



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AC/LSC/2016/0320 &
LON/00AC/LSC/2017/0106

Property : 240A Station Road Edgware Road
Middlesex HA8 7AU

Applicant : Richard Archer Property Trading
Limited

Representative : Mr. A. Meyers
(Churchills Solicitors)

Respondent : Ms. S. Pandya

Representative : Ms. R. Baker of Counsel
Mr. G. Scott
(Philip Ross Solicitors)

Type of application : County Court referral for the
determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : Mr. N. Martindale
Ms. S. Coughlin

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 21 November 2017

DECISION

Decisions of the Tribunal

- (1) The Tribunal records that many of the items of claim were withdrawn by the landlord, or were conceded by the tenant as the hearing progressed. Nevertheless a substantial number of items remained for the Tribunal to determine **and its decision in respect of each of these is set out in bold type below for the 2015 and 2016 service charge years respectively.** The Tribunal clarifies that the service charge year 2015 is the period 25 March 2014 (rather than 24 April 2014 as in the Directions) to and including 24 March 2015 and that the service charge year 2016 is for the period 25 March 2015 to and including 24 March 2016.
- (2) The Tribunal makes no determination on the compliance or otherwise by the landlord in respect of S.20ZA consultation for works at the block, as the tenant did not seek to present a case on this issue.
- (3) The Tribunal makes no determination in respect of costs arising from litigation at County Court. These remain a matter for the court to determine.
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985. The costs in preparation for and presentation of the landlord's case at this Tribunal hearing cannot therefore be recovered from the tenant under future service charges.
- (5) The respondent tenant having had some success the Tribunal declines to order a refund by the tenant to the applicant landlord, of the application and hearing fees.

The applications

1. These are two cases, referred from County Court to the Tribunal. LON/00AC/LSC/2016/320 and LON/00AC/LSC/2017/0106, which concern consecutive service charge years and were consolidated under Rule 6(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), as to the amount of service charges payable by the Respondent in respect of certain items in two service charge years.
2. Directions were issued from this Tribunal, by Tribunal Judge N Hawkes, on 23 May 2017. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Directions provided for a one day hearing on 11 September 2017. Although both parties had previously substantially complied with the Directions but one party did not provide a new bundle, relying instead on the one prepared for the postponed hearing in 2016. This was soon apparent on the hearing starting which then delayed the start of the hearing until these bundles were retrieved by the Tribunal office.
4. There being some duplication and amendment of schedules and other considerable materials contained in the bundles for each case, the Tribunal, with the agreement of both parties, adopted the most recent Scott schedule prepared by the respondent, for service charge years 2015 and 2016 as the basis of consideration of each side's case. Individual issues were then numbered by the Tribunal so as to identify 14 scheduled contested items for 2015 (No.s 1 - 14 inclusive) and 11 scheduled contested items for 2016 (No.s 15 - 25 inclusive).
5. The Tribunal then led the parties through each of the 25 items, inviting each to present their case. This was to ensure that presentations could be concluded in the limited time remaining. It transpired that some of the items were withdrawn, accepted or agreed by the parties as the hearing progressed. The Tribunal notes these below and therefore Tribunal makes no determination on them.
6. Though some additional papers were submitted by the parties on the day, it was without objection of the other and these were received by the Tribunal.
7. Besides those named above, Mr R Davidoff (Director of the applicant company) also attended for the applicant. Ms K Pandya also attended to support the respondent.

The background

8. The property is part of an early twentieth century mixed residential and commercial terraced block in a busy 'high street' location in Edgware. The property is one of two flats located immediately above ground floor retail premises and shares a short communal internal staircase with that other flat.
9. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The provisions of the lease were not contested.
10. The reasonableness and payability of service charges at the property have been challenged before for earlier years at the Tribunal. Neither

party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The 2015 service charge items, Tribunal's decisions with reasons

11. The proportion of the total cost of services was not in dispute. The Scott schedule adopted at the hearing by the Tribunal set out the proportionate sums claimed by the applicant landlord, from the respondent tenant for each of the 25 items. Some of the items had been agreed or there was no longer a challenge to them. Most items were quantified under the column headed 'balancing charge' in the schedule, but where there was no advance payment for a particular item a single actual cost figure was the one in dispute.
12. Item 1. Electricity: £59.27 balancing charge due. The tenant now accepted that £59.27 was reasonable and payable and no longer challenged it.
13. Item 2. General Repairs: £2000 balancing charge due. The tenant now accepted that £1993.38 was reasonable and payable and no longer challenged it.
14. Item 3. Legal: £542 charge due. The tenant represented and the landlord acknowledged that this item was an administration charge and not a service charge and that it had not been passed to the Tribunal to deal with by the court. It could only be determined by the court at a later date, not by the Tribunal. It was no longer challenged at this hearing.
15. Item 4. Insurance: £460.60 balancing charge due. Some confusion had arisen between the parties arising from a minor change to the start and end date for each insurance year, the premium billing date and its interaction with the service charge year. This had apparently led to two recharges for insurance premiums arising as a one-off in one service charge year. After discussion at the hearing the tenant and landlord agreed that the correct balancing charge was £269.78. The tenant accepted that this sum was reasonable and payable and no longer challenged it.
16. Item 5. Audit: £50 balancing charge due. The tenant accepted that £50 was reasonable and payable and no longer challenged it.
17. Item 6. Management: £300 balancing charge due. The tenant accepted that £300 was reasonable and payable and no longer challenged it.

18. Item 7. Postage: £4.17 balancing charge due. The Tribunal would normally expect such sundry expenses to be borne by the agent and covered by the general estate management fee. The landlord now accepted that this sum was not due and withdrew the claim.
19. Item 8. Contingency: Formerly £333.33, but revised by the landlord to a nil balancing charge due. It was in the nature of the item that it was only ever an estimate of possible additional annual expenditure. The tenant no longer challenged this item as nil was due.
20. Item 9. Professional Fees: £4050.00 due. This item is considered together with item No.10 below. The landlord claimed their time and those of his representatives in preparing for the earlier Tribunal hearing which was postponed. The tenant claimed that the landlord had issued duplicate bills each for identical sums of £4050.00.
21. Item 10. Professional Fees: £4050.00 due. The tenant also stated that in any case the level of costs generated by the landlord under items 9 and 10 was wholly disproportionate to the amount of service charge challenged and unpaid by the tenant in earlier accounting years. The landlord denied this stating that there had been two hearings and that they had spent considerable time trying to address the time-wasting approach and challenges from the tenant, especially as many of these were then later settled in earlier challenges. The tenant had offered £1200.00 in total settlement of these claims. **The Tribunal found the 'paper trail' as presented for the competing claims inconsistent and confusing, but doing the best it can with the information presented, it determines that a sum of £2,250 inclusive of VAT is reasonable and payable in respect of both items 9 and 10 in total.**
22. Item 11. Reserve Fund: £750 due. The landlord listed a number of external works which would shortly be needed to the block within which the property was located in particular the flat roof to the back addition which had last been replaced 11 years ago. The landlord stated that both the ground floor shop and other flat leaseholder had contributed £750 towards this fund and that the tenant should do the same. The tenant considered this excessive as an annual contribution to this fund and had offered £250 but gave no other reason. **The Tribunal mindful of the expense of anticipated works to the exterior of the block, determines that the sum of £750 is reasonable and payable by the tenant for this item.**
23. Item 12. Electrical Certificate: £150 due. There had been no estimated charge, this being the contribution to the actual. The tenant accepted that £150 was reasonable and payable and no longer challenged it.
24. Item 13. Drafting Specs: £750 due. This Item is considered together with item No.14 below. The landlord maintained that a detailed

specification of decorating works to the interior of the stairwell to the upper floor and shared with one other flat, was prepared to ensure that competitive bids from contractors would be submitted on a properly comparable basis. Unfortunately a copy of the specification was not available to the Tribunal. The tenant queried that such work was necessary as the small physical extent of the space to be decorated and the work itself was so straightforward. The tenant stated that should such specification work even be necessary it should fall within the scope of the annual management fee. **The Tribunal accepts that some work is required to specify and arrange the issue, receipt, analysis and award of even a small tender exercise for this work and that it would not form part of the annual estate management fee of an agent. It therefore determines that £300 is reasonable and payable by the tenant for this item.**

25. Item 14. Supervision Fee: £225.60 due. The landlord stated that this figure was based on 10% of the contract price. The tenant maintained that such work did not require supervision, but that on the basis that there was to be no charge for the specification and award of the tender they would accept that 10% of the final contract price for the whole exercise. The Tribunal was presented with details showing a final cost of the works as £3960 including VAT, a cost which would have been borne £1980 by each tenant. The cost of the work itself was not contested. **The Tribunal accepts that some work is required to supervise this work and that it would not form part of the annual estate management fee of an agent. It therefore determines that £198 including VAT is reasonable and payable by the tenant for this item.**

The 2016 service charge items, Tribunal's decisions with reasons

26. Item 15. Accounts and Audit: £50 balancing charge due. The tenant accepted that £50 was reasonable and payable and no longer challenged it.
27. Item 16. Insurance: £223.75 balancing charge due. The tenant accepted that the £22.75 was reasonable and payable and no longer challenged it.
28. Item 17. Management Fees: £315.00 balancing charge due. The tenant accepted that the £315 was reasonable and payable and no longer challenged it.
29. Item 18. Reserve Fund (External): £333.33 due. The arguments around were very similar to those for item 11, for 2015. The tenant stated that as no major works were due £100 was quite sufficient contribution. The landlord referred again to the condition of the exterior of the block and in particular the flat roof. **The Tribunal**

determines that £333.33 is reasonable and payable by the tenant for this item for the same reason as at item 11 above.

30. Item 19. Contingency: £86.40 balancing charge due. The tenant denied that the 'helpline telephone' service was recoverable under the lease and certainly not through a 'contingency' fund and that therefore nil was due. The landlord maintained that creating and maintaining a contingency fund was in accord with good practice as promulgated by the RICS code of practice. **The Tribunal requested that the landlord refer it to a copy of the management agreement between the landlord and the manager, but no copy was available. It was unclear to the Tribunal therefore the basis on which this service was provided, if it was and whether it should be covered under the annual management fee and not as a contingency, as it was not of itself an unexpected event. For these reasons the Tribunal determines that nil is reasonable and payable by the tenant for this item.**
31. Item 20. Repairs and Maintenance: £2602.84 balancing charge due. The landlord sought a substantial sum in respect of works which had been carried out in the year to the block, but was unable to point to documentation in the bundle which supported this sum or account for the figure demanded. The landlord instead took a more conservative stance at the hearing and sought the revised sum of £529.32, based on proportions of the following costs: Supply and installation of Health and safety signage to the stairwell (50% of) £82.80; supply and installation of a new lock to the stairwell (50% of) £222.84; pest control to the block (25% of) £186.00; removal of flue resulting from an asbestos survey (50% of) £348; Fire Risk Assessment to the stairwell (50% of) £312. Total £529.32. in the light of these new representations the tenant maintained that in the absence of detailed documentation to show that these sums were expended, nothing was due. **The Tribunal found the 'paper trail' as presented for these costs patchy but accepts the revised costs and contribution sought by the landlord at the hearing. Doing the best it can with the information presented, it determines that a sum of £529.32 inclusive of VAT in total is reasonable and payable in respect of these costs for this item.**
32. Item 21. Postage: Nil balancing charge due. As for item 7 above, the parties now agreed that nothing was due.
33. Item 22. Electricity: £60.39 balancing charge due. The tenant accepted that £60.39 was reasonable and payable and no longer challenged it.
34. Item 23. Reserve Fund: £500 balancing charge due. The landlord now sought £250 rather than the £500, and the tenant offered £150. The arguments presented were similar to those for item 11 above, but other

than a contribution to future decoration of the shared hallway no substantial anticipated works were on this occasion were noted by the landlord. **The Tribunal mindful of the expense of smaller anticipated works to the interior of the block, determines that the lesser sum of £150 is reasonable and payable by the tenant for this item.**

35. Item 24. Internal decoration: £Nil due. The parties agreed that the landlord's original claim of £2217.50 was a duplicate and the landlord confirmed that nothing was now claimed.
36. Item 25. Legal costs: £2341.00 due. The tenant represented and the landlord acknowledged that this item was an administration charge and not a service charge and that it had not been passed to the Tribunal to deal with by the court. It could only be determined by the court at a later date, not by the Tribunal and it was no longer challenged, at this hearing, therefore.

Application for Order under S.20C - Tribunal's decision & reasons

37. The tenant respondent maintained that the demands and supporting information provided by the landlord for service charges for these two years was late, patchy, incomplete, confusing, duplicated and sometimes completely wrong. Some items should not have been claimed under the service charge as they were not services the cost of which could be reclaimed in this way, and others that they were in the nature of administration charges which could only be determined by the county court. The landlord's records were said to be incomplete and poorly arranged and this had generated the need for a large number of challenges being made by the tenant.
38. The landlord applicant argued that the vast majority of tenants paid what was owed when billed, but that this tenant had raised a disproportionate number of queries, many of which had been settled just prior to or at the hearing itself. For example the fact that the tenant did not apparently have an email address made dealing with queries or supply of documents in attempting to address queries more cumbersome and expensive for the landlord than should be necessary. The landlord also felt that it was reasonable for the tenant to make payment of service charges on account and then to raise queries in parallel. This would avoid the need for the landlord to refer claims for non-payment to the county court and the considerable attendant costs should not have arisen.
39. **The Tribunal experienced difficulty in dealing with the information provided by both parties. The Tribunal notes that this is not the first time these parties have had cause to appear at the Tribunal to determine the reasonableness and payability of service charges under this lease. Whilst there is**

nothing to prevent this pattern continuing in future years, the Tribunal records in its decision that a significant number of claims were either withdrawn, corrected, or substantially reduced by the landlord and that a similar number of challenges were dropped or compromised by the tenant either very shortly before or during the hearing itself. On balance of the overall outcome, the Tribunal determine that many of these resolutions some significantly in favour of the tenant would not have arisen without a challenge having been made. The Tribunal therefore orders that the landlord shall not recover the costs of preparing and presenting their case at this particular hearing.

40. The Tribunal would encourage the parties in future years to carefully prepare, support, communicate and explore such service charges, their cost, correct basis and justification more carefully and at an earlier stage. In light of the way this particular hearing progressed the parties are also recommended to consider the option to use the mediation service currently offered by the Tribunal, rather than a full hearing.

Name: Neil Martindale **Date:** 17 November 2017

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.

Section 27A

- (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 20

- (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) 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.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had

been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).