



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

**Case reference** : **CAM/38UF/LIS/2021/0034**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **The Old Warehouse, 51 Woodgreen,  
Witney OX28 1DD**

**Applicants** : **1.Mr and Mrs Gibson – flat 3  
2.Mr and Mrs Guerriero – flat 12  
3.Mr Godfrey – flat 2**

**Representative** : **Mr Gibson**

**Respondent** : **Mrs Sophie Smith**

**Representative** : **Mr Daniel Smith**

**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 Ruth Wayte  
Derek Barden  
Mr N Miller**

**Date of decision** : **14 April 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held due to the pandemic. The documents are in the third of three lever arch files provided by the applicants. The order made is described below.

## **Decisions of the tribunal**

- (1) No service charges are payable pending service of a notice stating the landlord's name and address, together with an address for service in England and Wales as required by section 47 of the Landlord and Tenant Act 1987;
- (2) The tribunal has otherwise made determinations of reasonableness in respect of certain disputed charges from 2014/15 to 2021/22 summarised in the table annexed to this decision;
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, preventing the respondent from passing on the costs of the proceedings through the service charge.

## **The application**

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the service charge years 2014/15 to 2021/22. This application is linked to the application for an appointment of a manager case reference CAM/38UF/LAM/2021/002. The applications were heard on the same day but decisions issued separately for ease of reference.
2. Directions were ordered on 15 December 2021. As with the application in respect of the Appointment of a Manager, the respondent's representative did not comply with the directions but did attend the hearing and was permitted to take part.

## **The hearing**

3. The applicants were represented by Alan Gibson, supported by Mr and Mrs Guerriero. The respondent was represented by her son Daniel Smith who stated he holds a power of attorney to act on her behalf. The hearing bundle had been prepared by Mr Gibson in accordance with the directions.
4. As a result of a query by the tribunal, the applicants were asked to provide a schedule of payments made by them in respect of the years in dispute and the respondent to provide the same information from his agents, together with a Statement of Account in respect of each applicant, all by 1 April 2022. Mr Gibson provided his information by the due date but the respondent failed to respond and therefore the tribunal only has the applicants' evidence on this issue which maintains that they are all up to date with their service charges.

## **The background**

5. The subject property is a converted period warehouse, divided into 17 flats. There are communal gardens, parking spaces and at least one garage. 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.
6. The applicants bought their flats at different times: Mr Godfrey has been resident the longest, since November 1995, then Mr And Mrs Gibson in December 2014 and finally Mr and Mrs Guerriero in December 2017. Mr and Mrs Guerriero's lease is a more modern document that the lease for flats 2 and 3. The specific provisions of the lease will be referred to below, where appropriate.
7. The respondent is a woman in her 90s who resides in India. Her son Daniel Smith states he holds power of attorney and until their resignation on 31 December 2021, Gatekeeper Property Services were the managing agents. Unfortunately, Gatekeeper declined to attend the hearing or provide Mr Smith with any assistance, apparently on legal advice. The tribunal has appointed Alan Draper of Common Ground as the new Manager of the property, effective from 22 April 2022.

## **The issues**

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for the service charge years ending 30 September 2015 through to 30 September 2022. It became clear during the evidence considered as part of the Appointment of Manager application that all service charges had been claimed on account of costs as no reconciliation had been carried out under the terms of the leases. Mr Gibson's primary argument was that nothing was payable due to the failure of the demands to comply with section 47 of the Landlord and Tenant Act 1987 (landlord's name and address), however a number of specific items were also challenged for each year as detailed below.
  - (ii) Whether the tribunal should make an order under section 20C of the Landlord and Tenant Act 1985, preventing the landlord from claiming any costs of the application as part of the service charge.
9. 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 charge year 2014/15

10. Under the lease the service charge year runs from 1 October to 30 September. Only Mr Godfrey was the leaseholder for the full year, with Mr and Mrs Gibson completing their purchase on or about 1 December 2014. Mr Gibson argued that nothing was payable due to the failure to provide correct details of the landlord under section 47 of the Landlord and Tenant Act 1987. He also challenged the management fee of £3,445, accountancy fees of £690, repairs of £1,920 and gardening costs of £780. His schedule of items in dispute also raised the ground rent, he understood that the FTT has no jurisdiction in respect of ground rent but wanted confirmation that it should play no part in the calculation of the service charge as the accounts produced by Gatekeeper appeared to indicate it was included in the expenditure for the property which was to be recovered via the service charge.
11. Mr Gibson had kept copies of his service charge demands which prior to 2021 indicated that his “superior landlord” was Gatekeeper Property Services Limited or SLLB Architects, with an address care of the agents. It was agreed that the Landlord was in fact Mrs Sophie Smith who resided in India. He maintained that unless and until a notice was served giving that information, service charges were not payable pursuant to section 47 of the Landlord and Tenant Act 1987. Notices had been served more recently stating that the Landlord was Mrs S. Smith but the address was either care of the agents or an out of date business address for her son Daniel. Mr Gibson relied on the Upper Tribunal case of *Beitov Properties Limited v Elliston Bentley Martin* [2011] UKUT 133 (LC) which states that a care of address is insufficient for these purposes. He submitted that it was now too late to correct this error for the older service charges, given the statutory limitation in section 20B of the 1985 Act, which only allows demands to be backdated 18 months from the date the costs were incurred.
12. He submitted that no payment was due to the agents for their fees given their extensive failings to produce compliant demands, budget properly for service charges, failure to comply with the RICS Management Code or carry out works in accordance with the lease. From the accounts it appeared that £3,445 was charged for this year.
13. He also challenged the payment of the accountancy fees in their entirety. After persistent enquiries, he had been sent what purported to be service charge accounts by Gatekeeper. However, they were clearly not service charge accounts and were not used by Gatekeeper to carry out an annual reconciliation of the service charge due at the end of the year as required by his older form of lease. Again, he assumed £690 was charged as that was indicated by the accounts for that year.
14. He also challenged repairs of £1,920 on the basis that although it was accepted some repairs were carried out, until the applicants had sight of

the invoices, they were unable to ascertain whether the full amount was due.

15. Finally, gardening costs of £780 should be reduced by 50% due to the poor quality service. Photographs in the bundle showed that the lawn was patchy and the borders were full of weeds.
16. Mr Smith submitted that it was not fair that his mother might incur a debt due to the failings of her agent. He had been assured by them that a care of address was sufficient.

### **The tribunal's decision**

17. Section 47 of the 1987 Act provides that any written demand to a tenant must contain the name and address of the Landlord and if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant. If the demand does not contain the information required, any service charge contained in the demand shall be treated as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
18. Mr Gibson is correct to quote *Beitov* as authority for the proposition that the agent's address is insufficient to meet section 47. In Paragraph 11 of his judgment The President of the Lands Chamber stated that "*The address of the landlord for the purpose of section 47(1) thus seems to me to be the place where the landlord is to be found. In the case of an individual this would be his place of residence or the place from which he carries on business.*"
19. There is no dispute that as yet that information has not been provided, although Gatekeeper eventually confirmed the landlord's name. As the section states, this omission is capable of retrospective remedy and the President in *Johnson v County Bideford Ltd* [2012] UKUT 457 (LC) has also confirmed that a service charge demand which does not comply with section 47(1) is still a valid demand for the purposes of section 20B(1).
20. In the circumstances, the tribunal determines that no service charges are payable until a valid notice is provided. This should be a simple matter to correct once and for all and the respondent is urged to seek legal advice at the earliest opportunity to ensure it is done properly.
21. In respect of the other challenges, as stated above, these items are all payments on account as no reconciliation has been carried out at the year end as contemplated by the lease. In the circumstances section 19(2) of the Landlord and Tenant Act 1985 states that no greater amount than is reasonable is payable. However, for the historic charges, it seems to the

tribunal that it is right to take into account the service actually delivered when determining reasonableness.

22. There is no doubt that the standard of management by Gatekeeper has been poor. Their fee of £3,445 is approximately £200 per flat (divided by 17) which is a reasonable amount for a reasonably competent agent in 2014/15. However, the service has been minimal and therefore the tribunal considers that a 50% reduction is due.
23. The tribunal agrees with Mr Gibson that nothing should be paid in respect of the accounts. They are not service charge accounts and seem if anything to be prepared for the agents, stating the income and expenditure for the property, with a balance sheet. If the accounts were used to calculate service charge liability it has been overstated due to the inclusion of the ground rent as “expenditure”.
24. The challenge in respect of repairs is purely on the basis that no invoices have been produced to support the cost. £1,920 for a substantial period property is a modest amount which is supported by the accounts. In circumstances where the applicants accept work was carried out, the tribunal considers this to be a reasonable amount as an interim payment.
25. Finally, gardening costs of £780 were charged in 2014/15. This amounts to just £65 per month. Mr Gibson states that the gardens have deteriorated and a 50% deduction is merited. Given the minimal cost for 2014/15 and that the photographic evidence is current rather than historic, the tribunal also considers £780 to be a reasonable amount on account of costs.

### **Service charge year 2015/16**

26. Mr Gibson raised the same arguments in respect of the year ending 30 September 2016: challenging all service charges until a valid s47 notice was served; the management fees of £3,445, accountancy fees of £720, repairs of £1,934, gardening of £1,920 and making the same point about the apparent inclusion of the ground rent as an item of “expenditure”.

### **The tribunal’s decision**

27. For the same reasons as indicated above, the tribunal considers that the management fees should be reduced by 50%, the accountancy fees disallowed in their entirety and the repairs item upheld as reasonable. In the absence of any explanation for the increase in gardening costs, this figure is reduced to £780. Ground rent is not an item of expenditure for calculation of the service charge.

### **Service charge year 2016/17**

28. Again, Mr Gibson repeated his challenge in respect of section 47 of the 1987 Act, the management fee of £3,603, accountancy fees of £732, repairs of £829, gardening costs of £1,440 and the apparent use of ground rent to inflate the service charges.

### **The tribunal's decision**

29. For the same reasons as indicated above, the tribunal determines that the management fee should be reduced to £1,722.50, the same amount as upheld for the previous year given that there was no improvement in the service offered; the accountancy fees disallowed in their entirety; repairs upheld in the amount claimed and gardening costs reduced to £780. Again, ground rent should not be used as an item of service charge expenditure.

### **Service charge year 2017/18**

30. The challenges were as before: section 47, management fees of £3,879, accountancy fees of £756, repairs of £3,820, garden repairs of £1,920 and the apparent use of ground rent as an item of expenditure.

### **The tribunal's decision**

31. For the same reasons as before the section 47 challenge is upheld, management fees capped at £1,722.50, accountancy fees disallowed altogether and the gardening costs reduced to £780. Although the repairs item has increased for this year, it was unusually low in both the preceding and following year. As the three years average out to the amount previously allowed, this is upheld as a reasonable interim payment. As before, the applicants are correct about ground rent, if it has been used to inflate the service charges sought.

### **Service charge year 2018/19**

32. The challenges were as before: section 47, management fees of £4,238, accountancy fees of 780, repairs of £876, gardening of £1,200 and the apparent use of ground rent to inflate expenditure.

### **The tribunal's decision**

33. For the same reasons as before, the section 47 challenge is upheld. In the absence of any justification for the increased cost, the management fee is capped at £1,722.50 and the accountancy fee disallowed. Both the repairs and gardening costs are upheld as a reasonable amount to pay on account, even though the latter have increased. As before, the ground rent should not be used to inflate expenditure for the purposes of calculating the service charge.

### **Service charge year 2019/20**

34. Again, the applicants maintained their challenge to the whole service charge due to the failure to include the landlord's name and address in the demands. Management fees of £3,916, accountancy fees of £810, repairs of £1,541 and gardening costs of £1,427 were also challenged as before.
35. In addition, the applicants raised an unexplained change in the reserve funds, with £2,177 effectively disappearing from the amount held in reserves.

### **The tribunal's decision**

36. As before, the section 47 challenge is upheld. Management fees capped at £1,722.50 and the accountancy fees disallowed altogether. Repairs and gardening costs are upheld as reasonable amounts on account. The tribunal is unable to make a determination about the unexplained change in the reserve funds: this is not a service charge per se and there is no evidence to explain how, if at all, the service charges payable by the leaseholders have been affected. However, Gatekeeper should certainly provide an explanation to both the applicants and respondent.

### **Service charge years 2020/21 and 2021/22**

37. No accounts were produced for these years and no estimate was provided to the applicants, although Mr Smith produced an estimate from Gatekeeper for the current service charge year and it would be helpful if other estimates could be provided to support the accounts. The tribunal considers that the management fee should remain capped at £1,722.50 until the end of Gatekeeper's contract due to their minimal and poor service. Likewise, no accountancy fees are payable in the absence of proper service charge accounts, used to provide a reconciliation as required by the lease held by Mr and Mrs Guerriero. Given that nothing is payable pending a valid section 47 notice the tribunal makes no other determination in respect of these last periods. It is hoped that the parties can reach an agreement in respect of past service charges pending the handover to the new manager.
38. For ease of reference, the tribunal's determinations in respect of the service charge years in dispute are set out in a table annexed to this decision.

### **Application under s.20C and paragraph 5A**

39. In the application form, the applicants applied for an order under section 20C of the 1985 Act, limiting any costs of the proceedings.



40. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act so that none of the costs incurred by the respondent in connection with the proceedings can be passed through the service charge. This application has been caused by the respondent's failure to ensure that the property was properly managed throughout the period in dispute and by taking no active part in the proceedings, both the respondent and Gatekeeper have added to the costs incurred by the applicants in proving their case.

**Name:** Judge Wayte

### **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).

Annex: Summary of determinations in respect of service charges 2014-2021

Year	Item	Determination
All	No landlord's address or address for service	Nothing is payable until a compliant s47 notice is served
2014/15	Management - £3,445 Accountancy - £690 Repairs - £1,920 Gardening - £780	Reduced to £1,722.50 Nothing payable Reasonable as interim Reasonable as interim
2015/16	Management - £3,445 Accountancy - £720 Repairs - £1,934 Gardening - £1,920	Reduced to £1,722.50 Nothing payable Reasonable as interim Reduced to £780
2016/17	Management - £3,603 Accountancy - £732 Repairs - £829 Gardening - £1,440	Reduced to £1,722.50 Nothing payable Reasonable as interim Reduced to £780
2017/18	Management - £3,879 Accountancy - £756 Repairs - £3,820 Gardening - £1,920	Reduced to £1,722.50 Nothing payable Reasonable as interim Reduced to £780
2018/19	Management - £4,238 Accountancy - £780 Repairs - £876 Gardening - £1,200	Reduced to £1,722.50 Nothing payable Reasonable as interim Reasonable as interim
2019/20	Management - £3,916 Accountancy - £810 Repairs - £1,541	Reduced to £1,722.50 Nothing payable Reasonable as interim

Year	Item	Determination
	Gardening - £1,457	Reasonable as interim
2020/21	No breakdown available	Cap management to £1,722.50, nothing for accountancy in the absence of proper service charge accounts, insufficient information to make further determinations
2021/22	As above	As above