



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

Tribunal Case Reference : **LON/00BK/LSC/2022/0172**

Property : **13 Greencoat Mansions, Greencoat Row,
London SW1P 1PG**

Applicant : **Peabody**

Respondent : **Giampietro Lea**

Type of Application : **Payability of service charges**

Tribunal : **Judge Nicol
Mrs A Flynn MA MRICS**

Date and venue of Hearing : **17th & 18th January 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **24th February 2023**

DECISION

- (1) The service charges claimed by the Applicant from the Respondent for the years 2011 to 2020 inclusive are reasonable and payable, except for:
- (a) A charge to the Respondent in relation to electricity for each year in dispute would only be reasonable in amount to the extent that it did not exceed £42.35;
 - (b) Caretaking charges for each year in dispute are only reasonable to the extent that they are split equally across the various parts of the estate and based on no more than 5 hours of work per week;
 - (c) There was an overcharge of £46.81 in relation to “responsive repairs” for the year 2019/20; and

- (d) A reasonable charge in relation to buildings insurance for each year in dispute would be no more than £100 per year.
- (2) The Tribunal does not have the material on the basis of which it can recalculate the Respondent's service charge liability based on the above findings. Each party has liberty to make a fresh application to the Tribunal if the parties are unable to reach an agreed figure.
- (3) The Tribunal makes the following costs orders:
- (a) An order under section 20C of the Landlord and Tenant Act 1985 that the Applicant may not recover its costs of the Tribunal proceedings through the service charges levied on the Respondent; and
- (b) An order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent is not liable to pay an administration charge in respect of the Applicant's costs of the Tribunal proceedings.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the freeholder of the mansion block containing the subject property. The Respondent is the lessee of that property.
2. On 1st July 2020 the Applicant issued a claim against the Respondent in the county court for alleged service charge arrears, interest and costs. The Applicant claims that the Respondent has failed to pay the service charge due on time since 30th July 2013 so that, as of 8th March 2021, his arrears were £5,632.49.
3. On 28th March 2022 Deputy DJ Davis transferred the claim to the Tribunal for the determination of the reasonableness of service charges relating to 13 Greencoat Mansions for the years 2011 to 2020 inclusive. The Tribunal issued directions on 8th June 2022 (amended 29th September 2022).
4. The Tribunal heard the case on 17th & 18th January 2023. The attendees were:
 - Ms Rea Murray, counsel for the Applicant
 - Mr Shamsul Siddique, collection officer and witness for the Applicant
 - The Respondent
 - Witnesses for the Respondent:
 - Ms Agnes Dybowska, his wife
 - Mr Andrew Shillam, the lessee of 22 Greencoat Mansions
5. The documents before the Tribunal consisted of:

- A bundle in electronic form, prepared by the Applicant, of 1,459 pages (1,339 pages of an original bundle, with a further bundle of evidence from the Respondent attached);
 - A third witness statement from Mr Siddique;
 - A skeleton argument from the Respondent; and
 - (On the second day) Final Submissions from the Respondent.
6. The Respondent acquired his lease in 2008. He has raised many objections to the Applicant's actions and the service charges for over 11 years. He claims that his objections were repeatedly ignored and he often did not receive the documentation he asked for. Previous proceedings were settled, with the Tribunal's prompting, on the basis that the parties would continue to seek a settlement but that came to nothing, according to the Respondent due to the same lack of responsiveness and documentation.
 7. The Respondent complained that the current claim was virtually identical to the one which settled but that is not surprising given the failure of the subsequent negotiations.
 8. The Respondent usefully summarised his current principal objections in his skeleton argument. The sub-headings in that skeleton argument are dealt with in turn below.

Electricity

9. The estate consists of three contiguous blocks, each with 8 flats, and a smaller block with 3 flats, together with a small central courtyard. The Applicant spent most of the hearing unsure how electricity use is measured across the estate but eventually was able to clarify that there are four meters, one for each of the 3 larger blocks and one for separate estate use. The electricity supplier to the blocks is Scottish Hydroelectric and to the estate is EDF.
10. Service charges are separately categorised by estate and block. The Respondent is charged 3.587% of estate charges and 11.765% of block charges. With electricity costs, the separate meters should result in there being, in every year, an estate charge and a separate charge unique to the Respondent's block. Unfortunately, the Applicant's documents do not show this.
11. The Applicant accepts that there was an error for the year 2012/13 and has re-calculated what it believes to be the correct charge for that year, although the Respondent does not accept that any credit given was correct. The Respondent took the Tribunal to the Applicant's Actual Service Charge Statements in which there appeared to be clear errors:
 - 2008/9 There was only an estate charge, with no block charge. That can't be right – even if no electricity usage were recorded on a meter, there would be a standing charge.

- 2011/12 There was no estate charge, a large figure of £1,243.17 to the Respondent's block and no charge to the neighbouring block where Mr Shillam has his property.
 - 2012/13 Similarly, there was no estate charge, a large figure of £1,440.98 for the Respondent's block and £256.44 for Mr Shillam's block. In this year, the Respondent also objected to costs incurred over a 14-month period being included within one year's charges but there is nothing wrong with that if the bills for that period all fall to be paid within the same year.
 - 2013/14 Again, there was no estate charge, £703.99 was charged to the Respondent's block and nothing for Mr Shillam's block.
 - 2014/15 The same pattern was repeated with £766.56 being charged to the Respondent's block.
 - 2015/16 There was no electricity charge but the Respondent's and Mr Shillam's blocks were charged an identical amount of £235.11.
 - 2018/19 Again, there was no estate charge.
 - 2019/20 £360.43 was charged to the estate but nothing to the Respondent's block.
12. The Applicant complained that this kind of clarity in the Respondent's objections had only appeared at the last minute. However, he has only picked out figures from the Applicant's own statements. The Tribunal cannot understand why such errors would not have been apparent without anyone pointing them out. If there is a meter for the estate and each block, there must be a charge in the statements for the estate and each block. Every time there wasn't, something had gone wrong and whoever compiled the statements should have been able to see that.
13. The problem for the Tribunal is that neither party has provided reliable figures for what the Respondent's service charges should have been in respect of electricity, although the Respondent has clearly tried his best to provide accurate calculations in lieu of the Applicant doing so.
14. In paragraph 9ii of his second witness statement, Mr Siddique set out a table showing that the estimates for the Respondent's service charge in relation to electricity for the years 2013/4 to 2020/21 varied from as low as £30.28 to as high as £175.76 and actual costs from £27.01 to £90.18. Some of the figures appear to be unusually large outliers, possibly due to incorrect allocation, which can distort the mean average so the Tribunal looked at the median figures. The median figures are an estimate of £36.47 and an actual cost of £42.35.
15. Doing the best it can with the information available, the Tribunal has concluded that an electricity charge to the Respondent for each year in dispute would only be reasonable in amount to the extent that it did not exceed £42.35. This acts as a cap so that the lower of the actual charge and the figure of £42.35 is the one which is payable in each year.

Caretaking

16. The Respondent's Statement of Case dated 5th August 2022 started by pointing to a document headed "*What do my service charges pay for*", which appears to have accompanied service charge demands, in which the Applicant defined "Caretaking" as follows:

This is for the cleaning of the communal parts of a block and or estate by Peabody Caretakers. The charge includes the costs of employing the caretaker and any equipment needed to do their job.

17. The Respondent then analysed the work of the caretaker purely as that of a cleaner. Ms Murray objected that the caretaker also did other work. However, she had no evidence, such as a list of the caretaker's duties – many landlords make do without a detailed specification for the duties of a cleaner but the caretaker in this case is an employee whose statutorily-required terms and conditions of appointment would have included such a specification. Instead, she again complained that the Respondent's objections had only become clear in his skeleton argument and final submissions and submitted that the Applicant should have more time to produce evidence. However, the Respondent's Statement of Case made clear his objections to the caretaking. The Applicant has had plenty of time to produce its evidence. The Tribunal has to make its decision from that which has been made available for the hearing.
18. In 2012/13 the Applicant incurred £3,030.60 in caretaking charges. They were split 80:20 between the blocks and the estate. However, the block charge was split between only two of the blocks, the ones with leasehold properties. The Applicant has not explained why and there appears to be no justification for it. The Tribunal knows of no reason why it should not be apportioned equally between all the blocks and determines that the service charge would not be reasonable in amount unless it is so apportioned.
19. The 2012/13 caretaking charges had been based on 5 hours of work. The Respondent had carefully analysed how long it would take to clean the estate by using his own demonstration of mopping the stairs (in front of the Applicant's officers on a site visit), his own calculations of surface areas, and figures from the British Institute of Cleaning Science. He concluded that only one hour was needed.
20. However, the Respondent did not appear to have made allowances for preparation and other elements of the work such as attending on site, accessing the caretaker's store cupboard (accessible from the courtyard), arranging for the purchase and delivery of equipment and materials, gathering those materials together for the cleaning, moving between parts of the site, and disposing of rubbish and dirty water after.
21. Having said that, the Respondent also provided dated and timed photos which appeared to show the time between the caretaker opening his

store cupboard and locking it up at the end of his work on a couple of days as no more than one hour. The problem with photos is that they only provide a snapshot of a sequence of events – it is possible that the photos captured an unusually quiet day.

22. The Applicant could not shed any light. There were timesheets pinned to the block notice board but they had not been completed. Mr Siddique was unable to assist as to what, if any, methods were used to monitor a caretaker's attendance on site.
23. The Respondent obtained alternative quotes which suggested making an allowance of 3-4 hours to do the work, possibly preceded by a one-off deep clean, although it was not clear to what extent the alternative contractors were aware of the details of the site and so to what extent their quotes were like for like.
24. With the information available, the Tribunal is satisfied that caretaking services taking 5 hours would be just about within a reasonable allowance so that a service charge based on that amount of time may be regarded as reasonable in amount.
25. However, according to the Applicant's actuals breakdown, in 2014/15 the weekly time allowance increased to 6 hours for the estate and 13 hours for the internal areas of the blocks for a total of 19 hours at a cost of £16,491.52. The following year's figures were 7 hours for the estate, 10 hours for the blocks, and a total of £14,392.55. The Applicant had no explanation for this massive increase.
26. Both the Respondent and his wife also complained bitterly as to the standard of cleaning and provided photos to back up their complaints, although there was some acceptance that their opinion of the quality of the cleaning was subjective. It is very difficult to provide evidence of a sustained poor standard of cleaning since dirt and rubbish is capable of accumulating quickly between standard cleaning visits. However, the Tribunal is satisfied that the increase in hours and costs cannot be justified by some superior quality service.
27. The Tribunal has determined that, on the available evidence, caretaking charges are only reasonable in amount to the extent that they are based on no more than 5 hours of work per week.

Maintenance

28. The Respondent's principal complaint in relation to maintenance is that the estate is not adequately maintained. However, the Tribunal does not deal with failures of service as such. If a landlord fails to comply with a covenant in a lease in relation to repair or maintenance, the lessee's remedy lies in an action for breach of covenant in the county or High Courts. The Tribunal may only do what it is specifically tasked to do by statute. In this case, that means looking at the reasonableness and payability of the amounts actually charged.

29. The Respondent also complained that maintenance had to be carried out after a major works programme. This misunderstands the nature of maintaining a large building such as this. Major works programmes are needed on a regular, cyclical basis, normally every few years, but reactive maintenance is also required during the periods in between. Ongoing maintenance does not constitute, by itself, any indication that a preceding major works programme was deficient in any way.
30. The real problem here is that the Applicant's repeated and ongoing failure to produce documents to justify its service charge expenditure has led to a breakdown in the essential relationship of trust between landlord and lessee. The Applicant has failed to produce invoices for much of the maintenance work it claims to have done over the years, although it only admits to one error amounting to £20 for a misallocation of a door entry maintenance contract monthly charge. When all this is taken together with what he sees as the poor condition of the estate, the Respondent has asserted that the resulting service charges should not be regarded as reasonable or payable.
31. However, the Tribunal needs something more than just an absence of invoices. The accounts are compiled by professional accountants who would have seen the original documents and based their work on them. As a housing association subject to a regulator, the Applicant also has internal arrangements for monitoring its expenditure on maintenance – it has even awarded itself an in-house Gold star for the standard of maintenance to this estate. Due to the lack of trust, the Respondent suspects the Applicant of deliberately manipulating the figures to its own financial advantage and lessees' disadvantage but such allegations of fraud would require compelling evidence before the Tribunal could accept them.
32. The Respondent has also alleged that the lessees are being charged for work carried out inside flats of social tenants. This is a common complaint in such mixed tenure buildings, arising principally from misunderstandings. When a problem manifests in one or more particular flats, the maintenance might be labelled as being in relation to those flats although the work is in relation to matters for which service charges may be raised. Further, sometimes such matters require the landlord's contractors to enter into particular flats for work there. By itself, this is not an indication that the expenditure cannot be included in the service charges.
33. The Respondent has pointed to "Gas servicing", "Electrical Testing and Servicing" and "Appliance Testing" as line items in the service charge accounts which would be in relation to work inside the flats of social tenants but there is far too little information in these documents to leap to such conclusions. There is no reason to think that this work was not service-chargeable.
34. The Respondent also objected to an annual "responsive repair" charge which, when unspent, contributes to the sinking fund. He suggested

that this constitutes a subsidy to the Applicant but this misunderstands the nature of service charges. Money paid in service charges to the Applicant is never lost to the service-charge payer because it must be accounted for. If the money is not used for a particular service charge, it will offset the cost of another. Money held in a sinking fund remains the service-charge payer's, albeit that the landlord holds it, and offsets future liabilities of the service-charge payer.

35. Having said that, the Respondent has pointed out that the “responsive repair” charge was apportioned only between the lessees. In 2019/20, the total cost of £217.02 for the Respondent's block was apportioned to the 3 lessees at £72.34 each. Again, the Applicant has not provided any justification for this. It should go without saying that costs are only payable to the extent that the lessees are charged the correct proportion under their leases. There is no basis that the Tribunal is aware of for allocating costs only to the lessees. The Respondent's share of £217.02 should, at 11.765%, have been only £25.53 – there was an overcharge of £46.81. Any similar overcharge should also be corrected.

Insurance

36. Clause 4(E)(2) of the Respondent's lease requires the Applicant to “Provide on demand a summary of the current policy and premium receipt.” The Respondent claims to have requested this repeatedly but not to have received it.
37. The Applicant has a block policy on which it pays a single premium to its insurers, Zurich. The Respondent sought a breakdown so that he could see the premium for his building alone. He has been advised by a Mr Blain, a purported expert in insurance, that the Applicant should have a building by building breakdown of the block policy premium it pays. The Respondent did not have permission for expert evidence but the Tribunal is an expert tribunal and is aware from its own knowledge and experience that this is correct. However, the Respondent says the Applicant has never provided this information.
38. Mr Siddique attached to his witness statement a document from the insurers, summarising the cover available under the Applicant's policy for leasehold properties. The document is not specific to the Respondent's building. For example, the “Sum Insured” is said to be “The reinstatement value of your building” but nowhere does the document mention what that value is. This means that there is essential information missing. Without that information, no lessee can possibly understand whether the insurance premium is value for money or obtain like for like quotes.
39. In his oral evidence, Mr Siddique said the Applicant had received a Renewal Notice covering the whole of its housing and office stock broken down by tenure, not by property. He said he had just received the reinstatement values which, for the Respondent's flat, is £151,409.12 and, for the whole of Greencoat Mansions, is £4.8m. Ms

Murray attempted to defend the late provision of this information on the basis that the Applicant was not sure what the Respondent wanted but, again, his Statement of Case was reasonably clear and the lawyers involved on the Applicant's side should have known what needed to be disclosed.

40. The amount charged in insurance to the Respondent has ranged from £87.21 in 2011/12 to £133 in 2020/21. The estimate for 2022/23 is a much-increased £307.
41. Only the Applicant is in a position to provide the information which would justify the service charge arising from its expenditure on buildings insurance. When it fails to comply with its obligation under the lease and in disclosure in legal proceedings, it denies that information to the lessees and, therefore, a fair opportunity for the lessees to understand or challenge their liability. Social landlords like the Applicant publicly commit themselves to openness and transparency but the Applicant has failed miserably to provide them in this instance.
42. In the circumstances, the Tribunal cannot be satisfied that the service charge in relation to buildings insurance is reasonable in amount. Doing the best it can with the evidence available, the Tribunal has determined that a reasonable charge for the years in dispute would be no more than £100 per year.

Water tanks

43. The Respondent objected to charges for the maintenance of water tanks because the majority of properties now take their water directly from the mains supply and he asserted that he should not have to pay for what he does not utilise. However, service charge provisions in leases are rarely based on benefit and use. The Respondent's lease requires him to contribute to this maintenance and, therefore, he is obliged to do so, even if he derives no direct benefit from the expenditure.

Costs

44. The Respondent sought orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Applicant should not be permitted to add any costs of the Tribunal proceedings to the service charges or bill them direct to the Respondent.
45. The Respondent has achieved a significant measure of success. Also, the Applicant has failed to provide information and disclosure which would have been expected and which might have enabled a narrowing of the issues prior to the hearing or even prior to the issue of proceedings. Therefore, the Tribunal is satisfied that it is appropriate to make both orders.

Court issues

46. Any remaining issues within the exclusive jurisdiction of the county court must be raised separately by the parties with the county court.

Name: Judge Nicol

Date: 24th February 2023

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.

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).