



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

**Case Reference** : **MAN/00EM/LSC/2019/0023**

**Property** : **16 The Manors, Adderlane Road, Prudhoe,  
NE42 5ET**

**Applicant** : **Mrs Pam Hutchins**

**Respondent** : **Karbon Homes Ltd.**

**Type of Application** : **S. 27A and s.20C of the Landlord and Tenant  
Act 1985 & paragraph 5A of Schedule 11 of the  
Commonhold and Leasehold Reform Act  
2002**

**Tribunal Member** : **Judge P Forster  
Mr R Harris FRICS**

**Date and venue of Hearing** : **3 September 2019,  
Tribunal Office, Manorview House,  
Newcastle, NE1 6PA**

**Date of Decision** : **23 September 2019**

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**DECISION**

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## **Decision**

The service charge payable by the applicant from 1 April 2019 is £481.46 per month.

## **Introduction**

1. The applicant, Pam Hutchins, makes this application under s.27A of the Landlord and Tenant Act 1985 (“the Act”) to determine whether a service charge is payable, and the reasonableness of the charges that have been made from 1 April 2019.
2. There is also an application under s.20C of the Act to prevent costs incurred in connection with these proceedings from being recovered as part of the administration charge.
3. In addition, there is an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the applicant’s liability to pay a particular administration charge in respect of costs incurred in connection with these proceedings.
4. The property, 16 The Manors, Adderlane Road, Prudhoe, NE42 8EG, is held under a lease dated 11 June 2010 made between Milecastle Housing Ltd. and Eric Alexander Law for a term of 99 years from 1 January 2009. The applicant and respondent are respectively the successors in title to the original parties to the lease.
5. The Tribunal received the application on 1 April 2019. Directions were given on 29 April 2019 that required the respondent within 21 days to provide copies of all relevant service charge accounts for the year in dispute together with copies of all relevant notices and demands for payment. The respondent was required to explain by reference to the lease the basis on which the charges have been applied, calculated and apportioned.
6. Within 21 days of receipt of the information supplied by the respondent, the applicant was required to provide a statement of case setting out the grounds for the application. Within 21 days of receipt of the applicant’s statement of case, the respondent was required to provide a statement of case setting out the reasons for opposing the application. Within 7 days of receiving the respondent’s statement of case, the applicant was able to provide a supplementary statement in reply to the applicant’s case.

7. The tribunal decided that it was appropriate for the application to be decided on the papers without holding a hearing. Each party was informed that they could within 14 days of receipt of the directions ask for a hearing. Neither of the parties asked for a hearing and therefore the tribunal determined the application on 3 September 2019 after an inspection and without a hearing.

### **The applicant's case**

8. When the applicant viewed the property in August 2018, she was given details of the monthly charges by Gilmore Estate Agents acting on behalf of the vendor, the estate of the late Mr J R Hubbuck. The total charges were £423.50 per month. That was confirmed by the respondent in a letter dated 13 August 2018. There was no indication of any intention to increase the charges.
9. The applicant purchased the property on 23 November 2018 from Mr Hubbuck's estate. The respondent wrote to her on 10 January 2019 again confirming that the monthly charge was £423.50. Arrangements were made for a direct debit to be set up to pay £423.50 per month.
10. On 28 February 2019 the respondent issued a notice under s.13(2) of the Housing Act 1988 proposing to increase the rent from £513.00 to £528.36 per month with effect from 1 April 2019. In an accompanying letter of the same date, the respondent stated that the current rent was £513.00. That sum was not correct. The applicant's daughter, Linda Travis-Anderson, contacted the respondent. She was not given any explanation for the difference between the rent being paid, £423.50 and the amount said to be payable, £513.00 and she was told that the rent would be increased to £528.36.
11. On 28 March 2019, a general letter was delivered to "*all residents*" stating that after reviewing the increased costs, the respondent had decided to phase the propose increase in two stages over 13 months. The reason given for the increase was that the hours of the onsite responder had been extended to provide 24-hour cover.
12. A second letter dated 28 March 2019 was addressed to the applicant in which it was stated that "*service charges and property insurance*" would increase to £481.46 per month from 1 April 2019. No mention was made of the notice of increase dated 28 February 2019.

13. On 1 April 2019, £523.36 was debited from the applicant's account. On 16 April 2019 the respondent wrote to the applicant telling her that it had "*adjusted her payment schedule slightly to reflect the correct charges on her account*" which meant they were reduced to reflect the overpayment on 1 April 2019. It was stated that the service charge would be £481.46 per month.
14. The applicant disputes the increase in the monthly charge from £423.50 to £481.46. By implication, she also disputes any further increase in the charge from 1 April 2020. She considers that a 3% increase in the monthly payment to £436.20 would be reasonable.

### **The respondent's case**

15. Gilmore Estate Agents was acting on behalf of the estate of the leasee, the late Mr Hubbuck. The information provided by the agent to the applicant at the time of viewing in August 2018 was correct. The total monthly payment was £423.50. After the applicant took over the lease, the respondent wrote to her on 10 January 2019 and confirmed that £423.50 was payable each month in respect of "*building insurance, service charge, water, heating, warden call and management fee*". A direct debit for that amount was set up by the applicant.
16. The respondent incorrectly issued a s.13(2) notice dated 28 February 2019 notifying tenants of the proposed rent increase from 1 April 2019. In fact, a notice was not required because the applicant is a leaseholder and is not liable to pay rent. The respondent accepts that the figure given in the notice for the existing rent, £513.00, was incorrect and should have been £423.50 but the figure for the proposed new rent, £528.36, was correct. The letter dated 28 February 2019 to the applicant showed how the monthly charge she is liable to pay had been calculated, totaling £528.36. This included £228.25 for a "*wellbeing charge*" or warden service.
17. On 4 May 2018, the respondent had written to Mr Hubbuck, as one of the leaseholders, giving notice of intention to enter into a long-term agreement for "*onsite care provision*". The current arrangements were due to end on 27 September 2018 and leaseholders were invited to make written observations about the proposed new arrangements that would extend the cover between 13:00pm and 8:00am to 24 hours. That was followed on 10 August 2018 by notice of intention to enter into an agreement for 24-hour cover. This was all done under the statutory consultation procedure set out in s.20 of the Landlord and Tenant Act 1985, as amended by s.151 of the Commonhold and Leasehold Reform Act 2002.

18. The respondent wrote to the applicant on 28 March 2019 explaining that it had decided to reduce the “*wellbeing charge*” from £228.25 to £181.35 from 1 April 2019. The charge had been increased because of the extension of “*onsite care provision*” to 24-hour cover. The respondent now intended to phase the increase over 2 years, on 1 April 2019 and 1 April 2020.
19. £528.36 was debited from the applicant’s account on 1 April 2019 because the direct debit had not been amended. Subsequent payments have been amended to the correct figure of £481.46.

### **The Law**

20. The law relevant to this application is set out in the annex.

### **Decision**

21. Under clause 3.2.2 of the lease, the tenant covenanted to pay a service charge to the landlord in accordance with clause 7. The amount to be paid was 2.11% of the costs of providing the services, to be paid in equal monthly payments in advance. Clause 5.7 requires the landlord to provide a warden service. Under clause 7.5.1 the costs of and incidental to the performance of the landlord’s covenants are recoverable as a service charge.
22. The monthly figure of £423.50 provided by Gilmore Estates, as confirmed by the respondent, was correct at the time. It included a charge of £131.69 for “*warden call*”. As part of the conveyancing process, the pre-contract enquiries made before completion should have disclosed the s.20 consultation in respect of the contract for warden service. The effect of extending the warden cover was likely to increase the amount of the charge. The applicant would have been able to make a decision whether to proceed with or renegotiate the purchase of the property. That is entirely a matter between the applicant and the late Mr Hubbuck’s estate and does not concern the respondent.
23. The applicant will have, or should have, known that the amount she is liable to pay is reviewed annually. It was to be expected that the monthly charge would change on 1 April 2019. Evidently, she was not aware that the cost of the warden service was likely to increase by a substantial amount.
24. The service of the s.13(2) notice under the Housing Act 1988 was a mistake and served to complicate matters. The applicant is a leaseholder and not a tenant in the terms of the 1988 Act. The error was compounded by the respondent’s insertion of an incorrect figure for the current monthly payment.

25. The increase in the monthly payment from £423.50 to £481.46 (£57.96) is mainly attributable to the cost of providing the warden service. The monthly cost of the warden service has increased from £131.69 to £181.35 (£49.66). That will rise to £228.25 on 1 April 2020. The balance of the increase is attributable to other expenses covered by the service charge and are not in dispute here.
26. The increase in the cost of the warden service has come about because the service has been extended to provide 24-hour cover. The service was previously available between 13:00pm and 8:00am. In May 2018, the respondent consulted the leaseholders about the proposed change in the arrangements for the warden service and gave notice in August 2018 that the change would be put into effect. The respondent complied with its statutory obligations to consult under the provisions of s.20 of the Landlord and Tenant Act 1985. That took place before the applicant purchased her flat. The applicant has not raised any issue about the consultation process, and she is bound by it, as was the estate of the late Mr Hubbuck.
27. The question to be resolved by the Tribunal is whether the increase in the cost of providing the warden service is reasonable. The applicant has not directly addressed this issue. Her case is that a reasonable increase in the monthly payment should be limited to 3% but she has not distinguished the cost of the warden service from the other charges. The applicant has not dealt with the cost of extending the service to 24-hour cover.
28. Under the new contract with the service provider the monthly cost per flat has increased from £131.69 to £228.25, although the increase has been phased over 2 service charge years. The respondent passes on the cost of providing the service to the leaseholders without any uplift and it will be responsible for the shortfall in the first year.
29. It is not possible to consider the increase in cost of the warden service without taking into consideration the extension to 24-cover. The previous contract was due to expire on 27 September 2018 and in any event a new renegotiated contract was required. It is likely that the cost of the service would have increased without extending the hours. The respondent put the new contract out to tender under the consultation process and the best price achieved was provided by the existing contractor who was awarded the contract. The applicant has not put forward any alternative costings for providing a 24-hour service. The best measure of establishing the cost of providing a service is to put it out to tender to test the market. In this case, that has produced the figure which is claimed as part of the monthly payment. There is no evidence to persuade the tribunal that is not a reasonable cost for the service that is being provided.

30. The respondent gave the applicant notice of the increase in the service charge on 28 March 2019. That notice is in the correct form and no point has been taken by the applicant that the statutory requirements have not been satisfied.

### **Conclusion**

31. The Tribunal found that under the terms of the lease a service charge was payable by the applicant to the respondent monthly and in advance. The amount claimed by the respondent is reasonable in amount and properly incurred.
32. The Tribunal determines that the total amount to be paid by the applicant for the year 2019/20 is £481.46

### **Costs**

33. Under s.20C(1) of the 1985 Act 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 the tribunal 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 specified in the application.
34. In any such application it is essential to consider what will be the practical and financial consequences for all of those who will be affected by the order and to bear those consequences in mind when deciding on the just and equitable order to make. The tribunal has a wide discretion having regard to all the circumstances of the case.
35. There is also an application under paragraph 5A of Schedule 11 to the 2002 Act. This is a discretionary power to restrict the ability of a landlord to recover from the leaseholder the landlord's costs of taking part in legal proceedings as an administrative charge. The matters to be considered here are similar to those in respect of s.20C(1).
36. The applicant was not aware of the s.20 consultation process which preceded the introduction of a 24-hour warden service. The increase in the monthly charge was substantial and was unexpected. We have found that the increased charge is reasonable because the service provided has been extended and the respondent had followed the statutory procedure and put the contract out to tender. The application has not succeeded. The respondent caused confusion by incorrectly issuing a s.13(2) notice which overstated the current rent. Communication between the parties has been poor and served to compound the situation. All of the leaseholders stand to bear part of the costs incurred by these

proceedings through the service charge or as an administration charge. We find that it is just and equitable that the applicant should bear her proportion of the costs incurred as a result of her application together with the other leaseholders. Therefore, we do not make an order under s.20(C) of the 1987 Act nor under s.5A of the 2002 Act.

**Dated 23 September 2019**

**Judge P Forster**



## ANNEX

S.18 of the Act defines “service charges” and “relevant costs”:

- (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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (1) An application may be made to a leasehold valuation 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.