



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

**IN THE COUNTY COURT at  
CENTRAL LONDON, sitting at 10  
Alfred Place, London WC1E 7LR**

**Tribunal reference** : **LON/00BK/LSC/2022/0060**

**Court claim number** : **H87YX149**

**HMCTS Code** : **V:CVPREMOTE**

**Property** : **3 Hatherley Court, Hatherley  
Grove, London, W2 5RD**

**Applicant/Claimant** : **Central & Metropolitan Estates  
Limited**

**Representative** : **Shaheed Jussab (Counsel)**

**Respondent/Defendant** : **Masdhold Limited**

**Representative** : **Daniel Searle (Counsel)**

**Tribunal members** : **Judge Robert Latham  
Evelyn Flint FRICS**

**In the county court** : **Judge Robert Latham**

**Date and Venue of  
Hearing** : **13 June 2022 at 10 Alfred Place,  
WC1E 7LR**

**Date of decision** : **20 July 2022**

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**DECISION**

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This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office.

## **Summary of the decisions made by the Tribunal**

- (i) Service Charges of £6,990.39 are payable.
- (ii) The administration charges claimed of £636 are not payable.

## **Summary of the decisions made by the Court**

- (iii) The Court makes a declaration pursuant to section 81 of the Housing Act 1996 that service charges of £6,990.39 are payable.
- (iv) Contractual costs of £5,000 (including VAT) are payable.

## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been requested by the parties. The form of remote hearing was V: CPVEREMOTE. The Applicant has provided a Bundle of Documents extending to 241 pages.

## **The Proceedings**

1. On 19 May 2021, the Applicant landlord, issued proceedings against the Respondent in respect of arrears owed under its lease in respect of 3 Hatherley Court, Hatherley Grove, London, W2 5RD (“the Flat”). The Applicant claims the following: (i) service charges £6,990.39; (ii) administration charges of £636.00; and (iii) contractual costs. The Applicant further sought a determination pursuant to section 81 of the Housing Act 1996 that the sums were payable. The Applicant stated that it was reserving its position in respect of forfeiture of the lease. The Statement of Account, attached to the Particulars of Claim, is at p.59-60.
2. On 16 August 2021, the Respondent filed a Defence. The Respondent pleaded that it had not seen the service charge accounts. The Respondent sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of the sums demanded. The Respondent asked for the claim to be transferred to this tribunal.
3. On 2 December 2021 (Order drawn up on 14 February 2022), DDJ Scher, sitting at the County Court at Central London, made an Order to “send to the First Tier Tribunal for them to consider reasonableness of service charge”.
4. On 23 February 2022, Judge Martynski made Directions which were amended on 21 April. The Judge Directed that the Judge who heard the application would determine all the issues in the case, including

interest and costs. The Judge (sitting as a Judge of the County Court) would make all necessary County Court Orders.

5. By 25 March 2022, the Applicant was directed to serve on the Respondent: (i) a breakdown of all the charges claimed; (ii) Service Charge accounts for the years in question; and (iii) copy demands for Service, Administration and Rent charges. On 25 March 2022, the Applicant disclosed these items.
6. The parties have prepared a Schedule of the Items in dispute. The Applicant relies upon the witness statements of Mr Raji Anand and Ms Archi Minhas, both of whom are employed by Residential Management Group Limited (“RGM”), the managing agents. Mr Anand was unable to attend to give evidence as he is in ill health and was in hospital. However, Ms Minhas had access to the relevant files.
7. Mr Ahmed Masood has provided a witness statement on behalf of the Respondent. Mr Masood complains about the extent to which the service charges and the reserve fund contributions have increased in recent years.

### **The Hearing**

8. The Applicant landlord was represented by Mr Shaheed Jussab (Counsel) instructed by PDC Law. He adduced evidence from Ms Minhas. On 9 June, the Applicant served a Form N260 Statement of Costs seeking contractual costs in the sum of £5,411.00.
9. The Respondent tenant was represented by Mr Daniel Searle (Counsel). He adduced no evidence, but made submissions on the payability and the reasonableness of the service charges. Neither Counsel provided Skeleton Arguments.
10. This case is being heard under the County Court Deployment Scheme. The effect of this is:
  - (i) The Tribunal now administers the whole case on behalf of the County Court, and Judge Latham, sitting as a District Judge of the County Court (“DJ Latham”), is entitled to make directions having regard to the provisions of the Civil Procedure Rules 1998 (the “CPR”).
  - (ii) Judge Latham and Ms Flint, sitting as a First-tier Tribunal (“FTT”), determine the payability and reasonableness of the service charges under the 1985 Act and the administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). This jurisdiction is governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).

(iii) DJ Latham determines the issues which fall outside the traditional \*jurisdiction of the FTT, namely the claim for costs.

DJ Latham and the FTT have had regard to the decision of the Upper Tribunal (“UT”) in *Avon Ground Rents Limited v Childs* (“*Avon Ground Rents*”) [2018] UKUT 204 (LC); [2018] HLR 44, and identify the decisions taken respectively by DJ Latham and the FTT.

11. At the commencement of the hearing, DJ Latham explained the manner in which the application would be determined. Both Counsel agreed to the course proposed.
12. The following matters fall to be determined by the Tribunal:
  - (i) The payability and reasonableness of service charges totalling £6,990.39. The sums demanded cover the period 24 August 2018 (when a service charge of £416.88 and a reserve fund contribution of £199.56 were demanded for the quarter September/December 2018) to 4 January 2021 (when a service charge of £518.59 and a reserve fund contribution of £225.20 were demanded for the quarter December/March 2021);
  - (ii) Three administration charges totalling £636.00, namely £34 (20.1.21 at p.237); £160 (11.3.21 at p.239); and £432 (15.3.21 at p.238).
13. DJ Latham is required to determine the Applicants claim for contractual costs. Costs are claimed in the sum of £5,411.
14. During this period, the Respondent has not made any contribution towards its service charges. It is to be noted that further service charges will have become due in March 2021. If these are not paid, further proceedings are likely to ensue.

### **The Lease**

15. The Respondent occupies the Flat pursuant to a lease, dated 29 January 1982 (at p.16). Mr Anand summarises the relevant terms of the lease in his witness statement. By Clause 4(4), the tenant covenants to pay the interim service charge and service charge in the manner provided for in the Fifth Schedule. The interim service charge is to be paid by equal quarterly payments.
16. Clause 5 sets out the Lessors’ obligations. Clause 5(5)(q) makes provision for a reserve fund namely “such sums as the Lessors shall reasonably require to meet such future costs as the Lessors shall reasonably expect to incur”. By Clause 5(5)(r), the Lessors covenant to “act fairly and reasonably in carrying out their obligations under Clause

5 hereof and at all times to manage and maintain the Building economically and efficiently”.

17. The following clauses are also relevant:

(i) By Clause 3(9), the tenant covenants to “pay to the Lessors all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Section 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidation such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the court.”

(ii) Clause 5(5)(f) provides: “For the purpose of performing the covenant on the part of Lessors herein contained at their discretion to employ on such terms and conditions as the Lessors shall think fit one or more caretakers porters maintenance staff gardeners cleaners or other such persons as the Lessors may from time to time in their absolute discretion consider necessary and in particular to provide accommodation either in the Building or elsewhere (free from payment of rents or rates by the occupier) and any other services considered necessary by the Lessors from them whilst in the employ of the Lessors”

### **The Background**

18. Hatherley Court is a self-contained block of flats consisting of 4 blocks with 142 flats. The Block has a residential head porter, deputy porter and two other staff members. It includes both internal and external communal areas and plant rooms.

19. On 29 June 1984 (p.105), the Applicant was registered with the freehold title of the Building. At all material times, RGM have acted as its managing agent.

20. On 15 May 2014 (p.12), the Respondent was registered with the leasehold interest of the Flat. The Respondent is a Company that is registered in the BVI. Mr Masood is the sole director. He is aged 80 and is in poor health. He has never occupied the Flat. The Respondent has rather rented out the Flat.

21. On 23 March 2021 (at p.57-60), Property Debt Collection Limited, on behalf of the Applicant, sent a pre-action letter to The Respondent. A statement of account was attached. An administration fee of £442 was

claimed in respect of the costs incurred in pursuing the debt. A total of £7,626.39 was claimed. The Respondent was warned that it risked losing the Flat if it failed to make payment. This was a reference to the remedy of forfeiture. The Applicant has provided a copy of the relevant service charge and reserve fund demands (at p.144-196).

### **The Service Charge Items in Dispute (Decision of the FTT)**

#### **(i) Maintenance and Other Agreements**

22. The Respondent complains that several of the agreements are Qualifying Long Term Agreements (QLTAs”) including the agreement with RGM, the managing agents. The Respondent also suggests that the contracts of employment with the porters are QLTAs. No consultation has been carried out in respect of any of these agreements as required by section 20 of the 1985 Act.
23. The Applicant responds that all the service contracts are reviewed and renewed annually. This includes the agreement with RGM. RGM provide tenants with the budget for the year to which any tenant is able to respond.
24. Section 20ZA (2) of the 1985 Act defines a “qualifying long term agreement” as  

“(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”.
25. Subsection 3 permits the Secretary of State may by regulations provide that an agreement is not a QLTA. Rule 3 of the Service Charge (Consulting Requirement) (England) Regulations 2003 (SI 2003/1987) provides that a contract of employment is not a QLTA. This answers the Respondent’s complaint in respect of the porters.
26. Guidance on what constitutes a QLTA was provided by the Court of Appeal in *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102; [2018] HLR 36.) McFarlane LJ stated at [39]:  

“Whether the agreement is for a term exceeding 12 months is not about the substance of the management agreement and its various obligations. Rather, it is about whether it is an agreement for a term which must exceed 12 months. In *Poynders Court* [2012] UKUT 339 (LC), whilst the managing agent may have been "intended" to provide the services for a period extending beyond 12 months, the relevant clause as to the term of engagement did not secure that they were under contract to do so for the period of more than 12 months.

27. The Applicant has not provided the Tribunal with a copy of the relevant management agreements. Mr Jussab stated that they are commercially sensitive. The Tribunal disagrees. They could, and should, have been produced.
28. At [28(c)] of his witness statement, Mr Anand states that the management agreements are renewed annually. In her evidence, Ms Minhas stated: “we send the landlord a copy of the management agreement to be signed on an annual basis. If not signed, there is an assumption that the agreement will continue”.
29. The Tribunal sees no reason to reject the evidence of Ms Minhas. In the light of this evidence, the Tribunal is satisfied that the management agreement with RGM is not a QLTA. The Respondent has produced no evidence to suggest that there is any other QLTA upon which the landlord has failed to consult.

#### (ii) Building Insurance

30. The Respondent complains that the cost of insuring the building has been excessive. The costs have been: (i) 2017 - £36,900; (ii) 2018 - £35,867; (iii) 2019 - £42,000; (v) 2020 - £42,000; and 2021 - £46,000. Mr Jussab pointed out that the figure of £46,000 was only an estimate which had been included in the budget for the year. The accounts for 2021 are not yet available. However, Ms Minhas stated that the actual premium paid on 1 April 2022 was £43,860. This was an increase of 19% over six years. The premium is currently £307 per flat.
31. The Respondent complains that no valuation has been carried out, there has been no consultation and the landlord has taken no adequate efforts to secure best value. In his statement, Mr Anand states that the last insurance valuation was carried out in 2018. This is done every five years. The next valuation is due in 2023. Insurance brokers are engaged to provide the best cover for the building.
32. The tenant has provided no alternative quotes. On the other hand, the landlord has not provided (i) the certificates of insurance for the years in dispute; (ii) a summary of policy terms and conditions; (iii) any claims history taken into account by brokers and/or insurers when the policies were written; and/or (iv) any other ‘additional risks’ covered.
33. On the basis of the limited basis before us, the Tribunal is satisfied that the sums charged for insurance are reasonable. This is an expert tribunal. The premium of £307 per flat is well within the range of those payable of flats of this nature.

### (iii) Management Fees

34. The Respondent complains that the cost of the management fees charged by RGM. The costs have been: (i) 2017 - £36,900; (ii) 2018 - £33,360; (iii) 2019 - £34,356; (v) 2020 - £35,558; and 2021 - £36,804. This is £260 per flat. Mr Searle argued that these are excessive and should be reduced by 50%. The Respondent has not provided any alternative quotes.
35. Mr Jussab points out that the charge is equivalent to £217 per flat (excluding VAT). In the experience of this Tribunal, this is at the lower end of the scale. The Tribunal is satisfied that the sums demanded have been reasonable.

### (iv) Major Works and Reserve Fund

36. The Respondent complains that no notices of anticipated major works have been served and that there has been no consultation. It refers to Clause 5(5)(r) of the lease which requires the landlord to act 'fairly and reasonably' and 'economically and efficiently' and to Clause 5(5)(q) which limits the landlord's ability to raise a reserve fund to 'such sums of money as the Lessor shall reasonably require to meet such future costs as the Lessors shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessors have hereby covenanted to re-place maintain and renew'. Against this background, the reserve fund contributions have been excessive and unreasonable.
37. The Applicant responds that the statutory Section 20 consultation Notices have been served when these have been required. However, regardless of this, it does not preclude a landlord from accumulating a reserve fund to meet future expenditure on major works. Mr Jussab stated that a Cap-Ex Plan is being prepared. Major works are normally executed every seven years. The current package of works has slipped and a Capex-Plan is being prepared.
38. The Tribunal is satisfied that the reserve fund contributions which have been demanded have been reasonable. The 2020 Accounts (at p219) show that on 31 December 2020, there was a reserve fund of £290,512. On 31 December 2018, these had been £1,192,145 (p.207). However, in the subsequent two years, substantial internal repairs and decorations had been funded from reserves. The landlord holds any reserve fund on trust for the contributing tenants (section 42 of the Landlord and Tenant Act 1987). There are 142 flats in the four blocks. The accumulation of a reserve fund protects tenants when substantial sums are required for major works. It also saves the landlord from having to pursue tenants who are unable to pay the sums demanded for such works. The reserve fund demands have been reasonable in all the circumstances.



#### (v) Porterage

39. The Respondent complains that the cost of porterage service has been excessive. The costs have been: (i) 2017 - £97,731; (ii) 2018 - £97,277; (iii) 2019 - £104,500; (v) 2020 - £107,550; and 2021 - £112,500. This includes both the salary bill and the cost of accommodation. The accommodation costs have ranged from £10,156 to £9,300. The porterage costs are some 32% of the total service charge expenditure.
40. The landlord employs four full time staff members. There is a head porter, two assistants and a cleaner. The Respondent argued that all the contracts of employment were QLTAs. This is not correct. There are obvious advantages in having a resident caretaker. The Respondent lets out its flat. Many tenants occupy their flats and are more likely to value this service. There are given the opportunity to comment on the service provided when they are served with the annual budget.
41. The lease permits the landlord to employ caretakers, porters and cleaning staff. The scope of the service that is to be provided is a matter for the landlord. The fact that the service could be provided more cheaply if non resident staff were employed, is not critical. The Tribunal is satisfied that the service charges demanded are reasonable given the service that is provided. There has been no criticism of the quality of the service.

#### **The Claim for Administration Charges (Decision of the FTT)**

42. The Applicant claims three administration charges: (i) £34 which was demanded on 20 January February 2021, and is described as a "Reminder Fee" - the invoice for which is at p.237; (ii) £160 which was demanded on 14 March 2021, and which is described as an "Administration Fee" - the invoice for which is at p.239; and (iii) £432 which was demanded on 23 February 2021, and is described as a "Legal Fee" - the invoice for which is at p.238.
43. Any demand for an administration charge must be accompanied by the Requisite Summary of Rights and Obligations (see paragraph 4 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Applicant has provided the Requisite Summaries of Rights and Obligations which were sent with the demands for service charges. No such documents have been provided for the demands for administration charges. The Tribunal has merely been provided with the invoices. The Tribunal is not satisfied that these sums are payable.
44. There is a further problem in respect of the claim for the legal fee of £432. This seems to relate to the costs incurred in referring the case to solicitors. This would rather seem to be a cost relating to the current proceedings.

**Contractual Costs (Decision of DJ Latham)**

45. The Applicant has served a Form N260 Statement of Costs (Summary Assessment) claiming costs in the sum of £5,422.00. The majority of the work has been carried by a Grade B Solicitor at a rate of £190 ph. A Grade D Solicitor has claimed £165 per hour. A Grade C Solicitor has charged a nominal £44 for reviewing the Statement of Costs.

46. PDC Law are based in Hertford, which is treated as National 2 for the Solicitors' guideline hourly rates. The hourly Guidelines Rates for a Grade C fee earner are £177 ph and a Grade D are £126.

47. The following costs are claimed:

Solicitors' costs	£2,842.50
Counsel's fees	£1,500
Hearing Fees	£200
VAT on solicitors' and counsel's fees	£868.50
Grand total	<hr/> £5,411.00

48. Clause 3(9) of the lease only permits the Applicant to recover its costs under the lease if it can satisfy the Court that it has brought these proceedings in contemplation of forfeiture. The Applicant has so satisfied the Court. First, the pre-action letter warns the Respondent that it risked losing the Flat if the arrears were not paid (see [21] above). Secondly the Particulars of Claim state that the Applicant is reserving its position on forfeiture (see [1] above). Thirdly, the Applicant seeks a determination pursuant to section 81 of the Housing Act 1996. Such a determination is only required if a landlord is contemplating forfeiture.

49. CRR 44.5 which provides:

“(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44—General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.”

50. In *Chaplain Ltd v Kumari* [2015] EWCA Civ 798; [2015] HLR 36, the Court of Appeal provided useful guidance. An order for the payment of costs by one party to another is always a discretion under section 51 of the Senior Courts Act 1981. However, where there is a contractual right to the costs, the discretion should ordinarily be exercised so as to reflect the contractual right.
51. The Applicant has largely succeeded in its claim, albeit that its claim for administration charges has failed. Mr Searle argued that the costs claimed were unreasonable. He challenged the sums claimed for drafting the claim (£285) and drafting the witness statement (£437). He suggested that the statement was largely a cut and paste job.
52. The Tribunal considers that the hourly rates claim by the solicitor and counsel are somewhat high. However, the Court has regard to the overall size of the costs claimed. In the circumstances, DJ Latham assesses costs in the sum of £5,000 (including VAT).

#### **Interest (Decision for DJ Latham)**

53. No claim was pursued for interest.

#### **Order Under Section 20C (Decision for the FTT)**

54. The Respondent seeks an order under section 20C of the 1985 Act limiting the costs incurred in connection with these proceedings that the Respondent through the service charge. Given the order which we have made in respect of the contractual costs to which the Applicant is entitled, no such order arises.

**Judge Latham**  
**20 July 2022**

### **ANNEX - RIGHTS OF APPEAL**

#### *Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

#### *Appealing against the County Court decision*

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

#### *Appealing against the decisions of the tribunal and the County Court*

In this case, both the above routes should be followed.

## General Form of Judgment or Order



<b>In the County Court at Central London sitting at 10 Alfred Place, London WC1E 7LR</b>	
<b>Claim Number</b>	H87YX149
<b>Date</b>	20 July 2022

<b>Central &amp; Metropolitan Estates Limited</b>	<b>Claimant Ref 469981/RMG</b>
<b>Masdhold Limited</b>	<b>Defendant Ref</b>

**BEFORE Tribunal Judge Robert Latham, sitting as a Judge of the County Court (District Judge),**

UPON the claim having been transferred to the First-tier Tribunal for administration on 2 December 2021 by order of Deputy District Judge Scher sitting at the County Court at Central London.

AND UPON hearing Shaheed Jussab (Counsel) for the Claimant and Daniel Searle (Counsel) for the Defendant

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

**IT IS ORDERED THAT:**

1. The Defendant shall pay to the Claimant by 2 September 2022 the sum of £6,990.39 being the sum found due and payable in respect of service charges;
2. The Court makes a declaration pursuant to section 81 of the Housing Act 1996 that the said service charges of £6,990.39 are payable;
3. The Defendant shall pay to the Claimant by 2 September 2022 the sum of £5,000 (inc VAT) in respect of the Claimant's summarily assessed costs;
4. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 20 July 2022 under case reference LON/00BK/2022/0060.

Dated: 20 July 2022

