



**Case Reference** : CAM/11UF/LSC/2013/0070

**Property** : 15 Jackson Court, Rose Avenue,  
Hazlemere, High Wycombe, Bucks,  
HP15 7TZ

**Applicant** : Norman Newton  
Unrepresented

**Respondent** : Housing 21  
Unrepresented

**Date of Application** : 10<sup>th</sup> May 2013

**Type of Application** : Determination of the Reasonableness  
and payability of service charges  
pursuant to Section 27A of the  
Landlord and Tenant Act 1985 (“the  
1985 Act”)

**Tribunal** : Judge J. Oxlade  
M. Henington BSc MRICS  
J. E. Francis

**Date and venue of  
Hearing** : 16<sup>th</sup> August 2013  
Law Courts, Easton Street,  
High Wycombe, Bucks, HP11 1LR

**Attendees:**

Norman Newton, Applicant                      Kim O’Neill, Housing 21  
Keith Stacey (12 Jackson Court)  
George Lee (17 Jackson Court)

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**DECISION**

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**For the following reasons, the Tribunal <sup>1</sup> finds:**

<sup>1</sup> The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) (‘the Transfer Order’) the functions of leasehold valuation tribunals were, on

- (i) **the estimated service charges demanded for the year 2012 in respect of a deficit of £5882 are reasonably incurred and payable**
- (ii) **the estimated service charge demanded for the year 2012 in respect of management charges at 16%, are not reasonably incurred and payable.**

## REASONS FOR DECISION

### **Background**

1. The Applicant is a tenant of 15 Jackson Court ("the premises"), which was let to him by Housing 21 ("the Respondent") under an assured tenancy on 2<sup>nd</sup> May 2009. It is located in a development of 32 flats for older and retired people.
2. The terms of the tenancy require the Applicant to pay weekly rent and a service charge, which at the time of entering into the agreement were £87.89 and £17.94 respectively.
3. The tenancy agreement referred to service charges as being the Applicant's contribution to the costs that the Respondent incurs or expects to incur in providing specified services, which services were set out in a Schedule of Services. The tenancy agreement further said that:
  - (i) the costs may be incurred before, during or after the week in which they are charged to the Applicant,
  - (ii) the service charge is variable, which meant that it varied, depending on the costs incurred in providing the services,
  - (iii) the costs are reviewed annually, dependant on the income received and the costs incurred in the past 12 months,
  - (iv) new service charges would be set according to a forecast of what costs were expected in the next 12 months and adjusted to take into account any credit or shortfall arising in the previous 12 months,
  - (v) any variation in costs would be shared between the other tenants receiving the services in either this development or this development and other developments,
  - (vi) any increase or decrease would be notified a month before it begins,
  - (vii) the Respondent can increase or decrease the service charge more than once a year,
  - (viii) each year the Applicant would receive a copy of the service charge calculation and the Leasehold Valuation Tribunal ("LVT") has power to settle a dispute.
4. Since his tenancy commenced the weekly service charge costs have increased as follows: £19.75 (from 5<sup>th</sup> April 2010), £28.18 (from 4<sup>th</sup> April 2011), £37.35

1<sup>st</sup> July 2013, transferred to the First-tier Tribunal (Property Chamber). In this decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

(from 2nd April 2012) and subsequently adjusted downwards to £33.76 (notified 20<sup>th</sup> July 2012).

5. The Applicant's concerns about increasing service charge costs had led him to look at the published accounts, and to ask questions. None of the answers resolved his concerns about the accuracy of the accounts and so the service charges which were demanded. Accordingly, he issued an application for determination of estimated reasonableness of service charges for the year 2012, which application was supported by 20 other residents.

6. On 4<sup>th</sup> June 2013 Directions were made for the filing of evidence, and the case was set down for hearing on 15<sup>th</sup> August 2013.

### Hearing

7. Prior to the hearing the Tribunal inspected the communal resident's lounge in the development and the Applicant's first floor flat.

8. The Applicant attended the hearing, along with two other residents. Ms. O'Neill attended on behalf of the Respondent, who is engaged as a consultant, on behalf of Housing 21.

### *Preliminary Matters*

9. At the commencement of the hearing, the Tribunal set out its jurisdiction, which is to resolve issues as to the reasonableness and payability of service charges, including estimated service charges, but not to "police" the accounts.

### *The Applicant's Case*

10. The Applicant's concerns first arose because he and other residents were notified of an increase in service charge costs for the period 2<sup>nd</sup> April 2011 to 31<sup>st</sup> March 2012 from £19.75 to £28.13, which was an increase of 44%. He asked for a meeting with the Respondent, and two representatives attended. His view of the meeting was that they did not have a working knowledge of accounts, but assured him that costs would reduce the following year, as this was a "one off". So, he went along with this on the strength of the assurance given.

11. However, on 22<sup>nd</sup> February 2012 he and other residents were notified of an increase in service charge costs for the period 2<sup>nd</sup> April 2012 to 31<sup>st</sup> March 2013 of £37.35 per week. (page 5). He and other residents were aghast, and so started to look further. At his request, the House Manager printed from her computer system a document entitled "Resident Charges – April 2012 to March 2013", (page 3 of the bundle). In the actual costs column for 2011 this showed a surplus brought forward from the prior year of £5882, but in an earlier document entitled "Resident Charges – April 2011 to March 2012", (page 1 of the bundle) this figure was shown as a deficit carried forward from the actual column for 2010 and was part of the forecast for 2011. Putting these two documents together, he was concerned that the Respondent had for 2012 added a deficit and a surplus, which was not right, and this error was repeated for 2013.

12. His concern was that page 3 showed the figures to be false, and that this falsity was being carried through from year to year, and would impact on 2013. The Applicant had some knowledge of accounts and started to scrutinise the figures comparing pages 3 and 4, and found further errors: the total service charge expenditure forecast for 2011 (page 3) was said to be £42,391, but on page 4 the forecast was £41,002; the actual costs for 2011 (page 3) were £48,785, but on page 4 were £48,549; the (under)/over spend for 2011 (page 3) was £6394, but on page 4 were £7547. As one can only have one set of figures, he was very alarmed.

13. He noticed that the period of actual costs had changed, and so whilst it was said that the period was April 2012 to March 2013, in fact the period would be 1<sup>st</sup> January to 31<sup>st</sup> December 2012. In short, his concern is that the accounting years are wrong, and so the estimated costs are wrong.

14. So, the Applicant got in touch with Mary Woolhead at the Respondent's head office. She was new to the organisation, and could not assist him. He had a meeting with Mark Lawson and Samuel Naylor-Wedlon, but this opened with them saying that they were happy to answer his questions, without going into detail. He was dismayed as he had thought it was the whole point of the meeting. However, subsequent to the meeting on 20<sup>th</sup> July 2013 they were notified that the service charges would reduce to £33.76, which he was told related to errors in gardening charges.

15. Kim O'Neill started in July 2012 and had written to the residents. The intention was to move the date on which accounts would be produced – from April to October – so that the actual final figures could be used on the accounts, to promote accuracy.

16. The Applicant was concerned about how the management charges had been arrived at. He was told that they amounted to 16% of the service charge costs, less the house manager's cost, so (on page 3) 16% of the forecast of £38539 for 2012 would give £6166.24, but the management charges were £7978, so amounting to an overcharge of £1802. The Respondent had tried to do the calculations, without satisfactory resolution. The Respondent was also wrong to charge management charges on the disputed sum of £5882, amounting to £841 as the applicant felt that the £5882 had already been charged in the 2011 year and could not be carried forward again in the 2012 charges.

17. The Applicant also noted that in the handbook entitled "Residents' Handbook", which was given to him before entering into the tenancy agreement (page 40) the management charge was said to be currently 15%, and he had not been consulted about any change as required by page 39, nor notified of any change.

18. In summary, the Applicant wished it to be declared that the estimated service charge accounts were not accurate and that they should be reduced by £5882 (referred to in paragraph 11), £841 (referred to in paragraph 16), and £3130 which is the difference between 15% and 16% service charge.

*The Respondent's Case*

19. Ms. O'Neil set out the Respondent's case.

20. She ran through differences in figures at page 3 and 4: for example, on page 4 the actual costs under direct staff service for 2011 were £21,944, and £15,361 on page 3 under the same heading. Her point was that the document at page 4, was for internal accounting purposes, and reflected the actual costs, not all of which are passed onto the Applicant and other residents as service charges. The Applicant should not have been provided with page 4, which had only served to confuse matters.

21. The Respondent had provided to the Applicant and other residents, documents at page 14 and 15, entitled "Jackson Court service charge income and expenditure account for the year ended 31<sup>st</sup> December 2011" for the purposes of trying to put the information into a more digestible form, and the actual final figures entitled "Resident Charges – April 2012 to March 2013". This showed how the Respondent had arrived at the new figure of £33.76 per week for service charges, to be backdated to 2<sup>nd</sup> April 2012, and showing that the sum of £5882 as a deficit brought forward.

22. The sum of £5882 was a deficit which arose in 2010 as the costs exceeded income, by that amount. Therefore, the deficit had to be carried forward into the accounts for 2011, so that it could be recovered through service charges. Accordingly, in 2011 the actual expenditure was forecast to be £41,002 and with the deficit of £5882, the total service charges needed in 2011 were £46,883. There had in the past been a surplus brought forward, seen at page 16, as in 2008 there was an excess income over expenditure of £5740, which was carried forward and resulted in a net surplus in 2009 of £4152, seen at page 1.

23. As to management costs, in 2012 a decision was made to simplify the charging structure, as until then there were administration and management costs charged under 3 different headings. It was thought preferable to have this shown as just one figure. The actual costs under this head went down, although because it was more transparent, the costs appeared to have increased. The percentage had increased from 15% to 16%, but there was consultation in April 2011. Ms. O'Neill did not consider that the handbook was part of the tenancy agreement, and so not binding. Further, she pointed out that the handbook said that the management costs were "currently" 15%, so they were not fixed. She produced at the hearing copies of letters sent out to other developments seeking consultation and notifying the change, but did not have copies for Jackson Court. Further, though she said that tenants had responded, she could not say that any tenant from Jackson Court had done so.

24. Ms. O'Neill's made the point that the Respondent had sought to explain this to the Applicant, so preventing the need for an application.

25. At the end of the hearing the Tribunal reserved its determination. The Applicant sent to the Tribunal the original handbook issued to him, for copies to be taken.

The Relevant Law

26. The Tribunal has jurisdiction by virtue of section 27A of the 1985 Act, which is set out in annex A, along with the other statutory provisions that have been considered in this application.

Tribunal's Findings

27. The Tribunal has carefully considered all of the evidence submitted and submissions made by the parties.

*The £5882 deficit*

28. The Applicant relied on pages 1 and 3 of the bundle, and the Respondent on page 15 of the bundle. It is clear from Ms. O'Neill's explanation of the differences of pages 1 and 3, that page 3 is for internal purposes, and can be disregarded as a document which assists in establishing what costs are charged to the service charge account. It is a pity that page 3 was provided to the Applicant, as this amplified the dispute - rather than resolving it.

29. Nevertheless, from an analysis of actual income and expenditure year-on-year, it is clear that:

- in 2008 there was a deficit of £1588 (page 16) which was carried forward into 2009;
- in 2009 there was a surplus of £5740 (page 16) and so (after deducting the deficit of 2008 of £1588) there was a net surplus of £4152;
- the net surplus of £4152 was carried forward into 2010, but as there was a considerable shortfall of £10,034 (Page 1) between actual income and expenditure, the net deficit was £5882;
- the new deficit of £5882 in 2010 was carried forward into 2011 (page 15) and together with a deficit in 2011 of £2549, there was a total deficit to carry forward into 2012 of £9430.

30. The documents collectively show that deficits have been repeatedly brought forward, over several years, where income has not been sufficient to meet expenditure together with an existing deficit.

31. It follows that the estimated service charge costs for 2012 - which include a deficit of £9430 - are £33.76 per resident per week, which the Tribunal finds to be reasonable and payable. Under the terms of the tenancy, old deficits are recoverable whether or not incurred in a different year and so the Tribunal has not asked for an explanation as to why such large deficits have accrued, as it is not relevant for the purposes of this application.

*Management Costs*

32. The Tribunal has been provided with a copy of the handbook, which is a true copy of that which was supplied to the Applicant. Mr Newton's unchallenged

evidence was that he was given a copy prior to entering into the tenancy agreement. At page 6 of the handbook, in the “welcome” section of the booklet, the resident is advised that the booklet “also sets out your rights and responsibilities as a resident”. Section 9 is headed “what will I pay”, and at page 40 says that the management charge is “currently 15%”. Section 4, under the heading “your views count” at page 18 says that the Applicant will be consulted about the provision of rent and service charges, by sending letters, through annual Court consultation meetings, and tenant’s association.

33. The tenancy agreement does not suggest that the resident’s handbook forms part of the agreement, nor does the section in which the parties have signed the agreement. However, the booklet itself does say that it sets out “rights and responsibilities”, and was given to the Applicant prior to entering into the agreement. Accordingly, the Tribunal finds that the handbook contains terms of the tenancy and is legally binding on both parties.

34. The handbook sets out different methods of consultation, which are a prerequisite to changes in how service charges arrangements are made.

35. Though Ms. O’Neill said that the change in management costs had been consulted and tenants had responded, she was not part of the organisation at the time, and was not able to produce any documentation to show that consultation had taken place with residents in Jackson Court nor that they had replied. The Tribunal accepts Mr. Newton’s evidence that he was not consulted on the question of restructuring of costs.

36. In the circumstances, the Tribunal is not satisfied that the Respondent has varied the management charges in accordance with the consultation requirements as set out in the handbook, and so finds that they are not demanded in accordance with the agreement. Ms. O’Neill did not undertake an alternative calculation of management costs on the “old” basis, and so the Tribunal is not able to make specific findings about what the costs could reasonably be recovered on the old basis.

#### *Costs and fees*

37. There was no indication that the Respondent would charge costs of responding to the application to the service charge account, and so the Tribunal has not considered whether or not to make an order pursuant to section 20C of the 1985 to prevent the Respondent doing so.

38. The Tribunal has not directed a refund of the Applicant’s costs of issuing the application. This is because he has only been partially successful in the application, and so would have incurred costs in any event on that part on which he was not successful.

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Joanne Oxlade

Judge First-Tier Tribunal, Property Chamber  
9<sup>th</sup> September 2013

## Appendix A

The 1985 Act as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

### *Section 18*

“(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord’s cost 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 of which the service charge is payable.

(3) For this purpose

- (a) costs include 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 period.

### *Section 19*

(1) “Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred; and
- (b) where they are incurred on the 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 27 A*

(3) An application may also be made to a leasehold valuation tribunal for a determination whether it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.