FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BL/LSC/2023/0080**
Property	**:**	**Flat 3, Buckley Court, Buckley Lane, Bolton BL4 9SE**
Applicants	**:**	**Mr Paul Pugh**
Respondent	**:**	**Dauber Homes Management Limited**
Representative	**:**	**Mr Geoffrey Faiman (Director)**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20** **Landlord and Tenant Act 1985 – s 20C** **Commonhold and Leasehold Reform Act 2002 –Sch 11 para 5A**
Tribunal Members	**:**	**Judge J Stringer** **Tribunal Member S Latham**
Date of Decision	**:**	**21st May 2025**

Date of Determination: 05 August 2025

DECISION

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1. The application is dismissed.
2. The costs incurred, by the Respondent 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 Applicants, pursuant to section 20C of the Landlord and Tenant Act 1985.

3. The Applicant's liability to pay an administration charge in respect of litigation costs with regard to these proceedings is extinguished pursuant to Paragraph 5A of schedule 11, of the Commonhold and Leasehold Reform Act 2002.

REASONS

Background to the application

1. The Tribunal received an application for a determination as to whether service charges and administration charges in respect of the Property are payable and/or reasonable.

2. An application has also been received for an order preventing the costs incurred in connection with the proceedings from being recovered as part of the service charge.

3. In addition, an application has been received for an order reducing or extinguishing the Applicant's liability to pay administration charges in respect of costs incurred in connection with the proceedings.

4. The registered owner and freeholder of Buckley Court, Buckley Lane, Bolton BL4 9SE ("Buckley Court") is the Respondent. Mr Faiman, who represents the Respondent company, is (as recorded at the directions hearing on 14th May 2024) a shareholder in, and director of, the Respondent Company, with particular responsibility for managing the Property.

5. The Applicant is the long leaseholder of the Property.

6. The Property is a 2-bedroom flat in a purpose-built block of 6 flats.

The Lease

7. Service charge provisions are set on Part 1 to the Fourth Schedule of the Lease and include provision for: Tenant's liability to pay service charges for the contractually required services (clause 1); Advance payments to the service charge, as "the Lessor may reasonable determine as likely to be equal to the Lessee's contribution…"(Clause 2); service charges accounts and adjustments (Clause 3); exceptional expenditure (Clause 4); sinking funds and reserves (Clause 5); advance payments deposit account (Clause 6); Lessor's "protection provisions" (Clause 7); a provision excluding from the service charge Lessee's individual liability or expense under the terms of their own specific lease (Clause 8); management charges (Clause 9); landlord's obligation to provide Services (as defined in Part 2 of the Fourth Schedule) (Clause 10); statement that the object of the service charge is the recovery of monies for which the

Lessor may be liable so that there shall be no residual liability on the Lessor (Clause 11).

8. Part 2 of the Fourth Schedule sets out the services which the landlord is required to provide under the lease, including at Clause 2 of that Part the obligation to keep "the facilities shared by all the occupiers in the Building (including but not limited to the security gates external lighting and communal television aerials) in good repair and condition", at Clause 3 the obligation to keep "the Building comprehensively insured against the Insured Risks" (as defined in Clause 6(b) of the Lease), to employ and retain managing agents or other professional advisors and staff as may be necessary (Clause 4), and to do "such other acts and things as may be reasonable necessary or desirable for the maintenance of the Building and for the comfort and convenience of the occupiers with it" (Clause 5).

9. Clause 7(b) of the lease, clauses 6 and 7 of Part 1, and clause 2 of Part 2, to the Fourth Schedule to the lease, are set out in full below:

> *"7. IT IS HEREBY AGREED AND DECLARED as follows:-*
>
> *(b) the Lessor shall be at liberty to modify waive or release any restriction stipulation covenant or conditions and other matters relating to any other part of the Estate whether imposed or entered into before or at the same time or after the date hereof and the Lessor shall not in any way be bound by the layout or general scheme of the development of the Estate as may be shown on any plans at any time prepared in regard to the Estate and it may from time to time after such layout or scheme of the development in any such manner as it may deem fit.*
>
> *6. Advance payments deposit account*
>
> *6.1. This paragraph 6 applies to such part of the monies (the Relevant Monies) paid by the Lessee and other lessees of the remaining parts of the Building by way of Service Charge as for the time being has not been disbursed in payment of the costs and expenses of providing Services.*
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> *6.2. The Lessor shall keep the Relevant Monies in a separate account until and to the extent that they may be required for disbursement then or in the immediate future in payment of the costs and expenses of providing the Services.*
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> *7. Lessor' s protection provisions*
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> *The Lessee shall not be entitled to object to the Service Charge (or any items comprised in it) on any of the following grounds (inter alia):*

7.1. the inclusion in a subsequent service charge period of any item of expenditure or liability omitted from the Service Charge for any preceding service charge period;

7.2 any items of Service Charge included might have been provided or performed at a lower cost; or

7.3 disagreement with any estimate of future expenditure for which the Lessor requires to make provision so long as the Lessor has acted reasonably and in good faith and in the absence of manifest error; or

7.4 the manner in which the Lessor exercises his discretion in providing Services as long as the Lessor acts in good faith and in accordance with the principles of good estate management; or

7.5. the employment of managing agents to carry out and provide the Services on the Lessor' s behalf.

Part 2

(Services and Heads of Charge)

2. Keeping the facilities shared by all the occupiers of the Building (including but not limited to the security gates external lighting and communal television aerials) in good repair and condition."

Inspection

10. The Tribunal Members inspected Buckley Court externally prior to the hearing on 21st May 2025. Of the parties, only the Applicant was present at the inspection.

Issues

11. The following issues were identified for determination by the Tribunal:
    a. The Applicant challenges the reasonableness of the service charges in relation to the years ending 2010, 2017, 2019, 2020, 2021, 2022, 2023, 2024 ("the Relevant Years"), and *"all future years"*, in relation to the following specific charges:
    b. Banking fees;
    c. Insurance costs;
    d. Communal electricity charges;
    e. Gardening charges
    f. The Applicant also challenges the recoverability of service charges in respect of fencing repair works in 2021/2022 on the basis of their being unreasonable and on the basis of the Respondent's alleged failure to comply with the section 20 Landlord and Tenant Act 1985 consultation requirements;

g. The Applicant further challenges the recoverability of service charges from 2010 to date on the basis of a set-off by reason of breach of contract, specifically an alleged breach of a contractual term in the lease by reason of a failure to replace front and rear metal security gates, which went missing in 2010.

The Law

12. The Tribunal has considered and applied sections 20 (consultation requirements) and sections 19 and 27A (reasonableness of, and liability to pay, service charges) of the Landlord and Tenant Act 1985 ("LTA") and the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 ("the Consultation Regulation").

Evidence

13. The Tribunal was provided with bundles from each party: from the Applicant, an 81-page bundle (including index); from the Respondent, a 189-page bundle.

14. The Tribunal has carefully considered the parties Statements of Case and all the written evidence available at the hearing. In particular, the parties' respective cases are summarised in the schedule/spreadsheet completed in accordance with the directions (which greatly assisted the Tribunal and for which the Tribunal is grateful for the parties completing so comprehensively).

15. The Tribunal has also carefully considered the oral evidence given at the hearing by the Applicant and Mr Faiman.

Relevant Evidence and the Tribunal's Conclusions on the Issues

16. In accordance with the *'Practice Direction from the Senior President of Tribunals: Reasons for decisions'*, this decision refers only to the main issues and evidence in dispute, and how those issues essential to the Tribunal's conclusions have been resolved.

Banking fees

17. The Applicant's objection to the banking charges was that it was unreasonable to incur any charges in relation to the Respondent's management functions, on the basis that the evidence indicated that the relevant accounts were in credit and that bank accounts without bank charges were commonly available; the Applicant accepted the current bank charges of £120 per annum for the building, or £20 per lessee, was not unreasonable, but he considered previous charges in excess of this amount, up to £15.50 per month, were unreasonable. The Respondent relied upon Clause 6.2 of the lease, Clauses 7.2 and 7.3 (referred to above).

18. Whilst a contractual clause cannot oust the jurisdiction of the Tribunal pursuant to section 20 LTA 1985, the Tribunal accept in principle that a Service Charge cost is not necessarily unreasonable simply because it might have been provided or performed at a lower cost.

19. The Tribunal take judicial notice (that is, it accepts it as generally known, without proof required) of the fact that charges for business bank accounts are not uncommon (accepting that charge free accounts may also be available). Business bank accounts that include charges are not contrary to the *"Service charge residential management Code and additional advice to landlords, leaseholders and agents"*, Code of Practice, 3rd edition ("the RICS guidance").

20. The Respondent gave oral evidence that the account used was for the purposes of a number of properties managed by the Respondent, and that if a specific and separate account was required to be used for Buckley Court, this was likely to give rise to additional management costs. The Tribunal accepted this evidence and finds, having regard to this, and the acceptance by the Applicant that the current charges are not unreasonable, that bank charges for the relevant years are not unreasonable, and are recoverable.

Insurance costs

21. The Applicant objected to the insurance costs on the basis that he had been provided with details of like-for-like policies with lower premiums, and that he believed the insurance costs had been inflated by reason of commission paid to both the broker and Respondent. The Respondent confirmed he was aware of the quotes obtained by the Applicant but thought any difference may be in consequence of differing information being submitted or different insurance periods being applied, and that the market may have changed between the Applicant obtaining his quote and the policy actually obtained (for the insurance period 1st December to 30th November); the policy obtained was a block policy for over 100 properties nationally, obtained as a result of a competitive tendering exercise (in respect of which exercise a 'letter of comfort' could be provided by the insurer). The Respondent stated that over the last 2 years management company commission received from the broker had been 15%, or £186.00 for the block, that is an equivalent cost to each flat of approximately £30, a payment that related to all insurance related work of the management company (detailed in Respondent's email dated 13th June 2024); 15% commission was also paid by the insurer to the broker, and was (the Respondent submitted) a form of remuneration for the work relating to the tendering process.

22. The Tribunal note the FCA guidance referred to by the Applicant (Policy Statement PS23/14, *"Multi-occupancy building insurance")* in relation to insurance commission payments to third parties (including property

management agents and freeholders), applicable from 2024, and the RICS guidance at paragraph 12.1.

23. The Tribunal is satisfied that there is an element of work involved in both tendering for, and administering, insurance. The Tribunal also accepts that insurance costs may be unreasonable if the cost of insurance for a particular property is increased as a result either of other properties being included in the policy, or by reason of commission which is not required to be paid/received. The Tribunal further accepts that the failure by the Respondent to disclose commission on an annual basis was contrary to the RICS guidance, but for the reasons given below, that does not make the insurance premium unreasonable in the absence of prejudice, nor, for the same reasons, is a finding of breach of the FCA guidance established by the Applicant.

24. The Tribunal does not make any finding as to whether the commission sums claimed are reasonable because the Tribunal finds that on the basis of oral evidence only from the Applicant, in the absence of further, documentary evidence as to the terms on which the Applicant's quote was obtained (that is, evidence of all information requested by the insurer and provided by the Applicant in support of the quotations relied upon), and it not being accepted by the Respondent that the quotations are on a like-for-like basis, the Tribunal is not able to make any finding that the relevant quotations were at a lower cost on a like-for-like basis. For the same reason, the Tribunal is not able to find that the total insurance costs claimed for the relevant years are unreasonable because it is not satisfied that there is sufficient evidence of that the quotations relied upon by the Applicant are on a like-for-like basis.

Communal electricity charges

25. The Applicant accepted that the relevant electricity charges had been paid for communal lighting at the property but queried why the charges were so high; the Respondent's evidence was that the charges were based on either actual or estimated meter readings, the meter was read at least once a year, the higher charges for particular years (in particular, 2023 and 2024) were likely due either to issues related to the pandemic or to known increases in energy costs post-2021, but that insofar as the charges had been over-estimated, any over-payments would be credited to the electricity account in subsequent years.

26. On the basis of the evidence the Tribunal is not satisfied there is any evidence to find that the communal electricity charges for the relevant years are unreasonable.

Gardening charges

27. Following disclosure of the relevant invoices in the course of the proceedings, the Applicant accepted that those charges had been reasonably incurred and disbursed. The Tribunal accordingly finds the gardening charges for the relevant years are reasonable.

Fencing/Failure to consult

28. The Applicant disputed the charges relating to fencing repairs, initially on the basis that no invoice/receipt had been provided (but acknowledged at the hearing the invoices and email correspondence disclosed in the course of proceedings), and at the hearing on the basis of the quality of the work (that the metal spikes supporting the fence posts were unstable and the work was generally not of a "reasonable standard") and on the basis of breach of the section 20 LTA 1985 consultation provisions.

29. The Respondent's evidence was that in the course of the contractor removing fencing which had blown/fallen down (the Respondent clarified the relevant fencing was to the rear only, and not the (uneven) fencing to the left hand side of the property) the Respondent had been advised that "footings" for the fences was rotten and required replacing; the Respondent contended that the work was of a reasonable standard and that the works did not fall within the consultation requirements as they were two separate items (that is, firstly, replacement of the fallen fencing and, secondly, work to replace the footings by way of metal spikes and new posts).

30. In relation to the standard of work, the Tribunal inspected the relevant sections of fencing and find that the work was of a reasonable standard, in particular, the fencing was of a reasonable quality and the footings by way of metal spikes provided adequate stability to the fencing. The charges are therefore not unreasonable on that basis.

31. In relation to the consultation requirements the Tribunal rejected to the Respondent's submission that the works were more than a single set of works and excluded from the consultation requirements (the works being contiguous and physically proximate, subject of the same quotation/contract, done at more or less the same time, and closely connected and related).

32. However, the Tribunal is satisfied that it is appropriate to grant retrospective dispensation in relation to the consultation requirements on the basis that the sums claimed exceeded the consultation requirement threshold by a minimal amount, and, in particular, because in the absence of any alternative quotes, or

other evidence to suggest the charges are unreasonable in amount, the Applicant cannot demonstrate any prejudice.

Metal Gates/Set Off

33. The parties' respective cases in relation to the stolen gates are set out in detail in the schedule, in particular, the Applicant alleged breach of the contractual provision at clause 2 of Part 2 to the Fourth Schedule of the lease (see above), the Respondent denying any breach of that provision.

34. The Tribunal finds that there has been no breach of the provision because it accepts the interpretation of the Respondent, specifically, that clause 2 imposes on obligation to repair, as opposed to replace; the Tribunal further finds that the Respondent is also able to rely on clause 7(b) of the lease, that is, to alter services by having chosen not to replace the security/metal gates, particularly, in circumstances of the Respondent's (unchallenged) evidence that no other tenants/owners had sought replacement of the gates.

35. Further, even if the Tribunal had not so found, the Applicant's claim for set-off fails because the Applicant is unable to establish any financial loss arising from the failure to replace the gates (the Tribunal not being satisfied that there is any reliable evidence of loss of rental income or freehold value in consequence of the absence of the gates) and/or any purported set-off is unspecified and impossible to assess.

Conclusion

36. For the reasons given above, the application is dismissed.

Costs

37. The Applicant applies for orders pursuant to s 20C LTA and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

38. Notwithstanding that the Application has been dismissed the Tribunal is satisfied that it is would be just and equitable to make the orders sought because it is clear from the evidence that there has been a failure on the part of the Respondent to disclose relevant documents when requested, and that the application has been pursued, at least in part, as a result of this delay in disclosure of relevant documents until proceedings were issued.

Tribunal Judge J Stringer

21st May 2025