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

**Case Reference** : CHI/00LC/LSC/2017/0104

**Property** : South Shore, Ocean Drive, Gillingham,  
Kent ME7 1FY

**Applicant** : The Leaseholders

**Representative** : Mrs Joy Davies of Blocsphere Property  
Management Limited

**Respondent** : Hyde Housing Association Limited

**Representative** : Mr Sam Coward Senior Associate from  
Trowers & Hamlins Limited

**Type of Application** : Determination of Service Charges  
Section 27A Landlord and Tenant Act 1985

**Tribunal Member(s)** : Judge Tildesley OBE

**Date and Venue of  
Hearing** : 6 June 2018 Havant Justice Centre  
Telephone Hearing

**Date of Decision** : 9 July 2018

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DECISION

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## **Decisions of the Tribunal**

1. The Tribunal determines that the sums of £13,026.54 and £13,135.79 are payable by the leaseholders at South Shore to Hyde Housing in respect of the service charges for 2015/16 and 2016/17.
2. The Tribunal determines that under the terms of the lease Hyde Housing is not entitled to recover the costs of the Tribunal proceedings through the service charge. In those circumstances there is no power to make an order under section 20C of the 1985 Act.

## **The Application**

3. The leaseholders at South Shore acquired the Right to Manage in October 2014. This is a dispute between 28 of those leaseholders represented by Mrs Davies of Blocsphere, the managing agent for the RTM company, and Hyde Housing, the Head Lessee and social landlord, regarding the estate charges and insurance which are not part of the right to manage.
4. South Shore is located on Victory Pier which is an extensive waterside development on a 20 acre site overlooking the estuary of the River Medway comprising blocks of residential flats and student bedsits served by shops, bars and restaurants. The site is still being developed by Berkeley Homes.
5. In 2012 Hyde Housing acquired the head lease of South Shore known as Block M, Victory Pier. The head lease is dated 15 March 2012 and made between Berkeley Homes (Eastern Limited) and Hyde Housing Association Limited for a term of 125 years. Under schedule 12 of the lease Hyde Housing has an obligation to pay certain service charges to Berkeley Homes, namely, a proportion of the costs of maintaining the estate including parking and insurance.
6. South Shore comprises 43 flats arranged over five storeys. Hyde Housing has granted long leases of the flats for a premium on a shared equity basis. The term of the long leases is 125 years less 65 days.
7. The lease for Flat 1 made between Hyde Housing and Jamie Roy Grant and dated 21 February 2013 was exhibited as a sample lease. Under clause 7.1 the leaseholder is required to pay a service charge to Hyde Housing which is defined in clause 7.4 and includes the costs of and incidental to the performance of the landlord's covenants in the superior lease, and in respect of insuring the building.

8. The dispute concerned the service charges for 2015/16 and 2016/17. The amounts involved were £17,074.02 in 2015/16 and £13,380.11 in 2016/17. The £17,074.02 comprised £4,300 building insurance, £12,165.57 estate charges and £608.45 management fees against which income of £4,047.48 was set off resulting in a net liability of £13,026.54. The £13,380.11 comprised £4,284.68 building insurance, £8,662.42 estate charges and £433.01 management fees against which income of £244.32 was set off resulting in a net liability of £13,135.79. The net liability is shared equally between the 43 leaseholders which in 2015/16 was £308.51 and £292.54 in 2016/17<sup>1</sup>.
9. The origin of the dispute was that in June 2017 Hyde Housing requested payment of £32,284.44 from Blocsphere for the estate and parking charges for South Shore from 1 October 2014 to 31 March 2017. Mrs Davies of Blocsphere disputed the amount on the ground that some expenditure items had not been demanded within the 18 month period set down by section 20B of the 1985 Act. On 9 October 2017 Hyde Housing issued a credit note to cancel the request for payment. Hyde Housing stated that the request for payment from Blocsphere should not have been made because the demands should have been issued against individual leaseholders which was done on 30 September 2017.
10. There are four issues in this case which are restricted to the service charges for 2015/16 and 2016/17, namely:
  - Whether Hyde Housing was entitled to demand the service charges from the individual lessees?
  - Whether the demands complied with section 47 of the Landlord and Tenant Act 1987 (“1987 Act”)?
  - Whether the requirements of section 20B of the 1985 Act had been complied with in respect of the items of expenditure for 2015/16?
  - Whether an order should be made under section 20C of the 1985 Act?
11. The relevant legal provisions are set out in the Appendix to this decision.

### **The Hearing**

12. The Tribunal originally directed the application to be dealt with on the papers. The Tribunal, however, following receipt of the determination bundle decided that a hearing was required which could be dealt with by means of a telephone conference. The hearing was set down for 6 June 2018.

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<sup>1</sup> The individual amounts are taken from the demands for Mr Grant in the hearing bundle. The individual amounts do not equate to 1/43th which would be £302.94 (2015/16) and £305.48 (2016/17).

13. On 4 June 2018 Mrs Davies requested an adjournment in order to re-issue the hearing bundles which did not include all the documents supplied by Hyde Housing and to supply witness statements from individual lessees asserting that they had not received the demands. Hyde Housing opposed the adjournment.
14. The Tribunal refused the adjournment because it had copies of the missing documents, albeit not in the hearing bundle and that it was satisfied that the individual leaseholders had received the demands dated 30 September 2017.
15. Mrs Davies for the leaseholders, and Mr Coward and Ms Begum for Hyde Housing attended the hearing by means of a conference call.

**Whether Hyde Housing was entitled to demand the Charges from Individual Leaseholders?**

16. Mrs Davies argued that following the Right to Manage it was agreed that the RTM company would be responsible for the payment of the service charges to Hyde Housing not the individual leaseholders. Hyde Housing disagreed. Hyde Housing stated that it had no privity of contract or estate with the RTM company, and that it was entitled under the leases to demand the service charges directly from the individual leaseholders.
17. The solicitors for RTM company confirmed that there was no agreement in place between Hyde Housing and the RTM company regarding payment of service charges. Mrs Davies when pressed at the hearing referred to the existence of email correspondence from Mainstay, the agents for the freeholders which she said mentioned that the RTM company would be responsible for the payment of service charges.
18. The Tribunal is satisfied that Hyde Housing is entitled under the terms of the leases to demand the service charges direct from individual leaseholders.

**Whether the Demands Comply with Section 47 of the Landlord and Tenant Act 1987?**

19. The lease requires the leaseholder to pay the service charge in advance of the accounting year, and a balancing payment at the end of the accounting year if expenditure exceeds the estimate. Under the lease Hyde Housing is required to estimate before the beginning of the account year the expenditure likely to be incurred in the forthcoming year, and as soon as practicable after the end of the accounting year to certify the amount by which the estimate has exceeded or fallen short of actual expenditure. The lease does not specify a format for the demands for estimated and actual expenditure.

20. At common law there are no particular requirements for the form of service charge demands. Section 47 of the 1987 Act provides that any written demand given by a landlord to a tenant must contain the name and address of the landlord. Section 21B of the 1985 Act requires all service charge demands to be accompanied by a summary of rights and obligations of tenants. The leaseholders accepted that the summary of rights had been served with the demands issued by Hyde.
21. Hyde Housing exhibited in the hearing bundle the service charge demands for Mr Grant of Flat 1 for the 2015/16 and 2016/17 actuals. The demands comprised the following four documents:
- a) A covering letter on Hyde's notepaper which was headed "Actual Service Charges for 2015/16 or 2016/17" with the name of the property. The narrative of the letter dealt with the enclosures including the statement of account and signposted the reader to sources of further information on ways to pay. The letter was signed by the typed signature of the Service Charge co-ordinator. The footer of the letter contained the following details: "*Hyde Housing Association Limited is part of the Hyde Group. Registered Office: 30 Park Street, London SE1 9EQ*".
  - b) A statement of account which explained the charge and how it was calculated. The footer of the statement provided a phone number and an email address for queries on the statement.
  - c) Service Charges: Summary of Tenant's Rights and Obligations.
  - d) Useful Information on your Service Charge Statement which provided an email address or a FREEPOST facility for raising queries on the statement.
22. Mrs Davies contended that the information on the documents did not satisfy the requirements of section 47 of the 1987 Act. Mrs Davies relied on the facts that Hyde Housing was not specifically referred to as the landlord in any of the four documents. Further Mrs Davies argued that the service charge statement alone constituted the demand, and that did not contain the name and address details of the landlord.
23. Mrs Davies cited the FTT decision of *Ms Suzy Collis v Hyde Housing Association Limited* (CHI/00ML/LIS/2015/0038 &39) which decided that the service charge estimates and actuals and covering letters provided by Hyde did not meet the requirements of section 47 of the 1987 Act. The Tribunal stated that

"Even if the documents served on the Applicants could be construed as demands for service charge, the absence of the

name and address of the landlord on these documents means the demands were not validly served. The Beitov Properties case (*Beitov Properties Limited v Elliston Bentley Martin* [2012] UKUT 133 (LC)) made it clear that section 47 is designed to ensure that the identity of the landlord is confirmed to the tenant at the time the demand is made”.

24. Mr Coward argued that the footer on the covering letter was sufficient to meet the requirements of section 47. Mr Coward in the alternative said that if the present documentation did not fulfil the statutory requirements subsection 47(2) of the 1987 Act allows an invalidity arising from a failure to give the landlord’s name and address to be corrected with retrospective effect by the issue of a subsequent demand with the correct particulars<sup>2</sup>.
25. The Tribunal does not know whether the facts in this case are distinguishable from those considered by the FTT in *Collis v Hyde*. It appears to this Tribunal that the submissions in the previous FTT case focussed on the service charge statement rather than the suite of documents.
26. The Tribunal is satisfied that if the suite of documents is considered in their entirety as the demand, the requirements of section 47 are met by the wording in the footer of the covering letter. The previous FTT placed emphasis on the principles in the Lands Tribunal case of *Beitov Properties*. At paragraph 13 George Bartlett, the then President said at paragraph 13:

“Having said that, I should add that it is in my view generally inappropriate for a tribunal to take on behalf of one side in what is a party and party dispute a purely technical point, by which I mean a point that does not go to the merits or justice of the case. Here there is nothing to suggest that the tenant wished to know the address of the landlord or was concerned that the address given in the demands might not be the right one or that he was prejudiced in any way by not knowing the address. The LVT said that if the landlord were now to serve a demand that gave the address required by section 47 the service charges would be payable. No purpose will in the circumstances have been served in imposing on the landlord the need to deal with the issue raised, to serve a fresh demand and, quite possibly, to take further proceedings for recovery”.
27. In this case there was no issue about the identity or the address of the landlord. If the documentation is read as a whole, the Tribunal is satisfied that a person reading the documentation would clearly identify Hyde as the Landlord. The 1987 Act does not specify the format for the details required by subsection 47(1). Although the Tribunal has found in favour of Hyde Housing, the Tribunal suggests to Hyde that it may wish to consider putting formal details of the name and address of the landlord on the statement of

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<sup>2</sup> See *Johnson v County Bideford Limited* [2012] UKUT 457 (LC)

account to avoid any potential challenges to the validity of demands.

### **Whether the Requirements of Section 20B have been Complied with?**

28. Sub Section 20B(1) of the 1985 Act provides that costs are not recoverable as service charges if they were incurred more than 18 months before being demanded. Subsection (2) provides that the bar to recovery does not apply in the event that the tenant was informed within 18 months in writing that these costs had been incurred and that the same would be recoverable from the tenant.
29. The relevant demands in this case were sent on the 30 September 2017. The demand for actual service charge for 2016/17 would not be caught by the 18 month rule because it related to costs that had been incurred since 1 April 2016.
30. The demand for 2015/16 on the face of it breached the 18 month rule. Hyde, however, sent a "Section 20B Notice" on 30 September 2016 to all leaseholders at South Shore advising them that during the financial year 1 April 2015 to 31 March 2016 the Hyde Group incurred costs in respect of services, repairs and maintenance and other items that were undertaken in accordance with the terms of the lease. Hyde further advised that the costs incurred would not exceed £20,089.24. Hyde in the covering letter to the section 20B notice explained that it was under a legal duty to provide a copy of the service charge statement for the accounting year 2015/16 before the end of September, and if it was unable to do this it would issue a section 20B Notice.
31. The Tribunal finds that Hyde Housing issued a section 20B Notice on 30 September 2017 which had the effect of stopping the "18 month clock" imposed by subsection 20 B(1).
32. The Tribunal decides that the 2015/2016 demand did not offend the 18 month rule in section 20B of the 1985 Act.

### **Decision**

33. Mrs Davies confirmed at the commencement of the hearing on 6 June 2016 that the leaseholders were not challenging the reasonableness of the costs incurred.
34. In view of the Tribunal's findings on the three disputed issues, the Tribunal determines that the sums of £13,026.54 and £13,135.79 are payable by the leaseholders at South Shore to Hyde Housing in respect of service charges for 2015/16 and 2016/17.

## Section 20C Application

35. Mr Coward relied on clause 7(4)(c) of the lease as the Respondent's authority for recovering its legal costs in connection with these proceedings through the service charge.
36. Clause 7(4)(c) states:

All reasonable fees, charges and expenses payable to the Authorised Person any solicitor, accountant, surveyor, valuer, architect or other person whom the landlord may from time to time reasonably employ in connection with the management or maintenance of the building including the computation and collection of rent including the cost of preparation of account of the Service charge".
37. The Tribunal considers there needs to be explicit reference in the lease to legal costs incurred in proceedings particularly in Modern leases in order for those costs to be recovered by the landlord through the service charge. It, therefore, follows that as this lease contains no explicit reference to legal costs in proceedings, the grounds for considering a section 20C application do not apply.
38. The Tribunal determines that under the terms of the lease Hyde Housing is not entitled to recover the costs of the Tribunal proceedings through the service charge. In those circumstances there is no power to make an order under section 20C of the 1985 Act.
39. The Tribunal adds that it gained no assistance from the case of *Bretby Hall Management Company Limited v Christopher Pratt* [2017] UKUT 70 (LC) cited by Mr Coward which in the Tribunal's views was determined on its own facts.



## **RIGHTS OF APPEAL**

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 of relevant legislation**

### **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 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.