



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

Case reference : **LON/00AG/LAC/2022/0004**

HMCTS code : **V: CVPREMOTE**

Property : **Flat 36, Matilda Apartments, 4
Earnshaw Street, London WC2H 8AJ**

Applicant : **Lara Rushby**

Representative : **In person**

Respondent : **Clarion Housing Association Limited**

Representative : **Ms S Evans, Solicitor from
Weightmans LLP**

Type of application : **Application under Paragraph 5A of
Schedule 11 Commonhold and
Leasehold Reform Act 2002**

Tribunal : **Tribunal Judge I Mohabir
Mrs S Redmond MRICS**

Date of Decision : **24 February 2023**

DECISION

Introduction

1. The Applicant made two applications. These are:
 - (a) under paragraph 5(1) in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the Act”) as to whether administration charges are payable and reasonable for the years 2014/15 to 2020/21 inclusive.
 - (b) under paragraph 5A in Schedule 11 of the Act for an order to reduce or extinguish the tenant’s liability to pay an administration charge in respect of litigation costs. As none are being sought by the Respondent, this application is dismissed together with the Applicant’s application under section 20C of the Landlord and Tenant Act 1985 in relation to the same issue.
2. The freehold of Matilda Apartments is owned by Central Saint Giles Partnership Limited. It granted a head lease to the Respondent (then called Circle Thirty-Three Housing Trust Limited) dated 11 June 2010 (“the head lease”).
3. Under clause 3.1 of the head lease, the Respondent covenanted to pay a reasonable and fair proportion determined by the landlord for the cost of buildings insurance, service charge contributions and repairing and maintaining the common parts to the extent that such costs do not already form part of the service charge contribution.
4. In turn, the Respondent granted the Applicant a sub-lease dated 3 August 2010 under the shared ownership scheme (“the lease”). Under clause 3.3.3 of the lease, the Applicant covenanted to pay to the Respondent *“reasonable per flat annual administration fee by equal monthly instalments in advance on the first day of each month during the Term”*.
5. Clause 7.4 of the lease generally deals with the service charge contribution payable by the Applicant annually and provides:

*“The relevant expenditure to be included in the Service Provision shall comprise the sum of (a) those sums payable by the Landlord to the Head Landlord pursuant to Clauses 3.1.2, 3.1.3, and 3.1.4 of the Head Lease and (b) all expenditure reasonably incurred by the Landlord in connection with the repair, management (**our emphasis**), maintenance and provision of services for the premises demised by the Head Lease and shall include ...”*
6. In addition, clause 7.4(e) permits the Respondent to recover as part of the Applicant’s overall service charge contribution *“any administrative charges incurred by or on behalf of the Landlord”*.
7. For the years 2014/15 to 2018/19 inclusive, the Respondent has passed

on the managing agents' costs incurred by the freeholder to the leaseholders in the block and added a 5% administration charge. For 2019/20 to 2020/21, this figure was increased to 15%. The total administration charges demanded by the Respondent for all of the relevant years is £288.01¹

8. For the year 2020/21, the Respondent also charged a 15% administration fee in respect of the buildings insurance cost incurred by the freeholder. However, at the hearing, it was conceded by the Respondent that this was not recoverable and it was agreed that the Applicant would be refunded the sum of £45.04.
9. By an application dated 30 March 2022, the Applicant made this application to the Tribunal seeking a determination that the additional administration charges claimed by the Respondent are unreasonable.

Relevant Law

10. This is set out in the Appendix annexed hereto.

Decision

11. The hearing in this case took place on 23 January 2023. The Applicant appeared in person. The Respondent was represented by Ms Evans, a Solicitor.
12. Put simply, the Applicant contended that the additional administration charge demanded by the Respondent for each of the relevant years was not reasonable because it was in effect just passing on the service charge expenditure incurred by the freeholder. In addition, she submitted that the Respondent was also charging a separate management fee and, therefore, the further administration fee amounted to double charging. She, therefore, submitted that she has no liability to pay the administration charges claimed by the Respondent for each of the relevant years.
13. The Respondent's case was that up until 2018/19 an administration fee was included with the charge for each communal service, excluding buildings insurance, management fee and sinking fund. From 2019/20 an administration fee was calculated at 15% of all communal services and reflected as a separate service charge line. 15% is not calculated on management fee and sinking fund charges.
14. The Respondent contended that the administration fee is a charge to cover the cost for obtaining and managing the communal service charges and the cost of preparing and reconciling the service charge account. For

¹ see page 54 of the bundle

example, the administration charge for repairs will help meet the cost of staff involved in ordering the repair, checking the repairs for quality, and paying contractor invoices. The administration charge for managing agent services will help meet the cost of staff who administer the payment on invoices, reconcile these against the managing agent's budgets and year end accounts, and also the cost of staff who ensure the managing agent are complying with the lease and regulations.

15. The Tribunal heard oral evidence from Mr Bashir on behalf of the Respondent. He is the Head of Rents and Service Charges, although he admitted that he did not have any actual day-to-day involvement or preparation of these.
16. The Tribunal cross-examined Mr Bashir on the difference between the administration and management fees that are charged separately to the leaseholders. Somewhat unhelpfully, he did not make this distinction in his witness statement between the two. He simply referred to the "management fee".
17. His evidence was that the administration charge was made whether those services are delivered by the Respondent or a third party. Where a third party provides the day-to-day services, they recharge the invoiced costs to leaseholders plus the 15% management (administration) fee. The reason for doing so is that irrespective of how many hard services are directly provided for any one scheme, the overall management costs and time spent are broadly equivalent. It would be practically very difficult and costly to calculate a fixed management fee for each scheme individually, because if costs were incurred on an actual time spent basis on each scheme for each service charge year, the figures would constantly change and be subject to constant review. Applying a 15% management fee is a cost effective method and merely reflects an attempt to recover the Respondent's costs of managing its housing stock.
18. As to the actual separate management fee, Mr Bashir's evidence was it covered a range of activities provided by the Respondent. Not all apply to every property and the level of the management fee reflects the extent of the services it provide, which can include arranging insurance and helping with insurance claims, managing the obligations in the lease or freehold transfer, collecting rent, service charges and/or freehold charges, providing information such as handbooks and newsletters, consulting leaseholders on repair work and long-term contracts, investigating breaches of the terms of the lease or freehold transfer and taking action as needed and undertaking inspections to ensure compliance with statutory requirements.
19. The Tribunal found that clause 3.3.3 of the lease was of no application in this instance because the administration charge recoverable under this clause was limited to any "outgoings" in relation to the buildings and premises.
20. Schedule 9 in the lease defines outgoings as "... all existing and future

rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property”. In other words, an administration charge can only be recovered under clauses 3.3.3 in respect of these matters only and not in relation to service charge expenditure, which it seems that the Respondent was charging an administration fee for.

21. The Tribunal found that contractually the Applicant is liable under clause 7.4 to indemnify the Respondent for the service charge costs incurred by the freeholder. The Tribunal also found that the clause also permits the Respondent to recover from the Applicant the cost of management for “*the services for the premises demised by the Head Lease*”. In other words, if the Respondent incurs additional management costs in recharging the service charge costs passed on to it by the freeholder, those costs are, in principle, contractually recoverable from the Applicant.
22. The difficulty faced by the Respondent is the separate charges it makes to leaseholders for an administration and a management fee in its service charge accounts. The Tribunal found the explanation given by Mr Bashir both in his witness statement and in oral evidence somewhat confusing and the methodology (and rationale) employed by the Respondent for doing so difficult to understand.
23. Understandably, the Applicant faced the same difficulty and it gave rise to a perception on her part of double charging, as she contended.
24. Nevertheless, the Tribunal accepted the evidence of Mr Bashir and found that the administration fee was, in effect, part of the management costs incurred by the Respondent in the preparation of the service charge accounts. The management functions performed by the Respondent are in fact published to the leaseholders².
25. The Tribunal was, therefore, satisfied that there is no double charging to the leaseholders or the Applicant. It is not the case that the Respondent performs no additional management functions for the administration fee, as the Applicant contended. For the avoidance of doubt, the Tribunal found that the administration fee was recoverable by the Respondent in relation to the gas and car park charges for the same reasons. The Tribunal makes no finding in relation to the service charge costs *per se* for this expenditure because it is outside the scope of this application.
26. The Tribunal concluded that the Applicant is liable to pay the administration charges claimed by the Respondent for the years 2014/15 to 2020/21. However, the Tribunal found the increased rate of 15% for 2019/20 and 2020/21 to be unreasonable. The Respondent had not

² see page 293 in the bundle

provided any evidence that the scope or cost of the management functions it performed for these years had in fact increased to justify the additional costs. The rate for these years is, therefore, limited to 5% as for the preceding years and the Respondent needs to refund or amend the Applicant's service charge accounts accordingly.

27. It should be noted that the Tribunal's determination is limited to the years in question and it does not apply prospectively to any future years because the Tribunal has no jurisdiction to do so. Nevertheless, it is open to the Applicant (or any other leaseholders) to challenge any future administration/management costs demanded by the Respondent by making a separate application.
28. Finally, as to the fees incurred by the Applicant, given the criticisms made by the Tribunal about the opaque charging structure employed by the Respondent in the preparation of its service accounts and the lack of clarity in its responses to the Applicant's enquiries about this, it was satisfied that the application could have been avoided. Furthermore, the Applicant had achieved, albeit limited success on the substantive issue and had obtained an admission from the Respondent that the administration charge for the buildings insurance was incorrectly made.
29. For these reasons, the Tribunal considered it just and equitable to make an order that the Respondent refund the Applicant the fees of £300 she has paid to issue the application and have it heard. Payment to be made within 28 days of the issuing of this decision.

Name: Tribunal Judge I Mohabir

Date: 24 February 2023

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).

Appendix of relevant legislation

Schedule 11 of the Commonhold & Leasehold Reform Act 2002

Liability to pay administration charges

5(1)An application may be made to 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.