

Workshop 4c:

Leaseholder challenges – demonstrating value in service charges

Speaker: Jonathan Cox, Anthony Collins Solicitors LLP
 Chaired by: Stephen Chalmers
 Room: Warwick Room

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Anthony Collins
solicitors

Leaseholder Challenges –
Demonstrating Value in Service
Charges

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Jonathan Cox, Partner

Sample table format:

Outline

What service charges are we talking about?

When can there be challenges?

First Tier Tribunal ("LVT")

"Reasonableness" challenges



What service charges are we talking about?

"a. which is payable directly or indirectly for services, repairs, maintenance, improvements or....management; and

b. the whole or part of which varies or may vary according to the relevant costs."



Landlord &
Tenant Act
1985
Section 18(1)

Generally

leaseholders, shared owners, some tenants

What service charges are we talking about? – relevant costs

"... costs or estimated costs incurred or to be incurred by or on behalf of a landlord, or a superior landlord ..."



Landlord &
Tenant Act
1985
Section 18(2)

Costs

for the current service charge period or earlier or later

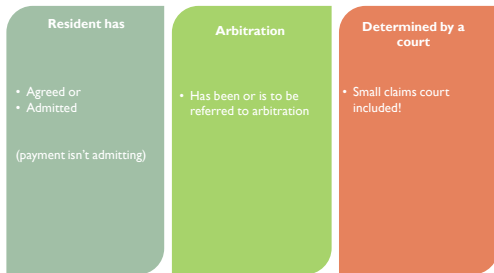
What to check!

That the service is being charged as a service charge

That the landlord agreed to provide the service

That the resident agreed to pay for the service

Tactics - there can't be a challenge when



First-Tier Tribunal (Property Chamber)

- Formerly the Leasehold Valuation Tribunal
- Decisions don't bind other FTTs
- Generally three people
 - A lawyer (typically the Chair)
 - A surveyor
 - A lay person

Leaseholder Challenges – “Reasonableness”

MUST BE

Reasonably incurred

To a reasonable standard

Advance payment must be reasonable

Reasonably incurred

- **Not** just reasonable
- A two part test: -
 - Was the action taken by the landlord reasonable
 - Were the costs incurred reasonable
- Examples
 - Wandsworth v Griffin 2000 (windows)
 - A2 Housing Group v Spencer Taylor 2006 (large contract for gardening and cleaning)

Questions to consider

- are (or were) the works or services necessary?
- are the works or services required at all?
- are the works sufficient to remedy the perceived problem?
- are the works or services adequate or over-extensive?

Questions to consider

- was, or is, the original specification for the works or service adequate?
- did it include all necessary work or was the job allowed to expand as additional repairs were revealed?
- are there genuine grounds for additional works of an urgent nature?

Questions to consider

- what are the landlord's arrangements for controlling costs?
- how adequate is site supervision?
- what controls are there for checking and payment of invoices etc.?
- what arrangements are there for checking the service provided against that specified?
- is the standard of the works or service proposed or completed appropriate and reasonable?

Historic neglect

- A question of delay
- Whether **actual** amount was reasonably incurred is the issue
- **Not** whether action or inaction was reasonable
- **But** can be other challenges

To a reasonable standard

- A question of fact
- Demonstrating a process
- Expert evidence

Questions to consider

- was, or is, the standard of the works or services appropriate?
- will the specification deliver the levels of services or standards of work expected?
- are the completed works satisfactory?
- were the works carried out in accordance with the standards specified?
- what are the landlord's arrangements for monitoring service delivery?
- are services maintained to the agreed specification?

Prior application

- Can apply to FTT in respect of future works or services
- Same grounds so whether future works or services: -
 - Would be reasonably incurred
 - Would consider to be to a reasonable standard
 - Whether any amount now (i.e. in advance) or when completed would be reasonable

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Jonathan Cox of Anthony Collins
Solicitors LLP on 0121 212 7453 or
jonathan.cox@anthonycollins.com

Anthony Collins
SOLICITORS

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham B3 2ES
MDX: 1855 Birmingham 1
Tel: 0121 200 9242
www.anthonycollins.com