FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BF/LSC/2019/0370**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 3, Ravensbury Court, 17 Ringstead Road, Sutton, Surrey SM1 4SQ**
Applicant	**:**	**Ravensbury Court Residents Association**
Representative	**:**	**Mr Ryan Blake (flat 6)**
Respondent	**:**	**Mrs Kim Dickerson (aka Matthews) (flat 3)**
Representative	**:**	**Amanda Ritchie of Chase Leasehold Management Ltd**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Brandler** **Mr P Roberts DipArch RIBA, Professional Member**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**21st January 2021**
Date of decision	**:**	**9th February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in an unpaginated bundle from the Applicant, and a bundle of 15 pages from the Respondent, the contents of which we have noted. The order made is described at the end of these reasons. The parties said this about the process that they were content they had been able to tell the Tribunal everything they wanted to say.

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £250.00 is payable by the Respondent in respect of the service charges for the years 2013-2016

(2) The Tribunal makes the determinations as set out under the various headings in this Decision

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

(4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Worthing.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years 2013-2016. This case originates from the County Court where it was issued by the Applicant (Claim No. A0QZ4843) to recover service charge arrears against the Respondent. By an order dated 12 September 2019 the County Court at Worthing transferred the proceedings to the Tribunal for determination.

The hearing

2. The Applicant was represented by Mr Blake at the hearing and the Respondent was represented by Ms Ritchie from Chase Leaseholder Management, who assist the Respondent with some of her other buy to let properties. Also present at the hearing, on the telephone only, was Mrs Wagner (Flat 5).

3. Reference to page numbers in this decision refer to the pages of the electronic bundle.

The background

4. The property which is the subject of this application is Flat 3, Ravensbury Court, 17 Ringstead Road, Sutton, Surrey SM1 4SQ ("the flat"), situated in a purpose built block containing 6 flats. Miss Kim Dickerson ("the Respondent") is the leasehold owner of flat 3. She previously owned the flat with her ex-husband, and she now holds her ex-husband's share in the flat on behalf of her adult daughter. She does not occupy the flat which she rents out. The Tribunal had before it a copy of the lease for flat 5, for reference, there being identical terms for all six flats in the block.

5. The block is managed by the Ravensbury Court Residents' Association, and by Clause 3(d) of the lease, all the leaseholder owners must become members of the Association, and must not at any time withdraw from membership of the said company.

6. Mr Blake, who represents the Applicant at this hearing, became the treasurer some two years ago. A claim had been issued in the County Court against the Respondent in relation to the service charges owed by her. At the date of issue, the amount owed was only £660 [78]. Since that time the applicants state that the amount owed has increased, and that the County Court has amended the limit of the claim. No documentation was available to confirm this.

7. This matter was first issued in the County Court at Northampton on 13.01.2014 under claim no. A0QZ4843. It appears that after it was issued in 2014, it was transferred to the County Court in Canterbury on 6.03.2014. It appears then to have been lost in the system for some time, and upon Mr Blake becoming treasurer, he chased the matter up. On 12.09.2019, DJ Clarke sitting at the County Court at Worthing, having read the claim form and the defence lodged, considered that the issues were better dealt with by the First-tier Tribunal (Property Chamber) and transferred the matter to the Tribunal at Havant.

8. The matter has now come before the First-tier Tribunal (Property Chamber), London.

9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their

costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

11. At the start of the hearing the Applicant clarified that the subject of these proceedings is Flat 3, and not Flat 6, as set out on the Tribunal's documentation. This was amended.

12. Mr Blake confirmed that the service charges owed by the Respondent relate to the period from August 2013 until January 2016 only. Ms Matthews has since that time been paying the charges of £100 per month. The issues for the Tribunal to consider fall within that period only.

13. The Respondent seeks clarification in relation to her responsibility for major works carried out during that period, namely the resurfacing of the driveway with tarmac which appears to have been paid for in July 2014.

14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charges for the years ending 2013,2014,2015 and 2016 at a rate of £100 per month from August 2013 until January 2016 – Total amount claimed for that period £2800

15. The Applicant's case is simply that the Respondent owes service charges for the above period, which she failed to pay. They want her to pay what she owes in this regard which amounts to £2800. They are not seeking interest on the amount owed. Mr Blake refers to bank statements in the appeal bundle as evidence that the Respondent has not paid for the period in question. Mr Blake also says that the Respondent stopped paying the monthly service charge amount, 11 days after she was voted out of her position as treasurer. He says that indicates that it was bad feeling on her part and that is the reason she stopped paying the service charge.

16. The Respondent does not deny the allegation of non-payment for that period. The unpaid sum of £2800.00 in service charges appears to be admitted by her. She denies, however, that she is obliged to pay this sum because the service charges have not been correctly demanded. She denies that it was bad feeling on her part.

17. The custom and practice of the leaseholders in the block has been to pay their service charges by way of a regular payment of £100 per flat, per month, to the residents' association.

18. The relevant term in the lease relating to payment of service charges is set out in clause 3(c), whereby the Lessee covenants "*to pay to the Lessors on the Twenty ninth day of September in every year (or within Twenty eight days thereof) a one sixth part of the sum which the Lessors shall estimate that they will require to expend in the next ensuing year in complying with the covenants on their part contained in clauses 5(c)(d) and (e) of these presents and such part if not so paid shall be forthwith recoverable by action and shall carry interest at rate equal to one per centum per annum above the Bank Rate from time to time until payment PROVIDED that if the sum spent in such ensuing year (as certified by the Lessors' auditors) shall exceed the sum so estimated as aforesaid the Lessee shall pay one sixth part of the excess within Twenty eight days of the demand therefor by the Lessors but if the certified sum shall be less than the estimated sum then one sixth part of the difference between the two sums shall be allowed as a deduction from the next following payment due from the Lessee pursuant to this clause".*

19. In oral evidence Mr Blake confirmed that no written demand had been made in relation to service charges. The payment has always been by way of a monthly payment of £100. He explained that when someone new moved in, the residents association inform the new owners where to send the money, and accounts are sent every year.

20. The leaseholders meet regularly at AGMs. There is a reserve fund which is accumulated from the monthly payments made by leaseholders. The balance of the sum held in that fund is discussed at the AGM. The management of the block by the residents' association appears to have been carried out on a, mostly, friendly manner which involves co-operation and co-ordination, and allocation of tasks to be done to various people, or alternatively, various people volunteer to obtain quotes for works etc.

21. Minutes of AGMs are taken, and several of these were included in the bundle of documents before the Tribunal. This goodwill manner of management appears to have functioned fairly well for the leaseholders for some years, but when the Respondent was voted out of her role of treasurer, there was some bad feeling both from the Respondent and from other leaseholders about the Respondent's management of the finances. Amongst the complaints were issues of the Respondent not distributing the accounts and allowing the leaseholders only a brief look at the accounts during the course of the AGM. Since her removal from post as treasurer there have been complaints that she has failed to return the cheque book and other accounts.

22. The Respondent in her evidence states that she became unhappy with the way that the association was run after she was voted out of her role. Prior to that, Mr Blake stated in oral evidence, the Respondent had not managed things any differently whilst she was treasurer, but since she

has been voted out, she objects to custom and practice that she had followed herself.

23. The Respondent's position is that she is now aware of how things should be managed. She has come to this understanding with the assistance of Ms Amanda Ritchie from Chase Property Management Ltd who manage a block in which the Respondent owns another buy to let property. Since she now knows how things should be carried out, the Respondent says that she is entitled not to pay the service charges, because these have not been lawfully demanded. Although she admits that she has started paying the £100 per month towards the service charges because she recognises that it is the block, including her flat, that will suffer from the lack of funds being required for maintenance.

The tribunal's decision

24. The tribunal determines that the amount payable by the Respondent in respect of the unpaid sums of £100 per month for the period August 2013 until January 2016 is £0.

Reasons for the tribunal's decision

25. The Tribunal had sympathy with the residents' association as they had managed things amicably, if unofficially, and were managing the block in the custom and practice of accumulating funds from the monthly payment received from each leaseholder.

26. It was noted that the Respondent during her time as treasurer of the association, had managed the accounts in exactly the same way as the association managed them after she left that post. It is not an attractive prospect to penalise the association under these circumstances. However, the association is in breach of both the lease and the law in respect of service charges.

27. The lease at clause 3(c), set out above, sets out the requirement for an annual estimate to be provided to the leaseholders and payment of one sixth part to be made on 29th September. That estimate should set out the proposed expenditure for the following year. Thereafter accounting can be carried out if the estimate is insufficient, or if there has been an over estimate. This procedure has not been carried out by the residents' association, and they are therefore in breach.

28. A landlord must demand a service charge, and that demand must contain the landlord's name and address, as well as including a "summary of leaseholders; rights and obligations". The law states that if the demand does not comply with either of these requirements, the leaseholder has a legal right not to pay unless and until the service charge is demanded in the proper manner.

29. There is a limitation period on recovery of service charge costs by virtue of s.20B of the 1985 Act which states that a landlord cannot recover service charge costs that were incurred more than 18 months before he formally demands them. The exception to this rule is if he writes to the leaseholder within 18 months of incurring the costs informing them that he has incurred costs, the amount of them, and that they will be demanded in due course.

30. No service charge demands have ever been made by the Applicant. Accordingly the sum of £2800.00 unpaid by the Respondent during the period August 2013 – January 2016 is not payable.

The tarmacing of the drive in 2014 - Amount claimed £10,800.00

31. Mr Blake told the Tribunal that the work to the drive had been discussed and carried out before he became treasurer two years ago.

32. Mrs Wagner explained that works on the driveway had been discussed for several years before the works were done. She has only lived in the block since 2011. She referred the tribunal to the AGM meeting notes dated 21.08.2013 [35] where at paragraph 6 it states "*Drive – Vina/Emma to get quotes for tarmac*". Other than obtaining quotes and discussing them, Mrs Wagner could not clarify whether s.20 had been complied with.

33. Included in the bundle are various AGM minutes of meetings. The earliest of which is from 2005 [62]. At paragraph 3 of those minutes *"Quotes for the following work will be given my Mark and Kim: a... b. Relaying the driveway with tarmac..."* (sic)

34. Other Minutes in the bundle included the Minutes dated 17.08.2011. At paragraph 3 under the heading for repairs and maintenance there is mention that "*The drive is of really bad condition and the border need to be redefined. Possibly we need a few quotes to do tarmac or resin using Sutton recommended trade people*" (sic) [52].

35. Minutes dated 17.09.2012 under repairs and maintenance states, "*no change to £100 per month to build funds*" and several points later "*We will sort out the driveway after winter. By then, we will have accumulated more funds*". [53]

36. The Respondent told the Tribunal that various leaseholders had been asked to obtain quotes for the drive, and that she had seen these. She had made comments about the quotes which she said were inadequate in terms of the information provided, for example one quotation had no contact telephone number and had no address. There had been no talk of specifications and no formal s.20 application was carried out. No demand had been made directly in relation to these works. The funding

of the drive was being covered by the monthly payment of £100 by each leaseholder. The Respondent went on to say that there had been some problems with the drive after it was completed because the groundwork had not been done correctly, and some of the tarmac was lifting.

37. No documentary evidence was produced by the Applicant to demonstrate compliance with s.20 of the 1985 Act. The only documentary evidence in the Respondent's bundle was an undated invoice for £10,800.00 from A.B. Contractors & Sons Ltd, stating *"For a new Tarmac drive and kerbs on garden area for the above address all work completed"*. The customer's address given as "*Ravensbury Court (Cashalton) Residents Association, 1 ravensbury court, 17 ringstead road, SM1 4SQ*" and a photocopy of a cheque drawn on a Nat West Account for £10,800.00 dated 11.07.2014. [page 5 of the applicant's bundle].

The Tribunal's decision

38. The Tribunal determines that the amount payable by the Respondent for her contribution towards the tarmacing of the drive is £250.00 only.

Reasons for the Tribunal's decision

39. The law requires that leaseholders paying variable service charges must be consulted before a landlord carries out qualifying works. S.20 of the 1985 Act sets out the precise procedures that are required.

40. The tarmacing of the driveway was repair/maintenance work which cost over £250 for any one contributing leaseholder. As the consultation procedure has not been undertaken, the landlord cannot recover costs over £250 per leaseholder.

Application under s.20C and refund of fees

41. No application for a refund of the fees was made as this is a matter transferred to the Tribunal from the County Court.

42. Nor was any application made for an order under section 20C of the 1985 Act.

The next steps

43. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Worthing.

Name: D. Brandler **Date:** 9th February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(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 the 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 subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 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 a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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 a 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "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) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).