

## Managing multi-user buildings and service charges



**Justin Bates**

## A case study

\*\* Please note that whilst the building that I am discussing does actually exist, I have no knowledge of the title structure or how any of the users of the building actually operate. It is just used to illustrate some wider points \*\*

Just up the road from my house

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# From another angle



## Users

What kinds of user?

- Top part is residential flats (with cladding...)
- Then office level
- Then two GPs surgeries and a pharmacy
- Café and car parking at ground level (private and semi-public)
  - Also access for the flats and offices via their own staircase and lifts
  - A fairly complicated plant room

## Title structure

- Freehold of the whole
- Headlease of the whole (including car parking spaces)
- Underlease of the café, GPs surgeries and pharmacy (and some car parking spaces)
- Underlease of the office floors (and some car parking spaces)
  - sub-underlease of individual parts of the office?
  - licences of parts of the office
- Underlease of the flats
  - sub-underlease of each flat
  - occupational tenancies
-

## What problems does that present?

Different regulatory position between users

- *e.g.* the cladding
  - Likely to be an issue for the flat owners (whether underlease or individual flat leaseholder) because of the EWS1 issue and mortgage concerns
  - Why do the other occupiers care?
    - Service charges likely to relate to the structure and exterior of the whole building regardless of benefit derived
    - Likely remedial costs of a few million
    - No government funding for any of the non-residential units
    - Impact on insurance?

## What problems does that present (2)?

- Service charge allocation
  - How does each lease apportion service charges?
    - By floor area? By fixed percentage? By the discretion of the LL (or LLs surveyor)?
      - Commercial tenants have very few remedies and statutory protections
      - Residential tenants (and headlease of the whole – *Oakfern v Ruddy* [2006] EWCA Civ 1389) have an advantage over commercial tenants because of s.27A, Landlord and Tenant Act 1985
        - » FTT can re-allocate costs between use classes to benefit of residential tenants (e.g. *Aviva v Williams* [2021] EWCA Civ 27 and the three UT(LC) cases approved in that judgment)
        - » Leaseholders have ss.19, 20 etc LTA 1985 regardless of apportionment issues

## What problems does that present (3)?

- Complex title structure leads to inconsistent and unclear obligations
  - Where do the repairing obligations sit?
  - How does a tenant enforce an obligation which is ultimately the responsibility of someone else under a different lease?
  - What do you do if the leases are inconsistent?

## If commercial tenant wants to challenge service charges...

- See *Criterion Buildings Ltd v McKinsey & Co Inc and Another* [2021] EWHC 216 (Ch), as approved in *Gell v 32 St John's Road (Eastbourne) Management Company Ltd* [2021] EWCA Civ 789 and the “initial burden” on the tenant to show a *prima facie* case in any challenge.
- So any challenge needs to be front-loaded.

# Thank you for listening

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