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

**Case reference** : LON/00AL/LAC/2017/0203

**Property** : 155 Halton Court, 5 Cranfield Walk,  
London SE3 9EX

**Applicant** : Mr K Von Local

**Representative** : In person

**Respondent** : Optivo Housing Association

**Representative** : Mr C Brewin of counsel

**Type of application** : For the determination of the  
reasonableness of and the liability to  
pay a service charge

**Tribunal members** : Mr S Brilliant  
Ms S Coughlin MCIEH  
Mr N Miller

**Date and venue of  
hearing** : 9 October 2017  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 8 February 2018

**DECISION**

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years ending 31 March 2015 (from 8 August 2014), 31

March 2016, 31 March 2017 and the current year ending on 31 March 2018 [5].

2. The relevant legal provisions are set out in the Appendix to this decision. References in square brackets are to the pages in the trial bundles

### **The hearing**

3. The Applicant appeared in person, and gave evidence on his own behalf. The Respondent<sup>1</sup> was represented by Mr C Brewin of counsel. The Respondent called the following employees to give evidence:
  - (1) Ms K Berwick Moore, a Senior Finance Manager.
  - (2) Ms E Comer, a Leasehold Services Special Project Manager.
  - (3) Ms N Shah, a Finance Manager for Income and Service Charges.
4. The Tribunal issued directions to the parties on 13 July 2017.
5. None of the parties requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. Following the hearing, both parties sent in written closing submissions.

### **The property**

7. The property is a two bedroom flat (“the flat”) in a substantial purpose-built block (“the block”). The block includes 170 flats. 12 flats are held on long leases, and the remainder are let out on short tenancies. The Respondent holds a head lease. The freeholder also owns the freehold of a broader development within which the block is located.
8. The block is limited to people over 55 years of age, and provides residents with a variety of services appropriate to people of that age group.

### **The lease**

9. The Applicant was granted a shared ownership lease of the property on 8 August 2014 (“the lease”) [44-92]. The lease is for a term of 125 years commencing on 1 January 2013.

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<sup>1</sup> The Respondent was known as Viridian Housing prior to 22 May 2017.

10. The Applicant covenants to pay a variable service charge (“the service charge”) by clauses 3.3.4 [54] and 7.1 [69] of the lease. The service charge is to be calculated in advance of the service charge year by reference to the amount expected to be expended by the Respondent on its relevant obligations: clauses 7.2 and 7.3 of the lease [69]. There is provision for the Applicant to be credited or make further payment when calculation of the actual expenditure has been completed after the end of the service charge year: clause 7.5 of the lease [70].
11. The service charge is payable at the same time as the “Specified Rent”: clause 7.1 of the lease [69]. This is by equal instalments monthly in advance: clause 2 of the lease [53]. The Applicant pays 1/170 of the total sum: see the definition of “Specified Proportion” in Schedule 7 to the lease [85].
12. The costs included in the calculation of the service charge are those set out in clause 7.4 of the lease [69-70]. We set out some of those costs.
13. Clause 7.4(a) of the lease provides for the payment of:

*the costs of and incidental to the performance of the Landlord’s covenants contained in Clause 5.2 (Insure) and Clause 5.3 (Repair redecorate renew structure) and clause 5.4 (Lighting and cleaning of Common Parts)*

14. Clause 7.4(c) of the lease provides as follows:

*all reasonable fees, charges and expenses payable to the Authorised Person<sup>2</sup> any solicitor, accountant, surveyor, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees, charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work*

15. Clause 7.4(e) of the lease provides as follows:

*any administrative charges incurred by or on behalf of the Landlord including but not limited to:*

- (i) *the grant of approvals under this Lease or applications for such approvals;*

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<sup>2</sup> This is the individual nominated by the Respondent to estimate expenditure in relation to the service charge: Schedule 7 to the lease [82].

- (ii) *the provision of information or documents by or on behalf of the Landlord;*
- (iii) *costs arising from non-payment of a sum due to the Landlord; and/or*
- (iv) *costs arising in connection with a breach (or alleged breach) of this Lease.*

16. Clause 7.4(f) of the lease provides as follows:

*the cost of and incidental to the performance of the Superior Landlord's covenants in respect of the Estate contained in the Superior Lease (Schedule 8 Part 2).*

### **The issue**

17. The Respondent charges the long lessees in the block a 15% management charge ("the management charge"). In the service charge account, it is referred to somewhat misleadingly as an administration charge: see for example [447]. There were previous proceedings in the Tribunal between the parties in 2016. The decision is dated 19 December 2016 [583-600]. In those proceedings the management charge of 15% (in addition to the costs of onsite staff) was in issue. The Applicant argued that the charge was too high. The Tribunal found it to be reasonable. There is no challenge to the management charge of 15% in these proceedings.
18. However, the Respondent, in addition, charges the long lessees in the block (but not the social tenants) a monthly fee of £20.83 ("the monthly fee"). This equates very closely to an annual charge of £250.00. The Respondent charges the monthly fee for what it describes as "Leasehold Management Services". The Applicant objects to paying the monthly fee.
19. The Respondent submitted that the issue of the monthly fee had already been determined in the earlier proceedings. We made a ruling on a preliminary point at the hearing. The ruling was that, whilst the monthly fee could not be challenged in the service charge year ending 31 March 2015, it could be challenged in the service charge years ending 31 March 2016, 31 March 2017, and 31 March 2018. The earlier proceedings did not rule on whether or not the monthly fee was reasonable.

### **The Applicant's case**

20. The Applicant denies that is liable to pay the monthly fee in addition to

the management charge.

### **The Respondent's case**

21. The Respondent accepts that it cannot explain how the amount of the monthly fee was originally calculated. It submits, however, that a retrospective recalculation over a three year period confirms that the sum is a reasonable estimate of the sums that can properly and reasonably be attributed to the provision of leasehold management services at the block. It says that the monthly fee is a reasonable fee in connection with the management of block, and that this falls squarely within clause 7.4(c) of the lease which is set out at paragraph 14 above.
22. The Respondent's case<sup>3</sup> is that the monthly fee relates to direct labour costs of staff in the Leasehold Services Team. These are the direct costs of employing them but excluding overheads, such as office space, executive oversight and so on.
23. Ms Berwick-Moore has calculated the total cost of the Leasehold Services Team over the financial years ending 31 March 2015, 31 March 2016 and 31 March 2017. This totals £1,078,518.58. The vast majority of the costs relate to the salaries paid to members of the team.
24. Ms Berwick-Moore has calculated the number of units over which the cost is to be shared by taking into account all the units included in the notes to the end of year accounts of the Respondent. The number of units per year range between 1,358 and 1,628. These units are spread over a number of different types of housing schemes situated within a widespread geographical location.
25. The following is a schedule showing the monthly cost per unit of the Leasehold Services Team:

	2014/15	2015/16	2016/17 <sup>4</sup>
Staff costs	£324,226.35	£330,901.64	£291,079.21
staff related costs	£15,939.05	£22,728.06	£20,570.39
communications	£45.30	£11,100.00	£1,350.00
Professional fees	£14,059.42	£27,799.04	£8,745.46

<sup>3</sup> As set out in paragraph 5 of its closing submissions.

<sup>4</sup> The actual cost is higher because of maternity leave, but nothing turns on this.

Total	£357,670.12	£383,863.34	£336,985.12
Number of units	1,358	1,492	1,628
Annual cost per unit	£263.38	£257.28	£206.99
Monthly cost per unit	£21.95	£21.44	£17.25

26. Based on these figures, the Respondent argues that the monthly fee of £20.83 is an appropriate and reasonable amount to charge.
27. Ms Comer explains in her evidence that the work carried out by the Leasehold Services Team is distinct from that carried out by the staff directly employed to manage the scheme at the block. The monthly fee is only charged to the long lessees, not the social tenants.
28. The Leasehold Services Team consists of Ms Comer, as the Special Projects Manager, a Senior Property Manager (currently vacant), an Income Officer (currently vacant), a Team Administrator and five Property Managers. The team is experienced in leasehold management. The team exists to provide a service in assisting with the management of leases. This work is said to be distinct from that carried out by employees whose cost is covered by the staff costs in the service charge accounts.
29. Ms Comer explained in oral evidence that the Leasehold Services Team spends most of its time dealing with long lessees and shared owners. The team has specialist training and experience in this field, whereas housing officers, who are dedicated to general needs occupiers, do not. Ms Comer visits the block to liaise with the freeholder and concerned parties.

### Discussion

The amount said to be payable for management services provided by the Respondent either falls within the service charge or it does not. If it does, it is covered by the 15% management charge. We see no justification for the additional monthly fee of £20.83 being laid at the door of the long lessees only. The work said to be done by the Leasehold Services Team, such as liaising with the freeholder, is not work which just benefits the long lessees. The social tenants are just as likely to be concerned with such liaison work as the long lessees.

## **Conclusion**

31. The Applicant is not liable to pay the monthly fee of £20.83. In a full year this amounts to £249.96.
32. We direct the Respondent to refund to the Applicant fees of £300.00 incurred in these proceedings. We also consider it reasonable in the circumstances to make an order under s.20C of the 1985 Act that the costs incurred in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of the block.

**Name:** Simon Brilliant

**Date:** 8 February 2018

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent changes or otherwise.

#### Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,



- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.