

APRIL 2021

# TECHNICAL UPDATE – LANDLORD & TENANT

Roythornes property litigation (leasehold management)  
technical update

## ***Is my landlord liable to pay costs on its application for Dispensation? (Section 20 Landlord and Tenant Act 1985)***

As is stands, yes but we await the outcome of the Court of Appeal in *Aster Communities v Chapman* [2020] UKUT 177 (LC) (15 June 2020) which is due to be heard this month.

- In *Aster Communities v Chapman* [2020] UKUT 177 (LC), the Upper Tribunal (UT) dismissed the appeal and upheld the First Tier Tribunal's (FTT) impositions and conditions when granting the landlord dispensation from consultation under section 20 Landlord and Tenant Act 1985.

### **Case summary:**

- Landlord undertook works on five low rise apartments blocks without consulting on any part of the work and applied for retrospective dispensation to prevent a bar on recovering no more than £250 from each leaseholder for non-compliance with the consultation procedure pursuant to section 20 Landlord and Tenant Act 1985.
- The FTT granted dispensation and ordered the landlord to pay the leaseholders costs in respect of (1) instructing an expert; (2) legal costs of the dispensation; and (3) that no part of the landlord's legal costs could be recovered through the service charge \*.
- It is fair to say that an application for dispensation made by a landlord is likely to always be successful as long as the tribunal take into proper account any prejudice suffered by the leaseholders through the landlord's failure to consult.
- Since the case of *Daejan Investments Limited v Benson and others* [2013] UKSC 14, landlords consider dispensation a matter of convention when unable to consult or to fully comply with the requirements of section 20. That may be so but the case of *Aster Communities v Chapman* should be reminder that it is not without potential exposure to substantial costs under section 20C Landlord and Tenant Act 1985 (Limitation of Landlord's Legal Costs).

\*Section 20C - This section allows a leaseholder to make an application to a court or tribunal to request that an Order be made stopping a Landlord recharging their legal costs (associated with any proceedings in a Court, Tribunal, or Arbitration) being recharged through their Service Charge.

## Roythornes Landlord and Tenant Technical Update April 2021

Service charge collection remains one of the main disputes between landlords and tenants. If you have any queries relating to services charges please contact Bukola Obadun-Craigs who can advise you on some of the principal considerations when dealing with service charge disputes.

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*Bukola Obadun-Craigs*

**Bukola Obadun-Craigs - Partner**

[bukolaobadun-craigs@roythornes.co.uk](mailto:bukolaobadun-craigs@roythornes.co.uk)

07702 867532

