FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00KF/LIS/2023/0028**
Property	:	**272 Fairfax Drive, Westcliff on Sea, SS0 9LT**
Applicant	:	**Daniela Galova**
Representative	:	**Daniela Galova**
Respondent	:	**Long Term Reversions (Torquay) Limited**
Representative	:	**Daniel Jones (Counsel)**
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 Adcock-Jones** **Ms Alison Flynn**
Venue	:	**Via CVP**
Date of hearing	:	**6 March 2025**
Date of decision	:	**6 March 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal determines that the sums payable by the Applicant in respect of service charge years 2016 to 2024 inclusive are as set out below.

(2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

(3) The Tribunal dismissed the application to make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") in respect of reimbursement of the Applicant's Tribunal fees.

The application

1. The Applicants seek a determination pursuant to section 27A of the 1985 Act as to whether service charges are payable in respect of the service charge years 2016 to 2024 inclusive.

2. The Applicant further sought an order to limit the recovery of the Respondent's costs of the proceedings through any service charge and/or administration charge and for an order for reimbursement of their Tribunal Fees pursuant to rule 13(2) of the Tribunal Rules.

The hearing

3. A remote hearing was held by CVP video. The Applicant represented herself and the Respondent was represented Mr Daniel Jones of Counsel. Miss Rachael Smith of Pier Management Ltd on behalf of the Respondent was also in attendance.

4. The approach taken by the Tribunal was to examine each disputed service charge item in turn with the parties addressing the Tribunal on each item with their clients' position. Witnesses were not formally called, although all parties helpfully assisted the Tribunal in answering any additional questions or providing further information during the hearing.

The background

5. The Applicant is the leasehold owner of a two-bedroom ground floor maisonette and garden.

6. No-one requested an inspection of the Property, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

8. The Application for determination of payability of service charges were made on 22 November 2023 and received by the Tribunal in the same month. Directions were issued by Mary Hardman FRICS IRRV (Hons) on 28 August 2024.

Procedural Issues

9. The directions provided for an agreed bundle to be prepared. However, the Tribunal were provided with a bundle of documents for each party.

10. Mr. Jones submitted that the Applicant had failed to provide a reply as directed by the 7th of November 2024 and had instead provided documents on the day that the bundle was to be finalised and filed with the Tribunal on the 18th of November 2024. He therefore invited the Tribunal to strike out the Applicant's case and/or disregard the documents in their entirety.

11. The Applicant referred to a previous short extension that had been agreed between the parties and explained that she had not understood what was required.

12. Mr Jones did accept that the Respondent had been in possession of the Applicant's documents since the 18 November 2024 and no application to strike out the case had been made.

13. Upon consideration of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013, specifically rules 6 and 8 and given that the Respondent had had a significant opportunity to consider the papers, had not made an application to strike out the case, the Tribunal considered it just and equitable and in accordance with the overriding objective to allow the Applicant to rely upon the documents and to proceed with the hearing.

The issues

14. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:

- whether the identified charges, in particular building insurance, management fees and service charges are validly demanded and payable under the terms of the lease for the relevant year and, if payable, reasonable;

- whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 of the 2002 Act should be made, if such orders are sought;

- whether order for reimbursement of application\hearing fees should be made

15. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

16. There was an initial issue regarding the lease subject to the property insofar as the Applicant was concerned that she had never been provided with a lease in her name.

17. Mr Jones referred the Tribunal to the Respondent's statement of case, specifically to paragraphs 11 to 20 and further to the official copy entries relating to the freehold and leasehold titles. The original lease was dated 15 February 1977 and thereafter followed the subsequent lease dated 30 August 2013.

18. Whilst the Applicant at the time of purchasing the property in 2016 was represented by conveyancing solicitors, she had either not been properly advised or alternatively had not appreciated that she would not receive a lease in her name.

19. However, the Tribunal explained the fact that she had purchased the leasehold interest and this was recorded in the Land Registry title documents for both the freehold and the leasehold title itself.

Determination

20. The Tribunal determined that the application was to be considered under section 19 of the 1985 Act.

21. Section 19(1) limits the amount payable for a service charge to the extent that it is "reasonably incurred" and that services or works are "of a reasonable standard".

22. By way of the Scott Schedules included in the bundles, it was confirmed that several previously disputed items, mostly relating to management fees, property inspection fees and admin fees, had since been conceded by the Respondent and therefore determination was not required by the Tribunal.

23. The disputed service charge items are listed in the table below.

Disputed Item	2016 – 2017	2017-2018	2018-2019	2019-2020	2020-2023	2023-2024	2024-2025
Building Insurance		£653.08	£675.19	£699.23 £725.05	£2,452.90 (relating to £747.12 for 2020 – 2021) £808.04 for 2021 – 2022 £897.74 for 2022 – 2023)	£924.33	£720.90
Chimney Repair Admin Fee					£24.60		
Repairs to Chimney					£246.00		
Insurance Admin Fee						£21.99	£21.99
Centrick Reinstatement Cost Assessment						£180.00	

24. The Tribunal notes the important of insurance premiums and service charges being paid promptly to ensure the effective management and protection of a building.

Building Insurance

25. The largest part of the application related to payment of the building insurance. The Applicant had obtained a quotation from AXA and confirmed upon further enquiry that this covered the entire building.

26. However, there was no specific detail or evidence produced before the Tribunal to support what information had been provided to AXA to support the quotation. The Tribunal was informed that the Applicant had not informed the insurance company about any previous claims on the property and had sought the policy based on standard risks.

27. Moreover, the Applicant expressed disquiet that she had received an invoice on the 28 March 2023 requesting payment for her contribution for insurance premiums for the three-year period from 2020 to 2023. She confirmed that she had not received any demand for building insurance prior to this date. Principally, her position was that the insurance premium was an unreasonable cost for a building of this nature.

28. Mr Jones referred the Tribunal to the Respondent's statement of case; namely, paragraph 22 onwards insofar as the process followed by the Respondent to obtain insurance and criticised the Applicant for the lack of evidence in support of her contention that the insurance was overpriced.

29. Mr Jones stated that an "all risks" policy that have been obtained for the building and this was materially different to the domestic policy that the Applicant appeared to have investigated and explained the portfolio basis upon which the insurance was placed.

30. Mr Jones referred the Tribunal to various case authorities as set out within the Respondent's statement of case and to the authority of *Avon Estates Limited v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) which prescribes at paragraph 30 that so long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred.

31. Mr Jones confirmed that there was regular open market testing of the insurance and in response to enquiry by the Tribunal as to the frequency of the same, directed the Tribunal to the broking strategy as set out by Lockton within the papers. The Tribunal noted that there had been no extensive marketing testing between the years of 2018 and 2024.

32. The Tribunal was further directed to the various risks covered within the "all risks" policy wording provided by Lockton relating to and including but not limited to property damage, loss of rent, legal defence costs, loss of market value and eviction of unauthorised occupants. Mr Jones therefore submitted that this was evidence of extensive cover and therefore the costs were reasonable.

33. Miss Smith provided clarification as to the insurance admin fee demanded of the Applicant.

34. The Tribunal notes that pursuant to clause 4(2) of the Original Lease, the Respondent covenants with the Applicant

    "To insure and keep insured the building during the term hereby granted for the insured risks and to make all payments necessary for the above purposes within seven days after the same show respectively become payable and to produce to the Tenant upon demand the policy or policies of such insurance under receipt for every such payment"

35. Clause 3 of the New Lease varied the terms of the Original Lease as set out in the Schedule appended and was to be read and construed accordingly.

36. Paragraph (1)(i) of the Schedule of the New Lease added provision to clause (2) of the Original Lease:

"(9) To pay in addition to the rents reserved a fair and reasonable proportion determined by the Landlord of the cost of any premiums (including any IPT) that the Landlord expends… in effecting and maintaining insurance of the building in accordance with its obligations in the lease including any professional fees for carrying out any insurance valuation of the reinstatement value together with the cost of any additional premiums (including any IPT) and loadings that may be demanded by the Landlord's insurer as a result of any act or default of the tenant, any undertenant, their workers, contractors or agents or any person at the property with the express or implied authority of any of them"

37. In respect of the reason why three years of insurance had not been demanded until the demand of the 28 March 2023, Mr Jones explained that this was due to a dispute between the parties relating to an extension that had been constructed by the Applicant. The Tribunal asked to be addressed on section 20B of the Landlord and Tenant Act 1985 regarding limitation to notify tenants of service charge costs and demand payments within 18 months. Mr Jones sought to draw a distinction between the insurance and service charge as set out in the New Lease at clause 4.2 noting in any event that the years 2021 onwards would not be caught by this.

38. The Tribunal was also made aware that for the year 2023 to 2024, the Applicant had received a partial credit of £241.02 against that premium as a gesture of goodwill.

39. Whilst credit is to be given to the Applicant in providing a comparative quotation as often this is not the case in such matters before the Tribunal, the Tribunal nonetheless accepted the evidence of the Respondent insofar as the insurance premium and admin fee were payable under the terms of the lease and were reasonably incurred.

40. Whilst limited testing of the market had taken place between the years of 2018 and 2024, the Respondent had obtained extensive cover for the property for which the Applicant is liable.

41. It therefore follows by the same analysis that the insurance admin fees of £21.99 for 2023 to 2024 and 2024 to 2025 are also payable.

42. The Tribunal therefore determines that the sums as set out below are payable and reasonable by the Applicant.

Disputed Item	2016 – 2017	2017-2018	2018-2019	2019-2020	2020-2023	2023-2024	2024-2025
Building Insurance		£653.08	£675.19	£699.23 £725.05	£2,452.90 (relating to £747.12	£924.33	£720.90

					for 2020 – 2021) £808.04 for 2021 – 2022 £897.74 for 2022 – 2023)		

Chimney

43. The Applicant's case in relation to the chimney was that work had never been done and she was concerned that photographs provided did not relate to the building. However, during the hearing, it was clarified that her position was actually that the works had been done badly and her position was that this was supported by the subsequent water ingress and mould damage to her flat property. In this regard she referred to the invoice of Westcliff contractors dated 11 November 2024. She stated she had never been given notice of the work to be done and had never seen any bills relating to the chimney.

44. Mr Jones referred the Tribunal to the invoice of Stringer Roofing Services Limited dated 17 November 2021 and the associated pictures in support of his submission that the work had been carried out. He continued that was no evidence to support the position that the current issues with the chimney were related to the works undertaken in 2021.

45. Under clause 3(3) of the Original Lease, the Applicant covenanted with the Respondent:

    "To contribute a fair proportion towards the cost of maintenance repair and if necessary, the reconstruction of the roof the main walls and drains and the foundations of the building expended either by the Landlord or the Tenant or occupier the undemised premises such sum to be paid in advance is so-called upon"

46. Clause 4(5) of the Original Lease prescribes:

    "If necessary to reconstruct the roof the main walls and the drains and foundations of the property PROVIDED THAT the Tenant and all other tenants of the building under similar leases as this have been paid in advance their fair proportion of their estimated costs or such repairs or reconstruction"

47. As the work had been done, the Respondent had demanded from the Applicant a fair and reasonable proportion of 50% towards these expenses incurred given that the property consisted of two maisonettes. It was submitted by Mr Jones and Miss Smith that the management of the building is performed on a reactive basis insofar as if there are items of repair and maintenance required, a demand would be raised to

leaseholders for the advance payment of their contributions to the costs anticipated to enable those to be undertaken.

48. There was brief discussion regarding the duplication of these sums later in the Scott schedule; however, it was confirmed that only one charge in relation to chimney works and an admin fee had been demanded. The Tribunal enquired about inspections of the property and Miss Smith stated that whilst inspections had been carried out on the 1 September 2022, 26 October 2023 and 23 October 2024 elements had been flagged.

49. All site inspections had been ground inspections. The Tribunal notes that a more detailed inspection beyond a ground inspection may be prudent for future inspections. The Applicant referred to problems within her property regarding water ingress, mushrooms and mould growth within her property. However, the Tribunal was not satisfied there was any evidence that this related to the 2021 chimney works.

50. Accordingly, the Tribunal determines that the sums of £246.00 and £24.60 for service charge year 2020 to 2023 are payable by the Applicant.

Centrick Reinstatement Cost Assessment

51. The Applicant's position on this was that it was a fee for which she had been charged but received no service. Mr Jones referred the Tribunal to the invoice which set out the sum of £180.00 due.

52. Both he and Miss Smith confirmed this is an anticipated cost and as further expanded within paragraph 58 of the Respondent's statement of costs, reflects the amount of research required by Centric to complete their in-house assessment and the cost of the data utilised. In the absence of payment being made, this service cannot be carried out.

53. The Tribunal is satisfied this this payable under Paragraph (1)(i) of the Schedule to the New Lease in respect of a contributing cost to be made by the Applicant.

54. Accordingly, the Tribunal determines that the Applicant is to pay the sum of £180.00 in respect of the Centric Reinstatement Costs Assessment for service charge year 2023 to 2024.

Application under section 20C and paragraph 5A of Schedule 11 and for refund of fees

55. The Applicant applied for an order under section 20C of the 1985 Act to limit recovery of the Respondent's costs of the proceedings through the service charge and under section 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 through administration charges.

56. Mr Jones confirmed that the Respondent had no intention to demand from the Applicant, whether by way of either service charge or as administration challenge, legal costs it had incurred in responding to the application.

57. This was further enshrined within paragraph 65 of the witness statement of Adam Fotiou of PDC law, solicitors for the Respondent dated 13 October 2024 which was signed by a statement of truth.

58. In such circumstances, the Tribunal determines that there is no need for further consideration of this application given the Respondent's position.

59. In respect of her Tribunal fees, as the Applicant has been unsuccessful in her application, the Tribunal does not consider it to be just and equitable to exercise its discretion to order reimbursement of the Applicants' Tribunal fees for the application and hearing fees.

Name:	Judge Adcock-Jones	**Date:**	6 March 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b) except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2)In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a)if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a)an amount prescribed by, or determined in accordance with, the regulations, and

(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

<u>Section 27A</u>

(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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.