FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2021/0272**
Property	:	**Flat 5, 1 Leonard Street, London EC2A 4AQ**
Applicants	:	**Daniel Gerrans** **Katherine Elizabeth Gerrans**
Respondent	:	**City House Development (Management) Ltd**
Representative	:	**Charles Russell Speechlys**
Type of Application	:	**Payability of service charges**
Tribunal	:	**Judge Nicol** **Mr DI Jagger MRICS**
Date and Venue of Hearing	:	**17th-18th May 2022;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24th May 2022**

DECISION

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1) The Tribunal has determined that the following service charges are payable by the Applicants to the Respondent for the years 2014-2021:

   (a) In respect of the expenditure which the Respondent maintains should be apportioned in accordance with the Components Basis, namely in relation to General repairs and redecoration, Door entry systems, Buildings insurance, Lift maintenance and the Reserve Fund.

   (b) In respect of expenditure to power the air conditioning systems apportioned on the Estate-Wide Basis.

   (c) In respect of legal costs because they are recoverable under the terms of the lease.

2) The Tribunal has determined that the following service charges are not payable by the Applicants to the Respondent for the years 2014-2021:

   (a) In respect of the Lift insurance; and

   (b) The Tribunal having found that the Applicants did not receive the letter dated 27th June 2018, those service charges whose payability was dependent on proper notification thereby under section 20B of the Landlord and Tenant Act 1985.

3) At the request of both parties, the Tribunal has yet to determine:

   (a) The mathematical calculation of any credit due to the Applicants for overpayment of service charges in the light of the Tribunal's findings; and

   (b) Whether the Tribunal should make orders in relation to costs under section 20C of the Landlord and Tenant Act 1985 (prohibition on adding to the service charge) and under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

4) If the parties cannot reach agreement on the matters referred to in paragraph 3 above, the following directions apply:

   (a) Either or both parties shall notify the Tribunal and each other, by **17th June 2022**, whether they wish the Tribunal to determine any of these matters and, if so, whether they are content to do so in writing, without a hearing.

   (b) If either party so notifies the Tribunal, the Applicants shall, by **1st July 2022** send to the Tribunal and serve on the Respondent their written submissions.

   (c) The other party shall provide their written submissions in response by **14th July 2022**.

   (d) The Tribunal will thereafter reach a further determination as soon as practicable using the documentation provided unless either party has requested a hearing, in which case the Tribunal will list a hearing and notify the parties accordingly.

   (e) The parties are at liberty to propose jointly any alternative directions by **17th June 2022**.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. The Applicants are the lessees of the subject property at Flat 5, 1 Leonard Street, London EC2A 4AQ. The Respondent is the lessee-owned management company.

2. The Applicants applied to the Tribunal in accordance with section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and payability of a large number of service charge items for the years 2014-2021 (the last two years being estimated rather than actual costs). The Scott Schedule compiled by the parties and listing their comments on all such items ran to 83 pages.

3. Fortunately, both parties have approached the proceedings in a commendably co-operative manner and have been able to limit the dispute to a much smaller number of items. In some cases, the Applicants have been satisfied by the provision of further information and documents. However, the Respondent has also conceded that there have been errors in the administration of the service charges and that some items must be conceded due to a lack of evidence. While noting the concessions (which may be relevant in relation to the costs of these proceedings), the Tribunal has only dealt in this decision with the matters identified as remaining in dispute.

4. The application was listed for four days. The first day was taken with the Tribunal's inspection of the estate in which the subject property is located and time for the Tribunal members to read the papers which consisted of:

   (a) An indexed bundle of 2,293 pages split into 5 lever arch folders;
   (b) A supplementary bundle of 18 pages provided on the first day of the hearing;
   (c) Skeleton Arguments on behalf of each party; and
   (d) A bundle of authorities.

5. The hearing itself was, in the event, completed in two days. The attendees were:

   - The First Applicant who, as a former barrister, represented both himself and his wife, the Second Applicant;
   - The Second Applicant (for the morning of 17th May only);
   - Mr Sam Madge-Wyld, counsel for the Respondent;
   - Ms Lauren Fraser and Ms Hope Wilson from the Respondent's solicitors;
   - Witnesses for the Respondent:
     - Mr Gavin McCarty, Technical Services Manager for Lifts and Mechanical Systems for FirstPort, the Respondent's current managing agents (for the afternoon of 17th May only);
     - Mr Charles Seifert FRICS (for the morning of 18th May only); and
     - Ms Debbie Cain, property manager for FirstPort (also for the morning of 18th May only).

The Property

6. The subject property is situated on an estate built in around 2010, together with the refurbishment of Victorian buildings in Leonard

Street. The Tribunal inspected the estate in the company of Ms Cain, who acted as guide, the First Applicant and Mr Madge-Wyld.

7. The estate consists of two 15-storey blocks, comprising 127 flats and facing the roundabout at Old Street in central London, together with four refurbished/rebuilt older blocks on neighbouring Leonard Street. Three of those blocks comprise between 5 and 9 flats, while 9 Leonard Street comprises 45 units of affordable housing, separately managed by One Housing. There are commercial premises on the ground floor of the two towers and 3 of the blocks in Leonard Street. There are also one residential unit and one commercial unit at 75 City Road.

8. The towers contain facilities available to all residents on the estate. In the communal entrance lobby, there is a concierge service. The CCTV and door entry systems are monitored from the concierge desk. In the basement, there are a gym, a sauna, showers and toilets. There is also underground parking, albeit with only enough room for a few parking spaces (some reserved to the neighbouring secondary school), with a cycle store. On the 1st and 13th floors, there are communal gardens.

9. The basement also contains the boilers for the communal heating and hot water system. On the first floor, there is a comms room with facilities for the air conditioning system, fire alarms, broadband and electrical supply. The comms room also has a computer terminal from which data about the communal systems may be accessed. It appears there are two meters measuring electrical supply to the common parts but the usage in particular parts of the building, e.g. the lifts, or of the heating and hot water or air-conditioning, are not separately metered.

10. The Tribunal's inspection was not for the purposes of examining the estate's condition or state of repair but it did seem to be in good decorative order and in as good a condition as would be hoped and expected with a property built within the last 15 years.

11. The remaining issues in dispute are dealt with in turn below.

Method of Apportionment

12. The Respondent is responsible for the management and maintenance of the estate. They have employed agents for day-to-day management. Originally, it was Rendall & Rittner who remain the agents for the head lessee, Grif 044. FirstPort took over on 28th February 2018.

13. The Applicants and their fellow lessees are liable to pay charges for the services provided by the Respondent in accordance with the provisions in their leases. The charges are divided into two parts, namely Block Structure Services, to which the commercial properties and the social housing contribute, and Internal Services, which relate to the residential properties only.

14. The calculation of the service charges is set out in clause 2 of Schedule 9 of the Applicants' lease:

In respect of:

2.1 the Block Structure Services the proportion attributable to the Premises is to be calculated primarily by reference to the net internal area for the time being of the Premises as a percentage of the aggregate net internal areas of all the premises on the Estate which are let or intended to be let for separate or exclusive occupation

2.2 the Internal Services the proportion attributable to the Premises is to be calculated primarily by reference to the net internal area for the time being of the Premises as a percentage of the aggregate net internal areas of all the premises on the Estate which are let or intended to be let for separate or exclusive occupation (but excluding for these purposes those designated as affordable or social housing and the commercial retails units within the Estate)

but if the method of calculation is inappropriate having regard to the nature of the item of expenditure incurred or the number of premises which benefit from it the Manager may acting reasonably exercise its discretion and adopt an alternative method of calculation which is fair and proper in the circumstances and may if appropriate apportion the whole of the expenditure to the Premises

15. Therefore, the primary method of apportioning the service charges is according to the ratio of the floor area of the Applicants' flat relative to the floor area of the entire estate ("the Estate-Wide Basis"). The Applicants' percentages of the service charge expenditure on this basis are 0.7377% for Block Structure Services and 1.12986% for Internal Services.

16. However, from the outset the Respondent has apportioned many of the charges by reference to particular components of the estate. For example, if a repair was carried out in the Applicants' block at 1 Leonard Street, it would be charged to that block alone. The parties termed this "the Components Basis". The Applicants' percentages on this basis are 17.3292% and 30.9191% respectively, albeit of what would normally be a significantly lower amount of expenditure.

17. The Applicants object to the use of the Components Basis for the majority of instances where it has been used, not least because it often results in a higher charge to them. Moreover, they bought the property partly because they were attracted by the use of the Estate-Wide Basis which they saw as contributing to a sense of community, with the costs shared equally, without quibbling as to who was using what.

18. Both parties accepted that, in accordance with the Court of Appeal's judgment in *Williams v Aviva Investors Ground Rent GP Ltd* [2021] EWCA Civ 27; [2021] 1 WLR 2061, it is for the Tribunal to decide the

method of apportionment, rather than the Respondent, to the extent that the lease contains a discretion as to which method to use.

19. The Respondent instructed their own expert, Mr Seifert, to advise on the best method of apportionment. He produced two reports, the second one updating the first and amending his conclusions. The Respondent has adopted his report wholesale and accepted his recommendations, including where this means conceding the Applicants' position.

20. Mr Seifert explained to the Tribunal that reasonableness was his guiding principle, as derived from section 19 of the Landlord and Tenant Act 1985. Under cross-examination from the First Applicant he further stated that, if and when it was possible to calculate which lessees benefited from a particular instance of service, then only those lessees should pay for it. The First Applicant pointed out that, taken to its logical extreme, this would mean, for example, lower apportionments for lifts or roof works for lower floor occupiers but Mr Seifert explained that there was a balance between fairness and simplicity so that the apportionment was by block rather than any lesser division.

21. The Respondent conceded that some service charges should be calculated on the Estate-Wide Basis because they did not have the evidence on the basis of which they could use Mr Seifert's approach. Mr Seifert had suggested that the Components Basis be modified by having the Leonard Street lessees make a contribution to the communal facilities in the towers but the Respondent conceded that they did not have the evidence on the basis of which they could identify the appropriate proportion which would represent a fair contribution. The Respondent reserved their position so that, if the evidence does become available at some point in the future in respect of any particular category of expenditure, they may switch apportionment from the Estate-Wide Basis to the Components Basis for that category.

22. More fundamentally, the Applicants object to Mr Seifert's approach on the grounds that it is contrary to the provisions of clause 2 of the lease. The Applicants' principal argument was that the method of apportionment must be the Estate-Wide Basis unless that method is "inappropriate" and, in their submission, the Respondent had failed to show that this method was inappropriate in the ordinary sense of that word in any of the categories remaining in dispute.

23. However, this is to take the word "inappropriate" in isolation. The lease actually says, "inappropriate having regard to the nature of the item of expenditure incurred or the number of premises which benefit from it". The lease was also drafted in the light of the existence of section 19 of the Landlord and Tenant Act 1985 and the drafters cannot have meant the phraseology to be inconsistent with statute.

24. The Applicants pointed out that there are reasons for using the Estate-Wide Basis, such as the community solidarity already referred to, so that it is not inappropriate as that word is used in ordinary language. However, in the context of the lease, that method of apportionment may be inappropriate for an item of expenditure from which only some lessees benefit, such as an item exclusive to a Leonard Street block which has no conceivable benefit for lessees in the towers or other blocks. The Tribunal is satisfied that the terms of clause 2 permit the Respondent to use a benefit and use approach, reflected in the Components Basis, rather than the Estate-Wide Basis, where they have the evidence to demonstrate who uses or benefits from the services in question.

25. The Applicants were concerned that the Respondent used the Components Basis for so many items of expenditure that the Estate-Wide Basis could no longer be regarded as "primary". However, that is to view matters by outcome and in hindsight. In this context, "primary' simply means to use that method first, unless the proviso of inappropriateness is met. As counter-intuitive as it may seem, the terms of the proviso allow for the possibility that the primary method may be used for a minority of expenditure or even not at all.

26. Mr Seifert had exhibited to his report the RICS Code for Service charges in commercial property and the Service charge residential management Code. The First Applicant pointed out to Mr Seifert in cross-examination that section 4.2.5 of the former Code stated that, "Apportionment based on floor area is the most common and often the simplest method of apportionment." Mr Seifert agreed that this was consistent with the Applicants' argument but said that it must be considered in the context of the Code's core principles which include:

    4 … Where reasonable and appropriate, costs should be allocated to separate schedules and the costs apportioned to those who benefit from those services.

    5 The basis and method of apportionment should be demonstrably fair and reasonable to ensure that individual occupiers bear an appropriate proportion of the total service charge expenditure that clearly reflects the availability, benefit and use of services.

27. The Applicants pointed out that using a simpler method of calculating service charges may help to minimise any errors in such calculations. They pointed to the fact that there had been a number of errors in the past, to which the Respondent has admitted during these proceedings. However, the Tribunal agrees with Mr Seifert that the possibility of error should not deter a manager from attempting to follow best practice and should not be determinative of which method of apportionment to use. Moreover, there is no evidence that the errors in this case arose from complications involved in the method of apportionment used by the Respondent or that changing the method of apportionment would eliminate or even reduce such errors.

28. The Applicants also relied on the fact that the lessees all hold long leases. They asserted that expenditure should be considered over the length of a lease. From the point of view of the start of each lease, there is no reason to think that any particular component of the estate would be more expensive to run and manage than any other. This means that, while one block might uniquely require an expensive repair in one accounting period, it is likely that, in due course, other components would require similar expenditure so that the Estate-Wide Basis would be no less equitable than the Components Basis over the entire length of the lease.

29. Unfortunately, this is flawed reasoning which the Applicants sought to apply in respect of a number of issues. It may well be that, from the point of view of the present, there is no reason to think that expenditure would be uneven across the estate in future but this fails to take into account what happens in the real world, as evidenced by the experience of the Respondent's witnesses, which is consistent with the Tribunal's own experience. The fact is that events happen which are unforeseen. Mr Madge-Wyld gave the example of the one lift which turns out to require more attention than the other lifts. In this case, there are two lifts in the towers and one in each of the Leonard Street blocks – there is no reason to think that maintenance costs would vary across the lifts over time but those involved in residential management know that it does happen sometimes and it is best practice to allow for such unforeseen contingencies. Assigning the costs of providing services to those who use and benefit from them does precisely that.

30. The dispute as to which method of apportionment to use was relevant to a number of categories of expenditure:

    (a) General repairs and redecoration. Ms Cain's witness statement had indicated that this expenditure was subject to purchase orders for the estate as a whole. However, she corrected herself in oral evidence and stated that such matters were dealt with on a reactive basis so that it was possible to assign each item of expenditure to particular components on the estate. Therefore, the Respondent had the evidence to justify use of the Components Basis.

    (b) Door entry systems. Ms Cain's correction also applied to the door entry systems. Mr Seifert clarified that, contrary to the Applicants' understanding, although the door entry systems could be accessed centrally from the concierge desk, the majority of components and, therefore, the majority of maintenance, would be within each particular block. Again, the Respondent therefore had the evidence to justify use of the Components Basis.

    (c) Insurance. The Applicants pointed out that the head lessee's obligation was to insure the estate as a whole and that they appeared to do so under a block policy covering their entire portfolio. The insurers broke down the premium into separate amounts for each block on the estate and provided separate certificates of insurance and invoices. However, the Applicants further asserted that, since the Respondent was not

involved, the lessees had no influence over how that breakdown was calculated. From these matters, the Applicants submitted that the insurance should be regarded as a single policy covering the entire estate so that the Estate-Wide Basis was the only possible appropriate method of apportionment. They asserted that the lessees derived no benefit from the breakdown by block. In the Tribunal's opinion, this misunderstands the insurance market. The reasonableness of service charges arising from expenditure on insurance may be judged in part by whether the person placing the insurance has tested the market. Market testing would only be possible with a breakdown by block showing the risk profile of each. The blocks on this estate differ so markedly in character that it is virtually impossible to imagine that insurers would be willing to assess risk on an estate-wide basis. The breakdown also enables lessees to see if they are getting value for money and so it is not true to say they derive no benefit from it. The fact is that the insurers have provided a breakdown by block so that the Respondent has the evidence they need to apportion by means of the Components Basis.

(d) Expenditure on lifts (excluding the lift phone). FirstPort operates a panel of lift maintenance contractors and has a Framework contract with each. These contractors are then appointed to various properties across the portfolio which they manage. In this case FirstPort appointed Amalgamated which charges an annual maintenance fee of £580 plus VAT for a property with 5 or fewer units, inclusive of four visits to the property. For the years before this appointment the Respondent accepted that the contract had not been tendered and so the service charges for those years would be limited to this amount. However, for the period since, the Applicants objected that FirstPort could have appointed a different contractor from their panel, ACE, which charged the lesser fee of £520 plus VAT for the same service. Mr McCarty did not know why the property manager of the time, Ms Kirsty Taylor, chose Amalgamated for the whole estate rather than ACE for either the whole estate or just for 1 Leonard Street but gave the reasoning he would have applied. He said that ACE tended to deliver a poorer service than Amalgamated and appointing two contractors on one estate risked the wrong one attending to a reported lift problem, with consequent issues about who should be paid and how much. In the Tribunal's opinion, FirstPort's actions are reasonable – they have no obligation to seek the cheapest contractor and have sufficient justification for appointing Amalgamated alone rather than ACE alone or in addition. Again, the Respondent has the information and evidence on the basis of which apportionment may be on the Components Basis.

(e) Reserve Fund. In 2016 the Respondent commissioned a report from Gradient which analysed the maintenance needs of the estate and proposed amounts for which they should allow in order to cover future expenditure on major maintenance projects. They allowed for major expenditure on the Applicants' block at 1 Leonard Street every 5 years. The amounts collected for the Reserve Fund were based on Gradient's recommendations. As it happens, there have been no major projects within the subsequent 5 years and none are in prospect. The Applicants

pointed to this fact, and to the relatively low level of actual maintenance expenditure each year, to show that Gradient's estimates were wrong and that there is no reason to think that their block would be more expensive to maintain than any other component on the estate. However, this is to look at Gradient's report with the benefit of hindsight. Reserve funds are collected on the basis of predictions as to the future and the reasonableness of those predictions should be judged on the basis of what was known at the time they were made. Of course, if more money has been collected than turned out to be necessary, downward adjustments may be made for future Reserve Fund contributions. The Tribunal is satisfied that the Reserve Fund amounts based on Gradient's report were reasonable and that the possibility of overcollection does not cast doubt on either their reasonableness or the apportionment of contributions on the Components Basis.

Air Conditioning

31. Air Conditioning, referred to in the lease as "comfort cooling system", is available in each flat at the property. When SW Energy was the electricity supplier, they charged each flat directly for what they said was their individual usage of the air conditioning. This was convenient for the Applicants because they knew the cost to pass on to their tenants.

32. However, this arrangement ceased and the cost of the air conditioning was added to the service charge. There was no individual breakdown of usage by each flat. Instead, the cost was simply included in the service charge for electricity.

33. The Applicants objected to the lack of a breakdown. They pointed to SW Energy's invoices which set out the actual meter readings for the power usage by the communal condensors and then set out a percentage (which varied from one bill to the next) which they ascribed to an individual flat. The First Applicant had a meeting with FirstPort staff in the comms room in which they were able to use the computer terminal to access these percentages. The First Applicant's conclusion from these matters was that there was data of actual usage by each flat of the air conditioning and, therefore, the Respondent should be able to charge each flat individually for that usage. The Applicants were here asking for apportionment not to be on the Estate-Wide Basis.

34. Unfortunately for the Applicants, the evidence indicates that SW Energy did not have any data on individual usage by each flat. There is no meter on the estate which measures such usage, nor has there ever been. No-one currently involved in managing the estate is aware of how SW Energy came up with the percentages. Moreover, the Respondent and FirstPort have to act on the basis of the information and evidence they now have, irrespective of what may have happened previously.

35. The result is that the Respondent has no choice but to use the Estate-Wide Basis to apportion the cost of powering the air conditioning.

Lift Insurance

36. The Respondent has insurance for the lifts which is separate from the buildings insurance discussed above. The First Applicant wrote to FirstPort querying why and asking for the relevant policy documents. The Respondent has never provided this information nor any explanation for their failure to do so. The Tribunal cannot see any reason why the information and documents could not be provided.

37. In the circumstances, the Tribunal cannot be satisfied that the expenditure on the lift insurance was reasonably incurred. This is dissatisfying as the Tribunal would expect there to be a reasonable explanation. However, in the absence of one, the Tribunal is compelled to conclude that the service charges arising from this expenditure is not reasonably incurred and so is not payable.

Balcony and roof repairs

38. The Applicants asserted that repairs to their balcony and roof had been wrongly allocated between Block Structure Services and Internal Services. The Respondent accepted that the Applicants were right as to how such costs should be allocated and undertook to correct any such mis-allocation.

Section 20B letter

39. Under section 20B of the Landlord and Tenant Act 1985, if any relevant costs were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then the tenant is not liable to pay in respect of those costs unless they have been previously notified of those costs.

40. The Respondent purported to send such a notification by letter dated 27th June 2018. Service of such a letter is deemed under the lease if it is sent by registered post but this letter was sent only by first class post.

41. The Applicants say they did not receive the letter. The First Applicant described in detail in his witness statement the process by which he and his wife deal with postal deliveries and stated in oral evidence that, while it was possible that they mislaid the letter, such a possibility was next to impossible. The Second Applicant gave similar oral evidence.

42. Mr Madge-Wyld accepted, as he must, that, in the absence of any provision for deemed service, he must demonstrate that the letter was actually received. On the available evidence, the Tribunal is compelled to conclude that he has not demonstrated this. It is more likely than not that the Applicants did not receive the letter and, therefore, cannot be liable for a service charge arising out of the relevant costs.

Legal costs

43. The Applicants have applied for orders relating to the costs of the proceedings:

(a) An order under section 20C of the Landlord and Tenant Act 1985 prohibiting the Respondent from recovering their costs of these proceedings through the service charge; and
(b) An order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent should reimburse the Applicants the application and hearing fees they paid to the Tribunal.

44. Both parties agreed that they would want to make their submissions on these issues after they had seen the Tribunal's decision on the substantive issues. Accordingly, directions have been given in this decision for that purpose.

45. However, both parties also wanted a determination as to whether £8,000 in legal costs which the Respondent has sought to add to the service charge so far in relation to these proceedings is recoverable as a service charge item under the terms of the lease:

Schedule 9

Services and the Service Charge

Part 2 – Block Structure Services

20. Employing or retaining any solicitor accountant surveyor valuer architect engineer managing agent or management company or other professional consultant or adviser in connection with the management administration repair and maintenance of the Estate including the preparation of any accounts certificates and statements relating to the Annual Expenditure and the collection of the Service Charge.

46. Paragraph 16 of Part 3 of Schedule 9, relating to Internal Services, is in identical terms save that the reference to "the Estate" is replaced by one to "the Building".

47. Both parties pointed to cases in which the higher courts have considered this issue, including *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725 and *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592 (LC). However, the fact is that each case has turned on the particular terms of the clause in the lease being examined in each case. The most pertinent principles are those laid down by the Supreme Court in *Arnold v Britton* [2015] UKSC 36; [2015] 2 WLR 1593 that contractual clauses should be given their natural meaning. If anything, the other cases go no further than to say that legal costs are not recoverable unless the language of the relevant clause clearly includes them.

48. In this case, solicitors are expressly mentioned and "professional … adviser" is apt to cover barristers. The Applicants' principal point was that litigation is not expressly mentioned. The Tribunal put to the First

Applicant that pursuing litigation is part of the landlord's armoury in collecting service charges. The First Applicant responded with 3 points:

(a) He said that the collection of service charges is an administrative act which does not extend to litigation.
(b) The current proceedings are about quantification of service charges which is not the same as collection.
(c) The proceedings had been brought by him and his wife to challenge the service charges they had already paid, not by the Respondent seeking to collect them.

49. The Tribunal respectfully disagrees. Unfortunately, landlords do have to use litigation from time to time to collect service charges. Those proceedings will inevitably involve quantification because collection is not possible without knowing how much to collect – quantification is a condition precedent to collection and, therefore, part of the same process.

50. Further, there is no meaningful distinction between proceedings brought by one party rather than another. A lessee cannot avoid litigation costs by bringing proceedings themselves before the lessor has managed to do so in relation to the same service charges.

51. For these reasons, these proceedings are properly described as part of the collection of the service charge within the terms of the Applicants' lease and the costs are recoverable under the paragraphs referred to above.

Conclusion

52. In relation to the issues remaining in dispute, the Tribunal is satisfied that the Respondent's approach to apportionment and legal costs is within the terms of the lease. The Tribunal hopes and expects the parties to agree the mathematical calculation of the Applicants' true liability to service charges under their lease.

Name: Judge Nicol **Date:** 24th May 2022

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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

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 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.

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.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/LSC/2021/0272**
Property	**:**	**Flat 5, 1 Leonard Street, London EC2A 4AQ**
Applicants	**:**	**Daniel Gerrans** **Katherine Elizabeth Gerrans**
Respondent	**:**	**City House Development (Management) Ltd**
Representative	**:**	**Charles Russell Speechlys**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mr DI Jagger MRICS**
Date of Decision	**:**	**6th July 2022**

SUPPLEMENTAL DECISION

Supplementary to the Tribunal's decision in this matter dated 24th May 2022, the Tribunal has further determined:

5) The Applicants are entitled to be re-credited for an overpayment of service charges in the sum agreed with the Respondent, namely £12,452.49.

6) There shall be an order under section 20C of the Landlord and Tenant Act 1985 that 25% of the Respondent's costs of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

7) The Respondent shall reimburse the Applicants their Tribunal fees of £300.

Reasons

53. By a decision dated 24th May 2022, the Tribunal determined the payability of various service charges for the years 2014-21 in relation to the subject property at Flat 5, 1 Leonard Street. The decision states that two issues were yet to be determined and directions were given for that purpose.

54. By letter dated 1st July 2022, which was approved by the Applicants, the Respondent's solicitor stated that the parties had reached agreement as to the mathematical calculation of the credit due to the Applicants for the overpayment of service charges in the light of the Tribunal's decision. The credit is £12,452.49.

55. Further, the parties agreed that there should be an order under section 20C of the Landlord and Tenant Act 1985 that 25% of the Respondent's costs of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. The Tribunal is satisfied that it is just and equitable to make the order in these terms and does so.

56. These agreements left one matter not agreed. The Applicants sought reimbursement of the Tribunal fees of £300 in accordance with rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Both parties are content for the Tribunal to determine this matter without a further hearing.

57. While the Applicants failed on the majority of items, they have recovered a substantial sum of money, based in part on the Respondent's egregious error in relation to the section 20B letter. The issue and pursuit of proceedings were justifiable on these grounds alone. Therefore, the Tribunal is satisfied that it is appropriate to order reimbursement.

Name: Judge Nicol **Date:** 6th July 2022

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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