FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UG/LSC/2021/0001 (v)**
Property	**:**	**Flats 24, 62, 104, 107 and 112 Ziggurat House, 25 Grosvenor Road, St Albans, Herts AL1 3UE**
Applicants	**:**	**Sonja Schelletter-Buckley (flat 24)** **Scott Francis Fleming (flat 62)** **Shreena Chavda (flat 104)** **Joseph Arthur Gillam (flat 107)** **Rachel Hocking (flat 112)** **& 10 others (flats 60,94,119,121, 93 &118,19,111,47,122 and 73)**
Respondent	**:**	**London and Suburbs Limited (Lessor)** **Represented by it managing agent Landside Property Management Limited and Luke Gibson, Counsel, instructed by MLL Limited**
Date of Application	**:**	**6th January 2021**
Type of Application	**:**	**Section 27A Landlord and Tenant 1985**
Tribunal	**:**	**Judge J. Oxlade** **S. Moll FRICS** **N. Miller Bsc.**
Date and venue of Hearing	**:**	**1st & 2nd June 2021** **Remote cloud based video-hearing**

DECISION

For the following reasons the Tribunal:

(1) finds in respect of the service charges demanded for the service charge years: (a) 2018 and 2019, that they are reasonable and payable as claimed, save in respect of the items set out in these reasons at paragraphs 22, 23, 26, 27, 30, 31, 33 and 36 herein, but (b) no findings are made on the service charges budgeted for the service charge year 2020,
(2) makes an order pursuant to section 20C of the 1985 Act, it being just and equitable to prevent the Respondent from adding to the service charge accounts any costs caused or occasioned by the requirement to respond to this application,
(3) make an order requiring the Respondent forthwith to reimburse to the Applicants the sum of £300, which sum was paid by the Applicants in respect of the application and hearing fees.

REASONS

Background

1. The Applicants are 15 long lessees of Ziggurat House, an office block converted into 125 residential units by the Respondent Freeholder, some of which have been sold on long leases, the first completing in July 2018; the remainder now rented out by the Respondent on assured shorthold tenancies.

2. Subject to inevitable adjustment relating to each specific unit, the long leases are in identical form and provide a liability on the Respondent to maintain the premises, subject to the lessees obligation to pay service charges. These charges are apportioned on a "fair and reasonable" basis, as determined by the Respondent, who has adopted an approach of apportionment according to the size of each flat, over which no issue arises in these proceedings.

3. The leases provide that there shall be payment on account at the point of purchase of the lease for estimated costs, and thereafter half yearly payments on account, with an account being taken at the end of each year (with the service charge year ending 31st December), subject to certification.

4. The leases provide that the Respondent may engage professional assistance (Accountant, lawyers, Managing Agents) to manage the building, with the cost to be borne by the lessees. On a date not known in 2018/2019, the Respondent engaged Landside ("the agents") to manage the premises, and who have been managing the premises since that date.

5. The lessees were not content with the standard of management, the standard of communication, and attention to detail, so made a request for information pursuant to section 21 of the 1985 Act. The Applicants say that this lacked full co-operation and so issued an application pursuant to section 27A of the 1985 Act, to determine the reasonableness and payability of service charges in the years 2018, 2019 and 2020 (the latter year's figures being a budget, rather than final figures), challenging each item in each year, and providing substantial challenges within the application.

Evidence

6. A directions order was made on 22nd January 2021, requiring the parties to prepare a bundle, including a completed schedule (as appended to the directions, "the Schedule") setting out the items in dispute, the reason for the dispute, and the amount that the lessees would pay; together with a statement identifying the relevant provisions in the lease, any legal submissions, and any documents relied. The directions order also provided that any witness of fact should make a witness statement, attend the hearing, and be prepared to be cross-examined, unless otherwise agreed. In the events that occurred, although there were substantial issues of fact, neither party provided a witness statement, and so there were no witnesses before us to give evidence; rather the matter proceeded by way of parties making submissions, providing information, and considering the documentation filed.

7. In preparation for the hearing, a bundle of documents was produced. The Applicants provided the detail of their case against each item in the Schedule in some considerable detail; the Respondent's response depended on the managing agents responses, which in many respects lacked detail, and there was an absence of full compliance with the directions and a lack of full disclosure, though the bundle did contain many of the invoices relating to the sums in the accounts.

Hearing

8. At the hearing the Applicants were represented by two lessees, respectively Ms. Schelletter-Buckley and Ms. Chavda of flats 24 and 104; Counsel was instructed to represent the Respondent.

9. At the outset Mr. Gibson said that his hope had been that the final 2020 figures would have been available to him, but they were not, so that the 2020 remained budgeted figure, (rather than actuals). It was acceptable to all that the Tribunal not make a determination in respect of 2020, it being unclear what they will be,

and whether there will be a dispute about them; it would clearly be advantageous for the Respondent to comply with the section 21 procedure in future, to avoid Tribunal proceedings being – once again – resorted to for want of compliance. The Tribunal would therefore look at years 2018 and 2019 for which there were final figures.

10. Counsel still awaited instructions on many aspects, at the start of the hearing being without the presence of anyone from the agents. It became apparent that Mr. Gibson was unable to advocate without being attended; eventually, he was joined by Simon Lee, an employee within the agents. In many respects we found him to be an unsatisfactory witness, unsympathetic to lessees genuine questions and grievances, and defensive; we find this has contributed to a break down in trust, and which has given rise to a greater level of sensitivity and scrutiny by the lessees.

11. One effect of the failure to give fulsome co-operation within the section 21 structure and in preparing the Schedule, is that the issues were played out before the Tribunal, with the new discovery of information ah hoc, which gave rise to further layers of questions. The absence of witness statements and the Respondent's clear earlier disclosure on the items in dispute, has lead to prolonging the hearing, the dispute, the number of issues, and costs.

Issues

12. It seems to us apposite to make findings of fact on each item of the service charge accounts, before moving onto the question of the section 20C application and reimbursement for fees incurred by the Applicants in bring the application.

13. In addition we take into account the closing submissions of both parties.

14. Mr. Gibson made the point that almost every item was in dispute, which was unreasonable now that invoices have largely been provided. There was no supplemental evidence to provide alternative quotes or other evidence to substantiate the suggestion that they are made up amounts or invoices. Whilst the Respondent's reply was short, it was to the point, referring to the terms of the lease and provide the invoices. The Tribunal has not been provided with comparable quote or evidence, to show that the costs charged were not reasonable. The evidence of Mr. Lee should be accepted, and no adverse inferences drawn. His evidence was given whilst he was going through his records. He had not been prepared sufficiently or at all for the hearing, and should not be construed as furtive or evasive.

15. On behalf of the Applicants, Ms. Chavda said that Mr Lee was noted as a potential witness in April, attended the hearing late, without a witness statement, and his overall lateness and inattention to detail and lack of co-operation spoke to a lack of professionalism at the hearing and in managing the building. There was still no management contract provided, they cannot secure alternative quotes as there is no benchmark, and deprives them of accountability. There were delays in the provision of documents to the Tribunal, depriving the Applicants of seeking comparable quotes. The accounts should have been available by now for 2020, but there will now have to be resources and time spent on looking at that. The contempt for the Tribunal process was reflective of the lack of care for the development

16. There were multiple examples of unreasonably charging back to the accounts i.e. the 4th lift being put back into commission and parking signs, which were not for the lessees benefit. The accounts were not provided in a timely manner, a failure to apportion in the service charge year, and the Respondents schedule was not meaningfully completed, so lacks credibility. There was a general lack of care in management of the development, where there is much disrepair, with long-standing mould issues, seen in photographs, and a lack of care for the surroundings.

17. A section 20C order was recognised by the Respondent as likely to fall with the determination of service charges. The Applicants said that their understanding was that the norm was for the parties to bear its own costs, but the Respondent had failed to show a clear right to them. There were multiple instances of the Respondent's failure to adhere to procedure, to cooperate from the section 21 procedure through to the hearing. They would seek reimbursement of costs.

18. At the end of the hearing the Tribunal reserved its decision.

Findings of Fact

19. The Tribunal makes the following findings.

20. The Tribunal finds that the *accountancy fees of £150 in 2018* were incurred, as shown by an invoice in the bundle (p 98) and are payable. There was evidence filed in the supplementary bundle that the accountant is qualified, as he claimed; that he had been a Director for a short while does not lead to a finding of a conflict of interest, and is not an unusual arrangement when a company is formed – rather it is a matter of convenience. The service charges are payments made on account, and so the section 20B point (the "18th month rule") is misconceived. The section 28 point does not bite, as it looks to the section 21(6) certification, with which this charge is not concerned. Therefore, we find

that the sum was incurred, and that it is a reasonable sum for the likely work done at the inception of the service charge accounts.

21. The Tribunal finds that the *insurance costs* of £48,028.78 in 2018 were incurred, as shown in the invoice in the bundle (p 99), and payable. One issue was the allocation between two service charge years (being paid in August for part of 2018 and part of 2019), and whilst apportionment (as called for by the lessees) would not be the wrong thing to do, the Respondent is perfectly entitled to charge it in 2018 as the costs were incurred and paid at that point. The insurance company are unlikely to wait for part payment until 2019, so the insurance would need to be paid in 2018 and collected in at that point. Whilst the lessees would have been shocked to have been told at the point of purchase that the costs were considerably lower only to find out the real cost subsequently, it seems likely that this would have arisen from a misunderstanding as to what period the estimated costs covered. The costs are higher during 2018/19 than later; that in itself can be explained by the initial number of void units, which can increase insurance risks and does not inevitably speak to unreasonable costs then.

22. The Tribunal finds that there is an absence of evidence on the *communal electricity* charged in 2018 of £9,145.88; Mr. Gibson was awaiting instructions, which did not come, and perhaps became lost amongst the myriad of other issues. The lease provides that the liability to pay service charges is from execution of the lease not commencement of the lease (see page 265). The information received by the Tribunal was that there was a consensus that there had been an offer to make a pro rata assessment for one lessee; that being so, it is incumbent on the Respondent to do so for **all** lessees, and the Tribunal would expect the Respondent to do so. The Tribunal finds that this is not reasonable and payable, but cannot do the apportionment for the lessor and so cannot suggest the right figure in this decision.

23. The Tribunal finds the *accountancy fee* of £1100 for 2019 was not reasonably incurred for the work done; the work was certification, not for auditing accounts. The function is simply to look at invoices, add them up, and provide a certification. In the Tribunal's expert knowledge and experience, the sum of £600 would be apposite for that amount of work, and so the sum of £1100 is reduced to £600.

24. The Tribunal finds that the sum of £1033 for *bin sanitation* in 2019 is reasonable and payable. There was evidence that this was prior to a "surge" in the number of occupiers, and the Applicants realistically accepted that there was some element of lessees causing the issue. The Tribunal finds that the Agents had no option but to be reactive in these early stages and had to treat the problem (and incurred costs in doing so). At best it shows poor management in being reactive and not proactive, and will be reflected in a reduction in managing agents fees.

25. The Tribunal finds that the *insurance costs of £52,262.31* in the year 2019 has been incurred (page 109), and is reasonable and payable. The Applicants refer to the steep rise since 2018, and then a drop to 2020 of £40,000, however, there is no evidence before us as to

the insurance being on a like-for- like basis; for example, whether there was a claims history which caused a spike in costs. There is an absence of comparable quotes. Whilst the Applicants has received the information late, made enquiries and started to look into the question of "kick backs" there is simply no evidence on which we could find that this was a factor influencing the premium; to do so would amount to speculation on our part.

26. The Tribunal finds that the *call out charges for the lifts of £1118.40* in the year 2019 were incurred and payable, invoices having been provided, **save as to £90** because the Welt security invoice at page 111 fails to detail when the call out took place and what repairs were done; accordingly, the sum payable is reduced to *£1028.40.* As far as the Tribunal is able to discern from the limited evidence available, any contract for servicing of lists is likely to be basic, and which means that is a lift goes wrong that there is no alternative but to call out an engineer. As to whether this is a false economy, is not known on the basis of the limited evidence before us, being without quotes for more comprehensive cover.

27. The Tribunal finds that the Respondent has failed to show that the *car park maintenance sum of £1509.13* in the year 2019 was incurred in accordance with the terms of the lease; there was no provision to which our attention was drawn which would require the lessees to pay for this sum. The suggestions as to why these costs were incurred was entirely speculative, and so it is not payable.

28. The Tribunal finds that the sum of £16, 272 *for cleaning and maintenance in the year 2019* was incurred, reasonable and payable. The Applicants do not make criticism of the quality of the work done, nor challenging that the work was done. The Applicants point was that there was lazy accounting or that items were put under the wrong heading. This speaks to poor management, and should be reflected in managing agents recovery of fees.

29. The Tribunal finds that the sum of *£12,412 for communal electricity in the year 2019* was incurred, is reasonable and payable. There is no issue but that the Respondent has provided costs arising from actual readings, rather than estimates. Whilst it is higher than the previous year, and the suggestion is that the sensors were not working (so leaving lights on) there is no evidential link between the criticism/observation and the bill i.e. how it translates to cost. The Tribunal simply does not have sufficient information to reduce this head of cost.

30. The Tribunal finds that the sum of *£10596.84 for lift maintenance and repair in the year 2019* is not wholly reasonable and payable, and reduces the sum by **£6570 to £4026.84**. The sum of £6570 appears to relate to a quotation for re-commissioning the 4th lift, but the quotation is not within the bundle. The lease does not appear to permit putting into repair an item in the first place; indeed the strong suggestion was that in the conveyancing process the Lessor was committed to doing this. That being so the burden is on the Respondent to show that this was incurred, reasonably incurred, and recoverable under the terms of the lease, but has failed to do so.

31. The Tribunal finds that the sum of *£32,760 for managing agents fees* (equating to £262 per flat) is not reasonable for the standard of service which was provided. Using its skill and knowledge as an expert Tribunal the fees are reduced to £200 per flat, so a total of £25,000. The Tribunal finds that there is has been a level of indifference to the lessees criticisms, the agents were reactive, not proactive as typified by the issue over the bin store. There was an arrogance towards invoicing, which meant that there was an acceptance of lazy and opaque invoicing. The agents instituted a WhatsApp group, but then found it too unwieldy and reverted to emails – but which were then not answered, leading to poor means of communication. These failures impact on costs i.e. bin store costs, passing on costs wrongly to the lessees that the freeholder should bear, poor accounting relating to pro rata charging for electricity. These failures should properly be reflected in a reduction of managing agents fees.

32. The Tribunal finds that the total sum *of £2,537.08 for repairs and renewals* is reasonable and payable. The lessees have apposite criticisms as to a rather causal approach observed during the hearing, to invoices which were often not detailed as to the work and dates of work done; reliance was placed on the memory of Mr. Lee to fill in the inadequate information in on each invoice, as each invoice would pass his desk to check that the sums had been spent. In light of being told that he and his team manage 30 or so estates, it is undeniable that there is room for error, which cannot be plugged by the knowledge of one person. However, the invoices have been provided, and the Tribunal considers it more likely than not that the work has been done. However, the casual approach to accepting poor invoicing is reflected in the managing agents fees.

33. The Tribunal finds that the sum of *£195.60 for sundries* is not incurred in accordance with the lease, and so not payable. This cost appears to relate the sign for the property, in place of a temporary piece of paper. There was no clear provision which would enable the lessor to recover the cost; we do not consider that it could fall within the wide definition of "facilities" found in the Sixth Schedule, clauses 6 or 7.

34. The Tribunal finds that the sum of *£7000 for site survey* was incurred and is payable, as invoiced at page 160. The lessees are right to point out that there has been a failure to produce the reports arising from this work, and which the Respondent should do; it leaves the Tribunal without clarity as to what work was actually done for the fees. On balance the Tribunal considers it more likely than not that (post-Grenfell) a building of this size would not be without the necessary checking mechanisms, and as the systems would be sophisticated, so that the survey would reflect that. That the door entry system was reported by the lessees as continually broken, is unfortunately part and parcel of buildings with the number of the inhabitants. The Tribunal's expert knowledge and experience is that the costs of these services is high and there is not sufficient material available to us to reduce the costs, absent of further information, including comparable quotes made on a like for like basis.

35. The Tribunal finds that the sum of *£1270 for TV and satellite* was incurred and is payable. Though the lessees made the point that most people have "smart" televisions, and so do not need the satellite provided, it is not the case that everyone does, and short of the risk of a "forest" of dishes for those who want to have SKY – are entitled to insist on it under the terms of the lease (Clause 11, 7th Schedule) – there is not alternative but for the agents to have incurred these costs.

36. The Tribunal finds that the sum of *£690 for parking patrol* was not incurred in accordance with the lease, and is not payable. There was considerable conflict in the explanations given by the Lessees and Mr. Lee as to the arrangement for issuing parking permits and enforcement, which we understand to have been outsourced to a separate company. It was not clear to the Tribunal why the costs were incurred, how they were recoverable under the lease, nor that the lessees benefited from the arrangements. The Respondent has not discharged the burden of showing on evidence adduced that these costs were incurred and reasonably so.

37. The Tribunal finds that the sum of £3360 for window cleaning was reasonably incurred. The issue revolved around windows not cleaned, and damage done by the company. There was a gulf between the parties on this issue, leaving the Tribunal unable to do anything other than speculate what might have caused damage, or whether the damage was present before the cleaning was done, but not noticed before. Nor did the Tribunal have any evidence to say what costs should be held back as damages, as recompense for the damage done. There is clearly an insurance policy in place, and any claim for damage can be made against that, though the company may well ask for before and after evidence. We understand that the cleaning is cyclical, and not all windows would be done on the same day; potentially leaving residents to say that they had been missed out, only then to be included in the next cycle. In short the evidence fell short of the Tribunal being able to conclude that the costs were not other than incurred and reasonably so.

38. Accordingly, we make findings that (save as noted above in paragraphs 22, 23, 26, 27, 30, 31, 33 and 36) the costs in 2018 and 2019 are reasonably incurred and payable.

Costs and fees reimbursement

39. Mr. Gibson did locate in the lease a provision which satisfied the Tribunal that the Respondent's legal costs could be added to the service charge account (page 254 clause 5(xv). The power to disallow, is contained in section 20C of the 1985 Act, and provides the Tribunal with a discretion, to achieve a "just and equitable" outcome.

40. We are satisfied that prior to issuing the application the Applicants sought disclosure of the basis on which service charges were charged, and nothing above bare budgetary figures were provided until quite some time after requested, when remote meetings took place, but at which there was inadequate disclosure. It fell far short of adherence to transparency and all that is intended by section 21 of the 1985 Act. The Tribunal's directions were not fully complied with by the Respondent, which is narrated above. In

short, the Respondent has brought this application on themselves, and should meet its own costs. The Tribunal's hope is that the production of certified actual costs for 2020 will be met with requests for information by the lessees which the Respondent will positively engage with.

41. As for fees, the Tribunal considers, in line with the section 20C findings, that the Respondent should meet the Applicants fees in bringing this application for the same reasons.

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Judge J. Oxlade

20th July 2021