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**HM Courts  
& Tribunals  
Service**

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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**EASTERN REGION**

**LEASEHOLD VALUATION TRIBUNAL**

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**Case No** : CAM/26UC/LSC/2011/0121

**Property** : Nos 1 – 7 Waterside Court, Ebberns Road,  
Hemel Hempstead, Hertfordshire HP3 9FU

**Applicant Lessees** : John Markwell (flat 1)  
Mr Newman (flat 2)  
Chris Wright & Maggie Wright (flats 3 & 6)  
Hayley Markwell (flat 4)  
Naomi Scott (flat 5)  
Richard Morson & Karolina Uchymair (flat 7)

**Defendant Lessor** : Rightway Homes Ltd

**Inspection** : 1<sup>st</sup> February 2012

**Hearing** : 1<sup>st</sup> February 2012

**Determination** : 1<sup>st</sup> February 2012

**Written** : 11<sup>th</sup> April 2012

**Tribunal** : Stephen Reeder (lawyer chair)  
Marina Krisko BSc (Est Man) FRICS (valuer member)  
Najiba Bhatti (lay member)

**Application** : Application for a determination of the liability for, and  
reasonableness of, service charges pursuant to section 27A  
of the Landlord & Tenant Act 1985

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**DECISION**

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## DECISION

### The service charge determinations

The following service charges are deemed by the Tribunal to be reasonable and payable for the years in question :

#### **2007**

Refuse : £56.25  
Common areas cleaning : £367  
Gardening & landscaped areas : £650  
Communal water : £19.50  
Common areas electricity : £123.31  
Maintenance & repairs : £326  
Security (locks & keys etc) : £183  
Accountancy fee : £250  
Managing agent's fee : £1,151

#### **2008**

Refuse : £77  
Common areas cleaning : £797  
Gardening & landscaped areas : £320  
Communal water : £26.75  
Common areas electricity : £253  
Maintenance & repairs : £329  
Security (locks & keys etc) : £ zero  
Accountancy fee : £250  
Managing agent's fee : £1,151

#### **2009**

Refuse : £39  
Common areas cleaning : £800  
Gardening & landscaped areas : £320  
Communal water : £27.90  
Common areas electricity : £308  
Maintenance & repairs : £ zero  
Bollard replacement : £100  
Security (locks & keys etc) : £86  
Accountancy fee : £250  
Managing agent's fee : £1,151

#### **2010**

Refuse : £ 102  
Common areas cleaning : £ zero  
Gardening & landscaped areas : £150  
Communal water : £14.04  
Common areas electricity : £170  
Maintenance & repairs : £366  
Security (locks & keys etc) : £ zero

Accountancy fee : £250  
Managing agent's fee : £1,151

### **The costs of the Tribunal proceedings**

The Tribunal makes an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding the respondent from re-charging any of the costs of these proceedings as an additional service charge.

## **REASONS**

### **Procedural history**

1. On 28<sup>th</sup> September 2011 the Tribunal received the application. Directions were given by order dated 13<sup>th</sup> October 2011. The Tribunal inspected the relevant property and convened a hearing on 1<sup>st</sup> February 2012. The Tribunal completed its determinations and made its decision on 1<sup>st</sup> February 2012. This decision was not written up until April due to a period of serious illness suffered by the Chairman who wishes to apologise to the parties for any inconvenience caused by this delay.

### **The scope of the application**

2. By this application the named lessees challenged the service charges for the accounting years 2007-2010 inclusive. In respect of each year they challenged the following service charge items :
  - Gardening & upkeep landscaped areas
  - Refuse collection
  - Water
  - Common areas cleaning
  - Common area electricity
  - General maintenance & repairs
  - Replacement of bollard lighting in the car parking area
  - Security (locks & keys etc)
  - Accountancy fee
  - Managing agents fee

The parties confirmed that there was no dispute relating to the payability and reasonableness of the cost of insurance.

### **The Tribunal's jurisdiction**

3. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine

liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
  - (a) *Which is payable, directly or indirectly, for services, repairs, maintenance, improvements<sup>1</sup> 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.*

19. Limitation of service charges : reasonableness

- (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 reasonable 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.*
- (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 20C : Limitation of service charges : costs of proceedings

- (1) *A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
- (2) *The application shall be made –*
- (a) *.....*
- (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.*
- (3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

27A. Liability to pay service charges : jurisdiction

- (1) *An application may be made to a leasehold valuation 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 is payable.*

## **Inspection**

4. The subject properties are situated in a modern purpose-built block completed in or around November 2006. The Tribunal inspected the communal grounds/gardens and car parking area together with the communal/retained internal parts in the company of Ms Scott (flat 5) and Mr Wright (flats 3 & 6), together with Ms Lee of Rightway Homes (the lessor) and Mr Jackson and Mr Lambert of HML Shaw (the managing agent). In doing so the Tribunal were particularly concerned to form a visual impression of the gardening, the upkeep of landscaped areas, the refuse collection arrangements, water usage referable to an external stand pipe, the common areas cleaning, common areas electricity usage, general maintenance & repairs, communal security (locks & keys etc), and the management of the block and site. During this inspection and the subsequent hearing it was confirmed that the small enclosed garden areas immediately outside of the front and rear ground floor flats are demised to, and the responsibility of, the individual lessees of those flats.

## **Hearing**

5. For the applicants the hearing was attended by Naomi Scott (flat 5), Chris Wright (flats 3 & 6), and Karolina Uchymair (flat 7). In accordance with the signed consent forms before the Tribunal Ms Scott spoke as representative for all of the named applicants. We also had the benefit of additional arguments made by Mr Wright and Ms Uchymair. For the respondent the hearing was attended Nicki Lee of Rightway Homes (the lessor) together with David Jackson and Duncan Lambert of HML Shaw (the managing agent), all of whom addressed the Tribunal. We had the benefit of two indexed bundle of documents : one prepared by Ms Scott for the applicants, the other by HML Shaw. No expert evidence was relied upon. The parties relied upon no witness statements or written evidence beyond their respective statements of case which have been very helpful. The Tribunal carefully considered the documentation in the two bundles including the specimen lease for flat 2, the service charge accounts, and the useful summary of annual costs sorted under service charge items which is found in Ms Scotts email to Mr Jackson (in the applicants' bundle Tab F page 7-8). In relation to the lease the parties confirmed that, whereas the Fourth Schedule provides that the due proportion of the relevant costs due from each lessee is 1/6<sup>th</sup>, they are in fact recharged at 1/7<sup>th</sup> to reflect the fact that a seventh flat was constructed on the top floor of the block.
6. The applicants confirmed that the challenge related not to liability for the service charge items but to the reasonableness of the sums charged and of the standard of the relevant services and works giving rise to such charges. The Tribunal satisfied itself that on a proper reading of the relevant leases the service charge items recharged are payable in principle. Up until 2010 each lessee had paid a fixed monthly account since they purchased their lease(s) and none had received accounts detailing the services and repairs and the resulting charges. Mr Wright (flats 4 & 6) stated that he has never received a service charge demand and so had not paid anything to date. The applicants referred to emails in the bundles which were sent to the managing agents in 2010 seeking clarification and proof in relation to the charges now challenged. They described the response from the agents as "minimal". They referred also to the documentary disclosure relating to the charges provided by the agents in response to the Directions order as "in a chaotic state". In 2010 the lessees met up and discussed the management of the block. All had the same issues with the respondent : delays in repairs being carried out and a lack of adequate management of the block and grounds. At this time only flats 5 and 7 were paying the monthly service charge demands. The other lessees were all withholding payment whilst complaining that no adequate services were being provided. In June 2010 flats 5 and 7 threatened to withhold payment unless the agents responded to their inquiries. They claim the agents did not do so. They too have withheld payment since June 2010.
7. The bundles provided to the Tribunal include copies of correspondence between lessees and the managing agent in the form of letters and emails. The lessees are consistently complaining about the level of charges on the basis that the services provided are inadequate. Each of the issues raised on this application is raised in that correspondence. Such correspondence appears to have been met on some occasions with acknowledgement but little effective

action, and on other occasions by computer generated service charge demand reminder letters. This pattern of correspondence and contact culminated in the position set out succinctly stated in Ms Scott's email dated 12<sup>th</sup> August 2011 which is in the bundles before the Tribunal :

- Payment of service charges continued until problems began with the services
  - The lessees continued to pay despite no adequate cleaning being carried out
  - The lessees continued to pay despite no adequate responses to complaints from the managing agent for some 8 months
  - The managing agent failed to respond to an email warning that Ms Scott would withhold payment unless they replied to the complaints
  - The managing agent responded to such complaints and warnings by sending a service charge demand reminder
8. One simple but graphic example of the lack of adequate service level given during the hearing was that needles dropped in the common areas by Christmas trees being taken out in January 2010 were still there in May 2010. It is common ground that the respondent formally ceased providing internal common parts cleaning and external grounds gardening services in October 2010. Since that time both services have been undertaken by the occupiers of flats 3, 5 and 7. The lessees have also been attending to general repairs and maintenance tasks.

## **Determinations**

9. The Tribunal considered each of the accounting years 2007-2010 in turn and the parties addressed each of the relevant service charge items in each year. As the issues raised are largely generic to the accounting years the reasoning given for the 2007 determinations is relevant also to the 2008-2010 determination unless otherwise identified. As the service charge accounts round up or down to the nearest full pound the determinations adopted such rounded figures where appropriate.

### **2007**

10. Refuse collection is recharged at £129 whereas the three invoices in the bundle total £56.25 with a £73.32 invoice missing. The applicants have been seeking proof that this charge was incurred and in the sum recharged. The respondent has acknowledged this discrepancy and fairly conceded that it will only recharge £56.25.
11. Communal areas cleaning is recharged in the sum £367 for twice monthly visits to carry out a specification provided at page 194 of the bundle which comprises vacuuming of stairs and landings, wiping down railings, dusting of cills surrounds and skirtings, damp wiping of stair treads, spot cleaning of walls and both external and internal cleaning of the main entrance doors. The applicants accept that the sum recharged is reasonable for the job as specified

but question whether that work was adequately done beyond the hoovering. Davis Jackson of HML Shaw gave direct evidence that he inspected the block bi-annually and saw no problems and that the contractor delivered the specified works until the year 2010. On balance the Tribunal finds that the specified works were carried out adequately until 2010 such that the sum of £367 claimed is payable and reasonable.

12. Gardening and upkeep of landscaped areas is recharged at £650 for the year. The area covered is the rear garden down to the canal towpath boundary and the works were to the lawns and ground only. The respondent has now produced the relevant invoices and satisfied the applicants of the veracity of the sum recharged. The fact that it has taken until now to achieve this is a management failing rather than a reflection of the work itself. The applicants accept that the work was done and that the sum reclaimed is reasonable for the work done. In the circumstances the Tribunal determines that the sum of £650 is payable and reasonable.
13. The sum of £231 is recharged for communal areas electricity usage. This relates to the 6 internal lights, 4 space heaters, and 6 external lights seen on inspection. The timer mechanism controlling the lights appears to work adequately. The respondent confirms that meter readings are taken whenever the agent is on site and so the sums recharged are based on actual rather than estimated usage. The January-April invoice for £123.31 is provided. Two further invoices for £89.95 and £21.38 respectively are referred to but not provided, nor have ever been provided to the applicants despite requests. The respondent has very fairly conceded that it will recharge the invoiced actual cost of £123.31 only.
14. Communal water is recharged in the sum £263. The parties agree that this item relates solely to one external tap located in the external bin store which, when viewed on inspection, had no head on it and so could not be used. Ms Scott stated that she was the first lessee in occupation after completion in 2006/07 and there was no head on the tap then and has never been since. The landlord and agent simply do not know. The location of the tap has obvious utility and the resulting charges are payable in principle having regard to the lease. However, it is clear that, as there has never been a head on the tap, no lessee could or did use it. It follows that any actual water usage would be a mystery. The Tribunal notes that the relevant bills comprise a standing charge and estimated rather than actual usage for water. It also notes that a standing charge and estimated sewerage service is also billed. The landlord accepts that the sewerage charge is an obvious error but has only queried it with the supplier within the last month. In the circumstances the Tribunal finds that, until such time as the tap is usable only the water standing charge is payable. For 2007 this is £19.50.
15. The sum recharged in respect of general repairs and maintenance is £326. The invoice is produced and details the job as the replacement of an electric strike and door closer necessitating two site visits. The applicants accept the job was reasonable required. They wish to be satisfied that the job cost provides value for money. The respondents have explained how P&J Security were



appointed to carry out such minor jobs and is satisfied that their charges are competitive. The Tribunal is satisfied that this cost is reasonable and it is payable in full. The sum recharged under the heading 'security locks and keys' is £183 and the invoice dated 30.11.07 from the Lock & Key Centre is in the bundles. It relates to a communal entrance door. Ms Scott recalls that there was a problem with the door but argues that such a defect, coming so soon after the November 2006 completion, is a construction defect which should be remedied by the landlord constructor and not recharged to lessees. The Tribunal finds that the item falls within the lessees liability under the lease and that, absent any real detail as to what the defect or repair actually amounted to, is payable and reasonable as a service charge item.

16. The accountancy fee re-charged for 2007 is £705. It is accepted by all that John Gale Associates were only instructed in 2009 or 2010 to prepare the yearly accounts for 2007-2010 inclusive at the same time. The applicants accept the need for such accounts and indeed had been requesting the same for a long time. However, they argue that the cost is unreasonably high. The respondents contend that £705 is the 'going rate' and would have been achieved by obtaining quotes from its usual panel of accountancy firms. No further detail of that process has been before us. The Tribunal takes the view that the nature and extent of the accounts required for this development are relatively simple. This is apparent from the accounts themselves. If the accounting process was more complicated and time consuming than might be expected this will have resulted from the undue delay in preparing those accounts and it is neither envisaged by the lease nor reasonable that any additional cost caused by such delays should be recharged to the lessees. Moreover, the respondent was appointing one accountant to prepare four years of accounts at one time and so should reasonably be able to achieve an economy of scale on the cost for each yearly account. Having regard to all of these issues and applying its own specialist knowledge of the reasonable range of a 'going rate' for accountants accepting such an instruction the Tribunal determines that the reasonable charge payable for 2007, and for each of the accounting years, is £250.
17. The managing agent's fee charged for 2007 is £1,439. HML Shaw have very helpfully provided in the bundles the lengthy and detailed 'Charter for Property Management Services' setting out the tasks it is contracted to undertake and its charge structure. The yearly fee charged is fixed at £1,225 + VAT and is said to be within the ARMA guideline rates. The respondent explained that 2 quotes were obtained for management services and that whilst HML Shaw provided the higher quote they appeared to be the larger and the better of the two companies. The applicants argue that the developer Rightway was still carrying out some of the management during 2007 and that once HML Shaw did take over it took several phone calls to get any one problem dealt with. The Tribunal takes the view that a flat rate fee of £1,225 + VAT (equating to £175 per property) to deliver the management tasks set out in the 'Charter' is reasonable. However, it also takes the view that there were material failings in providing the management service contracted for as is evidenced by the earlier findings relating to 2007. In addition, whilst the annual service charge demands were sent out in September, November or

December of each year it is accepted that John Gale Associates were only instructed in 2009 or 2010 to prepare the yearly accounts for 2007-2010 inclusive and no adequate explanation has been given for that delay during which the applicants had been regularly requesting accounts so that they could verify the demands. In the circumstances the Tribunal determines that a reasonable management fee is the gross fixed fee charged minus 20% which produces a fee of £1,151.

18. So far as Mr Chris Wright is concerned the Tribunal is satisfied on the documents and information provided to it before and during the hearing that demands were sent to him at the two flats in the block and that, having regard to the lease, he is liable to pay the service charges determined by this Tribunal for this and each accounting year.

## 2008

19. The three invoices for refuse collection have now been produced and the sum recharged of £77 is reasonable and due. For the same reasons as given for 2007 the £797 recharged in respect of common areas cleaning is reasonable and due.
20. For the same reasons as given in 2007 the three invoices totalling £320 in respect of gardening & upkeep of landscaped areas are reasonable and due. A further invoice for £341.25 relates to the replacement of lighting bollards in the grounds. The applicants accept that bollards were damaged by drivers parking and required replacement. However, they contend that these costs were covered by the communal insurance as similar costs in 2010 were claimed against that insurance. The respondent accepts the force in this. The Tribunal determines that it is not reasonable to seek to recharge this item in these circumstances so that the sum of £300 is due in respect of gardening & upkeep of landscaped areas.
21. For the same reasons as given in 2007, and having regard to the fact that the documents before us show that the recharge is the sum of the charges incurred, the figure of £253 is reasonable and due in respect of common areas electricity.
22. In respect of the communal water charge, and for the same reasons as given for 2007, only the standing charge of £26.75 (incl VAT) is payable.
23. The sum of £464 is claimed in respect of general maintenance & repairs. The applicants question what works this relates to. The landlord identifies three invoices for the installation of a door closer (£264.38), inspection and testing of a blackened wall socket (£64.63) and installing a night-latch (£128.08) but confirms that it does not now intend to recharge the last invoice. The applicants accept this position. It follows that £329 is reasonable and due.
24. The £128 charge for security (locks & keys etc) also relates to the night-latch invoice which is withdrawn so that nothing is payable against that item.

25. For the same reasons as given in 2007 the accountancy fee payable is £250 and the managing agent's fee is £1,151.

## 2009

26. The refuse collection charge of £39 is agreed now that the requisite invoices have been produced.
27. For the same reasons as given for 2007 the £800 charge for common areas cleaning is reasonable and payable.
28. £750 is claimed in respect of the cost of gardening & upkeep of landscaped areas. However, the respondent accepts that each visit has been charged at £30 whereas it should be £20, and that 5 of the visits dated from 2008 rather than this accounting year. As a result the respondent fairly concedes that only the 'corrected' sum of £320 will be recharged.
29. The documented actual re-charged for common areas electricity is reasonable and payable subject to the respondent's concession made at the hearing that it will re-credit £126.69 which the accounts acknowledge there is no invoice for, so that the resulting sum payable is £308.
30. For the same reasons as set out for 2007 the only water charge payable is the standing charge which is £27.90 for this year.
31. Nothing is recharged in respect of general maintenance & repairs in this year, however a separate item of £100 is recharged as the balance of the repair cost to an external lighting bollard after the insurer has met the claim for the same. This sum is reasonable and payable.
32. The £86 re-charged in relation to security (locks & keys etc) is not disputed now that the invoice has been seen and is reasonable and payable.
33. For the same reasons as given for 2007 the accountancy fee payable is £250 and the managing agent's fee payable is £1,151.

## 2010

34. The sum of £102 re-charged for refuse collection and paladin hire is documented, is not disputed and is payable. It is not disputed that the local council dictated that a paladin had to be hired for refuse to be collected.
35. The applicant's contend that by 2010 common areas cleaning was not being provided at all adequately and they were carrying out themselves. The respondent accepts that there were problems with the contractor who was eventually dismissed. The Tribunal is mindful of the evidence on this issue recorded at paragraph 8 above. The Tribunal determines that, as no effective service was being provided, no re-charge is reasonable and payable for this item in this year.

36. The applicants state that a similar problem occurred during this year with the gardening & upkeep of landscaped areas so that insufficient works were carried out between January and April/May and no works at all after April/May which caused them to purchase a lawnmower and take over this task themselves. As the cleaners (Boxmoor Services) have the same invoice address and format as the gardener (Patrick Brady) they appear to be linked and may have suffered similar difficulties with their business and service. In any event the Tribunal largely accepts the situation to be as described by the applicants and determines that the sum of £150 which is recharged adequately reflects that position and is reasonable and payable for gardening for 2010.
37. The documented actual cost of £170 re-charged for common areas electricity is reasonable and payable.
38. For the same reasons as set out for 2007 the only water charge payable is the standing charge which is £14.04 for this year.
39. The sum of £386 has been re-charged for general maintenance & repairs. Upon examination it is apparent that £19.99 relates to refuse collection which is recovered elsewhere and the respondent concedes that it should be discounted. The remaining charges can be seen from invoices for a repair to the trades button and time clock in September 2010, and re-lamping of internal and external communal lighting in December 2010. The Tribunal is satisfied that both are reasonable in nature and sum. Accordingly, discounting the refuse item, the sum of £366 is reasonable and payable in respect of repairs and maintenance for 2010.
40. Nothing is recharged in respect of security (locks & keys etc) in this year. For the same reasons as given for 2007 the accountancy fee payable is £250 and the managing agent's fee payable is £1,151.

### **Costs of the Tribunal**

41. As the hearing continued until 4.40pm neither party made any detailed submissions on the issue of costs.
42. The Tribunal has considered the lease. It appears that neither covenant 4.7 (landlord's costs), the fourth schedule (service charge) or the sixth schedule (landlord's obligations subject to reimbursement) provide for the costs of this Tribunal to be re-charged as a service charge.
43. In any event the applicants seek an order pursuant to section 20C of the Landlord & Tenant Act 1985 Act. This provides a power to make an order which precludes the landlord from re-charging all or some of the costs of these proceedings as an additional service charge. The Tribunal is mindful that it has an absolute discretion regarding costs, that the LVT is intended to provide an accessible, low cost vehicle for the proportionate resolution of service charge disputes such as this, and that its decision should be just and equitable in all of the circumstances of this dispute.

44. Having regard to the substantive findings made as part of this Decision and to the overall circumstances the Tribunal determines that it is just and equitable to make an order pursuant to section 20C precluding the respondent from re-charging any of the costs of these proceedings as an additional service charge.

Stephen Reeder  
Lawyer Chair

April 2012

Caution

The Tribunal inspected the subject block and the gardens and grounds in which it is situated solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the block, gardens and grounds in this Decision are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.