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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
EASTERN PANEL  
LEASEHOLD VALUATION TRIBUNAL**

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**Case No** : CAM/11UE/LSC/2010/0105

**Property** : 6 Woodhill Court, Fulmer Road, Gerrards Cross,  
Buckinghamshire SL9 7DZ

**Applicant** : Mr Mervyn CA Sheperdly

**Respondent** : London & Quadrant

**Represented by** : Mr Tom Smith, Financial Services Team Leader, L&Q

**Inspection** : 10<sup>th</sup> November 2010

**Hearing** : 10<sup>th</sup> November 2010

**Determination** : 10<sup>th</sup> November 2010

**Tribunal** : Mr Stephen Reeder (lawyer chair)  
Mrs Helen C Bowers MRICS (valuer member)  
Mrs Najiba Bhatti (lay member)

**Application** : Application for a determination of as to the payability and  
reasonableness of a service charge pursuant to section 27A of  
the Landlord & Tenant Act 1985

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## Decision

### The management & administration fee

1. The Tribunal determines that for the accounting year 2010/11 (1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2011) the "management & administration fee" which is reasonable and payable by the applicant as a service charge is £150

### The format & content of the service charge demands

2. The Tribunal determines that the present service charge demands comprising an invoice and accountants certificate of actual service charge are sufficient to comply with the legal requirements for the same but reminds the respondent of the timescale for complying with any request

for a summary of relevant costs as specified in section 21 of the Landlord & Tenant Act 1985 and of the good practice guidance set out in paragraphs 10.16-10.17 of the RICS 'Service Charge Residential Management Code'

#### The costs of the proceedings

3. The Tribunal determines that is no provision in the lease which permits it to recharge the costs of these tribunal proceedings as a service charge now or in the future. Further, the respondent has confirmed that it will not seek to re-charge any such costs in any event. Accordingly, the Tribunal makes no order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding it from doing so.
4. The Tribunal determines that the respondent landlord shall reimburse to the applicant the whole of the application and hearing fees, totalling £200, within 28 days of receipt of the Decision pursuant to Regulation 9 of the Leasehold Valuation Tribunal (England) (Fees) Regulations 2003.

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## Reasons

### The property, application and issues

5. The applicant is the lessee of 6 Woodhill Court, Fulmer Road, Gerrards Cross, Buckinghamshire SL9 7DZ pursuant to a lease acquired in 1999. This is a two bedroom flat situated in two linked three storey purpose-built blocks of flats numbered 1-6 and 7-14 respectively. It appears that Nos. 1,3,6,8 & 10 are held on long leases with the remainder occupied by weekly tenants of the respondent. The blocks comprise 2 one bed flats and 12 two bed flats. The blocks were formally owned by South Bucks District Council and later transferred to Beacon Housing Association. The respondent registered provider acquired the landlord reversionary interest in those blocks in 2005.
6. The application raises four issues –
  - (1) Whether the management & administration fee of £161 charged for the accounting year 2010/11 (1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2011) is unreasonable ;
  - (2) Whether the service charge accounts presented to lessees provide adequate information to enable a lessee to ascertain how the service charge demanded is calculated ;
  - (3) Whether the Tribunal should grant an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding the landlord from re-charging the costs of these proceedings as service charge; and

- (4) Whether the respondent landlord should reimburse the whole or a part of the application and/or hearing fees paid by the applicant, pursuant to Regulation 9 of the Leasehold Valuation Tribunal (England) (Fees) Regulations 2003.

### The jurisdiction of the Tribunal

7. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges, together with the consultation requirements imposed on landlords. The relevant sections are set out below (adopting the numbering of the Act).

#### 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<sup>1</sup> 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.

#### 19. Limitation of service charges : reasonableness

- (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 reasonable incurred, and
  - (b) where they are incurred on the provision 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 charges or otherwise.

Section 20C : Limitation of service charges : costs of proceedings

- (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 leasehold valuation tribunal, or the Lands 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.
- (2) The application shall be made –
  - (a) .....
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A. Liability to pay service charges : jurisdiction

- (1) An application may be made to a leasehold valuation 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.

**The inspection & hearing**

8. Flat 6 is situated on top floor of one of the linked blocks. It is reached by a common entrance door into a small hallway which provides entrance doors to flats 1 & 2, leading to a staircase up to a small first floor landing (flats 3 & 4) and to a small second floor (flats 5 & 6) landing.
9. The Tribunal has inspected the external parts and grounds to the blocks along with the internal common parts relevant to Flat 6. The parties have assisted that inspection by pointing out relevant parts of the building and surroundings and relating the same to the issues raised on the application. The applicant together with Mrs Partridge (long lessee of Flat 1) have kindly accompanied the Tribunal on this inspection. Mr Smith for L&Q joined that inspection at the conclusion and did not draw any additional points to the Tribunal's attention.
10. The common entrance door, internal common parts, internal sensor lighting, external bin stores, external drying areas, 14 garages, access road and paths, parking areas and external grounds laid to lawn are all in good order and suggest a good standard of management. A ground floor notice board in the common parts exhibits a good deal of management information which also suggests a good standard of management.

11. The applicant, Mr Shepherdly, has attended the hearing and made very useful and succinct oral arguments based on the helpful written submissions and documents he submitted to the Tribunal in accordance with the Directions Order dated 18<sup>th</sup> August 2010. Mr Tom Smith, Financial Services Team Leader, L&Q has made similarly useful and succinct oral arguments based on the helpful written submissions and documents which the respondent submitted to the Tribunal in accordance with that Directions Order. The Tribunal has given careful regard to those oral and written arguments and to the documents provided by both parties. Mrs Partridge (long lessee of Flat 1) has been present during and has observed that hearing.

### The lease

12. The hearing bundle provides the Tribunal with the lease for 6 Woodhill Court. That lease includes the following relevant covenants :
- (i) Clauses 2(2), 3(1) & 3(3) require the lessee to pay the rent, further rent and additional rent as defined in the lease
  - (ii) Part II of the 3<sup>rd</sup> Schedule requires that the lessee pay as additional rent a proportion of the respondent's expenses and outgoings including –
    - “The cost of employing such staff and agents as the [respondent] may in its absolute discretion deem desirable or necessary to enable it to carry out and maintain the services referred to in this Schedule or any of them and for the general conduct and management of the building and all parts thereof” (clause 8)
    - “All fees and costs incurred in calculating the [respondent's] expenditure under this Schedule for the purpose or arriving at the amount of the further and additional rent” (clause 9)
13. Part I of the 3<sup>rd</sup> Schedule and paragraphs 1-7 of Part II of that Schedule define the 3<sup>rd</sup> Schedule services to comprise the landlords repairing covenant, rectification of structural defects within 10 years of grant, buildings insurance, maintenance of common grassed areas, maintenance of any TV distribution system, maintenance of land or facilities in common use, all charges assessments and other outgoings payable by the respondent in respect of all parts of the building, exterior redecorations, cleaning decorating and lighting in internal common areas, maintaining amenities areas and forecourts pathways and parking areas adjoining or adjacent to the building.
14. Clause 1(b) of Part III of the 3<sup>rd</sup> Schedule provides that where costs are incurred which are common to the whole or part of the building they are to be re-charged as further or additional rent in the same proportion of those costs as the gross rateable value of the flats bears to the gross rateable value of building. In fact the present arrangement is that such costs, save for the management & administration fee which is considered below, are apportioned at 7.32% which appears to reflect both the total number of flats (14) and the number of one bed flats (2) and two bed flats (12). This appears to the Tribunal to be a perfectly reasonable and equitable apportionment and is accepted as such by the applicant.

## Determinations

### The 'Management & Administration' Charge

15. Prior to April 2010 the management & administration fee was charged as 15% of the costs of all the relevant services (excluding the ground rent). It was therefore subject to fluctuation in line with the costs of the relevant services, and also subject to variation between the estimated cost notified at the start of a financial year and the actual cost certified at year end. In 2010 the respondent carried out an internal review of how management & administration charges were calculated and levied across its stock of approximately 60,000 long lessees and weekly tenants. That review concluded that the fairest way to achieve consistency and clarity over the whole stock was to impose a uniform fixed charge. The fixed charge for 2010/11 the Tribunal is concerned is £161 and comprises three component charges as follows –

- (i) £60 for the neighbourhood services team to cover the costs of property surveyors, day to day management by the neighbourhood services officer, and long term maintenance by the planned maintenance team.
- (ii) £78 for the financial and conveyancing services to cover the costs of management of the service charge account, the issuing of quarterly statements, providing advice to lessees in financial difficulty, providing advice to lessees for instance in relation to selling their property or seeking a lease extension.
- (iii) £23 for the service charges to cover preparation of the estimated service charge schedule, preparation of end of year accounts, and dealing with service charge queries.

16. The respondent argues that each of these component charges is payable under the terms of the lease and in particular clauses 8 & 9 of Part II of the 3<sup>rd</sup> Schedule because the lease is silent on the scope of the services which fall within clauses 8 & 9, and because read as a whole in context the lease permits charges for such services. Mr Smith confirms that each of the three component charges is reached by calculating the costs of the in-house salaried staff or contract costs of the appointed external contractor for providing such services across this management 'patch' (the South Bucks area), dividing that across the number of properties receiving those services within that 'patch', and factoring in the type and number of properties within that patch that require such services. He confirms that the final total charge of £161 is the actual cost and does not include any profit element as the respondent is a non-profit Registered Provider. Mr Smith points out that a fixed charge system protects the lessees from upward fluctuations in response to increased actual relevant service costs in any given year and in relation to balancing increases between estimated and end of year relevant service costs. He argues that management and administration fees of similar scope in the private sector are materially more and an annual figure of £300 or more is common in London.

17. The applicant takes a well considered position and raises no express challenge to the payability or reasonableness of the 'neighbourhood services team' charge or the 'service charges' charge, other than to point out that the previous variable total management & administration charge was materially lower than the new total fixed charge and amounted to £35.12 in the previous accounting year which suggests that these charges and the total charge are not reasonable. He does take issue with the 'financial and conveyancing services charge' in three respects –
- (i) The management of the service charge account within that item is a duplication of the preparation of the estimated and end of year account already charged for the 'services charges' charge.
  - (ii) The costs of the provision of advice to lessees in financial difficulty, and advice to lessees for instance in relation to selling their property or seeking a lease extension are not payable as a service charge as those service are not envisaged by the lease.
  - (iii) The costs of the provision of advice to lessees in financial difficulty, and advice to lessees for instance in relation to selling their property or seeking a lease extension are not reasonable as service charges as those issues are ones on which lessees would likely seek independent legal advice and likely not avail themselves of any such service from the landlord.
18. The lease is silent as to whether a charge for management and administration should be made as a percentage of the relevant service costs as previously or by fixed charge as for 2010/11. Either is permissible. The Tribunal notes that the adoption of a fixed charge is in accordance with Part 2 (including paragraph 2.3) of the RICS 'Service Charge Residential Management Code' and that most of the respondent's management services are within the scope of that Code (including paragraph 2.4). In terms of good practice the application of a fixed charge by a non-profit registered provider landlord for a block of this type is reasonable. It does provide economies of scale and so value for money, certainty and protection from fluctuation for the lessees. The previous lower variable fees appear to have been an 'undervalue' of the actual service being provided as those services had not been accurately costed. In the circumstances the Tribunal determines that it is permissible under the lease and reasonable in the circumstances for the management & administration fee to be charged in a fixed sum as for 2010/11.
19. The Tribunal determines that the management of the service charge account within the 'financial and conveyancing services' charge is not a duplication of the preparation of the estimated and end of year account re-charged as part of the 'services charges'. The 'service charges' relate to the preparation of estimated and end of year accounts and any queries on the same, whereas the 'management of your service charge account' item in within the 'financial and conveyancing services' charge relates to the management and recovery of the service charge once calculated and demanded.
20. The Tribunal determines that the costs of the provision of advice to lessees in financial difficulty, and advice to lessees for instance in relation to selling their

property or seeking a lease extension are not payable as a service charge as those services are not envisaged by the lease. They are not expressly within the scope of clauses 8 or 9 in Part II of the 3<sup>rd</sup> Schedule. They are clearly not within the scope of the relevant services specified in Part I of the 3<sup>rd</sup> Schedule or by paragraphs 1-7 of Part II of that Schedule. They cannot be said to be envisaged reading the lease as a whole in its legal and factual context. Further, whilst such services may be good practice for a non-profit Registered Provider such as the respondent there is some force in the applicant's argument that lease sales and extensions are the types of issue on which lessees would likely take independent legal advice and assistance rather than rely upon the same from their own lessor. On the information before us it is impossible to accurately identify how much of the £78 charged for 'financial and conveyancing services' relates to the provision of advice to lessees in financial difficulty, and advice to lessees for instance in relation to selling their property or seeking a lease extension. Doing the best we can on the information before us and by application of our expert knowledge of such issues we quantify the sum at £11 for those items. Therefore, the service charge payable for the 'financial and conveyancing services' component of the 'administration & management charge' is £63

21. The Tribunal is satisfied that the 'neighbourhood services team' and 'service charges' components of the 'administration & management charge' are both payable and reasonable. It is similarly satisfied that the remaining items of the 'financial & conveyancing services' component are payable and that £63 is a reasonable charge for the same.
22. It follows that the reasonable service charge payable for the total 'administration & management charge' is £150.

#### **The format & content of the service charge demands**

23. The respondent confirms that the demand for the final service charge for an accounting year comprises an invoice for the recipient lessee's individual proportion, accompanied by an accountant's certificate of the actual service charge which particularises the relevant services (eg. "cleaning contracts, electricity consumption, general maintenance, grounds maintenance, audit fee and administration & management charge) and the certified amount due for each. This is the single format for service charge demands across the respondent's substantial leasehold stock. Mr Smith states that where such a demand and certificate includes any unusual or unusually high service charge component then it will be accompanied by some narrative detail and explanation but not otherwise. He states that the respondent operates a transparent policy and procedure on service charge demands and that any lessee can request details and information of any items on the demand and certificate and they will be provided.
24. The applicant complains that the invoice and accountant's certificate do not show what any individual service charge item (eg. 'general maintenance') actually related to so that he cannot satisfy himself on its payability (in terms of the lease) or reasonableness (in terms of value for money). He further complains that neither the invoice nor certificate show how the total 'block' service charge items have been apportioned to calculate the individual lessees liability. He candidly



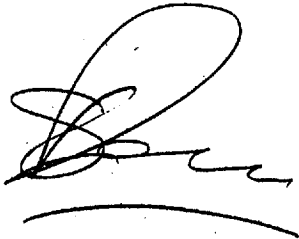
stated that some of these concerns arise because he has lost faith in the respondent's management performance based on his past experience. He states that he made many requests for the detailed information be needed to satisfy himself on payability and reasonableness and that it took an inordinate time for the same to be provided. Mr Smith candidly accepted that there have indeed been delays in providing that information. The applicant contends that the service charge demands should comprise :

- (i) An invoice showing the individual lessees actual service charge and accounting for any estimated charge paid on account
  - (ii) An accountant's certificate listing the individual service charge items and the certified amount for each
  - (iii) A clear written calculation showing how the total service charge costs for the block have been apportioned to calculate the individual lessee's demand
  - (iv) The computer record narrative which summarises the nature and states the cost of individual service charge costs which are combined within service charge items listed on the accountant's certificate.
25. The Tribunal determines that the present service charge demands comprising an invoice and accountants certificate of actual service charge are sufficient to comply with the legal requirements for the same. The former shows clearly the amount demanded and any credit given for estimated an account payments already made. The latter provides a certified amount for each service charge item. The Tribunal is mindful of the statutory scheme and that the applicant has a right to request for a summary of relevant costs pursuant to section 21 of the Landlord & Tenant Act 1985. The Tribunal reminds the respondent of the good practice guidance on this procedure set out in paragraphs 10.16-10.17 of the RICS 'Service Charge Residential Management Code' and expects the respondent, as a non-profit Registered Provider' to comply with the same. In future requests for relevant costs summaries should be complied with timeously. Whilst the Tribunal has no power to stipulate that future service charge demands adopt the format proposed by the applicant it does invite the respondent to consider whether the present format can be amended to incorporate the points raised by the applicant all of which are consistent with the principles of best practice and transparency which the respondent operates.

### Costs

26. The applicant seeks an order pursuant to section 20C of the Landlord & Tenant Act 1985. The Tribunal determines that there is no provision in the lease which permits the respondent landlord to recharge costs incurred in relation to these tribunal proceedings as a service charge now or in the future. Mr Smith very fairly stated that it would not seek do so in any event. In such circumstances there is no need for the Tribunal to consider an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding such a course of action.

27. The applicant seeks an order that the respondent landlord should reimburse the whole or a part of the £50 application and £150 hearing fee he has paid, pursuant to Regulation 9 of the Leasehold Valuation Tribunal (England) (Fees) Regulations 2003. The Tribunal makes such orders only where it is just and equitable to do so in all of the circumstances of the case. On all questions of costs the Tribunal is mindful that the LVT is intended to provide an accessible, low cost vehicle for the proportionate resolution of service charge disputes. The applicant has raised and succeeded on one payability issue with regard to the 'management & administration charge'. He has established, and the respondent has very fairly accepted, that there were undue delays in providing a sufficiently detailed summary of relevant costs to enable him to satisfy himself on payability and reasonableness issues. Having regard to these factors and weighing them against all of the circumstances of the case the Tribunal determines that it is just and equitable to make an order pursuant to Regulation 9 of the 2003 Regulations requiring the respondent to reimburse the whole of the application and hearing fees by paying the sum of £200 to the applicant within 28 days of receipt of this Decision.



Stephen Reeder  
Lawyer Chair

Caution

*The Committee inspected the external parts and internal common parts of the subject blocks and the plot on which they are situated solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the blocks or plot in this Decision are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the blocks or plot.*