FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: MAN/00FC/LSC/2019/0011** **: MAN/00FC/LAC/2019/0003**
Property	**: Cambridge Retirement Park, Grimsby, DN34 5UU**
Applicants	**: Various Leaseholders (see Annex)**
Representative	**: Mrs Mary Martire**
Respondent	**: Anchor Hanover**
Representative	**: Mrs Matusevicius FIRPM**
Type of Applications	**: Determination as to the payability and reasonableness of service charges under Section 27A (3) Landlord and Tenant Act 1985.** **: Variation of a fixed administration charge under paragraph 3 of Schedule 11 Commonhold and Leasehold Reform Act 2002.** **: Applications under sections 20C Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**: Judge T N Jackson** **Mr P Mountain**
Date and venue of Hearing	**: 22nd August 2019** **Grimsby Magistrates Court**
Date of Decision	**: 23rd September 2019**

DECISION

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Decision

We determine that:

a) The service charges for service charge years 2014/5 to 2018/9 as set out below are payable and reasonably incurred and reasonable in amount.

	One bedroom (per month)	Two and three bedroomed (per month)
2014/5	£81.57	£163.14
2015/6	£71.72	£143.43
2016/7	£73.86	£147.71
2017/8	£81.76	£163.52
2018/9	£82.17	£164.34

b) The service charge estimates for service charge year 2019/20 as set out below are payable and reasonable in amount.

	One bedroom (per month)	Two and three bedroomed (per month)
2019/20	£80.05	£160.09

We order that:

a) under section 20C of the Landlord and Tenant Act 1985, the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

b) under paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 Act, the Applicants' liability to pay an administrative charge in respect of litigation costs relating to these proceedings is extinguished.

Reasons for decision

Introduction

1. This is an application to determine the payability and reasonableness of service charges for service charge years 2014/5 to 2020/21.

2. There is a further application to vary a fixed administration charge.

3. There are also applications under section 20C Landlord and Tenant Act 1985 ('the 1985 Act') and paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') to limit the payment of the Landlord's costs.

Background

4. Cambridge Park, which comprises 85 units, was built in the late eighties/ early nineties and was developed in phases. It comprises Kings Court, Queens Court, St John's Court, Clare Court and Peter House Road.

5. The provisions of the Leases changed as each phase was built, resulting in different provisions in the Leases for Kings Court, Queens Court and St Johns Court to those of Clare Court and Peter House Road. The differences relate to the extent of the Landlord's repairing obligation and provisions relating to a Sinking Fund. The Leaseholders of Kings Court, Queens Court and St Johns Court appear to be at a significant disadvantage to those at Clare Court and Peter House Road.

6. The matter is further complicated by the fact that the Leases of properties formerly occupied by the resident housekeepers have slightly different Lease provisions to the Leases in the remainder of that phase. We are told that 8 Kings Court and 9 Queens Court have different provisions to the remainder of the Leases in Kings Court and Queen Court respectively. We are also told that the Lease for 2 Peter House Road a three bedroomed town house, has slightly different lease provisions to the other Leases relating to Peter House Road.

7. In the proportion to be paid for service charges, all Leases distinguish between one bedroomed, on the one hand and two and three bedroomed properties on the other, with the latter paying double the proportion of the former irrespective of the service to which it is applied.

8. Discussions have taken place to vary the Leases to rectify the anomalies and difficulties with the Leases, as currently drafted, to attempt to place the Leaseholders on an equal footing, but no variations to the Leases have yet been made. This application is not one to vary the Leases but is to determine the payability and reasonableness of service charges. Whilst we understand the difficulties caused by the drafting of the Leases, we are required to determine the applications before us considering the Leases as currently drafted, however unreasonable they may appear to be.

Inspection

9. We inspected the Property on 22nd August 2019 in the presence of Mrs M Matire (Secretary of the Residents Association), Mrs S Johnson and Mr J Cuthbertson (Chair of the Residents Association), on behalf of the Applicants. Mrs Matusevicius, (Home Ownership Business Partner,) Mr F Bartle (District Manager) and Mr R Chalmers (Estate Manager) attended on behalf of the Respondent.

10. Cambridge Park appears to have been built specifically for retired persons. There are 85 units comprising, one, two and three bedroomed flats, bungalows and town houses. The Park is of open plan construction with good pedestrian and road access and ample car parking. There is an Estate Managers Office, guest room, laundry and a communal residents lounge.

Hearing

11. The hearing was attended by Mrs Matire, Mrs Johnson and Mr Cuthbertson for the Applicants and Mrs Matusevicius and Mr Bartle for the Respondent.

Matters agreed

12. The Applicants agree that the divisor for a Leaseholders proportion of the Service Charge for services covered under Clause 1 of the Fourth Schedule is 0.74%. In accordance with the provisions of the Leases, the proportion of the Service Charges for a one bedroomed property is 0.74%, and for two and three bedroomed properties 1.48%.

13. Other matters regarding Lessee proportions are considered in paragraphs 17-19 below.

14. The application refers to service charge years 2014/5 to 2020/2021.Whilst we can determine whether charges are recoverable under the provisions of a Lease, we cannot determine the reasonableness of amounts in service charge year 2020/21 as service charge estimates have not yet been demanded of the Leaseholders.

Leases

15. We have seen Leases for both one and two/three bedroomed properties in Kings Court, Queens Court, St John's Court, Clare Court and Peter House Road. We have also seen the Leases for the housekeepers' properties.

16. Despite the numerous variations of the Leases as described in paragraph 5 above, we are fortunate in that, subject to the clause described in the footnote below, the provisions the subject of these applications are common in each of the Leases on the Estate and there is no dispute between the parties on that point. The relevant provisions are set out below:

Clause 5
The Lessor hereby covenants with the Lessee as follows:

(4) That subject to payment of the service charge as hereinbefore provided) the Lessor will maintain and keep in good and substantial repair and condition

(i) ***The main structure of the premises comprised in the development including the main walls the foundations and the roof thereof with its gutters and rainwater pipes***[1]

(i) All such gas and water pipes drains and electric cables and wires in under and upon the development as are enjoyed or used by the Lessee in common with the owners or Lessees of the other bungalows and flats on the development

(ii) The common areas of the development enjoyed or used by the Lessee in common as hereinafter provided and the boundary walls and fences of the Estate and the provision and tending of any trees grass shrubs or other plants as the Lessor shall decide to plant at its sole discretion.

....

(9) To provide so far as is practicable a twenty four hour monitoring and observation facility by providing a housekeeper which includes an assistant housekeeper to generally assist residents of the development but this will not impose on the Lessor an obligation to provide within the maintenance charge a nursing or medical service of any kind.

[1] This wording appears only in the Peter House Road and Clare Court Leases.

Fourth Schedule
Costs Expenses and outgoings and Matters in respect of which the Lessee is to contribute.

1.[Two twenty first part(s)][2] of

(a) ...

(b) The expense incurred by the Lessor in carrying out its obligations under Clause 5 of this Lease

(c) Providing communication support for the development

(d) .....
(e) .....
(f) ....

(g) All other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the development comprising .....

(h) .....
(i) ....

(j) Provided that this proportion may be reduced at the Lessors discretion if these common areas obligations or facilities are shared with the Lessees or residents of any adjoining developments.

2. A proportion of the costs of:

(i) Providing maintaining and running the housekeepers flats and office and providing housekeepers (including any remuneration and expenses for such housekeepers)

(ii) A Community centre or residents lounge (when built on adjoining land) provided that such facility shall be available to Lessees and residents of the development

AND such proportion to be dependent upon the number and size of dwellings or other residential units available and intended to have the benefit of the before mentioned facilities and in this respect the decision of the Landlord or its duly authorized agent as to what is a fair proportion of the costs of such facilities attributable to any dwelling or other unit shall be final and binding on the parties hereto.

[2] Different Leases have different specified proportions as more properties were developed with the divisor ranging from 1/20th to 2/56th.

Submissions

Proportions to be applied

17. The Applicants submit that it is unreasonable that two and three bedroomed properties are charged double the service charge of a one bedroomed property. They accept however, subject to Clause 2 of the Fourth Schedule, that this is provided for in Clause 1 of the Fourth Schedule of the Leases.

18. They submit that Clause 2 of the Fourth Schedule refers to "a proportion" and can therefore be distinguished from Clause 1 of the Fourth Schedule which refers to a specified proportion. They assert that the two and three bedroomed 'double' service charge rate should not therefore apply to the costs for the services within Clause 2 of the Fourth Schedule which can be fixed at a different proportion.

19. The Respondent submits that Clause 2 of the Fourth Schedule relates to costs which derive from Clause 5 and therefore the proportion to be applied is that set out in Clause 1 of the Fourth Schedule for each property, i.e. the specified proportion (which reflects the double service charge for the larger properties).

Management fee

20. The total management fees charged per annum in the relevant service charge years were as follows:
2014/5 £31,000/84 units = £369.10 (Housekeeper occupied 1 unit)
2015/6 £31,687/ 84 units = £377.23
2016/7 £34,996/85 units = £411.72 (Housekeeper vacated the unit)
2017/8 £38,406/85 units = £451.84
2018/9 £39,942/85 units = £469.91
2019/20 £41,260/85 units = £485.41

21. The Applicants accept that a management fee is recoverable under Clause 1 (g) of the Fourth Schedule. They assert that any increase in fees is limited by the House and Communities Agency (HCA) which limits any increase to increases of CPI (as of September) + 1 % each year. (page 458-9). They accept that the Leases do not specifically refer to the limit but consider that due to the demographic of the residents that there is a moral obligation to apply it.

22. The Applicants say that the overall increase on management fees since 2015 from 23.8% of the total service charges to 30% is unreasonable. Since 2009 overall management costs generally, including management fees, have increased from 39% to circa 50% of the total service charges. The increases in the management fees year on year in 2016/7 of 8.8% and in 2017/18 of 9.75% are unreasonable. The Applicants refer to the minutes of a meeting between the Residents Association and Anchor Leasehold and Finance Consultants on 2nd November 2017 (Section 8 Document 5) where it is reported that the Respondents said that the management fee had increased by over 9% due to "*under recovery in previous years on some of the Estates*". The Applicants say it is unreasonable that they should have to pay for other Estates.

23. The Applicants refer to a First tier Tribunal decision (CAM/26OJ/LSC/2015/0047) in which the Tribunal determined the management fees to be reasonable at properties which the Applicants describe as 'private 5 star luxury development in a listed building set in a magnificent park' where the management fees are lower than those paid by two bedroomed properties at Cambridge Park.

24. The Respondent says that the HCA limit does not apply as the properties were not built as affordable housing for the elderly with a subsidy. Even if the limit had applied, up until financial year 2017/8, the management fee fell below the limits which are set out below. From 2017/8 to 2019/20, the fee per unit was only between £20.84 and £23.21 per annum (on a unit basis) higher than that deemed appropriate to be charged at developments of affordable housing for the elderly.

2014/5 £409 per unit
2015/6 £418 per unit
2016/7 £422 per unit
2017/8 £431 per unit
2018/9 £447 per unit
2019/20 £462.20 per unit

25. The Respondent confirms, (as does the Service Charge Budget at pages 360 and 390), that following a review of the costs of management in 2016/7 and 2017/8, management fees were increased by CPI +1% and £3 per property per month. The Respondent says that there was no cross subsidy of other Estates and that each Estate is a cost centre and must recover its own costs. The minutes of the meeting of 2nd November 2017 explain some of the cost saving measures made by the Respondent including internal restructuring and the reasons for increases in costs. The Respondent submits that the fees are reasonable and comparable with those charged by other organisations which manage leasehold retirement housing.

Fees for the management of maintenance contracts

26. The total sums charged per annum in the relevant service charge years are as follows:
2014/5 £41
2015/6 £42
2016/7 £43
2017/8 £355
2018/9 £288
2019/20 £205

27. The Applicants accept that the fees are recoverable under the Leases but submit that the sums charged should form part of the management fee as it was charged prior to 2014/5. In 2014/5 it was charged as a separate item at 20% of the costs of the maintenance contracts being managed. They refer to ARHM Code of Practice Chapter 2 on Management Fees (Section 8 Document 7B) in which paragraph 2.5 lists "entering into and managing maintenance contracts" as a management service that **may** (our emphasis) be included within the management fee.

28. They refer to the Sellers Pack in April 2019 in which it refers to the service being included in the management fee (Section 8 Document 9). They refer to the Respondents Leasehold Management fees and HCA calculation document for 2018/9 (Section 8 Document 15) which also includes the service as part of the management fee.

29. The Applicants say that there was no consultation when the service was separated from the management fee as is required under ARHM Chapter 10 (Section 8 Document 7C). The Applicants also assert that the role is one for the Estate Manager for whom they are already charged.

30. The Respondent says that the change occurred in approximately 2005 as previously the charge was based on the costs of contracts across the whole of Respondent's Estates. The charge now relates to the costs of the maintenance contracts on Cambridge Park only. The contracts include emergency lighting and fire detection equipment; ventilation fans; fire-fighting equipment; door entry system and warden call system and water systems testing (page 468). The work is done by back office staff and not the Estate Manager.

31. The Respondent says that the entries in the documents referred to in paragraph 28 above are errors as the service was last included as part of the management fee in 2005 and it has been recorded correctly in the budgets as a separate item since 2013/4 (pages 337, 345, 365, 383,402 and 420).

Stock condition survey

32. Reference was made to a charge of £500 for a stock condition survey. On being asked by the Tribunal to confirm the date of the charge, after the hearing the Respondent advised that £500 had not been charged to date.

33. The Applicants say that the charge should form part of the management fee. They say that the Respondent's document 'Leasehold Management fees and HCA calculation (Section 8 Document 15) includes 'property inspections to check condition and deal with necessary repairs' within the management fee. They also refer to the description of Management Fee included within the Sellers Pack which includes a document entitled Management fee (Section 8 document 9) which lists items included within the fee including 'inspecting the development to check the condition'.

34. The Applicants assert that as they are tenants rather than freeholders, (though admittedly on long term leases of 250 years), it should be the freeholder's cost rather than that of a tenant, as it is effectively the freeholder's stock.

35. The Respondent says that the costs of the Stock Condition survey can be recovered under Clause 5(4) of the Leases under which the Lessor covenants to maintain and keep in good and substantial repair and condition various matters described in clause 5(4). The Respondent says that the Lessees are 'tenants' for a period of 250 years and that the only rent paid is a small ground rent rather than a commercial rent.

Visiting Estate manager costs

36. The sums charged per annum in the relevant service charge years are as follows:

2014/5	£17,536.32
2015/6	£21,248.76
2016/7	£21,897
2017/8	£22,332
2018/9	£22,273
2019/20	£23,245.83

The above costs include the salary, pension and employers' contributions.

37. Following a confusion around lunch breaks after which it was determined that they must be taken unpaid, a credit of £2370 was applied to the service charge account in 2018/9.

38. The Respondent submits that the charges are recoverable under Clause 5(9) and Clause 1 (g) and Clause 2 (i) of the Fourth Schedule.

39. The Applicants assert that the charges are not recoverable under Clause 5(9) as the Clause refers to a housekeeper rather than an Estate manager and that the roles are different. The Applicants produced the job descriptions of the housekeeper role (although we note it is headed 'Estate Manager') from 2008 (Section 8 Document 10) and of the current role of Estate manager (Section 8 Document 11). The Applicants says that the former role included a pastoral role whilst the current role is a mainly management role. The Applicants says that the pastoral role is fundamental bearing in mind the character of the development as a retirement development.

40. Historically two housekeepers worked a total of 48 hours per week and were provided with properties on site. The Applicants requested that the hours be reduced. It was agreed that the service would reduce to one full time role and that the roles did not need to be residential. The housekeepers and assistant housekeepers' properties were sold which increased the number of properties contributing to the service charge. The Applicants say that these reductions should have reduced the cost of the role but that overall costs have increased.

41. The Applicants says that the management part of the role should not take 32.75 hours per week and that the Estate Manager should be more efficient, particularly with the introduction of technology. The Applicants refer to the Estate Manager leaving the site for training courses and team meetings and spending one hour every 2 weeks at the residents' coffee morning but not at the Leaseholders request. They consider that the costs are excessive and that as they relate to 'management' they should be subsumed within the management fee.

42. The Applicants say that as the Estate Manager is employed by Anchor, the Respondent should pay for all on costs, e- learning, team meetings and off- site training as it has no relevance to Cambridge Park. They suggest both that they should only be charged the Estate Managers hourly rate without the on costs but also say that they shouldn't be charged at all (page 31). They say that they do not have a say in the terms and conditions of the Estate Manager as is required by paragraph 21.5 of AHRM Code of Practice (Section 8 Document 7D),

43. The Applicants consider that the increase in the proportion of the service charge for the combined element of management fee and the costs of the Estate Manager from 31.9% in 2008/9 to 50% at present is unreasonable.

44. The Applicants concede that they had not made any complaints regarding the performance of the Estate Manager but rather of the nature of the role itself. They had also suggested efficiencies.

45. The Respondent says that the role was always managerial with some pastoral element. The reduction in hours from 48 to 32.75 hours per week reduced the time available for the pastoral element. From 2018/9 the hours had increased from 32.75 to 36 hours. The Respondent does not consider the hours to be overgenerous for a development of that size and suggested that the Applicants are not aware of the full range of management activities that are required to be carried out. Mr Birtle confirmed that there had been no complaints regarding the performance of the Estate Manager. He also confirmed that, following suggestions from the Applicants, he had improved the performance management of on - site contractors.

46. Salary costs have increased due to the effects, across the Respondent's organization, of equal pay legislation and minimum pay requirements Further explanation was provided at the meeting of 9th November 2017. Costs also varied between years when there was no person in the role and therefore no salary to pay.

47. The Respondent submits that the Tribunal must consider the costs of the services rather than the percentage of the total service charge attributable to management costs.

Recruitment costs

48. The Applicants say that the costs of recruiting the Estate Manager should not be recharged. They point to Section 8 Documents 9 and 15 which refer to the costs of the recruitment service and recruitment and training of staff being included within the management fee. They identify costs of £250, £250 and £500 for service charge years 2014/5, 2015/16 and 2016/7.

49. The Respondent confirms that whilst the management costs of recruiting the Estate Manager are included within the management fees, the disbursements, such as DBS checks, advertising and agency fees, are not and these are charged to the respective development.

Anchorcall

50. The total sums charged annually in the relevant service charge years are as follows:

2014/5	£3556	(0.81p per property per week)
2015/6	£3627	(0.83p per property per week)
2016/7	£3740.40	(0.85p per property per week)
2017/8	£4908.24	(£1.11 per property per week)
2018/9	£5028.60	(£1.14 per property per week)
2019/20	£5141	(£1.14 per property per week)

51. The Respondent say that the charges are recoverable under both Clause 5 (9) and also Fourth Schedule Clause 1 (c) of the Leases.

52. The Applicants say that Clause 5(9) requires the provision of 24- hour monitoring "so far as is practicable". This does not require the service to be provided by Anchorcall which is the Respondent's in- house service. As it is an in-house service the Applicants contend that under the AHRM Code the costs should form part of the existing management fee.

53. The Applicants contend that it is not fit for purpose as the three pull cords in each property are not located in the main risk areas, namely the lounge and kitchen. The Applicants submit that not everyone requires such a service and those that do prefer to use the services of local providers who provide a pendant/watch that can track movement and which is linked to a phone line. The Applicants refer to the AGM on 5th February 2018 (Section 8 Document 16B) at which it was agreed that the residents did not want Anchorcall. The Applicants say that their concern is not regarding the current cost but the estimated costs of upgrading the system, estimated at £45-50,000 for a system they don't want

54. The Applicants provided anecdotal evidence of one incident where a resident had been left for several hours but with little further detail. They did not have a log of complaints regarding the lack of timely response.

55. The Respondent says that following the introduction of the Working Time Directive it was not possible to provide an 'on call' residential housekeeper and they therefore provide the required 24 -hour monitoring through a combination of the Estate Manager during their working hours and Anchorcall outside of those hours and on any occasion when the Estate Manager is not available in the office. Anchorcall is available 24 hours a day 365 days a year. A call to Anchorcall can result in a call to emergency services when required.

56. The Respondent accepts that the service needs upgrading. The capital cost of an upgrade to the system, (which would include pendant style tracker) would be paid from the Sinking Fund. As best practice, the Respondents will consult, as opposed to inform, on the proposals and costs of any upgrade.

57. The Respondent states that Anchorcall has a high reputation, that all calls are recorded and that there is no evidence of any delays regarding calls. The Respondent submits that the current charge to properties is cheaper than the comparables of three external providers provided by the Applicants of £114, £119 and £189 per annum plus for each a one -off joining fee (page 21).

Broadband and office running costs.

58. The contributions towards the cost of providing broadband, voice and data, (including office telephone charges) charged in the relevant service charge years are as follows:

2016/2017 £1052.80
2017/2018 £2060
2018/2019 £2220
2019/2020 £2239

59. The Respondent submits that the charges are recoverable under Clauses 1(g) and 2 (i) of the Fourth Schedule. Broadband was installed for the Estate Manager to be able to access back office functions although the guestroom and laundry fall within the Wi-Fi range.

60. The Applicants submit that as the residents do not get the benefit of the Wi-Fi then the cost should be subsumed within the management fee. They assert that there do not appear to have been any efficiencies such as a reduction in the Estate Managers hours as a result of its introduction. The costs include the costs of the office phone and printer. As the residents do not get the benefit of the use of office items, they do not consider that they should be charged for the costs.

61. As detailed in paragraph 18 above, the Applicants submit that any charges for the running of the office should be charged at a different proportion to the specified proportion in Clause 1 of the Fourth Schedule

62. The Respondents say that the costs are those required to run an office in modern times. A dial up service was installed in approximately 2009 the costs of which were absorbed by the Respondent. The system was upgraded in 2016/7 to include broadband and charges were subsequently made. The large increase between service charge years 2016/7 to 2017/8 reflected a budget accounting error in 2016/7 which was corrected in service charge year 2017/8.

<u>Sellers Pack</u>

63. The Applicants say that the cost of the Sellers and Purchasers Information Pack at £550 plus VAT is unreasonable and excessive and consider that £50 is more appropriate (see paragraphs 96-98 below). They say that the Pack is generic and that most of the information is readily available and merely needs copying.

64. The Respondent says that services provided during the sale of any individual property are not included in the management fee and requests for information and documentation during the process are separately chargeable as administrative charges.

65. A summary of additional charges was produced at the hearing. The Respondent says that they offer a 'package' which benefits leaseholders selling their properties as it is more cost effective than charging for each individual piece of information requested. The 'package' has a fee of £550 plus VAT (referred to as the Sales Transition and Administration Fee). The 'package' includes the preparation and supply of the Sellers and Purchasers Information Pack but also additional services including dealing with solicitors correspondence during the sales process; drafting and sending completion documentation; reconciliation and allocation of completion monies; the provision of a certificate of consent so change of ownership can be registered at the Land Registry. The services provided under the 'package' are carried out by non -legal staff under the supervision of Mrs Matusevicius. The 'package' is an optional service and leaseholders are not required to use it.

66. Mrs Matire and Mrs Johnson say that in all discussions regarding the fee of £550 they have not been made aware that the package is optional and were under the impression that it was compulsory. The fee was charged on 23rd April 2019 in relation to the sale of 9 Queens Court. As there had appeared to be a lack of communication regarding the optional nature of the 'package', Mrs Matusevicius informed the Applicants and the Tribunal that the fee charged on that occasion would be refunded to the former Leaseholder and that in future, Leaseholders would be explicitly advised that it was an optional service rather than compulsory.

Deliberations

Proportions

67. There is no dispute regarding the divisor to be used for the service charges. Whilst individual service charge proportions defined within the Leases could not be varied (without a formal Deed of Variation), under the provisions of Clause 1(j) of the Fourth Schedule the Lessor has reduced the overall proportions once all phases were built to ensure that Leaseholders collectively did not pay more than 100% of total costs. We find each of the Leases to be clear and unambiguous that two and three bedroomed properties pay double the service charge of a one bedroomed property. This application is not one to vary the Leases and we must therefore apply the terms of the Leases as drafted.

68. We agree with the Applicants that Clause 2 of the Fourth Schedule allows a decision to be made as to the proportion to be applied and it is not restricted to the proportion specified in Clause 1 of the same Schedule. On the face of it, there appears to be an opportunity to remedy the apparent unfairness of a two or three bedroomed property having to pay double the cost of office running expenses and the residents lounge despite the fact that they are not receiving double the 'service'. However, the Clause states that such proportion is to be dependent on the number and **size** (our emphasis) of dwellings available and intended to have the benefit of the facilities included within the Clause.

69. Having regard to the background of the phased development of the Estate; the interpretation of each Lease as a separate document, (all of which appear to be drafted on the presumption of future phases and include future proof clauses re amending proportions such as Clause 1 (j) of the Fourth Schedule); the amendments to the specified proportions in the later Leases as the development progressed which continued with the double service charge for two and three bedroomed dwellings, and the Leases for the Estate taken in the round, we find that the inclusion of 'size' in Clause 2 of the Fourth Schedule to be consistent with the principle throughout the Leases of a double charge for two and three bedroomed dwellings. We consider the discretion in Clause 2 relates rather to whether or not the dwellings had the benefit of the facilities. We therefore do not consider it appropriate to reduce the proportion specified in Clause 2 to a different proportion than that specified in Clause 1 of the Fourth Schedule.

Management fee

70. As agreed between the parties, management fees are recoverable under Clause 1 (g) of the Fourth Schedule of the Lease.

71. The HCA limit is not applicable as this Estate does not fall within the criteria to which the limit applies. Even if it did, the limit still does not apply as the Leases do not contain a clause which specifies that the limit applies and this is accepted by the Applicants. We note the 'moral' argument but do not consider that it prevails over an organisation's fiduciary duty to recover its' costs (subject to those costs being reasonable). However, the HCA limit is a useful benchmark when assessing the reasonableness of management fees generally.

72. Whilst we note the Applicants concern regarding the increase of the proportion of the service charge due to management fees and management costs more generally, we must have regard to whether the fees themselves are unreasonable rather than their impact on the overall service charge. Management fees (or management costs generally) forming a large proportion of the service charge does not of itself make the management fees unreasonable. We accept the Respondent's explanation that the increases in 2016/7 and 2017/8 were due to a previous under-recovery of costs for Cambridge Park (as opposed to subsidizing the under-recovery of costs at other Estates). The minute of the 2nd November 2017 meeting can be interpreted in both ways and this is consistent with each Estate being its own cost centre.

73. We consider that the Applicants are not clear as to the purpose of the management fee, which is a contribution towards the provision of services to residents that are not directly provided at the Estate, for example the costs of the support services such as HR, procurement and finance teams, management and overheads. Whilst stating that the current management fees are unreasonable, throughout the case they have stated that they also consider that the management fee should include fees for the management of maintenance contracts; Stock Condition Survey; cost of the Estate Manager; the costs of Anchorcall as it is an in house service; the costs of broadband and office expenses. Regardless of under which budget head they are placed, all the costs related to those items have to be charged for by the Respondent in order for the Respondent to recover their costs. If those costs were applied to the management fee, the management fee would necessarily increase. The key issue is not under what 'label' the charge is made, but whether the charges (under whichever label) are reasonable.

74. We attach little weight to the First Tier Tribunal decision provided by the Applicants as the terms of the Leases the subject of this application require a 'double charge' for two and three bedroomed houses and this does not assist when comparing charges with two bedroomed houses on other Estates subject to different Leases. We have reviewed the AGM minutes and, whilst it is clear that the Applicants and the Respondent have different views on matters, we find limited evidence of poor management such as to justify a reduction in the management fees.

75. Having inspected the Estate, having had regard to the HCA limit as a guide only and based on our experience as a specialist Tribunal, we find the management fees in each of the service charge years 2014/5 to 2018/9 to be reasonably incurred and reasonable in amount. We find the estimated fees for service charge year 2019/20 to be reasonable in amount.

<u>Fees for the management of maintenance contracts</u>

76. The Applicants agree that the costs are recoverable under the Leases and we agree. In determining whether they are reasonable we consider it to be irrelevant as to whether the charges are described as management fees or separated out as a separate budget item, although it is unfortunate that the drafting errors referred to above have occurred.
We have limited evidence as to whether or not there was any consultation in 2005 when the charges were separated. In our view, there did there need to be any such consultation with the Leaseholders on any change in 'labelling' of a service charge under the provisions described in Chapter 10 of ARHM Code.

77. We consider the range of maintenance contracts to be appropriate for a development of this nature. The Applicants have stated that they consider 20% to be unreasonable and that there should be no charge. We consider 20% to be reasonable although at the higher end of the range of reasonableness.

78. We find the fees for the management of the maintenance contracts in each of the service charge years to be reasonably incurred and reasonable in amount. We find the estimated charges for service charge 2019/20 to be reasonable in amount.

Stock Condition Survey

79. We determine that the costs of a Stock Condition Survey are not included in the management fee. We consider that references to 'inspections to check the condition' in the documents referred to in paragraph 33 above refer to the regular inspections carried out on site to identify day to day repairs which is distinct from a Stock Condition Survey which is carried out on a 5 year basis, to assess for a 30 year period the overall condition of the stock, long term repairs and the implications on the sinking fund of any long term works required.

80. The costs of a Stock Condition Survey are recoverable under Clauses 1(b) and 1(g) of the Fourth Schedule of the Lease. However, no charge has yet been made.

Visiting Estate Manager

81. We find that the charges are recoverable under Clause 5(9) and Clause 1 (g) and Clause 2(i) of the Fourth Schedule of the Leases.

82. We do not accept the Applicants' argument that on costs should not be included or that the costs of training or attending team meetings should be excluded from the charges. Put simply, that is not how things work. Neither do we accept that as the Applicants do not have an input into terms and conditions that they should not be charged with the Estate Managers salary. AHRM paragraph 21.5 advises that residents should be informed of the terms of employment, duties and responsibilities and a copy of the job description and hours of duty. It does not refer to conditions of employment.

83. The Respondent is required to ensure that any employees terms and conditions are comparable across their organization. It is not the Applicants' role to have an input into those elements. The Respondent is required under the Leases to ensure the proper management of the Estate and they choose to do that through an Estate Manager. It is for the Respondent to determine what the Estate Managers responsibilities are and those are set out in a job description. If Leaseholders wish any services above those already identified in the job description, such as an enhanced pastoral role, this would need to be negotiated with the Respondent and for which appropriate charges would no doubt be made.

84. We have limited evidence of any poor performance of the Estate Manager that would justify a reduction in the service charges. Having inspected the Estate, reviewed the job description of the Estate Manager and based on our experience as a specialist Tribunal we find the charges for the Estate Manager in each of the service charge years to be reasonably incurred and reasonable in amount. We find the estimated charges for service charge year 2019/20 to be reasonable in amount.

Recruitment costs

85. We find that the charges are recoverable under Clause 5(9) and Clause 1 (g) and Clause 2(i) of the Fourth Schedule of the Leases. The costs of employing an Estate Manager must reasonably include the disbursements necessary in the recruitment process.

86. We find the charges for recruitment costs for the Estate Manager of £250, £250 and £500 for service charge years 2014/5, 2015/16 and 2016/7 to be reasonably incurred and reasonable in amount.

Anchorcall

87. We consider that there has been confusion in relation to the role of the Estate Manager and whether that role is the means by which the Respondent complies with Clause 5 (9). If we look at Clause 5 (9) it refers to '*provide so far as is practicable a twenty four hour monitoring and observation facility by providing a housekeeper which includes an assistant housekeeper to generally assist residents….*'.

88. As a result of the Working Time Directives, it is no longer possible to have employees on 24 -hour call. Further the residents agreed not to have a residential housekeeper and also agreed a reduction in the hours of the role of the person who was to be on site, now described as Estate Manager. The purpose of the clause is to provide 24 -hour monitoring and observation. Any staff were there to provide 'general assistance' but specifically no nursing or medical service. Having regard to the background as described above, this has implications for 'so far as practicable'.

89. Further, viewing the clause through the perspective of modern technology, we find that a 24 hour 365 day a year emergency call and monitoring service meets the requirements of the Clause. That provision is enhanced by access to the Estate Manager during their working hours. The Applicants appear to accept that a technological solution meets the requirements of the Clause as they have provided alternative technological providers. It appears that the Applicants issue is that some Leaseholders don't want a 24 hour monitoring service at all and those that do do not want the service to be provided by Anchor. In relation to the former, until the Leases are varied, the Respondent is required to provide a 24 hour monitoring service whether or not it is required by all Leaseholders. The latter aspect is considered below. We find that the charges are recoverable under both Clause 5 (9) and also Fourth Schedule Clause 1 (c) of the Leases.

90. We note that the Applicants would prefer to use an external provider. We have noted the comparables provided and note that Anchorcall is cheaper, although we accept that the comparables provide a more modern approach with a pendant/watch. We have limited evidence that the system is not fit for purpose although we accept that it appears to be 'of its time' and Leaseholders would prefer a more modern service.

91. We cannot deal with the Applicants concerns regarding the estimated costs of a proposed upgrade to Anchorcall as the costs have not yet been incurred and any costs will be recovered by the Sinking Fund rather than by the variable service charge. The anomalous terms in the Leases regarding contributions to the Sinking Fund are not before us in this application.

92. We find the charges for Anchorcall in each of the service charge years 2014/5 to 2018/9 to be reasonably incurred and reasonable in amount. We find the estimated charges in 2019/20 to be reasonable in amount.

Broadband and office running costs

93. We find that the charges are recoverable under Clauses 1(g) and 2 (i) of the Fourth Schedule of the Leases. The broadband, telephone and printer are for the use of the Estate Manager and we consider it entirely appropriate that this should be available in a modern work environment It is irrelevant that they are not available for the use of the Leaseholders. We also find the charges in each of the service charge years 2016/7 to 2018/9 to be reasonably incurred and reasonable in amount. We find the estimated charges in service charge year 2019/20 to be reasonable in amount.

Sellers pack

94. We find that the services provided for the £550 plus VAT fee are not included within the management fee and that the Sales Transition and Administration Fee is separately chargeable as an administrative charge. We are clear that the fee of £550 plus VAT is for a service wider than the provision of just the Sellers Pack itself, (which we accept is likely to contain generic information). We are also satisfied that the fee of £550 is for an optional service and that a Leaseholder can choose instead to pay separately the fees set out in the summary of additional charges for all aspects of a sale. We note for example that a copy of a Lease is £50 plus VAT; enquiries during the sales process are charged at £25 plus VAT; Memorandum of Articles of Association at £50 plus VAT; Notice of Assignment £35 plus VAT.

95. The drafting of the individual Leases and the anomalies between the different Leases arising from the phased development of the Estate is likely to increase the solicitors' enquiries that need to be made during any sale. We consider that the charge is reasonable, (although at the higher end of the range of reasonableness).

Application to vary a fixed administrative charge

96. The Applicants applied to vary clause 3 (h) (2) of the Leases. The Clause provides that for the purposes of registration of any transfer, assignment, mortgage, legal charge, letters of administration or other instrument affecting or evidencing the devolution of the title of the Lease, the Lessee will pay the Lessor "*£10 in respect of a mortgage or legal charge or other document or instrument".*

97. The Applicants applied to vary the Lease to increase the fee from £10 to £50.

98. It became apparent that the Applicants had misunderstood the clause as their intention with the variation was to reduce the administrative charge of £550 for the Sales Transfer and Administration Fee (referred to in paragraphs 63-66 above) to £50. On being advised of the correct interpretation of the Clause they applied to withdraw the application. Mrs Matusevicius had no objection to the withdrawal.

99. The Tribunal consented to the withdrawal.

Applications under Section 20 C of the 1985 Act and Paragraph 5(A) of Schedule 11 of the 2002 Act.

100. The Applicants applied for an order under the 1985 Act that the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

101. The Applicants also applied for an order under the 2002 Act to reduce or extinguish the Applicants liability to pay an 'administrative charge in respect of litigation costs' i.e. contractual costs in a Lease.

102. The Respondent had no objection to either application.

103. When considering the applications, it should be made clear that we make no findings as to whether the Respondent has a contractual ability under the terms of the Leases to recover its costs or the quantum of those costs. The exercise of our discretion is whether the Respondent should be entitled to recover any costs it had incurred in connection with these proceedings.

104. As the Respondent has not objected to the applications, we make the orders requested by the Applicants under each application.

General

105. The application before us was not in the main concerned with many of the anomalies in the Leases but it was clear that the anomalies were causing significant difficulty. We encourage all parties to pursue a satisfactory answer to the present difficulties caused by the current drafting of the numerous Leases as the alternative could potentially involve further applications to the Tribunal or other litigation. Now the Estate has been completed, all parties would benefit from a wholescale review of the Leases to ensure, so far as possible, that Leaseholders are put on an equal footing on a range of matters that were not before us in this application but were apparent from reading the Leases and the Applicants' submissions. It would also be an opportunity to review whether or not a 24-hour monitoring service as currently required by Clause 5 (9) is still required some 30 plus years after the drafting of the Leases, and if it is, in what guise. We do not underestimate the task, as any variations are likely to result in winners and losers compared to the current position but we would still encourage the parties to face the challenge in the hope of achieving a clearer position for the future.

Appeal

106. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson

Annex

1. R Thomas
2. L Fidlin
3. B Peddie
4. P Cook
5. Mr & Mrs Farr
6. M Willows
7. B Waller
8. S Johnson
9. M & F Martire
10. K Wheelhouse
11. M Rogers
12. Mrs A Watts
13. A Hutchins
14. A Oblades
15. A & G Walter
16. J & S Lamming
17. K Horrell
18. M & P MacDonald
19. M Campbell
20. B & D Francis
21. B West
22. J & K Elshaw
23. D Stringer
24. A McKellar
25. R Matthews
26. S Charlesworth
27. P Mayall
28. M Farrow
29. B Woods
30. J Dodds
31. D Lavin
32. V Sadler & G Coupeland
33. P Chadwick
34. M Hilditch
35. L Bailey
36. J Challis
37. R Alliston
38. S & M Douglas
39. M Hodson
40. S Calledine
41. _R Blades
42. J Regan
43. J Deveraux
44. M Horton
45. W Leach
46. M North
47. E Bedford
48. D Goodwin
49. K Brown
50. J Cowie
51. E Kyme
52. F Cooledge
53. J Ellerby
54. W Egan
55. J & F Platt

56. M Jones
57. K Watson
58. J Jobson
59. J Brooks
60. J & P Norval
61. J Jackson
62. J Collins
63. B Vere Clark
64. M Pritchett
65. A Thomas
66. I Loveday
67. N Hallett
68. Mrs R King
69. P Peters
70. Mrs B Smith
71. J Watson
72. S Pope
73. B & J Cuthbertson
74. J Chittock
75. M Davie
76. B Barker
77. H Davies
78. J & R Lambert
79. G Thornton
80. F MacDonald
81. J & T Stringer
82. Bill Sate
83. G Robson
84. M Nuttall
85. D Perkins & J Kirby