FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/LSC/2022/0074**
Property	**:**	**Flat 1, 140 York Road, Southend-on-Sea SS1 2EA**
Applicant	**:**	**Ivana Baltic** **Unrepresented**
Respondent	**:**	**Long Term Reversions (Harrogate) Ltd**
Representative	**:**	**J B Leitch Ltd**
Type of application	**:**	**Applications for permission to appeal**
Tribunal members	**:**	**Judge K Saward** **Miss M. Krisko BSc (EST MAN) FRICS**
Date of decision	**:**	**1 August 2023**

DECISION AND REASONS

Description of determination

This has been a determination by the Tribunal on the papers, which is the basis on which all permission to appeal applications are considered, unless there is a request or order for a hearing. The determinations concern applications to appeal made by both the Applicant and Respondent. In arriving at its decisions, the Tribunal has considered the responses by each party submitted on 31 July 2023.

DECISIONS OF THE TRIBUNAL

1. Having considered Ms Baltic's request for permission to appeal submitted on 14 July 2023, the Tribunal determines that it will not review its decision on the Applicant's stated grounds of appeal and permission be refused.

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2. The Tribunal has considered the request by Long Term Reversions (Harrogate) Ltd for a review of the Tribunal's decision dated 16 June 2023 (and, if it is not granted, for permission to appeal).

3. Having done so, the Tribunal determines to correct a typographical error in the wording of the section 20C order in exercise of its powers of correction under rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. A copy of the corrected decision is attached.

4. The Tribunal determines that it will not review its decision on the Respondent's grounds of appeal, and permission to appeal be refused.

5. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the further application for permission to appeal may be made to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

6. Where possible, you should send your further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

7. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 0207 612 9710).

REASONS FOR THE DECISIONS

The Applicant's application

8. The Applicant considers that the Tribunal has not protected the leaseholder against arbitrary and unlawful behaviour of the freeholder. The Applicant also seeks the removal of the threat of all the fees. The Tribunal takes this to mean that the Applicant considers an order should have been made under section 20C of the Landlord and Tenant Act 1985 in respect of all the landlord's costs of the proceedings.

9. There is a misunderstanding over the function of the Tribunal. Its role was to determine the reasonableness of and liability to pay service charges for the disputed service charge years under section 27A of the 1985 Act. In its decision dated 16 June 2023, the Tribunal found the disputed charges to be reasonable and reasonably incurred. Notwithstanding this determination, the Tribunal made an order under section 20C to limit recovery of the landlord's costs of the proceedings to no more than 50% of the costs incurred for the reasons given in its decision.

10. Paragraphs 6 and 7 of the decision simply record documents before the Tribunal, which fell for consideration. The Applicant disputes that any documents were late. They were considered by the Tribunal regardless.

11. There was no evidence before the Tribunal that the buildings insurance had been invalidated by reason of defects with the property or how it was managed, hence the comments at paragraph 57. That position is unaltered by the extracts from various websites quoted by the Applicant.

12. The Applicant's concerns over the electric cover and hallway carpet were addressed at length in paragraphs 67 to 79 (inclusive) of the decision. The points now made are essentially a repeat of arguments raised and considered as part of the substantive application challenging the disputed service charges and management fees.

13. Taking into account the overriding objective to deal with cases fairly and justly, the Tribunal will not review its decision on the grounds given by the Applicant.

14. In the circumstances, the Tribunal does not consider that any of the Applicant's grounds of appeal have a realistic prospect of success.

The Respondent's application

15. The Respondent's application dated 14 July 2023 is made on two grounds.

Ground 1

16. Ground 1 concerns the wording of the Tribunal's decision of 16 June 2023 to make an order under section 20C of the Landlord and Tenant Act 1985 limiting the landlord's costs of the Tribunal proceedings that may be passed "to the lessees" through any service charge. The Respondent says that the Tribunal erred in law by extending the order to other leaseholders who were neither applicants nor consented to the application.

17. Plainly, there is a minor typographical error in the wording of the order which should have said "lessee" in reference to Ms Baltic and not "lessees", plural. As set out in section 20C, the application was for an order that any costs incurred by the landlord "*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 [emphasis added].*" The application was made solely by Ms Baltic. The word "lessees" will be corrected accordingly.

Ground 2

18. The Respondent considers that the Tribunal erred in making the section 20C order at all. It is submitted that in deciding it just and equitable to make the order, the Tribunal failed to balance the factors fairly. In particular, the Respondent says it was entitled to pursue a case for strike out of the whole of the Applicant's claim. Plus, legal submissions had to be made in any event during the hearing in respect of the Applicant's attempts to re-litigate matters already determined by the County Court. The Respondent points to its success in defending all the challenges. It is further submitted that, if it is correct on ground 1, then it would be

fundamentally unfair for other leaseholders of 140 York Road to be required to contribute to the Respondent's costs.

19. The Tribunal recognises that the purpose of section 20C is not to punish a landlord or management company or to award damages through the backdoor. That is neither the purpose nor effect of the order made by the Tribunal in limiting recovery of the landlord's costs to no more than 50% of those incurred.

20. In arriving at its decision, the Tribunal took into account all the relevant factors. Part of the application was struck out in relation to arguments concerning the Building Safety Act 2022 and service charges for 2020/21 already determined in the County Court. However, there remained a dispute over service charges for four other years. The Respondent advanced protracted arguments in an unsuccessful attempt to strike out the claim in its entirety. Indeed, the Tribunal noted that there were issues raised by the Applicant capable of disclosing a possible basis of claim.

21. The Tribunal did not find that there was "no basis for this claim to succeed". It said that there would be no basis to make a deduction from the management fee between 2017/18 to 2019/20 for a management failure if the concerns had not yet been recorded. That is entirely different.

22. It is somewhat remiss of the Respondent to claim wholescale success. It succeeded in defending the application, but not without the Tribunal expressing its concerns over the very poor and neglected appearance of the building. The application was not struck out entirely and the Respondent's argument that section 19(1)(b) was not engaged was dismissed.

23. Of course, the Respondent was entitled to defend itself, but it could have done so far more succinctly. By the same token, the Applicant was entitled to pursue an application before the Tribunal on the grounds not struck out. There were issues that warranted consideration. As it was, the Tribunal was satisfied as to the reasonableness of the disputed service charges. This conclusion was reached on the basis that the Applicant had not produced alternative buildings insurance quotes and the Tribunal took into account the low level of management fees.

24. The Tribunal exercised its discretion in accordance with section 20C(3) to find it just and equitable in the circumstances to make an order limiting recovery of the Respondent's costs in the proceedings through the service charge to no more than 50%. In doing so there was recognition that the Respondent had succeeded in striking out part of the claim and that determinations were made in its favour. However, the Tribunal reasonably and properly weighed up the time (and thus costs) taken by the Respondent in pursuing lengthy arguments against a litigant in person which did not wholly succeed and who had raised some issues worthy of consideration by the Tribunal, albeit not made out.

25. The Applicant was not awarded her Tribunal fees because her claim did not ultimately succeed. It has no bearing on whether the recovery of the Respondent's costs should be limited through an order under section 20C.

26. The effect of the correction to the section 20C order is that no other person is entitled to the benefit of the order besides Ms Baltic. In this eventuality, the Respondent argues that it would be fundamentally unfair as the other leaseholders would be required to contribute to the Respondent's costs in dealing with an application to which they were not a party. In this regard, the decision of the Upper Tribunal in *Conway v Jam Factory Freehold Limited* [2013] UKUT 0592 (LC) is cited.

27. The *Jam Factory* was a complex case concerning blocks of multiple flats where the management arrangements had proved controversial and there were a series of disputes. It was fact sensitive. The circumstances are not comparable to this case which involves a semi-detached house converted into 3 flats and straight-forward arrangements. Each and every case must be considered on its individual merits.

28. The section 20C order does not 'require' any other leaseholder to contribute towards the Respondent's costs. I am mindful that the corrected order opens up the possibility of the Respondent seeking recovery of more of its costs through the service charge from the other leaseholders than the Applicant herself. Of course, those other leaseholders played no part in the proceedings and might well feel aggrieved if the Respondent chooses to recoup its expenses from them.

29. I shall not prejudice the outcome of any application, but if the Respondent were to seek recovery of its costs from the other leaseholders, then they could make their own application to the Tribunal for an order under section 20C. The option would also be available for them to challenge the reasonableness of such charges under section 27A of the 1985 Act. There would be a potential remedy available to them.

30. It would not have been just and equitable in the circumstances of this case to refuse Ms Baltic any order under section 20C. To do so would enable the full recovery of the Respondent's costs of the proceedings from her and other leaseholders when the Tribunal has found that not to be justified. It imposed a 50% limit for a reason.

31. Taking into account the overriding objective to deal with cases fairly and justly, the Tribunal will not review its decision.

32. In the circumstances, the Tribunal does not consider that an appeal has a realistic prospect of success.

Name: Judge K Saward Date: 1 August 2023