



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

Case Reference	: LON/00AT/LSC/2021/0446
Property	: 16 Memorial Close, Hounslow, TW5 0LN
Applicant	: Yasmeeen Shireen Bashir
Respondent	: HML Shaw
Type of Application	: Challenge to reasonableness and payability of service charges pursuant to s.27A Landlord and Tenant Act 1985
Tribunal Member	: Judge Shepherd Mark Taylor MRICS (RIP) Sue Coughlin MCIEH

Determination

1. In this case the Applicant Ms Bashir (“The Applicant”) challenges charges made by the freeholder through their agents, HML Shaw (“The Respondents”). The Freeholder was invited to take part in the proceedings but failed to respond. In practical terms HML Shaw have been the Applicant’s first point of contact and this is why they are named as the Respondent. Clearly any determination made

below binds the Freeholder particularly since they chose not to take part in the proceedings.

2. Ms Bashir is the leaseholder of premises at 16 Memorial Close, Hounslow, TW5OLN (“The premises”) a two bedroom flat on the top floor of a purpose built block of flats in Heston, Hounslow. The Applicant specifically charges the payability of debt collection and administration fees and reserve fund charges.
3. The case was heard at two virtual hearings which were separated by a period of 16 months. The first hearing that took place on 25th August 2022 ended prematurely because the Respondent’s representative Mr Ahluwalia of HML Shaw had not chosen to attend the hearing but was on site on his phone. The Tribunal found him to be a singularly uncooperative individual which was apparently also reflected in his behaviour towards the Applicant and her son.
4. At this first hearing the Tribunal (Judge Shepherd and Mark Taylor) heard the evidence on the administration charges but were unable to hear the evidence on the reserve fund. There followed extensive delays as the Tribunal sought to agree a new date with the parties. Mark Taylor sadly died and with the consent of the parties was replaced at the second hearing by Sue Coughlin MCIEH. The second hearing took place on 14th December 2023. Mr Ahluwalia was replaced by Ms Campbell.

The law

5. The law applicable in the present case was limited. It was essentially a challenge to the payability of the sums sought under the lease.
6. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

(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 provision 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.

....

7. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

a. *An application may be made to [the appropriate tribunal]² 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.

b. *Subsection (1) applies whether or not any payment has been made.*

c. *An application may also be made to [the appropriate tribunal]² 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.*
- d. *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.*
- e. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment....*

The administration charges

8. As already indicated the submissions on this issue were heard at the first hearing and Mark Taylor and I made a decision but decided that it would be best to issue it at the same time as the decision in relation to the reserve fund. The charges are connected to the reserve fund because they represent the costs that the agents said they incurred in chasing the Applicant for the reserve fund. The Applicant summarised the situation in her statement of case.

I purchased my property in 1996. At the time of purchase I was made aware that, as per the lease, I would be liable to pay a yearly service charge for

maintenance of the building, grounds, and shared spaces as well as a contribution towards a reserve fund for longer-term renovations and repairs.

In 2011 the management company along with the directors decided to set up a new reserve fund which would be separate and distinct from the service charge fund with the yearly new reserve fund payment capped at 10% of the yearly service charge payment. I was led to believe by one of the directors (who lived at 17 Memorial Close at the time) that reserve fund payments would be a voluntary contribution and being a widow on a low income with a young child to support (and having recently lost my son) I opted not to contribute.

Between 2011 and 2021 the yearly payments for the new reserve fund increased drastically, as shown below:

Year Yearly amount for new reserve fund

2011 £62.68

2012 £68.04

2013 £68.04

2014 £69.64

2015 £69.64

2016 £250.00

2017 £250.00

2018 £665.91

2019 £660.32

2020 £607.78

2021 £607.78

Around 2019/20 I was contacted by HML Shaw with demand letters for arrears which had built up over time as my yearly service charge contribution was funneled towards clearing previous arrears instead of towards my service charge. I was very concerned by these demand letters and threats to involve debt collectors. I tried to contact HML Shaw's point of contact for Memorial Close, Rajesh Ahluwalia, but he refused to talk to me and was rude and abrasive towards me over multiple calls. After most calls I would cry due to the way he interacted with me and made me feel.

During 2020 HML Shaw forwarded my file to PDC, a debt collection agency, increasing my urgency to resolve this. Rajesh's refusal to engage with me finally led me to contact HML Shaw's credit control team and I spoke with Michelle and Adrienne in that team and we were able to reach a resolution which allowed me to clear the arrears. Michelle and Adrienne also tried to contact Rajesh who was rude and abrasive towards them as well. They agreed that my efforts to try to contact Rajesh meant that they could waive the various other fees and charges that had built up (totally £646). This was also communicated to PDC where I dealt with a lady called Jade. PDC subsequently confirmed to me in writing that my file was now closed and no further charges were being sought.

Despite still being on income support earning approximately £1,000 a month through my part-time job, I prioritised clearing these arrears by late 2020 incurring significant credit card debt in the process in an effort to put this episode behind me. However, I have found out this year that HML Shaw did not waive those £646 in fees and charges and my service charge payment for this year has instead been diverted towards those fees and charges. This now means that I am now back into arrears on my service charge and HML Shaw is demanding an exorbitant amount for the reserve fund (which for 2021 equals the service charge amount). I would like to dispute the huge increase in the reserve fund amount since 2016 as well as claim back the fees and charges that HML Shaw has charged me over the years. I have always sincerely tried to engage with them but HML Shaw, and Rajesh Ahluwalia in particular, have refused to ever be upfront with me and resolve this amicably. I feel it is unacceptable for myself and other residents of Memorial Close to have to pay towards a reserve fund an almost equal amount to the service charge when this was never a part of my lease when I bought my property in 1996. Add to this, HML Shaw has consistently refused to help myself and other residents query where the reserve fund amounts are being spent or where any interest earned on the reserve fund pool is going.

9. Mr Ahluwalia maintained that there was a lease provision allowing the administration charges to be recovered. There is no such provision. The

Applicant was entitled to challenge the payability of the reserve fund. The Respondents were not entitled to recover the cost of chasing the debt. They appear to have realised that they had no right to the administration charges when they told the Applicant that they would be waived. In the event they were not waived. If the Applicant has already paid the £646 in administration charges they will need to be paid back to her by HML Shaw.

The reserve fund

10. The Respondents accept that the lease of the premises does not contain a provision allowing them to recover contingency sums for future works. Mr Ahluwalia in a short written submission before the second hearing stated the following:

We are aware that the lease does not allow for a reserve fund. However, implementation of setting aside funds for major works was agreed historically at an Annual General Meeting to which all members were invited. It was agreed that although the lease does not allow members would set aside funds for future Major Works in a separate bank account.

11. Ms Campbell asked for the opportunity to produce the AGM resolution in relation to the reserve fund. It was surprising that this had not been already produced but the Tribunal allowed further evidence which appeared central to the issue in question.
12. Ms Campbell provided minutes of the Memorial Close Management Company Limited AGM from 2009 onwards. Although the minutes mention a reserve fund there is no resolution to set one up. Further as already mentioned there is no lease provision requiring payment into a reserve fund neither is there a construction of the lease which allows for such a clause to be read into it. The lease was drafted in 1970. The need for a reserve fund may not have been an issue at the time.

13. At best the payment into a reserve fund is a voluntary act by leaseholders. There is no compulsion on them to pay these sums. If the Respondents want to set up a proper reserve fund which leaseholders are liable to pay into they will need to vary the lease.
14. For the purpose of this decision we find that the Applicant is not liable to pay the reserve fund and accordingly none of the disputed sums are due. If she has already paid them, they will need to be reimbursed.

Judge Shepherd

19th January 2024

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.