

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0009/06/25

In the Matter of Flat 5, 83 Abbey Road, Llandudno, Conwy LL30 2EH

And in the Matter of a transfer from the Caernarfon County Court under section 176A of the Commonhold and Leasehold Reform Act 2002

Applicant: Builders Merchants (Wimbledon) Limited
Applicant's Representative: Stefanie Smith of Counsel

Respondent: Richard Owen Morris
Respondent's Representative: Gary Donaldson of Counsel

Tribunal: Colin Green (Chairman)
Tom Daulby MRICS (Surveyor Member)
Susan Hurds (Lay Member)

Date of Hearing: 22.01.26

DECISION

The Respondent's outstanding service charge liability for the period 22 October 2019 to 11 March 2024 is £6,023.12.

REASONS

Preliminary

1. This matter arises out of proceedings brought by the Applicant against the Respondent in the Caernarfon County Court, Claim Number L4QZ7F44, seeking judgement in respect of alleged service charge and building insurance arrears of £4,459.62, interest under s. 69 of the County Courts Act 1984 of £266.24, and contractual costs of £1,851.00. On 13 December 2024, an order was made by District Judge Hynes in the County Court, pursuant to s. 176A of the Commonhold and Leasehold Reform Act 2002, transferring to this Tribunal the determination of the service charge and administration charge issues in the County Court proceedings.
2. The Tribunal's jurisdiction in that regard is conferred by section 27A of the Landlord and Tenant Act 1985 and paragraph 5 of Part 1 of Schedule 11 to the 2002 Act. Directions were made by the Tribunal on 18 July 2025, amended on 4 August 2025, which included provision for the completion of a Scott Schedule by the parties.

3. An inspection of 83 Abbey Road (“the Building”) was carried out by Mr. Daulby, the surveyor member of the panel, on 15 January 2026 in the presence of Mr. Morris, the Respondent, and his solicitor.
4. The hearing took place via Microsoft Teams on 22 January 2026. Both parties were represented by counsel, to whom the Tribunal is grateful for the detailed presentation of their respective client’s cases. Testimony was given by Mr. Morris and Mr. Gary Rendle, the head of property management at Residential Block Management Group Limited (Trading as “Plymouth Block Management”) the managing agents for the Applicant during the period under consideration until 31 October 2024. Both were questioned by opposing counsel.

The Building

5. 83 Abbey Road comprises a late-Victorian four-storey semi-detached building that was converted some years ago into seven self-contained flats. There is a flat in the basement level and two flats on each of the upper three storeys. Each of the flats is subject to a 999-year lease and is sublet. Mr. Morris owns flat 5, and ownership of the remaining six flats is divided between two other owners.

The Lease

6. By a lease dated 23 August 2007, made between Barbara Hackett as landlord and Mr. Morris as tenant (“the Lease”), the landlord demised flat 5 to Mr. Morris for a term of 999 years from and including 6 April 2006. At all material times the Applicant has been the freehold owner of the property.
7. The Lease contains the following relevant provisions.
 - (1) Under clauses 2.2 and 5.3, covenants by the Tenant to pay an “Insurance Rent”, being one-eighth of the cost to the Landlord from time to time of paying the premium for insuring the Building. The definition of “service charge” in s. 18 of the 1985 Act means that the Insurance Rent qualifies as a service charge.
 - (2) The Third Schedule to the Lease makes provision for payment of a service charge in respect of the services specified in the Second Schedule. The service charge year runs from 1 January to 31 December and the Tenant’s contribution to annual expenditure is one-eighth, save in respect of the supply of water where it is one-seventh. The service charge machinery is standard, with provision for payment of an advance service charge based on a budget for the forthcoming year, payable in equal instalments on the usual quarter days (March 25, June 24, September 29, and December 25) and payment of either a balancing sum or provision of a credit after the provision of end of year accounts which reconcile budgeted against actual expenditure for that year.

The claim

8. Miss Smith on behalf of the Applicant confirmed that the interest claimed in the County Court Particulars of Claim is under statute, not under any provision in the Lease, and that the costs claimed would be under the County Court jurisdiction to award costs, not under the Lease. This leaves the amount itemised in a statement of account showing sums invoiced and payments received from Mr. Morris, with an

outstanding balance of £4,459.62 for the period 22 October 2019 to 11 March 2024, consisting primarily of invoices for the advance quarterly service charge and the Insurance Rent.

9. It was not disputed that an adjustment needed to be made to that figure. Although the statement of account contains a credit on 24 June 2020 of £492.40 for the service charge year ending 31 December 2019, there is no reconciliation debit or credit for the service charge years 2020, 2021, 2022, and 2023. (The claim for payments in 2024 is in respect of advance service charge payments only and to date there have been no end of year accounts for 2024.)
10. During the hearing, reconciliation figures for those missing years were provided:
- | | |
|-----|------------------|
| (1) | 2020: (£521.62) |
| (2) | 2021: £1,556.84 |
| (3) | 2022: £23.55 |
| (4) | 2023: £696.73 |
| | <u>£1,775.50</u> |

The addition of £1,775.50 to £4,459.62 produces £6,215.12. The remaining issues, therefore, are whether any adjustments should be made to that figure.

Scott Schedule

11. This identifies the specific service charge and Insurance Rent items in dispute for the years 2021, 2022, and 2023.
12. *Cleaning* – Mr. Morris' case is that there should be no charge for cleaning the common parts of the Building as no cleaning was carried out.
13. Mr. Morris lived in flat 5 until 2019 when he sublet, and at no time has he ever seen any cleaning being carried out, and nor has his subtenant or any other flat owner. The evidence from photographs (dates unknown), and confirmed on the inspection, is that the carpeting is grubby and heavily stained in parts and in one photograph carpet is missing. An Improvement Notice was served in November 2024. The copy in the bundle is difficult to decipher but it may relate in part to damp.
14. The evidence on behalf of the Applicant was a series of invoices in respect of cleaning services provided by Fresh Commercial Limited. The invoices show monthly cleaning in 2021, scaled back to quarterly in 2022 due to the limited funds available, then back to monthly in 2023 until July 2023 when it stopped altogether, again due to lack of funds. Mr. Rendle had not seen the cleaners on site and there was no written contract, but Fresh Commercial carried out cleaning at several properties managed by the managing agents and Mr. Rendle had no reason to believe that they were not carrying out the cleaning for which they invoiced. He accepted that the Building was in a poor condition, due to the substantial service charge arrears, primarily from the other two flat owners, and therefore the absence of funds. This is substantiated by the annual accounts and the significant difference between money available and sums accruing

from year to year, and the fact that the cleaners, and other creditors (including the managing agents) are still owed money in respect of their services.

15. On balance, the Tribunal is not satisfied that no cleaning was carried out. It is unlikely that Fresh Commercial would have raised invoices over a protracted period if they had not carried out cleaning. Given the condition of the carpets and common parts, it is not surprising that evidence of cleaning is not apparent, and it is possible that the photographs were taken after cleaning ceased altogether in July 2023. The Tribunal only heard evidence from Mr. Morris that the cleaners had never been seen, and he has not lived at flat 5 since 2019 so that it is conceivable he would not have seen them from 2021 to 2023.
16. *Fire Risk Assessment* – After hearing the evidence there was no dispute over this item.
17. *Fire Safety* – The evidence from Mr. Morris was that, as seen in photographs, fire extinguisher tests had not been carried out since 2018 and therefore there should be no charge. An Improvement Notice also identified steps to be taken concerning fire precautions.
18. Mr. Rendle accepted that he would have expected Stuart Todd t/a Abbey Fire to carry out such tests, if required under the relevant Fire Regulations. The invoices from Mr. Todd however, describe the service carried out as fire alarms tests only with no reference to fire extinguishers. Therefore, irrespective of whether he should also have been carrying out fire extinguisher tests, these were not included in the service for which he charged. Therefore, in the Tribunal's view, the charge is justified. The need for additional fire safety precautions does not affect such charge, and those works or services would presumably have given rise additional expenditure.
19. *Water Rates* – After hearing the evidence there was no dispute over this item.
20. *Legal Fees* – After hearing the evidence there was no dispute over this item.
21. *Insurance* – Mr. Morris required confirmation that the insurance was taken out, which was provided by the Applicant on disclosure. The previous managing agent, Urbanpoint, continued to deal with the building insurance, which was done under a block policy. Mr. Morris also requested that the Applicant provide evidence that the insurance premiums were reasonable, but in cases such as this in the first instance the burden is on him to provide some evidence they were not. No alternative quotes for insurance were provided.
22. The 2023 cover from Citygate Insurance Services gives a Building Declared Value of £1,473,680 and the Building Sum Insured of £1,989,468. It was suggested by Mr. Donaldson that these figures were rather high. In the Tribunal's view however, such figures for both 2023 and for previous years, are what one would expect for rebuilding costs for a building of this type in its location. The premiums are also in the range one would expect.

23. It should also be noted that Urbanpoint's statement of account of 28 June 2022 shows a balance brought forward of £15,851.86. This is not part of the premium payable that year and is likely to be an accrual figure reflecting a debt for insurance carried over from previous years, unpaid due to lack of funds.

Additional Issue

24. There was a further point raised by the Tribunal chairman concerning late payment fees that have been charged to Mr. Morris by the managing agents. These are in respect of letters sent to him concerning his arrears with a charge imposed on a sliding scale for each subsequent letter. According to Mr. Rendle, this is something that was not covered by the management fee which the Applicant was charged for the agent's services, and there was no invoice to the Applicant in respect of such letters.

25. The late payment fees itemised in the schedule are as follows:

(1)	27 January 2020:	£42.00
(2)	30 November 2020:	£24.00
(3)	14 December 2020:	£42.00
(4)	26 July 2023:	£42.00
(5)	26 July 2023:	£42.00
		<u>£192.00</u>

It is unclear why there are two late payment fees for the same amount on 26 July 2023.

26. The issue is whether there is a liability on the part of the Tenant to the Landlord under the terms of the Lease to make such payments. Miss Smith relied on the provisions of paragraph 5 of the Second Schedule to the Lease:

"To employ at the Landlord's discretion a firm of managing agents to manage the Building and discharge all proper fees charges and expenses payable to such agents or such other persons who may be managing the Building including the cost of computing and collecting the Service Charge."

27. Miss Smith submitted that the late payment fees were part of the cost of collecting the service charge and therefore, Mr. Morris is liable to pay them as part of his service charge.

28. For the following reasons, the Tribunal does not agree. Service Charge liability is in respect of the Landlord's Annual Expenditure, defined by clause 1.12 as:

"all costs expenses and outgoings whatever reasonably and properly incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services..."

The Services are the services facilities and amenities specified in the Second Schedule (clause 1.10).

29. Paragraph 5 of the Second Schedule covers costs discharged by the Landlord, but late payment fees are not something for which the Landlord is liable. As noted above, the

managing agent has not invoiced the Applicant in respect of them. Therefore, the Applicant has not discharged the late payment fees, and then passed on by reference to Annual Expenditure in Mr. Morris' service charge, which in any event would be a one-eighth liability, not for the whole sum. It is instructive by way of comparison, that legal fees incurred by the Landlord in bringing proceedings against a lease owner for arrears of service charge (and presumably not recovered by way of a costs order) are treated as a service charge expense, for which each lease owner is liable for one-eighth.

30. In addition, the amounts involved are unlikely to reflect the managing agent's costs in sending such letters – £34.00 for a second letter, £42.00 for a third. Rather, as Mr. Donaldson submitted, such sums are in the nature of a penalty or fine: an incentive to discharge the arrears. There is nothing in the Lease however, that renders the Tenant liable for such sums. The managing agent is not a party to the Lease and, for the reasons stated, absent the liability to discharge such sums on the part of the Landlord to the managing agent, there is no liability on the part of the Tenant for them.

Conclusion

31. In the light of the above, £192.00 in respect of late payment fees should be deducted from £6,215.12 (paragraph 10 above), so that Mr. Morris' outstanding service charge liability for the period 22 October 2019 to 11 March 2024 is £6,023.12.

Dated this 9th day of February 2026

Colin Green (Chairman)