



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

<b>Case Reference</b>	: CHI/21UF/LSC/2022/0019 (service charge) CHI/21UF/LAM/2022/0003 (appointment of a manager)
<b>Property</b>	: Flat 11, Margaret Court, 269 South Coast Road, Peacehaven, East Sussex BN10 7PQ
<b>Applicant</b>	: Mr S & Mrs L A Socratous
<b>Representative</b>	: -
<b>Respondent</b>	: Margaret Court (Peacehaven) RTM Company Limited
<b>Representative</b>	: Mr G Kirby
<b>Type of Application</b>	: Determination of Service Charges and Appointment of a Manager.
<b>Tribunal Member(s)</b>	: Judge D Whitney Mr B Bourne MRICS MCIarb Mr E Shaylor
<b>Date of Hearing</b>	: 20 May 2022
<b>Date of Determination</b>	: 20 June 2022

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**DETERMINATION**

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## **Background**

1. The Applicants made two applications to the Tribunal. Firstly, an application seeking the Tribunal's determination of the service charges payable for the period 24 June 2021 to 23 June 2022 and Orders under S.20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and Paragraph 5A of Sch 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). Secondly an application for an Appointment of a Tribunal Manager.
2. The issues the Applicant refers to in respect of the service charge are
  - a. A failure of the Respondent to provide information requested under clause 4(iv) of the Lease
  - b. A failure to comply with requests made under sections 21 and 22 of the 1985 Act
  - c. A failure to comply with article (47) of Judge Cooper's decision of 11 June 2021
  - d. The validity of the demand dated 25 May 2021 in the sum of £1,022.60.
3. Directions were issued in respect of both applications on 21<sup>st</sup> February 2022. These pointed out that not all of the issues raised by the Applicants are within the Tribunal's jurisdiction. The Directions provided that the two applications would be determined at the same hearing.
4. Initially the Applicants proposed a Mr Battersby as the Tribunal manager. His firm, Rayners, had previously been appointed by the freeholder prior to the RTM taking over the management. Mr Battersby subsequently indicated he would not be available to accept an appointment. As an alternative the Applicants proposed Mr Gary Pickard.
5. The Applicants provided a separate bundle for each application. Many of the documents were duplicated. References in [ ] are to the appointment of a manager bundle and references in A[ ] are to the service charge bundle to differentiate the two.
6. This decision is the determination of both applications.

## **Inspection**

7. The tribunal did not inspect. The bundles contained some photos and the tribunal had viewed the exterior using the internet. We were satisfied that this was sufficient for the matters to be determined in respect of the two applications.

## **The Law**

8. The relevant law is set out in the annex to this decision.

## **Hearing**

9. The hearing took place in person at Havant Justice Centre. The Applicants represented themselves and Mr Pickard was in attendance throughout the hearing. Mr Kirby represented the Respondent as a director of the same.
10. The Tribunal indicated at the start it would deal with the service charge matter first, then hear from Mr Pickard and finally hear from both parties in respect of the appointment of the manager.
11. In the week leading up to the hearing Mr Kirby had emailed the Tribunal office attaching multiple further documents. These were not supplied in accordance with any directions and had not been considered by the Tribunal. Mr Kirby submitted these were further documents which he had been requesting from Rayners, the previous agents, which had been supplied late.
12. The Tribunal declined to admit these in evidence and proceeded on the basis of the documents within the two bundles.
13. The Tribunal confirmed to the parties it had the two bundles and had read the contents of the same.
14. Mr Socratous presented the case for the Applicant. He relied upon his statement of case A[44-50] signed by him and his wife dated 29<sup>th</sup> March 2022. In particular he relied on an earlier Tribunal determination A[84-95] CHI/21UF/LAC/2021/0001 and the interpretation of the lease by the Judge in that case[18-33].
15. Mr Socratous explained he and his wife were concerned the service charge demands were presented differently to the ones previously received from Rayners, which had contained a breakdown of what proportions each leaseholder was paying. In his submission the demands were not made in accordance with the lease principally because they were demanding money in advance which was not what his lease provided for. He confirmed he was happy to pay the sums if they were demanded properly under the lease and to that extent he was not suggesting the amounts per se were unreasonable.
16. Mr Kirby agreed the handover from Rayners to the new agents appointed by the RTM Company had been “rubbish”. Complaints had

been made to and of Rayners who had not co-operated. He stated that the Applicants had always been good payers as far as he was aware.

17. Upon questioning by the Tribunal Mr Kirby acknowledged that he had not looked at all the leases and accepted that those he had looked at were not perfect. He stated it was impractical to manage without up front payments given the building did not have a reserve fund.
18. He explained the agents appointed by the RTM company had taken over existing balances which the previous managing agent claimed were owing. This was why it was said there was a balance due and owing by the Applicants.
19. Mr Kirby confirmed the demand was that dated 25<sup>th</sup> May 2021 [76]. He accepted this was a demand. He explained that the Respondent had managed to reduce certain costs such as the insurance from that which had been previously charged. He agreed a reserve fund was required. He explained he personally had paid in money to ensure matters in the building continued to run.
20. At this point there was a short adjournment. Upon resumption both sides confirmed they had nothing further to add to their respective cases with regard to the service charge case.
21. Mr Pickard then gave his evidence [71-118]. He confirmed his name and address and that his statements given to the Tribunal were true and accurate.
22. Mr Pickard explained he managed some 117 buildings ranging from blocks of 2 flats up to 64 flats. He has held a number of Tribunal appointments and is currently appointed on 8 blocks. He confirmed his firm is a member of ARMA and hold the ARMA-Q certification and he is FNAEA.
23. Mr Pickard explained he had spent some time trying to obtain copies of the leases from the Land Registry. He had produced a table [118] of his results. It appears that not all the leases are in similar form with some having been varied and not all the variations are in a similar form. For example some allowed the collection of reserve funds and others do not.
24. Mr Pickard took the Tribunal through his statement. Upon conclusion he was questioned.
25. He explained he understood his duty was to be an officer of the Tribunal and was answerable to the Tribunal. He had visited the flats and had been inside the Applicants flat. It was clear there was spalling of the concrete to some of the balconies and works were required. He commented that on the first occasion he visited he had noted a very strong smell of damp as he entered the building. On the second visit this was less strong but this was after a pipe leak had been repaired. In

his view substantial major works were likely to be required over the next few years to the block as a whole. It was symptomatic of the age of the block.

26. Mr Pickard explained he had been accepting Tribunal appointments since 2003. He took satisfaction from getting things done and blocks back into good order. In his view he makes no money from such appointments.
27. He considered 4 years were required since he believes it will take a year to arrange everything to move forward with works which therefore aren't likely to be able to start until next summer. He also predicts raising funds will not be easy. He explained he would request a power to issue ad hoc quarterly demands to ensure funds are in place.
28. Mr Kirby confirmed it was agreed that the Landlord and Tenant Act 1987 Section 22 preliminary notice had been served upon the Company and no issue was taken over the same.
29. Mr Socratous relied upon his statement within the bundle [147-163]. He has concerns over what he considers to be unreasonable service charges.
30. Mr Kirby had no questions for Mr Socratous.
31. Mr Socratous explained he was happy with Rayners. They had conducted a section 20 consultation relating to works required and the RTM company was starting that process again.
32. Mrs Socratous explained that in her opinion everything was easy with Rayners. In time things got done and they received year end accounts setting out all the percentages each flat was paying in a form she understood.
33. She felt there was a lack of openness in the service charge demands received from the RTM company's agent. She explained the budget confuses her. She has zero faith in Housemartins. She would prefer to pay someone they trust.
34. Mr Kirby presented the case for the RTM Company. He explained that he believed Rayners had let the side down and the building as a whole was now in a poor state. He discussed the issues which needed to be addressed including balcony repairs, doors and water ingress.
35. He explained CCTV had been installed by a volunteer to try and prevent fly tipping. A budget is prepared and the RTM has a plan as to what works it wants to undertake. He explained he would like to have everyone on side, not fighting each other. He said he finds Housemartins very approachable and likes the fact they are relatively small and approachable.

36. He was adamant Rayners had failed miserably.
37. The RTM had accountants, Shoreline, who prepared accounts [235-238].
38. The Tribunal questioned Mr and Mrs Socratous who said they would expect these accounts to include a breakdown of the individual apportionments. If they had this they would be happy.
39. Mrs Socratous explained that a letter they had sent to Mr Kirby had been forwarded to all the residents by email and subsequently she and her husband received hate mail.
40. Mr Kirby explained he had been sued by the Applicants for releasing their contact details. A settlement had been reached whereby a payment was made and insurers had been involved. He recognised he had to be careful and had advised Housemartins that they could not share details with others as this was the advice of the insurers.
41. He explained previously his practice had been to share everything received with everyone. He would much rather have the Applicants on side given their attention to detail and knowledge. He explained he does not have the time to deal with everything, he lives in Greenwich having originally purchased the flat for a relative. In some respects, he wished he had just walked away since it is like herding cats.
42. Mr Socratous questioned Mr Kirby.
43. Mr Kirby agreed that Rayners accounts included everyone's shares. He described Rayners as a quill pen outfit.
44. He confirmed he had spoken to Housemartins and they would allow Mr and Mrs Socratous to attend their office to inspect documents, which they had not done during the pandemic due to concerns about having people attend their office.
45. He explained when he circulated the email including the letter from the Socratous he did so because he was agreeing they were addressing a relevant point. He was shocked when they wished to sue over this.
46. Mr Kirby explained he is an AST property manager. The RTM was simply a vessel to get rid of Rayners. He reiterated that he appreciates the attention to detail of Mr and Mrs Socratous.
47. At the end of the hearing all parties confirmed they had said everything they wished to.

## **Decision**

48. All parties are thanked for their helpful submissions. We have borne in mind all that was said and contained within the bundle.

## Service charge

49. We have carefully considered the decision of Judge Cooper A[84-95] CHI/21UF/LAC/2021/0001. We agree with her interpretation of the lease and adopt the same. Clause 4 of the lease A[24] sets out the service charge provisions. In short a sum of £40 is payable as an on account payment with balancing payments thereafter. Further the Applicants lease allows a reserve fund to be established.
50. A[76] is the demand relied upon. This claims two amounts. Firstly what is referred to as a “Balance Brought Forward” and secondly “Service Charge due 24/6/21 - 23/6/22”. It is dated 25<sup>th</sup> May 2021.
51. In respect of the first sum this is said to be an amount Rayners advised they were owed. It seems for some reason the RTM agreed to collect such sums on behalf of the freeholder and their previous agent. No accounts had been served showing how this sum was calculated as being due and owing. Mr Kirby now suggests that in the week leading up to the Tribunal he has received documentation from Rayners including accounts which explain the same.
52. We are satisfied that at the date of the demand relied upon the “Balance Brought Forward” was not due and payable by the Applicants. It may be that with the documents the Respondents now have they can serve the same and such sum may be payable. We have not seen those documents and make no findings as to the same. The Respondent must take its own advice.
53. As to the service charge due we find this is not payable under the terms of the Applicants lease. The lease does not allow on account payments greater than £40 per annum as provided within the same. As a result the sum cannot be demanded of the Applicant and so the demand is not payable. In so determining we make no criticism of the budget prepared by Housemartins.
54. The Applicants raised various other matters within its application but these were not within the Tribunal’s jurisdiction.

## Appointment of a manager

55. The parties agreed that the Section 22 Notice had been served [38-49]. It was not replied to by the Respondent.
56. The Respondent opposes the application and 8 of the 15 flats have also objected. Save for the Applicants no other leaseholders have indicated they support the Application.
57. The Section 22 notice gives the grounds for the appointment of a manager as:

1. The landlord is in breach of obligation owed to the leaseholder(s) under a Lease.
  2. The landlord has made/ proposed unreasonable service charges.
  3. That other circumstance exist which make it just and convenient to appoint a manager
58. We have found within the service charge proceedings that the Respondent has issued demands not in accordance with the Applicants lease. Further it would appear that no proper response was made to the Section 22 Notice.
59. We take account of the evidence of Mr Kirby that there were separate County Court proceedings brought by the Applicants. Mr Kirby says he was advised to not communicate during this period.
60. We take account of the findings of Judge Cooper in her earlier decision already referred to. We do note she records some of the difficulties faced by the Respondent in dealing with the handover from Rayners.
61. We also took careful account of Mr Pickard's evidence as to the difficulties he had experienced trying to obtain copies of all the leases of the flats. It is clear that the leases are not in similar form in so far as they relate to the demanding and collection of service charges. Inevitably this will cause issues relating to the collection of the service charges.
62. Whilst we have made findings supporting certain of the matters complained of by the Applicants overall we are not persuaded that currently it would be just and convenient for a manager to be appointed.
63. We so determine for the following reasons.
64. The Respondent has only relatively recently taken over the management from the freeholder's managing agents Rayners. The hand over has been difficult and has caused the Respondents to lodge formal complaints to the Ombudsman scheme of which Rayners are a member. It appears that even leading up to this hearing Mr Kirby continued to struggle to obtain documents from them.
65. Whilst the Applicants state they were happy with Rayners they appear to acknowledge the block has deteriorated. This deterioration must lie at the hands of the freeholder and its agents.
66. Mr Pickard explained in his evidence what he had seen from his two visits. We are satisfied the Respondent is aware of these matters and they appear to have a plan in hand together with Housemartins to deal with the deterioration. This process will be difficult and expensive. We were told Section 20 consultation and works had been put on hold pending the resolution of this application. We make no criticism of that approach. The Respondents have been managing the building only

for a relatively short period of time during a period of a national emergency which inevitably will have further complicated matters.

67. We were impressed by Mr Kirby. He demonstrably had the best interests of the building at the heart of his actions. He accepted that certain errors had been made but that he wishes to improve the building as a whole.
68. We note that all bar two flats (one being the Applicant) are members of the RTM. A majority of flats positively supported the Respondent and no other flat supports the Applicants. Given the issues as to the leases clearly some form of consensus will be best for the Building as a whole. The majority would not be supportive of a Tribunal appointed manager. This of itself is not a conclusive matter but is something we take careful account of. Also the fact the RTM has been in place for a short period of time only.
69. We hope the RTM through this (and the earlier application) will have learnt of the essential need to obtain copies of all the leases and ensure they follow the same. It would be well advised to take professional advice particularly as to whether any application for variations are required.
70. Taking account of all matters we are satisfied that the management should remain with the Respondent. The Respondents ought in our judgment be given an opportunity to demonstrate they can manage and undertake the major works all agree are required. They should be allowed to proceed and begin their proposed programme of works. Given the Respondent is supported by the majority one would hope they can proceed and gain the support of other leaseholders including the Applicants. In our judgment the situation is such that appointing a manager in the face of the opposition of the majority would not satisfy the test of being just and convenient.
71. For that reason the application is refused.
72. In so determining we acknowledge that the grounds the Applicant set out in their preliminary notice have been made out. The application was perfectly proper and reasonable. The issues raised were matters which needed to be aired and addressed. Mr Kirby himself acknowledged this at the hearing.
73. We wish to thank Mr Pickard for his evidence and submissions. We have no doubt he would have been a very capable manager for this building. His evidence as to the leases and the difficulties he faced obtaining copies from the Land Registry was especially helpful for this Tribunal. It was useful to also hear his views as to what works may be required which support the plans for works the RTM and its agents are looking to undertake, even if in a different way.

74. We have considered whether or not we should make an Order pursuant to Section 20C and paragraph 5A. We were not addressed as to whether or not the Respondent will look to recover any costs although we note they are not professionally represented. The making of such orders are at the discretion of the Tribunal. Considering matters in this instance we decline to make any such orders.

75. In conclusion we would urge the parties to attempt to work together. It is plain the building as a whole requires significant investment of time and money and matters can only be assisted by the parties working together.

#### 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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)

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.