



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTION 27A**

REF: LON/00AH/LSC/2007/377

PROPERTY: 9, MEYRICK COURT, 25 DUNHEVED ROAD
WEST, THORNTON HEATH, SURREY CR7 6AP

APPLICANTS: BOURNE HOUSING ASSOCIATION

RESPONDENT GLENISTER PROPERTIES LIMITED

APPEARANCES: MR ADRIAN CARR (of Counsel)
MR SIMON SHORT (Area Housing Manager)
MR RICHARD SAVILL (Accountant)
RUTH BLACKWOOD (HPLP Solicitors)
For the Applicant

PHILIP JACKSON
For the Respondent

DATE OF TRANSFER ORDER: 10TH SEPTEMBER 2007

DATE OF HEARING: 10TH JANUARY 2008

DATE OF DECISION: 16TH JANUARY 2008

MEMBERS OF TRIBUNAL MR S. SHAW LLB (HONS) MCI Arb
MR C. WHITE FRICS
MRS. R.J. TURNER BA (Hons) JP

DECISION

Introduction

1. This case has been transferred to the Leasehold Valuation Tribunal by order made in the Croydon County Court on 10 September 2007. The case involves 9, Meyrick Court, 25 Dunheved Road West, Thornton Heath, Surrey CR7 6AP (“the property”). Meyrick Court is a block of 20 flats arranged over three floors and the freehold of the block is owned by Bourne Housing Society Limited (“the Applicant”). The Tribunal was informed that the Applicant, as its name suggests, is a registered Housing Association and also a Registered Social Landlord. The Tribunal was further informed that it is a charitable and non-profit making organisation which, although it covers its costs, essentially provides a service rather than aiming to make a profit.
2. The property in respect of which the case is concerned is the subject matter of a lease for 99 years from 13 May 1996 made between the Applicant and a company called Glenister Properties Limited (“the Respondent”). The flats within this block were subject to a shared ownership scheme, the effect of which was that the tenants owned a percentage share of their flat and rented the remaining share from the landlord. Some of the tenants have purchased their flats outright and become long leaseholders of the Applicant. In this particular case, the Respondent, so the Tribunal understands, purchased the property from one such shared owner who had exercised the right to purchase the flat, but thereafter had fallen into mortgage arrears and had to sell the property. The Respondent purchased the property in its entirety, (rather

than on a shared ownership basis) and a new lease was entered into between the Applicant and the Respondent. The Respondent is a property investment and development company, of which the sole director and shareholder is Mr Philip Jackson. The property is one of a number of properties owned by the Respondent and is occupied by a sub-tenant.

3. Over a period of at least 6 years, and possibly longer, there has been a continuing dispute between the Applicant and the Respondent concerning the manner in which the management charges element of the service charges has been calculated. The Respondent's position is, for reasons to be expanded below, that he has been over-charged, whereas the Applicant's contention is that the charge made is perfectly reasonable. This dispute culminated in the Applicant instituting proceedings in the County Court against the Respondent and claiming alleged arrears of service charge in the sum of £3,259.56. By order of the court dated 10 September 2007 the case was transferred to this Tribunal for determination of the correct charge to be claimed.

4. The matter came before the Tribunal initially on 29 October 2007, and by Directions issued on the same date, the parties were required in the usual way to prepare statements of case and an appropriate bundle of documents. At that hearing, attended by representatives of the Applicant but not the Respondent, the issue to be determined was identified as the reasonableness of the management charges imposed by the Applicant in respect of the property up until April 2007 and amounting to £3,259.56.

The Hearing

5. On 10 January 2008, the matter came before the Tribunal and the Tribunal was much assisted by a bundle of documents prepared by the Applicant (albeit not paginated) and a Statement of Case and Skeleton Argument, both prepared by Mr Adrian Carr, of Counsel. Mr Jackson appeared in person. He had not prepared a Statement of Case but had written a letter to the Applicant's solicitors dated 3 January 2008 (and copied to the Tribunal) indicating that he had felt it impossible to respond to the Applicant's Statement of Case because various matters had not been clarified, and he did not feel that he had been presented with a proper case to answer. It might in fact have been rather more helpful if Mr Jackson had put forward his substantive case in writing, because in the event he put such a case perfectly clearly before the Tribunal at the hearing. Nonetheless the hearing proceeded and both sides set out their cases very fully in a manner which will be summarised below.

6. Mr Carr, for the Applicant, took the Tribunal through the various provisions in the lease upon which the Applicant relied and which will be referred to below. He explained that in fact the service charges had been calculated using a year end of 31 March every year rather than the date of 30 September provided for in the lease – but no point was taken in this respect by Mr Jackson and nothing seems to turn upon it for the purposes of this case. He had prepared a useful schedule at paragraph 13 of his Statement of

Case setting out the actual management fees charged for each of the seven service charge years from 2000/1 to 2000/7. The specific charges claimed for each of those years are £228.75, £285.88, £300.88, £305, £316.25, £323.50 and £346.25 respectively. The total is £2,106.51. Within the £3,259.56 claimed in the County Court is an element of £827.83 referable to interest which was stripped out by Mr Carr leaving a balance of £2,431.73. (In fact the Tribunal was informed that the amount claimed in the County Court was £3,269.26 – which would produce a very tiny difference, but reference to the County Court claim form demonstrates that £3,259.56 is in fact the figure claimed in those proceedings). The result is that arrears of £2,431.73 are claimed, of which the service charge element is £2,106.51. This means that there is a small balance of £325.22 referable to other service charges which Mr Jackson confirmed is not in dispute and is payable in any event. The sum referable to management charges, i.e £2,106.51, is the figure in dispute.

7. Mr Carr called on behalf of the Applicant Mr Simon John Short, who is the Area Housing Manager for the Applicant. He explained the non-profit making nature of the Applicant and said that the manner in which the management charge has been calculated, up until 2007 has really been very simple. The basis of calculation has been that the Applicant Association operates at a cost, which cost involves payment of its employees and various overheads. For the period with which the Tribunal is concerned, it had within its ownership some 1,700 units, 900 of which were leasehold and the remaining 800 of which were let directly to tenants. The Applicant had experimented with various methods for calculating its management

charge. It had carried out an exercise which demonstrated that the time spent on managing its housing stock was split almost equally between long leasehold properties and tenanted properties – which, as it transpired, corresponded to closely with the actual proportions of housing stock in the portfolio. That exercise had been carried out in approximately 2003 and he thought that an earlier exercise had also taken place resulting in a similar conclusion.

8. Armed with that information, and on a broad brush basis, the Applicant accordingly took that figure which represents its overheads in respect of the entirety of its housing stock and divided that figure by 2, so as to make a split between the leaseholders and tenants. Having carried out that exercise, it then calculated what the cost of seeking to recoup 50% of its overheads from the leasehold occupiers would be. Although the Tribunal was not told what this figure would be in each case, Mr Short told the Tribunal nonetheless that it was felt by the Applicant that this would produce too high a figure for the leaseholders to pay; accordingly the Applicant effectively “capped” the amount which it sought to recover from the leaseholders by deducting £100,000 from the figure of 50% of overheads as calculated. The result of this of course is that the leaseholders are to some extent subsidised from income received from the tenants.

9. Notwithstanding this perhaps slightly artificial way of keeping down the cost of management to the leaseholders, Mr Short recognised that the figures which have been recited above for management fees for the leaseholders were, as he put it, “*not low*”. Nonetheless, he produced for the Tribunal a graph apparently prepared

by an independent organisation called “Housemark” which compared various Housing Associations and local authority management charges and which showed the Applicant as being within the middle range of management charges levied by similar organisations.

10. He said that for next year there was to be a change in the calculation because the Applicant had been subjected to examination by the Audit Commission which had disapproved of the subsidising arrangements made in respect of leaseholders and had directed that the whole of the actual costs of management, rather than a reduced sum, should be recovered from such leaseholders. However he tempered this potentially bad news for the Respondent by saying that the Applicant itself had now been taken over by a much larger Housing Association and the expectation, although not a certainty, was that the resultant reduction in overheads may lead to consequential reduced management charges.

11. Mr Short appeared to accept that the charges levied for management by the Applicant were higher than those one might find in the private sector. When put to him by the Tribunal that figures of £200 to £250 were much more commonly found as the going rate from property management companies for a property of this kind, he in general terms accepted this range – but said that the comparison was not a fair comparison because:
 - (a) The Applicant provided a much higher level and quality of management than the

usual property management company. For example it provided regular newsletters, 6 monthly statements of account, and a call out service and other facilities which were not normally provided for in the private sector.

- (b) Housing Associations were subject to outside scrutiny by other agencies and their properties had to be equipped in accordance with all relevant regulations and to a high standard which was not always the case in the private sector.

He further made the point that the level of management charges was known to the Respondent when he purchased the property.

12. Mr Jackson pointed out, by reference to the service charge accounts for each of the respective years, that the management and administration charge claimed for the block was for several years almost the same sum as the total expenditure on the building and in some cases even exceeded the total expenditure. He said that this was completely out of sync with what would be charged on the open market, which would be a figure representing 15-20% of the expenditure on the building in each year. However, when the Tribunal carried out this calculation in respect of this particular property, the figure achieved using this method would produce a management charge of about £50 per unit which Mr Jackson readily conceded would be quite uneconomic for any management company to accept. The low figure comes about probably as a result of the method of calculations suggested on behalf of the Respondent but also because the expenditure figures in relation to this block of flat are in relative terms low. It was put to Mr Jackson on behalf of the Applicant that higher proportionate

management charges might be expected for a small block rather than a large block, but he rejected this suggestion.

13. Mr Carr, in summarising the Applicant's case, said that he recognised that the methodology adopted by the Applicant might be regarded by the Tribunal as unsatisfactory but that the Applicant in some respects was in an impossible position. On the one hand it was compelled by its regulatory bodies, and in particular the Audit Commission, to recover its actual management costs from the leaseholders. On the other hand, if it sought to do so, as it has in this case (albeit subject to a cap) the result was high management charges by comparison to those levied within the private sector. He said that in the absence of a radical overhaul by the Applicant of the methodology adopted, there would be no way that it could reduce its management charges.

Analysis of the Tribunal

14. The principal statutory provision governing the appropriate level of charges so far as the Tribunal is concerned, is section 19 of the Landlord & Tenant Act 1985 which provides that:

“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 provision 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.”

15. In this case there is absolutely no dispute about the standard of the works or services. The essence of the dispute is the issue of methodology in calculating the management charge which essentially goes to whether or not the sum claimed has been “*reasonably incurred*”. The argument advanced by and on behalf of the Applicant is that it is indeed reasonable to look at the overall management expenditure for its entire portfolio, to divide this by 2, then to cushion the blow by deducting £100,000 per annum from the figure produced, and then by a method not explained in detail, to allocate the resultant figure to each of the blocks of flats within its portfolio, which figure would then be subjected to the percentage apportionment provided for in the various leases. Whilst it was accepted by the Applicant that this might not be a perfect method, it was nonetheless suggested that it was reasonable, and resulted in a reasonable level of management charge for the relevant leaseholders and in particular the Respondent in this case.

16. The Tribunal is uneasy with this approach for three principal reasons:

- (i) It does not seem to the Tribunal to be a method entirely consistent with the provisions of the lease in this case. More specifically, by virtue of clause 3(2) of the lease, the Respondent covenants to pay service charges in accordance with clause 7 of the lease. Clause 7(5) provides that:

“The relevant expenditure to be included in the service provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair, management, maintenance and provision of services for the Building”

The cost of management is therefore provided for within the service charge provision but it is linked specifically to expenditure reasonably incurred in connection with “the Building”. “*The Building*” is defined, unsurprisingly, in the particulars set out on the first page of the lease as “*the property known as Meyrick Court, 25 Dunheved Road, Thornton Heath*” – that is to say this particular block of flats. It does not make recoverable, in the judgment of the Tribunal, a sum recoverable in respect of management of other buildings or other properties within the portfolio of the Applicant and outside “the Building”.

When this point was put to Mr Short, he answered that although calculation of the management charge on a building by building basis might be possible, the extra level of management necessary in making this calculation would only increase the charge further and, so he inferred, would be counter-productive. However it is not clear whether this should be the case and so far as could be ascertained, the exercise had not to date been carried out. In any event, the first concern is that the methodology adopted does not appear to be in accordance with the contractual agreement entered into between the parties.

- (ii) Moreover, the result of the methodology adopted is that, in practice, management charges are being levied to individual leaseholders which might bear no relation with the management time in fact expended on specific buildings, but are the result of an averaging of the management charge across a much larger portfolio. Once again, Mr Short accepted this observation but inferred

that over a period of time these things average themselves out, and although there may be little management time expended on a particular property one year (and correspondingly a lot of management time on other properties within the portfolio) there might also be situations in which the opposite is the case and other buildings within the portfolio for some years might effectively subsidise this particular building. In the event, however, upon looking at the service charge accounts for the 7 years in issue before the Tribunal, the overall charges of expenditure appear to be consistently modest and if there is to be a “levelling out” it has not come yet and there is no suggestion that it is due in the near future. In any event, it seems to the Tribunal that this is a somewhat haphazard basis for levying management charges in a case of this kind.

- (iii) Thirdly, the actual quantum of the charges made each year in this case do seem to the Tribunal to be high, and not just high within a particular range, but, albeit marginally, actually outside the appropriate range. As has been indicated, when figures for management in the private sector were put to Mr Short, he accepted that it would not be unreasonable or unusual to find figures of £200 to £250 being levied per annum for units of this kind. His argument however was that Housing Associations are in a different category and have to cope with higher overheads than the ordinary private property management company, and have to comply with more regulations and stipulations.

17. As will have been observed from the figures recited at the start of this decision, the amount claimed, at least from 2002, has exceeded £300 and most recently has been £346.25. There is no separate provision made for housing associations in the Landlord & Tenant Act 1985 affording such Associations differential treatment in the context of assessing reasonableness.
18. The perhaps unsatisfactory situation therefore arrived at is that neither of the methods principally put forward by either of the parties in this case really produces a figure consistent with the Tribunal's experience and the parties' accepted recognition of the market rate in cases of this kind. The Respondent's suggested approach produced an uneconomically low figure whereas the Applicant's approach takes into account expenditure in relation to buildings not provided for in the lease and produces claims outside the range which might otherwise be expected to reflect a reasonable management charge. When this point was ventilated with the parties, the Respondent accepted that his figure was too low. Mr Carr, on behalf of the Applicant, made no concessions that the Applicant's charges were anything other than reasonable, although he included in his skeleton argument the contention that the charges are *"towards the higher end of the range, they are still within the range of what is reasonable ..."*.
19. The Tribunal therefore floated with the parties the possibility of the Tribunal itself forming a view, based on its own experience, the evidence from the parties, and the figures expressly put to the parties during the hearing, in respect of the

appropriate charges. Both parties accepted that this was an option open to the Tribunal. When asked by the Tribunal what objectively, and on an open market basis, one might expect to pay for a unit of this kind (a 1 bedroom flat in a relatively small and modern block) Mr Carr, on behalf of the Applicant, suggested £275 “*minimally*”. Mr Jackson, for the Respondent, would not be drawn on the precise figure but was content to leave the matter to the Tribunal.

20. The conclusion to which the Tribunal has been drawn, for the reasons set out above, is that neither of the approaches suggested by the parties produces a reasonable result in this case. The Tribunal has concluded that the appropriate management charge should reflect the range available on the open market and take into account the nature of the property concerned. On this basis, and using figures within the range expressly put to the parties, the Tribunal finds that an appropriate management charge, reasonably incurred for the purposes of the Act for each year would be as follows:

2000/1	£200
2001/2	£208
2002/3	£216
2003/4	£225
2004/5	£234
2005/6	£243
2006/7	£253

21. These charges are reflective of reasonable charges for similar blocks and provide an inflationary and other uplift of 4% per annum for the period concerned. The Tribunal thus finds that the total sum due from the Respondent to the Applicant for the period concerned is £1,579 together with the undisputed balance of £324.92

referable to other service charges. The full sum due is thus £1,903.92.

22. The only other matters outstanding are that the Applicant made reference to and relied upon a previous decision of the Leasehold Valuation Tribunal in the case of *Bourne Housing Society Limited v. Melville Court Residents Association Ref. LVT/HA/97/1*. In that case, decided on 28 April 1997 some reliance was placed upon the fact that the Applicant was subject to special requirements as a registered social landlord and in particular that it had to provide management information to the Housing Corporation as confirmed by a performance standard publication. That Decision, of course, is not binding on this particular Tribunal, nor does it appear to the Tribunal specifically to endorse the method of calculation - but does approve as reasonable the charge made in that particular case. In that respect, the Tribunal considers it significant that, unlike the instant case, the Applicant had decided, internally, only to levy 40% of the actual costs incurred upon the leaseholders – and accordingly this Tribunal found, perhaps not surprisingly, that:

“There is thus a difficult task for the Residents’ Association in demonstrating to us that this charge is unreasonable.”

23. Notwithstanding the fact that there has been a cap applied in this case, the resultant discount is nowhere near the figure of 60% featured in that case.

24. No requests for orders for costs were made by either party and no such orders are made.

Legal Chairman: S. Shaw

A handwritten signature in black ink, appearing to read "S. Shaw", with a small horizontal line underneath the final letter.

Dated: 16th January 2008