



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

Tribunal Case Reference : **LON/00AY/LSC/2022/0159**

Property : **7a Heather Close, London SW8 3BS**

Applicants : **Raimondo Gaetani (Flat 2)
Ciaran Ball & Christopher Haynes (Flat 4)
Di Xu (Flat 5)
Christopher Ward & Caitlin Carey (Flat 7)
Benjamin Scarfield & Ross Gould (Flat 9)**

Respondent : **RG Securities (No.3) Ltd**

Representative : **JB Leitch Solicitors**

Type of Application : **Payability of service charges**

Tribunal : **Judge Nicol
Mr J Naylor MRICS FRIPM**

Date and venue of Hearing : **30th January 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **2nd February 2023**

DECISION

(1) The service charges claimed by the Respondent from the Applicants for the 3 years 2019-22 inclusive were not reasonably incurred to the following extent:

(a) The expenditure on Ilecs totalling £1,824.84 (inc VAT) was not reasonably incurred; and

(b) The management fees are reduced by £300 for each Applicant.

(2) The Tribunal makes the following costs orders:

- (a) An order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that each Applicant is not liable to pay an administration charge in respect of the Respondent's costs of these proceedings; and
- (b) An order under section 20C of the Landlord and Tenant Act 1985 that the Respondent may recover no more than 50% of their costs of these proceedings through the service charges levied on the Applicants.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are lessees at the subject property, a 4-storey block of 9 flats. The Respondent is the freeholder. Inspired Property Management ("IPM") act as the Respondent's agents.
2. The Applicants applied on 6th February 2022 for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness of the service charges levied by the Respondent for the years 2019-22 in respect of two categories: lift maintenance and management fees.
3. The Tribunal heard the case on 30th January 2023. The attendees were:
 - Mr Ben Scarfield, one of the Applicants (Mr Christopher Ward had been due to come as a witness but was unable to attend)
 - Ms Iris Ferber, counsel for the Respondent
 - Mr Chris Peters, director of IPM
4. The documents before the Tribunal consisted of a bundle of 586 pages and a skeleton argument from Ms Ferber. Both parties had provided statements from witnesses but the facts were not materially in dispute and so the Tribunal did not hear live evidence and there was no cross-examination.
5. The heart of the dispute is that there has been a problem with the lift since the property was re-developed in 2016. As far as the Applicants were concerned, the lift had been completely out of action since 2019 and, not only did IPM appear not to be taking sufficient action, they also failed to keep the lessees informed. At the hearing, Ms Ferber took the Tribunal through the relevant chronology. Mr Scarfield was content that her account was reasonably accurate.
6. On 31st January 2019 the Respondent was assigned the freehold interest in the building. In March 2019, they appointed IPM as their agents.
7. IPM inherited KEP Lifts as the lift maintenance contractor. On 21st March 2019, KEP Lifts submitted an engineers report which said they

had serviced the lift and everything was in working order. On that basis, in April 2019 IPM appointed their own lift maintenance contractor, Murray Lift Group Ltd.

8. On 12th April 2019 Murray attended at the property as the lift was out of service. We now know that it has not returned to service to date. On 15th April 2019 Murray reported,

When the engineer got to site, he found there to be several issues which were as followed: The motor room was in bad condition (dusty, messy etc.), the handpump was inoperative, there is no shaft lighting, car top control is non-compliant, there were 2 batteries in the control panel not plugged in and there were 5 plug ins that had been taken out of the panel.

The most critical thing missing were the lift drawings on site. This is all of the information on the electrical set up of the lift and without it makes it incredibly difficult for engineers to locate faults and diagnose and resolve problems. Although there are several issues highlighted above, they do not affect the operation of the lift. Please therefore see below our proposals to return the lift to service and thereafter resolve any other issues.

- We propose to have 1 x technician attend site for 1 x day to perform a thorough investigation on all aspects of the lift with the view of returning the lift to service. He will produce a full report detailing his findings including recommendations (short and long term) and pictures.

9. There then followed an unexplained delay until another Murray engineer attended on 18th November and 18th and 20th December 2019. He again noted the lack of drawings and spoke to the manufacturer, Thyssen Krupp Encasa (“TKE”). The conclusion was that the batteries needed replacing and further progress could be made after the batteries had been installed and the effect of having new batteries could be seen. Murray re-attended on 9th January 2020 and changed the batteries.
10. The lift remained inoperable. On 30th January 2020 Murray identified that the PCB Board was burnt out irreparably and quoted £3,742, plus VAT, to source and install a new one. This exceeded the limit for triggering the statutory consultation requirements pursuant to section 20 of the Act and so IPM began the process by issuing a letter to all lessees on 17th February 2020.
11. However, as part of the process, IPM obtained an alternative quote from Amalgamated Lifts (“AL”) for £1,810.80. This was less than the limit for the consultation requirements. Therefore, IPM abandoned the consultation process and instructed Amalgamated Lifts to do the work.
12. There then followed further delay, possibly due to the restrictions imposed due to the onset of the COVID pandemic. Eventually, on 30th July 2020, AL attended to install the new PCB Board. However, the

engineer noted that some add-on boards appeared to be missing and sought further information. It turned out that Murray had misplaced the relevant board. It took them a few weeks to source a new one from TKE – they delivered it to site on 30th September 2020.

13. On 23rd October 2020 AL installed the new boards. However, the lift remained inoperable. On further investigation, the AL engineer found that multiple wires were disconnected. For the third time, the crucial absence of drawings was noted.
14. There then followed yet more unexplained delay. In April 2020 IPM had appointed International Lift and Escalator Consultants (“Ilecs”) to provide advice on managing the lift, which they did for £350 and £360.50 (plus VAT) for 2020 and 2021 respectively. On 24th February 2021 IPM instructed Ilecs to provide a lift conditioning report. Ilecs attended site on 11th May 2021 and produced a report on 25th June 2021 at a cost of £725 plus VAT. Ilecs’s principal conclusion and recommendation was that the absence of relevant drawings was crucial and progress could not be made without them. TKE had provided technical drawings and a users’ manual for this model of lift but the compliance documentation for this particular lift was still needed.
15. IPM tried to get the documentation but, on 17th September 2021, they told Mr Ward that no further information could be found and it was likely that the lift would fail a compliance inspection. IPM then decided to get TKE themselves to inspect and make any recommendations they could. They attended on 23rd December 2021.
16. The lift machinery is actually located in a basement area within the demise of the ground floor commercial tenant. The tenant was happy to provide access to TKE but there had been a recent flood with water up to street level. TKE’s operatives found the basement to be wet, possibly slippery, and entirely unlit. They abandoned the inspection as unsafe.
17. The application to the Tribunal challenges service charges up to March 2022. No further action was taken to that point. Mr Peters stated that lighting has now been installed in the basement and it is hoped that further progress may yet be made.
18. Mr Scarfield, on behalf of himself and his fellow lessee Applicants, asked rhetorically how the lift could still be out of operation, and still so far from being operable, up to 7 years after it was first identified as being problematic and nearly 4 years since Murray reported to IPM its poor state. He asserted that the lift maintenance charges and the management fees could not be reasonable in the circumstances.
19. Ms Ferber asked the Tribunal to look at each item of expenditure on the lift separately. She submitted that, when that is done, each item can be seen to be a reasonable response to the situation pertaining at the time. She emphasised the fact that a lift is a complex piece of machinery and it was entirely reasonable for IPM to resort to, and then rely on, expert advice from specialist contractors and consultants.

20. The Tribunal accepts Ms Ferber's approach, but only to an extent. The Applicants complained that the maintenance contract with Murray did not cover existing faults and, therefore, they were paying for something that was, in effect, useless due to the existing problems. However, IPM acted reasonably in getting a report from KEP Lifts. It seems that their report provided a misleading picture but IPM can't be criticised for relying on it at the time as the basis for entering into the maintenance contract with Murray.
21. It also appears to the Tribunal that IPM and Murray acted reasonably in replacing the batteries and the boards. However, IPM's actions betray a reactive approach. Each time something came up, they sought to react in such a way that the issue would recede to the background for at least a while. Presumably they were busy, not only with other matters relating to this property, but also with the rest of the portfolio of properties which they manage and which likely have issues of their own. However, there should have come a point at which they considered a more strategic approach to get the lift back into service.
22. IPM brought in specialist consultants, Ilecs, to advise but, with all due respect, in these particular circumstances their advice appears to have been otiose. Although they used more words, their conclusion and recommendations went no further than Murray's findings more than 2 years previously. IPM needed to have taken a step back earlier than this to identify a path forward – if they had, it is likely that TKE would have been brought in to inspect and advise long before the flood in August 2021. Delay resulted in yet more delay.
23. The total cost of the services provided by Ilecs was £1,824.84 (£420 + £432.60 + £972.24). In the circumstances, the Tribunal has determined that this expenditure was not reasonably incurred. It is to be hoped that the Respondent will now take a strategic approach and look to implement a comprehensive plan as to how the lessees can be provided with a fully-functioning lift.
24. As well as IPM's failure to get an effective grip on the problems with the lift, the Applicants complained about IPM's failure to keep them fully informed while they continued to be without a lift. Mr Ward was assiduous in trying to get details from IPM and corresponded with them by email. Sometimes he didn't get timely responses and became frustrated at having to chase them.
25. IPM did respond to him with information when they had it but, again, their approach was reactive, not strategic. They simply assumed, mistakenly as it turned out, that Mr Ward was keeping his fellow lessees informed of whatever IPM told him. Also, it did not occur to them that staying silent during the periods of delay would just generate more anxiety – they did not realise that an absence of any action or progress for a sufficiently long time is also news of which the lessees would like to be informed.

26. Mr Ward complained to the Property Ombudsman. On 25th April 2022, the Ombudsman produced an 8-page report in which he concluded that there had been a number of failings justifying an award of £300 in compensation. This has been paid to Mr Ward but the Respondent has not thought to grant a similar benefit to the other lessees. Ms Ferber pointed out that the Ombudsman's decision was founded partly on a lack of documentary evidence which, in contrast, was available to the Tribunal.
27. IPM has charged £5,000-5,100 per year for its services. With 9 flats, that amounts to £462-472, plus VAT, per unit per year (the documents refer to £417-425 plus VAT per unit but the Tribunal does not understand this calculation). While this is within the range which the Tribunal might expect to find in the market for a property with this number of units, it is on the high side. The Tribunal would expect to find a service which fits that level of fees. Instead, IPM's service has fallen short in relation to both lift maintenance and communication about that lift maintenance.
28. The Tribunal is not bound by the Ombudsman's findings or recommendations. However, the Tribunal has decided that the management fees should be reduced by a similar amount. £300 is equivalent to reducing the management fees by £100 for each of the 3 years under challenge. In the Tribunal's opinion, a deduction of £300 per lessee reduces the management fees to a reasonable amount in the circumstances.
29. The Applicants sought orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent should not be permitted to add any costs of these proceedings to the service charges or bill them direct to any of the Applicants.
30. The Applicants have been successful to a degree in their application. On that basis, the Tribunal decided to grant the order under paragraph 5A. However, they eschewed the opportunity to try to resolve this matter in mediation or otherwise outside the Tribunal hearing. The parties have an ongoing relationship and should seek to resolve their differences without the need for litigation. In the circumstances, the Tribunal determined that the Respondent may not put more than 50% of their costs through the service charges.

Name: Judge Nicol

Date: 2nd February 2023

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.

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 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).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.