FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2021/0455**
Property	**:**	**Flat 7 140 Gloucester Terrace London W2 6HR**
Applicant	**:**	**Elisabetta Rachele Massara**
Representative	**:**	
Respondent	**:**	**138-140 Gloucester Terrace (Management) Limited**
Representative	**:**	**Prime Property Management Limited**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Mrs E Flint FRICS** **Mrs A Flynn MA MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**27 and 28 September 2022**

DECISION

Decisions of the tribunal

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

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

(3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. 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 administration charges payable by the Applicant in the years 2018-19 to 2020-21 inclusive.

The background

2. The property which is the subject of this application is one of eleven flats in two converted houses. Number 138 provides access to flats 3 and 5, number 140 provides access to flats 2, 4, 6, 7, 8, 9, 10 and 11. Flats 1 and 2 are in the basement and have their own entrances although Flat 2 can also be approached via the lift in 140.

3. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

4. The Applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the applicant's lease will be referred to below, where appropriate.

5. Each lease provides for the lessee to hold one share in the Management Company.

6. **The issues**

1. The apportionment of the service charge.
2. The charge for the extractor fan.

3. Lift maintenance.
4. Cost of window and gutter cleaning.
5. Porch and roof repairs
6. Cost of internal repairs
7. Credits and debits.
8. Contribution to sinking fund
9. Invoice addressed to Gordon and Co.
10. Legal costs
11. Accountancy fees
12. Building Insurance
13. Late payment charge £50 – this was conceded by the Respondent during the hearing
14. Management charges

7. An application for an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act and an order for reimbursement of application and hearing fees.

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The lease

9. The applicant holds a lease dated 17 September 1987 for a term of 125 years from 24 June 1987.

10. The lessee covenants at paragraph 3.1.1 "*pay to the Management Company such sum per annum …. As representing a fair and proper proportion* ***(as hereinafter calculated****) of the reasonable estimated amount required to cover the costs and expenses incurred or to be incurred by the Management Company in carrying out the obligations contained in the covenants …. (hereinafter called the "Management Charges")*

11. Paragraph 3.1.2 refers to the percentages set out in the Seventh Schedule, it also allows the method of apportionment to be amended if approved by not less than three quarters of the Management Company at an EGM called to consider the proposed method.

12. The seventh Schedule of the lease sets out the percentage contributions payable by each lessee to the Management Company in respect of the service charge. The percentage in respect of Flat is 3.92%.

Apportionment of Service Charges

13. Mrs Massara said that when she had purchased the lease her share of the service charge costs at 3.92% was affordable. She was now being

charged almost double that percentage; she had not expected the percentage to change. She was of the opinion that the lease cannot just be varied. There was no clarity or transparency regarding the amendment. She had asked for details of the percentages paid by others but had not been given the information.

14. The minutes of the 23 October 2017 AGM indicate that the variation for Flat 2 excluding any costs relating to the lift was illogical: the tenants at Flat 2 used the lift regularly. It was agreed that all the leases should be reviewed and that for the service charge year 2017-18 the Deed of Variation for Flat 2 should be ignored.

15. Mr Stephen Wiles, of Prime Property Management Limited, on behalf of the Respondent referred to the Respondent's statement of case in which it was submitted that it was just and equitable (and indeed lawful) to charge the flats in accordance with their access. Flat 7 has access to the internal corridor at no140 and is therefore charged in accordance with its floor area relative to the other flats with the same access. Flats 1-3 & 5 are omitted from this schedule and the contributions are adjusted accordingly.

16. The wording in clause 3.1.1 of the lease states that the lessee must pay to the management company "such sum per annum … as representing a fair and proper proportion".

17. He agreed that the lease states the percentage contribution for the flat was 3.92% in the lease. He stated that expenditure in respect of the internal common parts of Number 140 had been charged at 5.86%. He understood the figure was arrived at by converting the percentages relating to those flats with access to the internal common parts to 100% and applying the result to the service charge costs for those areas. Prime had taken over the management of the building on 23 June 2020 and continued to use the percentages already in place.

18. He confirmed that some flats were subject to Deeds of Variation which removed the liability to contribute to the service charge account for the internal common parts. The shortfall was met by the Management Company. He did not know if there had been an EGM to consider the variations and consequent amendments to the method of apportioning the service charge account or indeed whether the other lessees had received written notification of the revised regime.

The Tribunal's decision

19. The correct percentage to be used when calculating the service charge liability for Flat 7 is 3.92%.

Reasons for the Tribunal's decision

20. The Seventh Schedule included a list of all the percentages charged to each individual flat. It was unreasonable not to provide details of the percentage of service charge account paid in respect of the other flats in the building: the list of original percentages was included in Mrs Massara's lease. She could not ascertain if she was being charged unfairly without this information.

21. There is a clear provision to allow amendments to the apportionment however there is no evidence that the procedure has been followed. The 2017 AGM minutes indicate that the variation for Flat 2 was ignored, suggesting that the proper procedure had not been followed. Mrs Massara was not advised that there was an EGM to discuss such amendments which would have been necessary if the lease machinery were followed.

Charge for the extractor fan

22. Mrs Massara confirmed that the fan in question is situated in the kitchen of Flat 7. She had been charged £135 for Mr Gifford's visit which ought to have been shared with all the concerned flats.

23. Mr Wiles explained that the total bill was £540, which had been shared among the affected flats.

24. Mrs Massara confirmed she was no longer disputing this item.

The Tribunal's decision

25. The item is no longer disputed, consequently the Tribunal has no jurisdiction in respect of this item.

Lift maintenance

26. Mrs Massara queried why only seven flats had been charged for the lift maintenance when in correspondence she had been advised that only flats 1, 3 and 5 do not contribute to the lift because they do not have access to or use the lift. Moreover, there appeared to be double charging: the costs had been recovered in previous years then again in 2020-21. The budget for 2021-22 shows £8000 reserve fund for potential lift repairs.

27. Mr Wiles said that the actual costs incurred, taken from the accounts, were as follows: 2017-18 £2089; 2018-19 £12951; 2019-20 £12694; 2020-21 £1731 and 2021-22 budget £2000. The larger contributions in 2018-19 and 2019-20 were to the reserve fund to cover the cost of the major works.

28. The lift had been taken out of service in 2020 for major repairs and no maintenance costs had been incurred since then. The charges were in respect of ancillary items or a contribution to the major project. The lift works are not covered by insurance because it is an old lift. Future work is estimated at between £15,000 and £20,000 and will be covered by the Reserve fund.

The Tribunal's decision

29. The Tribunal determines that the costs incurred were reasonable and payable. Full consultation had taken place regarding the lift works. The amount charged to the applicant should be recalculated based on 3.92% rather than the 5.86% charged.

Reasons for the Tribunal's decision

30. No evidence to indicate the cost of the works were excessive were provided. The costs were subject to s20 consultation. The percentage used to calculate the amount payable by the Applicant was incorrect. Nevertheless there has been no cogent reason why the lift should have been out of service for such a long period of time.

Cleaning

31. Mrs Massara said that the budget for 2021-22 included £360 for window cleaning. Window cleaning had previously been part of the general cleaning budget.

32. The budget for cleaning the gutters was excessive. The gutters should be cleaned once every two years rather than annually.

33. Mr Wiles said that no window cleaning had taken place or been charged due to the ongoing major works. The figure in the budget of £360 was reasonable. No window cleaning would take place until the major works were completed.

34. The cost of cleaning the gutters was £144 in 2017-18, there was no further expenditure incurred. It was reasonable to provide £360 in the budget for 2021-22. The only costs relating to the gutters which had been incurred were in respect of a blocked outlet in July 2020 costing £501.24.

The Tribunal's decision

35. The budget costs are reasonable, the apportionment should be based on 3.92%.

Reasons for the Tribunal's decision

36. No costs have been incurred in respect of cleaning the windows and the gutters not since 2017-18 other than clearing a blocked outlet. It is good management to provide for both these items in the service charge budget.

Porch and Roof repairs

37. Mrs Massara referred to costs of £19,000 in 2019-20 and a budget of £73716 in 2021-22. She was concerned that the costs included work to the balcony of Flat 11 and the porch roof which is used by the first floor flat. As no one else was able to use these areas it was unreasonable for the costs to be included in the service charge account. She said that she had been advised that "*the main roof repair is being performed as a Service Charge expense with any terrace being charged to the relevant lessees*" but that does not appear to be the case. In support of her assertion that the balcony of Flat 11 should not be a service charge expense, Mrs Massara referred to advice given to Dauntons Soar Management Limited in 2017 by KDL law and counsel that the covering of the balcony was the responsibility of the lessee.

38. Mr Wiles said that although the balcony was demised the lease required floors to be carpeted, the landlord cannot enforce carpeting of the balcony. He referred to counsel's advice regarding the responsibility to repair the balcony. In particular, the lease defines the Reserved Property as "*the main external structural parts of the building … forming part of the property including the roofs and external parts thereof*" and in the fourth part of the Third schedule it is stated that "*the demised premises shall not include parts of the property intended to form part of the Reserved Property*".

The Tribunal's decision

39. The Tribunal determines that the repairs to the porch roof and Flat 11's balcony should be charged to the service charge account.

Reasons for the Tribunal's decision

40. The lease provides for external parts of the building to be maintained by the lessor. The balcony and porch roof are part of the exterior of the building therefore are part of the Reserved Property and consequently the costs of repairs are service charge expenses.

Internal Repairs

41. Mrs Massara queried the sum of £599 for internal repairs in 2019-20. The budget figure in 2019-20 was £100, however the actual cost was £1589.

42. Mr Wiles did not consider the cost to be unreasonable. No specific queries had been raised which he could investigate or explain.

The Tribunal's decision

43. The costs incurred were reasonable and payable.

Reasons for the Tribunal's decision

44. The budget figure of £100 in 2019-20 was low. No specific queries have been raised in respect of the actual costs incurred.

Credits and Debits

45. Mrs Massara said that under the lease there was a system of debits and credits to be applied each year however this machinery had not been implemented.

46. Mr Wiles explained that there were no credits for 2018-19, there had been a small deficit. His letter of 25 February 2022 set out the specific figures showing that the charges for Schedule 3 costs (internal) had been charged at 5.86%. He confirmed that all the credits and debits would be made to her account after the Tribunal issued their decision.

The Tribunal's decision

47. The Tribunal determines that credits will be due to the applicant following this decision.

Reasons for the Tribunal's decision

48. The apportionment of the service charge requires recalculating and other adjustments following this decision should also be made to the service charge account.

Contribution to the Sinking Fund

49. Mrs Massara was of the opinion that the amount of the Sinking Fund collected in 2020-21 and 2021-22 was too high. £7,000 had been charged in 2020-1 and £13000 in 2021-22. £25,000 had been paid in 2017 for a fire alarm system. The front doors to the individual flats had

recently been inspected, further works were needed to be compliant with modern fire regulations.

50. Mr Wiles said that the lease allows the landlord to collect a Sinking Fund. At the date of the application the building required expenditure of about £400,000. The works included a new roof, external repairs and decorations, compartmentation works, lift and fire safety works including heat sensors in each flat. The budget cost of £100,000 for internal works included redecoration of the common parts. Mr Wiles accepted that the lease does not give the landlord the right to install heat sensors inside the individual flats but thought it unlikely that there would be any objections as the installation would improve the fire safety of the occupants and the building.

The Tribunal's decision

51. The Tribunal amount of the sinking fund collected in total for the building was reasonable. The apportionment for Flat 7 is incorrect: it should be recalculated based on 3.92% of the total for the building.

Reasons for the Tribunal's decision

52. The Tribunal is satisfied that it was prudent to levy the Sinking Fund contributions taking into account the cost of the work necessary to bring the building back to a good state of repair and compliant with modern fire regulations.

Invoice addressed to Gordon & Co.

53. Mrs Massara referred to the invoice issued in August 2017. Dauntons Soar Management Limited had not provided any explanation.

54. Mr Wiles said understood that it related to a balance in respect of 2016 matters when Gordon and Co. were the managing agents. He had not been able to verify how the amount had been made up. It was very late to be querying the amount moreover the sum was outside the scope of this application.

The Tribunal's decision

55. The Tribunal has no jurisdiction in respect of this invoice.

Reasons for the Tribunal's decision

56. The invoice is not within the scope of the application. Furthermore, Mr Wiles said that he had been unable to obtain detailed information regarding the invoice.

Legal Costs

57. Mrs Massara was concerned that the works were not well planned, There had been a defects report in 2017 but the work had not been undertaken, it would have saved money if carried out four years ago.

58. Mr Wiles said that the legal fees were not legal fees but professional fees for surveyors and related costs. These were as follows:

2017-18 **£1440**, excluding £5352 legal fees for lease review
2018-19 **£8036**:
£4233 legal fees; £3472.50 Block management outside usual contract and £330 survey fee
2019-20 **£2568**:
£208.50 Company secretarial for 2 years; Planning applications £1977.50; £382 managing agent
2020-21 **£3265**:
£115.50 Company secretarial b/fwd; £13 Company's House; Surveyors fees £2387; Prime £750
2021-22 **£34660** Budget for surveyors and legal fees for roof and porch works costing approximately £350,000.

59. Mr Wiles said that a Building survey costing £2406 had been cancelled. The budget will not be fully expended as there were only a few days left in the financial year at the date of the hearing. The fees in 2021-22 at a little under 10% of the cost of the major work were reasonable.

The Tribunal's decision

60. The Tribunal determines that the fees were reasonably incurred.

Reasons for the Tribunal's decision

61. There were no alternative quotations provided or any evidence to show that the fees relating to the major works were unreasonable. The mislabelling of all fees as legal fees goes to the management of the block.

Accountant's fees

62. Mrs Massara queried the amount of the accountant's fees as some were higher than the budget figures.

63. Mr Wiles said that owing to the frequent change in the management company the costs of the accountants were higher than the norm. Each time there was a change, inevitably there was additional work in preparing the annual accounts.

The Tribunal's decision

64. The fees are reasonably incurred.

Reasons for the Tribunal's decision

65. No alternative quotations were provided. There was inevitably some overlap of work when the managing agents changed. In addition there were significant works undertaken during the period.

Insurance

66. Mrs Massara said that there was no building insurance in place in 2019. She queried the premium for the Directors and Officers insurance which she said had not previously been charged.

67. Mr Wiles was unable to comment on the building insurance for a period prior to Prime managing the block. He said that the Directors' and Officers' Insurance was necessary and chargeable under the lease and referred to clause 6.1.2 and paragraph 3 of part 1 of the 6th Schedule of the lease. The broker tested the market for both the building insurance and Directors and Officers Liability Insurance on an annual basis.

The Tribunal's decision

68. The Tribunal determines that the costs were reasonably incurred.

Reasons for the Tribunal's decision

69. The cost is recoverable under the terms of the lease. No evidence was provided to show that the premiums were excessive. The market has been tested annually.

Management Fees

70. Mrs Massara said that all the points already raised pointed to the poor quality of the management over a number of years: the financial information provided had been misleading with incorrect labels; including presenting figures as actual expenditure which were not actual at all; not charging in accordance with the lease provisions; there

had been a lack of responsive management. Prime had sought a payment of £50 to have the windows opened after external decorations however the windows had not been painted shut: no work was necessary.

71. She had sublet to a new tenant from 1 July. She had been asked to pay a fee of £60 to deal with the subletting, this had not been requested in the past. The code to the vaults housing the gas meters had been changed without notification. The tenant has a pre-paid meter and therefore requires access to the meter. The lift has not been working for two years despite there being sufficient money in the reserve fund to cover the cost.

72. Mr Wiles said that the management fees were:

- 2017-18 £8040
- 2018-19 £7811
- 2019-20 £4641
- 2020-21 £3440
- 2021-22 £2750

73. He agreed that the fees in the early years were at the higher end of the scale. However, Prime's fees were reasonable: £250/ unit including VAT. He accepted that there were errors in the budget schedule which was regrettable however that was not a good reason to reduce the management fees. If a reduction was considered appropriate it ought to be a small percentage reduction: a maximum of 5% which would be a small sum for Flat 7. The block had struggled with managing agents over the years. Mrs Massara had not produced any alternative quotations.

74. Taking out Directors' and Officers' Insurance was an example of good management practice. A fee for registering subletting was also good practice and allowed by clause 2.8.3 of the lease.

75. Paragraph 2.7 allowed the Management Company to charge a fee for registering a subletting of less than three years.

The Tribunal's decision

76. The administration charge for registering a subletting of less than three years is not payable.

77. The management fees for 2017-18 and 2018-19 are reduced to £3440. The management fee for 2020-21 and 2021-22 is reduced by £10 per year per unit.

Reasons for the Tribunal's decision

78. The lease at clause 2.7 states that "*an underletting of the whole of the demised premises for a period not exceeding three years at any one time shall be permitted without any consent subject to the sub-lessee covenanting in the sublease to observe and perform all the covenants on the Lessee's part and the conditions herein contained save payment of rent and management charges*". 75. The lease does not provide for an administration charge in respect of an Assured Shorthold letting: this is in contrast with longer dispositions where the lease makes different provisions in clause 2.8.

79. As was conceded by Mr Wiles the management charges in the early years appear high. There was evidence provided that the condition of the building was allowed to deteriorate; legal opinions were obtained regarding the service charge apportionments and the liability for the cost of repairing the balcony to Flat 11 however no major work was undertaken during the period of high management charges nor were the problems emanating from a number of lease variations resolved.

80. The management charge payable to Prime of £250 per flat is reasonable in the normal course of events. However there has been a lack of transparency regarding the individual percentages and mislabelling of schedules which resulted in disinformation and a delay in commissioning the work necessary to bring the lift back into service. The management charge for 2021-22 is reduced from £250 to £240 per unit.

Application under s.20C and refund of fees

81. In the application form the Applicant made an application for a refund of the fees that they had paid in respect of the application. Having considered the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

82. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: E Flint **Date:** 14 November 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).