



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

**Case Reference** : **LON/00BJ/LSC/20198/0020**

**Property** : **The Battersea Works Estate Paveley Drive London SW11 3TP**

**Applicant** : **Mr D Napier and 18 others**

**Representative** : **In person**

**Respondent** : **Carew Management Ltd**

**Representative** : **Mr P Sissons of Counsel**

**Type of Application** : **S27A and s20C Landlord and Tenant Act 1985, Sched 11  
Commonhold and Leasehold Reform At 2002**

**Tribunal Members** : **Judge F J Silverman Dip Fr LL.M  
Mr H Geddes**

**Date and venue of Hearing** : **10 Alfred Place London WC1E 7LR  
08 July 2019**

**Date of Decision** : **16 July 2019**

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## DECISION

**The Tribunal determines that:**

**1. The three items of charge disputed by the Applicants were all validly charged to the service charge accounts and were reasonable in amount. The Applicants having conceded all other outstanding items this means that the Tribunal finds that the service charge accounts for the years ending 2017 (£1,909) and 2018 (£20,866) are both payable in full by the Applicants in the proportions as set out in their respective leases.**

**2. The Tribunal makes no Order under s20C Landlord and Tenant Act 1985.**

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## REASONS

- 1 The Applicants are the tenants and long leaseholders of various apartments forming part of the estate comprising 45 flats known as the Battersea Works Estate, Paveley Road London SW11 3TP. The Respondent is the management company responsible for the performance of the landlord's repairing covenants under the lease and entitled to recover its costs of so doing from the tenants in the proportions specified in their respective leases.
- 2 The application was made on 11 January 2019 and Directions were issued by the Tribunal on 5 March 2019.
- 3 The Tribunal was not asked to inspect the property and did not consider that it was necessary to do so because none of the issues before the Tribunal related to the structure of or repairs to the buildings.
- 4 The Applicants' application, made under s27A of the Landlord and Tenant Act 1985 and Schedule 11 Commonhold and Leasehold Reform Act 2002 related to disputed service charge demands for the years 2017 and 2018. The only contended items concerned legal and professional fees and office and administration expenses.
- 5 The Directors of the Respondent company are themselves tenants of apartments on the estate. The current Directors took office in 2016 and being dissatisfied with the service provided by the managing agents who had been engaged by their predecessors decided, despite their acknowledged lack of experience in such matters, to undertake most of the management themselves assisted by a number of third parties with whom they entered into contracts (eg cleaners, gardeners etc) with limited assistance from a professional managing agent. The current Directors sought advice on a number of issues from solicitors whose bills formed the major part of the disputed items in this application.

- 6 At the time of the hearing a number of the disputed items had been agreed including the amount of the administration charges for 2018 (file 1/part 3/page 173). Counsel for the Respondent produced a spreadsheet setting out the items which remained in dispute. During the course of the hearing the Applicants conceded a number of further items leaving only three matters on which the Tribunal's ruling was sought.
- 7 The three outstanding disputed matters all related to solicitors' fees incurred by the Respondent who had taken advice on the management of the estate including handling disputes with some of the tenants who had expressed themselves to be unhappy with the new regime.
- 8 The Tribunal was faced with four issues: first, was it reasonable for the Directors to take on the role of management instead of taking the conventional decision to appoint a managing agent? Second, were the Directors entitled under the terms of the leases to charge the cost of legal advice to the tenants under the service charge? Thirdly, were they entitled to take legal advice on this particular matter? Fourthly, if so, were the solicitors' charges reasonable in amount?
- 9 The Tribunal considers that the Directors' decision to take on the management role themselves was unusual, bold and possibly naïve but not so rash as to be regarded as unreasonable. They had put in place arrangements with a number of professionals to carry out routine cleaning, maintenance and inspections and the Applicants' representative, when asked by the Tribunal, said that they were satisfied with the current level of service they were receiving.
- 10 The leases under which the Applicants hold their properties and from which the Respondent derives its authority are understood to be in materially identical terms. Recital C (1/3/34) records that the Respondent company was incorporated to carry out the management of the estate. By clause 3A (1/2/36) the lessee covenanted with the Respondent as follows: '...that he will pay to [the Respondent] within fourteen days of demand being made a service charge being the appropriate percentage of the costs and expenses expected to be incurred by [the Respondent] in the ensuing year of and incidental to the performance and observance of its obligations:
- (i) contained in the fourth schedule to this lease [repair and maintenance of the estate];
  - (ii) of creating such reserves in connection therewith to meet its future liabilities as ... [the Respondent] in its absolute discretion may deem necessary or desirable;
  - (iii) the management and administration of [the Respondent];
  - (iv) the performance and observance of all obligations entered into by [CML] for the benefit of the residents of the Estate
  - (v) such other expenses as [the Respondent] may incur in the exercise of any of its objectives as set out in its Memorandum of association.'
- 11 The above clause is drafted very widely and in the Tribunal's opinion fully encompasses the right for the Respondent both to take legal advice in general and to take legal advice on the particular matters in question.
- 12 The solicitors' time sheets were made available to the Tribunal which showed the advice having been given by a qualified solicitor using a

charge rate of £200 per hour which, in the Tribunal's experience, is a reasonable charging rate for a qualified solicitor to adopt when advising about similar matters.

13 The Applicants had particular concerns about a letter which had been sent in reply to their solicitors by the Respondents' solicitors (page 415) in relation to perceived acts of harassment by some of the Applicants. The issue here is not whether harassment had taken place nor whether the wording of the letter was appropriate but whether the Respondents had the right within the terms of the lease to take legal advice on this issue and then to charge the cost of that advice to the tenants as part of the service charge. As stated above, the Tribunal finds that the wording of the lease is broad enough to allow the Respondents to take such advice and as further stated above, the Tribunal finds the charging rates of the solicitor to be reasonable therefore there is no reason why this item should not be included as part of the service charge accounts.

14 The Tribunal therefore finds that the three items of charge disputed by the Applicants were all validly charged to the service charge accounts and were reasonable in amount. The Applicants having conceded all other outstanding items this means that the Tribunal finds that the service charge accounts for the years ending 2017 (£1,909) and 2018 (£20,866) are both payable in full by the Applicants in the proportions as set out in their respective leases.

15 The Applicants' application also asked the Tribunal to decide whether the current Directors 'are fit to serve in office'. This is not a matter which falls within the Tribunal's jurisdiction in an application made under s27A Landlord and Tenant Act 1985 and the Tribunal notes that no application was made under s24 Landlord and Tenant Act 1987

16 The Tribunal did however consider the Applicants' request for an order under s20C Landlord and Tenant Act 1985. Having heard submissions for both parties the Tribunal declines to make such an order. The Applicants conceded most of the charges which they had contested and the Tribunal failed to find in their favour in respect of the three outstanding matters. That being so it would be unjust not to allow the Respondent to add the reasonable costs of defending this action to the current year's service charge accounts.

## 17 **The Law**

### **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.

## **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).

**Section 47 Landlord and Tenant Act 1987**

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

- (a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1 or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2 or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3 or (as the case may be) administration charges] from the tenant.

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

### **21B Notice to accompany demands for service charges**

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Landlord and Tenant Act 1987 s24 ( as amended)  
Appointment of manager by the court.**

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

- (a) such functions in connection with the management of the premises, or
  - (b) such functions of a receiver,
- or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

- (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)

.....

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

- (i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

- (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard,

or

- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—
- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters,
- as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager’s functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
- (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal may by order direct that the entry shall be cancelled.
- (9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

Judge F J Silverman as Chairman  
**Date 16 July 2019**

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

