FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AB/LSC/2024/0706**
Property	**:**	**Flat 706 Pembroke House, 21 Academy Way, Dagenham RM8 2FE**
Applicant	**:**	**Mark Smith**
Representative	**:**	**In person**
Respondent	**:**	**London & Quadrant Housing Trust**
Representative	**:**	**Mr Blakeney of counsel**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal member	**:**	**Judge R Percival**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **12 June 2025**
Date of decision	**:**	**2 September 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the contested service charges were reasonably incurred.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2022/23 and 2023/24.

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 which is the subject of this application is a 2 bedroom flat in a purpose-built block.

4. The broader development consists of 18 blocks containing 975 residential units, with some houses. The Respondent is the management company under the tripartite lease. As of (it appears) 1 April 2017, the leaseholders of Pembroke House acquired the right to manage, and the block itself is now managed by Academy Central (Pembroke) RTM Company Ltd. The Respondent is the Management Company under the lease, and remains responsibility for external areas of the wider estate, in respect of which it may collect a service charge.

The lease

5. The lease is dated 31 March 2011, and is in tripartite form between the Academy Central LLP, the landlord the Applicant and London Quadrant Housing Trust, the management company. The term is 125 years.

6. "The Development", "the Estate" and "the Amenity Areas" are defined by reference to lease plans (in the case of the latter, as relating to "roads verges grassed and floral areas pedestrian ways forecourts or drives" on the specified areas). As a matter of practice, the evidence was that the Respondent produced a "scheme" service charge account, which related largely to external works. I assume therefore that it largely related to the "Amenity Area" covenants.

7. The term for the service charge is "Management Charge", which is defined as the relevant proportion of the "Management Costs". That term is defined as

> "the sums spent by the Management Company on the matters specified in the Fifth Schedule and so far as the same relate to the matters specified in Part II of the Sixth Schedule …"

8. The Management Company's covenants with the landlord and the tenant are set out in Part 1 of the Fifth Schedule in relation to "the Common Parts", and in Part II of that schedule in relation to "the Amenity Areas".

9. "The Common Parts" are defined as

> "All parts of the Development including the Main Structure and the main structure of the Property (but excluding the Estate Roads and Estate Sewers) not comprised in the Dwellings and any Service Installations exclusively serving and within the Dwellings …"

10. "Main Structure", in turn, is defined as the structural parts of "the Building" and the structural parts of "the Property. "The Building" in the singular is not defined, but "Buildings" is defined as "all buildings and structures" etc, but excluding (relevantly) individual flats. "The Property" is defined as flat 706.

11. "Estate Roads" are defined by reference to a lease plan. "Estate Sewers" are all sewers within the estate, the development or the property.

12. In Part I of the fifth schedule, the Management Company's repairing, cleaning etc covenants relate to the Common Parts, aerials and insurance, which must now be exercised by the right to manage company.

13. Part II of the fifth schedule relates to the Amenity Areas.

14. Part II of the sixth schedule is headed "Expenditure to be recovered by means of the Management Charge" and sets out that this includes the sums spent by the Management Company on performing the covenants in the fifth schedule, and the costs of its covenants in Part I of the sixth schedule. The latter covers the Management Company's covenants to administer the mechanism of the service charge (estimated costs, advance payment, reconciliation etc).

15. Part II of the sixth schedule also covers some additional expenditures, under the headings such as sundry fees, employees, insurance etc. Some of these figure in the Management Companies covenants earlier.

16. One of these additional items is “Administration”. This is defined as the costs of

> “Managing the Development including the costs of preparing and auditing accounts the expenses of the Directors and the Secretary the printing and sending out of notice circulars reports or accounts the holding of meetings and all fees payable to any statutory body or any other body (or in the case where the Management Company is not solely involved in managing the Estate the reasonable proportion thereof) and including the Management Company’s legal costs and expenses relating to the drafting negotiation and completing any lease or agreement relating to its interest in the Development or its management thereof”

17. Part III of the same schedule defined initial proportions in percentage terms, and gives the Respondent a power to vary them. It was not contested that the Respondent had done so in introducing a fixed management fee.

18. The following provisions potentially relate to legal costs being recoverable. The first two relate to recovery through the service charge.

19. The first is in the third schedule, which contains the tenant’s covenants. These include, at paragraph under the heading “Expenses”

> “To pay all expenses (including Solicitor’s costs and surveyor's fees) incurred by the Company or the Management Company in the recovery of any arrears of Management Charge or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 (or any statutory modification re-enactment or replacement thereof) notwithstanding that forfeiture is avoided (otherwise than by relief granted by the Court)”

20. Secondly, one of the other additional items in Part II of the sixth schedule (see above), under the heading “litigation”, is “the costs incurred by the Management Company in bringing or defending any action or other proceedings against or by any person whatsoever.”

21. As to an administration charge, the leaseholder covenants:

> “To pay all expenses (including Solicitor’s costs and surveyor’ fees) incurred by … the Management Company in the recovery of … incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 … notwithstanding that forfeiture is avoided (otherwise than by relief granted by the Court)”

The hearing

Introductory

22. The Applicant represented himself. The Respondent was represented by Mr Blakeney of counsel. Miss Hughes, the Respondent's service charge team manager, gave evidence.

23. The Applicant challenged the management fees charged by the Respondent in the 2022/23 and 2023/24 service charge years.

24. Mr Smith applied to extend the application forward to the service charge year 2024/25 and backward to previous years since the RTM company acquired the right to manage.

25. Mr Blakeney objected. There had been no warning of the application. If the Tribunal were to decide that a fixed fee was not allowable, the Respondent would not persist with the system in the future in any event, subject to appeal.

26. I agreed with Mr Blakeney's submission and refused the application.

The evidence and submissions

27. It was agreed that it was not necessary for Mr Blakeney to cross examine Mr Smith. Mr Smith accordingly set out his case orally. Miss Hughes' evidence was received thereafter, and then I heard closing submissions.

28. The sums challenged in 2022/23 was the Respondent's management fee of £105, in relation to an "estate charge" of £145.61. The corresponding figures for 2023/24 were £112 and £174.85.

29. Mr Smith's core point was that the Respondent's use of a fixed fee was unreasonable where the fixed fee amounted to between about 65% and 70% on top of the substantive estate service charge, where management of the block itself fell to a right to manage company. He proposed that a fixed proportion of the service charge should be used. That method would be a reasonable one, he argued. There may be other reasonable ways of calculating the management fee, but the current fixed fee was not one of them.

30. Mr Smith referred me to an extract from the Property Institute's service charge index for April 2025. That showed figures for management fees at 6% in 2023 and 2024. He also produced the estimated service charge for the financial year 2017/18, before the right to manage was acquired. That showed a figure for management in line with those figures, he said (a management fee of £9 in respect of a monthly total of £141.40). By

contrast, the figure for 2022/2023 was over 40% of the total charge. The figures for the years under challenge are above.

31. Mr Smith also argues that the services being managed by the Respondent were disproportionately used by the tenants of the non-right to manage blocks.

32. Ms Hughes gave evidence for the Respondent.

33. In her witness statement, she explained that the Respondent's management fees were fixed portfolio-wide according to a matrix taking account of tenure and service level. She provided the copies of the matrixes for 2022/23 and 2023/24. The relevant tenure category was divided as follows, with the relevant service charge in each year (LHSO stands for "leaseholder shared ownership":

Designation	**Descriptor**	**2022/23**	**2023/24**
Level 1 LHSO	Minimal services	£105	£112
Level 2 LHSO	Medium range of services	£120	£135
Level 3 LHSO	High level services	£225	£253

34. Pembroke House was assigned level 1. Asked by Mr Blakeney what would be included in a service charge statement in relation to a block that had not exercised the right to manage, she said it would contain higher figures for block services, and the management fee would probably be at level 3, or level 2.

35. The Respondent was responsible for a list of tasks in respect of the external areas of the wider estate of which Pembroke House formed part. She referred to a list of "scheme" services set out in the final service charge statements. She agreed that the "scheme" service charge effectively covered the service charge for amenity areas provided for in the lease. The list included matters such as external lighting maintenance and servicing, communal heating system maintenance and servicing, tree works, grounds maintenance, the caretaker's cleaning supplies, bulk refuse removal etc.

36. Miss Hughes said that the matrix figures were developed as the result of an exercise carried out by the finance team about five years previously, based on the salaries of staff involved in providing the relevant management services. It had been uprated in line with inflation thereafter. Miss Hughes said she did not believe that the specific requirements of individual leases would have featured in that exercise.

37. The Respondent had previously charged as a percentage of the total service charge, but RICS gave guidance that management fees should not be calculated on that basis, which led to the change to a fixed fee.

The matrix tariffs were uprated annually, following the initial calculation. Service charge specialists employed by the Respondent allocated each block to one of the three levels in the matrix. The allocation was reviewed annually.

38. When asked how the Respondent could be confident that the tariff in the matrix was amounted to a reasonable management charge in relation to each specific block, she said that the Respondent relied on the exercise of judgement in the original tariff-setting exercise described above.

39. Miss Hughes had provided a list of service charge heads in her witness statement. In oral evidence, she told the Tribunal that the management fee covered four of those elements: the cost of the neighbourhood housing lead; the cost of the Respndent's income team, which manages accounts and chases arrears; the cost of the Respondent's contact centre, a call centre which receives calls relating to the "scheme" service charge, such as reports of fly tipping or repairs to playground equipment; and the costs of the service charge team, which calculates the issues service charge demands and deal with some service charge queries. In re-examination, Miss Hughes confirmed that the management of contracts etc for the substantive service charges items would also fall to be covered by the management fee.

40. Mr Blakeney, in his final submissions, first noted that the lease provided for the recovery of both the management company's costs of management, and a reasonable fee for managing the development (sixth schedule, part II, paragraph 10). In this case, he said, there were no specific costs, just a fee.

41. Mr Blakeney outlined the way in which the service charge was calculated, departing from the percentage basis set out in the lease. Mr Smith did not contest that that was illegitimate, and I am satisfied that it was, given the flexible nature of the lease, which allows changes to a fixed percentage contribution in consequence of changed arrangements for the delivery of services, a condition clearly satisfied by the acquisition of the right to manage by several of the blocks.

42. As a matter of principle, Mr Blakeney argued, there was no reason why the management fee could not be a fixed fee. The enquiry was, rather, whether the fixed fee charged was reasonable. A fixed fee could, indeed, be reasonable as a means of recovering the costs of management, on the assumption that the means of calculation of the fixed fee was reasonable. But in any event, in this case, Mr Blakeney argued, the contested charge was a fee, not confined to costs recovery.

43. There was, in any event, Mr Blakeney argued, a nexus between the tariffs in the matrix and real costs, given the initial cost-based

calculation of the matrix fees as described by Miss Hughes, and the annual review of tariff allocation.

44. As to the use of a single fixed fee across the portfolio as a whole, Mr Blakeney argued that it was a much more efficient way of charging than undertaking a specific exercise of calculating the real costs of management in arrears (ie to calculate an end of year balancing charge). A fixed fee avoided such excessive transaction costs, and was fairer to the leaseholders as a whole. Further, the service charge specialists review the matrix level every year, thus ensuring that the right fixed cost is being applied on a block by block basis. And secondly, it was much more efficient than any possible real-costs calculation.

45. This particular fixed fee was reasonable, Mr Blakeney argued. Miss Hughes had explained that, in addition to the cost of the central management (the specific costs listed in paragraph 39 above), it covered management of contracting and liaising with the contractors delivering the substantive scheme services.

46. Mr Blakeney referred us to a first instance decision, *Flat 2, Vertex Tower and Flat 73 Cavatina Point* (LON/00AL/LSC/2023/0174) in which another constitution of the Tribunal, in a case in which the Respondent was the intermediate landlord, found a passed-on management fee of £170 to be reasonable in amount. Mr Blakeney argued that in that case, the services provided were less extensive in this case.

47. More generally, Mr Blakeney argued against Mr Smith's argument that simply by virtue of the proportion of the service charge constituted by the management fee, that fee was unreasonable. In the first place, the Tribunal should not come to a conclusion just on the basis of a percentage figure, as if that were sufficient to show unreasonableness. Secondly, it was inevitable that a flat fee would be a high proportional percentage when the charge itself was so low. There is necessary a floor to the amount of time, and therefore cost, that can be expended on management functions. In the *Vertex Tower* case, there were no services at all provided by the intermediate landlord, so the management fee compared to the services provided was an infinite percentage. There was necessarily a base amount that had to be spent on, for instance, calculating the service charge, issue a charge and following it up. Again, Mr Blakeney relied on the fee agreed as reasonable for no more than passing on a service charge in *Vortex Tower*.

48. Mr Smith stood by his proportionality argument in relation to the management costs. The Respondent was only performing a fraction of the functions exercised now that the right to manage had been acquired, and the amount of service charge for management should be

proportionate to that. The Respondent's matrix did not feature a specific tariff for right to manage properties.

49. As to Mr Blakeney's argument from efficiency, Mr Smith submitted that it was not a straight choice between having a fixed fee on the one hand, and calculating exact costs of every task performed on the other. There were, he said, options between those two poles. He argued that a fixed proportion would also not require year by year calculation of exact costs, either.

50. The *Vertex Tower* case was not directly relevant in a number of ways, Mr Smith argued.

Determination

51. I conclude that the Respondent's use of a fixed fee in principle is a reasonable one, and that the actual fee charged is reasonable in amount.

52. First, the decision to move from a proportional charge to a fixed charge in compliance with the advice in the RICS service charge residential management code must be a reasonable decision for the Respondent to make. Even if Mr Smith's preference, a proportional charge, would also have been a reasonable one (which I do not need to find), it cannot possibly be the case that following the basis of fee recommended by RICS was an *un*reasonable decision for the Respondent to take.

53. While it is not necessary for this decision, I nonetheless doubt Mr Smith's assertion that there are a range of other, reasonable, options available to the Respondent. Once a proportional fee has been excluded, there is only the option of a fixed fee, and the question then becomes whether the fixed fee is reasonable in amount.

54. Secondly, the outcome of that decision – fees of £105 in 2022/23 and £112 in 2023/24 are reasonable in amount.

55. I accept Mr Blakeney's submission that there is a floor to how low a management fee of this type can reasonable go, even if the result is that, in proportional terms, it constitutes a high proportion of a low service charge.

56. The question is then whether this particular charge is reasonable in amount. To put it in the terms posed by Mr Blakeney, is it right that the sums charged were, in fact, the floor below which the service charge fee should not be required to be reduced?

57. Another way of putting the point is that Mr Smith's argument that there is what he says is a disproportionate relationship between the fixed fee

and the substantive service charge is sufficient to raise a question that the Respondent is required to answer.

58. The Respondent has provided an answer. We heard Miss Hughes' evidence as to the process used by the Respondent to initially fix the fixed fees. While it must be said the evidence as to the performance of that exercise was somewhat thin, and it was not presaged in Miss Hughes' witness statement, I am satisfied that the basics are established. The exercise involved an assessment of actual costs in the relevant year, having regard to salary costs at that time. The charge has been uprated annually following that exercise. We also had the evidence of Miss Hughes that the service charge specialists assessed the tariff category in the matrix into which each block fell in each service charge year. That determination put this block in the lowest category for this tenure type in each of the relevant years. These two processes – the initial assessment and the annual decision as to tariff category – are sufficient to demonstrate reasonableness.

59. I was referred to the *Vertex Tower* case. It is a different case involving a different development with different leases, before another first-tier tribunal, and I do not put any great weight on its conclusions. But merely as a check on my determination of the reasonableness of this service charge, it is at least worth noting that a significantly higher management fee covering significantly less work was found to be reasonable in that case.

Costs

60. Mr Smith made applications under both section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act. I indicated to the parties that there was a potential preliminary issue as to whether the costs of these proceedings could be passed on under the lease. While the Tribunal generally makes a determination in relation to both of the orders on a hypothetical basis (ie that the lease does allow collection via both routes), whether the lease does allow collection may be considered as a preliminary issue.

61. In this case, I told the parties that I would prefer to have written submissions on payability under the lease, with particular reference to whether costs were recoverable as an administration charge. I have set out the relevant provisions in the lease above. To make the matter plain, there appears to me to be a real issue in relation to the administration charge clause, but that is not the case in relation to the service charge provisions. I do not exclude, however, submissions on the latter point if the parties choose to make them.

62. The parties may provide written submissions within 21 days of the date of this decision on:

(i) Whether the lease provides for the costs of these proceedings to be passed on as either an administration charge or through the service charge;

(ii) And if it does, whether or to what extent I should exercise my discretion to make orders under section 20C and paragraph 5A.

Rights of appeal

63. 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.

64. 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.

65. 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.

66. 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 R Percival **Date:** 2 September 2025

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.