



**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/26UF/LSC/2019/0041

Property : 47 Regal Court, Bancroft, Hertford SG5 1LJ

Applicant : Len Garwood

Represented by : In person

Respondent : Home Group Ltd

Represented by : Mr Gibbs, solicitor.

Application : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the liability to pay service charges and administration charges.

Tribunal Members : Judge S Reeder
Ms M Krisko BSc (EST MAN) FRICS
Mr J Francis QPM

Date of hearing : 20 December 2019
Cambridge Magistrates Court, 12 St Andrews Street,
Cambridge CB2 3AX

Date of Decision : 20 December 2019

Date Written : 24 January 2020

DECISION

DECISION

1. The Tribunal determines the relevant charges due and payable to be as follows –

	2015/16	2016/17	2017/18	2018/19
Office expenses	£1959.80	£942.08	£997	£1000**
Training	zero	zero	£115	£100**
Management fee	£7,423.50 [£188.56]	£7,519 [£191]	£8,445 [£214.50]	£16,417**

These are the Regal Court block charges and so are subject apportionment as provided for in the lease to calculate the applicant's individual charge.

As the only adjustment required by this Decision relates to the management fee the adjusted block charge is followed by the adjusted individual charge in [brackets] in respect of the management charge.

The 2018/2019 charges marked ** are estimated charges and subject to the final account and subsequent service charge demand for that year. Accordingly the Tribunal indicated that it was not to minded make any determination on that estimated cost, and neither party demurred.

2. No order for costs is made pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 so both parties bear their own costs.
3. An order is made pursuant to s20C of the Landlord and Tenant Act 1985 in respect of the current lessees of 2-12 and 14-47 Regal Court at the date of this Decision.

REASONS

The application, parties and dispute

1. The applicant, Mr Len Garwood, is the lessee of 47 Regal Court, Bancroft, Hitchin SG5 1LJ. The property is a 2 bedroom flat on the third floor of a purpose built block. Regal Court is a retirement property comprising 34 one bed units and 11 two bed units.
2. The respondent, Home Group, is a substantial housing association registered with the Regulator of Social Housing, and is the lessor of 47 Regal Court.
3. The applicant challenges the service charges levied for the accounting years 2016, 2017, 2018, and 2019. The service charge items challenged are the same for each of the relevant years and the relevant Regal Court block charges, subject to apportionment between the lessees as provided for in the lease, are –

	2015/16	2016/17	2017/18	2018/19
Office expenses	£1959.80	£942.08	£997	£1000
Training	zero	zero	£115	£100
Management fee	£14847	£15039	£16890	£16417

4. The applicant states that he has been querying these charges with the respondent since 2015 but has received no reasoned response other than that the respondent considers them to be payable.
5. The applicant seeks an order pursuant to section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with these proceedings before the Tribunal are not to be included in the amount of any service charge payable by him or payable by the lessees of 2-12 and 14-46 Regal Court.
6. The application was received on 21 June 2019. Deputy Regional Valuer Hardman made a directions order on the papers on 25 July 2019 setting out preparatory steps for this hearing. No party sought to exercise the permission granted in that order to vary the same following service of the order. That directions order stated that the Tribunal did not consider that a property inspection was necessary and that it did not propose to do so unless either party confirmed that it wanted such an inspection. Neither party requested an inspection. The Tribunal did not inspect.
7. The case has been determined following a hearing on 20 December 2019.

The law

8. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter ‘the LTA 1985’) sets out the Tribunal’s jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
9. Section 18 sets out the meanings of ‘service charge’ and ‘relevant costs’.
10. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
11. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by

the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs.

12. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –
An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
13. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

The hearing & the materials considered

14. The hearing was attended by Mr Garwood who was accompanied by his wife, and by Mr Gibbs (solicitor for the respondent) accompanied by Mr Clarke (general practice surveyor for the respondent).
15. The Tribunal was assisted by oral argument from Mr Garwood and Mr Gibbs. Both presented their respective positions with admirable clarity and succinctness.
16. Both were offered the opportunity to ask questions of the other in order to test the respective contentions made. Both helpfully answered questions posed by the Tribunal. In particular, Mr Gibbs' submissions were well considered and realistic and delivered with skill.
17. Each party has provided us with an indexed hearing bundle, including the key documents as referred to us by both of them respectively. In accordance with the directions order the parties have produced a Scott style Schedule identifying the matters in dispute and the parties' respective positions on the issues raised. Both parties have filed statements of case with supporting documentation for their respective positions, and witness statements. The bundles contain the relevant service charge budgets, accounts and invoices.
18. Direction 9 in the order made on 25 July 2019 required the hearing bundle to contain the lease or specimen lease and a schedule of any relevant variations on other leases. The respondent has provided a cope lease dated 11 January 1991 We are provided with an electronic office copy of the lease dated 11 January 1991 which appears to have been

produced upon completion of the housing scheme, together with a registry of title including a schedule of notices of leases which includes 47 Regal Court.

19. In response to a pre-hearing request by the Tribunal the respondent has provided us with written job description of the 'Scheme Manager' which appears to be generic across the respondent's schemes. This states the 'job purpose' as being "to effectively co-ordinate all services within the leasehold retirement scheme to meet the requirements of the lease whilst providing a safe and welcoming environment that enables leaseholders to feel secure and live independently".
20. The applicant's bundle includes a volume of email correspondence with the Leasehold Advisory Service about this dispute. The interpretation of the lease and determination of the liability to pay and reasonableness of the service charges in dispute is for the this Tribunal. We have therefore declined to read that correspondence.
21. The respondent has, for the first time at the hearing, sought permission to file, serve and rely upon a further statement addressing the role of the warden or scheme manager and the resulting 'office expenses'. The directions order made on 25 July 2019 directed the respondent to file any statements it relied upon by 26 September 2019. The respondent has already filed its main statement of case on 26 September, together with a further statement from Beverley Hart dated 4 December 2019 and served on 12 December 2019 which has been served on the applicant a week ago, and admitted and read by the Tribunal. Despite Mr Gibb's fluent advocacy it is clear that he cannot offer any explanation for the delay in seeking permission to adduce this further additional statement until this hearing and so almost 3 months after the deadline set in the directions order. That directions order stated in clear terms the potential sanctions for non-compliance. Mr Garwood acts in person and would be required to read and assimilate that new statement during the hearing which is unfair. The Tribunal has reminded itself of the provisions of the Tribunal Procedure (first-tier Tribunal)(Property Chamber) Rules 2013 including Rules 3, 6, 8 & 18(6)(b), and has refused permission to now file, serve and rely upon this further additional statement.

The lease

22. Direction 9 in the order made on 25 July 2019 required the hearing bundle to contain the lease or specimen lease and a schedule of any relevant variations on other leases. The Respondent has provided a cope lease dated 11 January 1991 We are provided with an electronic office copy of the lease dated 11 January 1991 which appears to have been produced upon completion of the housing scheme, together with a registry of title including a schedule of notices of leases which includes 47 Regal Court. The relevant provisions of the lease discussed during the hearing are (adopting the numbering of the lease) –

5th Schedule paragraph 1

The Association covenants to.....maintain at all times the services of a resident warden for the performance within the development of the following duties.....(a) responding to the warden call system link between the property and the warden's residence.....(b) whilst respecting the independence and privacy which the purchaser may desire maintaining contact with the purchaser looking out for signs of the need and summoning medical or other aid as and when the Association deems it necessary.....(c) liaising with doctors social workers external organisations and

friends and relatives of the purchaser as necessary.....(d) assisting with and promoting use of the common room by the residents of the dwellings comprised in the development and arranging for the same to be kept locked when not in use..... providing always.....(ii) the warden is not employed on 24 hours duty but will be available during night time hours to answer calls.....(iii) the warden shall be under no duty to carry out domestic duties in or around the property

5th Schedule paragraph 4

The Association covenants to..... keep and maintain at all times in the property an emergency warden call system linked to the warden's residence.

5th Schedule paragraph 13

The Association covenants.....not to use the warden's residence for any purpose other than as or incidental to a private dwelling for the use of a resident warden to supervise and maintain services for the benefit of the owners and occupiers of the dwellings comprised in the development.

5th Schedule paragraph 16

The Association may at any time during the said term add to diminish modify or alter any services provided by them if by any reason of any change in circumstances the Association considers it to be desirable and in the interests of good management and for the general benefit of the occupiers of flats within the development any such change to be subject to the agreement of a majority of the residents.

6th Schedule Part I paragraph 2

The purchaser shall pay to the Association a sum without deduction equal to the specified percentage of the total amount specified in (the paragraph notice of sums spent on the matters specified in Part II of this Schedule) to be paid in quarterly instalments on the usual quarter days.....

6th Schedule Part II paragraph 1

Expenditure to be recovered by means of the maintenance charge [includes].....the sums spent by the Association in and incidental to the observance and performance of covenants.....in the 5th Schedule and Part I of this Schedule.

6th Schedule Part II paragraph 2

Expenditure to be recovered by means of the maintenance charge [includes] ...all fees charges expenses salaries wages and commissions paid to any.....agent....contractor or employee who the Association shall employ in connection with the carrying out of its obligations under this lease and the leases including the costs of and incidental to the preparation of the [maintenance charge] estimates notices and accounts referred to in Part I of this Schedule

6th Schedule Part II paragraph 3

Expenditure to be recovered by means of the maintenance charge [includes]..... all expenditure incurred by the Association in performing its obligations pursuant to the covenants contained in the 5th Schedule in respect of any employees of the Association

on the provision of uniforms clothing accommodation and all outgoings incurred in connection therewith or payable in respect thereof and the cost of any such other items in connection therewith or payable in respect thereof as the Association shall from time to time determine.

6th Schedule Part II paragraph 10

Expenditure to be recovered by means of the maintenance charge [includes]..... the costs of management of the property and the development including the costs of preparing and auditing accounts and printing and sending out of the notices circulars reports or accounts and all fees payable to the government or any such body.

23. The lease defines the relevant terms including ‘property’, ‘development’, ‘wardens residence’, ‘common room’, and ‘maintenance charge’. It expressly provides that ‘association’, ‘company’ and ‘purchaser’ include the successors and derivatees in title of the same.

Issues, discussion and determinations

24. The Applicant’s challenge to the liability for and reasonableness of the service charges relates to specific items being training costs, office expenses, and the management charge.

The Training Costs

25. The Applicant has argued that any training costs should be included as part of the management fee and cannot be separately recharged as additional costs. The 2017/18 charge is £115 and the 2018/18 charge is £100.
26. In its written statement the respondent states that these costs refer to “face to face and e-learning training that the resident warden attends as required in their role”.
27. During the hearing Mr Gibbs has identified and explained (including by reference to the detailed actual costs schedule for the period and the supporting costs documents) that the £115 charge for 2017/18 has in fact been misdescribed as a ‘training cost’ and is a recharge for communal parts consumables. Once this has been explained Mr Garwood has very promptly and fairly accepted that it is payable.
28. The 2018/19 charge is an estimate and is subject to the final account and subsequent service charge demand for that year. Accordingly the Tribunal indicated that it was not to make any determination on that estimated cost, and neither party demurred.

Office expenses

29. The respondent confirms in its evidence that the ‘office expenses’ item relates to maintaining the resident warden’s office and the provision of services of the ‘resident warden’ on site. The role of resident warden (using the language of the lease) has been retitled as ‘scheme manager’. The parties confirmed that Regal Court has a scheme

manager named “Hilary” who resides in Flat 1, maintains an office in the block and is available between the hours of 9am – 5pm on Monday to Thursday of each week. This is augmented by an out of hours emergency call system.

30. The office expenses charges challenged are £1959.80 for 2015/16, £942.08 for 2016/17 and £997 for 2017/18.
31. The office expense charge of £1000 for 2018/19 is an estimate and is subject to the final account and subsequent service charge demand for that year. Accordingly the Tribunal indicated that it was not minded to make any determination on that estimated cost, and neither party demurred.
32. The applicant argues that any items for the use of the scheme manager to perform her duties should be included as part of the management fee and cannot be separately recharged as additional costs.
33. In respect of each of the relevant accounting years the applicant argues that the ‘office expenses’, which he has been told by the respondent includes telephone, broadband, stationary, postage, printer ink and similar equipment costs, should form part of the management fee and cannot be separately recharged as additional costs. He accepts that consumables for the guest room, lounges, kitchen and community areas can be recharged. He accepts that other items up to £50 can be recharged but items in excess of £50 can only be charged with prior agreement.
34. For the year 2015/2016 the applicant also challenges the individual component sums of £326.23 recharged in respect of a ‘relief manager’ and £26.90 recharged as ‘recruitment costs’. The respondent has confirmed in its evidence that these costs were incurred to cover sickness absence when a vacancy arose for the resident warden for a period. These are actual costs supported by invoices. The Tribunal determines that they are reasonable costs properly incurred which fall within the scope of the 5th Schedule costs and so are payable in full.
35. The respondent argues that the costs of the warden and her office are discrete and separate from the management fee which is intended to cover “all of the usual lessor management tasks in the lease”, so that these costs are within the scope of 5th Schedule costs (ie. resident warden costs) and do not fall within the scope of 6th Schedule costs.
36. The 5th Schedule to the lease clearly covenants to provide a resident warden. Paragraphs 1 and 4 provide the scope of that role. The 6th Schedule expressly reserves the right to recharge the costs of the resident warden as part of the maintenance charge.
37. Both of the parties’ respective documents bundles include a copy of the Respondent’s ‘Leaseholders Handbook’. Section 7 states that the “service charge” (which is the “management charge” using the language of the lease) includes the scheme manager costs including salary, recruitment, training, sickness and public liability insurance, together with provision of facilities and any other costs in connection with the scheme manager service. This also includes the cost of providing and maintaining the emergency call system, and the cost of providing a monitoring service at a central control centre .
38. Following our pre-hearing request the respondent has provided the written job description of the ‘Scheme Manager’. which appears to be generic across the respondent’s schemes. This states the ‘job purpose’ as being “to effectively co-ordinate all services within the leasehold retirement scheme to meet the requirements of the lease whilst providing a safe and welcoming environment that enables leaseholders to feel secure and live

independently”. The job description includes the scope of that role as defined in the lease and builds upon that to identify necessary work to deliver that scope including responding to resident calls for assistance, providing assistance and reassurance to residents, facilitating social events, summoning appropriate assistance for residents, signposting residents to relevant statutory and non-statutory organisations, identifying and escalating any safeguarding issues, ensuring that communal areas are clean safe and welcoming, ordering any repairs and maintenance that are required, ensuring that all health and safety requirements are met, ensuring that all servicing repairs and scheme security requirements are co-ordinated and monitored efficiently, ensuring residents comply with their lease terms, assisting in the management of service charge arrears up to the point of legal action, resolving residents’ queries, making any insurance claims in respect of the communal parts, managing and reconciling petty cash, managing cash generated by use of the communal parts, holding regular liaison meetings with residents and resident’s associations, facilitating the delivery of the annual programme of major repairs replacement and improvement in conjunction with the Maintenance Surveyor and Leasehold Retirement Managers, and assisting with the sale of properties by encouraging residents to sell through ‘Home Group, and carrying out viewings and interviewing purchasers and inducting new residents.

39. This same scope of the scheme manager’s duties is summarised in section 9 of the ‘Home Leaseholder’s Handbook’ included in the documents bundle.
40. During the hearing Mr Gibbs added, on instructions, that the scheme manager acts as the respondent’s “eyes on the ground” in respect of any issues arising at Regal Court.
41. It is apparent that the provision of a ‘resident warden’ provided for in the lease is met by the ‘scheme manager’ working by a job description which requires her to be both a traditional warden and, to a material degree, an onsite property manager. The Tribunal has considered carefully whether the actual scope of her role falls within the defined scope of paragraph 1 of the 5th Schedule of the lease and, having regard to the evidence and information before it, determines that it does. Further, it is clear from the ‘Home Leaseholder’s Handbook’ that the respondent has elected to recharge the relevant charges incurred in discharging that role as ‘office expenses’ as opposed to recharge them as part of the management charge. The Tribunal considers that such an approach is permissible even if it might be viewed as contrary to the approach advised (but not dictated) by the ARHM Code of Practice ‘Raising Standards in Retirement Housing’ as discussed below.
42. Accordingly, the Tribunal determines that these ‘office expenses’ are reasonable costs properly incurred which fall within the scope of the 5th Schedule covenant to provide a resident warden and so are payable in full.
43. This of course raises the issues of overlap between the services and resulting relevant costs recharged as ‘office costs’ and the services and resulting relevant costs recharged as the management fee.

The Management Fee

44. Regal Court is a retirement property comprising 34 one bed units and 11 two bed units. It provides 2 lounges, a kitchen, a laundry, a lift, a conservatory, and 1 guest/visitor flat for communal use by the lessees. There is also a garden to the rear. It is a fairly typical example of a modern retirement housing scheme with a daytime on site scheme manager. It therefore poses typical management tasks and challenges for such a scheme.

45. Both of the parties' respective documents bundles include the 'Home Group Schedule of Management Services' which states that Home Group charges a management fee to cover the costs of managing the building and/or the estate where the property is situated. The documents "gives examples of the services that are provided through this fee". Those services include management of office provision and equipment costs, management information provided to home owner customers, management of estate and property reviews for contract monitoring, management of day to day communal repair requirements, management of complaints, liaising with external management companies and freeholders, management of regular service contracts, management of health and safety arrangements, maintaining records, consultation with home owners on management matters, major works and long term agreements, liaising with residents associations, managing local and statutory authorities requiring improvements to communal services, liaising with the FTT (PC) for lessees, the management accounting and administration of rent and service charges, the preparation and distribution of service charge estimates, budgets and accounts, consultation with leaseholders on scheme financial planning, holding one annual account meeting with residents as required following challenges by leaseholders, collecting routine service charge arrears (but not legal action or FTT submissions), management and administration of buildings and public liability insurance, collecting and accounting for insurance fees, liaising on leaseholder insurance claims, liaising with insurers and managing insurance claims for communal areas.
46. Both of the parties' respective documents bundles include a copy of the Respondent's 'Leaseholders Handbook'. Section 15 summarises the services paid out of the management fee in similar terms to the 'Home Group Schedule of Management Services'.
47. The statement of Beverley Hart (leasehold retirement manager for the respondent) dated 4 December 2019 states that "the calculation of the management fee is based on the services provided by the departments operating within Home Group Limited for the management of Regal Court...they are not related to the costs incurred within the on-site scheme office at Regal Court", and further that "the management fee is uplifted annually in line with the regulatory guidance issued.....from the Regulator of Social Housing". It is clear therefore on the respondent's own case that the management fee is not intended to cover any services and resulting charges which arise from the on-site management of Regal Court by the scheme manager.
48. The Tribunal has carefully analysed where there is in fact an overlap between the services and resulting relevant costs recharged as 'office costs' and the services and resulting relevant costs recharged as the management fee. It is apparent from the respective descriptions of both in the respondent's own documents that there is a material overlap. This was raised and discussed during the hearing and both parties given the opportunity to address this concern.
49. The Tribunal was initially concerned whether the inclusion in 'office costs' of relevant costs which might ordinarily or often be seen recharged as part of the management charge was permissible. Accordingly we have revisited the lease provisions and the service descriptions in the respondent's documents and also reminded ourselves of the relevant provisions in the ARHM Code of Practice 'Raising Standards in Retirement Housing'. which was brought into force from 1 June 2016 by the Approval of Codes of Management Practice (Residential Property) (England) Order 2016 (SI 2016/505) was prepared by the Association of Retirement Housing to promote best practice in the management of leasehold retirement properties in England which are specifically designed and designated for retired older people.

50. Chapter 2 of the Code addresses the ‘Statement of Manager’s Duties, Management Agreements and Fees’ and provides that “the following duties should be provided for within the management fee (this is not a comprehensive list and other duties may be added where appropriate and reasonable to do so and if agreed with the landlord)”. The duties included are opening and administering bank accounts, preparing and distributing service charge budgets/estimates, collecting service charges, accounting for service charges prior to examination by an independent accountant, providing information to auditors for the production of annual accounts, collecting routine service charge arrears, providing management and service charge information to residents, liaising with residents’ associations, providing professional indemnity insurance for the manager, employing management staff (excluding scheme-based staff), inspecting the property regularly (period to be explicitly agreed with the landlord and made known to leaseholders) to check condition and deal with any necessary repairs, periodic health and safety checks but not specialist checks and tests, holding regular (at least annual) meetings with residents, regular visits to supervise scheme managers, recruiting and training of scheme managers but not the cost of advertising or agency fees, keeping records of residents and tenancy details, keeping landlords advised on management policy when working as an agent, preparing specifications for minor works and services, providing information to advice agencies and ombudsman services.
51. The same paragraph further adds that “examples of other management services that may be included within the management fee include some or all of the following”: administering buildings and other insurance, preparing replacement cost assessments on buildings and landlords contents for insurance purposes, entering into and managing maintenance contracts, carrying out consultation on management matters, major works and long term agreements, drawing up and reviewing risk assessment plans, preparing specifications, obtaining tenders and supervising major works, fees for specialist advice in assessment of major repairs and decoration, negotiating with local and statutory authorities regarding operation or amendment or improvement to communal services, providing copy documents including insurance policies, employing and working with advisers of a specialist nature where required, recovery of unpaid service charge or ground rents or noncompliance with leases, including instructing solicitors.
52. The Code makes expressly clear that the use of the word ‘should’ in the Code indicates recommended or best practice, and that recommended best practice cannot override the provisions of the lease or other written contractual agreement between the landlord and leaseholder, but should nevertheless be given appropriate consideration.
53. The Tribunal determines that the respondent’s approach to recharge the relevant charges incurred in discharging the role of scheme manager as ‘office expenses’ which might ordinarily or often been seen as part of the management charge as opposed to recharging them as part of the management charge is permissible even if it might be viewed as contrary to the approach advised but not dictated required by the ARHM Code of Practice ‘Raising Standards in Retirement Housing’.
54. It follows that, as the Tribunal has accepted that the respondent may recharge the entire costs of the scheme manager as ‘office expenses’, the Tribunal must consider how to address the issue of the overlap between the services and resulting relevant costs recharged as ‘office costs’ and the services and resulting relevant costs recharged as the management fee.
55. During the hearing we reminded the parties of the advice notes issued by the Regulator of Social Housing. The respondent quite correctly confirmed that it is subject to those advice notes which provide that the advised upper limit for the management element of relevant

service charges is re-calculated annually, with reference to the Consumer Price Index (CPI). This means that the basic limit rises each year by CPI + 1%. As a matter of official record the relevant limits per unit imposed by the Regulator are £418 from 1 April 2015, £426 from 1 April 2016, £430 from 1 April 2017, £447 from 1 April 2018, £462 from 1 April 2019.

56. Regal Court has 45 units comprising 34 one bed units and 11 two bed units and charges the management fee at 83.465% and 100% respectively. The Applicant resides in a 2 bed flat. The accounts record a management fee for a 2 bed unit of £377.11 from April 2015, £382 from April 2016, £429 from April 2017, £417 from April 2018, and £429.80 from April 2019.
57. It follows that the management fees charged by the respondent in the relevant accounting years are within the limits set by the Regulator. This supports but does not determine the contention that they are reasonable when benchmarked against the services which the management fee is expected to cover to accord with the ARHM Code of Practice 'Raising Standards in Retirement Housing' and in particular chapter 2 which addresses the 'Statement of Manager's Duties, Management Agreements and Fees'.
58. However, the Tribunal determines that it is clear that a material part of those services are already provided by the scheme manager in accordance with her job description and the summary in the 'Home Leaseholder's Handbook'.
59. Moreover, the Tribunal further determines that the scope of the services provided by the scheme manager in accordance with her job description and the services summary in the 'Home Leaseholder's Handbook' has a clear and material overlap with the scope of the management services recharged as a relevant costs as summarised in the 'Home Group Schedule of Management Services'.
60. Accordingly, the Tribunal has carefully considered the overlap between the services and resulting relevant costs recharged as office costs and the services and resulting relevant costs recharged as the management fee and sought to fairly reflect this by adjusting the management fee to a reasonable fee for the costs of the management services provided which are have not already been charged as part of the office costs. Doing the best it can on the evidence and information before it the Tribunal has determined that the management fee charged for each of the relevant accounting years should be reduced by 50%.
61. The resulting reasonable management charges due and payable by the applicant for his flat are £188.56 for 2015/16, £191 for 2016/17, and £214.50 for 2017/18.

Costs

62. In considering whether to exercise its power to award costs the Tribunal had careful regard to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules. The Tribunal was also mindful of the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. The Tribunal considers that neither party has acted unreasonably in bringing, defending or conducting the proceedings and so makes no costs shifting order. Accordingly, both parties bear their own costs.

63. Having regard to the scope and circumstances and of the application, the issues considered and the determinations made the Tribunal considers that it is just and equitable to make an order pursuant to s20C of the Landlord and Tenant Act 1985 in respect of the current lessees of 2-12 and 14-47 Regal Court at the date of this Decision.



Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

20 December 2019

ANNEX - RIGHTS OF APPEAL

- a. **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.**
- b. **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.**
- c. **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.**
- d. **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.**