FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AT/LCP/2024/0001**
Property	**:**	**11 Marlborough Road, London W4 4EU**
Applicant	**:**	**11 Marlborough Road RTM Company Ltd**
Respondent	**:**	**Ms Louisa Wickham and Ms Anne Shepherd**
Type of application	**:**	**Determination relating to Right to Manage Chapter 1 Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge H. Lumby** **Mrs S Phillips MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**16 September 2024 and 6 December 2024**
Date of decision	**:**	**27 March 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the amount of costs payable by the Applicant to the Respondent pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 is (a) £1,000 plus VAT in respect of legal costs and (b) £1,711.80 in respect of the termination fee paid to Blocsphere Limited and (c) £570.60 in respect of the handover fee paid to Blocsphere Limited. The payment at (c) is conditional on the Applicant receiving independently audited accounts for the 2021/2022 and the 2022/2023 service charge years.

(2) The tribunal determines that the amount of uncommitted service charges to be transferred to the Applicant pursuant to section 94 of the Commonhold and Leasehold Reform Act 2002 is £1,173.13.

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

The application

1. The Applicant seeks determinations pursuant to sections 88(4) and 94(3) Commonhold and Leasehold Reform Act 2002 (the "2002 Act") as to (a) the amount of fees payable to the Respondent in respect of the transfer of the Right to Manage to the Applicant and (b) the amount of uncommitted service charge to be transferred to the Applicant.

2. The leaseholders behind the Applicant also seeks orders under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant or any lessees through any service charge.

Background

3. The Property is a Victorian building, converted into three one bedroom flats together with a single two bedroomed ground floor with a separate entrance. The Applicant is an RTM company established by the leaseholders. The Respondent owns the freehold to the building and is the landlord to the leaseholders. One of the leaseholders is Louisa Wickham; Ms Wickham is also one of two people comprising the Respondent.

4. The Respondent employed Blocsphere Limited as managing agent. Its initial contract was signed on 31 December 2020 but did not come into effect until September 2021, as a result of the completion of works to the Property following an insurance claim. A replacement contract was entered into in April 2022.

5. The service charge year from 29 September in each year to 28 September the following year. No accounts have been provided for the 2021/2022 and 2022/2023 service charge years.

6. There were complaints from both parties as to the services provided by Blocsphere, including in relation to the production of accounts, the charging of sums by Blocsphere and its hand over to the Right to Manage company.

7. The Right to Manage notice was served on 9 February 2023 and accepted on 20 April 2023. The Applicant took over providing the services on 26 July 2023.

8. Notice to terminate Blocsphere's appointment was served on 12 April 2023.

9. There was no dispute as to whether the Applicant had acquired the Right to Manage, the disputes instead related to the transition arrangements.

The hearings

10. This has been a determination following two hearings, first on 16 September 2024 and then on 6 December 2024. Both hearings were conducted in person.

11. The first hearing was attended by Ms Wickham, on behalf of the Respondent, together with her husband, Mr Glenn Halliday. The Applicant was represented by two leaseholders (Ms Usma Sattar and Mr John Elkon, together with Mr John Price and Mrs Linda Price on behalf of their son Mr Jack Price, who was another leaseholder). Ms Sattar acted as representative. That hearing successfully considered the issues of the costs payable to the Respondent and the section 20 application. However, it was not possible, based on the information available, to ascertain the amount of uncommitted service charge to be transferred to the Applicant. As a result the hearing had to be adjourned.

12. A witness summons was issued to Mr Ashley Davies of Blocsphere to attend the second hearing and to provide specified information prior to the hearing. Information was provided by Mr Davies and he attended the second hearing by telephone.

13. The second hearing was also attended by both Ms Wickham and Ms Shepherd, who are the Respondent. Ms Sattar attended on behalf of the Applicant, together with Mr and Mrs Price, again on behalf of their son.

14. The documents that the tribunal was referred to are in a bundle of 664 pages; in addition, the tribunal was provided with skeleton arguments by both parties. The tribunal had sight of the management information provided by Mr Davies in advance of the second hearing. The contents of all these have been noted by the tribunal.

15. Mr Davies agreed at the second hearing to provide additional information, in particular internal service charge accounts for the 2021/2022 service charge year by 20 December 2024 and externally prepared accounts for the 2021/2022 and 2022/2023 service charge years by 31 January 2025. The parties were permitted to make further written submissions by 17 January 2025. The tribunal has not seen any such accounts nor any further submissions, despite waiting a further month for these. It has therefore proceeded to make its determinations without these.

16. The application was ostensibly to ascertain the costs payable to the Respondent in relation to the RTM application and the uncommitted service charges to be transferred to the Applicant. However, the Applicant's principal arguments related to whether the fees paid to Blocsphere and the service charges levied by it were reasonable and proper, so increasing the uncommitted balance to be transferred to the Applicant. Much time was spent reading and hearing submissions to the tribunal on this basis. It was explained at the hearing, and it is reiterated now, that these are not matters which are appropriate for this application. As a result, we have not rehearsed or analysed the arguments made nor is any determination made in relation to them. If the individual leaseholders wish to pursue these complaints, they should make an application to the tribunal for a determination as to the payability and reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985.

17. Having considered all of the documents provided and heard the submissions of the parties, the tribunal has made determinations on the issues as follows.

The Law

18. Section 88 of the 2002 Act has been repealed with effect from 3 March 2025. However, it remained in force for the purposes of this case and provided:

> *(1) A RTM company is liable for reasonable costs incurred by a person who is—*
>
> *(a) landlord under a lease of the whole or any part of any premises,*
> *(b) party to such a lease otherwise than as landlord or tenant, or*
> *(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,*
>
> *in consequence of a claim notice given by the company in relation to the premises.*
>
> *(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*
>
> *(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before [the appropriate tribunal] only if*

the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by [the appropriate tribunal]

19. The tribunal is the appropriate tribunal for these purposes and for the purposes of section 94 set out below.

20. Section 94 of the 2002 Act provides

(1) Where the right to manage premises is to be acquired by a RTM company, a person who is—

(a) landlord under a lease of the whole or any part of the premises,
(b) party to such a lease otherwise than as landlord or tenant, or
(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of—

(a) any sums which have been paid to the person by way of service charges in respect of the premises, and
(b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to [the appropriate tribunal] to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

Tribunal's determination

Costs payable under section 88(4) of the 2002 Act

21. Section 88 of the 2002 Act holds the RTM company (here the Applicant) responsible for reasonable costs incurred by the landlord (here the Respondent) "*in consequence of a claim notice given by the company in relation to the premises*". This means the Applicant is responsible for reasonable costs incurred by the Respondent as a result of the Applicant's application to be given the Right to Manage.

22. As referred to above, section 88 has now been repealed, with effect from 3 March 2025. However, section 88 was in force at the time of the Applicant's application to be given the Right to Manage as well as when the Applicant applied to the tribunal and when the hearings occurred. The subsequent repeal of the section is therefore not relevant.

23. The Respondent is claiming professional costs as follows:

    (i) Legal fees of £1,236.60

    (ii) Termination fee payable to Blocsphere of £1,711.80 and

    (iii) Handover fee of £570.60

24. The tribunal has considered each of these in turn.

Legal fees

25. The Respondent's initial estimate of the legal fees of their solicitor (FDC Law) was £975 plus VAT in July 2023. This was subsequently raised to £1,600.40 (with the Applicant's share being £1,236.60), which was said to have occurred as a result of the non-co-operation of Blocsphere. The Applicant argues the increase was for separate advice given to the Respondent on insurance matters and that costs relating to Blocsphere should be solely for the Respondent, as they were not privy to those arrangements.

26. The tribunal is satisfied that FDC's costs in relation to the RTM application are recoverable from the Applicant. This includes legal costs in dealing with the termination of Blocsphere as this appointment needed to come to an end once the Applicant took over. However, it also determines that enquiries about insurance were not recoverable. These fees are recoverable only to the extent they are reasonable. The tribunal concludes that £1,000 plus VAT is a reasonable sum for the Applicant to pay, with the Respondent responsible for the excess.

27. The tribunal therefore determines that the sum of £1,000 plus VAT is payable by the Applicant to the Respondent in respect of legal fees.

Termination fee

28. The relevant contract with Blocsphere is dated 21 April 2022 and took effect from 1 May 2022. The annual fee was £3,500 plus VAT and the specified review dates were 1 May 2023 and each anniversary of that date.

29. Blocsphere argued to the Respondent that clause 12.6 of their contract entitled them to be paid the management fee up until the next review date.

They argued that no fault termination by the Respondent must be given on not less than three months' notice to terminate on the next review date. Notice was given on 12 April 2023; they argued that because this is less than three months before 1 May 2023, they were entitled to a management fee until 30 April 2024, so £3,500 plus VAT from 1 May 2023. They offered to waive this in return for a six months' fee. A figure of £1,711.80 was agreed by the Respondent.

30. The Respondent argues that Blocsphere were indeed entitled to a full year's management fee and so by agreeing the lower figure, they had secured the Applicant a saving.

31. The Applicant argues that the contract is invalid as it refers to the wrong property. Whilst the wrong property is referred to, this is clearly a typographical error and does not invalidate the contract. They also argue that the fee lacks clear justification and a contractual basis and potentially breaches section 62 of the Consumer Rights Act 2015 and the Unfair Term on Consumer Contracts Regulations 1999. The tribunal does not accept these arguments; the appointment of Blocsphere is not a consumer contract and the contractual figure to which Blocsphere were entitled was higher.

32. The tribunal concludes that the termination fee was payable in consequence of the RTM application and so is recoverable in principle under section 88. If three months' notice prior to 1 May 2023 had been given, the fee payable would have been avoided but this would have required notice to be given prior to 1 February 2023. Given the Right to Manage notice was not served until 9 February 2023, it is not reasonable to expect an existing management agreement to be terminated prior to that. The tribunal accepts that Blocsphere were entitled to be paid a management fee until the end of April 2024, being £3,500 plus VAT from 1 May 2023. The Respondent obtained a significant discount on the amount payable. The tribunal therefore concludes that this discounted amount is reasonable and payable by the Applicant.

33. The tribunal therefore determines that the sum of £1,711.80 is payable by the Applicant to the Respondent in respect of the termination of the Blocsphere management agreement.

Handover fee

34. Blocsphere also argued that they were entitled to a handover fee for work handing the Property over to the Applicant. They relied on Appendix 3 of their contract which allows charges to be levied by reference to their Standard Tariff Overview for "*standard procedures relating to the Property which are of an ad-hoc nature and/or subject to periodic change*". The Respondent accepted that this includes a handover fee with the Applicant's share being £570.60.

35. The Applicant argues that clause 4.3 of the Blocsphere contract requires them to comply with the RICS' Service Charge Residential Management Code as appropriate. They argue that this code prohibits handover fees but this is not a requirement of the code. The Applicant further argues that the code makes it clear that the documentation held by the agent is the property of the client and so a charge is not appropriate.

36. The tribunal also noted clause 12.7 of the Blocsphere contract which requires them to use reasonable endeavours to hand over relevant documents within three months of the termination date. The code contains similar requirements. Clause 12.7 contains a lien on these documents until all fees have been paid to them but this is not relevant given they have received all fees due to them. The tribunal accepts the submissions from the parties that Blocsphere is in breach of its obligation to handover relevant documentation.

37. The tribunal accepts that the Blocsphere contract entitles them to a handover fee and that the sum of £570.60 the Applicant is required to pay towards this is reasonable. The fee is payable in consequence of the Applicant's application for the Right to Manage and so is payable by the Applicant. It therefore determines that this amount is payable by the Applicant to the Respondent. However, it considers that this is only reasonable if Blocsphere has complied with its obligations in clause 12.7 of its contract and in the relevant RICS code. The tribunal cannot specify precisely what is to be handed over but considers the outstanding accounts as critical. It therefore makes the payment conditional on the Applicant receiving independently audited accounts for the 2021/2022 and the 2022/2023 service charge years.

38. The tribunal therefore determines that the sum of £570.60 is payable by the Applicant to the Respondent in respect of the handover fee payable pursuant to the Blocsphere management agreement, conditional on the Applicant receiving independently audited accounts for the 2021/2022 and the 2022/2023 service charge years.

Uncommitted service charges under section 94(3) of the 2002 Act

39. Section 94 of the 2002 Act requires in this case the Respondent to transfer to the Applicant an amount equal to any accrued uncommitted service charges held by them on the acquisition date. Sums held by managing agents (Blocsphere in this case) will be counted as sums held by the Respondent. The acquisition date was 26 July 2023.

40. In calculating accrued uncommitted service charges at that date, all service charges paid by the lessees are taken into account (together with investment income but that does not appear relevant here). All costs incurred before the acquisition date are deducted from this to give the amount payable. Ground rents are not included but reserve fund payments are. It is not necessary for

the costs to have been paid, simply that they have been incurred; the intent is that the landlord will be left enough to meet any further payments due.

41. In calculating the amount to be transferred, the tribunal will seek to look at sums actually received and costs actually incurred. It will not conduct an exercise on whether sums incurred were reasonable or payable. If there are issues relating to reasonableness and payability (as is clearly the case here and was the basis of the Applicant's arguments for a much higher figure), it is for the leaseholders to apply for a determination pursuant to section 27A of the Landlord and Tenant Act 1985, as referred to above. The Applicant's arguments were therefore not relevant in this case but will apply to any section 27A application.

42. The lack of information, including audited accounts, from Blocsphere meant that the parties were clearly struggling to agree the figure for uncommitted service charge that needed to be transferred to the Applicant. This also meant that the tribunal was unable to make a determination at the first hearing.

43. It was still not possible to do a full income and expenditure calculation after the second hearing, especially in the absence of audited accounts. Mr Davies explained in witness evidence that reconciliations were not provided to tenants and only external accountants provided these.

44. It was therefore instead necessary to rely on Mr Davies' testimony and the balance on the bank accounts operated by Blocsphere, on the basis all income was paid into them and all expenditure paid out of them.

45. A witness statement from Mr Davies was provided with the bundle, on pages 44 and 45 of the PDF version. This appears to be undated. That statement refers to two bank accounts being operated on behalf of the Respondent and "the balance recorded on 26th July 2023 was £1,177.13". This is a reference to the balance in the service charge bank account at that point. In the absence of evidence to the contrary, the tribunal accepts that this was the balance held at the acquisition date. Only accrued but unpaid costs as at that date can be deducted from it.

46. Pages 609 and 610 of the PDF bundle show bank statements from two accounts as at September 2023. The first (account number 62317156) showed a balance of £3,251.69. The second (account number 62287311) showed a balance of £482.51. Mr Davies confirmed that the first account was a ground rent account and the second was the service charge account. The tribunal only considered the service charge account but noted some unexplained transactions through the ground rent account which the parties may want to review further as part of any section 27A application.

47. Mr Davies explained that the £1,177.13 referred to in his witness statement had been reduced to £209.14, in settling invoices to Blocsphere. No sums

were due or paid to any third party. The question that needed to be answered was the extent to which these invoices related to a period after the acquisition date. Mr Davies explained they were monthly fees payable after the termination date as insufficient notice was given; these were in addition to the termination and handover fees. The tribunal concluded, on the basis of Mr Davies' explanation, that these related to fees incurred after the acquisition date and so were not deductible for the purposes of the section 94 calculation. As a result, the sum of £963.99 (being £1,173.13 less £209.14) should be transferred to the Applicant.

48. The remaining balance of £209.14 had been paid towards the termination and handover fees (with the balance settled by the Respondent direct). As the termination and handover fees were outside the scope of the service charge, the tribunal finds that they should not have been deducted from this account. In addition, as the Applicant is liable to pay these to the Respondent (as referred to above), to allow the £209.14 deduction would result in double counting, as the Applicant would in effect have to pay this sum twice. As a result, the sum of £209.14 would also need to be transferred to the Applicant.

49. Mr Davies said there was no reserve fund held by Blocsphere, all sums held had been spent. Absent any evidence to the contrary, the tribunal finds that there are no reserve funds to be transferred to the Applicant.

50. The tribunal therefore determined that the sum to be transferred to the Applicant by the Respondent pursuant to section 94 of the 2002 Act is £1,173.13.

Costs

51. Three of the leaseholders in the Property (Ms Sattar, Mr Elkon and Mr Price) have applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**").

52. The relevant part of Section 20C reads as follows:-

> (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 … the First-tier Tribunal … 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…".

53. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicant or other parties who have been joined.

54. In this case, the Respondent confirmed at the first hearing that they did not intend to make any such to the Applicant or the leaseholders. In addition, the need to make the applications in this case was driven by Blocsphere's demand for termination and handover payments and its lack of transparency on service charges. Blocsphere were retained as managing agents by the Respondent and it is inappropriate that costs consequential on their failure to perform should be passed to leaseholders. The tribunal therefore makes an order in favour of the Applicant and the leaseholders that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

Name: Judge H Lumby **Date:** 27 March 2025

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).