



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

**Case Reference** : CHI/45UH/LSC/2020/0096

**Property** : Flat 8 Hampton Court, 109-115 Brighton Road, Worthing BN11 2EF

**Applicant** : Kirkland Investment Management Limited

**Representative** : Mr P Humphries

**Respondent** : Rushcavern Limited

**Representative** : Mr T Morris, counsel, instructed by Brethertons Solicitors

**Type of Application** : Determination of service charges - Section 27A Landlord and Tenant Act 1985

**Tribunal Member(s)** : Judge D R Whitney  
Mr B. Bourne MRICS

**Date of Hearing** : 20<sup>th</sup> April 2021

**Date of Decision** : 14<sup>th</sup> June 2021

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**DECISION**

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## **Background**

1. The Applicant is the leaseholder of the Property. The Respondent is the freeholder.
2. The Applicant looks to challenge certain items within the service charges for the years 2017, 2018, 2019 and 2020. The Applicant also seeks orders pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002.
3. Directions were issued on 18<sup>th</sup> December 2020. Further directions were issued on 11<sup>th</sup> March 2021.
4. The Applicant has produced two hearing bundles which ran to approximately 1400 pages. References in [ ] are to pages within the main bundle unless specifically said to be the second, shorter, bundle of photographs.

## **The Law**

5. The relevant law is contained in sections 19 and 27A of the Landlord and Tenant Act 1985 which is exhibited hereto marked A.

## **Hearing**

6. The hearing was attended by Mr Peter Humphries, director of the Applicant. Mr Morris of counsel attended to represent the Respondent company together with Messrs. Darren and John Winter, directors of the Respondent and Ms Maidment from Brethertons Solicitors.
7. The Tribunal had received from both parties in advance of the hearing skeleton arguments which it had read.
8. The below is a summary only of the evidence and submissions made at the hearing.
9. Mr Humphries relied upon his statements contained within the bundle [84-111 and 188-198]. He confirmed those statements were true and accurate.
10. Mr Morris then cross-examined Mr Humphries.
11. Mr Humphries agreed some tenants treat property better than others. He did not accept short term tenants were necessarily any worse

than long term occupants. Mr Humphries would not agree that if a lease has no control over sub letting this is problematic.

12. Mr Humphries accepted the need for consents to structural alterations. He stated the lease covered this. He accepted that if works undertaken in breach the landlord will have a remedy.
13. Mr Humphries accepted he was familiar with leases. He explained the company did have an investment portfolio which was managed through agents. He was aware of the remedy of forfeiture and the fact a landlord or their agent must act to avoid waiving any breaches.
14. The flat was an investment and when purchased works were required. He accepted he did not complain about service charges before April 2018. Mr Humphries accepted he had been wrong in respect of interest and the landlord was entitled to charge 10% interest.
15. Mr Humphries explained he had requested sight of invoices pursuant to Section 22 of the Landlord and Tenant Act. He disputed it was necessary for section 21 to have been complied with first. He accepted he did not inspect the invoices until September 2019. He explained he had not raised issues until this application was made as there were other matters happening. He explained there had been personal issues.
16. Mr Humphries explained throughout 2018 he spent a lot of time at the block and met other leaseholders. He saw what he believed was the poor condition of the block. He believed he had made complaints to the managing agent which clearly questioned the service they were providing.
17. Mr Humphries confirmed he had discussed matters with his solicitor, Mr Donegan, and agreed a strategy for removing the managing agents and having a manager appointed.
18. Mr Humphries explained he was not challenging the cleaning costs but the service received from the managing agents. He explained he had raised matters by way of complaint with them. He did not believe that matters he raised were properly dealt with by the managing agents, hence this application.
19. Mr Humphries suggested that £250 per unit per annum was a reasonable fee for management. This was the fee that the Tribunal appointed manager Mr Pickard was charging. Chanctonbury Estates also confirmed they considered this amount reasonable and Mr Humphries had 3 flats within blocks managed by this company. He felt most agents do not separate out reactive maintenance and charge this separately as has been done in this case. He believed that Mr Pickard's fee is most appropriate market evidence as to a reasonable fee.

20. Mr Humphries believed since Mr Pickard had been appointed generally matters had improved.
21. Upon conclusion of Mr Humphries evidence Mr Morris then called Mr Darren Winter. Mr Winter confirmed his name and address and that both statements he had provided [51-83 and 112-187] were true.
22. Mr Morris confirmed that he was instructed that legal fees incurred with Brethertons Solicitors were conceded as it had been determined in the appointment of a manager case that legal costs were not recoverable. In Mr Morris' submission there was no reason for a Section 20C Order to be made.
23. Mr Humphries cross examined Mr Winter.
24. Mr Winter explained that he always tries to get accounts issued within 6 months of the year end. He accepted that the accounts sent under cover of letter dated 9<sup>th</sup> October 2020 [785], being the closing accounts from Helm Estate Services Ltd, would have been the first time certain costs would have been known to the leaseholders as they had not been include within the budget.
25. Mr Winter did not accept the cleaning was undertaken to a poor standard. He explained there was anti-social behaviour at the block. Mr Winter blamed this upon sub-letting including lettings via AirBnB.
26. At the conclusion of the evidence the Tribunal adjourned for lunch.
27. Upon resumption both parties confirmed the schedule at [963] listed the costs to be determined by the Tribunal. Mr Morris confirmed that the Respondent conceded the following items were not recoverable:
  - 2019 Legal fee £1680
  - 2017 EICR £60
  - 2017 Arrange car park and bin store lighting £75
28. Mr Morris referred the Tribunal to the earlier Tribunal decision [1178] where at paragraph 51 and 52 that Tribunal recorded that it determined that costs were not recoverable. Mr Morris was not looking to challenge this determination.
29. Both parties had filed skeleton arguments which the Tribunal had received and read.
30. Mr Humphries made his submissions. He suggested the facts are not in dispute. He pointed out the Respondents rely upon Cain v. Mayor

and Burgesses of the London Borough of Islington [2015] UKUT 542 (LC). He pointed out in that case the Applicant sought to challenge service charges going back many years. In this case he was looking to merely go back 3 years. Mr Humphries stated he had made requests for information and had made complaints in respect of services. He had previously pursued a claim for an appointment of a manager who had been appointed. He suggests his complaints went to the heart of the managers performance at this block.

31. Mr Humphries stated it is clear from his correspondence with Helm, much of which is in the bundle, that he was unhappy with the management. He made ongoing complaints including complaints to RICS in respect of Mr Winter and agreed a strategy with his solicitor to seek the removal of Helm as the manager.
32. Mr Humphries contended that in clause 6(D)(v) [35] of the lease the use of the word “and” in the phrase “...herein contained and for the proper management...” was conjunctive and clause 6 (D) (xiii) [37] was redundant. In his submission applying this meaning of the lease did not allow the Respondent to recover the various disputed charges from Helm under the lease.
33. In respect of the fire door costs Mr Humphries submits no proper due diligence was undertaken by the Respondent. He suggested that the Fire Authority and the council had not required such works and the Respondent had an obligation to act in good faith. His view was that the Respondent had not been required to proceed given they had agreed as part of a settlement within other proceedings in the County Court to support an application for the appointment of a manager.
34. Mr Humphries also challenged whether Mr Winter and Helm were the appropriate persons to be undertaking work to locks.
35. He suggested many of the additional charges were for matters which should have been properly included within the fees charged by Helm for its services. Mr Humphries contended that the fee charged by Mr Pickard of £250 per unit per annum ought to be the correct level of charge to be made.
36. Mr Morris then made his submissions. In his submission Mr Humphries could not challenge certain of the service charge costs. He also referred to Cain. Mr Morris submitted that Mr Humphries stated he had paid his service charges to obtain consent for alterations. He had not made any challenge of amounts until November 2018. The challenges related to the cleaning and yet Mr Humphries does not challenge the cost of the cleaning charges themselves.

37. Mr Morris referred to the extensive correspondence between the parties and the County Court proceedings brought by the Applicant in respect of the management regulations introduced by the Respondent. At no point during these proceedings or the settlement negotiations had the Applicant indicated they wished to challenge the service charges. In Mr Morris' submission this meant they were unable to do so and their agreement could be inferred.
38. In respect of the fire doors the Respondent had served section 20 notices and no objection had been received from the Applicant. Again agreement should be inferred.
39. Mr Morris did not accept the Applicants submissions as to the lease. In his submission it was clear that the Respondent could, relying upon clause 6(D)(v), as the landlord if it meant it was reasonable to appoint its manager to undertake tasks.
40. As to the fees charged in his submission these were reasonable and the Tribunal would apply its expertise. He did not accept the Chanctonbury Estate blocks were comparable. In his submission as they were new blocks they had fewer management challenges. This block had no controls over subletting's, was affected by fly tipping and other issues.
41. Turning to the fire doors he suggests on the evidence the approach taken was reasonable. This was a post Grenfell world and the Respondent took a view and proceeded. They had conducted a consultation and received no objections from any leaseholder.
42. At the conclusion all parties confirmed to the Tribunal they had been afforded opportunity to make all points they wished to raise.

## **Decision**

43. The Tribunal thanks Mr Humphries and Mr Morris for their submissions. The Tribunal has considered all documents within the bundle, the skeleton arguments and all which was said at the hearing. We cannot pass without commenting that the bundle, running as it did to nearly 1400 pages, contained many documents which were not referred to or relevant.
44. Turning firstly to what or not any of the years have been agreed we have considered carefully the arguments bearing in mind Cain. We accept the Respondent's argument that even recent service charges may be said to be admitted by conduct.
45. It is clear that the Applicant paid. This alone cannot amount to agreement. The bundle does contain much correspondence between the parties which can be categorised as complaints. Whilst

there is perhaps nothing within the correspondence which could be said to expressly state they objected to any of Helms fees it is clear looking at the totality of the correspondence that the Applicant was unhappy.

46. We take account of the fact that whilst the service charge years we are looking at date back to the year ending 25<sup>th</sup> December 2017 in fact the accounts were not produced and supplied to the Applicant until substantially beyond those dates. Looking at the time which has elapsed the “delay” in applying to this Tribunal is not in our opinion substantial.
47. We have considered the separate County Court proceedings and settlement of the same. Firstly these proceedings did not relate to service charges. The proceedings concerned the validity of management regulations. These proceedings were settled following a round table meeting. It is disputed as to whether or not either party wished to include other issues. We make no finding beyond making clear the terms of settlement made no mention of service charges. Either party could have raised this and included terms within that agreement, but they did not. Essentially the settlement was that the Applicant would apply for a manager to be appointed by the Tribunal and the Respondent would support the same. This happened and a manager was appointed.
48. On balance taking account of the evidence and the submissions we are not persuaded that the Applicant can be said to have agreed any of the years service charges. We are satisfied that the Applicant can challenge each of the years.
49. Turning to the charges we refer to [963]. The parties agreed this set out each of the items which were disputed. We do not refer to those items conceded by the Respondent as not recoverable.

#### Basic management fee

50. In each of the years a basic fee is payable to Helm together with a fee to a firm called Adiuvo for what was termed ‘reactive management’. Looking at the later aspect we agree that typically such a charge would be included within the managing agents fee. We do not accept that by not doing so this is not recoverable or unreasonable.
51. We are satisfied that the lease allows the recovery of management fees (see clause 6(D)(v)(b) [35]). This includes in our opinion use of a firm such as Adiuvo to deal with urgent repair requests including those out of hours. We are satisfied it is for the Respondent to decide on the level of service and it is not unreasonable for them to contract for such services.
52. We do accept Mr Morris’ submission that we should treat Mr Pickard’s fee and the evidence re Chantonbury Estates with some caution.

That being said the management fees charged for a development of this type do appear to be high being approximately £295 per annum in 2020 for the Applicants share. We were not however persuaded that the fee was so high as to make this unreasonable and we find that the Basic Management fees in each of the years charged by Helm or Adiuvo are reasonable.

53. We make clear in reaching this determination given it is a fee at the higher end of those we would typically determine we do expect the service to match that level and have taken account of this in determining the extra charges below.

#### Accounting fee

54. Whilst we heard argument as to whether or not the Respondent was correct as to their interpretation of sections 22 and section 21 of the Landlord and Tenant Act 1985 we again make no comment or findings. It was a matter of fact that the Applicant had requested a summary pursuant to section 21 of the Landlord and Tenant Act 1985. We are satisfied that it was right and proper for the Respondent to employ accountants to produce the required summary. We are satisfied that the employment of such accountants is within clause 6 (D)(v).
55. We have considered the amount charged. At [687] a quote of £750-1200 plus vat was given. The fee charged was £1920inc VAT. We are not satisfied that such fee is reasonable. We accept that as a one off piece of work the cost would be higher than a reoccurring annual accountancy charge. However we are unsure as to why the original fee estimate should be exceeded and using our professional skill and judgment as an expert tribunal we determine that a reasonable fee for this service including vat would be £1200. This is the amount we find to be reasonable and for which the Applicant should pay the appropriate proportion.
56. We will also comment upon the management fee charged. We are not satisfied this is reasonable. All of the documentation for the accounts should be documentation which a managing agent would have available to them. We are not satisfied that it is reasonable for the agent to charge an additional fee and we find that the sum of £485 is not payable and not reasonable in amount.

#### Fire Safety

57. We heard much evidence over these works.
58. As a general comment we accept the submission of Mr Morris that all such works have to be viewed in the post Grenfell world. It is incumbent upon freeholders to look and think carefully about undertaking works and it is prudent to ere on the side of caution and if in doubt to conduct works.



59. In this instance this is what the freeholder has done. The Respondent received a report produced by the Applicant which suggested doors may require work. The Respondent took the view if doors on one floor of the building required works it is likely this would be true, given the nature of the building and their own observations that all may be affected. We find it was reasonable for the Respondent to look at doing such works.
60. We take note of the fact that a consultation exercise was undertaken and no objections were raised even by the Applicant. It seems the Applicant assumed the works would not be undertaken given the potential appointment of the manager. We find that the Respondent was entitled to proceed.
61. The Applicant does not seem to dispute the price as such but suggests it was not clear whether all of the works were required. On balance looking at all the evidence we are satisfied it was reasonable in all of the circumstances for the respondent to decide that they would undertake a total replacement relying principally upon the report supplied by the Applicant.
62. As a result we find the total sum charged of £10,500 to be reasonable and the Applicant is required to pay their proper proportion of the same.

#### Additional management fees

63. In assessing these amounts we take account of our findings as to the “basic management fee”. We are conscious that we have allowed what we find to be a fee at a higher end of what we would typically determine is reasonable. As a result we would expect the service provided to reflect the same without additional charges being levied.
64. We note the Respondent invited us if we were not satisfied that any charges could be recovered as additional management charges to determine that certain charges could be recovered as administration charges from leaseholders including the Applicant. We decline to do so. To do so is not within the scope of this application.
65. We find that the following costs are reasonable and payable:
  - Report of damaged bin store lock £216
  - Replace damaged Yale lock to the front door £158.99
66. In making such determination we are satisfied taking account of the evidence that it was reasonable for additional work to have been undertaken and that each of these items effectively is as a repair.

67. Turning to all other amounts claimed we do not accept that they are reasonable or payable being:

25 December 2020

Flat 8 Unauthorised parking  
Report of stiff bin store lock

25 December 2019

Flat 8 dispute-leasehold charges  
Flat8 dispute- fire doors  
Fire rating requirements for flat entry doors  
Arrange S21 Summary of costs

25 December 2018

Fire safety queries  
Antisocial behaviour Flat 18

68. Generally these were for works which generally in our opinion should have been included within the basic management fee. Much of the work referred to in these charges was for items which we would expect a managing agent to carry out as part of their normal duties.
69. In respect of the charge for the “Report of stiff bin lock” we heard evidence that a repair was carried out, any adjustment should not have incurred additional fee in our judgment on the evidence as presented.
70. Certain of the charges related to matters which may entitle (and we make no finding) the managing agent to charge administration fees. What was clear from the evidence was that these were not matters for which in our opinion it was reasonable for a professional managing agent to have charged an additional fee beyond that of their normal fee.
71. We also comment on the Section 21 Summary costs all of the information required to be provided to the accountant are records we would expect a managing agent to have readily to hand within their own accounting records and we do not accept given the overall management fee which we have allowed that it would be reasonable for further costs to be charged.
72. Finally we consider whether or not any order pursuant to section 20C should be made or reimbursement of any Tribunal fees. We note the Respondent accepts that legal costs are not recoverable and so no section 20C Order is required.
73. Turning to the reimbursement of Tribunal fees we have considered all matters carefully. Both sides can be said to have succeed on certain

aspects of their case. This is a case where plainly there is animosity on both sides. Overall taking account of all matters and exercising our discretion we decline to make any order as to the Tribunal fees.

## **RIGHTS OF 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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being 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.
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.