FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2019/0235/0018 (CVPREMOTE)**
Property	:	**Flats 1 – 10 18 Lancaster Road, SE25 4AJ**
Applicant	:	**Michael McFagan (flat 2)** **John Tyler (flat 1)** **Yekaterina Kryzhan (flat 4)** **Alex Williams (flat 5)** **Mr E Belgrave & Miss M Belgrave (flat 6)** **Dennis Veselkov (flat 7)** **Solmaz Zeidi (flat 8)** **Fiona Young (flat 9)** **Akinwale and Ayoola Tikare (Flat 10)**
Representatives	:	**In person with lead applicant M Fagan**
Respondent	:	**Assethold Limited**
Representative	:	**Ms A. Cafferkey of Counsel**
Type of Application	:	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	:	**Judge Professor Robert Abbey** **Mr Luis Jarero FRICS (Chartered Surveyor)**
Date and venue of Hearing	:	**17 December 2020 by an online video hearing**
Date of Decision	:	**07 January 2021**

DECISION

Decisions of the tribunal

(1) The tribunal determines that: -

(2) For the June 2019 exterior decorating works the figure to be paid is to be reduced by 50% to the sum of £1030.14 per flat

(3) For 2017-2018 common parts cleaning charge disallowed completely so that the allowed charge is £nil.

(4) For management fees for 2017-2018 this is reduced by £2000 in total to £2553.10

(5) For 2018-2019 the Interphone charge of £823.73 is disallowed completely so that the allowed charge is £nil.

(6) For the same year the Tribunal completely disallowed common parts cleaning of £1417.20 and window cleaning of £108 so that in both cases the allowed charge is £nil.

(7) For 2018-2019 the accountants fee is reduced from £750 to £500.

(8) For 2019-2020 the Interphone charge of £900 is disallowed in full, the window cleaning charge of £200 is disallowed in full and the common parts cleaning charge of £1500 is disallowed in full so that the allowed fees in each case is £nil. The accountants fee is reduced from £750 to £500 inclusive of VAT.

(9) For the same year the risk assessment charge of £400 is disallowed in full so that the allowed charge is £nil.

(10) Administration charges: the administration charges of £120 dated 9 July 2019 are disallowed in full so that no fee is payable in that regard. The administration charge levied against Ayoola Tikare and dated 10 April 2018 is reduced to £95. The administration charges demanded of Ms Zeidi are all disallowed other than the flat 8 notice of proceedings charge which is allowed at the reduced charge of £95.

(11) Otherwise, if service charge items are not specifically mentioned under this heading then the Tribunal has found them to be reasonable.

(12) The tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the

Landlord and Tenant Act 1985 that 100% of the costs incurred by the applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenants.

The application

1. 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 charge payable by the respondent in respect of service charges payable for services provided for **Flats 1 – 10 18 Lancaster Road, SE25 4AJ**, (the property) and the liability to pay such service charge.

2. 18 Lancaster Road SE25 4AJ is a conversion of a large Victorian house into ten self-contained flats. The property consists of one- and two-bedroom units and also includes a lease of the room space above. The respondent is the landlord and the parties named as the applicant are all leaseholders of units in the property. The leaseholders have recently obtained a Right to Manage the property (hereinafter "RTM"). (The RTM decision is dated 14 October 2019 under Tribunal reference LON/00AH/LRM/2019/0023.)

3. There are two types of leases comprising the ten set out above, two in a new style and eight in an old style. The applications were concerned with service charges and administration charges arising in service charge years 2017-2018, 2018-2019 and 2019-2020.

4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

5. The applicant was in person with the lead tenant Mr McFagan speaking for the other persons named as an applicant and the respondent was represented by Ms A. Cafferkey of Counsel.

6. The tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing. No objection to them was received by the Tribunal prior to the hearing. These documents were helpful and their late inclusion did not seem to the Tribunal to cause any prejudice and as such were allowed as late evidence. The Tribunal decided that it would be fair and proportionate to allow this late evidence and therefore included it in all its deliberations.

7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties

Decision

8. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written evidence and the surrounding documentation as well as the oral comments provided by the parties at the time of the video hearing.

9. The Tribunal were required to consider service charges and administration charges arising in service charge years 2017-2018, 2018-2019 and 2019-2020 as well as external decoration and administration charges.

10. Dealing first with the external decoration works the respondent asserted that they had no evidence of recent previous decoration. The respondent maintained that costs went through a consultation pursuant to the statutory requirements and the applicant did not provide alternative quotations. The respondent chose the lowest of two estimates for the works. The applicant said a detailed schedule of works had been requested but not supplied, objections had been made in the consultation process. The applicant was also of the view that the cost of the work was excessive and that scaffolding costs had been incurred unnecessarily because these works had not been combined with other work carried out to the exterior earlier in the year in question.

11. Of greater concern to the applicant was the alleged poor standard of work with regard to the exterior redecoration carried out at the property. The Tribunal was shown emails from tenants to the managing agents Eagerstates Limited that expressed significant concerns about the nature of the works. For example one tenant wrote in August 2019 that "….on closer inspection the wall to the front of the property has been very poorly rendered, windows painted over, and a general lack of attention to detail, also it seems that the contractors have not thoroughly cleared the site".

12. The Tribunal also had the benefit of four videos produced as evidence that the tenants said showed how poor the work was and that damage

had been done to the roof whilst the scaffolding was in place. The Tribunal was able to see roof tile damage as well as particularly poor repainting where it was very obvious that no proper pre-preparation had been carried out prior to the painting of window wooden structures. The total cost of this work was said to be £2060.28 per tenant or £20602.80 in total.

13. The Tribunal was not satisfied that the works were of a reasonable quality and were not satisfied that they have been carried out to a reasonable standard as clearly the evidence before it showed otherwise. Therefore, the Tribunal was minded to reduce the amount as a consequence. In these circumstances and bearing in mind some benefit will have accrued from the decorating works, the Tribunal considered that it was fair and proportionate and reasonable that the leaseholders pay 50% of the charge so that for the June 2019 exterior decorating works the figure to be paid was reduced to the sum of £1030.14 per flat.

14. The applicant also asserted that due to the lease provisions the respondent was precluded from making separate demands such as were issued in regard to these major works for the external decorations. The applicant says that the terms of the leases dictate that all service charges are charged twice a year with any balancing payment to be payable once the financial year has finished. Counsel for the respondent asserted that the actions taken by the respondent were lawful as the case of *Southwark LBC v Woelke* [2013] UKUT 348 (LC) confirmed. The Tribunal took time to consider the impact of this decision on the facts of this dispute. In particular the Tribunal noted within paragraph 59 of the decision that the deputy President of the Upper Tribunal wrote that

> "*There is no reason why service charges for major works should not be identified in a separate document if that is thought to be more convenient for the purpose of identifying charges for which loans or different payment terms are available, provided that the leaseholder is also provided with a statement of the total service charge and the balance due for the year*".

15. This being so the Tribunal was of the view that the lease terms did not preclude the respondent from making the demands that it did and that there was nothing wrong with the procedures adopted by the respondent which appeared to comply with the requirements set out in the *Woelke* decision.

16. The applicant also challenged the imposition of Vat on a Vatable item. In particular the applicant objected to vat on a management fee expressed as a percentage of an underlying fee. However, the underlying item is an expense of the agent who cannot reclaim the vat

and therefore forms an appropriate amount to base management fees upon and therefore the vat on the management fees.

2017-2018

17. Turning now to the 2017-2018 the Tribunal noted that the applicant thought that insurance charges for this year and indeed the following years were excessive. However, no alternative quotes were disclosed to the Tribunal and as the landlord's insurance was with a reputable mainstream insurance company the Tribunal had no alternative other than to find that the insurance for this year and indeed all subsequent years are reasonable.

18. In this year common parts cleaning was stated to be in total £452. The Tribunal heard evidence form the applicant that no such cleaning had ever been carried out. The respondent simply indicated that an invoice having been produced the work must have been done. The Tribunal preferred the evidence from the applicant and has therefore disallowed this part of the service charge completely.

19. For the same period the Tribunal noted that there were in fact two management fees charges, one for the previous agents and the second for Eagerstates Limited. The total was £4553.10 made up of £3653.10 for the old agents and £900 for Eagerstates. The Tribunal from its own knowledge of charges in the region for property of this kind thought that this amount was excessive. Therefore, reduced the charge in total by £2000 down to £2553.10 making a 10% charge reduced to £255.31 per flat in the property.

20. The applicant asserted that when the agents changed that there had been an element of double charging. The Tribunal was satisfied that there had not been double charging as the 2017-2018 accounts appeared to properly take into account the items spreading across both periods of management. The accounts from Eagerstates show their expenditure and separately the previous agent's expenses. Then set against that it shows the amount received on account and in the case of the figures for the lead applicant it also showed a credit left of the account after setting the income against the expenditure. The Tribunal could not find fault with these figures.

2018-2019

21. With regard to insurance no change is made for the reasons set out above for 2017-2018.

22. A charge was made for interphone being the door entry phone system for this block. The applicant gave evidence that asserted that it only

ever worked for just two of the flats in the property. In these circumstances the Tribunal considered it appropriate to disallow this service charge completely.

23. Window cleaning was charged in this year in the sum of £108. In the light of the evidence from the applicant that no cleaning had ever taken place this amount is disallowed completely as is the common parts cleaning charge of £1417.20.

24. For the same period the Tribunal noted that there were Accountants fees of £720. The Tribunal from its own knowledge of charges in the region for property of this kind thought that this amount was excessive particularly bearing in mind the simple nature of the accounts themselves. Therefore, the Tribunal reduced the charge in total by £220 down to £500 inclusive of VAT for the accountancy fee.

2019-2020

25. Eagerstates issued a set of estimated charges in accounts dated 4 March 2019. These contained estimated expenditure for several items touched upon above for previous years. Therefore, for the same reasons the Tribunal makes the following adjustments. The Interphone charge of £900 is disallowed in full. The window cleaning charge of £200 is disallowed in full. The common parts cleaning charge of ££1500 is disallowed in full and the accountants fee is reduced to £500.

26. With regard to insurance no change is made for the reasons set out above for 2017-2018.

27. A risk assessment charge was made in the sum of £400. Bearing in mind a similar charge was made in the previous year and bearing in mind that the applicant maintained that no recommended works had been carried out the Tribunal could not see any justification for this repeat charge. This charge is disallowed in full.

Administration charges

28. The several leaseholders that constituted the applicant had all complained of what they considered the unnecessary and excessive administration charges levied by the respondent in several different circumstances over the period of time under review. These were listed at page 177 of the trial bundle. It was apparent that the applicant did not assert that the administration charges were not chargeable under the lease terms and in fact the applicant specifically confirmed that the applicant was not challenging the ability of the respondent to make such a charge. The reason the applicant made the challenge was because the charges to all the tenants listed at the top of page 177 were

charged "since the inception of these proceedings for the non-payment of the items that we are challenging through this process."

29. The respondent raised administration charges of £120 for each flat on 9 July 2019. The s.27a application to the Tribunal is dated 12 June 2019 and within it the applicant confirmed that the applicant wanted to make an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. This provides that a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs" i.e. contractual costs in a lease. In the light of this timing the Tribunal takes the view that it was premature of the respondent to have made this charge against the tenants and therefore finds that the administration charges from 9 July 2019 should be disallowed in full.

30. The next charge was from 10 April 2018 and levied against Ayoola Tikare. In this instance the Tribunal notes the circumstances leading to the making of the charge but feels that the amount of the charge is excessive for the work done. This charge is reduced to £95.

31. The final administration charge arises from those levied against Solmaz Zeidi from April 2018. In that regard during the hearing Counsel for the respondent confirmed that proceedings were not issued and that consequently the claimed court fee of £205 was not payable, nor were the administration costs levied in regard thereto of £240 and the solicitors fee of £600 were not payable either. Accordingly, the Tribunal notes that the respondent has withdrawn these elements of these administration charges amount in that regard to £1045.

32. Furthermore, the Tribunal was shown emails form Ms Zeidi raising queries about what she calls "very random" charges and noting that she had not received any correspondence from the respondent's solicitor. Indeed, in May 2018 she asks for clarification of the administration charges and fees that were levied without clear explanation of what they were. So, bearing in mind the concession by Counsel for the respondent that three of the charges had not been incurred and that proceedings had not been issued the Tribunal would disallow all these charges other than the flat 8 notice of proceedings charge of £120 which we reduce to £95 in line with previous similar charges.

33. For all the reasons set out above the tribunal is of the view that the service charges and administration charges as amended by this decision are reasonable and payable by the applicant.

Application for a S.20C order

34. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

35. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them.

36. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the hearing.

37. It was apparent to the tribunal that there had been a long history of the applicant querying these charges with little or no response from the respondent. Indeed, the applicant has resorted to taking steps under legislation that exists to protect leaseholders by way of this application. Moreover, it has taken this application to reach a resolution notwithstanding the leaseholders first raised various issues several years ago. Accordingly, it can be seen that the tribunal did take issue with elements of the conduct of the respondent and could see where the applicant was able to take issue with the conduct of the service charge accounting process in relation to these service charges. For all these reasons the tribunal has made this decision in regard to the 20C application.

38. The applicant needs to be aware of the decision in *Plantation Wharf Management Limited V Blain Alden Fairman And Others* [2019] UKUT 236 (LC). In this case the Upper Tribunal made it clear that whilst it was possible for this Tribunal to make an order in favour of a class of leaseholders, it could only do so if each member of the class had

applied for such an order or authorised another party to apply on their behalf. Accordingly, this s.20 order will only apply to the leaseholders who are named as the applicant. It is open to other leaseholders to consider their own applications should the need arise

Name:	Judge Professor Robert Abbey	**Date:**	07 January 2021

Appendix of relevant legislation and rules

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.

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.