

Leasehold Service Charges

Robert Brown

(and Neil Maloney of My Home
Surveyor)

selborne
CHAMBERS

An Introduction to Key Concepts

- What does the lease say?
- Statutory reasonableness
- Consultation requirements
- Form and timing of demands
- Role of the tribunal

What does the lease say?

- Needs to be set out in the lease
- Standard rules of construction apply
 - No special rule of interpretation but should not bring within the general words of a service charge clause anything which does not clearly belong there: *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619
- Fixed amount or variable?
- On account payments or only in arrears?
- Apportionment
- Timing
- Preconditions

Statutory reasonableness

- Applies to “service charge” as defined by LTA 1985, s.18(1)
 - 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.

Statutory reasonableness

- Reasonableness requirement LTA 1985, s.19(1)
 - (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 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.
- See generally *Woodfall* § 7.193

Consultation requirements

- LTA 1985, s.20(1) creates requirement to consult
 - Qualifying works, “works on a building or any other premises”, cap of £250 per lessee
 - See *Phillips v Francis* [2014] EWCA Civ 1395; [2015] 1 WLR 741
 - Qualifying long term agreement, “an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months”, cap of £100 per lessee
 - See *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102; [2018] HLR 36
- Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987); Service Charges (Consultation Requirements) (Wales) Regulations 2004 (SI 2004/684)

Consultation requirements

- Requirements fall on landlord carrying out the works, must consult head lessor and sub-lessees with long leases: *Leaseholders of Foundling Court v Camden LBC* [2016] UKUT 366 (LC); [2017] L&TR 7
- Landlords can be granted dispensation: LTA 1985, s.20(1)(b), s.20ZA(1)
 - See *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854; *Aster Communities v Chapman* [2020] UKUT 177 (LC); [2021] EWCA Civ 660; [2021] 4 WLR 74; *Marshall v Northumberland & Durham Property Trust Ltd* [2022] UKUT 92 (LC)

Form and timing of demands

- Timing normally set out in lease
 - Often pre-conditions
 - Query whether time is of the essence? See *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725
- LTA 1985, s.20B – within 18 months of costs being incurred
 - Must either issue demand within the 18 months or serve a s.20B(2) notice within that time, with demand to follow
 - Costs incurred when demand for payment issued to landlord or when payment made: *OM Property Management Ltd v Burr* [2013] EWCA Civ 479; [2013] 1 WLR 3071

Form and timing of demands

- Must be a contractually valid demand: *No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd* [2021] EWCA Civ 1119; [2022] L&TR 10
- Applies to on account demands too: *Skelton v DBS Homes (Kings Hill) Ltd* [2017] EWCA Civ 1139; [2018] 1 WLR 362
- Successive 18-month limits where chain of landlords: *Westmark (Lettings) Ltd v Peddle* [2017] UKUT 449 (LC); [2018] HLR 10

Form and timing of demands

- LTA 1985, s.21B – must be accompanied by a summary of rights and obligations
 - See Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257), reg.3; and, Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 (SI 2007/3160), reg.3
- Also need to comply with LTA 1987, ss.47 & 48 (and s.47A & s.49A when in force)

Role of the tribunal

- LTA 1985, s.27A: application can be made to FTT(PC)/LVT for determination of whether service charge payable
- Or transfer from county court (CLRA 2002, s.176A and Sch.12, para.3)
 - Tenant defendant obliged to plead issue of reasonableness
 - *Yorkbrook Investments Ltd v Batten* (1985) 18 HLR 25; *Gell v 32 St John's Road (Eastbourne) Management Co Ltd* [2021] EWCA Civ 789; [2021] 1 WLR 6094
 - FTT(PC) “double-hatting”
 - *Avon Ground Rents Ltd v Child* [2018] UKUT 204 (LC)
 - *Behjat v Crescent Trustees Ltd* [2022] UKUT 115 (LC)

A few Challenges and Uncertainties

- Apportionment
- Right to manage and freeholder contributions
- Mixed-use developments
- Limitation
- Not following the lease

Apportionment

- Normally set out in lease as %age or fraction
- Can also be by reference to rateable value or floor area
- Can also be a power for landlord (or mgt co) to set or vary proportions
 - Void and power vested in tribunal: LTA 1985, s.27A(6); *Aviva Investors Ground Rent GP Ltd v Williams* [2021] EWCA Civ 27; [2021] 1 WLR 2061 (permission to appeal granted by Supreme Court)
- Can make application to tribunal to vary: LTA 1987, Pt 4

Right to manage and freeholder contributions

- RTM Co acquires management functions under the lease: CLRA 2002, s.96
- Service charges then become payable to RTM Co
- If landlord retains flats and there is shortfall in service charge proportions, landlord is required to pay the difference: CLRA 2002, s.103
- Are landlord payments a service charge?
 - No: *Gibbs v Clevedon Court (Dulwich) RTM Co Ltd* [2017] UKUT 411 (LC)
 - Yes: CLRA 2002, Sch.7, para.4

Mixed-use developments

- Tribunal jurisdiction?
- Lack of statutory protection
- Danger with use of rateable value to calculate apportionment
- Different lease schedules and apportionments for different categories of service charge expenditure

Limitation

- No application can be made where matter has been agreed or admitted, or determined by a court, or subject to arbitration: LTA 1985, s.27A(4)
- Tenant not taken to have admitted or agreed by reason only of having made payment: LTA 1985, s.27A(5)
 - But see *Cain v Islington LBC* [2015] UKUT 542 (LC); [2016] L&TR 13; *Marlborough Park Services Ltd v Leitner* [2018] UKUT 230 (LC); [2019] HLR 10

Limitation

- No limitation period for application: *Parissis v Blair Court (St John's Wood) Management Ltd* [2014] UKUT 503 (LC); [2015] L&TR 7
 - But would then need restitutionary claim to recover overpaid service charges (limitation period 6 years), or possibly breach of trust (either no limitation or 6 years: Limitation Act 1980, s.21)
- For landlord to bring claim, limitation is 12 years if not reserved as rent, 6 years if reserved as rent: Limitation Act 1980, s.8 & s.19

Not following the lease

- Tribunal has no jurisdiction to order repayment of service charges: *Knapper v Francis* [2017] UKUT 3 (LC); [2017] L&TR 20
- Can make a determination but that is purely declaratory and not enforceable as a court order under CLRA 2002, s.176C: *Termhouse (Clarendon Court) Management Ltd v Al-Balhaa* [2021] EWCA Civ 1881; [2022] 1 WLR 1529
- Separate proceedings required to recover overpaid service charges (restitution, possibly breach of trust)

Not following the lease

- Possible limitation defence (need to consider Limitation Act 1980, s.32 and *Paragon Finance Plc v DB Thakerar & Co* [1999] 1 All ER 400)
 - *Parissis v Blair Court (St John's Wood) Management Ltd*, County Court at Central London, HHJ Saggerson, 6 December 2018
- Good faith change of position
 - *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548; *Commerzbank AG v Price-Jones* [2003] EWCA Civ 1663; and, *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2003] EWCA Civ 1446; [2004] QB 985
- Estoppel by convention
 - *Jetha v Basildon Court Residents Co Ltd* [2017] UKUT 58 (LC)



Robert Brown

robert.brown@selbornechambers.co.uk

[@rbrownac](#)

Neil Maloney

neil@myhomesurveyor.co.uk