



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

**Case Reference** : **MAN/00EC/LSC/2021/0036**

**Property** : **27 Janaury 2023**

**Applicant** : **Eric Cook & Nancy Lennie**

**Representative** : **Newtons Solicitors**

**Respondents** : **Landmark (Bolton) Limited &  
Plantview Limited**

**Representative** : **Residential Management Group Ltd**

**Type of Application** : **Determination of service charge  
liability**

**Tribunal** : **Valuer Chair J Fraser FRICS  
Judge J Holbrook  
Regional Surveyor N Walsh**

**Date of Decision** : **27<sup>th</sup> January 2023**

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**DECISION**

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## DECISION

Upon review of its decision dated 5 August 2022, the Tribunal determines that:

- A. For the service charge year 1st March 2019 – 29th February 2020, each of the Applicants are liable to pay the relevant proportion (3/127) of £16,045.00, being the total amount recoverable by the landlord as service charges for the supply of water to Roseberry Mews.
- B. For the period 1st March 2020 – 15th March 2020, each of the Applicants are liable to pay the relevant proportion of £3,043.69 in respect of water charges.

Save for the minor corrections made by paragraph 31 below, the Decision is otherwise unaltered and is confirmed.

## REASONS

### Preliminary

1. By a decision dated 5th August 2022 (“the Decision”), the Tribunal made a determination of the Applicants’ service charge liability under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”).
2. In response to an application to appeal against the Decision, the Tribunal decided to review one particular aspect of it: namely, its findings in relation to the Applicants’ liability to contribute to the costs incurred by the landlord in connection with the supply of water to Roseberry Mews. The Tribunal’s reasons for deciding to review the Decision were set out in its refusal of permission to appeal, dated 28th September 2022.
3. Directions were given for the parties to submit additional written representations and documentary evidence in respect of the water charges issue, and we are grateful to both parties for the submissions they have made.
4. The review was conducted without holding a further oral hearing. The parties had been notified of the Tribunal’s intention to proceed in this way and no objections were received.

### Water charges

5. At paragraph F of the Decision, the Tribunal determined that:

“For the service charge periods 1<sup>st</sup> March 2019 – 29<sup>th</sup> February 2020 and 1<sup>st</sup> March 2020 – 15<sup>th</sup> March 2020 the Tribunal finds that, in principle, the water charges are recoverable, however the Tribunal was not able to make a decision based upon the information and explanations provided and the

amount will need to be determined separately at a later date unless the parties are now able to reach agreement on quantum.”

6. The Tribunal’s ‘in principle’ decision has not been challenged. However, the Applicants contend that the Tribunal should have determined the actual amount payable by them towards water charges for the periods in dispute, and it is for this reason that the Decision has been reviewed.
7. In dispute are the water charges of £16,045 for the 2019/2020 service charge year and £3,408 for the 2020/2021 service charge year. Following the Tribunal inviting further submissions, the parties have set out their respective statements on the water charges for the relevant service charge years. Neither party has been able to provide a properly reconciled explanation of the water charges based upon the invoices provided to the Tribunal and the table of charges and accruals provided by the Respondent.
8. In brief, it is the Applicants’ case that the water charges are too high based upon an average of the prior years’ charges for water within the service charge accounts and that the water charge includes three historic invoices, provided by the Respondent, dated during 2018 and early 2019. The Applicants submit that the costs which are the subject of these invoices cannot be recovered through the service charge as they were incurred more than 18 months prior to the issue of the service charge accounts (and are therefore irrecoverable by virtue of section 20B of the 1985 Act).
9. The Respondent’s case, in brief, is that the disputed water charges are fully recoverable. The Respondent submits that it had not received the historic invoices until the aggregate amount was shown on an invoice received on the 26th March 2019 and that the overall increase in water charges is largely due to more flats within the development being occupied during the service charge years in dispute than during the preceding years.
10. There is a further dispute as to the end-reconciliation of the accounts and the amounts to be transferred to the RTM company, with the Applicants stating that no payment has been received from RMG for water charges and the Respondent stating that a payment was sent to FirstPort, the RTM company’s managing agent. This is however beyond the scope of the issues for the Tribunal to determine in the present proceedings.
11. The Tribunal has reviewed the documents provided by the parties. There are two water and sewerage accounts for the development. Account number 5603 7543 60 relates to the actual usage of water and associated sewerage charges at each flat within the development; and account number 4976 5995 78 relates to fixed sewerage charges, which are charged annually in advance and do not fluctuate with actual usage.
12. It is necessary to consider the position for each of the periods in dispute separately.

2019/2020 Service Charge Year

13. Considering first account number 5603 7543 60, the Tribunal is provided with three invoices:
- The first is dated 30th March 2019 (bill number 8370153), it relates to the period 21st June 2018 until 12th January 2019 and is based upon actual meter readings. The amount is £3,726.36.
  - Second, an invoice is provided, dated 15th July 2019 (bill number 9345944) for the period 13th January 2019 until 9th July 2019, it is based upon actual meter readings and amounts to £3,436.86.
  - Third is a bill dated 10th January 2020 (bill number 11128871), for the period 10th July 2019 until 10th January 2020, based upon actual meter readings, it amounts to £3,830.17.

The three invoices total £10,993.39.

14. Considering now account number 4976 5995 78, the Tribunal is presented with an invoice dated 16th February 2019 (bill number 7281248), with new charges of £5,066.05. The bill sets out that the charge comprises fixed sewerage charges for the development, for the period 31st March 2019 to 31st March 2020. The same bill shows that there are historic charges outstanding of £4,015.59.
15. The amount of water charges, for the year 2019/2020, stated with the service charge accounts is £16,045. For water account 5603 7543 60 the amount invoiced is £10,993.39 and for the account 4976 5995 78 the amount invoiced is £5,066.05. The two amounts total £16,059.44 and the tables of charges and accruals provided by the Respondent shows that the aforementioned invoices were charged to the service charge account that year, albeit the accrual accounting leads to a slightly different amount charged of £16,045, which is not adequately explained. The Tribunal determines that the water charge stated within the accounts of £16,045 is reasonable: it has been supported by the actual usage at the development and invoices provided and further, the service charge accounts were prepared and issued within 18 months of the costs being incurred.
16. For the avoidance of doubt, the historic charges amounting to £4,015.59 are not included within the £16,059.44 arrived at by the Tribunal.
17. The overall amount claimed in respect of water charges for the 2019/2020 service charge year is £16,045. Each of the Applicants are contractually obliged to contribute a  $\frac{3}{127}$  proportionate part of this amount (or 2.3622%). This equates to £379.02 which the Tribunal considers to be reasonable. This level of charge is within the range of charges that the Tribunal would expect and is further fully supported by the four invoices referred to above and, in respect of the first water

account, relates to a period of usage of circa 18 months (June 2018 – January 2020). Hence the annual charge for each Applicant would in fact be lower – in the region of £253.

2020/2021 Service Charge Year

18. The amount in dispute is £3,408, being the water charges stated within the service charge accounts. During this year, the RTM company took over management of the building and RMG were responsible for management from the 1st March 2020 – 15th March 2020 only.
19. Considering first account number 5603 7543 60, the last bill of the prior year was dated 10th January 2020 and related to usage occurring from 10th July 2019 until the 10th January 2020. Therefore, it would logically follow that there would be a final bill to reflect the period 11th January 2020 until the 15th March 2020.
20. An invoice has not been provided for the final amount. However, emails from Northumbrian Water were provided in the hearing bundle. An email dated 28th January 2022 from Northumbrian Water states that the final balance from 10th January 2020 until the 15th March 2020 amounted to £1,543.84. The same email confirms that the last payment prior to this was for £3,830.17 for the bill dated 10th January 2020 and this corresponds with the invoices provided to the Tribunal.
21. The Tribunal is satisfied that the emails provided support this figure and it is logical that a charge would follow for the period 10th January 2020 – 15th March 2020. The amount for water account 5603 7543 60 in the 2020/2021 service charge is £1,543.84. Whilst the service charge year was effectively for a period of 15 days only, the amount relates to usage for a longer period (i.e. 10th January 2020 – 15th March 2020).
22. Considering water account number 4976 5995 78, the Tribunal has noted (at paragraph 14 above) that the charge of £5,066.06 was billed in advance and covered the annual period ending 31st March 2020. Therefore, it would be expected that there be an adjustment for the period 15th March 2020 – 31st March 2020.
23. The relevant invoices and credits are as follows:
  - The first invoice is dated 16th February 2019 (bill number 7281248), and as set out above, this invoice is for new charges of £5,066.05 and was for fixed sewerage charges for the period 31st March 2019 – 31st March 2020.
  - The second invoice is dated 14th January 2022 (bill number 19998186) and shows charges of £4,844.40. The supporting breakdown with the bill shows that the fixed sewerage charges have been calculated to end on 15th March 2020 and that they amount to £4,844.40. As set out above, the 2019/2020 service charge year included a charge of £5,066.05 up until the 31st March 2020, the

adjusted bill of £4,844.40 reflects the slightly shorter liability period that ends on the 15th March 2020.

- On the bill dated 16th February 2019 for £5,066.05, there is an amount outstanding shown of £4,015.59, relating to a prior period. Documents within the hearing bundle show that this amount is made up of the three historic invoices. The first invoice is dated 2nd November 2018 and amounts to £1,870.17, the second is dated 22nd November 2018 and amounts to £423.92, and the third is dated 29th January 2019 and amounts to £1,721.50.
  - The final invoice is dated 29th February 2020 and is for £7,976.69, with new charges of £3,961.10 for 31st March 2020 – 31st March 2021 and historic charges of £4,015.59, being the three invoices referred to above.
24. As set out above, in the 2020/2021 year, for water account 4976 5995 78 there was an overpayment of £221.65 for the period 15th March 2020 – 31st March 2020, being the difference between £5,066.05 charged in the 2019/2020 year and the final balance of £4,844.40 allowing for the account closing 15th March 2020, rather than 31st March 2020.
25. The statement of charges and accruals show that the historic invoices totalling £4,015.59 were charged to the service charge account in the year 2020/2021. A question therefore arises as to whether all or any of this sum is rendered irrecoverable by the so-called '18-month rule' in section 20B of the 1985 Act. The policy underlying that rule is that a tenant should not be faced with a bill for expenditure of which they were not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering any expenditure on matters, and to the extent, of which there was adequate prior notice. Section 20B provides:
- (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.*
26. Having reviewed the chain of emails between RMG and Northumbrian Water, the Tribunal is satisfied that the relevant department within RMG were not aware of the three invoices outstanding until they attempted to reconcile the account to hand over to the RTM company. However, the Tribunal is also satisfied that, despite RMG not being aware, the invoices presented are correctly addressed to RMG

(notwithstanding a typo in the company name present on all invoices), and we have no reason to believe that the invoices were not received by RMG in the ordinary course of posting. It follows, in the Tribunal's judgment, that the costs concerned were incurred by the landlord on the dates on which the invoices were issued.

27. The Applicants were not notified that the charges in question had been incurred until 24<sup>th</sup> June 2020 (the date on which service charge accounts for 2019/2020, along with a statement of charges for 2020/2021, were provided to the leaseholders of the building). Accordingly, any costs incurred by the landlord prior to 24<sup>th</sup> December 2018 fall foul of the 18-month rule and cannot be recovered. On this basis, the charges with which the first two of the historic invoices are concerned cannot be recovered through the service charge. However, the charges of £1,721.50, which are the subject of the third invoice, dated 29<sup>th</sup> January 2019, were notified to the Applicants within 18 months of that date and may therefore be taken into account when determining the Applicants' service charge liability.
28. Therefore, taking the figure of £1,543.84 arrived at for account number 5603 7543 60, deducting the overpayment on account 4976 5995 78 of £221.65 and adding the invoice dated 29<sup>th</sup> January 2019 for £1,721.50 results in a total charge of £3,043.69.
29. As noted at paragraph 18 above, the amount claimed by the landlord for water charges was £3,408 (and this includes the charges from the three historic invoices discussed above). However, the Tribunal determines that only £3,043.69 can be supported by the invoices and explanations provided, and having regard to the limitations imposed by section 20B of the 1985 Act.
30. We find that the overall amount recoverable for water charges in respect of the 2020/2021 service charge year is £3,043.69. This results in an individual proportionate liability for each of the Applicants of £71.90, which we are satisfied is reasonable.

### **Corrections to the Decision**

31. Having also considered representations from the parties about the existence of certain accidental slips or omissions in the Decision, and in exercise of the power conferred by rule 50 of the Tribunal's rules,<sup>1</sup> the Tribunal now makes the following amendments to the Decision in order to correct it:
  - a) In the table in paragraph C of the Decision, for the amount relating to fire equipment maintenance, the amount of £10,236 is substituted for the amount of £261.02.

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

- b) The following is substituted for paragraph E: “E. The Tribunal finds that charges for staff accommodation are not recoverable under the Applicants’ leases.”.
- c) In paragraph 47, the words “for either of the years in dispute” are omitted.
- d) In paragraph 79, the following is substituted for the second sentence: “The parties were able to resolve this aspect of their dispute at the hearing. They agreed that the overall amount recoverable for fire equipment maintenance in respect of this year is £10,236.”.

Signed: J Fraser  
Valuer Chair of the First-tier Tribunal  
Date: 27<sup>th</sup> January 2023