



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

<b>Case Reference</b>	: CHI/23UF/LSC/2021/0087
<b>Property</b>	: Maple Tree Court, Old Market, Nailsworth Gloucestershire GL6 0AF
<b>Applicant</b>	: Lessees of Flats Numbered 1 -10, 11, 12, 14, 15, 16, 17 – 19, 21, 25-30 and 31.
<b>Representative</b>	: Mr Graham Barton
<b>Respondent Representative</b>	: Fairhold Homes (No 20) Limited Miss Katherine Traynor (Counsel) instructed by JB Leitch Solicitors
<b>Type of Application</b>	: Applications under section 20C of the Landlord and Tenant Act 1995 (the Act) and paragraph 5A of Schedule 11 of CLARA
<b>Tribunal Members</b>	: Judge C A Rai Mr M Woodrow MRICS
<b>Date type and venue of Hearing</b>	: 7 November 2022 Paper Determination without a hearing
<b>Date of Decision</b>	: 19 February 2023

---

**DECISION**

---

1. The Tribunal dismisses the applications for orders under section 20C of the Act or paragraph 5A of Schedule 11 of CLARA. The reasons for its decision are set out below.

## **Background**

2. After the issue of the Tribunal's decision dated 7 December 2022 (the Decision) dismissing an Application for "set off" against the service charge liability of the Applicant, the Applicant made submissions in support of its application for limitation of its liability to pay legal costs. The Applicant's original application contained supplemental "Costs Applications" but the Applicant had submitted no reasons in support of those applications before the Tribunal's decision.
3. The Tribunal therefore directed (paragraphs 147 – 149 of the Decision) that, should the Applicant wish to pursue the Costs Applications, it could submit written reasons to which the Respondent could respond. The Applicant's submissions were received by the Tribunal on 4 January 2023. The submissions were undated. The Respondent replied on 1 February 2023. Subsequently the Applicant made further submissions to which the Respondent's solicitor objected.

## **The Applicant's grounds.**

4. The Applicant submitted that it has always sought to minimise costs but claimed that the Respondent has not. Mr Barton stated that the Respondent ignored requests for mediation resulting in subsequent costs which it claimed were avoidable. Mr Barton referred to both parties attending mediation but claimed that the lack of success and subsequent "unnecessary" costs were incurred as the result of the Respondent's lack of desire to agree to any settlement. He neither explained nor quantified the amount of those costs.
5. The Applicant claimed that the Respondent's failure to submit documents in compliance with filing deadlines was questionable. Whilst Mr Barton accepted that it was unclear what effect this had on costs, he asserted that the delay resulted from, and was evidence of, the Respondent's unreasonable behaviour.
6. The Applicant complained that it had been unaware before the hearing that the Respondent would be represented by three witnesses, a legal representative and Counsel which resulted in him being unable to obtain advice and guidance from its own Counsel.
7. Mr Barton also suggested that the first hearing was "a waste of everyone's time" because the Respondent's Counsel had erroneously claimed that the Tribunal had no jurisdiction to deal with its application. He also claimed that the Applicant was not at fault for what occurred.
8. Collectively, the Applicant's grounds have been put forward by Mr Barton as justification for his request for an order that some or all of the Respondent's costs in connection with the proceedings should not be regarded as relevant costs in relation to service charges payable by the Respondents whilst apparently accepting that the Tribunal should make such order as it considers just and equitable taking into account all the circumstances.

### **The Respondent's reply**

9. This was received by the Tribunal on 1 February 2023 and is undated. It summarised the Respondent's analysis of how it expected the Tribunal to deal with the application and then in particular stated that:-
  - a. The leases of the Property specifically provided for the Respondent to recover costs as part of the service charges;
  - b. In reliance on case law (and it quoted from three cases) it believed that the costs of the proceedings would be recoverable within the provisions of the leases; and
  - c. It also believed that litigation costs would be recoverable as an administration charge and referred to the appropriate lease provision.
10. It then considered whether it was just and equitable for the Tribunal to make an order limiting costs under section 20C or paragraph 5 of schedule 11 to CLARA.
11. It submitted that the Respondent's conduct has been reasonable and responded to the Applicant stating that:-
  - a. The mediation process is confidential and should not be discussed within these proceedings. Nevertheless, it averred that it had participated with the intention of reaching a settlement;
  - b. The Respondent was entitled to apply for extensions of time; and
  - c. There was no obligation for the Respondent to advise the Applicant that it would be represented by Counsel and, in its view, any wasted costs during and prior to the hearing were wasted because the Applicant had chosen not to obtain legal advice and not related to the Respondent's conduct.
12. Taking into account all of its submissions it would not be just and equitable to make orders depriving the Respondent from recovering its costs. Whilst it believed that the Applicant had only put forward submissions in relation to the section 20C application, both the applications should be dismissed.

### **The Law**

13. Section 20C and paragraph 5A of Schedule 11 of CLARA are set out in full in the appendix to this decision.
14. This Tribunal may make such order as it considers just and equitable in the circumstances in respect of the section 20C application that all or any costs incurred by the Respondent are not to be regarded as relevant costs, so effectively, they would not be recoverable by the Respondent as service charges.
15. Paragraph 5A of CLARA enables the Tribunal to make an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs, defined as meaning costs incurred by a landlord in the kind of proceedings listed in that paragraph, and which include proceedings before this tribunal. The Applicant has not submitted any reasons in support of its application for such an order so the Tribunal has concluded that it does not wish to pursue this application.

### **Reasons for the tribunal's decision.**

16. Although the Applicant has suggested that the alleged failure of the Respondent to engage in mediation might have avoided it incurring subsequent costs, it has not adduced evidence to explain why. The Applicant simply stated that it concluded that the Respondent did not wish to engage in agreeing to any settlement.
17. The Tribunal concurs with the Respondent's view that the mediation process was, and should remain, confidential in the context of these proceedings.
18. Regardless of whether or not the Applicant's assessment of what occurred during the mediation is accurate, the Tribunal does not accept that this ground has any bearing or relevance on the applications before it.
19. It is appropriate and desirable that parties consider engaging in mediation to settle a dispute, but it is unlikely to succeed in every instance. Failure of parties to settle a dispute following mediation should not be put forward as evidence of wasted costs unless there is compelling evidence that one or both parties engaged in the process without any intention of seeking a mutually acceptable compromise or with vexatious motives. No such evidence has been provided by the Applicant.
20. The Applicant stated that the Respondent was late filing documents. As is recorded in paragraph 36 of the Decision, the parties filed eleven separate bundles consisting of more than 2000 pages of documents and authorities. The Applicant stated that the delay was avoidable but offered no explanation as to why the delay would have impacted on the costs subsequently incurred.
21. The Tribunal does not accept that filing some documents later than directed would have had any measurable impact on the Respondent's costs. Furthermore it suspects that the numerous applications made by the Applicant must inevitably have impacted on the Respondent's costs and caused the Tribunal to spend more time than would be usual in administering these proceedings.
22. During the hearing on 17 May 2022 the Applicant made no submissions regarding "set off". Mr Barton confirmed that the Applicant did not dispute his liability to pay service charges; this statement was directly contradictory to the application made for a determination of the Applicant's liability to pay service charges. Mr Barton's statement during the hearing was in response to the Respondent's Counsel questioning the tribunal's jurisdiction. However, a challenge to the Tribunal's jurisdiction had previously been raised by the Respondent in its written response to the Applicant's statement of case. Whilst the Applicant was correct in stating that the Respondent's counsel had suggested that it might be more advantageous and usual for a claim for "set off" to have been made in the County Court, the application before the Tribunal at the hearing was made under section 27A of the Act. The Tribunal could have dismissed the application but did not because it accepted that the Applicant could have made a subsequent application for "set off". It therefore considered, having regard to its overriding objective, that it was appropriate to offer the Applicant the chance to submit an amended application.

23. Taking into account all of the evidence and submissions, before it the Tribunal finds that there is no merit in the Applicant's submissions regarding the first hearing. Neither do any of those submissions justify the Applicant's criticism of the Respondent's representation at that hearing.
24. The Respondent was entitled to legal representation and had no obligation to inform the Applicant that it would be represented.
25. During two adjournments of the hearing the Applicant and the Respondent were given the chance to agree "a way forward". Following the hearing the Tribunal offered the Applicant time to reconsider its application and make submissions to support a "set off" claim. Instead of the Applicant made several unhelpful applications to the Tribunal for case management orders and extended extensions of time within which to file its submissions and documents.
26. The Tribunal dismisses the Application for an order under Section 20C. It does not find it either just or equitable to make any order limiting the Respondent's ability to recover its costs as relevant costs. As the Tribunal recorded in paragraph 143 of the Decision, the Applicant for the most part ignored the Tribunal's directions and made no valid submissions regarding its claim for equitable "set off". It has done so again by making further submissions in response to the Respondent's reply to the Costs Applications.
27. The Applicant has made no submissions in support of the Application for an Order under Paragraph 5A of Schedule 11 to CLARA so the Tribunal has concluded that it does not wish to pursue that application and dismisses that application.
28. Whilst this has no relevance to this decision the Tribunal finds it appropriate to record that the Applicant's reference to Queens Counsel (QC) in its application is incorrect. The Applicant retained Rawdon Crozier as its counsel and the Respondent instructed Katherine Traynor, neither of whom were at the date of the hearing a QC, or to its knowledge, at the date of the Decision, a KC Kings Counsel).

**Judge C A Rai**

**Chairman**

## Appendix

### 20C of the Act — 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 court [, residential property tribunal] or leasehold valuation tribunal [ or the First-tier 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.

### Schedule 11 to the Commonhold and Leasehold Reform Act 2002

#### Paragraph 5A

(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.

<b><i>Proceedings to which costs relate</i></b>	<b><i>“The relevant court or tribunal”</i></b>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.”

## **Appeals**

1. A person wishing to appeal this decision to the Upper 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 further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal 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 person making the application is seeking.