FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/LSC/2021/0338**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**The Hoola, East and West Towers, Royal Docks, Tidal Basin Road, London E16 1UX**
Applicant	**:**	**Strawberry Star London Limited**
Representative		**Strawberry Star Estate Management Limited**
Respondents	**:**	**All leaseholders at the Hoola as listed in a schedule provided to the tribunal**
Type of application	**:**	**Determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Judge	**:**	**Judge Nicola Rushton KC**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**~~14 December 2022~~ Amended 20 January 2023**

DECISION Amended under ss. 9(4) and (5) of the Tribunals, Courts and Enforcement Act 2007

Paragraphs 64, 66, 67 and 68 and the initial summary amended pursuant to rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and ss. 9(4) and (5) of the Tribunals, Courts and Enforcement Act 2007. This does not affect any of the other substantive decisions of the tribunal.

Covid-19 Arrangements

This has been a hearing on the papers which has been consented to or not objected to by the parties. The form of hearing was P: PAPERREMOTE. A face-to-face hearing was not held because no party ultimately requested one and the tribunal considered that all of the issues before it could be determined on paper. The documents to which the tribunal were referred were in an electronic bundle provided by the applicant of 230 pages, the contents of which have been noted.

For the tribunal's current Covid-related procedures, please see the Guidance for Users at: https://www.judiciary.uk/wp-content/uploads/2021/02/Guidance-for-Users-February-2021-final.pdf

Decisions of the tribunal

(1) The tribunal determines that:

a. the costs of repairs to the sliding doors between individual apartments and their balconies are payable through the service charge, by leaseholders;

b. but the costs of such repairs should in each case be apportioned to and paid by the leaseholder of the particular apartment whose door has been repaired.

(2) This determination is not intended to apply in situations where widespread works are required to the tower or estate.

(3) The Applicant Landlord or its managing agent should within 14 days of receipt of this Amended Decision notify all leaseholders listed in the Schedule of this Amended Decision, by placing and maintaining a copy of the Amended Decision on its website and referring the leaseholders to it (and removing any copy of the original Decision of 14 December 2022).

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

The application and procedural steps

1. The Applicant, Strawberry Star London Limited ("**the Landlord**"), is the freeholder and landlord of the Hoola, which is a new development comprising two 23 or 24-storey towers of apartments at the Royal Docks, Tidal Basin Road, London E16 1UX ("**the Hoola**"). The two towers are known as the East Tower and West Tower and between them have 360 residential apartments, which are let to tenants on long leases. The Hoola is managed on behalf of the Landlord by Strawberry Star Estate Management Limited ("**SSEM**").

2. SSEM has arranged or proposes to arrange repair works to the sliding doors onto the private balconies of about 50 of the apartments, where they have become misaligned, letting in draughts, or are otherwise out of repair. SSEM and the Landlord wish to establish whether these works fall within the Landlord's repairing covenants under the long leases and if so, whether the costs should be charged to all the tenants through their service charges and/or whether they should be charged to the individual tenants whose doors required repair.

3. That is the issue which is before the tribunal for determination.

4. An application under s.27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") for a determination of liability to pay and reasonableness of such service charges was originally issued on 20 September 2021, but was incorrectly issued in the name of SSEM, with "Strawberry Star Asset Management" incorrectly named as the respondent. The application included a detailed written advice from solicitors J B Leitch on the issue, which also suggested seeking a determination from the tribunal of the reasonableness and payability of the proposed service charge.

5. By directions issued on 2 November 2021 Judge Jack required SSEM to provide a copy of the Land Registry entries showing the identity of the freeholder; a list of the names and addresses of all the tenants who were liable to pay service charges; and an executed sample lease, following which the tribunal would consider substituting the correct landlord as applicant and the tenants as respondents.

6. Office copy entries, a spreadsheet of 425 tenants with their contact details ("**the Schedule**"), and a sample executed lease were subsequently provided by SSEM to the tribunal.

7. Further directions were issued by Judge Donegan on 29 July 2022, who ordered that the Landlord be substituted as the Applicant and the leaseholders of the 360 flats at the Hoola (as set out in the Schedule) be substituted as the Respondents. Those directions also required the Landlord to write to all the respondent leaseholders providing copies of the application form and supporting documents, ideally through a web-based document storage site, notifying them of the deadline for any responses to the application and providing a form to use to reply, and to notify the tribunal that it had done this.

8. The tribunal is satisfied, having seen copies of the correspondence and details of the website, that this has been done, and that the respondent leaseholders have been given a proper opportunity to respond to and make submissions on this application, including requesting an oral hearing if they wished to do so.

9. Two leaseholders, Kevin Hales (apartment 2003) and Stewart Moore (apartment 705) submitted replies, with emailed submissions, in both cases opposing recovery of such costs from all leaseholders through the service charge. Mr Moore did not request an oral hearing, but Mr Hales originally said that he did. On 13 October 2022 the tribunal therefore requested dates to avoid for a face to face hearing. On 7 November 2022 Mr Hales emailed the tribunal to say that he would not be able to attend an oral hearing in person and so he personally no longer requested one to take place.

10. Mr Hales also expressed concern in correspondence with Darren Logan, Head of Estates at SSEM, that if an oral hearing took place, SSEM would recharge its costs of attending to the leaseholders through the service charge, imposing additional expense. Mr Hales also complained about the fact that SSEM had sought legal advice from J B Leitch when SSEM held themselves out as having experience in estate management.

11. On 14 November 2022 Judge Vance noted that no electronic bundle had yet been filed by the Landlord or provided to the leaseholders (in breach of the directions), and he ordered the Landlord by 18 November 2022 to provide the tribunal, Mr Moore and Mr Hales with a copy of the bundle, after which the tribunal would decide if an oral hearing was required and if so, whether it should be remote/hybrid rather than in person.

12. SSEM did then provide an electronic bundle of relevant documents to the tribunal and respondent leaseholders, on 18 November 2022, for the use of the tribunal in determining this application. That bundle includes among other things the correspondence between Mr Hales and SSEN and with the tribunal referred to above.

13. The tribunal has not received any further representations from any party as to how the application should be heard, since the provision of the bundle.

14. Having considered all of the documents in the bundle and in particular the correspondence from Mr Hales and Mr Moore, with the tribunal and with SSEM, the tribunal has concluded that it would be most appropriate for it to proceed to determine this application on the papers in the bundle. This is because (a) it is clear what the positions of Mr Hales and Mr Moore are from their emailed submissions; (b) of the concerns in particular of the leaseholders not to incur the costs of an oral hearing if this is not necessary and because (c) SSEM's primary concern, as is apparent from the correspondence and the J B Leitch advice, is to have a clear determination of whether and how they should recharge these costs, rather than seeking any particular outcome. All these points mean this application would best be dealt with as a paper determination, which the tribunal has accordingly done.

15. Since all the leaseholders have been joined as respondents to this application and given the opportunity to make representations on it, this determination is, and is intended to be, binding on all of them.

16. The bundle includes:

(i) Land Registry entries for the Hoola;

(ii) A sample executed lease for apartment 2204 in the West Tower ("**the Lease**"). The tribunal has proceeded on the assumption that all the leases for the other apartments are in essentially the same terms;

(iii) The application, and the reply forms and email submissions from Mr Hales and Mr Moore;

(iv) Directions and correspondence with the tribunal;

(v) Evidence of provision of details of the application to all the leaseholders.

(vi) Invoices for the repair works to sliding doors, where these works have already been carried out. Each of these invoices is for a few hundred pounds, with the greatest being £816. They range in time from January 2020 until November 2022 and so cover more than one service charge year. Following receipt of this Decision, costs will need to be attributed by SSEM to the correct service charge years.

17. It appears from the invoices that the works to date have been carried out on an ad hoc basis for individual flats. However SSEM has raised the additional questions of whether it would make any difference to the conclusion if (a) the charge for a single flat was high (referred to in J B Leitch advice) or (b) if it was proposed to carry out works across a number of flats as a single job, which would reduce the overall cost per flat (email from Mr Logan to the tribunal of 22 March 2022).

18. The application also states that the company which originally installed the sliding doors and the developer have ceased trading so that recovery against them is no longer possible, insofar as there were inherent defects.

19. The thrust of the objections made by Mr Hales and Mr Moore (considered in more detail below) is that since the sliding doors in each case are solely available for use by the tenant of that particular flat, and since some tenants look after their sliding doors whereas others are less careful, it is unreasonable for the cost of repairs to the sliding doors of a

particular flat to be charged to all the leaseholders generally via the service charge. Rather they say the costs should be charged to the tenant who owns that flat, unless they can be claimed from the developer.

20. Accordingly the issue before the tribunal can be broken down as follows:

(i) Are the sliding doors between each apartment and its balcony demised to the leaseholder under the lease or are they retained by the Landlord?

(ii) If they are retained premises, does the Landlord have an obligation to repair them?

(iii) Can the cost of repairs to such sliding doors be recharged by the Landlord to the leaseholders through the service charge?

(iv) If so, is it reasonable for such service charges to be apportioned between all leaseholders in the same way as other service charges, or would the reasonable approach be to apportion them to the owner(s) of the apartment(s) to which work was done?

21. The tribunal will address each these points in turn. Reference will be made to the relevant terms of the Lease at each stage. The tribunal has had regard to the written advice from J B Leitch but has reached its own conclusions on all the points in issue.

22. Ultimately the question, pursuant to section 27A of the 1985 Act, is whether a service charge in respect of these incurred and/or proposed costs is payable under the terms of the Lease and what the reasonable apportionment would be.

Are the sliding doors demised or retained?

23. The demised premises are defined in part 1 of schedule 1 to the Lease (as stated in LR4 in the preamble). Paragraph 1 of schedule 1 states that the demised Premises are the apartment shown edged in red on the plan attached.

24. Clause 1.1 of the Lease defines the "*Retained Premises*" as being "*the East Tower and the West Tower but excluding the Premises and any other Lettable Premises but including for the avoidance of doubt the main structure load bearing walls foundations and roofs.*" Other "*Lettable Premises*" are defined as "*accommodation within the West*

Tower (which accommodation includes such parts of the West Tower as correspond with those included in the Premises by virtue of the description in part 1 of schedule 1) from time to time let to a tenant or tenants or occupied or intended for separate or exclusive occupation." It is assumed that leases relating to the East Tower are in corresponding terms.

25. Therefore the Retained Premises are essentially everything except for the apartments used or intended for occupation by tenants.

26. Paragraph 3 of part 1 of schedule 1 states expressly that "*3. The Premises shall exclude without limitation the following: (a) any doors door frames windows window frames or any forms of glazing which are in or comprise part of the external walls of the West Tower."*

27. It is clear from the papers that the sliding doors with which we are concerned are in the external walls, between the apartment and the balcony in each case.

28. It is absolutely clear therefore that all parts of the glazed sliding doors (or any other doors) between the apartment and the balcony in each case are not part of the demise to the tenant but are part of the Retained Premises. This is true even though each particular balcony door will only be accessible to and used by the leaseholder and occupiers of that apartment. It is unclear from the bundle if all apartments have a balcony, but this conclusion is not affected even if some apartments do not.

29. There are two other provisions in paragraph 2 of Schedule 1, Part 1 which fall to be considered in this context. Sub-paragraph 2(f) provides that the Premises shall include "*the doors door furniture and door frames of or within the Premises (but not the outer face and decorative finish of the main door of the Premises).* However this provision only relates to doors within the apartment itself. It does not apply to the glazed doors onto the balcony which are covered by paragraph 3(a) quoted above.

30. In addition sub-paragraph 2(j) includes within the demised Premises "*the surface of any balcony but not the balcony structure itself."* The lease therefore draws a distinction between the surface used by the tenant (which is demised) and the structure of the balcony (not demised).

31. Finally it is noted that the "Retained Premises" are defined by the Lease in much wider terms than the "Common Parts" (whether the "Residential Common Parts" or the "Estate Common Parts"), both of which are separately defined under clause 1.1. There is no necessary relationship between the fact certain parts of the premises are

"retained" by the Landlord and whether all or most tenants have access to them as common parts.

Does the Landlord have an obligation to repair the sliding doors?

32. By clause 4 of the Lease the Landlord promises to perform the obligations set out, in among others, Schedule 4 (Landlord's covenants) and Schedule 8 (services and the service charge).

33. Paragraph 5 of Schedule 4 states that subject to the tenant paying the Service Charge and the provisions of Schedule 8, the Landlord *"… will use reasonable endeavours to carry out and provide or procure the carrying out and provision of the Services…"*

34. The "Services" which the Landlord agrees to provide are divided in Schedule 8 into "General Services" (in Part 2); "Apartment Services" (in Part 3); "West Tower Services" (for this apartment which is in the West Tower, in Part 4); and "Estate Services" (in part 5).

35. Paragraph 1 of Part 3 obliges the Landlord (among other things) to maintain, repair, preserve, renew and/or replace "… *any parts of the Retained Premises which exclusively serve the private residential parts of the West Tower…*". In addition, paragraph 5 provides that the Landlord will clean the inside and outside of all parts of the private residential parts of the West Tower which the tenants themselves are not obliged to clean under their leases (considered further below).

36. In addition paragraph 1 of Part 4 obliges the Landlord (among other things) to maintain, repair, preserve, renew and/or replace "*the Retained Premises… (other than any parts of the Retained Premises… which exclusively serve the private residential parts of or any other Lettable Premises within the Estate)…*"

37. In other words, paragraph 1 of Part 3 and paragraph 1 of Part 4 between them exhaustively cover all of the "Retained Premises" in the West Tower, requiring the Landlord to maintain, repair etc. all of them. As between the two, repair of the sliding doors most probably falls within "Apartment Services" rather than "West Tower Services", as being a part of the Retained Premises which exclusively serve private residential parts.

38. The Landlord is therefore required to maintain, repair etc. the doors, door frames and glazing of the sliding doors between the apartments and their balconies.

39. In contrast, the tenants do not have any obligations under the Lease to maintain or repair the sliding doors. The tenants do have various obligations, in particular "Tenant covenants" set out in Schedule 2 to

the Lease. These include an obligation (at paragraph 3.1) to keep the Premises in good repair, but as already noted, "Premises" does not include the Retained Premises and so does not include the sliding doors. In addition the tenant is obliged to clean every 3 months the inside of the windows and the outside of any window which is accessible, expressly including the outside of glazing which faces onto the balcony and the inside of any glass screen surrounding the balcony (paragraph 3.3).

40. Accordingly, the tenant's obligation is only to clean the glazing on the sliding doors, not to maintain or repair them.

Can the cost of the repairs to the sliding doors be recharged to tenants through the service charge?

41. By clause 3 of the lease, the tenant covenants (among other things) to perform their obligations under Schedule 8, which relates to the Service Charge. Paragraph 4 of Schedule 8 obliges the tenant to pay the service charge, by way of two half-yearly payments on account followed by a balancing payment if the actual Service Charge for that year exceeds the payments on account.

42. "Service Charge" is defined in paragraph 1 of Schedule 8 as follows:

"***Service Charge:***

(a) a fair and reasonable proportion or proportions properly attributable to the Premises as determined from time to time by the Landlord or its managing agents or accountants whose decision shall be final of the Annual Apartments Expenditure and

(b) a fair and reasonable proportion or proportions properly attributable to the Premises as determined from time to time by the Landlord or its managing agents or accountants whose decision shall be final of the Annual West Tower Expenditure and

(c) a fair and reasonable proportion or proportions properly attributable to the Premises as determined from time to time by the Landlord or its managing agents or accountants whose decision shall be final of the Annual Estate Expenditure."

43. "Annual Apartments Expenditure", "Annual West Tower Expenditure" and "Annual Estate Expenditure" are defined by reference to the corresponding three categories of services in Parts 3, 4 and 5 of Schedule 8. In particular "Annual Apartments Expenditure" is defined

(so far as relevant) as being "*the aggregate expenditure incurred or to be incurred by the Landlord during a Service Year in or incidentally to providing or in respect of all or any of the Apartments Services…"*

44. The Annual Apartments Expenditure will therefore include the cost to the Landlord of repairing the sliding doors, since these costs were incurred in providing "Apartment Services".

45. Therefore these costs can properly be recharged to tenants by the Landlord via the service charge which the tenants are liable to pay.

What is the reasonable way to apportion elements of the Service Charge relating to sliding door repairs, as between tenants?

46. This is an application to which all the leaseholders in the Hoola have been joined and on which they have all been given the opportunity to make representations. This Decision will therefore be binding on all of them. Furthermore no apportionment of these costs has yet been made by the Landlord, as the tribunal understands the position: the Landlord is seeking guidance before it does so. Therefore this is not a situation where decisions on apportionment will have a knock-on effect on parties not before the tribunal so that caution needs to be exercised.

47. As set out above, the tenant under each lease is obliged to pay "*a fair and reasonable proportion or proportions properly attributable to the Premises… of the Annual Apartments Expenditure."*

48. In addition, there is a further clause under this Lease, which permits the Landlord to adjust the apportionment of the service charge for any particular head of expenditure. This is in paragraph 2.3 of Schedule 8, which is in the following terms:

"*The Landlord may if in its opinion it shall be undesirable to calculate or apportion the Service Charge for any one or more of the heads of expenditure of the Services on the basis of the relevant service charge proportion or proportions having regard to [how it would] apply to the completed Estate then the Landlord shall be entitled to calculate or apportion the Service Charge for such head or heads of expenditure by an alternative proportion or proportions calculated by the Landlord in a fair and reasonable manner and notified to the Tenant in writing from time to time during such period*."

49. It appears there has been a slight drafting error in this clause, in that words such as "*how it would*" have been omitted before the words "*…apply to the completed Estate…"*. The tribunal has read the clause as if those words have been inserted, as above.

50. While it appears that this clause was particularly aimed at adjusting the service charges for tenants in occupation before the whole estate had been completed, it is drawn more widely than that. In the tribunal's view it expressly envisages that particular heads of expenditure may be apportioned in a different way to the way the service charge more generally is apportioned between tenants, where it is "*undesirable*" to apportion that particular expenditure in the same way, and there is an alternative proportion that would be "*fair and reasonable*" and is notified to the tenant in writing.

51. There is no evidence before the tribunal as to the manner in which service charges are generally apportioned between the different apartments in the Hoola. The tribunal is aware from other developments owned by this Landlord that its practice on other estates is to apportion by reference to gross internal area of the apartments (see decision of 9 August 2022 in case LON/00AY/LSC/2021/0337), so the tribunal assumes that a similar apportionment would ordinarily be applied in the Hoola. However in the absence of any direct evidence or representations it makes no finding as to what the Landlord's general practice is for service charge apportionment at the Hoola or whether that is reasonable.

52. As quoted above, the proportions are not fixed by the Lease, but are variable. As such, the apportionment as well as the total amounts of the expenditure is subject to review by the tribunal, under section 19 of the 1985 Act, in considering whether those service charges have been or will be "*reasonably incurred*". This was confirmed by the Court of Appeal in *Oliver v. Sheffield City Council* [2017] EWCA Civ 225 and *Aviva Ground Rent GP Ltd v. Williams* [2021] EWCA Civ 27.

53. Furthermore, although the Lease states that it is the Landlord, its managing agents or accountants who shall determine what is a "*fair and reasonable proportion*" under paragraph 1 of Schedule 8, or shall determine any alternative proportion under paragraph 2.3, the cases of *Oliver* and *Aviva* also decide that such clauses are void under section 27A(6) of the 1985 Act insofar as they purport to give the landlord a complete discretion to determine the apportionment. Rather such clauses must be interpreted as enabling the tribunal to determine what is a reasonable apportionment.

54. It is therefore for the tribunal to determine the reasonable apportionment of the costs of sliding door repairs (although in fact the Landlord has not made any apportionment itself but has asked the tribunal to do so). In all the circumstances, the tribunal also considers that it was entirely appropriate for the Landlord to seek that guidance from the tribunal, as its solicitors suggested it did and as it has done.

55. In their advice (which in other respects accords with the conclusions which the tribunal has reached above), J B Leitch advised that although

the Lease allows the proportion charged to vary, it would be difficult to suggest that any one leaseholder should contribute a differing amount because the balcony door that serves their apartment requires works but the remaining ones do not. They say that if the Landlord sought to apportion all the costs to that one unit then the leaseholder might seek to challenge that apportionment via the tribunal, and suggest that the Landlord would require expert surveying evidence to substantiate that proportion, but that the tribunal might still consider this unreasonable. Therefore they advised the Landlord to obtain expert surveying advice on the reasonableness of the proposed proportion, as well as suggesting that the Landlord obtain a determination of reasonableness and payability from the tribunal.

56. No such expert surveying evidence has been obtained or is before the tribunal, and the tribunal repeats that it is not making any determination as to the approach to apportionment which it would be reasonable for the Landlord to apply in relation to the general run of service charges, having received no evidence or submissions on this. However, the tribunal does consider it can reach a decision on the reasonable approach to apportioning costs of repairing individual sliding doors, on the evidence before it.

57. Mr Hales submits that damage to the closing mechanisms of balcony doors, including for example rubber seals coming loose, is often the result of lack of care by owners, and that in any event since the doors are solely used by and accessible to the particular leaseholder, and not in any way common parts nor part of the structure of the Tower, the cost of repairs to the doors should be paid by the particular leaseholder. Mr Moore makes a similar point, saying that any damage to doors is caused by misuse or poor maintenance and so costs should be incurred by the owner. Alternatively he says that if the fault is with the installation or design, this should be claimed against the developer or installer. As to this last point, the Landlord says this remedy is not available as the developer and installer are no longer in business.

58. No submissions have been received from any of the tenants whose sliding doors have been repaired, although they have been given the opportunity to do so.

The tribunal's determination

59. The tribunal has concluded on all the evidence that where repairs are required to the sliding doors onto the balconies of individual apartments for one-off disrepair or damage, then the reasonable approach would be to apportion that cost to the individual flat concerned. This would be as an exercise of the power under paragraph 2.3 in Schedule 8 to make a different apportionment from the norm, because it is undesirable to recover costs of this type through the usual service charge (which is apportioned between all the leaseholders).

60. The reasons are that: (a) the sliding doors solely benefit that particular apartment, and so the repair also essentially benefits that apartment; (b) the sliding doors are not part of the structural fabric of the Tower and so do not provide wider benefit to other tenants; and (c) problems with individual sliding doors will sometimes be the result of neglect or misuse by the particular leaseholder or their sub-tenants, whether or not this constitutes any actual breach of the Lease by them.

61. All of the works described in the invoices in the bundle are small works, which fit this description and so should be charged to the individual flat. However it would make no difference to this conclusion if the works to a particular apartment's sliding door were significantly more expensive, so long as they were still one-off works to a particular apartment.

62. It may be more efficient for the Landlord to conduct such repairs across a number of flats at the same time and divide the costs between those flats, which would also be reasonable.

63. However, this determination is not intended to apply to any situation where it becomes necessary for the Landlord to undertake works across a large proportion of the Tower, e.g. because of widespread damage or necessity for repair or renewal, which is not just a problem with an individual door or glazing.

64. No challenge has been made to the individual costs of the repairs set out in the invoices in the bundle, all of which are fairly modest, but issues of whether the repairs to the sliding doors of particular apartments were of a reasonable standard and/or whether the amount charged for those repairs was reasonable, were not before the tribunal (not being within the application, nor included as issues in the directions of 29 July 2022).

65. Accordingly, the tribunal determines that the reasonable approach would be to charge the individual apartment-owner, through their service charge, the costs of the repairs to the sliding doors of their particular apartment.

66. ~~Insofar as those costs are contained in the invoices before the tribunal, the amounts are reasonable and payable.~~ Such costs should be demanded along with other service charges through the usual service charge procedure. Since issues around the quality and cost of the repairs to the sliding doors of particular apartments were not before the tribunal, the tribunal makes no finding as to whether any such repairs were carried out to a reasonable standard, or whether the amount charged was reasonable. No party is precluded by this Amended Decision from applying under s.27A of the 1985 Act for a determination of whether the repairs to the sliding doors of a particular apartment

were carried out to a reasonable standard and/or whether those costs were reasonable.

67. The Landlord will comply with the obligation in paragraph 2.3 of Schedule 8 to notify the tenants in writing of any change to the usual apportionment for a particular head of expenditure if it writes to all leaseholders notifying them of this Amended Decision and/or refers to this Amended Decision when notifying a leaseholder that they must meet the costs of the repairs to their individual sliding doors.

68. In any event the Landlord is ordered to make a copy of this Amended Decision available to all leaseholders through its website within 14 days and to remove any copy of the original Decision of 14 December 2022, and notify the leaseholders in the Schedule that it has done so. The time for any party to appeal against this Amended Decision shall run from the date when the tribunal sends this Amended Decision to the parties.

Name: Judge Nicola Rushton KC **Date:** ~~14 December 2022~~ 20 January 2023

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 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.