



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

**Case Reference** : **MAN/30UN/LSC/2019/0084**

**Property** : **14C, Liverpool Road, Penwortham  
Preston PR1 0AD**

**Applicant** : **Kassiann Nair**

**Respondent** : **Elmwood Property Holdings Limited  
(represented by SLC Solicitors)**

**Type of  
Application** : **Reasonableness and payability of service  
charges and administration charges  
Landlord and Tenant Act 1985 section 27A  
and 20C and Commonhold and Leasehold  
Reform Act 2002 Schedule 11**

**Tribunal Members** : **Mr J R Rimmer  
Mr K Kasambara**

**Date of Decision** : **16<sup>th</sup> February 2021**

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**DECISION**

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**Order : The amounts payable by the Applicant in respect of the disputed service charges for 14C Liverpool Road, Penwortham, Preston for the Period 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2020 are as set out herein**

### **Application and background**

- 1 The Applicant is the leasehold owner of the first-floor flat at 14C, Liverpool Road, Penwortham, Preston. The Respondent is the freehold owner of the building at 14, Liverpool Road which contains a further two first floor flats, 14A and 14B, and a ground floor licensed bar.
- 2 The Respondent purchased the building at the end of August 2018 and it would appear to be accepted by both parties that prior to that point the provision of services under the terms of the lease was unsatisfactory. This resulted in the Applicant undertaking work and expenditure on her own behalf in respect of matters which may properly have fallen within the service provision, with actual and potential overlap when the Respondent sought to comply more precisely with the terms of the relevant leases.
- 3 The Applicant has therefore raised objection to a number of items of expenditure that have now been raised within the service charges from 2017 onwards. The service charge accounting years run from 1<sup>st</sup> April to 31<sup>st</sup> March each year.
- 4 A basic summation of each party's position, to be considered further, below, is that the Applicant challenges costs as being unreasonable and/or a duplication of her own expenditure: the Respondent avers that the relevant charges have been properly and reasonably incurred at reasonable cost.

### **The law**

- 5 The law relating to jurisdiction for service charges, falling within section 18 Landlord and Tenant Act 1985 ("the Act") 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 in the provision of services or the carrying out of works, only if the services are of a reasonable standard.

6 Further, Section 27A of the Act provides;

(1) An application may be made to a (First-tier Property 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.

7 Section 20C Landlord and Tenant Act 1985 provides that:

(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... the First-tier 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 or persons specified in the application

(2) The application shall be made...

(ba) in the case of proceedings before the First-tier Tribunal, to the Tribunal

(3) The...tribunal to which the application is made may make such an order on the application as it considers just in the circumstances.

8 Section 158 and Schedule 11 paragraph 5 Commonhold and Leasehold Reform Act 2002 provide almost identical provisions to those set out in section 27A in relation to administration charges, those being charges identified in paragraphs 1 and 2 of the Schedule:

(1) ...”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) ...

(b) ...

- (c) In respect of a failure by the tenant to make a payment by the due date to the landlord...or
  - (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease
  - (2) A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 9 Paragraph 5A was inserted into Schedule 11 by the Housing and Planning Act 2016 to further provide for consideration by the Tribunal of litigation costs:
- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order educing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs.
  - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
  - (3) In this paragraph –
    - (a) “Litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned I the table, and,
    - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings

Proceedings to which the costs relate	The relevant court or tribunal
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the County Court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal Proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the County Court

- 10 Other provisions of the relevant legislation are referred to in relation to the specific elements of the service charge where reference is made to them.

**Inspection**

- 11 In view of the current situation in relation to the Covid-19 virus the Tribunal determined that no inspection of the property was required to be undertaken prior to the determination of the application by consideration of the papers without a hearing and there was nothing in what the Tribunal then considered that suggested a subsequent inspection would be assistive.

## **The lease**

- 12 The lease to flat 14C is one that grants a term of 125 years from 1<sup>st</sup> January 2006 and it provides, at Clause 3, a covenant by the tenant to observe the obligations contained in the Fourth Schedule. This Schedule in turn refers at paragraph 1 to an obligation to pay rent. Clause 2 of the lease includes within the rent not just the occupation rent, but also the relevant service charge costs and insurance premium.
- 13 The Seventh Schedule to the lease provides for the costs of fulfilling the obligations of the landlord to be recovered by the service charge. They appear at pages 26 and 27 of the lease and need not be set out at length here. The Schedule also provides the mechanisms for drawing up the appropriate service charge accounts. The Applicant's proportion of the total service charge costs for the building is set at 33.31%.

## **Submissions**

- 14 Both parties provided detailed submissions to the Tribunal in the form of statements of case and/or witness statements and the Tribunal noted the comments made in respect of each of each of the elements of the service charges that were disputed by the Applicant.
- 15 The Parties also distilled the issues between them into a "Scott Schedule" that was provided within the bundle of documents and provided a precis of their respective final positions on those matters. It is useful to refer to their respective views in relation to each issue as it is set out below. As the numbering adopted in that schedule is repetitive and non-sequential the Tribunal hopes that its own views are made clear from the different order adopted below.

## **Management fees.**

- 16 These appear twice in the schedule, once in relation to an 18 month period from March 2017 to March 2019 and then for the 12 month period from April 2019 to March 2020. The total amount claimed for the first period is £ 1000.00, for which the relevant proportion attributable to the Applicant is £333.10. The Tribunal notes that this relates to periods either side of the purchase of the property by the Respondent in August 2018. For the second period the amount for the twelve months in question is £3000.00. 33.31% of this amounts to £999.30.
- 17 The landlord avers that paragraph 15 of the Seventh Schedule allows the recovery of management charges. It provides for the recovery of: The fees and disbursements paid to any managing agents employed by the landlord in respect of the building or if the landlord does not employ managing agents 10 per centum of the cost of the items referred to in this Seventh Schedule (other than in this paragraph)

- 18 Complete Property Management Solutions Limited were appointed managers with effect from December 2018 and notification given to the Applicant.
- 19 The Applicant however regards this as a long-term agreement in respect of which no consultation process was undertaken under the complex provisions of Section 20 of the Act and associated regulations. This is not addressed at any length by the Respondent, even to the extent of advising as to the nature of the manager's appointment, be it long-term, or on a year by year basis, and there is no alternative clarification in the letter from the manager to the Applicant of 14<sup>th</sup> December 2018.
- 20 Given that paucity of evidence on either side, but the ability to establish the true position one way or the other lies with the Respondent, the Tribunal is drawn to the conclusion that it is such a qualifying long-term agreement and the amount recoverable from the Applicant should not exceed £100.00 for each of the periods in question, in accordance with paragraph 4 of the Service Charges (consultation etc) (England) Regulations 2003.
- 21 The Tribunal notes that the first period is one of 18 months, cutting across two accounting periods, the appointment of the Agents only occurred in December 2018 and in respect of the April 2018 to March 2019 accounting year.

### **Building Insurance**

- 22 Payment of the appropriate premium for relevant buildings insurance is of concern to the Applicant in view of her own steps to insure her property and which the Tribunal accepts this may possibly have been an appropriate step under the previous landlord, although page 35 in the Respondent's bundle of documents is clearly a policy taken out by the previous landlords for the period from 04/12/2017 to 02/12/18.
- 23 It is perhaps unfortunate that the dry correspondence passing between the parties at the time of the Applicant's purchase of the freehold does not explore in greater detail the rights and obligations of the parties under a new regime. Duplication might then have been avoided. It is clear however that the lease provides for the landlord to insure the property and it is only right and reasonable that it should do so, given that it has 4 separate units within the building and has a need for appropriate cover for that building and not individual units.
- 24 Indeed, the landlord covenants in paragraph 5 of the Fifth Schedule to the lease to effect appropriate insurance and the tenant covenants to

pay the appropriate proportion of the premium in accordance with Clause 2.2 and paragraph 1 of the Fourth Schedule.

- 25 The amounts payable by the Applicant, according to the landlord, are £599.60 for the period from September 2017 to March 2018 and £318.11 for April 2019 to March 2020.
- 26 The premiums are identified in the Respondent's bundle of documents (pages 35 onwards):  
04/12/2017 to 04/12/2018 - £1159.66 (subsequently apportioned to £864.18 to account for a subsequent overlap with)  
03/09/2018 to 03/09.2019 - £1145.57  
02/08/2019 to 03/09/2020 - £1191.52  
The total amount payable for 2 years and 10 months by all tenants is £3201.27, of which the Applicant's proportion is £1066.34. A yearly average amount would be £376.36.
- 27 For the Tribunal this is a reasonable amount to pay for the relevant buildings insurance in respect of a flat such as 14c as part of a landlord's policy. It is consistent with what the Tribunal would expect to find elsewhere and there is no compelling, or credible, evidence provided to suggest otherwise.

### **Repairs**

- 28 The Tribunal had some difficulty in ascertaining what repair charges were the subject of dispute between the parties and what were only notional charges that had been budgeted for.
- 29 After further clarification was received from the parties there appear to be two matters that can be discounted from the information originally received. Firstly an amount of £250.00 is a budgeted amount and not referable to expenditure incurred. Secondly, an amount of £630.00 for repairs to the leak between the entrance way to the subject flat and the ceiling of the downstairs premises is actually represented by the amount of £466.67 actually outstanding, If it is the responsibility of the Applicant to pay.
- 30 This repair is understood to relate to a leak between the decking and the ceiling of the downstairs property in the part of the property that is the landlord's responsibility. The description of the demised premises in relation to 14C is provided in the First schedule to the lease and appear to embrace that situation.
- 31 The matter Is further complicated by two issues raised by the Applicant;

- (1) The costs are such that they would require consultation under Section 20 of the Act which did not occur
  - (2) There was residual damage and debris left by the contractors
- 32 If the Tribunal adopts the view that this was, by its nature, an emergency repair and although a consultation process might be engaged, it is also a situation where a dispensation under section 20ZA was likely to have been granted. In order to effect some proportionality to the dispute the Tribunal is of the view that a contribution of one-half (£233.33) is appropriate and taking into account the suggested defects in the making good and reflect some proportionality in respect of this item.
- 33 A further repair cost of £75.00 is made in respect of external lighting. On what now appear to be the best information available to the Tribunal, again after further enquiry, it appears that the light in question and the wiring to it is wholly within the demise to the Applicant and runs to her meter, albeit that it is on the external part of the demise, the walkway. In that circumstance it is the Tribunal's view that the responsibility falls only on the Applicant in relation to any decision as to its operation, or repair and is not a charge for the landlord to recover via the service charge.

### **Reserve fund contributions**

- 34 For the period from September 2017 to March 2019 a collective contribution to a reserve fund is sought in an amount of £400.00 and for the following year £1000.00. The Applicants contributions are £133.26 and £333.10 respectively.
- 35 Paragraph 11 of the second part of Schedule 7 of the lease makes provision for such a fund, at least in relation to "the provision for anticipated future expenditure in relation to such services as in the landlord's reasonable opinion is appropriate"
- 36 Although in this instance somewhat vague, it is by no means uncommon and, indeed, quite appropriate to make provision for future expenditure, particularly in respect of items that might be high cost and result otherwise in a steep service charge for the year in which they occur and which are not in their nature items that can be budgeted on an annual basis.
- 37 The Applicant seeks clarity as to what the fund is for. To the Tribunal's mind no such clarity is given by either the Respondent's statement of case, or the witness statement of Warren Ward. This would not have been difficult and might have been of assistance to the Tribunal that the decision as to what it is for is not entirely open, but subject to what must be reasonable to the Respondent.



- 38 Ordinary items of expenditure can be reasonably foreseen within an annual budget and the balancing process at the end of each year. What is clear is that at present there is a limited amount in the fund. Given that it is appropriate for there to be such a fund, the current contributions are also appropriate. The Tribunal would go so far as to suggest that the September 2017 to March 2019 contribution is low.
- 39 The Tribunal believes that the parties would be well advised to monitor the fund and contributions in future as a fund for long term replacement and renewal and not as a fund duplicating proper service charge budgeting.

### **Health and safety risk assessment**

- 40 Again, this cost appears in the 2019-20 budget. The Applicant contests the charge on the basis there are no common parts to which the charge should relate. The Respondent suggests in the Scott Schedule that such a charge is permissible under Part II of the Seventh Schedule to the lease, but indicates that it relates to such inspections or minor repairs to the block as a whole.
- 41 The Tribunal would take the view that such an inspection for the purpose of assessing repairs would be different to a health and safety inspection and should be budgeted elsewhere. It may well be prudent for some H&S report to be sought on a periodic basis to provide assistance with how work to the building should be carried out and associated aspects of entry and access be approached. To the extent that in the first full year of the landlord's ownership it is proper to consider those issues £140.00 budgeted between all contributors is not unreasonable, but this should be subject to some element of review as and when a report is obtained, its cost known, and its relationship to past and future contributions more clear.

### **Window Cleaning**

- 42 Window cleaning is a further matter that has been resolved between the parties following the initiation of these proceedings and the Respondent indicates that the charge will not be raised if the Applicant continues to accept responsibility for the cleaning of the windows to the flat.

### **Ground Rent**

- 43 The payment of ground rent is an obligation under the lease and not a service charge. The Respondent is correct in its submissions upon the matter and the tribunal has no jurisdiction to deal with such payments

### **Administration Charges**

- 44 The Applicant contests two amounts which are administration charges, rather than service charges. They are an amount of £48.00 for the internal pursuit of arrears by the managers and then £250.00 (including VAT) solicitors cost for legal proceedings that are under contemplation.
- 45 Both parties make submissions on behalf of their respective positions and the tribunal has also considered the situation that existed between the parties at the time the costs were incurred together with the relevant provision of the lease which is the covenant by the tenant at paragraph 1 of part II to the Fourth Schedule:  
To pay the landlord all reasonable expenses it may properly incur in:  
(a) Collecting any arrears of the yearly rent the insurance rent or the service charge due from the tenant together with interest at the Prescribed rate thereon  
(b) Enforcing any obligation of the tenant whether or not proceedings are taken and whatever the outcome of any such proceedings.
- 46 The Tribunal is of the view that such charges should be recoverable in principle, subject to an assessment as to what is reasonable for what are essentially routine activities that are capable in one case of involving simple internal processes and in the second case fee-earner input at a relatively modest level.
- 47 Applying that test the Tribunal is of the view that for what would appear to be a pro-forma letter and the likely work involved an amount of £36.00 is appropriate for the first of the two items.
- 48 It takes a similar view in relation to the solicitors costs to the extent that at an hourly rate of £190.00 45 minutes work would be sufficient for a fee earner at that level of competence together with the appropriate letter – an amount of £161.50, to which should be added VAT of £32.30.

### **Section 20C Landlord and Tenant Act 1985**

- 49 The First-tier Property Tribunal, when dealing with cases such as this is not a cost shifting tribunal. There is no automatic power to award, or apportion, costs according to victory or defeat. There is a limited power to award costs contained introduced the Tribunal Procedure ((First-tier Tribunal) (Property Chamber) Rules 2013 if a party conducts itself unreasonably in relation to proceedings, but that has no application here.
- 50 The Respondent may, however, seek to rely upon a provision of the lease which effectively encompasses any such costs that relate to

tribunal proceedings within the service charge, thereby enabling their recovery as part of the service charge for future years.

- 51 The Tribunal has examined the lease at some length and is satisfied that there is no provision in either the Fourth Schedule, Part II, or the Seventh Schedule Part II, that sufficiently includes such costs as part of the service charge. As a matter of finality the Tribunal will in that situation make an order in favour of the Applicant, as requested.

**Judge J R Rimmer**  
**16<sup>th</sup> February 2021**