



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

**Case reference** : **CAM/11UE/LSC/2019/0025**

**Property** : **The Alders, Alder Road, Denham,  
Uxbridge UB9 4AY**

**Applicant** : **The Alders RTM Company Ltd**

**Representative** : **Mr George Okines of Arko Property  
Management Limited**

**Respondents** : **1.Mr Shobiery (Flat 5)  
2.Mary Oborn (Flat 1)**

**Representative** : **The Respondents did not attend the  
hearing**

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

**Tribunal members** : **Judge N Hawkes  
Mrs A Flynn MA MRICs  
Mr A Ring**

**Date and Venue** : **9 September 2019 at Mercure  
London Heathrow, Shepiston Lane,  
Hayes, Middlesex UB3 1LP**

**Date of decision** : **19 September 2019**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal grants the Applicant permission to amend the applications dated 9 April 2019 so as to seek determinations in respect of the reasonableness and payability of the actual service charges (rather than the estimated service charges) which are claimed in respect of the year 2019.
- (2) The Tribunal determines that the sums which are set out in the attached schedule in respect of the service charge years 2013-2019 are payable by the First Respondent.
- (3) The Tribunal determines that the sums which are set out in the attached schedule in respect of the service charge years 2015-2019 are payable by the Second Respondent.
- (4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (5) The Tribunal does not make an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

## **The application**

1. By an application dated 9 April 2019, the Applicant seeks a determination in respect of the reasonableness and/or payability of service charges which are claimed against the First Respondent in respect of the service charge years 2013-2019.
2. By a separate application dated 9 April 2019, the Applicant seeks a determination in respect of the reasonableness and/or payability of service charges which are claimed against the Second Respondent in respect of the service charge years 2015-2019.
3. On 7 May 2019, Directions were issued for both applications to be heard together.
4. The Alders is a purpose-built 1960s block which is described in detail in the previous Tribunal decisions which are referred to below. A specimen lease was provided in the hearing bundle and the Tribunal was informed that the relevant provisions of the leases of Flats 1 and 5 the Alders are in identical form.
5. A Scott Schedule has been prepared which lists the service charge items which currently remain in dispute, namely the service charges relating

to management fees, accountants' fees, bank charges, and fire and safety assessments.

6. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

7. The Applicant was represented by Mr Okines of Arko Property Management Limited ("APM") at the hearing. Mr Okines was accompanied by Mrs Okines, also of APM. APM are the Applicant's managing agents.
8. Neither of the Respondents attended the hearing nor were they represented. Mr Okines handed up proof that he had posted a copy of the trial bundles to each of the Respondents.
9. By a letter from the Tribunal office dated 30 July 2019, the Second Respondent was informed she had been barred from taking any further part in these proceedings by virtue of a failure on her part to comply with the Tribunal's Directions. It may be that this is the reason why the Second Respondent did not attend, although it would have been open to her to have attended as an observer.
10. The First Respondent had instructed a solicitor to prepare his statement of case and Mr Okines informed the Tribunal that he had written to the First Respondent's solicitor on two separate occasions. He had received a reply stating that the solicitor would take his client's instructions but no further communication.
11. The Tribunal was satisfied that the parties had been notified of the hearing and that, in the absence of any explanation for their failure to attend, it was in the interests of justice to proceed in their absence in accordance with rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

### **The Applicant's application pursuant to rule 6(3)(c) of the 2013 Rules**

12. Rule 6(3)(c) of the 2013 Rules provides that the Tribunal may permit a party to amend a document.
13. The Applicant's applications, as issued, sought determinations in respect of the estimated, on-account service charges in respect of the year 2019. However, the actual figures have since become available and Mr Okines therefore made an oral application to amend the

applications so as to seek determinations in respect of the actual figures.

14. The Tribunal determined that it was in the interests of justice to grant this application. The issues raised in respect of the actual service charges for the year 2019 are similar to the issues raised in respect of the other service charge years which were already under consideration. In all the circumstances, it would not have been proportionate to have required the Applicant to incur the time and expense of issuing a separate application in respect of the actual service charges for the year 2019.
15. In reaching this decision, the Tribunal had regard to rule 3(2) of the 2013 Rules which includes provision that:

*“(2) Dealing with a case fairly and justly includes—*

*(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;*

*(b) avoiding unnecessary formality and seeking flexibility in the proceedings;”*

**Issue estoppel, the payability of bank charges and the reasonableness of the sums which have been demanded**

16. There have been two previous Tribunal decisions concerning the Alders; case reference CAM/11UE/LSC/2009/0108 in 2010 and case reference CAM/11UE/LSC/2012/0053 in 2012.
17. In the 2012 proceedings, a differently constituted Tribunal made determinations concerning the payability under the terms of the leases of service charges relating to management fees, accountants’ fees, and fire and safety assessments (that is all of the categories of service charge which fall to be considered in the present proceedings, save for bank charges).
18. The Applicant and the Second Respondent were party to the 2012 proceedings. At this time, the First Respondent and his late father were the joint lessees of Flat 5. The First Respondent alone is currently the lessee of Flat 5. Mr Shobeiry senior attended both the hearing in 2012 and the inspection and, at paragraph 12 of the 2012 decision, it is recorded that the Tribunal gave Mr Shobeiry permission to speak in respect of the matters which were in dispute in those proceedings.

19. At the commencement of the hearing, the Tribunal and Mr Okines considered the 2012 decision in detail (a short adjournment was allowed for this purpose) and regard was also had to paragraph 7.192.1 of Woodfall: Landlord and Tenant which includes provision that:

*“A decision on a point of law by the Tribunal does not create a binding precedent requiring any subsequent Tribunal to follow it, so that in a case involving different parties, a subsequent Tribunal would be entitled to depart from it if having scrutinised it with appropriate care, it believed the decision to be wrong. However, where the subsequent case involves the same parties or their predecessors in title as the earlier case, the doctrine of issue estoppel applies, so that the decision in the earlier case cannot be challenged in subsequent proceedings unless there are special circumstances.”*

20. After having had the opportunity to consider the matter, Mr Okines accepted that all parties to the current proceedings are estopped from disputing the findings which were made by the 2012 Tribunal concerning the true interpretation of the leases.
21. We are satisfied that this is correct. Although Mr Shobeiry senior was not formally a party to the 2012 proceedings, it is clear from the decision that he had a full opportunity to participate and to make representations concerning the matters which were in dispute in those proceedings. Accordingly, the Tribunal satisfied that the principle of issue estoppel applies to Mr Shobeiry senior and to his predecessors in title as it does to the Second Respondent.
22. Applying the findings of the 2012 Tribunal decision, pursuant to the terms of the leases the managing agents' fees are limited to 10% of the sum actually spent on the building in any one year plus any sum which is payable in respect of the reserve fund; accounting fees are payable (insofar as they are reasonable); and the fire and safety costs are payable (insofar as they are reasonable).
23. No alternative quotations were provided by the Respondents to establish that the sums which are claimed in respect of each category of expenditure are unreasonable. Having considered the amount of the charges, the absence of alternative quotations, and applying its knowledge and experience as an expert Tribunal, the Tribunal is satisfied that the sum claimed under each of these heading is reasonable.
24. Bank charges appear in a schedule to the 2010 decision which sets out the sums which the lessee of Flat 1 was found to be liable to pay. However, the lessee of Flat 5 did not participate in the 2010 hearing, accordingly, no issue estoppel can arise in respect of Flat 5.

25. In respect of the bank charges, Mr Okines gave evidence, which the Tribunal accepts, that it is a requirement of ARMA to keep client funds, including sinking fund payments, in a designated bank account. The interest is paid back to the lessees but there are charges involved in holding such a bank account.
26. At page 2 of the leases, it is provided the lessees are to pay “a sum equivalent to one fifteenth part of the moneys which the Lessor shall actually have expended from time to time in and about the contributory services...” By paragraph 5 of the Third Schedule to the leases, the contributory services include “the cost of the provision at the Lessor’s discretion of a Sinking Fund or Sinking funds...”
27. The Tribunal finds that the bank charges form part of the cost of the provision of the sinking fund and that they have been expended “in and about” the contributory services. No alternative quotations have been provided by the Respondents and the Tribunal finds that the bank charges in the years which are under consideration are reasonable.
28. Applying these findings:
  - (i) The Tribunal determines that the sums which are set out in the attached schedule in respect of the service charge years 2013-2019 are payable by the First Respondent.
  - (ii) The Tribunal determines that the sums which are set out in the attached schedule in respect of the service charge years 2015-2019 are payable by the Second Respondent.

**Additional matters**

29. No applications for any orders relating to costs were made at the hearing. Accordingly, the Tribunal does not make orders under section 20C of Landlord and Tenant Act 1985 or under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. For the avoidance of doubt, the Tribunal makes no findings concerning whether or not any costs which have been incurred, which have not already been waived, are potentially recoverable.

**Name:** Judge N Hawkes

**Date:** 19 September 2019

**Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **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.

**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.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule**

Total service charge 2013			Total service charge 2014		
accountancy fees	£ 360.00		accountancy fees	£ 360.00	
electricity	£ 509.00		electricity	£ 571.00	
repairs & Maintenance	£ 372.00		repairs & Maintenance	£ 2,708.00	
H&S	£ 420.00		H&S		
Cleaning	£ 391.00		Cleaning	£ 360.00	
window cleanng	£ 600.00		window cleanng	£ 420.00	
legal and professional	£ -		legal and professional		
Bank charges	£ -		bank charges	£ 37.00	
insurance	£ 1,962.00		insurance	£ 2,185.00	
reserve fund	£ 5,000.00		reserve fund	£ 5,000.00	
	£ 9,614.00			£ 11,641.00	
Management Fee	£ 961.40		Management Fee 1/15	£ 1,164.10	
Total service charge	£ 10,575.40		Total service charge	£ 12,805.10	
Lessees proportion 1/15		£ 705.03	Lessees proportion 1/15		£ 853.67

Total service charge 2015			Total service charge 2016		
accountancy fees	£ 480.00		accountancy fees	£ 480.00	
electricity	£ 723.00		electricity	£ 472.00	
repairs & Maintenance	£ 1,730.00		repairs & Maintenance	£ 252.00	
Cleaning	£ 530.00		Cleaning	£ 360.00	
window cleanng	£ 280.00		window cleanng	£ 600.00	
bank charges	£ 76.37		bank charges	£ 93.00	
insurance	£ 2,316.00		insurance	£ 2,578.00	
reserve fund	£ 5,000.00		reserve fund	£ 5,000.00	
	£ 11,135.37			£ 9,835.00	
Management Fee	£ 1,113.54		Management Fee	£ 983.50	
Total service charge	£ 12,248.91		Total service charge	£ 10,818.50	
Lessees proportion 1/15		£ 816.59	Lessees proportion 1/15		£ 721.23

Total service charge 2017			Total service charge 2018		
accountancy fees	£ 480.00		accountancy fees	£ 480.00	
electricity	£ 627.00		reserve fund expenditure	£ 1,260.00	
repairs & Maintenance	£ 754.00		electricity	£ 577.00	
admin costs			repairs & Maintenance	£ 54.00	
Cleaning	£ 500.00		Cleaning	£ 600.00	
window cleanng	£ 210.00		window cleanng	£ 350.00	
fire safety	£ 552.00		fire safety	£ 450.00	
Sundries			bank charges	£ 21.00	
bank charges	£ 116.00		insurance	£ 2,778.00	
insurance	£ 2,816.00		reserve fund	£ 3,000.00	
reserve fund	£ 5,000.00				
				£ 9,570.00	
	£ 11,055.00		Management Fee	£ 957.00	
Management Fee	£ 1,105.50		Total service charge	£ 10,527.00	
Total service charge	£ 12,160.50				
Lessees proportion 1/15		£ 810.70	Lessees proportion 1/15		£ 701.80

<b>Total service charge 2019</b>						
accountancy fees	£	480.00				
reserve fund expenditure	£	14,774.00				
electricity	£	591.00				
repairs & Maintenance	£	1,690.00				
ground maintenance	£	900.00				
Cleaning	£	360.00				
window cleanng	£	700.00			2013	£ 705.03
bank charges	£	30.00			2014	£ 853.67
insurance	£	2,770.00			2015	£ 836.83
reserve fund	£	3,000.00			2016	£ 721.23
					2017	£ 810.70
	£	25,295.00			2018	£ 701.80
Management Fee	£	2,529.50			2019	£ 1,854.97
Total service charge	£	27,824.50				
Lessees proportion 1/15		£ 1,854.97		Total payable for each lessee		£ 6,484.23