13054

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UF/LSC/2017/0051**
Property	:	**Flats 109 and 110 Garner House, Tadros Court, High Wycombe HP13 7GG**
Applicant	:	**Mrs D Clark (Flat 109)** **Mr and Mrs Nolan (Flat 110)**
Representative	:	**In person**
Respondent	:	**Circle 33 Housing Trust Limited (now Clarion Housing) (1)** **Healey Gate Management Limited (2)**
Representative	:	**Mrs S Lovegrove - Counsel for Clarion** **Mrs K Phillips and Mr P Kaluba both of Clarion** **Mrs B Eves - Banner Property Management for Healey Gate**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Econ) MSc MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**High Wycombe Magistrates' Court on 25th October 2018**
Date of Decision	:	**14th November 2018**

DECISION

DECISION

1. The Tribunal makes the determination set out under the various headings in this decision.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so that none of the landlord's costs of the Tribunal proceedings may be passed on to the lessees through any service charge.

APPLICATION

1. This matter started before the Tribunal in 2017 and came before us for a directions hearing on 9th August 2017. Those directions were complied with and the matter re-appeared on 6th March 2018. At that time, we made a determination in respect of the service charge year ending June 2014 and issued further directions which led to this matter coming before us on 25th October 2018. We record that at paragraph 11 of the March 2018 decision we said this: *"We urge the Applicants to consider whether they wish to continue with the claim after the directions, which we will deal with, have been concluded. This case has already resulted in a great deal of time being spent by both sides as well as tax payer's money. The mischief appears to have arisen from February 2017. Until then it seems a service charge was paid largely without demure. It is hoped that following the directions the Applicants will be able to see what has caused the increase which we have alluded to at paragraph 5 above ...."*

2. Unfortunately, the parties were not able to reach an agreement. At the hearing on 25th October we were provided with a trial bundle which included directions we had issued in June of 2018, statements from the Applicants and a witness from Karen Phillips. There were also emails and a schedule of items said to be in dispute. Supporting invoices in respect of some of those matters were included.

HEARING

3. Mrs Nolan told us that she was concerned at the increase in service charges over the years, which had been substantial. She wished to have some consistency and said that she still had no idea why there appeared to be a deficit due from them for the year 2016/17.

4. Mrs Eves from Banner Homes, who are now the managing agents for the total development instructed by Healy Gate Management Limited, had attended this hearing, which was helpful. She told us that three years' accounts have now been submitted for audit. These are for the years 2015/16; 2016/17 and 2017/18. It is hoped, therefore that in the early part of 2019 audited accounts will be available which will remove the problems which have arisen in this case. It is to be remembered that the challenges made by the Applicants are against estimated service charges. We were told that the Applicants were paying something towards the interim demands but had not made full payment towards the estimated accounts.

5. Mrs Lovegrove, Counsel who appeared on behalf of Clarion, confirmed that there had been some difficulties with apportionments for the years in dispute. However, these were now in the hands of the management company and it was

considered that allocation would be dealt with once the final accounts were available. Reconciliations could thereafter take place.

6. On some of the specifics we heard the following:-

Accountancy. We were told that the costs were apportioned between the residents of the block on an estimated basis only. There are also it would seem, accounting charges relating to the estate and again these will be matters that will be clarified once the final accounts are available.

7. In respect of the management and administration of the estate, it appears that previously a management fee had been charged which was not allowed for under the terms of the lease. Instead Clarion now sought to claim an administration charge of 5% for processing accounts and dealing with queries raised by their tenants with the freeholder. This is, we were told, an overhead and is a justifiable figure equating to £92 per flat.

8. We were told that Clarion, or in its guise as Circle 33, did carry out checks against the claims made by Healey Gate and had approached Remus but were unable to get all the information sought. Mrs Phillips who had provided a witness statement on behalf of Clarion, who we were told used benchmarking with other housing associations to reach this 5% figure. We were told that the administration charge as well as representing overall office costs, included requirements to query items raised by Healey Gate, for example, insurance and capital expenditure, as well as the reserve fund. We were referred to the case of the London Borough of Southwark v Paul and others under reference [2013]UKUT0375(LC). This case accepted that overheads incurred as an incidental cost to the carrying out of the works were recoverable. The question we needed to consider if that is the case, whether 5% is a reasonable fee. We understand that there had been or was to be a refund to all lessees of the management fees which had been charged in the past and that the administration fee will apply for the year 2018/19 onward.

9. Mrs Nolan queried the work done by Clarion to justify the 5% charge when all she said they received was documents which were passed onto them. She thought that a percentage of something less than 5%, perhaps 2%, would be reasonable.

10. There was then a general complaint by Mrs Nolan that as they only owned 25% of the Property, it seems unfair that they should have to pay any additional costs when it is the housing association which owes the 75% value. They were paying rent and that should therefore reflect in their liability to meet these types of costs.

11. Mrs Lovegrove's response was that whilst shared ownership was not the perfect answer to the housing crises, the leases were as they were and there was no room for there to be any alteration. The lease, she said, was clear as to the obligations and those that had been entered into by the Applicants. The service charges related to the leaseholders only as did the administration fee.

12. It was confirmed by the Respondents that there would be no objection to an order being made under section 20C of the Act.

DISCUSSION

13. In respect of the individual items set out on the schedule, there were certain matters that we could not deal with. Throughout it seems to us that the question of accountancy charges will need to be resolved when the final accounts are known. They are at the moment estimated and it seems unnecessary to make findings regard of same.

14. There are, however, certain items of expenditure which appear to have been challenged by the Applicants for which invoices are available. The first is an invoice by JB Services which the Applicants considered had been cancelled. We have had sight of that invoice and it appears that the works have been undertaken and the cost being sought appears to be a reasonable charge. The invoice relates to a leak coming from a fractured soil stack. It appears to be suggested that this was an individual charge to Flats 101, 106 and 111. It seems to us that that cannot be right. If this is a leak to a soil stack then that is a common service for which the block is required to make a contribution. In those circumstances, therefore, we can see no reason for there to be a challenge to the charge of £894. We say in respect of this item of expenditure that as with the others that we shall refer to, they are costs which will appear in the final accounts and we find that they are not susceptible to further challenge.

15. The next item of expenditure specifically challenged was that of an invoice from Speedman Contractors Limited in the sum of £1,560 which dealt with scaffolding and roofing repairs. The complaint made appeared to be that this was delayed in being undertaken and that not all the repair works were carried out. The invoice accepts this. It says that they repaired two slipped tiles and checked for others and found a slipped tile on the other side of the roof but it was too slippery to repair safely. In those circumstances it seems to us that this is a properly incurred charge and the sum of £1,560 is payable.

16. The third invoice from AP Contracting Limited related to the cleaning, in particular the removal of cigarette butts from the front of a number of blocks. These relate in our findings to the cleaning of the common areas. The entrances to the various blocks seems to fall within the estate cleaning charges and accordingly although Garner House is not mentioned, it has an obligation to make a contribution to this overall charge. We could, for example, have seen an invoice in which Garner House was named and the others were not. They would, however, expect to receive a contribution. The invoice is in the sum of £100. The amount, therefore, is de minimis when apportioned between the number of flats on the estate.

17. The same could be said for another invoice by AP Contracting which does specifically refer to Garner House and the removal of a number of items of waste on 6th November 2015. The response given by Remus was that non-domestic waste costs were apportioned between blocks unless it was clear where they came from. It seems in this case from the invoice, that these items clearly came from Garner House. The apportionment, therefore, of this cost will be down to the final accounts but the sum of £85 for the removal on two days of what appeared

to be some relatively substantial items seems to us to be perfectly reasonable and should not be challenged.

18. The final invoice is in respect of Ellis Sloane & Co for carrying out an inspection of the main structure and common parts of Garner House. The fee was £990 plus VAT. Whilst we find that it is not unreasonable for such a survey to be undertaken, we do think that a copy of such survey should be made available to the Applicants. They can then see what has been said and presumably have an idea as to what future costs may be planned.

19. There was a further invoice of £108 in respect of works to the communal stack which appears in the year ending June 2016. Our comments concerning the earlier invoice in this regard apply and it seems to us again this is not a charge susceptible to challenge.

DECISION

20. As set out above our findings are, in respect of the six invoices which we have referred to on the Scott Schedule, and at paragraphs 14 - 19 that they are recoverable charges and will form part of the final accounts and should not be the subject of further challenge.

21. In respect of the accountancy costs, these are at present estimated and it would be appropriate for the Applicants to wait and see how these figures are recorded and passed to them in the final accounts.

22. As to the administration fee, we think that a charge of 5% is a reasonable amount for Clarion to undertake a proper assessment of the costs passed to them by Healey Gate, to vet the accounts and to raise any queries that might arise on them or which are referred to them by the lessees. It seems to us that Clarion are doing the best they can given the difficult circumstances with the accounts.

23. As we have indicated above, it is hopeful that these accounting issues will now be resolved and that the parties can move forward avoiding further disputes of this nature.

24. We are content to make an order under section 20C of the Act considering it just and equitable to do so. This is largely on the basis that the Respondents, certainly Circle 33/Clarion, do not wish to object to such an order being made and further we think that Healey Gate Management Limited as the second Respondents have had difficulties with the managing agents, which they could and should have resolved before now. That has been a large part of the problems faced by the Applicants in this case. In those circumstances it seems to us that it would be reasonable and proper for us to make an order under section 20C such that the costs of these proceedings are not recoverable from the lessees. We hope in fact that both the Respondents will take the view that these costs are not recoverable at all from any lessee on the estate, although that is not a matter that we can pursue further.

Andrew Dutton

Judge: _____
A A Dutton

Date: 14th November 2018

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.