



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

Tribunal reference	:	LON/00AZ/LSC/2022/0240
Property	:	Flats 212 & 86 River Mill One, Station Road, London SE13 5FS
Applicants	:	(1) Mr Ryan Jeffrey (2) Mr Mumin Abdul
Representative	:	Mr Ryan Jeffrey represented himself
Respondents	:	(1) Lewisham Gateway Developments Ltd (2) Lewisham Gateway (Plot A & B) Management Company Ltd (3) Lewisham Gateway Estate Management Company Mr Simon Butler of Counsel
Representative	:	represented the Second and Third Respondents
Type of application	:	Application under s.27A Landlord and Tenant Act 1985
Tribunal members	:	Judge N Hawkes Mr A Lewicki FRICS Mr C Piarroux JP
Dates and venue of hearing	:	22 and 23 January 2024 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	6 February 2024

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations under the various headings below.
- (2) **By 5 pm on 20 February 2024** the Second and Third Respondents shall send each of the Applicants a schedule setting out the sums which are payable by them under each heading below following the Tribunal's determinations. If these figures are not agreed, any party may apply to the Tribunal (on notice to all other parties) for a determination, setting out the reasons for the dispute, **by 5 pm on 5 March 2024**.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondents' costs of these proceedings may potentially be passed to the Applicants through any service charge.
- (4) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability, if any, to pay an administration charge in respect of the Respondents' costs of these proceedings.
- (5) The Tribunal makes an order under Rule 13(2) of Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 requiring the Second and Third Respondents to reimburse the Tribunal fees in the sum of £300 paid by the First Applicant in respect of these proceedings.

The application

1. The Applicants seek determinations under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether certain service charges are payable in the service charge years 2017 to 2021.
2. The Tribunal was informed that Lewisham Gateway is a development which currently comprises four high rise residential tower blocks ("the Development"). The Second and Third Respondents took over the management of the Development in October 2021. Prior to this, the Development was managed by the developer's management company.
3. Mill One is one of the four blocks on the Development and the Applicants are the long lessees of flats at Mill One. When the First Applicant became the long lessee of his flat, the Development was still under construction and the number of blocks at the Development subsequently increased from two to four.
4. The Second Applicant did not attend the hearing and was not represented although he had filed and served a witness statement in support of the application. The Tribunal has not given this witness

statement any weight because no reference was made to its contents during the course of the hearing. The First Respondent was not represented and played no part in the proceedings. The Second Applicant and the First Respondent remain parties and they are therefore bound by the Tribunal's determinations as are all other parties.

5. An inspection was not requested, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

6. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 22 and 23 January 2024. The First Applicant, Mr Jeffrey, represented himself and confirmed that he did not represent the Second Applicant. Mr Butler of Counsel represented the Second and Third Respondents.
7. Mr Butler was accompanied by Mr Robertshaw, a Senior Property Manager at JFM Block and Estate Management LLP ("JFM"), and by Ms Malecaut, an Estate Coordinator, also of JFM. JFM are the managing agents who currently manage the Development. Mr Robertshaw and Mr Jeffrey gave oral evidence of fact to the Tribunal.
8. As stated above, the Second Applicant and the First Respondent did not attend the hearing and were not represented.
9. The Tribunal's jurisdiction under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") is limited to determining the reasonableness and payability of service charges. The disputed matters were set out by Mr Jeffrey in a Scott Schedule and, insofar as the reasonableness and payability of service charge items is in dispute, the Tribunal has made the determinations which appear under the various headings below.
10. Any matters which do not concern the reasonableness and/or the payability of service charges fall outside the Tribunal's jurisdiction under section 27A of the 1985 Act and the parties may wish to take independent legal advice as to whether or not they may have other remedies.

The Tribunal's determinations

Staff Costs

11. The staff costs have fluctuated considerably without any satisfactory explanation. The evidence given on this issue was purely speculative.

Accordingly, it was agreed that the total staff costs will be limited to a maximum of £70,000 per annum because there is no evidence before the Tribunal justifying an increase above this figure from year to year and there are no comparative quotations establishing that £70,000 is above the reasonable range of charges in respect of staff costs.

Health and Safety Audit

12. In the Scott Schedule, Mr Jeffrey states:

“£4,621 in 2017 to £5,364 Dec 2018 and without complaints it has climbed to £10,254 in Dec 2019.”

13. Mr Robertshaw stated that the total costs under this heading increased because the number of blocks increased as the Development was completed. Although the total costs increased, it appears from the Schedule of Charges that the contribution payable by Mr Jeffrey went down slightly from £19,23 in 2017 to £19.13 in 2019. Accordingly, it is likely on the balance of probabilities that the increase in the total cost is due to the increase in the number of blocks on the Development. The Tribunal is not satisfied on the balance of probabilities on the basis of the evidence referred to at the hearing that the cost per block has changed significantly. No comparative quotations have been provided and the Tribunal is not satisfied that the costs under this heading fall outside the reasonable range. In all the circumstances, the Tribunal finds that the service charge costs under this heading are reasonable and payable in the service charge years which form the subject of this application.

Audit Fees

14. Mr Jeffrey may have accounting experience and expertise. However, he attended the Tribunal hearing as an applicant rather than as an expert witness. The Tribunal does not have accounting expertise and no party called any expert witness to give evidence in these proceedings. Accordingly, there was no expert evidence before the Tribunal in support of the proposition that the auditors' work was not carried out to a reasonable standard. There were also no comparative quotations before the Tribunal demonstrating that the costs under this heading fall outside the reasonable range of charges. In all the circumstances, the Tribunal finds that the service charge costs under this heading are reasonable and payable in the service charge years which form the subject of this application.

Other professional fees

15. In the Scott Schedule, Mr Jeffrey refers to the following charges:

“Dec’17 £1881, Dec ’18 £29,388, Dec’19 - £14K and Dec’20 £43K”

16. When asked what these charges relate to, Mr Robertshaw stated that they include surveyors’ fees, consultants’ fees, and external professionals’ fees. He was not in a position to explain why fees of this type would have been incurred in connection with a newbuild development which should have been under warranty. Further, the Tribunal was not shown any invoices during the hearing evidencing these costs. The Tribunal is therefore not satisfied on the balance of probabilities that any of the costs under this heading were reasonably incurred or that they are reasonable in amount. Accordingly, the Tribunal finds that no costs under this heading are payable in respect of the service charge years which form the subject of this application.

Electricity

17. Mr Jeffrey stated that he is no longer challenging the costs under this heading.

Other Admin Fees

18. Mr Jeffrey stated that he is no longer challenging the costs under this heading.

Water Rates

19. In the Scott Schedule, Mr Jeffrey refers to the following charges:

“Dec ’17 £3,574 Dec ’18 £4,349 Dec ’19 £1,977 Dec ’20 £6,020.”

20. It is common ground that the lessees pay their own water rates. The extent of the fluctuation of the communal water rates is, in the absence of a satisfactory explanation, greater than the Tribunal would expect to be the case if the communal costs fell within a reasonable range, applying our general knowledge and expertise. When asked to provide an explanation, much of Mr Robertshaw’s evidence was speculative and comprised a number of different possibilities.
21. However, the Tribunal heard evidence that there is a communal irrigation system and that some water would also be needed for the heating system. The Tribunal was also referred to invoices for the installation of meters although, in his witness statement, Mr Robertshaw had indicated that the communal water supply was unmetered.
22. In our opinion, the water needed for the heating system is likely to be minimal because it is a sealed system. Further, newbuild properties are

required to be fitted with adequate meters when built. Accordingly, we are not satisfied that any costs in connection with subsequently installing additional meters were reasonably incurred. Given the nature of the evidence available, it has been necessary for the Tribunal to adopt a broad-brush approach and we find that the reasonable total costs under this heading should not exceed £3,000 per year in the service charge years which form the subject of this application.

Telephone

23. Mr Jeffrey challenged a charge in the sum of £5,270 in the year 2019 under this heading on the grounds that the charge for telephones has been zero in all other service charge years and no satisfactory explanation had been provided for this one-off charge.
24. Mr Robertshaw said that there are phones for site staff and in the lifts and that the previous managing agents may have classified the charges differently in different years. There was no explanation as to why they would have done so. As regards the site staff, it has not been suggested that the number of staff has exceeded four members of staff working in shift patterns so that, for most of the time, one member of staff is on duty at a time.
25. The installation of the lift telephones and any other non-mobile telephones is likely to have been part of the initial build. However, we accept that there would have been some ongoing charges for telephone usage. Applying our general knowledge and experience as an expert Tribunal, the sum of £5,270 appears above the range of reasonable charges for telephone usage by staff and any ongoing costs associated with the lift phones.
26. In the absence of any explanation as to why the charges are so high and, of necessity, applying a broad-brush approach, we find that the reasonable total costs under this heading should not exceed £1,000 for the year in question.

CCTV Control

27. In the Scott Schedule, Mr Jeffrey refers to the following costs:

“Dec ’18 – £11.7k, Dec ’19 - £17.14k and Dec ’20 £27.45K”
28. Mr Jeffrey’s case is that the extent to which the costs have increased is evidence that they fall outside the reasonable range in the years in which higher charges were incurred. Mr Robertshaw gave evidence that the reason for the increase was unclear from the documents which he had reviewed. Once the invoices were produced, they appeared to include costs in respect of repairs which Mr Robertshaw agreed would

have probably been covered by a warranty. The Tribunal heard that additional cameras have recently been installed to improve security but only in the last 12 to 18 months. Doing our best on the limited evidence available, we find that reasonable total costs under this heading are limited to £12,000 per year in the service charge years which form the subject of this application.

Fire equipment

29. In the Scott Schedule, Mr Jeffrey states:

“Dec ’17 £19k Dec ’18 £32K Dec ’19 £32.8k, Dec ’20 £22k”

30. Mr Jeffrey challenged these costs on the grounds that there should not have been a need for additional equipment annually; the extent to which these costs have fluctuated is evidence that they fall outside the reasonable range in the years in which the higher charges were incurred; and he challenged the need for an £5,000 upgrade in December 2020 when the fire equipment costs in connection with these new buildings would have been part of their initial build costs.
31. When the blocks were built, it would have been necessary to install fire equipment in order to comply with building regulations and it should not be necessary to extend this equipment. Mr Robertshaw agreed that repairs should be covered by a warranty. He stated that the cost of the annual maintenance contract was £8,650 initially, rising to £12,000. Doing our best on the limited evidence provided at the hearing, the Tribunal allows the total sum of £8,650 for the years 2017 and 2018 and the total sum of £12,000 for each subsequent year which is within the period covered by this application.

Security services

32. Mr Jeffrey confirmed that the issues he raised under this heading have already been covered under the heading “staff costs” above.

Cleaning materials

33. In the Scott Schedule, Mr Jeffrey challenges cleaning costs in the sum of £4,500 in the year 2019 stating that the relevant costs should be zero because the cleaners provide their own materials. In response, Mr Robertshaw stated that the staff have some facilities which include a toilet and a kitchen. Applying our general knowledge and experience, the sum of £4,500 is above the reasonable range for supplying products to one bathroom and one kitchen. Doing our best on the basis of the limited evidence available we limit the costs under this heading to a total of £1,000 for the year in question.

Internal cleaning

34. There is a fluctuation in the cost of internal cleaning but no alternative quotations were provided and, applying our general knowledge and experience of cleaning costs, the variation is not such that we are satisfied that the costs under this heading fall outside the reasonable range of charges.
35. Accordingly, we find that the charges under this heading are reasonable and payable in the service charge years which form the subject of this application.

Waste management

36. The costs under this heading concern payments which were made to a private company to carry out waste removal. These costs were challenged on the basis that the local authority now disposes of waste at the Development free of charge and could have done so throughout the period in question. Mr Robertshaw was unable to say why the previous managing agents did not ask the local authority to carry out waste removal. In all the circumstances, we are not satisfied that the costs under this heading in the relevant years were reasonably incurred and we find that they are not payable.

Window cleaning

37. The window cleaning costs were challenged on the grounds that the fact that they have decreased indicates that they were unreasonably high in earlier years. Mr Robertshaw gave evidence that the costs have decreased because JFM carried out a competitive tender and instructed a different company at a lower rate. However, he stated that the higher costs were within the range of the quotations received as part of the competitive tender process. We accept Mr Robertshaw's evidence on this issue and find that the costs under this heading are reasonable and payable in respect of the years which form the subject of this application.

Landscape gardening

38. Mr Jeffrey stated that he is no longer challenging the costs under this heading. Further, we heard evidence from Mr Robertson concerning the work which is undertaken, no alternative quotations have been provided, and we note that we are satisfied that the costs under this heading are reasonable and payable in respect of the service charge years which form the subject of this application.

Internal plants

39. Mr Jeffrey stated that he is no longer challenging the costs under this heading. Further, we heard evidence from Mr Robertson concerning the work which is undertaken, no alternative quotations have been provided and we note that we are satisfied that the costs under this heading are reasonable and payable in respect of the service charge years which form the subject of this application.

Maintenance contracts

40. Mr Robertshaw accepted that the charges under this heading include charges for fitting new equipment at a time when such charges should have been covered by a warranty. This occurred before JFM took over as managing agents and Mr Robertson did not know why the sums which should have been covered by warranty were charged to the service charge account by the previous managing agents. However, some of the charges relate to annual maintenance which would not have been covered by a warranty.
41. Numerous invoices have been provided and it would not be procedurally fair for the Tribunal to conduct an analysis of this extensive documentation in the absence of the parties because the parties would then not have any opportunity to make representations concerning the Tribunal's analysis. Further, it is for the parties to present their cases at the hearing itself. Doing our best on the limited evidence referred to at the hearing we find that these charges should be limited to a total of £45,000 per year for the years which form the subject matter of the application because the reasons for any greater fluctuation were not adequately explained.

Communal heating

42. Mr Robertshaw stated that the costs under this heading are the costs of repairs rather than the costs of heating and, again, he did not know why a claim had not been made against the warranty in respect of these costs. In all the circumstances, we are not satisfied that the costs under this heading were reasonably incurred and we find that they are not payable in respect of the service charge years which form the subject of this application.

Insurance

43. Mr Jeffrey challenged these costs because he believes that there is a term of the policy which benefits another block which does not benefit his block. If this is correct (and the Tribunal makes no finding on this issue), it does not automatically follow that the premium paid for the policy falls outside the reasonable range of insurance costs. There are

no comparative quotations before the Tribunal, and we are not satisfied on the evidence available that the costs under this heading fall outside the reasonable range. Accordingly, we find that the costs under this heading are payable in respect of the service charge years which form the subject of this application.

Internal repairs

44. Mr Butler stated that Mr Jeffrey's share of these costs is £2.98 and that the Second and Third Respondents agree to remove the costs under this heading in respect of the period covered by this application due to lack of time.

Management fees

45. Mr Jeffrey challenged the reasonableness of the apportionment of these fees between the different blocks on the Development, based on the size of the blocks, on the grounds that another block is more intensively managed than his own. Mr Robertshaw accepted that the other block is more intensively managed. However, he gave evidence that this is because the lessees of that block pay extra to employ additional staff, and that the staff to which these management fees relate are shared equally between the four blocks. We accept Mr Robertshaw's evidence on this issue and find that the fees under this heading are reasonable and payable.

Applications concerning costs

46. Mr Butler confirmed that the Second and Third Respondents will not seek to pass the legal costs of these Tribunal proceedings on to the Applicants through the service charge or as an administration charge. Accordingly, the making of orders under 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 was unopposed.
47. Mr Jeffrey sought an order for the reimbursement of Tribunal fees which he has paid in the total sum of £300. By bringing these Tribunal proceedings, he has secured reductions under a number of different headings. In all the circumstances and taking into account all of the findings set out above and the speculative nature of much of the Second and Third Respondent's evidence, the Tribunal exercises its discretion to order the Second and Third Respondents to reimburse the Tribunal fees which Mr Jeffrey has paid.

Name: Judge N Hawkes

Date: 6 February 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).