FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/LSC/2020/0215** **CVP REMOTE**
Property	**:**	**Flat 3, 3 Alexandra Grove, Finchley London N12 8NU**
Applicant	**:**	**Ms Svitlana Pyrkalo**
Representatives	**:**	**In person**
Respondent	**:**	**Mrs Shahida Nasreen Ali and Mr Chaudhary Zulfiqr Ali**
Representative	**:**	**Ms Mattie Green of Counsel**
Type of Application	**:**	**For the determination of the liability to pay service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Ms Sarah Phillips MRICS**
Date and venue of Hearing	**:**	**3 February 2023 by online video hearing**
Date of Decision	**:**	**14 February 2023**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that all service charges challenged by the applicant were found to be reasonable and payable other than in regard to the service charges listed below.

(2) The following service charges are unreasonable and are only payable as modified by this determination.

a. The 2019 alarm maintenance fee payable by the applicant is reduced to £250.
b. The applicant's liability for the 2018 fire maintenance service charge is reduced by £42.86.
c. The total insurance premiums are considered reasonable and payable only after the adjustment/allowance in favour of the applicant of £361.90.

(3) The Tribunal makes the s.20c Order as set out below.

The application

1. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges for the service charge years set out below are reasonable and payable in respect of works and services provided at **Flat 3, 3 Alexandra Grove, Finchley London N12 8NU** (The property).

2. The applicant is a lessee of flat 3, the property, within the building and the respondent is the freeholder that provides services to all the lessees of the seven registered titles in the building. The applicant 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 "fair proportion". Each lessee must pay a one seventh (1/7) of the cost of the services provided. By a formal deed of surrender and regrant dated 2 May 2020, the lease of the property was extended to a term of 189 years from 24 June 2002

3. 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.

4. The Tribunal had before it one main issue the details of which are set out below. The Tribunal has to deal with the section 27A determination as to the reasonableness and payability of service charges payable by the lessee of the property. The lessee also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985

The hearing

5. The applicant was self-represented, and the respondents were represented by Ms Green of Counsel.

6. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions arising out of the Covid-19 pandemic.

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 Ministry of Justice CVP 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 travel disruption for Tribunal staff during a day of industrial action and because all issues could be determined in a remote hearing. The documents that were referred to were in one bundle of many pages, the contents of which we have recorded, and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents agreed by the applicant and the respondent, in accordance with previous directions. Legal submissions/skeleton arguments were also made available to the tribunal.

The background

8. The Tribunal identified that the issues to be determined included disputed service charges for the years 2015, to 2019 and service charges for 2020 and whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act and whether the service charges have been correctly demanded and whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and any supervision and management fee. All of the units in the building, save for the property, are owned by the respondents' family members. The respondents' son, Mr A. Ali, manages the building at respondents' request.

9. The Lease contains the following relevant clauses. By clause 2:

> *"The Tenant hereby covenants with the Landlord as follows to the intent that the obligations hereby created shall continue throughout the Term:-*
>
> ...

2.3 To pay by way of additional rent the Interim Charge and the Service Charge at the times and in the manner provided in Schedule 7 hereto

…

2.10 To pay to the Landlord all costs charges and expenditure incurred by the Landlord in repairing renewing or reinstating any part of the Estate the repair renewal or reinstatement of which shall be necessitated by any act negligence or default of the Tenant his agent servants or invitees"

(i) By clause 5:

"*5.1 Subject to the payment by the Tenant of the rent Service Charge Interim Charge and to the observance and performance by the Tenant of his obligations herein contained the Landlord hereby covenants with the Tenant (subject always to the remaining provisions of this clause) to provide the services set out In Part Two of Schedule 7 … provided further that the Landlord may discontinue any such services or provide any additional services and any such additional services shall be deemed to form part of those referred to in Part Two of Schedule 7*

5.2 In providing the said services the Landlord may engage the services of whatever employees agents contractors consultants and advisers it reasonably considers necessary …

5.3 The Landlord further covenants with the Tenant to insure at all times during the Term (unless such insurance shall be vitiated by any act or default of the Tenant) and to keep insured the Building and such other areas as the Landlord shall decide to insure in the full reinstatement value thereof as the same shall be reasonably determined from time to time by the Landlord against loss or damage by the Insured Risks …"

(ii) The service charge machinery is set out in Schedule 7, Part One:

"1.1 "Service Costs" means the amount expended by the Landlord in carrying out all of its obligations contained in this Lease including (without limitation) buildings insurance referred to in clause 5.3 hereof and the provision of the services set out in Part Two of this Schedule

1.2 "Service Charge" means a fair proportion of the Service Costs to be conclusively determined (having regard to paragraph 5 below) by the Landlord or the Landlord's surveyor or managing agent as the Landlord may elect from time to time"

10. Schedule 7, Part Two sets out the relevant services. Schedule 7 envisages an interim service charge, followed by a balancing service charge. However, the applicant has not paid, and the respondent has not demanded, an interim service charge. Service charges have been demanded annually after 31 March in each relevant year.

11. At the outset the applicant challenged the service charges because the demand she said were not in the prescribed format. On examination by the Tribunal, it appeared that this was the case. However, by a letter dated 4 January 2022, the service charge demands were re-served with the summary of tenants' rights and obligations. That letter also included a section 47 notice and set out the amended insurance sums. It also enclosed the service charge demand for the year ending 2021. The purpose of a s.47 notice is to inform the leaseholder of the freeholder's identity by providing its name and address. Failure to give a compliant s.47 notice only suspends the leaseholder's liability to pay an otherwise valid demand for service charges. Once a valid notice is given the service charges become payable. This was confirmed in the case of *Tedla v Camerat Court* [2015] UKUT 221 (LC). Accordingly, the Tribunal was satisfied that the issue had been resolved by the actions of the respondent set out above.

12. The Tribunal when considering the substantive application were concerned with the service charges disputed for quite old items from 2015 up to 2019. That is to say in respect of matters which have "been agreed or admitted by the tenant" by reason of her paying the charges without objection during the period form 2015 up to 2019: see s.27A(4) of the Act. Reliance is placed on the decisions of the Upper Tribunal in *Cain v Islington BC* [2015] UKUT 542 (LC) [107] and *Marlborough Park Services Ltd v Leitner* [2018] UKUT 230 (LC) [121].

13. In the Cain case The Upper Tribunal found that this Tribunal was entitled to find that the applicant had admitted or agreed the service charge amounts purely by the series of payments made in respect of the demanded service charge "without reservation, qualification or other challenge or protest". That entitlement was strengthened by the length of time which had passed before a challenge was made to the charges. The Upper Tribunal found that this Tribunal was entitled to look at matters in the round "and find that where there has been substantial delay in making any challenges to the items now in dispute, and most if not all of which have long-since been paid, that the tenant has agreed or admitted the amounts claimed which, after all, have long-since lain dormant without challenge".

Decision

14. In the end the Tribunal was not required to make a final determination on these points as the applicant at the hearing confirmed to the Tribunal that she agreed and conceded everything in the disputed service charges Scott Schedule before 2019 save for two items, insurance premiums and fire alarm and maintenance charges. Accordingly, the Tribunal was able to dispose of these prior service charges by finding, in the light of the applicant's concession, that they were reasonable and payable. Insurance will be considered subsequently as a global issue for all the years in dispute. So, the Tribunal turned to consider the fire alarm and maintenance issues.

15. The tribunal therefore considered the fire alarm charges and maintenance charges. The tribunal considered alarm maintenance for all the years in question and heard representations from both parties in regard thereto. The applicant considered these charges to be too high. However, the respondent said that they were all represented by invoices from a third party and the tribunal considered those invoices and accept them as entirely legitimate and represented the expenditure charged by the respondent. In these circumstances the tribunal determined that the charges for the fire alarm and maintenance were reasonable and payable save in one regard. With regard to the 2018 fire alarm and maintenance charges the tribunal noted on the invoices an amendment in handwriting expressed be an increase of £150 in two instances. The tribunal could find no justification for this and therefore disallowed the total of £300 giving a reduction in the liability of the applicant for this service charge of £42.86.

16. The tribunal then turned to the individual charges for 2019. The tribunal considered garden maintenance, alarm maintenance for just this year only. With reference to garden maintenance in the sum of £300 the applicant said no work had been done while the respondent said the work was done. On the balance of probabilities, the tribunal decided that the work had been done and found that the garden maintenance charge was reasonable and payable. However, with regard

to the alarm maintenance, where the charge for the year was £2484 the Tribunal was satisfied that a section 20 notice pursuant to the terms of the Landlord and Tenant Act 1985 should have been issued and had not been. Therefore, the charge in this regard was limited to £250. A section 20 consultation is necessary where one set of Qualifying Works costs any one tenant £250, in any one year for a Qualifying Long-Term Agreement. If a landlord fails to consult, the level of service charges that can be recharged are capped at £250 respectively. Accordingly, the service charge in this regard is therefore limited to £250 for the applicant to pay.

17. For the remaining items in the 2020 service charges the tribunal was satisfied that they were all reasonable and payable. This included garden maintenance, alarm maintenance, cleaning, rainwater flushing and CCTV charges. The applicant did not produce any evidence that might in anyway undermine the legitimacy of these itemise charges set out by the respondents.

18. The tribunal then turned to the question of insurance for all the years challenged by the applicant. The applicant complained bitterly about the respondent's failure to supply her with insurance details or insurance information for the property. Ultimately she discovered that the property was insured with another property elsewhere. The respondents confirmed that it was the case that the property was indeed insured along with another property and that this was common practise for landlords.

19. The respondents confirmed the property was insured under a single policy along with 165 Friern Barnet lane London N20. The applicant queried how the insurance premium had been apportioned between the two properties. The respondent instructed their insurance broker to consider the apportionment of the cost of the policy. In the respondent's statement of case they set out the adjusted insurance charges for the period 2015 to 2020 so as to calculate any potential overcharge for the applicant. the tribunal was able to review these calculations which showed that there was a difference in the global charges of £2533.29 pence. Accordingly, the respondent giving a credit for the applicant of one 7th of this sum being £361.90. The tribunal was of the view that this was an appropriate and proportionate adjustment and that the total insurance premiums payable by the applicant should indeed be reduced by £361.90. Accordingly, the total insurance premiums for the property are considered reasonable and payable after the adjustment of £361.90.

20. At the hearing the respondent accepted that the service charge demands have not been certified by a qualified accountant as the lease requires, but dispute that this renders the demands invalid and alters the applicant's liability to pay. The Tribunal agreed that the applicant remained liable to pay even though the certified accounts were not

produced. Certainly, there was nothing in the lease that enabled the applicant to refuse to pay in the absence of certified accounts. However, the Tribunal was critical of the respondent for not complying with the lease terms and suggested that the provision of certified accounts is best practice and accords with the lease terms and should in future be supplied.

Application for a S.20C order

21. The applicant made an application under section 20C of the Act, i.e., preventing the respondent from adding the legal costs of these proceedings to subsequent service charge accounts. 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.

22. 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 for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

23. 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.

24. 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. This is particularly in the light of the partial success on the part of the applicant and the respondents' admitted failure to comply with the terms of the lease by not supplying formal certified or audited annual service charge accounts.

25. 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 considered 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 original hearing.

Name:	Judge Professor Robert Abbey	**Date:**	14 February 2023

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.