



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

Case References : **BIR/31UG/LIS/2023/0041-49**

Property : **1-9 Court House, Norman Road,
Melton Mowbray, LE13 1JE**

Applicant : **Lessees of the Court House**

Representative : **Mr Philip Bourqui, Brunel Property**

Respondent : **G & O Securities**

Representative : **Mr Fahy, Blue Property Management**

Type of Application : **An application under Application under
Ss 27A & 20C Landlord and Tenant Act 1985
And Schedule 11 para 5A Commonhold and
Leasehold Reform Act 2002**

Tribunal : **Judge P.J Ellis.
Tribunal Member Mr I Humphries FRICS**

Date of Hearing : **30 August 2024**

Date of Decision : **17 September 2024**

DECISION

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***Upon reading the papers and hearing the parties the Tribunal
determines that***

- 1. The sum of £984.00 inclusive of VAT is a reasonable sum to pay for the preparation of accounts in total for years 2019,2020, 2021 and 2022**
- 2. The cost of membership of the Client Money Protection scheme is not payable by the Applicants .**
- 3. The charges for Health and Safety Inspections and the Fire Risk Assessment are reasonable and payable.**
- 4. The claim relating to the management charges of Blue Property Management is adjourned to be heard at the same time as the connected claim in proceedings issued and identified as BIR/31UG/LIS/2023/0041-49 together with a further claim for items of service charge in service charge years 2019, 2020, 2021 and 2022.**
- 5. The application for reimbursement of the sum of £300 for inspection of a fire door is dismissed the parties having agreed settlement**
- 6. The costs of the application are not reasonable costs to be taken into account of any service charge payable by the Tenant.**

Introduction

1. This is an application, issued in October 2023 for determining the reasonableness and payability of service charges with associated applications related to the limitation of costs under the relevant statutory provisions of the Landlord and Tenant Act 1985. There is also an application under the Commonhold and Leasehold Reform Act relating to litigation costs but at present the Tribunal is unaware of a claim for such costs.
2. The service charge years involved in this case are 2019,2020, 2021,and 2022. The sums claimed had accumulated over the period of the subject service charge years. The Applicant was represented by Mr Philip Bourqui of Brunel Property Management, the current managing agents. The Respondent was represented by Mr Fahy of Blue Property Management, the former managing agents.

3. The issues raised by the application are
 - a. The reasonableness of accountancy charges. The Applicant contends the Respondent has used an accountant whose fees are disproportionate to the work involved and no adequate checks were undertaken to ensure the sums charged were fair and reasonable. The excess fees incurred are £800
 - b. Using the Client Money Protection scheme and the associated charge was unnecessary having regard to the size of the scheme and the sums involved. The charge claimed was £24.00 pa
 - c. A charge of £300 for inspection of a fire door that was never carried out was erroneous. The Respondent agreed the inspection had not occurred. This claim was resolved with out further order of the Tribunal.
 - d. Excess charges in the region of £1200.00 for health and safety and fire risk assessments caused by carrying out unnecessary assessments.
 - e. Excessive management fees charged by Blue Property Management for poor service and contrary to the term implied by s49 Consumer Rights Act 2015

4. In addition, the Applicant's representative, Mr Bourquoi was under a misapprehension that having issued these proceedings the Tribunal would also deal with a substantial number of other items of charge which were allegedly unreasonable and unpayable. At the hearing the Tribunal directed it would not deal with such matters until a new application was issued. Having regard to the number of items apparently in issue the Tribunal will address case management of that dispute when the relevant application is issued.

5. Having regard to the stated intention of Mr Bourquoi to issue new proceedings the Tribunal exercised its case management powers under r6 Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to adjourn *sine die* the application relating to the managing agents fee for consolidation with the expected new application. In the event no application is issued within 28 days the Applicant has leave to restore this element for final determination.

The Property

6. The Tribunal did not inspect the properties, the following description was given by Mr Bourqui at the hearing. The Court House comprises nine apartments formed from a refurbished two storey building constructed of brick and tile in or about 1878 and used as the magistrates' court, the adjoining police house of the same age and newly constructed additional extensions. Apartments 1 & 2 are on the ground floor of the courthouse, apartments 3,4 & 5 are on the upper floor with separate access, the police house is now apartment 6 and the adjoining new build comprise the remaining units.
7. The Court House was opened for residential use after completion of the refurbishment work in 2015.

The Lease

8. There was no dispute over the terms of the leases which are in substantially the same terms for all apartments.
9. Clause 1 is the interpretation clause for the definitions and rules of interpretation applied in the lease. Clause 1.1 is described as Definitions. Services are defined within this Clause. The Service Charge is defined as "the Tenants proportion of the Service Cost which are in turn defined as the total of"
 - a. All of the costs reasonably and properly incurred or reasonably and properly estimated by the landlord to be incurred of*
 - (i) providing the Services, and*
 - (ii) Complying with all laws relating to the Retained Parts*
 - b.the reasonably and properly incurred costs, fees and disbursements of any managing agent or other person retained by the landlord to act on the landlord's behalf in connection with the Building or the provision of the Services, and*
 - c. (so far as relevant)all rates taxes impositions and outgoings payable in respect of the Common Parts their use and any works carried out on them.*

10. Also in Clause 1 Tenants Covenants are defined as the covenants on behalf of the Tenant set out in Schedule 4 and the Regulations.
11. By Clause 5 the Tenant covenants with the landlord and the other tenants to observe and perform the Tenants Covenants.
12. Schedule 4 paragraph 2 contains the Tenant's covenant to pay the Service Charge under paragraph 4 of Schedule 6 (the Landlord's Covenants).
13. Schedule 6 paragraph 4 provides at 4.2
“to serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur or accepting an estimate relating to any Service Costs, and

4.3 to keep accounts records and receipts relating to Service Costs incurred by the landlord and to permit the Tenant, on reasonable notice, to inspect the accounts records and receipts.

The Statutory Framework

14. This case is brought under the usual statutory framework derived Sections 18 - 30 of the Landlord and Tenant Act 1985 for the regulation of the relationship between a landlord and tenant of residential property in connection with service charges.
15. S27A provides that an application may be made to the appropriate tribunal for the determination of what charges are payable and by whom. S20C provides that the Tribunal may determine that costs incurred in connection with such proceedings are not to be regarded as relevant costs to be taken into account of any service charge payable by the tenant and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 entitles a tenant to apply for an order extinguishing any litigation costs from an administration charge.

16. In this case the Applicants have relied on s49 Consumer Rights Act 2015 to support their case that the managing agents have not conducted the responsibilities in accordance with their statutory responsibilities. The section provides: *“(1)Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.”*

The Parties Submissions

17. As both sides relied on their respective representatives alone without any direct evidence from them the Tribunal has substantially relied on the written presentations. Neither Mr Bourqui nor Mr Fahy were able to give full and complete answers to questions from the Tribunal.

18. The disputed years are the period when Blue Property Management Limited (Blue) were the managing agents of the property pursuant to managing agreements renewed annually. The management agreements for each year between the Respondent and Blue were produced in the papers. The operative clause of the appointment simply states *“ Blue Property is hereby appointed by the Company as its managing agent in relation to the structural and communal parts of the Property and certain of its functions under the Leases on the terms of this Agreement”*.

19. As far as the Applicants are concerned after Blue took over the management of the Property in 2018 the charges and costs increased significantly.

20. The accountancy charges were incurred by a company which was connected to the managing agent. Accounts preparation charges levied upon the Applicants were as follows: in 2019, £445; in 2020, £490; in 2021, £530; and in 2022, £744, a total of £2,209 for the four years which are the subject of this Application,

21. The accounts are very simple. It should not be necessary to spend the time required to justify a large accountancy fee, Mr Bourqui has instructed a replacement firm, Flat Management Accounts, an online chartered accountancy business based in Bristol. It has provided an adequate service at a

much lower rate. Based on their current rates Mt Bourqui estimates the comparable charge by Flat Management Accounts would have been £984.00 inclusive of VAT.

22. Mr Fahy contended the accountancy firm used was at arms length from Blue and that their fees had been benchmarked against other businesses. He was unable to produce the benchmarking evidence or the names of other firms invited to tender for the work

23. The Charge for Client Money Protection was described as unnecessary. Although only a modest fee, it was indicative of the Respondent's approach, Mr Bourqui contended in that it did not have regard to the means of the Tenants or to the proportionality of using such a business in light of the sums involved.

24. Mr Fahy contended it was good practice to use such a service no matter what sums were involved for the protection of the tenants.

25. Charges incurred for Fire Risk Assessments and Health and Safety inspections should not be incurred on an annual basis, the Applicant's contended. Mr Bourqui relied on his interpretation of guidelines published by the Association of Residential Managing Agents (ARMA). The guidelines advised an assessment is not required each year, only that there is a check to ensure nothing has changed since the last inspection. His written submissions included a quotation from the guidelines published in 2023 "*On low-risk, modern, low-rise blocks (e.g. a block of no more than three storeys above ground, built within the last 20 years), a review every two years may be sufficient, with a new FRA completed every four years.*"

26. His written submissions asserted there is no obligation to conduct an annual safety inspection of a residential property and referred to the Health and Safety at Work Regulations 1999 relating to employment as support for his contention that an annual inspection is not required.

27. Mr Fahy contends that it was good practice to carry out fire safety inspections each year especially having regard to the considerable age of the former magistrates building

28. Mr Bourqui referred to the size of the complex and that it had been recently refurbished to contemporary standards.

Discussion and Decision

29. The Applicants noticed a rise in charges after the appointment of Blue in 2018. One resident, Joanne Spencer wrote to Blue on 10 and 21 March 2023 with complaints about balancing charges and insurance costs in addition to the items the subject of this application. The Respondent replied under its own complaints procedure on 19 April dismissing all the Applicant's complaints.

30. The complaint about the accountancy costs was dismissed with an assurance that charges are benchmarked without giving any explanation of how the benchmarking is carried out.

31. In answer to the Tribunal Mr Fahy was unable to give any information to assist the Tribunal in understanding the benchmarking methodology. The Respondent's accountants are supposedly at arm's length from Blue but there is an understandable question of proximity of relationship unanswered by the response to the complaint or by the answers given by Mr Fahy at the hearing. Blue has not attempted to show any benefit to the Applicants for the use of this firm.

32. Moreover, the lease does not require any external advisers to prepare and certify an account. The papers included the accounts for the subject years. They are a simple record income and expenses which is all that is required by the lease. The evidence of the third party is helpful in determining that the Applicants have been overcharged for the accountancy services. The Tribunal accepts and agrees that it is not necessary for the landlord to accept the cheapest of any trader or service provider's fees but in this case there is a significant difference between the charge levied by Blue and the costs of a

suitable alternative. Applying the two-part test set out in *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173 which required assessment as to:

1. Whether the landlord's decision-making process had been reasonable; and
2. Whether the amount charged was reasonable

the Tribunal considers the landlord appointed its associated accounts company without adequate review of other suppliers for the preparation of the service charge account. The Tribunal determines that the sum of £984.00 inclusive of VAT is a reasonable sum to pay for the preparation of accounts in total for years 2019.2020, 2021 and 2022.

33. The claim relating to the Client Money Protection service is upheld. It is reasonable for a responsible managing agent to take steps to ensure funds held on behalf of lessees are protected. Moreover, regulation 3 Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 requires all residential letting and property management agents who handle client money to join a client money protection scheme. This regulation ensures that landlords and tenants are compensated if the agent cannot repay their money, for example, if the agent goes into administration. However, no evidence was adduced regarding the actual cost to the Respondent of membership. The lease does not provide for the cost of membership to be passed on to the lessees. The Respondent did not give evidence of the amount of client money held. The Tribunal determines the cost of membership of the Client Money Protection scheme is not payable.
34. As far as the fees for Fire and Health and Safety inspections are concerned the decision to carry out inspections on an annual basis appears to be that of Blue acting without consultation with the leaseholders irrespective of any regulation or practice guidance.
35. The assessment and inspections were conducted by Blue Risk Management Limited, another company within the Blue family of companies. It is not surprising the Applicants are suspicious of fees incurred by an associated business. The issue for the Tribunal is whether the cost is relevant and reasonable.

36. The Applicant's contention in respect of health and safety inspection was that annual inspections were not necessary having regard to the size and construction of the property. All that was required was a check to ensure no changes had occurred after the original inspection.
37. The invoices for inspections reveal the fee charged for the inspection was £480 plus VAT per year. It appears the inspections were carried out at the same time as the fire risk assessments.
38. The Applicants did not produce any comparable evidence of relying on the general proposition of need for such frequency of inspections.
39. The Tribunal considers that there is unlikely to be a significant difference in cost if the attendance by an inspector is to look for any changes, which in practice amounts to a check. It concludes the attendance on a yearly basis is reasonable. The Applicants contend the fee should be £240.00 derived without explaining how that sum is deduced. The Tribunal does not have a reason to substitute the Applicants proposed sum for the actual charge.
40. Fire risk assessments were also charged at £480 plus VAT. The challenge to these fees was similar to the challenge to health and safety inspections. However, the Tribunal is satisfied that the performance of an annual fire risk assessment is reasonable for the fee imposed. The Tribunal determines the charges for Health And Safety Inspections and the Fire Risk Assessment are reasonable and payable.
41. The claim relating to the management charges of Blue Property Management is adjourned to be heard at the same time as the connected claim in proceedings issued and identified as *BIR/31UG/LIS/2023/0041-49* together with a further claim for items of service charge in service charge years 2019, 2020, 2021 and 2022.

Appeal

42. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such

application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge P.J Ellis