



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

**Case Reference** : **LON/00AU/LSC/2019/0018 &  
LON/OAU/LBC/2019/0035**

**Property** : **46 Thornhill Houses, Thornhill Road, London  
N1 1PA**

**Applicant** : **The Mayors and Burgesses of London Borough  
of Islington**

**Representative** : **Mr S Israni-Bhatia, Litigation Lawyer  
accompanied by Mr Richard Powell,  
Leasehold Officer; Mr Timothy Evans, Service  
Charge Calculations Officer; Mr Shaun  
O'Brien, Service Charge Calculations  
Manager; Mr Dennis Heath, Leasehold Estates  
and Services Co-ordinator.**

**Respondent** : **Mr Peter Cain**

**Representative** : **Mr Cain in person**

**Type of Application** : **Application to determine the reasonableness  
and pay ability of service charges pursuant to  
section 27A of the Landlord and Tenant Act  
1985 and an application under section 168(4)  
of the Commonhold and Leasehold Reform  
Act 2002**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr T W Sennett MA MCIEH  
Tribunal Judge Brandler**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR on 1<sup>st</sup> May  
2019**

**Date of Decision** : **4th June 2019**

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**DECISION**

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## DECISION

- 1. The Tribunal makes the various findings in respect of the outstanding service charge matters as set out below.**
- 2. The Tribunal makes no orders under section 20C of the Landlord and Tenant Act 1985 (the Act) or under schedule 11 paragraph 5(a) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).**
- 3. Directions in respect of a claim for unreasonable costs under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 are set out below.**

## BACKGROUND

1. On 8<sup>th</sup> January 2019 Deputy District Judge Gilford sitting at the County Court at Clerkenwell and Shoreditch in case number E6QZ1C4P involving these parties transferred the claim to this Tribunal and at the same time struck out the defendant's counter claim.
2. On 23<sup>rd</sup> January the matter came before the Tribunal for directions to be considered. Those directions record that the amount now outstanding is £576.72 and the issues to be determined related to service charges in the year 2017/18, being the management charge for building insurance, caretaking costs and management costs.
3. Prior to the hearing we were provided with a bundle of papers prepared by the Council which included submissions and replies to the Respondent's case as well as statements of costs. The County Court documentation was provided as were previous Tribunal decisions and a breakdown of management charges, details of building insurance and caretaking issues, together with cleaning inspection reports. Copies of the witness statements of Mr O'Brien and Mr Heath were also provided as well as copies of correspondence passing between the parties and the Tribunal. In addition, we were provided with further documents giving a breakdown of caretaker's management salaries, job descriptions, photographs and inspection sheets.
4. In a separate bundle the Respondent, Mr Cain, had produced papers upon which he wished to rely. These included a response headed 'Respondent's Case' which addressed the outstanding issues of management fees, insurance and cleaning. In addition, there were documents, which were prepared by Mr Cain, said to include charge-out rates for the caretaker and cleaner and others but these did not appear to be for the year in question and on the face of it, therefore, were not helpful. There were various photographs and other documents within those papers, which we will refer to as necessary.
5. In the Applicant's written submissions it confirmed that there were three heads of estimated annual service charges in dispute, being Management Fees in the sum of £255, Building Insurance in the sum of £171.90 and Caretaking Fees of £252. Actual costs were now available and we will refer to those in due course. The Council thought that the Respondent should be debarred from taking part in the proceedings because he had failed to respond to matters when requested to do so. Much of this submission was taken up with cost issues. The applicant

Council sought a refund of the issue fee in the County Court and the application top-up fee of £30. They also sought to recover costs under the terms of the lease or as unreasonable conduct through the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules).

6. The Respondent's bundle contained his statement of case, which cast doubt upon the efficacy and accuracy of the Council's evidence. We noted what he said.
7. Under heading Management Fee he said that it was 'probably not unreasonable' provided management was done properly. No indications of improper management were included. It appeared to be suggested that an unnecessary charge in respect of ASBO services had been included, which was inappropriate and that there should be an explicit clause in the lease allowing the recovery of any management fee.
8. In respect of insurance it was noted that the insurers offer the opportunity of performing management of claims handling within the overall fee. Mr Cain suggested that in fact it was the Council that did this and passed the fees onto the freeholder. He thought the fee might be 15%, although the Council had refused to disclose this and he thought therefore that his insurance premium should be reduced by that percentage.
9. With the cleaning, he felt that there needed to be an explicit clause to enable recovery of additional management fees, going back to 2005, associated with the cleaning costs. He alleged that cleaning costs had increased unreasonably. He was also critical of Comensura who had provided temporary staff for cleaning, which he thought disclosed a rate of around £13 per hour which included a 15% management fee and that the recharge should therefore be £11.30 on the basis that the management fee should have been included within the annual management charge which he wanted to review. He then went on the list the lack of cleaning and the fact that some paper in the form of receipts had been left in situ for some time. He did not think that the cleaning was done appropriately. His bundle included photographs of the offending article and a number of emails and other correspondence. Reference was made to the tenants' association and its dissatisfaction with the cleaning arrangements.
10. The local authority responded to this case in a reply denying that the service charges had increased exponentially and that no documentation had been produced by Mr Cain to support this allegation. Their position was that the services provided were of a good standard.
11. On the question of the Council's management charges, which were recorded at £255, the Council drew to our attention that the Respondent appeared to accept this was 'probably not unreasonable' and while saying it had not been done properly, gave no evidence. They recited the terms of the lease which enabled a management charge to be made, see the third schedule part 3, and relied on the wording of *Wembley national stadium v Wembley London* and in particular the Council's entitlement to reflect management charges associated with the cleaning and caretaking and separating those from the overall management charges as a separate issue.

12. In respect of the insurance, the Council made it clear that the insurers undertake the claims handling service as part of an overall tender submission and it is not optional for Islington, or indeed any of the other eight local authorities in the Insurance London Consortium, to take on that role. The insurer's handling of a claim is not a supervisory management function but an integral function of investigating and resolving claims and part of the insurance claims process. It is the Council's position that the 2017/18 estimated building charges are based upon the actual cost of the policy. In addition, the Respondent had failed to provide any alternative insurance costs.
13. Finally, on the question of the estimated caretaking, a detailed breakdown was given showing how the charges are arrived at by dividing the total number of caretaking hours spent on the block by the total number of caretaking hours for the area housing office catchment. Whether, or not, a caretaker working in the block is residential or non-residential or agency or permanent member of staff was, the Applicant said, irrelevant although it did accept that it was becoming more difficult to recruit a permanent caretaker.
14. In respect of Comensura, it was said that they were entitled to charge for its services which contain a commission/profit element. It was confirmed that the caretaking management charge is calculated by assessing the cost of management staff who work on caretaking and dividing this by the total hours for the area to give an hourly rate, which is multiplied by the total hours for the block. (see para 31 of Mr O'Brien's witness statement) Full breakdown for the management tasks was set out in the papers before us, running to four or five pages. As to the caretaking quality, the Respondent's statement was not admitted. Apparently, 637.87 hours were provided for 2017/18 for which a charge of £240.19 was levied giving an hourly charge of 38p.
15. A number of items in the Respondent's bundle were rejected by the Council as being irrelevant as they did not deal with the period before us. There were also various photographs that the Respondent had produced. The Applicant relied on inspection reports, in particular those dated 2<sup>nd</sup> November and 7<sup>th</sup> December and inspections on 7<sup>th</sup> and 9<sup>th</sup> December. The Applicant's position is that the caretaking had been provided to a reasonable standard and the charges reasonably incurred. The request for reimbursement of fees now included the cost of the hearing fee giving a total of £300. The Council also sought recovery of its legal costs associated with the dispute. It is said that the Respondent had failed to comply with the directions and that the lease allowed the recovery of the costs. Reference was made to a wasted cost order and allegations that the Respondent had acted unreasonably. In a second statement of summary costs the Council sought the sum of £3,998.35. The question of costs will be dealt with as a separate issue.

## **HEARING**

16. At the hearing Mr Cain accepted that 50% of the management fees were reasonable but wanted to review that against the fee charged for caretaking and other charges. He indicated that the challenge was not to the entitlement but to the quantum. The Council relied on the evidence of Mr O'Brien who had provided a witness statement and attended the hearing. The statement can be

found at page 178 onwards and addressed the estimated annual service charge for management fees which were shown as £255, now an actual charge of £249.42. This estimated charge had been calculated by taking the 2016/17 actual management charge and applying a 2% uplift. The management charge was made up of three elements. The first is home ownership for which there was a cost of £925,021 divided by the total number of leasehold stock of 8,202 giving a home ownership service costs per unit of £112.78.

17. The second area was area housing office where the costs for the year were £813,233 divided by the total number of properties managed by the Upper Street Area Housing Office which was £15,308 giving an area housing office cost of £53.12. The final element of the management costs was the central support service cost of £2,493,809.66 divided by the total number of housing units of £29,860 giving a central support service cost per unit of £83.52. These matters added together give the actual management charge of £249.52. It is right to say that Mr Cain thought that a management fee in the region of £250 would be reasonable.
18. Part of the criticism by Mr Cain was the anti-social behaviour costs. Mr O'Brien explained this setting out the anti-social behaviour cost element which appeared to come to £33.27. This was 13% of the total charge.
19. Mr O'Brien then moved on the deal with the insurance for which a premium of £171.90 was the contribution sought from Mr Cain. Breakdown of this was provided and it confirmed that the insurers carry out the handling of claims. No evidence has been provided by Mr Cain in his defence that the charge is excessive other than an estimated 15% reduction that should be made for concealed management. However, the Council made it clear that the estimated building insurance charge is based on the actual policy and that the insurance handling is dealt with by the insurers themselves and accordingly there was no basis for believing that there was a concealed management charge.
20. The final element was the caretaking charge. The estimated figure was £252 but the actual caretaking charge is £240.19. The statement from Mr O'Brien set out how this was broken down and dealt with the caretaking quality in some detail. It is not necessary for us to set out the position. Mr O'Brien also confirmed that no management charge was allocated to anything other than the general management and the caretaking costs and he referred us to pages in the bundle which set out those caretaking charges and the hours spent. These were from pages 121 through to 125.
21. At the conclusion of Mr O'Brien's evidence Mr Cain confirmed that he accepted the general management charge of £249.42.
22. At this point Mr Cain also reviewed his concerns about the management fee for caretaking. Instead he wished to pursue the concerns as to the standard of caretaking and the costs. He also accepted the insurance premium at £171.90 was acceptable.
23. Mr Heath was called to deal with the caretaking costs. Like Mr O'Brien he had made a statement albeit shorter and with less details. He confirmed that he was

employed as the Estate Services Co-Ordinator in the Upper Street area and was responsible for supervising Thornhill Houses. He was satisfied that they provided a good level of service and that they review their service standards consistently as evidenced by some inspection reports within the papers. It appears that the permanent caretaker has been on long term leave and now departed but during that time temporary cover was made available. He listed out the responsibilities of the caretaker and that a quality assurance officer was used for carrying out inspections and reporting.

24. His view was that the standard of caretaking at the block had, for the majority of inspections over the year, scored at least 80%. In oral evidence to us he confirmed he remembered concerns being raised by the residents' association and he asked a colleague to inspect. At page 138 of the bundle was an example of the inspection sheets, which he said he completed himself. He completed in pen or pencil at the property and typed the reports up at the office. He had also arranged for an independent assessor to review and was satisfied that all was in order. He confirmed that he had no regular complaints relating to the property although there had been some in respect of building works undertaken in the block. He did not recall any complaints from Mr Cain.
25. Mr Cain's concerns about the cleaning appeared to be to a large extent assuaged by Mr Heath's evidence. Although he had provided in his report allegations that the costings were unreasonable, much of this was historic. He did provide photographs showing pieces of paper left on the stairs for some considerable time, but apparently, he had been told by the residents' association not to pick these up as it would merely encourage the Council. The photographs appeared to show one or two pieces of paper, perhaps receipts, being in situ for a period of time which one might have thought would have been picked up by a cleaner.
26. At the same time as this application the Council had commenced proceedings under section 168(4) of the 2002 Act. This application alleged that a breach of covenant arose from the difficulties the Council said they had had in trying to make an appointment with Mr Cain to inspect the interior of his flat. Apparently, there was some concerns that alterations were being undertaken to Mr Cain's flat which might have been structural. The Council had attempted to visit and matters had become somewhat difficult, not helped by a Council employee sticking his foot in the door.
27. Whatever the rights and wrongs of this it seemed to us that this is a matter that should be resolved and should not take up Tribunal time. Accordingly, with the assistance of the parties we were able to agree that there could be two periods for which an inspection could take place, the first being between the 28<sup>th</sup> and 31<sup>st</sup> May and the other being 10<sup>th</sup> to 14<sup>th</sup> June. The Council indicated that they wished to inspect with a number of members of staff, which seemed unnecessary. It was agreed, therefore, that the inspection would be limited to a surveyor and the employee who had placed his foot in Mr Cain's door, or rather the threshold thereof, would not be in attendance. This seems to meet the requirements of both parties and we will be deeply disappointed if this application for a breach of covenant saw the light the day and was not withdrawn once the inspection had taken place. We do ask Mr Cain to assist in this regard.

28. We then turn to the question of the costs. Putting aside the potential claim either under the lease or under Rule 13, the Council seeks a refund of the fees paid for the proceedings. Mr Cain, somewhat off the cuff, offered a 50:50 contribution which was rejected by the Council. At the foot of this decision we have set out the directions if an application is to be made under Rule 13. If the Council intends to pursue the matter as an administration charge under the terms of the lease then that would we think be best dealt with by way of a separate application under the 2002 Act.

### **THE LAW**

29. The law applicable to this matter is set out in the addendum.

### **FINDINGS**

30. With respect to Mr Cain there has been a history of dispute with the Council and most of the decisions appear to have gone against him. The position is that there appears to be, putting it colloquially, no love lost between the parties, which is a pity. The complaints raised by Mr Cain concerning the three items that we have dealt with above did not really give rise to a bona fide dispute. Mr Cain seemed to quite happily accept the explanations put forward by the Council and it is a pity that it had to come to proceedings for this to happen.
31. The position is that actual costs have now been ascertained and rather than make a finding based on the estimated figures it seems to us sensible to proceed on the actual costs incurred, which were set out in the accounts within the papers before us and which we have referred to above. At page 103 of the bundle the actual accounts are shown. The building insurance fee remains at £171.90. The caretaking has reduced from the estimated cost of £252 to £240.19 and the management fee likewise reduced from £255 to £249.42.
32. We find that those sums for building insurance, caretaking and management are properly due and owing and should be paid by the Respondent within the next 28 days. The disputed items schedule at page 21 of the bundle stills seems to contain the estimated service charge sums. On our calculation the difference is £17.39. If the total shown on the disputed item schedule of £576.72 is correct, and it does not appear to have been disputed by Mr Cain, then this should be reduced giving a figure of £559.33 as being the amount due and owing.
33. We conclude that it would be appropriate for Mr Cain to reimburse the Council with the Court and Tribunal fees totalling £300. As we indicated above, any application under Rule 13 can be dealt with as per the attached directions and if the Council intends to pursue by other means the costs as an administration charge, it seems to us that those should be calculated, a demand made of Mr Cain giving the details of the lease that enables the recovery of charge. Then if it is not settled it can be dealt with by way of a separate application.

### **Directions rule 13 claim**

1. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).

2. The application is to be determined **without a hearing, unless either party makes a written request (copied to the other party) to be heard before the paper determination.**

### **The applicant's case**

3. By **21st June 2019** the applicant shall send to the respondent a statement of case setting out:
  - (a) The reasons why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;
  - (b) Any further legal submissions;
  - (c) Full details of the costs being sought, including:
    - A schedule of the work undertaken;
    - The time spent;
    - The grade of fee earner and his/her hourly rate;
    - A copy of the terms of engagement with applicant;
    - Supporting invoices for solicitor's fees and disbursements;
    - Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
    - Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.

### **The respondent's case**

4. By **5th July 2019** the respondent shall send to the applicant a statement in response setting out:
  - (a) The reasons for opposing the application, with any legal submissions;
  - (b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;
  - (c) Details of any relevant documentation relied on with copies attached.

### **The applicant's reply**

5. By **12th July 2019** the applicant shall send to the respondent a short statement in reply.

### **Documents for the hearing/determination**



6. The applicant shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall by **26<sup>th</sup> July 2019** send one copy to the other party and send **four** [two if paper track] copies to the tribunal.
7. The bundle shall contain copies of:
  - The tribunal’s determination in the substantive case to which this application relates;
  - These directions and any subsequent directions;
  - The applicant’s statements with all supporting documents;
  - The respondent’s statement with all supporting documents.

### **Determination/hearing arrangements**

8. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the week commencing **5<sup>th</sup> August 2019**.
9. If an oral hearing is requested, the hearing shall take place on **Wednesday 7<sup>th</sup> August 2019** at 10 Alfred Place London WC1E 7LR starting at **1:30pm** with a time estimate of 1-2 hours.
10. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

Judge: \_\_\_\_\_  
A A Dutton

Date: 4<sup>th</sup> June 2019

### **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.

## **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 charges 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.