FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LSC/2019/0118**
Property	**:**	**Flat 7 Salisbury House, 23 Highbury Corner, London N5 1RB**
Applicants	**:**	**Peter Munro & 17 others ("the tenants")**
Representative	**:**	**In person**
Respondent:	**:**	**Islington & Shoreditch Housing Association Limited ("the landlord")**
Representative	**:**	**Capsticks Solicitors LLP**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge Angus Andrew** **Patrick Casey MRICS**
Date and venue of hearing	**:**	**19 June 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**25 June 2019**

DECISIONS

Decisions

1. Costs of £2,840 plus disbursements of £255 plus VAT were reasonably incurred by the landlord in the handover of its management functions to Salisbury House (Highbury Corner) RTM Company Ltd and may be recovered from the applicants under the service charge provisions of their leases.

The applications and the hearing

2. On 22 March 2019 the tribunal received the tenants' application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application was for a determination of the tenant's liability to pay service charges in respect of total costs of £7,534.80 incurred by the landlord in the handover of its management functions to the tenants' RTM company. In their application the tenants also applied for orders under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. By these applications the tenants sought orders limiting the landlord's ability to recover the costs of these proceedings either through the service charge or as an administration charge under the terms of their leases.

3. At the hearing the tenants were represented by Peter Munro and Tony Cowell. Mr Munro is the lessee of flat 7 and Mr Cowell is the lessee of flat 4. Thus, the tenants were effectively in person. The landlord was represented by Justin Bates, a barrister. Also present were Bridget Stark-Wills and Deeion Sharpe. Ms Stark-Wills is an associate solicitor with Capsticks and her witness statement is at pages 89 to 97 of the landlord's bundle. Ms Sharpe is employed by the landlord as its Head of Customer Neighbourhoods and her statement is at pages 130 to 139.

Background

4. Salisbury House is a block of 20 flats facing Holloway Road, nearer Highbury Corner. We only had a copy of Mr Munro's lease that is at tab 2 of the tenants' bundle. That lease is dated 21 August 1991 and was made between Highbury Corner Housing Co-operative Ltd and Mr Munro's predecessor in title. The lease was clearly granted under the right to buy legislation and as Mr Bates pointed out that was probably because the original lessee had a preserved right to buy.

5. The landlord now owns the reversion. It is a relatively small local housing association providing mainly affordable housing and home ownership in north and east London. We were told that the landlord has 2,200 units of housing stock of which some 500 units are let on long residential leases. Eighteen of the 20 flats in Salisbury House have been let on long residential lease whilst the remaining two flats are let on secure tenancies at social rents.

6. As far as the long leases are concerned the landlord clearly must manage the properties in which the flats are situated and it presumably recovers its costs through the service charge provisions of the relevant leases. We were told that the landlord undertakes this management work in-house and that it charges a

fixed fee of £142 per flat per year for this work. The recovery of such fee, which is analogous to a managing agents fee, will of course depend upon the service charge provisions of the individual leases. Ms Sharpe told us that the landlord does not apply hourly rates in calculating its management costs that are passed on to the leaseholders through the management fee. It is not clear if the fixed management fee covers the cost of statutory consultations or the cost of supervising any major work projects.

7. The tenants decided to exercise the statutory right to manage granted by the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). They formed an RTM company, Salisbury House (Highbury Corner) RTM Company Ltd. On 24 March 2018 they served a claim notice on the landlord. We were told and accept that this was the first occasion on which any of the landlord's long leaseholders had exercised a right to manage granted by the 2002 Act. The landlord instructed Capsticks to represent it. On 4 May 2018 the landlord served a counter notice admitting the RTM Company's right to manage Salisbury House. The acquisition date was given as 6 August 2018 but at the request of the RTM Company this was subsequently brought forward to 11 July 2018.

8. Having exercised the right to manage the RTM Company appointed managing agents. Those agents required the landlord to comply with its obligations under sections 92 and 93 of the 2002 Act. In summary those sections impose a duty on landlords to give a notice of contracts and to provide information. In addition, the managing agents required the landlord to comply with a building management checklist and a financial handover checklist. Much of the information required by those checklists goes beyond the landlord's statutory obligations to give notice of contracts and provide information. As the landlord had not previously faced a right to manage claim it instructed Capsticks to deal with this handover work and from the documents before us they appear to have undertaken that work in a professional manner.

9. Capsticks charged for the work undertaken on behalf of the landlord in the way that solicitors do: that is by the application of hourly rates to the time spent. Although the costs were not initially broken down between the claim notice and the handover work such a breakdown was eventually provided. Costs of £664 plus VAT (£796.80 in total) were incurred in respect of the completion of the work to the service of the counter notice. Costs of £6,024 plus VAT and disbursements of £255 plus VAT (£7534.80) were incurred in connection with the handover work. To start with the landlord sought to recover the total cost (£8331.60) from the RTM Company under the provisions of section 88 of the 2002 Act. For reasons that will become apparent it is unnecessary to consider the provisions of the 2002 Act in any detail but in summary section 88 provides that a landlord may recover its reasonable costs incurred *"in consequence of a claim notice given by the company"*.

10. Through the medium of the RTM Company the tenants protested about these total costs saying that they were substantially higher than the going rate charged by other landlords in RTM cases. The landlord reconsidered its position no doubt in the light of advice received from Capsticks. It took the view that it could only recover the costs down to the service of the counter notice (£796.80) under the

provisions of section 88. It limited its claim under that section and as Mr Bates accepted, the section 88 costs were agreed at £796.80.

11. The landlord then sought to recover the handover costs (£7,534.80 in total) under the service charge provisions of the tenants' leases so that collectively they would be responsible for nine-tenths of those costs. The tenants objected to paying those costs through the service charge and thus made their application to the tribunal. Initially they relied on alternative arguments. They said that the handover costs could not be recovered through the service charge under the terms of their leases. If they were wrong about that, they said that the costs were disproportionate and unreasonable and should be substantially reduced. However, during the hearing and having heard Mr Bate's submissions on liability the tenants abandoned their first argument. Mr Munro accepted that reasonable costs could be recovered by the landlord through the service charge but he maintained that the costs claimed were wholly unreasonable. Consequently, by the end of the hearing that was the only issue before us.

Summary of the parties cases

12. We hope that we do not do the parties an injustice by briefly summarising their positions that are set out in more detail in their respective statements of case.

13. For the landlord Mr Bates emphasised that the landlord is a small housing association and that this was the first right to manage claim that it had encountered. Given its resources it was reasonable for the landlord to instruct solicitors to complete the handover work. Both the time spent 57.41 hours and the hourly rates applied (from £110 to £180) were reasonable. Consequently, the costs were reasonably incurred.

14. In answer to our question about the appropriateness of using a firm of solicitors to undertake this work Mr Bates said that the landlord was on *"a learning curve"* and that they were entitled to charge for the additional cost. He drew an analogy with a firm of solicitors that might undertake a transaction for the first time. Such a firm, he said, would recover all its costs even though they would be substantially greater than the costs incurred in subsequent transactions when the appropriate documents could simply be selected from its *"memory bank"*.

15. On behalf of the tenants Mr Munro made five points. Firstly, the work should have been undertaken either in-house or by a firm managing agents. Secondly, the handover work had not been completed efficiently resulting in many e-mails. Thirdly, the introduction of a third party (that is Capsticks) resulted in inefficiencies. Fourthly, it was not reasonable that the tenants should have to pay the increased cost resulting from their being *"guinea pigs"*. Fifthly, they had been given no estimate or indication of the likely costs: if they had they would have elected to complete some of the work themselves, such as obtaining copy leases from the Land Registry.

Reasons for our decision

16. There is clearly an interesting discussion to be had as to whether the handover costs can be recovered under section 88 of the 2002 Act. We rather think they can. However, given Mr Bates concession it is not a discussion that can be had in this case.
17. As Mr Bates readily acknowledged solicitors have substantially higher charging rates than managing agents. Having considered the correspondence and the check lists to which we have referred it is apparent that the handover work undertaken by Capsticks was largely if not exclusively of an administrative nature and did not require the services of solicitors. In the main it consisted of the provision of documents and information within the landlord's possession. The reconciliation and closing accounts should not have presented a problem because they will be similar to the service charge accounts that the landlord undertakes on a regularly basis in the management of the 500 long leasehold flats within its stock.

18. We make no criticism of the quality of the work undertaken by Capsticks. There is nothing in the documents that we have seen that substantiates Mr Munro's suggestion that this was not *"a good handover"*. Indeed, the landlord agreed to bring the handover date forward and it appears to have gone beyond its statutory obligations in providing documents and information. It may have been reasonable for the landlord to take some initial advice from Capsticks on the extent of its obligations under sections 92 and 93 but that apart no legal involvement was either necessary or justified.

19. Equally we reject Mr Bates *"learning curve"* argument. As Judge Andrew pointed out from his previous 29 years in private practice a firm of solicitors would not generally impose *"learning curve"* costs on a client when repeat work can reasonably be expected. That apart *"the learning curve"* argument would still not justify the use of solicitors to undertake basic administrative work normally associated with the work of managing agents that, as Mr Bates acknowledged, have substantially lower charging rates.

20. It follows that we consider that the total handover costs were not reasonably incurred. Our difficulty is in assessing a reasonable cost in the absence of any in-house hourly charging rate. Doing the best what we can from the available evidence we consider that the handover work was very broadly equivalent to a year's basic management. Insurance and other contracts were cancelled rather than being renewed: accounts were prepared: documents and information was provided: closing statements were or will presumably be issued. On that basis we consider that it is reasonable for the landlord to recover its annual management fee from each of the tenants together with the disbursements that we were informed relate to land registry fees in obtaining copy documents and leases. If the tenants themselves had obtained the copy documents they would still have had to pay the Land Registry fees.

21. We assume that the management fee of £142 per flat is inclusive of VAT. On that basis we consider that total costs of £2,840 plus disbursements of £255 plus VAT were reasonably incurred and may be recovered through the service charge. For

the avoidance of doubt the tenants will collectively have to pay nine-tenths of the total sum.

22. If our assumptions about the management fee being inclusive of VAT is wrong then the landlord may also recover an additional VAT element and we trust that we can leave it to the good sense of the parties to calculate that sum.

23. Turning to the section 20C application we agree with Mr Bates that the right to manage having been acquired the landlord cannot recover the cost of these proceedings through the service charge. Turning to the paragraph 5A application we cannot find a provision in the only lease before us that would enable the landlord to recover the cost of these proceedings as an administration charge, in a case such as this where the application is made by the tenants. Consequently, we leave both applications in abeyance: if the landlord does in future attempt to recover the cost of these proceedings as either a service charge or an administration charge, the tenants may resuscitate them.

Name: Angus Andrew Date: 25 June 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).