

12843



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

Case reference : **LON/00AU/LSC/2016/0271**

Property : **Various Flats (12,15-21,24-26,29-32) 1 Lloyds Row London EC1R 4AD**

Applicant : **Ms K. Berndl (Flat 31) and Others.**

Representative : **Ms K. Berndl (Flat 31) and Others
from Flats No.s 8,12,18,21,30,31,32.**

Respondent : **Notting Hill Housing Group**

Representative : **Mr C. Flintoff (Leasehold Manager)
Ms M. Dowe (Property Manager)
Ms E. Desborough (Head of
Leasehold)**

Type of application : **Liability to pay service charges
under S.27A Landlord and Tenant
Act 1985.**

Tribunal members : **Mr N. Martindale FRICS
Mr S. Mason BSc FRICS FCI Arb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **26 June 2018**

DECISION

Decisions of the Tribunal

The Tribunal concluded that on all but items 1, 2 and 3 of the year 2015/16, it could not make a determination as there was no express challenge to the sums due. It therefore determines that in Year 2015/16 : Items 1 & 2, £18,590.91 is reasonable and payable for the gas supply. Item 3, £24,071.65 is reasonable and payable for the water supply.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”), as to the amount of service charges payable by the respondent in respect of certain items in service charge years 2016/17 and 2017/18. Although the original application had been wider in scope, the Directions hearing confirmed that the First Tier Tribunal (Property Chamber) had already determined those sums reasonable and payable for service charges for years 2011-2014/15 as a result of an earlier application.
2. Directions were issued by Tribunal Chair Hamilton-Farey on 7 December 2017. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Directions provided for a one day hearing on 21 May 2018. Both parties substantially complied with the Direction. The respondent was late in providing some of the invoices requested by the applicants. On the morning of the hearing the applicant submitted some additional papers – an updated Scott Schedule for each year and a summary of gas meter readings. The respondent did not object. These were accepted by the Tribunal.
4. The second set of Scott schedules for the same years contained revised issues headings, revised issue numbers and additional issues. The Tribunal found this late revised presentation confusing. It therefore referred to the items listed in the first set of Scott Schedules. Regrettably the Directions did not clearly identify the service charge items and sums due which were at issue, which led to considerable overlap and duplication.

The background

5. The properties which are the subject of this application form a majority of the 32 flats within a post 2000 block located over several levels. There is a lift. Flats are either held by way of a shared ownership long leasehold (22No.) or rented out (10No.) directly by the respondent.

The applicants all appeared to be long leaseholders. The block of flats being of relatively recent construction it appeared that it was still experiencing issues resulting from the initial construction phase.

6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The applicants each hold a long lease of their property, either outright or under a shared ownership scheme. Each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. The single bundle prepared by the applicant containing evidence and submissions from both parties, set out set out the heads of service charge; the amounts claimed for two accounting years, 2015-16 and 2016-17. The Tribunal considered the services as a whole, leaving the parties to apply the respective proportions to the total sums determined as reasonable and payable. The service charge proportions between properties within the block themselves were not contested.

Service Charges 2015/16

9. **Items 1 & 2 – “Payment of the on ‘First Utility’ gas invoice” and “Payment of the SSE gas bills”:** The respondent sought £18,590.91. The applicant offered £10,612.57.
10. Gas is supplied to the block communally to power space heating and hot water to all flats by the landlord. By contrast electricity was provided and consumed individually by each flat. It comes principally from mains supply, though there is a small but un-metered feed in connected to PV panels on the roof which produced a potential electricity credit against mains consumption.
11. The picture of energy consumption was further complicated by initial heating provided to water from roof elements. The reliability of the roof based heating as well as that of the original communal gas boilers had also been uncertain with a significant number of days when no heating or hot water had been provided despite the respondent’s best endeavours to do so. We were informed that there were or were due to be ‘heat meters’ for each property, to better measure the heat consumed by individual flats but that these were not yet in use.
12. The applicants were also concerned that the failure by the respondent to fully use and maintain the rooftop heating facilities, the electrical PV

panels or water pre-heaters was a breach of a condition under the planning permission. The Tribunal explained that such planning issues fell outwith its jurisdiction.

13. The dispute about the reasonableness and payability of the communal gas bill, arose largely from the lack of accurate and timely meter readings, either by the gas supplier or the respondent, leading to highly variable estimated charges. In turn this caused the final bill charges to vary widely from year to year as debits and credits were finally applied to the accounts. The change of gas suppliers from First Utility to SSE from March 2015 had highlighted this problem and led to a considerable difference in notional charges between 2014/15 and 2015/16. We were however informed that the respondent was now taking regular readings of the gas meter to reduce such uncertainty in future years. Such rises could also be mitigated by increasing the budget estimates for this and other services.
14. The tenant maintained that credits and debits were late or inaccurately applied and in particular that VAT at 5% paid on overestimated sums was not credited to the accounts when (lower) final readings were provided.
15. **Item 3 – “The cost for water”:** The respondents sought £24,071.65. The applicants offered £12,812.15.
16. The applicants expressed similar concerns over the failure by the supplier and/or respondent to take accurate and timely readings of water consumed at the building. The Tribunal was similarly informed by increased reading of the water meter by the landlord now and in the future.
17. The applicants sought a greater transparency of billing and wanted the installation of individual water meters for each property. This was not a matter that the Tribunal could determine. Metering would continue to be done centrally and the cost shared as per each lease.
18. **Item 4 – “Maintenance of solar panels on roof”:** The applicants withdrew this item at the hearing.

Service Charges 2016/17

19. **Item 1 – “Missing NHH Trust deficit payment from accounts”:** The applicants were concerned that the substantial payment due from the respondent who in effect made a service charge contribution on behalf of the tenants who rented their properties, was not shown as a credit in the accounts. This could have led to additional charges being made against the applicants for the shortfall. The landlord whilst accepting that this payment was not shown clearly in

accounts prepared at the time, maintained that a credit for the full sum had been made and that no additional sums would be sought from the applicants.

20. This was an accounting matter. It was accepted by both parties that as this was a credit item and was not a service for which a charge was made to leaseholders. There was nothing for the Tribunal to determine as reasonable and payable.
21. **Item 2 – “NHH putting into use and operating efficiently the solar Missing NHH Trust deficit payment from accounts”:** Although the respondent to some extent agreed that the pre-heating and PV roof systems were operating in a sub-optimal manner, it was accepted by both parties that this item was not one where a particular sum was payable by leaseholders. There was nothing for the Tribunal to determine as reasonable and payable.
22. **Item 3 - “Reading of gas meter”:** Both parties accepted that this was essentially a repeat of the item from the previous year. Whilst readings had been deficient, the landlord confirmed that these were now being taken. The same considerations applied as for the earlier year. There was nothing for the Tribunal to determine as reasonable and payable.
23. **Item 4 – “Presentation of water and energy bills”:** In the Scott Schedule the applicants state *“Although the tenants are not challenging the landlord’s expenditure on metered supplies, they are challenging him on his obligation to ensure transparency in the information he provides on the bills that he requires tenants to pay.”* The applicant thus acknowledged that there is no challenge to either the water or energy charges made in this year. The absence of information on the ‘free’ electricity generated from rooftop panels and fed back into the communal supply, and on the heat actually used by each property rather than a simple share of total gas consumed are both regrettable. There was nothing for the Tribunal to determine as reasonable and payable.
24. **Item 5 – “Cost for communal electricity and revenue provided by the Solar Pv electricity supply system.”** The applicants did not accept that service charges continually based on estimated electricity meter readings rather than actual readings was an acceptable approach. The respondent had undertaken to take regular quarterly or monthly readings of mains supply, rather than rely on the supplier to do so and to provide this data to the supplier to generate more accurate and timely electricity bills. They considered that any over or under payments which had occurred in this accounting year were corrected within that period.

25. The respondent was unable to provide any explanation for the absence of accurate monitoring of the feed in power from the Pvs except that such practice was uneconomic to undertake.
26. The applicant wanted to know why the bill for power to the lift was so low at only some £206.23 (standing charge for the year), and was concerned that feed-in credit electricity was not being received by the tenants. The landlord was unable to supply any data on what was being received in the way of 'free' electricity or how that was being credited. Although they invited the applicants to employ a specialist to test this equipment the applicants had declined. There was nothing for the Tribunal to determine as reasonable and payable.
27. **Item 6 – “Installation of water meters and reducing water wastage”** : The applicants sought a change in management practice. However this was a matter for the respondent only if the lease required such action to be taken. In the meantime flow volumes and readings would continue to be taken from one central water meter. There was nothing for the Tribunal to determine as reasonable and payable.

The Tribunal's decision

28. The Tribunal concluded that on all but items 1, 2 and 3 of the year 2015/16, it could not make a determination. There was no express challenge to the sums due.
29. It determines that in Year 2015/16: Items 1 & 2, £18,590.91 is reasonable and payable for the gas supply. Item 3, ££24,071.65 is reasonable and payable for the water supply.

Reasons for the Tribunal's decision

30. Most items raised by the applicants concerned the management and billing practices of the respondent. Whilst they had tended to obscure the true sums due they did not of themselves give rise to specific challenges. Where estimates had been artificially low, owing to the chronic absence of meter readings, such estimates had been corrected when actual readings were finally taken. In future if estimated charges were made higher and readings more frequent by the respondent, this could be expected to largely eliminate additional debits arising for leaseholders after year end.
31. There had clearly been an absence of timely and accurate meter readings for: Communal mains gas; communal mains water; rooftop pre-heating water energy and rooftop electricity feed. These failings had led to sudden uplifts in charges when estimated figures were checked and found to be low after the event. The landlords admitted this and confirmed their resolve to check and inform their suppliers

more accurately with readings and to make higher estimated charges as well, so as to remove cost surges to leaseholders. They did however decline to install water or heat meters to individual flats for reasons of excessive installation and subsequent monitoring costs.

32. The Tribunal makes no order under S.20C preventing the landlord's costs of this application and hearing being added to the service charge, if the lease allows for such. The Tribunal makes no order for the refund of the application and hearing fees by the respondent to the applicant.

Name: Neil Martindale Date: 26 June 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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 not being within the time limit.

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 the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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 or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 any payment has been made.

- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
 - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).