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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2015/0437**
Property	**:**	**39 and 41 Craven Hill Gardens, London W2 3EA**
Applicant	**:**	**38/41 CHG Residents Company Limited ("CHG")**
Representative	**:**	**In person**
Respondent	**:**	**The lessees specified in the list accompanying the application**
Representative	**:**	**N/A**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**(1) Judge Amran Vance** **(2) Mr H Geddes** **(3) Mr Alan Ring**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**15 April 2019**

DECISION

Decisions of the tribunal

(1) We determine that Ms Hyslop did not receive service charge demands for the 2014/15 and 2015/16 service charge years, said by the applicant to have been sent or delivered to her on or about 25 March 2014, 19 September 2014, 21 July 2015, 24 July 2015, 15 August 2015 and 29 September 2015; and

(2) As a consequence, no valid demands for those service charge costs were received by her on, or about, those dates.

Background

(3) This decision is supplemental to the decision of the tribunal issued on 19 November 2018, in which the tribunal made determinations as to service charge payable by Ms Hyslop, and the long lessees of 39 and 41 Craven Hill Gardens ("the Building") for the service charge years 2014/15 and 2015/16 (actual costs).

(4) In that decision, we determined, subject to the qualification referred to in the next paragraph, that:

(a) the actual service charge payable by Ms Hyslop for the service charge year ending 31 March 2015 was her apportioned share of **£49,616.69;**

(b) the actual service charge payable by Ms Hyslop for the service charge year ending 31 March 2016 was her apportioned share of **£55,851.76**

(c) all of the budgeted service charge costs for the service charge year ending 31 March 2016 (in the sum of **£57,599**) were payable by Ms Hyslop (in her apportioned share), except for the sum of £450 for directors' and officers' insurance; and

(d) reserve fund contributions of **£90,000** for the 2014/15 service charge year and **£40,000** for the 2015/16 service charge year were payable by Ms Hyslop, again, in her apportioned share.

(5) However, we determined that these costs were payable by Ms Hyslop *if* they had been validly demanded from her and, if not, once validly demanded, subject to any limitation on recovery imposed by virtue of section 20B of the Landlord and Tenant Act 1985 ("the 1985 Act"). Her position, throughout this application, has been that none of the service charge demands said by the applicant to have been sent to her, for these service charge years, were received by her.

(6) At paragraph 28 of our decision we gave permission for CHG and Ms Hyslop to restore this application for a determination as to whether the sums in question were validly demanded from Ms Hyslop and as to the impact, if any

of s.20B of the 1985 Act ("the Residual Issue"). Ms Hyslop subsequently applied for the application to be restored so that the tribunal could determine the Residual Issue. Directions were issued on 4 December 2018 and varied on 12 December 2018. The application was listed for hearing on 20 and 21 March 2019, together with the final hearing of an application issued on 4 October 2018, by CHG, against Ms Hyslop (LON/00BK/LSC/2018/0365), in which CHG sought a determination as to Ms Hyslop's service charge liability for the service charge years ending 31 March 2017, 2018 and 2019.

(7) This decision concerns the Residual Issue only. A separate decision will be issued in respect of application LON/00BK/LSC/2018/0365.

(8) Ms Hyslop's lease ("the Lease") was granted on 26 September 1997, commencing 25 March 1976, for a term of 99 years. The relevant provisions concerning service charge liability were set out in our previous decision and are not repeated here.

(9) Numbers in square brackets and in bold below refer to the hearing bundle prepared by the applicant for this determination.

The Hearing

(10) The hearing in respect of the Residual Issue took place on the morning of 20 March 2019. Ms Hyslop was present, as was Mr Gream, one of the directors of CHG. CHG's solicitor, Mr Comport, of Dale & Dale, solicitors, was also present, but he was only representing CHG in respect of application LON/00BK/LSC/2018/0365. Mr Gream represented CHG in respect of this application, although he received some advice from Mr Comport during the course of the hearing.

(11) We heard oral evidence from both Mr Gream and Ms Hyslop, including cross-examination. Both had provided witness statements in advance of the hearing.

Jurisdictional challenge

(12) Towards the end of the hearing Mr Gream raised, for the first time, a challenge to the tribunal's jurisdiction in respect of the Residual Issue. He stated that the applicant's position was that the tribunal lacked jurisdiction because the issue had already been determined by HHJ Bailey in the County Court on 20 September 2017 (as referred to in our decision dated 19 November 2018). We rejected that challenge. Judge Bailey's decision was substantially set aside by Mr Justice Freedman on 5 November 2018 in *Iris Hyslop v 38/41 CHG Residents Company Limited* [2018] EWHC 3983 QB and paragraph 69 of that judgment makes it clear that this is an issue that the tribunal must decide afresh without regard to HHJ Bailey's decision.

The Applicant's Case

(13) Mr Gream explained that CHG's practice is to send out service charge demands in March and September of every year. In March, a leaseholder is sent the budget for that year, along with a demand for the first half of the service charge and reserve fund contribution due for that year. The second half is demanded in September each year, and at around about the same time, depending on when the accounts are prepared, a final, balancing, demand for the previous service charge year is sent to leaseholders.

(14) In its statement in reply **[83]**, CHG provided a timeline of events relevant to the Residual Issue, including details of when and how service charge demands were sent to Ms Hyslop. According to CHG:

(a) on 13 June 2013, Ms Hyslop's account was placed "on stop" due to unpaid service charge arrears and CHG's intention to pursue recovery. The effect of the stop was that she would no longer receive automatic communications from FW Gapp, the applicant's managing agents. FW Gapp were subsequently instructed by Mr Gream to return or destroy all communications received from Ms Hyslop whilst her account was 'on stop';

(b) on 16 January 2014, Mr Gream sent Ms Hyslop a notice under s.48 Landlord & Tenant Act 1987 notifying her that communications from her should be sent directly to CHG and not the managing agents for the Building, FW Gapp;

(c) email correspondence between Mr Gream and FW Gapp suggests that the stop was temporarily lifted on 31 March 2014, so that demands for the 2014/15 service charge year (the budget and the demand for the first instalment of that years' service charge) could be sent to Ms Hyslop. Her account was then placed on stop again. A copy of the invoice was included at **[43-45]** but this is not an actual copy of the physical invoice (as no paper copies are kept by CHG). It is an electronically generated reconstruction of an invoice dated 25 March 2014, in which the sum of £727 is demanded for on account service charges and £500 for a reserve fund contribution for the period 25 March 2014 to 28 September 2014;

(d) an electronic reconstruction for the second half of that year's payment, dated 19 September 2014 (covering the period 29 September 2014 to 24 March 2015), appears at **[46]** but Mr Gream stated that he was unable to explain whether and, if so, how, this was sent to Ms Hyslop;

(e) Mr Gream also acknowledged that whilst the budget for the 2015/16 service charge year, and the demand for the first instalment of that year's service charge should have been sent to Ms Hyslop in March 2015, the applicant has no records or documentation to evidence that this took place;

(f) a notice under s.20B of the 1985 Act was hand delivered to Ms Hyslop on 30 June 2015 by Mr Gream**.** In an email to FW Gapp dated 30 June 2015, Mr Gream states that he delivered the letter to the front door and that he would check that night whether she (presumably Ms Hyslop) had failed to collect it in which case he would hand deliver it under her door.

(g) by July 2015, following the receipt of legal advice, Mr Gream lifted the 'stop' on Ms Hyslop's account and, on 21 July 2015, he personally hand-delivered:

(i) both demands for the 2014/15 service charge year, namely the demand dated 25 March 2014 and the demand dated 29 September 2014;

(ii) a demand dated 15 July 2015, for the first half of the 2015/16 charge covering 25 March 2015 to 28 September 2015 (electronic reproduction at **[47];**

(iii) a statement of her account

(iv) a covering letter

(h) an email dated 15 July 2015 from FW Gapp to various individuals, including Mr Gream **[104]**, records the lifting of the 'stop' on the account and the intention to "demand everything due" from Ms Hyslop;

(i) a copy of a letter dated 15 July 2015, said by Mr Gream to have been included in the documentation he hand-delivered on 21 July 2015 is at **[104-105].** Photographs said to be taken on 20 July 2015 of the documents he delivered on 21 July 2015, and a photograph of him about to put an envelope through the front door of the Building is at **[106]**. He confirmed, in oral evidence, that the door in question is the communal door to number 41, and that behind the letterbox there is a wire cage to catch post. He said that residents collect post that gathers there and then insert it into the appropriate combination-locked box for the correct individual resident located in the hallway;

(j) In his witness statement **[38],** Mr Gream states that on 24 July 2015 he reprinted and delivered the documents he had delivered on 21 July 2015, and hand-delivered them again, this time, without an envelope, by putting them under the internal door to Ms Hyslop's flat. In oral evidence, he told us that he did this because he was concerned that putting the envelope containing the documents through the communal letterbox on 20 July 2015, was insufficient given their importance. A photograph taken on the day of his visit shows two letters, one on top of the other **[107]**. Unlike, the photograph said to have been taken on 20 July 2015, it does not appear to show any invoices. When questioned, Mr Gream informed us that he could not recall if all of the documents he delivered on 21 July 2015 where

re-delivered on 24 July 2015, but he believed that the cover letter was delivered;

(k) On 12 August 2015, at Mr Gream's request, FW Gapp prepared a 'payment reminder' notice for Ms Hyslop's attention. This is referred to in an email exchange between them dated 10 August 2015 **[108]**. In his witness statement **[38]** Mr Gream explains that he hand-delivered this document, but did not photograph it, and cannot recall how he delivered it. In his oral evidence Mr Gream stated that this would probably have been a copy of a demand and a chaser letter;

(l) On 24 August 2015, FW Gapp sent a demand, by post, for the second instalment due for the 2015/16 service charge year to all leaseholders, including Ms Hyslop;

(m) according to the applicant's statement of case **[36]** a demand dated 29 September 2015**[48]** covering the second instalment for 2015/16 was sent by post to MS Hyslop by FW Gapp. The demand included in the hearing bundle seeks payment of: £756 for service charges; £500 for a reserve fund contribution and £2,250 for an additional reserve fund contribution (all for the period 29 September 2015 to 24 March 2016);

(n) On 20 October 2015, Ms Hyslop's account was but back "on stop" by FW Gapp.

(15) The applicant acknowledges, in its statement of case, that prior to July 2015 it has an evidential problem in establishing that the demands delivered to Ms Hyslop were received by her. However, its case is that demands for the service charge years in issue were delivered to her on 21 July 2015, 24 July 2015, 15 August 2015 and on 29 September 2015, within the 18-month limit referred to in s.20B of the 1985 Act.

Ms Hyslop's Case

(16) Ms Hyslop denied receiving any of the demands in question. Her oral evidence was that whilst she has not had problems with the post office delivering letters to the Building, sometimes letters went missing after delivery, because residents put them in the wrong individual boxes in the hallway. She said that many of the residents are absent for long periods, and that sometimes residents find documents placed on the ledge in the hallway, that should have been delivered a long time ago. In her witness statement she says that residents have repeatedly had mail interfered with after it has been delivered to the Building.

(17) She suggests that the photographs said to have been taken by Mr Gream may have been staged, and that it cannot be determined what documents were contained within the envelopes shown in these pictures.

(18) It is her case that the applicant cannot rely upon the invoices included in the hearing bundle as they were not demanded within the 18-month period specified in s.20B.

Decision and Reasons

(19) We determine that that none of the demands for the two service charge years in issue were received by Ms Hyslop on the dates advanced by the applicant.

(20) At the hearing, Mr Gream, after taking advice from Mr Comport, conceded, correctly in our view, that when identifying if a valid demand had been made of Ms Hyslop, given her denial of receipt, the test to be applied is whether we are satisfied that a demand was *received*, not whether it was delivered to her.

2014/15 service charge year

(21) In an email to FW Gapp on 31 March 2014 **[101]**, Mr Gream confirms that a demand relating to Ms Hyslop's account should be generated and sent to him. The suggestion in the applicant's statement of case is that the demand in question was the demand dated 25 March 2014. However, Mr Gream was unable to explain whether, when, and how that demand was delivered to Ms Hyslop in March 2014. Given the lack of evidence as to delivery, and Ms Hyslop's denial of receipt, we cannot be satisfied that this demand was received by her in March 2014.

(22) Similarly, there is a complete absence of any evidence as to whether, when and how the demand dated 19 September 2014, covering the second half of the 2014/15 service charge **[46]** was delivered Ms Hyslop and, as such, we are not satisfied that this was received by her in September 2014;

(23) Nor are we satisfied that the applicant has established that copies of the 25 March 2014 and 29 September 2014 demands were received by Ms Hyslop on either 21 July 2015 or 24 July 2015. We accept Mr Gream's evidence that he attended the Building on 21 July 2014 and that he posted documents, in an envelope addressed to Ms Hyslop, through the communal letter box in the front door. We found his oral evidence credible and it is corroborated by the photograph that he took on 20 July 2014 of the documents to be delivered to her and the photograph of him about to insert an envelope addressed to Ms Hyslop through the front door.

(24) However, we cannot identify with any certainty *what* documents were included in that envelope. Although the applicant suggests that both the 25 March 2014 and the 29 September 2014 demands were enclosed, only one document that looks like a demand appears in the photograph taken on 20 July 2014. Nor can we be certain what demand it is, as the image is too small to allow us to read the document in question. Further, the covering letter said to have been included in the envelope **[104]** refers to "an up to date service charge demand as of March 2015". The reference is therefore to a demand in

the singular, rather than the plural. No physical copy of the demand said to have been included in that envelope has been kept.

(25) The second problem with the 21 July 2015 delivery by Mr Gream, is that the envelope was delivered through the communal letterbox to the Building. We accept Ms Hyslop's evidence, which was not challenged by Mr Gream, that post delivered to the Building is sometimes mistakenly placed by residents in wrong individual boxes located in the hallway. Given this inherent risk, and Ms Hyslop's denial that she received the documents said by Mr Gream to have been posted through the letterbox that day, we conclude that she did not receive the 25 March 2014 or the 29 September 2014 demands, said to have been delivered on that day.

(26) We accept Mr Gream's oral evidence that he attended the Building again on 24 July 2015, as corroborated by the photograph taken that day **[107]** and that he pushed documents under Ms Hyslop's door. The image of the photograph in the bundle is too small and too blurry to enable us to read the documents pictured. Nevertheless, if the applicant could establish that the documents pushed under her door included the 25 March 2014 and the 29 September 2014 demands, or a demand that sought payment of all the service charges due for the 2014/2015 year, then it would, in our view, have a persuasive case that, on the balance of probabilities, Ms Hyslop received such demands.

(27) However, although the case advanced in paragraph 7e of the applicant's statement of case **[36]** and in paragraph 5 of Mr Gream's witness statement **[38]** is that the same documents that were delivered on 21 July 2015 were reprinted and placed under Ms Hyslop's door on 24 July 2015, this was not reflected in Mr Gream's oral evidence to us. His oral evidence was that he could not recall if all the documents he delivered on 21 July 2015 were re-delivered on 24 July 2015, although he thought the covering letter was delivered. Given his acknowledged uncertainty, and the fact that Mr Gream's photograph of the documents said to have been posted under Ms Hyslop's door only shows two letters, and not a service charge demand, we are not satisfied that the documents pushed under Ms Hyslop's door on 24 July 2015 included a service charge demand for the 2014/15 service charge year.

2015/16 service charge year

(28) The two service charge demands included in the bundle for this service charge year are dated 15 July 2015 **[47]** and 29 September 2015 **[48].** The applicant's case is that the 15 July 2015 demand was hand delivered by Mr Gream on 21 July 2015 and 24 July 2015. However, for the reasons stated above we reject that submission and conclude that they Ms Hyslop did not receive these demands on those dates.

(29) As to the 29 September 2015 demand, in the applicant's statement of case, it is said that this was sent by post to Ms Hyslop by FW Gapp. However, Mr Gream's witness statement does not contain any reference to when and how this demand was sent to Ms Hyslop. Nor is there any witness evidence from

anyone at FW Gapp explaining this. The hearing bundle does not include a copy of a covering letter from FW Gapp to Ms Hyslop, nor any email exchange between Mr Gream and FW Gapp evidencing delivery of this demand. Given the lack of any evidence to corroborate the assertion made in the statement of case, and Ms Hyslop's denial of receipt of this demand, we are not satisfied that this demand was received by her.

(30) There is insufficient evidence to support the assertion in the applicant's statement of case that a service charge demand was delivered to Ms Hyslop on 15 August 2015. The email exchange between Mr Gream and FW Gapp refers only to a 'payment reminder' notice. Although, in his oral evidence, Mr Gream suggested that the documents delivered would probably have been a copy of a demand and a chaser letter, there is no physical evidence as to what documents were delivered by him. There is no photograph of the documents said to have been delivered and Mr Gream was unable to recall how he delivered these documents to Ms Hyslop.

(31) It was also suggested that FW Gapp sent a demand, by post, for the second instalment due for the 2015/16 service charge year to all leaseholders, including Ms Hyslop on 24 August 2015. However, the bundle does not include any demand dated in the month of August 2015, and no witness statement from anyone at FW Gapp has been provided evidencing what documents were sent to Ms Hyslop on this date and how they were sent to her. The only available evidence is the reference in an email from FW Gapp to Mr Gream dated 24 August 2015 **[109]** that a "demand and reminder" has been issued to Ms Hyslop. Mr Gream's witness statement is silent on this point. Given all these uncertainties, and Ms Hyslop's denial, we are not satisfied that a service charge demand for the second instalment of the 2015/16 service charge year was sent by FW Gapp to Ms Hyslop. We accept that she did not receive one.

Conclusion

(32) We therefore conclude that none of the demands said by the applicant to have been sent or delivered to Ms Hyslop for the two service charge years in question were received by her. The applicant has not suggested that they were sent to her on any other dates other than those referred to in this decision. Whether the applicant can now issue a valid demand for these costs depends on whether the costs were incurred more than 18 months before the demand. If the answer to that question is yes, then the starting point is that they are not recoverable by virtue of s.20B(1) of the 1985 Act. However, s.20B(2) provides that this bar to recovery does not apply where a tenant was informed in writing within 18 months of the costs being incurred that those costs had been incurred and that they would be recoverable from the tenant.

(33) The applicant appears to be suggesting that a notice under s.20B(2) of the 1985 Act was delivered to Ms Hyslop by Mr Gream on 30 June 2015. We are unable, however, to determine whether the notice said to have been delivered meets the requirements of s.20B as we have not been provided with a copy of

the notice and no legal submissions on this point have been made by the parties. If the applicant is satisfied that a valid s.20B(2) notice was given to Ms Hyslop then it is open to it to demand from her the costs that were the subject of that notice. If it does so, Ms Hyslop has a right to challenge her liability to pay those costs in a fresh application to this tribunal.

Name: Amran Vance **Date:** 15 April 2019

Appendix - 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).