



**First-Tier Tribunal  
Property Chamber  
Residential Property**

**Case Reference** : **CAM/11UF/LSC/2019/0040**

**Property** : **15 Rollings House,  
Wrights Meadow Road,  
High Wycombe,  
HP11 1NQ**

**Applicant** : **Christina Knowles**  
**Unrepresented**

**Respondent** : **St. James Gate (High Wycombe)  
Residents Co. Limited**  
**Represented by Ms. K. Gray, Counsel  
(instructed by Mills & Reeve LLP)**

**Date of Application** : **14<sup>th</sup> June 2019**

**Type of Application** : **Section 27A Landlord and Tenant Act 1985  
("the 1985 Act")  
Determination of the payability of service  
charges**

**Tribunal** : **Judge J. Oxlade  
Ms. A. Flynn MA MRICS**

**Date and venue of  
Hearing** : **6<sup>th</sup> November 2019  
Crowne Plaza  
Marlow**

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**DECISION**

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For the following reasons, the Tribunal makes the following orders:

- (i) Pursuant to Regulation 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") to strike out for want of

jurisdiction those parts of the application made under section 27A of the 1985 Act which were subject to determination of the Oxford County Court (claim number D97YX200) on 12<sup>th</sup> June 2018, in respect of service charges demanded (a) for the financial years 2014 to 2017, and (b) on account to 31<sup>st</sup> December 2017,

- (ii) Pursuant to regulation 9(3)(d) of the Rules, to strike out as an abuse of process those parts of the application made in respect of (a) whether the signature on service charge accounts is a condition precedent to the recovery of service charges, (b) recovery by the Respondent of service charges arising from window cleaning, as subject to consideration as part and parcel of the claim heard in the Oxford County Court, (c) interest on landlord's refund.
- (iii) in respect of the service charges for the period 1<sup>st</sup> January 2018 to 31<sup>st</sup> July 2018 the service charges are reasonable and payable, save the apportionment by the Respondent of the invoice raised by Britain Hadley (of 40% to blocks D1 and D2), is not a fair proportion; rather the Tribunal finds that 23.5% is the proportion reasonable and payable by blocks D1 and D2,
- (iv) the Application for an order made pursuant to section 20C of the 1985 Act is refused.

## **REASONS**

1. The Applicant is the lessee of 15 Rollings House, a second floor mansard flat, in a modern development on the outskirts of High Wycombe, sited on a former paper mill.
2. As originally developed in 2007, the Applicant's block was part of an estate of 5 blocks ("the original estate"), spread over an extensive area, and separated by a commercial development. It lead in 2013 to the Tribunal being invited to, and agreeing to vary the leases, to re-define the estate, so that Rolling House and its immediate neighbour Woodhouse Lodge formed "the estate"; this was logical and convenient as these blocks were proximate to one another, constructed at the same time of the same or similar materials, configured in a similar way - albeit that Rollings House consists of 15 flats and Woodhouse Lodge consists of 12 flats.
3. The Applicant had failed to pay service charges over some years, even after the redefinition of the estate in 2013 resulted in a recalibration of service charges, and so credits were made to her service charge account. In 2017 this failure to

pay lead to the Respondent taking action in the Oxford County Court against the Applicant, and securing judgement.

4. In those proceedings, the Applicant had pleaded multiple points in defence, including (in the most general terms) section 18-30 of the 1985 Act, wrongful deductions from the reserve funds, liability for the costs of window cleaning, interest on landlord's reserves. Despite this, judgement was entered against the Applicant for the sum claimed, and covered the financial years 2014 to 2017, and payments on account for the period 1.7.2017 to 31.12.2017.

#### Current application

5. The Applicant issued the current application on 14<sup>th</sup> June 2019, pursuant to section 27A of the 1985 for determination of the reasonableness and payability of service charges in the years 2014 to 2018, and the current year of 2019. The Applicant provided a breakdown of each item disputed.
6. Directions were made for the filing of evidence, and for the filing of a Scott Schedule. On filing of the bundles, the Tribunal (aware of issues which would give rise to striking out) made further directions for the filing of arguments on striking out, which would alert the Applicant to any arguments to be made by the Respondent.

#### Hearing

7. On the morning of the hearing the Tribunal inspected the estate and the original estate in the presence of the parties. At that stage the Tribunal was made up of three members, but prior to the hearing one member had to recuse himself for personal reasons which were unrelated to the dispute or the parties; being quorate, we were able to continue with the two remaining members.
8. At the commencement of the hearing we sought to establish the issues, and clarify one specific point; namely, whether or not the lease provided a mechanism for dividing costs to D1 and D2, where incurred as a larger piece of work which included the other blocks A, B, and E. It was agreed that the lease did not do so, had not formed a point in the earlier proceedings, and so something over which we retained jurisdiction. The Tribunal was informed that the division used was dependent on square footage, so D1 and D2 carried a 23.5% liability in respect of what came to be referred to as "cross-estate" costs. This was relevant in respect of three matters: audit and professional costs, and the insurance valuation costs of Britain Hadley.

#### Preliminary issue

9. At the commencement of the hearing, the Tribunal took submissions from both parties as to the striking out of part of the application. Counsel for the

Respondent adopted and expanded upon her skeleton argument: in essence, the Respondent's position was that the part of the application for determination under section 27A in respect of service charges for the period 2014 to 2017 and on account for 1<sup>st</sup> July 2017 to 31<sup>st</sup> December 2017 had been subject to County Court determination and so the Tribunal had no jurisdiction, and had no alternative but to strike out that part of the application; as for other items, these had been subject to decision in respect of earlier years and so should not be argued in respect of these later years.

10. The consequence of a successful application to strike out was that the Tribunal could consider only the specific items challenged in respect of on account payments for 1<sup>st</sup> to 30<sup>th</sup> June 2018, the deficit for 2016, the surplus for June 2015 and 2017, under the balancing jurisdiction found in section 19(2) of the 1985 Act.
11. In reply on her view of the striking out application, the Applicant set out her recollection of events before the County Court, which is where "it all went wrong" and she recalled that internal redecorations were mentioned.
12. We asked the parties to withdraw from the hearing whilst we made a decision, and pending that for the parties to draw up a list of what other items were subject to dispute, if striking out took place.
13. The Tribunal determined that the Respondent's arguments on strike out were well-made, and so pursuant to regulation 9 we struck out that part of the Application for the period 2014 to 2017 in its entirety, and 1<sup>st</sup> July to 31<sup>st</sup> July 2017. Further, the Tribunal found that the Applicant could not challenge again on the basis that service charges were not payable unless service charge accounts were signed, or window cleaning costs as recoverable under the lease.
14. Though the application raised the issue of reasonableness and payability of the service charges for the service charge 2018 to 2019, as the final accounts had not been provided, the Applicant was not in a position to challenge them, and so the parties agreed that the Tribunal would not be asked to make any determination in respect of them; it leaves open the Applicant's opportunity to challenge them. Albeit that the Applicant will not be able to challenge again costs on the basis that service charges were not payable unless service charge accounts were signed, or window cleaning costs as recoverable under the lease.
15. At that point when clarifying and framing the issues, the Respondent indicted that it would not pursue a Regulation 13 order for costs.

## Evidence

16. There was some discussion as to how to proceed, as to whether or not the Tribunal should hear live evidence from Rachel Saunders of Hallmark Property Management Limited, or whether or not she could simply give instructions to Counsel on the questions in issue. As the Applicant said that she believed that “the witness statement was not true”, the witness was called to give evidence having adopted her witness statement as accurate, spoke to the Scott Schedule, and related the remaining items in dispute to the invoices contained within the bundle. As to cross-estate costs, she knew that the audit fees were split on the basis of square footage, and assumed that this was also followed for legal and professional costs. However, this approach was not followed in respect of the cross-estate bill incurred for building insurance revaluation of £4968, which was split 40/60; rather it was split across the number of blocks (5) this was because the valuer had to go to each block to measure internally and externally. When asked by the Tribunal why they had not followed the 23.5% system, she said that he had invoiced and so advised them how to split it. She conceded that there were other ways of splitting this. The different formula would make a financial difference - £1987.20 or £1157.54. A short adjournment was granted so that instructions could be taken – and to ascertain whether or not the Respondent’s would wish to reconsider this - but the Respondent maintained its position on the 40/60 split. She referred to the reserves being built up and their being forthcoming exterior and interior decorating costs which will or were subject to section 20 consultation.
17. Thereafter, the Applicant asked questions of Ms Saunders, as well as providing background of her own. Much of her concern was to see that invoices were supported by correct documentation, and that apportionment between the estate and the original estate were fair and proportionate; in many respects she was not happy with the explanations given, but had no specific challenge. During the course of that, questions were raised about the use of the reserve fund and accounting practices, but we indicated that it was not within our jurisdiction to “police” the accounts, but limited by section 27 A considerations. We could not, as requested in the Applicant’s statement, “rule on the transparency” of the Respondent’s financial statements. She pointed out that the audit costs for a smaller block should be less, as audits would be done on an hourly rate, and with fewer invoices the number of hours spent would be less. The Respondent was uncomfortable with postage costs being for amounts which could not readily be broken down, into first or second class stamps, and was advised some were larger envelopes, some posted abroad, and some paid for by weight. She challenged as poor some of the descriptions on the invoices. There was an issue about incurring costs in investigating a leak, which should have come within the NHBC timeframe of 10 years; however, the agents view was that these were a matter of emergency and

simply could not be left to resolve with the NHBC, which itself carried restrictions, and a diminishing claim structure. It was not simply a question of saying that there is an NHBC certificate in place, and that would provide an answer to all problems in that time period.

18. Further, the Applicant wished to challenge the use of funds for external and internal decoration, but as the consultation proceedings had not been concluded, and costs and extent of works not known, this seemed premature. We made no decision about this; rather suggested to the Applicant the Tribunal's jurisdiction under section 27A(3) of the 1985 Act, in respect of a determination of reasonableness if costs were to be incurred, and prior to them being incurred. We steered the Applicant in the direction of waiting until more was known, before deciding that she was content or not, or whether there was a challenge of substance.
19. The thrust of the Applicant's case was generally that having found that accounts or accounting was not as she would have liked it in 2014 – and departed from a counsel of perfection - she was suspicious of everything, and considered that she wanted every invoice to be explained; this extended to asking about apportionment of expenditure of 10 light bulbs between estate and former estate and the cost of postage. We indicated that we would not consider that approach that as a proportionate exercise of public funds, particularly when there was no specific challenge. In those circumstances the Tribunal will not look behind the Respondent's reliance on their caretaker (Or residents) informing them of blown bulbs, and being invoiced for the costs of replacement, without themselves making more enquiries.
20. At the end of the hearing the Respondent resisted the Applicant's application made pursuant to section 20C of the 1985 Act; namely, to prevent the Respondent from adding its costs of responding to the application, to the service charge account, as permitted by the lease: the Respondent had no choice to defend, though much of the dispute was struck out; prior to issue the agents had bent over backwards to help to accommodate the Applicant at their officers providing much disclosure; they found that it was an endless task as having provided an explanation, another question arose, and so it went on, without the problem being resolved. The Respondent's perspective was that the argument was about accounting, rather than reasonableness of the costs. They had provided bank statements, in an attempt to show transparency. The Ombudsman had been involved – a complaint which was unfair and time consuming. There was no challenge to the quality of the works, but it was an accounting exercise that the Applicant wished to conduct. The amounts involved now were very small indeed. It was completely disproportionate to spend on costs sums which far exceeded the amounts in issue.
21. The Applicant said that the responses given now differ from those given in the Scott Schedule. It was the Ombudsman who ordered that they give the bank

statements. Her concerns arose in 2014 when she noticed the wrong electricity costs being put through the accounts – the effect of which was that she paid less - and so she was acting against her own interests, and asked them for rectification. It led to distrust and concern for the standard and method of accounting. She is a pensioner and lives on a fixed income, so has to watch these costs. Though she agreed that cross-estate instruction of work could save money, she felt that the splitting of bills as it was done was unfair and should be done on a timed basis.

22. At the end of the hearing we reserved our decision

#### Relevant Law

23. The relevant law is to be found in Appendix A.

#### Discussion

24. We have carefully considered the evidence filed and the submissions made, appreciating that the Applicant was acting in person and having to grapple with legal argument (which was not her field), but ably managed the vast number of financial documents contained within the bundles (which was her area of expertise).

#### *Preliminary Issue*

25. The Tribunal considered as a preliminary point, the Respondent's application to strike out part of the application. The arguments in favour of it were set out fully and clearly in the skeleton argument filed, and reiterated in submissions made by the Respondent's Counsel.

26. The Respondent referred to the action in the County Court for recovery of arrears of service charge for the period 2014 to 2017, and payment on account for the period 1.7.2017 to 31.12.2017. Judgement was entered for the sum claimed, namely £9173.08, though the Applicant defended the application on numerous grounds, referring in her defence to sections 18-30 of the Landlord and Tenant Act, and so referred in her witness statement. So, reasonableness was in issue, which is the thrust of section 27A of the 1985 Act. In addition the Applicant had in those proceedings put in issue (i) the ability of the Respondent to recover window cleaning costs (ii) whether signature on the demands amounted to a condition precedent to recovery of balancing charges.

27. The Respondent made out the case that the Tribunal had no jurisdiction to relook at these matters which had been raised in the application; this was the effect of section 27A(4)(d) which prohibits an application where it "had been the subject of determination by a Court". Regulation 9(2)(a) provides that the Tribunal must strike out a claim/part of a claim where the Tribunal does not have jurisdiction. Accordingly, we are obliged to strike out that part of the

application relating to service charges incurred in the period 2014 to 2017 and sums demanded on account for the period 1<sup>st</sup> July 2017 to 31<sup>st</sup> December 2017.

28. Further, there were other service charge issues which the Respondent satisfied the Tribunal that it may and should strike out under Regulation 9 (3)(d); the question of signature of accounts as a condition precedent and absence of liability for widow cleaning were raised as part of the defence, and clearly the County Court – by giving judgement for the sum asked – rejected those arguments. It is not in the interests of justice for finality in proceedings, and the issues raised therein, to be raised in subsequent proceedings, unless an unforeseen point arises. That is not the case here, and so we find that we should strike out the raising of those two issues, as invited by the Respondent.

*Costs 1<sup>st</sup> January to 30<sup>th</sup> June 2018*

29. Accordingly, we are left to determine limited issues, for the period 1<sup>st</sup> January 2018 to 30<sup>th</sup> June 2018. The parties respective positions were set out in the Scott Schedule at pages 582 to 584 of the bundle.
30. Having heard the oral evidence, seen the invoices, and the limited points raised in reply by the Applicant which were of an accounting nature, we find that the sums spent in respect of *general repairs*, were reasonably incurred; there was no challenge of substance. The *window cleaning* point was struck out. In respect of *audit fees*, this was supported by an invoice; whilst there was no issue that the sum was spent, and in itself reasonably spent, it was a question of splitting between the estate and former estate. The Applicant said that smaller blocks should generate fewer invoices, and so there should be a more favourable split to D1 and D2, but there was no detail behind the submissions – in the sense of the Applicant asserting positive differences in numbers of invoices received and time spent. The point was a principled one, without any figures to illustrate it. The Tribunal finds that there are several ways in which bills could be considered to be apportioned fairly, and square footage is one of them. We find that there is nothing inherently unfair in how these audit fees are divided, and find the costs to be reasonably incurred. The Tribunal finds the same point applies in respect of *legal and professional fees* and the same outcome. The Applicant raised points on sundries which consisted of largely postage; we find that there is no substance to the arguments against it now, and that it is not proportionate to the costs involved to conduct litigation over such small sums.
31. The Applicant questioned items of expenditure under the heading “reserve fund”; however, all items were supported by invoice, and so the sums were spent. There was no issue as to the quality of work done, or that the costs were not in themselves reasonable. There were two areas of challenge; one related to an *additional window cleaning costs*, which initially the witness attributed to cleaning windows consequent on cleaning out gutters; however, when the



invoice was examined, it seemed more likely that balcony doors were cleaned additionally after jet-washing of the balconies in May.

32. The second invoice related to the apportionment 40/60 to D1 and D2 for *insurance valuation report costs*. The witness was asked about this and said that they had split the invoice (Page 603) according to how the valuer said that his time was spent. However, the invoice as sent to the Respondent does not explain this; it appears that the handwritten figures are added by the Respondent. The Tribunal was advised that the valuer spent time measuring the floor areas, from the outside, and inside, and consider the fabric internally or externally. It was agreed between the parties that blocks A, D, and E had lifts, and more sophisticated fire equipment. We have no means of knowing how these differences would affect valuation principles. However, the Respondent has established a percentage split for cross-party costs of 23.5%/66.5%, and applies this to many of the cross-party costs. The evidence to support a departure from this in respect of this invoice, was not sufficiently strong or well supported, and we do not find that this to be a reasonably incurred costs. Rather, we substitute £1157.54 for £1987.20.
33. Accordingly, save in respect of the insurance valuation costs, we find that the service charge costs incurred during the period 1<sup>st</sup> January to 30<sup>th</sup> Jun 2018 are reasonable and payable, and the Applicant is liable to discharged them.

#### *section 20C costs*

34. The Tribunal is permitted to make an order that the Respondent's costs of responding to the application – which are so recoverable under the terms of the lease - are not wholly or partially added to the service charge account, if just and equitable not to do so.
35. The main challenges that the Applicant makes in these proceedings, are matters which have already been litigated, and so cannot be re-opened; the Tribunal was bound to strike them out. Nevertheless, the Respondent has incurred costs in responding to matters which have little purpose, and had to prepare bundles for service charge years which could not be in dispute. Whilst we appreciate that the Applicant is a non-lawyer, she did have representation in the Oxford County Court proceedings, and so had the means to discover what were her rights.
36. Much of the dispute is about accounting, rather than reasonableness of service charges; there is perhaps a misunderstanding on the Applicant's part as to the extent of our powers, which are not to "police" the accounts.

37. The Applicant has succeeded on only one point, which was a minor part of preparation of the costs. That being so, the Tribunal does not consider that it is just and equitable to make a section 20C order; the Respondent is permitted to add to the service charge account, its costs in defending these proceedings.

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Judge J. Oxlade

11<sup>th</sup> November 2019

## Appendix A

The 1985 Act, as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002, provides as follows:

### *Section 18*

“(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord’s cost 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 of which the service charge is payable.

(3) For this purpose

- (a) costs include 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 period.

### *Section 19*

(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.

### *Section 27 A*

(1) “ An application may be made to a leasehold valuation 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.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a)....
  - (b)....
  - (c) has been the subject of determination by a Court”.

In respect of Costs

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 the proceedings before .. the LVT.. are not 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 ...Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.”

**Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).