FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2020/0130**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**232 Metro Central Heights, 119 Newington Causeway, London SE1 6BX**
Applicant	**:**	**Barbara Mars**
Representative	**:**	**In person**
Respondent	**:**	**Metro Central Heights RTM Company Limited**
Representative	**:**	**Nick Leach (Director)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Robert Latham** **Sarah Phillips MRICS** **Jayam Dalal**
Date and Venue of Hearing	**:**	**8 March 2021 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal considered the documents summarised at [3] of our decision.

Decisions of the Tribunal

(1) The Tribunal determines that the service charges which are challenged by the Applicant for the service charge years 2014 to 2020 are all payable and reasonable.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or for the refund of the fees paid by the Applicant.

The Application

1. By an application issued on 4 June 2020, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges which are payable for the years 2014 to 2020 in respect of the flat of which she is the leaseholder at 232 Metro Central Heights, 119 Newington Causeway, London SE1 6BX ("the Flat").

2. On 30 July 2020, the Tribunal issued Directions. These were suspended on 30 September. On 17 November 2020, the Tribunal issued further Directions at a Case Management Hearing which was attended by both parties. Pursuant to the Directions, the parties have produced a Schedule of the items in dispute. For the service charge years 2014, 2015 and 2016, the sole issue is whether the accounts have been audited in compliance with the terms of the lease. For the years 2018, 2019 and 2020, the Applicant challenges a number of heads of expenditure. Both parties have also filed Statements of Case.

3. The parties have filed over one thousand pages of documents in the following Bundles to which reference will be made in this decision:

   (i) Part 1 of Applicant's Bundle (375 pages). Pre-fix: "A1._"
   (ii) Part 2 of Applicant's Bundle (392 pages). Pre-fix: "A2._"
   (iii) Applicant's Supplementary Bundle (74 pages). Pre-fix: "A3._"
   (iv) Respondent's Bundle (212 pages). Pre-fix: "R._".

4. After the hearing, the Respondent provided a number of additional documents. However, we have not taken these into account in reaching our decision.

The Hearing

5. The Applicant appeared in person and provided a Skeleton Argument. She gave evidence. She is a member, but not a director, of the Respondent RTM Company. She is a retired property surveyor. She does not currently live in her flat, but lets it out. During the Covid-19 lockdown, she has been living in Eastbourne with her father.

6. Mr Nick Leach represented the Respondent. He is a director of the Respondent. He was assisted in the presentation of his case by Mr Christopher Wobschall, who is both a director and the Company Secretary. Mr Christopher Povoas and Ms Claire Hamilton also attended. Both are employed by Warwick Estates ("Warwick"), the managing agents. They all assisted the Tribunal.

7. The Schedule of issues in dispute is at R.54-63. The Applicant confirmed that the following issues are no longer in dispute: (i) 2018: building insurance and salaries; (ii) 2019: estate service charge; (iii) 2020: window cleaning; building insurance and accounts certification. The Tribunal worked through the other items in the Schedule inviting each party to develop their cases.

The Lease

8. The Applicant's lease is dated 11 August 1998 (at A1.3). The Flat is a studio flat on the lower ground floor of the South Block of Metro Central Heights ("MCH"). We were referred to the following provisions:

(i) The lessee's contribution towards the maintenance expenses is 0.16854% (Clause 1);

(ii) The Sixth Schedule relates to the maintenance charges. Part I sets out the maintenance covenants. Paragraph 9 specifies "Providing metered water supply to the Properties and collecting the appropriate cost for the supply". Part II relates to the maintenance expenses. Paragraph 15 provides for the establishment of a reserve fund,

(iii) The Seventh Schedule sets out the lessee's proportion of the maintenance expense. The lessee is required to pay an interim service charge on 1 January and 1 July. The service charge year is the calendar year. The lessor is obliged to maintain an account of the maintenance expenses which are to be audited by an independent accountant as soon as is practicable and to serve a copy of the accounts on the lessee, together with the accountant's certificate.

The Background

9. MCH was designed by the modernist architect, Erno Goldfinger and built in the 1960s. It was initially occupied by the Department of Health when it was known as Alexander House. In the late 1990s it was converted to residential use. It is now Grade II Listed. There are 4 blocks: West (7 storeys); North (16 storeys); South (11/12 storeys) and East (9 storeys). There are a total of 422 flats. There is also a gym and swimming pool.

10. In 2008, the Applicant acquired her leasehold interest. On 4 October 2012, the Respondent acquired the statutory Right to Manage. It is one of the largest RTM estates in the UK. The Respondent RTM Company is owned by the lessees. There are eight directors, six of whom occupy their flats and two are non-resident. In July 2015, Mr Wobschall became a director; in January 2017, Mr Leach joined the Board.

11. The Respondent appointed Kinleigh Folkard and Haywood ("KFH") to manage MCH. The property manager was Mr Gary Humphries. On 1 January 2018, the management of MCH was transferred to My Managed Services ("MMS"). This was a company that Mr Humphries had established with his wife. It seems that one of the Board, Ms Maureen Mele, unilaterally signed the management contract (see A2.67)

12. Unfortunately, this arrangement did not work out. In September 2018, the Respondent terminated the contract with MMS, due to mismanagement, inadequate record keeping and financial irregularities. When MMS left, there were service charge arrears of some £1m. The Respondent has brought proceedings against MMS and on 19 August 2020 obtained a money judgment in the sum of £20k. MMS is now in liquidation. The Respondent has had practical difficulties in obtaining certified service charge accounts.

13. On 20 September 2018, the Respondent appointed Warwick to manage MCH. In October 2019, the Respondent obtained a "Forensic Review" from BDO (at R.129-171) which identified serious failings in the manner in which both KFH and MMS had managed MCH. On 2 October 2018, the Board informed the leaseholders and residents of the problems that had arisen (see A2.67).

14. In an email to the Applicant, dated 11 November 2020 (at R.186), the Respondent express their disappointment that the Applicant had refused to engage in mediation. They had met the Applicant in the previous week at which the Applicant had made clear that she wanted the Respondent RTM Company removed from the management of MCH and for the management to revert to the freeholder. It was apparent to the Tribunal that the Applicant has no confidence in the manner in which this tenant-controlled RTM Company is managing MCH. No other tenant has supported her claim. The Applicant informed the Tribunal that a

separate application which had been made by Mr Zhang. The tribunal has confirmed that this application has been withdrawn.

Our Determination on the Issues in Dispute

Service Charge Years 2014, 2015, 2016: Accounts

15. The Applicant complains that the service charges for these years were not certified. The uncertified block service charge accounts, which were produced by KFH, are at A1.47-68. The Applicant paid the sums which were demanded. She did not complain about this defect at the time. The current Board members had no involvement at this time. They have made inquiries and have been told that it was not the practice at the time for the accounts to be certified. Their auditor is willing to provide such a certificate. However, given the time that has elapsed, they would require a payment of £1,200. The Tribunal agrees with the Respondent that it would be disproportionate to do so. We asked the Applicant whether she would be willing to pay for this herself, if she required it for her own peace of mind. She was not willing to do so.

16. The Applicant asks the Tribunal to order the Respondent to provide audited accounts. We have no power to do so. It is accepted that there was a technical breach of the terms of the lease. However, this has no impact on the payability or reasonableness of the sums which the Applicant has already paid. Equally, the Applicant has not at any point challenged the reasonableness of any of those service charges, except for this one point. Therefore, she was in no way prejudiced by this default.

Service Charge Years 2018, 2019, 2020: Reserve Fund Contribution

17. The Applicant initially complained that the 2018 accounts had not been certified. On 7 February 2021, the Respondent provided a copy of the accounts which had been certified by certified by BDO LLP, accountants, on 8 December 2020 (at R.206-212).

18. The Applicant complains of the respondent's decision to collect reserve fund contributions of £842.50 (2018), £473 (2019) and £1,457 (2020). She complains that no major works were executed during these years.

19. The Tribunal is satisfied that the leases permits the Respondent to collect a reserve fund. It is important for the Respondent to be able to accumulate the resources necessary for these works. The Respondent has produced a Capital Projects Funding Plan, the total cost of which is £9.882m (at R.181). The Tribunal is satisfied that the sums demanded are both payable and reasonable. In so far as the reserve fund to which the Applicant has contributed has not been spent, it will be held by the Respondent on trust for her (see section 42 Landlord and Tenant Act 1987).

Service Charge Year 2018: Phase 1 Levy

20. The Applicant complains about a "Phase 1 levy" of £1,971 which was demanded on 28 February 2018 towards the Phase 1 external redecorations programme (at A1.141). The Applicant complains that the statutory consultation notices required by Section 20 of the Act have not been served.

21. The Respondent responds that a programme of external repairs and decorations has been planned for some years. On 16 January 2017 (at A1.208), the Respondent served a Stage 1 Notice of Consultation. The analysis of the tenders, dated May 2017, is at R.67. The Stage 2 Notice of Estimates, dated 15 December 2017, is at R.66. The Board subsequently decided to split the works into two phases, Blocks 1 and 2 (North and West) in Phase 1 and Blocks 3 and 4 (South and East) in Phase 2. On 25 January 2018, a meeting was held with tenants to discuss these options. In February, a Newsletter was circulated to all tenants (at R.65). A contract was subsequently awarded to Maybank Projects (London Best Limited) in the sum of £1,082m and the works were completed in 2018/9. The Phase 2 works have not yet started. They have been delayed for three reasons: (i) Covid-19; and (ii) the need to identify appropriate Grenfell-compliant paint; and (iii) the need to ensure that the appropriate resources are available.

22. Mr Leach stated that the consultation notices had been hand delivered by the managing agents, to all the leasehold flats. All the tenants have secure postal boxes. The Tribunal is satisfied that the Respondent served the statutory notices. We were told that the respondent has an online portal with a building link which had been set up by KFH. We are satisfied that the Phase 1 levy is both payable and reasonable.

Service Charge Year 2018: Demands made on 1.1.18 and 1.7.18

23. The Applicant challenges the payability of the demands which were made for the interim service charges which were made on 1 January and 1 July 2018, each in the sum of £1,031. The Applicant paid the sums demanded. However, she complains that the demands were not accompanied by the Summary of Rights and Obligations required by Section 20B of the Act.

24. At this time, MCH was being managed by MMS. The Respondent concede that MMS did not serve the demands with the requisite Summary of Rights and Obligations. This defect has subsequently been cured on 27 June 2019 (at A1.134-6).

25. Section 21B(3) provided that a tenant may withhold payment of the sum demanded if the landlord has failed to comply with the statutory requirement. However, the provision is "ambulatory", and the sum would become payable when the requisite notice is given (see *Dallhold*

Estates (UK) Ltd v Lindsay Trading Inc [1994] 17 EG 148). There is no merit to this ground of challenge. Whilst the Applicant would have been entitled to withhold payment until the requisite Summary of Rights and obligations was served, in the event she elected to pay.

Service Charge Years 2018, 2019, 2020: Water Rates

26. The Applicant complains that she has been charged for water at the rate of 0.24% whereas the proportion specified in her lease as her contribution towards the water charges is only 0.1685%. She was charged £178 (2018); £180 (2019) and £208 (2020).

27. The Respondent points out that the figure of 0.1685% rather relates to the Applicant's contribution to the maintenance charge. Paragraph 9 of the Sixth Schedule rather provides for a "metered water supply to the Properties and collecting the appropriate cost for the supply". There are 422 separate meters and the cost of reading these and apportioning the actual usage would be expensive and disproportionate. The Respondent has therefore decided to split the total charge between the 422 units. The Respondent is reviewing how the costs should be apportioned. One option would be to install smart meters.

28. The Applicant occupies a bedsit. Her flat is smaller than the average one and this is reflected in the lower contribution towards the maintenance charge. However, were the water charges to be collected on this basis, it would not reflect the actual use. We are satisfied that the Applicant is obliged to contribute towards the water charge. It is for the Respondent to determine how to apportion the overall charge. We accept that it would be disproportionate to read all the meters. The current apportionment disadvantages the smaller flats. However, we must consider whether charge that the Applicant has been required to pay is reasonable. We have satisfied that it is not. We note that the Respondent are reviewing how the charge will be allocated in future. They may decide upon an option that is more favourable to the Applicant in the future.

Service Charge Year 2018: Estate Service Charges

29. The Applicant complains about the estate service charge of £302 which she has been required to pay against a deficit for the year of £203k. She has paid this sum. She complains that audited Estate Service charge Accounts were not provided.

30. 2018 was the year in which MCH was being managed by MMS. On 27 June 2019, Warwick served a Notice of the 2018 Estate Expenditure (at A1.134-6). Warwick explained that this was being served pursuant to Section 21B. No payment was required at that time and would only become available when the accounts were prepared and served. On 6 August 2020, Warwick served the audited 2018 accounts (R.106-115).

The suspected deficit had been reduced to £183k. The Respondent proposed to credit the surplus from the 2014-2017 accounts against this. We can see no fault in respect of the procedure adopted by the Respondent.

Service Charge Years 2019, 2020: QLTA Warwick

31. The Respondent has entered into three management agreements with Warwick.

(i) The first, dated 20 September 2018, is at R.314-322;

(ii) The second, dated 19 September 2019, is at R.323-349;

(iii) The third, dated 19 September 2020, is at R.350-375

The Applicant contends that these are Qualifying Long Term Agreements ("QLTAs"), that the Respondent failed to consult on these pursuant to section 20 of the Act, and that the annual charge is therefore capped at £100. She refers us to *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102; [2018] HLR 36. The Respondent dispute that these are QLTAs.

32. Section 20ZA(2) defined a QLTA as "an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months". It is therefore necessary to look at the terms of the agreements:

(i) Clause 1.3 of the 2018 Agreement (at R.315) defines the term as "the period of one year less one day".

(ii) Clause 1.15 of the 2019 Agreement (at R.326) defines the term as "a minimum period of one year less one day, the first day of which shall be the Commencement Date, continuing until the Agreement is terminated on accordance with clause 11". Clause 11 provides that the agreement may be determined by mutual consent or by 90 days' written notice.

(iii) Clause 1.15 of the 2020 Agreement (at R.352) defines the term as "a minimum period of six months, the first day of which shall be the Commencement Date, continuing until the Agreement is terminated on accordance with clause 11". Clause 11 provides that the agreement may be determined by mutual consent or by 90 days' written notice.

33. The Tribunal is satisfied that none of these agreements are QLTAs. The deciding fact is the minimum length of the commitment (see *McFarlane* quoted at [37] in *Corvan*). The 2018 Agreement is expressly stated to be for a term "of one year less one day". The minimum and maximum

lengths of the term are both less than one year. The minimum period of the second agreement is also "one year less one day". The fact that it could extend beyond that period is therefore irrelevant. It is not a QLTA. The same principle applies to the third agreement.

34. Mr Leach noted that the current management agreement is only for a period of six months. On 30 November 2020, the respondent consulted the tenants on the future management arrangements. The Board is keen to test the market now that the management problems created by MMS have been resolved. The Applicant made a detailed response and recommended that Strettons be appointed. Strettons have denied to tender.

Service Charge Years 2019, 2020: Leisure Centre and Gym

35. The Applicant complains about the service charges for which she has been charged in respect the Leisure and Gym. £55k is included in the budget for 2019 and 2020 (at A1.131 and A1.33). The Applicant has provided a number of invoices at A1.218-231. Covid-19 has led to additional costs through a booking system, additional cleaning and the installation of barriers. We accept the Respondent's argument that it has been more cost effective to keep these facilities running whilst they are closed to residents, rather than shut them down because of the substantial costs of draining the pool, decommissioning the plant and then restarting them.

36. The Applicant's main concern is that the tenants have been charged for these facilities whilst they have been closed. It was closed for an eight month period between October 2018 and June 2019. This was due to maintenance issues with a collapsed drain and water leaking into the electric transfer cupboard. Covid-19 has also required the Respondent to close down the facilities for a significant period in 2020 and 2021.

37. We accept the Respondent's evidence that it has been more cost effective not to shut down these facilities whilst they have been closed to residents. This is a management decision. The landlord has had to incur these running costs even though the facilities have been closed to residents. The lease permits the landlord to pass on these costs to the residents. The mere fact that the residents have been unable to benefit from the facilities is no reason for disallowing the sums charged. These running and maintenance cost have been reasonably incurred and are a proper service charge item to pass on to tenants.

Service Charge Year 2019: Fire Safety Works

38. The Applicant challenges the sums charged for fire safety works. The cost of these works in 2019 was some £213k (see R.125). The Applicant takes particular exception to the charges of some £100k to PRM for a waking

watch service between 18 December 2018 and 27 January 2019 (see A1.232-249)

39. On 7 November 2018, Gresham (SMS) Ltd carried out a Fire Safety Risk Assessment (at A1.261). The overall risk rating was "high risk" (see A1.274). The report addressed 54 safety items. MCH was assessed as being compliant with only 19% of these and, in particular, only 10% of the medium risk and 13% of the high-risk factors.

40. On the 24 December 2018, the London Fire Brigade ("LFB") undertook an inspection of MCH without prior warning. They immediately demanded a waking watch be established or they would require a forced evacuation of all floors above 18 metres. The Respondent stated that this would have resulted in estimated costs of £901k for a four-week period in accommodation alone, involving 422 bedrooms and upwards of 500 residents. The use of waking watch, already in short supply and at a premium following Grenfell and the special measures many buildings have been put in, was the most cost-effective option. The resultant costs amounted to £121,984 (see R1.131) for a 24-hour waking watch. The Respondent sought to address the LFB's immediate concerns but with the Christmas break and many buildings in London requiring remedial work post Grenfell, this took much longer than the Respondent would have liked.

41. On 22 December 2020 (at R.182), CH/PK provided a fire safety strategy. This concluded that the smoke control and fire alarm systems must be upgraded. These works are now to be put in hand.

42. The Grenfell Fire Tragedy in June 2017 has been a wakeup call on the need to ensure adequate fire precaution measures. The LFB have required waking watch services as a matter of urgency until more permanent fire precaution measures can be installed. In the experience of this tribunal, the cost of waking watch services is extremely high. The only consolation is that this was only required over a period of eight weeks. The Applicant has failed to provide any adequate evidence that the costs incurred have been unreasonable.

Application under s.20C and refund of fees

43. At the end of the hearing, the Applicant made an application for a refund of the tribunal fees that she had paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant has failed in her challenge and we therefore make no order.

44. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay

an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. In the light of our findings, we make no order under either of these provisions.

Conclusions

45. On 4 October 2012, the Respondent acquired the Right to Manage with the support of the majority of the tenants. MCH is one of the largest RTM estates in the UK. The Respondent RTM Company is owned by the lessees. There are eight directors all of whom carry out their duties without remuneration. Most of them have full time jobs. They are all lessees and pay the same service charges. They have a common interest in seeking to maintain MCH to the highest standards.

46. Mr Leach stated that the Respondent has a well-functioning, professional and dedicated Board which has the support of the vast majority of the leaseholders and residents who work with the Board to improve MCH for the benefit of all. The Board seek to be transparent. The Bundle includes a number of Newsletters which they have sent to residents (at R.172-6). The estate manager circulates a weekly Newsletter. There is a Residents' website portal. The Board have held a number of meetings with residents. The directors hold a quarterly Surgery.

47. Mr Leach noted that the Board have decided to represent themselves, rather that incur additional legal expense of some £30k. However, they have been advised by Emily Fitzpatrick, their legal advisor, at a cost of £12k. An additional £1.4k has been incurred in preparing their bundle of documents.

48. It is a matter of regret that the Applicant has lost confidence in both the Board and the concept of the Right to Manage. Mr Leach stated that the Respondent had received some 100 emails from the Applicant. Although the Applicant has produced some emails from other tenants (at R3.60-63), no other lessee has been willing to provide a witness statement to support her claim. As noted above, Mr Zhang has withdrawn his claim. It is a matter of regret that the Applicant has continued to pursue this claim despite attempts being made to resolve matters by the Respondent. It is hoped that following this decision there will be an attempt to build trust and confidence between the parties.

Judge Robert Latham
12 April 2021

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).