FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/LSC/2018/0312**
Property	**:**	**Flat 5, 5 Bridge House, 74c Broad Street, Teddington, TW11 8QT.**
Applicant	**:**	**Ms. M. Ablett**
Representative	**:**	**Healys, Solicitors** **Ms. Hermione Williams of Counsel at the hearing.**
Respondent	**:**	**Bridge House Residents' Management Company Limited (1)** **Mr. Ian Michael Sneller (2)and Mrs. Hilary Jane Sneller (3)**
Representative	**:**	**Ms. Amanda Gourlay of Counsel (1)** **Mr. James Harris of Counsel (2).**
Also in attendance at the hearing	**:**	**Mr. Russell Weston, Consultant on behalf of the Applicant;** **Mr. Barry Whiting – Leaseholder** **Ms. Hema Chhandiyara – Leaseholder and Director of the Management Company;** **Mr. Simon Lawrence – Snellers' Property Management.**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge under S27A Landlord & Tenant Act 1985, an application under S.20C Landlord & Tenant Act 1985 to limit the landlord's costs of proceedings. An application under Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal members	**:**	**Ms A. Hamilton-Farey** **Mr. Michael Taylor FRICS**

Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**12 July 2019**
Date of decision	**:**	**1 October 2019**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums claimed, with the exception of those to be reapportioned, or withdrawn by the respondents, are reasonable and payable by the Applicant in respect of the years 2014 – 2019 inclusive.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal does not make an Order under section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the 2002 Act in favour of the Applicant.

(4) The tribunal does make an Order under S.20C of the Landlord and Tenant Act 1985 and Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that the Second and Third Respondents may not recover their costs from the First Respondents in relation to this matter.

The application

1. By an application dated 18 August 2018 the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2006 – 2018 inclusive,

2. Following a preliminary hearing on the matter, the tribunal determined by a decision dated 23 November 2018, that the years in dispute should be limited to 2014 – 2019 inclusive, due to the fact that, prior to this period, the applicant had paid the service charge without complaint and that it was only since 2014 that protests had been made in relation to either the services provided or the service charges claimed. This tribunal is bound by that decision, and we therefore confine our decision to the period from 2014 – 2019.

3. The applicant owns the flat under a long lease dated 8 January 1982. Under that lease the landlord is noted to be Bridge House Residents Management Company Limited ("BHRMC") which is the leasehold owner of the residential parts of the building, and which is subject to a superior lease between BHRMC and Ian Sneller and Hilary Sneller.

4. Under the terms of that superior lease, the freeholder is obliged to provide services to BHRMC, which in turn passes these on to the residential owners under the terms of their underleases.

5. Pursuant to Clause 1(2)(a) the Total Expenditure incurred by the Freeholder, includes a fair and reasonable proportion of the costs attributable to the residential parts of the building, as defined in the Third Part of the First Schedule to the lease. That proportion relates to the Total Expenditure incurred by the Landlord in any accounting period in carrying out its obligations under the defined parts of Clause 5(3), provided that, the Residential Parts of the building are held under a superior lease (as is the case here), the fair and reasonable proportion shall be 61% of the Total Expenditure incurred by the Superior Landlord in carrying out its obligations

6. The proportion of Total Expenditure (61%) is further defined in Clause 2 of the Third Schedule and includes the landlord's expenses in;

    (i) Painting as and when necessary, the outside wood and iron works to the building;

    (ii) Keeping the common parts clean and lighted;

    (iii) Employing for the purposes of performing the landlord's covenants one or more caretakers, porters, maintenance staff gardeners cleaning or such other persons as the Landlord may from time to time in their absolute discretion consider necessary.

7. The landlords have appointed their own company, Snellers Property Consultants Limited to act as managing agents for the building, and they issue the demands for ground rent, service charges and management fees.

8. Under Clause 6 of the Third Schedule to the lease the applicant is to be served with a summary of the total expenditure and a statement showing any interim service charge, with a balancing charge as appropriate, whether an excess or deficit.

The Applicant's Case:

9. The applicant says that it is not possible, from the summaries of expenditure provided, to ascertain whether the Total Expenditure is being properly apportioned and whether items demanded by BHRMC are due and payable under the lease, including Director's Insurance, Service Charges from the Landlord, Sundry Expenses, Health and Safety, Audit and Accountancy.

10. The applicant also says that she is unable to ascertain the amount held in the Building Fund, where these are held and whether they are held in a separate designated account.

11. That some of the costs claimed fall within the requirements to consult under S.20 of the Landlord and Tenant Act 1985 because they were/are Qualifying Long Term Agreements and her liability was in excess of the statutory threshold of £100.00.

12. That the costs for insurance, repairs and maintenance and management fees amongst others are excessive for the work undertaken.

13. In addition, the applicant says that she is concerned that because the superior landlords were directors of the managing agents, and the insurance brokers (until August 2017) that there may be some connection between the superior landlord and contractors appointed to carry out works on the building and that neither the superior landlord nor BHMRC may be 'acting in the best interests of the residential tenants'.

The Hearing:

14. A hearing was held on 12 July 2019. The parties in attendance at that hearing are identified on this decision.

15. Prior to that hearing the tribunal had issued directions for the compilation and lodging of bundles containing documents on which any of the parties wished to rely. Bundles were duly served and contained copies of invoices and receipts for expenditure identified in copy accounts, accounts, copies of bank statements and the parties' respective statements of case. The bundles also contained a Scott Schedule, which the tribunal and the parties explored during the hearing.

16. The applicant, with the assistance of Counsel, presented her case to the tribunal and set out, by reference to the Scott Schedule those matters that remained in dispute.

17. At the end of the hearing the parties were requested to provide closing submissions on their respective cases. In addition to this, the tribunal received an additional witness statement from the applicant, however we refused to accept this document on the basis that it rehearsed much of the same arguments we had already heard, and was disadvantageous to the respondents who would have to incur additional costs in responding. We were also satisfied that, at the conclusion of the hearing, the applicant had made out her case fully and was satisfied that she had had an opportunity to go through her application, the documents submitted in the bundles and the statements of case.

Agreed and conceded matters:

18. During the hearing, as the tribunal considered the Scott Schedule, the applicant and respondents either agreed or conceded some of the matters that were originally in dispute. In addition, the tribunal considers these costs to be reasonable and payable by the applicant. The matters identified were as follows:

(i) Item 5 - late filing penalties;

(ii) Item 7 – discrepancies between invoiced building insurance and amounts in the annual reports;

(iii) Item 8 – directors' insurance;

(iv) Item 9 - directors' prepaid insurances;

(v) Item 10 – evidence of invoice payments;

(vi) Item 11 – evidence of payment for the window cleaners;

(vii) Item 12 – cleaning payments;

(viii) Item 13 – supplier payments from external accounts;

(ix) Item 16 – replacement ceiling tile cost (withdrawn);

(x) Item 17(1) – roofing payments;

(xi) Item 17(v) – reallocation of invoices

(xii) Items 19 – 23 were all resolved;

(xiii) Item 26 - fire risk assessment costs;

(xiv) Item 27 – resolved;

(xv) Items 28 – 30 – resolved

(xvi) Items 32 and 33 – resolved.

(xvii) In addition, it was agreed during the hearing that items 14 and 24 would be reallocated by the managing agents and any reallocated cost charged to the applicant.

Disputed matters:

Accounting:

19. The applicant's main argument was that the service charge accounts were less than transparent and that it was not possible to discover end-to-end transactions through invoices and bank statements. The applicant had employed a forensic accountant to look at the accounts and invoices and they had been unable to find sufficient evidence to show the applicant that the transactions were in order.

20. The tribunal was told that the managing agents, who are owned by the landlords, operated what was termed a '999' bank account. This was an account that showed payments into the landlord's accounts, and then regular payment transfers to individual contractors from that account which were then included within the service charge accounts.

21. We find this to be a very unusual way of operating a service charge account, and the practice has in our view, contributed to the confusion expressed by the applicant when she had been trying to identify payments, and determine whether the correct apportionment had been applied. Although it is not within our jurisdiction to say how the landlord should operate the bank account, it is our view that a named service charge account for the block into which all service charges were paid and from which all invoices were paid would be more transparent for leaseholders.

22. Although the operation of the accounting system was unusual, we were satisfied that invoices were being properly apportioned between the residential and commercial elements, and that the applicant was therefore being charged the correct amounts for the services provided.

23. Also, although the applicant considered that there was a conflict of interest between the landlord and managing agents/suppliers, we could find no evidence of this, and in any event do not consider that this would come within the tribunal's jurisdiction.

24. We therefore find the applicant to be liable for the costs apportioned in accordance with the above formula.

Repairs and maintenance, management fees, insurances and 'service' costs.

25. Although the applicant considered that some of these costs were excessive. We were not provided with any evidence to suggest that they were. We were not supplied with alternative quotations for the management fees, or any work, or service provided, and we consider on balance that the costs claimed under these headings were reasonably incurred and payable by the applicant.

Repointing:

26. The applicant's case was that the costs to repoint the building had increased from those notified as part of the S.20 consultation, and that it was not clear that the invoices had been properly apportioned between the residential and commercial units.

27. The respondent's informed the tribunal that, until the scaffold was erected, it was not possible for the full extent of repointing to be identified and the contractors found more work to be necessary than at first thought. This resulted in the increase in costs.

28. It appeared that no formal specification of works was prepared for this contract and the contractor was just told to price what they saw, which they did. This is again an unusual way of preparing contracts for building works and we would not expect a competent managing agent to undertake this type of practice.

29. We do not have any evidence, however, from the applicant that the repointing was not required, or that the cost of the total work was excessive.

30. We have been provided with evidence to show that the costs were properly apportioned between the residential and commercial elements and therefore find the costs charged to the residential part of the building to be reasonable, with the result that the applicant is liable for their share of the costs.

Determination:

31. The tribunal has considered all of the evidence presented to it, including the invoices and receipts, the statements of case and the Scott Schedule. We find, on balance, that all of the costs claimed, with the exception of those withdrawn by the respondents to be reasonable and payable by the applicant. In addition, the respondent agreed to re-apportion some costs (identified above) and this should be done as soon as possible. The newly apportioned cost would then be payable by the applicant.

32. We do not find that any of the contracts disputed by the applicant come under the definition of a Long-Term Agreement (s.20 Landlord and Tenant Act 1985) because it appeared that in no case was the applicant required to pay more than £100.0 per annum for an individual service.

33. As noted above, with respect to the additional re-pointing costs, although again we find the method in which the managing agents procured this contract to be unusual, there being no specification of works or the usual contract documentation one would expect, there was

no evidence before us that the work was not required, or that it had been carried out at an unreasonable cost. We find the applicant therefore liable for her proportion of the costs of repointing.

34. As noted above, with respect to the applicant's view that she should be able to have evidence of 'end-to-end' accounts transactions, we find this to be unreasonable. The applicant is entitled under the lease and the legislation to a summary of the costs incurred by the landlord and/or management company, and on request to see receipts and invoices that make up that expenditure. The legislation also provides that a leaseholder is entitled to know where monies are kept so that they may satisfy themselves that there is a separation between leaseholders' monies and the freeholders. The requirement for end-to-end accounting in our view, exceeds those legislative requirements, and costly, as in this case, for the parties to comply with requests.

35. Overall, although we find that we are able to criticise the freeholder for their lack of transparency with respect to the bank accounts, service charge coding etc, and the managing agents for the way in which they procure contracts, but we cannot find any evidence to suggest that the charges made are unreasonable in amount, or that the extent of the work carried out in respect of the invoices supplied was not required.

36. We therefore conclude that all of the costs, with the exception of those to be re-apportioned by the agents or withdrawn are reasonable and payable by the applicant. We suggest that the agents prepare a full breakdown of the amendments due to those re-apportioned and/or withdrawn costs so that the applicant can clearly see her liabilities for the amounts claimed.

S.20C, and Paragraph 5A applications:

37. Both the applicant and the first respondents made applications under S.20C and Paragraph 5A to Schedule 11 to limit the costs of proceedings. The applicant and first respondents made statements in relation to these applications. No response was made by either the second or third respondents.

38. The tribunal is aware that the first respondent is a resident-owned management company that has no assets and does not in fact provide many of the services at the development. The majority of the services are provided by the landlord, and there appears to be no dispute between the landlord and BHRMC as to the services provided, indeed the tribunal was informed that all other residents are content with the service.

39. The superior lease makes no provision for the applicant to pay the freeholder's costs in this matter. However, the superior lease between

the freeholders and BHRMC does enable the freeholder to recover costs as part of the service charge for the block. As noted above, BHRMC has no assets and unless the leaseholders voluntarily agreed to pay the second/third respondents' costs, then it is likely that BHRMC would become insolvent.

40. It transpired during the hearing that, in actual fact BHRMC had produced many of the documents before the tribunal on behalf of the second/third respondents and it would therefore be unjust for any order to be made requiring the first respondents to pay the second/third respondents costs in this matter. In any event, no submissions have been made by the second/third respondent in relation to costs and it may well be that they are content to absorb their own costs. The tribunal therefore makes no Order under S.20C or Paragraph 5A in relation to the second/third respondent's costs of these proceedings.

41. In relation to the applicant's application under S.20c and Paragraph 5A, we do not make such Orders. We are satisfied that the applicant has not been able to demonstrate that the costs claimed were unreasonable or not payable under the lease. In addition, the applicant conceded several items during the hearing, albeit having received further information from BHRMC and/or the managing agents, and in our view the applicant's case was outside what would be reasonable in the circumstances. The demands for end-to-end accounting were not, in our view reasonable, and the large amount of documentation required from the first respondent was in excess of what should have been required to satisfy the applicant as to the accuracy of the accounts and the expenditure.

42. We find on balance that it would not be just for the first respondent to pay the costs of these proceedings in a situation where it provided few of the services and provided much of the documentation for the hearing. The tribunal does not consider it reasonable that other leaseholders might have to meet their proportion of the costs where they have taken no part in the proceedings and to all intents and purposes are content with the services and service charge. We therefore make no Order under S.20C or Paragraph 5A in relation to the application.

The next steps.

43. The tribunal would hope that this matter is now resolved between the parties and that further disputes such as this can be avoided. The applicant should understand that some of her demands cannot be resolved to the degree that she requires and the management company/managing agents have supplied as much information as they can in relation to these matters.

44. The respondent should re-apportion the costs agreed during the hearing and give credit where necessary for those withdrawn, and re-issue an account to the applicant so that she can understand her liabilities.

Name: Aileen Hamilton-Farey **Date:** 1 October 2019

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal 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).