FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UB/LSC/2018/0002/3**
Property	**:**	**81 Barnshaw House, Coxhill Way, Aylesbury HP21 8FH**
Applicant	**:**	**Grand Central Management Company Ltd**
Representative	**:**	**PDC Law**
Respondent	**:**	**Jonathan Anthony Stacey**
Date of Application	**:**	**23rd November 2018**
Type of Application	**:**	**For a determination under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings.** **For a ddetermination under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 of reasonableness of Administration Charges**
Date of Amended Directions	**:**	**9th January 2019**
Date of Decision	**:**	**11th April 2019**

DECISION

The Tribunal having made a determination in relation to section 20C of the Landlord and Tenant Act 1985 following the transfer of Claim Number C36YY611 from the County Court, the case is now returned to the County Court sitting at High Wycombe for such further order as may be appropriate.

Decision

1. The Tribunal is not able to make a determination of reasonableness of Administration Charges under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 in respect of the costs incurred in relation to the County Court Claim because under the County Court Order

issued on 31st October 2018 these costs will be dealt with by the County Court following the Tribunal's determination in respect of the present application under section 20C of the Landlord and Tenant Act 1985.

2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants and the fees in relation to the present proceedings should be reimbursed.

Reasons

Original Tribunal Application

3. The original Application was for a determination of the reasonableness of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) in the form of costs payable for enforcement of service charge payments. The years in issue are the Administration Charges for non-payment of the Estimated Service Charge incurred for the period 1st June 2015 to 31st May 2016.

4. Claim Number C36YY611 was issued by Grand Central Management Limited on 28th October 2016 and Judgement in Default for £1,685.45 (comprising Service Charge of £1,350.45 and Debt Collection Costs (PDC) of £299.95) was made on 20th March 2017.

5. Following an application by Mr Jonathan Stacey (the Tenant) for the judgement in default to be set aside on 6th April 2017, Deputy District Judge Child ordered that the judgement of 20th March 2017 be set aside and the case referred to the First-tier Tribunal (Property Chamber – Residential Property) to determine the issues raised by the Tenant as to the extent of the land included in his lease and the reasonableness of Administration Charges.

6. The total claim was for £630.45 (comprising Estimated Service Charge of £312.15, Reserve Fund £53.30 and Administration Charge of £265.00).

7. The Tribunal heard the matter on 16th April and issued its decision on 9th May 2018 as follows:

   a) The extent of the land comprised in the demise was agreed.

   b) The Tribunal found that the Estimated Service Charge and contribution to the Reserve Fund are payable.

   c) The Tribunal determined that the Administration Charges demanded of £265.00 comprising £25 for the reminder letter, £192.00 for employing a debt collection company and £48.00 for a land registry search are reasonable and payable.

8. The Tribunal having made a determination of the reasonableness of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act

2002) following the transfer of Claim Number C36YY611 from the County Court, the case was returned to the County Court sitting at Peterborough for such further order as may be appropriate.

Present Applications

Administration Charges Application

9. As part of the application referred to below, the Respondent applied for a determination of reasonableness of Administration Charges under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 in respect of the costs incurred in relation to the County Court Claim.

Determination regarding Administration Charges Application

10. Under the County Court Order issued on 31st October 2018 these costs will be dealt with by the County Court following the Tribunal's determination in respect of the present application under section 20C of the Landlord and Tenant Act 1985. Therefore, the Tribunal is not able to deal with this Application. To do so would be an abuse of process.

Section 20c Application

11. At a hearing before District Judge Nicholson sitting at the County Court at High Wycombe on 31st October 2018 the Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charges arising from the landlord's costs of proceedings. The Application was transferred to the Tribunal for a determination.

12. The Tribunal issued Directions on 12th December 2018 these were amended and re-issued on 9th January 2019 as the previous Directions caused some confusion having been made on the understanding that this was a fresh application by the Tenant under section 20C Landlord and Tenant Act 1985. Due to the matter being transferred from the County Court rather than a fresh application the parties should remain as in the County Court i.e. the Management Company is the Applicant/Claimant and the Tenant is the Respondent. The Directions were amended accordingly in respect of the parties and the times for compliance.

13. In its Directions the Tribunal stated that it considered that this application is suitable to be determined without an oral hearing and would consider the application on or after 25th February 2019, on the basis of the papers submitted. The Parties were invited to request a hearing at any time up to that date. No request was made therefore the Tribunal proceeded to make its determination on the basis of the documents provided.

14. The Tribunal initially received a bundle from the Respondent which only contained the Respondent's case and omitted the Applicant's case. Before the Tribunal issued its decision, it received a copy of the Applicant's case from the Applicant which had been sent and received by the Respondent but which the Respondent had failed to add.

15. Both bundles included a statement of case of the respective parties, a copy of the Lease and correspondence relating to the Tribunal and County Court proceedings.

16. The Tribunal required the Respondent to give an explanation.

17. In reply the Respondent stated that he received the Applicant's Statement of Case, late after he had contacted the Applicant's Representative. He apologised for not including the Applicant's statement of case in the bundle submitted to the Tribunal in accordance with Direction 3 but this was because he genuinely thought that it had been supplied directly to the Tribunal, and therefore did not think her had to include a duplicate copy in the bundle he provided,

18. The Tribunal accepted the Respondent's explanation.

The Law

19. 20C Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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 the county court;*
- *(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;*
- *(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
- *(ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

The Papers Submitted

20. Both parties submitted a statement of case and a number of other documents including a copy of the Lease, Land Registry entries for the Property and County Court papers.

21. Firstly, the Tribunal considered the Respondent's case, as the transfer to determine the issue was at his request.

22. In his statement of case the Respondent states that he is questioning the legality of the of the County Court legal costs of £7,521.60 as being unreasonable and disproportionate to the claim of £630.00.

23. The Respondent then goes on to state that the administration charges were unreasonable in that they were not in accordance with paragraph 4 of Part 1 of the Eighth Schedule of the Lease as the Applicant had not served a section 146 Notice on him directly and this provision only permits the recovery of costs incurred in relation to serving such a Notice. He states that he has already paid the outstanding service charges and administration fees. However, he is now being required to pay legal costs of £7,521.60.

24. With regard to the Tribunal proceedings he stated that he was entitled to question the administration charges. The Respondent states that the Tribunal did not award costs. He then refers to the County Court hearings and that he had sought to settle the matter of costs.

25. Secondly the Tribunal considered the Applicant's statement of case. The Applicant referred the Tribunal to the Respondent's obligations to pay the estimated Maintenance Expenses under Paragraph 6 and 6.1 of the Seventh Schedule and to pay a contribution to the reserve fund under Paragraph 13 of Part C of the Sixth Schedule.

26. The Applicant then stated that there had been a previous case in the County Court (Claim Number B18YP139) which had been settled with the Respondent by a Tomlin Order. The Applicant also referred to the present County Court proceedings (Claim Number C36YY611) for recovery of estimated Maintenance Expenses and reserve fund contribution in the course of which the County Court Judge transferred (what was in the event) the single issue of whether the Administration Charges were reasonable to the Tribunal (CAM/11UB/LSC/2018/0009).

27. The Applicant outlined the case it had made in the proceedings before the Tribunal. Namely that:
    - Paragraph 4 of Part one of the Eighth Schedule of the Lease enabled the Applicant to recover the legal costs incurred in contemplation of proceedings or service of a notice under section 146 of the Law of Property Act 1925.

- It relied upon the case of *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258 where the Court of Appeal held that costs for actions that are cumulative to serving a section 146 Notice fell within the terms of clause 3(12) of the lease in that case. The wording of clause 3(12) of that lease was much the same as paragraph 4 of Part One of the Eighth Schedule of the Lease in the present case in that both referred to the Lessee being personally liable for costs incurred in contemplation of a section 146 Notice.
- These costs were therefore potentially recoverable provided they were reasonable as administration charges which was the question transferred by the County Court to the Tribunal.

28. The Applicant referred to the Decision the Tribunal made in favour of the Applicant and quoted the determination already stated in these Reasons.

29. The Applicant therefore submitted that as the Applicant was successful it would be unjust for it to be deprived of recovering costs incurred since October 2017.

Tribunal's Consideration

30. In relation to this application under section 20C, the Tribunal is only able to consider whether an order should be made, limiting a landlord's costs incurred in relation to the proceedings before the Tribunal, in so far as they may be a cost to the service charge.

31. The Tribunal is being asked to make the section 20C determination in respect of Tribunal proceedings reference number CAM/11UB/LSC/2018/0009. These related to the specific issue, transferred from the County Court, of determining whether or not the Administration Charges for non-payment of service charges were reasonable.

32. In determining the issue, the Tribunal had to address three questions as follows:

    1) It asked whether the estimated service charge (referred to as the Maintenance Expenses in the Lease) and reserve contribution demanded were payable. The County Court Order did not ask the Tribunal consider the reasonableness of these costs.

    2) If the charges were payable, it asked whether the Respondent could under para 4 of Part One of the Eighth Schedule be individually liable for the costs incurred in serving the warning letters prior to serving a s 146 notice as Administration Charges. The Applicant referring to *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258 as authority for the Respondent being liable.

    3) If the costs were Administration Charges within paragraph 4 of the Eighth Schedule, were they reasonable under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

33. The Tribunal found that:

1) The estimated service charge and reserve contribution were payable.

2) The relevant provisions in Schedule 8 of the Lease did include the cost of warning letters prior to the s146 notice so the Respondent was personally liable.

3) The charges were reasonable.

34. The Tribunal has made its determination on this issue and cannot now re-visit it.

35. With regard to the present application the Tribunal is now being asked:

1) whether the costs of the Tribunal proceedings (CAM/11UB/LSC/2018/0009) come within the service charge (Maintenance Expenses) under the Sixth Schedule; if so,

2) whether under section 20C the Tribunal should exercise its discretion to limit the landlord's costs incurred in those proceedings.

36. Paragraph 4 of Part One of the Eighth Schedule of the Lease creates a contractual liability between the Lessee and the Lessor for the Lessee to pay the Lessor's costs relating to service of sections 146 and 147 notices.

37. The Sixth Schedule of the Lease creates a contractual liability between the Lessee and the Lessor to contribute to the Lessor's costs of managing and maintaining the Development.

38. The liability under the Eighth Schedule might be described as individual in that a lessee is liable for all these costs. The liability under the Sixth Schedule might be seen as collective in that a Lessee is only liable to pay a contribution to these costs along with the other lessees as part of the service charge.

39. The difference between these tow types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

40. Neither party addressed the issue as to whether the Sixth Schedule provided for the landlord's or management company's costs incurred in proceedings before a tribunal to be charged to the service charge.

41. The Tribunal therefore examined the Lease and found that paragraphs is of the opinion that paragraphs 7.1 and 15.3 of Part C of the Sixth Schedule stated that the Maintenance Expenses included:

7.1 The running and management of the development and the collection of the rents (if any) and service charges and in the enforcement of the covenants and conditions and regulations contained in the leases and transfers of the Dwellings and any development Regulations.

15 All other reasonable and proper expenses (if any) incurred by the Manager:

15.3 As to any legal or other costs reasonably and properly incurred by the Manger and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease or transfer of any of the Dwellings or any claim by or against any lessee or transferee or any tenant agent or visitor thereof or by any third party against the Manger as owner lessee or occupier of any part of the Development.

42. The Tribunal found that although paragraph 7.1 appeared to enable the Management Company to charge legal costs to the service charge incurred in collecting and enforcing service charges it did not appear to extend to administration charges. Nevertheless paragraph 15.3 enabled the recovery of legal costs incurred in taking proceedings against a lessee through the service charge if not otherwise recovered.

43. Therefore, the Tribunal found that the costs of the Tribunal proceedings reference number CAM/11UB/LSC/2018/0009, could be recovered through the service charge if not otherwise recovered e.g. under the Eighth Schedule.

44. The Tribunal then considered whether it should exercise is discretion under section 20C. The parties only addressed this in a cursory manner. The Respondent said that he was entitled to challenge the Administration Charges and the Applicant said that as the tribunal had determi9ned the Administration Charges to be reasonable it was entitled to its costs

45. The Tribunal examined its Decision and Reasons in the case of CAM/11UB/LSC/2018/0009 to determine whether it should exercise is discretion under section 20C.

46. The Tribunal noted at paragraph 40 of the Reasons that:
the Respondent had objected to paying the Service Charge and contribution to the Reserve Fund because works had not been carried out. In particular he had complained about the failure to paint the exterior metalwork which he had been told by the Managing Agent had been planned but still no start date had been set, to repair his intercom which had not worked for 3 years and what he had considered was substandard gardening and landscaping outside the French windows of his flat. He said he had settled a previous claim by Tomlin Order on the understanding that these works would be done. that the transfer was somewhat unsatisfactory. Before it could determine whether or not the administration charge was unreasonable it had to determine whether or not it was payable although this was not referred to in the County Court Order.

47. Also, at paragraph 41:
[The Respondent] *added that he felt the reserve fund was unreasonable because he was paying for something that he was not receiving i.e. money was being set aside for work that was not being done.*

48. The Tribunal found that the Applicant conceded the reasons for the Respondent's complaints in that, at paragraph 43:
[The Applicant] *had stated that the Respondent's complaint about the intercom was not limited to his flat. It had been found that the intercom system originally installed was defective and that a new system had to be installed in 2015 to 2016. However, it was found that the new system was not compatible with some of the individual handsets in the flats so these had to be changed in 2017.*

49. Also, at paragraph 42:
that the Applicant agreed the re-painting of the exterior metalwork was overdue. However, as this was qualifying work the consultation process under section 20 Landlord and Tenant Act 1985 had commenced in February 2018.

50. In paragraphs 43 and 44 it is noted that the Applicant sought to explain why it had taken so long to carry out the work by reference to the tripartite nature of the agreement, the transfer of the Management Company from the Developer, who had appointed RMG Ltd as a managing agent, to the Leaseholders as shareholder of the Management Company who, due to some dissatisfaction with RMG Ltd, had appointed their own managing agent, Neil Douglas Block Management Ltd, in 2016. Neil Douglas Block Management Ltd then had to wait until the accounts from the previous agent were reconciled before putting in place the current long-term maintenance plan.

51. Notwithstanding the Applicant's statement by way of justification, it had failed to comply with the Lease by repainting the external metalwork and repairing the intercoms in a timely manner and so was itself in breach.

52. Although, the refusal by the Respondent to pay the Estimated Service Charge and contribution to the Reserve Fund was not the correct manner in which to call the Applicant to account, nevertheless it was the failure of the Applicant to carry out the works which ultimately precipitated this action. In the Tribunal's experience leaseholders withhold service charges in the face of a landlord's or management company's intransigence as they feel it the only action they can take. Although the Applicant had correctly made demands and there had been some communication between the parties nevertheless the situation had not been adequately explained to the Respondent. This was left for the Tribunal, as recorded at paragraphs 51 and 53 of its decision. These whole proceedings might have been avoided if such explanation had been provided at a much earlier stage by the Applicant or its Agents, who were legally represented throughout.

53. Therefore, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Respondent.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.