

STATEMENT OF OPPOSITION

Respondent's name: [REDACTED]

Respondent's email: [REDACTED]

Respondent's address: [REDACTED]

Representing: [REDACTED], [REDACTED], and [REDACTED]

Introduction

My name is [REDACTED], and I am the leaseholder of a Shared Ownership flat in West London. My block is the [REDACTED] and it is part of the [REDACTED]. I am representing active respondents [REDACTED], [REDACTED], and [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 "Unreasonable service schedule".

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 increase. The Applicant has already done this for some of the Properties, resulting in higher unit fees for some of the Respondents. For example, the Applicant replaced the provider for the properties at [REDACTED]

from Stonewater to Pinnacle. As a result of this change, the unit fee paid by leaseholders at [REDACTED] increased from £121.19 per year to £437.97. The Applicant decided to subsidise this rise temporarily; however, the increased costs are still a clear form of financial prejudice.

In our view, if the Applicant or any New RP desires to appoint a Replacement Provider in place of an Existing Provider, it should always conduct a consultation as described under Section 20 of the Landlord and Tenant Act 1985.

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 the need for flexibility and the potential necessity to appoint a Replacement Provider for good leasehold management or if the Existing Provider intends to withdraw from providing housing management services. In our view, the Applicant's statement of case suggests they are pursuing this matter for reasons of operational convenience, which is not a valid reason to bypass our statutory protections.

Even if an Existing Provider immediately withdraws from providing housing management services, alternative solutions exist that would still allow for consultation with leaseholders. For instance, 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 a Replacement Provider would be materially the same as with the Existing Provider. However, this does not guarantee that the quality of the services provided will remain

the same. The replacement provider may offer lower-quality services than the Existing Provider, causing 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.

Please know that calculating service charges for each property is one of the providers' responsibilities. Failure to perform this service accurately will cause financial prejudice to the respondents. In 2024, Southern Housing severely overestimated the service charges due from the respondents at the [REDACTED]. After multiple complaints, the Applicant started an investigation, which revealed that the charges from Southern Housing did not align with the

service charge budget and that most respondents at the [REDACTED] had been overpaying by up to £112 per month.

Eligibility of providers

Southern Housing wasn't selected as a provider in the 2019 competitive procurement exercise. The thorough procurement exercise is highlighted in the statement of case as one of the reasons to favour dispensation. As the Applicant explained, on 16 December 2022, Optivo and Southern Housing Group Limited amalgamated with each other to create Southern Housing. Since Southern Housing was established in 2022, it could not have taken part in the procurement exercise, and thus does not qualify as a replacement provider.

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 agree that it wasn't possible to conduct consultations when there were no tenants in the properties; 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.

We have asked the Applicant to terminate the agreements at the end of the initial five-year term, but the Applicant has rejected this request.

Unreasonable service schedule

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 the [REDACTED], the Applicant has a lease where the landlord is St James Group Limited. 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 Rendall & Rittner Limited, 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 for Southern Housing and one of approximately £404 for Rendall & Rittner. The total amount paid by the respondents in management fees, approximately £842, is unreasonable. The same situation is occurring for other properties in this case. For context, please know that the Regulator of Social Housing publishes management fee limits for leasehold properties for the elderly. The limit was £557 for the year 2023/24.

This management arrangement would be reasonable if the two management providers supplied completely different services. However, they overlap. Schedule 2 of the Agreement with Southern Housing specifies services such as securing, cleaning, and maintaining the building. These services are the responsibility of the Head Landlord, and therefore, Rendall & Rittner carry 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, in Schedule 2 of the agreements, the service specification for void works relates to the provision of services that are not recoverable under the terms of our leases.

In our view, Southern Housing only needs to provide two services. They need to calculate the rent due on our unowned share and the monthly service charge due for each property. Every other service is the responsibility of the Head Landlord and their management company.

These agreements are qualifying long-term agreements, and if we were to be consulted, we would advise the Applicant 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 caused financial prejudice to the respondents.

Conclusion

We trust that the tribunal will give due consideration to our concerns and uphold our statutory rights by rejecting the application for dispensation. We argue that the agreements in question are unfair, qualifying long-term agreements that have caused significant financial and other prejudice to the respondents. Allowing the Applicant to operate without proper consultation, including replacing our service providers, would only exacerbate these issues and undermine the protections afforded to leaseholders under the law. We respectfully request that the tribunal ensure adherence to the consultation requirements to safeguard the interests and rights of all respondents.

Thank you for your attention to this matter.

Sincerely,

