



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

Case Reference : **LON/00AW/LSC/2022/0003
CVP Remote**

Property : **Flat 2, 63 Cadogan Gardens, London
SW3 2RA**

Applicant : **Midnight Nominees (Guernsey) Limited**

Representatives : **Daniel Dovar of Counsel**

Respondent : **International Property Rentals Limited**

Representative : **Philip Rainey KC of Counsel**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey
Mr Stephen Mason FRICS**

**Date and venue of
Hearing** : **28th and 29th November 2022 by remote
video hearing**

Date of Decision : **12th December 2022**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges in dispute are those more particularly confirmed and set out below. This is by reference to the Scott Schedule contained within the trial bundle at pages 28 to 52 and following the same item numbers listed in that schedule.

The applications and background

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Flat 2, 63 Cadogan Gardens, London SW3 2RA**, (the property) and the liability to pay such service charge.
2. Flat 2, 63 Cadogan Gardens, London SW3 2RA is in a block of just three flats and so the property is a first and second floor three-bedroom flat forming part of a Victorian property which was converted to provides 3 self-contained flats and associated common parts.
3. There are three main areas of dispute:
 - (i) Apportionment. The applicant claims that there is an agreement by e-mail which alters (for all time) the fixed percentage apportionment laid down in the applicant’s Lease;
 - (ii) The reasonableness of the sinking fund charges, for Planned preventative maintenance (PPM). This involved the expert evidence of building surveyors/quantity surveyors;
 - (iii) And finally, the level of service charge costs incurred, and whether the costs were reasonably incurred.
4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

5. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the

tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

6. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice CVP platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to were in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it electronic/digital trial bundles of documents agreed by the applicant and the respondent, in accordance with previous directions. Legal submissions/skeleton arguments were also made available to the tribunal.
7. The face-to-face hearing took place over two days in November 2022, (28th and 29th), when the applicants were represented by Mr Dovar of Counsel and the respondent was represented by Mr Rainey KC of Counsel.

Decision

8. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written and oral evidence and the surrounding documentation as well as the oral submissions provided by both the parties at the time of the face-to-face hearing.
9. The first to give evidence was Thomas Hutchinson Chartered Surveyor, a witness for the applicant. He sought to provide evidence of the historical events affecting the nature of the lease and the service charge provisions since around 2010. He sought to explain how the service charge might vary as a consequence of changes at the property such as the lack of a resident housekeeper.
10. Then Ann Fensterstock gave evidence on behalf of the applicant. She is the current tenant of Flat 2. She gave convincing evidence about a number of issues she had with the state of the common parts in the building. First, she confirmed she had never seen a concierge at the building and she also confirmed a lack of concierge services such as the failure to sort resident's mail. Similarly, she said that resident's rubbish is not collected and wear and tear in the common parts is not attended to promptly. In summary her forthright evidence was that there was no

concierge and that there were other clear concerns about services or the lack of them in the common parts.

11. Mr Nair, a company official for the respondent also gave evidence. However, it was clear from his evidence that most of the detailed accountancy minutiae were to be more readily available from his company accountant Deborah Sullivan who also gave evidence. What became clear from the evidence from Mr Nair was that some of the expense headings in the accounts were unconventional to say the least and that they did not always clearly summarize what was being charged. Similarly, the evidence from Ms Sullivan was somewhat limited by a lack of documentary supporting evidence.
12. Both parties provided evidence from experts in relation to the PPM. There had been two previous attempts at the provision of PPM schedules, in 2014 by Bruton Street Management and in 2019 by Botley Byrne. For a variety of reasons these were deemed unsatisfactory and or excessive in their financial recommendations. Mr Stuart Birrell FRICS gave evidence for the applicant as a building surveyor. Mr Mark Ruddell MRICS gave evidence for the respondent as a building surveyor. Both parties also provided evidence from Quantity Surveyors, Mr Simon Worthy MRICS and Mr Justin Sullivan FRICS ACI Arb.
13. The Tribunal were required to consider service charges and administration charges arising in service charge years set out above. The Tribunal will consider each in turn or by subject matter. In particular the first two overarching issues, apportionment and PPM will be dealt with first followed by a detailed review of all the service charges in dispute by reference to the Scott Schedule.

PPM

14. The tribunal is required to consider which argument they prefer in their interpretation of the lease and service charge provisions and the payability of service charges for items in dispute. The tribunal therefore sought precedent guidance to support their decision-making process. The Supreme Court case of *Arnold v Britton and Others* [2015] UKSC 36 is extremely helpful in this regard. This case was about judicial interpretation of contractual provisions analogous to the dispute before the tribunal. The court held-

“that the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be gleaned from the

language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate departure from the natural meaning; that commercial common sense was relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties as at the date on which the contract was made....it was not the function of a court to relieve a party from the consequences of imprudence or poor advice”.

15. Accordingly, the tribunal turned to the lease to try to identify what the parties had meant through the eyes of a reasonable reader. On that basis it is clear that the lease of the property permits the establishment of a sinking fund. There are two challenges to the sinking fund. First, that given the accumulation of reserves without work being carried out, the applicant says the respondent did not need to collect them for all the years it has demanded them. Secondly, that the estimated sums are not reasonable estimates.
16. The original basis for the reserve charge was from a schedule prepared by Bruton Street Management. The total for each year is £30,920 with a charge of £30,000 levied since the year end 2015. As far as the applicant is aware, none of the underlying work has been done, with the result that substantial sums have accrued into the reserves. As at March 2021, £72,082 was held in the sinking fund and represented the applicant’s contributions. The applicant says that on the basis of the joint experts’ reports the amount collected is too high for the planned works and should be substantially reduced to reflect the advice put forward by the applicant’s building and quantity surveying experts. The applicant therefore challenges the reasonableness of the sums demanded for the sinking fund on the basis they are excessive.
17. The estimated costs required to be collected to provide for a reserve fund based on the Bruton Street Management calculation produced an amount of £30,920 p.a. Subsequent to this a planned preventive maintenance report was prepared by Botley Byrne in November 2019 and this has formed the basis for the joint building and quantity surveying experts’ reports as to the scope of the works to be considered. The applicant’s experts have advised that the provision should be £15,650 p.a. whilst the respondent’s experts have advised that the amount should be £24,841 p.a.
18. The tribunal has ascertained that the main areas of difference between the experts concerns the cost of scaffolding required for external repairs

and redecoration along with the external redecoration cycle and lift replacement cycle.

19. The tribunal adopts the applicant's building surveying expert's view that the external redecoration cycle can reasonably be 6 years and this will reduce the anticipated costs for these works over the remaining years of the planned maintenance programme.
20. The tribunal is of the view that scaffolding costs are likely to be about midway between the costs estimated by the quantity surveying experts. The tribunal is of the view that the lift life expectancy will be greater than the period estimated by the respondent's building surveying expert due to the relative light usage which can be anticipated for this particular building.
21. The tribunal is of the view that an annual provision of £18,000 will provide an adequate fund for future works and that the present amount collected is excessive and collection of further funds should be paused until the balance in the fund equates to the annualised equivalent of the foregoing amount.
22. As a matter of good practice when works are actually undertaken and funds are expended from the reserve then the costings in the planned maintenance programme should be reviewed and amended accordingly. This may result in adjustment of the future amounts to be collected.

Apportionment issue

23. By a lease dated 29th August 2010 the applicant's predecessor in title was granted a demise of the property for a term expiring 24 March 2132. This demise was pursuant to a lease extension of an earlier demise, dated 30th May 1977. By clause 2 of the 1977 lease, the tenant covenants to pay

'... a proportionate part of the expenses and outgoings incurred by the Company in the repair maintenance renewal and insurance of the Building and the provision of services therein and the other heads of expenditure as the same is set out in the Schedule hereto... (herein called the 'service charge') being subject to the following terms and provisions....

(e) the annual amount of the service charge payable by the Lessee as aforesaid shall be 45.4% of the aggregate of the said expenses and

outgoings incurred by the Company in the year to which the certificate relates'

24. The said certificate is by clause 2 (d), an annual certificate produced by the landlord's surveyors or agents, setting out (1) the expenses and outgoings incurred for the last year end; and (2) a summary of the relevant details and figures forming the basis of the service charge. Clause 2 (g) provides for a quarterly interim charge on account of the service charge, which is to be a fair and reasonable interim payment.
25. The new 2010 lease was on materially the same terms as the 1977 lease, save that by clause 4.1 of the 2010 lease, any obligation on the part of the Lessor to provide a resident housekeeper, was removed and by clause 4.4

'There shall be added to Clause 2 (f) the words 'Provided that for any period during the said term there is no resident housekeeper in the building the due proportion shall be 35.44% (There is an apparent and obvious error in referring to 2 (f) and not 2 (e) which should be read in here).

26. All the parties accept that there is no housekeeper. At the hearing the respondent accepted that in error it has previously charged the applicant 45.4%; and that the difference between that and 35.44% must be refunded. However, the respondent then maintained that if there is no housekeeper then 35.44% is the fixed due proportion which the applicant must pay.
27. On the other hand, the applicant argues that by reason of alterations to the building, which reduced the common parts and increased the size of Flats 1 and 3, it is to be implied into the lease of the property that the service charge should be adjusted. The applicant referred to correspondence about the changes and the alterations in the relative square footage of the units and common parts and suggested that the percentage was "agreed" at 29.73%.
28. In answer to this the respondent asserted that "*A argues that by reason of alterations to the Building, which reduced the common parts and increased the size of Flats 1 and 3, it is to be implied into the Lease that the service charge should be adjusted: This must be rejected. 'Proportionate part' is part of the express terms of the Lease; and those express terms are clear - the due proportion was fixed, by agreement, in 2010. An implied term cannot override an express term; nor does A address whether any such implication meets the test for implying a term (business efficacy etc.).*" The Tribunal accepts this

to be a correct understanding of the law as it applies to this “implied” term and as such rejects the applicant’s argument in this regard.

29. Alternatively, the applicant contends that the 35.44% was further varied by an agreement by e-mail. It is possible to vary a long lease by deed by a simple agreement in an e-mail. However, as the respondent rightly observed, as an e-mail is not a Deed, there has to be consideration. Counsel for the applicant argued that consideration could be implied by the reduction in the size of the internal common areas available to the applicant following the respondent’s alteration works to the building. The Tribunal was not persuaded by this argument as it seemed not seem to have any merit This was because, so far as the Tribunal is concerned no consideration can be gleaned from the documentary evidence put before it by the parties of indeed from the conduct of the parties. The applicant seeks to rely upon an email from Mr Nair dated 7 April 2014 to Mr Hutchinson subsequent to a discussion about relative square footage where he wrote “*we are aligned*”. Clearly, there was some discussion about the changes to the building but quite what was intended by such an open remark is plainly unclear and open to interpretation and is nowhere near enough to amount to an agreement to vary the terms of the applicant’s lease.
30. Accordingly, the Tribunal is not persuaded by the applicant’s argument and agrees with the respondent that the appropriate percentage for the property is 35.44%

Scott Schedule of Disputed Items

31. There now follows below, a detailed examination by the Tribunal of all the service charges items that are in dispute by reference to the form of Scott Schedule utilised and reviewed by both the parties to this service charge dispute. The same item numbers will be used and the actual charge will be indicated. All charges are for the building and not for just flat 2.

2014-2015

32. Schedule item 1 Window cleaning. The charge for this year was £814.98. The applicant disputed the several service charges across the years for the provision of window cleaning at the property as it asserted that it was not a service charge item so far as windows in the demised property is concerned. Window cleaning in the flat was the responsibility of the tenant and so the cleaning of the property windows could not be a service charge item. There are three windows in the common parts. The applicant offered 3 x £40 x 2 (3 windows twice a year, totalling £240 for the building. The respondent confirmed that

the window cleaning was carried out on a regular basis and was done to make sure the property was kept as clean as possible, given the nature of its prestige location. On inspection the level of charges did seem excessive to the Tribunal given the nature of the property and the very limited extent of the windows in the common parts. On the balance of probabilities, the Tribunal was satisfied that the work was carried out and that therefore the charges were reasonable and payable in the sum of £240 for the building for the year.

33. Schedule item 2 Cleaning carpets and floors. The charge for this year was £825.99. The applicant says that the communal areas are a small space so the cost is not warranted. The respondent says that the cost was reasonably incurred. Carpet cleaning is carried out routinely throughout the year that is to be expected for a property of this quality. On the balance of probabilities, the Tribunal was satisfied that the work was carried out and that therefore the charges were reasonable and payable in the sum of £825.99 for the building for the year.
34. Schedule item 3 Communal areas cleaning and dusting. The actual charge for this year was £1116.74. The applicant says that this is not reasonable and may be covered in other service charge headings. The respondent says the cost was reasonably incurred. The respondent says that routine cleaning and dusting is carried out throughout the year, which is to be expected for a property of this quality. The respondent noted that the applicant did not put forward any alternative quotations. The respondent says that there is no duplication of cost/work incurred. The Respondent has sought to allocate charges incurred in as detailed a manner as possible. On the balance of probabilities, the Tribunal was satisfied that the work was carried out and that therefore the charges were reasonable and payable in the sum of £1116.74 for the building for the year
35. Item 4 Concierge. The actual charge for this item was £20,682. It would appear from the evidence that the respondent has clarified that ‘concierge’ services are:
- (a) Housekeeping;
 - (b) Management; and
 - (c) Accountancy costs and expenses.
36. The applicant says of this that “*R’s evidence as to the cost of this heading is opaque and the labelling ‘concierge’ misleading. It has taken these proceedings for R to finally provide the actual details of this heading. Notwithstanding this, it is still not entirely easy to follow what is going on but it appears that the various costs claimed are linked to R’s property letting business run through various entities from a variety of countries*”. All parties accepted that there is no

“concierge” as a landlord and tenant lawyer or surveyor would use the term. All that there is at the building is an empty desk and chair in a part of the common parts. The tenant gave evidence that she never saw a concierge.

37. If the explanation is followed then it is unclear what ‘housekeeping’ is done other than those set out in other cost headings: notably: i.e., there are separate cost headings for window cleaning, cleaning and polishing doors, cleaning carpets and floors, cleaning vault, communal areas cleaning and dusting. The Tribunal was not persuaded that this was an acceptable explanation for the concierge charge. Similarly, it is also unclear why there should also be a heading for ‘accountancy’, particularly given that accountancy fees are separately levied each year and will be considered by the Tribunal later in this decision. Again, The Tribunal was not persuaded that this was an acceptable explanation for the concierge charge.
38. Finally, in this regard, in terms of Management, if this is intended to mean the sort of work normally carried out by a managing agent, then in that respect, the applicant has offered £3,000 per annum for management of the entire building/ This is in the context of the fact that as at 2022, the respondent has appointed managing agents at a cost of £2,000 per annum. The Tribunal also noted that the respondent provided little evidence of the significant costs said to have been incurred under this heading and no actual managing agent has been appointed until this year. (The applicant has obtained an alternative quote for a managing agent. For a building of this type requiring only basic management services (to include service charge administration (excluding auditing of service charge accounts) and liaising with contractors and leaseholders), the applicant considers a reasonable charge for the building to be £3,000 (exclusive of VAT) with the applicant paying their respective proportion. The alternative quote for management fees does not take into account any price rise between 2014 and 2022. However, the applicant says it is willing to waive the adjustment for inflation in order to reach settlement.) In these circumstances, the Tribunal find this total expenditure unreasonable and is therefore disallowed but replaced at the level of £3000 the sum accepted by the applicant as being a reasonable amount.
39. Item 5 Annual lift inspection. The actual charge for this item is £5198.24. The respondent says this cost was reasonably incurred. It relates to the annual lift maintenance at the building. The work was carried out as evidenced by disclosed invoices The cost charged by the contractor is reasonable and the Applicant has not put forward any alternative quotations. The applicant says that the only invoice provided is for £1.5K plus VAT (£1.8k) for period of 23/2/2015 to 22/02/2016. The applicant says that it is not clear how the figure of

£5,198.24 was arrived at. The applicant says it is prepared to agree £1,800 (inclusive VAT which the respondent stated it could not recover) as the building cost for this service. The Tribunal noted that prior to this service charge year the property and lift had been subject to a recent refurbishment. It therefore thought that the amount demanded was not reasonable and that an annual charge for lift maintenance should be £1800 as being a reasonable charge for this item.

40. Item 6 Annual repairs. Actual charge £5,198.24. As to this expense, the respondent justifies it by saying “The cost was reasonably incurred. It relates to work carried out that consists of issues such as the front entry doorbells not working, emergency lights needing to be replaced and changing the locks on the door to the vaults. Due to the passage of time, the Respondent has not been able to locate invoices for this charge. The cost charged by the contractor is reasonable and the Applicant has not put forward any alternative quotations.” On the other hand the applicant says in the absence of any supporting evidence it offers nothing. The Tribunal took the view that on the balance of probabilities, the Tribunal was satisfied that some work was carried out and that therefore a proportion of the charges were reasonable and payable in the sum of £2,337 for the building for the year being 50% of the actual demanded amount.
41. Item 7 Telephone. Actual charge £792.95. This amount relates to maintenance of the telephone in the lift within the building. The respondent says that the work was carried out as evidenced by the invoice(s) disclosed by the respondent. However, the applicant says it remains unclear whether this cost is for maintenance of the emergency phone in the lift or the cost for the phone line/usage in the lift only. Invoices provided total £418.89. The applicant says that in order to narrow the issues, the applicant considers £418.89 pa to be a reasonable amount for the telephone line. On the balance of probabilities, the Tribunal was satisfied that the service was available and that therefore the charges were reasonable and payable in the sum of £792.95 for the building for the year
42. Item 8 Accountancy fees Actual charge £3,900.88 The respondent says of these fees that the cost was reasonably incurred. It relates to the preparation of the annual accounts and managing the service charge accounts and costs incurred in maintaining the building. The work was carried out as evidenced by the invoice(s) disclosed. The cost charged by the contractor(s) is reasonable and the Applicant has not put forward any alternative quotations. There is no duplication of cost/work incurred. The Respondent has sought to allocate invoices as appropriate in as detailed manner as possible. In reply the applicant says that the invoice disclosed bears no relation to sums claimed with

no explanation as to how sum apportioned. On the basis the service charge administration should be carried out by a property managing agent the applicant considers the sum of £750 (inclusive VAT) to be reasonable for an annual service charge accounts audit on a building such as this. The Tribunal agrees with the applicant. From its own knowledge of accountancy fees for a building of this type with a limited number of flats involved it considers that the charge of £750 is reasonable and it therefore the sum to be charged for this specific service charge item.

43. Item 9 Office Expense £93. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
44. Item 10 Professional fees Actual charge £11,299.56. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
45. Item 11 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000

2015-2016

46. Item 12 Cleaning and polishing £1149.78. The respondent claims that this cost was reasonably incurred. Routine cleaning and polishing is carried out throughout the year, which is to be expected for a property of this quality. The work was carried out as evidenced by the invoices disclosed. The respondent also asserted that there was a discrepancy in the way this cost was labelled in the accounts. However, the Respondent's position is these costs are nonetheless recoverable under the service charge provisions and have been reasonably incurred.
47. The applicant in reply noted that the invoices were for routine cleaning of common parts not front elevation/polishing doors. Consequently, the applicant said nothing should be allowed for this claim because polishing doors etc. should be covered in general cleaning. The Tribunal agrees with the applicant as this is clearly a common parts cleaning expense for which there is already a costs claim and heading. Accordingly, this service charge is unreasonable and is disallowed in full and set at £nil.
48. Item 13 Window cleaning Actual cost £918.50. As set out above at paragraph 34 of this decision the appropriate window cleaning annual payment should be £240.

49. Item 14 Cleaning vault £28.63. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
50. Item 15 Communal areas cleaning and dusting Actual cost £1359.03. The parties have agreed the sum of £864 per annum plus VAT and so the Tribunal endorses this sum.
51. Item 16 Concierge Actual cost £26,918.50. As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3000.
52. Item 17 Telephone £425.11. Please see paragraph 43 above. Thus, on the balance of probabilities, the Tribunal was satisfied that the service was available and that therefore the charges were reasonable and payable in the sum of £425.11 for the building for the year
53. Item 18 Garden maintenance £271. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
54. Item 19 Accountancy fees Actual charge £1,949.33. As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750.
55. Item 20 Professional fees Actual charge £5,160.79. The respondent claims that the cost was reasonably incurred. It relates to the cost of obtaining the Service Charge Budget Consultancy Fee for Bruton Street (Management) Ltd. The work was carried out as evidenced by the invoices disclosed. On the other hand the applicant observes that the invoice provided for Bruton Street (Management) Ltd totals £950 plus VAT (£1,140). The applicant says that insufficient explanation has been given to justify the expenditure of £5,160. The applicant said that it considers £950 plus VAT for surveyor's costs to prepare a PPM schedule to be reasonable. The Tribunal agrees. The Tribunal cannot find any justification for the large charge and therefore finds the claim unreasonable and allows instead the sum of £950 plus VAT for these professional fees.

2016-2017

56. Item 21 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000

57. 22 Cleaning and polishing doors. £84.74. As set out above at paragraphs 48 and 49 of this decision the appropriate cleaning and polishing annual payment should be £nil.
58. Item 23 Window cleaning £1203.39. As set out above at paragraph 34 of this decision the appropriate window cleaning annual payment should be £240.
59. Item 24 Communal areas cleaning and dusting £1,779.66. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
60. Item 25 Concierge Actual charge £37,116.92. As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3,000.
61. Item 26 Garden maintenance £271. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
62. Item 27 Accountancy fees Actual charge £3292.78 As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750.
63. Item 28 Service charge consultancy. Actual charge £1,064.97. The respondent asserts that the cost was reasonably incurred. It relates to the cost of procuring Saffery Champness LLP to prepare quarterly service charge invoices. However, the Respondent has been unable to locate the invoice for this charge. There is no duplication of cost/work incurred. As stated above, this was a fee for a particular service provided. The applicant says that this charge should form part of a managing agent's role and has been included in the sum offered at item 25 above. The Tribunal agrees. The Tribunal cannot find any justification for the charge and therefore finds the claim unreasonable and disallows the sum in full.
64. Item 29 Professional fees £901.12. The respondent says It relates to the service charge consultancy fee for Bruton Street (Management) Ltd. The respondent maintains that the cost charged by the contractor is reasonable and the applicant has not put forward any alternative quotations. The applicant on the other had rejects the claim on the basis this should form part of a managing agent's role and has been included in the sum offered at item 25 above. Again. the Tribunal agrees. The Tribunal cannot find in the evidence any justification for this charge and therefore finds the claim unreasonable and disallows the sum in full.

2017-2018

65. Item 30 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000
66. Item 31 Cleaning and polishing doors. £1565.97. As set out above at paragraphs 48 and 49 of this decision the appropriate cleaning and polishing annual payment should be £nil.
67. Item 32 Window cleaning £1203.39 As set out above at paragraph 34 of this decision the appropriate window cleaning annual payment should be £240.
68. Item 33 Concierge Actual cost £38,655.27. As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3,000
69. Item 34 Garden maintenance £271. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
70. Item 35 Accountancy fees Actual charge £3,293.78 As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750.

2018-2019

71. Item 36 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000
72. Item 37 Cleaning and polishing doors£1,562.14 As set out above at paragraphs 48 and 49 of this decision the appropriate cleaning and polishing annual payment should be £nil.
73. Item 38 Communal areas cleaning and dusting £381.35 The Tribunal finds this amount reasonable and allows it in full
74. Item 39 Concierge £40,107.34 As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3,000

- 75. Item 40 Telephone £463.27 This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
- 76. Item 41 Garden maintenance £220. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
- 77. Item 42 Accountancy fees Actual charge £1,191 As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750.
- 78. Item 43 Provision for sundry expenses. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard

2019-2020

- 79. Item 44 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000
- 80. Item 45 Cleaning and polishing doors £2,000 As set out above at paragraphs 48 and 49 of this decision the appropriate cleaning and polishing annual payment should be £nil.
- 81. Item 46 Communal areas cleaning and dusting. £408.79 The respondent has limited the claim here to just £408.79. The Tribunal is able to find this to be a reasonable sum for these works for the building for the year.
- 82. Item 47 Concierge £24,905.49 As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3,000
- 83. Item 48 Telephone £531.87 Please see paragraph 43 above. Thus, on the balance of probabilities, the Tribunal was satisfied that the service was available and that therefore charges are reasonable and payable but in the sum of £450 for the building for the year as offered by the applicant and as is in line with previous payments for previous service charge years
- 84. Item 49 Accountancy fees Actual charge £9,204.40 As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750. The Tribunal noted that the landlord also incurred a one-off retrospective audit of the service charge accounts apparently to address

the tenant's complaints. The Tribunal was unconvinced as to the necessity for such an expensive exercise and felt that it should not be part of the service charge for the tenant to be responsible for.

85. Item 50 Provision for sundry expenses. £1,292. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard

2020-2021

86. Item 51 Sinking fund. £30,920. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000
87. Item 52 Internal cleaning £989.01 This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
88. Item 53 Annual deep clean of carpets £204.40 This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
89. Item 54 Communal areas cleaning and dusting £2,753.85 This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
90. Item 55 Concierge £12,734.07 As set out above at paragraphs 37 to 40 of this decision the Concierge annual payment should be £3,000
91. Item 56 Telephone £296.70 This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
92. Item 57 Garden maintenance £500 in budget. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard
93. Item 58 Accountancy fees £3,934.07 As set out above at paragraph 44 of this decision the Accountancy annual payment should be £750.
94. Item 59 Legal fees £15,013.19 The respondent says the cost was reasonably incurred. It relates to legal advice incurred in connection with the building. The applicant says the invoice provided totals £6,515 (no VAT charged) so no evidence was provided of the larger sums demanded. The applicant asserts that the amount claimed appears to

be costs associated with the application to the Tribunal and so not a service charge item. The Tribunal prefers the applicant's view and believes the charge to be unreasonable and disallowed in full

95. Item 60 Depreciation £250. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard

2021 – 2022 Estimated items not yet in final accounts

(The sums set need to be merely reasonable estimates for the lessor's budget as final accounts are not yet available.)

96. Item 61 Sinking fund. £30,000. As set out above at paragraph 23 of this decision the appropriate reserve fund annual payment should be £18,000
97. Item 62 Cleaning and polishing doors Budget £1,000 The Tribunal needs to consider if this is a reasonable estimate. The Tribunal is not satisfied bearing in mind the nature of the item and how the Tribunal has dealt with previous years for this heading. This sum is disallowed in full.
98. Item 63 Window cleaning Budget £950. The Tribunal views this sum to be excessive given its previous decisions for window cleaning in previous years. It considers the reasonable amount to be £240 for an estimate for this year.
99. Item 64 Annual vault inspection. Budget £950 The Tribunal is unconvinced by this proposed charge that seems somewhat novel given the claims for previous years. This estimate is disallowed in full.
100. Item 65 Communal areas cleaning and dusting Budget £1,500 The tribunal considers this to be a reasonable estimate for this work and allows it in full
101. Item 66 Concierge and management Budget £35,000. In the light of decisions for previous years about this charge the Tribunal sets the reasonable estimate at £3,000 for the service charge year for the building
102. Item 67 Garden maintenance £250 in budget. This item was agreed and settled between the parties and as such the Tribunal therefore makes no determination in this regard

103. Item 68 Accountancy fees. Budget £1,500 In the light of decisions about this charge in previous years the Tribunal sets the reasonable estimate at £750 for the service charge year for the building

Application for a S.20C order

104. The applicants also made an application under section 20C of the Act, i.e., preventing the respondent from adding the legal costs of these proceedings to subsequent service charge accounts. No formal submissions were made at the end of the hearing. Therefore, the Tribunal **DIRECTS** that within 21 days from the date of the receipt of this Decision the applicants will file and serve their reasons for making this 20C application. Thereafter, within 21 days of the receipt of the applicants reasons the respondent will file and serve its reasons for opposing the application. Thereafter the Tribunal will make its determination on the S20c application.

Name: Judge Professor Robert Abbey **Date:** 12th December 2022

Appendix of relevant legislation and rules

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.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.