



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
SOUTHERN RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref : CH1/29UC/LIS/2010/0025

**Property: Joseph Conrad House, Bishops Way,
Canterbury, Kent CT2 8DX**

**Applicants: Mr. J.C Carte and Mrs A.E Carte and other
lessees at the property**

Represented by: Mrs Carte

Respondent: Hyde Housing Association Limited

Date of hearing: 2 July 2010

**Tribunal: Mrs S. O'Sullivan
Mr C. Harbridge FRICS
Mr P.A Gammon MBE**

Background

1. An application was received on 25 February 2010 under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking a determination of the reasonableness and/or liability to pay service charges. The original applicants were Mr J.C Carte and Mrs A.E Carte. An application under section 20C was also made for an order that any of the costs incurred or to be incurred by the Respondent in connection with the 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 Applicants. Further lessees at the property also applied to be joined as Applicants as set out in the directions dated 31 March 2010.
2. The application concerns the property known as Joseph Conrad House, Bishops Way, Canterbury, Kent (the "Property"), a development of warden assisted flats and car park built in 1984. Mr J. C Carte is the lessee of Flat 17 at the Property pursuant to a lease dated 9 November 2001 (the "Lease"), a copy of which was provided to the Tribunal. The Tribunal was informed that all other leases are held on similar terms.
3. A pre trial review was held on 31 March 2010 following which directions were made of the same date which provided for steps to be taken by the parties to prepare for the hearing. Further to those directions statements of case were exchanged and bundles lodged for the hearing of both applications simultaneously.

The Law

4. Section 18 (1) of the 1985 Act provides that for the purposes of the relevant parts of the 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.
5. Section 19 (1) of the 1985 Act provides that 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 reasonably incurred on the provision 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.

6. Section 19 (2) of the 1985 Act provides that where a service charge is payable before the relevant costs have been 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 otherwise.
7. Section 27A (1) of the 1985 Act provides that an application may be made to a leasehold valuation 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
8. Section 27A (3) of the 1985 Act provides that an application may be made to a leasehold valuation tribunal for a decision 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.

Inspection

9. The Tribunal inspected the Property at 10am on 2 July 2010. It was a dry sunny day. The Applicants attended in person along with other lessees at the Property. The Respondent was represented at the inspection by Mr Upton of Counsel with Mrs Pat Cooke, a leasehold services manager and Mr Mc Grath also attending who are both in the employ of the Respondent.

10. Joseph Conrad House is a development of 31 warden-assisted flats, communal accommodation and grounds and a car-park, which was built in 1984. The flat units have been sold to qualifying residents, on a shared equity basis, by way of long leases.

11. The Property is located to the north of the City centre and is in an established residential area fronting Bishops Way. The development is of two storey design, laid out as a square creating a communal garden with paved walk-ways, some lawned areas and planted beds. The gardens and walk-ways were seen to be well maintained. Construction is traditional, with sand-faced cavity brick external walls, beneath main roofs being of pitched and gabled design and clad in interlocking concrete tiles except the single storey communal lounge, which has a pitched and hipped roof. Original windows and eaves and gable joinery was formed in stained softwood, and some window casements have now been replaced with

uPVC units. Guttering and external paintwork was seen to be in good order.

12. Internal common parts comprise a lounge, a small and basic kitchen area, laundry and w.c. facilities, together with ground floor lobbies, staircases and landings. The internal common parts were clean and in good order. Finishes are plastered with emulsion painted walls, tiled floors and gloss painted woodwork. The facilities were well maintained and in good order.

13. Access was also gained via a step ladder to the internal roof space above the communal lounge and a repair to the pitched roof above the communal lounge was inspected. Access was also gained to Flat 17 from which the Tribunal was able to inspect the roof from an alternative angle.

The Hearing

14. The hearing of this matter took place on 2 July 2010. At the hearing the Applicants were represented by Mrs Carte with Mrs Brown (Flat 19) and Mrs Laraman (Flat 26) also each making a short statement at the end of the hearing. The Respondent was represented by Mr Upton of Counsel. Also attending on behalf of the Respondent was Mr Stone, a technical services manager and Ms Protheroe, a leasehold manager in the employ of In-Touch, the managing agents. Mrs Hammond of the Respondent, a Group Service Charges Manager also attended. Many of the Applicant lessees attended together with other lessees at the Property who had not joined in the application.

15. The Tribunal was referred to documentary evidence over the course of the hearing and heard oral evidence from Ms Carte and those attending on behalf of the Respondent. The Tribunal does not intend for the sake of brevity to repeat all that evidence in this decision, the majority of the evidence in any event being contained in bundles in the parties' possession. What follows therefore is a summary of the evidence heard and the Tribunal's decision in relation to each of the matters before it.

16. Service charges for the years 2008 – 2010 and the budget for 2010/11 were challenged. The Tribunal considered the items in dispute on an item by item and year by year basis. The Tribunal considered the items in dispute by reference to the order in which they appeared in the Applicants' statement of case which was in part in a different order than set out in the original application.
17. After having read the statements of case the Tribunal queried as a preliminary point whether the Applicants were also seeking to challenge the management fees for what they perceived to be poor management. Ms Carte confirmed that the Applicants did wish to challenge the management fee although this was not an issue raised in the application form or in her statement of case. Mr Upton confirmed that he would not object to this being raised without prior notice given that the Applicants were litigants in person.

2008/09

Maintenance of warden call system/telephone link (3.1)

18. In the application the Applicants had challenged the sum of £1,169 in respect of the warden call system and the quarterly charges for the telephone link on the basis that the invoices were missing. The invoices have since been provided to substantiate these charges and they are no longer challenged.

Credits of payments (3.2)

19. The Applicants wished to clarify how surplus sums should be dealt with by the Respondent. It was confirmed by Ms Protheroe that the Respondent's system had now been changed and that any credit due to lessees would now be credited back by cheque to each lessee during the relevant service charge year irrespective of the amount in question. Ms Carte confirmed that she was happy with the new system and no further point was raised in this regard.

Charge for light fittings (3.3)

20. The Applicants' complaint in this regard was that there was a discrepancy between a quote obtained by Mr Carte and the sum charged by the Respondent for the replacement of light fittings in due course.
21. The Tribunal heard that Mr Carte had obtained a quotation for the replacement of some light fittings at a cash discount of 58%. However the Respondent subsequently placed the order receiving a discount only of 22%, a cash difference of £42.93 between the two quotations. The Applicants point to this as evidence on a more general point that the Respondent does not have a robust system for marrying quotations with sums subsequently authorised for payment.
22. In response the Respondent's position was that Mr Carte obtained a discount as a cash customer which the Respondent could not obtain as it had a business account. On a more general note the Tribunal heard that it is the Respondent's practice to marry up a quotation with a works/purchase order but that it was not done in this case as the quotation was not obtained by an employee. In addition the Respondent now has a purchasing department to avoid any future problems of this nature.
23. The Tribunal accepted the Respondent's explanation in relation to these costs. It considers the costs claimed in relation to this item as reasonable and allows them in full. The costs themselves cannot be said to be unreasonable on the basis that a cash discount could have been obtained by an individual for a lesser sum. The Tribunal also notes that the Respondent now has a purchasing department in place which should avoid any future problems of this nature.
24. There was some discussion between the parties as to the involvement of the lessees with such matters. The Respondent explained that it was attempting to foster good relations with the lessees by involving them in the process by allowing them to choose their own light fittings and asking them to obtain a quotation. However although the intention may have been admirable it is the Tribunal's view that the Respondent cannot offer a cost

effective service if it continues to devote so much time to informal liaison with the lessees in relation to such minor matters. Further it does appear with lines of responsibility having become blurred with some lessees feeling obliged to assist the Respondent in this manner without wishing to be involved. Although the Respondent's intentions in this regard may well be commendable it may wish to reconsider the way in which lessees are involved to avoid future problems of this type reoccurring.

Charge of £602.78 for repairs to lounge roof (3.4)

25. These charges were challenged in the application on the basis that scaffolding was unnecessary (comprising £312 of the total price) and that the residents were not convinced that the works had been carried out.

26. Mr Stone gave evidence in relation to this repair. The Tribunal heard that the use of a scaffold had been thought necessary as the work involved heavy materials which would be used in close proximity to the communal lounge. The cheapest option in this case was to use a tower scaffold. In fact the contractor opted to use a full scaffold as it provided a safer working area but charged only for the use of a tower scaffold. The price charged for the scaffold was fixed according to a schedule of prices agreed between the Respondent and its contractors. The Tribunal was informed that the contractor's initial view was that the gutter and boards needed renewal. In fact the actual repairs carried out were to repair the cracking to the valley gutter and replace cracked tiles but the contractor failed to adjust the invoice to reflect the actual works carried out in place of the original anticipated works. At the Tribunal's request Mr Stone provided a price for these replacement works according to the price schedules in place with contractors at a total cost of £602.78. This was made up of the cost of 21 roof tiles at £68.49, plastering of the walls at £21.15, the plaster frame at £20.49, the painting of the ceiling at £28.06 and the walls at £24.40 making a total of £162.59. These were uplifted by approximately 51% to reflect the fact that these prices were from 2004 and vat was

added together with the cost of the scaffolding at £216.19 making a total of £602.78.

27. The Tribunal had seen evidence of the repair works on inspection and it was clear that the leak had been rectified and the repairs had been carried out to a reasonable standard. The Tribunal agreed that it was sensible to use a scaffold in view of the location and nature of the repair and noted that the charge made was for a tower rather than full scaffold. The Tribunal were satisfied with the explanation given by Mr Stone and considered the costs of the repairs themselves as reasonable. Accordingly the Tribunal allowed the sum of £602.78 in full.

Choice of contractor (3.5)

28. The Applicants complained of problems with the contractors used by the Respondent, MHS which are set out in the statement of case in more detail. The Applicants request that they be allowed to have the *"option not to use the services of MHS or any other contractor that fails to meet the residents' standards"*.

29. As it explained at the hearing the Tribunal does not have the jurisdiction to order which contractors the Respondent may or may not employ. However it is the Tribunal's view that it is not for the lessees to choose which contractors they wish to be employed at the Property. This is properly a matter for the landlord. If the Applicants consider that the Respondent is making poor management decisions this is something which may be raised in relation to any criticisms of the Respondent in managing the Property.

2009/10

Supply of invoices (3.6)

30. The Tribunal heard that the lessees were previously provided with copy invoices on a monthly basis due to a large number of errors found in the

accounts. The lessees were provided with a monthly binder of invoices which was placed in the communal lounge. This service was withdrawn in 2009. The Applicants would like to see this system reinstated as they say it leads to errors being found and action being taken to rectify any errors in a timely manner.

31. The Tribunal heard from Ms Protheroe that the provision of invoices had been instigated in an attempt to build relationships with the lessees but it had placed a large burden on the Respondent administratively and was not practicable to maintain. The Respondent says that it now has a specialist leasehold team which has the task of checking all invoices. The Tribunal heard that the Respondent does not have the resources to provide this service to all of its properties and that in any event the lessees will be provided with an audited statement on an annual basis together with all invoices. This will be followed up with a meeting within 2 months of receiving the invoices. The Tribunal also heard that the Respondent does not provide invoices on a monthly basis at any other of its schemes and this has not created any problems.

32. As it explained at the hearing the Tribunal does not have the power to order reinstatement of the provision of monthly invoices. In any event it considers that such a scheme is not cost effective and that this is an unrealistic expectation on the part of the lessees. In its current provision the Respondent is exceeding legislative requirements. Although the Tribunal has noted the past problems with errors in invoices, the creation of a leasehold management team should ensure that such problems are avoided in future.

Apportionment (3.9)

33. Many of the Applicants appeared to be concerned with the issue of replacement windows. The Tribunal heard evidence from Mr Stone about the window scheme at the Property. There were two service charge schemes at the Property, "*with windows*" and "*without windows*". In the

"with windows" the lessees have not replaced their windows and are contributing towards the cost of future planned replacement at a rate of £30 per month. Those in the *"without windows"* scheme have replaced their windows at their own cost and no longer contributed towards the cost of replacement.

34. There was no challenge raised before the Tribunal in relation to how service charges for the two schemes are apportioned or to the reasonableness of the amount charged as a reserve towards the cost of future window replacement. However there was some confusion amongst the lessees as to how the scheme operated in practice, whether one could opt out of the scheme and when windows would be replaced. Accordingly the Tribunal spent some time in exploring the schemes in an attempt to assist the parties.

35. It was confirmed on behalf of the Respondent that anyone who had opted out of the scheme by giving notice to the Respondent before 1 April 2009 would not contribute towards the cost of window replacement. Further the Tribunal heard that the scheme was fluid and that people could continue to opt out of the scheme at the present time if they wished to do so before the Respondent replaced the windows. If they chose to opt out they would then be refunded any monthly payments made since the scheme was commenced in 2009/10.

36. The Tribunal also heard that as yet no deeds of variation had been entered into in relation to those lessees who had replaced the windows at their properties. The practical effect of this is that they remain bound by the covenant in their leases to contribute towards the cost of window replacement to the Property as a whole. This was accepted by Mr Stone as being something which the Respondent needed to clarify with the lessees. In addition for those lessees who had opted out of the scheme and had yet to replace their windows no timeframe had been agreed by which they had to replace their windows. Clearly this was something which needed to be clarified and Mr Stone confirmed that these issues were currently being explored by the Respondent.

Reserves (3.7)

37. The Tribunal explained that it could not look into payments to the reserve funds beyond the sum demanded in the budget for 2010/2011. Future reserve payments could be challenged as and when they are demanded.
38. The Respondent had provided the Applicants with a great deal of background information in relation to the reserve fund and the planned works over the next ten years. Mr Stone explained that in 2005 the Respondent had commissioned a firm of chartered surveyors who had produced a schedule of planned expenditure for each scheme. This had evolved over time and was used as a guide as to what sums should be collected for each scheme by way of reserves. The schedule itself was then adjusted to reflect the particular individualities of each scheme and it was updated annually in line with the service charge review. It became clear that the Respondent had entered into a great deal of discussion with the Applicants in relation to each separate provision contained in the reserves. The Tribunal heard how for example the parties had discussed different options for the future repair of the paving at the Property and after informal consultation the cheapest quotation for renewal of the current scheme was included in the budget.
39. The Applicants objected to the reserve fund payments on a general basis on the grounds that there has been an increase in the reserve fund payments of approximately 50% over the last 4 years. The effect of this was that the living standards of the current lessees had been significantly decreased.
40. Ms Carte had clearly spent a great deal of time in analysing the reserve fund background data and spreadsheets. Detailed challenges were made to the process of calculation used by the Respondent as set out in the statement of case, in particular
- The start date for the reserves was challenged with the Applicants challenging the starting reserve fund balance

- The period covered, the Applicants say it should run from 2009/10 rather than 2008/09
- Failure to take account of existing sums held
- The figures used for each individual item being inaccurate, including;
 - The removal of the charge for a communal WC
 - The inclusion of the cost of proposed decorations when works had already been carried out
 - The necessity for the future replacement of soffits and bargeboards
 - The alleged failure of the Respondent to take into account sums held for window replacement
 - The cost of the warden call system remaining in the spreadsheet when the works have been carried out
 - The provision made for future paving work
 - The cost of boiler replacement
 - Works to the communal kitchen being priced too high compared to costs agreed at a meeting

41. The Applicants had prepared their own spreadsheet which set out what they believed to be appropriate payments to be made. However this did not address any of the categories contained in the Respondent's budget.

42. Mr Stone informed the Tribunal that the Respondent's approach was a cautious one. The Respondent did not want to be faced with large costs for which they have not adequate funds in hand and having the necessity of having to invoice residents for large amounts.

43. As referred to above the Tribunal had heard about the extent of informal consultation that had taken place in relation to the different items contained in the reserve budget. The Tribunal considers it unusual that a landlord will go to such lengths to consult with its lessees in relation to works which are planned to take place in some cases in ten years time. However the extent of the consultation has led to increased expectations

on the part of the lessees. It is for the landlord to choose which works it considers appropriate over what period and to make appropriate provision by way of reserve contributions. The Tribunal does not consider it practicable for the lessees to comment in such detail on the proposed works which will by their very nature evolve over time. By way of example, works may be carried out sooner than anticipated at a decreased cost as in the case of the recent internal decorations. The Tribunal considered the Respondent's approach to the reserve fund contributions as reasonable in principle and expects that each year's budget for reserves will be considered on an item by item basis taking into account any developments which will impact on the planned works and contributions.

Budget 2010/11 – transfer to reserves

44. The Tribunal went on to consider the budget for 2010/11 which was contained in Appendix 9 of the Respondent's bundle under the heading "Transfer to Provisions" and allows the following sums;

- The provision of £70 for alarms fire equipment was conceded by the Respondent as there was not believed to be any at the Property
- The provision made for communal furniture was not challenged and the sum of £500 was allowed
- The provision for internal communal decorations was conceded to be no longer required as the internal decorations had been carried out in March 2009
- The sum of £22.41 for external decorations was not challenged. The Tribunal considered a provision of £25 as reasonable and allowed this in full
- A provision of £9,687.77 was made for future works to the structure and exterior. This was disputed on the basis that some of the planned works may not be necessary in time although it was accepted that some works would be necessary. The Tribunal allowed the sum of £8,000 in relation to this item. It was clear that some works would be

necessary and the Tribunal did not consider the Respondent's provision to be unreasonable as a starting point.

- A provision of £4,570.01 was made in relation to window replacement with the aim of replacing in 2015/16. The element of this cost relating to the actual replacement was not disputed but the Applicants disputed the necessity for scaffolding for which provision had been made. Mr Stone's evidence was that scaffolding was a Health & Safety requirement and that it was difficult to say exactly what works would be required at this stage. The Tribunal agreed that scaffolding would be required and allowed the sum of £4,500

Management Fee

45. As referred to above the Applicants also challenged the management fee for the period 2008 to 2010 which were charged as follows at a per unit charge;

2008/09	£327
2009/10	£313
2010/2011	£352

46. The management fee was challenged on the basis that;

- Invoices were paid incorrectly
- Contractors were often poor
- Comments were not taken on board
- No regard was had for the residents
- They did not deliver the "best service" which the residents deserved

47. The Tribunal heard from Mr Stone that the Respondent accepted that the management had not been perfect but that they strove for excellent service and had made a goodwill compensation payment to the scheme of £2,000 in 2008/09 to acknowledge failures (the lessees contested that the

good will element was in fact £500). More robust procedures had now been put in place. Mr Stone also pointed out that many criticisms related to internal documentation provided and that in fact he submitted that many errors would have been picked up by the Respondent in any event. Mr Stone also informed the Tribunal that the management fee charged per unit was within the limit set by the Housing Corporation in conjunction with the Department for Communities and Local Government.

48. Miss Brown and Mrs Laraman also made statements. They both spoke of the lack of improvements in management and submitted that the Respondent was not working in their interests.

49. A statement was also made by Mrs Lingfield of Help the Aged. She considered the Respondent had been derelict in its duty towards the lessees in how the scheme had been managed.

50. The Tribunal considered the issue of the management fees carefully. It had been impressed by the evidence given by Mr Stone who obviously had excellent knowledge of the Property and the planned future works. It had also been impressed by the evidence given by both Ms Protheroe and Mrs Hammond who demonstrated a thorough knowledge of the finances of the scheme and were able to answer all of the Tribunal's questions. The Tribunal did not see any evidence of poor management. The Respondent has conceded that mistakes have been made and has put procedures in place to ensure these do not reoccur. The Tribunal also does not consider that there has been any poor treatment of the lessees but rather had seen evidence of the Respondent making every effort to consult with the lessees in almost every respect. Accordingly the Tribunal allows the sums claimed in respect of management fees in full.

Costs applications

51. The Applicants made an application under section 20C of the 1985 Act for an order that the Respondent be prevented from recovering his costs of the proceedings through the service charge. It was conceded by the

Respondent that no costs would be placed through the service charge and on that basis the Respondent was happy for the Tribunal to make an order under section 20C.

52. Ms Carte also made an application for the reimbursement of the fees paid in connection with the application and the hearing fee. This application was made on the basis that matters could have been resolved without the need for the application. This application was challenged on the basis that the application had not been necessary and that it did not have merit. In view of the decisions it has made and the conduct of the Respondent the Tribunal does not consider it appropriate to make an order for reimbursement of fees in this case.

53. The Applicants also made an application under paragraph 10 Schedule 12 of the Commonhold and Leasehold Reform Act 2002 for an award of costs of £500 on the basis that the Respondent had acted "*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*". The Applicants considered that the Respondent had acted abusively in its treatment of the elderly as residents at the Property. The Tribunal saw no evidence of any conduct on the part of the Respondent in the proceedings to justify the making of such an order and the application was therefore refused.

Chairman: Sonya O'Sullivan

Dated: 4 August 2010