FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/LSC/2019/0079**
Property	**:**	**Apartment 1205, The Gateway North, Crown Point Road, Leeds LS9 8BYL**
Applicant	**:**	**The Gateway (Leeds) Management Company Ltd**
Respondents	**:**	**Mr Seyed Masoud Seyed-Jalali; Ms Narges Seyed-Jalali**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A**
Tribunal Members	**:**	**Judge P Barber; Ms A Ramshaw FRICS**
Date of Determination	**:**	**11 March 2020**
Date of Decision	**:**	**7 April 2020**

DECISION AND REASONS

Decision

That the service charge payable for the service charge years in question in relation to the provision of an office, a gym and CCTV is as follows (insofar as it relates to the Respondent's obligation to pay under the terms of his lease):

Year	Office	Gym	CCTV
2015	**£14,400**	**£19,200**	**In full**
2016	**£14,400**	**£19,200**	**In full**
2017	**£14,400**	**£19,200**	**In full**
2018	**£14,400**	**£19,200**	**In full**
2019	**£14,400**	**£19,200**	**In full**

The Administration charge of £168.00 is not payable under schedule 11, para. 5 of the Commonhold and Leasehold Reform Act 2002 (as accepted by both parties at the hearing).

Accordingly, the Respondents are to pay their proportion of the service charge relating to the rent of the office and the gym and the CCTV charges in line with the above relevant costs.

REASONS

1. This application started life as a claim in the Huddersfield County Court for a declaration under section 81 of the Housing Act 1996 that service charges and administration charges are due and payable by the Respondent. The County Court referred the question as to the payability of the service charge to the First-tier Tribunal on the 12 June 2019.

2. We held an oral hearing of the application. In attendance was Mr Tolson of Counsel on behalf of the Applicants, together with Ms Davis, (Head of Finance for Liv, the Managing Agents); Ms Swordy (Property Manager, Liv) and Mr Ahmed (Credit Control, Liv). Mr Jalali, the Respondent represented himself with the help of Mr Shamsizadeh.

3. At the hearing it was agreed between the parties, and Mr Jalali confirmed, that he objected to paying a proportion of the whole amount of rent which was charged by the freeholder owner of the gym and the freehold owner of the office space. He also objected to the cost associated with the use of the CCTV camera. His objection was that leaseholders were being charged an excessive amount and he relied exclusively on the decision in the Upper Tribunal in relation to two other apartments at the property: *The Gateway (Leeds) Management*

Ltd v (1) Mrs Nagshah, (2) Mr Shamsizadeh [2015] UKUT 0333 (I"The Gateway").

4. Mr Jalali confirmed that no other part of the service charge was in dispute.

5. In relation to the administration charge of £168.00, Mr Tolson indicated that the Applicants accepted that this was not a recoverable amount as it had not been properly demanded.

6. Accordingly, the only issue in this appeal is whether the Respondent can properly rely on the decision in *The Gateway* in support of his contention that the service charge payable in relation to the gym, the office is too high, to take account of the excessive level of rent and in relation to the CCTV cameras.

   The Law

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

> **18.— Meaning of "service charge" and *"relevant costs".***
> (1) In the following provisions of this Act *"service charge"* means an amount payable by a tenant of a [dwelling] [1] as part of or in addition to the rent—
> (a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements] [2] or insurance or the landlord's costs of management, and
> (b) the whole or part of which varies or may vary according to the relevant costs.
> (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
> (3) For this purpose—
> (a) *"costs"*includes overheads, and
> (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal] [2] 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.

8. Accordingly, our powers are limited to determining the reasonableness and payability of the service charge under the terms of the respondents' leases. There was no question that the respondents are liable to make payments in respect to the service charge and that the proportion as calculated was in accordance with the terms of their leases. The issue for the Tribunal, therefore, was whether the amounts were reasonable and payable as set out in the various service charge demands.

The Inspection

9. The Tribunal inspected the development on the morning of the hearing. We viewed the office and the gym, and we also saw the CCTV system. We viewed the inside of Mr Jalali's flat, but in reality, the flat had no relevance to the issues we had to decide. The gym, as the parties agree, is about 1000 metres; as is the office space and we noted that there were a number of CCTV cameras dotted around the development. Other than that, there was little of note from the inspection.

The Evidence at the Hearing

10. We heard evidence from Ms Davis at the hearing who confirmed her witness statements and addressed one or two points raised during the course of the hearing. We heard evidence from Mr Jalali and submissions were made by Mr Tolson, for the Applicant and Mr Shamsizadeh and Mr Jalali on behalf of the Resondents.

Our Assessment of the Issues in this Appeal

The Status of the Decision in the Upper Tribunal

11. For obvious reasons, the Respondent asked us to follow the same approach as the First-tier Tribunal which heard the application in relation to the period 2011 to 2012, as confirmed on appeal by the Upper Tribunal. Mr Tolson urged us not to follow that decision arguing that it relates to a different period in time; it relates to a different sum of money within that time period; the tenants were not party to the

decision and the decision expressly states that it would not bind future years.

12. That is all well and good, but in our view, we can take into account the facts in that decision. It appears that at that time, the Managing Agent for the management company, a Mr Dean, informed the previous tribunal (as is the case in this tribunal) "that it was payment of this rent which had led to the service charge for the gym being so high" (paragraph 15) and that:

> "It was accepted by Mr Dean that the size of the gym was similar to that of a standard two-bedroom apartment within the block. The Tribunal invited the applpicant to comment on the respondent's suggestion that a rent of £10,000-£15,000 would be more reasonable. Mr Dean conceded that "superficially" it did seem to be expensive, and one would certainly rather be a landlord than a tenant."

13. In relation to each of the items, the Tribunal in *The Gateway* decision reduced the sum charged to the service charge account in relation to the gym and office by 50% and in relation to the CCTV by 20%.

The Gym and Office Rent

14. Of course no admissions were made at the hearing of this application that the rent charged for the gym and office could be viewed as "superficially high" but we queried the amounts actually charged to the service charge account in relation to these items, and the CCTV over the lunch recess. Ms Davis returned to advise that the Applicants were unable to provide an indication as to the costs of the gym and the office for the years 2015 and 2016 were not available (i.e. they didn't know how much was charged to the service charge account for these years) but that in 2017, £28,800 was charged for rent and £38,400 in relation to rent for the gym. However, this reduced to £14,400 for the office and £19,200 for the gym in the years 2018 and 2019 to reflect the outcome of the Upper Tribunal in The Gateway.

15. Utilising the expertise of the Tribunal and by reference to our general understanding as to the level of rents which might be charged for office units of this size and location we thought that we could reasonably rely on the findings of fact arising out of *The Gateway* tribunal and agree with their view that the rent for the office and the gym is 50% too much, even taking account of the bands within which a service charge might still be considered reasonable.

16. It also seems to us that in restricting the level of the element of the service charge to 50% of the rent for the gym and office in years which were not the subject of the determination by the tribunal in *The Gateway*, the Applicant's claim that the decision relates to a specific period in time is undermined.

The Office and the Gym

17. We decided that the proper approach was to treat all rent payments for the office and gym to be unreasonable in that they are 50% more than is payable.

The CCTV

18. The costs associated with the provision of the CCTV at the development proved to be slightly more elusive and had to be the subject of further enquiries by the Applicants during the lunch recess. We were told that the following were the amounts in the service charge attributable to the provision of CCTV:

    2015 - £27,556

    2016 – not clear but incorporated in to "security" of £110,539.77

    2017 – ditto£83,522.51

    2018 – ditto £109,636.04

    2019 - £954.00

19. We determined at the hearing that up to 2016/17 the Applicants continued to make payments for the purchase of the CCTV system but by the end of that financial year, ownership passed to the Management Company. As can be seen, the costs were £27,556 in 2015 and Mr Tolson submitted, and we think he is correct, that a similar figure is incorporated into the overall heading "security" in the service charge accounts for the 2016 year. Thereafter, the costs for the CCTV reduced to a "nominal" amount in 2017 (and this can be seen by the significant reduction in the amount under the heading "security") and this followed through subsequent years.

20. Mr Tolson also pointed out, rightly again in our view, that even if we were to rely on the decision in *The Gateway* the current level of service charge payable for the CCTV must remain reasonable as from 2015 onwards it is less that the amount set by the tribunal in that decision. At that time the amount was £39,887 and the tribunal reduced it to £31.909 – i.e. a 20% reduction.

21. It follows that we think that since 2015 the service charge element attributable to the CCTV is reasonable and payable.

Section 20C

22. We decline to make an order under section 20C.

23. We note that the amounts which the Respondents objects to paying are a very small part of his overall service charge liability and he has failed to pay any service charge since October 2016, and even then, that payment did not cover the service charge balance. The only other

payment relates to a transfer from another property owned by the Respondent and which was in credit.

24. It seems to us that it was necessary for the Applicant to take action against the Respondents and that it would be wholly unreasonable to prevent the Applicant from recovering its costs of the proceedings.

Phillip Barber

Judge of the First-tier Tribunal

Date: 7th April 2020