



FIRST-TIER TRIBUNAL PROPERTY CHAMBER  
RESIDENTIAL PROPERTY

Case reference : MAN/00EH/LSC/2023/0022

Property : 16 Claremont Villas, Trinity Road, Darlington,  
County Durham DL3 7AW

Applicant : Mr Andrew Bowers

Respondent : Claremont (Darlington) Management Company  
Limited

Counsel for the  
Respondent : Mr NDK Jackson

Type of Application : Landlord and Tenant Act 1985 - s27A and s20C  
Commonhold and Leasehold Reform Act 2002  
Schedule 11 paragraph 5A

Tribunal Members : Tribunal Judge W L Brown,  
Tribunal Member Mr I R Harris MBE FRICS  
(Valuer Member)

Date of Hearing : 20 May 2024 (FVH)

Date of Decision : 13 August 2024

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DECISION

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## DECISION

1. The Applicant's Application is dismissed in its entirety. No order made under section 20C Landlord and Tenant Act 1985.

## REASONS

### The Application and hearing

2. The Applicant made an application to the Tribunal dated 23 February 2022 (the Application) under section 27A of the Landlord and Tenant Act 1985 ('the Act') for determination of whether certain service charges were payable by him for years 2021, 2022 and 2023. He provided a detailed Statement of Case of 4 May 2022. The Applicant holds the Property under the terms of a lease ('the Lease') for a term of 999 years from 31 December 2005, entered into on 27 April 2007 between Darlington Homes Limited (1), the Applicant (2) and the Respondent (3).

3. The Respondent presented a Statement of Case dated 26 May 2022 and the Applicant replied on 29 May 2022. The parties presented to the Tribunal a Scott Schedule, attached to this Decision as Annex A, identifying the matters at issue and including a summary of their respective representations.

4. The Tribunal made directions on 4 April 2023. A hearing of this matter took place as referred to above. This was a remote hearing by video which was not objected to by the parties. With the consent of the parties, the form of the hearing was by video using the Tribunal video platform (a Full Video Hearing – FVH). The Tribunal was satisfied that all relevant issues could be determined in a remote hearing and we identified no difficulty in engagement for those in attendance. The documents that we were referred to are bundles from the parties, the contents of which we have recorded. (The parties were content with the process). The Tribunal considered it unnecessary in view of the matters in issue to conduct an inspection.

### The Property

5. The Tribunal learned from the parties' documents that the Property comprises a lower ground floor apartment within a residential development comprising 21 apartments in 2 blocks, with associated grounds (referred to as 'the Estate'). The Lease includes covenants on the part of the Respondent related to the management of the Estate, and obligations upon the Applicant to pay to the Respondent a 1/21 share of a service charge, to become a member of the Respondent company and to serve as a director if requested to do so.

### The Principal Law for the Application

6. Section 18 of the 1985 Act states

*Meaning of "service charge" and "relevant costs".*

*(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—*

*(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*

*(b) the whole or part of which varies or may vary according to the relevant costs.*

*(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

*(3) For this purpose—*

*(a) "costs" includes overheads, and*

*(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

Section 19 of the 1985 Act states

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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

7. Section 27A of the 1985 Act states

Liability to pay service charges: jurisdiction

*(1) An application may be made to the appropriate tribunal for a determination whether 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.*

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

*(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*

- 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.*

8. Also of relevance is Schedule 11 of the 2002 Act which states

Meaning of "administration charge".

*1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*

*(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,*

*(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*

*(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*

*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

.....

*(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—*

*(a) specified in his lease, nor*

*(b) calculated in accordance with a formula specified in his lease.*

Reasonableness of administration charges.

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

.....

Liability to pay administration charges

*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.*

The parties' positions

7. The Applicant's case referred substantially to previous decisions of this Tribunal in litigation between the same parties regarding the Property in respect of service charges and determinations concerning legal costs. His complaints concerned legal fees incurred, re-charged through the service charge account. Counsel for the Respondent provided a Skeleton Argument document dated 16 May 2024. This helpfully set out the respective parties' arguments and we adopt its content regarding the summaries of the parties' respective cases. Having reviewed it carefully and

compared it to the Applicant's documents, oral representations and the Scott Schedule we found it comprehensive and accurate.

8. We record from the Skeleton Argument (omitting references to page numbers in the bundles):

1. The Applicant's case founds in his dissatisfaction at the Respondent seeking to recoup its legal costs incurred in defending the previous application as part of the annual service charges: see *Bowers v. Claremont (Darlington) Man. Co. Ltd* (MAN/00EH/LSC/2020/0065) ('the Previous Application'). [The Tribunal here will refer to the decision in those proceedings as the Previous Decision.]
2. With regard to the quantum of those legal costs it is to be observed that the Previous Application was issued on 16th August 2020 and finally determined the best part of two years later on 12th May 2022.
3. At the final hearing of the Previous Application on 11th April 2022 the Respondent submitted a summary costs schedule in the sum of £44,718.90 including counsel's fees.
4. The summary is closely supported by the invoices raised by Newtons Solicitors from February 2021 to August 2022 in the cumulative sum of £43,851.60.1 The written rule 13(1) costs decision is dated 31st August 2022.
5. Those fees include counsel as disbursements as recorded on the face of the invoices.
6. With regard to the description of the dispute on the face of the invoices as a defamation claim it will be appreciated that the Previous Application did comprise allegedly defamatory publications on the Applicant's part as referred to in the written decision @ §§ 54 & 55.
7. The Applicant has identified that the sum of £25,659 was debited against the service charge account for 2021 as actually incurred in the period. That tallies almost precisely with the eight 2021 Newtons' invoices totalling £25,515. The balancing £144 may very well relate to other professional fees or expenses.
8. The Applicant then points to the 'Ad Hoc Charge: Contribution towards Legal Costs' in the sum of £800 raised of him as his 1/21st part service charge share in July 2022. The total charge levied cumulatively against all twenty one leaseholders was accordingly £16,800.
9. Those two service charge debits in the consecutive years sum £42,315 which is less than either the summary costs schedule or the sum of the invoices raised.

9. The Tribunal found the Applicant's complaints to comprise challenges to his obligation to pay through the service charge for legal costs incurred in responding to the Previous Application. However, we found that the point of recoverability has already been determined by the previous Tribunal (in the decision referred to at point 1 in paragraph 8 above). The Applicant is reminded of paragraphs 57 and 59 of the Previous Decision:

*"57. The Lease defines the 'Service Charge' as being a one twenty first share of 'Total Expenditure'. 'Total Expenditure' is defined to include 'the total expenditure reasonably and properly incurred by the [Respondent] in any Accounting Period in providing the Services...'. The definition goes on to expressly include 'other costs and expenses properly incurred in connection therewith...'. The Lease defines 'Services' as 'the services set out in the Sixth Schedule.' Paragraph 9 of the Sixth Schedule is as follows: 'The payment of all proper fees charges expenses and commissions of the [Respondent] in connection with the management and supervision of the estate...'.*

*58. The tribunal considered the allegations made within the 'corruption announcements' to relate to the management and supervision of the Estate within the meaning of paragraph 9 [of the Lease]. In this respect the initial allegations specifically related to the arrangements for the carrying out of grounds maintenance and gardening. The legal fees qualified as expenses incurred by the Respondent in connection with its management and supervision of the Estate and it was reasonable and proper for the Respondent to instruct solicitors and incur this expense in view of the serious nature of the allegations against its directors."*

10. While the decision of a First-tier Tribunal is not binding upon another First-tier Tribunal through legal precedent, the principle at issue here is known as "res judicata". In other words it concerns a cause of action between parties which has already been determined finally by a court or tribunal with jurisdiction, without appeal. The decision then is binding, to prevent further litigation about the same point. Therefore, in any event, this Tribunal is so bound by the Previous Decision on interpretation of the Lease concerning the payability point on legal fees in connection with provision of Services – specifically management of the estate of which the Property forms part - and as defined in the Lease. For certainty, we carried out our own interpretation of the Lease and we agreed without demur with the determination in the Previous Decision. The Applicant must lose on his attempt to re-argue he is not responsible for paying the legal fees he presented at issue. The Tribunal found that the Applicant presented no other supported allegation giving rise to a separate basis of claim in this case.

11. The Applicant represented that he wanted to see from the Respondent bank statements, somehow suggesting the other evidence found by the previous Tribunal was inadequate as to identify quantification of costs. However, again, the Previous Decision is definitive in its findings, which the Applicant chose not to seek to be reviewed or appealed.

12. When questioned during the hearing, the Applicant was clear that he was not arguing the legal costs at issue were administration charges governed by Schedule 11 paragraph 5A of the Commonhold and Leasehold Reform Act 2002. Therefore,

although included in the Application, no determination was required under that provision.

13. The Tribunal noted from the Respondent that it had agreed to waive a fee of £285.71 in relation to a directors' loan for the 2023 service charge, and that it had conceded that the Applicant was owed a credit for the surplus funds in 2019 and therefore had made a payment of £312,57. We found that the former action was taken for commercial reasons and benefits the Applicant entirely. We found that the latter action likewise, of itself, gives no cause of action to the Applicant. However, for clarity, we also confirm that no award in favour of the Applicant was made by the Previous Decision.

14. We record that we have not ignored the case law authorities presented by the Applicant. However, we found that each turned on their facts regarding interpretation of lease terms and had no persuasive effect on the way the Tribunal reached its conclusions.

## Section 20

15. The Applicant included in the Application a request pursuant to section 20C 1985 Act preventing the Respondent recovering any costs of these proceedings through the service charge. The attention of the Tribunal was not directed to a current application regarding costs of these proceedings. However, plainly the Applicant has been unsuccessful in his action here and we have found he sought to re-litigate matters already determined. The Tribunal found no basis to afford particular protection and made no section 20C Order.

16. In light of the findings in paragraphs 10 and 15 the Tribunal dismissed the Application.

WL Brown  
Tribunal Judge