FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/44UC/LIS/2019/0022**
Property	**:**	**Properties at Berkeley Close and Rochester Close, Nuneaton, CV11**
Applicant	**:**	**Dr. M. D. Lockhat (acting in person)**
Respondent	**:**	**Freehold Securities Limited**
Respondent's representative	**:**	**Stephen Whybrow, Freehold Group Ltd.**
Type of Application	**:**	**An Application for a determination of liability to pay and reasonableness of service charges pursuant to section 27A Landlord and Tenant Act 1985**
Date of determination (Conducted without a hearing)	**:**	**5 November 2019**
Tribunal members	**:**	**Judge A McNamara** **Mr. R. P. Cammidge FRICS**
Date of Decision	**:**	**19 December 2019**

DECISION

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Background

1. This is the decision of the First-tier Tribunal (Property Chamber) (Residential Property) in respect of an Application pursuant to Section 27A of the Landlord and Tenant Act 1985 (the Act) seeking a determination as to the liability to pay and/or the reasonableness of service charges levied by the Respondent.

2. This decision follows a 'paper' consideration of the application since both parties were content for the matter to proceed in the absence of a hearing.

3. On 5 November 2019, the Tribunal met and considered the documentation provided by the Parties; the directions and correspondence generated by the Tribunal; and came to the following conclusion.

Preliminary matters

The Applicant's status

4. The status of the Applicant's ownership of and/or relationship to the material properties was initially unclear. In the application dated 13 June 2019, the Applicant described himself as acting in a representative capacity as '*Trustee of various Family Trusts, also of UK Registered Charity MDMLCT to whom properties belong*'. In the statement dated 15 May 2019 provided by the Applicant he referred to the Applicant as '*Lockhat properties*' in the heading but went on to detail how '*I have 44 properties in Nuneaton*' which, in the next sentence, he also referred to as '*My properties*'.

5. In order to give the Applicant an opportunity to address this issue, the Tribunal wrote to the Applicant on 20 June 2019 and directed him to identify :

   5.1. *A list of the legal owners of the long leasehold interest in each property*.
   5.2. *A list of the Landlords in respect of each property and their address (this can usually be found on service charge/insurance demands). These will become the Respondents in this matter. The application form indicates that this is LPM Leasehold Property Management Limited however the copy demand in respect of Berkeley Close indicates that the Landlord is Freehold Securities Limited?*
   5.3. *Formal confirmation that the owners in 1. above appoint you as their representative in this matter.*

6. By letter dated 24 June 2019, the Applicant set out that four of the material properties (11 and 17 Rochester Close and 5 and 16 Berkeley Close) were owned by a combination of Charitable and Discretionary Family Trusts established by the Applicant; and that the fifth property (3 Berkeley Close) was in fact owned by his daughters. On the face of it that amounts to compliance with direction 5.1 set out above.

7. However, there is no evidence, beyond the Applicant's mere assertion in list form, in support of the legal relationship between the Applicant and the properties identified. Accordingly, the Tribunal cannot be satisfied, on the balance of probabilities, that the Applicant has established any connection between himself and the subject properties.

8. Further, it is entirely unclear whether, contrary to 5.3 above, he acts on his own behalf; with the approval of the Trustees; or his daughters' authority and/or agency in respect of 3 Berkeley Close, Nuneaton. There is no evidence from them in that regard. Accordingly, the Applicant is in default of direction 5.3 from 20 June 2019.

9. Even if the Tribunal is incorrect in relation to this procedural matter, it could not be satisfied on the balance of probabilities that the Applicant has any legal relationship with 3 Berkeley Close in the light of the evidence.

10. The logical corollary of that is that the Applicant cannot satisfy the Tribunal that he is entitled to bring the application since he has failed to satisfy the Tribunal that he has any standing to do so.

11. Since the Applicant is in person, and in the further alternative to the above, the Tribunal considered the evidence in relation to the nature of the Applicant's purported legal relationship with the material properties. The Tribunal has seen only one copy lease, in relation to what is referred to as '*Plot number 56 The Radleys Estate Marlborough Nuneaton*', dated 26 November 1991.

12. It is impossible to determine, on the face of the evidence, precisely which of the material properties the lease relates to or what is the Applicant's legal entitlement under that lease: neither he nor any of the organisations referred to in the Applicant's letter of 20 June 2019 appear anywhere on the face of that document. There is no explanation as to what the plot number came to be known as or the Applicant's entitlement under lease or otherwise.

13. For the reasons set out above, and for the avoidance of doubt the Tribunal is not satisfied that there is sufficient evidence that the Applicant is entitled to bring the Application. The mere assertions of the Applicant do not amount to a sound evidential basis to entitle the Tribunal to make a finding about who or what organisation(s) own(s) the properties, the Applicant's relationship to those properties and, if not owned by him in a personal capacity, whether the Applicant has the permission of the Trustees or his daughters to represent their interests.

14. Therefore, subject to what follows, the Tribunal strikes out this application on the basis that it cannot be satisfied that the Applicant possesses any standing to bring it.

The Tribunal's Directions and Applicant's letters of 2 & 3 September 2019

15. On 9 July 2019, the Tribunal directed that the parties should serve and file copies of their respective statements of case by 30 July 2019.

16. By letter to the Respondent dated 19 August 2019, the Tribunal extended time for the Respondent to file and serve to 13 September 2019. That was sent to the Tribunal by email dated 30 August 2019. The paper copies promised were received on 2 September 2019.

17. Once in receipt of the Respondent's statement of case, the Applicant sent to the Tribunal two additional handwritten documents dated 2 and 3 September 2019 respectively. The Respondent objects to the Tribunal relying upon those late submitted documents.

18. In the light of the Tribunal's ruling in relation to the Applicant's standing, it makes no finding or determination in relation to the admissibility of or the reliance to be placed upon those documents but it does make the following observation:

    18.1. The letter from Leasehold Property Management dated 4 June 2018 – attached to the letters dated 2 and 3 September – and like the letter from the same organisation dated 29 June 2017 attached to the Applicant's statement of case, merely serves to reinforce the Tribunal's view about the Applicant's standing to bring this application since the letter is addressed to three members of the Lockhat family.

The Law

19. The relevant section of the Act of 1985 provides:

> ***27A Liability to pay service charges: jurisdiction***
>
> *(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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]

20. In this case the Tribunal takes the view that, if it is wrong in relation to its finding in relation to the Applicant's failure to establish that he is entitled to bring these proceedings, then in the alternative, it will go on to deal with the merit of the application in principle.

21. As identified in the directions dated 9 July 2019 the case of **Cain v Islington BC [2015] UKUT (LC)** is germane here and the observation of HHJ Gerald that:

…it would offend common sense for a tenant who without qualification or protest has been paying a series of demanded service charges over a period of time to be

able to turn around and deny that he has ever agreed or admitted to that which he has previously paid…

The nature of the dispute

22. If the Tribunal is wrong in its approach to procedural conformity and/or the evidence to establish standing, it goes on to consider the merits of the application in any event.

23. This case relates to insurance premiums alone. The Applicant insists they are unreasonable and that he is able to insure his own home and other properties he 'owns' less expensively.

24. It is the Applicant's case that the premiums dating back as far as 1999 are within purview.

25. The Applicant suggests that the first occasion upon which he raised a concern in this regard was in about 2006/7 when it is suggested an application was made to what is referred to as the 'Land Tribunal, Birmingham'. The Tribunal presumes that what is being referred to is probably an application to this Tribunal and/or its predecessor. No further detail is provided. Elsewhere (letter dated 15 May 2019), the Applicant suggested that 15-17 years ago he wrote to the 'Managers' expressing concerns at the level of insurance premiums.

26. Although the Tribunal recognises that the Applicant may be concerned about cynicism, the Respondent suggests it has no record of any such application or the compromise suggested by the Applicant. There is no evidence to support either occasion.

27. Within the documentation provided to the Tribunal (again the letter dated 15 May 2019, sent to RCP Property Management – the predecessor to the Respondent) it would appear that the first occasion upon which the Applicant formally took issue was when he was presented with the proposed new premiums for 2019-20.

28. The Tribunal has been presented with no evidence from the Applicant to counter the explanation given by the Respondent in relation to its selection of appropriate insurance cover. The Respondent relies upon a letter dated 23 August 2019 from Christopher Trigg, Insurance brokers, which identifies four matters which are pertinent to the question of risk:

    28.1. Subsidence
    28.2. High Risk Groups
    28.3. Contract Work
    28.4. Our Client's Legal and Contractual Obligations

29. The closest one gets to a comparison is when one scrutinises the section entitled '*EXCESSES and SPECIAL CONDITIONS*' at the foot of the document dated 4 June 2019 sent by LPM Limited to Ms Haseena B Lockhat and Ms Farhan B Lockhat-Clegg. That suggests that the limits on the cover include:

29.1. *All units occupied/Owner Occupied or Professional tenants only…*
29.2. *No history of subsidence landslip heave or flood…*

30. In short, the Tribunal cannot conclude whether the premium proposed by the Applicant offered a comparable degree of cover to the policy obtained by the Respondent. In any event there is no obligation upon the Respondent to engage in an extensive trawl through insurance providers seeking the least expensive option.

31. In the Tribunal's judgment, the sums sought by the Respondent could not be said to be unreasonable. For the avoidance of doubt, the sums sought are as set out in the statement of Mr. Whybrow at §19 of his statement as follows:

31.1.	3 Berkeley Close	£170.10
31.2.	5 Berkeley Close	£170.10
31.3.	16 Berkeley Close	£170.10
31.4.	11 Rochester Close	£170.10
31.5.	17 Rochester Close	£198.51.

32. In respect of historical issues with insurance premiums it is the Tribunal's judgment that the Applicant has failed to produce any evidence to contradict the proposition that they were paid without demur. That is, historically, the premiums appear to have been paid and there is insufficient evidence to conclude, on the balance of probabilities, that any issue as to the price of the policy was questioned by the Applicant.

33. Accordingly, the observations of HHJ Gerald in **Cain v Islington BC** above apply. Namely, in the absence of evidence of dispute or challenge, it is the Tribunal's view that it would offend common sense to conclude anything other than consent to the size of the insurance premiums since they were paid.

34. Accordingly the application is dismissed.

35. The Applicant declined to make an application pursuant to section 20(C) of the Landlord & Tenant Act 1985.

36. For the avoidance of doubt the Tribunal notes the Applicant's desire to utilise his own insurance policy would require an amendment to the terms of the lease and no such application is before the Tribunal.

Appeal

37. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge A McNamara
Mr. R. P. Cammidge FRICS