



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

Case reference : **LON/00AY/LAC/2023/0019**

Property : **Flat 5, 53 Drewstead Road, London
SW16 1AA**

Applicants : **Ms Sophie Cole (Flat 1)
Ms Alexandra Brooks (Flat 2)
Ms Jennifer Pierce (Flat 3)
Mr Alan Sheehan (Flat 4)
Mr Luke Billingham (Flat 5)
Mr Tom Quayle (Flat 6)**

Representative : **Mr Luke Billingham**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **For the determination of the liability to
pay administration charges under
Paragraph 5 of Schedule 11 to the
Commonhold and Leasehold Reform
Act 2002**

Tribunal member : **Judge J P Donegan**

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

Date of decision : **20 March 2024**

DECISION

This has been a paper determination. A face-to-face hearing was not held, as I considered it unnecessary. All issues could be decided on the documents.

Decisions of the Tribunal

- A. The Tribunal determines the “*Admin costs for collection of ground rent*” of £39 per quarter, per flat are not payable by the applicants.
- B. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (‘the 1985 Act’) so that none of the respondent’s costs of these Tribunal proceedings may be passed to the applicants through any service charge.
- C. The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (‘the 2002 Act’) extinguishing the applicants’ liability to pay administration charges in respect of litigation costs of these Tribunal proceedings.
- D. The respondent must reimburse the application fee of £100 (One Hundred Pounds) paid by Mr Luke Billingham by **5:00pm on 17 April 2024**.

The background and procedural history

- 1. The applicants are the long leaseholders of the six flats at 53 Drewstead Road, London SW16 1AA (‘the Property’). The respondent is the freeholder of the Property. The leaseholders acquired the right to manage the Property in late 2021. The respondent’s agents, Eagerstates Limited (‘Eagerstates’) collect the ground rents from the applicants.
- 2. The applicants seek a determination pursuant to Schedule 11 to the 2002 Act, as to their liability to pay ground rent collection fees of £39 per quarter, per flat. They also seek an order for the limitation of the respondent’s costs in the proceedings under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay administration charges in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.
- 3. The application was submitted by Mr Luke Billingham on 27 September 2023. Directions were issued on 31 October 2023 and the case was allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing.
- 4. Ms Cole, Ms Brooks, Ms Pierce and Mr Sheehan were added as applicants to the proceedings by an order of Judge Martynski dated 09 January 2024. Mr Quayle was added as an applicant by a direction of Judge Vance dated 05 March 2024.

5. The paper determination took place on 20 March 2024. When making my decision, I considered a 121-page, digital bundle lodged by the applicant and a one-page email from Eagerstates dated 05 December 2023.
6. The relevant legal provisions are set out in the appendix to this decision.

The issues

7. The only issues to be determined by the Tribunal are:
 - (a) the ‘payability’ of ground rent collection fees demanded by Eagerstates on behalf of the respondent, and
 - (b) the applications for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act.
8. The current ground rent for each flat is £250 per annum. Eagerstates issue quarterly rent demands for £62.50, which include an additional charge of £39 for “*Admin costs for collection of ground rents*”.
9. The total collection fees demanded from each applicant are:

Flat 1 (December 2021-February 2024)	£390
Flat 2 (December 2021-February 2024)	£351
Flat 3 (December 2021-February 2024)	£390
Flat 4 (June 2022 to February 2024)	£312
Flat 5 (March 2022 to February 2024)	£312
Flat 6 (March 2023 to February 2024)	£195

The lease

10. The applicants’ bundle contained a sample lease (Flat 5). This was granted by West End City Holdings Limited (“*Lessor*”) to Arianne Samantha Edwards (“*Lessee*”) for a term of 125 years from 29 September 2016.
11. The particulars include the following definitions:

<i>“PAYMENT DATES</i>	<i>The usual quarter days</i>
...	
<i>MAINTENANCE RENT</i>	<i>One sixth of the costs and expenses that the Lessor incurs pursuant to its covenants contained in the Second Schedule hereto</i>
...	

RENT

£250 per annum for the first 25 years”.

12. Clause 1 and paragraph 1 of the third schedule oblige the Lessee to pay the Rent and the Maintenance Rent on the Payment Dates.
13. The Lessor’s covenants are to be found in the the second schedule and include:
 - “11. *Employing any workmen necessary for the proper maintenance of the Property and a Managing Agent Solicitor Accountant Surveyor or other professional adviser in connection with the management of the Property including Maintenance Rent calculation and collection”.*

The applicants’ case

14. The applicants contend the collection fees, which equate to approximately 62% of the ground rent, are unreasonable. They also rely on a previous First-tier Tribunal (‘F-tT’) decision dated 02 May 2023, for ***Flat 4 River Court, 16A River Street, Bedford MK40 1PX (case reference CAM/00KB/LAC/2022/0003)***. That case involved the same freeholder, Assethold Limited and agents, Eagerstates. The F-tT disallowed rent collection fees of £36 per annum as they were not recoverable as administration charges under the lease.

The respondent’s case

15. The directions required the respondent to send the applicant a statement setting out the relevant provisions in the lease and any legal submissions in support of the charges claimed. Eagerstates sent a brief email to the Tribunal case officer on 05 December 2023 simply stating, “*The clause that the landlord would rely on is clause 11 of the Second Schedule*”. This was the full extent of their case.

Discussion

16. The starting point is to determine whether the collection fees are contractually recoverable as administration charges under the leases. If so, I must then consider whether the charges are reasonable, as a variable administration charge is payable only to the extent it is reasonable (paragraph 2 of Schedule 11 to the 2002 Act).
17. The respondent relies on paragraph 11 of the second schedule to the lease. This entitles them to employ various people/professionals in connection with the management of the Property. They can then recover one-sixth of these costs from each leaseholder, as “*Maintenance Rent*” i.e a service charge.

18. The disputed fees are claimed as “*Admin costs*” and relate to the collection of ground rent. They have been charged by respondent’s agents, Eagerstates. Paragraph 11 of the second schedule refers to Maintenance Rent collection but makes no mention of ground rent collection. Further, any costs incurred under this paragraph can only be recovered as a service charge.
19. The collection fees do not come within paragraph 11 of the second schedule, are not contractually recoverable as administration charges and are not payable by the applicants. It is therefore unnecessary to consider whether these fees are reasonable.

Section 20C, paragraph 5A and refund of fees

20. The applicants have been wholly successful, as I have disallowed the ground rent collection fees. They were entirely justified in pursuing this application and it is just and equitable to make orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act. For the same reasons, I also order the respondent to reimburse the Tribunal application fee of £100. This was paid by Mr Billingham and must be reimbursed to him by 5:00pm on 17 April 2024.

Name: Judge J P Donegan

Date: 20 March 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 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

Section 20C 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 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of “administration charges”

- 1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

Liability to pay administration charges

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- (1) An application may be made to the appropriate tribunal 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Limitation of administration charges: costs of proceedings

5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph –
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<u><i>Proceedings to which costs relate</i></u>	<u><i>“The relevant court or tribunal”</i></u>
<u>Court proceedings</u>	<u>The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court</u>
<u>First-tier Tribunal proceedings</u>	<u>The First-tier Tribunal</u>
<u>Upper Tribunal proceedings</u>	<u>The Upper Tribunal</u>
<u>Arbitration proceedings</u>	<u>The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.</u>