FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BC/LSC/2024/0234**
Property	**:**	**6 Bracken Court, Foremark Close, Ilford Essex IG6 3GJ**
Applicant	**:**	**Shamim Naeem**
Representative	**:**	**Mohtshim Naeem**
Respondent	**:**	**Clarion Housing Group**
Representative	**:**	**Ms Victoria Bateman Rent and Service Charge Manager Clarion Housing Group**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Judge Prof R Percival** **Mr J Naylor FRICS FIRPM** **Mrs E Ratcliffe MRICS**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **6 December 2024**
Date of decision	**:**	**11 December 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the contested service charges are payable under the tenancy and are not unreasonable in amount.

(2) The Tribunal does not make an order under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through a service charge.

(4) The tribunal declines to make an order under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant's Tribunal fees.

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and/or Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and/or administration charges payable by the Applicant in respect of the service charge years 2019/20 to 2024/25.

2. Sources of free legal information, including the legislation referred to in this decision, are set out in the appendix to this decision.

The background

3. The property is a two bedroom flat on the second floor of a purpose built block.

4. The Applicant holds an assured tenancy 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. She was represented throughout by Mr Mohtshim Naeem, her son, who also lives at the property.

The tenancy agreement

5. The agreement is a weekly assured tenancy that started in June 2009. We were provided with a partial copy of the agreement that included most of the principal substantive terms. Our copy did not include appendix A, which, the agreement said, set out the services the costs of which were recoverable through the service charge. Separately, we were provided with a copy of what appear to be the opening terms, specifying the parties and the date of commencement.

6. Section 1 of the tenancy agreement is entitled "general terms". The first sub-section (clause 1.1 and 1.2) is headed "payment for the premises". It makes provision for the payment of rent and for utilities and water.

7. The second subsection is headed "services". It reads as follows:

> 1.3 The Landlord shall provide services in connection with the Premises as set out in Appendix A. However, the Landlord may, after consulting with the tenants affected, increase, add to, remove, reduce or vary the services provided.
> 1.4 The Service Charge (if any) for any 12 month period ending on the 31 March ("the Account Year") shall be a sum equal to the cost which the Landlord estimates they are likely to incur in the Account Year in providing the services. The Landlord will give the Tenant at least 28 days notice of the estimate which is the amount the Tenant must pay for the following Account Year. The service charge is a variable service charge for the purposes of the Landlord & Tenant Acts 1985 and 1987 as amended.
> 1.5 After the end of each year, the Landlord will work out how much they have actually spent on providing *services* for the Tenant in the previous year. If the Landlord has overcharged the Tenant, they will reduce the Service Charge for the coming year. If the Landlord has undercharged the Tenant, they will increase the Tenant's new Service Charge. (If there would be a significant increase in the amount of Service Charge, the Landlord may introduce this gradually over a number of years.)

8. There is no separate provision for an administration charge.

The hearing

Introductory

9. Mr Naeem represented the Applicant. Ms Bateman, a rent and service charges manager, represented the Respondent.

10. The bundle that had been provided by Mr Naeem was inadequate, in that it did not contain the statement of case and supporting documents supplied to Mr Naeem by the Respondent. Mr Naeem told us that he had not realised that he was responsible for including the Respondent's material.

11. However, given the nature of the issues as they now appeared (see below), we suggested that we would be able to deal with the substantive issues without having sight of those materials, a course with which both parties agreed.

The issues and determination

12. The parties had significantly narrowed the issues in advance of the hearing. Mr Naeem had provided a Scott schedule containing eight items, described as administration charges or administration fees, relating variously to the service charge years from 2020/21 to 2024/25.

13. Before the hearing, the papers showed that Mr Naeem considered that these represented administration charges in the sense defined and regulated in Commonhold and Leasehold Reform Act 2002, schedule 11. At the hearing, Mr Naeem explained that six of the eight items he now understood not to be administration charges. They were described as "true up" charges, by which the Respondent meant charges arising out of a deficit in the advance service charge charged the previous year, as provided for in paragraph 1.5 of the lease, quoted above. Ms Bateman told us that these reconciliation charges were spread over the subsequent year and charged weekly.

14. That left two sets of charges in the Scott schedule, for £1.55 per week in 2023/24 and £1.68 per week in 2024/25. However, as Ms Bateman helpfully pointed out, at the Case Management Hearing it had been agreed that the scope of the claim related to each service charge year from 2019/20 to 2024/25. Accordingly, our determination relates to each of those years.

15. At the hearing, Mr Naeem's case was that these charges were administration charges in the 2002 Act sense, and there was no provision in the lease for such charges.

16. Mr Bateman said that the charges were levied in each of the years under consideration. They were, however, charges representing the cost to the Respondent of what she described as back-office functions. These included approving invoices for service charge items, managing the service (which we take to include administering repairs etc), checking that works paid for had been done, reconciling service charge accounts and administering service charge demands.

17. The fee for this work was calculated at 15% of the service charge, with a cap of £200 on any one tenant in a year. This figure was used across the whole of the Respondent's considerable portfolio of properties, where the tenancy agreements made provision for a service charge.

18. By the close of the hearing, we are not sure that Mr Naeem persisted with his contention that the charges were administration charges in the 2002 Act sense, in the light of Ms Bateman's explanation. In his reply to Ms Bateman, he concentrated on the difficulty he had experienced in understanding the charges in the form in which they had been presented. He referred, in particular, to the difficulty of extracting and understanding information from the online account available to the

tenant, and also argued that the demand itself did not provide sufficient information. We should add that Ms Bateman contested, at least to a degree, the assertion that the information was difficult to access, in particular referring to the demand.

19. Our conclusion is that the 15% charge is charged as part of the service charge, and is not an administration fee charged to specific tenants in the 2002 Act sense. It is, as Ms Bateman submitted, a part of "the cost which the Landlord estimates they are likely to incur in the Account Year in providing the services" in clause 1.4 of the tenancy agreement.

20. Mr Naeem did not argue that, considered as an element in the service charge, the 15% fee was unreasonable in amount, or incorrectly calculated.

21. *Decision*: the contested fees or charges are payable under the tenancy and not unreasonable in amount.

22. In the light of this decision, it is strictly unnecessary for us to come to a conclusion on the reasonableness and method of calculation to determine the issue before us. Nonetheless, applying our collective knowledge of charges for management fees in both the private and public sectors in London (knowledge of a general nature not susceptible to disclosure of discrete pieces of evidence), we did conclude that the fee was within the reasonable range, particularly having regard to the £200 cap. We also concluded that using an overall percentage of service charge as a stand-in for a precise calculation of the actual costs incurred in respect of what Ms Bateman referred to as back-office functions was, in the absence of a specific challenge, an efficient and fair methodology.

23. However, we do have some sympathy with Mr Naeem's complaint about his difficulty in ascertaining the nature of the charges made against his mother. We note Ms Bateman's defence of the material supplied to tenants, and, for the reasons set out above, we did not have most of the relevant materials before us to see for ourselves. But Mr Naeem came across as an articulate and intelligent man, and if he had, as we are convinced he did have, genuine difficulty ascertaining the true position, that itself may give the Respondent a reason to reassure itself that its information is of sufficient clarity and accessibility.

Applications for additional orders

24. 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. Mr Naeem did

not expressly apply for an order for the reimbursement of the application and hearing fees, under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13(2), but the directions indicated that such an application could be considered at the close of the hearing.

25. Insofar as the application for an order under paragraph 5A is concerned, we conclude that there is no provision in the tenancy agreement for an administration charge in respect of the costs of Tribunal proceedings. We do not consider that such an administration charge could be imposed by an entry in the missing appendix A, either, as that is, on the terms of the lease, relevant only to the tenant's covenant to pay the service charge. Accordingly, there is no call for us to make the order.

26. In the absence of a copy of appendix A, we cannot come to the same conclusion in relation to the application for an order under section 20C. So we consider the application under section 20C on the basis that the tenancy agreement does provide for such costs to be passed on in the service charge, without deciding whether that is 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.

27. 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). Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

28. 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. In this case, the landlord is a large landlord with an extensive portfolio.

29. 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.

30. We have not heard developed submissions from either party. It is possible that the Respondent would have declined to pass on the costs in any event. Indeed, we think the likelihood of that is reasonably high. Given the way in which the 15% management charge is calculated, it may well be that the Respondent would consider that dealing with the substantive application would be one of those expenses covered by that charge. That suggestion is further supported by the fact that the Respondent dealt with the matter in-house both in advance of the hearing, and by the (helpful and effective) contribution of Ms Bateman at the hearing. If the Respondent had declined to charge for the cost of proceedings, it is frequently the practice of the Tribunal to secure that commitment by making an order.

31. While in general, the level of success achieved by the Respondent would argue strongly for not making an order, we also take into account that the lack of clear explanations of the charges until a relatively late stage appears to have contributed to the application proceeding to a hearing.

32. On balance, therefore, we conclude that we will make an order under section 20C. It is open to the Respondent to invite the Tribunal to review that decision under Tribunals, Courts and Enforcement Act 2007, section 9 and rule 55 of the 2013 Rules.

33. We do not consider that the same considerations apply to the application (assuming one was before us) to reimburse the Tribunal's fees. The Applicant made the applications, and has been unsuccessful before us, and in those circumstances we consider it would not be appropriate for us to make an order requiring reimbursement by the Respondent.

34. *Decisions*:

(1) The tenancy agreement does not make provision for the Applicant to be charged an administration fee, and accordingly the question of an order under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A does not arise;

(2) The Tribunal orders under section 20C of the 1985 Act that 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

(3) The Tribunal declines to make an order that the Respondent reimburse the Applicant's application and hearing fees under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2).

Rights of appeal

35. 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.

36. 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.

37. 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.

38. 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 Prof R Percival **Date:** 11 December 2024

APPENDIX: SOURCES FOR FREE LEGAL MATERIALS

Legislation

The legislation referred to in this decision may be found at:

https://www.legislation.gov.uk/ukpga/1985/70
https://www.legislation.gov.uk/ukpga/2002/15/contents

Case Law

The dedicated website for Upper Tribunal (UT) cases, which are binding on this Tribunal, is:

https://landschamber.decisions.tribunals.gov.uk/Aspx/Default.aspx

The search engine does not allow for free text searching. Sufficient information to use the provided search engine (such as the date of the case or the parties names) may be available via a google search.

Alternatively, the official National Archive website is at:

https://caselaw.nationalarchives.gov.uk/

This has a better search engine, but does not contain UT decisions before 2015, and there may be gaps in its provision thereafter.

The National Archive website can also be used for finding cases in higher courts, including those referred to in UT decisions.

Alternatively, many UT decisions, and most other important cases in all courts, are available on:

https://www.bailii.org/ .

Bailii stands for British and Irish Legal Information Institute. It is a charity that has published free caselaw for many years, and has in some cases loaded up earlier case law.