



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CHI/00HN/LIS/2021/0016**

**Property** : **Snowdon Mount,  
4 Snowdon Road,  
Bournemouth,  
Dorset BH4 9HL**

**Applicant  
representative** : **RMB 102 Ltd.  
JB Leitch Ltd.**

**Respondents** : **Peter Stevenson (flat 1)  
Philip Abraham (flat 2)  
Diane Harper (flat 3)  
Jennifer Harding (flat 4)  
Hayley Dawson (flat 6)  
Shauna & Mark Clapham (flat 7)  
James Moore (flat 10)  
Sam Johnson (flat 12)  
Lydia Turnbull,  
Gemma de Toro Flores, and Kasia  
& Pawel Dziubinski  
Lydia Turnbull (lay)**

**representative**

**self represented** : **Rebecca Goodson**

**Date of Application** : **12<sup>th</sup> March 2021**

**Type of Application** : **to determine reasonableness and  
payability of service charges**

**The Tribunal** : **Judge Bruce Edgington  
Michael Donaldson FRICS**

**Date of decision** : **20<sup>th</sup> August 2021**

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**DECISION**

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1. In respect of the Respondent's claim for monies on account of service charges the Tribunal determines that the amount that is reasonable and payable is £15,863.05 per flat.

## Reasons

### **Introduction**

2. The Applicant's solicitors have lodged an e-bundle of documents and any page numbers quoted in this decision will be the page numbers at the top of the pages in that bundle i.e. the gross page numbers rather than the sub-section numbers.
3. This is a claim by the freehold owner of the property for payment of money on account of service charges alleged to be reasonable and payable under the terms of a long lease of the property granted by the Applicant's predecessor in title to the Respondents or their predecessors in title.
4. The property is a purpose built block of flats constructed in 2008. It has suffered from serious building defects. The problems started with water ingress and as work was undertaken to rectify that, major structural problems were identified. This Tribunal's task is limited to the nature of the application and the extent of the representations and evidence produced by the parties.
5. None of that deals with the cause of the problems nor whose fault it was or who may be liable to reimburse the cost. As was said in the last decision of the Tribunal, it is hoped that expert legal advice has been obtained.
6. There have been a number of Tribunal decisions relating to this matter, the last of which was dated 29<sup>th</sup> June 2021. This granted dispensation from the statutory consultation requirements for a demand for the estimated cost of the major works to the property as at 1<sup>st</sup> January 2021.
7. This is a separate application, although of the same date, for the Tribunal to assess whether such estimated service charges are reasonable and payable. Various directions orders have been made. In particular, it has been ordered that this paper determination is to be based on the representations of the parties and evidence filed unless any party objected. None has although Rebecca Goodson says that in her view the Tribunal cannot assess the reasonableness of the service charges demanded on account because it is "...*near-impossible to determine if even the anticipated costs are reasonable*" (page 197).

### **The Lease**

8. The previous decisions have set out the basic terms of the leases. There have been no specific disputes about those terms which have been relevant to the various decisions. However, Lydia Turnbull and Rebecca Goodson now raise one issue in their representations at pages 197, 200 and 201. They refer to the fact that the specification of works upon which the service charge demand is made refers to decorating works to flat interiors plus replacement kitchens and bathrooms. As these are not included in the reserved property, it is argued that they cannot form part of a service charge.

### **The Law**

9. Sub-section 27A(3) of the **Landlord and Tenant Act 1985** ("the 1985 Act") says that this Tribunal has jurisdiction to determine "*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...*” who would pay and the amount that would be payable.

10. Sub-section 18(2) of the 1985 Act defines a service charge as being “*an amount payable by a tenant*” being “*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord*”.

### **The Inspection**

11. As there is a full description of the building in which the flats are situated in the earlier decisions, the Tribunal members decided that a pre-hearing inspection was not necessary. They also had the benefit of seeing the full specification of works.

### **Discussion**

12. The bundle provided for the Tribunal includes a statement from Brian Ward dated 10<sup>th</sup> June 2021. Mr. Ward has been a building surveyor for over 25 years. He says that he is a director of Greenward Associates instructed to assist in the facilitating of the remedial works since 8<sup>th</sup> November 2016. He was originally instructed by the Respondents but then agreed with the Applicant to assist with these works, presumably with the consent of the then leaseholders.
13. Mr. Ward attended an onsite meeting on the 14<sup>th</sup> May between a number of leaseholders, the Applicant’s managing agents and the contractors when the specification was considered. Agreement was reached on a number of works to be excluded from the specification which brought the estimated cost down from £323,385.60 (February 2021) to £208,256.40 (May 2021) The final pages of the schedules are 166 and 182 in the bundle respectively.
14. The natural inference from this is that Mr. Ward agrees with the work and that the estimated cost is reasonable.
15. Turning now to the question of the burden of proof to be applied, the Tribunal notes the case of **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005. His Honour Judge Rich QC had to consider this issue in a service charge case. At paragraph 15 he stated :

*“If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the (Tribunal) to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.”*

16. The Respondents have produced no evidence to contradict the figures put forward. It is said, once again, that there should have been consultation

and the obtaining of competitive quotes. This point has already been dealt with in the decision on the Section 20ZA application. Mr. Ward also makes it clear that it was reasonable and cost effective to use the same contractors.

17. The point made on the terms of the leases is a reasonable one. The problem is that the leases simply do not provide for damage caused to the demised premises by structural problems. If a court was asked to determine what the lease terms should be for this situation it would look at all the circumstances, including, in particular, the fairness to the leaseholders. Would it be fair to expect some leaseholders to sustain much more of the liability than others when it is the building as a whole that has been damaged?
18. It is clear that the structural problems have caused different internal defects for different leaseholders. If a court did find a breach of contract or a tortious liability in a class action, it would be likely to order the landlord to rectify all problems or award an amount to cover all expenditure. The leaseholders would then distribute that amount between themselves according to their actual losses.
19. In this case, the cost of the repairs to the structure is something covered by the service charge provisions in the leases. In the Tribunal's view the cost of resulting repair work caused by the main structural issues would, by implication, be covered by the service charge provisions and be shared equally amongst the leaseholders. This is yet another reason why the parties should seek expert legal advice on whether liability rests elsewhere for the cost of all this work.

### **Conclusions**

20. The Tribunal, having taken all the evidence and representations into account determines that the amount of £15,863.05 per flat is reasonable and payable under the terms of the lease. The original total claimed (page 82) was £239,825.00 which included £226,000.00 for major works which was the only item disputed i.e. £13,825.00 was undisputed. The major works figure has now been reduced to £208,256.40. Thus £208,256.40 + £13,825.00 = £222,081.40 and 7.1429% of that is £15,863.05 per flat.

.....  
**Judge Edgington**  
**20<sup>th</sup> August 2021**

### **ANNEX - RIGHTS OF APPEAL**

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.

- iii. 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.
- iv. 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.