FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LSC/2021/0029**
HMCTS code	**:**	**Video**
Property	**:**	**Kelvin Court, 40-42 Kensington Park Road, W11 3BT**
Applicants	**:**	**Mr C Marshall and others as listed on the attached schedule**
Representative	**:**	**Philip Marshall QC**
Respondent	**:**	**Northumberland & Durham Property Trust Limited**
Representative	**:**	**Ms K Ziya of counsel**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Mrs S F Redmond BSC (Econ) MRICS**
Date and venue of Hearing	**:**	**9 February 2022** **Remote**
Date of Decision	**:**	**28 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was VHS. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents are in a bundle of 90 pages, the contents of which have been noted.

The application

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2020 and 2021, and in respect of certain items from 2007 to 2010.

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

The property

3. Kelvin Court, 40-42 Kensington Park Road is a purpose built block of 16 flats, all held on long leases. The Applicants are Mr C Marshall (flat 11), Ms N Manoukian (flat 14), both of whom have provided witness statements, and Ms H Oliver (flat 7), Mr C Taylor (flat 16), K Bazargan (flat 1) and Mr L Estrati (flat 6).

The leases

4. We were provided with a sample lease (that to flat 11), and told that the other leases were in materially identical terms.

5. The lease provided is dated 1977 and is for a term of 99 years from 1970.

6. By clause 3(f), the lessor covenants to use its best endeavours provide hot water for heating from April to October, and, throughout the year, to provide hot water. The obligation is subject to a caveat that "the Lessor shall not be liable hereunder for any failure of the boilers or other apparatus beyond its control".

7. Clause 3(c) imposes an obligation on the Respondent to repair and clean the common parts.

8. The service charges are provided for in the tenant's covenants in clause 4. In addition to the insurance premium for cover of the flat, the obligation is to pay 7% of the lessor's expenses in undertaking its

covenants in clause 3 (repair, decoration, provision of heating and hot water etc), as further detailed in the third schedule. That schedule sets out the expenditure covered by the service charge, and includes "inspecting maintaining overhauling repairing and where necessary replacing the whole of the boilers" (paragraph (2)) and "the general management and running of the building" (paragraph (8)).

9. The service charge mechanism provides for estimates of advance service charge to be demanded twice a year, with actual outturns calculated on a yearly basis, with provision for reconciliation (overpayments being credited, underpayments demanded in arrears) (clause 4(c) to (e)).

The issues and the hearing

10. Mr Philip Marshall QC represented the Applicants. We refer to him hereafter as "Mr Marshall", and to the first Applicant as "Mr Cameron Marshall". Ms Ziya of counsel represented the Respondent. Ms Brindell of the managing agent had provided a witness statement, gave some brief oral clarification in chief and was cross examined by Mr Marshall. Mr Marshall had not appreciated that the practice of the Tribunal is not to issue a specific direction requiring the presence of witnesses. He had accordingly assumed he would rely only on witness statements and so did not have his witness available for oral cross examination. Ms Ziya confirmed that she was content to proceed without the opportunity to cross examine.

11. A number of issues which appeared in the papers had been resolved in advance of the hearing. These were a challenge to service charges referable to legal costs in 2020 and 2021 (conceded irrecoverable by the Respondent); a charge in or relating to 2017 for "insurance claims costs in excess of recoveries", in which both parties agreed that only the sum of £10,716 was chargeable to the service charge, not £44,925; and the Applicants accepted that a sum questioned in relation to money received under an insurance claim relating to roof damage in 2014 was properly applied by the Respondent.

12. After our hearing, the Upper Tribunal heard an appeal by Mr Cameron Marshall against a determination under section 20ZA of the 1985 Act by a differently constituted First-tier Tribunal that the consultation requirements in section 20 of the Act be dispensed with. The consultation requirements arose from the major boiler works considered below. The Upper Tribunal overturned the decision of the First-tier Tribunal ([2022] UKUT 92 (LC)).

13. With the agreement of the parties, we first heard Ms Brindell's oral evidence. We then heard submissions on the following issues in turn:

(i) Issues relating to the boilers, including their initial installation, maintenance and repairs and associated major works;

(ii) Charges relating to water hygiene;

(iii) Charges relating to health and safety and fire reports; and

(iv) Charges for communal cleaning.

The boilers: overview

14. In 2009, three new Hamworthy boilers were installed to provide heating and hot water. From 2017, problems were reported, and a report by a specialist engineering consultant, IDA, was commissioned in 2019. IDA reported that the original installation had been defective. One boiler was replaced in 2019, a second in 2020, and the replacement of the third was planned at the time of the hearing.

15. The challenges pursued before us in respect of service charges referable to the boilers fall into three categories: installation, maintenance and repair in 2020 and 2021, and replacement/major works.

Installation of the boilers

16. That the installation of the boilers was defective, and accordingly did not amount to work of a reasonable standard (section 19(1)(b) of the 1985 Act), is not contested by the Respondent. It is not disputed that the total cost in issue was £166,918.

17. Briefly, the relevant system was required to be sealed, to protect the aluminium heat exchanger, which would otherwise be subject to corrosion. Contrary to the manufacturer's specification, these boilers were installed using an open vent which utilised a (remote) feed and expansion tank. The result was a build-up of corrosion, both as a result of the presence of oxidised water, and because the Ph levels could not be balanced using a specified amount of inhibitor, as that requires that the system be a closed one. IDA reported that as a result, the boilers' life span would be considerably reduced, they would require additional maintenance after a certain point, and would become less efficient.

18. The question for the Tribunal is, therefore, as to the quantification of the appropriate credit to be given to the leaseholders.

19. Mr Marshall relied on a ten year planned maintenance programme produced in 2013 for the Respondents by building surveyors Harris Associates, which stated that the communal boilers should not need replacing until 2025 to 2030, thus 16 to 21 years after installation. In fact, they needed replacing within ten years. Mr Marshall argued that

we should take the median of the projected life span implied by the Harris Associates report, at 18.5 years.

20. In addition, Mr Marshall argued that there were additional costs associated with the additional maintenance and of the fall off in the efficiency of the boilers. Taking those into account, Mr Marshall argued for a credit of at least 50%, or £83,459.

21. Mr Marshall argued that the faulty installation affected the whole system, not just the boilers considered individually. He pointed to a passage in the IDA report that suggested the most likely cause for various leaks in the boiler system was the build up of corrosion in the form of magnetite sludge as a result of the faulty installation. The report recommended the replacement of not only the boilers themselves, but also the flue and other elements of the installation.

22. Ms Ziya explained that no significant documentation as to events at the installation in 2009 are now available. The current managing agent, D and G Block Management, had only been engaged since September 2017, and did not have available records from previous management agents. As a result, the Respondent could only rely on the IDA report.

23. Ms Ziya argued that a credit of 25% would be appropriate. Ms Ziya provided us with a Tribunal decision concerning Vista, Fratton Way, Southsea, Hampshire, CHI/00MR/LSC/2018/0112, one aspect of which related to advanced service charge demands in respect of early boiler replacement necessitated by faulty installation or maintenance (or lack thereof). We note the calculation in that decision. The Tribunal in that case took the lower end of the range of expected life expectancy of the boilers had they been properly maintained, rather than the median, although it does not say why. The Tribunal ended up with a figure of about 25%, where the expected life of the boilers (using the lower end estimate) had been reduced by a little over half. However, in that case, the Tribunal had halved their initial figure, on the basis that the current landlord had only been in place for half of the period of poor maintenance. Their broad approach was, however, to arrive at a proportion of the initial cost by working out the proportion of life expectancy lost, which is also the approach proposed by Mr Marshall.

24. Ms Ziya also noted that the Tribunal in Vista, Fratton Way appeared to give some credit to the landlord on the basis that the tenants would have benefitted from lower maintenance costs than would have been charged if the boilers had been properly maintained.

25. Further, the sum expended in 2009 included work to the boiler plant room that more extensive than just replacing the boilers. In addition to boiler replacement, the IDA report suggests that the 2009 works included other works. Due to the loss of records, however, the

Respondent was unable to apportion the costs between boiler replacement and other matters.

26. We should, Ms Ziya said, take the lower end of the life span. The boilers may have failed for other reasons, even if the installation had been correctly performed, such that they only lasted for 16 years. That would give a starting point of 37.5%, which the other factors would bring the appropriate credit down to 25%.

27. We broadly accept Mr Marshall's submissions. First, we see no reason for assuming either end of the range given. Any choice except the median would essentially be rewarding one party for the inherent indeterminacy in the life-span estimate that both parties accept. So the starting point should be a life span of 18.5 years.

28. Secondly, we accept that the 2009 works did appear to include other works. However, some of the works listed in the IDA report are, in fact, covered in the new work, such as wiring and a control box. Further, there is no way of quantifying the value of such other works (or, indeed, even identifying them with any precision).

29. Finally, we can see no basis for identifying additional benefits to the leaseholders, unlike the situation in Vista, Fritton Way, in which the tenants had benefitted from not paying for the lack of maintenance.

30. We do not, however, accept Mr Marshall's argument that we should go up from the mathematical calculation of the value of the lost period against the life expectancy. That comes to 46%.

31. The Applicants should be credited with each of their service charge shares of £76,782.

Boilers: maintenance and repair, 2020 and 2021

32. The IDA report from February 2019 advised that the work should be carried out in two stages, the first by April 2019, the second by August 2019. Mr Marshall argued that there was no real explanation for why the replacement was not carried out according to this timetable. The result of not doing so was that there were more call-outs and repairs than would have been necessary if the works had been carried out according to the IDA report timetable.

33. Mr Marshall referred us to invoices for an annual service dated October 2019 (£2,150), and thereafter for a succession of call-outs from November 2019 to February 2020 (£2,818.85 in total). These were all on an installation, Mr Marshall argued, that should have been replaced by then. Thereafter, from April to June 2020, there were a series of invoices from the same company that had just installed the second boiler in April 2020 (£2,433). These, he said, should either have been

covered by a warranty from the manufacture if they related to defects to the equipment, or if it were a result of poor workmanship, the contractor should have been responsible.

34. Mr Marshall's submission was that these costs were a result of the failure of the Respondent to timeously replace the boilers, as recommended in the IDA report. By that failure, the Respondent was in breach of its covenant in clause 3(f), and the Applicants' claim is to set-off their loss against these costs. Mr Marshall took us to *Continental Property Ventures v White* [2006] 1 EGLR 85, and the passage from [13] to [14] in which the judge quotes from *Loria v Hammer* [1989] 2 EGLR 249, 258. These costs, in those terms, are the costs of the eight stitches resulting from the failure that led to the breach of covenant, rather than the one that would have been reasonably incurred to remedy the problem timeously. As such, even if "reasonably incurred" in section 19 terms (as understood in *Continental*), those costs are not "payable" within the meaning of section 27A.

35. Mr Marshall therefore submitted that no service charge was payable in respect of maintenance during this period.

36. Ms Ziya submitted that the Respondent was not in breach of the covenant at clause 3(f). First, she argued that the covenant was to "use its best endeavours"; and, secondly, that it was subject to a caveat relating to failures beyond its control.

37. The evidence of Ms Brindell showed, she said, that the Respondent had, over this period, indeed used its best endeavours to provide heating in the winter months and hot water. Further, the failure of the boilers was a result of the faulty installation in 2009, which the Respondent did not know about, and had no control over, until it was revealed by the IDA report.

38. We are not prepared to adopt an equitable set off approach, as urged by Mr Marshall. We remind ourselves that we cannot order payment of a counter claim. Rather, the *Continental* approach allows us to conclude merely that a service charge is not payable, as a result of the fact that a set off is available to a tenant. We do not consider that that approach can practically be applied here.

39. In a normal disrepair situation, the value of the counter-claim will include the cost of the repair to the landlord, insofar as it is chargeable through the service charge. As HHJ Rich explained in *Continental* at [14], a "breach of the landlord's covenant to repair would give rise to a claim in damages. If the breach resulted in further disrepair imposing a liability on the lessee to pay service charge, that is part of what may be claimed by way of damages".

40. We are not satisfied that that is the right approach to the breach of *this* covenant. Both parties argued on the basis of the covenant in clause 3(f), the covenant to supply heat and hot water to the flats. The argument could not be made in respect of the repairing covenant. It was agreed that the repairing covenant had been breached in 2009, and we have indicated above what credit should be allowed, to reduce the cost of the faulty installation to that which would have been reasonable. With that credit, to put it simply the leaseholders have paid for boilers the life expectancy of which had, by the time the charges under consideration here were incurred, expired. These repairs – reasonable in themselves, as Mr Marshall's argument necessarily concedes – cannot properly be regarded as "further disrepair" caused by the initial breach in those circumstances. To do so would be allowing the leaseholders to double recover for the original breach to the extent that these charges were disallowed.

41. The loss caused to the tenants by a breach of the covenant in clause 3(f) during the relevant period is not the same as the cost of maintenance of the boilers. Rather, it is the loss of amenity caused by the intermittent and occasional lack of heating and hot water (and, presumably, the cost to the Applicants of compensating for that loss, for instance, by using more electricity to heat the flats). Were we to entertain a claim for equitable set-off, we would need to have heard evidence and submissions on the proper valuation of the loss of heating and of hot water during the relevant period. That would depend, among other things, on an assessment of how much heating and how much hot water had been lost to the Applicants. It would be speculation now for us to simply assume, without that evidence, that that measure would necessarily be enough to wholly overbear the service charges referable to the maintenance costs in issue. And if it is not, how are we to quantify it?

42. Further, the breach of covenant was a continuing one – the continuing (intermittent etc) failure to supply those services. The value of the set off may vary according between Applicants, either because the value of the loss of the services varied (for instance, depending on their use or need of the services), or because they may not all have acquired their interests for the whole period. So, we simply do not have the material upon which to make a judgement as to whether each individual Applicants' set off would be sufficient to overbear the charges against which it is applied.

43. As a result of this conclusion, the question of whether clause 3(f) was breached loses its significance. For the record, however, we would reject Ms Ziya's submission that there was no breach in respect of the initial installation. It is difficult to think of an operation more completely under the control of the Respondent than the carrying out and supervision of a substantial contract to replace the boilers in 2009. And the failures to exercise control and supervision apparent in the defective installation cannot be said to demonstrate best endeavours.

44. Mr Marshall's challenge to the earlier set of invoices (October 2019 to February 2020) falls as a result of our rejection of the set off approach. The same is not true of the second set, in respect of which Mr Marshall relies on a straightforward reasonableness challenge, on the basis that the Respondent cannot have been legally obliged to pay for the work.

45. Ms Ziya said her instructions were that the later set of invoices (from February 2020) were not, as Mr Marshall advanced, NCarr fixing their own work, or doing work covered by warranty, but additional maintenance to other elements of the system (the point had not been put to Ms Brindell in cross examination). We were invited to consider the invoices.

46. Our own inspection of the invoices, to the extent that we can reliably draw implications from them, endorse Ms Ziya's contention. One was to test the electrics, another related to the old boiler, a third was to shut down the heating system, for an unexplained reason, and the remaining two related to an old pump or pumps.

47. The result is that we conclude that all of the invoices in issue were reasonably incurred and are payable.

48. The Scott schedule featured as a separate item costs relating to water hygiene in 2020. The charge in that year was £4,825, in contrast to £2,616 in 2019. The Applicants' case was that the 2019 figure was reasonable and payable, and the same sum would be payable in 2020. The excess (it was agreed) was attributable to the costs incurred as a result of the finding of the bacteria responsible for legionella in the water system, resulting in costs for eradication and extra testing. It was not contested that it was the loss of temperature in the hot water system as a result of the failure of the boilers that resulted in the presence of the bacteria, and hence the costs.

49. Both parties agreed that the costs under this heading fell to be considered on the same footing as the additional maintenance issue.

50. It was necessary to deal with the legionella risk, and there is no suggestion that the tasks undertaken were not appropriate and reasonable means of securing that objective. As a result of us rejecting Mr Marshall's set off argument, these costs are also payable.

51. The costs incurred in relation to securing water hygiene in 2020 are payable.

The boilers: major works

52. The Upper Tribunal decision on Mr Cameron Marshall's appeal against the granting of unconditional dispensation in respect of elements of the major works has now been published. In addition to allowing the

appeal, the Upper Tribunal re-took the decision on the Respondent's application for dispensation, and allowed dispensation on conditions.

53. It is our view that the Upper Tribunal in practice disposes of some of the key issues advanced before us in relation to actual costs for the major works. In particular, the Upper Tribunal found facts in its re-taking of the dispensation application. Even if those findings of fact are not strictly binding on us (a matter we do not decide), we have read them carefully and agree with them, for the reasons given. It is true that the Upper Tribunal was not technically undertaking a reasonableness/ payablility assessment when it found that it was appropriate for the Respondent to accept the recommendation to procure three boilers, rather than the two that the Applicants argued would have been sufficient, and when it assessed the realistic reduction in the price of the third boiler. However, on the particular facts of this case, it is clear to us that those findings would necessarily have been the same as if it had done so.

54. Insofar as they overlap, we had independently come to the same conclusions as did the Upper Tribunal. To the extent that they do not, we have considered, and agreed with, the Upper Tribunal's findings of fact. We had decided that accepting the recommendation that there be three new boilers was reasonable before seeing the Upper Tribunal decision, but we had not considered the question of the reduction of the quotation for the third boiler, had the more competitive situation arisen if Mr Cameron Marshall's alternative contractor's estimate had been deployed in negotiations. Now we have had the advantage of the Upper Tribunal's reasoning as to that factual issue, we agree with it.

55. The Upper Tribunal does refer to one possible challenge in respect of poor quality work that could be the subject matter of a section 27A application at [106], but that issue was not substantively pursued before us.

56. The Upper Tribunal decision has some relevance to the challenge to the advance service charge demand for £100,000 made in June 2020, in that the finding that replacing all three boilers was reasonable is relevant to it. It does not entirely dispose of the challenge, however.

57. In respect of this issue, we also note that it may be that it either is or soon will be of only historical interest, given that not only are the costs of the two boilers replaced known, but that of the third is also the subject of the condition of dispensation granted by the Upper Tribunal, and there have been no particularised challenges to any other of the works proposed. Any excess demanded and paid will be, or may already have been, credited to the Applicants on reconciliation.

58. It seems that the Respondent proceeded on the mistaken belief that a section 20 consultation exercise was necessary (a notice of intended

works was issued in February 2020 and a notice of estimates in 2021). There is no such obligation in respect of demands for advance service charges: *23 DollisAvenue (1998) v Vejdani* [2016] UKUT 0365 (LC), and see *Woodfall, Landlord and Tenant*, paragraph 7.194. To the extent that the Applicants still contend that the section 20 requirements do apply, we disagree.

59. Mr Marshall argues that the advance demand was not in reality wholly in advance, in that some of the work covered by it had been started by the time that the demand was sent. It may be that there was some slippage in the timing of the making of the demands, perhaps as a result of the partial section 20 consultation exercise engaged upon by the Respondent. The charge was, however, presented as an interim, advance demand, and, critically, it will be subject to the reconciliation process. We do not consider that the slippage in the timing robs the demand of its nature as an advance demand.

60. We are persuaded that the figures were derived from the tables in the IDA report, with the addition of professional fees. Mr Marshall principally argues, not that the figures were not derived from the IDA report, but that those costings were misconceived. The proof of that is in the actual outturn costs, where they are known (ie in respect of the two boilers), are much lower than IDA estimated.

61. There is some force in this argument, in that the outturn figures certainly for the first boiler (the cheapest) were know by the time the notice of intention was served. However, if a landlord engages an expert consultant to assess, among other things, the costs of a project, it is in the end difficult to argue that accepting the consultant's figures cannot be within the band of reasonable decisions that the landlord can take. We have concluded that it is within that band.

62. The advance/interim service charges demanded in respect of major works in June 2020 were reasonable in amount.

Health and safety and fire safety

63. The Applicants' challenge, as finally set out by Mr Marshall, was not to the actual costs incurred in 2020, but rather that those properly incurred costs made elements of the advance service charge for 2021 unreasonable. The total costs in respect of health and safety was £1,548 for 2020, which included a health and safety and fire risk assessment (£276) and a fire door inspection (£192). The contested costs in the advance service charge demands for 2021 were £9,000 for health and safety; and an advance demand for £20,000 for fire safety in 2021.

64. Mr Marshall's challenge in respect of advance charges for health and safety were to the commissioning of a fire safety strategy, from a consultant called Tetra, at a cost of £3,000, and of a further door

inspection, at £192. The fire strategy report had been received and invoiced by July 2021, when Ms Brindell signed her witness statement.

65. The fire strategy report, Mr Marshall argued, covered much the same ground as the health and safety and fire risk assessment, and was unnecessary. He was critical of the copy supplied in the bundle (which was marked as "draft"). It was only 27 pages, much of which, Mr Marshall submitted, was mere copper plate padding, and could not justify a fee of £3,000.

66. There was no need to carry out a second fire door inspection a year after the first one had taken place, Mr Marshall submitted.

67. The advance service charge for fire safety was for new fire safety measures, particularly the provision of sounders and sensors in the flats, and associated works. In his witness statement, Mr Cameron Marshall produced a quotation from a company called MJ Fire in respect of a property called Knightsbridge Court, a block of 56 flats on Sloan Street. The quotation was for £24,942. Mr Marshall argued that if that sum was required for a 56 flat block, then £20,000 was too high for a block of 16.

68. In her oral evidence, Ms Brindell said that the Respondent had sought a quotation for the work from MJ Fire, but their quotation had been higher than the one they accepted. Mr Marshall submitted that the Respondent could have produced that document, but had not done so. Ms Brindell also said that the details of the work specified in the Knightsbridge Court quotation were different from that in relation to Kelvin Court.

69. Ms Ziya, in respect of the two fire safety reports, pointed to the purposes of each, as explained in Ms Brindell's evidence. The health and safety and fire risk assessment was to assess current fire hazards, quantify existing risk, and advise on additional control measures to counteract such risk; whereas the fire strategy was a more forward looking document directed towards the plans should be put in place to minimise risk in the future. They were not, accordingly, duplication one another. As to the cost of the report, the Applicants had not produced any alternative costs for a fire strategy report, and so the Applicants had not made out their case.

70. As to the advance charges for fire safety provision, Ms Ziya submitted that the Applicants had not provided any alternative evidence as to the costs of installation for this building, and there was no expert evidence available to allow us to ascertain the extent to which the Knightsbridge Court quotation was comparable. Ms Brindell's oral evidence is before us.

71. We reject Mr Marshall's argument that the health and safety fire risk assessment and the fire risk strategy report duplicate one another. The distinction between a fire risk assessment report and a fire strategy is an understood one, and the key findings of each are clearly distinct. The former recommended the work subsequently charged for in advance; the latter recommended changing the current strategy, a stay put policy, to a simultaneous evacuation strategy.

72. However, we agree with his criticism of the cost of the report. The report requires expert input, and is tailored to the property. However, in the experience of the Tribunal, a cost of £2,000 would be the upper limit of what was reasonable for a report of this kind in respect of a property of this nature, and we do not accept that anything more than this is reasonable.

73. We have considered carefully whether it was justified to undertake a fire door inspection in both years. In her oral evidence, Ms Brindell said that damage to four fire doors had been found in the first inspection, and the second was necessary to check that the problems had been eradicated. We have come to the conclusion that, in the light of Ms Brindell's evidence, it is just justified in this instance. We do not think it would be reasonable to conduct a new survey every year hereafter, however, unless there were exceptional circumstances.

74. We reject Mr Marshall's argument on the installation of the new sensors and sounders, and associated work. The quotation from MJ Fire in respect of Knightsbridge Court does not provide sufficient information to conclude that the two projects involved like-for-like installation issues, or indeed, the same specifications of equipment. We are alive to the fact that differences in the layout and wiring of the two properties could make a substantial difference to the costs between the two buildings, and the costs are not obviously on their face out of the range that would be expected.

75. In summary, we consider that £2,000 is the maximum reasonable fee for the fire strategy report. The charge for the re-inspection of the doors is reasonable, as is the advance charge for the new fire safety equipment.

Cleaning of communal areas

76. Cleaning costs in 2020 were £9,266. The estimate for 2021 was £9,200. Mr Marshall argued that, at £579 per flat, the cleaning costs were high. Mr Cameron Marshall had obtained those for Knightsbridge Court, which were only £399 per flat. In his witness statement, Mr Cameron Marshall states that he sought a quotation from an enterprise called London Clean Team. A brief email from them sets a figure of £100 a week, on the basis of two visits. In his witness statement, Mr Cameron Marshall reports that the cost given to him was in fact £110 a week,

which, he states, would be £6160 a year (although the arithmetic is not obvious to us) .

77. Ms Ziya submitted that the evidence of the Applicants was insufficient for us to find the cleaning costs unreasonable. She noted that when Ms Brindell approached the cleaners engaged at Knightsbridge Court for a quotation, they told her that Mr Marshall had already approached them, and they had provided an estimate higher than the existing one. Mr Cameron Marshall's second witness statement confirmed this, but added that, when Mr Marshall had put the rate at Knightsbridge Court to them, they had indicated that they would be able to lower their quotation, but no written quotation is provided in the bundle.

78. Ms Brindell had given evidence that the communal areas where quite extensive at Kelvin Court, as, addition to the obvious lobby and stairs, there were also corridors on each floor running to the back of the building to give access to a rear exit. She said that the current cleaners attended three times a week, for a total of ten hours.

79. Ms Ziya suggested that the quotation from London Clean Team was vestigial, with no indication of standard of service above the specification of two visits a week.

80. We do not consider that the Applicants have demonstrated that the cost of the cleaning was unreasonable. We take account of Ms Brindell's evidence about the communal areas and hours worked. We do not consider the parallel with Knightsbridge Court helpful without any information about the extent of the communal areas or the layout of the property. We agree with Ms Ziya's criticisms of the London Clean Team's quotation. We also note that the email states that they do not charge VAT, which suggests the enterprise (we do not know if it is a company) is a small one. It would be reasonable for a landlord to decline to contract with an enterprise, the size of which may bring its reliability into question.

81. The service charges for cleaning in 2020 and estimated charges for 2021 are reasonable.

Application for an order under Section 20C of the 1985 Act

82. In the light of the Respondent's concession that no legal fees were recoverable as a service charge under the lease, it was unnecessary for us to consider the Applicants initial application for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge.

83. There was no application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing

any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

Rights of appeal

84. 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 London regional office.

85. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

86. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

87. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 28 June 2022

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 provision 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 the county court ;

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

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

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , 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 the 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]1 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).