



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

**Case Reference** : CHI/00MS/LSC/2020/0048

**Property** : 46 Redcote Close, Southampton SO18 5SU

**Applicant** : Jason Kauder

**Representative** : -

**Respondent** : Clarion Housing

**Representative** : Weightmans LLP

**Type of Application** : Determination of service charges: section 27A Landlord and Tenant Act 1985

**Tribunal Member** : D Banfield FRICS  
Regional Surveyor

**Date of Decision** : 17 February 2021

**DECISION**

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The Tribunal determines that the service charges payable are as follows;

2017/18	£97.42
2018/19	£95.96
2019/20	£132.54
2020/21	once the actual cost of Grounds maintenance is known a deduction of 10% will be applied before calculating the Applicant's service charge liability.

That the Respondent may allocate the cost works to those properties that receive the benefit of them as adopted from 2019/20 onwards.

## **Background**

1. The Applicant seeks a determination of the service charges payable in years 2018/19, 2019/20 and 2020/21, stating that the total value of this dispute is £483.68.
2. Directions were made on 11 September 2020 setting out a timetable for the conduct of the application which required the Respondent to prepare and serve a hearing bundle by 9 November 2020
3. The bundle was not received and on 10 December 2020 I served a Notice that I was minded to bar the Respondent from taking any part in the proceedings.
4. By a letter dated 22 December 2020 from Weightmans LLP on behalf of the Respondent it was explained that staff at Clarion Housing had been negotiating with the Applicant and had mistakenly believed that agreement had been reached and therefore there was no need to respond to the Tribunal.
5. Having realised their error, the Tribunal was asked not to bar the Respondent's participation but to make further directions to enable them to comply with the Tribunal's directions albeit at a later date.
6. Further Directions were made on 23 December 2020 in which I determined not to bar the Respondent but required it to send their statement of case and any witness statements to the Applicant to which he could reply. The Respondent was then to prepare the hearing bundle, copies of which were to be sent to the Applicant and the Tribunal.
7. The determination bundle comprising 496 pages has been received and references to pages within it are shown as [\*].

## **The issues**

8. In his "Particulars of Claim" [14] the Applicant refers to 6 years of correspondence, complaints and agreements in respect of the gardening service in Redcote Close, Portway Close and April Close following the appointment of Envirocare as grounds maintenance contractor.
9. The level of service previously enjoyed was not maintained and the price increased. The specification in the contract is not followed and it is impossible to monitor the situation which affects 120 properties in his area.
10. Particular complaints are that despite an assurance that a hedge would be cut down to 1 metre as per the contract the work remains outstanding, the contractors do not attend regularly and do not rake the leaves.

11. The Applicant asked Clarion for full details of the service contracted to be provided and actually received together with a breakdown of service charges, work done and invoices for the past six years for gardening.
12. The Applicant referred to his monthly Grounds Maintenance charges of £11.26 for 2018/19, £9.28 for 2019/20 and £13.15 for 2020/21 and disputed the following invoices;
  - a. 30/11/17; £432; Work included in general specification
  - b. 4/1/19; Rubbish clearance not in his contract
  - c. 31/7/18; as above
  - d. Gardening charges for 2017/18 totalling £5,417.52
  - e. Gardening charges for 2018/19 totalling £5,596.92
13. The Gardening charges are disputed on the grounds that his proportion should be 1/120<sup>th</sup> rather than the 1/100<sup>th</sup> charged and that the work was not completed on time, was shoddy and that some tasks within the contract have not been done or charged as an extra when they should have been included.
14. The Applicant wants a determination as to whether the specification [18] is a term of the contract that is supposed to be adhered to or “guidelines that the association and envirocare can pick and chose (sic) what tasks are completed.”

## **The Tenancy**

15. The Applicant holds a monthly assured non-shorthold tenancy from 14 June 2008. The terms relevant to this dispute are:

- |                     |   |
|---------------------|---|
| <i>Clause 1.2</i>   | <i>The monthly payment includes service charge</i>  |
| <i>Clause 1.3.1</i> | <i>The service charge is payable in respect of the following services to be provided by the Association (Respondent):<br/>Landscaping Contract<br/>Management &amp; Administration @ 15%</i>  |
| <i>Clause 1.3.2</i> | <i>The Association may, after consulting the Tenants affected, increase, add to, remove, reduce or vary the services provided</i>   |
| <i>Clause 1.3.3</i> | <i>The Association may charge for the services on the basis either of reasonable costs incurred during the previous financial year or of estimates for the current or next financial year. The difference between any estimate and the actual cost may be carried forward. The financial year starts on 1 April and ends on the following 31 March.</i> |
| <i>Clause 1.3.5</i> | <i>The costs of services shall be apportioned equally between all the properties concerned in respect of which such services are supplied...</i>  |
| <i>Clause 1.3.6</i> | <i>The Association shall provide an annual account of the costs incurred, the service charges due, and the amount held in the sinking fund if any.</i>  |

## **The Law**

16. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can construe the tenancy agreement where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.
17. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.
18. In summary therefore, the Tribunal's task is to determine whether:
  - The cost and standard of the work is reasonable and: -
  - Whether the work falls within the tenant's obligation to pay as referred to in the tenancy agreement

### **The Evidence**

19. A quantity of evidence has been provided in respect of whether the terms of the maintenance contract and its specification have been adhered to. This is not a matter for the Tribunal as its concern is to determine whether the cost is reasonable for the work carried out. Whether that work complies with the contract is a matter for the Respondent landlord not the Tribunal. As such, whilst I have read the parties' evidence on this aspect I do not propose to refer to it further in this determination.

### **Respondent**

20. In the Respondent's Statement of Case [27] the terms of the Applicant's tenancy are recited with the location described as on a site comprising Redcote, Portway and April Close (referred to as "the block") comprising 3 blocks of flats, houses and bungalows containing 100 units. i.e 8 supported flats, 24 general needs flats and 68 houses/bungalows.
21. The Respondent has apportioned the service charge costs for the Block to the Applicant's Property as follows:
  - 1% of all costs, for the service charge years up to year ending 31 March 2019, based on the service charge being apportioned equally between all 100 units on site;
  - and
  - For the service charge year ending 31 March 2020 onwards, the same 1% of all "Blockwide" costs have been charged except for costs relating to the enclosed communal garden for 42-47

Redcote Close which is used by those 6 units alone. That element of specific cost is now being apportioned equally between those 6 units which solely benefit from that element of the grounds maintenance works as the Respondent deemed this to be a fairer apportionment.

22. In support the Respondent attaches: -

- 1) Scott schedule
- 2) Site plan
- 3) Witness statement of Simon Balchin
- 4) Tenancy commencing on 14 June 2008
- 5) Service charge annual account of costs incurred year ending 31 March 2018 (letter of 28/09/18)
- 6) Service charge annual account of costs incurred year ending 31 March 2019 (letter of 27/09/19)
- 7) Service charge annual account of costs incurred year ending 31 March 2020 (letter of 25/09/20)
- 8) Estimate of annual service charge year ending 31 March 2021(letter of 07/02/2020)
- 9) Statements of account detailing service charges charged to applicant for above years
- 10) Gardening contract/specification with Envirocare dated 1.5.14 and extended January 2019
- 11) Grounds Maintenance Expenditure Summary spreadsheet
- 12) Supporting invoices for relevant service charge years as summarised in the spreadsheet

23. The Respondent confirms that although the application does not include 2017/18 it is content for it to be included and has been referred to in the Scott Schedule prepared.

24. With regard to grounds maintenance it is said that “All costs invoiced by the Contractor have been incurred in accordance with the agreed terms of the Contract, save for one non-contract item for tree surgery work of £432 which has been itemised separately. All the invoices received from the Contractor for the relevant service charge years are summarised in the Spreadsheet provided with this statement of case, with all supporting copy invoices also supplied.”

25. The terms of the Tenancy “do not require a specific contract or specification to apply, and the Respondent is able to charge all reasonably incurred landscaping costs via the service charge. The tenants of the site were all consulted at the time the Contract in question was put in place. The Respondent’s position on this is that as far it is aware all costs charged by the Contractor are in line with the terms of the Contract, works are carried out as per the specification and all such costs are reasonably incurred costs which are payable under the terms of the Applicant’s tenancy.”

26. In summary, “the Respondent’s position generally is that the garden areas are regularly checked, and any issues are picked up and addressed with the Contractor. The level of costs for the Contract are reasonable and in line with the type and extent of service provision on the Respondent’s similar sites. The Applicant is the only resident on this estate to make complaint regarding the quality or standard of work being completed by the Contractor. The Respondent has no concerns about the work carried out by the Contractor and considers all service charges demanded to date are reasonable and in accordance with the terms of the Tenancy. Notwithstanding this, concessions have been made by the Respondent, as per the Scott Schedule and the Spreadsheet enclosed. The Respondent also cut the hedges to the Applicant’s 1m requirement, despite the chance this will result in death of the plants. It is not considered any further reduction of service charge costs payable by the Applicant is required. The Respondent therefore asks the Tribunal to find that the service charge for the relevant years is reasonable and payable by the Applicant.”

27. In the Scott Schedule [32] provides the following information: -

2017/18

The disputed invoice for £432 relates to tree works and as such is not within the gardening contract and is chargeable. The two invoices relating to rubbish clearance have been removed as not payable.

Due to an error in calculating the Grounds Maintenance costs the amount to be charged is £89.33 (1% of £8,932.76) rather than £95.09 as indicated on the year end statement dated 28/9/18.

2018/19

The two invoices relating to rubbish clearance have been removed as not payable.

Due to an error in calculating the Grounds Maintenance costs the amount to be charged is £92.71 (1% of £9,270.84) rather than £168.12 as indicated on the year end statement dated 27/9/19.

2019/20

Costs relating to the communal garden is now split 6 ways, other costs continue at 1% as before.

Further errors have been discovered in the allocation of items reducing the Applicant’s share from £130.28 to £128.07

2020/21

The monthly charge of £13.15 is for grounds maintenance comprising £5.06 brought forward from 2018/19 and £8.09 estimate for 2020/21.

It is accepted that charges for Fire protection, Playground maintenance, Aerial maintenance and Estate Refuse collection should not be charged and will be removed from the Applicant's account.

28. A summary of the above adjustments is indicated on a spread sheet [188] covering the years from 2014/15 to 2019/20.
29. The plan [37] of the estate indicates that there are 36 general needs properties and 61 supported housing.
30. Mr Baldwin's witness statement [38] mainly concerns whether the contractors follow the contract which I have already stated is not a matter for this Tribunal. Mr Baldwin does however record that; "The Respondent has no concerns about the quality or standard of work from the Contractor. However, in light of the Applicant's concerns we have offered to meet him on site during site inspections but he has declined this offer. In any event, the Respondent will continue to monitor the situation closely going forwards. The level of costs for the services provided for this property are in line with the type and extent of service provision on the Respondent's similar sites in the Southampton and Portsmouth areas. The Respondent therefore considers all service charges demanded to date are reasonable."
31. Schedules of invoices for 2018/19 and 2019/20 at [193 & 194] together with supporting invoices at [276 to 341] support the Grounds Maintenance costs referred to in paragraph 27 above.

### **Applicant**

32. In a reply to the Respondent's case the Applicant confirms that the "basis of his case is that "the Housing Association have provided me with a document, stating when the tasks will be carried out, yet these tasks are not carried out."
33. Mr Kauder goes on to refer to his previous communications with the Respondent and that;
  - Litter and leaves are clearly blown into the hedges
  - Advanced notification of use of weedkiller not given
  - Hedges not cut to 1 metre
  - Shrubs not cut back regularly
  - Moss not removed in some areas
  - The previous contractor attended site regularly whereas Envirocare come for half the time and for more money.
34. Mr Kauder "would like the tribunal to make the order that my service charge is unreasonable owing to the fact the association is "not willing

or required to do so” to provide the services mentioned in the contract at the date or time or even with 3 years of being due and therefore on that basis I should not have to pay for something that they are “not willing or required to do so “complete or even offer.”

35. At [367] is an undated email with various photographs attached showing litter, an old door, leaves and various hedges all of which is said to demonstrate poor workmanship.
36. Further photographs and correspondence between the parties is included regarding the continuing failure of the contractor to comply with the terms of its contract. Whilst the photographs previously referred to are undated those at [448 to 472] are said to have been taken on 21/1/2021 and do show what appears to be litter of some age, discarded builder’s rubbish, moss covered paths and cut back shrubs with uncleared arisings.

### **Respondent**

37. The Respondent commented on 25/1/2021 that the Applicant’s response above [473] stating that the Tribunal’s directions allowed the Applicant to make a concise response to the Respondent’s case however what was received was a 91-page document and 60+ photographs many of which were out of date and depicting the condition some time ago.
38. The Respondent therefore asked the Tribunal to take into account its further comments and 6 photographs attached taken on 25/1/2021 showing the estate paths and borders are clean and tidy, free from moss, largely free from litter and that hedges have been reduced to 1m height except where a resident wanted it kept at 1.5m for privacy.

### **Applicant**

39. In a further statement [488] the Applicant says that the Respondent has seen similar photographs before as the work has never been done. He confirms the photographs were taken on 26 January 2021 and that he exhibits an up to date copy of The Sun as proof.

### **Discussion and Determination**

40. Neither party in this case has strictly complied with the Tribunal’s Directions but, in the absence of specific objections I am prepared to take into account all of the documents contained within the hearing bundle.
41. It is unfortunate that the Applicant has largely based his case on what he considers to be the contractor’s failure to comply with the terms of its contract which, as indicated at paragraph 19 above is not relevant to the matter the Tribunal must determine.



42. For the avoidance of any doubt I confirm that the Landlord's obligation under the tenancy agreement is to provide a "Landscaping Contract" The form of that contract and the extent of the work undertaken is to be determined by the landlord.
43. The Respondent has accepted that charges for Rubbish clearance, Fire protection, Playground maintenance, Aerial maintenance and Estate refuse collection should not have been made and the resultant costs have been adjusted as referred to on the Scott Schedule [36]. The matters remaining to be determined therefore are;
- Whether the costs are allocated in accordance with the tenancy agreement
  - Whether the costs charged are reasonable for the work carried out.
44. In determining these two issues I will only consider the evidence submitted by the parties.
45. With regard to the allocation of costs the Applicant says it should be 1/120<sup>th</sup> of the Grounds maintenance charge whereas the Respondent says that although it has previously been charged at 1/100<sup>th</sup> from 2019/20 it has been charged at 1/6<sup>th</sup> of charges solely relating to the maintenance of the communal gardens serving his and neighbouring properties at 42-47 plus 1/100<sup>th</sup> of the costs of the remainder of the estate.
46. Clause 1.3.5 of the tenancy agreement states that "*The costs of services shall be apportioned equally between all the properties concerned in respect of which such services are supplied...*" and as such the Respondent is able to allocate costs to those properties that receive the service. In this case maintenance is provide to the estate as a whole together with specific maintenance to the six properties one of which is the Applicant's.
47. The first issue therefore is how many properties receive any particular service. The Applicant says that it is 120 but provides no supporting evidence or explanation. The Respondent says it is 100 but the plan [37] refers to a total of 97 units.
48. In the absence of any other evidence I determine that the Respondent was entitled to divide the costs by 100.
49. I further determine that where some services benefit a lower number of properties it is in accordance with the tenancy agreement to divide the costs equally between them. The method adopted from 2019/20 of charging 1/6<sup>th</sup> of costs relating to Nos 42-47 Redcote Close and 1/100<sup>th</sup> of the remainder accords with the tenancy agreement and is therefore in order.

50. Turning now to the question of whether the costs charged for grounds maintenance is reasonable I have no evidence from either party as to alternative quotations received or sought only the assertion by the Applicant that they are more expensive than the previous contractor. The Respondent has said that consultation with the tenants took place before the contract was placed and the costs are in line with the terms of the contract.
51. In the absence of any evidence to the contrary I accept that if the standard of workmanship is reasonable then the contractor's charges are recoverable.
52. I must finally turn to the quality of the works undertaken and whether they meet a reasonable standard for the cost incurred. Photographs have been provided by both parties some of which have been dated.
53. Many of the photos are close ups of small areas of ground with no indication of location. Some show uncleared leaves, mossy paths and litter whereas those provided by the Respondent indicate a good standard of maintenance. Given that the photos can only give a limited indication of the part of the estate where they were taken on the day they were taken, only a general impression of the standard of maintenance provided can be given. I do note however that in asserting that the Applicant's photographs depict the condition dating back some time there is an acceptance that standards have not always been of the best.
54. Given this acceptance and the evidence of lack of maintenance in at least some areas of the estate as demonstrated in the photographs taken by the Applicant on 21 January 2021 I consider a modest reduction of 10% to the Grounds maintenance charges excluding the one-off payment for tree works should be made for 2017/18, 2018/19, 2019/20 and 2020/21 together with a resultant adjustment of the 15% Management and Administration charge all as set out in the table below.

	Block expenditure	Less 10%	Charged	Corrected	Refund
<b>2017/18</b>	8,932.76	8,039.48	95.09	80.39	14.70
	432 (Trees)	n/a	4.32	4.32	-
Admin 15 %			14.91	12.71	2.20
<b>2018/19</b>	9,270.84	8,343.76	168.12	83.44	84.68
Admin			25.22	12.52	12.70
<b>2019/20</b>	7,123.53	6,411.18	130.28	64.11}	15.03
42-47 (1/6 <sup>th</sup> )	340.95	306.85		51.14}	

Admin			19.54	17.29	2.25
<b>TOTAL</b>					<b>£131.56</b>

55. The Tribunal therefore determines that the service charges payable are as follows;
- 2017/18        £97.42
  - 2018/19        £95.96
  - 2019/20        £132.54
56. For 2020/21 the Tribunal determines that once the actual cost of Grounds maintenance is known a deduction of 10% will be applied before calculating the Applicant's service charge liability.
57. That the Respondent may allocate the cost of works to those properties that receive the benefit of them and as adopted from 2019/20 onwards.

D Banfield FRICS  
17 February 2021

#### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.