



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

Case reference : **LON/00AR/LSC/2021/0433**

Property : **Flat 18 Southbury Court, South Street,
Romford, Essex, RM1 1SY**

Applicants : **William Bastow
Sorin-Gabriel Bostan
Richard & Yvette Pearce
Jyde Omotajo**

Representative : **William Bastow**

Respondents : **James Henry Coventry
Paul McGowan
Laurence Bird
Metta Properties Limited**

Representative : **(The freeholder Respondents were
represented at the hearing by Mr
Coventry and Mr Bird, both of whom
addressed the Tribunal)**

Type of application : **Determination as to the reasonableness
and payability of service charges under
the Landlord and Tenant Act 1985.**

Tribunal : **Judge Foskett
Mrs Evelyn Flint DMS FRICS**

Hearing dates : **11 January and 14 June 2023**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that in relation to the items challenged in the Application the following sums are payable and reasonable (as service charge) for the years ended 31 March 2021 and 31 March 2022:

- £1,200 incl VAT for general administrative expenses incurred by DBM in managing the block prior to their termination in August 2021;
 - £1,485 incl VAT for Bailey Partnership’s desktop fire safety review;
 - £120 incl VAT for DBM facilitating the initial stages of the section 20 process (later aborted);
 - £5,280 incl VAT for Tri Fire’s EWS review and certificate
 - £300 incl VAT for some limited work done by DBM during August and September 2021.
 - **Grand total: £8,385 incl VAT**
2. The Tribunal makes the determinations set out below under various headings.
 3. The Applicant sought an order under section 20C of the Landlord and Tenant Act 1985 for the limitation of the landlord’s costs in the proceedings and an order under para 5A of Sch 11 to the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the tenant’s liability to pay an administration charge in respect of litigation costs. The Tribunal has seen no evidence that the Freeholder seeks to charge costs in relation to the Tribunal proceedings as service charge. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for orders to be made under section 20C of the 1985 Act and para 5A of Sch 11 of the 2002 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge and orders that no such costs will be chargeable.
 4. Following representations from the parties at the hearing on 14 June 2023:
 - (a) the Tribunal directs the parties’ attention to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and notes that the parties may make an application under it within 28 days of the date of this Decision, if they wish to do so;
 - (b) the Tribunal will write a letter to the Upper Tribunal (Lands Chamber) notifying it of the apparent non-compliance with its Order dated 12 April 2023 under section 25 of the Tribunal Courts and Enforcement Act 2007 and the Upper Tribunal will decide how it wishes to proceed.

Background

5. The Applicant seeks by his Application originally issued in November 2021 a determination in relation to service charges at the subject property on behalf of himself and other leaseholders within the building. The leaseholders are all long leaseholders of 1, 2 and 3-bedroom flats on the first to fourth floors in a purpose-built block of flats above

commercial units and car park on the ground floor. Mr Bastow has acted on behalf of all leaseholders in the Application: the sums referred to below are the full sums payable across the block, rather than referable simply to one flat.

6. From August 2019 until August 2021, the Freeholder appointed Devon Block Management Ltd (of which Mr and Mrs Sean Nicholson are directors), “**DBM**”, as the managing agent of the block. The agreement was terminated in August 2021 and the management handed over to Metta Properties Ltd.
7. The issues in dispute in the Application relate to service charges for the years ended 31 March 2021 and 31 March 2022. They are as follows:
 - (a) Expenditure of £6,994 for various works at the building;¹
 - (b) Payment to Bailey Partnership of £1,485 incl VAT for a desktop fire safety review of the block;
 - (c) Invoice from DBM dated 13 May 2021 (numbered 9230) for £1,620 incl VAT for facilitating a section 20 process at the block;
 - (d) A sum of £8,250 paid to and retained by DBM;
 - (e) Invoice from Tri Fire dated 2 Sept 2021 for £5,280 incl VAT for an External Wall review and EWS1 form for the block;
 - (f) 2x invoices from DBM for £647.67 each for management fees in August 2021 and September 2021.
8. The Application included a challenge to a charge of £990 by Atrio in relation to fire safety inspections at the block, but at the hearing on 11 January 2023 the Applicant agreed that this was no longer in issue.
9. The Tribunal did not inspect the property. No party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. The hearing bundle contained various photographs of the block.
10. There were hearings on 11 January 2023 and 14 June 2023. Mr Bastow (on behalf of all Applicants) and Mr Bird and Mr Coventry (on behalf of the Freeholder) attended. Both parties had prepared written summaries of their positions and completed the Schedule provided by the Tribunal in relation to the items in dispute. Both gave evidence and made submissions on all the items in dispute.

Devon Block Management Ltd

11. The Tribunal notes at the outset that the issues in this case could have been significantly narrowed, with fewer Tribunal and party time and resources being expended, had DBM cooperated with their appointing Freeholder properly during and after the period of their management. The parties to the proceedings themselves have been caused much hassle and stress on account of DBM’s non-provision of information and documentation and the Tribunal proceedings have been significantly longer and more complicated than they needed to be for the same reason.

¹ According to DBM, this was covered by two invoices, one numbered 9724 and dated 21 Jan 2021 for £5,320 and one numbered 9725 and dated 22 Oct 2020 for £1,674.

12. The Freeholder sought, and was granted, an order against DBM from the First Tier Tribunal on 14 April 2022 for production of a number of documents relevant to the dispute due to previous non-engagement by DBM. The deadline for DBM to send the relevant documents to the Freeholder was 16 May 2022. The order specifically noted that DBM should be aware that the Tribunal may exercise its power to ask the Upper Tribunal to exercise its powers under section 25 of the Tribunal Courts and Enforcement Act 2007, including (in the event of serious or continued non-compliance) bringing proceedings for contempt of court.
13. DBM did not comply.
14. On 17 May 2022, Mr Coventry wrote to the Tribunal on behalf of the Freeholder to confirm that no documents had been received from DBM, and to request that the Tribunal refer the matter to the Upper Tribunal to exercise its powers of enforcement. Mr Coventry wrote to the Tribunal on 25 May 2022 to repeat his request that the Tribunal refers the matter to the Upper Tribunal to exercise its powers of enforcement.
15. On 27 May 2022, Mr Coventry received an email from the Tribunal: *“Judge Martynski has considered the latest email from Mr Coventry and has commented as follows: It seems to me that the freeholders have a right to force Devon Block Management to hand over information. I would like further details on the steps taken by the freeholders to enforce their right to this information. I would also like to know the name/s and addresse/s of the Directors of Devon Block Management, as it seems to me that they could be summonsed to the tribunal to produce documents.” Can we have a response please by **20 June 2022.**”*
16. On 12 July 2022, the Tribunal emailed the parties, stating that Judge Martynski had again looked at this matter and commented as follows: *“... I need a comment from the Respondents' solicitors on the letter from Devon Block Management dated 6 May (copy attached) in which they say; "all documents have been transferred to the new managing agents". Could we please hear from the Respondents' solicitors by no later than 22 July.”*
17. On 22 July 2022, the Freeholder's then solicitors emailed the Tribunal noting the documentation which remained outstanding from DBM, concluding: *“We should be grateful if the Tribunal would take whatever action it deems appropriate to require DBM to produce the above documents and look forward to receiving the Tribunal's further directions in due course.”*
18. On 3 August 2022, the Tribunal emailed the parties suggesting additional avenues for obtaining missing documentation, before a referral was made to the Upper Tribunal, concluding: *“I want to explore every avenue before consideration of a referral to the Upper Tribunal which may take some time and which may produce no real result. Also, the alternative to a referral to the Upper Tribunal is to proceed with the case and to leave it to the Respondents to seek the documents that they require. Can we please hear from the parties by **12 August 2022.**”*

19. On 5 August 2022, the Freeholder’s solicitors emailed the Tribunal noting that some documentation still remained outstanding. They stated that *“Our preference would be for the Tribunal to refer DBM’s non-compliance with the Tribunal’s directions to the Upper Tribunal for enforcement, with a view to obtaining the missing documents and information. This would be consistent with the guidance give in Coates v Marathon Estates Ltd [2018] UKUT 31 (LC). The information that DBM have been directed (and failed) to produce is directly relevant to the outcome of the case.”*
20. On the same day, the Tribunal responded: *“Judge Martynski has considered the latest correspondence from the parties and has commented as follows: Bearing in mind the information that is now available and my previous comments, I now consider that this matter should go forwards to a final hearing on the information that the parties have and any additional information that they can obtain prior to a final hearing.”*
21. On 10 August 2022, the Freeholder’s solicitors made a further request to the Tribunal for the referral to the Upper Tribunal by email.
22. The Tribunal then appears to have called an in-person case management conference on 1 September 2022. At that hearing, which was attended by a legal representative for DBM, Judge Carr gave directions drawn up in consultation with all parties including the following:
 - (a) *“Ms Kavanagh ([Devon Block Management’s representative]) told the tribunal that Devon Block Management would use their best endeavours to supply either the missing invoices or full explanations of expenditure within 28 days.”*
 - (b) *“The tribunal made it clear that failure to do so would have consequences and that it would consider further applications from the parties in those circumstances. However it also made clear that the matter must proceed to a timely conclusion.”*
23. DBM produced no further documents.
24. The Freeholder wrote to the Tribunal on 3 October 2022 stating that: *“This is the second time Devon Block Management have ignored the Directions of the Court and with all due respect we are asking the Court to act in accordance with Paragraph 3 of the Order of 14 April 2022 and also in accordance with the Statement “The Tribunal made it clear that failure to do so would have consequences”. Please compel Devon Block Management Ltd to provide the documentation required in Paragraph 1 of the Order 14 April 2022 which are referred to as “The documents listed above are crucial to the consideration of the issues that are in dispute”.”*
25. No further response was received from the Tribunal before the face-to-face hearing took place before Judge Foskett and Mrs Flint on 11 January 2023 at 10am at Alfred Place. At that hearing, the Freeholder renewed their application for a request to the Upper Tribunal to exercise its enforcement powers and Mr Bastow on behalf of the Applicants supported the further request (on the basis that the Freeholder would, in the meantime, pay into escrow the sum of £15,244 which is the total

amount of the disputed items in respect of which Devon Block Management hold relevant documents). The Tribunal stated to the parties that it would make the referral in respect of the relevant documents and that it would set out its reasons in a written request.

26. The Upper Tribunal made the relevant Order on 12 April 2023 ordering DBM and its directors to produce documentation and to attend a hearing on 14 June 2023 for questioning. It contained a penal notice on its face.
27. Letters were sent to DBM's director, Mr Nicholson, and to LMP Law Ltd, the solicitors for DBM, informing them of the hearing. No response was received until LMP Law sent a letter to the Tribunal by email on 12 June 2023 with some limited explanation for the sums involved and saying that one director of DBM knew nothing about the matter so would not be attending and the other director, Mr Nicholson, was unable to attend due to health issues – no medical information or evidence was provided to the Tribunal.
28. Whilst DBM's conduct will be referred back to the Upper Tribunal for it to consider how it wishes to proceed, the parties agreed that they wanted the FTT to proceed to make a decision on the Application as quickly as possible so that there would be no further delays. Both parties explained to the Tribunal, and the Tribunal accepts, that the proceedings have been stressful and difficult for them.

Investigations by Bailey Partnership regarding fire safety

29. The Applicant accepts that under the lease the Freeholder is entitled to charge as service charge sums paid in relation to the fire safety desktop review by Bailey Partnership. However, he argues that £1,485 is unreasonable as it is far too high for the work they carried out.
30. The Freeholder gave evidence as follows, which was accepted by the Tribunal and backed up by documentary evidence in the Respondent's hearing bundle:
 - (a) Certain leaseholders in the block originally asked for an EWS1 form when they were seeking to remortgage their flats; an example of such a request from a leaseholder was produced in the bundle from a Mr Somner in September 2020;
 - (b) The Freeholder thought that it would be straightforward to obtain an EWS1 form for the block at a relatively low cost of around £500-£800 and it was proposed that this would be recharged to the lessees who had asked for the form;
 - (c) DBM appointed Atrio to inspect the building from a fire point of view in around November 2020 at the Freeholder's request. Atrio attended the block on 5 and 17 November 2020;
 - (d) Atrio raised concerns about the mansard roof and stated that they needed to carry out intrusive works to investigate the roof structure in December 2020 but, before those works could be commenced, DBM dis-instructed Atrio;
 - (e) Bearing in mind the guidance given in January 2020 by the Ministry of Housing, Communities and Local Government, the

Freeholder considered that it was necessary for reasonable investigations to be carried out to ensure the concerns raised by Atrio were addressed;

- (f) DBM appointed Bailey Partnership instead in February 2021 and they first undertook a desktop review of the building and completed a schedule of proposed opening up works (with estimated costs which were in excess of £25,000 following quotes received by Bailey Partnership); the detailed report and schedule of works for the proposed opening up investigations were in the Tribunal's hearing bundles;
 - (g) DBM commenced the section 20 process in respect of these opening up works (by sending out an initial notice of intention on or around 12 May 2021) but the Freeholder sought alternative solutions because of the high costs proposed, which concerns were raised by Mr Coventry with DBM by email in March 2021;
 - (h) The Freeholder instructed Tri Fire (following a recommendation from a contact at Savills) to carry out a survey in around July 2021. They attended the block on 10 August 2021 and completed their report in September 2021 and that resulted in the block being declared safe and a EWS1 form being issued.
31. The Tribunal reviewed Bailey Partnership's fee proposal dated 1 Feb 2021 (which was in the bundles before the Tribunal) and notes that the desktop work carried out as a first phase was in accordance with that fee proposal under which 25% of the total of £4,950+vat was payable in respect of the completion of a desktop review. No party put forward any evidence to show that there were cheaper options available and accordingly the Tribunal concludes on the evidence that the charge was reasonable for the particular phase of the work which Bailey Partnership carried out.

DBM's supervision of Bailey Partnership's fire safety works

32. The Applicant accepts that under the lease the Freeholder is entitled to charge as service charge sums paid in connection with a section 20 consultation process supervised by managing agents. He also accepts that some very small element of the fee charged by DBM would be reasonable for the work they did supervising the small amount of work carried out by Bailey Partnership – he suggested around 5-10% of the £1,620 charged (incl VAT), bearing in mind that they simply sent out one notice of intention before the works covered by the section 20 process were terminated. Even the Freeholder did not consider that the £1,620 charged was reasonable for the work done – their evidence was that £1,620 would have been a reasonable fee for supervising the whole section 20 process and the works.
33. The Tribunal accepts the evidence given and the submissions made and considers that £100+VAT would have been a reasonable fee for sending out the 24 same-form notices.

Tri Fire invoice of £5,280 (incl VAT)

34. The Applicant challenges:
- Whether these sums are payable as service charge under the lease;
 - The reasonableness of the sums (if they are indeed payable as service charge).
35. The Freeholder argues that the lease enables the Freeholder to obtain a fire safety works report. The Tribunal does not accept that the provisions on which the Freeholder relied (ie paras 9 and 20 of the Sixth Schedule) apply to this issue, but has reviewed the Sixth Schedule and considers that the charges fall within para 21 of the Sixth Schedule: *“Providing inspecting maintaining repairing reinstating and renewing any other equipment and providing any other service or facility in connection with the Maintained Property which in the opinion of the Manager it is reasonable to provide”*. It also falls within para 25.1: *“All other reasonable and proper expenses (if any) incurred by the Manager: in and about the maintenance and proper and convenient management and running of the Estate ...”*. The “Estate” is defined as plot of land on which the block stands. The “Maintained Property” is defined in the lease’s Second Schedule as including the roof and all external parts of the block (para 1.3).
36. The Tribunal accepts that a Freeholder faced with the information which was available from appropriately qualified individuals to Mr Bird and Mr Coventry was reasonable in seeking further investigations and solutions to the problems found.
37. Whilst the Applicant suggested that various ‘tactical mitigations’ might have been appropriate and considerably cheaper, the Tribunal considers that the Freeholder acted reasonably in instructing Tri Fire and notes that no alternative quotes for the same work have been put forward.

2x months of DBM management fee

38. The Applicant accepts that under the lease the Freeholder is entitled to charge as service charge sums paid in connection with the management of the block. However, he says that after 3 August 2021, Metta was managing the block, not DBM and accordingly DBM should not have been paid 2x £647.67 monthly fees for management for August and September 2021. He also argues that DBM’s conduct was negligent and the service poor and that they should therefore not be remunerated for their services.
39. The Freeholder accepts that some limited work was carried out by DBM in August and September 2021 as part of the handover to Metta, but says that it was a very unsatisfactory process, in particular in relation to DBM’s retention of £8,250 with no explanation or justification and their non-provision of full documentary information to the Freeholder/the new managing agents.
40. The Tribunal accepts that DBM did some very limited work as part of the handover process following termination of their management

agreement. It considers that a reasonable sum is £250+vat to cover both months.

General expenditure included in DBM's 2 invoices numbered 2924 and 9725

41. DBM emailed the Tribunal in May 2022 and the Freeholder in August 2022 and stated that they had already provided all documents to the new managing agents, but Metta have explained that this is not the case in relation to documents relating to these two invoices and the Tribunal has no reason to think that Metta is incorrect.
42. The invoice dated 22 Dec 2020 for £1,674 is stated to cover EWS1 visual inspection works carried out by Atrio. There has been no evidence provided by DBM (such as a bank transfer or other payment record or even invoice from Atrio) to demonstrate that this was paid so that it can be recharged to leaseholders. The email to the Tribunal dated 12 June 2023 from DBM's solicitors states that the sums were incurred and that they are chargeable to the Freeholder under DBM's contract at an hourly rate but no underlying documentation has been provided even at this late stage in the proceedings. This is also curious because the section 20 works were not notified until the spring of 2021 (before then being aborted) whereas this invoice is dated in December 2020.
43. The invoice dated 21 Jan 2021 for £5,320 is stated to cover EWS1 investigation works carried out by Atrio and Bailey Partnerships. There has been no evidence provided by DBM (such as a bank transfer or other payment record or even invoice from Atrio) to demonstrate that this was paid so that it can be recharged to leaseholders. The email to the Tribunal dated 12 June 2023 from DBM's solicitors states that the sums were incurred and that they are chargeable to the Freeholder under DBM's contract at an hourly rate but no underlying documentation has been provided even at this late stage in the proceedings. Again, at face value, this is curious because by 21 January 2021 (the date of DBM's invoice), Bailey Partnership had not yet been instructed.
44. Both invoices have a further curious feature on their face: they appear to be duplicative of the £1,620 invoice dated 13 May 2021 (which post-dates the sending of the initial section 20 notices of intention and which makes more sense as being to do with the section 20 process).
45. The Applicant gave evidence that he had spoken to Mr Matt Alway of the Finance Department at Bailey Partnership on 13 July 2022 by telephone and that Mr Always confirmed that Bailey Partnership had only ever issued one invoice to DBM for EWS1 investigation works in the sum of £1,485 and that that had been paid to them on 15 April 2021. A Partner at Bailey Partnership (Mr Demuth) emailed DBM in August 2022 stating that Mr Always has no recollection or record of giving out information relating to an invoice on Southbury Court but the Tribunal attaches weight to the evidence given by the Applicant (backed up by a record of his having telephoned Bailey Partnership on 13 July 2022) and notes that no one from DBM or Bailey Partnership has given evidence to the Tribunal.

46. The Freeholder accepted that DBM might have spent around 8-10 hours dealing with the fire safety aspects at the building, such that a charge of around £1,000+VAT might be reasonable for their administrative efforts based on an hourly rate of £110. The Tribunal accepts that £1000+VAT is reasonable, but notes that the sums contained in these 2 invoices sent by DBM and the £8,250 retained (see below) are certainly unreasonable for the services DBM alleges to have provided.

Retention of £8,250 by DBM

47. The expenditure report completed on handover to Metta refers to a sum of £8,250 retained by DBM in relation to “Section 20 EWS1”. No evidence has been provided by DBM to justify this retention and there is no justification for it being recharged to leaseholders. The email to the Tribunal dated 12 June 2023 from DBM’s solicitors states that the sums were incurred and that they are chargeable to the Freeholder under DBM’s contract at an hourly rate but no underlying documentation has been provided even at this late stage in the proceedings. This is particularly surprising given the large sum of money involved.

Name: Judge Foskett
Mrs Evelyn Flint DMS
FRICS

Date: 11 July 2023