



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

Case reference : **CAM/33UG/LIS/2021/0029**

Property : **Flat 2, Crocodile Court, Ely Street,
Norwich, Norfolk NR2 4UN**

Applicant : **Norwich City Council**

Representative : **nplaw**

Respondents : **1. Mr Jayanadren Sundrun
2. Ms Ranousha Moher**

Unrepresented

Type of application : **For the determination of the
reasonableness of and the liability to
pay a service charge**

Tribunal members : **Judge K. Saward; Judge J. Oxlade**

Date of decision : **1st April 2022**

DECISION AND REASONS

DECISION

For the following reasons, the Tribunal determines that the Respondents are liable to pay to the Applicant:

- (i) by way of service charges: £209.10 for the years 2016/17, £213.46 for the years 2017/18, £269.77 for the years 2018/19, and £1,174.76 for the years 2019/20.

- (ii) by way of reimbursement of fees which had been paid to the Tribunal by the Applicant the sum of £100 within 28 days of this Decision

REASONS

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) of the payability by the Respondents of service charges in respect of the property for the service charge years 2016/17 (£209.10), 2017/18 (£213.46), 2018/19 (£269.77) and 2019/20 (£1,174.76 including £957.04 for lighting works carried out in accordance with the statutory consultation requirements). The total sum of service charges is £1,867.09.
2. In the application the total value stated to be in dispute is £1907.09. However, this figure included a claim of £40 ground rent over which the Tribunal has no jurisdiction and makes no determination accordingly.
3. Proceedings were originally issued in the Norwich County Court under claim no. H00NR774 on 11 August 2011. An application for a determination of liability to pay service charges was subsequently made to the Tribunal on 4 October 2021.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The property which is the subject of this application is a 2 bedroom, first floor flat, within a building containing 2 flats located on an estate consisting of 12 flats, collectively known as Crocodile Court.
6. A case management hearing was conducted by Judge David Wyatt by telephone on 22 December 2021. The Applicant’s representative attended. The Respondents did not appear; neither have they participated in the Tribunal proceedings, though the Tribunal is satisfied that they have been notified of the proceedings and the directions, by service at the property address.
7. In accordance with the Directions order made by Judge Wyatt, the application has been determined without a hearing as neither party made a written request to be heard within the timescale prescribed.
8. 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.

9. The Respondents hold a long lease of the property which 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 will be referred to below, where appropriate.

The issues

10. At the case management hearing held on 22 December 2021, the Tribunal identified the relevant issues for determination as follows:
 - (i) whether the relevant service charges are payable under the lease, duly demanded and reasonably incurred/reasonable;
 - (ii) whether the consultation requirements under section 20 of the 1985 Act were complied with in relation to the lighting works; and
 - (iii) whether an order for reimbursement of Tribunal fees should be made.
11. Those main issues are unchanged following a review of the written submissions by the Tribunal.

Documentary evidence

Compliance/non-compliance with Directions

12. The Directions made on 22 December 2021 included a requirement for the Respondent leaseholders to provide details of their case. The Respondents have not done so nor have they played any part in these proceedings. The Tribunal is satisfied that they were served at the address given in the lease. It is therefore not possible to discern what objections, if any, the Respondents have as to their liability to pay the service charges and ancillary application for fees, nor on what basis.
13. No applications have been made by the Respondents under s20C of the 1985 Act (to limit recovery of the costs of these proceedings through the service charge) or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (to reduce/extinguish the leaseholder's liability to pay any administration charge in respect of litigation costs).
14. In support of the application, the Applicant has submitted a paginated bundle of documents containing the application, notice of issue in the County Court, notice of County Court Hearing, the Directions issued, witness statement for the Applicant and exhibits (including service charge statements and associated demands), notice of intention to re-let electrical maintenance contract, section 20 notice and electrical

maintenance contract. In determining the application, the Tribunal has considered all these documents.

Witness statement

15. The bundle contains an unsigned and undated witness statement of Gemma Mitchell, Housing Outcomes Manager for the Respondent. The witness statement sets out that the Applicant granted a long lease of Flat 2 to Mr Richard George Wood in 2002. The Respondents became the registered proprietors of the leasehold interest of Flat 2 in 2011.
16. Ms Mitchell states that the Council was unaware of the transfer [into joint names] and continued to invoice Ms Ranousha Moher, the second Respondent.
17. According to the Applicant, the Respondents are out of the country and have not provided contact details. The only contact address is 2 Crocodile Court, as registered at HM Land Registry.
18. Details of the service charges claimed are set out by Ms Mitchell who exhibits the service charge statements being relied upon. The charges included “major works” in 2020 to upgrade the landlord’s exterior lighting to LED energy efficient lighting. Those works included replacement wall lights and column lighting. The Council deemed the works necessary as the existing lighting was over 20 years old and showing signs of degradation. A further reason given for the lighting works is that the Council is committed to improving energy efficiency for which the financial benefits will pass down to leaseholders.

The lease

19. The lease dated 28 January 2002 was granted by The City Council of Norwich (“the Council”) for a term of 125 years from the date of deed. It includes the following provisions of particular relevance to the issues before the Tribunal.
20. The lease demised to the lessee the “property” being “the flat numbered 2” on the first floor of the building plus the associated storeshed on the ground floor, shown coloured pink on the plan annexed to the lease. The “building” is defined as the buildings at Crocodile Court shown edged red on the plan and the “estate” is the Council’s housing estate shown edged in blue.
21. At clause 4.(3) the lessee covenants with the Council “to pay such sums of Service Charge as are payable in accordance with the provisions of Schedule C”. In Schedule C, “service charge” is defined as “such percentage as shall from time to time be a fair share as determined by the Council’s Housing Manager or such other officer of the Council as

shall be appropriate of the Councils expenditure attributable to the Property proportionate to the number and/or nature and/or size of the properties from time to time comprised in the Building and or claiming to exercise or entitled to use the rights specified in Schedule A and/or claiming the benefit of or entitled to use the services specified in Schedule D". This is subject to the proviso that any dispute over the fairness of the share is settled by arbitration.

22. Pursuant to paragraph 3 of Schedule C, the lessee shall pay the service charge shown on the service charge statement within one month of the service charge statement.
23. The lessee also covenants under clause 4.(11) to give written notice to the Council within one calendar month of any underlease, transfer, assignment, or devolution of the lessee's interest in the property and to produce the relevant Deed and certified copy.
24. The Council's covenants to the lessee are set out at clause 6. They include an obligation to keep in repair (including decorative repair) the structure and exterior of the property and the building (clause 6(1)) and to keep in repair any other property over or in respect of which the lessee has rights as specified in Schedule A (clause 6(2)). The rights granted to the lessee under Schedule A include the right of access or light and air to buildings or any part of a building, and the right in common with the Council and others entitles to the use and/or enjoyment of the drying areas and communal gardens and/or landscaped areas on the Estate.
25. The Council also covenants (clause 6(9)) to ensure so far as practicable that the services provided by the Council, as specified in Schedule D, are maintained at a reasonable level and to keep in repair any installation connected with the provision of such services. The services provided in Schedule D are: the provision, maintenance, repair, and renewal of the lighting to the communal areas on the Estate and the electricity consumed in respect thereof (paragraph 1); the provision of horticultural planting and maintenance of the communal gardens and/or landscaped areas on the Estate (paragraph 2); and window cleaning at the Building (paragraph 3).
26. The Council is responsible for insuring the property and building against loss or damage by fire, tempest, flood, subsidence, and other risks against which it is "normal" to insure in its full reinstatement or replacement value (clause 6(7)). Whenever required by the lessee, the Council covenants to produce the policy or policies of insurance and receipt for the last premium.
27. Under paragraph 2 of Schedule C, the Council must keep a detailed account of the Council's expenditure and shall procure that a service charge statement is prepared for every such year or period and furnish

the lessee with a copy as soon as reasonably practicable at the end of every such year or period.

28. The “Council’s expenditure” is defined to include the reasonable expenditure of the Council (including interest paid on any money borrowed for that purpose) in complying with its obligations under clause 6(1),(2) and (9) as well as keeping the Property insured in its full reinstatement or replacement value.
29. The “service charge statement” means an itemised statement of the Council’s expenditure for a year ending on 31 March in every year accompanied by a certificate that, in the opinion of the Council officer preparing it, the statement is a fair summary of the Council’s expenditure and set out in a way which shows how it is or will be reflected in the service charge and sufficiently supported by accounts, receipts and other documents.

Service charge 2016/2017 - £209.10

30. A statement of service charges for 2016/2017 was sent to the second Respondent by covering letter dated 15 September 2017.
31. The statement covers the period 1 April 2016 to 31 March 2017. It contains a breakdown of charges. The total cost of £209.10 is composed of: (i) £49.94 being a 8.33% share (calculated with reference to the rateable value of the property) of estate costs for communal lighting electricity, horticulture maintenance and communal bin cleaning; (ii) services benefitting the property for insurance and TV aerial of £75.88 at 100%; and (iii) a leasehold management fee of £83.28. There were no services charged in respect of the building or any major works.
32. An invoice dated 22 September 2017 was sent to both Respondents at the property at No 2 Crocodile Court requiring payment of the service charges by 2 October 2017.

Service charge 2017/2018 - £213.46

33. A statement of service charges for 2017/2018 was sent to the second Respondent by covering letter dated 26 September 2018.
34. The statement covers the period 1 April 2017 to 31 March 2018. It contains a breakdown of charges. The total cost of £213.46 is composed of: (i) £49.56 being a 8.33% share (calculated with reference to the rateable value of the property) of estate costs for communal lighting electricity, horticulture maintenance and communal bin cleaning; (ii) £2.46 for block repairs at 50% (iii) services benefitting the property for insurance and TV aerial of £77.96 at 100%; and (iv) a leasehold

management fee of £83.49. There were no services charged in respect of any major works.

35. Payment was demanded by 19 October 2018 in an invoice dated 9 October 2018 sent to both Respondents at the property.

Service charge 2018/2019 - £269.77

36. A statement of service charges for 2018/2019 was sent to the second Respondent by covering letter dated 19 September 2019.
37. The statement covers the period 1 April 2018 to 31 March 2019. It contains a breakdown of charges. The total cost of £269.77 is composed of: (i) £83.84 being a 8.33% share (calculated with reference to the rateable £value of the property) of estate costs for communal lighting electricity, horticulture maintenance, communal lighting maintenance and communal bin cleaning; (ii) services benefitting the property for insurance and TV aerial of £92.32 at 100%; and (iv) a leasehold management fee of £93.61. There were no services charged in respect of the building or any major works.
38. Payment became due by 6 October 2019 after an invoice dated 26 September 2019 was sent to both Respondents at the property.

Service charge 2019/2020 - £1,174.76

39. A statement of service charges for 2019/2020 was sent to the second Respondent by covering letter dated 30 September 2020.
40. The statement covers the period 1 April 2019 to 31 March 2020. It contains a breakdown of charges. The total cost of £1,174.76 is composed of: (i) £34.40 being a 8.33% share (calculated with reference to the rateable £value of the property) of estate costs for communal lighting electricity, horticulture maintenance and communal bin cleaning; (ii) services benefitting the property for insurance and TV aerial of £102.09 at 100%; (iv) major works for landlord's lighting of £957.04 and (v) a leasehold management fee of £81.23. There were no services charged in respect of the building.
41. An invoice was issued on 15 October 2020 with payment due on the same date.

Tribunal's findings of fact

42. The application was made to the Tribunal on 4 October 2021.

43. The Applicant relies on a witness statement, but being unsigned and undated, the witness statement fails to comply with the paragraph 4 of the Directions order, which require that it be signed and so the Tribunal will consider it as a statement of case (“the statement”), rather than evidence.
44. The Tribunal notes the statement says that the first Respondent was added as an additional lessee without notice to the Council. However, no issue is taken over who are the proper parties to the lease, the proper parties to the proceedings or the proper parties responsible for service charge payments. Therefore, the Tribunal does not need to determine these points.
45. As required by the lease, all of the statements of service charges include certification that the statement is a fair summary of the Council’s expenditure which is sufficiently supported by accounts, receipts and other documents produced to the certifying Council Officer. Invoices were despatched to the Respondents in each of the service charge years. None of the costs were incurred more than 18 months before the demand for payment of the service charge was served upon the tenant.
46. The service charge for 2019/20 of £1,174.76 includes £957.04 for major lighting works. Those works are covered under the lease as a service provided by the landlord for the “provision, maintenance, repair and renewal of the lighting to the communal areas on the Estate”. To fully recover the costs from the lessees the Council needed to comply with the statutory consultation provisions within s20 of the 1985 Act.
47. No issue is taken by the Respondents over compliance with s20 and having reviewed the bundle of documents there is no reason for the Tribunal to find otherwise. Within the bundle is a copy letter of 14 August 2018 from the Applicants giving the second Respondent notice of intention to re-let its electrical maintenance contract for a further 3 years as a qualifying long-term agreement. There followed a “section 20 Notice” on 21 May 2019 consulting the second Respondent on the proposed lighting works at an estimated cost to them of £944.72 and identifying why the works were considered necessary. Notice of intention to let the electrical maintenance contract to the contractors who submitted the lowest tender was given to the second Respondent by letter dated 20 June 2019 with an invitation to make observations.
48. The Respondents have not disputed their liability for any of the service charge payments nor challenged the reasonableness of the sums. All the charges are of a type payable under the lease. The Tribunal is satisfied that a demand has been duly made in the manner required by the lease.
49. The Tribunal concludes that the relevant service charges are payable under the lease, they were duly demanded and reasonably

incurred/reasonable and that the consultation requirements under s20 of the 1985 Act were complied with in relation to the lighting works.

Application for a refund of fees

50. Although the Directions refer to reimbursement of Tribunal fees as an issue for determination, the Applicant has not made an application for a refund of the fees paid in respect of the application.
51. Nevertheless, under Rules 13(2) and (3)¹ the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid on an application or on its own initiative. The Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations (Rule 13(6)).
52. The prospect of the Applicant recovering its Tribunal fees was flagged up to the Respondents in the Directions of 22 December 2021 with opportunity for them to make representations in response. The Respondents were thus on notice of a potential award against them and have made no response.
53. Recovery of fees would ordinarily follow the event where a party has had to apply to the Tribunal to establish liability for service charges having complied with s20 and the Respondents have failed to make any response. There is no reason for the Tribunal not to award the Applicant its Tribunal fees incurred when the application has comprehensively succeeded. In the circumstances it is reasonable for the fees to be reimbursed and for the Tribunal to exercise its discretion accordingly.
54. Taking into account the determinations above, the Tribunal orders the Respondents to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: Judge K. Saward
Judge J. Oxlade

**Date: 1st
April
2022**

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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..... 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)
- (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.

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.