



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

Case Reference:	CHI/29UE/LSC/2020/0129
Property:	50, 44 and 42 Hancocks Field, Deal, Kent, CT14 9SY
Applicants:	Josey Grimshaw (No: 50) Anthony and Janet Yarlet (No: 44) Keith and Maureen Waddington (No: 42)
Representative:	Josey Grimshaw
Respondent:	Orbit Group Ltd
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 (The 1985 Act) and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (The 2002 Act)
Tribunal Members:	Mr R T Brown FRICS (Chairman) Mr D Ashby FRICS
Date and venue of Hearing:	26th April 2021 on papers submitted
Date of Decision:	21 May 2021

DECISION

Decision

1. The Tribunal determines that under the Service Charge Provisions of the Lease the Applicants are liable to pay service charges for the items listed in Clauses 3.4.3 and 3.3 (Leaseholder's Covenants) of the Lease.
2. The Tribunal is not asked to determine that the following amounts are or are not reasonable in amount or that the service provided is to a reasonable standard. However to assist the Parties the Tribunal summarises below the charges payable by the Applicants to the Respondents:
 - a) Year ending 31st March 2017: No charge is levied by the Respondent
 - b) Year Ending 31st March 2018: £0.00 as conceded by the Respondent
 - c) Year Ending 31st March 2019:
No 50: Rentcharge £203.62. Insurance £88.43.
No 44: Rentcharge £203.62. Insurance £88.43.
No 42: Rentcharge £203.62. Insurance £79.12.
 - d) Year Ending 31st March 2020:
No 50: Rentcharge £143.55. Insurance £76.17.
No 44: Rentcharge £143.55. Insurance £76.17.
No 42: Rentcharge £143.55. Insurance £68.16.
 - e) Budget Year 2020/2021:
No 50: Rentcharge £171.51. Insurance £97.02.
No 44: Rentcharge £171.51. Insurance £97.02.
No 42: Rentcharge £171.51. Insurance £86.81.
3. The Tribunal allows the Applicant's application (and it applies to all three Applicants) under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its costs in relation to the application by way of service charge or administration charge.

The Application and Issues in Dispute

4. The application was received by the Tribunal on 10th December 2020.
5. The years in which 'payability' is disputed are years ending 31st March 2017, 2018, 2019, 2020 and the Budget for 2021.
6. The Applicants dispute the payability of the service charge as opposed to the reasonableness of the charges themselves:

- a) Payment of the Rentcharge (also referred to in the papers as 'amenity charges' and 'Management Company Charges').
- b) Certain charges for repairs all of which are conceded by the Respondent save for two repair items in the Budget for 2020 and waste removal charge/repairs in the Budgets for 2021.
- c) The Respondents own management fee for the years in dispute.

Inspection and Description of Property

- 7. For the reasons explained in the Directions the Tribunal did not inspect the property, but viewed it on Street View. The subject properties are 3 semi-detached houses fronting an adopted highway on a housing association estate developed post 2000.

Directions and Documents before the Tribunal

- 8. Directions were issued on 6th January 2021.
- 9. A copy of the Lease dated 27th March 2017 in respect of No 50. It is understood the Lease of Nos: 44 and 42 are in similar form.
- 10. A Bundle prepared by the Applicant and comprising 328 pages.
- 11. Respondents Additional Bundle comprising 38 pages.
- 12. This determination is made relying on the evidence and submissions made in the papers before the Tribunal.
- 13. The Tribunal in considering this case has had regard to its overriding objective: The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must:

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

The Law

14. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 (the 1985 Act) as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002. (See Appendix).
15. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord’s costs of management, under the terms of the lease (s18 of the 1985 Act). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
16. Under Section 20C of the 1985 Act and Schedule 11 Paragraph 5A of the 2002 Act, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.
17. The Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
18. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*
19. *“Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.*

Ownership and Management

20. Each Applicant owns a leasehold interest in their property. The Respondent is the owner of the Freehold of the Estate which is edged red and with a solid grey infill colour on the Plan (Additional Information page 5).
21. The Transferor is Church Lane (Deal) Residents Management Company Ltd (managing agent: HML Ltd) and the Transferee is Orbit Group. The Transferor is responsible for managing the 'open space' identified by the stippled area on the Plan (Additional Information page 5).

The Lease and Landlords Transfer Deed

22. This is a complex arrangement where the Lessee covenants include a covenant to pay Service Charge to the Landlord (Paragraph 3.4.3 of the lease: Bundle page 21) which include):

'a) the estate rentcharges and other costs claims demands expenses and other liabilities charges or otherwise arising in accordance with the provisions of the Landlords Transfer'

(shown stippled and titled 'Open Space' on the plan attached to the Lease (Additional Information page 5))

'b) the expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding of any Communal Facilities.'

'c) the reasonable costs, charges and expenses (including but not limited to internal costs, charges and expenses) incurred by the Landlord in connection with the provision, maintenance and management of the Communal Facilities'.

23. The Communal Facilities are defined under Schedule 6 to the Lease (Bundle page 36): "Communal Facilities" means party walls, fences, gutters, drains, estate roads, pavements, entrance ways, steps, accessways, passages, courtyards, external pavements, car parks, cycle and bin stores and other such amenities which are or maybe used or enjoyed by an occupier of the Premises in common with any other person or persons but insofar only as facilities are within the Landlord's Estate'
24. Under a separate covenant (Clause 3.3 of the lease: Bundle page 20) to pay the insurance premium for the property.
25. The Respondent, under the Landlord's Transfer, is liable to pay the Rentcharge to the Management Company defined as 'Church Lane (Deal) Residents Management Company Limited and (see above, Clause 3.4.3(a)) is entitled to recover from individual lessees by way of service charge. The maintenance of the open space is managed by HML Ltd (HML).
26. The share payable by individual lessees (Clause 3.4.2) states that the Lessee shall pay a fair and proper proportion of the total expenses such proportion to be conclusively determined by the Landlord.

The Parties Submissions

Year Ending 31st March 2018

27. In relation to the year ending 31st March 2018 the parties' arguments are not summarised as the Respondent has conceded that no amount is payable.

Year End 31st March 2019

a) Management Company Charges: £203.62.

b) Property Specific:

Insurance £88.43 (Nos: 44 and 50) or £72.12 No: 42),

Management Charge £64.89

28. **The Applicant says:** (Bundle page 69 onwards)
29. They were initially told that the service charge covered the cost of cleaning and refuse removal, gardening, door entry and security and fire alarm and equipment. None of these expenses apply to the Applicants properties which are houses. The Respondent confirmed to them that these charges did not apply to their properties.
30. The insurance is included in the amount demanded with the rent and should not therefore be billed separately.
31. They are not liable to contribute to the cost of maintaining land that does not even adjoin the properties their properties.
32. **The Respondent says** (Bundle page 89 onwards and Additional Information):
33. All properties were charged £203.62 as their share of the Management Company Charges (Rentcharge/ amenity charge).
34. Individuals were charged either £79.12 (No: 4) or £88.43 (Nos: 44 and 50) for insurance and £64.89 for management fees.
35. So far as the Rentcharge is concerned the Respondent is simply recharging the invoices from HML.
36. The Respondent acknowledges that there were further anomalies which have been corrected. The Grounds Maintenance charge was conceded as being incorrectly charged.
37. Buildings insurance is part of a group wide policy that covers all properties owned or managed by Orbit.
38. The management charge of £64.89 covers the administrative costs of preparing the budget, year end accounts, paying the Rentcharge, keeping the Estate in repair, placing the insurance cover and organising repairs. Orbit consider this management fee to be reasonable.

Year Ending 31st March 2020

a) Management Company Charges: £143.55.

b) Property Specific:

Insurance £76.17 (Nos: 44 and 50) or £68.16 No: 42),

Management Charge £64.92

Repairs of £7.77.

39. **The Applicant says** (Bundle page 71 onwards) essentially the same arguments apply that these sums do not apply to their properties.

40. **The Respondent says** (Bundle page 90 onwards and Additional Information) that the same arguments apply save that the repairs were carried out under Orbit's obligations under Schedule 6 of the Lease.

41. Additional Information (page 2) The following repair charges are removed having been incorrectly charged:

Item 2813336: missing manhole cover: £79.68

Item 2937721: blocked main sewer: £56.56

Item 2939681: bike store lock: £76.43

Item 2939705: bin store £72.83

Item 3063144: blocked drain car park £69.64

This reduces the cost from £7.77 per property to £1.62

Budget Year End March 2021

42. **The Applicant says:** (Bundle page 75 onwards) essentially the same arguments apply that these sums do not apply to their properties.

43. **The Respondent says:** (Bundle page 92 onwards and Additional Information) that the same arguments apply.

44. The Budget for year ending 31st March 2021 is:

a) Estate Budget

Management Company Charges: £171.51

Landlord's Waste removal; £7.25

b) Property Specific

Insurance: £97.02 (Nos: 44 and 50) or £86.81 (No: 42)

Management Fee £ 66.53

The Tribunal's consideration

45. The Tribunal finds from the papers presented that the standard of management of the estate falls well below the standard expected under the RICS Code of Management and the standards of the Regulator of Social Housing.
46. In particular it appears that the Respondents:
- a) Have charged the Applicants with items that do not fall within the lessee covenants under the leases.
 - b) Failed to respond with clarity to reasonable questions asked by the Applicants.
 - c) Appear to have simply paid HML the invoices for the Rentcharge without any evidence that these have been checked or the total cost monitored. For example, in the accounts for 31 December 2019 the total expenditure is £38,928 and the management fee is £20,700. The professional fees total £23,202 and the works element is £15,713. The professional fees equate to 59.6% of the total expenditure.
47. In this case the Tribunal is not asked to determine the reasonableness of the amounts actually charged but the principle that such amounts are simply not recoverable under the terms of the lease.

The Tribunal finds as follows:

48. That on a proper interpretation of the Lease and Transfer Document Rentcharge (management company charges/amenity charges), Service Charge (if incurred in respect of Communal Facilities) and insurance are due from the Applicants.

Communal Facilities

49. Schedule 6 to the Lease defines the Communal Facilities as:

'Communal Facilities' means party walls, fences, gutters, drains, estate roads, pavements, entrance ways, steps, accessways, passages, courtyards, external paviours, car parks, cycle and bin stores and other such amenities which are or may be used or enjoyed by an occupier of the Premises in common with any other person or persons but insofar only as such facilities are within the Landlord's Estate.

50. On the evidence before it the Tribunal finds that there are no communal facilities provided on the Landlord's Estate from which a charge could arise. Clause 3.4.3 of the Lease refers to 'any Communal Facilities'. The Plan of the Estate shows the Applicant's properties as fronting an adopted highway (Hancocks Field) with no evidence of public footpaths or similar which might require maintenance. Fox Road which runs out of Hancocks Field is shown 'stippled' and would (if not adopted) fall to be maintained under the Transfer Deed and covered by the Management Company Charges (Rentcharge or Amenity charge).
51. Certain charges for repairs (totalling £424.84) within the amounts charged by the Respondent are not due and have been conceded by the Respondent and removed

in respect of the year end 31st March 2020. However, that leaves two repairs orders totalling £111.50. These appear to relate to repairs to slabs outside property numbers 132-134, however these slabs are not identified as being part of the Landlord's Estate.

52. The Respondent Landlord has not explained in its submission what or where such communal facilities are provided for the benefit of the Applicants.

In 2018 and 2019 no charges arise.

In 2019 no charges arise but a management fee is raised.

In 2020 a figure of £7.77 (reduced by the Respondent to £1.62) and a management fee is included.

In the Budget for 2021 a figure of £7.25 for waste removal and a management fee is included.

53. The Tribunal finds that a management fee can only arise if management of the Communal Facilities is provided. No evidence has been presented to the Tribunal to convince it that there are any Facilities provided therefore no charge arises and consequently no fee is recoverable.

Respondent Landlord's Management Fee

54. The Tribunal determines that the Respondents' (Landlord Orbit) management fees are only recoverable in respect of the administration of the Communal Facilities which does not include managing the payments of the Rentcharge or administering the insurance which are recoverable under a separate covenant.

Insurance

55. The Applicants says that the insurance is included within the amount paid for rent. It is not clear from the statements whether this means 'in addition to' or within the figure set for the rent. The Tribunal is not involved in the setting of the rental element however it is clear from the Lease that the lessees are liable to pay insurance whether or not this is collected through the service charge or with the rent is a matter between the parties. However it is collected the lessees are only required to pay one premium per annum.

On the evidence before it the Tribunal determines as follows:

Year ending 31 March 2018

56. Nothing is payable as conceded by the respondents.

Years Ending 31st March 2019 and 2020 and Budget for Year Ending 31st March 2021

57. The Rentcharge and insurance are payable under the terms of the Lease.

Section 20c and Paragraph 5A Application

58. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.
59. Other than ticking the boxes on the application form the Applicant has made no submissions on this part of the application.
60. It might be argued in such circumstances that such application should be rejected for such reason. However, in the light of the Tribunal's findings above, the application must be considered by the Tribunal.
61. Under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances to make its determination. It follows a similar course when considering administration charges. "Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise." (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000)).
62. "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."
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else". (**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). "In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make." (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).
63. The actions of the Respondent, in particular incorrectly interpreting the lease resulting in the Applicants being charged for amounts that are not properly due, book keeping errors and the failure to respond properly to reasonable questions asked by the Applicants, inevitably led to the Application.
64. Taking this into account the Tribunal allows the application under Section 20C of the 1985 Act and orders that any costs incurred in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

65. This Order applies to the lessees of all three Applicants.

Paragraph 5A

66. For the same reasons the Tribunal allows the Applicant's application under Section 20C above, the Tribunal allows his application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicant in this or any other year.

67. As in respect of the 20C Order this determination applies to all three Applicants.

Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix (The relevant statutes)

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18 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 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 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 Liability to pay service charges: jurisdiction

- (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, 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(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 a leasehold valuation 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 ... tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

“The relevant court or tribunal”

The First-tier Tribunal