



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

Case reference : **LON/00BJ/LSC/2021/0319**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Flat 31 Parkside St Peters, 21 Plough
Lane, London, SW11 2DE**

Applicant : **Mr Robert Kettlewell**

Representative : **In person**

Respondent : **Plough Road Management Company
Limited**

Representative : **Ms Bernadette Cunningham, Director**

Type of application : **Liability to pay service charges under
section 27A of the Landlord and Tenant
Act 1985**

Tribunal : **Mr Charles Norman FRICS
Valuer Chairman
Mr John Naylor MRICS
Mrs Louise Crane MCIEH**

Date of Hearing : **20 June 2022**

Date of Decision : **7 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because no-one requested the same, and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in bundles of approximately 500 pages, the contents of which the Tribunal noted.

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the service charge year 1 March 2020 to 28 February 2021. As a result in a change in managing agents, on 31 August 2021 a section 20B notice was served on the Applicant who relied on the figures stated when making his application. However, Ms Cunningham explained that the amounts in the section 20B notice had been superseded when draft accounts had been prepared. These draft accounts prepared by Fortus Chartered Accountants were included in the landlords’ bundle. The landlord was seeking a determination in respect of those sums in the draft accounts. The Tribunal noted that in aggregate the sums from the draft accounts were significantly less than the section 20B figures.
2. The individual elements challenged were as follows, showing draft accounts figures with the section 20B sums in strikethrough:
 - (i) Part A – Estate Expenditure for which the Applicant is liable for 1.93%:
 - (a) Building and Terrorism Insurance: ~~£17,565.64~~.£18,076
 - (b) External maintenance: ~~£9,050~~.£4,829
 - (c) Health and Safety: ~~£14,532.24~~.£7,809
 - (ii) Part B – Block Expenditure for which the Applicant is also liable for 1.93%:
 - (d) Door Entry/Access Contract: ~~£2,779.50~~.£3,248

(e) HIU Maintenance: ~~£18,224.86~~.£26,258

(f) Internal maintenance: ~~£30,365.52~~.£4,403

(g) Telecom lines: ~~£1,143.64~~.£969

(iii) Part D – Staff and Lift (for which the Applicant is liable for 2.76%):

(h) Staff costs: ~~£50,065.04~~. £49,650

The hearing

3. The Applicant appeared in person and the Respondent was represented by Ms Bernadette Cunningham, a Director of Plough Road Management Company Limited (“PRML”).

The background

4. The property which is the subject of this application is a modern development of 69 flats built within the last ten years. The building has a communal heating and hot water system. It also has a concierge service. The property has been affected by fire-risk related cladding and at the time of the hearing, this was in course of being removed. The Applicant also submitted that the quality of construction is poor. However, those issues are not directly before the Tribunal in this case although the history has resulted in poor relations between the parties.
5. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. 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 variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
7. Directions were issued on 26 October 2021 and amended following a Case Management Hearing on 18 February 2022. The amended directions required the parties to utilise a Scott Schedule. Unfortunately, neither party was able to provide this in MS Word format and consequently the Tribunal has been unable to utilise it to set out its decisions on individual items which are therefore set out below. As the parties were unable to agree a bundle and each provided their own.

The issues

8. In accordance with the directions, the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 1 March 2020 to 28 February 2021 relating to the items set out above. There was no challenge to the service charge proportions set out in the lease (see below).
 - (ii) Market testing in relation to the insurance cost, whether commissions were received and the basis of the fire insurance valuation
 - (iii) Whether a section 20C order should be made in favour of the Applicant.

The Lease

9. The property is held under a lease dated 27 October 2016 for a term of 252 years (less 10 days) from 13 December 2013. The parties are Thornsett South London Ltd, Robert James Kettlewell and Plough Road Management Company Limited (“PRML”). The property is defined as flat 31 as shown edged red on a plan and more particularly described in schedule 8 of the lease. The tenant’s proportion of service charge liability is defined as follows:

1.93% of the Estate Costs as set out in Part A of Schedule 11

1.93% of the Block Costs as set out in Part B of Schedule 11

1.72% of the Parking Costs are set out in Part C of Schedule 11 [parking costs are not challenged in the application]

2.76% of the Lift and Staff Costs are set out in Part D of Schedule 11

10. The scope of categories A, B, D and E may briefly be summarised as follows:

Part A

Maintenance of Estate Communal Areas including gardening, road footpath and fence maintenance, cleaning of the estate communal areas, maintenance of service installations, lighting, party walls, public liability insurance, repairing fire alarms and security equipment within the estate, the cost of a reserve fund and incidental costs.

Part B

The maintenance repair renewal replacement of the main structure of the block including the main structural parts of the balconies, communal doors, all service installations, fire alarms, security equipment, exterior decoration, common part decoration, cleaning and furnishing of common parts, cost of building insurance, window cleaning, television /satellite aerial provision, gate maintenance provision of a reserve fund and incidental costs.

Part D

Maintaining replacing and repairing the lifts emergency telephones connected to lifts, staff and concierge costs, and provision of a reserve fund.

Part E

The cost of keeping accounts in relation to Parts A to D and serving the service charge certificate, compliance with statutory requirements, professional fees, enforcement costs, other services, or functions that the Management Company thinks fit for the benefit of the Dwellings, provision of a reserve fund, all other reasonable and proper expenses incurred by the Management Company in the convenient running of the property including repair of inherent structural defects.

11. By Clause 19 the tenant also covenants to pay the Insurance Contribution. This is defined as 1.93% in the Particulars of the Lease [pg. 30, LL bundle]
12. The Estate Service Charge Costs are defined as money actually expended or reserved for periodical expenditure by or on behalf of the management company in carrying out the obligations in Schedule 11.
13. The Maintained Property is defined as the estate communal areas and gates to the estate the car park the main structure of the buildings including the roof gutters rainwater pipes foundations floors and all walls bounding individual dwellings therein and all external parts of the building including all structural parts of the balconies of the buildings together with all decorative parts and structure and exterior of the internal common parts of the buildings and which is intended to be managed by the management company for the benefit of the estate.
14. Service Installations are defined as including services to and from the dwellings and any other buildings on the estate and shall include any equipment or apparatus installed for the purpose of such service or supply.

15. Schedule 1 paragraph 3 provides that the Management Company is a company formed with the object of maintaining the Maintained Property and to provide certain services. By paragraph 6 the landlord reserves the right to appoint a manager to act on behalf of the Management Company. Under schedule 3, the tenant covenants to pay the tenant's proportion of the Estate Service Charge Costs.
16. By Schedule 5, the Management Company covenants with the tenant to provide the Management Company Obligations save that the management company may employ at its discretion a firm of managing agents. Management Company Obligations are defined as the Management Company Obligations under Schedule 11.
17. The lease is modern and well drafted. The definition of Estate Service Charge Costs in Schedule 11, Parts A-D is extensive. Part E includes extensive sweeping up provisions which amplify and are to be read into Parts A-D.

The Applicant's Case

18. Mr Kettlewell made written and oral submissions but did not provide a witness statement. He told the Tribunal that the Respondent failed to answer questions about service charges. Mr Richard Delaney of HAUS managing agents had provided much lower quotes for costs including insurance and other costs. [pg. 70 Applicant's bundle]. Various leaks were being claimed through insurance, whereas the roof was not fit for purpose. The construction quality of the building was very poor. The cheapest cladding was used. Repeated visits had been needed for the door entry system as the contractors repeatedly failed to fix it. The HIU (heat interface units) were cheap equipment. When engineers attended his flat to repair the HIU, on a Sunday during a Covid lockdown, he denied entry as they were not wearing PPE and he had not been given notice. The Applicant's case is expanded in the Scott Schedule appended.

The Respondents' Case

19. Ms Cunningham provided a detailed signed witness statement. Her evidence may be summarised as follows. Ms Cunningham was appointed a director of PRML on 28 November 2013. PRML delegated management functions to managing agents. Ms Cunningham expressed concern that she was being asked to respond on detailed points for which she had no day-to-day oversight. Ms Cunningham referred to Schedule 11, part B, paragraph 3 of the lease which set out the insurance provisions. In accordance with directions, Ms Cunningham provided insurance documentation including claims history and commissions paid to LRM, the previous managing agents. In relation to the year in question these commissions were £100.20, £1941.96, and £135.97. Ms Cunningham stated that no other services were provided for the income received. The [fire insurance] valuation was based on the initial contract

sum, indexed. A broker was used to test the market and her letter was appended. [This was a letter from Ms Kyle Herbert of St Giles Insurance dated 21 February 2021.]

20. Ms Cunningham appended an excel spreadsheet which categorised expenditure with reference to the headings used in the draft Fortus accounts. Except for items highlighted in red, which related to accounting adjustments and duplicate entries, all referenced invoices were also appended to her witness statement. Ms Cunningham referred to relevant invoices during cross examination.
21. Mr Kettlewell had attended LRM's offices to inspect invoices and receipts. The Applicant had a history of service charge arrears which stood at £12,911 in February 2021. The Applicant had sent threatening emails to the Respondent. Examples were exhibited. The Respondent replied to the Applicant's Scott Schedule, and this is appended.

The Tribunal's Decision

General

22. The Tribunal notes the covering letter dated 31 August 2021 enclosing the section 20B notice from PRML's new agents Town & City to the applicant which stated, "no payment need be made until the certified accounts and confirmation of your share of the costs are published." Furthermore, only draft accounts are presently available. The Tribunal therefore confines itself to determine, where disputed, whether relevant costs have been reasonably incurred but finds that they are not payable until demanded in accordance with the lease provisions.
23. The Tribunal found Ms Cunningham to be an honest witness doing her best to assist the Tribunal. However, the Tribunal does not accept her evidence that responsibility for management can be delegated to the managing agents. It is the Management Company, PRML that is party to the lease, not the managing agents. Schedules 1 and 5 place the obligations of management on PRML. Although PRML may delegate its management functions it cannot delegate its responsibilities under the lease.

Estate Expenditure (Part A)

Building and Terrorism Insurance (£18,076)

24. The applicant's quote from Haus managing agents was dated 27 June 2018 and was therefore historic. Although the Respondents market testing letter dated 16 February 2021 from St Giles insurance brokers was for the service charge year 2021/2, it was far closer in time to the disputed period This letter showed that the most competitive quote was

£23,520 and that many major insurers refused to quote owing to the cladding issues and claims history. The landlord is entitled to decide what insurance claims to make in respect of the structure, for which it is responsible. The Tribunal therefore finds that the amount claimed for insurance of £18,076, less the commissions (see above), was reasonably incurred. The commissions are disallowed because Ms Cunningham's evidence was that no other services were provided for the income received. The Tribunal therefore finds that they are not part of the insurance costs.

External maintenance (£4,829)

25. The lease defines the maintained property as including structural parts of the balconies (see above). Therefore, repairs to glass damage to balconies fall within the landlords' repairing responsibilities. There is no evidence as to the cause of the damage and the Tribunal finds this cost reasonably incurred, except in relation to Harris Associates (see below).
26. The Tribunal finds that costs of scaffolding to inspect the roof and clearing the gutter fall within the lease, are supported by invoices, and are reasonably incurred. The Junk Hunters invoice is for 5 cubic yards of waste removal. This falls within paragraph 1 of schedule 11 of the lease being required to keep the estate communal areas in good condition and 1.1.4 keeping the Estate Communal Area in a neat and tidy condition and also Para 8 being any other costs and expenses in connection with the estate. Therefore, the Tribunal finds this reasonably incurred. The Tribunal rejects the invoice from "Just Does" as it contains no information as to the service provided. The Tribunal disallows part of an invoice from Harris Associates surveyors because the description is inadequate to support a fee of £1,776 for 8 hours on site dealing with "Flat 45 balcony glass". The Tribunal allows 2 hours or £370 plus VAT. The Tribunal finds invoice 014 for leak repairs to storage unit 6 payable as the invoice gives sufficient detail.

Health & Safety (£7,809)

27. This is a block of 69 flats which has substantial ongoing issues in relation to fire risk related cladding. The cost of waking watches was incurred. The Tribunal noted that the expenditure is supported by invoices and finds that this reasonably incurred.

Block Expenditure (Part B)

Door Entry/Access Contract (£3,248)

28. This is a block of 69 flats. The Tribunal noted that the invoices from Ozzas Security Systems contained narratives which may be summarised as follows: reprogramming of the fob system owing to unauthorized

access, teenage boys forcing the door open three times, replacing faulty reader and [fire] break glass, attending faulty intercom, replacement of a Maglock, fault to entrance gate lock, provision of fobs and transmitters to concierge. A LSA invoice related to door release to a bin store. The Tribunal finds that these invoices do not demonstrate any unreasonable degree of repeated attendance. The Tribunal finds that the costs are supported by invoices, fall within the lease, and are reasonably incurred.

HIU (Heat Interchange Unit) Maintenance (£26,258)

29. The fact that Haus quoted £4,500 in 2018 is not relevant to the question as to whether these costs have been reasonably incurred by the Respondent. The costs fall within the terms of the lease and are supported by invoices. The Tribunal finds that the costs were reasonably incurred.
30. The Tribunal accepts the Respondent's submissions that operatives attempted to enter his flat during Covid restrictions on a Sunday without PPE or notice and that consequently he required them to leave. The Tribunal has not identified a specific invoice for this attendance nor has this cost been challenged in the Scott Schedule. The Tribunal notes charges of £105 plus VAT for such visits to other flats. Under Part B of Sch 11 the Respondents' liability for this cost would be 1.93% or £2.43 which the Tribunal considers de minimus. The Tribunal therefore finds that the applicant's contribution to HIU costs is reasonably incurred.
31. As to plant room costs, plant insurance does not cover maintenance work and the Tribunal finds these costs reasonably incurred.

Internal Maintenance (£4,403)

32. The Tribunal finds that these costs are supported by invoices, fall within the lease, and are reasonably incurred. It finds from the evidence of Ms Cunningham that Fowler Close is another reference to the same property, which has two entrances.

Telecom Lines (£969)

33. The Tribunal accepts the Respondents explanation that these costs relate to lift lines and the concierge desk. It finds that they fall within the lease are supported by invoices and have been reasonably incurred. However it finds that the lift lines should be categorised under Part D as falling within Paragraph 2.

Lift and Staff Costs (£49,650) Part D

34. The Tribunal accepts the Respondents case that these costs, which relate mainly to concierge and management fees, have increased as result of irrecoverable VAT now becoming payable. The costs are supported by invoices and the Tribunal finds that they fall within the lease and have been reasonably incurred.

Application under s.20C

35. The Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, and the conduct of the parties the Tribunal determines that the application be refused.

Name: C Norman FRICS

Date: 7 August 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).