

STATEMENT OF OPPOSITION

Respondent's name: [REDACTED]

Respondent's email: [REDACTED]

Respondent's address: [REDACTED]

Representing: L&GAH Shared Owners at [REDACTED]

Introduction

My name is [REDACTED] and I am the leaseholder of a Shared Ownership flat in East London. My property is in the [REDACTED] I am representing active respondents shared owners at [REDACTED]. I believe the facts contained in this statement are true.

We oppose the Applicant's and each New RP's request to appoint replacement providers for the Properties without carrying out consultations as described under Section 20 of the Landlord and Tenant Act 1985. Our arguments are presented below under the sections "Change in unit fee", "The applicant's justification", and "Impact on service quality".

We also oppose the Applicant's and each New RP's request to recover from each Respondent the unit cost it incurs under the Varied Management Agreement with their Existing Provider. Our arguments are presented below under the sections "The length of the agreements" and "The nature of the agreements".

Change in unit fee

The applicant requests to appoint replacement providers for the Properties without carrying out consultations and states that the unit fee paid by the respondents may be higher. The applicant has already done this for [REDACTED], resulting in higher unit fees for the Respondents. For example, the applicant replaced the provider Richmond Housing Partnership (RHP) for the

properties at [REDACTED] from RHP in September 2023. In 2022, RHP increased their management monthly fee from £20 monthly for the year account 2020/2021 to £21 monthly for the year account 2021/2022 and to £33.55 for the year account 2022/2023 (from £252 per year to about £402.60 per year in 2022/2023, resulting in an increase of about 60% year-on-year), and without consulting the shared owners despite an increase of over £100 per year.

In October 2023, RHP was replaced by Southern Housing, which also increased the management fee to £36.54 for the year account 2023/2024. The increased costs are still a clear form of financial prejudice.

The effective operation of [REDACTED] is currently managed by POD rather than by RHP or Southern Housing (whose services mainly refer to rent/service charge/ground rent collection in our case). Shared owners of the estate are already paying a management fee to POD, which is included in the service charge and amounts to approximately £250 per year. Consequently, shared owners at [REDACTED] essentially bear the burden of duplicated management fees.

The applicant's justification

The applicant has failed to provide sufficient justification for the dispensation. In our view, a dispensation should not be granted lightly, and an application for dispensation should be backed by strong, compelling reasons. For example, if the applicant was requesting dispensation in relation to qualifying works that were needed to eliminate an immediate risk to health or safety, then we would agree that there would not be time to carry out consultations and that it is reasonable to dispense of their obligation to consult.

The applicant mentions their need for flexibility and that it may be necessary to appoint a Replacement Provider for reasons of good leasehold management or because the Existing Provider intends to withdraw from providing housing management services. In our view, the applicant's statement of case suggests that they are pursuing this matter for reasons of operational convenience. Operational convenience alone is not a valid reason to bypass our statutory protections.

Even if an Existing Provider immediately withdraws from providing housing management services, there are alternative solutions in which the applicant can still consult the leaseholders. For example, the Applicant could temporarily appoint a Replacement Provider for a short period, not exceeding two calendar months, and use this time to conduct consultations before appointing a new long-term Provider.

Impact on service quality

The Applicant emphasises in section 33.1 of the Statement of Case, that The Varied Management Agreement with that Replacement Provider would be materially the same as the one with the Existing Provider. However, this does not mean that the quality of the services provided will be the same. The replacement provider may offer lower-quality services than the Existing Provider, as it happened since October 2023, when Southern Housing was appointed as the new Management Provider from L&GAH, whose services have been inferior since then. This situation would cause prejudice to the respondents.

Please consider that multiple organisations in the United Kingdom have invested resources in measuring the quality of the Services provided by the Providers and have found differences in quality. One of these organisations is the Housing Ombudsman Service, which publishes individual performance reports about the Providers on an annual basis. For example, for the period between April 2022 and March 2023, the Housing Ombudsman Service determined that Richmond Housing Partnership had a maladministration rate of 83% and, therefore, “The landlord performed poorly when compared to similar landlords by size and type”. During the same period, the Housing Ombudsman Service determined that Flagship Housing Group Limited had a maladministration rate of 23% and therefore “The landlord performed very well when compared to similar landlords by size and type”.

The Applicant also measures the quality of the Services provided by the Providers with KPIs as specified in Schedule 3 of The Varied Management Agreements. If the Applicant believes that the quality of the services is the same or similar with all the Providers, this should be substantiated with evidence.

Undoubtedly, the metrics used when measuring the quality of Services provided by the Providers will be subject to debate. However, this only reiterates the importance of consultation in safeguarding the interests of leaseholders. The leaseholders should be allowed to provide their opinion on what measures of quality are important to them.

The length of the agreements

The agreements are qualifying long-term agreements even if there were no leaseholders when the agreements were entered into. The Service Charges (Consultation Requirements) (England) Regulations 2003 make an exception for agreements entered into when there were no tenants of the building; however, this exception is only applicable if the agreement is for a term not exceeding five years. These agreements are for ten years, a five-year initial term and a five-year extended term.

We understand that it wasn't possible to conduct consultations when there were no tenants at [REDACTED] when L&GAH inherited the Management Provider when signing the deed; however, we find a ten-year term to be excessively long and against the spirit of the legislation. Allowing such an agreement would set a bad precedent. A developer could arrange agreements for 999 years and avoid having to consult residents for the entire duration of their lease.

The nature of the agreements

We believe that the applicant's procurement exercise to appoint the providers was unreasonable and resulted in unfair agreements that have caused financial prejudice to the respondents. We think that the tribunal should consider this when determining whether to grant a dispensation, as it would be unreasonable to dispense with the consultation requirements if the agreements are clearly unfair to the leaseholders.

In our view, these management agreements were created when the applicant did not know the service needs of the properties to which the agreements apply. This is because many of the properties had yet to be developed. As a result, the applicant created agreements that were broad

in scope and for the full management of the properties. The providers bid a unit price for the full management of the properties.

In many of the properties, the applicant is a tenant under a lease with another landlord, and the head landlord has also appointed a management company to manage the properties. For example, for [REDACTED] the applicant has a lease where the landlord is St Berkeley Homes. The head landlord also appointed a management company.

The [REDACTED] is managed by two management companies hired by the applicant and the head landlord to provide overlapping services. These companies are Southern Housing, appointed by the applicant, and POD, appointed by the head landlord. As a result, respondents who own a property at the [REDACTED] pay two sets of management fees: an annual management fee of £438.48 for Southern Housing and one of approximately £250 for POD. The total amount paid by the respondents in management fees, approximately £689, is unreasonable. The same situation is occurring in other developments.

This management arrangement would be reasonable if the two management providers supplied completely different services. However, they overlap. Schedule 2 of the agreement specifies services such as securing, cleaning, and maintaining the building. These services are the responsibility of the head landlord, and therefore, POD carries out these services.

Additionally, these agreements should not specify any services that are not covered under the service provision clause in our leases. For example, the service specification for void works relates to the provision of services that are not recoverable under the terms of our leases.

These agreements are qualifying long-term agreements, and if we were to be consulted, I would advise the landlord to remove services that are not needed for the property or are not permissible under the terms of our lease. This would result in lower unit fees bid by the providers during a procurement exercise. Therefore, we can argue that the lack of consultation has resulted in inflated unit fees and that this has caused financial prejudice to the respondents.