

Landmark Chambers' seminar

Property Law Nuts & Bolts - Part 4: Service Charges



Your speakers today...



Timothy Morshead KC
(Chair)



Peter Sibley

Topic:
Contractual machinery and
Reasonableness



Admas Habteslasie

Topic:
Consultation



Kimberley Ziya

Topic:
First Tier Tribunal
procedure and tactics



Contractual Machinery and Reasonableness



Peter Sibley



Structure of Service Charge Provisions

Arnold v Britton [2015] UKSC 36:

- No special rule of construction;
- Focus on the meaning of the relevant words;
- Consider the words in their documentary, factual and commercial context;
- Identify the parties' intention by reference to what a reasonable person with all the background knowledge would understand.



Contractual Machinery: Service Charges

- Interim payment on account?
- Time of the essence?
- Certification?
 - Conclusive or binding?

Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd

[2023] UKSC 2



Valid Demands: S.47 LTA 1987

- S.47 LTA 1987 requires that a tenant must be provided with the following:
 - Landlord's name and address;
 - Landlord's actual address, or in the case of a company, the registered office or place of business: ***Beitov Properties Ltd v Martin*** [2012] UKTU 133 (LC)

NOTE:

- Director's name insufficient: ***Triplerose Ltd v Grantglen Ltd & Cane Developments Ltd*** [2012] UKUT 221 (LC)
- Managing agent's address is not sufficient



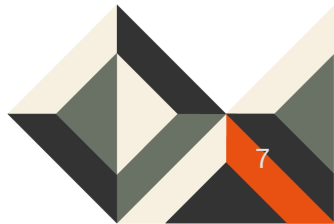
Valid Demands: S.47 LTA 1987

S.47(2) LTA 1987, “suspensory only”, see ***Tedla v Cameret Court Residents Association Ltd*** [2015] UKUT 221 (LC).

NOTE:

Triplerose Ltd v Grantglen Ltd & Cane Developments Ltd [2012] UKUT 204 (LC):

*“I echo the sentiments expressed by George Bartlett QC, as President, in *Beitov Properties Limited v Elliston Bentley Martin* that it is generally inappropriate for a tribunal to take a purely technical point (namely one that does not go to the merits or justice of the case) on the part of one side, when the issue has not been raised by a party in a party and party dispute.*”



Valid Demand: S.48 LTA 1987

- S.48 LTA 1987 requires:
 - a landlord to provide an address, which **must be** in England or Wales, at which notices may be served on them by their tenants or leaseholders.

NOTE:

- Prevented from enforcing recovery.
- No prescribed form, but it **must** be in writing!



Time limit for making demands

20B Limitation of service charges: time limit on making demands.

(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.



Summary of rights and obligations

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

See the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257



Summary of rights and obligations

NOTE:

- Must be legible in a typewritten or printer form, at least font size 10pts.
- Must contain title “Service Chagres – Summary of tenants’ rights and obligations”
- ***Tudor Roberts v Countryside Residential (South West) Ltd*** – errors in font size, paragraph numbering and Welsh translation, held to be “trivial” defects.



Leasehold and Freehold Reform Bill

Bill passage



Bill started in the House of Commons

- ☒ 1st reading
- ☒ 2nd reading
- ☒ Committee stage
- ☒ Report stage
- ☒ 3rd reading



Bill in the House of Lords

- ☒ 1st reading
- ☒ 2nd reading
- ☐ Committee stage
- ☐ Report stage
- ☐ 3rd reading



Final stages

- ☐ Consideration of amendments
- ☐ Royal Assent



Consultation



Admas Habteslasie



Introduction

- Part of the statutory overlay onto private law relationship between landlord and tenant
- The principal statutory provisions in relation to consultation requirements are:
 - Sections 19, 20 and 20ZA of the LTA 1985
 - The Service Charges (Consultation Requirements) (England) Regulations 2003 (2003/1987)
- In short: if L fails to either comply with consultation requirements or seek dispensation, the contribution of tenants is limited to £250 per tenant (in the case of qualifying works) or £100 per tenant (in the case of qualifying long term agreements).



The consultation requirement: s.20

- The relevant contributions of tenants are limited to the qualifying amounts unless the consultation requirements have either been complied with or dispensed with: s.20(1).
 - “relevant contributions” – amount tenant is required to pay under the lease to contribute to service charge – see definition in s.18 LTA 1985 – payable for services, repairs, maintenance, improvements, insurance, costs of L’s management
- Section 20 applies to “qualifying works” or “qualifying long-term agreement”



The consultation requirement: s.20 - qualifying works

- Defined in s.20ZA(2) – “works on a building or any other premises”
 - Require “works”; e.g. – does not include window cleaning
(***Paddington Walk Management Ltd v Peabody Trust*** [2010] L&TR 6)
- Section 20 applies where the costs/estimated costs incurred/to be incurred in connection with the works exceed “an appropriate amount”
- Appropriate amount here = “an amount which results in the relevant contribution of any tenant being more than £250”: Regulation 6



The consultation requirement: s.20

- qualifying long term agreement

- Defined in s.20ZA(3) and Regulation 3
- An agreement entered into by L or superior landlord for a term of more than 12 months, subject to exclusions in Regulation 3
- Section 20 applies to a QLTA where relevant costs incurred thereunder in any accounting period result in the relevant contribution of any tenant, in the relevant period, being more than £100: regulation 4



The consultation requirement: s.20

- What is the purpose of the consultation requirements?
 - To ensure that the tenants are protected from paying for inappropriate works
 - To ensure that tenants are protected from paying more than would be appropriate
 - Reflecting the reasonableness limitation on the extent of service charges found in s.19 LTA 1985
 - Not for the purposes of “transparency and accountability” generally

See judgment of Lord Neuberger in ***Daejan Investments Ltd v Benson and others*** [2013] UKSC 14 at [42]-[44] and [52]



Content of the consultation requirements

- Qualifying works and/or QLTA
- Different consultation requirements where 'public notice' under public procurement regulations is required – see definitions and thresholds in the Public Contracts Regulations 2015, which principally apply to public sector
- The requirements are set out in schedules 1 to 4 of the Regulations:
 - Schedule 1 – QLTA (no public notice)
 - Schedule 2 – QLTA + public notice
 - Schedule 3 – QLTA + QW
 - Schedule 4 pt 1 – QW + public notice
 - Schedule 4 pt 2 – QW (no public notice)



Content of the consultation requirements

- Schedule 1 – QLTA (no public notice)
 - L to give notice in writing of intention to enter into the relevant agreement , notice providing certain specified information:
 - Describe the goods or services to be carried out or specify place/hours at which description may be inspected
 - Reasons why necessary/ where consist of relevant works, explain why L considers necessary to carry out those works
 - Invite observations
 - L has duty “to have regard” to observations made



Content of the consultation requirements

- Notice should invite tenant/association to propose name of a person from whom L should try to obtain an estimate
- L's has duties to obtain certain estimate(s) - in para. 4
- L then to prepare proposals and give notice to tenant:
 - At least one providing goods/services provided by a person wholly unconnected with L
 - Where estimate obtained with a nominated person, a proposed based on that estimate
 - Intended duration of the proposed agreement
 - Statement setting out T's observations and L's response to them



Content of the consultation requirements

- L has duty “to have regard” to observations made in regard to proposals
- Where L enters into agreement, duty to give notice to each tenant and any recognised tenants association stating reason for making agreement and setting out observations on proposal and response



Content of the consultation requirements

- Schedule 3 – QLTA + QW
 - Similar to Schedule 1 requirements but reduced:
 - Notice in writing
 - Duty to have regard to observations
 - Duty to respond to observations within 21 days



Content of the consultation requirements

- Schedule 4 pt 2 – QW (no public notice)
 - L to give notice in writing to tenants
 - Duty to have regard to observations in relation to proposed works
 - Duty to obtain certain estimate(s) – and to invite observations thereon and have regard thereto – paras. 4-5
 - Where L enters into agreement, duty to give notice to each tenant and any recognised tenants association stating reason for making agreement and setting out observations on proposal and response

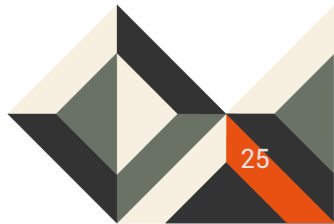


Content of the consultation requirements

- Duty.... to have regard?

“the landlord must conscientiously consider the lessees' observations and give them due weight, depending on the nature and cogency of the observations...it is impossible to say that the tenants' views are ever immaterial. They will have to be considered in every case. This does not of course mean that the lessees have any kind of veto over what the landlord does; nor that they are entitled to insist upon the cheapest possible means of fulfilling the landlord's objective. But [the duty] entails more than simply telling them what is going to happen. Given that in every case the tenants will have had the opportunity to make observations on the landlord's proposals I do not consider that the landlord has any further positive duty to inquire into the tenants' views. The statutory consultation process is designed to inform the landlord about the tenants' views.”

Waler v Hounslow [2017] EWCA Civ 45 at [38].



Dispensation

- See ***Daejan Investments Ltd v Benson*** [2013] UKSC 14 and *Jastrzemski v Westminster City Council* [2013] UKUT 284:
- (1) whether, and if so to what extent, T would relevantly suffer if an unconditional dispensation was granted. relevantly suffer = full compliance – unconditional dispensation
- (2) factual burden on T to identify any relevant prejudice which he claims he would or might have suffered;
- (3) once T has shown a credible case for prejudice, Tribunal should look to the landlord to rebut it
- (4) not sensible or convenient to distinguish between serious failing and a technical, minor or excusable oversight, save in relation to the prejudice it causes
- (5) that the tribunal could grant dispensation on such terms as it thought



Key points

- Are consultation requirements engaged? Qualifying works or qualifying long term agreement
- Content of requirements – refer to schedules to Regulations – Schedules 1, 3 and 4 Pt 2 most relevant (unless procurement requirements apply)
- Dispensation may be granted where reasonable to do so
- Requirements are about making sure tenants are protected from paying for inappropriate works or paying more than would be appropriate. Compliance is important; but not a broader licence for transparency/veto of landlord's discharge of duties.



First Tier Tribunal Procedure & Tactics



Kimberley Ziya



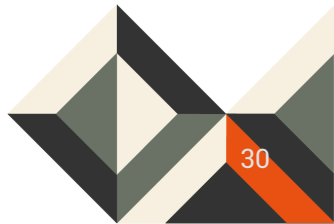
What is the FTT?

- FTT – Creature of statute
- Part of the streamlined two-tier tribunal system (appeal to Upper Tribunal (Lands Chambers))
- Applicable rules are the *Property Chamber Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*



Application to the FTT

- Rule 26 – start proceedings
- Rule 27 – Time Limits
- Rule 29 – Notice to Respondents, interest persons
- Rule 30 – the Respondent



FTT – Case Management Powers

The Tribunal has a general power to regulate its own procedure, which can include, *inter alia* (rule 6(3)):

- Extend or shorten the time for compliance with a rule or direction: rule 6(3)(a)
- Deal with an issue as a preliminary issues: rule 6(3)(g)
- Adjourn or postpone a hearing: rule 6(3)(j)
- Stay proceedings: rule 6(3)(m)



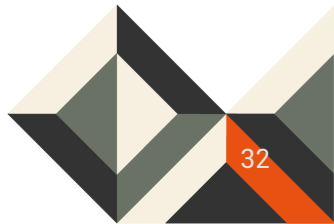
General Powers & Provisions

Rule 19 – Expert Evidence

- None w/o permission
- Provides the power to direct that a single joint expert is instructed and affords the Tribunal a large degree of control over expert evidence

Rule 21 – Site Inspections

- Rule 21 allows the Tribunal to inspect the land, property or premises which may assist



Non-Compliance in the FTT

In the case of non-compliance with a rule, or direction, the Tribunal may take such action as the Tribunal considers just (rule 8(2)). This general power includes, *inter alia*:

- Waiving the requirement (rule 8(2)(a))
- Requiring the failure to be remedied (rule 8(2)(b))
- Striking out a parties case (rule 8(2)(c))
- Barring or restricting a party's participation in the proceedings (rule 8(2)(e))



Striking out applications in the FTT

- The Tribunal has the power to strike out applications.
- The Tribunal **must** strike out the whole or part of a case if (rule 9(2)):
 - it does not have jurisdiction in relation to the whole or part of proceedings; **and**
 - it has not transferred the whole or part of the proceedings to another court or tribunal under rule 6(3)(n)(i)



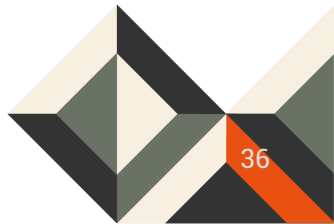
Striking out applications in the FTT

- The Tribunal **MAY** strike out the whole or part of a case where *inter alia*:
 - there has been a failure to comply with the directions, stating non-compliance by a stated date would lead to the application or part of it being struck out
 - the applicant has failed to co-operate with the Tribunal
- **MUST** first given the parties the opportunity to make representations (rule 9(4))
- Rule 9 applies to Respondents as it does to Applicants, save as pursuant to rule 9(7)



FTT & The Hearing

- Must be held in public (Rule 33)
- 14 days notice unless (a) parties consent to a shorter notice period or (b) there are urgent or exceptional circumstances (Rule 32)
- Relatively informal, but will follow the procedures set by the Tribunal
- Members of the Tribunal panel may ask questions
- Consent order (Rule 35)
- Withdrawal (Rule 22)



FTT Decisions

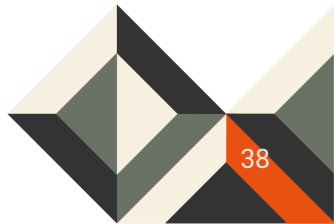
The Tribunal may give a decision orally at a hearing and must provide to each party as reasonably practicable after making a decision (Rule 36):

- A decision notice stating the decision
- Written reasons for the decision
- Notification of right to appeal



Correcting, setting aside, appealing & reviewing FTT decisions

- Slip rule (Rule 50)
- Set aside (Rule 51)
- Application for permission to appeal (Rule 52)
- Tribunal's consideration of application to appeal (Rule 53)
- Review of decisions (Rule 55)



FTT & Costs

Starting point = each party bears their own costs

BUT limited power in rule 13(1) for Tribunal to make an order for costs:

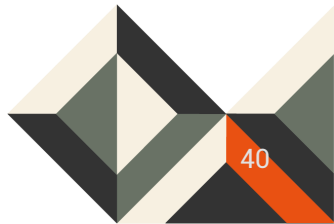
- “Wasted costs”
- Where a person has acted unreasonably
- In a land registration case
- In telecoms cases transferred from UT



FTT & Costs – unreasonable behaviour

***Willow Court Management Co (1985) Ltd v Alexander* [2016] ULUT 290 (LC):**





- Guidance on what constitutes “unreasonable behaviour” under rule 13
- 3-stage analysis
- Would a reasonable person in the position of the party have conducted themselves in the manner complained of?
- “applications [under rule 13] should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right.”



Thank you

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