

10659



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

Case Reference : CHI/24UB/LSC/2014/0079-91/0111-0113/0117/1119

Property : The 4387 properties set out in Appendix A to Directions dated 17th September 2014

Applicant : Sovereign Housing Association

Representative : Mrs K Leach
Mr K Dey
Mr T Snook

**Respondents
(Lead cases)** : Mr J Coleman
Miss L Clayton
Mr S G Karpik
Mr R D Cooke
Mr D Selway
Mr MA Jones
Mrs V Portess
Mrs L Cross
Mr R L Smallbone
Mrs V J Williamson
Miss E Carter
Mr J Wilson and Ms S Ware
Mr A Adams
Mr P Pepperell,
Ms A Boston,
Miss D Ransome,
Mr I Armstrong
Ms T Lennark

Representative : None

Type of Application : Reasonableness of management fees in prospective service charges

Tribunal Member(s) : Judge D Agnew (Chairman)
Mr A Mellery-Pratt FRICS
Mr J Mills

Date of Decision : 3rd February 2015

DECISION

Background

1. This is the second application by the Applicant for a determination under section 27A((4) of the Landlord and Tenant Act 1985 (“the Act”) for a determination that if the Applicant were to adopt a new scheme for charging their management fees in the service charges they will render to the 4387 tenants of their leasehold stock for the years 2015, 2016 and 2017 those charges would be reasonable and therefore recoverable. Instead of this charge being calculated at 15% of the cost of the landlord’s expenditure on the services provided, which, it was said by the Applicant, failed to cover the actual cost of management by something in the order of £450,000, the proposed charges would be based on the cost to the landlord of providing the management service.
2. The first application was made in September 2013 under case reference CHI/24UB/LSC/2013/0127-36 and the decision was dated 9th June 2014. That application failed. The Tribunal was not satisfied that the proposed scheme of charging for management services was reasonable. The Tribunal considered that the Applicant needed to come forward with a more nuanced proposal involving additional categories of charging to produce a more reasonable result particularly where a lessee would just cross the threshold from the provision of one type of service into a higher category of service. The resulting increase would be too severe in certain circumstances.
3. The second application was dated 4th September 2004. The Applicant said that it had returned to basics and recalculated their proposed charges and had come forward, it said, with an improved scheme of charging which it hoped addressed the concerns that the Tribunal had expressed in respect of their first application.
4. Directions were issued on 17th September 2004. The same lead cases as for the first application were selected as they represented each of the different types of lease within the Applicant’s portfolio. A number of other lessees applied to be considered as lead cases and they were added to the list of lead cases. Directions provided for the lessees to provide statements of case in reply to the application. Statements were received from three lessees of the lead cases and one letter of opposition to the application was received from a lessee who was not amongst the lead cases.
5. The hearing took place at the Tribunal’s offices in Chichester on 22nd January 2015. The Applicants were represented, as before, by Mrs K Leach, Mr K Dey and Mr T Snook. No lessees attended the hearing.

6. In view of the fact that this second application was basically the same as the first but with an amended scheme for charging different amounts for the various categories of lease with one extra category added, it will be of assistance to anyone reading this decision to do so in conjunction with the earlier decision a copy of which is appended hereto.

The Applicant's case

7. The Applicant's evidence was given by all three of the Applicant's representatives with Mrs Leach, the Leasehold Strategy Manager taking the lead and Mr Dey, the Director of Intermediate Housing and Mr Snook, the Finance Business Partner adding their contributions where appropriate. They explained that they had acted on the recommendations contained in the Tribunal's decision in the first application. That decision had established that all the various types of lease within the Applicant's portfolio contained provisions for the Applicant to charge and recover costs of the management and provision of services to the lessees as specified in the leases and in addition, the computation and collection of rents where appropriate. It was proposed to attribute different management fees to various bands depending upon the amount of time spent in managing the services supplied by the landlord for those various categories. First, therefore, an estimate of the amount of time spent in that management by the various categories of the Applicant's employees. Then an average cost per hour including some but not all overheads was attributed to each grade of employee. Multiplying the two figures gave an average cost per property for each category.
8. Category A leases are for those properties, typically shared ownership houses, which required rent collection and buildings insurance but no communal services. It was estimated that 0.5 hours per year per property would be spent by the Service Charge Team in preparing the service charge estimate, preparing draft and final service charge statements, sending out service charge "account packs" and dealing with queries and adjustments. Leasehold Services Officers would receive the estimates and actual service charge statements from the Service Charge Team and moderate them in the light of their detailed knowledge of the individual properties. They would receive and process payments, deal with queries and adjustments and manage the building insurance coverage. They would be the point of contact with lessees to answer queries by telephone, email or by face to face contact. They would manage the initial stages of Anti Social Behaviour complaints and support lessee involvement in the Applicant's governance structure within the Board, Council and Regional Panels. It was estimated that this would involve on average 1.5 hours of time for Leasehold Services Officers. An additional hour per property per year was estimated for the Leasehold Services Officers in rent account management including annual rent increase reviews and sending out statements. There is, however, a Rents Team which also spends a further 0.5 estimated hours per year per property in calculating the annual rent increase, notifying lessees of the new rent and managing the rent payments.

Above the Leasehold Services Officers there is one Leasehold Services Manager for approximately 5 Leasehold Services Officers for whom a further 0.5 hours of time has been estimated. The charging rates applied to the various personnel is £21.80 per hour for a Service Charge Officer and a Rent Officer, £27.12 per hour for a Leasehold Services Officer and £37.28 for a Leasehold Services Manager.

9. Category B leases are for those properties, predominantly houses where they have the same services as Category A leases plus communal services in respect of estates services, such as grass cutting and gardening, playground maintenance, street repairs and lighting. For this category, the amount of Service Charge Officer's time has been increased to 1 hour per year per property, the Leasehold Services Officer's time has been increased to 3 hours, the Leasehold Manager's to 0.6 hours and in addition a surveyor's time of 1 hour has been added for the supervision and monitoring of contracts relating to communal services. The hourly rate of the surveyor is £28.02.
10. Category C leases are those properties where there is what may be described as a "full service" provided by the Applicant. The properties are flats where there is a responsibility on the Applicant to repair and maintain the structure and the common parts of the blocks including cleaning, lighting and, where appropriate, lifts. For this category the estimated time for the various employees involved is the same as for Category B save that the Leasehold Services Officer's time is increased to 3.5 hours, the leasehold Services Manager's time to 0.7 hours and the surveyor's time to 2 hours. It is to be noted that this category is concerned only with routine repairs and maintenance. Major works' management has been and is proposed to be charged separately and on the the basis of 15% of expenditure incurred. The application before the Tribunal was not concerned with the management charges in respect of major works.
11. Category D leases are those where the Applicant is the head lessee of a property which is part of a block or estate managed by or on behalf of the head landlord. The Applicant's tenants are sub-lessees, normally on a shared ownership basis, with a rent billed and collected by the Applicant and their lessees have a sub-lease. The Applicant receives service charge demands from their landlord which the Applicants pass on to their lessees. There may be, and often is, a certain amount of liaison with the head landlord on behalf of the sub-lessees. However, the amount of time spent by the various employees of the Applicant in these cases has been estimated to be significantly lower than for Category A, B and C leases. In this case, the Leasehold Services Officers' time has been estimated at 1.5 hours per year per property, the Leasehold Services Managers' time at 0.3 hours and the Service Charge Officer's time at 0.5 hours.
12. For this second application the Applicant has introduced a new Category G lease. However, the properties in this category are freehold

- houses or shared ownership properties where there has been staircasing of the freehold element up to 100 per cent. As the Tribunal has no jurisdiction to make a determination in respect of service charges for freehold properties, the Tribunal did not proceed to consider this category any further.
13. The result of costing out the estimated time spent on providing the services to the lessees for the various categories of lease is as follows.
Category A: £108 per property per annum
Category B: £165
Category C: £210
Category D: ££63
14. This compares with the scheme proposed in the first application as follows:-
Category A: £125 per property per annum
Category B: £150
Category C: £185
Category D: £150
It can be seen that the Applicant, following the Tribunal's decision in the first application, has reduced the proposed charges for Categories A and D but has increased those for Categories B and C.
15. The Applicant produced benchmark figures from a selection of other housing associations so that they could be compared with the scheme it is proposing and referred to a number of cases where similar schemes for portfolio-wide management charges had been approved.
16. The Applicant proposes to implement the new charges over a period of three years, 2015 to 2017, so that increases in charges will be phased in over that period. The Applicant also asked the Tribunal to rule that any determination as to the reasonableness of the proposed charges in each category would apply to any new or transferred properties into the Applicant's ownership and/or management.

The Respondent lessees' responses

17. Written representations were received from three of the 18 Lead Case Respondents, namely, Mr S Karpik, Mrs L M Cross and Mr and Mrs J Wilson. They all opposed the application. The relevant points made were as follows.
18. Mr Karpik pointed out that the proposed increase in his case would be 14 times the current fee and over twice as much as the remainder of the service charges he pays. He says that this demonstrates that Category B is inherently unreasonable and that "the proposal to taper its implementation merely delays its through-going unreasonableness". He considers that one reason for the unreasonableness of the charges is the amount of staff time that has been allocated to his property, which he considers to be too high. There are 14 relevant properties in his road. He does not believe that it requires 14 hours of a surveyor's time to

survey a small area of tarmac, pavement, retaining wall, shrubs and a hedge, or that the hours of management time of all the other categories of employee are required for what he calls a “relatively stable group of 14 households”. He makes various comments with regard to freehold properties but, as stated above, the Tribunal has no jurisdiction to consider these. Mrs Leach did inform the Tribunal, however, that there may have been some errors on the schedule that had been produced and that if a property was indeed a freehold or had staircased to 100 per cent freehold, the proposed charge would be £63 and not £165. Mr Karpik did not consider that time for supporting resident participation in the governance structure of the Applicant was a proper cost to include. He certainly did not derive any benefit from this. Finally, he pointed out that the Tribunal in its decision on the first application had stated that the proposed management fee of £150 for Category B needed to be lower in cases such as his, yet the proposed charge for Category B leases under the second application was higher.

19. Mrs Cross questioned the efficiency of the Applicant’s management. In particular the need for a Rent Officer and a Surveyor for category B leases and the time estimated for each category of employee.
20. Mr and Mrs Ware stated that they do not receive any service from the Applicant other than buildings insurance. They say that the rent they pay on their shared ownership property of which they own 65 per cent is more than enough to pay administrative costs and that the Applicant has seen a profitable return on its original investment. They bear the cost of all maintenance, repairs and renewals. They seemed to think that the proposed management charge in their case would be £63 per year, whereas in fact it would come within category A as they pay rent for a shared ownership house and pay for buildings insurance arranged by the Applicant. They would therefore be paying, in fact, £108.

The Law

21. By section 27A(4) of the Landlord and Tenant Act 1985 (“the Act”) an application may be made to a [First-tier Tribunal (Property Chamber)] for a determination as to 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.
22. By section 19 of the Act service charges are only payable to the extent that they are reasonably incurred: in other words, that the amount is reasonable.

The determination

23. The Tribunal had already decided on the Applicant's first application that in respect of all the leases in categories A to D management charges were claimable and recoverable from the lessees as part of the service charge. The Tribunal also decided that it is not unreasonable for the Applicant to seek a portfolio-wide scheme for applying fixed management charges based on the cost of time for the Applicant's employees to carry out the services provided and as required by the leases. This is so even though it recognises that in the Applicant's case this is complicated by the fact that its portfolio comprises properties under several different types of lease. This is the result of past mergers of several different housing associations to form the existing Applicant.
24. The result of applying a portfolio-wide rate means that an average cost is being applied in each case. It is inevitable that there will be some winners and some losers and in some years those who have been winners previously will be losers in another year and vice versa. It is the inevitable consequence of applying a uniform average cost. The advantage to the lessees, however, is that they will know precisely what their management fees are going to be in any year and they know that they are not going to fluctuate in accordance with actual expenditure on the services they receive.
25. The Tribunal finds that the proposed charging rates for the various categories of employee are reasonable. Although the Tribunal has not seen the detail as to how those charging rates have been computed even if it had the data, without an expert analysis thereof it would not be possible for the Tribunal itself to verify the computation. What the Tribunal is able to say from its own knowledge and experience of the sort of level of charging rate that would apply to the types of employees concerned, the rates appear to be what the Tribunal would expect.
26. The Tribunal closely questioned the Applicant's representatives at the hearing as to the precise work done by the various categories of employee and on how the time spent had been estimated. The Tribunal was satisfied that the times estimated for leases in Categories A, C and D were reasonable. The Tribunal was not satisfied that the time allocated for Category B leases was reasonable. In particular, the Tribunal considered that the estimate of one hour per year per property was, on a balance of probabilities, excessive. Taking Mr Karpik's case as an example, there are 14 properties in his road for which a surveyor's time of 14 hours per annum will have been included in the calculation. The Tribunal considers that a minimal amount of surveyor's time is required to fulfil the landlord's obligations for maintenance of the communal space here. Whilst no doubt this is countered where there may be more extensive communal ground, such as a playground, if this is associated to a block of flats for example, the one hour surveyor time is multiplied by the number of lessees in the block. In the Tribunal's opinion the resulting proposed charge for Category B is too high.

Where the services provided under Category B leases are only marginally greater than under Category A and yet are significantly less than under Category C the Tribunal considered that the proposed charge under Category B should be much closer to Category A and further from Category C than proposed.

27. Mr Karpik pointed out, quite correctly, that the Tribunal had found in the first application that the proposed charge for Category B was too high at £150 and yet the proposal under this application is that it should be even higher, at £165. It is difficult to see how the Applicant can have thought that the Tribunal (albeit not bound by its previous decision) would be likely to approve a higher charge for Category B than that which it had rejected as being too high in the previous application.
28. As for Category C, the proposed charge at £210 is £25 per annum higher than that proposed in the first application and which the Tribunal had said it found to be reasonable. At £210 the Tribunal considers that this figure is at the very top end of the bracket that it would find reasonable. In so finding, the Tribunal has taken into account the benchmark figures charged by other housing association landlords provided by the Applicant. Whilst £210 per year is not the lowest figure it is about average for properties outside London. In view of the fact that the full impact of the charge is not going to be felt until the year 2017, the Tribunal found that the proposed charge at £210 being £105 for 2015/16, £157.50 for 2016/17 and £210 for 2017/18 would be reasonable.
29. With regard to Category A, the Tribunal accepts that there is a basic cost of managing the services for the setting and collection of rents and service charges and the arrangement and collection of the buildings insurance for all the properties in the leasehold portfolio. The Tribunal notes that a proposed charge of £108 per year is £17 lower than that proposed in the first application. The Tribunal is pleased to see this and is satisfied that £108 is a reasonable fee for the very basic provision of services under this Category.
30. The Tribunal therefore determines that should the following management fees be charged in the service charges for the forthcoming three years as set out below, the said charges would be reasonable. They are as follows:-

2015/16

Category A: £54; Category C: £105; Category D: £31.50

2016/17

Category A: ££81; Category C: £157.50; Category D: £47.25

2017/18

Category A; £108; Category C: £210; Category D: £63

The Tribunal does not find that the proposed charge for Category B leases is reasonable. The Applicant, therefore, has a choice. It may decide to come forward with yet another proposal with regard to this category of lease resulting in a proposed charge much nearer to the approved Category A charge than the approved Category C charge. Alternatively, it may charge what it considers to be a reasonable amount for the service provided under this category (and this may vary with the amount of time spent on one property as opposed to another in this Category) and either make an application under section 27(A)(1) of the Act at the end of the service charge year or wait to see whether the charge is challenged under that section by any leaseholder within that category after the demands are served. This would enable the Applicant to tailor the charge more directly to the amount of service time provided. Thus, someone in Mr Karpik's position might be charged less than someone who had enjoyed more extensive services. This may well produce a fairer outcome than the proposed application of one charge for all Category B leases, although it would involve more time in differentiating one property from another and it would lose the advantage of certainty as to what the charge will be.

31. In order to comply with Rule 23(5)(a) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 and under its case management powers under Rule 6 of the said Rules, the Tribunal directs that **the Applicant must send a copy of this decision to every party in the related cases (that is, not the lead cases)**. Within 28 days after the date on which the Applicant sends a copy of the decision to a party in the related cases that party may apply to the Tribunal in writing for a direction that the decision is not binding on the parties to a particular related case. If no such application is received the decision in the lead cases will be binding on the parties in each of the related cases. If an application to the Tribunal is made by a party in any of the related cases within the 28 day period the Tribunal will give further directions to deal with that application.

Dated the 3rd February 2015

Judge D. Agnew (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking