landlord & Tenant Act 1985 – s 27A Commonhold and Leasehold Reform Act 2002 – sch 11 para 5A**
Tribunal Members		**Judge Richard M. Dobson-Mason LLB Mr Joe Fraser FRICS**
Type & Venue of the Hearing		**Video hearing online**
Date of Hearing	**:**	**4 June 2025**

DECISION

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(1) The Tribunal determines that the service charge payable for the Property for the period 1 July 2020 to 30 September 2021 is £6,178.92.

(2) The Tribunal declines to make an order under Sch 11 para 5A Commonhold and Leasehold Reform Act 2002.

REASONS

Background

1. The Application relates to Apartment 80, 3 Royal Quay, Liverpool, L3 4EU *("the Property")*.

2. The Applicant is Kings Waterfront (Management Company) Limited, the head lessee of the land known as 'Part of King's Waterfront, Wapping, Liverpool' *("the Premises")*. The Property forms part of the Premises, which are subject to several underleases, one of which relates to the Property. Accordingly, the Applicant is the landlord in respect of the Property. The Applicant is also the named residents' management company under the underleases, and appoints Firstport Property Services Limited for the purposes of carrying out its management obligations at the Premises.

3. The First Respondent is Ross Smith and Margaret Smith, the long leaseholders of the Property. The Second Respondent is Receiver Redbrick Survey and Valuation Limited, the LPA Receiver appointed in respect of the Property, who have played no active part in the proceedings.

The lease

4. The First Respondents' interest in the Property is derived from an underlease dated 26 March 2003 between (1) Ochil Residential Limited (2) Kings Waterfront

(Management Company) Limited and (3) Ross Smith and Margaret Smith *("the Lease")*, in respect of which the Applicant purchased the head leasehold title in about 18 February 2013.

5. The relevant terms of the Lease regarding the payability of service charges generally are set out below: -

16. Definitions

"Building" means the buildings comprising the several flats within the Development.

"Development" means the land described in the First Schedule- being known for development purposes as Blocks 2 & 3 Kings Waterfront, Wapping, Liverpool.

"Maintenance Expenses" means

(i) the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the term in carrying out the obligations specified in the Sixth Schedule

(ii) the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the term in carrying out the obligations contained within the Underlease between Fiorito Limited (1) and Ochil Residential Limited C2) dated 14 October 1999 ("the Superior Lease")

(iii) the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the term in carrying out the obligations contained within the Headlease between Commission for New Towns (I) and Fiortho Limited (2) dated 14 October 1999 ("the Headlease")

“Lessee’s Proportion” means the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule.

17. Tenant’s Covenants

Under paragraph 2 of Part Two of the Eighth Schedule, the Lessee covenants:

“To pay to the Management Company the Lessee’s Proportion of the Maintenance Expenses at the times and in the manner provided.”

By paragraph 3 of Part Two of the Eighth Schedule, the Lessee covenants to:

"To keep the Management Company and the Lessor indemnified in respect of charges for other services payable in respect of the Demised Premises which the Lessor or the Management Company shall from time to time during the term be called upon to pay such sums to be repaid to the Lessor or the Management Company on demand.”

18. Management Company’s Covenants

Under paragraph 1 of the Tenth Schedule, the Management Company covenants as follows:

“To carry out the works and do the acts and things set out in the Sixth Schedule Provided: -

a) The Management Company shall not be held responsible for any damage caused by any want of repair to the Maintained Property or defects in it for which the Management Company or defects in it for which the Management Company is liable unless and until notice in writing of it has been given to the Management Company and the Management Company has failed to make good or remedy such want of repair or defect within a reasonable time of receipt of such notice.

b) Nothing in this covenant shall prejudice the Management Company's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Management Company or the Maintained Property by the negligence or other wrongful act or default of such person.

c) The Management Company shall not be liable for any failure to provide employees and workmen necessary in connection with the Maintained Property if it shall have used its best endeavours to obtain them.

Pursuant to paragraph 3 of the Tenth Schedule, the Management Company covenants to:

"The Management Company shall ensure that the reserve fund or funds referred to in paragraph 14 of Part "B" of the Sixth Schedule shall be kept in separate accounts and any interest on or income of the said fund shall be held by the Management Company in trust for the lessees of the Properties and shall only be applied in accordance with the terms of the Sixth Schedule."

19. The Lessee's Proportion of the Maintenance Expenses

By paragraph 1 of the Seventh Schedule of the Lease:

"The Lessee's Proportion means a reasonable proportion of the amount attributable to the matters mentioned in Part "A" of the Sixth Schedule hereto and of whatever of the matters referred to in Part "B" of the said Schedule are expenses properly incurred by the Management Company which are relative to the matters mentioned in Part "A" of the said Schedule."

By paragraph 6 of the Seventh Schedule:

"The Lessee shall pay to the Management Company the Lessee's Proportion of the

Maintenance Expenses in the following manner: -

(a) Quarterly in advance on the 1st January April July and October in every year throughout the term one quarter of the Lessee's Proportion of the amount estimated from time to time by the Management Company or its managing agents as the Maintenance Expenses for the year the first payment to be apportioned (if necessary) from the date of this Underlease.

(b) Within twenty-one days after the service by the Management Company on the Lessee of a certificate in accordance with paragraph 5 of this Schedule for the period in question the Lessee shall pay to the Management Company the balance by which the Lessee's proportion received by the Management Company from the Lessee pursuant to paragraph (a) above falls short of the total sums payable by the Lessee to the Management Company during that period and any overpayment by the Lessee shall he credited against future payments due from the Lessee to the Management Company.

6. The Respondent has not challenged the payability of any specific items of service charge expenditure; however, as above, Schedule 6 of the Lease lists the items which fall under the category of the Maintenance Expenses.

The application

7. On 28 September 2021, the Applicant issued proceedings against the First Respondents in the County Court Money Claims Centre seeking payment of unpaid service charges of £7,902.92, interest of £41.27, debt recovery costs of £772.00, administration fees of £364.00, and further costs.

8. Those proceedings were defended by the First Respondents by way of a defence dated 10 November 2021.

9. They were then transferred to the Tribunal on 13 April 2022.

10. In those circumstances, the proceedings were treated as an application by the Applicant for an order under s 27A Landlord and Tenant Act 1985 for a determination as to the reasonableness and payability of the service charges for the Property for the period 1 July 2020 to 30 September 2021, with consideration to be given, pursuant to para 5A sch 11 Commonhold and Leasehold Reform Act 2002, as to whether to restrict the Applicant from recovering the costs of the proceedings as administration charges *("the Application").*

The law

11. The Tribunal is given jurisdiction to decide the reasonableness and payability of service charges by s 27A Landlord and Tenant Act 1985, which provides: -

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

12. Subsection 2 provides that the application may be made whether or not any payment has been made by the Applicant.

13. Para 5A Sch 11 Commonhold and Leasehold Reform Act 2002 provides that the Tribunal may restrict the recoverability of the costs of the proceedings as administration charges, where it states: -

(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.

Directions

14. The Tribunal made initial directions on 20 December 2022, which identified the following issues to be determined: -

    a. Whether the service charges are payable for the service charge years in question.

    b. Whether the service charges have been properly demanded in accordance with the law and the Lease.

    c. Whether the service charges incurred are reasonable in amount and the services provided or works undertaken are of a reasonable standard.

15. Those directions also provided for a stay for settlement, followed by sequential filing and service of the parties' statements of case and any witness evidence.

16. The proceedings were subject to further sets of directions and stays. Accordingly, the parties have produced several successive position statements.

Other applications

17. The Respondent made an application to the Tribunal by email dated 29 May 2025 to postpone this hearing. That application was opposed by the Applicant by email dated 2 June 2025 and was refused by the Tribunal on 3 June 2025.

18. The Applicant made an application dated 2 June 2025 for permission to rely on the witness statement of Kerry Teasdale dated 30 May 2025.

19. The Applicant also produced a skeleton argument on 3 June 2025. The First Respondent sent an email to the Tribunal on that same day stating that there was inadequate time to respond to the same.

The hearing

20. The hearing took place by way of a video hearing on 4 June 2025.

21. The Applicant was represented by Counsel, Mr Castle. Miss Kerry Teasdale, an Associate Director of FirstPort Property Services Limited, also attended the hearing as a witness on behalf of the Applicant.

22. Neither of the First or Second Respondents attended the hearing, nor did any representatives on their behalf.

23. The Applicant's most recent position statement is dated 20 January 2025, being a summarised version of its statement of case 13 February 2024.

24. The First Respondent's most recent position statement is dated 27 December 2024.

25. The Second Respondent has not produced any position statements throughout the proceedings.

26. The Applicant submitted a bundle of documents as directed by Case Management Note dated 11 February 2025.

Preliminary applications

27. The Applicant sought permission (1) to rely on the witness statement of Kerry Teasdale dated 30 May 2025, per its abovementioned application, and (2) for the Tribunal to proceed with the hearing in the absence of the Respondents.

28. As to application (1), the Tribunal considered that the witness evidence of Miss Teasdale largely mirrored the Applicant's most recent position statement, and that it would be helpful to the Respondents, had they attended the hearing, and the Tribunal, to ask questions of her. Additionally, the Respondents had not formally

objected to the application. The Tribunal was therefore satisfied that allowing the application would be in accordance with the overriding objective of dealing with the matter fairly and justly and granted permission to the Applicant to rely on Miss Teasdale's witness statement.

29. As to application (2), the Tribunal acknowledged the Applicant's submission that, in making their application to postpone the hearing, the First Respondent had not said that it could not attend the hearing or, if not, why not. The Tribunal also considered rule 34 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and determined that it was satisfied that the Respondents had been notified of the hearing, as evidenced by the First Respondent's application to postpone it, and that it was in the interests of justice to proceed, given the long history of the matter, the delay in it proceeding to a final hearing, and the lack of explanation for the First Respondent's absence. Accordingly, the Tribunal allowed the application for the hearing to proceed in the absence of the Respondents.

30. Finally, the Tribunal considered the First Respondent's objection to the Applicant relying on its skeleton argument and noted that it was usual practice for represented parties to file and serve a skeleton argument shortly before a hearing. The document was designed to summarise the submissions that the Applicant intended to make at the hearing, taken from their position statement, to assist the Tribunal. The Tribunal determined that the skeleton argument did not contain any substantially new points which were not included in its previous position statements, and accordingly, the Applicant was entitled to rely on it.

The issues

31. The issues raised by the First Respondent can be summarised as follows: -

    1) Whether all the relevant service charge demands were accompanied by the information prescribed by Regulation 3 of the Service Charges (Summary of rights

and Obligations and Transitional Provision) (England) Regulations 2007 *("the Prescribed Information")*.

2) The First Respondent requires the Applicant to prove that the service charges claimed are a reasonable proportion of the maintenance expenses recoverable under Sch 7 para 1 of the Lease.

3) The First Respondent requires the Applicant to provide them with a full statement of account for the period of 12 months ending with the date of their defence, purportedly under s 21(1)(b) Landlord and Tenant Act 1985 *("the Act")*.

4) The First Respondent requires the Applicant to prove that the service charges claimed are reasonable in amount and have been reasonably incurred within the meaning of s 19 of the Act.

5) Whether the Applicant has complied with Sch 6 Part A para 4 and / or Part B para 2 of the Lease, in terms of the construction of the building in which the Property is situated.

6) The extent to which, since the coming into force of the Building Safety Act 2022 *("BSA 2022")*, cladding-related costs incurred before the BSA 2022 came into force are recoverable through service charges.

Determination

Issue 1) Prescribed Information

32. The First Respondent states that the service charge demand dated 21 May 2021 was not accompanied by the Prescribed Information and requires the Applicant to prove that all service charge demands for the relevant period were properly served and that they included the Prescribed Information.

33. The Applicant submitted that all service charge demands have the Prescribed Information pre-printed onto their reverse side, which included the demand dated 21 May 2021 and all relevant demands, exhibiting copies of all relevant demands and an example of the Prescribed Information in the hearing bundle. Miss Teasdale confirmed in her witness statement, and when asked by the Tribunal, that this was the practice of FirstPort and that the demands and the Prescribed Information in the hearing bundle were copies of those that were served.

34. The Tribunal noted that the first Respondent had not produced any evidence to challenge the Applicant's evidence.

35. The Tribunal is therefore satisfied, on a balance of probabilities, that the relevant service charge demands were properly served and included the Prescribed Information.

Issue 2) Reasonable Proportion

36. The First Respondent requires the Applicant generally to prove that the amounts claimed by way of service charge are a reasonable proportion of the Maintenance Expenses as required under Sch 7 para 1 of the Lease, which states: -

The Lessee's Proportion means a reasonable proportion of the amount attributable to the matters mentioned in Part "A" of the Sixth Schedule hereto and of whatever of the matters referred to in Part "B" of the said Schedule are expenses properly incurred by the Management Company which are relative to the matters mentioned in Part "A" of the said Schedule

37. The Applicant submitted that the First Respondent has not raised a dispute about any specific items contained in the service charges, or as to the proportion of the overall Maintenance Expenses that they are required to pay. The Application submitted that it calculates the proportion payable by each apartment by a square footage matrix; the Property's proportion of Sch 6 Part A costs is 1.5135%, and of

Part B costs is 1.6713%. Part B costs include the lift expenses, which are not charged to the ground floor apartments.

38. The Tribunal noted that the First Respondent had not raised any specific objections as to the above method of calculation or the proportions applied.

39. The Tribunal is satisfied that the method of calculation is acceptable, and the proportions applied to the Property are reasonable.

Issue 3) Statement of Account

40. The First Respondent requires the Applicant to provide a full statement of account for the period of 12 months ending with the date of their defence, pursuant to s 21(1)(b) of the Act. Notably, s 21(1) of the Act states: -

> *(1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred –*
>
> *(a) If the relevant accounts are made up for periods of 12 months, in the last such period ending not later than the date of the request, or*
>
> *(b) If the accounts are not so made up, in the period of twelve months ending with the date of the request,*
>
> *And which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period*

41. The Applicant submitted that s 21(1) of the Act does not entitle the First Respondent to a copy of their service charge account, but a summary of relevant costs, which are different. It also submitted that the relevant accounts are made up for periods of 12 months, and so s 21(1)(b) does not apply. Accordingly, s 21(1)(a) would be the relevant provision, but the First Respondent did not make its request under that provision. The Applicant conceded that it had not provided such a summary, which could in principle entitle the First Respondent to withhold payment of the service charge under s 21A(1) of the Act. However, the Applicant submitted that no valid

request had been made under s 21(1) of the Act, or alternatively the Applicant had a reasonable excuse, under s 21A(4) of the Act, for failing to comply with any such request, because the First Respondent had asked for something other than a written summary of costs as provided for by s 21(1) of the Act and / or the wrong provision had been relied upon – 21(1)(b) instead of (a).

42. The Tribunal determines that the First Respondent made their request under the wrong provision of s 21(1) of the Act, and that it was not clear from the wording of the request exactly what the First Respondent was asking the Applicant to provide, such that s 21A(1) of the Act does not apply. In the event that s 21A(1) was engaged, the Tribunal determines that the Applicant had a reasonable excuse for failing to provide a written summary of costs due to the unclear wording of the request and the reliance on the incorrect section of the Act.

Issue 4) Reasonableness of Service Charges

43. The First Respondent requires the Applicant to show that the amounts claimed by way of service charge are reasonable in amount, that they have been reasonably incurred, and are of a reasonable standard, pursuant to s 19 of the Act.

44. The Applicant submitted that the First Respondent has not raised any specific dispute to the effect that any Maintenance Expense forming part of the service charges has not been reasonably incurred within the meaning of the above section and, as such, it is unable to meaningfully respond to the issue.

45. The Tribunal noted that, in order to challenge the reasonableness of a charge, a tenant must first produce some evidence that the charge is unreasonable before the burden passes to the landlord to show that the charge was in fact reasonable *(Wynne v Yates* [2021] UKUT 278 (LC)).

46. The Tribunal notes that the First Respondent has not provided details of any specific challenges to any element of the service charges, and has not produced any evidence in support.

47. The Tribunal therefore determines that it is not sufficient for the First Respondent to simply put the Applicant to proof, and accordingly the First Respondent has not satisfied the Tribunal that there is a *prima facie* case that the service charges are unreasonable.

Issue 5) Compliance with Building Regulations

48. The First Respondent makes several complaints about the construction of the building in which the Property is situated, including that it is not compliant with Regulations, and states that this is a breach of Sch 6 Part A para 4, and Part B para 2, such that 'the sums claimed in this claim, and in other service charge demands are unreasonably incurred and unreasonable in amount'. The parts of the Lease referred to read as follows: -

Sch 6 Part A para 4
Repairing rebuilding repointing improving or otherwise treating as necessary and keeping the Maintained Property and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts

Sch 6 Part B para 2
Providing and paying such persons as may be necessary in connection with the upkeep of the Maintained Property

49. The Applicant submitted that the complaint is insufficiently particularised and evidenced, and that it focuses on the allegedly flawed construction of the building by the developer – whereas the parts of the Lease referred to relate to the Applicant's ongoing maintenance and upkeep obligations, which do not require it to take any

action in relation to the matters complained of regarding the construction. Further, the First Respondent has not provided any expert evidence on the point, which would be required to properly consider it, and the issue is unrelated to the reasonableness of the service charges in question; the First Respondent having failed to highlight any specific dispute within the meaning of s 19 of the Act, as above.

50. The Tribunal determines that the First Respondent's assertions in respect of the allegedly flawed construction of the building do not relate to the payability or reasonableness of the service charges in question. Furthermore, it determines that the parts of the Lease referred to by the First Respondent do not relate to the construction of the building but to the Applicant's ongoing obligations regarding the maintenance and upkeep of the building.

Issue 6) The Effect of the Building Safety Act 2022

51. The First Respondent refers to issues with cladding and the recoverability of the related costs by way of service charges.

52. The Applicant submitted that: -

a. £1,724.00 of the service charges in dispute relate to waking watch costs charged to the First Respondent, which may fall within the scope of Sch 8 of the BSA 2022.

b. If they do fall within that scope, the Applicant must accept that they are not payable by the First Respondent.

c. The related costs in question were demanded from the First Respondent prior to the coming into force of the BSA 2022 on 14 February 2022.

d. The Tribunal is currently bound by the decision in the case of *Adriatic Land 5 Limited v Leaseholder of Hippersley Point* [2023] [UKUT 271 (LC)

("Hippersley Point") which decided that Sch 8 of the BSA 2022 does have retrospective effect.

e. The decision of the Court of Appeal on the issue, in the combined appeals in *Hippersley Point* and *Triathlon Homes LLP v Stratford Village Development Partnership and others* [2024] UKFTT 26 (PC) is still awaited and, if the Tribunal makes its determination before that decision is handed down, then it remains bound to follow the judgment in Hippersley Point and disallow the waking watch costs.

53. The Tribunal determines that it is bound by the decision in Hippersley Point, having made its determination in respect of the Application prior to the Court of Appeal handing down its judgment as above. Accordingly, the sum of £1,724.00 relating to the waking watch costs shall be deducted from the relevant service charges charged to the First Respondent for the relevant period.

Costs

54. The First Respondent seeks an order reducing or extinguishing the liability to pay administration charges that relate to litigation costs, pursuant to Sch 11 para 5A of the Commonhold and Leasehold Reform Act 2002 *("CLRA 2002")*.

55. The Applicant submitted that the Lease, under Sch 8 Part One para 3, provides that the costs of the proceedings are recoverable from the First Respondent, and that the Tribunal should have regard to: -

a. The extent to which it has been successful in the Application, on the basis, that, subject to issue 6) above, it ought to have been substantially successful.

b. The parties' conduct in the proceedings, where it submitted that the First Respondent had not put forward a clear case, made numerous nebulous points, and failed to identify any specific items in the service charges that it considered to be unreasonable.

c. The issue regarding the recoverability of the waking watch costs did not exist when the Applicant issued its claim.

d. The fact that the Applicant had been attempting to settle the dispute since September 2022 on terms where the waking watch costs would not be sought until the judgment in the abovementioned appeal has been decided.

e. Following the Tribunal's decision, the matter will be remitted back to the County Court, where the judge at final hearing will have a broad discretion in respect of the costs of the proceedings to date and would be best placed to decide what costs, if any, the First Respondent should pay.

56. The Tribunal noted that it was being invited to consider *without prejudice save as to costs* correspondence and stated that, in order to do so, that correspondence would need to be filed with the Tribunal and copied to the First Respondent. The Tribunal therefore received an email from the Applicant's solicitors shortly after the hearing was concluded, copied to the First Respondent, which contained a copy of a letter marked *without prejudice save as to costs* from the Applicant's solicitors to the First Respondent dated 19 May 2025 which, *inter alia*, made the proposal referred to at d. above.

57. Considering the determination above, and having further determined that, once the case is remitted back to the County Court, the judge at the final hearing would be best placed to decide what costs, if any, the First Respondent should have to pay to the Applicant in respect of the proceedings as a whole, the Tribunal is not satisfied that it is just and equitable in the circumstances to make an order pursuant to Sch 11 para 5A of the CLRA 2002.

Judge Richard M. Dobson-Mason
4 June 2025