FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UF/LSC/2017/0051**
Property	**:**	**Flats 109 and 110 Garner House, Tadros Court, High Wycombe HP13 7GG**
Applicant	**:**	**Mrs D Clark (Flat 109)** **Mr and Mrs Nolan (Flat 110)**
Representative	**:**	**In person**
Respondent	**:**	**Circle 33 Housing Trust Limited (now Clarion Housing) (1)** **Healey Gate Management Limited (2)**
Representative	**:**	**Mrs S Lovegrove - Counsel for Clarion** **Mrs K Phillips and Mr P Kaluba both of Clarion** **Mrs B Eves - Banner Property Management for Healey Gate**
Type of Application	**:**	**Liability to pay service charges**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Econ) MSc MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	**:**	**High Wycombe Magistrates' Court on 25th October 2018**
Date of Decision	**:**	**14th November 2018**

DECISION

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DECISION

1. The Tribunal makes the determination set out under the various headings in this decision.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so that none of the landlord's costs of the Tribunal proceedings may be passed on to the lessees through any service charge.

APPLICATION

1. This matter started before the Tribunal in 2017 and came before us for a directions hearing on 9th August 2017. Those directions were complied with and the matter re-appeared on 6th March 2018. At that time, we made a determination in respect of the service charge year ending June 2014 and issued further directions which led to this matter coming before us on 25th October 2018. We record that at paragraph 11 of the March 2018 decision we said this: *"We urge the Applicants to consider whether they wish to continue with the claim after the directions, which we will deal with, have been concluded. This case has already resulted in a great deal of time being spent by both sides as well as tax payer's money. The mischief appears to have arisen from February 2017. Until then it seems a service charge was paid largely without demure. It is hoped that following the directions the Applicants will be able to see what has caused the increase which we have alluded to at paragraph 5 above …."*

2. Unfortunately, the parties were not able to reach an agreement. At the hearing on 25th October we were provided with a trial bundle which included directions we had issued in June of 2018, statements from the Applicants and a witness from Karen Phillips. There were also emails and a schedule of items said to be in dispute. Supporting invoices in respect of some of those matters were included.

HEARING

3. Mrs Nolan told us that she was concerned at the increase in service charges over the years, which had been substantial. She wished to have some consistency and said that she still had no idea why there appeared to be a deficit due from them for the year 2016/17.

4. Mrs Eves from Banner Homes, who are now the managing agents for the total development instructed by Healy Gate Management Limited, had attended this hearing, which was helpful. She told us that three years' accounts have now been submitted for audit. These are for the years 2015/16; 2016/17 and 2017/18. It is hoped, therefore that in the early part of 2019 audited accounts will be available which will remove the problems which have arisen in this case. It is to be remembered that the challenges made by the Applicants are against estimated service charges. We were told that the Applicants were paying something towards the interim demands but had not made full payment towards the estimated accounts.

5. Mrs Lovegrove, Counsel who appeared on behalf of Clarion, confirmed that there had been some difficulties with apportionments for the years in dispute. However, these were now in the hands of the management company and it was

considered that allocation would be dealt with once the final accounts were available. Reconciliations could thereafter take place.

6. On some of the specifics we heard the following:-

   Accountancy. We were told that the costs were apportioned between the residents of the block on an estimated basis only. There are also it would seem, accounting charges relating to the estate and again these will be matters that will be clarified once the final accounts are available.

7. In respect of the management and administration of the estate, it appears that previously a management fee had been charged which was not allowed for under the terms of the lease. Instead Clarion now sought to claim an administration charge of 5% for processing accounts and dealing with queries raised by their tenants with the freeholder. This is, we were told, an overhead and is a justifiable figure equating to £92 per flat.

8. We were told that Clarion, or in its guise as Circle 33, did carry out checks against the claims made by Healey Gate and had approached Remus but were unable to get all the information sought. Mrs Phillips who had provided a witness statement on behalf of Clarion, who we were told used benchmarking with other housing associations to reach this 5% figure. We were told that the administration charge as well as representing overall office costs, included requirements to query items raised by Healey Gate, for example, insurance and capital expenditure, as well as the reserve fund. We were referred to the case of the London Borough of Southwark v Paul and others under reference [2013]UKUT0375(LC). This case accepted that overheads incurred as an incidental cost to the carrying out of the works were recoverable. The question we needed to consider if that is the case, whether 5% is a reasonable fee. We understand that there had been or was to be a refund to all lessees of the management fees which had been charged in the past and that the administration fee will apply for the year 2018/19 onward.

9. Mrs Nolan queried the work done by Clarion to justify the 5% charge when all she said they received was documents which were passed onto them. She thought that a percentage of something less than 5%, perhaps 2%, would be reasonable.

10. There was then a general complaint by Mrs Nolan that as they only owned 25% of the Property, it seems unfair that they should have to pay any additional costs when it is the housing association which owes the 75% value. They were paying rent and that should therefore reflect in their liability to meet these types of costs.

11. Mrs Lovegrove's response was that whilst shared ownership was not the perfect answer to the housing crises, the leases were as they were and there was no room for there to be any alteration. The lease, she said, was clear as to the obligations and those that had been entered into by the Applicants. The service charges related to the leaseholders only as did the administration fee.

12. It was confirmed by the Respondents that there would be no objection to an order being made under section 20C of the Act.

DISCUSSION

13. In respect of the individual items set out on the schedule, there were certain matters that we could not deal with. Throughout it seems to us that the question of accountancy charges will need to be resolved when the final accounts are known. They are at the moment estimated and it seems unnecessary to make findings regard of same.

14. There are, however, certain items of expenditure which appear to have been challenged by the Applicants for which invoices are available. The first is an invoice by JB Services which the Applicants considered had been cancelled. We have had sight of that invoice and it appears that the works have been undertaken and the cost being sought appears to be a reasonable charge. The invoice relates to a leak coming from a fractured soil stack. It appears to be suggested that this was an individual charge to Flats 101, 106 and 111. It seems to us that that cannot be right. If this is a leak to a soil stack then that is a common service for which the block is required to make a contribution. In those circumstances, therefore, we can see no reason for there to be a challenge to the charge of £894. We say in respect of this item of expenditure that as with the others that we shall refer to, they are costs which will appear in the final accounts and we find that they are not susceptible to further challenge.

15. The next item of expenditure specifically challenged was that of an invoice from Speedman Contractors Limited in the sum of £1,560 which dealt with scaffolding and roofing repairs. The complaint made appeared to be that this was delayed in being undertaken and that not all the repair works were carried out. The invoice accepts this. It says that they repaired two slipped tiles and checked for others and found a slipped tile on the other side of the roof but it was too slippery to repair safely. In those circumstances it seems to us that this is a properly incurred charge and the sum of £1,560 is payable.

16. The third invoice from AP Contracting Limited related to the cleaning, in particular the removal of cigarette butts from the front of a number of blocks. These relate in our findings to the cleaning of the common areas. The entrances to the various blocks seems to fall within the estate cleaning charges and accordingly although Garner House is not mentioned, it has an obligation to make a contribution to this overall charge. We could, for example, have seen an invoice in which Garner House was named and the others were not. They would, however, expect to receive a contribution. The invoice is in the sum of £100. The amount, therefore, is de minimis when apportioned between the number of flats on the estate.

17. The same could be said for another invoice by AP Contracting which does specifically refer to Garner House and the removal of a number of items of waste on 6th November 2015. The response given by Remus was that non-domestic waste costs were apportioned between blocks unless it was clear where they came from. It seems in this case from the invoice, that these items clearly came from Garner House. The apportionment, therefore, of this cost will be down to the final accounts but the sum of £85 for the removal on two days of what appeared

to be some relatively substantial items seems to us to be perfectly reasonable and should not be challenged.

18. The final invoice is in respect of Ellis Sloane & Co for carrying out an inspection of the main structure and common parts of Garner House. The fee was £990 plus VAT. Whilst we find that it is not unreasonable for such a survey to be undertaken, we do think that a copy of such survey should be made available to the Applicants. They can then see what has been said and presumably have an idea as to what future costs may be planned.

19. There was a further invoice of £108 in respect of works to the communal stack which appears in the year ending June 2016. Our comments concerning the earlier invoice in this regard apply and it seems to us again this is not a charge susceptible to challenge.

DECISION

20. As set out above our findings are, in respect of the six invoices which we have referred to on the Scott Schedule, and at paragraphs 14 - 19 that they are recoverable charges and will form part of the final accounts and should not be the subject of further challenge.

21. In respect of the accountancy costs, these are at present estimated and it would be appropriate for the Applicants to wait and see how these figures are recorded and passed to them in the final accounts.

22. As to the administration fee, we think that a charge of 5% is a reasonable amount for Clarion to undertake a proper assessment of the costs passed to them by Healey Gate, to vet the accounts and to raise any queries that might arise on them or which are referred to them by the lessees. It seems to us that Clarion are doing the best they can given the difficult circumstances with the accounts.

23. As we have indicated above, it is hopeful that these accounting issues will now be resolved and that the parties can move forward avoiding further disputes of this nature.

24. We are content to make an order under section 20C of the Act considering it just and equitable to do so. This is largely on the basis that the Respondents, certainly Circle 33/Clarion, do not wish to object to such an order being made and further we think that Healey Gate Management Limited as the second Respondents have had difficulties with the managing agents, which they could and should have resolved before now. That has been a large part of the problems faced by the Applicants in this case. In those circumstances it seems to us that it would be reasonable and proper for us to make an order under section 20C such that the costs of these proceedings are not recoverable from the lessees. We hope in fact that both the Respondents will take the view that these costs are not recoverable at all from any lessee on the estate, although that is not a matter that we can pursue further.

Andrew Dutton

Judge: A A Dutton

Date: 14th November 2018

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

FIRST-TIER TRIBUNAL
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Case Reference	**:**	**CAM/11UF/LSC/2017/0051**
Property	**:**	**Flats 109 and 110 Garner House, Tadros Court, High Wycombe HP13 7GG**
Applicants	**:**	**Mrs D Clarke (109) and Mr and Mrs Nolan (110)**
Representatives	**:**	**Mrs Nolan with Mr Nolan and Mrs Clarke**
Respondents	**:**	**Circle 33 Housing Trust Limited now Clarion Housing Association Limited(1)** **Healey Gate Management Limited (2)**
Representatives	**:**	**For Clarion Mr J Sandham - Counsel with Mr P Kaluba and Mr M Sherwood, both of Clarion.** **For Healey Gate Mrs B Eves of Banner Property Services (Banner), managing agents**
Type of Application	**:**	**Liability to pay service charges**
Tribunal Member	**:**	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Econ) MSc MRICS** **Mr ON Miller BSc**
Venue	**:**	**Burnham Beeches Hotel, Burnham Beeches on 6th March 2018**
Date of Decision/Directions	**:**	

DECISION/DIRECTIONS

DECISION OF PART

The Tribunal makes the determinations set out below in respect of the service charge year ending June 2014. Directions are issued concerning the continuance of these proceedings.

BACKGROUND

1. On 9th August 2017 directions were issued following what proved to be an abortive attempt to determine the Applicants' application under s27A of the Landlord and Tenant Act 1985. As a result of those directions additional documentation became available and the matter was re-listed for a hearing on 6th March 2018.

2. At that hearing Mr and Mrs Nolan attended together with Mrs Clarke, who was accompanied by her daughter Miss Parry. Clarion was represented by Mr Sandham of Counsel. Mrs Eves, who attended a CMC on another matter involving the development at Windsor Gate remained to assist and represent Healey Gate Management Company Limited.

3. We had available a further bundle of papers produced by Clarion running to sum 515 pages. We also received further statements from the Applicants dated 15th September 2017 and 13th October 2017. The latter documents were replied to by Clarion, albeit undated. Within the additional bundle was a Scott Schedule running to some 11 pages covering the period June 2014 to June 2016 in respect of costs allocated to Garner House and a similar period for estate costs relating to Windsor Gate.

4. It became apparent very early on that this hearing was going the same way as the attempt in August 2017. As a result of a dispute between Healey Gate and the previous managing agents Remus, the accounts for the period 2015 -16 onwards had not been completed. Remus had ceased to be the managing agents for the development from March 2017 and that role was now fulfilled by Banner Property Services Limited (Banner). Hence the costs for those years were estimated. There were only final accounts for the years ending June 2014 and 2015. The application did not, in fact seek to challenge the year ending June 2014 but Mr Sandham raised no particular objection to us considering the costs set out on the Scott Schedule.

5. Mrs Nolan told us that the matter had come to a head when in February 2017 the Applicants received a letter from the Respondent, then Circle 33, indicating that the service charge would rise from £126.32 to £187.67 per month with no explanation. By a letter dated 14th March 2017 there was an attempt to put some flesh to the bones indicating that the annual service charges had increased from the estimated charge in 2016/17 of £1057.42 to the estimated charge in 2017/18 of £1480.77. These were based on figures given to Circle by Remus. In

addition it would appear that the ground rent increased from £240 per annum to £313.32. There appeared also to be a deficit from the year 2015-16 of £457.98, although without final certified accounts it is unclear how this figure arises. It is of course this year that Healey Gate disputes with Remus and no final accounts are available. These elements give rise to the increased monthly charge of £187.67, which contrary to Circle's letter dated 24th February 2017 does not relate just to service charge costs but includes both the ground rent and the deficit, both adding to the monthly total. The letter dated 14th March 2017 seeks to clarify this increase.

6. Until the letter of February 2017 it seems that the Applicants were not unduly concerned about the service charges. As a result of this letter there has been an attempt, in the main by Mrs Nolan to conduct an almost forensic assessment of the amounts being spent, involving a review of individual invoices and apportionments between block and estate costs.

7. We are not convinced that such an exercise will result in an answer which satisfies the Applicants.

8. **For the year June 2014 in respect of Garner House we make certain findings.** They are as follows. No real evidence was put to us by the Applicants that the charges for the door entry phone, gardening or management fees were excessive. The door entry phone cost relates to a contract with NACD which covers each door at Garner House, there being three, which seemed to surprise Mrs Nolan. This is an annual contract providing cover for the door entry systems. It was not suggested that this was an unreasonable amount. It may be that there are additional costs for call outs and that there has been problems, it seems with vandalism. However, we find that the charges for this year for these costs are reasonable. A similar charge is applied for 2015 and it is difficult to see that the charge for the subsequent year can be challenged.

9. As for gardening we were referred to invoices which appeared to relate just to Garner House and others to estate costs. Mrs Eves told us that for the year 2017 the estate charge, the block charge having been, we think, quite rightly abandoned, is around £22,000. The difference to the Applicants, taking into account the block and estate charge is not so substantial as to result in us disallowing the costs for this year. In reaching this conclusion we also considered that there was no specific evidence from the Applicants as the standard of the gardening undertaken around the development. We do accept that these costs appear to have been incurred by a company which is owned by a director of Remus, a fact that does not seem to have been disclosed to the residents at the time.

10. In so far as the management fees are concerned it would seem that the block charge equates to around £210 per flat with a share of the estate charge of £3744 per quarter. If that estate element is divided by the

number who contribute, which we were told by Mrs Eves was 285 it gives an annual charge for management, excluding the fee charged by Circle, of around £260 per unit. There is no evidence to suggest that this is an unreasonable amount and we allow it.

11. We have not considered the following years. We urge the Applicants to consider whether they wish to continue with the claim after the directions, which we will deal with, have been concluded. This case has already resulted in a great deal of time being spent by both sides as well as tax payer monies. The mischief appears to have arisen from February 2017. Until then it seems that the service charge was paid largely without demur. It is hoped that following the directions the Applicants will be able to see what has caused the increase, which we have alluded to at paragraph 5 above. Further we have suggested to Clarion that it may wish to review the interim demands and base those on the estimates now provided by Banner for September 2017 at £460 per quarter, rather than the estimates from Remus, which appear to be under challenge. They will also have to review their right to collect a management fee, a matter we raised in the August directions but which has been overlooked.

FURTHER DIRECTIONS

1) Within 7 days Banner will supply to the Applicants and to Clarion's solicitors a schedule of demands made for the year 2016-17 in respect of Garner House highlighting any differences between flats owned by the Applicants and others in the block.

2) By **6th April 2018** Clarion will provide a statement explaining any difference between the demands made of the Applicants and those of other lessees in the Block. The statement should include details of payments received from the Applicants for 2016-17 and clarify the amount attributed to rent, ground rent and service charge costs. The statement should also set out the terms of the flat lease which enables Clarion/Circle to recover management fees for its management of the applicants' flats from 2014 onwards. It is suggested that fresh demands might be appropriate reflecting the estimated costs produced by Banner.

3) The Applicants shall **by 20th April 2018** review the documentation/statements produced as above. If they wish to proceed with their application they must review the Scott Schedule and indicate whether items can be removed. They must bear in mind the comments we made above. They should remember that the monies representing the service charges are estimated costs and there is no indication when final accounts might be produced for the years 2015-16 and 216-17.

TRIBUNAL JUDGE DUTTON 12TH MARCH 2018

<u>IMPORTANT NOTE:</u>

- **These directions are formal orders and must be complied with**
- **They are intended to help the parties and the tribunal deal with applications swiftly and economically**
- **Failure to comply with directions could result in serious detriment to the defaulting party e.g. the tribunal may refuse to hear all or part of that party's case and orders may be made for them to reimburse costs or fees thrown away as a result of the default**
- **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email**