



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

Case Reference : **CHI29UG/LAC/2019/0011**

Property : **Flats A, C, D, E, G & H, 5 & 7
Lansdowne Square, Northfleet,
Gravesend, DA11 9LX**

Applicant : **Steven Newman**

Representative : **D & S Property Management**

Respondents : **Mr D Noyes & Mr D Carpenter
c/o Sovereign Services**

Represented by : **Judge & Priestley LLP Solicitors**

Type of Application : **Administration Charge: Paragraph 5
of Schedule 11 to the Commonhold
and Leasehold Reform Act 2002.**

Tribunal Member : **Judge M Davey**

Date of Decision : **18 November 2019**

DECISION

An administration charge of £5,075.00 is payable in equal shares by the Respondents to the Applicant.

REASONS FOR DECISION

The Application

1. By an application (“the Application”) to the First-tier Tribunal (Property Chamber) (“the Tribunal”) Mr Steven Newman (“the Applicant”), being the freeholder landlord of Flats A, C, D, E, G & H 5-7 Lansdowne Square, Northfleet, Gravesend, Kent DA1 9LX (“the Flats”) seeks a determination from the Tribunal as to the payability and reasonableness of an administration charge, in the amount of £6,451.14, levied by him on the Respondent leaseholders of the Flats on or around 7 June 2019 and requiring payment of the sums demanded, by 24 June 2019. The Application, which is dated 1 July 2019 and was received on 4 July 2019, is made under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The charges demanded of Mr Noyes in respect of his four Flats (A, C, E and G) are £4,300.76 and the charges demanded of Mr Carpenter in respect of his two Flats (D & H) are £2,150.38.

Directions

2. The Application included a Statement of Case of the same date. On 11 July 2019, Judge Tildesley OBE issued Directions to the parties requiring the Applicant to provide further and better information. The Applicant subsequently provided this in a Supplemental Statement of Case dated 22 July 2019. The Directions further stated that the Application would be determined on the papers without a hearing, in accordance with Rule 31 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013, unless either or both parties objected in writing to the Tribunal within 28 days of the Directions. No such objection was received and the Tribunal has accordingly considered the Application on the basis of the written submissions of the parties. The Respondents provided a Statement of Case dated 15 August 2019 to which the Applicant produced a Statement in Reply dated 21 August 2019.

Background

3. 5-7 Lansdowne Square, Northfleet, Gravesend, Kent DA1 9LX (“the Building”) is a purpose built 4 storey block of 8 self-contained flats with internal and external common parts. Flats B and F are held by different leaseholders and are not part of this Application.

4. The leases of the Flats (“the Lease”) are all in the same form and were granted in 2008 for a term of 99 years. The Respondents are the original lessees of the subject Flats. The Applicant landlord acquired the freehold reversion by purchase on 19 October 2018 and was registered as proprietor on 5 December 2018. The Lease reserves an Interim Charge and a Service Charge
5. By an application (“the section 27A Application”) dated 21 January 2019 (CHI/29UG/LIS/2019/0013), Mr Newman, through his agent, D&S Property Management (“D&S”), applied to the Tribunal, under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination as to the payability and reasonableness of the first quarterly Interim (Service) Charge demand in respect of the service charge year 1 January to 31 December 2019. The demand was dated 7 December 2018 and required payment by the Respondents on 25 December 2018. Mr Newman also asked the Tribunal to determine the same sums to be payable by the Respondents by way of Interim Charges on each of the March, June and September quarter days in 2019, in respect of the said service charge year of 1 January to 31 December 2019.
6. By a decision made on 24 May 2019 and amended on 12 June 2019 under Rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber Rules 2013, the Tribunal determined that the quarterly sums payable by the Respondents by way of Interim Charges on 25 December 2018 were those demanded in the Interim Charge demands of 7 December 2018. The Tribunal also determined the same sums to be payable by the Respondents by way of Interim Charges on each of the March, June and September quarter days in 2019. In the same decision the Tribunal rejected an application by the Respondents for an order under paragraph 5A of Schedule 11 to the 2002 Act.

The Applicant’s case

7. The Applicant says that between 21 January 2019 and 7 June 2019 he incurred the costs now demanded by way of administration charge, in pursuing, by way of the section 27A Application proceedings, the arrears of the Interim Charge payments demanded on 8 December 2018.
8. The breakdown of the sums demanded is as follows with item numbers provided for reference by the Tribunal.

Date	Item	Task	Fees incurred	Balance
21/01/2019	1	Preparation of application form and statement of case	£1,500.00	£1,500.00
21/01/2019	2	Section 27A application fee	£100.00	£1,600
15/03/2019	3	Receiving and considering	£500.00	£2,100.00

		Respondents' statement of case		
24/03/2019	4	Preparation of Applicant's reply to the Respondents' statement of case	£2,250.00	£4,350.00
26/03/2019	5	Preparation of trial bundle	£250.00	£4,600.00
28/03/2019	6	Printing trial bundle	£101.15	£4,701.15
18/04/2019	7	Receiving and considering Respondents' supplemental statement of case and paragraph 5A application	£250.00	£4,951.15
01/05/2019	8	Preparation of Applicant's reply to the Respondents' supplemental statement of case and paragraph 5A application	£1,250.00	£6,201.15
30/05/2019	9	Receiving and reviewing the F-tT decision	£250.00	£6,451.15

9. The Applicant appointed D&S under a contract dated 3 December 2018 for the period 1 January 2019 to 31 December 2019. Under that contract D&S agreed to provide a number of management services, as set out in paragraph 3 of the contract in consideration of a fee of £2,400. Paragraph 4 of the contract provides that

“For the avoidance of doubt the following services are not included in the payment set out in paragraph 3 above, however will be provided by the Managing Agent to the Freeholder

.....

(f) any legal work undertaken by the Managing Agents in-house solicitor, Stephen Newman, including but not exclusively, corresponding with the leaseholders with regard to breaches of any covenants contained in the leases, drafting tribunal applications, drafting county court claim forms, drafting particulars of claim, drafting statements of case, drafting witness statements, reviewing leaseholders pleadings, preparation for Court and Tribunal appearances and court and tribunal appearances.

Any legal work undertaken pursuant to this paragraph shall be charged to the Freeholder at a rate of £250.00 per hour or such fixed fee as agreed, to be paid

by the Freeholder and, if instructed, recovered from the leaseholders under the terms of the leases.”

10. The Applicant says that each time D&S performed one of the tasks listed above it sent him an invoice as Landlord for the specified sum. He produced the invoices as part of his case. He says that he has made the relevant payments.
11. The Applicant says the sums that he has incurred are reasonable in amount and recoverable from the Respondents by virtue of paragraph 8 of the Fourth Schedule of the Lease which contains a covenant by the tenant

“To pay all proper and reasonable costs charges and expenses (including solicitors costs and architects and surveyors’ fees incurred by the Landlord for the purposes of or incidental to the preparation service or enforcement (whether by proceedings or otherwise) of.....

8.3 The payment of any arrears of the Rent Interim Charge or Service Charge....”

12. The Applicant says that he brought the Tribunal proceedings in order to be in a position to enforce the payment of the disputed Interim Charges in question. He says that with regard to the costs incurred, these have not been charged on a time-costed basis as opposed to a fixed fee based on the Applicant’s experience of how long such matters take to deal with. However, he says that when D&S do charge for Mr Newman’s time on the time-costed basis, the rate of charge is £250 per hour. The Applicant says that this is a reasonable charge, because the Solicitors Guideline hourly rates produced in 2010 indicates that the starting point for a reasonable hourly rate for a grade A solicitor working in the W1 postcode would be £317.

The Respondents’ case

13. The Respondents dispute the sum claimed on the ground that the Applicant has not “incurred” the sums claimed for the purposes of paragraph 8.3 of the Fourth Schedule of the Lease. They stated that there was no evidence that (a) any charge was raised by D&S to the Applicant and entered into the records and accounts of that company or (b) that the Applicant has made any such payments to D&S.
14. Without prejudice to their submission that the costs claimed are not contractually chargeable, the Respondents dispute the reasonableness of the amount claimed. They do so on a number of grounds.
15. The first ground is that the Applicant is not practising as a solicitor in private practice for comparable rates but is operating as an in-house legal officer on behalf of D&S of which he is one of two Directors and shareholders. The Respondents submit that all the usual overheads such as professional indemnity insurance, SRA compliance etc. are not applicable to the Applicant in carrying out work of this nature. It is

submitted that for this reason reference to the Solicitors guideline rates is not a fair comparison. Furthermore, the Respondents submit that because the properties are located in Northfleet, Kent it is not reasonable or proportionate to incur W1 management charge rates. They say that by comparison, the guideline hourly rate for a Grade A fee earner in Northfleet Kent would be National Grade 1 and is set at £217. But, they submit, this is the rate for a solicitor in private practice with the usual overheads referred to by the Respondents.

16. The second ground is that in a different application by the Applicant before the Tribunal (CHI/20UG/LAC/0009) there is a claim for payment of administration charges relating to costs incurred by former managing agents of the subject properties (prior to the Applicant's ownership of the freehold). Those costs were charged at an hourly rate of £125. The Respondents contend that this reflects a reasonable hourly rate to be charged by D&S in the present case if costs were in fact incurred. They state that the claim in the proceedings which led to the present Application was not complex and principally dealt with an issue between the Applicant and Respondents regarding an estimated cost of £80,000 for proposed external works of repair in circumstances where the Respondents did not believe such an estimate was reasonable having regard to the absence of a breakdown of such costs. The Respondent submits that the issue was not legally or factually complex or difficult.
17. The Respondent states that using the rate of £250 per hour the time claimed to have been spent on the tasks by the Applicant is as set out below:

Date		Fees claimed	Time spent
21/01/2019	Preparation of application form and statement of case	£1,500.00	6 hours
15/03/2019	Receiving and considering Respondents' statement of case	£500.00	2 hours
24/03/2019	Preparation of Applicant's reply to the Respondents' statement of case	£2,250.00	9 hours
26/03/2019	Preparation of trial bundle	£250.00	1 hour
18/04/2019	Receiving and considering Respondents' supplemental statement of case and paragraph 5A application	£250.00	1 hour
01/05/20019	Preparation of Applicant's reply to the respondents'	£1,250.00	5 hours

	supplemental statement of case and paragraph 5A application		
30/05/2019	Receiving and reviewing the F-tT decision	£250.00	1 hour

18. The Respondents contend that spending 25 hours is not reasonable or proportionate and make the following comments on the items listed in paragraph 8 above:

(1) Preparation of the Application and Statement of Case

The Respondents submit that this was not a complex application and to the extent that time was required to copy and collate that should not have been carried out by someone charging hourly rates as it was administrative and support duties. The Respondents also state that because all six leases were in the same form it was not necessary to review all six leases in detail. The Respondents contend that 4 hours is reasonable.

(3) Considering the Respondents' statement of case

The Respondents submit that 2 hours is excessive and would offer 30 minutes for considering a ten paragraph 2 page document.

(4) Preparing the Applicant's reply

The Respondents submit that 9 hours is excessive and a full working day of 7 hours would be reasonable.

(5) Preparation of trial bundle

The Respondents submit this is largely an administrative task but at a lower hourly rate they will accept one hour.

(7) Receiving asnd considering Respondents' Supplemental Statement of Case

The Respondents state that this was a five paragraph document extending over two pages and one hour is unreasonable. The Respondents propose 30 minutes.

(8) Preparation of Applicant's Reply to Supplemental Statement of Case

The Respondents offer 4 rather than 5 hours.

(9) Receiving and reviewing the Tribunal's decision.

The Respondents accept 1 hour.

The Applicant's Response

19. The Applicant says that (a) he is an in house solicitor with an up to date practising certificate employed to the separate legal entity D&S, which has professional indemnity insurance and overheads to be paid and (b) that he has SRA compliance obligations, which are paid by D&S, of which he is one of two shareholders and directors.
20. The Applicant denies that the costs claimed were not incurred for the purposes of paragraph 8.3 of the Fourth Schedule to the Lease and refers to the requests for payment made of the Applicant by D&S in respect of each item. He submits, relying on the decision of the Court of Appeal in *OM Property Management Ltd v Burr* [2013] EWCA Civ. 479, that the costs were incurred when the request for payment was made in each case but that in any event he had paid all the charges to D&S.
21. With regard to the quantum of costs, the Applicant says that although D&S has not charged the Applicant on an hourly rate for the services provided, the hourly rate of £250 charged for its in house solicitor is reasonable and the rate should not be reduced just because the solicitor is employed in house (as confirmed by the Upper Tribunal in *Re Arora* [2013] UKUT 0362 (LC)).
22. The Applicant says that he retains the services of D&S to deal with all such matters as the Applicant is of the opinion that he, in his capacity as the in-house solicitor of D&S, is best placed to deal with such matters.
23. The Applicant says that the Respondents' reference to the fee of £125.00 per hour charge by a lay managing agent is misguided because the Applicant is a solicitor, with an up-to-date practising certificate, of 17 years post qualification experience. He submits that the present case required such an experienced solicitor to deal with the relevant legal arguments. He did not believe that the section 27A Application was straightforward.
24. The Applicant says with regard to the fee basis that the matter was not charged on an hourly basis as opposed to a fixed fee. The Applicant says he arrived at the fixed fee by making an estimation of how long it would take to undertake the required task and applying the hourly rate to that estimation. He says that in some cases it proved to be an underestimate.
25. The Applicant says that it was appropriate for the Application and Statement of Case to be prepared by a solicitor of his standing. He also says that it was good practice to review all six leases. He further submits that it was reasonable to charge (a) £500 for reviewing the Respondents' Statement of Case, (b) £2,250 for reviewing the Respondents' Statement of Case (c) £250 for considering the Respondents' Supplemental Statement of Case and (d) £1,250 for the Preparation of the Reply to the Respondents' Supplemental Statement of Case.

Discussion.

26. The matter for determination is whether the Applicant Landlord incurred the legal costs in connection with the section 27A application proceedings brought by him for the purposes of recovering the sums due under clause 8 of the Fourth Schedule to the Lease and if so whether the costs were payable and reasonable.
27. Paragraph 1 of Schedule 11 to the 2002 Act provides (so far as relevant) that

“(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 –

.....

(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.”
28. Paragraph 1(3) provides that “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.”
29. Paragraph 2 of Schedule 11 to the 2002 Act provides that “a variable administration charge is payable only to the extent that the amount of the charge is reasonable.”
30. Paragraph 5 (1) of Schedule 11 to the 2002 Act provides that an application may be made to the tribunal “for a determination whether an administration 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 (d) the manner in which it is payable.
31. It is not disputed that if the sums claimed are contractually payable under the terms of the Lease they are capable of being an administration charge for the purposes of Schedule 11 to the 2002 Act.
32. Paragraph 8 of the Fourth Schedule of the Lease contains a covenant by the tenant

“To pay all proper and reasonable costs charges and expenses (including solicitors costs and architects and surveyors’ fees incurred by the Landlord for the purposes of or incidental to the preparation service or enforcement (whether by proceedings or otherwise) of.....
33. 8.3 The payment of any arrears of the Rent Interim Charge or Service Charge....”

34. The Respondents submitted in their Statement of Case that because there was no evidence of a management contract between the Applicant and D&S, or that the charges in question had been raised by D&S, or paid by Mr Newman, the charges had not been “incurred” for the purposes of the covenant in paragraph 8 of the Fourth Schedule of the Lease.
35. However, the Applicant subsequently produced, in his Reply of 21 August 2019 to the Respondents’ Statement of Case, copies of requests made of him as Landlord for payment of the sums in question. The Tribunal finds therefore that the costs were properly raised by D&S. We have the requests for payment, which are in essence invoices, although nothing turns on how they are described, and we have the management contract of 3 December 2018 between the Applicant and D&S, which the Applicant produced in his Reply of 21 August 2019 to the Respondents’ Statement of Case. The Applicant, who is a solicitor, has also stated that he has paid the charges in full. The Tribunal is satisfied that the Applicant incurred the costs when they were paid.
36. The Applicant submitted that notwithstanding that he had paid the sums in question, it was sufficient that he had been invoiced for the charges for him to have incurred a liability to pay them. The Applicant relies on the decision of the Upper Tribunal in *OM Property Management Ltd v Burr* [2012] UKUT 2 (LC) (accepted as correct by the Court of Appeal at [2013] EWCA Civ. 479) as authority for the proposition that a cost is incurred by a landlord when he is invoiced or when the invoice is paid. The Tribunal does not accept that the decision is applicable to the circumstances of the present case.
37. The Tribunal does not agree. The *Burr* case concerned the interpretation of the word “incurred” for the purposes of Section 20B of the 1985 Act which prevents a landlord from recovering service charges where the demand was made more than 18 months after the relevant costs were incurred. The case was about whether time began to run when the services were supplied or when the landlord was invoiced or paid. The Upper Tribunal decided that incurred meant either when the invoice was issued or paid. It did not matter which in that case because the invoice was both issued and paid within the 18 month period.
38. In the present case we are concerned with the meaning of the word “incurred: for the purposes of clause 8 of the Fourth Schedule of the Lease. This creates a liability on the part of the tenant to pay costs incurred by the landlord for the purposes set out in paragraph 8. A charge arising under that provision is an administration charge. The Tribunal considers that the proper meaning of the word incurred in this context is that the costs had been paid the charge was levied on the Tenant. If the Applicant’s interpretation were correct it would mean that the clause would permit the Landlord to recover charges from a Tenant to reimburse him for costs that he had never paid. This cannot be right. The Tribunal therefore determines that for the purposes of clause 8 the tenant’s liability only

arose when a demand was made in respect of costs actually paid, that is to say were incurred, by the landlord.

39. The remaining issue therefore is whether the charges are reasonable. It is of course perfectly proper for a landlord to appoint a managing agent and agree to pay legal costs incurred by the agent in, amongst other things, pursuing tribunal proceedings as a means of obtaining payment of service charge arrears. It is also perfectly proper for the landlord to seek to recover those costs by an appropriately worded charging clause in the lease.
40. The facts of the present case are less than usual for the simple reason that the Landlord is also a solicitor who duly appointed as managing agent of the flats a company (D&S) of which he is stated to be an employee as an in-house solicitor, albeit that we have not seen his employment contract. He is also one of two Directors and shareholders of the Company. The management agreement states that the Company will provide legal services to be undertaken by their in-house solicitor, Steven Newman, who is, as noted above, the Landlord, such services to be “charged to the Freeholder at a rate of £250.00 per hour or such fixed fee as agreed, to be paid by the Freeholder and, if instructed, recovered from the leaseholders under the terms of the leases.” It follows therefore that although D&S is a separate legal entity from Mr Newman, in practice he will have set the charges that D&S would levy on him as Landlord and which he would then seek to recover from the Respondents by way of an administration charge under the terms of the Lease. The issue for the Tribunal to determine is whether those charges are reasonable.
41. In paragraph 6 of his Statement of Case the Applicant says that he incurred the costs set out in paragraph 6 above of these reasons. In paragraph 7 of his Statement of Case the Applicant says “these have not been charged on a time-costed basis as opposed to a fixed fee based on my experience of how long such matters take to deal with.” It follows therefore that the total sum claimed must consist of a series of fixed fees each agreed between D&S and Mr Newman before the event in question.

The fees are as follows:

**Preparation of Application form and Statement of Case:
£1,500.00.**

42. The Application form and Statement of Case are dated 21 January 2019, as is the request for payment in respect of preparation of the same from D&S. The Applicant says he had anticipated that the time taken to review all six leases, prepare the application form, draft the statement of case and review and assemble the exhibits would be in the region of 6 to 8 hours but in fact it took longer. At an hourly charging rate of £250 the sum claimed amounts to 6 hours work. The Applicant is therefore suggesting that the fixed fee of £1,500 was good value ultimately to the Respondents because it represented an hourly rate of less than £250.00.

43. The Respondents says that for the work involved 4 hours would have been reasonable. They also submit that a more local solicitor should have been used at a lower charging rate and indeed in so far as time used to copy and collate this should not have been done by somebody charging hourly rates. The Tribunal does not agree. It was reasonable for D&S to use its in house solicitor and no distinction should be made solely on the ground that the solicitor was in house. It was also reasonable for the whole task be done or overseen by the solicitor. The Tribunal considers that £250 per hour was a reasonable rate for a solicitor with the relevant experience to deal with this matter. As to the time taken the Tribunal believes that 6 hours was reasonable and therefore agrees the sum of £1,500.00

Receiving and considering Respondent's Statement of Case: £500.00

44. The Respondents' Statement of Case was very short and although it raised issues that required a response, these would be covered in the Applicant's Reply. The Tribunal therefore agrees with the Respondents that a charge of £500 is unreasonable and would substitute a charge of £200.

Preparation of Applicant's reply: £2,250.00

45. With regard to the Applicant's Reply the Applicant says he estimated that this would require 10 to 12 hours, much of which was allocated to reviewing and considering the relevant legal authorities. The Applicant says that the time to be taken proved to be an underestimate. He therefore argued that the sum agreed was reasonable having regard to the hourly charging rate of £250.00. The Respondents say that a working day of 7 hours would be reasonable and the Tribunal agrees. Although Mr Newman is a solicitor he is also the Landlord and a key member of the agency who drafts and signs relevant correspondence. As such he will have been very familiar with the case. The Tribunal therefore considers that a sum of £1,750 would be reasonable.

Preparation of Trial Bundle: £250.00

46. The Tribunal accepts that this is a reasonable sum.

Receiving and considering the Respondents' Supplemental Statement of Case and Paragraph 5A Application: £250.00.

47. The Tribunal agrees with the Respondents that this was relatively straightforward and would have required no more than 30 minutes. A reasonable sum in respect thereof would be £125.00.

Preparation of Applicant's reply to the Respondents' supplemental statement

48. The Tribunal considers that £1,000.00 is a reasonable amount for this task.

Receiving and reviewing the F-tT decision.

49. The Tribunal agrees that £250.00 was a reasonable fee for this task.
50. In conclusion the Tribunal determines that an administration charge of £5,075.00 is reasonable and payable. The Tribunal considers it appropriate to apportion the charges on the basis of one sixth per lease/Flat being £3,383.33 to Mr Noyes and £1,691.67 to Mr Carpenter.

RIGHT OF APPEAL

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, that 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.

Martin Davey
Chairman

