



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

**Case Reference** : **LON/OOBK/LSC/2019/0404  
CVPREMOTE**

**Property** : **Flat 5 Stourcliffe Close Stourcliffe Street  
London W1H 5AQ**

**Applicant** : **Mohammed Al-Hariri**

**Representatives** : **In person**

**Respondent** : **Stourcliffe Close RTM Company Limited**

**Representative** : **Ms Katie Helmore of Counsel**

**Type of Application** : **For the determination of the liability to  
pay and reasonableness of service  
charges (s.27A Landlord and Tenant Act  
1985)**

**Tribunal Members** : **Judge Professor Robert Abbey  
Mr Duncan Jagger MRICS (Chartered  
Surveyor)**

**Date and venue of  
Hearing** : **15 June 2020 by an online video hearing**

**Date of Decision** : **22 June 2020**

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**DECISION**

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## Decisions of the tribunal

- (1) The tribunal determines that: -
- (2) The applicant is liable under the terms of the lease of the property to pay service charges in respect of the provision of porters and that the service charges for the cost of the provision of up to 5 full-time porters for the service charge years ending March 2016, March 2017, March 2018 and March 2019 are reasonable.
- (3) An order be made under section 20c of the Landlord and Tenant Act 1985 in the terms set out below.

## The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Flat 5 Stourcliffe Close Stourcliffe Street London W1H 5AQ**, (the property) and the liability to pay such service charge.
2. The applicant is the long lessee of the property pursuant to a lease dated 14 March 2008 made between (1) The Trustees of the Portman Estate (2) Bryanston Property Company Limited (3) Stourcliffe Management Limited (4) the applicant for a term of years from 14 March 2008 to 19 March 2115. The Respondent was incorporated on 22 April 2013 and on or around 25 March 2014 acquired the Right to Manage Stourcliffe Close pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002.
3. The Disputed Charges are as follows:
  - (i) For the year end 24 March 2016 £78,310.24 being:
    - (a) Caretaker’s salary £49,524.37
    - (b) Caretaker’s flat £12,657.71
    - (c) Temp Staff/ Holiday Cover £16,128.16
  - (ii) For the year end March 2017 £92,278 being:
    - (a) Caretaker’s salary £44,614
    - (b) Caretaker’s flat £10,387
    - (c) Temp Staff/ Holiday Cover £37,277
  - (iii) For the year end March 2018 £133,954 being:
    - (a) Wages and Holiday Cover £111,968
    - (b) Caretaker’s utilities £567
    - (c) Council Tax £619
    - (d) Rent £20,800

- (iv) For the year end March 2019 £182,010 being:
  - (a) Concierge- Wages £158,711
  - (b) Concierge – Accommodation £20,800
  - (c) Concierge –Utilities £185
  - (d) Concierge –Council Tax £1,455
  - (e) Concierge –Telephone £859

- 4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

### **The hearing**

- 5. The applicant was in person and the respondents were represented by Ms Katie Helmore of Counsel.
- 6. The tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing. No objection to them was received by the Tribunal prior to the hearing. These documents were unexceptional and their late inclusion did not seem to the Tribunal to cause any prejudice and as such were allowed as late evidence. During the hearing the applicant sought to rely on late evidence in the form of a witness statement from Paul James. His oral evidence had been allowed earlier and reference to it will be made later on in this decision. However, neither the Tribunal nor the respondents had seen the witness statement and there was an objection to the late use of this witness statement. The Tribunal decided that it would not be fair or proportionate to allow this late evidence and therefore directed the applicant not to use it.
- 7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties

### **The background and the issues**

- 8. Stourcliffe Close is a purpose built mansion block constructed in the 1930s containing 59 flats over two blocks each with its own entrance The tiers of ownership of Stourcliffe Close are, (1) The freeholder is the Trustees of the Portman Estate, (2) there is a Headlease granted in 1938 of which the current lessee is Seymour Street Nominees Limited and Berkley Street Nominees Limited and (3) there are 58 of 59 Flats in the block let on residential long leases one of which is on the name of the applicant.

9. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite narrow issues in dispute.
10. The lessees of the flats in the property hold long leases which require the lessor, (but presently the RTM), to provide services and the lessees to contribute towards their cost by way of a service charge. The lessees must pay a percentage stipulated in their lease for the services provided. The actual percentage is expressed in the leases and may vary from flat to flat.
11. The block in which the property is located was originally constructed as a prestigious building but over the years was allowed to decline in condition. In 2015 major works were carried out to reverse the decline. However, a major issue, partly due to the location of the building just off the Edgware Road and around 5 minutes' walk from Marble Arch, Oxford Street and Hyde Park, has been persistent unauthorised and therefore unlawful short term lettings of many flats in the building. The respondents increased the number of porters to address this issue.
12. Under the terms of the leases of the several flats in the block including the flat in the ownership of the applicant the tenants are not to assign transfer sublet or part with possession of part of the flat, see clause 15.21 of the lease. Additionally and more importantly, the tenants are not to underlet or part with possession of the flat as a whole without the written consent of the Landlord (which is not to be unreasonably withheld): see lease clause 15.23. In many instances of the problematic short term lets either or both of these covenants will have been breached giving rise to unlawful short term lettings.
13. Accordingly, the following two issues arise for determination, (1) Whether the sums claimed for porters for the service charge years ending March 2016, March 2017, March 2018, and March 2019 are reasonable within section 19 of the Landlord and Tenant Act 1985, (were the services reasonably incurred and were they of a reasonable standard), and (2) whether an order should be made under section 20C of the same 1985 Act.

### **Summary of the applicant's argument**

14. The applicant accepts that there is a problem with short term lets in the building. He also accepts that originally efforts to expand the number of porters were made to try to limit and reduce the short term letting abuse. The applicant says that there were thirty three flats on short term lets at Stourcliffe Close, (out of total of fifty eight flats, one flat being occupied by the head porter), in 2014. Subsequently thirty four flats were on short term lets in 2017.

He therefore posed the question, how many flats are now on short term lets, after employing another 4 full-time porters, (in addition to the original head porter ), at what he asserts is an additional £100,000 per year in service charges? What he sought to establish was whether the service of the five porters is of a reasonable standard. Because of the outstanding number of flats still subject to short term lets he asserts that the provision of five porters is not reasonable and that none are required and that CCTV would be a viable alternative.

15. It did not appear to be disputed that it is appropriate (and permitted by the property lease at clause 16.4 to have porter or caretaking services (including a resident caretaker) and such porter or caretaking costs are within the items for which service charges are payable (see clause 17.5 of the property lease). (Indeed, the employment of 2 additional porters in order to combat the continuous unauthorised short term lettings at an approximate annual cost of £50,000 was proposed by the applicant and supported by a majority of residents at a residents meeting on 31 October 2017.)
16. In his evidence the applicant made allegations about the conduct of the head porter but as these were disputed by the respondent and because the head porter was not a witness before the Tribunal it was not able to form an opinion about these allegations. Paul Jones, a head porter in an adjacent block, Dudley Court, gave evidence about the use of CCTV installed on that block. The Tribunal found little in this evidence to assist it in its deliberations.

### **Summary of the respondent's argument**

17. The respondents say that the five porters have been successful in their attempts to reduce the number of short term lets as the numbers speak for themselves. The respondent says that these unlawful short term lets are kept under constant scrutiny and that the managing agents compile lists to monitor the situation in the block and will take further enforcement action when required.
18. The respondents' position is that the current porter arrangements have been successful in reducing the instances of unauthorised short lettings and the associated problems. The respondent says this because as at 24 January 2020 there appeared to be 5 confirmed and 12 suspected cases of short lettings of the 59 flats and that at the time of the hearing this figure could well have dropped to 1 or 2; albeit this recent lowering may have arisen out of the Covid 19 lockdown.

### **Decision**

19. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal first considered the level of the charges, i.e. the salaries and ancillary costs involved

in the provision of five porters and why five were needed and finally whether what they did was effective.

20. Dealing first with the number of porters, The following porters are currently employed at Stourcliffe Close:
- (i) Magdy Amasha as a resident caretaker or head porter pursuant to a contract of employment dated 16 February 2010 which included a licence to Mr Amasha and his wife and children to occupy a flat in the block for the period of his employment on a current annual salary of £35,000 (including all taxes and contributions). The duties and responsibilities of Mr Amasha are set out at Schedule 1 to that contract;
  - (ii) Benjamin Arlorbuh as a porter pursuant to a contract of employment dated 30 May 2017 which commenced on 19 September 2018 at a salary of £22,000 per annum. The duties and responsibilities of Mr Arlorbuh are set out at Schedule 1 to that contract;
  - (iii) Keith Madley as a porter pursuant to a contract of employment dated 25 January 2018 at a salary of £21,000 per annum. The duties and responsibilities of Mr Madley are set out at Schedule 1 to that contract;
  - (iv) Omar El-Tahlawi as a porter pursuant to a contract of employment with a start date of 1 June 2017 at a salary of £22,000 per annum. The duties and responsibilities of Mr El- Tahlawi are set out at Schedule 1 to that contract;
  - (v) Kyle Brooker as a porter pursuant to a contract of employment with a start date of 24 November 2018 at a salary of £22,000 per annum. The duties and responsibilities of Mr Brooker are set out at Schedule 1 to that contract.
21. In cross examination the applicant confirmed that the four porter salaries were reasonable. He therefore did not challenge the salaries of the four porters. The four porters work shifts from 11am to 11pm four days a week with three days off. In the evidence there was a statement made by the Respondent that the applicant found misleading and confusing. This said that “*A rota of four days on followed by three days off. Rota hours: 11.30am-11.30pm and 11.30pm-11.30am. At any one time there is always two porters on duty and being one at each block*”. The applicant took this to mean that portering was available 24 hours a day seven days a week. However, the respondent via its witness Sachit Patel, (a director of the respondent), clarified this statement by

saying that the porters actually worked from 11.30am to 11.30pm from Monday to Sunday and also Friday and Saturday nights but not otherwise.

22. Taking into account that there are two separate entrances at the building it seemed to the tribunal that five porters were necessary to ensure coverage and management for the hours set out by the respondent. The need for portage was demonstrated by the inclusion within the trial bundle of several examples of the problems that arose from the unlawful short term lets. These included but were not limited to several serious assaults on porters, a number of break ins and security issues, damage to the common parts, noise and nuisance to residents ,excessive refuse and drug taking. All were attributed to people taking the benefit of the short term lets. Accordingly, the respondent says “*It is only via the physical presence of such porters and their ability to challenge individuals entering who are not able to confirm the name of the resident they purport to be visiting that the issue of short lets has been addressed.*”. The Tribunal found itself able to agree with this assertion given the evidence before it.
23. With regard to the salaries as has been noted above the applicant did not challenge the salaries of the four porters and as such the Tribunal found these four salaries to be reasonable and not excessive in the current market for these services. The Tribunal also considered the remuneration of the head porter to be at a market level and not excessive. The applicant provided little or no convincing evidence that the salaries were excessive. Conversely the respondent said of the salaries

*“The salary of Magdy Amasha is a reasonable salary for a Head Porter when set against the adverts obtained by the Respondent’s for a head concierge in SE1 for a salary of £35,000 and a head porter in W2 for a salary of £32,000-£36,000 especially where Magdy Amasha’s duties are more onerous than either of these specifications; and the average salary of a porter in London is £21,155 which reflects the salaries of the 4 porters/ concierges at Stourcliffe Close”*

24. If there are five porters, are they working effectively to address the major issue identified by the applicant, namely the high numbers of unlawful short term lettings in the block? It was hard for the Tribunal to settle on exact numbers as the figures varied significantly from year to year and witness to witness. Furthermore some figures put forward by the applicant differed from those put forward by the respondents. The applicant asserted that in January 2020 there were 15 unlawful sublets whereas the respondent asserted that in that month there appeared to be 5 confirmed and 12 suspected cases of short term lettings out of the 59 flats.
25. Furthermore in his evidence before the Tribunal Mr Patel said he thought the number was now no more than one or two unlawful sub lettings. All of these figures should be considered in the context of at least 30 unlawful sub-lettings in previous years. To be exact, in May 2017 the caretaker listed 34 flats subject

to short term lets. So there has at the very least been a reduction from 34 to the level of 5/12 identified in January 2020, a 50% decrease in the problem. If the evidence of Mr Patel is accepted of the further reduction to the current level of one or two unlawful short term lets then clearly there has been a significant change. The Tribunal is therefore satisfied that the portorage provision is satisfactory and effective, proportionate and reasonable.

26. For all the reasons set out above the tribunal is of the view that the service charges for the portorage at this block are reasonable and payable by the applicant.

### **Application for a S.20C order**

27. It is the Tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in this decision the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 25% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.
28. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The Tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. Bearing in mind the determinations made above the Tribunal thought that the respondent had provided evidence late and that therefore a 75%/25% division in the order was appropriate. The s.20C decision in this dispute gave the Tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay all of them by way of the service charge.
29. In *Re Scmla (Freehold) Limited* [2014] UKUT 0058 Deputy Chamber President Martin Rodger QC stated that "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances...*" Accordingly the Tribunal was indeed mindful of the consequences of any order it might make under s.20c and as a result the percentage Order was made.
30. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented and timings.



31. The Tribunal took careful note of the respondents' submissions but in the end felt that in the light of the above comments it would be just and equitable to proceed as set out above. For all these reasons the Tribunal has made this decision in regard to the 20C application.

**Name:** Judge Professor Robert  
Abbey

**Date:** 22 June 2020

## **Appendix of relevant legislation and rules**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (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**

- (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 provisions 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 27A**

- (1) An application may be made to the appropriate 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 the appropriate tribunal 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.
- (4) 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.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
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 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.