



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

Case reference : **LON/00BA/LSC/2020/0392**

HMCTS code : **P: PAPERREMOTE**

Property : **20 & 20A Dearn Gardens, Mitcham,
Surrey, CR4 3AY**

Applicant : **(1) Anis Dawood (Flat 20)
(2) Marcin Marek (Flat 20A)**

Representative : **-**

Respondent : **(1) Regis Group Ltd (Flat 20)
(2) Ground Rents (Regis) Ltd (Flat
20A)**

Representative : **Pier Management
Ms Jane Canham, Solicitor**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Tribunal Judge D Brandler
Mr A Fonka, MCIEH, CEnvH, M.Sc.**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12th July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to/not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in a bundle of 66 pages, the contents of which we have noted. Leases and Land Registry documents were provided separately and were also noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the sum of £0 is payable by the Applicants in respect of the new management fee introduced in 2020
- (2) The tribunal determines that the sum of £500.00 is payable by each Applicant for the insurance premium for service charge years 2020/2021
- (3) The tribunal makes no determination in relation to insurance premiums for the service charge years 2013-2020
- (4) The tribunal makes the determinations as set out under the various headings in this Decision
- (5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (6) The tribunal determines that the Respondent shall pay the Applicant £100.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the 2nd Applicant

The application

1. A separate application was made by each applicant for determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicants in respect of service charge years 2014-2021
2. The two applications have been consolidated by the Tribunal as they raise identical issues.

The background

3. The properties which are the subject of this application are two self-contained flats contained within no. 20 Dearn Gardens, Mitcham, Surrey

CR4 3AY (“the building”): Flat 20 is the ground floor flat held on a long lease by Anis Dawood and Noorjahan Jamaludeen Hashim, Flat 20A is the first floor flat held on a long lease by Marcin Marek.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

5. Two issues have been raised by both applicants as follows
 - (i) The payability and/or reasonableness of a newly introduced management fee of £115 per flat per annum for service charge years 2020/2021
 - (ii) The payability and/or reasonableness of the insurance premiums since 2014 to 2021.
6. Having considered all of the documentary evidence and submissions from the parties, the tribunal has made determinations on the various issues as follows.

The new Management fee introduced in 2020 of £115 per annum per flat.

7. The applicants say that this new management fee has been introduced without notice of what it is for. They say this is in addition to the regular payments they make of 10% management fee for any work carried out at the property by contractors at the request of the freeholder.
8. The respondent says that the management fee of £115 per annum per flat instituted in 2020 is permitted under the terms of the lease and the *“figure of £115 per annum per flat is significantly below market average for such fees and reflects the fact that the building has minimal communal areas and is managed on a reactive basis. The fee remunerates the managing agent for providing MIRPM and RICS qualified staff on standby 365 days of the year, answering calls and email communications, providing digital software to manage the building, and recoding core data as well as ensuring the building maintains compliance with statutory provisions and complying with the provisions relating to the maintenance and repair of the building”*
9. In addition, in relation to Flat 20, the respondent says that Mr Dawood has no right to challenge the service charge, as they are subject to a sub-lease [6]. Nevertheless, they say Mr Dawood and Mrs Hashim must comply with the terms of the head lease.

The tribunal's decision

10. The tribunal determines that the amount payable in respect of the management fee is £0 .

Reasons for the tribunal's decision

11. The new management fee of £115 is said to offer the services of very qualified personnel 365 days of the year. Yet is it not clear what sort of services that would provide. Leaseholders, by the nature of their interest in their properties are required to maintain them. The Respondent, by their own evidence states that the communal area in the building is minimal and it is hard to envisage what they intend to achieve under the terms of the new management fee.
12. The tribunal considered that that a fee of £115 p.a. was inconsistent with the suggested professionals on call who would be available for 365 days of the year.
13. In any event, the applicants already pay a management fee in relation to the services and works that are provided. This new charge is not reasonable and is not payable.
14. In relation to the respondents claim that Flat 20 is not entitled to challenge service charges because they do not have a direct relationship with them does not make sense. If the terms of the lease are enforceable, such that Flat 20 is liable to pay service charges, then they are entitled to challenge those service charges by way of s.27 of the 1985 Act.

Insurance premiums for service charge years 2014-2021

15. The applicants say that the building insurance premium is excessive. The current charge is £1582.76, that is £791.38 per flat for 2020-2021 and £1746.28, that is £873.14 per flat for 2021-2022. They say that they have asked the respondent to explain why a claim was made in relation to another property on their policy, which they say will have increased the premium. They have provided an alternative quotation by email for £483.84 as well as one with full details of the policy terms from Reich in the sum of £686.31 which includes terrorism cover.
16. The respondent's legal submissions are set out within their response.

The tribunal's decision

17. No determination is made in relation to the insurance premiums for service charge years 2013-2020.

18. The tribunal determines that the amount payable in respect of the insurance premium for 20/2021 is £1000, that is £500 per flat.

Reasons for the tribunal's decision

19. No evidence has been produced for service charge years 2013-2020 and so no determination can be made.
20. In relation to service charge year 2020-2021 the evidence supports the Applicant's assertion that the premium charged is excessive and may have been affected by a claim in relation to another property.
21. There was no evidence before the Tribunal from the Respondent in relation to what other properties, if any were covered by this policy, but the fact that there was a claim from another address indicated that other properties were probably included in this policy as a block policy. No detail is provided in relation to what properties are included, in what areas they are located or their respective values. This would have been useful in assessing whether the proportion charged to the applicants was reasonable in the circumstances.
22. What was clear to the Tribunal was that the insurance premium charged by AXA was extremely high. While the Tribunal accepts the legal submission by the Respondent, and rejects the email quotation of £484 provided by the applicants. The quotation by Reich seemed reasonable.
23. If there are some terms that are not comparable to the AXA terms, then the Tribunal makes an allowance for that and determines that a reasonable amount for the insurance premium is assessed at £1000 per annum for the building. That is £500 per flat.

Application under s.20C and refund of fees

24. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having taken into account the determinations above, 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, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
25. The Tribunal considered that it is just and equitable to award a refund of fees having taken into account the determinations above.
26. The Respondent must refund the Applicants the tribunal fees paid by them in relation to the applications made by them.

Name: Tribunal Judge Brandler

Date: 12th July 2021

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).

Appendix of relevant legislation

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or

- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

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.