

- Order**
- (1) The service charges in question are reasonable, with the exception of the management charges for 3 years from 2016 to 2019 which shall be 15% (and VAT if appropriate) of the cost of other services per flat per year. However, the charges are not presently recoverable as the Respondent has failed to comply with the provisions of Section 21B Landlord and Tenant Act 1985.**
 - (2) The Respondent shall pay £50.00 to the Applicant in relation to his expenses for attending the Tribunal on 26th June 2019.**

Application

- 1 The Tribunal received an application from the Applicants in this matter dated 4th June 2019 in relation to service charges from 2011 to 2018.
- 2 Whilst it was clear that the Applicants had concerns as to the provision of services in general to the development at St John's Court it was not clear from the application what, more precisely, were the issues being raised.
- 3 Progress of the case was not assisted by the inexperience of all parties with the Tribunal process and how to provide the information that was required of them for the Tribunal to make a reasonable determination as to the reasonableness of charges being levied.
- 4 The result was that the initial hearing was adjourned for further information to be provided by the Respondent as to the charges for services being provided as opposed to the management accounts of the management company and for the Applicant to be able to respond to them.
- 5 Neither party, nor the Tribunal, were assisted by the situation which arose from the change of managing agent in 2016, to Howard's Property Management, when very little information was passed on from the previous agents. The Applicants expressed concern at this, but the experiences of the Tribunal in such matters, is, sadly, that such a situation is not infrequent in its occurrence.
- 6 The issues were, however, simplified by the intervention of Mr Taylor, on behalf of the Applicants, together with the clarification of what the Applicants were seeking to achieve from the tribunal process. They were not necessarily outcomes that were within the Tribunal's power to grant.
- 7 The Applicants, through Mr Taylor, indicated at the hearing on 29th October 2019 that they were looking to find a way forward for dealing with the management of the development in the future. The directors of the

management company present at the hearing Mark Rothwell and Deborah Thomas, were clearly of the same view. There was not, however, any clear agreement as to how that might be achieved.

- 8 Mr Taylor did identify 3 issues that the Applicants had with the current service charges, but was clear that in the circumstances they should be limited to the period from when Howards property Management took over management responsibility in March 2016.
- 9 His concerns related to:
 - (1) The insurance premiums for the buildings insurance for the development, considered to be unreasonable and in excess of what might be reasonably obtained elsewhere.
 - (2) The extent of the management fees, representing approximately 50% of the service charges, year on year.
 - (3) The failure to provide certified service charge accounts and statements of tenants' rights when payment of service charges were demanded, nor to provide them in a timely manner.

The law

- 10 The law relating to jurisdiction in relation to service charges, falling within Section 18 Landlord and Tenant Act 1985, is found in Section 19 of the Act which provides:
 - (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.
- 11 Further section 27A Landlord and Tenant Act 1985 provides:
 - (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

and the application may cover the costs incurred in providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- 11 Section 20B Landlord and Tenant Act 1985 provides:
 - (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 a 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 be subsequently required under the terms of his lease to contribute to them by the payment of a service charge.

- 12 Section 21B provides:
 - (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) ...
 - (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.

- 13 It appears that in the light of the clarification of the matters about which the Applicant was concerned they all relate to service charges rather than administration charges

Inspection

- 14 On the morning of 25th June 2019, the Tribunal inspected St John's Court and found it to be a mixed development of terraced houses and flats constructed, or, adapted in a vernacular style from local industrial and commercial buildings. It is situated in the centre of Ramsbottom. The houses face either onto a courtyard or directly onto the rear roadway. The Flats are accessed from the courtyard and via a first-floor walkway. The courtyard is accessed by pedestrian vehicles at the southern end and by pedestrians only from the Northern end via electro-mechanical gates. Local amenities are close to hand, as is public transport to further afield.

Evidence and hearing

- 15 The Tribunal was initially exercised by the lack of clarity in the information that it received from the parties and the manner in which it was presented, but this was ameliorated by the subsequent observations of the parties at the hearing on 29th October and the frankness of the opinions expressed. The tribunal was however concerned that it had to search through unpaginated and unindexed documents to find what required. The parties were reminded in the directions of 29th June to comply with the earlier directions of the Deputy Regional Judge,
- 16 The limitation of the issues to be addressed and the Applicants' acceptance of the powers of the Tribunal to deal only with matters where it had jurisdiction allowed the hearing to proceed with some expedition.
- 17 Insurance There was clear disagreement between the parties as to whether a more reasonable premium for an insurance policy in respect of the buildings at the development and other risks that might reasonably be covered by the Respondent.
- 18 Mr Delaney was adamant that his experience in relation to developments elsewhere suggested that a premium in the region of £1,500.00 would be available. Mr Taylor suggested his professional experience was similar.
- 19 The Respondent, through Mr Howard suggested that the premium was obtained on the open market. Without commission and through a reputable broker.
- 20 The Applicants did not provide any documentary evidence in support of their contention, indicating that they did not feel it their place to do so. In the absence of such and in the experience of the Tribunal that although a lower premium might be obtainable, this alone did not indicate that those obtained from 2016 onwards were unreasonable in the circumstances that had surrounding its payment the Tribunal is of the view that the premiums paid are reasonable.
- 21 Management fees The Applicants challenge these on two bases. Firstly, they are high in any event, at approximately 50% of the overall service charge. Secondly, they are not merited in the circumstances in which current management takes place, notwithstanding an acceptance of the difficulties that were experienced in 2016 at the time of the replacement of the previous agents. It was suggested that a fee at 10% of total service charge expenditure was appropriate, but here less should be considered; even nothing in the circumstances as they are.

- 22 Understandably, Mr Howard and the Respondent's representatives disagreed, again referring to the difficulties being experienced in the management of the development and an increased management requirement arising from the inability of relevant parties to find a constructive way forward to provide mutually acceptable management processes.
- 23 Whilst the Tribunal accept that there may be an element of difficulty experienced in dealing with the range of views among all the current leaseholders, reflected in a higher workload than might normally be anticipated, there were nevertheless a number of shortcomings in the current manner of management that militates against a fee at the levels claimed by the current agents:
- (1) There appears to be some lack of awareness of any objective standards that might be applied to the management process. The Tribunal accepts that the agents are not members of any professional body, but there are objective standards against which they may judge their processes
 - (2) Mr Howard accepts that the issuing of a summary of rights and obligations with the service charge demands has been neglected and, indeed, appeared unaware of the requirements.
 - (3) The engagement with the Tribunal suggested an absence of awareness of what might be required to assist with its enquiries, although this does appear to have been remedied by one of his staff in the provision of further information that was requested.
- 24 There has, however, been some element of management that has taken place in relation to day to day expenditure on essential matters for the benefit and maintenance of the development. The Applicants appear to accept this in identifying only those specific matters that they sought ultimately to pursue.
- 25 Given that the Respondent has now produced what it terms budgets for the years to 31st July 2018 and 2019 (although in reality they appear to record actual as well as anticipated expenditure) and the acceptance that general management of services has taken place the Tribunal is of the view that the suggestion of a 10% or lower fee made by the Applicants is unrealistic. It is the experience of the Tribunal that such an amount acts as a disincentive to effective management and out of line with what it sees elsewhere, even with the observations, above.
- 26 The Tribunal is of the view that the fee should reflect 15% of the other service charge costs in the two years in question, together with VAT thereon, if appropriate.

- 27 The Tribunal must still consider the effects of Sections 20B and 21B of the Act. Given what the Tribunal has now seen of the service charges now being considered for the years to 31st July 2018 and 2019, there does not seem to be any doubt that the charges have been identified by the Respondent to the Applicant and that recovery will be sought in due course. The Tribunal does not therefore consider section 20B to be engaged in those circumstances.
- 28 It is clear, and the Respondent admits it to be the case, that Section 21B has not been complied with and in such a circumstance there is no obligation upon the Applicants to make payment, nor can the Respondent pursue the debt, until compliance is made.
- 29 There remains the outstanding question of the costs of Mr Delaney in relation to the hearing on 26th June. He was clearly inconvenienced by the need for the Tribunal to adjourn for further information. Direction 3 of the subsequent directions made on 29th June sought from him a schedule of costs incurred. He assessed these in his subsequent statement, without any explanation, at £150.00 the position was no clearer at the final hearing.
- 30 In such circumstances the Tribunal is of the view that it can reasonably assess his expenses at £50.00, to be paid by the Respondent, but cannot justify any greater amount.

J R RIMMER (CHAIRMAN)
08 November 2019

