FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/LAC/2021/0008**
Property	**:**	**Apt 2, Block A, Albion Works, 12 Pollard Street, Manchester, M4 4AJ**
Applicant	**:**	**Ms Mi Zhou**
Respondents	**:**	**Artisan H2 Limited (in administration)**
Representants	**:**	**Residential Management Group**
Type of Application	**:**	**Commonhold and Leasehold Reform Act 2002, Sch. 11(5) and 11(5A) and Landlord and Tenant Act 1985, s.20C**
Tribunal Members	**:**	**Judge Caroline Hunter** **Tribunal Member William Reynolds**
Date of Decision	**:**	**20 November 2023**

DECISION

Summary Decision

1. The Tribunal:
    a. Finds that the administration fees are not payable;
    b. Finds that even if they are payable, they are not reasonable;
    c. Make a s.20C order.

Application

2. On 1 November 2021 the applicant, Ms Mi Zhou applied to the tribunal for a determination under the Commonhold and Leasehold Reform Act 2002 (the 2002 Act), Sch. 11(5) as to liability to pay four administration charges in respect of App 2, Block A, Albion Works, 12 Pollard Street, Manchester, M4 4AL (the flat). The respondent was the landlord under the lease. In addition, the applicant sought orders under Sch. 11(5A) of the 2002 Act and the Landlord and Tenant Act 1985, s.20C.

3. The respondent's management company was Residential Management Group (RMG).

4. Further to directions from the Tribunal dated 8 June 2022, the applicant provided a statement of case and a bundle of documents. The respondent via RMG also provided a statement of case and documents on 20 July 2022. At the same time RMG informed the Tribunal that on 29 October 2021 the respondent had entered into administration. The Administrator was Kroll Advisory Ltd.

5. On 17 August 2022 RMG applied to the Tribunal to discontinue the application under the Insolvency Act 1986, Schedule B1, para. 43(6). After various correspondence including with the Administrator and a further case management hearing on 19 June 2023, the Administrator confirmed (on 16 August 2023) that the applicant had consent for the application proceeding. RMG has continued to represent the Administrator.

6. The Tribunal considered that it was appropriate for the application to be determined on the papers. Neither of the parties requested a hearing, and this decision is made on the papers.

The Lease

7. The lease dated 16 August 2006 is between the landlord and the tenant. The lease includes a requirement to pay the estimated services charges quarterly (Clause 6.1). The lease includes the following terms:

    Clause 6.18.2 upon a devolution or transmission of this Lease or of an underlease of the Flat (except in the case of an underletting for a period not exceeding three years) not coming within clause 6.18.1 to use his reasonable endeavours to ensure

that the person in whom this Lease of the Flat becomes vested as a result of the devolution or transmission enters into and executes the appropriate Deed of Covenant (in duplicate) in the form set out in the Fourth Schedule and with such alterations as the deaths of the parties or as such other circumstances render necessary and lodges the Deed of Covenant and the duplicate with and pays the reasonable fees of the Landlord or the solicitors for the Landlord in connection with the approval engrossment and recording of the Deed of Covenant (including any fees payable in respect of the rewording of the Deed of Covenant or any of them pursuant to the provisions of this Lease)

Clause 6.18.3 within one calendar month of every transfer assignment mortgage or legal charge of this Lease of the Flat and of every transfer or assignment and also of every Grant of Probate or Letters of Administration Order of Court or other instrument effecting or evidencing a devolution of the title of this Lease being executed or operating or taking effect or purporting to operate or take effect to provide the Landlord's Solicitors with a certified copy for the purpose of registration and to pay to the Solicitors for the Landlord the sum of £25 (together with any Value Added Tax which may be payable in respect thereof)

Clause 6.20 to pay all expenses including solicitors' costs and disbursements and surveyors' fees reasonably and properly incurred by the Landlord incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceeding under Section 146 or 147 of that Act of proceedings on account of arrears of rent and/or Service Charge or Structural Service Charge for forfeiture of this Lease or for the recovery or attempted recovery of those arrears notwithstanding forfeiture is avoided otherwise than by relief granted by the Court .....

Clause 10. A demand for payment notice or other document required or authorised to be served or given under this Lease shall be in writing and shall be deemed to be sufficiently served
10.1 In the case of service on the Tenant if addressed by or on behalf of the Landlord to the Tenant by name or by the designation of "the Tenant" and sent by the recorded delivery service or left for the Tenant at the Flat.

8. The Fourth Schedule sets out the Form of Deed of Covenant to be executed on Grant, Disposition or Devolution of a Lease.

The Law

9. The applicable statutory provisions are set out in the Appendix of this decision. In summary, the applicant alleges the administration charges were are not payable at all (2002 Act, Sch. 11, para. 5) and/or they are not reasonable (2002 Act. Sch. 11, para. 2). Further under Sch. 11, para.5A we can disallow the applicant's liability to pay a particular administration charge in respect of litigation costs if we are of the view that it is just and equitable.

10. In addition by the Landlord and Tenant Act 1985, s. 20C, 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.

The Dispute

11. The applicant applied for reimbursement of three administration charges that she paid in November 2021. The four charges were:

    a. Legal Fee of £432.00 levied on 16 June 2021;

    b. Administration Fee of £160 levied on 16 June 2021;

    c. Court Fee of £455.00 levied on 30 July 2021 – this is no longer in dispute as it was removed by respondents (see the applicant's supplementary statement in reply of 22 July 2022 and respondent's reply of 17 August 2022);

    d. Reminder fee of £34 levied on 7 September 2021 (we are not clear whether this is still in dispute, but as far is it, this decision covers it).

12. The chronology of the case is important in understanding the cases made by each party and we set it out here.

Date	**Event/email**
21 February 2020	The applicant completed the purchase of the flat
22 February 2020	The Applicant emailed RMG to request set up payment of service charges
24 February 2020	The Applicant's solicitors send the completed Notices of Transfer and Charge Form and payment of £125, certified copy of the transfer and copy of the lease to the freeholder at 'Landmark Collections'.
4 March 2020	RMG email the applicant requesting that the notice of assignment is sent directly to the freeholder
4 March 2020	Applicant's solicitor emails RMG to confirm that notices have been send to the freeholder and that they are awaiting receipted notices
23 February 2021	RMG emailed the previous owner because non-payment of the service services
23 February 2021	Previous owner replies saying that he has rang multiple times to inform RMG that the flat was sold in February 2020
02 March 2021	In response to another email, the previous owner states that he received an email from RMG dated 11 August 2020 that RMG was awaiting for the receipted notice from the buyer [the applicant]'s solicitor and chased the applicant's solicitor that morning.

5 March 2021	RMG contacted the previous owner and the applicant requesting paperwork on the purchase – ie the receipted notice
7 March 2021	The applicant emails her solicitor asking him to respond to this asap
16 March 2021	The applicant emails RMG requesting her customer number
19 March 2021	RMG replies to the applicant stating the account is not yet in the applicant's name, and advised her to chase her solicitor
19 March 2021	The applicant emails RMG the completion statements, copying in her solicitor
20 March 2021	The applicant's solicitor emails RMG stating that the notice of transfer, the notice fee and relevant documents were sent to them on 24 February 2020
25 March 2021	The applicant emails RMG to ask RMG to confirm if it is now sorted
10 April 2021	Email from applicant to RMG requesting service account
12 April 2021	Email from RMG to the applicant stating that 'Until RMG receive the relevant legal paperwork we are not able to change any details on our systems…'.
16 April 2021	The account (in the name of the previous tenant) was referred to Property Debt Collection Law (PDC) by RMG.
29 April 2021	RMG updates their records based on information from PDC that the property register states that the applicant is the owner.
30 April 2021	RMG sends a welcome pack to the applicant and invoice for the service charges by post at the flat.
1 June 2021	Final Request for Payment send to the applicant by post. This state the matter would be referred to a debt collection representative which 'may pursue the arrears via your mortgage lender where appropriate'.
16 June 2021	Administration fee added to applicant's account
16 June 2021	'Legal' fee added to account
24 June 2021	RMG (re)instructs PDC in the matter.
28 June 2021	Email from applicant to RMG requesting service account
28 June 2021	RMG email to say that the Welcome pack and account number was sent around the end of April
29 June 2021	Applicant emails to say she has not received the welcome pack and number. She asks for a statement of account.
6 July 2021	RMG reply with statement and a request to payment to be made to PDC
6 July 2021	The applicant responded querying the administration and legal fees. She also provides a different postal address.
7 July 2021	RMG reply

7 July 2021	Applicant asserts that the welcome pack did not arrive 'although as I landlord I regularly check matters sent to the flat'
30 July 2021	'Court' fee added to account
1 September 2021	The applicant emails RMG asking them to overturn the legal and administrative fee.
7 September 2021	Reminder fee added to account
30 September 2021	RMG replies stating that: 'While I do appreciate your frustrations over the situation, I do need to note that, per the Lease for this property, we are required to receive confirmation of the same from the Freeholders before we can assign the account to yourself.'
14 October 2021	In response to emails from the applicant PDC states that 'The title does not show an alternative address for yourself therefore as previously advised, this is your solicitors' responsibility to ensure that RMG hold the correct contact details.' The email included an offer to reduce the fees by half to resolve the matter.
19 November 2021	The applicant paid all outstanding service charges, including the fees, under protest
6 December 2021	The £455 'Court' fee was returned to the applicant's account

The Applicant's case

13. The applicant's case is quite simple. She has always been willing to pay her service charges. This is demonstrated by the timeline set out above. In terms of the welcome pack and invoice that RMG asserts was sent on 30 April 2021 she notes that no evidence is provided by RMG of this posting. Further the previous and subsequent evidence shows that RMG regularly uses email as a form of communication.

14. She states that RMG has never provided the relevant clauses under which the charges can be demanded. It was RMG's negligence and omission that has led to their failure to provide a service charges statement. The amounts are not reasonable or justified.

15. In her supplementary statement in reply of 22 July 2022 the applicant provided information on RMG stating 'RMG is notorious in changing unreasonable fees…' We have not considered this evidence in our decision as it was not relevant to the matter to be decided.

The Respondent's case

16. The respondent's case was also put simply. RMG points to 6.20 of the tenant's covenants as the basis for the demand.

17. Further RMG state they were clear from the start that they could not open a service charge account for the applicant without a 'copy of the Notice receipted by the Freeholder/Landlord'. This was never provided by the applicant.

18. It was only when they received the evidence from PDC of the ownership of the flat that they could send a welcome pack and invoice. They did this on 30 April 2021 and the applicant was able to make a payment at that point. The applicant had between 30 April 2021 to 1 June 2021 to make payments.

19. In para. 32 of respondents' statement of case RMG point to the email from PDC dated 14 October 2021. The failure of the applicant to provide correct details of her address was, it is alleged, the main cause of the Applicant incurring the legal fees.

Discussion

20. Although neither party put their case exactly in this form, we have to decide:

    a. whether under the lease the fees are payable;

    b. if they are payable, whether they are reasonable.

21. We did consider whether Sch. 11, para.5A of the 2002 Act might be relevant, however given that the court fee of £455.00 was reimbursed, in our view no litigation costs were incurred.

22. **Payability.** As noted above the respondent relies on Clause 6.20 to oblige the applicant to pay for disputed fees. Neither party cited any cases on the proper construction of Clause 6.20. However, there are a number of relevant cases on similar clauses.

23. In particular we have considered the Upper Tribunal decision in *Barrett v Robinson* [2014] UKUT 0322 (LC). In that case the relevant clause (clause 4(14)) was:

    "To pay all reasonable costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor in or in contemplation of any proceedings or the preparation of any notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court."

24. The Upper Tribunal stated at para. 49:

> "Clause 4(14) must therefore be understood as applying only to costs incurred in proceedings for the forfeiture of a lease, or in steps taken in contemplation of such proceedings. Moreover, even where a landlord takes steps with the intention of forfeiting a lease, a clause such as clause 4(14) will only be engaged (so as to give the landlord the right to recover its costs) if a forfeiture has truly been *avoided*. If the tenant was not in breach, or if the right to forfeit had previously been waived by the landlord, it would not be possible to say that forfeiture had been avoided – there would never have been an opportunity to forfeit, or that opportunity would have been lost before the relevant costs were incurred. In those circumstances I do not consider that a clause such as clause 4(14) would oblige a tenant to pay the costs incurred by their landlord in taking steps preparatory to the service of a section 146 notice" (emphasis in original).

25. The Tribunal continued at para. 52:

> "Costs will only be incurred in contemplation of proceedings, or the service of a notice under section 146 if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not *in fact* contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as clause 4(14) as providing a contractual right to recover its costs" (emphasis in original).

26. We note that 6.20 does not have the exact same words as those considered by the Upper Tribunal decision in *Barrett v Robinson* however, in our view, the principal established is relevant. On the evidence, we consider two factors indicate the respondent did not *in fact* have the necessary contemplation of proceedings in mind when the administration charges were levied. Those factors being the refund of the 'Court' fee when challenged by the applicant as to the nature of the alleged Court proceedings they related to (together with the absence of any notification to the applicant in respect of such proceedings actually taking place) and the statement in the RMG's letter of 1 June 2021 that the debt collection representative may pursue the arrears via the applicant's mortgage lender where appropriate.

27. The evidence shows that there are no issues between the parties as to the payment of the service charges. The applicant always accepted that she had to pay them and has been willing to pay them. There was no demand for payment until 30 April 2021. The respondent claimed that court costs had been incurred, however, it is clear that no legal action was taken (this is the reason that the 'Court' fees were returned to the applicant). There is no evidence that forfeiture was ever contemplated. Accordingly, we determine that the administration fees are not payable.

28. **Reasonability.** Even if we are wrong on the payability of the fees, we consider that the failure to pay the service charges, and therefore the fees, has arisen because of the failure of the respondents not the applicant.

29. Clauses 6.18.2 and 6.18.3 (see para. 7 above) do not require the applicant to obtain a receipted notice from the freeholder as a pre-requisite to registering the new owner's details. The applicant and her solicitor complied with the lease on 24 February 2020. RMG's client is the freeholder, and it was for the freeholder to confirm that the transfer has taken place. RMG were wrong to insist on a receipted copy of the notice before registering the new tenant's interest.

30. RMG had plenty of communication from the applicant including her e-mail address and she repeatedly asked for online accounts, furthermore, when communicating with the former tenant over unpaid invoices, they did so by e-mail.

31. The applicant asserts that she did not receive the Welcome Pack or service charge statement dated 30 April 2021. Her email of 28 June 2021 supports this. The respondent states that the Welcome Pack, Welcome letter and an invoice were posted to the applicant on 30 April 2021 however, there is no marking on the correspondence itself to denote that it was sent by recorded delivery as required by the lease, nor is any such evidence provided.

32. On the evidence, and on the balance of probabilities, the administration charges were incurred owing to delayed payments consequent upon RMG's practice of failing to transfer responsibility to the new tenant until they received a receipted notice yet there is no such obligation imposed on the assignor/assignee under the lease. Furthermore, RMG had details of Ms Zhou's e-mail address and desire for an online account and should have used a dual mode of communication involving e-mail. If RMG had done one or both of these things the administration charges would never have arisen. Accordingly, it is not reasonable for the applicant to pay them.

Costs – s.20C

33. The applicant made an application for an order pursuant to s.20C of the 1985 Act, on the basis that the charges were excessive. In the light of our decision above we make a s.20C order.

RIGHTS OF APPEAL

34. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

35. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

36. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

37. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix – relevant legislation

1. Commonhold and Leasehold Reform Act 2002, Schedule 11

Paragraph 2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

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).

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing 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 in 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 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.

Landlord and Tenant Act 1985

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 leasehold valuation tribunal, the First-tier 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(ba) in the case of proceedings before the First-tier Tribunal, to the 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.