

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/24UH/LIS/2006/0018

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**RE: FLAT 9, CHRISTYNE COURT  
STAKES ROAD, PURBROOK, HANTS PO7 5XT**

**Parties**

Mrs Theresa Passmore  
(The Applicant)

and

Grange Management (Southern) Limited  
(The Respondents)

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Application dated: 15<sup>th</sup> May 2006  
Pre-Trial Review: 15<sup>th</sup> August 2006  
Hearing date: 24<sup>th</sup> November 2006  
Decision: 18<sup>th</sup> January 2007

**Tribunal**

Mr D M NESBIT JP FRICS FCI Arb – Chairman  
MR M R HORTON FRICS  
MRS H CLARKE – Barrister

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**RE: FLAT 9, CHRISTYNE COURT,  
STOKES ROAD, PURBROOK, HANTS PO7 5XT**

**Introduction**

1. This case arises from an application dated 15<sup>th</sup> May 2006 by Mrs Theresa Passmore, the lessee, for the determination of liability to pay service charges in accordance with Section 27A, Landlord & Tenant Act 1985 (The Act). The application related to the amount of service charges under various headings, and over the period 1998 to 2006. The application included a request under Section 20C of the Act, to restrict the landlords' recovering costs in connection with the procedure before the Tribunal as service charges.

**The Law**

2. Section 18 of the Act as amended sets out the law in respect of the determination of service charges as follows –
  - 2.1 “(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 or insurance for the landlord's costs of management....
    - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.”
  - 2.2 Section 19(2) of the Act states:-

“Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable...”
  - 2.3 Under Section 27A of the Act, headed: “Liability to pay service charges: jurisdiction” it is stated:-
    - (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 it is payable

- (2) Subsection (1) applies whether or not a payment has been made.

### **History of the Case**

3. Following the application, provisional Directions were issued on 21st July 2006 for a Pre-Trial Review, which was held at the property on 15<sup>th</sup> August 2006. The Applicant was present and other lessee flat owners, who had applied to be 'joined' in the application, and the Director and Regional Manager of the Respondents, Grange Management (Southern) Limited. The application and the law and procedures were outlined, it was agreed that there were no legal disputes arising, and there had been no prior discussions between the parties arising from the application.
4. On 23<sup>rd</sup> August 2006 further Directions were issued for detailed responses to be provided on all matters raised in the application, together with a schedule of documents to be available for the Hearing.

### **Inspection**

5. Prior to the Hearing on 24<sup>th</sup> November 2006, the Tribunal made an external inspection of the building and grounds, and an internal inspection of the common parts, and noted communal facilities available to all residents. We were accompanied by the lessees. Grange Management were not present or represented.

### **Hearing**

6. The Hearing took place at Havant Civic Centre. The Applicant was present and represented by her sons, Andrew and Trevor Passmore, together with lessees or family members representing 8 flats. Apologies had been given in respect of a further 3 flats. The Respondents were represented by Mr T Martin, Chief Executive, Grange Management, and Mr M Twinley, Technical Services Director.
7. Mr Martin confirmed that the detailed and full submissions that had been made by Mrs Lorraine Copsey, Director of Grange Management, dated 5<sup>th</sup> October 2006, was their response to matters

raised by the original Applicant and subsequently. Mr Martin responded to specific points that had been raised and, in particular, the Grange Management fees. He pointed out the management fees were 'capped' and were in line with other competitor's charges, which reflected the volume of units within a building, the work required for all maintenance, the procedure for the procurement of tenders for works, and the building insurance.

8. Specifically, Mr Martin commented that it was the lease obligations that set out the contractual duties for lessees in respect of payments. His company were well aware that numerous lessees had limited incomes, which were reflected in the annual review of costs and expenses for Christyne Court.
9. Mr Andrew Passmore confirmed that the response before the Tribunal to the very extensive submissions made by Grange Management represented the views of his elderly mother. He confirmed that there had been many years of concern as to rising costs and representations made to Grange Management. His mother, and many other lessees, were seriously affected by rising service charge costs which outstripped inflation, and as many lessees had fixed incomes there were real concerns about the lessees' ability to pay. He urged that Grange Management should be more diligent with greater consultation and discussion with the lessees.
10. Mr Trevor Passmore maintained that service charges should be fair and reasonable, and that no alternative costings had been provided for many of the elements of cost included in the annual budget. There must be some regard to inflation and the Retail Price Index. He particularly criticised the decrease in the services that had been provided to the residents, specifically when the House Manager had been unavailable for some considerable time.
11. Mr Martin confirmed there was no resident House Manager and there would be a financial adjustment to the year end accounts. There were pension arrangements, which needed to be taken into account for permanent salaried employment in the residential social landlord sector.
12. In answer to questions from the Tribunal, Mr Martin confirmed he had only been in post for 12 months, but one of the roles of the

House Manager was to support and assist the residents. There were aspects about the quality of performance of the past holder, and an interim Manager had been appointed, but on a time share basis with another property, but which only provided two hours per day.

13. Mr Martin confirmed Grange were responsible for some 160 schemes, providing some 3300 sheltered housing flats, and the management charge was £296 per flat, with some variations. He outlined the scope of work included within their charges.
14. In respect of the insurance premium, there was a regular review of sums insured to reflect current building costs, and a good claims history reflected a lower rate per cent. The building policy covered all elements, though there was a separate lift policy with an additional premium. Mr Martin confirmed that only the net premium was charged, no commission was received.
15. In respect of the annual budget for Christyne Court prepared for service charge demands, Mr Martin outlined the current procedure. In September there was a general review of expenses, in October a draft budget was circulated to all lessees inviting observations. In November a meeting is held at which the budget is reviewed, from which final service charge demands are issued. Each lessee was directly consulted, there was no current Lessees/Residents Association. All monies were held in a separate account. For the reserve fund, there was a contribution of £250 p.a. per flat for future major capital works. The reserve fund for the building was £25,622.43.
16. Mr Martin indicated that Grange Management was a not-for-profit organisation, and was a subsidiary of Affinity Sutton. It was not reasonable to operate without a surplus, but he disclosed that the margins were only 2/3%, which he maintained was extremely competitive.
17. Grange Management were required to comply with the private retirement housing Code of Practice issued by the Association of Retirement Housing Managers, and his company had been involved in developing the original Code. The original Code had been approved under Section 87, Leasehold Reform, Housing & Urban Development Act 1993.

18. Responding Mr A Passmore commented that there should be more written and prior information in respect of the annual budget. Lessees' means should be taken into account. He expected a full credit for "costs" of the absent House Manager. There had been a history of disputes regarding the House Manager. Any holder of that position should be subject to a regular appraisal process.
19. In respect of the reserve fund, Mr Twinley confirmed there had been an approximately 5% increase. In respect of a written submission from Mr E White of Flat 25 as to building costs, he commented that windows formed part of the freehold building, but there were no current plans to replace all windows in one contract.
20. The Tribunal invited any further comment or observations from other lessees present. The Tribunal noted those comments as to the cleaning of gulleys, light bulbs and concern as to a proper credit for the absence of the House Manager.
21. In conclusion, Mr A Passmore requested that the Tribunal order that no costs be charged to the lessees for the Respondents' attendance and expenses for the Tribunal hearing.

### **Consideration**

22. The Tribunal fully reviewed all of the case papers, including the detailed representations made on behalf of the Applicant lessees and by Grange Management. The Tribunal reviewed their inspection notes and those made at the Hearing. The Tribunal reviewed the documents received and, in particular, the standard lease for the building.
23. The Tribunal noted the building had been constructed originally by Stoneham Developments Ltd, and leases were granted circa 1988 on the basis that after completion of the development, the landlords agreed to sell to Downland Retirement Homes Ltd (predecessors to Grange Management). The lease requires that all tenants (flat owners) be aged 60 or above, and the development comprised the 25 flats, together with the rear communal car park and the front and rear gardens. Each lessee had an obligation to contribute 1/25<sup>th</sup> of the expenditure incurred by the landlord in accordance with the provisions of the lease, and specifically the Third Schedule.

24. That Schedule requires the tenants to pay on a quarterly basis for the provision of services as set out, together with a management fee, which shall not exceed that permitted by the Department of the Environment, Housing Associations managing sheltered housing schemes.
25. The Schedule also sets out at para 1 (iii) the procedure for the submission of certified accounts in respect of the previous year's costs and expenses. The Schedule sets out in para 2 the specific matters being the landlords' obligations which are recoverable as service charges. Specifically, The Tribunal noted the general requirement covering the provision of all other services provided by the landlord in and about the maintenance, and proper and convenient management and running of the estate and the gardens and grounds thereof.
26. The Tribunal were familiar with, but reviewed, the retirement housing Code of Practice and the revision effective from 2<sup>nd</sup> January 2006. In particular, the Tribunal noted in the introduction, that with the increase of resident management companies, greater participation of leaseholders in management, it is leaseholders themselves who can often decide the level of service and standards they want, subject to the law and the terms of the leases. There may be occasions where the leaseholders with good reason do not want a Manager to follow all of the requirements of the Code.
27. The Tribunal accepts that the administration and management of blocks of sheltered housing flats, especially those with a range of communal facilities, inevitably involves greater responsibilities and costs than blocks of privately owned flats.
28. The Tribunal assumes each lessee will have been legally represented and aware of their responsibilities and obligations at the time of the purchase of their flats. Each purchase involves a substantial capital investment and all lessees, irrespective of their personal circumstances, will expect their building to be efficiently and properly managed and maintained, so that the value of their flat is enhanced.
29. The lease terms impose clear obligations on all lessees to pay for the provision of services in their service charges, but which does not

permit a reduction due to a change in personal financial circumstances.

30. As Grange Management acknowledge, and this Tribunal understands, to meet increasing costs, many of which would be beyond the immediate control of Grange Management, an annual increase in expenditure is inevitable. The extent of such increase, however, is a matter for formal and proper consultation between Grange Management and the lessees. It is essential that in any block of flats, there should be full co-operation with all parties and a mutual understanding of collective responsibilities. There should be benefits to the lessees of Christyne Court, for example in relation to the annual insurance premium, with the purchasing power of the landlords with a very substantial policy covering many buildings, whereby the premium rate per cent is reduced. Further, in respect of gardening work, a contract involving several blocks of flats, should produce a lower charge than with a single contract with an independent contractor.
31. It is clear to the Tribunal that there has been a problem involving the resident House Manager, which should have been resolved, but which appears to have continued over a period. It is clear from the evidence and the views expressed to the Tribunal, that the lessees have considerable concerns on that matter, and which have been dealt with quickly and effectively. Grange Management have confirmed appropriate allowances will be made.
32. Detailed information has been provided by Grange Management as to the calculations and costs of a wide range of expenditure for the building. Whilst there were some general comments and criticisms of some elements of the total budget, the main thrust of objection on behalf of the Applicant was that costs were excessive, and should have been reduced more in line with RPI movements. There is no provision in the lease however for service charge costs to be subject to RPI indexation or similar. Neither for the Applicant, or from any of the other lessees, were any alternative estimates or costings submitted for individual items which might serve to indicate that charges were excessive.
33. The Code of Practice in relation to management charges states "Managers must charge management fees which are reasonable



having regard to services provided. Managers should calculate management fees as an average cost per unit of accommodation". Further managers should identify management fees separately in budgets and accounts presented to leaseholders. The Code also notes the limit on fees applicable to registered social landlords.

34. A balance has to be struck as to what is reasonable and what might be terms excessive costs. From a full review of all of the evidence, the Tribunal is not convinced that there have been excessive or unreasonable service charges. The building and grounds appear to be satisfactorily maintained, to comply with the landlords' lease covenants.
35. The Tribunal is grateful to all parties for the detailed explanations that have been given, and the time spent on the preparation of full submissions. It is hoped that the application, the Hearing and these Reasons will assist all parties for the future.
36. The Tribunal determines, however, there are no grounds for reductions in any of the service charges, nor specifically in any of the individual matters that have been raised.

### **Determinations**

37. The Tribunal determines that the service charges raised in respect of Christyne Court and for the periods in question, are reasonable and have been reasonably incurred and are payable accordingly.
38. Although Grange Management indicated at the Hearing they would not be seeking to recover charges in respect of the preparation for, or attendance at the Hearing, the Tribunal makes an Order under Section 20C of the Act refusing the landlords any ability to recover their costs as service charges.

  
D M NESBIT JP FRICS FCIArb  
Chairman