



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

**Case Reference** : **BIR/17UE/LSC/2022/0004**

**Subject Properties** : **(1) 7 Rockside Hydro  
(2) 5 Cavendish Apartments  
Cavendish Road  
Matlock  
Derbyshire  
DE4 3RX**

**Applicants** : **(1) John Livermore  
(2) Simon Whyld**

**Respondent** : **Rockside Hall Management Ltd**

**Representative** : **Property Management Legal Services  
Limited**

**Type of Application** : **Application under section 27A of  
the Landlord and Tenant Act 1985 for  
the determination of the  
reasonableness and payability of  
service charges in respect of the  
subject properties**

**Tribunal Members** : **Deputy Regional Judge Nigel Gravells  
David Satchwell FRICS**

**Date of Decision** : **13 September 2022**

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**DECISION**

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## **Introduction**

- 1 This is a decision on an application under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of service charges relating to the properties at 7 Rockside Hydro and 5 Cavendish Apartments, Cavendish Road, Matlock, Derbyshire DE4 3RX ('the subject properties').
- 2 The first Applicant, Mr John Livermore, is the former leaseholder of 7 Rockside Hydro; the second Applicant, Mr Simon Whyld, is the current leaseholder of 5 Cavendish Apartments. The Respondent, Rockside Hall Management Ltd, is the management company responsible for the management of the subject properties under the terms of the Applicants' leases.
- 3 By application dated 25 March 2022, and received by the Tribunal on 1 April 2022, Mr Livermore made three applications: (i) under section 27A of the 1985 Act for the determination of the reasonableness and payability of service charges demanded by the Respondent ('the section 27A application'); (2) under section 20C of the 1985 Act for an order for the limitation of costs ('the section 20C application'); and (3) under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing the Applicant's liability to pay administration charges in respect of the Respondent's litigation costs ('the paragraph 5A application').
- 4 Mr Whyld was subsequently joined as the second Applicant.
- 5 On 20 April 2022 the Tribunal issued Directions for the conduct of the section 27A application. The section 20C application and the paragraph 5A application were stayed pending the determination of the section 27A application.
- 6 The Applicants indicated that they were content with a paper determination and the Respondent did not dissent. Accordingly, the Tribunal determined the section 27A application on the basis of the documentation submitted by the parties.

## **Background**

- 7 The subject properties are part of a development comprising 34 leasehold apartments in three blocks (8 apartments in Rockside Hydro, 11 apartments in Rockside Hall and 15 apartments in Cavendish Apartments) and six freehold houses.
- 8 The relevant terms of the Applicants' leases are in similar form.
- 9 By clause 5.1, the Respondent covenants to provide the usual range of services to the relevant block, including maintenance and repairs, insurance and cleaning of the common parts. By clause 5.2, the Respondent covenants to provide the usual range of services to the estate ('community'), including maintenance and repairs, gardening and lighting.
- 10 By clauses 3 and 4(1), the Applicants covenant to pay the relevant proportion of (i) the costs incurred in respect of the relevant block (the 'service charge') and (ii) the costs incurred in respect of the estate (the 'community' charge).

- 11 The first Applicant's lease specifies the relevant proportions as 12 per cent of the service charge costs incurred in respect of Rockside Hydro and one fortieth of the community charge costs. The second Applicant's lease specifies the relevant proportions as 6 2/3 per cent of the service charge costs incurred in respect of Cavendish Apartments and one fortieth of the community charge costs.
- 12 The application originally challenged (i) the management fee and (ii) the buildings insurance premium for the service charge year 2020/2021; and (i) the management fee, (ii) communal cleaning, fire extinguishers, heating system maintenance, water hygiene control, water pump and tank maintenance and gas safety tests and (iii) conservatory repairs for the service charge year 2021/2022.
- 13 The Applicants subsequently withdrew their challenge relating to the buildings insurance premium for the service charge year 2020/2021, accepting that the costs were correctly apportioned.
- 14 The Respondent invited the Tribunal to determine formally that the buildings insurance costs were reasonably incurred. However, the withdrawal of the challenge means that the issue is no longer before the Tribunal and the Tribunal therefore has no jurisdiction to determine the issue.
- 15 The Applicants also withdrew their challenge relating to the conservatory repairs for the service charge year 2021/2022. The conservatory is attached to 4 Rockside Hall; and neither Applicant is liable to contribute to costs incurred in respect of that block. (Indeed, since the conservatory appears to be included in the demise of 4 Rockside Hall, the individual leaseholder would normally be liable for the repair costs.)

### **Statutory framework**

- 16 Section 27A of the 1985 Act), so far as material, provides –
  - (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—
    - (a) the person by whom it is payable,
    - (b) the person to whom it is payable,
    - (c) the amount which is payable,
    - (d) the date at or by which it is payable, and
    - (e) the manner in which it is payable.
  - (2) Subsection (1) applies whether or not any payment has been made.
  - (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
    - (a) the person by whom it would be payable,
    - (b) the person to whom it would be payable,
    - (c) the amount which would be payable,
    - (d) the date at or by which it would be payable, and
    - (e) the manner in which it would be payable.

17 Sections 18 and 19 of the 1985 Act provide –

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.

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 provision 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.

18 Both the service charge and community charge referred to above (see paragraph 10) are within the statutory definition of ‘service charge’.

### **Preliminary issues**

19 The current management company (Omnia Estates Ltd) assumed responsibility for the management of the development containing the subject properties on 31 January 2020. The Respondent states that on the handover the previous management company (Complete Property Management Solutions Ltd) failed to provide relevant documentation in a timely manner; and that, as a result, the accounts for 2020/2021 had to be amended.

20 The Applicants challenged the Respondent’s version of events surrounding the handover. That in turn prompted a response from Ms Jones, a director of the Respondent company, who not only sought to answer the Applicants’ challenge but also commented adversely on the conduct of the first Applicant before and after his resignation as a director.

21 In the view of the Tribunal this exchange has no relevance to the section 27A application. The Tribunal has determined the issues relating to the 2020/2021 service charge year by reference to the amended accounts, which reflect the Respondent’s final figures for service charge costs for that year. In so far as the liability of the Applicants to contribute to the service charge costs as determined by the Tribunal differs in amount

from the amount in the service charge demands for that year, those differences will be reflected in the balancing exercise set out in clause 3 of the Applicants' leases.

- 22 In the application, the Applicants' challenges relating to the service charge year 2021/2022 were directed at the budget for that year and the service charge demands based on that budget. That was understandable since the service charge accounts for 2021/2022 had not been finalised at the time of the application. However, although those accounts have subsequently been finalised, the Applicants seem to insist that the Tribunal should determine the section 27A application by reference to the figures in the budget.
- 23 In the view of the Tribunal, such an approach would be inappropriate. The Tribunal is in a position to determine the application by reference to the actual costs that appear in the accounts; and it makes no sense to ignore those accounts and, moreover, to leave open the possibility of a further section 27A application relating to 2021/2022.
- 24 The Tribunal has therefore determined the application relating to 2021/2022 by reference to the service charge accounts for that year. In so far as the liability of the Applicants to contribute to the service charge costs as determined by the Tribunal differs in amount from the amount in the service charge demands issued in April 2021, those differences will be reflected in the balancing exercise set out in clause 3 of the Applicants' leases.
- 25 In determining the issues of payability and reasonableness of the service charges demanded, the Tribunal took into account, so far as relevant, all written representations of the parties.

### **Service charge year 2020/2021**

- 26 The only outstanding challenge for the service charge year 2020/2021 relates to the management fee.
- 27 The global fee included in the accounts is £7439.
- 28 As the Respondent notes, the Applicants do not challenge their liability to contribute to the management fee through the service charge. Nor do they argue that the costs of £7439 were not reasonably incurred. Their only challenge is to the apportionment of those costs among the 40 properties in the development.
- 29 The Applicants argue that the total costs should be apportioned equally among the 40 properties in the development. The argument is based on the management agreement between the management company and the Respondent, which stated the fee (for 2020/2021) as '£155 + VAT per unit per annum therefore £6200 + VAT'. The Applicants argue that the formulation of the charging clause raised the expectation that the total costs would be apportioned equally among the 40 properties.
- 30 The Applicants further argue that their proposed apportionment of the management fee is consistent with the apportionment of other 'professional fees', which are treated as estate costs.

- 31 The Respondent disputes the Applicants' argument on the ground that it fails to take account of the terms of the lease, which includes management fees as allowable costs in relation to both block costs (payable by the 34 leaseholders only) and estate costs (to which the six freeholders also contribute). The argument also fails to take account of the apportionment figures included in each lease.
- 32 In order to take account of the terms of the leases, the Respondent has continued the historic apportionment (which is not disputed by the Applicants) –
- (a) the management fee is apportioned between (i) the block services provided to the 34 leaseholders contributing to block costs and (ii) the estate services provided to the 34 leaseholders and the 6 freeholders contributing to estate costs;
  - (b) 34/74 of the management fee is therefore apportioned to the block services and 40/74 is apportioned to the estate services;
  - (c) the 34/74 is apportioned to the three blocks in the proportions 8:11:15 (reflecting the number of apartments in each block) and the leases provide for the proportion payable by each leaseholder in each block;
  - (d) the 40/74 is apportioned equally among the 34 leaseholders and the 6 freeholders.
- 33 In the view of the Tribunal, the apportionment methodology proposed by the Applicants cannot be accepted. First, it disregards the various provisions for apportionment set out in the Applicants' leases. Second, there is no basis for arguing that the management agreement between the management company and the Respondent effected a variation of the leases and the provisions for apportionment. As the Respondent argues, the charging clause in the management agreement reflects common practice for management fees to be calculated by reference to the number of units to be managed, multiplying that number by a notional management fee per unit. The apportionment of the resultant global fee is then subject to the terms of the relevant leases. The Applicants read too much into the formulation of the charging clause in the management agreement. In any event, an agreement between the management company and the Respondent cannot without more vary the rights and obligations of the leaseholders.
- 34 The Tribunal is not persuaded by the Applicants' argument based on the treatment of other 'professional fees'. This appears to be a reference to accountancy fees, bank charges and other outgoings, which are not readily capable of sensible apportionment between the blocks and the estate.
- 35 The Tribunal determines that the apportionment methodology adopted by the Respondent cannot be regarded as unreasonable.
- 36 Applying that methodology to the costs for 2020/2021 –
- (a) the costs would be apportioned £3418 to the block costs and £4021 to the estate costs;

- (b) the block costs would be apportioned £804 to Rockside Hydro, £1106 to Rockside Hall and £1508 to Cavendish Apartments;
  - (c) the first Applicant would be apportioned 12 per cent of the block costs apportioned to Rockside Hydro = £96.51;
  - (d) the second Applicant would be apportioned 6 2/3 per cent of the block costs apportioned to Cavendish Apartments = £100.53;
  - (e) each Applicant would be apportioned 1/40 of the estate costs = £100.53.
- 37 The Tribunal therefore determines that the reasonable contributions to the management fee for the service charge year 2020/2021 are –
- (a) for the first Applicant £197.04;
  - (b) for the second Applicant £201.06.

### **Service charge year 2021/2022**

- 38 The parties' representations in relation to the management fee for 2021/2022 are the same as those set out above for 2020/2021; and the determination of the Tribunal is the same.
- 39 Applying the appropriate methodology to the management fee for 2021/2022 (£7749) –
- (a) the costs would be apportioned £3560 to the block costs and £4189 to the estate costs;
  - (b) the block costs would be apportioned £838 to Rockside Hydro, £1152 to Rockside Hall and £1570 to Cavendish Apartments;
  - (c) the first Applicant would be apportioned 12 per cent of the block costs apportioned to Rockside Hydro = £100.56;
  - (d) the second Applicant would be apportioned 6 2/3 per cent of the block costs apportioned to Cavendish Apartments = £104.67;
  - (e) each Applicant would be apportioned 1/40 of the estate costs = £104.72.
- 40 The Tribunal therefore determines that the reasonable contributions to the management fee for the service charge year 2020/2021 are –
- (c) for the first Applicant £205.28;
  - (d) for the second Applicant £209.39.
- 41 The Applicants' application for the service charge year 2021/2022 also challenges communal cleaning, fire extinguisher maintenance, heating system maintenance, water hygiene control, water tank maintenance and gas safety tests. In fact the costs relating to the water hygiene control are included in the water tank maintenance costs.
- 42 As the Respondent notes, again the Applicants do not challenge their liability to contribute to those costs through the service charge. Nor do they argue that the relevant costs were not reasonably incurred. Their only challenge is to the apportionment of those costs among the 34 leasehold properties in the development.

- 43 In fact the apportionment methodology challenged by the Applicants is that contained in the budget for 2021/2022 and the service charge demands based on that budget.
- 44 The methodology for which the Applicants argue is reflected in the final service charge accounts. The costs under each head of expenditure are apportioned to the three blocks in the proportions 8:11:15.
- 45 The Tribunal determines that that methodology is appropriate.
- 46 The calculations according to that methodology are set out in the table below –

Head of expenditure	Sum included in service charge accounts	Rockside Hydro (8/34)	Rockside Hall (11/34)	Cavendish Apartments (15/34)
Communal cleaning	£2952	£695	£955	£1302
Fire extinguisher maintenance	£380	£89	£123	£168
Heating system maintenance	£2942	£692	£952	£1298
Water tank maintenance	£1710	£402	£553	£754
Gas safety checks	£420	£99	£136	£185

- 47 Applying the proportions specified in the Applicants' respective leases, the Tribunal determines that the reasonable contributions for the service charge year 2021/2022 are as follows –

(a) for the first Applicant –

- (1) Communal cleaning:  $£695 \times 12\% = £83.40$
- (2) Fire extinguisher maintenance:  $£89 \times 12\% = £10.68$
- (3) Heating system maintenance:  $£692 \times 12\% = £83.04$
- (4) Water tank maintenance:  $£402 \times 12\% = 48.24$
- (5) Gas safety checks:  $£99 \times 12\% = £11.88$

(b) for the second Applicant –

- (1) Communal cleaning:  $£1302 \times 6 \frac{2}{3}\% = £86.80$
- (2) Fire extinguisher maintenance:  $£168 \times 6 \frac{2}{3}\% = £11.20$
- (3) Heating system maintenance:  $£1298 \times 6 \frac{2}{3}\% = £86.53$
- (4) Water tank maintenance:  $£754 \times 6 \frac{2}{3}\% = £50.27$
- (5) Gas safety checks:  $£185 \times 6 \frac{2}{3}\% = £12.33$



## Summary

### Service charge year 2020/2021

- 48 The Tribunal determines that the reasonable contributions to the management fee for the service charge year 2020/2021 are –
- (a) for the first Applicant £197.04;
  - (b) for the second Applicant £201.06.

### Service charge year 2021/2022

- 49 The Tribunal determines that the reasonable contributions to the management fee for the service charge year 2020/2021 are –
- (a) for the first Applicant £205.28;
  - (b) for the second Applicant £209.39.
- 50 The Tribunal determines that the reasonable contributions to the costs of the services listed are as follows –
- (a) for the first Applicant –
    - (1) Communal cleaning:  $£695 \times 12\% = £83.40$
    - (2) Fire extinguisher maintenance:  $£89 \times 12\% = £10.68$
    - (3) Heating system maintenance:  $£692 \times 12\% = £83.04$
    - (4) Water tank maintenance:  $£402 \times 12\% = 48.24$
    - (5) Gas safety checks:  $£99 \times 12\% = £11.88$
  - (b) for the second Applicant –
    - (1) Communal cleaning:  $£1302 \times 6 \frac{2}{3}\% = £86.80$
    - (2) Fire extinguisher maintenance:  $£168 \times 6 \frac{2}{3}\% = £11.20$
    - (3) Heating system maintenance:  $£1298 \times 6 \frac{2}{3}\% = £86.53$
    - (4) Water tank maintenance:  $£754 \times 6 \frac{2}{3}\% = £50.27$
    - (5) Gas safety checks:  $£185 \times 6 \frac{2}{3}\% = £12.33$

## Appeal

- 51 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 52 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 53 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 54 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

## **Section 20C and paragraph 5A applications**

55 The Tribunal has issued Directions in relation to the Applicants' section 20C application and paragraph 5A application.

13 September 2022

Professor Nigel P Gravells  
Deputy Regional Judge