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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: **LVT/0005/06/22, LVT/0006/06/22, LVT/0007/06/22, 0009/06/22**

In the Matter of Premises at Cardiff Pointe, Empire Way, Cardiff

And in the matter of Applications under Section 27A of the Landlord and Tenant Act 1985, Schedule 11 to the Commonhold and Leasehold Reform Act 2002, Section 20C of the Landlord and Tenant Act 1985, and Section 24 of the Landlord and Tenant Act 1987

Applicants:	**(1)**	**John Harris (Block D)**
	(2)	**Andrew Bucknall (Block B)**
	(3)	**Vivienne Cooper-Thorne (Block C)**
	(4)	**David and Pamela Perry (Block C)**
	(5)	**Dr. Ali Alalaiwi (Block A)**
Respondent:	**Cardiff Pointe Management Company Limited**	
Tribunal:	**Colin Green (Chairman)**	
	Siân Westby (Lay Member)	

DECISION ON SECTION 20C

It is ordered that 30 per cent of the recoverable costs of the Respondent incurred in respect of the proceedings the subject of the Tribunal's decision of 4 June 2024 ("the Decision") 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.

REASONS FOR DECISION

Introduction

1. This is a determination of the Applicants' application under s. 20C of the Landlord and Tenant Act 1985. A timetable for written submissions was provided in paragraph 165 of the Decision. The timetable was extended on several occasions, initially to accommodate the Applicants in preparing their submissions, and subsequently due to negotiations taking place between the parties that might result in a compromise which would not require this application to be determined.

2. To date, the Tribunal has not been informed of a final settlement, so it is proceeding to determine the application based on the following written submissions: a document from the Applicants entitled "Main 20c Costs submission document", provided as an attachment to an email of 22 July, the Respondent's submissions of 5 December, and the Applicants response of 19 December, 2024.

3. The Tribunal will not address every argument and issue presented by the parties but only those matters which it considers relevant to making its determination.

Section 20C

4. The relevant provisions are as follows:

> *"20C Limitation of service charges: costs of proceedings.*
>
> *(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 leasehold valuation tribunal or the First-tier 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 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."

5. It is important to understand the nature and scope of this jurisdiction, and what issues fall to be decided, and which do not.

6. Section 20C is concerned with costs incurred by the landlord in respect of the proceedings which might be recoverable, in whole or in part, by way of the service charge provisions in the lease.

7. The Tribunal does not have a total figure for the costs incurred by the Respondent, nor any breakdown, and its function is not to quantify those costs but only to express how much of such costs are recoverable, expressed as a percentage.

8. Under s. 20C, the Tribunal is not determining the recoverability of such costs under the relevant provisions of the lease (unless it is clear that the lease makes no such provision), only what percentage may be passed on to the extent they are so recoverable. Any issue as to whether legal costs are recoverable, or whether they were reasonably incurred, or reasonable in amount, would have to be the subject of a separate application under s. 27A of the 1985 Act. Accordingly, whether the Respondent's legal costs were excessive is not a matter on which the Tribunal will make any determination on this s. 20C application.

9. To the extent that the Respondent's costs are relevant costs that would form part of a service charge, as with any service charge item, the Applicants will not be liable for the whole of those costs but only their individual Service Charge Percentage, as provided for under each of their leases. There is no question of the Applicants alone being liable for so much of the Respondent's costs as are recoverable.

10. Any limitation on recovery provided by a s. 20C order applies only to the Applicants, not to all the leaseholders at Cardiff Pointe who would be liable for their share of the Respondent's recoverable costs (subject to any challenge under s. 27A). The Tribunal is not able to make an order in favour of those not a party to the s. 20C application see: *Plantation Wharf Management Ltd v Fairman* [2019] UKUT 236 (LC).

11. In the recent decision of the Upper Tribunal in *Rana v Maitland Court Ltd*. [2024] UKUT 122 (LC), Judge Elizabeth Cooke quoted with approval at paragraph 6 the following observations of HHJ Nigel Gerald in *Church Commissioners v Mrs Khadia Derdabi* [2011] UKUT 380 (LC), explaining how applications under s. 20C should be approached:

> *"18. In very broad terms, the usual starting point will be to identify and consider what matter or matters are in issue, whether the tenant has succeeded on all or some only of them, whether the tenant has been successful in whole or in part (i.e. was the amount claimed in respect of each issue reduced by the whole amount sought by the tenant or only part of it), whether the whole or only part of the landlord's costs should be recoverable via the service charge, if only part what the appropriate percentage should be and finally whether there are any other factors or circumstances which should be taken into account.*
>
> *19. Where the tenant is successful in whole or in part in respect of all or some of the matters in issue, it will usually follow that an order should be made under s20C preventing the landlord from recovering his costs of dealing with the matters on which the tenant has succeeded because it will follow that the landlord's claim will have been found to have been unreasonable to that extent, and it would be unjust if the tenant had to pay those costs via the service charge. By parity of reasoning, the landlord should not be prevented from recovering via the service charge his costs of dealing with the unsuccessful parts of the tenant's claim as that would usually (but not always) be unjust and an unwarranted infringement of his contractual rights. ...*
>
> *22. Where the landlord is to be prevented from recovering part only of his costs via the service charge, it should be expressed as a percentage of the costs recoverable. The tenant will still of course be able to challenge the reasonableness of the amount of the costs*

> *recoverable, but provided the amount is expressed as a percentage it should avoid the need for a detailed assessment or analysis of the costs associated with any particular issue.*
>
> *23. In determining the percentage, it is not intended that the tribunal conduct some sort of "mini taxation" exercise. Rather, a robust, broad-brush approach should be adopted based upon the material before the tribunal…"*

12. The Tribunal will have regard to those observations in determining the s. 20C application

Determination

13. The Tribunal will consider each of the disputed items using the headings employed in the Decision.

13.1. *Section 20B* – No regard can be had to any s. 20B issues since, as set out at paragraph 46 of the Decision, all such claims were subject to a compromise, the terms of which were confidential. Whether those terms have been breached, as alleged by the Applicants, has no relevance to the s. 20C application. Once a compromise was reached s. 20B was removed as an issue for the Tribunal and falls outside the scope of s. 20C considerations.

13.2. *Electricity Feed-in-Tariff Scheme* – This was a substantial claim by the Applicants which was unsuccessful.

13.3. *Qualifying Long Term Agreements* – there were four such agreements: three were conceded by the Respondent and the Tribunal found that the fourth was a QLTA. The Respondent sought dispensation and in the absence of evidence of prejudice granted dispensation.

13.4. *Incorrect VAT Charges and Climate Levy Charge* – No adjustment was made in respect of this item.

13.5. *Electricity (Block B) overcharges* – No adjustments were made.

13.6. *Insurance (Block) Charges* – The Applicants were successful in respect of the year 2016.

13.7. *Insurance (Block A) charge* – There was no adjustment.

13.8. *Insurance (Engineering) charge* – There was no adjustment.

13.9. *Boiler maintenance* – There was no adjustment.

13.10. *Charges applied to Building rather than Estate Services* – The Applicants were successful in respect of these items.

13.11. *Gas deposit* – No adjustment was made.

13.12. *Alternative suppliers* – No adjustment was made.

13.13. *Water Damage at Block B* – There was no dispute that credit would be provided but no figure had yet been agreed with Kier.

13.14. *Gas/Heat charges* – There were two issues. The first concerned whether the entirety of gas charges for each block are a Building Service, recoverable by way of service charge in each leaseholder's Service Charge Percentage so that there is no liability for gas resulting from each Apartments' separate meter. The Tribunal found in favour of the Respondent.

13.15. The second issue was the X minus Y issue, which was addressed at the further, eighth, day of the hearing. The nature of the further evidence and the parties' contentions are set out at paragraphs 119 to 135 of the

Decision. The Applicants were successful in challenging these calculations to the extent set out in the spreadsheet appendix to the Decision.

13.16. *HIU maintenance* – No adjustments were made.

13.17. *Reconciliation overcharges* – this amounted to £54,602.26 over the period 2015 to 2020 and a day was spent dealing with this in the evidence of Mr. Haddow. The Tribunal was not persuaded that the service charge accounts for the years in issue should be adjusted to reflect the figure claimed.

13.18. *Accounts certification* – No adjustment was made.

14. Therefore, in considering the outcome, in broad terms there were sixteen issues in dispute and the Applicants were successful to some extent in respect of four, one-quarter.

15. As regards other factors to be taken into account, the Tribunal has considered the following.

15.1. Ms. Morgan-Knight's explanations often only became clear during her testimony, sometimes based on information she had recently obtained from other employees of Warwick. Such enquiries should have been made earlier and dealt with in a more detailed manner in her witness statement. This might have led to some issues being shortened. For example, charges applied to Building rather than Estate Services and the gas deposit.

15.2. The most obvious example of such matters is in respect of the X minus Y issue where the evidence produced was incomplete and led to directions for a further hearing. In the Tribunal's view however, even if the information provided for the further hearing had been made available for the initial hearing, given the multitude of tables and issues raised it is likely that it would have gone into an eighth day.

15.3. The Respondent refused to participate in a mediation. Inevitably, it is a matter of speculation as to whether mediation would have led to a settlement, but in the Tribunal's view, on balance, this would not have occurred. The sheer range of matters in dispute and volume of material would not have led to a compromise. Possibly, issues might have been narrowed concerning certain items in dispute, but it is questionable whether mediation would have been a cost-effective exercise to achieve this when a hearing would have taken place in any event.

15.4. Warwick's record keeping was not always as it should have been and introduced confusion at certain points, see: paragraphs 79 and 160.3 of the Decision.

15.5. Although of understandable concern, issues of hardship, including the Applicants' financial circumstances, and health are not relevant considerations when making an order under s. 20C. In respect of the latter, it is noted that the Applicants' initial s. 20C submissions state, at paragraph 4b, that Mr. Harris has suffered a serious head injury and despite the Tribunal being informed of this no observable consideration or allowances were made during the Tribunal proceedings. This is not correct. So far as the Tribunal panel is concerned, the first occasion on which Mr. Harris' head injury has been raised is in the s. 20C submissions. No mention was made during the hearing and had Mr. Harris drawn such matters to the Tribunal's attention, proper consideration would have been given to them when he was presenting his parts of the Applicants' case. In Point 4 of the Applicants' reply to the Respondent's s. 20C submissions, there is reference to Mr. Harris' head injury having been "advised to all parties". Again, insofar as this is intended to include the Tribunal, it is incorrect.

16. Having regard to the matters set out above, the Tribunal considers that a just and equitable order would be to allow the Respondent to recover 70 per cent of its

costs in respect of the proceedings from the Applicants by way of service charge, that is to say, that 30 per cent of the recoverable costs of the Respondent incurred in respect of 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

Dated this 07th day of February 2025.

Colin Green (Chairman)