



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

**Case Reference** : **BIR/00FN/LIS/2021/0022**

**Property** : **1 Munnings Close, Leicester LE4 6DX**

**Applicant** : **Mani Mandalia**

**Representative** : **Amit Mandalia**

**Respondent** : **Leicester City Council**

**Representative** : **Justin Bates of Counsel**

**Type of Application** : **Payability and reasonableness of service charges under section 27A Landlord and Tenant Act 1985**

**Tribunal Members** : **Judge T N Jackson  
Mr W Jones FRICS**

**Date and venue of Hearing** : **16<sup>th</sup> August 2021  
Remote hearing via Midland Residential Property Tribunal, Centre City Tower, Birmingham.**

**Date of Decision** : **31<sup>st</sup> August 2021**

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**DECISION**

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## Decision

- a) We determine that the service charges set out below in relation to each service charge year are payable and reasonable:

2019/20	£ 371.12
2020/21	£1,212.12
2021/22	£1,233.36

- b) We make no order under section 20C of the Landlord and Tenant Act 1985.
- c) We make no order under paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

## Reasons for decision

### Introduction

1. The Applicant has applied under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') for determination of payability and reasonableness of service charges for service charge years 2019-2-21 inclusive, in relation to:
  - District Heating
  - Administrative charge
  - Building Insurance
  - TV receiving service
2. The Applicant has also applied for an Order under section 20C of the 1985 Act (Limitation of service charges: costs of proceedings) and an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (Limitation of administration charges: costs of proceedings).
3. At the hearing the Applicant's representative, Mr Mandalia, confirmed that the four items of service charge were payable under the provisions of the Lease and the matter at issue was their reasonableness.

### Background

4. The Property is a maisonette built over three floors within a block of 21 properties which include a mix of maisonettes and flats and of which 12 properties are tenanted and 9 held under leasehold. On 9<sup>th</sup> December 2019, the Applicant acquired the lease of the Property under the Right to Buy provisions of the Housing Act 1985. Throughout the application process the Applicant was represented by solicitors and by her son, Mr Mandalia. Prior to the purchase of the leasehold interest, the Applicant was given notice under section 125 of the Housing Act 1985 dated 8<sup>th</sup> July 2019, of an estimate of the anticipated service charges due which were stated to be subject to yearly review and revision. They were stated to be an average of £1,185.63 p.a. calculated as follows:
  - District Heating – 3 bed £851.88
  - Administration £158.64
  - Building Insurance £144.40

- TV receiving service £30.71

5. In October 2019, Mr Mandalia made several enquiries regarding the requirement to pay service charges should the purchase be completed. On 7<sup>th</sup> October 2019 he sought from Ms Ashton, the Exchequer Services Manager, a breakdown of the costs comprising the service charge estimate in order to assess whether they were reasonable. On 18<sup>th</sup> October 2019, Mr Mandalia was provided with a copy of all documents issued to the Applicant's solicitors to inform him of the position in regards to costs and service charge costs. On 30<sup>th</sup> October 2019, Ms Ashton provided Mr Mandalia with specific information regarding the estimated service charges and current costs in relation to building insurance, district heating, administrative charges and the TV receiving service. The purchase was completed on 9<sup>th</sup> December 2019.
6. On 6<sup>th</sup> October 2020, Mr Mandalia wrote to require a full breakdown of the service charges with evidence of bank statements, invoices etc. and the formula by which each charge was constructed. A substantive response was provided on 8<sup>th</sup> October 2020.
7. The Applicant has paid the service charges in full for the years 2019/2020 (£371.12) and 2020/2021 (£1212.12). The 2021/22 service charges (£1233.36) are being paid by monthly instalments.

### **The Lease**

8. The Lease is dated 9<sup>th</sup> December 2019 and is between the Respondent and the Applicant for the term of 125 years from 26<sup>th</sup> September 1983 until 25<sup>th</sup> September 2108 paying a ground rent of £10 per annum.
9. Clauses 3(2) of the Lease sets out the service charge mechanism and provides that the charges are payable '*whether or not the Lessee shall elect or choose to make any use of any services and notwithstanding the degree or extent of benefit the Lessee shall derive or enjoy therefrom*'. Clauses 4 (1)-(4) and the Fourth Schedule set out the chargeable services. Fourth Schedule Paragraph A (vi) and (ix) refer to the district heating scheme; paragraph A(v) refers to employing staff or contractors for the performance of the Lessor's obligations under the provisions of the Lease; paragraph A (vii) refers to the proper costs of the Lessor for the management of the building; paragraph C refers to the provision of radio and television transmissions (where applicable) and paragraph D refers to the costs of insuring the Premises and the Building against the risks specified or referred to in sub clause (4) of Clause 4. The clauses have not been set out in full as Mr Mandalia accepts that the four items of service charge are payable under the Lease.
10. The annual service charge period is 1<sup>st</sup> April to 31<sup>st</sup> March of the following year.

### **Inspection**

11. In light of the current Public Health Epidemic, the Tribunal determined this matter without an inspection following the Amended General Practice Direction: Contingency Arrangements in the First Tier Tribunal dated 14<sup>th</sup> September 2020.

## Hearing

12. An oral hearing was held on 16<sup>th</sup> August 2021 via Cloud Video platform. The Applicant did not attend but Mr Mandalia attended as her representative. The Respondent was represented by Mr J Bates of Counsel, attended by Mr F Hajat Instructing Solicitor, and Ms C Ashton, Exchequer Services Manager, appeared on behalf of the Respondent.

## Submissions

13. On a general note, the Applicant's principal concern is the Respondent's failure to provide accounts or other source data which he refers to as 'evidence' to substantiate the service charges.

### District Heating

14. The charges for this item for 2019/20 (part year), 2020/21 and 2021/22 are £266.65 (equal to £851.88), £868.92 and £886.32 respectively.
15. Mr Mandalia submits that the charge is unreasonable as the Respondent has failed to provide any calculation, formula, cost, accounts or any evidence as to how it determines the charge. Mr Mandalia submits that the charge is way above the national average cost of gas heating and has provided extracts from the internet from British Gas, Ovo Energy and Which, which state that the average annual cost of gas is £330.40 for low energy usage and £495.60 for medium usage; estimated average in 2019 of £610 and £542 based on a home with medium usage respectively.
16. Mr Mandalia submits that the district heating provision does not provide hot water which is provided by an immersion tank for which the Applicant pays electricity separately. Mr Mandalia further submits that the charge is unreasonable as the charge is neither based on the Applicant's personal consumption nor on the number of people who live in the house. Mr Mandalia suggests that the Respondent has sufficient staff and information in Council records to determine how many people live in a property.
17. The Respondent submits that it has explained that it allocates the costs of maintenance of the system and the provision of unlimited heating and hot water on a bedroom weighting basis across all properties with the benefit of the scheme. Such a basis of allocation is common, *Southwark LBC V Bevan [2013] UKUT 114 LC* and is 'fair' as required by the Lease. The use of bedroom weighting as a proxy for usage is both common and rational (as larger properties tend on the whole to have more occupants). Further, if usage were to increase in future, the Applicant would benefit from the fact that higher usage did not lead to a higher cost. The proposal to charge based on actual usage and number of occupants is not feasible as the Respondent cannot check the number of occupants across its stock on a regular basis and there is no individual meter in the Property to read.
18. The annual costs to the Respondent of the scheme in 2018 was £2.83m including network maintenance costs. The total income received in service charges was £2.25m. District heating charges are levied across approximately 3,292 properties (both tenanted and leased). The charges for all properties regardless of tenure are based on the number of bedrooms of a property with a 3 bed roomed property being

charged 3 times the charge for a one bedroomed property. At the time of the calculations the actual cost of providing district heating to a 3 bedroomed property was £1064 per annum but the amount charged to leaseholders was £852 per annum resulting in the leaseholders effectively being subsidized by over £200 a year. In 2018 and 2019, the Respondent froze charges and in 2020 and 2021 increased charges by 2% to both tenants and leaseholders.

19. Charges for district heating are discussed at Leaseholder and Tenant forum and at the Council Budget meeting each February. The report to Council Budget meeting is published on the Council's website and a link was provided to Mr Mandalia during correspondence.

#### Administration

20. The charges for this item for 2019/20 (part year), 2020/21 and 2021/22 are £49.66 (equal to £158.64 per annum), £161.76 and £165 respectively.
21. Mr Mandalia submits that the charge is unreasonable as the Respondent cannot provide evidence to show how it is calculated. He believes the charge is solely to provide leaseholders with one service charge invoice a year and that a charge of £165 for one invoice is unreasonable. He also submits that the service charge should be charged on the basis of the actual work done for each leaseholder as some leaseholders may require more 'administration' than others, such as if they need to make several complaints regarding anti-social behaviour.
22. Mr Mandalia also refers to maladministration by the Respondent relating to repair charges in invoice 88133787 dated 10th November 2020 for £54.75 and 88558828 dated 21<sup>st</sup> June 2021 for £29.55 which, he states, were subsequently negated after he disputed them.
23. The Respondent submits that the charge represents the total cost of more than £350k per annum to manage the leasehold portfolio and the costs are split equally across the 1,500 leasehold properties regardless of the size of the property or household makeup. It submits that that is a fair apportionment. That results in an average cost of over £233 per annum per property although the leaseholders are charged less. In 2020 and 2021 there was a 2% increase in the service charge. The Respondent does not make a profit from the charges.
24. £350k reflects the salary with on-costs such as NI, pension contributions, and apprentice training scheme. The Respondent employs 2 leaseholder co-ordinators (each on a salary with on-costs of £54,782) and 7 other officers who work full time on leaseholder administration (each on a salary with on costs of £34,355). Other staff contribute to the work required such as call centre handling repair enquiries and neighbourhood housing offices who carry out on the ground visits. These costs are not included. On average, 25 hours are spent administering a single leasehold account per annum at a cost of approximately £15 per hour which equates to approximately £375 per leasehold property. Ms Aston estimates that the Respondent has spent approximately 125 hours (16 days-approximately £1,875) administering the account for this Property).

### Building Insurance

25. The charges for this item for 2019/20 (part year), 2020/21 and 2021/22 are £45.19 (equal to £144.10 per annum), £150.12 and £150.12 respectively.
26. Mr Mandalia submits that it is unreasonable that the landlord has no cost to bear for the insurance on the building as the Applicant does not own the freehold of the building and is not responsible for the outside structure of the building. Mr Mandalia submits that it is common practice for the freeholder/landlord of the property to be responsible for buildings insurance on a leasehold property. Mr Mandalia suggests that it would be more reasonable for the cost of insurance to be split 50/50 between the Respondent and the Applicant.
27. The Respondent states that it is required to insure the building, the cost of which is apportioned across the total number of units. The charge for each property is directly related to the charge from the insurance provider. It is based on multiplying (a) the sum to be insured for a property (provided by the Respondent's property valuers), by (b) a rate of £1.52 per £1000 sum to be insured. Each year the sum to be insured and the rate chargeable by the insurance provider may change. Insurance is provided under a block policy. On 1<sup>st</sup> April 2019, the Property was insured for £95,000 with an annual premium of £144.40. On both the statements for 1 April 2020 and 1 April 2021, the Property is insured for £98,800 and therefore the annual charge is £150.12 in each year.

### TV receiving service

28. The charges for this item for 2019/20 (part year), 2020/21 and 2021/22 are £9.62 (pro rata equal to £31.32 per annum), £31.32 and £31.92 respectively.
29. The Applicant does not require or use any TV service from the Respondent and she purchases a TV licence as and when required. She finds it unreasonable to be forced to pay an additional charge for TV receiving that is neither required nor used. The Applicant has instructed the Respondent to disconnect the TV service provision but it has refused to do so.
30. The Respondent states that the Council is required to provide a TV/Radio receiving service to the block as a whole which includes both tenants and leaseholders. Leaseholders cannot put satellite dishes on the external walls of the building. The total cost is £277k per annum across all blocks. The cost is apportioned equally across the 7,900 properties, giving an average cost per property of over £35. The charges levied were less than the cost. The increase in service charge year 2021 was due to a 2% increase. The Respondent does not make a profit from the charges.
31. Apportionment across all 7,900 properties receiving the benefit of the facility is a 'fair' allocation as required by Clause 3 (2) of the Lease. It would be unworkable for the Respondent to monitor actual levels of usage across all those properties. The fact that the Applicant does not want to use the service is irrelevant, as provided for in Clause 3 (2) of the Lease.

## **Deliberations**

32. The basis of Mr Mandalia's submissions was that he had not been provided with the base documentation such as accounts and therefore he had no evidence upon which to assess whether the service charges were unreasonable. In the absence of such documents, Mr Mandalia did not accept the information provided by the Respondent in correspondence nor the evidence given by Ms Ashton, as he did not consider this to be 'evidence'. Ms Ashton is a professional Council officer in a responsible job whose role includes managing the business centre responsible for a range of financial transactional services including service charges. She signed a Statement of Truth at the end of her Statement in which she states that she understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made a false statement.
33. Mr Mandalia confirmed that he had no evidence that either Ms Ashton, or the author of the email on 8<sup>th</sup> October 2020, were lying or had made mistakes in the provision of the information regarding the make -up of the charges. He said that his distrust arose from 2 invoices dated 10<sup>th</sup> November 2020 and 5<sup>th</sup> July 2021 which had been charged in error as they related to communal areas to which the Applicant does not have access.
34. In the absence of any evidence that the Council officers have lied or made a mistake in stating the costs or the method of calculation, we rely on that evidence.

## District Heating

35. There appears to be a lack of clarity as to whether or not the Applicant receives unlimited hot water. The Respondent's records show that she does as she is on the district heating scheme. Mr Mandalia suggests that the Applicant does not based on the existence of an immersion heater with switch. The expert view of the Tribunal, from the photos provided by Mr Mandalia of the 'immersion tank' and the switch, is that the switch appears to relate to the circulation pump which would assist in pushing hot water from the district heating scheme into the Property and therefore the Applicant does receive the benefit of unlimited hot water. However, it would be prudent for the Respondent to inspect the Property to confirm the position in order that the Applicant understands the purpose of the switch, and also to allow the Respondent to take any action that may be required if it is determined that the Applicant does not, in practice, receive unlimited hot water under the district heating scheme.
36. We do not attach any weight to the gas prices provided by Mr Mandalia. They are based only on estimates of the annual consumption of gas for a 3 bedroomed house. The figures provided do not include maintenance and repair which are included within the district heating scheme cost. Mr Mandalia has not provided comparables from other local authorities which have district housing schemes.
37. We accept the evidence of the total costs of £2.83m for the costs of the district heating scheme referred to in Fourth Schedule Paragraph B (ix). We find that the method of calculation of the charge for district heating as referred to in paragraphs 17 and 18 is logical and fair. We do not accept Mr Mandalia's submission that the charge should be based on the number of occupants as opposed to bedrooms. How regularly is it suggested that such checks should be carried out – weekly, monthly,

annually or each time there is a change in the number of occupants? Such a system would require an unreasonable administrative burden on the Respondent the cost of which would itself be charged to the leaseholders under the Lease as part of the service charge for administration. We consider that the use of the number of bedrooms is a good proxy for the likely usage.

38. We note that the Respondent does not recover the total costs of the scheme from the service charges levied. We find that the service charges for district heating for the service charge years in question are reasonable in amount and reasonably incurred.

#### Administration

39. At the hearing Mr Mandalia accepted that the charge covers the full range of matters regarding the management of the leasehold portfolio in addition to issuing invoices and the management of service charge accounts including for example investigating and responding to enquiries about service charges; notifying leaseholders of impending major works, consultation, and indicative costs; dealing with communal repair enquiries and dealing with reports of anti-social behaviour.

40. Mr Mandalia did not provide the administration charges of other local authorities or managing agents of private sector housing for comparison nor did he state a figure that he thought was reasonable. Mr Mandalia stated that he considered the salary costs of the officers involved to be high although he did not provide any comparables. Using our expertise, we do not consider the salaries with on- costs to be unreasonably high.

41. Mr Mandalia stated that he was not arguing with the amount of the service charge itself but rather what he considered to be the unreasonableness of the failure to provide the evidence (by which he meant the accounts etc.) to support what he was being told.

42. We find that the costs are reasonable and that the method of calculation is fair. It is unrealistic to expect a local authority to account for each time an individual leaseholder contacts them and to collate that information to provide a bespoke administrative charge for each individual leaseholder. A leaseholder may contact various different sections or Departments of the Council. It would create an unreasonable administrative burden on the Respondent the cost of which would itself be charged to the leaseholders under the Lease as part of the service charge for administration.

43. We find that the service charges for administration for the service charge years in question are reasonable in amount and reasonably incurred.

#### Building Insurance

44. Mr Mandalia does not dispute the service charge amounts charged in each of the service charge years nor the method of calculation but rather the principle of a leaseholder being charged.

We do not accept Mr Mandalia's submission that as the Respondent owns the structure, that building insurance should not be charged to leaseholders. Mr Mandalia's assertion that it is common practice for the freeholder to be responsible



for buildings insurance on a leasehold property is partially accurate in that it is the freeholder who needs to arrange the insurance for the building. However, it is standard practice for freeholders to pass the cost of that insurance to the leaseholder within the provisions of the Lease, as is detailed in Fourth Schedule Paragraph D. We consider that Mr Mandalia misunderstands the respective responsibilities of a freeholder and leaseholder.

45. We find that the service charges for buildings insurance for the service charge years in question are reasonable in amount and reasonably incurred.

#### TV receiving service

46. Whilst we appreciate that the Applicant may not wish to use the TV receiving service, the provisions of Clause 3 (2) of the Lease make it clear that that the charge is payable whether or not the Applicant chooses to use it. Mr Mandali confirmed that he understood that the Lease required its payment. Mr Mandali has not disputed the amount charged.
47. We find that the service charges for the TV receiving service for the service charge years in question are reasonable in amount and reasonably incurred.

#### **Section 20C Landlord and Tenant Act 1985**

48. The Applicant applied for an order under the 1985 Act that the Respondent's costs in connection with these 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 Applicant. We may make such order as we consider just and equitable in the circumstances.
49. When considering the application, it should be made clear that we make no findings as to whether the Respondent is contractually entitled under the terms of the Lease to recover its costs or the quantum of those costs. The exercise of our discretion is solely whether the Respondent should be entitled to recover any costs it has incurred in connection with these proceedings.
50. We do not consider that the Applicant was justified in making her application to the Tribunal. The Applicant and Mr Mandali have been aware of the likely estimate of the service charges from 8<sup>th</sup> July 2019, the date of the section 125 Notice which should have informed her decision as to whether to proceed with the purchase. In response to his queries regarding service charges, Mr Mandali was provided with detailed information regarding costs and the methods of calculation of the charges on 30<sup>th</sup> October 2019 prior to the entering the Lease on 9<sup>th</sup> December 2019. The Applicant was legally represented through the purchase process and should therefore have been aware of the terms of the Lease. Mr Mandali was provided with further details of costs and the methods of calculation on 8<sup>th</sup> October 2020 which was prior to the Tribunal application dated 4<sup>th</sup> June 2021. Therefore prior to the application, on the basis of the information already provided, the Applicant and Mr Mandali ought reasonably to have been clear as to the services to be provided, the terms on which they were to be provided, that the Lease did not contain an opt out clause in relation to services the Applicant either did not require or with which she disagreed, the costs of the services and also the basis on which the service charges were calculated.

51. Mr Mandali has stated that he didn't trust the information given by the Council officers and wanted to check the source data himself as they may have made an error. Whilst we accept that it appears that two invoices were sent in error, the earliest of these was in November 2020 which was over a year after Mr Mandali requested to see the source data. We do not accept that this was the reason for the distrust of the information. No other reason was given.
52. Mr Mandali did not provide any figures that he thought were reasonable or any reasonable comparators which would show that the charges were out of the market norm. He accepted the amounts for the TV receiving service and building insurance. His arguments in relation to the TV receiving service and buildings insurance contradicted the provisions of the Lease. He misunderstood the extent of the services provided for the administrative charges. The application was misconceived. We have decided that all the service charges are reasonable in amount and reasonably incurred.
53. Mr Mandali states that the Applicant's only income is her state pension. Whilst that may be relevant if the Respondent seeks to recover the costs of these proceedings from the Applicant through her service charges, (if the Lease allows), it is irrelevant as to whether an order should be made under section 20C.
54. For the reasons above we do not make an order under Section 20C of the 1985 Act.

**Paragraph 5(A) of Schedule 11 Commonhold and Leasehold Reform Act 2002**

55. The Applicant also applied for an order under the 2002 Act to reduce or extinguish the Applicant's liability to pay an 'administrative charge in respect of litigation costs' i.e. contractual costs in a Lease. For the same reasons as set out in the paragraphs 50-53 above, we make no order.

**Appeal**

56. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson