



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

Case Reference	:	BIR/47UF/LSC/2024/0005
Property	:	15 Rushers Close, Pershore, Worcs., WR10 1HF
Applicant	:	Doris Joyce Oates
Representative	:	Jeremy Oates
Respondent	:	Anchor Hanover Group
Representative	:	S. Keeling-Roberts, Counsel
Type of Application	:	(1) Under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges in respect of the subject property. (2) Under section 20C Landlord and Tenant Act 1985 for an order for the limitation of costs. (3) Under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS M. Alexander B.Sc.(Hons.) MRICS
Determination	:	By Hearing at Worcester Justice Centre, Castle St., Worcester, WR1 3QZ on 25 October 2024
Date of Decision	:	13 January 2025

DECISION

1 **Application under section 27A Landlord and Tenant Act 1985 for**
determination of the reasonableness and payability of service charges

2 **Background**

2 Mrs Oates holds a long leasehold interest in a flat at a housing development in Pershore. The landlord, Anchor Hanover Group ('Anchor'), issued a service charge budget for the year 2024/25 to which she objected as it allowed for increases in the estimated costs of providing insurance and repairs that she considered excessive. She objected to the rate of interest obtained by Anchor for money left in the service charge deposit accounts as she considered better returns could have been obtained elsewhere. She also asked the tribunal to require Anchor to return funds held in the accounts to leaseholders as the funds held on deposit were excessive.

3 The Application was made to the tribunal on 14 March 2024.

4 The tribunal issued Directions on 9 May 2024 and the matter was listed for hearing on 25 October 2024.

5 A hearing was held at Worcester Justice Centre on 25 October where both parties were represented.

6 **Facts Found**

6 The tribunal inspected the property at 10.00 am on the morning of the hearing. Mrs Oates was represented by her daughter-in-law, Mrs D. Oates. Anchor were represented by Mr S. Keeling-Roberts of Counsel; Mr A. Hesford, in-house Solicitor to Anchor; Mrs K. Rauschenbach, Area Manager and Mr J. Radford, Estate Manager.

7 The tribunal were given a guided tour of the estate. It comprised a development of 25 units built around 1990 in a quiet residential area within easy walking distance of Pershore town centre. The development was at the end of a cul-de-sac and included 7 bungalows and 18 purpose built flats in two storey, brick and tile buildings. One of the flats was occupied by a Resident Caretaker and included a site office and laundry for residents' use but apart from this, there were no other common rooms or residents' lounges as all the units were self-contained.

8 The tribunal and entourage which now included 7 persons, did not inspect Mrs Oates' flat as it was considered unnecessary and she was elderly. However, the tribunal were advised by the parties that Flat 15 was on the first floor with a hall, lounge, kitchen, two bedrooms and bathroom. There was no lift.

9 The tribunal were advised that the road into the scheme had been adopted by the local authority. The buildings were on either side of the road and around the head of the cul-de-sac. They were well maintained and set in landscaped grounds with lawns, trees, shrubs and timber fences backing onto neighbouring properties.

10 The whole scheme was attractively laid out and maintained to a high standard. The only items noted by the tribunal were that gutters on the main building needed clearing and fencing at the rear of the property was in poor condition and would require some attention, but in answer to questions raised by the tribunal on site, Anchor had no immediate plans to carry out major repairs other than normal annual maintenance.

Issues

- 11 Mrs Oates raised four issues:
- 1 the estimated cost of insurance,
 - 2 the estimated cost of repairs,
 - 3 the interest rate obtained by Anchor on the service charge money on deposit and
 - 4 a request for some of the money held on deposit to be returned to leaseholders.

Relevant Law

- 12 The Tribunal's powers derive from statute.
- 13 Section 27A(1) of the Landlord and Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal, now the First-tier Tribunal (Property Chamber), to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 14 Section 18 of the Act defines 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 15 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 16 Section 20C of the Act provides that a tenant may make an application for an order that all or any part of the costs incurred, by the landlord in connection with the proceedings before a ... [First-tier 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.
- 17 Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, provides that a tenant may apply to the tribunal for an order reducing or extinguishing a tenant's liability to pay an administration charge in respect of litigation costs.
- 18 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts to interpret the standards to be applied.
- 19 In respect of the subject property, Mrs Oates, the Applicant, is the lessee of a lease granted for 99 years from 20 October 1994. Anchor is the freeholder and Respondent. Lease clause 3.1 requires the lessee to pay a ground rent and service charge as defined in clause 3.2.
- 20 Clause 3.2(b) provides for the amount of service charge to be based on the lessor's *'estimate of the costs and expenses of providing the said services during the Service Charge Year to which the same relates. Such estimate shall be based on the actual costs and expenses of providing the said services for the previous Service Charge Year (with due allowance being made for any excess or shortfall in current service charge payable in the previous Service Charge Year above or below the costs and expenses of providing the said services in that year) together with provision for any expected increase or decrease of costs for the succeeding year.'* ... *'(the lessor) shall so far as practicable endeavour to equalise the amount from year to year of the current service charge by*

charging against the costs and expenses in each year of providing the services and carrying out its obligations under this Lease in relation to the said services such sums as it considers reasonable by way of provision for future expenses and liabilities and shall carry such amount in a property repairs reserve fund for expending in subsequent years.'

- 21 The lease therefore envisages two funds, a general repair fund and reserve fund to pay for major items.
- 22 Clause 5.1(a) requires Anchor to keep the structure in repair and 5.1(e) to insure the premises.

Submissions

In respect of Issue (1) - insurance

- 23 The Applicant
Mr J. Oates for Mrs Oates noted that the 2024/5 budget estimate included a line entry for 'professional fees' that for some inexplicable reason included insurance, of £5,303 compared with an actual expense of £2,288 in the previous year. The sums included an audit fee of £193.16 in 2023/4, which if increased by an arbitrary 7% would have been equivalent to £206.68 in 2024/5, indicating an increase in insurance from an actual £2,094.84 to an estimated cost the following year of £5,096.32. This represented 243% increase which he said was unrealistic.
- 24 Mr Oates said it appeared Anchor had based the estimate on their own views rather than applying the terms of the lease that clearly required the cost to be based on the previous year's actual costs, plus any increase or decrease to allow for annual fluctuations and changes as required by the lease.
- 25 He said the terms of the lease were paramount as emphasised by the RICS Service Charge Residential Management Code.
- 26 To illustrate the excessive cost, he had entered details of the accommodation at the subject property into Direct Line's on-line home insurance website and had been quoted £109.76 for annual cover and a few months later, a reduced quote of £106.40.
- 27 In summary, he suggested a reasonable budget sum for insurance to be £2,750 for 2024/5 which the tribunal notes would be an increase of 20%.
- 28 The Respondent
Anchor, through its formal Position Statement, Darren Whitfield's statement and Mrs Rauschenbach's oral evidence at the hearing, said various factors had led to an increase in anticipated insurance costs:
- a) an increase in claims,
 - b) inflationary increases in the cost of labour and materials,
 - c) Insurers increasing the excess for water claims,
 - d) a significant number of Anchor's claims relating to escape of water and
 - e) revaluation of the premises.
- 29 In answer to questions from the tribunal, Mrs Rauschenbach said the insurance policy covered the whole portfolio, not just this site, and they had entered a three year contract with Zurich which was considered more beneficial than covering each site individually. She said the quote had been tendered.

30 The tribunal asked why the estimate could not simply be based on the previous year's cost as provided by the lease with a balancing charge at the year end, to which Mrs Rauschenbach replied that the narrative of clause 3.2 gave sufficient latitude for them to estimate the costs in advance, bearing in mind the general cost increases referred to in paragraph 28 above.

31 Tribunal Decision

As a matter of general principle, Mr Oates emphasised that the narrative of the lease was paramount and the starting point for the service charge budget was the cost incurred in the previous year. He drew attention to the RICS Service Charge Code but in fact this had not been contested by Anchor, all they said was that the wording of clause 3.2 was sufficiently wide to allow for expected increases in costs to be provided when setting budgets.

32 Mr Oates says the RICS Code was not mandatory but the tribunal notes it has some statutory authority and it was approved by the Secretary of State for England under section 87 of the Leasehold Reform, Housing & Urban Development Act 1993.

33 The tribunal is aware from its own general experience in the market that insurance costs have risen in recent years but finds Anchor's provision excessive.

34 The tribunal appreciates all the points made by Anchor though it is unfortunate that the cost of insuring this particular scheme is run in with other developments that may have different risk ratings. Anchor emphasise their claims record for water damage that has increased premiums but the tribunal were shown no evidence that this scheme had been subject to any claims and Mr Oates suggests they may have occurred at other sites.

35 Building costs have certainly increased since covid but again, in our general experience, this cannot account for a 243% increase in premiums in one year.

36 On balance, we find Mr Oates' evidence more convincing and his proposed estimate of £2,750 reasonable in the circumstances, representing a 20% increase over the previous year's actual cost and substantially more than inflation over the year.

37 While the tender of the block insurance may have generated a competitive initial premium, it may not have resulted in competitive premiums going forwards.

In respect of Issue (2) - repairs

38 The Applicant

Mr Oates points to a budgeted cost in the previous year of £10,000 and questions why it suddenly jumped to £13,000 for 2024/5 ?

39 He said he had asked to see copies of all the invoices paid by Anchor but what had been sent was an incomplete record and some of the copies lacked the basic requirements of an invoice such as a description of the work and date of supply. Some invoices related to other sites, for example 'key cutting for a master suite' on 13 July 2023, but there was no 'master suite' at Rushers Close. Others were vague and he questioned whether some costs had been double counted. The invoices in the bundle issued by contractor Ian Williams may have related to other sites as the company operated nationally.

40 Mr Oates emphasised that in his view, the budget should be based on the previous year's actual costs rather than Anchor's own estimate.

41 The Respondent
Anchor's Position Statement said that at the time the Budget was prepared, they expected to spend around £19,000 on repairs in 2024/5. However, this had since been reduced to £13,000.

42 The provision they made allowed for a cash float of around £25,000 which at current rates of expenditure would be equivalent to about two year's service charges in the repair fund.

43 Mrs Rauschenbach said the reserve fund was a different fund to allow for the cost of undertaking major repairs and renewals such as roof repairs, replacing gutters or boilers, rather than normal annual maintenance.

44 Mrs Rauschenbach said Anchor had no major work planned in 2024/5 and there was no current 5 year plan for future expenditure.

45 Tribunal Decision
The tribunal notes that in the previous year, the actual cost of general building repairs had been £6,392 although Anchor had expected to spend £10,000. It may be that some of the expenditure anticipated in the previous year had not been carried out and would be carried out in 2024/5 instead, but without a detailed analysis and fully itemised bills it would be impossible to determine accurately and this information had not been provided.

46 The tribunal therefore has to work with the information available and the only reliable audited figure is the £6,392 spent in 2023/4.

47 The tribunal accepts there would be some increase in expected costs due to inflation and to allow for carrying out overdue work, but as noted in paragraph 10 above, the estate is well maintained and there were no obvious works expected. Anchor's representatives said on site that they had no major work planned which was repeated at the hearing. The tribunal therefore finds it difficult to reconcile the fact that there are no major works planned with a total service charge balance of £106,620 (per Anchor draft Accounts 2023/4) which is equivalent to around £4,400 per lessee excluding the warden's flat, and questions why if major unforeseen costs arise they cannot be paid for from the reserve ? That surely is their purpose.

48 Nevertheless, based on the previous year's £6,392, the tribunal finds a reasonable budget sum in the 2024/5 accounts to be £10,000 as budgeted to year end March 2024.

In respect of Issue (3) - interest earned on service charge deposits

49 The Applicant
Mr Oates asks the tribunal to require Anchor to obtain a better rate of return from the lessees' deposits.

50 The Respondent
Anchor says it is under no duty to obtain the highest interest rate and its policy is dictated by accessibility to funds. Furthermore, the service charge deposits are protected as trust funds under section 42 of the Landlord & Tenant Act 1987.

51 Tribunal Decision
The Tribunal has no jurisdiction to make orders of the type requested. It can only determine the reasonableness of costs incurred as indicated above.

In respect of Issue (4) - request for service charge funds to be refunded

52 The Applicant

Mr Oates asks the tribunal to require Anchor to refund around £15,000 to the lessees.

53 The Respondent

Anchor does not consider £25,000 in the general repair fund to be excessive.

54 Tribunal Decision

The Tribunal has no jurisdiction to make orders of the type requested. It can only determine the reasonableness of costs *incurred* as indicated in paragraph 15 above.

Application under Section 20C of the Landlord & Tenant Act 1985 ('Section 20C')

55 This section grants lessees the right to apply for an order that all or any of the costs incurred, or to be incurred, by a landlord in connection with proceedings before a court or 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 tenants.

56 The Applicant

Mr Oates made a section 20C application.

57 The Respondent

At the hearing, Mr Keeling-Roberts for Anchor raised no objection.

58 The Tribunal

Accordingly, the tribunal makes the Order under section 20C of the Landlord & Tenant Act 1985 that no part of the costs incurred by the landlord in connection with proceedings before this tribunal are to be regarded as relevant costs in determining the amount of any service charge payable by the tenant.

Paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002

59 This section grants tenants the right to apply to a court or tribunal for an order reducing or extinguishing a tenant's liability to pay administration charges.

60 The Applicant

Mr Oates made an application.

61 The Respondent

At the hearing, Mr Keeling-Roberts for Anchor raised no objection.

62 The Tribunal

Accordingly, the tribunal grants the Applicant the requested order under paragraph 5A, Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that no part of the litigation costs in this tribunal are to form part of an administration charge payable by the tenant.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal Procedure

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 parties may make further application for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Such application must be made in writing and

received by the Upper Tribunal (Lands Chamber) no later than 28 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, any such application should be made by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).