FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2024/0140**
Property	**:**	**Flats 1-6 Char Apartments, 14 Mitchley Avenue, Purley, CR8 1DT**
Applicant	**:**	**The Leaseholders**
Representative	**:**	**Miss Egorova(Flat 1); Mr Malde (Flat 2); and Mr Pring (Flat 6), Mr Pring acted a spokesperson**
Respondent	**:**	**Char Developments One Limited**
Representative	**:**	**Mr Roberts of Urang Property Management Limited**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Prof R Percival** **Mr K Ridgeway MRICS**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **23 September 2024**
Date of decision	**:**	**26 November 2024**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this decision.

(2) The Tribunal orders under section 20C of the 1985 Act that 75% of the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant.

(3) The tribunal orders under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished to the extent of 75%.

The application

1. The Applicants seek determinations pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge year 2023.

2. The relevant statutory provisions referred to may be consulted at:
https://www.legislation.gov.uk/ukpga/1985/70/contents
https://www.legislation.gov.uk/ukpga/2002/15/contents

The background

3. Char Apartments is a recently built block of six flats, on two floors. There is a parking area accessible from Ingleboro Drive, behind and up a slope from the block itself.

4. The Applicants hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The main relevant terms of the leases are set out below.

The leases

5. We were provided with the lease of flat 1. We understood all of the leases to be of like effect.

6. The lease is for a term of 999 years. It is in tripartite form between the landlord, the tenant and the management company. Urang Property Management Company is given in the lease particulars as the management company. Clause 1.2.5 (the part of the definitions clause headed "construction") provides that "references to the Management Company are to the Management Company appointed from time to time

in accordance with the provisions of this lease". It is not apparent what functions, however, are reserved to the defined company. Further, as we note below, in this application, Urang Property Management Ltd ("Urang") act purely as the managing agent of the Respondent.

7. The definitions clause (clause 1) defines "service charge proportion" as "a fair and proper proportion as reasonably determined from time to time by the Landlord or its managing agents".

8. The details of the service charge (which is reserved as rent) are set out in schedule 5 (clause 4.1.3). Separate provision is made for "insurance rent" (clause 4.1.2 and schedule 3).

9. In schedule 5, part 1, paragraph 2, the landlord covenants to provide the "Principal Services", and provision is made for a discretion to provide the "Additional Services".

10. Schedule 5, part 4, makes provision for the payment of the service charge by the tenant. By paragraph 4.1,

> 4.1 In each Service Charge Year the Tenant is to pay the Service Charge Proportion of the Service Costs.
> 4.2 The Landlord may vary the Service Charge Proportion from time to time to ensure that the Service Costs are fairly and properly proportioned between the Tenant and any other tenants or occupiers of the Estate. The Landlord:
> 4.2.1 may allocate to the Tenant or to any other person the whole or any reasonable proportion of the Service Costs where it is reasonable to do so or operate different service charge percentages in respect of particular Services or Additional Service Items

11. In paragraph 4.4, the tenant is to pay to the landlord

> 4.4.1 by equal quarterly payments in advance on the Quarter Days the reasonable sum notified by the Landlord as being payable by the Tenant towards its liability under paragraph 4.1; and
> 4.4.2 any additional sum or sums on demand which the Landlord properly and reasonably requires where the Landlord is required to incur any Service Costs and the sums held on account by the Landlord are insufficient for that purpose

12. By paragraph 5.3, the reasonable costs of managing agents are chargeable to the service charge.

13. Provision is made for a service charge statement to be produced as soon as practicable after the end of the service charge year (paragraph 6.1),

and for a sinking fund (paragraph 8). The sinking fund is described in the accounts as a reserve fund.

14. Clause 7.4 requires the tenant to pay (among other things), "the proper costs and expenses of the Landlord's solicitors … and other professional advisors … arising from … the preparation and service of any notice and the taking of proceedings by or on behalf of the Landlord under sections 146 or 147 of the Law of Property Act 1925 …".

The hearing

Introductory

15. Mr Pring and Ms Egorova attended. Mr Pring acted as spokesperson for himself and the other Applicants. Mr Roberts, divisional head of property management for Urang represented the Respondent.

16. Mr Roberts clarified that in relation to the property, although Urang appeared as "the Management Company" in the particulars of the lease, it relevantly acted as the Respondent's managing agents, not as a party to the lease.

17. Urang had been appointed as managing agents in May 2022. Thereafter there was what Mr Roberts referred to as an on-boarding process. It was not disputed that the first contact with the tenants took place in June and July 2023.

18. The Applicants were the first leaseholders of the building, which was completed in 2022. They acquired their leasehold interests between late 2022 and early 2023.

The Scott schedule: general

19. At the hearing, we proceeded by consideration of the Scott schedule. A number of issues raised in the Scott schedule, and the Applicants' supporting material, were agreed, either before or at the hearing.

20. One of these was the apportionment of the service charge proportions between the flats. We have set out above the position under the lease. Had the matter been in issue, we would have considered whether the criteria set out in the lease governing the Respondent's discretion as to the proportions had been satisfied.

21. In fact, it appears that there had been a number of attempts to apportion the proportions on the basis of the size of the flats, none of which the Applicants considered appropriate. The Applicants had, instead, put to the Respondent an apportionment that they all agreed on. The Respondent, Mr Roberts told us, had now agreed to adopt that apportionment, and applied it to the 2023 service charge.

22. Mr Roberts also agreed that any surplus fell to be credited to leaseholders' future liability for service charges, not, as Urang had erroneously initially provided, applied to the reserve fund.

23. The Applicants did not contest the building insurance.

24. As we have set out above, the lease provides for an interim service charge to be collected in advance, and for a reconciliation process to follow, with a surplus being credited to the tenants in the following service charge year.

25. Demands for advance service charges were issued retrospectively, on 7 August and 6 December 2023, together relating to the whole of the calendar year 2023.

26. As to other matters that were agreed during the hearing, we deal with them at the point they occurred in the Scott schedule.

27. The matters in issue are set out and determined below. We were assisted by the out-turn figures for expenditure during the year, which were now available to us, but had not been available when the Applicants had compiled the Scott schedule.

General building repairs/works

28. The estimated figure in the demand was £350. The out-turn figure was £216. The expenditure related to an invoice from Urang Cleaning and Maintenance, an associated company of the managing agents Urang. It related to a call out of two hours in relation to fire safety equipment in the communal area, described on the invoice as "investigating faulty fire alarm panel as requested. Cleaned detector, cleared & reset panel". Mr Roberts could only rely, he said, on what was stated on the invoice. He suggested that the call out cost must have taken account of travel time. Mr Pring's principal objection was that any relevant work should have been covered by a warranty or guarantee. Mr Roberts said that cleaning a detector would not be something that the manufacturer or installer would accept as covered by a warranty.

29. The Tribunal is in the same position as the parties in having to rely only on the text on the face of the invoice. We not consider that cleaning a detector and resetting a fire alarm panel could reasonably have taken two hours. Mr Roberts suggests that it would have included travel time. We were not supplied with the contract between this contractor and the Respondent (or Urang), so we can only proceed on the basis of normal practice, which does not standardly charge for travel time. Accordingly, we consider only one hour is reasonable. The reasonable sum is therefore £108.

30. Decision: The reasonable sum for the fire safety call out charged under "general building repairs/work" is £108 (including VAT).

Fire risk assessment

31. £474 had been charged in the interim service charge. There was no actual expenditure. See below under "health and safety assessments" for the real position in relation to a fire risk assessment.

Fire alarm maintenance

32. £660 had been charged in the interim service charge. There was no actual expenditure.

General cleaning

33. £567 was charged in the interim service charge. The outturn figure was £1,178.64.

34. Mr Roberts explained that this heading was misleading, in that it included other matters.

35. First, an invoice included in the bundle showed monthly cleaning at £283.50, and monthly ground maintenance at £421.20, giving a total, with VAT added of £845.64. Both related to the fourth quarter of 2023 only. Secondly, there was, Mr Roberts told us, a further cleaning invoice not in the bundle totalling £277.50 (£333, including VAT). These two invoices were the basis of the £1,178.64 in the outturn statement. The total for cleaning alone is thus £561, or with VAT, £673.20.

36. Mr Roberts said that the non-disclosed invoice related to an initial clean in July 2023 charged at £120, followed by subsequent monthly cleans in August and September for £78.75. The invoice in the bundle covered the three cleans in October to December, at £94.50 each.

37. The Tribunal had viewed the property on google street view. Mr Pring explained that the communal areas comprised one stairway and two hallways giving access to the flats. All are carpeted. Mr Pring argued that effectively the entire budget for the year had been consumed in the final quarter. There was a record of cleaning at the premises which only showed two cleaning visits. The Applicants did not see the fruits of that expenditure, he said, and the cost was unreasonable. Mr Pring noted that there had been an incident when the Respondent, while snagging individual flats, make a substantial mess in the communal areas, of which photographs were provided.

38. Mr Pring said he thought that there would be no more than one hour's work to clean the communal areas. He said he would expect a charge of £20 for an hour's cleaning work.

39. Mr Roberts submitted that it appeared that no increased charge had been made in respect of the mess referred to by Pring. A charge of around £95 for an hour in London was not unreasonable, albeit not the cheapest available.

40. We accept that the budgeted approach as set out in the interim demand is necessarily approximate, and where appropriate must give way to actual expenditure incurred. Nonetheless, we conclude that there is force in Mr Pring's broad point that the outturn figure is about double that budgeted, even with Mr Roberts' clearer explanation of the times covered by the invoices. This is a small development with limited communal areas. The total figure of £673 for part of the year implies an annual total of about £1,300. Standing back, this is too much for a block of this size as an annual figure. We do not have any alternative quotations, but on the basis of our general knowledge of the market for communal cleaning services in London (knowledge of a general nature, not amenable to the disclosure of particular pieces of evidence), we consider that £95 (before VAT) for an hour's visit is not within the normal reasonable range. We would put the maximum reasonable one hour visit fee at £65. We accept that the initial fee of £120, after there had been no cleaning service for some months, may be reasonable. Applying that to the amount of cleaning actually done, £445 would be the reasonable charge. It follows that we reject Mr Pring's figure for an hour's cleaning, which might (although we doubt it) be appropriate for a domestic arrangement, but is not at all appropriate for a commercial contract with a freeholder.

41. *Decision*: the reasonable charge under the heading general cleaning is £534 (including VAT).

Door entry maintenance

42. £180 had been charged in the interim service charge. There was no actual expenditure.

Garden and grounds maintenance

43. The interim demand figure under this heading was £1,166.40. The outturn document stated that there had been no expenditure. As noted above, there was an invoice wrongly attributed to general cleaning for grounds maintenance of £421.20.

44. Mr Pring, while acknowledging that this amounted to somewhat less than the pro rata cost based on the interim demand, submitted that there was a wider issue as to the hand over state of the garden. It was not, he said, completed to a proper state, and was yet to be fully completed. The garden area is one lawn and some flower beds. He said he had observed two gardeners attending for about, he thought, 30 minutes once or twice a month.

45. We were taken to photographs that showed the incomplete state of the gardens, and from which we could assess the extent of garden maintenance necessary.

46. Mr Roberts argued that the invoice showed a quarterly rate of £140, representing two gardeners at £70 each. There was a lawn to mow, and planters and flower beds to maintain. This, he argued, was not an unreasonable charge.

47. We agree with Mr Roberts' submissions. We take Mr Pring's point as to the incomplete state of the landscaping of the gardens, as illustrated in the photographs, but that does not determine the reasonableness of the cost of ordinary garden maintenance. The garden area is, for a block of this size, larger and more elaborate than is often the case. For what it is worth, the overall sum is proportionate to that demanded in advance.

48. *Decision*: The reasonable charge under the heading garden and grounds maintenance is £505.44 (including VAT).

Accountancy fees

49. Mr Pring accepted that the fees of £510 were reasonable. He accepted that the fees would accrue at the end of year, so a charge for the whole sum was appropriate.

Management services

50. The sum of £1,800 was expended on the services of Urang. The figure was that in the interim service charge demand.

51. We indicated to the parties at the outset of this section that it was in the experience of the Tribunal that the market in London for managing agents services was such that, for a block of this size and nature, the top of the normal reasonable range for a per unit management fee would be in the region of £375 (before VAT), albeit subject to the exact nature of the contract in an individual case. This, we said, was knowledge of a general nature, not amendable to the disclosure of particular evidence. Accordingly, in principle the pre-VAT fee of £250 per flat was well within the normal reasonable range.

52. Mr Pring accepted that, as a per unit sum, the management fee was not excessive. However, he argued that Urang had only contacted the leaseholders in June 2023, and the charge was for the whole year. His submission was that the Applicants could not be charged for the preceding period, when no services had been delivered to the leaseholders.

53. Mr Pring also submitted, that even if that was not the correct approach, that the services of Urang had been substandard. His argument was that

the Respondent as developer had not completed the external areas on time, and it had been difficult or impossible for the leaseholders to property engage with Char Developments One Limited at and after the point of sale of the leasehold interests. It was a two way process, in that Urang were responsible for making sure that the leaseholders did what they were obliged to do under the lease, but it was also Urang's job to keep Char Developments up to scratch.

54. Mr Pring also put the point in a further alternative way. If Char Developments were performing inadequately, then that failure should be attributed to the managing agents.

55. Mr Roberts submitted that the objections to Char Developments conduct did not speak to the recoverability of Urang's management fees. Urang, he said, had performed their duties to their client, and nothing had been said that would prevent the client recovering those fees through the service charge.

56. He accepted that the on-boarding process had been longer than normal. Taking on a new building as managing agent was inevitably a somewhat time consuming process. He did not have sufficient information to explain why the process took so long in this particular case. In answer to questions from the Tribunal, he said he would usually advise that on-boarding took two months or so, so he inferred that there must have been some specific problems in this case.

57. We do not accept that the leaseholders were only liable for a service charge representing the fees paid to Urang from June or July 2023, when Urang was first in contact with the leaseholders. The cost of managing agents was recoverable under the lease, and the Respondent was liable for those charges from the time that it entered into a contract with Urang. We also reject Mr Pring's argument that it is the job of managing agents to enforce lease provisions against their client. A managing agent is an agent of their client, for whom they act, not an impartial enforcer of the leases. We also reject Mr Pring's argument that Char Developments' defaults meant that Urang were not performing their job properly. The managing agent is responsible for ongoing management of the relationship between leaseholder and freeholder, under the terms of the lease. It does not, in the ordinary way, have development or initial leasehold marketing responsibilities.

58. However, we think the on-boarding process, which appears to have lasted from May 2022 until about June 2023, is wholly unjustifiably long. The Applicants were not charged with Urang's fees for that long, but they were charged for a full calendar year. It cannot be reasonable for leaseholders to be liable for managing agents fees for such a long on-boarding process, before any leaseholder-facing management tasks at all were performed, in the absence of very compelling reasons. Mr Roberts was unable to give us any reason for the length of the process in this case.

59. It might have been reasonable for the process to have taken two to three months. It was accepted that Urang were in informal contact with the leaseholders in June 2023, but the first substantive work formal communication in July and then the interim demand in August. On this basis, an on-boarding process taking April, May and most of June provides an appropriate basis for assessing the reasonable charge for managing agent's fees. Three months' management fees would be £375. To account for the indeterminacy of when the direct relationship with the leaseholders can be said to have started, we assess the reasonable fee for the year as £1,200 (excluding VAT).

60. *Decision*: The reasonable charge under the heading management fees maintenance is £1,440 (including VAT).

Bank charges

61. Mr Pring accepted, on the basis that it was an annual fee, that the £50 charge (in both interim demand and outturn) was reasonable.

Emergency out of hours service

62. £72 had been charged in the interim service charge. There was no actual expenditure. Mr Pring observed that it was not clear to the Applicants why this was a separate heading, as it could properly be part of the management fee.

Health and safety assessments

63. £60 was charged in the interim demand. The outturn figure was £534.

64. Mr Roberts explained that a health and safety assessment and a fire risk assessment were undertaken at the same time, and the cost has been charged under this heading. He said that it might have been better if there had been one budget line dealing with both (and, we add, the fire door checks – see below).

65. There were two invoices contributing to the charge specified. One was for £474, including VAT, to another Urang associated company. That was in the bundle, and was for a general and a fire risk assessment. There was an additional invoice for £60, including VAT, for health and safety monitoring software. Urang required an annual licence for the software, and distributed the cost between the buildings it managed.

66. On the basis of Mr Roberts' explanation, Mr Pring said that he did not contest these charges.

Contingency

67. No provision was made for a contingency charge in the interim service charge demand. The outturn figures included a charge of £108, for two fire door checks. Mr Pring did not contest it. Mr Roberts conceded that the cost was misplaced in this category in the outturn figures.

Applications for additional orders

68. The Applicant applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

69. We consider these applications on the basis that the leases does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

70. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

71. Such orders are an interference with the landlord's contractual rights, and should not be made as a matter of course.

72. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. We have no information as to the identity or size of the Respondent, but there is no reason to suppose that it is in a similar position to, for instance, a leaseholder owned freehold company with no means of raising funds other than through the service charge, or administration charges.

73. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

74. In this case, in relation to the matters which remained contested before the Tribunal, both parties had a more or less equal level of success, perhaps with somewhat greater success for the Applicants. In addition, we take into account that the initial challenge pre-dated the outturn figures, which took a number of potential conflicts off the table (ie those

where no expenditure was incurred). It was not unreasonable for the Applicants to make these challenges. Further, in respect of some items, the rationale for the charges only became clear with Mr Roberts' explanations, and in some of those, he accepted that the presentation of both the interim service charge demands and the outturn figures were confusingly presented.

75. We conclude that it is just and equitable in these circumstances to order that the Applicants be relieved of 75% of the costs of these proceedings, in the context of both the service charge and any power to levy an administration charge.

76. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that 75% of the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished to the extent of 75%.

Rights of appeal

77. 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.

78. 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.

79. 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.

80. 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.

Name: Judge Professor R Percival **Date:** 26 November 2024