



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

Case Reference : **LON/00AY/LSC/2021/0054**

HMCTS code : **V: VIDEO**

Property : **22 Lambert Road, London SW2 5BD**

Applicants : **(1) Stephen Woods (Ground floor flat)
(2) Cheryl Woodcock (2nd floor flat)
(3) Amy Thomas (1st floor flat)**

Representative : **In person (Mr Woods representing Ms Woodcock)**

Respondent : **Nationworth Limited**

Representative : **Mr Mendelsohn, Darlington
Hardcastles Solicitors**

Type of Application : **For the determination of the
reasonableness of and the liability to
pay a service charge**

Tribunal Members : **Tribunal Judge Prof R Percival
Mrs S Phillips MRICS**

**Date and venue of
Hearing** : **26 August 2021
Remote**

Date of Decision : **26 August 2021**

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 no-one requested one. The documents that we were referred to are in a bundle of [x] pages, the contents of which has 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.
2. The relevant legal provisions are set out in the Appendix to this decision.

The properties

3. Number 22 Lambert Road is a Victorian house converted into flats. The leases relate to the four flats in the basement and the ground, first and second floors. It appears that a fifth flat has been formed in the attic.

The leases

4. The Applicants’ leases were originally granted in 1990, 1992 and 1987. The term of each has been extended since by deeds of surrender and re-grant, the substantive terms as to the covenants remain (relevantly) those in the original leases.
5. The lessee of each flat covenants to pay 25% of the expenses of the Lessor under the fourth schedule (clause 4(ii)). The service charge is to be paid in advance on 25 December and 24 June each year, and there is provision for reconciliation.
6. The lessor’s repairing covenants in respect of the structure, common services and communal areas and the covenants to light the entrance hall and staircase, paint the outside, insure and employ a managing agent are contained in clause 5. In the same clause, the lessor covenants to provide on request once a year “evidence of the actual expenditure by the lessor in relation to the costs expenses and outgoings to which the lessee is asked to contribute under his covenants and at the end of each

year to provide a statement of account showing the actual expenditure ...”.

7. There is provision for the lessees “of the other flats comprising” the building to be subject to the same terms (including as to service charge).
8. The costs attributable to the service charge are set out in the fourth schedule. They include the costs of the repairing covenant, lighting of the common parts, external decoration, insurance, repairing etc the boundaries and fences and “[a]ny other expenses of a recurring nature which the lessor may deem expedient in the interests of good management.” The lessor (by paragraph 7 of the fourth schedule) “shall be entitled to add to all and any of the above items the reasonable administration expenses of the lessor and its managing agents”.

The issues and the hearing

9. The Applicants appeared in person. Mr Mendelsohn of Darlington Hardcastles, Solicitors, represented the Respondent.

Preliminary matters

10. We dealt with four preliminary matters.
11. First, it was established that a previous freeholder had erroneously been added as a second Respondent to the application. The Respondent identified above is the only correct respondent.
12. Secondly, we entertained an application for certain correspondence to be adduced before us. Shortly before the hearing, the Applicants had sent to the Tribunal a document the title of which started “Attempts to resolve issues...”. We declined to read the document and, having ascertained that Mr Mendelsohn objected to it, reserved the issue for consideration at the hearing. Mr Mendelsohn submitted that the correspondence related to attempts to settle wider disputes, and were in substance of a without prejudice nature, even if those words had not appeared. Mr Woods submitted that the Applicants’ willingness to settle may be relevant to their application under section 20C of the 1985 Act.
13. We agreed with Mr Mendelsohn’s submissions, and concluded that we should not consider the correspondence. We indicated this conclusion to the parties.
14. Thirdly, we canvassed what was and was not still in issue.

15. The application related to service charges demanded in 2020 and 2021. An important element of the background is that, as a result of other proceedings, a Right to Manage company had been established and took over management functions on 20 August 2021.
16. As stated above, the leases provide for advance payment of service charge with reconciliation. The application related to these advance demands, in 2020 for cleaning of communal parts (£600 in total for all four tenants), for “health and safety” (£175), and for audit fees (£150). The advance demands for 2021 related to the same sums for cleaning and health and safety, and a further demand for £10,000 for eradication of Japanese knotweed in the rear garden.
17. Mr Mendelsohn confirmed that the Respondent had or would credit the Applicants in relation to the cleaning fees for both years and the audit fees for 2020, because no cleaning or auditing had been carried out. Similarly, the charge in relation to Japanese knotweed fell, as no money had been expended (and there had been no consultation procedure under section 20 of the 1985 Act).
18. Accordingly, the only substantive issue before us was the charge for health and safety in both years.
19. Finally, we considered how formally we should proceed. The Applicants had not provided witness statements. Mr Mendelsohn agreed that the issue in relation to health and safety was a simple one and could be dealt with by way of submissions from the parties.

The charge for health and safety

20. Mr Woods spoke for the Applicants in relation to the charge. His core point was that it was not evident what work had been done in relation to health and safety matters that should not have been covered by the management fee charged by the managing agents, Moreland Estate Management. He observed that the previous managing agents, Eagerstates, had not made a separate charge for health and safety matters, over and above the fee for management.
21. Mr Woods went on to argue, from a photograph of the circuit board in the bundle, that it was not compliant with current regulations. How, he asked rhetorically, could a charge be made for health and safety matters when such an apparent issue had been overlooked?
22. In response, Mr Mendelsohn said the charge had nothing to do with the electrical supply to the house. Rather, he referred to the terms in which the point was put in his reply to the Applicants’ statement of case, in the bundle. The charge
“relates to the fees of the person who has taken on all the obligation and risk associated with being nominated as the

‘Responsible Person’ for the purposes of Fire Safety, including being the person to whom any FRO would be addressed.”

23. The Respondent was entitled to charge such a fee under paragraph 7 of the fourth schedule.
24. We put to Mr Mendelsohn that, in the experience of the Tribunal, the annual unit management fee of £331 was within the reasonable range, but towards the upper end of it, and that made it harder to justify additional fees. Mr Mendelsohn responded that it showed the managing agent being transparent as to costs. It could have simply increased costs by £40, and the Applicants would not have known what the increase was for.
25. We prefer the Applicants’ submissions. While the contract between the managing agent and the freeholder was not in evidence, whether the contract made separate provision for charging for the appointment of a responsible person would not be determinative. It is a commonplace that contracts for managing agents consist of a core unit price, and then a list of additional functions for which additional charges may be made (and thus claimed through the service charge). The question of whether an additional fee item can reasonably be the basis of a charge in the service charge is related to the management fee. If tenants are paying through the service charge a higher unit cost for management, it is harder for the freeholder to justify as reasonable additional items.
26. Further, in this case, there was no evidence as to who was charging the fee referred to in the quotation from the Respondent’s reply above. The only documentation relating to the charge is in the form of invoices from Moreland. We would ordinarily expect such a function to be undertaken in house by a managing agent, and there is no clear indication that that is not what occurred in this case.
27. *Decision:* The charges for “health and safety” were not reasonably incurred.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

28. The Applicants applied 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; and 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.
29. We indicated that we would consider the applications on the basis that the leases did provide for such costs to be passed on either in the

service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

30. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000)). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.
31. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.
32. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.
33. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.
34. Mr Mendelsohn resisted the applications. He said that the application came about largely because the Applicants confused advance budgets as to service charges with final accounts. In particular, the 2020 final accounts showed that no expenditure had been incurred in respect of cleaning and auditing and payments on account in relation to those had been credited. The same would happen in respect of final accounts for the current year when they are drawn up in relation to handing over management to the RTM company.
35. We asked Mr Mendelsohn when the final accounts for 2020 had been provided to the Applicants, but he was unable to say.
36. Mr Mendelsohn argued that at times the Applicants had been represented by solicitors, at least in relation to the RTM application, and it should have been obvious to the solicitors that the provision for knotweed could not be expended until a consultation process under section 20 of the 1985 Act had been undertaken. The sums that should have been paid in advance in relation to the knotweed provision would, in any event, have been held on trust for the Applicants.
37. Mr Woods argued that it was difficult to tell what status the material from the managing agent was, at times, and Mrs Thomas observed that the charges were invoiced by the Respondent for payment.

38. We consider it is appropriate to make the orders.
39. The Applicants have been successful in respect of all items contested, for the most part because the Respondent conceded the point. To allow collection through the service charge or via administration charges would not be just and equitable in the circumstances.
40. There are no evident financial implications for the landlord (or any other party), as there would be, for instance, in the case of a tenant-owned freehold company. Mr Mendelsohn did not argue that there were.
41. We regard Mr Mendelsohn's distinction between budgets and final accounts as misleading. They were service charge demands, not budgets. The leases make clear provision for advance service charges to be made; and it was clearly proper for the Applicants to make an application under section 27A in respect of those service charge demands. The implication of Mr Mendelsohn's submission is that it is wrong for tenants to apply to the Tribunal in advance of the later reconciliation of service charges demanded by a freeholder, which we consider unsustainable. The application was not in respect of a "budget", but of an advance service charge, required to be paid under the leases.
42. *Decision:* We order (1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicants; and (2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicants to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

43. 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.
44. 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.
45. 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.

46. 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:** 26 August 2021

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).