



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

Case reference : **LON/00BG/LSC/2021/0419**

Property : **Fathom Court - The Premises
known as The Old Kings Arms
extending to Stepney Causeway E1
0JW and Cable Street E1W 3ER**

Applicant : **FATHOM COURT RTM COMPANY
LIMITED**

Represented by : **Mr C Sinclair**

Respondent : **BUNCLODY LIMITED**

Represented by : **Mr D Deeney (Director)**

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

Tribunal members : **Mrs E Flint DMS FRICS
Mrs J Mann MCIEH
Ms J Dalal**

**Date and Venue of
hearing** : **29 April 2022
10 Alfred Place London WC1E 7LR**

Date of decision : **31 May 2022**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the service charges are payable in accordance with the decisions under each of the headings below.

The application

1. The applicant seeks a determination under S.103 of the Commonhold and Leasehold Reform Act 2002 (the Act), as to whether service charges and insurance premiums for the years 2017 – 2020 inclusive in the sum of £44,979.00 are reasonable and payable.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The respondent has since March 2010 been the freehold owner of the building, the ground floor of which was originally a public house, there are six purpose-built flats above, which are accessed via a separate entrance on Stepney Causeway and known as Fathom Court. Long leases were granted between 2012 and 2014 for a term of 125 years from 1 January 2012 in respect of these residential units.
4. On 10 August 2015 the applicant acquired the right manage in respect of the building.
5. At some time, the commercial premises were converted into two residential units known as 26 Stepney Causeway and 513 Cable Street (the converted units). Long leases have not been granted in respect of these units and they remain in the ownership of the respondent and are let on Assured Shorthold Tenancies.
6. The applicant is of the opinion that it is required, pursuant to the terms of the leases, to apportion the service charge on a fair and reasonable basis. The two converted units do not benefit from certain services and therefore the applicant has apportioned the costs attributable to the 6 flats in Fathom Court on a 1/6th basis and the remainder of the service charges and the building insurance premium on a 1/8th basis. The applicant therefore seeks a 1/8th contribution from the respondent in relation to each of the converted units for the cost of the services which benefit the whole building plus the insurance premium.
7. The applicant noted that although the respondent had previously made payments in respect of these contributions, since 2019 he had failed to do so.

8. Mr Sinclair of counsel, on behalf of the applicant, explained that the Right to Manage Company had control of the whole building including the former commercial unit which now comprises the two converted units. The six lessees of Fathom Court were happy with the reasonableness of the service charges. In accordance with the provisions of s103 of the Landlord and Tenant Act the applicant is seeking part of the service charges from the freeholder because the respondent has not granted long leases in respect of the two converted units.
9. Mr Deeney, a Director of the respondent freeholder, confirmed that the respondent was willing to pay one quarter of the insurance premiums, 1/8th in respect of each of the converted units. However, the respondent was not willing to pay for the upkeep of the common parts which only serve the flats within Fathom Court nor for any costs incurred in the bureaucracy of running the Right to Manage Company.
10. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Leases

11. The lessees of the six flats in Fathom Court hold leases which define the common parts as “*the front door, entrance hall, passages, staircases and landings of the building and the external paths, driveways, yard, staircases, cycle store and Refuse Area (if any) at the Building which are intended to be used by the tenants and occupiers of the Building.*”
12. The services are defined in the usual way as requiring the landlord to clean, repair, maintain, light and decorate the Retained and common parts; including cleaning the outside of the windows except those within the demise of the commercial premises.
13. The landlord is required to provide annual service charge accounts.

The Issues

14. The relevant issues set out for determination are as follows:
15. The payability and reasonableness of the service charges for the years 2018 – 2020.

16. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

The accountancy fees

17. The accountancy fees were stated in the accounts to be £200 (2018), £600 (2019) and £306 (2020) plus an accountant's certification fee of £100 for each of the years in dispute.
18. Mr Sinclair said the building was managed as a whole and it was necessary to prepare accounts: the accounts provide transparency in the method of apportioning the service charge costs. If the freeholder managed the building it would recover 6/8th of the costs from the lessees of Fathom Court. He accepted that he was unable to produce the invoices for these accountancy fees, although the amounts were referenced in the accounts which were in the bundle.
19. Mr Deeney said that he had thought it was a good idea to set up a Right to Manage Company. He had paid for the building insurance in respect of the whole building himself until 2017. He accepted that he had to pay the insurance premium, then began to receive bills covering the bureaucracy of the RTM company. He had stopped paying, he did not consider that he should contribute to the accountancy fees which were part of the bureaucracy of the RTM Company: he said he was willing to pay that part of the service charge which he considered to be fair and reasonable.

The Tribunal's Decision

20. The accountancy fees of £200 in 2018 were reasonable and payable. The fees for 2019 and 2020 are reduced to £200 for each year. The accountancy certification fees of £100 per year are payable.

Reasons for the Tribunal's decision

21. The fees for 2018 and the annual certification fee were reasonable and the accounts were exhibited in the bundle. There was no cogent evidence to explain the increase in the accountancy fee to £600 for 2019, nor were there any invoices in the bundle to support such an amount. The invoice in the bundle for 2020 was in the sum of £200, no explanation was provided for the higher figure claimed and shown in the accounts.

Bank Charges

22. Mr Sinclair accepted that there were no bank statements to show the charges, the charges were listed in the accounts. The only charge was in 2018: it was for £10.
23. Mr Deeney said that he disputed his liability to pay the charges on the same grounds as the accountancy fees.

The Tribunal's decision

24. The bank charge of £10 is not payable.

Reasons for the Tribunal's decision

25. There was no explanation regarding why the charge had been levied, nor any evidence that the sum had been incurred.

Company Secretarial Fees and Directors and Officers Insurance.

26. Company Secretarial fees of £266 (2018), £400 (2019 and 2020) and the premiums for Directors and Officers Insurance £112 (2018), £148 (2019) and £64 (2020) were claimed.
27. Mr Sinclair referred to the definition of service charge costs in the lease: the service charge costs include "*the reasonably and properly incurred costs fees and disbursements of any managing agent or any other person retained by the Landlord to act on the Landlord's behalf in connection with the building or the provision of the services*". He said the definition was sufficiently wide to include these insurance premiums because the RTM Company is responsible for managing the whole building; the role of Company Secretary is one of acting in connection with the building; this is not the same as where a landlord company manages the building and these costs would be borne by the landlord and would not form part of the service charge account.
28. Mr Deeney said that he considered this to be part of the bureaucracy of the RTM Company. He did not dispute the reasonableness of the amounts incurred.

The Tribunal's decision

29. The Tribunal determines that the insurance premiums and company secretary's fees are payable by the respondent.

Reasons for the tribunal's decision

30. The Directors insurance premiums and company secretarial fees are costs of the RTM company. The RTM company is a leaseholder owned and managed company with no other assets or interests, therefore it is entirely reasonable and appropriate to insure company directors.

Repairs and Maintenance

31. **2018:** A bill for £257 drain repairs and maintenance was included in the accounts. No invoice was produced. A further sum of £4545 for general repairs and maintenance was included in the accounts. No evidence was available to explain what repairs were undertaken.
32. Mr Deeney said he had assumed that the bill for the drain repairs must relate to one of the flats because work to the main drain would be more expensive. Moreover, the ground floor was serviced by its own drains at the rear of the converted flats. Fathom Court was served by its own soil stack. He was not aware of any repairs to the structure of the building or the converted flats which he himself had maintained.
33. **2019:** £90 was charged for a replacement lock to the door to the rubbish room. £225 for dealing with a leak between the hallway entrance to the ground floor flat, and changing a lightbulb in the communal hallway and/or bike room.
34. Mr Deeney accepted that he should contribute to these costs during the hearing.
35. **2019** An invoice for £100 for electrical testing. **2020:** Mr Sinclair stated that costs of £610 for electrical and drain testing were claimed. An invoice for £360 for a 5 year electrical safety test was included in the bundle, he confirmed that there was no information provided regarding the drain testing.
36. Mr Deeney stated that no access arrangements had been made with the ground floor flats for electrical testing and he had his own electrical safety testing done with a full report.

The Tribunal's decision

37. The 2018 and 2020 bills for drainage work and general maintenance are not payable. The 2019 bill for electrical testing is not payable.

Reasons for the Tribunal's decision

38. No evidence was provided to show where the repairs and testing were undertaken. The plumbing for Fathom Court is separate to that for the converted flats.

Electricity Costs

39. Electricity Costs of £595 (2018), £544 (2019) and £857 (2020) were included in the service charge account.
40. Mr Sinclair called Mr El-Solh, a Director of the RTM Company, to give evidence. Mr El-Solh explained that the electricity was used to run the water pump, the common parts lighting in Fathom Court and the fire risk system for Fathom Court. As far as he was aware the converted units were not connected to the fire risk assessment system, the panel for the system was located in the entrance hall of Fathom Court.
41. Mr Sinclair stated that the fire system protects the whole building. The amount originally claimed was £1027 however this has been reduced to £595
42. Mr Deeney said that the ground floor flats are not linked to the fire risk system. Individual smoke alarms are located in the converted flats. He said that he did not know how much it would cost to run the system.
43. Mr Deeney confirmed that the water pump is not connected to the converted flats, as there is no need to pump water from the mains to the ground floor flats.
44. The converted flats do not benefit from the lighting in the common parts.

The Tribunal's decision

45. A nominal sum of £1 per unit is determined since it is impossible to calculate the cost attributable to the converted units, it is inevitably a very small sum.

Reasons for the Tribunal's decision

46. The only benefit relates to the electric light in the meter room which houses all eight flats' electric meters. The additional cost of the converted units accessing the meter room would be very small.

Fire Equipment and maintenance

47. Costs of £681 (2018), £231 (2019) and £854 (2020) were said to have been incurred. Invoices were included in the bundle. These were for the annual service and maintenance each year plus work in relation to the AOV in the 2018 accounts and in 2020 an invoice for various work including drawing up plans of Fathom Court, providing fire action and a fire alarm logbook and replacing the key switch and panel lock.
48. Mr Deeney said that there had been no contact with either the occupants or the landlord of the converted unit in respect of the fire risk assessment.

The Tribunal's decision

49. The sum of £336 in 2018 was reasonably incurred as part of the cost to be borne by all eight flats. All other costs under this heading relate to expenditure benefiting Fathom Court only.

Reasons for the Tribunal's decision

50. The vent in the roof is part of the structure of the building and the cost should be charged to all eight units.
51. The ground floor was a commercial unit when Fathom Court was built; there would have been a high degree of compartmentation to prevent fire in either the commercial unit or Fathom Court spreading to the rest of the building. As regards the fire risk system installed in Fathom Court, the costs of its annual repair and maintenance, except those parts which form part of the structure of the building, are chargeable to the lessees of Fathom Court only.

Out of Hours Emergency Service

52. Mr Sinclair advised that a fee of £48 had been charged for this service in 2020 and was of benefit to the whole building. Mr El-Sohl was not aware of whether the contact details of the service had ever been given to either the respondent or his tenants. The details were displayed in the entrance hall to Fathom Court.
53. Mr Deeney said that he arranged his own out of hours service and was not aware that such a service was available for the whole building.

The Tribunal's decision

54. The out of hours service cost is not payable.

Reasons for the Tribunal's decision

55. There was no evidence that the respondent had been made aware of the service. Furthermore, the tenants of the 2 converted flats did not have access to the common parts to Fathom Court, so they would not have seen the details displayed in the entrance hall to Fathom Court.

Cleaning

56. Initially in 2019 £650 had been charged for cleaning the external windows twice. However, a credit note had been issued and the actual cost had been £156 in 2018 and 2019. The invoice referred to windows at Fathom Court.
57. Mr Deeney said that he arranged for the windows to the converted flats to be cleaned regularly.

The Tribunal's decision

58. The cost of cleaning the windows related to Fathom Court and therefore the respondent is not required to contribute to these costs.

Reasons for the Tribunal's decision

59. The windows actually cleaned did not include the converted flats and the services listed in the lease specifically excludes the windows of the former commercial premises.

Water pump

60. Mr Sinclair referred to the cost of £264 relating to the upkeep of the water pump in 2020.
61. Mr Deeney said that the water pump served the six flats in Fathom Court. There was no need to have a water pump to supply water to the ground floor flats. The water supply for the converted flats was separate from that for Fathom Court.

The Tribunal's decision

62. The cost is not payable by the respondent.

Reasons for the Tribunal's decision

63. The water pump only serves the six flats in Fathom Court.

Risk Management

64. Mr Sinclair confirmed that £370 was charged in 2020 and a report was completed however it was not included in the bundle nor is the extent of the report known.

65. Mr Deeney said he had no knowledge of the report nor that any had been undertaken.

The Tribunal's decision

66. The cost is not payable by the respondent.

Reasons for the Tribunal's decision

67. The contents of the report have not been disclosed, the extent of the report is unknown. It cannot have been a full fire risk assessment of the building without an inspection of the whole, including the converted flats.

Management Fees

68. Fees of £1667 (2018), £3,120 (2019) and £1717 (2020) had been incurred in respect of managing the whole building.
69. Mr Sinclair confirmed that there was no invoice available for the 2018 fees charged by the previous managing agents. The fee however was listed in the accounts. Moreover, the lease allows for the appointment of managing agents and the annual fees were reasonable. Mr Deeney had suggested a firm of managing agents however their fees were higher than those charged by the current managing agents.
70. Mr El-Solh said that they had wanted to have a planned preventative maintenance plan for the external walls and windows, consequently the management fee in 2019 was higher than the norm to reflect the additional work undertaken in preparing a maintenance plan. However, none of the works had taken place because the RTM Company did not have sufficient funds to carry out the work.
71. Mr Deeney agreed that he had suggested to the lessees of Fathom Court that they should appoint a managing agent because he was concerned that otherwise the building insurance might lapse. He said that the managing agents did not manage the whole building: the converted units were managed and maintained separately. He considered 1/8th per converted flat was excessive for effectively arranging the building insurance. The amount being charged for the converted flats was disproportionate to the service provided.

The Tribunal's decision

72. The annual charge for managing the building in 2018 of £1667 and 2020 of £1717 is reasonable and payable. The apportionment of 1/8th to each of the converted flats is excessive and is reduced to

1/10th of the standard management charge for the converted units a sum of £166.70 + VAT per unit for 2018 and £171.70 + VAT per unit for 2020. The charge for 2019 of £3,120 is not reasonable and the charge for the converted units should be £180 +VAT per unit.

Reasons for the Tribunal's decision

73. The management company undertake the management of the whole building to the extent that the building insurance and repairs to the structure of the building include both Fathom Court and the converted flats. However, most of the expenditure and oversight relates solely to the six flats and common parts of Fathom Court. A 1/8th share of the cost per year is excessive for the service actually provided to the converted flats.
74. The planned maintenance schedule at pages 133 and 134 of the bundle is a standard set of actions or allowances required to manage a block of flats. It does not include any detailed assessment of any major works specific to Fathom Court and its preparation ought to have been considered as part of the annual management charge

Postage Costs and Sundries

75. Postage costs of £28 in 2019 , Sundries of £62 in 2019 to cut keys for managing agent and sundries of £302 in 2020 (including purchase of plants for planters and keys cut for building maintenance). In 2020 ground floor flats only charged £12 share of sundries charges for plants which was agreed by Mr Deeney at the hearing.

The Tribunal's decision

76. 2019 postage costs and sundries not payable.

Reasons for the Tribunal's decision

77. Postage costs are usually included in property management fees, postage receipt (p271) is dated 24/10/17 and invoices provided for key cutting added up to £20 only and not £62 (p266). No evidence was provided to the tribunal that showed the costs were incurred for services benefiting the ground floor flats.

Name: E Flint

Date: 31 May 2022

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.

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.

Commonhold and Leasehold Reform Act 2002

Landlord contributions to service charges

(1) This section applies where—

(a) the premises contain at least one flat or other unit not subject to a lease held by a qualifying tenant (an “excluded unit”),

(b) the service charges payable under leases of flats contained in the premises which are so subject fall to be calculated as a proportion of the relevant costs, and

(c) the proportions of the relevant costs so payable, when aggregated, amount to less than the whole of the relevant costs.

(2) Where the premises contain only one excluded unit, the person who is the appropriate person in relation to the excluded unit must pay to the RTM company the difference between—

(a) the relevant costs, and

(b) the aggregate amount payable in respect of the relevant costs under leases of flats contained in the premises which are held by qualifying tenants.

(3) Where the premises contain more than one excluded unit, each person who is the appropriate person in relation to an excluded unit must pay to the RTM company the appropriate proportion of that difference.

(4) And the appropriate proportion in the case of each such person is the proportion of the internal floor area of all of the excluded units which is internal floor area of the excluded unit in relation to which he is the appropriate person.

(5) The appropriate person in relation to an excluded unit—

(a) if it is subject to a lease, is the landlord under the lease,

(b) if it is subject to more than one lease, is the immediate landlord under whichever of the leases is inferior to all the others, and

(c) if it is not subject to any lease, is the freeholder.