



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

**Case Reference** : **MAN/OOBR/LSC/2017/0030**

**Property** : **Chancery Gardens, Sheader Drive, Salford,  
Manchester M5 5BU**

**Applicant** : **Chancery Gardens (Salford)  
RTM Company Limited**

**Representative** : **Slater Heelis LLP Solicitors.**

**Respondent** : **Deborah Maloney and others.  
(per list attached)**

**Representative** : **Oliver Kaplan (Counsel)**

**Type of Application** : **Application under section 27 of the  
Landlord & Tenant Act 1985 and section 19.**

**Tribunal Members** : **Judge L. J. Bennett  
Judge. G. C. Freeman**

**Date of Decision** : **15 November 2017**

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**DECISION**

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## **BACKGROUND**

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charge for the calendar years 2015 and 2016 are reasonable and payable.
2. This application arises out of a previous application to the Tribunal under reference **MAN/OOBR/LSC/2014/0106**. This was heard by Judge Bennett and Mr I James MRICS over two days in March and April 2015, and whose decision was issued on 6<sup>th</sup> May 2015 (the “2015 Case”). This application relates solely to the reasonableness of the legal and other costs incurred by the Applicant in connection with the 2015 Case, and whether they can be recovered from lessees by way of service charge. Briefly, the 2015 Case concerned the recoverability of the costs of replacing windows at the Property. It is not necessary for the purposes of this decision to go further into the 2015 Case. Suffice it to say that the Tribunal found that such costs were a service charge item and recoverable within the terms of the Leases of individual properties.
3. The Applicant is a Right to Manage Company formed for the purpose of managing the Property. The Landlord is Contour Property Services Limited who took no part in the 2015 Case or these proceedings. There have been no proceedings in the County Court for the recovery of any service charge from any leaseholder. The Respondents are some (but not all) owners within the Property. Some owners expressed a wish not to be joined in the application and the Tribunal has respected this wish. It is important to distinguish between those Respondents who are parties to this application and those who are not for reasons which will be seen.
4. The Lead Respondent, and most, if not all, of the other Respondents are members of the Applicant. All of the Respondents are lessees of individual properties by way of a long residential lease of a dwelling within the Property.
5. In order to save costs, the Applicant indicated that the matter could be dealt with by way of a paper determination. Both parties submitted statements of case and, in the case of the Applicant, a response to the Respondents’ case, which the Tribunal found most helpful.

## **THE APPLICANT’S CASE**

6. It is the Applicant’s case that the expenditure incurred by the Applicant in responding to the 2015 Case and in connection with other matters involving the management of the Applicant, has led to a deficit in the service charge accounts for the period in question.
7. The application relates solely to the sum of £13,949.60 which is part of the total deficit of £19,652 for the period. However the Applicant acknowledges that the balance of this deficit relates to matters involving the governance of the Applicant and therefore does not qualify as service charge expenditure.

8. A full breakdown of the amounts of expenditure incurred was provided by the Applicant as follows:-

Cutlers Property Consultancy (Services)	£500.00
Slater Heelis' Professional Charges including Counsel's fees	£10,020.00
HML Guthrie managing agents	£2880.00
Prestige Property Services	<u>£549.60</u>
	<u>£13949.60</u>

9. The Applicant provided a copy of an email dated 12<sup>th</sup> January 2017, (exhibit 25) in which their solicitors advised that they considered the costs being sought were administration charges and that such administration charges had to be reasonable (section 158 and Schedule 11 Part 1 of the Commonhold and Leasehold Reform Act 2002 ("CLARA")). They added that if the costs were service charges, then they must have been reasonably incurred and the services provided must have been to a reasonable standard (section 19 of the 1985 Act).

#### **THE RESPONDENTS' CASE**

10. Although the Respondents broadly agree with the Applicant's Statement of Case, they do take issue with the Applicant's classification of the nature of the costs incurred. They regard such costs as service charge and not an administration charge. They dispute the recoverability of the costs and the reasonableness of those costs.
11. For the sake of completeness the Respondents apply for an order under section 20C of the 1985 Act in connection with the 2015 Case. Such an application was made in the 2015 Case, but no determination on this point was made. For the reasons set out below at paragraph 28 the Tribunal have jurisdiction to consider the point.
12. If the costs sought are administration charges the Respondent contends that the same are not recoverable by virtue of the Applicant's failure to serve a Notice under section 4 of Schedule 11 above, and are unreasonable in value.
13. In support of their Response, the Respondents exhibited the Respondent's skeleton argument and the Applicant's Statement of Costs submitted in connection with the 2015 Case. They also rely on the decision of the Upper Tribunal in *Christoforou and another v Standard Apartments [2013] UKUT 0586 (LC)*.

## DISCUSSION

### **Service Charges or Administration Charges?**

14. It is important first to distinguish between a sum which may be recoverable as a service charge or an administration charge. There are similarities to both. For example, they are both subject to the requirement that a notice must be given to the potential payee under section 21B of the 1985 Act (Service Charge) and section 4 of Schedule 12 of CLARA (Administration Charge). Such notices must be given before they become recoverable. The distinction is important. There is no application before the Tribunal seeking an order that any administration charges (if such they be) are reasonable.
15. A service charge is defined in section 18 of the 1985 Act as:  
*“an amount . . . payable by the tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management [emphasis added], and the whole of which varies or may vary according to the relevant costs”*. The only further guidance in the 1985 Act is that “costs” includes overheads (section 18(3)(a)).
16. A service charge is payable only to the extent that:-
  - 16.1 It is reasonably incurred, and
  - 16.2 If the services or works are of a reasonable standard.(section 19(1) of the 1985 Act).
17. An administration charge is defined in subsection 1(1) of Schedule 11, Part 1 of CLARA as:-  
*“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –*  
...  
*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”*
18. A variable administration charge is payable only to the extent that it is reasonable (section 2 of Schedule 11 CLARA).
19. The main difference between them is payability. A service charge is payable by all owners of the individual units of accommodation in the Property. An administration charge may be payable by one or more owners, for example, by those in breach of their obligations in the lease, but not necessarily by all owners.
20. The Applicant is correct in stating that the first consideration in deciding whether the costs which are the subject of this application are payable by the Respondents is the lease.

21. The Tribunal were supplied with a copy of the lease for Plot 77. It is dated 22 November 1971 and is made between Wimpey Homes Holdings Limited (1) Portland Housing Association Limited (2) and Sorin Barbu and Fatima Andrade (3). Clause 1 of the Third Schedule provides that the tenant will “... *by way of additional rent to pay to the Association the Maintenance Charge ...*”
22. The Maintenance Charge is defined as the sums payable under Parts I and II of the Sixth Schedule. Clause 1 of Part II includes “*sums spent by the Association in and incidental to the observance and performance of the covenants on the part of the Association contained in the Fifth Schedule and Part I of this Schedule*”.
23. Clause 2 covers “*All fees charges expenses salaries wages and commissions paid to any ... Solicitor or any other agent contractor or employee who the Association shall employ in connection with the carrying out of its obligations under this Lease ...*”.
24. Clause 10 includes “*The costs of management of the Property and the Development ...*”
25. In *Christoferou*, the Upper Tribunal decided that the costs awarded by the LVT against the Appellants were administration charges on the basis that they were recoverable under a covenant to pay contained in the lease. The Tribunal noted that in this case there is no similar provision in the lease to pay the landlord’s costs of enforcement of the lease provisions. The Tribunal further noted that the costs in *Christoferou* were incurred in connection with litigation and were ordered to be paid by the LVT. No litigation has been initiated in this case other than the 2015 Case, in which no order for costs was made. In the light of the above, the Tribunal consider that the decision in *Christoferou* may be distinguished on its facts from this case and concluded that the charges sought by the Applicant must be service charges and cannot be administration charges.

### **Section 20C application**

26. The Respondents repeat their application that the relevant costs be excluded from the calculation of service charges payable by them under section 20C.
27. The section was set out in the 2015 Decision, but for ease of reference, it states:-
  - (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 or the First-tier Tribunal (Property Chamber) 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-*

.....

(b) *in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)*

28. It will be seen from the above that this Tribunal has jurisdiction to consider the fresh application under section 20C.
29. Having considered the fresh application and the earlier decision, the Tribunal concluded that the application decided by the 2015 Case largely failed. As a result there was no justification for an order under section 20C and the Tribunal refused to make one.

### **Reasonableness of the Respondents' Conduct**

30. In coming to this decision the Tribunal had regard to the Respondents' conduct in connection with the 2015 Case and in this Application. It is the Applicant's contention that the reasonableness of the Respondents' conduct must be taken into account in considering the payability of the relevant costs. No basis for this contention was advanced, other than, presumably, the Applicant's conduct in bringing the 2015 Case. As has been pointed out, no litigation has been begun in connection with the matter other than the 2015 Case. The Tribunal made no finding that the Respondents acted unreasonably in bringing the 2015 Case and maintain that opinion. No order for costs was made by the Tribunal in the 2015 Case. For the sake of completeness, the Tribunal finds that the Respondents did not act vexatiously, unnecessarily, unreasonably or unfortunately in bringing the 2015 Case.
31. Having decided that the costs incurred are service charges, the Tribunal proceeded to deliberate on whether they were reasonably incurred. Insofar as the Applicant had to respond to the 2015 Case, the Tribunal decided that the fees of the witnesses who gave evidence on behalf of the Applicant in that case were properly incurred and are reasonable.
32. The Tribunal then turned to the fees of the managing agents, HML Guthrie. The Tribunal noted that at the outset of the 2015 Case they indicated that their management fees did not include the work carried out in connection with the case. They suggested a fee of £400, to be reduced to £300 plus VAT. No evidence was adduced as to whether this fee was per hour or per day. If per hour, the Tribunal noted that this would have been a higher hourly rate than that charged by the Applicant's lawyers. In the event this firm has charged £2400 plus VAT, which represent eight units of charging. The Tribunal considered that much work would have been carried out in connection with the case, albeit of a routine nature. The fee was considered to be nearer the top of the range of what the Tribunal would deem reasonable, but there were no grounds for deciding it was unreasonably incurred or that the fee itself was unreasonable in amount.

33. The Tribunal then turned to the legal fees incurred in connection with the 2015 Case. Again the Tribunal must consider whether they have been reasonably incurred, both in substance and amount. The Tribunal decided that it was reasonable for the services of lawyers to be used in connection with the 2015 Case. As to the reasonableness of the actual fees, the Applicants correctly pointed out that, because no legal proceedings have been initiated, the summary of costs which the Applicant's solicitors provided cannot be relied on as a guide to the actual costs incurred. Whilst the Tribunal agree with this contention, they do not obviate the Applicant's obligations to assure the Tribunal that those costs were reasonable. A useful starting point must be the summary of costs provided immediately before the hearing. After all, the summary would have been used as a starting point if the Applicant's application for costs against the respondents had been successful. If not, the client, in this case, the RTM company, would have been entitled to query such costs.

34. The Tribunal therefore proceeded to consider whether the amount of such costs were reasonable. In the summary of costs accompanying the Respondents' bundle a figure of £8618.14 is shown. In its reply to the Respondents' statement of case, the Applicant states that this should be £10,328.14. The reason for the increase is said by the Applicant to be as a result of the additional day's hearing for the 2015 Case.

35. It is not clear to the Tribunal what sums by way of legal costs are now claimed by the Applicants in this matter. The Applicant is therefore directed to produce a further statement of costs within 21 days of the date hereof which takes into account the following observations of the Tribunal:

35.1 The Tribunal directs that the letter of engagement to the client be produced.

35.2 The Tribunal have regard to the normal rates of costs for the appropriate grades of fee earners in the County Court at the relevant time as follows:

Grade A: £217 per hour

Grade B: £192 per hour

Grade C: £161 per hour

Grade D: £118 per hour

The Applicant is directed to produce a revised statement of costs using the above figures.

- 35.3 The Tribunal disagree that two fee earners were necessary to personally attend initially on the Applicant. (paragraph 12.2 of the Applicant's Response) One would have been sufficient to glean the nature of the case and advise the Applicant. The lower grade fee earner could then have consulted his or her superior as necessary. There was no unusual case law involved which would have necessitated the attendance of the Grade 1 fee earner and this attendance will be disallowed.
- 35.4 Counsel's fees are stated to include an advice in conference. When did this take place and how long did it last?
36. Such further statement is to be provided within 21 days and a copy is to be served on the Respondent's Counsel, who may, if wished, provide observations within a further fourteen days.



## Appendix

### List of Respondents

Mr Goldthorpe & Mr Sloyan	Mr Watkin
Mr Pincher	Mr Woodward
Ms Leeds	Mr & Mrs Hall
Mr Marsden	Mr Maharaj
Mr Morris	Mr Grant
Miss Malloney	Mr Carter
Mr Chopra	Mrs Carney
Mr & Mrs Kohli	Ms Statham
Mr & Mrs Wood	Mr Malik
Mr Goldthorpe	Ms Mehan & Ms Sobti
Mr Grumbaum	Mr Nixon
Ms Hardcastle	Mr Carpenter
Mr Phipps	Ms Jackson
Mr & Mrs Martin	Mr Tattersall
Mr Naughton	Mr Hart
Mr & Mrs Smith	Mr Starling
Mr Elliott	Mr Rosenthal
Mr Higgins	Mr Halligan & Ms Richardson
Mr Barker	Mr Chan
Mr Brisbourne	Mr Oliver
Mr Gorman & Ms Walsh	Ms Mottershead
Executors of Brenda Garner Deceased	Mr Richmond
IRIS Properties Salford Ltd	Dr Qureshi
Ms Smyth	Mr & Mrs Greathead
Ms Adejumo	Mr Willingham
Mr & Mrs Thompson	Mr Stewart
Mr & Mrs Steel	Mr Lloyd
Mr Bruckshaw	Mr McLoughlin
Mr Young	Ms Ahluwalia
Mr & Mrs Beckford	Mr France
Mr Syed	Ms Vasyonok
Ms Chopra	Mr Kunayeo
Mr Dunne	Mr Syed
Mr Busari	Ms Tomlinson
Mr Bellingham	Mr Fulton
Mr & Mrs Goralski	Ms Peacock
Mr Mellen	Ms Howarth
Mr Coughlan	Mr & Mrs Bartlett
Mr & Mrs Dutta	Ms Wild