



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

Case Reference : **CHI/43UB/LSC/2018/0087**

Property : **Sandown House, 1 High St, Esher,
Surrey KT10 9SL**

Applicant : **Various lessees**

Representative : **Mr C Last, Solicitor**

Respondent : **Long Term Reversions Ltd**

Representative : **Mr B Stimmler of Counsel**

Type of Application : **S27A Landlord and Tenant Act
1985**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mrs J E Coupe FRICS**

**Date and venue of
Hearing** : **Havant Justice Centre
25 March 2019**

Date of Decision : **01 April 2019**

DECISION

**The Tribunal determines that:
the premiums demanded by the Respondent in respect of
service charge years 2012-3 to 2018-9 inclusive and set out in
Appendix 1 annexed are reasonable and are payable by the
Applicants in the proportions set out in their respective
leases.**

REASONS

- 1 The Applicants are tenants and long leaseholders of the property known as Sandown House, 1 High Street, Esher Surrey KT10 9SL (the property) of which the Respondent is the landlord and reversioner.
- 2 This application, together with a second application which the Tribunal has ordered to be heard separately, was dated 29 August 2018.
- 3 Directions were issued by the Tribunal on 22 October and 26 November 2018 and on 8 February and 7 March 2019.
- 4 An application for an adjournment made by the Applicants on 21 March 2019 had been refused and was not repeated at the full hearing.
- 5 Each party presented a bundle of documents for the Tribunal's consideration. A further bundle, presented by the Respondent at the hearing was partially disallowed as it contained additional evidence which had not been included in the hearing bundle. The legal authorities contained in the supplementary bundle were admitted.
- 6 The service charge issue before the Tribunal related to the insurance premiums for the service charge years 2012-3 through to 2018-9 inclusive. As noted above, other issues relating to a major works contract are to be dealt with at a separate hearing.
- 7 The Respondent's right to demand the premiums and the Applicants' obligation to pay a contribution towards them are contained in their respective leases (Schedule 5 Clause 8) and are not disputed.
- 8 The Applicants maintain that the amount of the buildings insurance premium demanded by Respondent for each of the years in question was excessive. The Applicants contended that the premium had been consistently overcharged because its calculation was based on an erroneous over-valuation of the property.
- 9 The Respondent's latest valuation carried out in 2015 and referring to an earlier report with a physical inspection in 2009 had concluded that the value of the property for insurance purposes was £21,508,500 whereas the Applicants' valuer had assessed the current value at

£9,209,100. The current declared value on the Respondent's insurance certificate is £29,801,771 (page R5).

10 On examination of the respective reports presented by the parties' surveyors it became apparent that a large part of the discrepancy between the two valuation figures could be explained by the fact that the Applicants' surveyor had omitted from his report any reference to the fact that the property was a grade II listed building containing numerous special features including a clock tower, water fountain and ornate garden structures. His costings were based on the use of modern materials which would be less expensive but also inappropriate in the context of the subject property. For this reason the Tribunal considered the Applicants' surveyor's report to be unsatisfactory. A reasoned explanation of the discrepancy in values is also provided by a surveyor to the Respondent on page R9.

11 The Tribunal accepted the Respondent's evidence that the factors mentioned in paragraph 10 above would have the effect of increasing the costs both of rebuilding the property and the associated professional fees because the local planning authority would be able to insist upon specific requirements in relation to the materials and methods used in the reconstruction.

12 It was inevitable that the rebuild costs would influence the cost of insurance resulting in a higher figure being assessed by the Respondent's insurer than that put forward on behalf of the Applicants.

13 The Applicants also argued that the Respondent could have obtained a less expensive premium if they had sought an individual quotation for the property rather than treating it as part of their portfolio. While this proposition may or may not be true, the Tribunal does not accept this as a valid reason for rejecting the Respondent's case. Established case law provides that a landlord with a portfolio of properties is entitled to take out a block insurance policy (ie is not obliged to insure each property separately) provided that it can demonstrate that it has obtained a reasonable outcome (ie is not obliged to take out the cheapest policy) and has followed an acceptable process including testing the market (see *Berrycroft Management Company Ltd v Sinclair Gardens Investments (Kensington) Ltd* [1996] EWHC Admin 50. In the present case the Tribunal is so satisfied by the evidence to that effect produced by the Respondent (see paragraphs 5-12 Respondent's statement of case, not challenged by the Applicant).

14 The Tribunal does not accept the Applicants' alternative quotations which were less expensive than the Respondent's policy because they were not obtained on a like for like basis in that they were individual quotations, not block policy quotations, and if based on the Applicant's surveyor's valuation must, for the reasons cited above (paragraph 10) have been based on a false premise as regards the status of the property being insured. Page A17 reveals that no uplift had been applied to the quotation to account for the listed status of the property. Further, none of the quotations produced have sufficient detail to be able to ascertain whether the risks covered, exclusions and excesses were equivalent to the extensive cover provided by the Respondent's current policy. Page A43 shows a number of sub-limits being applied in the quotation which are not present in the Respondent's current policy.

There is also no detail provided as to what, if any, claims history was taken into account in assessing the premium quotations which the Applicants obtained.

15 On behalf of the Applicants it was submitted that the Respondent's overvaluation of the property reinstatement costs had been miscalculated to such an extent that the insurance premium must be reduced. While it is true that the valuation figures produced by the Respondent do show a large increase in value of the property over a period of less than 10 years, the Applicants own valuation is clearly wrong and they have failed to produce any other substantiated evidence to demonstrate that the Respondent's valuation is incorrect. The Tribunal rejects this contention as misconceived.

16 The Applicants further submitted that since they had obtained a reduction from AXA for the years 2017/8 and 2018/9 they must be entitled to a similar reduction in respect of the other years to which this claim relates. The Tribunal accepts the Respondent's explanation that in response to a complaint by the Applicants, AXA had taken a commercial decision to discount the premium for the two years in question but had declined to do so for other years. The Tribunal accepts that a reduction was made for the two most recent years in dispute but rejects the Applicants' argument that this automatically means that they are entitled to a similar reduction for all other years. They have produced no evidence to support that contention and no evidence that the risks and claims history of previous years was similar to those to which the reduction had been applied.

17 In conclusion, the Tribunal finds that the insurance premiums charged by the Respondents for the years 2012-3 up to and including 2018-9 were both reasonably incurred and reasonable in amount. The amount of the premiums is set out in Appendix 1 annexed .

18 The parties agreed that any application relating to costs and/or reimbursement of fees should be deferred and dealt with at the next tranche of the hearing when the major works contracts are discussed .

19 **The Law**

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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Judge F J Silverman as Chairman
Date 01 April 2019

Note:
Appeals

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.
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 1

Year	Premium
2012-13	£22,491.00
2013-14	£25,730.00
2014-15	£28,594.00
2015-16	£39,226.00
2016-17	£45,440.00
2017-18	£39,536.31
2018-19	£41,266,00