FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AQ/LSC/2021/0276**
Property	:	**Flat 2, Oakwood Court, 101 Pinner Road, Harrow, Middx. HA1 4YW**
Applicant	:	**John Tilsiter**
Respondent	:	**Network Homes Ltd**
Type of Application	:	**Payability of service charges**
Tribunal	:	**Judge Nicol** **Ms R Kershaw BSc**
Date of Decision	:	**7th April 2022**

DECISION

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1) The management charge payable by the Applicant to the Respondent for the year 2022/23 is limited to £270.

2) The Tribunal orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 that the Respondent may not recover their costs of these proceedings from the Applicant.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. Oakwood Court is a modest modern block of purpose-built flats, all on long leases. The Applicant has a shared ownership lease of Flat 2. The Respondent is the freeholder.

2. The Applicant has applied to the Tribunal in accordance with section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and payability of the Respondent's proposed increase in their annual management charge from the current £244.80 to £344.80

in 2022/23 and further to £430 in 2023/24. The Tribunal calculates that these increases, rounded to the nearest whole number, amount to 41% in the first year and 25% in the second, for an overall increase of 76%.

3. The Tribunal issued directions on 16th November 2021, in accordance with which the Tribunal has determined the application on the papers, without a hearing, using a 229-page bundle prepared by the Respondent.

4. The Applicant is obliged under his lease to pay a service charge for the costs incurred by the Respondent in complying with their obligations under the lease. It is not in dispute that such costs include a management charge.

5. The Applicant has challenged the management charge twice before:

   a. On 6th December 2002 the Tribunal decided that the management charge should be £100 instead of £150 (LVT/SC/029/078 & 079/02).
   b. On 21st April 2010 the Tribunal decided that it should be £125 instead of £185 (LON/00AQ/LSC/2010/0131).

6. Contrary to the Applicant's submissions, the previous Tribunal decisions do not mean that the issue of the management charge is *res judicata*. The Respondent has the power to increase it. If and when the Applicant seeks to challenge any increase, the Respondent's reasons and evidence for the increase must be looked at anew. Having said that, the previous decisions do provide guidance as to a reasonable approach to the issue. The Tribunal said in 2002:

   > 10. In their written representations, the Respondent did not put forward any evidence or justification for the increase in the management charge but instead sought to justify it solely in absolute terms. They put forward two matters in support of the management charge. Firstly, they said that their total income is what is crucial and the management charge is only one part. Secondly, they said that the detailed and time-consuming regulation by the Housing Corporation of registered social landlords like themselves had to be reflected in the management charge.
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   > 11. The Tribunal does not accept either point. In accordance with the Act, the management charge must be "reasonable". That means it must be reasonable in relation to the subject property. This requires some consideration of the individual circumstances of the property, not just whatever amount will contribute to balancing the entire organisation's budget. The Applicant pointed out that the subject block is modern and uncomplicated, having no unusual or expensive chargeable items, such as a lift. The Respondent's figures … show no appreciation of the fact that some properties are more expensive to manage than others. … the Tribunal does not accept that a landlord may, as a matter of course, pass on its own unique or particular expenses, even if imposed by a Government body such as the Housing Corporation. At the very least, such a course of action must be

justified and the Respondent's approach throughout this dispute has been to provide, at best, a minimum of explanatory information.

7. For the current application, the Respondent has attempted to meet the last point by providing more information on how they determined the management charge. That is not to suggest that the information may be regarded as comprehensive. For example, the Tribunal previously pointed out that, in the private sector, management fees tend to be increased on a regular basis in line with inflation. Instead, the Respondent's approach is to leave management charges untouched for many years and then, when it occurs to them to do so, to review them.

8. On 3 occasions now, such reviews have led to proposals for substantial increases which the Applicant has brought to this Tribunal. Rent is adjusted annually, usually up, so the Tribunal does not understand why the Respondent cannot do the same for management charges. Their lessees, like the Applicant, are not likely to be people of abundant means and, according to the Respondent's own representations, their decision-makers were aware of the problems which large increases may cause them.

9. Of course, it is true to say that the costs in some categories of service charge may fluctuate each year, including the possibility of significant increases. However, this is normally the result in the service itself having changed. For example, in any one year, the costs of reactive maintenance may be higher due to more instances of disrepair becoming apparent. In contrast, in the current case the Applicant is being asked to pay considerably more for exactly the same service.

10. The Respondent's explanation for how they came to the proposed figures for the management charge is set out in their Statement of Case. In summary,

    a. During 2020/21 the Respondent reviewed leasehold management fees across that part of its housing stock subject to long leases – the Respondent owns 4,151 leasehold units, in 208 of which the management fee is fixed in the lease and may not be changed and a further number which are managed separately by third parties.

    b. The review involved collecting data on the costs involved in providing services to all those units and the current income collected from management fees in 2018/19.

    c. Staff costs, totalling £1,283,171, were the largest element of leasehold management costs. They included contributions from the Director of Housing, the Head of Older Persons Services, the Heads of the Hertford and London Neighbourhoods and various risk management officers. Overheads (of which £669,311 was estimated as relating to leasehold work) and contact centre costs (of which £95,134 was attributed to the 6% of calls which related to leasehold matters) were the other two elements.

d. Income was said to be £572,245, compared to the total costs of £2,047,616, leaving a shortfall of £1,475,571. The Respondent would need to charge an average of £493 per leasehold unit to cover this shortfall, compared to the current average charge of £200. The Tribunal understands the income figure to be an actual figure for monies received so that the shortfall includes any shortfall arising from the insufficiency of any fixed charges or alternative management arrangements and any service charge arrears.

e. The Respondent considered what other housing associations charged and found out that their own management charges were the lowest amongst those with over 20,000 units.

f. The Respondent considered a new method of setting management fees. They counted their various services as totalling 40 in number and allocated them into 10 categories which were then sorted into 3 tiers – high, medium and low. The intention was for charges, up to a maximum of £480 per unit per year, to reflect the number of services provided to each property and the level of management involved in each service.

g. This increase would be mitigated by spreading it over two years, the first year being capped at a 100% increase or an additional £100, whichever was lower.

11. On 26th February 2021 the Respondent sent the Applicant his service charges estimates for 1st April 2021 to 31st March 2022, including the management fee of £20.40 per month or £244.80 per year. The document also mentioned that this would be calculated differently in future.

12. By letter dated 28th June 2021 the Respondent sought to explain the new management charge calculation further. On 29th July 2021 the Applicant emailed the Respondent asking for an explanation as to why a 75.5% increase was considered to be fair and reasonable. The Respondent replied that the results of their review were extrapolated to calculate a fee on a block-by-block basis. They believed this was fair and reasonable.

13. There are two obvious and related problems with the Respondent's approach. Firstly, the Respondent claims that the new management charge is based on the actual services provided to the block in which the Applicant's flat is located. However, it is actually an approximation. The Respondent produced a table showing how the 40 services were categorised. The Applicant's management charge was calculated using 6 of the 9 categories (1, 2, 3, 4, 8 and 9) but not all the services in each category are provided to the Applicant's block. For example:

a. Category 1 includes window cleaning but the Applicant has asserted that his block does not receive any, not least because window glazing is excluded from the lease clause dealing with maintenance and the lease clause dealing with cleaning is limited to the common parts.

b. Category 3 includes CCTV of which there is none at the Applicant's block.

14. Secondly, the Applicant's obligation to pay the management fee arises from his lease. The Respondent's entire review is conspicuous for failing to consider any lease provisions other than those in the 208 units setting a fixed amount for management. The Applicant's lease only obliges him to pay for services to his block. This includes services from which he does not directly benefit, such as the cleaning of common parts to which he has no access, but does not extend to covering costs incurred by the Respondent in relation to any other part of their housing stock.

15. With all due respect to the care, time and effort expended by the Respondent on their review, the only reasonable conclusion is that the amount they seek to charge the Applicant for management likely includes costs of services and costs relating to other parts of the Respondent's housing stock for which he is not liable. It is understandable that the Respondent seeks to run their business by looking across their stock as a whole but, when it comes to leasehold management, this approach carries the inherent risk of conflict with the terms of leases which are limited to only part of that stock.

16. This means that the amount which the Respondent seeks to charge the Applicant includes an amount which is not payable and not reasonably incurred. The charge cannot be justified without at least some consideration of the actual circumstances of the actual block in question rather than an approximation of them.

17. The Tribunal then has to consider what sum would be reasonable and payable. As already discussed above, the Respondent has chosen to have a system by which management charges are not increased on a regular basis but on an ad hoc, irregular basis. While it is understandable that the Respondent would like to have a greater income in order to run their housing stock better for the benefit of all their residents, they have been managing without this income for years now. It is not reasonable to expect their lessees to bear the brunt of making such a large adjustment which the Respondent has chosen to make up for their own previous lack of action.

18. Both parties sought to provide evidence of management charges imposed for comparable properties. The Respondent's evidence related to their own housing stock and was entirely circular – the charges are alleged to be reasonable because they are what are charged in their other properties.

19. The Applicant referred to annual management charges for two private sector blocks of £176.47 and £165.75 respectively. Unfortunately, the Tribunal was provided with insufficient detail to be able to measure how comparable the buildings actually are.

20. Having said that, the Tribunal is an expert tribunal with knowledge and experience of its own as to the charges which tend to be imposed for such a service in this locality. For the subject block, the amounts referred to by the Applicant are not outside the range of what could be expected.

21. The Applicant has proposed a figure of £270 for each of the two following years. The Respondent has objected that the Applicant has not specified how he calculated this but neither party has provided an alternative figure within a reasonable range. Doing the best it can with the available evidence, the Tribunal has determined that a reasonable management charge for 2022/23 would be £270.

22. The Respondent has pointed out that they have yet to issue any estimated charges for 2023/24. The Tribunal is also concerned that this is some time in the future and it is possible that circumstances might change in the interim, not least that the Respondent may re-calculate their proposed charges for the Applicant's block based on the Tribunal's comments in this decision. Therefore, the Tribunal has made no determination in relation to 2023/24.

23. The Applicant has applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 limiting the costs of these proceedings which the Respondent may recover. If a lease permits the recovery of such costs, the Tribunal must be mindful that such orders limit a party's contractual rights under the lease. However, the Tribunal has also taken into account that the application has been successful and has been necessitated by the Respondent's chosen approach to this issue. In the circumstances, the Tribunal decided to make the orders requested.

Name: Judge Nicol **Date:** 7th April 2022

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

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
   (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

(1) An application may be made to the appropriate 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.