



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

**Case Reference** : **LON/00AE/LAC/2020/0014**

**HMCTS code** : **P: PAPER**

**Property** : **30 Regal Buildings, 75 Kilburn  
Lane, London W10 4BB**

**Applicant** : **Osama Moussa**

**Representative** : **In person**

**Respondent** : **Regal Properties**

**Representative** : **Premier Block Management**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay an administration charge**

**Tribunal Member** : **Tribunal Judge Prof R Percival**

**Date and venue of  
Hearing** : **Remote  
6 September 2021**

**Date of Decision** : **6 September 2021**

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**DECISION**

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## **Covid-19 pandemic:**

This has been a remote determination on the papers, which has been not objected to by the parties. A face-to-face hearing was not held because all issues could be determined in on paper.

## **The application**

1. The Applicant seeks a determination pursuant Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of an administration charges payable by the Applicant in respect of the preparation of a leasehold seller’s pack.

## **The property**

2. The property is a two bedroomed flat in a purpose built block.

## **The issues**

### *Introduction*

3. The Applicant is seeking to sell his flat. In 2019, he sought a seller’s information pack from the managing agents who represent the Respondent. I understand a seller’s pack in this context to mean a reply to the standard pre-contract enquiry forms issued by the Law Society, and known as LPE 1 and LPE2. The Applicant was charged either £540 or £630. That sale fell through, however. In 2020, he again accepted an offer on his flat and again sought a seller’s information pack, for which he was charged the same amount. He objected, on the basis that much of the material was already available from the first seller’s information pack. He paid the managing agent, but under protest.
4. The managing agents, in their submissions, defend the cost charged.
5. The parties have accordingly argued the matter on the merits of the reasonableness of the charge for the second seller’s information pack.

### *Jurisdiction*

6. There is, however, a prior question. Does the Tribunal have the power to make an order in relation to this charge? The Tribunal is strictly limited to the powers conferred on it by Parliament in specific pieces of legislation. This issue was not brought up by either of the parties. The Tribunal will in general be slow to take a point not argued by the parties. But this issue is a fundamental one. If the Tribunal has no power to make an order, it should not purport to do so.

7. This application is under paragraph 5 of Schedule 11 to the 2002 Act. Schedule 11 creates a mechanism for tenants to challenge administration charges on the basis that they are not reasonable, on a similar basis to the provisions in the Landlord and Tenant Act 1985 regulating the reasonableness of service charges.
8. Paragraph 1 defines an “administration charge” as “an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly ...” for a list of things. That list includes “(b) for or in connection with the provision of information or documents by or on behalf of the landlord ...”.
9. The question is whether the charge made in this case is an “administration charge”, as so defined.
10. The definition I have set out above does not expressly say that the charge must be payable under the lease of the dwelling concerned. I have concluded, however, that it must mean that. The administration charge is expressed as being “payable ... as part of or in addition to the rent”. Clearly, if it is part of the rent, it is only payable as provided for in the lease, and that limitation must in context also apply to the extension “or in addition to”. It means, payable *under the lease* in addition to rent.
11. This conclusion is fortified by the other provisions relating to administration charges in the schedule. It is only a variable administration charge that is susceptible to challenge in the Tribunal, and a variable administration charge is defined as one “payable by a tenant which is neither (a) specified in the lease; nor (b) calculated in accordance with a formula specified in the lease” (paragraph 1(3)), mirroring the equivalent provisions in relation to service charges. Similarly, paragraph 3, which is under the cross-heading “Reasonableness of administration charges” deals with applications to vary a lease because the administration charge (or the formula for its calculation) is unreasonable. Demands for administration charges must be accompanied by a summary of rights and obligations, the terms of which are apt to deal with a charge provided for in a lease (see Administration Charges (Summary of Rights and Obligations)(England) Regulations 2007). Again, this closely mirrors the position in relation to service charges.
12. This leads to the conclusion that a charge for a seller’s pack will only be subject to the reasonableness test, and to this Tribunal’s jurisdiction, if it is payable under the lease.
13. The lease of this property does not make any evident provision for the provision of the sort of information that goes into a seller’s pack (for which see the RICS Service Charge Residential Management Code, paragraph 13.10).

14. There are various provisions allowing fees to be charged to the service charge (for instance, those of the managing agent under clause 14), and there is also provision for administration charges, such as in clause 4.5, in respect of costs incurred by the landlord in remedying a failure of a tenant to repair the flat. There is a general administration charge provision in clause 4.16, in respect of “the Landlord's proper legal expenses and surveyor's fees (including disbursements and stamp duty) on all licences ... resulting from all applications by the Tenant for any consent or approval of the Landlord required hereunder”, but that is clearly linked to provisions of the lease requiring such consents etc.
15. My conclusion, therefore, is that the fee in this case required by the managing agent for provision of the seller’s pack is not, for the purposes of schedule 11 of the 2002 Act, “payable by a tenant of a dwelling as part of or in addition to the rent”, and thus not a (variable) administration charge. Its reasonableness or otherwise is not, therefore, something within the power of this Tribunal to adjudicate.
16. *Decision:* The Tribunal has no power to make an order in respect of the charge for the second seller’s pack.
17. I note by way of postscript that the Secretary of State for the Ministry of Housing, Communities and Local Government announced in Parliament on 27 June 2019 that the Government intended to legislate to impose a limit of £200 on the fee that freeholders and managing agents may charge for seller’s packs. As I understand it, this legislation is still awaited.
18. The Applicant declined to make an application under paragraph 5A of Schedule 11.

### **Rights of appeal**

19. 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 London regional office.
20. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
21. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

22. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Relevant legislation**

23. Schedule 11 to the 2002 Act may be found here:  
<https://www.legislation.gov.uk/ukpga/2002/15/schedule/11>.

**Name:** Tribunal Judge Professor Richard Percival   **Date:** 6 September 2021