FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UQ/LVL/2022/0002** **CAM/22UQ/LIS/2022/0005**
Property	**:**	**39 Manor Road, Stansted, Essex CM24 8NL**
Applicant	**:**	**Mr Ben Dean-Bowers**
Representative	**:**	**Mr Bowers in person**
Respondent	**:**	**Uttlesford District Council**
Representative	**:**	**Mr Rowan Clapp – Counsel with Mr Peter Holt, Chief Executive of Uttlesford District Council**
Type of Application	**:**	**Liability to pay service charges**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr S D Barnden MRICS**
Date of Hearing	**:**	**6th October 2022**
Date of Decision	**:**	**25 October 2022**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This matter was dealt with by a remote video hearing which had been consented to by the parties. The documents to which we were referred were contained in a bundle of some 468 pages, which we will refer to as necessary during the course of this decision.

DECISIONS

1. **The Tribunal records that the sum of £528.28 is no longer claimed by the Respondent and should therefore be removed as an adjustment as shown on the estimated management service charges for the year 1st April 2020 to 31st March 2021.**
2. **The Tribunal disallows the maintenance charge of £15 for each of the years in question for the reasons set out below.**
3. **The Tribunal reduces the management charges for the year 2022/23 to £190.**
4. **Insofar as the insurance premiums are concerned, the Tribunal allows the sums claimed for each year in dispute for the reasons set out below.**

BACKGROUND

1. This was a application Mr Dean-Bowers (Mr Bowers) challenging certain service charges levied against him by Uttlesford District Council.

2. It is appropriate to record some of the procedural background to this case. On 6th July 2022 Judge David Wyatt of the Eastern Tribunal issued directions having caused letters to be written to the parties both concerning the identity of the Respondent and raising issues concerning matters of jurisdiction, which the Applicant Mr Bowers wished to pursue.

3. In attempt to resolve these issues a case management hearing was held on 6th July 2022 by telephone when as a result the application that Mr Bowers had made for a variation of a lease was struck out as is set out at paragraph (6) of those directions.

4. The directions also went on to clarify the position with regard to service charges. Those for the period contained in the year 2010 were struck out as being an abuse of process. There was not, however, a strike out of the application in the sum of £410.53 for 2014 but we record now that at the hearing Mr Bowers indicated that he would not be pursuing that sum.

5. The directions went on to set out clearly what steps needed to be taken to deal with the service charges, which appeared to be in dispute. The years that we were required to deal with were the periods 2018 to 2022, the latter of course being estimated charges.

6. In addition, Mr Bowers persisted with his concerns relating to the apportionment of costs in respect of the service charges and whilst the application to vary the lease had been struck out it was possible for us to consider how those apportionments should be undertaken under the provisions of section 27A.

7. The directions went on to give clear instructions to the parties as to how they were to proceed with the case and the documents that would be required to enable the matter to be determined by the Tribunal.

8. The directions provided for Mr Bowers to be responsible for the preparation of a bundle of documents and it set out in the directions those documents that needed to be included.

9. At the commencement of the hearing held on 6th October 2022 by video, Mr Clapp, Counsel for the Respondent, asked that the claim should be struck out on the basis that Mr Bowers had not complied with the directions, that his submissions were rambling and incoherent and that it was very difficult to respond to them. He said that latitude had already been given to him and his conduct was such that the case should not proceed before us.

10. We heard all that was said by Mr Clapp. We do agree that Mr Bowers appears to operate on the basis that more that is said the better his case will get. The bundle ran to some 468 pages and there is no doubt from our consideration of same that there is a good deal of duplication and that it contains a considerable number of documents which have no relevance to the issues that were before us. Further, on the day of the hearing Mr Bowers submitted a document by email which was difficult to understand and appeared to have little relevance to the issues that we were expected to deal with. Having considered all that was said by Mr Clapp we cam to the conclusion that the case should proceed. We accept that Mr Bowers was a litigant in person and some allowance should be made. In addition, all present to allow the case to proceed.

11. In response to this Mr Bowers did confirm that he was not seeking to recover the £410.53, which is referred to in the directions. He did, however, seek to argue that the service charge costs still needed to be proportioned appropriately. There were he said five blocks each containing eight flats or maisonettes and he did not consider that the method by which the Respondent apportioned the service charges was reasonable. We shall return to this issue.

12. We have considered the documentation before us and it seems to us that there really was little to deal with in the way of service charge matters. Each set of estimated service charges for the years in dispute contained costs in respect of minor repairs and maintenance of £15 per annum, building insurance which fluctuated and management and administration charges, likewise fluctuating. That appeared from the estimated costs to be the extent of the service charges that Mr Bowers that was required to pay.

13. Having considered the extent of the service charges and explained to Mr Bowers that we would not be dealing with claims relating to disrepair, the possible attempt by the Council to impose an empty dwelling management order and other issues which had no reference to the jurisdiction under section 27A, we moved on in an attempt to deal with those issues which were relevant to the matters before us.

14. On the question of the minor repairs, Mr Bowers thought this related to bulkhead lighting in the common parts, which he did not use and he should not therefore have to pay for it.

15. In respect of the insurance, his complaint was that he had not been able to recover losses following a fire in his flat and as part of the breach of covenant allegations concerning disrepair, he was concerned that he had had to carry out works himself when he thought they should have been covered by insurance. He did, however, confirm that he did not query the insurance premiums.

16. As to management and administration, he said that he had had no service since 2016 and on the question of the apportionment had at pages 171 of the bundle onwards prepared schematic plans of the various properties making up the block and their size which he felt should be used for determining the service charge proportions.

17. Mr Clapp had no questions to ask of Mr Bowers and instead called Mr Holt to give evidence.

18. Mr Holt had provided a full witness statement starting at page 62 of the bundle in hardcopy format, although at page 64 on the PDF bundle that we had. This confirmed his employment as Chief Executive of the Respondent, a post he had only recently taken up (October 2021). His statement was based on information contained in the records and set out a history of the Council's involvement with Mr Bowers that we have noted but we see no need to repeat in this decision.

19. What he did say was that he did not think Mr Bowers had complied with the terms of the Tribunal directions and that this had made it difficult for the Council to respond. The bundle included the estimated service charge letters for the years 2015/16 through to 2022/23.

20. The statement spoke to the problems following a fire, which it is said by Mr Holt, occurred as a result of the Applicant's property being left unoccupied for some time. The witness statement also commented upon a document headed 'The Plaintiff Claimant Schedule' which we will return to in due course, but the response by Mr Holt was largely dismissive. There had been attached to the Claimant's witness statement a number of other documents in tabular form, which were exceedingly difficult to follow and as far as the Council was concerned were largely irrelevant. Some complaint had been made by Mr Bowers relating to the Council's involvement with his mortgagee who it seems had taken possession of the property apparently following from the same being empty and the Council's considered intention to issue an empty dwelling management order. That order did not arise. We have noted all that has been said by Mr Holt in his statement and the exhibits referred to.

21. The Plaintiff Claimant Schedule, which appeared a page 33 of the bundle, contained much that was not relevant. There is some minor criticism made of Judge Wyatt's findings and further reference to the application to vary the lease, which had of course been struck out. The individual service charge items are referred to by Mr Bowers. This includes the £410.53 which he decided not to pursue, the £580.20 which the Council agreed should not be claimed from him

(more to follow on this) and the £15 miscellaneous charges which under the heading of Repairs and Maintenance.

22. Under paragraph 6 Mr Bowers speaks about future service charge to leaseholders and a rent adjustment for AST tenants. He says that he had obtained support for a fairer methodology of dealing with service charges and insurance contributions from two ground floor leaseholders and from a tenant. It should be noted that there is a mixed tenure at this development with some leasehold properties and a number of Council tenants. At paragraph 8 he asks that there should be a determination that the Council had committed breaches in the past, that section 20 notices had not been dealt with properly, that management fees were too high, that there should be a review by the Property Ombudsman and that the Council's record keeping was not sufficient.

23. During the course of oral evidence Mr Holt made the following comments. On the question of the apportionments he had, we understand, taken the view that the building was assessed as four flats in each block, the division being where the communal entrance hall served the flats on the upper floors. It is we were told the basis upon which the Council have dealt with service charges over the years and that they have divided them on a straight unit basis. He told us that he had been advised there were 48 units in the development.

24. On the question of insurance, there was documentation produced which appeared to include suggestions that there was a mark-up for leaseholders. Mr Holt told us that his understanding was that this was something that was charged by the insurance company.

25. He the explained the basis upon which the management charges were calculated, and this was set out in page 72 as an annex to his statement. The management costs were weighted depending upon the property and whether it benefitted from a communal area. As Mr Bowers' property did not, he paid a slightly lower amount. We were told that the charges were calculated using a percentage of time spent on all elements of management, which included finance, rents, repairs, surveyors, director of housing and home ownership officer. Each was allocated a percentage which was applied to the total cost incurred by the Council in respect of these various headings, which for the year 2020/21 gave a cost for leaseholders of £34,106.51 which was divided between the 139 leasehold properties, which was then subject to a weighting change to reflect those that had the use of the communal areas and those that did not. He was of the view that these were reasonable costs and that indeed Mr Bowers' involvement had created additional costs over and above that which would be expected.

26. On the question of apportionments, he pointed out to us that the lease makes no particular reference to this. The lease was included in more than one place in the bundle. Mr Bowers' lease is dated 16th May 1983 and is for a term of 125 years from 16th May 1983 with a yearly fixed ground rent of £10. What it does say at clause 1(b) is as follows: *"The service charge shall include not only those expenses outgoings and other expenditure herein described which have been actually disbursed incurred or made by the Council during the year question, but also such reasonable part of all such expenses outgoings and other expenditure herein described which are of a periodically recurring nature*

(whether recurring by regular or irregular period) whenever disbursed incurred or made and whether prior to the commencement of a said term or otherwise including a sum or sums of money by way of reasonable provision of anticipated expenditure in respect thereof as the Council may in their discretion allocate as being fair and reasonable in the circumstances."

27. It was not said to us that there was any other provision in the lease as to how the service charges were to be dealt with.

28. Mr Holt told us that dealing with it on a unit basis was the best way forward and although Mr Bowers in his submissions had referred to section 103(4) of the Commonhold & Leasehold Reform Act 2002, this of course related to Right to Manage legislation and were in respect of landlords' contributions to service charges not the tenants.

29. Mr Holt was not aware that anybody had complained about the Council using the units as this gave certainty. To use floor areas would require substantial expense on the part of the Council for re-measuring the units and of course would take no account of any extensions that might arise. For example, he did not know the floor area of Mr Bowers' property, although it had had an extension at some time in the past.

30. He spoke briefly about the fire that had damaged Mr Bowers' flat and we should record what he had said concerning the sum of £580.28. This apparently related to the repair of the back door to Mr Bowers' property and this sum had been claimed from and paid by the insurers. However, notwithstanding the fact that the Council was not out of pocket, Mr Holt indicated that it had been the Council's intention to pursue Mr Bowers for this sum and to repay the insurers. However, on reflection, Mr Holt confirmed that we could record that the Council would not be going to seek to recover the sum of £580.28 and it was no longer in issue.

31. On the question of the repairs and maintenance of £15 per annum he thought this was for the communal area. However, we had no final accounts produced to us in respect of these years in question. It is clear that there have been some final accounting because in the estimated service charge letters there is frequently some form of adjustment. It was disappointing from our point of view that these accounts had not been provided.

32. Mr Holt then answered some questions from Mr Bowers. He was firstly asked whether he was aware of the leaseholder's policy handbook, which he said he was but had not read it recently. On the question of apportionments Mr Holt again referred to the lease and said that he was satisfied that the allocation on a unit basis was correct. Sometimes it would be used as divisible by four but if it included works for example to the roof of the block containing eight units, then there would be a division by eight. This discretion was allowed in the lease.

33. He did accept that if he was starting from scratch that he might have considered issues on size and other matters. However, he was not doing so and to change the approach from one to another would necessarily cause problems and potentially friction with other leaseholders.

34. In a short closing, Mr Bowers indicated that the £15 per annum for the common parts was not something that he should pay as he got no benefit from it. He complained about the management and that matters were not dealt with correctly and that it was not good value for money.

35. Mr Clapp's short submission to us was by reference to the lease and whether or not the costs that the Council sought to recover were payable and reasonable. The lease in his view clearly set out the discretion as to the manner in which service charges were apportioned and that the burden lay with the Applicant to show that the costs were outside the lease or were unreasonable and unpayable. There was in his view no justification for the application in that the door costs had already been written off and were in advance of the claim.

36. He was of the view that the application should be dismissed. He then went on to put forward a claim for costs against Mr Bowers under the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules of 2013. The grounds were that Mr Bowers had failed to clarify what he was claiming that a large element of the claim, namely the lease variation, had been struck out, that many of the allegations made were irrelevant as were the allegations of dishonesty. It was he said contempt of Court for the late production of documents and that too much latitude had already been granted to him. In his view this was manifestly unreasonable and misconduct which Rule 13 should apply.

37. Mr Clapp said that his fees, which were £3,000, included the attendance at the case management hearing and that they should be split 50:50. There were no other costs, although he did point out that Mr Bowers had referred his instructing solicitors to the Solicitors Regulatory Authority, which was dismissed, and which in his view was unreasonable.

38. Mr Bowers' short response was that there was no protocol from the Respondents about the discretion to charge what they did in the lease. He had nothing to say about the fire door other than he was not aware that a credit was to be granted to him until the hearing today and that he had spent a lot of time on dealing with the issues that were included within the papers.

DECISION

39. As we have said this was a confused and confusing application. As we have indicated above Mr Bowers had sought to include both an application to vary the lease and an application under section 27A of the Landlord & Tenant Act 1985. The lease variation had been struck out but that did not prevent him from still seeking to put forward certain arguments in that regard. This should have been a straightforward case. The service charges in dispute were minimal. Instead, we were presented with a bundle of 468 pages, much of it containing documents which were wholly irrelevant to the issues that we were required to consider and resulted in unnecessary Tribunal time as well as we suspect time of the Respondents in trying to make sense of what Mr Bowers was seeking to recover.

40. We will deal with the various findings that we make in turn. Insofar as the replacement of the back door to Mr Bowers' property is concerned, the sum of £528.28 was conceded by the Respondent. It was suggested that this had been conceded before proceedings or certainly before the case management hearing. We do not accept that. There is no evidence that that was the case, and we find it surprising that if Mr Clapp had been so instructed then he would have advised the Tribunal at the case management hearing that this was not an element that remained in dispute. We accept Mr Bowers' surprise that this was conceded at the hearing. Indeed, the reasons for claiming it are somewhat beyond us because if the insurance company had paid out and they are not renowned for their generosity, presumably they did so because they thought it was a bonafide claim. To then seek to recover those monies from Mr Bowers shows some spite on the part of the Council.

41. As we have indicated above, we have not been provided with the annual accounts. We see no reason why that should be the case. It was suggested by Mr Holt that they had not thought that they would be necessary but with respect to the Council they should have known that this was a claim about service charges and the accounts should have been produced so that we would have known exactly what sums were being claimed for the maintenance and repair instead of the generic amount of £15. In the absence of these accounts with no indication as to what the sum was actually spent on, we disallow the sum of £15 for the maintenance and repair for each of the years in question.

42. The insurance premium was not challenged by Mr Bowers, but he did seek to challenge the basis upon which the premium was apportioned. It does seem to us that the measurements that he produced in his document at page 171 of the bundle showing an area of 42 square metres do not seem to accurately reflect the size of the property. When one looked at page 130, he appears to be indicating that the internal floor areas were 41 square metres below the main roof, 13 square metres below the balcony concrete deck and a flat roof extension of 20 square metres. Those being the case, it would seem that the distribution of the insurance liability on a unit basis does Mr Bowers no harm.

43. We then turn to the question of the management. We do not propose to interfere with the historic management charges, which in the year 2018/19 were estimated at £141.28 and have then fluctuated for the years leading to the latest for 2022/23 estimated at £239.73. This is a higher than the other management charges for earlier years. Doing a quick calculation of the management fees for the period 2017/18 through to 2022/23 gives an average of just under £190. We propose, therefore, to reduce the management charges for the year 2022/23 as estimated to £190 reducing down from the £239.73 that is claimed.

44. The upshot of this is that the deficit, which is recorded of £1,474.08, needs to be reduced by £15 for each of the years in question as well as £528.28 for the replacement door. In respect of the last year, the management fee will need to be reduced. The Council should, therefore, calculate an amended demand taking these matters into account. Final accounts should be produced.

45. We then consider the question of costs that were raised by Mr Clapp on behalf of the local authority. We can understand the frustration that the local authority

will have felt faced with Mr Bowers' somewhat incessant and wide-reaching complaints. However, whilst we were burdened with a substantial bundle it was not difficult to get to the essence of the service charges in dispute, although this was not helped with by the lack of annual accounts.

46. The basis upon which an order for costs can be made under Rule 13 is governed by the Upper Tribunal decision of *Willow Court Management Company (1985) Limited v Alexander and others Upper Tribunal reference [2016]UKUT290(LC).* That case has set out the procedure for which the Tribunal may award costs under this Rule. It includes a three-stage step. The first is whether the person has acted unreasonably. *"The decision as to whether the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case."* If there is no explanation, then the behaviour will be considered unreasonable and thus the threshold for the order is made. A discretionary power is then engaged and the question then for us to consider is whether in the light of the found unreasonable conduct we should make an order for costs. It is only at that point that the question as to the amount of the order has to be engaged.

47. This is a close-run thing. However, at the end of the day we have found in Mr Bowers' favour in relation to the costs of the replacement door which should never have been claimed from him in the first place, the costs of an annual repairs and maintenance which have not been justified on our finding by the local authority and a slight reduction on the management charges for the estimated year ending 2023. He has, therefore, had success. We bear in mind that Mr Bowers was acting in person. That being said he appears to have knowledge of legal issues although in some cases somewhat misplaced.

48. Mr Clapp told us that his fees had been divided equally between the case management hearing and the hearing before us. An application for costs was made at the case management hearing and was refused by Judge Wyatt for the reasons that he set out in that decision. It seems to us, therefore, that on anybody's argument the costs of the case management hearing would not fall to be dealt with under the unreasonable aspect umbrella. The question, therefore, is whether the Applicant's behaviour after the case management hearing and his failure to adhere to the terms of the directions and other matters should lead to an order being made against him.

49. It seems to us that there is a bit of six of one and half a dozen of the other. If the Council had made clear that there was no claim for the costs of the replacement door, that may have impacted on Mr Bowers' decision as to how he proceeded. Equally it may not have done. Doing the best we can in the circumstances of the case, we have come to the conclusion that it would be inappropriate for Mr Bowers to pay a contribution to the Council's costs.

Judge: An drew Dutton

A A Dutton

Date: 25 October 2022

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

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 a leasehold valuation 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 a leasehold valuation 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.