FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2021/0071**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**28 Boundary Road, London SW19 2AN**
Applicant	**:**	**Mr Stephen McKenzie**
Respondent	**:**	**Abbeyladder 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	**:**	**Judge Nicola Rushton QC** **Mr Mark Taylor MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**14 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable or requested and all issues could be determined on paper. The documents to which the tribunal were referred were in a bundle of 188 pages, the contents of which have been noted.

Decisions of the tribunal

(1) The tribunal determines that the service charges payable by the Tenant, Mr Stephen McKenzie, in respect of buildings insurance are as follows, for the following years:

2017 – 2018	£287.44
2018 – 2019	£303.25
2019 – 2020	£319.93
2020– 2021	£337.52

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

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("**the 1985 Act**") that the costs incurred by the Landlord, Abbeyladder Limited, in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charges to be paid by the Tenant, insofar as these might otherwise be payable under the Tenant's lease.

(4) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") extinguishing any liability of the Tenant to pay any administration charges in respect of the litigation costs of this Application insofar as these might otherwise be payable under his lease.

(5) The tribunal makes an order pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Landlord shall reimburse the Tenant the £100 fee paid for the application, within 28 days of the date of this Decision.

The application

1. The Applicant, Mr Stephen McKenzie ("**the Tenant**") issued an application against the Respondent Abbeyladder Limited ("**the**

Landlord") for a determination under s.27A of the 1985 Act, of the amount of service charges for buildings insurance payable by him for the years 2017-2018, 2018-2019, 2019-2020 and 2020-2021 (the year in each case starting on 20 November). The application was received by the Tribunal on 2 March 2021.

2. Extracts of relevant legislation are set out in an appendix to this decision.

3. Directions were issued on 25 March 2021 by Judge Shaw, and have essentially been complied with by the parties. The parties have each submitted a signed statement of case/witness statement with the supporting documents on which they rely. The Tenant has also filed a statement in reply. The parties are agreed that this matter is suitable for a paper determination, and a combined bundle has been provided by the Tenant. 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 nor practicable given Covid-19 restrictions.

The Property and the Lease

4. The application relates to 28 Boundary Road, London SW19 2AN ("**the Property**") which is a first floor, self-contained, purpose-built maisonette dating from about 1900. It is one of a pair of maisonettes, number 26 being on the ground floor (together "**the Building**"). The Tenant holds the Property under a long lease under which the Landlord is the current lessor. The Landlord is the freeholder of the Building.

5. The original lease was dated 19 January 1979, but is subject to a Deed of Surrender and Re-grant dated 8 April 2008 made between the Landlord and a Ms Jane Hacker. The Tenant is the successor to Ms Hacker. All of the relevant covenants in the original lease were continued by the terms of the Deed of Surrender and Re-grant.

6. The Landlord has engaged a managing agent, Mr Christopher Case of SE1 Ltd as Property Manager for the Property. Mr Case has provided the statement on behalf of the Landlord.

7. There is no dispute that the Tenant has an obligation under clause 1 of the lease (as continued) to pay one half of the expenditure incurred by the Landlord in effecting and maintaining the insurance of the Building "*against loss or damage by fire and such other risks as the Lessor may deem necessary to the full value thereof…*".

8. The Landlord's obligation to insure the Property is in clause 6(ii) of the Lease, which provides that it will insure the Property in such a sum as it may reasonably deem adequate against loss or damage by fire and usual comprehensive risks and such other risks as the Landlord may reasonably deem necessary, including rebuilding or reinstatement.

9. The only issue is as to the reasonableness of the insurance premiums paid by the Landlord, and charged to the Tenant through the service charge. The charges have been paid by the Tenant.

10. The sums charged to the Tenant (which are said to be 50% of the premium in each case for the Building) for the relevant years are as follows:

2017 – 2018	£729.52
2018 – 2019	£768.71
2019 – 2020	£811.48
2020 – 2021	£899.78

11. There have been previous proceedings between the parties, also relating the reasonableness of service charges in respect of building insurance premiums, which resulted in a decision of the tribunal dated 25 September 2017 holding that the sums charged were unreasonable and substituting the tribunal's view as to a reasonable sum. That decision related to the years 2010 to 2016. The present tribunal has had regard to that decision (which was in the bundle) so far as relevant, although it cannot of course be treated as prejudging the reasonableness of the premiums charged for the years now in issue.

12. It appears from the documents submitted by the Landlord that the Building was insured as part of a block policy as one of 14 properties, for each of the years in question.

Reasons for the Tribunal's decision

13. The Tenant, who is in the business of property letting and has it appears sub-let the Property, submitted evidence in the form of three alternative quotes for building insurance commencing in early 2021. Two of those quotes were for the whole Building and were obtained from insurers who the Tenant said also offered block policies. Those were a quote from Covea, commencing 28 February 2021 of £549.30; and from Arch, commencing 3 February 2021 of £812.71. The third was a quote from Aviva, a more general insurer, which was for the Property alone, and was £307.80 from 2 April 2021. Covea was the insurer which actually provided cover to the Landlord for the relevant years.

14. For the year 2020-2021, the Tenant calculated in his statement of case that the average of these 3 figures would be £329.60. On this basis, he submitted that this would be a reasonable amount for a premium for that year. He noted that this was far less than the amount charged by the

Landlord for any of the earlier years November 2017 to November 2019 (being between about 40% and 45% of the amounts charged).

15. The Tenant noted that the tribunal, in its previous decision, had allowed an increase of 5.5% year on year from November 2010 to November 2016. As a cross-check, he calculated what a 5.5% increase for the years from 2017 to 2020 would amount to, based on the previous tribunal's figure for November 2016, and submitted that by November 2020, one ended up with similar figure to the average of his quotes.

16. The tribunal considers that this body of evidence, in particular the comparables obtained, created a prima facie case as to what a reasonable buildings insurance premium for the years from November 2017 to November 2020 would be.

17. The Landlord in this case has chosen to take out a block policy to cover a number of properties, whereas the Tenant's quotes relate to single buildings. It is well established that it may well be reasonable for a landlord to effect a block policy, there being management advantages to doing so (including identical terms across a number of properties and simplified claims processes). However, even where there is a block policy, it is still necessary for the policy obtained to be appropriate for the subject property. In order for the tribunal to be satisfied that the policy was appropriate and the premiums paid reasonable, it is generally also necessary for the landlord to produce evidence of relevant market testing.

18. Here the Landlord has submitted evidence through Mr Case which is said to support the premiums charged. Mr Case's statement attached copies of the invoices from the Landlord's broker, which evidence the premium said by the broker to relate to the Building for each year (50% of which was charged to the Tenant). Also attached are copies of parts of the Policy Schedule for each year, which includes the Building in each case. Mr Case also explains that following the 2017 tribunal decision, the Landlord decided to change brokers to Christopher Trigg Ltd, with effect from the November 2018 year.

19. In a section of Mr Case's statement which appears to have been "cut and pasted" from a letter or other document from Christopher Trigg, it is said that Christopher Trigg carried out a market testing exercise with a number of insurers in February 2021, and that Allianz provided the cheapest quote. However, as the Tenant points out in his statement in reply, this is irrelevant to the present application since this market testing post-dates the years in question.

20. Other than this, all that Mr Case/Christopher Trigg have said about market testing is that "*The annual property premiums are tested each year to ensure they are reasonable and in line with premium rates from reputable Insurers.*" There is no further information about how this

testing was done or whether or how this related to the subject Building. While Mr Case sets out a number of assumptions which the Landlord required any insurer providing a quote to make (including that the property may be let to individuals in high risk groups and must be covered for subsidence), there is no evidence as to whether these assumptions resulted in higher premiums being quoted or why these were reasonable assumptions to make in relation to the Building or Property.

21. In addition, it is entirely unclear how the premium charged for the Building has in each case been derived by the brokers from the total premium charged for the 14 properties under the block policy (the total is in any event only in evidence for some and not all years).

22. Consequently there is no real evidence before the tribunal as to the factual justification for why the Landlord has charged to the Tenant a building insurance premium which is more than 50% higher than either the available comparable evidence, or the tribunal's previous decisions as to a reasonable level of building insurance.

23. The tribunal notes that on the previous occasion, the tribunal made an allowance for 10% commission on top of the base premium it considered reasonable. This was because the lease expressly permits the Landlord to recharge any such commission and the Landlord had submitted evidence that commission of 10% had been paid to it. However, unlike on the last occasion, the Landlord has put in no evidence this time as to any commission paid by either the insurer or the broker to the Landlord, which may have been added to the premiums as recharged to the Tenant, let alone whether any such commission was reasonable. The tribunal has not therefore included any amount for any such commission in its assessment of a reasonable premium.

24. In his evidence Mr Case referred to and attached a revaluation of the Building which was carried out by Rebuild Assessment Ltd on 13 August 2018. For the purposes of his statement in reply, the Tenant therefore obtained an updated quote from Covea based on this revaluation, which was £596.81 for the Building (50% of which is £298.41).

25. On the basis of all of the evidence submitted by both parties, the tribunal has therefore concluded that the best (and only real) evidence as to a reasonable building insurance premium for the Building/Property is that submitted by the Tenant. Taking into account the updated quote from Covea, the average of the three premiums for the Property alone for the 2020/2021 year is £337.52 ((£298.41 + £406.36 + £307.80)/3). The tribunal accordingly determines that this is the reasonable premium for the Property for that year.

26. There being no comparable evidence before the tribunal for previous years, the tribunal has calculated a reasonable sum for each of those

years on the basis of an assumption that premiums increased by 5.5% each year, and on the basis of a final (50%) premium of £337.52 for the Property for 2020/2021.

Application under s.20C/Schedule 11 and refund of fees

27. In his statement of case, the Tenant applied for a refund of the fees he paid on the application[1]. Taking into account the determinations above, the Tribunal orders the Landlord to refund the £100 application fee paid by the Tenant, within 28 days of the date of this decision.

28. In his application, the Tenant applied for an order under section 20C of the 1985 Act. The Tribunal does not consider that the service charge provisions in the lease, which are narrow, would extend to the Landlord's legal costs of these proceedings. However, for the avoidance of doubt and taking into account its findings above, the Tribunal determines that it is just and equitable to make an order under section 20C of the 1985 Act, that the Landlord may not pass on to the Tenant any of its costs incurred in connection with these proceedings through the service charge.

29. In the application form, the Tenant also applied for an order under paragraph 5A of Schedule 11 to the 2002 Act, that the Landlord should not be able to pass on any of the costs of these proceedings to him by way of an administration charge. Again, the Tribunal considers that the narrow charging provisions in this lease would not extend to any such administration charge for legal costs. However, for the avoidance of doubt and taking into account its findings above, the Tribunal determines that it is just and equitable in the circumstances to make an order under the 2002 Act that the Landlord may not pass any of its costs incurred in connection with these proceedings to the Tenant by way of any administration charge.

Name: Judge Nicola Rushton QC **Date:** 14 June 2021

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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]

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).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	"The relevant court or tribunal"
Court proceedings	The court before which the proceedings are taking place or, if the

	application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.