FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2021/0414**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**18 Falmouth House, 1 Seaton Close, London SE11 4ET**
Applicant	**:**	**Dr A Checconi**
Representative	**:**	**In person assisted by Mr B McGregor**
Respondent	**:**	**London Borough of Lambeth**
Representative	**:**	**Mr A Stepanyan, litigation officer L B Lambeth**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and s20C of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Pittaway** **Judge McKeown** **Mr S Mason FRICS**
Dates of hearing	**:**	**23 and 24 June 2022**
Date of decision	**:**	**19 July 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Dr Checconi represented himself with the assistance of Mr B McGregor. Mr Stepanyan represented the respondent.

The documents before the tribunal were

- A core bundle of 533 pages
- A supplementary bundle of 258 pages
- Skeleton arguments from Dr Checconi (5 pages) and Mr Stepanyan (16 pages)
- Further written submissions from Mr Stepanyan (8 pages)

Prior to the hearing the tribunal had been supplied with certain documents that prior to the hearing had been placed in a 'without prejudice' bundle, and to which the tribunal did not have regard.

The tribunal heard evidence from Mr M Szczesney (called as a witness by Dr Checconi), Dr Checconi and from Mr Stepanyan, and submissions from Mr Stepanyan and Dr Checconi.

At the start of the hearing Dr Checconi repeated a request he had made earlier that certain 'without prejudice' documents might be put before the tribunal, those contained in the 'without prejudice' bundle, and certain further e mails, on the basis that they were the culmination of a chain of correspondence that the respondent had included in the core bundle. The tribunal determined that it would not look at the documents the subject of the earlier tribunal determinations on 4 and 11 February. It determined that it would consider further the e mails referred to by the applicant if necessary during the hearing. The application for the tribunal to consider these was not renewed.

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.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") as to the amount of service charges payable by the applicant in respect of the service charge years from 2014-15 to 2020-21 and the estimated service charge for the year 2021-22.

The background

2. The property which is the subject of this application is described in the application as a one-bedroom flat on the ground floor of a purpose-built block of flats, with its own private entrance.

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 applicant holds 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 lease are set out below, where appropriate.

5. In his application the applicant did not make an application under s20C of the 1985 Act limiting payment of the landlord's costs but did make such an application during the hearing.

The issues

6. At the hearing the parties confirmed that the relevant issues for determination were set out in the Scott Schedule contained in the core bundle, being the following:

   (i) The payability and/or reasonableness of the service charge of £6,632 levied on the applicant for intercom major works completed in 2014;

   (ii) The payability and/or reasonableness of the service charge of £5,586 levied on the applicant for gas major works completed in 2016;

   (iii) The reasonableness of the actual Block electricity charges for the years 2015-16 to 2021-22 (totalling £2,627) and the estimated Block electricity charge for 2022-23 (£533);

(iv) The reasonableness of the actual concierge charges for the years 2015-16 to 2021-222 (totalling £6,448) and the estimated concierge charge for 2022-23 (1,009);

(v) The reasonableness of the actual Estate electricity charges for the years 2013-14 and 2016-17 to 2021-22 (totalling £195) and the estimated Estate electricity charge for 2022-23 (£38);

(vi) The reasonableness of the actual heating charges for the years 2013-14, 2014-15 and 2017-18 to 2021-22 (totalling £2,499) and the estimated heating charges for 2022-23 (£697).

(vii) The reasonableness of the actual boiler Block charges for the years 2014-15 to 2021-22 (totalling £2,742) and the estimated boiler Block charges for 2023 (£285).

7. The application had included the reasonableness of the actual Estate cleaning costs for the year 2018-19 of £280. Mr Stepanyan conceded that this cost should actually be £140 so this was no longer an issue between the parties.

8. Dr Checconi included in his Scott Schedule a claim for £10,000 for mental distress. On the second day of the hearing he confirmed to the tribunal that he would not be pursuing that claim through the tribunal.

The Tribunal's decisions and reasons

9. 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.

10. In considering Mr Stepanyan's submissions the tribunal has had regard to the extent to which he was able to support the statements in his witness statement, which was the only witness statement relied upon by the respondent. Mr Stepanyan has largely been reliant upon information and documentation provided by others, who did not make their own witness statements and did not attend the hearing.

11. Mr Stepanyan submitted that generally the respondent relied upon the tenant's covenant in clause 2.2 of the lease and the provisions of the Fourth and Fifth Schedules for the recovery of the service charges claimed, referring particularly to the following;

12. *2.2 To pay to the Council at the times and in manner aforesaid without any deductibility by way of further and additional rent a rateable and proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair maintenance*

improvement renewal and insurance of the Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called the "Service Charge") being subject to the terms and provisions set out the Fifth Schedule hereto.

Fourth Schedule PART 1 - BLOCK

AS TO THE BUILDING IN WHICH THE FLAT IS SITUATED All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current of future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decoration to or in relation to the Building and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following

2 The cost of periodically inspecting maintaining overhauling improving repairing renewing and where necessary replacing the whole of the heating and domestic hot water systems serving the Building and the lifts lift shafts and machinery therein (if any)

3 The cost of the gas oil electricity or other fuel required for the boiler or boilers supplying the heating and domestic hot water systems serving the Building the electric current for operating the passenger lifts (if any) and the electric current used for the communal lighting within the Building

5. Where a caretaking service is provided at the date hereof the cost of employing maintaining and providing accommodation in the Building or on the Estate or in any neighbouring property of the Council for a caretaker or caretakers

7. All charges assessments and other outgoings (if any) payable by the Council in respect of all parts of the Building

Fourth Schedule PART 2 – ESTATE

AS TO THE ESTATE UPON WHICH THE BUILDING IS SITUATED All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decorations to or in relation, to the Estate and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:

2 The cost and expense of making repairing maintaining improving rebuilding lighting and cleansing all ways roads pavements sewers drains pipes watercourses party walls party structures party fences walls or other conveniences which may belong to or be used for the Building in common with other premises on the Estate

5 All charges assessments and other outgoings (if any) payable by the Council in respect of all parts of the Estate (other than income)

FIFTH SCHEDULE - TERMS AND PROVISIONS RELATING TO SERVICE CHARGE

5 The Tenant shall if required by the Council with every payment of rent reserved hereunder pay to the Council such sum in advance on account of the Service Charge as the Council shall specify at its reasonably exercised discretion to be a fair and reasonable interim payment

Intercom Major Works

The tribunal's decision

13. The tribunal determines that had the intercom been renewed to the applicant's flat the service charge demanded would have been reasonable. As the respondent did not renew the connection to the property, as required by the lease, the charge is unreasonable and is not payable.

Reasons for the tribunal's decision

14. Mr Szczesny, the owner of 22 Falmouth House (a first floor flat) between 2011 and 2016, gave evidence that the tenants were advised in August 2013 of the respondent's intention to replace the whole of the controlled door system. In October 2013 the tenants were advised that the intention was to replace the intercom system based on the date upon which it was installed, irrespective of whether the system was still working, and that there would not be a tender as the work would be undertaken by Openview under its Long Term Qualifying Agreement with the respondent. The work started in January 2014 and was completed in February 2015. Mr Szczesny referred the tribunal to photographs in the core bundle which show the similarity between the intercom installed as part of the work and the previous intercom. Mr Szczesny was not aware of any intercom at Falmouth House not working. The tenants had been given new entry fobs as part of the works. Mr Szczesny was unable to comment on whether the new fobs afforded the tenants greater security.

15. Dr Checconi gave evidence that he became the leaseholder of 18 Falmouth House in March 2014, at which time the property had a

functioning intercom system which allowed remote access to the concierge who was located in the main entrance of the Block. His means of physically accessing the concierge was by entering the main door of the Block (his flat has its own direct access) by using the fob-token provided. The survey he had had carried out before he bought the flat confirmed that a s20 consultation notice had been served. The notice stated it was proposed to '*replace the whole of the controlled door system together with the doors and any screen when necessary*'. In May 2014 the applicant received confirmation from the respondent that the contractor would be activating his headset, that he could continue to use his fob to access the communal areas and that he would be provided with a new fob when available. In July 2014 he was informed that all ground floor flats were to be permanently discontinued from the intercom system, but would nonetheless be required to pay for the Intercom Major Works. In July 2015 Dr Checconi received an e mail from Mike Axtell of L B Lambeth stating that he, '*should not pay the full amount for this project as you don't benefit from any intercom*'.

16. Dr Checconi submitted that the discontinuance of the intercom system contradicts the description of the work in the s20 notice which had stated that all intercoms would be replaced on a like-for-like basis, that the s20 consultation requirements had therefore not been complied with and that he should not have to contribute to the cost of these works.

17. Mr Stepanyan drew attention to the fact that the s20 consultation had occurred before Dr Checconi bought his flat.

18. Mr Stepanyan in his skeleton argument referred the tribunal to the Service Charges (Consultation Requirements) (England) Regulations 2003 as establishing the principle that consultation notices are required to describe the works or services in general terms. He submitted that the s20 notice did not preclude the respondent deciding that it was not necessary for the ground floor flats to retain their intercom facilities. Lambeth had taken this decision and had also decided that the ground floor flats should not be given fobs to access the communal entrance as this posed an unnecessary safety risk. Mr Stepanyan was unable to provide any evidence as to how the decision taken was reached. In his submission any statements made orally or in e mails to Dr Checconi as to whether he would remain connected to the intercom system were statements in principle and it had been made clear to him that the final decision rested with the Lambeth Home Ownership Services. Mr Stepanyan referred the tribunal in his skeleton argument to the right of the respondent to terminate services, set out in clause 4.3 of the lease.

19. Mr Stepanyan submitted that at no point had Dr Checconi disputed the quality or price of the door entry system and that neither he nor Mr Szczesny had provided evidence to substantiate such a claim.

20. The tribunal find that the service of the s20 consultation notice prior to Dr Checconi buying his flat did not preclude him from challenging the cost of the work contemplated by the notice where the service charge in question was demanded of him after he had bought his flat.

21. The tribunal accept Mr Stepanyan's submission that the s 20 notice only required to describe the proposed works in general terms, and the decision of Lambeth not to renew the wiring to the intercoms for the ground floor flats did not invalidate it.

22. Clause 4.3 provides,

'Notwithstanding anything herein contained the Council shall not be liable to the Tenant nor shall the Tenant have any claim against the Council in respect of.....

4.3.2 any termination of any of the services hereinbefore mentioned if the Council in its reasonably (sic) discretion shall decide that such services are no longer reasonably required on the Estate or that they are no longer economically viable.'

The 'services hereinbefore mentioned' are referred to in clause 2.2 of the lease which makes it clear that 'Services' are distinct from repair and renewal. Clause 4.3 does not permit the landlord to decide not to repair/renew that which it has covenanted to repair/renew.

23. The lease contains an obligation on the landlord, at clause 3.2, 'to maintain repair redecorate renew amend clean repaint and paint as applicable and at the council's absolute discretion improve....

3.2.2 the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the Building.'

Under Clause 3.2.2 the respondent is therefore under an obligation to the applicant to repair and renew the intercom connection to his flat. It has not done so.

24. The service charge demanded of the applicant is unreasonable because the landlord has not complied with its obligation to repair the intercom 'electric cables and wires and supply lines in under and upon the Building' as required by clause 3.2.2 of the lease. Clause 4.3, referred to

by Mr Stepanyan, relates to the provision of services, not the repair of cables, wires and supply lines.

25. To the extent that the provision of the intercom amounts to a service, the tribunal finds that the respondent has not decided that the service is no longer required on the Estate on grounds on financial viability, the required test in clause 4.3. Lambeth must consider that the service is still economically viable as it continues to provide the service to the remainder of the Block/ Estate.

Gas major works

The tribunal's decision

26. The tribunal determines that the sum of £5,586 for the gas major works is reasonable and payable by the applicant.

Reasons for the tribunal's decision

27. Mr Szczesny gave evidence in his written witness statement and orally that the s20 consultation notices relating to these works was delivered in October 2013 and January 2014 and that the works began in July 2014 and that the contractors ultimately left the site in September 2015. He stated that the original timetable for the works was five months. Mr Szczesny referred to e mails that he and other residents had sent Lambeth complaining about the quality of the works in October 2015. He referred the tribunal to photographs of the completed works in the core bundle.

28. Dr Checconi gave evidence, in his witness statement and orally. At his request the respondent had not provided his flat with the revised gas piping to which this service charge cost relates, because he considered it unsightly and that it would reduce the value of his flat. Dr Checconi submitted that the length of time spent on the works must have increased the cost, and that the works reduced the value of his property. Dr Checconi submitted that where the s20 notice had referred to the new pipes being installed 'externally' this meant that they were not going to be installed in the communal hallways of the Block and that the pipes installed internally in the common parts caused a safety hazard. He submitted that as the pipes were not external the respondent had not complied with the s20 consultation requirements and that he should not have to contribute to the cost of these works. Dr Checconi submitted that the cost was not reasonable because the respondent had failed to demonstrate that it was reasonable. The respondent had provided no independent report to confirm that the work had been carried out safely. He submitted that the method of installation was unacceptable and that the works was not carried out to a reasonable standard.

29. Dr Checconi submitted that in installing the pipes the respondent had disturbed the geogrid under a section of external paving. He submitted that he was able to speak as an expert on this in his capacity as a chartered geologist.

30. Mr Stepanyan referred the tribunal to the wording of the s20 notice of intention to carry out the works dated 7 January 2014, under a long-term agreement. The s20 notice stated the scope and reasons for the works as follows;

'*The proposed works will entail the re-routing the vertical and horizontal gas pipe network. The new network will be installed externally in keeping with the current H&S recommendations. All homes will be fitted with secondary gas meters and confirm the installations will conform to all current regulations***.**

The existing bulk gas pipe network is embedded within the fabric of the building structure making annual safety inspections extremely difficult and in places impossible. Further there are no isolation valves installed which means a total shutdown if any works are required on the pipes.'

Mr Stepanyan submitted that this is a sufficient 'general' explanation of the works that were to be carried out.

31. Mr Stepanyan submitted that Dr Checconi had provided no evidence to substantiate his submission that it was unreasonable for the respondent to have installed the pipes where they did (in the communal halls rather than routing them through the garages). He submitted that the word 'external' meant that the pipes would not be embedded in the structure of the building, not that they would be external to the building itself.

32. Mr Stepanyan submitted that the applicant had provided no evidence to support his contention that the works were of poor quality. The respondent had instructed a project manager who had signed off the works as to cost and quality. He further submitted that there was no evidence that the alleged time wasting by the contractors increased the cost of the works. The s20 notice stated that the property's estimated contribution to the works was £5,572.89 and the final sum demanded was only £13.11 more. Dr Checconi provided no alternative quotes to substantiate his claim that the cost of the works was unreasonable.

33. Dr Checconi has not challenged his liability to pay for the gas pipe works other than by reason of the invalidity of the s20 notice. In his witness statement Dr Checconi accepted that he is obliged to pay for works/services to the building that he does not have access to, citing lift maintenance by way of example.

34. The tribunal accept Mr Stepanyan's submission that the s20 notice sufficiently described the proposed works. It finds that the use of the word 'external' in the context of that description referred to the pipes not being embedded in the walls, not that they would be external to the building as a whole. The tribunal therefore finds that the description of the works in the s20 notice did not invalidate it, and that the applicant was liable to pay a reasonable amount for the works.

35. The tribunal find that in the absence of any expert evidence to the contrary it has no reason to doubt that the works, supervised by an independent project manager, were carried out to the necessary health and safety standards. It accepts that Dr Checconi found the proposed route of the piping to be unsightly and that he considers that this reduces the value of his flat but he has provided no evidence to substantiate this assertion. Dr Checconi states in his skeleton argument that he has shown that the costs he is challenging are not reasonable, but he has not provided the tribunal with evidence to substantiate this statement.

36. The tribunal notes Dr Checconi's submission as to damage to the geogrid under a section of paving but the only evidence of this is one photograph which does not prove that the current state of the paving is a result of such damage. The tribunal accepts that Dr Checconi believes he is an expert in this area, but no permission was sought, or granted, to permit either party to rely on expert evidence in this regard, and Dr Checconi, as the applicant, is not an independent expert.

37. On the basis of the evidence before it the tribunal finds the cost of the gas pipe works to be reasonable.

Concierge charges

The tribunal's decision

38. The tribunal finds that it is unreasonable of the respondent to charge the applicant his full share of the concierge charges from 2015 and find that in the circumstances a charge of 20% of the full charge to be reasonable.

Reasons for the tribunal's decision.

39. Dr Checconi submitted that it was unreasonable of the respondent to charge him for the concierge service which had not been available to him since 2015 when the intercom was removed from his flat and he was not given a fob which permitted entrance into the communal area of the building in which the concierge was located. Dr Checconi also challenged the level of charge, referring the tribunal to the difference in charge between 2014-15 (£33,270) and 2015-16 (£64,100). He

submitted that a charge in the region of £70,000 was unreasonable for a service provided for 7.5 hours a day, referring the tribunal to other blocks of flats owned by the respondent where the charge was less. The tribunal heard evidence from Mr Szczesny as to rise and discrepancies in the sums charged in the period from 2011 until he sold his flat.

40. Mr Stepanyan submitted that the tribunal should limit its consideration to the years challenged by Dr Checconi. In his witness statement Mr Stepanyan set out the 2021 data of all the blocks in Lambeth for which Pinnacle provide concierge services which he stated was representative of how Pinnacle have charged for its services in the years since 2014. He submitted that this confirmed an identical charge per hour based on 8.5 hour days 7 days a week. He submitted that when block definitions are correctly accounted for (Falmouth House being one block and Cotton Gardens Estate being three) the cost is identical.

41. In his witness statement Mr Stepanyan stated that while Dr Checconi no longer enjoyed certain of the concierge services provided to the flats that are not on the ground floor he was still provided with certain functions, the concierge serving a role between that of security and care-taking. He listed these as

> *"Hybrid between security and care-taking*
> *They monitor the cctv*
> *May contact and let in external vistors (sic)*
> *They provide a repair check in service*
> *Communal repair service*
> *Block management*
> *Report repairs to Lambeth*
> *Perform health and safety functions such as fire safety checks / marshalling when necessary*
> *Would work with the Police if there is a report.*
> *Give intelligence to Lambeth"*

42. The tribunal notes that with the exception of 2014-15 the concierge charges in the service charge years 2012-2021 have ranged between £63,240 and £73,735 and that the level of charge is consistent with Mr Stepanyan's explanation of the 2021 data in his witness statement. The tribunal therefore find that these charges would be reasonable had Dr Checconi benefitted from the full range of concierge services.

43. Since Dr Checconi's intercom was disconnected and his entrance fob removed he has not benefitted from the full range of concierge services. In particular he has no means of communicating with the concierge and cannot gain access to where he is located. Of the remaining services listed by Mr Stepanyan some appear to be covered by other heads of charge (eg communal repair service) and the majority will occupy little of the time spent by the concierge at the block. The tribunal therefore find it reasonable to reduce the applicant's contribution to these costs

in each year since the intercom and fob were removed. In the absence of any evidence as to what would be a reasonable charge for the few concierge services still enjoyed by Dr Checconi (block monitoring being one) the tribunal find it reasonable to discount this head of charge by 80% in each year in question.

Block and Estate Electricity Charges

The tribunal's decision

44. The tribunal finds these charges to be reasonable.

Reasons for the tribunal's decision

45. Dr Checconi submitted that the charges were unreasonable where the respondent was unable to explain the spike in charges between 2014-15 and the subsequent years, in years where the unit cost of electricity has only increased by a small percentage in the past ten years. He submitted that the block charge was unreasonable when compared to the yearly average cost for a one-bedroom flat in the UK. In response to the Excel spreadsheet of readings provided by Lambeth for the year 2017-2018 he submitted that the monthly readings must be erroneous as they showed more electricity consumption in the summer months, and that he believed that the communal electricity might be used by others than the residents of the block, referring to a vintage car club that rents the lower floor basement.

46. Mr Stepanyan submitted that electricity is a metered charge and the bundle includes the meter readings (one for the block and one for the estate) from 2012 to 2021. In his witness statement Mr Stepanyan stated that the underlying electricity price is procured via LASER Energy procurement, a body which works with a large number of public sector bodies and he is unaware of any other challenge to the reasonableness of its pricing or the quality of its service. In his witness statement Mr Stepanyan refers to an e mail from Scott Thompson which states that there are no plug sockets in the communal areas.

47. While the charges may be high, in the absence of any evidence to the contrary the tribunal find that the meter readings are an accurate reflection of the electricity consumed by the block and the estate. There is no evidence before it that external users are increasing the electricity usage. The tribunal would, however, encourage the respondent to investigate how these charges might be reduced.

48. Heating

The tribunal's decision

49. The tribunal finds these charges to be reasonable.

50. Reasons for the tribunal's decision

51. Dr Checconi submitted that the number of flats had not changed since 2012, and that therefore the average gas usage for heating should not have changed given that the cost of natural gas had only been subject to small fluctuations in the last ten years. He accepted that world events in 2022 might explain the significant increase in the estimated cost for 2022-23 (rising to £697). Dr Checconi gave evidence that the average yearly gas cost for a one-bedroom flat in UK was £190. He submitted that a reasonable charge for gas for heating his flat would be 65% of the total costs.

52. Mr Stepanyan submitted that gas is a metered expense, also procured under LASER Energy Procurement Frameworks.

53. The tribunal notes that in the years since 2014-15 the actual costs, based on readings, have been £387, £270, £249, £378, £404, £477 and £319.In the year 2012-13 they were £166 and in 2013-14 they were £443. Neither party provided an explanation for why the cost in 2012-13 was less but this may have resulted in an adjustment in 2013-14 when the charge was higher than in the next five years. There is no evidence before the tribunal which challenges the actual readings provided by the respondent and the tribunal therefore finds these to be reasonable.

Boiler repairs

The tribunal's decision

54. The tribunal find that it is reasonable for the respondent to charge by way of service charge for both a service contract and actual repairs but that some of the items listed in the breakdown are not recoverable under the terms of the applicant's lease.

55. Reasons for the tribunal's decision

56. Dr Checconi submitted that the charges for boiler repairs were inconsistent. He referred the tribunal to boiler repairs in 2014-15 amouning to £19,248 and not the £33,331.64 charged. He submitted that he should therefore only pay a proportion of the substantiated costs, namely £263 not £455. For all subsequent years Dr Checconi

submitted that Lambeth had provided no evidence of repair work to the boiler and that he should therefore pay nothing.

57. Mr Stepanyan attached to his supplemental statement dated 4 May 2022 breakdowns of the boiler charges for all the years from 2014-15. In these the costs fall under three main heads, summarised as Annual Major and Minor Service, Comprehensive Repairs Contract and Additional (non-contract) Repairs and submitted that these figures substantiated the service charge sums demanded.

58. Dr Checconi submitted that he had only seen these figures in May 2022, and that they are contained in a document created by the respondent. He submitted that it was impossible to judge the accuracy of the figures in the absence of any invoices. Until he was supplied with the breakdown he had been unaware of the existence of a service contract.

59. Dr Checconi has not challenged the existence of the service contract per se, only that he was not aware of its existence. His challenge of the contract before the tribunal was that there may be a degree of overlap between the contract and the repairs listed in Mr Stepanyan's breakdown of repair works. The tribunal therefore find the cost of the service contract in any year to be reasonable.

60. The tribunal has no reason to doubt the accuracy of the figures set out in the breakdowns provided by the respondent. It finds that certain of the items listed under the heading 'Boiler Repairs' are not service charge items.

Paragraph 2 of part 1 of the Fourth Schedule provides for 'The cost of periodically inspecting maintaining overhauling improving repairing renewing and where necessary replacing the whole of the heating and domestic hot water systems serving the Building and the lifts lift shafts and machinery therein (if any)' being recoverable by way of service charge'

It does not contemplate recovery from the leaseholders by way of service charge of the repair of radiators, etc. serving individual flats. The information provided by Mr Stepanyan (e.g.p525 Core bundle) makes it clear that some of the repair work charged is for work to individual flats and not to the communal system and to the extent the works are to individual flats they are not recoverable under the terms of the applicant's lease and should be removed from the service charge demands.

A number of the breakdowns refer to the addition of 8.9% of the charge by way of 'overheads' and again this is not a service charge item contemplated by the lease. A management fee is charged as a separate

item of expenditure (as a percentage of the total service charge and this is not challenged by the applicant) and the inclusion of this overhead charge, in the absence of any explanation by the respondent, amounts to double-counting. The tribunal find that it is not reasonable to make this charge of the applicant.

61. The respondent will need to review the breakdowns provided removing those items the tribunal find are not service charge items.

General

62. The tribunal note that the failure of the respondent to provide a fob prevents the applicant exercising the right granted to him in part 1 of the Second Schedule, namely,

'Full right and liberty for the Tenant and all persons authorised by him (in common with all other persons entitled to a like right) at all times by day and night to go pass and repass on foot only over and along the main entrance of the Building and the common passages landings and staircases thereof and to use the passenger lift (if any) therein ....'

Application under s.20C

63. At the hearing, the applicant applied for an order under section 20C of the 1985 Act. The respondent identified counsel's fees of £1,200 as being costs that it would wish to pass through the service charge. Mr Stepanyan submitted that counsel's opinion had been sought in the effort to save costs. Dr Checconi submitted that this was not reasonable in a case where the respondent had refused to mediate.

64. Having heard the submissions from the parties and taking into account the conduct of the parties and 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: Judge Pittaway **Date:** 19 July 2022

Rights of appeal

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

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

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

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

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

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