

Introduction to Service Charges

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Introduction

- What is a service charge?
- Why do they fight?
- What is the usual structure?
- How should service charge provisions be construed?

What is a service charge?

- Charge levied against occupiers of multi-occupied property
- To cover actual or anticipated cost of repairs, maintenance, management, and other services provided in respect of the building
- Basic mechanism:
 - Landlord is obliged to provide services
 - Leaseholders are obliged to pay for those services
- Statute



Why do they fight?

- Provision of poor services
- At high cost
- Or at a cost contrary to what was anticipated
- Lack of clarity in the lease

Princes House Limited v Distinctive Clubs Limited **[2006] 9 WLUK 329**

“This case contains many of the typical elements which cause and exacerbate disputes of this kind:


- first, **a managing agent who did not regard it as part of his job to read the lease** or give any consideration to whether the items, a contribution to the cost of which he was invoicing, properly fell within the service charge;*
- secondly, **a landlord who, despite earlier misgivings, appears to have decided to include all the costs of his project in the claim for service charges** irrespective of the propriety of doing so, placing on his tenants the onus of challenging his demands if they were able to discover and disentangle the calculations on which they had been based*
- thirdly, a situation where the **tenant had been led to expect a certain level of charge and then found himself being charged four times** as much with no explanation being offered as to how this state of affairs had come about; leading,*
- fourthly, to **the tenant becoming so frustrated and alarmed that he dug in his heels, refused to pay and resolved to take every point going, good or bad, with a view to resisting what he regarded as his landlord's patently unjustified behaviour.**”*

A potent recipe for expensive and unproductive litigation

- Managing agents who do not read leases
 - And leaseholders... and landlords...

- Landlords wanting to recover everything
 - 100% recovery is not always possible (*Rapid Results College v Angell* – [1986] 1 EGLR 53)

- Tenants wanting to pay as little as possible
 - Need to be realistic

- Poor drafting  Siege mentality

Structure of service charge provisions

- Management structure
 - Bi-partite (landlord-tenant)
 - Tri-partite (landlord-tenant-manager)
- Service charge structure
 - Services
 - Proportion
 - Advance payment
 - Ascertainment
 - Balancing amount



Other factors

- Service charge demand:
 - Any procedural provision or pre-conditions
 - NB *Yorkbrook Investments v Batten* [1985] 2 EGLR 100
- Time of the essence?
- Certification:
 - Binding or conclusive?
 - S.27A(6), LTA 1985

Construction of service charge provisions

- No special rule of construction

Arnold v Britton [2015] AC 169:

- identify the intention of the parties by reference to what a reasonable person with all the background knowledge would understand;
- focus on the meaning of the relevant words;
- in their documentary, factual and commercial context.

Construction of service charge provisions (2)

Is the cost of the service provided recoverable?

- Maintenance and repairs
- Heating and lighting
- Cleaning and refuse collection
- Cost of management and managing agents
- Insurance
- Legal costs



Thank you for listening

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