



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

**Case reference** : **BIR/00CS/LSC/2022/0008**

**Property** : **196 Cape Hill, Birmingham, B66 4SJ**

**Applicant** : **Mrs Amina Stokes**

**Representative** : **None**

**Respondent** : **Victoria Gardens (Cape Hill)  
Management Company Ltd**

**Representative** : **Miss Mattie Green (counsel) instructed  
by JBLeitch, Solicitors**

**Type of application** : **1. Application for an order under section  
20C of the Landlord and Tenant Act 1985  
2. Application under paragraph 5A of  
Schedule 11 to the Commonhold and  
Leasehold Reform Act 2002 for an order  
reducing or extinguishing a tenant's  
liability to pay an administration charge  
in respect of litigation costs**

**Tribunal member** : **Judge C Goodall  
Mrs J Rossiter MRICS**

**Date and place of  
hearing** : **Paper determination**

**Date of decision** : **06 July 2023**

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**DECISION ON COSTS APPLICATIONS**

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## **Summary**

1. We order:
  - a. Under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that Mrs Stokes's liability to pay any litigation costs claimed from her personally as a result of these proceedings is extinguished;
  - b. That no order under 20C of the Landlord and Tenant Act 1985 be made;
  - c. That the Respondent do reimburse Tribunal fees of £300.00 to Mrs Stokes.

## **Background**

2. On 16 May 2023, the Tribunal issued a decision ("the Decision") on an application by Mrs Stokes for a determination of the payability of a service charge on account for her flat at 196 Cape Hill, Birmingham ("the Property") for the calendar year 2022. The sum demanded for that year, in a demand dated 13 January 2022 ("the Demand"), was £2,388.94, which Mrs Stokes said was too high. The Tribunal agreed, and reduced the amount to between £1,501.58 and £1,755.56 (see paragraph 70 of the Decision).
3. Applications for costs protection orders under section 20C of the Landlord and Tenant Act 1985 ("the Act") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") were adjourned for further representations to be provided.
4. The parties have provided further representations, and this decision is the determination of those applications.

## **The Paragraph 5A application under the 2002 Act**

5. The Respondent's representations do not indicate that they have an intention to claim their costs from the Respondent personally. We will therefore deal with this aspect of the costs applications in short order.
6. Where a landlord / management company seeks to claim all the costs of a tribunal case from the tenant who brought the case, such costs are what is known as an administration charge under Schedule 11, paragraph 1 of the 2002 Act. Paragraph 5A of that Schedule gives this Tribunal jurisdiction to reduce or extinguish such costs, if we consider it is just and equitable to do so.
7. Any successful claim that Mrs Stokes should personally pay the whole of the Respondent's costs, however, would depend, firstly, on there being a contractual basis for the claim.

8. We cannot see any provision in the lease (which is the contract) under which Mrs Stokes can be charged all of the costs personally. Paragraph 12 of the Third Schedule does not work, as the costs were not incurred in connection with recovery of arrears, or incidental to the service of a section 146 notice.
9. In any event, we consider that Mrs Stokes substantially succeeded in her application, as the service charge was reduced by the Tribunal to around the level that she was arguing for. It would not be just and equitable for her to have to pay the costs personally.
10. We make an order that Mrs Stokes's liability to pay any litigation costs claimed from her personally as a result of these proceedings is extinguished.

### **The Section 20C application under the Act**

11. We find that paragraph 9 of Part II of the Sixth Schedule to the lease, which allows "the costs incurred by the Management Company in ...defending any actions or other proceedings against or by any person whatsoever" to be included within the service charge, clearly allows the Respondent to recover the costs of these proceedings through the service charge.
12. In this case, there are (at least) 20 contributors to the service charge. We say at least because the required contributions of the two houses on Crown Street are unclear. The Respondent is, so far as we understand it, a tenant owned company. We assume there is no other source of funding for the solicitor's costs incurred in this case other than through the service charge. The costs have to be paid by someone.
13. Although section 20C gives us the jurisdiction to absolve Mrs Stokes from any obligation to contribute towards the costs, we can only do so if we consider it to be "just and equitable in the circumstances".
14. If a tenant brings proceedings against a company of which that tenant is a part owner, there is a sense in which the tenant is suing him or herself. That tenant is putting the company to expense, and as a member, it is not inappropriate to consider that the tenant must recognise that the company has no recourse to funds other than those contributed jointly by all the tenants.
15. Neither party has given us any information that explains which personnel approved the draft budget for 2022, or authorised Mainstay and / or the Respondent's solicitors to defend these proceedings. Ordinarily, it would be the managing agent's responsibility, but it would be unusual for the managing agent not to agree the budget with its client before issuing it. The client is of course the Respondent, a company owned by all the lessees. It would therefore be expected that some or all of the lessees

would have approved the budget and authorised the defence of Mrs Stokes's claim.

16. In paragraphs 54 to 59 of the Decision, we were to some extent critical of the Respondent and / or Mainstay's decision to include a provision for an external wall survey in the 2022 budget. We were also critical, in paragraph 69, of the apparent lack of any channel of communication between Mainstay and the owners of their client.
17. Despite our criticisms, in making this costs decision, we have no evidence (as neither party provided any) by which we can identify the person or persons most responsible for taking the decisions of which we were critical.
18. In our view, in the light of our inability to allocate responsibility for including the cost of an external wall survey in the 2022 budget, it would not be just and equitable to increase the costs liability upon all other lessees by granting Mrs Stokes an order under section 20C of the Act, without having some evidence to the effect that the remaining lessees wanted the 2022 budget to include an unnecessary budget item. We have no such evidence. We therefore refuse that application.
19. It is of course open to Mrs Stokes, or any other lessee, to challenge the reasonableness of the legal costs which are likely to be added to the service charge under section 27A of the Act following this decision when the final year accounts which include those costs are produced.

### **Tribunal fees**

20. The impact of our decision above is that (unless there is a section 27A challenge), Mrs Stokes will have to pay her share of the Respondent's costs in these proceedings.
21. In addition, Mrs Stokes also funded the Tribunal fees, totalling £300.00.
22. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 gives the Tribunal the power to order a party to reimburse fees paid by another party.
23. Our view is that Mrs Stokes substantially achieved her objective in bringing the proceedings of reducing the 2022 budget service charge to levels more akin with residential flat service charge levels in the area. We consider that it is fair and appropriate to order that the Respondent reimburse her the fees of £300.00. The Respondent will be able to add those fees to the costs of the proceedings, so Mrs Stokes will end up paying a proportion of those fees, but her liability will be very significantly less than if she has to pay the whole of them. We consider that to be a fair outcome.
24. We add that Mrs Stokes indicated she had incurred additional costs of £100.00 in lost income and / or subscriptions to an advice service. There

are no applications before us under which we can order the Respondent to reimburse these costs, and Mrs Stokes will not be able to recover these costs through a Tribunal order in these proceedings.

### **Appeal**

25. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
Chair  
First-tier Tribunal (Property Chamber)