



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

**Case Reference** : **BIR/41UE/LLC/2021/0007**

**Subject premises** : **Tower Court/Trinity Court/Windsor Court  
No 1 London Road  
Newcastle-under-Lyme  
ST5 1LT**

**Applicants** : **Various leaseholders of flats in the subject  
premises**

**Respondent** : **Ian Hollins**

**Application** : **Application under section 20C of the  
Landlord and Tenant Act 1985 for an order  
for the limitation of costs**

**Tribunal members** : **Deputy Regional Judge Nigel Gravells  
Graham Freckelton FRICS**

**Date of decision** : **16 March 2021**

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**DECISION**

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## **Preliminary**

- 1 On 19 February 2021 the Tribunal issued its Decision on an application under section 24(9) of the Landlord and Tenant Act 1987 Act ('the 1987 Act'), by which the Applicants sought the discharge/variation of an order of the Tribunal dated 11 February 2020, appointing the Respondent as manager of the subject premises. The Tribunal determined that the management order should not be discharged but it varied the order by amending the paragraph providing for the payment of management fees in respect of qualifying works: see BIR/41UE/LVM/2020/0003.
- 2 On the same date the Tribunal invited the parties to make representations on the Applicants' application under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act'). (The Applicants had indicated at the hearing of the section 24(9) application that they wished to make a section 20C application and they submitted a formal application, dated 5 March 2021, as part of their representations.)
- 3 The section 20C application relates to the Respondent's costs incurred in connection with proceedings before the Tribunal to determine (i) the Respondent's applications under section 24(4) of the 1987 Act and section 27A of the 1985 Act (see BIR/41UE/LSC/2020/0005, Decision dated 18 December 2020) and (ii) the Applicants' application under section 24(9) of the 1987 Act (see BIR/41UE/LVM/2020/0003, Decision dated 19 February 2021).
- 4 This is the Decision of the Tribunal on the section 20C application.

## **Representations of the parties**

- 5 The Applicants' formal application argued –
  - (i) that, since the Applicants cannot use service charge funds to meet their own costs, the Respondent should not be able to recover his costs through the service charge;
  - (ii) that it would be unjust for the Applicants to have to pay two sets of legal costs;
  - (iii) that the Respondent did not inform the Applicants of the Building Safety Fund issue until 'late in the day' when the Applicants had already incurred substantial legal costs in pursuing the section 24(9) application.
- 6 The Applicants also noted that, since they did not know the amount of the costs which the Respondent was proposing to include in the service charge accounts, they could not comment on the reasonableness of those costs.
- 7 It should also be noted that at the hearing of the section 24(9) application, Ms Seitler (of Counsel), representing the Applicants, submitted (i) that the Respondent had been only partly successful in his applications under section 24(4) of the 1987 Act and section 27A of the 1985 Act and (ii) that the Respondent was not entitled to include in the service charge accounts costs incurred in connection with the section 24(9) application. Ms Seitler did not elaborate on those submissions; and the Applicants, who are no longer legally represented, did not refer to them in their formal application.

- 8 The Respondent argued –
- (i) that an order under section 20C, limiting the legal costs that the Respondent can recover through the service charge, would be inconsistent with the Decisions of the Tribunal on the substantive applications;
  - (ii) that the Respondent had been willing to pursue the Tribunal's invitation to participate in mediation but that the Applicants had refused to do so.

**Determination**

- 9 As noted above, there are two related matters on which the Tribunal cannot at this stage make definitive determinations –
- (i) First, the Tribunal (like the Applicants) does not know the amount of the costs that the Respondent is seeking to recover through the service charge and cannot therefore make a determination as to whether those costs were reasonably incurred until the amount is specified in the final service charge accounts for 2020/2021.
  - (ii) Second, the Tribunal (like the Applicants) does not know the details of the costs that the Respondent is seeking to recover through the service charge. At the hearing of the section 24(9) application, Counsel for the Applicants submitted (without elaboration) that costs incurred by the Respondent in connection with the section 24(9) application were not recoverable. The Tribunal cannot make a determination as to what costs are indeed recoverable through the service charge until the details of the costs are specified, presumably in documentation supporting the final service charge accounts for 2020/2021.
- 10 If in due course the Applicants wish to challenge the final service charge demands on the basis of the matters outlined in paragraph 9 above, the appropriate procedure would be an application to the Tribunal under section 27A of the 1985 Act.
- 11 This Decision is therefore limited to the determination of the section 20C application in relation to such costs as are agreed by the parties or determined by the Tribunal to have been properly and reasonably incurred.
- 12 Section 20C of the 1985 Act (so far as material) provides –
- (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 proceedings before ... the First-tier 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 tenant or any other person or persons specified in the application.
  - ...
  - (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
- 13 In determining the section 20C application, the Tribunal attaches significant weight to the following factors –
- (a) Although the Respondent was not wholly successful in his applications under section 24(4) of the 1987 Act and section 27A of the 1985 Act, he succeeded on the major issues of the buildings insurance and the waking watch scheme. Although the Tribunal declined to approve all the expenditure and to make all the directions for which the Respondent applied, that was not because the applications on those matters were unmerited in substance but because the applications were premature.

- (b) The Applicants' arguments that they should not have to pay the legal costs of both parties (see paragraph 5(i) and (ii) above) is flawed. It is true that, unlike in litigation before the courts, there is no presumption that in litigation before the Tribunal the losing party should pay the costs of the other party. However, the 1985 Act, the terms of the Applicants' leases and the Tribunal's management order dated 11 February 2020 may result in some costs shifting.
  - (c) The Applicants' third argument (paragraph 5(iii) above) seems to imply that, had they known about the Building Safety Fund at an earlier date, they would not have pursued the section 24(9) application - with the attendant costs. The Tribunal is not persuaded by that argument. First, the Respondent wrote to the Applicants (and the other leaseholders) on 11 August 2020, informing them that an application to the fund had been submitted. However, on 20 September 2020, nearly six weeks later, the Applicants made their section 24(9) application. Second, in their submissions to the Tribunal in connection with the Respondent's applications under section 24(4) of the 1987 Act and section 27A of the 1985 Act, the Applicants stated that in March/April 2020, soon after the announcement of Building Safety Fund on 12 March 2020, they 'decided to explore the relevance of the BSF and through contacts establish some direction aside from Mr Hollins'. That statement clearly suggests that the Applicants knew about the fund approximately six months before they made their section 24(9) application and that they were making independent enquiries. Third, even when the potential implications of a change of manager were raised, the Applicants concluded that the risk of losing BSF funding was 'limited' and that any risk was outweighed by the Applicants' other arguments for the discharge/variation of the management order; and they continued to pursue their application.
  - (d) On 5 November 2020 the Tribunal wrote to both parties, inviting them to explore mediation in relation to the issues identified in the various applications. The Respondent indicated his willingness to do so; but the Applicants declined the invitation and continued to pursue their discharge/variation application.
- 14 Exercising its discretion under section 20C(3), and applying the criteria of what is just and equitable, the Tribunal is of the view that, for the reasons set out in paragraph 13 above, it would not be just and equitable to make the order for the limitation of costs sought by the Applicants.
- 15 It follows that the Respondent may recover through the service charge those costs incurred in connection with proceedings before the Tribunal to determine (i) the Respondent's applications under section 24(4) of the 1987 Act and section 27A of the 1985 Act and (ii) the Applicants' application under section 24(9) of the 1987 Act - but only to the extent that those costs were properly and reasonably incurred in accordance with the 1985 Act, the terms of the Applicants' leases and the Tribunal's management order dated 11 February 2020.

16 March 2021

Professor Nigel P Gravells  
Deputy Regional Judge