



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

Case Reference : **MAN/00FF/LSC/2019/0073**

Property : **Yearsley House, Pinsent Court, York
YO31 8SZ**

Applicant : **Yearsley House (10-21) RTM
Company Limited**

Respondent : **Trinity (Estates) Property
Management Company Limited**

Type of Application : **Section 27A Landlord and Tenant Act
1985**

Tribunal Members : **Mr P Barber
Mrs A Rawlence MRICS**

Date of Decision : **17 April 2020**

Date of Determination : **29 April 2020**

DECISION AND REASONS

Decision

1. The Tribunal decided that the appropriate and reasonable amount for that element of the 2017/2018 service charge in dispute between the parties is £4544.46.

Reasons

2. This application under section 27A of the Landlord and Tenant Act 1985 follows a previous application decided on the 04 December 2017 and made by Chris Atkinson, the leaseholder of flats 10 and 20, Yearlsey House. The Decision and Reasons for the Decision in the previous application are at Tab 2 of the Respondent's bundle and it is relevant that the Tribunal in that application declined to make an order under section 20C, paving the way for the Respondent (in that and this application) to claim its costs of the previous application. The application was largely unsuccessful and the basis for the refusal to make a section 20C order was set out by the Tribunal in paragraph 73 as follows:

“overall the Tribunal has determined that the service charges for the most part are reasonable and payable, and the Respondent has been put to a large amount of work in answering the Applicant's application (which was for a greater amount of years originally) and it would not be appropriate for them to be unable to charge for their time which goes over and beyond their annual management charges.”

3. The result was that the Respondent sought to recover its legal costs of the proceedings through the service charge and has billed the leaseholders £6,737.17 in fees for that application in the following service charge year. Those costs are broken down into a Schedule, set out in Tab 3 of the Respondent's bundle.
4. The Application came before this Tribunal on the 17 April 2020 by way of a decision without a hearing under rule 31 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013*. We were satisfied that each party to the proceedings had consented to the Tribunal proceeding without a hearing and we were satisfied that it was in the interests of justice to proceed to a determination without a hearing, the parties having made extensive written representations on the issue we had to address.

Our Findings of Fact

5. We had before us a bundle of documents produced by the Applicant, which included the Applicant's statement of case; the Applicant's reply to the Respondent's statement of case and various supporting documents. We also had the Respondent's statement of case in a separate folder, together with various documents in support of their statement of case.

6. A representative lease is provided at Tab 1 of the Respondent's bundle and there is no dispute between the parties that the provisions in the Ninth Schedule to the lease provide for the collection, as part of the service charge, of legal costs. In any event even if there were we would have found as a matter of law that paragraphs 1 and 10 of that schedule are sufficient to provide for the collection of the costs of an in-house solicitor. We are satisfied, accordingly, that the Respondent is contractually entitled to recover their costs.

The Law

7. The law is contained in sections 18 and 27A of the Landlord and Tenant Act 1985 as follows:

18.— Meaning of “service charge” and “relevant costs”.

(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.

27A Liability to pay service charges: jurisdiction

(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.

Our Reasons

8. As mentioned above, the Respondent has produced a schedule of costs and as part of the Applicant's bundle, a response to each item of expenditure is recorded on that schedule in the Applicant's bundle and as part of our deliberations we considered each of those objections in detail.
9. We were satisfied that the Respondent is entitled to charge specific in-house legal costs as part of the service charge for the purpose of carrying out functions over the above the general management of the block. This was recognised by the previous tribunal in paragraph 73 of their reasons. The Applicant referred us to *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC), a decision of the Upper Tribunal. That decision relates specifically to the recovery of in-house costs under section 60 of the Leasehold Reform, Housing and urban Development Act 1993 as part of the costs of leasehold enfranchisement, but it does provide useful background in relation to how the Court of Appeal has addressed the issue of the recovery of in-house legal costs.
10. There is also no dispute between the parties that a hearing took place on the 04 December 2017 in relation to an application under reference MAN/00FF/LSC/2017/0065 and that preparatory work for responding to that application was carried out primarily by the Respondent's in-house solicitor, Tara Taylor, who is a Grade A fee-earner, at National grade 2 (£201 per hour) by reference to the national guidance on hourly rates. We are, otherwise satisfied that this work was appropriately carried out by a Grade A fee earner. Reading the decision and reasons of the previous Tribunal, it is clear that the application was complex and required extensive work to be carried out in preparation for the hearing. We also note that the previous Applicant had instructed counsel in relation to that application, which would have necessitated an experienced and competent response. Accordingly, an hourly rate of £201 is, in our estimation, reasonable for the level of solicitor required.
11. Generally, and taking a broad-brush approach to the level of costs challenged by the Applicant we are satisfied that there is nothing excessive about general preparatory work carried out between the 17 August 2017 and 08 September 2017. Tara Taylor throughout was, quite properly, working in blocks of 6 minutes and it follows that 6 minutes for considering an email (17 August 2017, for example) is reasonable. We are also satisfied that 48 minutes for reviewing an application (17 August 2017) is reasonable, as is reviewing a Directions Order (18 August 2017). All of this work was necessary and clearly over and above general management functions of the Respondent. It was also appropriately carried out.

12. We agree with the Applicant that the time spent drafting the Respondent's Statement of Case and associated work carried out on the 26 September 2017 is excessive and we reduce it to 5 hours, or £1005. Using our expertise, we would have thought this could have been carried out by a Grade A solicitor effectively in 5 hours.
13. We are satisfied that 48 minutes in reviewing the Applicant's "updated statement" was also reasonably incurred. The Applicant itself makes the point that this is a "6-page document" and 48 minutes to read this and take instructions is not excessive.
14. The entry on the 03 October 2017, in relation to obtaining policy documents for comparative insurance quotes, strikes us as being part of the general management functions of the Respondent and ought not properly to be included as specific costs arising out of the previous tribunal proceedings. We therefore remove these costs, in the sum of £80.40, from the schedule.
15. The work carried out between 04 October 2017 and the 20 November 2017, in our assessment is all reasonable and payable. As mentioned above, 6 minutes for considering a letter/email is a nationally agreed standard and 36 minutes in preparing an index and 2 hours 48 minutes in preparing a witness statement are not excessive.
16. We think the costs of preparing the tribunal bundles on the 20 November 2017 is excessive and we reduce it to 3 hours, at the national rate for a Grade D fee earner (£111 per hour), a sum of £333. In our expertise, we would have thought that 3 hours would be sufficient to collate and copy 5 x 3 level arch files utilising a suitable photocopier. The Applicant's point that the costs claimed are three times that of external sourcing is unreasonable.
17. The biggest difficulty we had with the Respondent's schedule of costs relates to the costs of the hearing on the 04 December 2017. We note that the Respondent had in attendance Ian Foster, Building Surveyor and Kirsty Anderson, Regional Property Manager, both of whom had filed witness statements and were on-hand to deal with any issues as to the service charge items in dispute during the hearing. It strikes us that any issues of law could have quite properly been dealt with by instructing counsel (of which there are many in the Leeds and York area) who would have been experienced and competent enough to represent the Respondent at the hearing, taking any instructions, as necessary from either Ian Forster and/or Kirsty Anderson. We are also satisfied that counsel would have prepared skeleton arguments as part of any fee for attending the hearing and would not have charged travel time but would have included travel expenses (see the fee note of Mr de Beneducci attached to the Applicant's application).

18. It follows that we find the costs of Tara Taylor in drafting skeleton arguments; travelling to York; attending the site visit and attending the hearing, taken cumulatively (including the travel disbursements) to be excessive. We note that the Applicant in the previous application instructed counsel at a cost of £1172.50 (excluding VAT) (from London) and we note that the Applicant's barrister had also drafted a skeleton argument (paragraph 13 of the reasons).
19. In our view, representation at the hearing should have cost no more than £1,200 plus VAT including drafting a skeleton argument and we find the following costs to be excessive:
- 29 November 2017 (skeleton argument) £522.60
 - 04 December 2017 (travel to York) £603
 - 04 December 2017 (site visit) £100.50
 - 04 December 2017 (hearing) £603
 - 04 December 2017 (return travel) £603
 - Costs of train ticket £268.77
20. We replace all of the above costs with £1,200 plus VAT at 20%, or £1440.
21. Finally, we are satisfied that the costs of the courier in the sum of £222 (£224.20 claimed) to be unreasonable. Ordinary first class recorded delivery would have been sufficient for the purpose of posting the bundle at a cost of £17.76.

Conclusion

22. Taking all of the above onboard, we therefore reduce the service charge payable for the costs of addressing the previous Tribunal proceedings by the use of in-house solicitors from £6737.17 to £4544.46.

Section 20C

23. The Applicant does not claim to be making an application under section 20C in the application form (in fact no box is ticked) and there is no mention of a section 20C application in the papers. Accordingly, we do not make an order under section 20C.

Tribunal Judge P Barber
Date: 29 April 2020