



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CAM/11UC/LSC/2018/0032

**Property** : 1-14 Glebe House, Windmill Road, Chalfont St Peter  
SL9 9PP

**Applicant** : Marion Evans & others

**Representative** : Ms Evans in person, assisted by Barbara Poole of  
*Voices and Choices*

**Respondent** : Paradigm Housing Group

**Representative** : David Hunter (Regional Director) & Graham Cobb  
(Service Charge Manager)

**Type of Application** : for determination of reasonableness and payability  
of service charges for the years 2014-15, 2015-16,  
2016-17, 2017-18 & 2018-19 [LTA 1985, s.27A]

**Tribunal Members** : G K Sinclair, M Wilcox BSc MRICS & N Miller BSc

**Date and venue of  
Hearing** : Wednesday 15<sup>th</sup> August 2018 at Glebe House

**Date of decision** : 14<sup>th</sup> September 2018

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**DECISION**

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### **Determination**

1. For the reasons which follow the tribunal determines that the 2014–15 cleaning element of the overall service charge account be reduced to £3 500, based on the evidence before the tribunal. That apart, no other adjustments are made to the sums demanded.

### **Introduction**

2. This case concerns a sheltered housing scheme owned and managed by Paradigm Homes Charitable Housing Association Limited (“Paradigm”). The development, known as Glebe House, and the rest of the local authority’s housing stock were transferred to it some years ago, with a condition that the cost of maintaining certain external parts such as the front lawn by the highway and a rear hedge (adjoining a separate bungalow development bearing a similar name : Glebe Close) was not to be recovered from the residents by way of service charge.
3. The similar name of the adjoining development at the rear of the subject property created some confusion for the gas utility provider, and the presence of additional water meters serving persons unknown has also led Paradigm erroneously to bill residents for what it thought was their private (as opposed to communal) water supply. Both problems have required some time and effort to unpick and resolve, but in each case it has been (or will be) to the residents’ advantage.
4. The application is a general challenge to every cost item that has formed part of the service charge from 2014-15 onwards, although in Ms Evans’ case her starter tenancy only began in January 2017 and her five year assured shorthold tenancy in January 2018, so the earlier years do not affect her. The application was received at the tribunal office on 15<sup>th</sup> May 2018 and directions were issued by the Regional Judge on 24<sup>th</sup> May 2018.

### **Relevant tenancy provisions**

5. As explained in paragraph 4 above, Ms Evans first occupied her flat at the subject property under a starter tenancy dated 25<sup>th</sup> January 2017. On 18<sup>th</sup> January 2018 this was replaced by a five year fixed term assured shorthold tenancy. Copies of both tenancy agreements appear in the hearing bundle and, while the numbering of the paragraphs in section 1 of each document differs and the later agreement includes a section containing a number of additional rights, the material service charge obligations are essentially the same.
6. As well as the requirement to pay rent the tenant is additionally obliged (where appropriate) to pay service charges for works undertaken and services provided, and a charge for water. The service charge includes a charge for managing any of the services provided, and the landlord may also establish a sinking fund to be applied to any unusually heavy cost expected to be borne by the service charge account in the foreseeable future. The landlord’s obligations, including those to maintain the structure and exterior and interior and to provide services, appear in section 3 of the agreement. By paragraph 3 of that section the landlord agrees to pay the water authority any amounts due to it and collected from the tenant as rates and other charges.
7. The cost of the service charge items is to be apportioned equally between all the properties benefitting, and in section 2, paragraph 3 [bundle page 70] it is

expressly stated to be a variable service charge, with the payer having the right to ask a First-tier Tribunal to consider whether the amount s/he is being asked to pay is reasonable. The service charge is recoverable as rent.

### **Material statutory provisions**

8. Section 18 of the Landlord and Tenant Act 1985 defines the expression “service charge”, for the tribunal’s purposes, as :
  - 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 or the landlord’s costs of management...
9. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
  - 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.
10. The tribunal’s powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease<sup>1</sup>. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.
11. Please also note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)<sup>2</sup> is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

### **Inspection and hearing**

12. The hearing was arranged to take place in the communal lounge at the property, with a number of resident tenants in attendance. Just before the hearing the tribunal, accompanied by Ms Thomas (the Paradigm housing officer responsible for this property) and a tenant, briefly inspected the communal kitchen, laundry, ground floor corridor, the rear bin storage and drying areas, and the rear path and gate leading to the group of bungalows also owned by Paradigm and known as Glebe Close. The tribunal was shown the location of the water meters (two at the one place) that had caused such confusion, but the cover was not lifted.
13. The subject property itself is a long two-storey building occupying most of one side of the western arm of the public highway known as Windmill Road. Mainly of redbrick construction under a hipped roof covered with concrete interlocking

<sup>1</sup> In this case, the tenancy agreement

<sup>2</sup> Eg. provisions in a lease stating that the landlord’s accountant’s certificate shall be conclusive, or that any dispute shall be referred to arbitration

tiles, the building features projecting two-storey painted wooden oriel windows and a porch by the front entrance. The building is set back from and slightly above the road, with a narrow garden screened by a low wall and hedge. Five steps lead from the street to the front garden. No provision has been made for any off-street parking. Parking areas at each end of the building are for the use of adjoining properties. As Windmill Road itself and the surrounding residential roads are quite narrow the opportunity for visitors to park nearby is limited.

14. The hearing began with a complaint by Ms Evans that the respondent landlord (responsible for producing the hearing bundles) had failed to include a large number of documents that she had sent it, ostensibly in the form of a 155 page statement. She showed the tribunal a copy of a slim document which referred to a large number of copy invoices, etc. The tribunal adjourned for a few minutes to read it, but it did not appear to take the form of a statement, or to add anything material to what was already before it. Nevertheless, this did indicate a failure of communication between the parties, and a lack of understanding of the difference between disclosing documents that may be relevant and putting them in the bundle only if necessary for determination of the issues at stake.
15. What were they? Ms Evans had really only put the landlord to proof that it had incurred the claimed costs; she did not put forward any contrary case other than to claim that the amounts sought to be charged be compared with the sum that tenants of another building had been charged by their landlord.
16. Ms Evans agreed that the following items remained in issue :
  - a. Whether costs for Glebe Close had been included in the amounts sought from tenants in Glebe House
  - b. Comparison between the costs here and another unit (Edith Bell House)
  - c. Water charges : both communal and personal
  - d. Gas
  - e. Cleaning : both its cost and quality of service
  - f. Repairs/maintenance to the patio door
  - g. The breakdown of costs provided to tenants.
17. *Glebe Close* — questioned about any other charges for Glebe Close that may have been added to the items paid for by the tenants of Glebe House, Mr Hunter said that there was one item for window cleaning which included both. This had been brought up at a residents' meeting. He would need to investigate and recharge, and referred to his letter written in March [page 127, item 9]. There were no other items shared to Paradigm's knowledge.
18. *Comparison with costs incurred at other blocks* — Mr Hunter referred to the spreadsheet at page 149. This was a schedule for cleaning submitted to Paradigm by the successful bidder, setting out the tender price for individual blocks. While they may differ widely between blocks, these were the figures proposed by the contractor. The respondent could either take the global tender or not. It could not interfere with the charges for specific buildings. Paradigm had asked three companies to quote, and the specification of work required was pinned up in the entrance of each building. The tribunal noted this on its way out of the building. The respondent argued that costs incurred by a different building, Edith Bell House, are irrelevant. It is bigger and has 32 tenants amongst whom the costs are

shared. Glebe Close has its own service charge statement.

19. *Water* — When investigating a leak, said Mr Hunter, Paradigm discovered that by turning off what was thought to be the communal supply the water in all the flats (the personal water) was also cut off. This revealed that part of what had been assumed to be the communal water bill that was levied proportionately against each flat included a substantial amount for personal water. This should have been paid by the tenants, but not as part of the service charge covering the communal laundry, kitchen and toilets (plus perhaps an outside tap). Paradigm recognised that it would have to make repayments, based on length of occupancy. This had been mentioned as item 1 in his letter dated 6<sup>th</sup> April 2018 [page 129].
20. The figure in the budget for communal water had failed to take into account the fact that the 2015–16 figures on the table at page 109 showed an under-recovery. Calculations are now based on new figures. Once the Housing Benefit authorities had worked out what is due to be clawed back (as communal water costs are taken into account but personal water charges are not) then repayments will be made to those tenants in receipt of Housing Benefit. Those who were not would have the money remitted to their bank accounts straight away.
21. *Gas* — When there was a change of gas supplier a few years previously there had been a failure to obtain approval of a new contract. When gas is supplied without any named customer or contract it is referred to as a “shipperless supply”. The respondent had received bills for 1 Glebe Close (a bungalow) and had paid them without noticing. The supply to Glebe House, by contrast, was shipperless. Even though the tenants had actually enjoyed the benefit of a gas supply to their homes the respondent had managed to persuade the utility company to waive further charges but had also agreed to reimburse the payments made to it by the tenants for gas actually supplied to 1 Glebe Close. Letters went out on 17<sup>th</sup> July 2018 confirming how much was to be refunded. The shipperless supply had ceased on 31<sup>st</sup> March 2017.
22. *Cleaning* — The tenants complained that no steam cleaning had been undertaken in 11 years (save for cleaning of the chairs last year due to soiling caused by an incontinent tenant). They had also been so unimpressed with the standard of cleaning that at the end of every day, after the cleaner had gone, they cleaned the communal kitchen themselves. They said that they never got an answer for why they pay £35 for half an hour’s work each day. On behalf of the respondent Mr Hunter said that if residents had complaints they should speak to the manager who comes every week. Because Paradigm never finds the place to be untidy it cannot, without evidence, challenge the contractor about it. The contract covers 520 blocks of varying sizes.
23. Questioned by the tribunal, Mr Hunter’s attention was drawn to the figure for Glebe House of £1 625 on the schedule at page 149 and then to the much higher figure of £9 908 actual costs on the annual service charge statement for 2014–15 on page 29. Why such a discrepancy? Mr Hunter thought there might be some other items included within that larger figure, but he could not say what. He was shown for comparison the service charge breakdown for actual cleaning costs incurred in 2016–17 in the table at the top of page 99. Helpfully, cleaning costs which included the estate, broken down into “communal cleaning”, “window

cleaning” and “bulk rubbish removal”, showed that the last two cost elements were minor by comparison. No answer was forthcoming about how the quoted cost on the schedule in the tender document escalated to the actual cost shown on page 29 (for 2014–15), or even the £7 443 on page 99.

24. *The patio door* — Complaints had been made about the cost and time involved in trying to maintain the patio door, with a maintenance man coming to take a look at it, deciding that he would have to come back again and do something which turned out not to be completely successful – yet charge for both visits. Mr Hunter confirmed that, with other complaints about the state of some of the wooden windows, a decision had been taken by Paradigm that it would replace the patio door and all the windows – both communal and those to the flats – in a staged process and entirely at its expense.<sup>3</sup> Some of the windows had already been replaced by the date of the hearing, but the patio door had not.
25. *Breakdown of costs* — the applicant’s complaint here was that she had constantly to demonstrate to Paradigm that its figures were wrong. The water problem had been identified by tenants, not by Paradigm. Tenants were not happy with the amount of information provided to them in order to justify the service charge costs.

#### **Discussion and findings**

26. As the result of errors and happenstance charges incurred for supplies of water and gas were being reimbursed by Paradigm and/or the utility supplier, with the result that supplies over a period of a few years may be free or at greatly reduced cost to tenants. Gas rebates had now been paid; those for water were awaiting some answers from the relevant authorities about how Housing Benefit claims might be affected retrospectively. Those tenants not in receipt of Housing Benefit would be paid quite quickly.
27. Complaints about blown double glazing units or rotten woodwork, and the patio door which sticks, were being dealt with by Paradigm as required by section 11 of the 1985 Act. This was all at its own cost. Had the tenants been long lessees then the cost would have fallen upon them instead.
28. The tribunal is well aware that tenants often compare service charge demands at other buildings, querying why their costs are so high. Much may depend on the age and construction of each building, maintenance and repair cycles, style of management, whether flats are owned by careful resident lessees or investors, whether there are lifts, and the number between whom the cost can be divided. This is not a particularly helpful exercise, as the lessee’s obligation is to pay for a share of the repairs, maintenance and services provided at the specific block.
29. Subject to one query about an old window cleaning invoice, about which there is insufficient information before it for the tribunal sensibly to comment, it does not accept the general accusation that some undefined costs that tenants are being asked to pay include items that relate to other buildings entirely.

<sup>3</sup> The flats all being let on short tenancies, this would be in compliance with the landlord’s repairing obligations implied by section 11 of the Landlord and Tenant Act 1985

30. That leaves only two remaining items, which to an extent are interlinked. The tribunal considers that Paradigm and its officers are and have been acting from the purest of motives, but their general approach to management, and especially the management and accounting for services, has been questionable.
31. The tribunal can therefore understand why tenants led by Ms Evans have found it difficult to understand how the costs levied have been calculated properly.
32. On the subject of cleaning the tribunal views with considerable suspicion any answers given about why the overall cleaning costs in 2014–15 should be so much higher than the figure quoted, or even that for 2016–17. While it can understand the landlord's desire that complaints should be directed to it so that matters can be raised with the contractor, this is the tenants' home and they want it – and in particular the kitchen which they use to socialise – to be kept clean and tidy at all times. Leaving it in a mess until managers from Paradigm and the contractor can arrange to fit in a meeting on site is inimical to their interests.
33. The tribunal is inclined to accept on the balance of probabilities that cleaning has been as poor as described. While managers may offer as an explanation for the much increased cost that the specification of work may have been enhanced they have no evidence to show this, whereas criticism by tenants of the limited work and short time that cleaning staff have been present has been consistent.
34. Doing the best it can, taking into account the tender price for the work, the limited additional costs shown to have been incurred more recently for window cleaning and rubbish removal, and the complaints about quality, the tribunal is prepared to reduce the claim for the year 2014–15 from the £9 908.86 shown on page 29 to £3 500 in total. It lacks the information with which to reduce the costs in subsequent years but regards that as a sufficient lesson. As she was not resident at the property in 2015 this will not affect Ms Evans.
35. The tribunal makes no other deductions to the amounts claimed in the years in question.
36. No order is made pursuant to section 20C of the 1985 Act.

Dated 14<sup>th</sup> September 2018

*Graham Sinclair*

Graham Sinclair  
First-tier Tribunal Judge

## **ANNEXE - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result sought by the party making the application.
3. The application for permission to appeal must arrive at the Regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit. The tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite it being outwith the time limit.