

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/24UJ/LSC/2008/0051

Re: Flat 22 Charles Ley Court, Denny Close, Fawley

Applicants	Mr G W Porteus & Mrs C A Evered-Porteus	Flat 22
	Mrs O M Braysford	Flat 20
	J E Rough	Flat 12
	Ms A R Appleton	Flat 17
Respondents	Housing 21	
	Ms S Harvey	Flat 4
	Mrs M Williams	Flat 15
	Mr K Banks	Flat 16

Date of Application 31st May 2008

Date of Inspection none

Date of Hearing 17th April 2009

Venue Jubilee Hall, Fawley

Representing the parties The Applicants in person
Mr N Grundy of Counsel for Housing 21

Also attending

For the Applicants:
Mr & Mrs A Bird
Mr W R J Martin
Mr D Miller
Mrs S Rushmer

For Housing 21:
Ms A Duke – Head of ICT
Mr P Richards – Director of Property & Customer Support
Mr D Harkin – Housing Services Manager
Ms Lynne Davey – Welfare Benefit Manager
Mr Steven Green – Resident Charges Manager
Ms S Harvey – Charles Ley Court Manager
Mr B Ward-Jones – Member, Housing 21 Housing Services Committee

Members of the Leasehold Valuation Tribunal:

M J Greenleaves
P R Boardman MA LLB
J Mills

Lawyer Chairman
Lawyer Member
Lay Member

Date of Tribunal's Decision: 7th May 2009

Decision

1. Under Section 27A of the Landlord and Tenant Act 1985:
 - a. The capital costs incurred by Housing 21 for the installation of the internet computer communication network installation ("the system") have not been charged to service charge and are not payable by the Applicants.
 - b. The running costs of the system are chargeable to service charge under the terms of the Applicants' tenancy agreement dated 13th February 1998 as varied by New Conditions of Tenancy dated 19th December 2003.
 - c. The service charges for the running costs of the system for the year 2007 of £2,195 set out in the Service Charge Account for the period April 2008 to March 2009 under the heading "Court Office Telephone Costs" less a refund of £1,025.13 (net £1169.87) were reasonably incurred and are of a reasonable sum subject to a deduction of 15% provided for under the heading of "Re-charge Direct Staff Services to Housing 21" under "Administration" in the same service charge account.
2. Under Section 20C of the Act, the Tribunal makes an Order that Housing 21's costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Reasons

Introduction

3. Note. Where the term "Applicants" is used below, it refers only to Mr Porteus and Mrs Evered-Porteus, the other applicants having requested to be joined as applicants but having taken no part in the proceedings.
4. This was an application made by the Applicants to the Tribunal on 31st May 2008 under Section 27A of the Act to determine whether a service charge is payable and, if it is, by whom it is payable, to whom, the amount, the date at or by which it is payable and the manner in which it is payable. The issues remaining to be determined by the Tribunal were whether the charge was payable and, if so, the amount which is payable.
5. The year in question under the application is 2008/2009 and relates to the service charges for the running costs of the system for the year 2007 of £2,195 set out in the Service Charge Account for the period April 2008 to March 2009 under the heading "Court Office Telephone Costs".

6. The hearing of the substantive application had been deferred pending determination of a preliminary issue as to the jurisdiction of the Leasehold Valuation Tribunal to determine the issue. A differently constituted Tribunal had, by decision dated 3rd October 2008, determined that the Leasehold Valuation Tribunal did have jurisdiction in the matter.
7. Similar applications relating to other Housing 21 Courts elsewhere in England had been made to other Leasehold Valuation Tribunals. (Short particulars of those other applications are set out in the Appendix to this decision). Under Regulation 8 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 notices had been issued to the parties to those cases to the effect that the decision of the Tribunal in this present case would apply to the common matter referred to in those other applications, namely whether or not a service charge is payable with effect from 2008 for the provision of internet communication for the Court Manager and, if such a service charge is payable, whether the amount demanded is reasonable.
8. For those reasons this Tribunal directed that the issues to be determined in this case related to service charges charged for the service charge year 2008/2009 to the extent that they include any costs incurred, whether capital or ongoing running costs, in respect of the internet computer communication network installation. To the extent that any of those charges are charged to the service charge accounts, they are, for Charles Ley Court, for the year 2007 the sum of £2,195 set out in the Service Charge Account for the period April 2008 to March 2009 under the heading "Court Office Telephone Costs"

Inspection

9. The Tribunal considered that inspection of the system would not assist its consideration of the issues and, neither party having requested an inspection, no inspection took place.

Hearing & Representations

10. A hearing was held on 17th April 2009, those attending being noted above.
11. Preliminary points:
 - a. The Applicants accepted that their tenancy agreement dated 13th February 1998 was varied by New Conditions of Tenancy on 19th December 2003 including the "Schedule of Services" set out on pages 11 and 12 of the New Conditions.
 - b. Ms L Jenner was unable to attend the hearing for Housing 21 and the Applicants agreed that evidence instead might be given by Mr D Harkin notwithstanding he had not made a written statement.
 - c. The Applicants declined to agree to Ms Harvey giving evidence as she had not provided a written statement.
 - d. The Applicants accepted they had had sufficient time to consider all the documents prepared by Housing 21, including the Skeleton Argument and the bundle of legal authorities.
 - e. On the decision of the Applicants, Housing 21 presented its case first.
12. The substance of Housing 21's case:

a. Mr Richards.

- i. He confirmed his written statement.
- ii. Housing 21 operates 350 Courts, all with Resident Managers. By reason of the age of the residents, they have a high reliance on care and support from the Managers, and to deliver the necessary care and support and to increase the effectiveness of the Court Managers, they need support from appropriate IT systems. Housing 21 had first of all installed dial up broadband lines in all Courts for use by Court Managers, but found that the running costs were too great. It has therefore established a converged network on to which all services including phone/fax, computer, fire alarm and warden call will progressively be added. He listed in his statement the range of benefits to tenants from the system.
- iii. No capital costs have been charged to residents and the running cost of the system was first charged to service charge in 2007/2008
- iv. Only 85% of the cost is charged to service charge "to reflect the crucial role [Managers] play in delivering the service tenants come ... to receive.", although Housing 21 considered they were entitled to charge 100% of those costs.
- v. Housing 21 has agreed to refund the part of the telephone costs relating to the dial up charges made to service charges for 2007/08. The average per Court would be about £800 (*see below for Charles Ley Court*). He estimated costs for future years to be about £1,000 per Court but further cost reductions were anticipated as other telephone lines are withdrawn from use.
- vi. If Housing 21 cannot recover the cost of the network through service charge it would have to be funded from property/rents.
- vii. They could not, as an alternative, simply put computers in the lounge for tenants' use as most would need support in their usage. Managers are only on site for 35 hours per week, but with the network they could now provide 168 hour support, including the out of hours support provided by Tunstalls who had access to all necessary information available from the network.
- viii. They had taken steps at all stages to communicate with tenants direct and through the Housing Services Committee and various communications had been sent out, but Housing 21 accepted it had not explained matters clearly enough. There had been an apology to the Annual Tenants Conference in October 2008 and repeated at many Courts, including personally at Charles Ley Court.

b. Ms Duke.

- i. She confirmed her written statement.

- ii. She confirmed the capital costs of the system had not been charged to service charge.
 - iii. The link from each Court on to the network is by dumb terminals
 - iv. She said the old dial up system was inadequate, usage and costs would increase so that a new system was needed. The dial up charges for Charles Ley Court had been £1,800 in 2006/07 but had not been charged to tenants.
 - v. She described the benefits and efficiencies that result from the new system. There had been 3 lines at Charles Ley Court. When dial up broadband had been introduced there were 4 lines, but this had, by the new system, been reduced to 3 thereby reducing cost. They had expected full convergence, whereby the emergency alarm and fire alarm systems lines could be removed, to have occurred by now, but there were delays with BT. It was necessary for BT to upgrade all fixed telephone cabling in the UK to allow full digital connection and although BT had commenced work to do this, the programme had been halted for the time being.
 - vi. It was not possible to use cheaper domestic broadband rates for business purposes
 - vii. She explained, with some documents, the work which had been done to ascertain the requirements of a new system, the tendering process that had been undertaken, the evaluation of tenders and resulting in a contract for 5 years with BT. The contract had commenced in April 2007 and the pricing structure would be reviewed in April 2010.
 - viii. They had compared their costs with other Housing Associations and found Housing 21 to be providing better value for the service provided.
 - ix. A further stage will be adding the warden call and fire alarm services to the private broadband lines if BT completes its digital programme and if, after rigorous testing, the fire alarm and emergency alarm systems do work with digital rather than their current analog communication protocols.
- c. Mr Harkin.
- i. He confirmed from his own knowledge the written statement of Ms Jenner annexing the Court Manager's job description, including the various examples of usage described in that statement.
 - ii. The system enables the quicker provision of quality services to residents and he can access the system and information from his home.
 - iii. He confirmed that he uses the slim terminals and broadband when he visits Courts. And that he provides a computer of his own at home for business use to contact the central server of Housing 21, but Housing 21 pay for the dial up costs.
- d. Ms Davey.

- i. She confirmed her written statement describing the benefit of the new system to her in respect of her job as Welfare Benefits Manager.
- e. Mr Green.
 - i. He confirmed his written statement providing detailed information about service charge items.
 - ii. He particularly confirmed that the refund for dial up charges for 2008/09 for Charles Ley Court would be £1,025.13 to be deducted from the charge for 2007 of £2,195.
 - iii. Housing 21 had used an apportionment of 80% of the Court Manager's costs being attributable to services for many years until 2006. The apportionment of costs to service charge had resulted from an assessment made some years ago. In 2007 Housing 21 decided that 85% of a Court Manager's time should be charged to the service charge, the remaining 15% charged against rents for matters which were not of direct relation to items in the service charge. The decision had been taken because it was thought the new broadband access had freed up the time of the Court Manager to give more time for tenants and because lettings work had become more centralised.
 - iv. There is no asset depreciation charge to tenants for the terminals provided in the asset usage charge for the Court Manager's office equipment. He confirmed that Housing 21 had not yet decided how it was going to fund the eventual replacement of all the slim terminals provided in Court Manager's offices.
- f. Mr Ward-Jones.
 - i. He is a tenant of Housing 21 at Hancock Court, Warrington and is a non-executive tenant Board Member and elected chair of the Housing Services Committee for Housing 21.
 - ii. He accepted there had been poor communication with tenants of Housing 21 about the IT network, but his Committee (by majority) recognised the importance of the system. Housing 21 had given a commitment to future cost savings from the system and they needed to be delivered soon.
 - iii. His experience of the system was that it was a step forward and running the Court could not be managed without it, especially as Managers now only worked for 35 hours per week.
 - iv. If the system costs were not recoverable as service charge, they would have to be charged against rental income available to spend on the upkeep of the Courts themselves. This would be reduced which would make most tenants unhappy.

13. The substance of the Applicants' case:

- a. They produced a bundle of letters from other tenants of Housing 21 supportive of the stance they were taking in making this application.
- b. The essential point of their case was that the system was of no benefit to residents; it benefitted only Housing 21 in the running of their business and there was no reason why residents should pay a single penny towards it. They did not accept that the running costs of the system were recoverable as service charge under any part of the Schedule of Services to their tenancy agreement.
- c. Mrs Evered-Porteus
 - i. In her written statement she said that the system, is solely for the use of management for administration purposes and should be viewed as such. It enables the management to be business-like and ease the Manager's burden.
 - ii. Conversely all other services are accessible and for use by tenants.
 - iii. Tenants are on limited fixed incomes and rises in cost hit them hard.
 - iv. There was no consultation about the proposed system which was unfairly announced as a fait accompli.
 - v. Housing 21 should use the vast reserve fund they have; they could make a charitable donation to themselves.
- d. Mr Bird.
 - i. He and his wife lived in Stewart Court, Axminster.
 - ii. He and his wife had decided not to change from their 1994 tenancy agreement as the new schedule of services had been altered.
 - iii. Housing 21 had said that the capital cost of the system would not be charged to residents and running costs would be little more than the then postage and telephone costs: 07/08 £371.
 - iv. Little had been gained from the system by residents and that Housing 21 could keep adding to the system without the residents having a say.
- e. Mr Martin read his written statement. It may be summarised:
 - i. He considered the system costs to be an injustice. The system is solely a function of management and administration; neither he nor other tenants had access to it.
 - ii. He was unsurprised at the views expressed by Housing 21's employees, but their statements are irrelevant to the reason for the application: that the system is only for administration.
 - iii. Conversely, the amenities of the Court such as accommodation, the gardens and laundry are there for use of residents and are paid for by service charge:

the same should not apply to the system which is for Housing 21's business, not for tenants

- iv. Rents and service charges must be fair.
 - v. He did not think the refund referred to above would have occurred if the Tribunal proceedings had not been under way.
 - vi. Overall: it is not for tenants to pay for the system at all.
- f. Mrs Rushmer.
- i. She confirmed her written statement.
 - ii. She referred to forecasts in the accounts, compared with actual costs; questioned the benefit of the system to the Applicants; the result of the system would be to add value to Housing 21, but not to the Applicants who would not be using it
 - iii. Housing 21's reserves total £378 million at the end of 2008.
 - iv. When online shopping, she does not expect prices to increase because of installation of a new network system.
 - v. Housing 21 did not consult tenants about the system as they should have done.

14. Mr Grundy's submissions for Housing 21.

- a. He had detailed the law in his skeleton argument which is to the effect that:
 - i. service charges include services, and the landlord's costs of management of those services; that they are payable to the extent that the costs are reasonably incurred and the services are of a reasonable standard.
 - ii. To be payable they must be payable under the terms of the tenancy agreement as amended in 2003
- b. He submitted that Housing 21 is entitled, as a matter of contract, to charge 100% of all the costs of the Court Manager including the telephone costs for the broadband connection; and that the 15% deduction was a matter of gratuity in favour of tenants rather than a right.
- c. Benefit – he would provide a copy of the case law on benefit but submitted that the terms of the tenancy agreement did not make any service charge conditional on benefit to a tenant.

15. The Applicants made no further submissions

Consideration

16. We took into account all the evidence given and submissions made at the hearing and the documents to which it had been referred

17. Housing 21's case is essentially that they incur the running costs of the system which assists significantly in the support which they provide to residents. Housing 21 say that it is not simply for administration but nevertheless for the type of cost falling within Direct staff services in the Service Charge Account for 2008/09, they do charge tenants only 85% and that has arisen out of an assessment of the direct benefit to tenants by the provision of services in the service charge. They incurred the expense after careful consideration of the needs of all the Courts and residents and a detailed analysis of tenders. The costs they expected to save had not yet all been achieved. However, Housing 21 claims that the cost of running the system is chargeable to tenants under the terms of their agreements and according to the law as they submitted it to be.
18. The Applicants submit that it is of no benefit to anyone but Housing 21 and they should not have to pay anything towards it, not least because it is not provided for in the Schedule of Services to their agreement.
19. The Tribunal's findings:
 - a. We found no evidence to suggest that any service charges made against the Applicants included any element of the cost of installing the system and wholly accepted Housing 21's evidence in that respect.
 - b. The amount included in the service charge account for the year in question, namely 2008 to 2009, for the running costs of the system was £2,195, but a refund of £1,025.13 is being made to the residents in that respect by a credit against the service charge for 2009/10, reducing the amount included in the service charge for the year in question to a net figure of £1,169.87
 - c. Although there have been difficulties in achieving all the benefits from the system so far, We were satisfied that the project for installation of the system was properly conducted and that the actual costs of running it in the year in question, namely £1,169.87, are reasonable.
 - d. The Applicants' central argument is that it is of no benefit to tenants so they should not pay anything towards it; that it should be paid for only by Housing 21 who alone benefit for their business purposes. We did not accept that contention. The purpose of Housing 21's business at Charles Ley Court is the provision of sheltered housing and related support and care to its residents in its 350 Courts. The full support and care cannot be provided without providing other services. The Court Manager's job description we have seen sets out an extensive list of tasks that he/she has to perform. We accept that residents may not see many of those activities in their daily lives, but we are satisfied they are required to provide all aspects of the care and support which residents would expect, and the list is not necessarily exhaustive. To carry out so many of those tasks in the modern world, with ever more legal requirements, health and safety for example, the support of technology is inevitably required. We are satisfied also that it is important in Housing 21's provision of support and care that they should obtain "out of hours" cover when the Court Manager is off duty.

- e. Subject to what we say below regarding the deduction of 15%, we therefore found not only that the cost was reasonably incurred but that the running costs in the year in question, namely £1,169.87, taking into account the refund, are reasonable,
- f. The question remains whether a share of those running costs is payable by the Applicants by way of service charge. That depends on their tenancy agreement.
 - i. The Applicants signed their original agreement on 14th February 1998. So far as material to the issues in this case it is necessary only to consider the terms of the "New Conditions of Tenancy", including the Schedule of Services, to which the Applicants agreed on 19th December 2003. *(We should say here that we do not think that our conclusions would have been different under the terms of tenancy as they existed prior to 19th December 2003. (The Schedule to the 1998 agreement provided for "cost of renting a telephone and cost of business calls" ,"Central alarm costs"," Resident Manager's office extras and repairs to equipment and furnishings", "maintenance and repair of equipment", "Resident Manager's office equipment and furnishings", "management charge for other services which are not renewing equipment and general maintenance").*
 - ii. On page 3 of the New Terms is the Applicants' agreement to contribute "towards the costs [Housing 21] incur, or expect to incur in providing services (see attached Schedule of Services)".
 - iii. Referring to that Schedule the following heads appear to us to be relevant:
 - 1. Running costs of the Court: stated to include Court Manager Management Services which includes telephone rental; and also includes Court Office running costs
 - 2. Provision for renewal of equipment: stating that "charges relating to the above services may be applied to the following equipment Court Manager's office equipment including Court Office computer equipment
 - 3. Management charge for the provision of services including support services... . Support services include Court Manager Support Services, central control alarm services, support services administration costs.
 - iv. We were not persuaded that the provisions for renewal of equipment necessarily covered the installation of the terminals for the new system. The system is not merely a replacement of that which previously existed, namely a standard telephone system, but represented a significantly different system, namely a digital broadband system which allowed the remote access to Housing 21's information stored on a central computer, free telephone call between Courts and Housing 21's offices, and the possibility of an IT system, with a wide range of new facilities.

- v. However, we did find that the running costs of the system fall plainly within the running costs of the Court office and the management charge for provision of services including support services. We did not take the New Terms to mean that any such costs were confined to provision within the four walls of the office: it is perfectly reasonable for those costs to be incurred by accessing the system to facilitate the servicing of the office, bearing in mind that the duties of the Court Manager are integral to the purposes of the office.
- vi. Benefit. As indicated above, the Respondent's Counsel had, at the hearing, indicated he would, after the hearing, submit case law on the subject of benefit. He did so with accompanying written submissions all of which were also provided to the Applicants requesting that they make any further submissions themselves. By letter dated 23rd April 2009, the Applicants wrote to the Tribunal to the effect that they were surprised that we were "entertaining Housing 21's further attempt in the shape of Mr. Grundy to pervert the course of justice"; that they are concerned that all the evidence was given on both sides at the hearing and Housing 21 should be satisfied with that; that it was not the Applicants wish that any further evidence be served on the Tribunal by Housing 21. Having considered the Applicants submissions, we consider that they were not prejudiced, the submissions are not evidence but case law and that it was right that we should have the opportunity of considering all the relevant case law in coming to a conclusion as to the correct determination in this case.
- vii. The decision we have been referred to is that of *Yorkbrook Investments v Batten* [1985] 2 EGLR 100. Before we had been referred to that case our preliminary view had been that the tenancy agreement, which determines the liability to pay service charges, does not provide for the proportion of charges to be affected by the extent to which the Applicants benefited from any particular charge. If it were otherwise, any resident at Charles Ley Court might argue as to the degree to which he or she benefited and that would lead to total uncertainty and argument as to who was liable for how much. That would create an impossible situation for both tenants and Housing 21 alike. We find that the above case does not change our preliminary view.
- viii. Housing 21 has included a 15% reduction in the service charge account for April 2008 to March 2009 under the heading of "Administration", subheading "Recharge Direct Staff Services to Housing 21". We have also noted the submission that the 15% reduction is by way of gratuity. We do not consider that is consistent with a decision to make an assessment before arriving at a percentage. We consider it to be a proper recognition that not all costs incurred on the system actually benefit tenants, whether directly or indirectly, by way of services payable under service charges. For instance, we do not regard the provision of the accommodation and the landlord's statutory repairing obligations to be services. They are provided

in return for the payment of rent. Their provision, though, is inevitably partly assisted through the use of the system so that the 15% reduction in cost paid under service charge is recovered from income received in rents.

- ix. The 15% reduction means that the sum of £1,169.87 which we have found to be reasonable will thereby be reduced to a net sum of £994.39.
- x. Finally, while we consider consultation on projects such as this is highly desirable, it is not a requirement of the tenancy agreement or of Section 20 of the Landlord and Tenant Act 1985 in relation to the running costs of the system, so that any possible failure to consult does not affect our decision.

20. Section 20C. We found that the provisions of the tenancy agreement do not allow Housing 21 to recover as service charge its costs in connection with these proceedings, but in case we are wrong about that, by agreement of Housing 21, we made an Order preventing Housing 21 from doing so.

21. We made our decisions accordingly.



Chairman

A member of the Southern Leasehold Valuation
Tribunal appointed by the Lord Chancellor

Appendix

Case No	Panel Area	Court Name	Applicant	Housing 21
MAN/00DA/LSC/2008/0056	Northern	Turnball Court	Mrs Ellis & others	Housing 21
LON/00AR/LSC/2008/0433	London	Peacock Close	Mrs Craven	Housing 21
BIR/00CT/LSC/2008/0033	Midland	Paterson Court	Mrs Bunn	Housing 21
BIR/17UJ/LSC/2008/0025	Midland	Goodman Court	Mrs Jones	Housing 21
CHI/18UB/LSC/2008/0102	Southern	Stewart Court	Mr Bird & others	Housing 21
CHI/29UL/LSC/2008/0104	Southern	Lord Cornwallis Court	Tenants' Association	Housing 21