



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

Case Reference : **LON/00BJ/LSC/2021/0428**

Property : **Thurleigh Court, Nightingale Lane,
London SW12 8AP**

Applicant : **James Attfield, Rory O’Hanlon and
Siobhan Nagle**

Representatives : **In Person; Ms Nagle**

Respondent : **Thurleigh Court Management Company
Limited**

Representative : **Ms Rebecca Akerley of Counsel**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey
Mr Duncan Jagger MRICS**

**Date and venue of
Hearing** : **15 and 16 September 2022 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **26 September 2022**

DECISION

Decisions of the tribunal

(1) The tribunal determines that: -

- (2) Building insurance: the insurance charges are reasonable and payable
- (3) Legal costs; the legal costs charges are reasonable and payable
- (4) Window cleaning; the window cleaning charges are reasonable and payable
- (5) S.20 works to the roof; the roof remedial works charges are reasonable and payable
- (6) Management charges; the management charges are reasonable and payable
- (7) Other items listed in the disputed service charges schedule dated 28 June 2022; several items are not reasonable and will be disallowed in full. They are –
 - a. FairFX PLC 1032019 £283.62.
 - b. Peer to Peer Practice 2042018 £3288.
 - c. No supplier 24052018 £600.
 - d. No supplier 18062018 £162.
 - e. No supplier 1769619 £9.
 - f. Rendall & Rittner 56993 £412.51.
- (8) Otherwise, if service charge items are not specifically mentioned under this heading, then the Tribunal has found them to be reasonable.

The applications and background

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Thurleigh Court, Nightingale Lane, London SW12 8AP**, (the property) and the liability to pay such service charge.
2. Thurleigh Court, Nightingale Lane, London SW12 8AP is a purpose-built block of 61 flats. The respondent is not the applicant’s landlord but the management company responsible for providing the services

and recovering the service charge under the leases. The block consists of 61 residential flats in all, each of which is held a long residential lease. The respondent Company was incorporated on 7th July, 1983 and was set up to manage the property as per the Articles of Association. The respondent company comprises of all leaseholders within the property and all the Directors are elected by the leaseholders of the flats in the property.

3. On or around 2015 the freeholder caused to be erected on the roof of the property seven new flats, apartments A-G. The building of the new flats was to a poor standard and as a result there has been severe water ingress to the property and particularly the flats formerly at roof level. Initially various repairs were carried out to fix the water ingress but the water ingress in a number of flats persisted. The affected flats were on the original top floor of the development, under the newly built penthouse level. Consequently, immediate action was required in order to prevent further damage to the structure of the property and to the apartments. The works that followed were s.20 works required to remedy the building defects that allowed the water ingress.
4. The Tribunal noted that the respondent company entered into an agreement dated 17 November 2016 with Thurleigh Partnership Limited who were involved with the development of the apartments on the roof of the property. By that agreement the respondent agreed to take over the insurance and repairing responsibilities and to receive service charge payments for the apartments. The applicants raised concerns about the agreement but it was apparent to this Tribunal that it did not have jurisdiction for the concerns raised. The Tribunal is simply required on this application to consider the reasonableness and payability of service charges.
5. The applications to the Tribunal were concerned with the reasonableness and payability of service charges for the years ending 31.03.2019, 31.03.2020 and 31.03.2021 and charges for the year 2021/2022. The first is for a Landlord and Tenant Act 1985 s.27A determination in respect of service charges arising in the several years mentioned above. In the second application the applicant seeks a determination pursuant to s.20c of the 1985 Act.
6. The Tribunal was advised that the Directors of the respondent company are not paid for their work in managing issues relating to Thurleigh Court. This involves dealing with professionals that are independently advising the directors in respect of any management issues regarding the property as well as dealing with complaints by leaseholders and following up on the non-payment of service charges. The Tribunal were further advised that the directors have always sought the advice of independent professionals and adhered to that advice.

7. The respondent says that in breach of the terms of the Lease the applicants have failed to pay service charges as demanded by the respondent via the Respondent's professionally appointed Managing Agents, Rendall & Rittner Limited. This the respondents say is having an adverse impact on the development as at present the sum of around £35,000 is outstanding.
8. 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

The hearing

9. The face-to-face hearing took place over two days in September 2022, (15th and 16th), when the applicants were represented by one of themselves, Ms Nagle and the respondent was represented by Ms Ackerley of Counsel.
10. 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.
11. The Tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties.

Decision

12. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written and oral evidence and the surrounding documentation as well as the oral submissions provided by both the parties at the time of the face-to-face hearing.
13. The Tribunal were required to consider service charges and administration charges arising in service charge years 2019 and 2020 and 2021 and charges for 2021-2022. The Tribunal will consider each in turn or by subject matter. In particular the issues concerned insurance demands, legal costs, window cleaning charges, the s.20 works, management charges and the items listed in the disputed service charges schedule dated 28 June 2022.

14. The tribunal is required to consider which argument they prefer in their interpretation of the lease and service charge provisions and the payability of service charges for items in dispute. The tribunal therefore sought precedent guidance to support their decision-making process. The Supreme Court case of *Arnold v Britton and Others* [2015] UKSC 36 is extremely helpful in this regard. This case was about judicial interpretation of contractual provisions analogous to the dispute before the tribunal. The court held-

“that the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be gleaned from the language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate departure from the natural meaning; that commercial common sense was relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties as at the date on which the contract was made....it was not the function of a court to relieve a party from the consequences of imprudence or poor advice”.

15. Accordingly, the tribunal turned to the lease to try to identify what the parties had meant through the eyes of a reasonable reader.
16. This was particularly so with regard to the extent of possible items of expenditure not specifically named in the leases of the flats in the property. For example, there was not a clause or covenant in the leases that specifically authorised the payment of legal fees. Instead, the Tribunal was asked to consider clause 8, Part IV of the lease schedule which says that -

“The company may in its absolute discretion in the interests of good estate management and for the benefit of the lessees of the property vary extend or curtail any of the services referred to in Part IV hereof or provide additional facilities and services....”

And here the lease lists examples and not limited to those examples such as landscaping of garden areas. This clause will be considered where the respondent is seeking to utilise it in regard to specific service charge items.

17. The applicants asserted that the annual accounts were not audited as the lease requires. In reply the respondent confirmed that the annual accounts were certified by Roberts & Co Chartered Accountants. The accounts say that the accounting work was carried out having regard to TECH 03/112 Residential Service Charge Accounts published jointly by the professional accounting bodies with ARMA and RICS. Therefore, the Tribunal was satisfied that this was an industry standard and one that was entirely suitable for this property and the accounts required for the respondent company. This way of preparing the accounts would save professional fees by the respondent which would ultimately benefit the lessees who would not have to pay more monies for accountancy charges.

Building Insurance

18. The applicants believe that the insurance premium for all the years in dispute are excessive. The applicants did not provide alternative quotes from other similar insurers. The respondent said that they had used a broker and that there had been market testing. Furthermore, the landlord was not required to find the cheapest quote.
19. The tribunal is satisfied that the respondent selected insurance companies of repute and that as such there is compliance with the obligation to obtain a quote from a reputable company. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not have to accept the cheapest quotation but the landlord must insure with a reputable company as is the case in this dispute.
20. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote. In this dispute it was stated in oral evidence before the Tribunal that a market analysis was undertaken by brokers instructed on behalf of the managing agents whereby several insurance companies were approached to test the market insurance premium rates.
21. Accordingly, the Tribunal accepted that there was no requirement on the landlord to find the cheapest quote. In the absence of comparable evidence from the applicants for very similar blocks and alternative premium quotations for an exact like for like cover it is difficult for the tribunal to say the premiums charged are unreasonably incurred. This left the tribunal with little alternative other than to confirm the adequacy of the premiums charged, which it now does. Accordingly, the items listed to insurance and to the brokers Lockton & Co are all approved as reasonable and payable.

Legal costs

22. The disputed service charges cover several invoices for legal costs. These are charges incurred by the respondent in relation to legal advice and representation obtained by the respondent company from solicitors for work done on its behalf. The applicant disputed these charges saying there was no authority to incur the charges within the terms of the flat leases. The respondent admitted that there was no exact lease provision authorising the incurring of legal costs. However, the respondent seeks to rely on the provisions of clause 8, Part IV of the lease schedule referred to above.
23. Given the guidance in the *Arnold* case set out above what would a reasonable reader make of this clause? Clause 8 gives the respondent an absolute discretion, in the interests of good estate management and for the benefit of the lessees the power to extend the services or provide additional facilities and services. Bearing in mind that all members of the respondent company are leaseholders the Tribunal was of the view that the taking of legal advice by the directors was in the interests of good estate management and was for the benefit of the lessees.
24. If that legal advice was about the recovery of monies that might flow to the respondent company (because of a potential claim against the freeholder/ developer) then it must be beneficial to take that legal advice. The seeking of legal advice must be an additional facility or service that is properly payable by the lessees as a service charge. Furthermore, having perused the actual invoices the Tribunal is satisfied that they are reasonable and payable given the circumstances of the dispute and the rates charged by the solicitor instructed.

Window cleaning

25. The applicants disputed the several service charges across the years for the provision of window cleaning at the property as they asserted that it was not done. The respondent through its directors and managing agents confirmed that the window cleaning was carried out on an ad hoc basis and was done to make sure the property was kept as clean as possible, given the nature of its multi-story construction. Once again, the respondent seeks to rely on the provisions of clause 8, Part IV of the lease schedule referred to above for these additional services. On inspection the level of charges did not seem excessive to the Tribunal given the nature of the property. On the balance of probabilities, the Tribunal was satisfied that the work was carried out and that therefore the charges were reasonable and payable.

S.20 works to the roof

26. These works arose because or around 2015 the freeholder caused to be erected on the roof of the property seven new flats, apartments A-G. The building of the new flats was to a poor standard and as a result there has been severe water ingress to the property and particularly to the flats formerly at roof level. Consequently, immediate action was required in order to prevent further damage to the structure of the property and to the apartments. The works that followed were s.20 works required to remedy the building defects that allowed the water ingress.
27. With regard to these works the applicants say that instead of seeking the cost of remedial works from those who were responsible for and profited from the development, the respondent is seeking to recover the cost from the tenants. In their statement of case the applicants estimate the remedial works to be at £350,000. The Applicants referred the Tribunal to the case of *Avon Ground Rents Limited v Cowley & Ors* [2019] EWCA Civ 1827. In that case the Tribunal determined that works were necessary, an appropriate procurement process had taken place and that the anticipated costs were themselves reasonable. It nonetheless reduced the amount which could be demanded from the leaseholders. The Tribunal's reasoning was that there was a very high likelihood of an insurance policy paying for some (or all) of the works and it required the landlord to give credit for those likely receipts when deciding what could be demanded from the leaseholders. The landlord argued that the correct approach was to allow it to demand the full amount from the leaseholders and then to give credit for any sums provided by the insurance company once those monies were actually received. The Court of Appeal rejected that contention, holding that it would be wrong to introduce such a structured approach to s.19(2 of the 1985 Act). What was a "reasonable" amount to demand in advance was something best left to the experience and judgement of the Tribunal.
28. From the evidence before it, it soon became clear to this Tribunal that the likelihood of recovering monies elsewhere was not great. It seems that no proceedings had been issued and that there was a distinct possibility that a claim against the freeholder/developer could be statute barred. Additionally, the developer company was in liquidation thus making the likelihood of recovery even weaker. This being so it seemed to this Tribunal that the *Avon* case did not assist as there was no comparison between the two situations that might then guide the Tribunal in its decision. The facts of this case were clearly different and as such *Avon* was unhelpful.
29. Additionally, it was incumbent upon the applicant to mitigate its loss by making sure that remedial repairs were carried out to stop further damage occurring in accordance with the covenants in the lease. Indeed, the Tribunal were advised that remedial works were well in

hand. Also, the Tribunal was informed that at present each individual leaseholder had the opportunity of taking action in nuisance against the freeholder/developer but that was not by the respondent/management company.

30. The Management Company relied on the several reports prepared by its Building Surveyor Mr Ryan Morrow and the schedule of works and resulting tenders were in strict accordance with the surveyors' recommendations.
31. In these circumstances the Tribunal determined that the works were necessary, that it was proportionate to demand the expense in advance and that the cost level was reasonable given the nature of the remedial works required. The s.20 works charges were therefore payable by the leaseholders.

Management fees/charges

32. The respondent through its managing agents raised management fees or charges on a yearly basis. These are the agents' charges for managing the property on behalf of the respondent. The applicants objected to the employment of the agents without them being regularly required to tender for the work so as to ensure the competitiveness of their charges. For example, the 2021 charges were in the region of £22750, that figure being quoted in evidence before the Tribunal. There are 61 flats in the property. That would equate to £372 per property per year for management charges.
33. The Tribunal from its own knowledge and expertise took the view that the range of fees currently experienced by it are in the range of £275 to £450 per unit in central London. The amount will of course depend on the block size as economies of scale will inevitably apply. The Tribunal was satisfied with the level of these charges which they found to be reasonable if towards the top end of the scale and also noted that the applicants failed to provide any convincing evidence to the contrary. In these circumstances the Tribunal were again satisfied as to the reasonableness of these management charges.

Other items listed in the disputed service charges schedule dated 28 June 2022

34. The Tribunal took a detailed review of all the remaining items on the schedule and found that several items were of concern to it. Each will be considered in turn.

- (i) FairFX PLC 1032019 £283.62. This was said to be a payment from a company credit card used by a person that was not a company officer. The Tribunal were not happy with this explanation or with the expenditure that was largely unexplained and unacceptable. Therefore, the Tribunal find this total expenditure unreasonable and is therefore disallowed in full.
- (ii) Peer to Peer Practice 2042018 £3288. This item was a very odd expense. It appeared to be in relation to works to a garden shed at the property carried out by what otherwise was described as a company concerned with information technology consultancy activities. The need to utilise this company was not at all clear to the Tribunal and the transaction seemed to be unusual. The Tribunal were not happy with the explanation provided at the hearing or with the expenditure that was largely unexplained and unacceptable. Therefore, the Tribunal find this complete expenditure unreasonable and is disallowed in full
- (iii) No supplier 24052018 £600. The lack of detail and supporting documentation meant that the Tribunal were not satisfied with the reasonableness of this item. Therefore, the Tribunal find this expenditure unreasonable and is disallowed in full
- (iv) No supplier 18062018 £162. The lack of detail and supporting documentation meant that the Tribunal were not satisfied with the reasonableness of this item. Therefore, the Tribunal find this expenditure unreasonable and is disallowed in full
- (v) No supplier 1769619 £9. The lack of detail and supporting documentation meant that the Tribunal were not satisfied with the reasonableness of this item. Therefore, the Tribunal find this expenditure unreasonable and is disallowed in full
- (vi) Rendall & Rittner 56993 £412.51. The Tribunal were able to inspect this invoice dated 17 October 2018. It purported to relate to “BOS Credit Card -Oct 2018”. The Tribunal were not happy with this explanation or with the expenditure that was largely unexplained and unacceptable. Therefore, the Tribunal find this

total expenditure unreasonable and is disallowed in full.

Application for a S.20C order

35. The applicants also 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. No formal submissions were made at the end of the hearing. Therefore, the Tribunal **DIRECTS** that within 21 days from the date of the receipt of this Decision the applicants will file and serve their reasons for making this 20C application. Thereafter, within 21 days of the receipt of the applicants reasons the respondent will file and serve its reasons for opposing the application. Thereafter the Tribunal will make its determination on the S20c application.
36. Finally, the Tribunal noted that presently the total percentage contributions made by all the flats exceeds 100% as a result of the addition of the roof top apartments. The Tribunal would, for the sake of good estate management, recommend that the respondent considers varying all the lease service charge covenants and conditions to ensure the total for all the 61 leases of the property is at 100%. If necessary, this could proceed by way of an application to the Tribunal to give effect to this.

Name: Judge Professor Robert
Abbey

Date: 26 September 2022

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.