

**IN THE FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

**IN THE MATTER OF SECTION 20ZA LANDLORD AND TENANT ACT 1985**

**AND IN THE MATTER OF VARIOUS SHARED OWNERSHIP LEASES**

**B E T W E E N: -**

**(1) LEGAL AND GENERAL AFFORDABLE HOMES LIMITED  
(2) LEGAL & GENERAL AFFORDABLE HOMES (AR) LLP  
(3) LEGAL & GENERAL AFFORDABLE HOMES (SO) LL  
(4) LEGAL & GENERAL AFFORDABLE HOMES (CAPITAL) LIMITED  
(5) LEGAL & GENERAL AFFORDABLE HOMES (DEVELOPMENT 3) LIMITED**

**Applicants**

**- and -**

**VARIOUS SHARED OWNERSHIP LONG LEASEHOLDERS**

**Respondents**

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**APPLICANTS' REPLY**

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1. This composite Reply is provided in compliance with paragraph 10 of the Directions Order dated 17 June 2024, and in reply to the statements of case served by various Respondents in compliance with paragraph 7 of those directions. It will be supplemented by further responses within the Applicants' witness evidence.

**General Points**

*Increased unit fee where a Replacement Provider is appointed*

2. Where a Replacement Provider replaces an existing Provider it is accepted that this will result in the unit fee changing. It may go up. It may equally go down. This is reflective of the competitive procurement exercise undertaken. The Applicants repeat paragraph 33 of their Statement of Case.

*The housing management services required by different Properties are not the same*

3. The Services identified in each Varied Management Agreement are the same. This is by design. The range of housing management services included is intended to include all those that may reasonably be required to be undertaken by and for any of the Properties over the 10 year term of the agreement.
4. It is averred that it was reasonable and prudent for the First Applicant to take this approach, avoiding any later disagreements or potential need to commission further such services from a Provider at additional cost.
5. It is inevitable, and will have been known to the Providers when they tendered, that some of the Services would be required to be undertaken regularly (e.g. billing), others infrequently, and some possibly never over the lengths of the agreement for the range of Properties that would be subject to the agreement. It will also have been known to the Providers that the needs for individual Properties (or individual developments) for the delivery of particular elements of the Services would differ from one another. The Providers knew that all the Properties would be new-build properties and will have known, or are reasonably to be taken to have understood, that some of the Properties would be within developments where the First Applicant owned some, but not all units, so that other housing management services would be provided by head landlords or developers or their agents (“other managers”). In the context of a competitive procurement, Providers had to make a judgment on what unit fee to tender, against this range of realities.
6. It is averred that it was reasonable for the First Applicant to procure the Services in the way that it did, in a context where it had yet to acquire the range of Properties intended then to be subject to one or other of the Management Agreements, and where it was intended that additional Properties would then be ‘added’ to the Management Agreements over their life. The obtaining of one unit fee per region per Property provided certainty and (given that the procurement was competitive) value for money.
7. It is denied that if the Applicants were now competitively to tender for the necessary housing management services for sets of Properties in developments where another manager provides other services, that the unit fees would be lower. The economies of scale, secured through the 2019 procurement exercise, would be absent.
8. It is denied that there is any ‘overlapping’ of services provided by a Provider and by another manager and/or that Respondents thereby pay ‘duplicated’ management fees. In the further or

alternative, the Services provided by the Provider to each Property are ones that it is necessary and reasonable to provide.

*Provider performance*

9. It is as much in the interests of the Applicants as it is the Respondents, that each Provider provides the Services in accordance with their contractual obligations, and delivers a good service to the individual Respondents. Where units are occupied pursuant to tenancies (as opposed to shared ownership leases), the unit fee cost is borne by the relevant Legal and General Group company that is the landlord pursuant to that tenancy.
10. The Applicants' Investment Manager has in place a comprehensive Performance Management and Assurance Framework for monitoring Provider performance. In summary, this is a 4-level control and assurance framework which is designed to ensure that high quality services are being delivered in accordance with contractually agreed levels, which includes contractual controls (in the Varied Management Agreements), a reporting framework, assurance through a schedule of testing, feedback and learning, and reassurance.
11. It is averred that this direct monitoring of performance under these Varied Management Agreements is of far more value than resort to any external sources, such as housing ombudsman reports, which some Respondents refer to. Indeed, with respect, resort to sources such as those provide no value in this context.
12. In addition, should this Application be successful, each Provider will know that it will be relatively straightforward for them to be replaced by a Replacement Provider should their performance be less than satisfactory. This is, it is averred, one of the clear benefits of granting the dispensation sought.

**Individual Properties / sets of Properties**

13. In some of the Respondents' statements of cases points are made, or wider complaints raised, which the Applicants do not consider are relevant to the issues before the Tribunal on this Application. Without intending any disrespect to the Respondents who have made these points or complaints, the Applicants do not seek to address them in this Reply. Nor do they address any points made which have, in substance, been addressed under 'General Points' above.

*Barnfield Way, Harlow*

14. The Provider is Chelmer Housing Partnership Limited.

15. It is confirmed that this Application is not made for reasons of urgency. It is made for the range of reasons summarised in the Statement of Case.
16. It is correct that the Applicants could, in theory, undertake an entirely new procurement exercise, country-wide, within which exercise it would seek to appoint a range of providers under QLTAs, each of which could be asked to provide housing management services (over the life of the proposed agreements) to Properties in different areas over the life of those QLTAs. It is also correct that the Applicants could, in theory, consult with the Respondents in respect of these proposed QLTAs with the intention then of appointing a number of providers, each of which would have provided different proposed costs, which process would enable the Applicants to appoint a replacement provider to individual Properties the lives of the QLTAs – without further consultation and whether or not the replacement providers’ unit fees were higher than those of the existing provider.
17. However, the First Applicant has already undertaken an extensive procurement exercise in 2019, and the Applicants now have a ‘panel’ of tried and trusted Providers with whom the First Applicant has worked for a number of years, who it considers provide a good level of service at reasonable cost, whose agreements have some 5 years left to run, and whose performance is monitored (see above). In these circumstances, and noting that any new procurement exercise could well result in higher tendered costs, it is averred that what the Applicants seek to achieve by this Application is both reasonable and proportionate.
18. It is denied that the First Applicant was in breach of the statutory consultation requirements prior to entering into the Management Agreements in late 2019. Paragraph 9 of the Statement of Case is repeated.

*Apartments within Hampton Tower, London E14*

19. The First Applicant is the long leaseholder of a number of apartments within this development. The developer / freeholder has appointed POD as managing agent for the development. It is admitted and averred that the First Applicant pays a service charge towards POD’s costs, which charges it then passes down to the individual Respondents in accordance with the terms of their underleases.
20. The Provider originally appointed was Richmond Housing Partnership. In or about 2023 it decided that it no longer wished to continue to provide the Services to the First Applicant. A replacement provider was therefore needed. The First Applicant appointed Southern Housing (Optivo). This was pursuant to an agreement with the Applicants for a fixed term of 364 days

(subject to earlier termination). Should dispensation be granted, Services will be provided pursuant to the Varied Management Agreement with Southern Housing (subject to that agreement being restated, as to be explained in an Amended Statement of Case the Applicants intend imminently to file and serve).

21. Richmond Housing Partnership's tendered unit fee was £402.55 per annum. At the time of the change from Richmond Housing Partnership to Southern Housing in 2023, Southern Housing's fee was £411.30.
22. It is admitted that part of the reason for bringing this Application is operational flexibility. Paragraph 14 of the Statement of Case is repeated. It is denied that the Applicants seek to "bypass [Respondents'] statutory protections". They recognise that what is sought requires dispensation (hence, also, limiting the agreement with Southern Housing to 364 days to ensure legal compliance) but aver that this will not result in relevant prejudice to any Respondents.

*Novello, Regina Road, Chelmsford*

23. The First Applicant owns a leasehold block of flats in this development. The Provider is CHP. POD have been appointed by the developer / freeholder (Bellway) as managing agent for the development.
24. For the avoidance of doubt, Stonewater has never been the Provider for Properties in this development.
25. It is denied that, in the event of a reversion being transferred from the First Applicant to another of the Applicants, this would make any material difference to the Respondents. It would make no difference at all in the context of what is sought by this Application.

*Little Cotton Farm, Dartmouth*

26. The original Provider was Stonewater. Owing to poor performance under the terms of the Varied Management Agreement it was agreed by mutual consent to end Stonewater's appointment. It may be noted, in the context of poor performance, that Stonewater's unit fee (£121.19 for 2022/23) was very low indeed.
27. The First Applicant then appointed Pinnacle Housing Association from 1 February 2024. This is pursuant to an agreement with the First to Fifth Applicants for a fixed term of 364 days (subject to earlier termination). Pinnacle was chosen as it has a broad geographical reach and

was therefore able to cover all of the regions within which Stonewater had been appointed, being the South East, North East, Midlands and South West.

28. It is correct that Pinnacle's unit fee for 2024/5 is £437.97 per annum. The First Applicant has sought to reduce the financial impact on this set of Respondents by itself bearing £154.38 for this year, and will also bear £77.19 for the next year. The correspondence between the First Applicant and some of these affected Respondents (which they have produced) will be referred to at the hearing.

*Willow Rise, Witheridge*

29. The Applicants repeat their Reply for Little Cotton Farm, Dartmouth.

*Acer Apartments, London W12*

30. The First Applicant is the long leaseholder of a number of apartments within this development. The developer / freeholder has appointed POD as managing agent for the development. It is admitted and averred that the First Applicant pays a service charge towards POD's costs, which charges it then passes down to the individual Respondents in accordance with the terms of their underleases.

31. The Provider is Southern Housing (Optivo). The fact that Southern Housing was not appointed as a Provider in 2019 is not to the point. Optivo was appointed, entered into a Management Agreement, and thereafter has provided Services to these Properties. Statutory amalgamations of registered providers is commonplace (and the change in name is immaterial – the chosen name could equally have been 'Optivo'). It has not resulted in any material changes to how Services have been delivered to these Properties.

*Hackworth Court, Watford*

32. The Provider is Pinnacle. The statement of case does not raise any matters which require any further reply.

**RANJIT BHOSE KC**

**26 July 2024**