



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

Case Reference : **MAN/30UM/LSC/2022/0123**

Property : **Various flats at the Power Mill and Loom,
Holcombe Road, Rossendale BB4 4AZ, as listed
in the Annex hereto**

Lead Applicant : **Rebecca Simms (assisted by Vincent Hughes and
Philip Suthers)**

Respondent : **Prescott Business Park Ltd (represented by
Regent Management Group Limited)**

**Type of
Application** : **Reasonableness and payability of service charges
Landlord and Tenant Act 1985 section 27A
Applications under Section 20C Landlord and
Tenant Act 1985 and Schedule 11(5) Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **Mr J R Rimmer
Mr J Gallagher MRICS**

Date of Decision : **5th April 2024**

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Order

The service charges for the years 2020-21, 2021-22 and 2022-23 are reduced by the amounts stated in paragraphs 42 and 43 herein for the respective years.

For the purposes of certainty and to record the views expressed at hearing the Tribunal makes orders in favour of the Applicants under section 20C Landlord and Tenant Act 1985 and Schedule 5 paragraph 11 Commonhold and leasehold Reform Act 2002

Application and background

- 1 The Applicants are the long leaseholders of the majority of 42 flats within two buildings now known as The Power Mill and The Loom, situated on Helmshore Road in Rossendale. Each building contains 21 flats. The Respondent is the management company responsible for provision of the services required under the terms of the leases of the flats and which acted through Regent Management Limited as its managing agents, until the leaseholders recently exercised their collective right to manage.
- 2 The Application for consideration of the payability of service charges under Section 27A Landlord and Tenant Act 1985 is predicated upon the fact that in establishing effective management of the services the right to manage company found that it could provide buildings insurance cover for the sites at a considerably lower premium that was hitherto paid to the respondent's agent for cover they had sourced.
- 3 The issue of the insurance premium also served to highlight for the Applicants certain other costs that had been incurred. All the costs that the Tribunal is being asked to consider relate to the service charge accounting years 2020-21, 2021-22 and those budgeted for 2022-23. Those matters where concerns were still apparent are set out in a "Scott Schedule", appearing at pages 289 to 291 in the bundle of documents provided to the Tribunal.
- 4 All parties provided the Tribunal with submissions upon the issues raised by the Applicants and an extensive bundle of agreed documents was provided to assist the Tribunal in its task.
- 5 The Tribunal also received applications under Section 20C Landlord and Tenant Act 1985 and Schedule 11(5) Commonhold and Leasehold Reform Act 2002 to consider whether or not it should allow any relevant costs relating to these proceedings to be recovered either as service charges, or administration costs, in future years.
- 6 At the hearing which took place on 26th February 2024 in Rochdale the Respondent's agents indicated that no such recovery would be contemplated. This indication conceivably had some sense of inevitability about it, given the change of management in any event, but it is recorded in a formal order, set out above. The Tribunal has not sought to deliberate further upon these applications.

7 The law relating to jurisdiction for service charges, falling within section 18 Landlord and Tenant Act 1985 is found in section 19 of the Act which provides:

- (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 in the provision of services or the carrying out of works, only if the services are of a reasonable standard.

8 Further, Section 27A of the Act provides;

- (1) An application may be made to a (First-tier Property Tribunal) 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

And the application may cover the costs incurred in providing the services etc. and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (Subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

The Leases

9 The leases of the flats, a copy of one being supplied within the bundle of documents, would appear to be identical in their provisions. No suggestion has been made to the contrary, nor has there been any dispute between the parties as to whether any of the charges to be considered fall outside the terms of the lease as being permitted to be recovered as service charges. The Tribunal does not intend to enter into any further consideration of such matters.

Inspection

10 The Tribunal had previously given an indication that it was not intended that an inspection of the buildings should be carried out by the Tribunal and no matter was raised at the hearing to cause the Tribunal to change its collective mind upon that matter.

Submissions

11 Both the Applicants and the Respondent's agents provided clear and relevant statements of their respective cases that allowed the Tribunal to consider the matters raised in a concise manner at the hearing and they assisted the tribunal in establishing why concerns had been raised in the context of the building, its residential development and its subsequent management.

- 12 Those matters may therefore be considered sequentially according to the submissions and the expanded narrative provided by the parties at the hearing.

Insurance

- 13 The Applicants raise this in each of the years 2023-4, 2022-3, 2021-2 and 2020-21 years. The Applicants' case is simple. Having taken over management of the buildings they have found that they are able to obtain buildings and terrorism insurance for the current year at a premium, including premium tax, of £21,859.86. They suggest the amount they should have had to pay to the Respondent was £21,407.50, being the lower of those two amounts.
- 14 They base the suggested premiums for the earlier years upon a quotation obtained by the Residents Association in 2022 of £21,016.16. They indicate a willingness to pay that amount as appropriate for those years.
- 15 The Applicants regard the premiums as excessive by reason of the apparent commissions paid to the broker (up to 25%) and the agents (up to 20%) and there is sufficient evidence to suggest that lower, reasonable, premium quotations could have been obtained with reasonable diligence.
- 16 A major concern appears to be that the Respondent's agent has always proceeded to seek insurance on the basis that the subject buildings are listed. The Tribunal was not made aware of any evidence that this was the case. It is satisfied that they are not listed buildings. A similar concern was that it was noted on the policies that some part of the ground floor of one building was occupied by a Housing Association. The Applicants aver that this is not the case and no contrary evidence was provided by the Respondent
- 17 The Respondent presented evidence of the efforts made by the brokers to research the market and the responsibilities that fall upon it as agent to act as an intermediary in relation to processing and collecting premiums and claims. This latter aspect is documented in the Respondent's statement of case at pages 294 onwards.
- 18 The Respondent also points out the differences in the policies previously taken out when compared with that now put in place by the right to manage company, with particular reference to the declared value and sum insured in relation to the buildings. These are slightly lower in the latest policy. It also became apparent that this policy was based upon a declaration there were no lifts when there is one in each building. In their own interests the Applicants indicated they would seek immediate information as to what effect this might have upon the premium.
- 19 They were able to advise the Tribunal within a very few days of the hearing that the advice from their brokers (copied to the Tribunal and the Respondent) was that no difference in the premium would be applicable.
- 20 The Tribunal is often aware in similar situations that it is not comparing like with like. In this case it is satisfied that cover is broadly similar and, if necessary, pro rata increases could be factored into deliberations to take account of the differences in value.

- 21 It also noted that the market exercises conducted by the Respondent's brokers provided tables of relevant enquires of insurers as to their willingness to provide quotations. Over a 4-year period 23 expressions of interest were sought. 5 quotations were forthcoming. 4 companies were approached a total of 13 times and never provided a quotation. Notwithstanding initial unwillingness those companies were approached again a total of 9 times with the same result.
- 22 The Respondent's agent was firm in its view that the commission it earned was compensation and reward for the duties it carried out in respect of policy administration on behalf of the leaseholders. Particular details provided by the Respondent for one period slightly in excess of 12 months indicated 4 claims upon the policies to a value of approximately and also provided details of the 4 claims that it had processed in the last 3 years to a value of some £4,600.00.

Roof repairs

- 23 These relate to repairs in the 2021-22 accounting year costing in excess of £20,000.00 where no consultation took place to satisfy Section 20 Landlord and Tenant Act 1985
- 24 The hearing distilled the following information from the submissions made and the discussions that took place:
- (1) No compliant consultation was carried out.
 - (2) The Respondent nevertheless justified the work carried out as necessary and provided in a reasonable manner at reasonable cost.
 - (3) The work in any event related to a number of separate repairs and were not one item of major works.
 - (4) The Applicants had not provided any clear evidence of prejudice they had suffered from the non-compliance with the Section 20 process, nor had they adduced any evidence of inadequacy or unreasonableness in what had been done.
 - (5) There may conceivably have been some issues with the timeliness and manner in which the works were organised and completed which may have conceivably been relevant to the fees charged by the respondent for management, but these had not been raised with the Tribunal,

On the basis of the information set out above the Tribunal is unable to reach any conclusion that the work has been carried out in any way that has involved any unreasonable work at unreasonable standard or at unreasonable cost.

Legal and professional fees

- 25 £655.00 was expended in the 2021-22 accounting year and £1255.00 in the preceding year. The concern for the Applicants is the expenditure of service charge monies in pursuit of defaulting leaseholders should be recoverable from those defaulters.

- 26 The service charge accounts for those years show the amounts in question as receivable from those debtors. The reality in cash terms will then be the extent to which they are in fact recovered, but this is essentially a false narrative. In the interests of proper management, it is essential that the reasonable pursuit of debtors is undertaken. The Respondent is the party to do it. It needs to expend monies to do so and recover what it can by due process. It is not unreasonable for them to act in that manner if the costs themselves are reasonable and there is no evidence to suggest otherwise.

Electricity

- 27 This is challenged in the 2021-22 accounts as being excessive for a period before the most recent large increases in such costs in more recent years. There is a 50% overspend in the year compared to the budget of some £1,105.00. There appears to be no doubt that the costs were actually incurred. There is no explanation for the amount expended and its comparison to the budget, other than a suggestion some may be accounted for by a leaseholder powering a dehumidifier from the common supply rather than the domestic one.
- 28 Notwithstanding the lack of evidence as to the effect that misuse might have had, there is also no other evidence of any factor that might have accounted for the overspend that makes the cost unreasonable.
- 29 What is not clear to the Tribunal is the extent to which the previous year is an outlier, given the extent to which the actual costs in 2020-21 are considerably below the budgeted charges for that year; an occurrence of which the Respondent may have noted, given the budgeted figure for 2021-22 is more in line with the previous year's budget than the actual costs incurred in that previous year.
- 30 What is apparent is the irregular pattern of payments in the year, as reflected in the copies of the statements from the supplier, which results in payments of an amount considerably below the cost incurred.

Emergency Lighting

- 31 The charge for this on the 2021-22 year is £3229.00, over 5 times the budgeted amount of £642.00. The explanation given is that quarterly inspections revealed faults that required work to be carried out. Supporting documentation and invoices appear at page 553 onwards in the bundle of documents.
- 32 Given that documentation and the lack of evidence adduced to suggest that those invoices are not justified, the Tribunal is drawn to the conclusion that work has been done to reasonable standard and at reasonable cost.

Lift insurance

- 33 This item is raised for 2021-22 on a similar basis to the preceding item. There is a significant difference by which the amount paid exceeds the budgeted amount. Again documentation is provided by the respondent to justify the

actual costs incurred and there is nothing by way of evidence to suggest that those costs are unreasonable.

Sundry Expenses

- 34 These appear in an amount of £268.00 for the 200-21 accounting year. A copy invoice is provided for this amount for an item which would appear to have been mistakenly missed from the head of charge relating to fire maintenance and equipment. The amount appears to be reasonable for such an item.

Conclusions

- 35 The majority of the matters raised by the Applicants relate to situations where the costs incurred exceed those budgeted. A Budget is often based upon the costs incurred in the previous year, with allowance for inflation and any other costs that may be incurred that were not incurred in the preceding year. There is not necessarily any science to it. Concerns may often be addressed by way of communication. Analysis of all the costs which the Tribunal has been asked to address, with the exception of the buildings insurance appear to show justification for what has been incurred and no compelling evidence that, in hindsight, they are unreasonable.
- 36 The Tribunal does consider that the insurance premiums are worthy of more thorough examination. The tribunal proceeds on the premise that there is an assumption that such costs are reasonable if a reputable broker is used and that the insurance is placed on the basis that the proposals are accurate.
- 37 The Tribunal is firmly of the view that this is not the position that pertains here. There are two significant errors made by the Respondent or its agents in relation to the building. As findings of fact the Tribunal has noted that there are no housing association tenancies in respect of flats within the buildings, nor are they listed buildings.
- 38 Furthermore, the Tribunal has serious concerns as to the real world competitiveness of the policies negotiated, given the commission payable to the brokers (25%) and the Respondents (20%). The Tribunal is in no way satisfied that the amounts are reasonable for either of those parties.
- 39 The Respondent seeks to justify its commission by reference to the work done in relation to administration and claims management. Setting aside the question of what falls in any event within ordinary management, the amount of work required to administer the policies and the small number of claims dealt with suggests that the amounts are not reasonable.
- 40 Similarly, the work suggested being done by the brokers in the open market to place the policy, as detailed in paragraph 21 merely indicate scratching at the surface of proper market enquiries. Those factors take the premiums beyond the scope of reasonableness and give considerable support to the Applicants' views that considerably lower premiums were available, evidenced by their own enquiries in respect of very similar cover.

41 The Tribunal reminds itself that its duty is not simply to consider whether the evidence suggests merely that the Applicants' quotation is more reasonable, but that the combination of the extent of the market enquiries and the situation surrounding the premiums paid by the Respondent indicate that they are unreasonable. The Tribunal considers emphatically that it is unreasonable.

42 On the amounts of the premiums available to the Tribunal for the years in question the Tribunal has sought to consider below what is a reasonable premium, providing a reasonable level of commission and appropriate cover.

2020/21 – actual premium £22,568

2021/22 – actual premium £35,629 (a factor increase of 1.58 for the year)

2022/23 – actual premium £44,751 (a factor increase of 1.26)

All of which include 25% broker and 20% Respondent commission.

The Applicants' quotation for 2022/23 is £21,016

The Tribunal is satisfied that an appropriate and reasonable level of commission would be 10% for the Respondent's duties. No commission should be payable to the broker in the light of the observations above. A further 5% should be included to reflect any possible differences in insured values and sums insured

Although the Applicants have not obtained quotations for years before 2022/23 it is possible to work backwards using the annual factor increases to assess reasonable premiums in the earlier years.

2022/23	Actual £44,751
Applicants' quote + 15%	<u>£24,168</u>
Overpayment	£20,583
2021/22	Actual £35,629
£24,168 adjusted (1.26/1.00)	<u>£19,181</u>
Overpayment	£16,448
2020/21	Actual £22,568
£19,181 adjusted (1.58/1.00)	<u>£12,140</u>
Overpayment	£10,428
Total overpayment	£47,459

43 The service charges for the years in question should therefore be reduced by the amounts shown above.