



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

Case reference : **LON/00AH/LSC/2023/0325**

Property : **Vita Apartments, 1 Caithness Walk,
Croydon CR0 2WB/CRO 2WD**

Applicants : **Paul Major and Barthelemy Monhonval
and other leaseholders joined to this
application (see Appendix I)**

Representative : **Paul Major and Barthelemy Monhonval**

Respondent : **Ruskin Square Phase One LLP**

Representative : **Ms Ceri Edmonds, counsel**

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 Tagliavini
Miss M Krisco FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **16 February 2024**
Date of decision : **26 February 2024**

DECISION

Decisions of the tribunal

Preliminary matters:

1. The tribunal accepts the lessees whose names appear in Appendix I to this decision, were parties to this application as at the date of the hearing and therefore this decision is binding on/enforceable by them.
2. The tribunal determines this application is limited to:
 - (i) The reasonableness and payability of the actual service charges for the service charge year 2021 to 2022, only in so far, they appear on their face, to unreasonably exceed the budgeted costs determined as reasonable by the tribunal in *ref: LON/00AH/LSC/2021/0167*.
 - (ii) The reasonableness of the managing agent's fees incurred in the service charge year 2022 to 2023.
3. All of the claims made in this application that sought awards of compensation, enforcement of the tribunal's previous decision or had otherwise previously been determined by the tribunal in *ref: LON/00AH/LSC/2021/0167* are outside of the tribunal's jurisdiction or otherwise an abuse of process.
4. Therefore, all claims made by the applicants except for those identified in paragraph 2(i) and (ii) above are dismissed.
5. The reasonableness of the managing agent's fees in respect of the service charge year 2023 to 2024 were without objection from the respondent, withdrawn by the Applicants in the course of the hearing and are not therefore, subject to a determination by this tribunal. The tribunal of its own motion regarded the managing agent's fees for 2024 to 2026 as also not be the subject of a determination.

Decisions of the tribunal

Substantive issues

6. Subject to the tribunal's decision in *LON/00AH/LSC/2021/0167* the tribunal finds the actual service charges incurred by the Respondent in the service charge year 2021 to 2022 are reasonable and payable by the Applicants.
7. Although the Respondent accepted it had not received any demand to pay water charges, the Applicant (Mr Major) in

LON/00AH/LSC/2021/0167 conceded that this cost was payable in full. Although the tribunal does not now go behind that decision, it is the tribunal's view that until such time as it is clear, any water charges pre-dating any installation of a water meter are likely to be incurred, the Respondent may wish to re-consider the demands made for this item of service charge in respect of future years.

8. For the avoidance of doubt, the tribunal considers the 20% deduction (plus VAT) determined by the tribunal in *LON/00AH/LSC/2021/0167* also applied to the managing agent's fees charged in the estimated service charge year 2021 to 2022. Therefore, the tribunal declines to make any further deduction in respect of this item.
9. The tribunal finds the managing agent's fees for the service charge year 2022 to 2023 are not reasonable in full and makes a 5% deduction from these fees plus the corresponding sum due in VAT.
10. The tribunal accepts the Respondent's written assertion and repeated to the tribunal, that it has or intends to apply the tribunal's decisions reached in *ref: LON/00AH/LSC/2021/0167* for the benefit of **all** lessees whether or not they were parties to that application. Similarly, the Respondent has indicated to the tribunal, that if a decision is reached in this application, that is favourable to the Applicants, it will be applied for the benefit of all lessees whether or not they are a party to this application.
11. The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 and therefore, the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge in accordance with the terms of lease.

The application

12. In this application the Applicants asked the tribunal to order:

The immediate payment of the £63,165.24 awarded to the Leaseholders as part of the Court Decision LON/00AH/LSC/2021/0167_V:FVHREMOTE dated 01st November 2021 – which was never complied with by RMG, and adequate penalties and compensation for failing to comply;

The payment of associated compensation for the failure to pay in due manner following the FTT decision;

The repayment of £12,780 of FTT legal costs unduly charged to Leaseholders and in disregard of the FTT's decision, and adequate penalties and compensation for contravening a court order;

The payment of associated compensation for the failure to pay in due manner following the FTT decision; - Up to £181,121.72 in full or partial repayment of charges applied by RMG for unjustified (no evidence to demonstrate that services or goods had been provided and the costs of those) or unreasonable costs (extortionate prices for goods or services provided, goods or services not provided at all, charges applied as a consequence of RMG's lack of management);

A rebate on RMG's management fee from 2017/18 to 2023/24 (7 years of management), superior to the 20% awarded by the FTT in November 2021 as RMG has made no attempt to improve their service, and would reflect the poor quality of the service provided to Leaseholders and Residents of Vita Apartments, the repetitive delays in providing information to Leaseholders (such as the summary of service charge accounts, and the total lack of transparency over the financial management of the property. Contents Scott Schedule Page 23 of 526 Given the serious failures of management and the contempt of Court, we ask the FTT to order RMG to repay 35% of their management fees (backdated to 2017/18).

13. The Applicants also asked the tribunal to order or determine:

[A] cap of RMG's management fee for future years to 2023/24 (rebated) level; until RMG demonstrate a clear improvement of their management performance.

By not repaying the Leaseholders of Vita Apartments the equivalent of 20% of the management fees between charged between 2017/18 and 2021/22, as ordered by the FTT (Reference LON/00AH/LSC/2021/0167_V:FVHREMOTE, dated 01st November 2021; Have RMG (the property manager) and the Freeholders breached the Court's decision?

Have RMG and the Freeholders charged unfairly and unlawfully the Leaseholders of Vita Apartments for "FTT Legal Costs" – despite the FTT's decision preventing from doing so?

Are RMG and the Freeholders liable for the immediate payment of the rebate on their management fees and the reimbursement

of legal fees charged to Leaseholders, as well as associated interest and compensation?

Are RMG and the Freeholders liable to pay compensation to all leaseholders for their failure to comply with the FTT's decision of November 2021?

Is it reasonable for RMG to charge Leaseholders for goods and services without providing any evidence that the goods/services have been provided?

Has RMG signed off service charge accounts that have not been adequately audited?

Providing the (lack of) quality of the management services provided by RMG, are their management fees (circa £365/unit/year) reasonable considering The Leaseholder Association advises that the "average fees currently range between £200 and £380 per flat per year" – placing RMG at the top of the range?

[A] failure by RMG to deliver the final accounts within six months of the year end (repetitively – as this has been an issue every single year since 2018). Could the FTT gain clarification as to why this is the case?

The summary of service charge 2021/22 were provided to Leaseholders in February 2023, nearly 1 year after the end of the accounting period. The lateness of publication of the summary of service charge accounts is recurrent – RMG having failed every single year to publish the summary within 6 months of the year end. Could the FTT clarify what are the management company (and Freeholders) responsibilities in terms of publication of the summary of service charge and particularly in regard to the timeframe for publication?

Further to the 1-year timeframe to provide the summary of service charge accounts, RMG has recognised that the accounts contained "errors that would be corrected". Can the FTT clarify how it is possible for RMG to publish audited end of year accounts (which contain errors) and "correct" them at a later stage?

The background

14. The property which is the subject of this application is a purpose built block circa 2015/2016 containing 161 apartments. The Applicants are long leaseholders of various apartments within the block and the

Respondent is the landlord. The Applicants each hold a long lease of an apartment in the subject property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. No challenge was made by the Applicants to the clauses in the lease or their interpretation.

15. The Applicants issued an application dated 04/08/2023 and the tribunal gave Directions to the parties dated 15 September 2023 and 25 October 2023. In these Directions the tribunal stated:

The application states that the issues concern management fees (2017-2024) and individual items of service charge (2021-2022). Reference is made to previous proceedings under LON/OOAH/LSC/2021/0167. Those proceedings were apparently brought by a single leaseholder and covered the period 2017-2022. The Applicants need to note that the Tribunal will not revisit issues already determined in the previous case. Neither will the Tribunal deal with issues of enforcement in relation to those proceedings as those are within the jurisdiction of the County Court. With this in mind the Applicants need to consider carefully what issues they include in the schedule referred to below. Only new issues that have previously not been dealt with by the Tribunal will be considered.

16. Neither 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

17. The Applicants Mr Major and Mr Monhonval represented themselves as well as the other Applicants whose names appear in Appendix I (attached). The Respondent was represented by represented by Ms Ceri Edmonds of counsel. A single digital hearing bundle of 565 pages was relied upon by both parties.
18. Despite the tribunal's clear instruction as to what it could and could not be determined in this application, the Applicants sought to persist with the entirety of their application as set out in the paragraphs above and effectively sought the tribunal's forensic examination of the invoices and accounts produced by the Respondent. However, as a preliminary matter the tribunal significantly reduced to scope of the application to the issues within the jurisdiction of which the tribunal had not previously been determined.
19. As well as reliance on the documents, the Respondent relied on the oral evidence of Ms Archi Minhas and Ms Rebecca Tempa who spoke to their

witness statements dated 12 December 2023 and 14 December 2024, respectively.

Reasons for the tribunal's decision

20. The tribunal finds the Respondent has not incurred water charges since the property was built, including the service charge year 2021 to 2022. The Respondent told the tribunal that since the subject property had been let, it had not received any invoices in respect of water charges, although it expected this situation would change at some point in the future. Consequently, the Respondent had made demands from the lessees in respect of water charges that were estimated by a property manager based on experience of other blocks.
21. When pressed by the tribunal, the Respondent was unable to say when a water meter would be installed and that it was not clear whether any demands would be made for earlier years or whether the account would effectively start from zero.
22. However, as Mr Major in Application *LON/00AH/LSC/2021/0167* conceded the landlord's water charges were payable in full, the tribunal in this application does not go behind that decision. In light of the likely absence of any demands for payment of the landlord's water charges in the foreseeable future, the tribunal invites the Respondent to re-consider whether demands for a sum that may never be incurred or demanded is reasonable or payable.
23. The tribunal considered only those items of estimated services charges for 2021 to 2022 that appeared to be substantially in excess in the actual account. These included insurance costs; general repairs (broken key in lock and broken toilet flush); the provision of temporary heaters and the purchase of a long ladder; the 'gym;' water charges; smoke alarm testing; cleaning (after suicide) and management fees.
24. The tribunal found the Applicants failed to provide any reliable alternative quotes for any of the items of services they challenged. Therefore, the tribunal preferred and accepted the evidence of the Respondent on all of these heads of service, except for the issue of water charges for the reasons stated above and management fees. The tribunal accepts the Respondent's explanation that they achieve value for money by using local contractors, albeit their registered address is outside of London. The tribunal finds no charges are made in respect of the 'gym' which is no longer in use and there are no running costs in respect of it.
25. The tribunal accepts the Respondent's evidence that where necessary, claims on insurance are made. The tribunal accepts that as claims are not often settled until after the cost of the work has been incurred

these costs appear on the service charge accounts and are later reversed when payment is received from the insurance company.

26. The tribunal accepts that it is reasonable for the company that installed the fire safety system to carry out regular checks and testing. The tribunal dismisses the Applicant's suggestion as unreasonable, that the caretaker should go up and down 20 stories carrying out these tests in addition to his regular activities and appears to be without any apparent expertise or training should a defect arise on testing.
27. Similarly, the tribunal finds it reasonable for the Respondent to have engaged a cleaning company to safely clean an area in the subject property that became bloodstained after an apparent suicide. The tribunal does not accept the Applicants' suggestion that the cleaning should have been carried out by the caretaker, as not only is it likely this would have been highly distressing to the caretaker but would have carried a risk of contamination.
28. The tribunal finds the Respondent's purchase of a long ladder (since stolen and not replaced) to keep on site for the use of contractors to be reasonable. Similarly, the tribunal finds the Respondent's reimbursement of heaters purchased by or on behalf of tenants when left without heating, is reasonable. The tribunal also finds it reasonable for the Respondent not to reclaim or recycle these heaters due to the inherent dangers of second-hand/used electrical goods.
29. The tribunal finds the Respondent has not sought to recover its legal costs in respect of the previous application. It finds these sums appear on the accounts as sums payable by the Freeholder and not the lessees.
30. The tribunal finds there has been some improvement in the provision of management services since the tribunal's decision in *LON/00AH/LSC/2021/0167*. However, the tribunal finds the service charge accounts lack clarity and that explanations for charges that appear to have been wrongly added to the Applicants' service charge account e.g. legal fees and costs claimable from insurance claims, have not been readily forthcoming and has led to a significant degree of confusion among the Applicants. The tribunal also finds the lack of clarity about when a water meter is to be installed, is an example of poor management and an issue that should be resolved as soon as possible.
31. Consequently, the tribunal determines a 5% reduction plus the corresponding amount of VAT from the managing agents fees for the charge year 2022 to 20223 is reasonable and appropriate.

Section 20C

32. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. Therefore, the Respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge in so far as the lease allows.
33. In reaching its decision, the tribunal took into account the unwavering stance of the Applicants in pursuing claims outside of the tribunal's jurisdictions despite its clear Directions, as well as the failure to consider mediation.
34. Therefore, the application for an order under s.20C is refused.

Name: Judge Tagliavini

Date: 26 February 2024

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).

Relevant extracts from the Landlord and Tenant Act 1985

s.19 Limitation of service charges: reasonableness

(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 provision 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.

27A Liability to pay service charges: jurisdiction

(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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s.20 Limitation of service charges: costs of proceedings.

- (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 leasehold valuation tribunal or the First-tier 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 the county court;

(aa)in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b)in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba)in the case of proceedings before the First-tier Tribunal, to the tribunal;

Appendix I: Lessees joined as Applicants

1	James		Lewis
2	Paul		Major
4	Anisha	Harshil	Shah
5	Jonathan		Chui
6	Barthelemy	Monhonval	
7	Alex		Bush
8	Karl	Chloe	Svensson
9	Gareth	Stefanie	Turkington
10	Adam		Lau
11	Samuel John Louis	de Thierry	
12	Charalambos	Lambrinos	
13	Jenny		Arnold
14	Ravi		Menghani
15	Paul		Casey
16	Miguel	Joana	Da Cruz Oliveira
17	Michael		Finch
18	Ranjeev	Kamini	Gadhoke
19	Srebrin		Hristev
20	RAJENDRA VITTOBARAO	MAHENDRAKAR	
21	Lewis		Beischer
22	Meena	Keeran	Patel
23	Antonio Pedro	Silva Candelaria	
24	Valentina	Tommaso	Azzolin
25	Dan	Alex	Jeal
26	Jessica		Cooke
27	Mariko		Brown
28	Zack		Wroot
29	Tomasz		Kecerski
30	Gabriel		McLaughlin
31	Vikas	Shama	Taneja
32	Jamie		Garvie
33	Burhan	Michaela	Uddin
34	Tom		Gregory-Smith
35	Kanhai	Hinal	Jhaveri
36	Vivek		Vasudeo
37	Ketan		Patel
38	Nirmala		Vadhia
39	Simon		Hunt

40	Wai Keung	Chan	
41	Christiane	Gross	
	Jean		Rodell
43	Laura		Nolan
44	Ingeburg		Spurrell
45	Alexandra	Edward	Watson
46	Francis	Enitan	Adetola
47	Lorenzo	Milena	Arena
48	Tanya		Paulose
49	Paul		Waite
50	SHUK TING IVY	HUNG SUM	YUE
51	Will		Renton-Rose
52	Kyle		Halling
			de Vimal du
53	Anneliese	Aymeric	Bouchet
54	Shahida		Ghufoor
55	Harshan	Rachel	Francis
56	Mohd Shaffi	Kousar Akhtar	Bulla
57	michael		travers
58	Nitika		Dandawate
59	Gordon		Mak
60	Yashinta Tri	Wahyuni	
61	Chung		Yip
63	Dewesh	Shweta	Singh
64	Yue		Jiang
67	Matthew		Qureshi
68	Wai Ming Dickens	Wong	
69	Sunil		Gopinathan
70	Nalini	Dinesh	Nair
	Weng Yip		
71	Raymond	Choo	
72	Jason		Glover
73	David	Kuura	Clark
76	Devinder		Singh
77	Wei		Wang
78	Jordan		Macauley
79	Harry	Bethan	Kind
80	Ricky	Amina	Mistry
81	Farah		Zaman
82	Neerav		Patel
83	Sarah	Sarah	Erridge
84	Sruthi		Vaman
85	Aswin	Lakshmi	Murali
86	Tarun Kumar	Das	
87	Ravi	Latha	Srinivasagopalan
88	simrat		masson

