



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

**Case Reference** : **LON/00AC/LSC/2022/0188**

**Property** : **The Bower, 42 Holden Road,  
London N12 7DN**

**Applicants** : **Zosia Krajewska (Flat 1), Jordan  
Foster (Flat 2), James Boxer (Flat  
3), Emily Saunderson (Flat 4),  
Florence Lee & Alexander Francis  
(Flat 5), Parisa Javadian (Flat 7),  
Mohammed Mehdi Goudarzi (Flat  
8) and Richard Kao (Flat 9)**

**Representative at  
hearing** : **James Boxer (leaseholder of Flat 3)  
in person**

**Respondent** : **Cullen and Davis 1 Limited**

**Representative** : **Paul O'Callaghan of Counsel**

**Type of Application** : **For the determination of the  
liability to pay a service charge**

**Tribunal Members** : **Judge P Korn  
Mr K Ridgeway MRICS**

**Date of hearing** : **27 March 2023**

**Date of Decision** : **29 March 2023**

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**DECISION**

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## **Description of hearing**

This has been a face-to-face hearing. The decisions made are set out below under the heading “Decisions of the tribunal”.

## **Decisions of the tribunal**

(1) In relation to the disputed service charge items, the following amounts are payable:-

### 2020

- Cleaning – only £808.20 payable (reduced from £1,347).
- General repairs and maintenance - £1,002 payable in full.
- Lift maintenance - £642 payable in full.
- Gate maintenance - £1,717 payable in full.
- Building insurance – only £6,000 payable (reduced from £8,332).
- Management fees – only £372 payable (reduced from £1,116).

### 2021

- Cleaning - £1,433 payable in full.
- Electricity – only £800 payable (reduced from £7,761).
- Window cleaning - £660 payable in full.
- Fire equipment maintenance - £1,517 payable in full.
- General repairs and maintenance for the Property - £1,257 payable in full.
- General repairs and maintenance for the Estate – only £500 payable (reduced from £4,493).
- Lift maintenance - £1,197 payable in full.
- Building insurance – only £6,000 payable (reduced from £10,032).

- Grounds maintenance for the Estate – only £500 payable (reduced from £2,350).
- Water for the Estate – only £100 payable (reduced from £694).
- Legal & professional fees for the Estate - £3,240 payable in full.
- Sundries for the Estate - £735 payable in full.
- Gate maintenance for the Estate - £1,130 payable in full.
- Electricity for the Estate – this is a negative figure and therefore is not susceptible to challenge in this forum.

2022 (budgeted figures)

- Building insurance - £6,000 payable in full.
- Communal electricity - £800 payable in full.
- Cleaning - £2,400 payable in full.
- Window cleaning – only £660 payable (reduced from £1,100).
- Water pumps – nothing payable (reduced from £1,000).
- Water tanks and testing – nothing payable (reduced from £1,500).
- Garden and ground maintenance for the Estate – only £500 payable (reduced from £3,600).
- Electricity for the Estate - £600 payable in full.
- Health and fire risk assessment for the Estate - £600 payable in full.
- Engineering insurance for the Estate – nothing payable (reduced from £400).

- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

- (3) The tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under their leases.
- (4) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”) the tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00.

### **Introduction**

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the reasonableness and payability of certain service charges.
2. The Property is a purpose-built block of 9 flats completed in 2020. Together with the neighbouring block of 21 flats known as Barnabas Apartments it forms a small estate (“**the Estate**”).
3. The service charge items disputed by the Applicants are listed in a ‘Scott’ Schedule. That Scott Schedule contains the Applicants’ explanation for each service charge challenge. The challenges cover the years 2020, 2021 and 2022. The service charge year is the calendar year and Mr Boxer confirmed at the hearing that the 2022 challenge was to the budget, not to the actual service charge, as the service charge accounts for 2022 had not yet been finalised.

### **Request for adjournment**

4. Mr O’Callaghan for the Respondent explained at the start of the hearing that he had only been instructed late on the previous Friday for this – a Monday morning – hearing and that he had very little paperwork and no specific instructions on any of the issues. The tribunal allowed Mr O’Callaghan two short adjournments to enable him to try to obtain more detailed instructions, but he was unable to obtain any meaningful instructions on individual points.
5. Mr O’Callaghan then requested a more lengthy adjournment of an unspecified period of time (but understood to be at least a few weeks) to enable him to obtain detailed instructions. Mr Boxer for the Applicants objected to such an adjournment. After the tribunal had pointed out to Mr Boxer that it was possible that it would help the Applicants for the Respondent to have more time to answer their questions and after Mr Boxer had confirmed that he was nevertheless objecting to the adjournment request, the tribunal refused Mr O’Callaghan’s request for a more lengthy adjournment. The Respondent had wholly failed to engage with these proceedings to date and had provided no explanation other than that the Respondent was in dispute with its managing agent.

Directions had been sent to both the managing agents and the Respondent and there was no proper justification for allowing more time or for wasting Mr Boxer's time and the tribunal's resources by moving the hearing to another date.

### **The issues and the tribunal's general approach**

The issues were discussed at the hearing, and the discussion and the tribunal's conclusion on each item are summarised below.

#### **2020 service charge year**

##### Cleaning (£1,347)

6. The Applicants' position was that they had been billed for ten months of cleaning but that there was no cleaning service for four of those months.
7. The Respondent has offered no arguments or evidence in response. In the tribunal's view, in relation to this issue the Applicants have made a 'prima facie' (i.e. a basic) case which is clear and coherent, and therefore it is for the Respondent to offer something substantive in return to rebut that case. As the Respondent has failed to rebut the Applicants' case we find in favour of the Applicants on this point. As the Applicants have only received six-tenths of the service they were entitled to receive they should only have to pay six-tenths (or 60%) of the cost. 60% of £1,347 is £808.20, and therefore only £808.20 is payable.

##### General repairs and maintenance (£1,002)

8. The Applicants argue that they should not have had to pay towards these items as the Property was newly built and the cost would have been covered by the developers under the snagging period.
9. The Applicants have produced no documentation in support of their position and have been unable to point to anything in their leases or in correspondence in support of their position. In addition, there is no information before us as to the nature of the items covered by these charges and therefore we are not even in a position to assess whether they are of a type that might be the sole responsibility of the developer and which might not be capable of being passed on to leaseholders.
10. In the absence of better information, this challenge fails and this amount is payable in full.

##### Lift maintenance (£642)

11. The Applicants state that the communal lift was not operational for part of the year due to the developer not connecting it to the emergency system correctly. They go on to state that the fee for fixing the lift was charged to leaseholders despite being something that the developer should have fixed.
12. At the hearing Mr Boxer was unable to say how the Applicants had reached the above conclusion and he accepted that there was nothing in the hearing bundle to support this narrative. This challenge is therefore in our view too vague and insufficiently supported or even argued to constitute a prima facie case. In the circumstances, this challenge fails and this amount is payable in full.

#### Gate maintenance (£1,717)

13. As with the general repairs, the Applicants argue that the cost should have been covered by the developers under the snagging period. Again, the Applicants have produced no documentation in support of their position and have been unable to point to anything in their leases or in correspondence in support of their position. In the absence of better information, this challenge fails and this amount is payable in full.

#### Building insurance (£8,332)

14. The Applicants' understanding is that the high charge was levied because the developer was running a few different insurance policies alongside each other, including construction insurance. They also understand that the developer received some money back through cancelling certain policies but that leaseholders did not benefit from this refund. In addition, the amount charged is substantially higher than the budgeted figure of £6,000 for 2022.
15. The Applicants have challenged the figure of £8,332 as being too high for various reasons but they have not provided alternative quotations or other hard evidence in support of their position. However, the evidence shows that the Applicants have tried to obtain information from the Respondent but that the Respondent has failed to engage with the Applicants. This lack of information in turn has made it very difficult for the Applicants to obtain such hard evidence, for example by preventing them from obtaining like-for-like quotations.
16. As an expert tribunal we are entitled to form our own view in appropriate circumstances, and having seen photographs of the Property and the wider Estate and having considered the general insurance market and also noted the Respondent's failure to raise any objections to the Applicants' submissions, we accept that £8,332 is an unreasonably high charge. In the absence of any better evidence, we consider in the circumstances that a reasonable charge would be £6,000, this being the amount that the Respondent itself has budgeted for in 2022.

### Management fees (£1,116)

17. The Applicants complain that the managing agents have provided minimal service and that responsiveness has been very poor, and they feel that nothing should be payable.
18. The evidence before us, whilst slightly thin, does indicate that the performance of the managing agents has been very poor, and it is clear that they have not responded to the Applicants' concerns and have not engaged at all with these proceedings. In addition, we note from the hearing bundle that there is evidence indicating that the Respondent terminated the managing agents' contract with effect from 31 March 2021. On the other hand, and Mr Boxer accepted this at the hearing, the managing agents will have provided some services and those services will have had some value. Having considered the evidence before us and all the circumstances, we consider that the management fees should be reduced by two-thirds to £372.

### **2021 service charge year**

#### Cleaning (£1,433)

19. This figure has been challenged on the basis of partial attendance, but no details have been given as to the level or attendance or standard of cleaning generally. In the absence of any better information, £1,433 for a year split amongst 9 flats seems a reasonable amount and therefore this challenge fails and this amount is payable in full.

#### Electricity (£7,761)

20. The Applicants state that no invoices have been provided for actual readings, and this amount is vastly higher than the charge for 2020 and the budget for 2021.
21. The evidence indicates that the Respondent and/or its managing agents have been unhelpful in response to the Applicants' reasonable requests for more information. We note the huge discrepancy between the charge for 2021 and (a) the charge for 2020 and (b) the budgeted figure for 2021. As an expert tribunal we consider that this charge is much higher than is reasonable considering the nature of the Property and the likely electricity needs, and in the absence of any engagement from the Respondent we consider that a reasonable charge would be the budgeted amount of £800.

#### Window cleaning (£660)

22. The Applicants' objection seems to relate to the question of whether there is a reasonable split between the Property and Barnabas Apartments. At the hearing, Mr Boxer accepted that the actual charge

for the Property seemed reasonable, and there is no plausible basis for the tribunal to find otherwise. Therefore this challenge fails and this amount is payable in full.

Fire equipment maintenance (£1,517)

23. The challenge to this charge is not a challenge so much as a question. In the absence of an actual proper challenge this charge is payable in full.

General repairs and maintenance for the Property (£1,257)

24. The Applicants again argue that they should not have had to pay towards these items as the Property was newly built and the cost would have been covered by the developers under the snagging period.
25. For the same reasons as set out in relation to 2020, this challenge fails and this amount is payable in full.

General repairs and maintenance for the Estate (£4,493)

26. The Applicants note that the budgeted figure was £500 but that the actual charge was £4,493, and they question this huge discrepancy. This is an obvious and reasonable point to make and it was open to the Respondent to address it in any way that it saw fit. However, the Respondent has simply not responded. It has neither engaged with the Applicants' concerns nor explained what it has spent the money on, let alone explained why such expenditure was considered necessary. Furthermore, as there is also a separate category of 'grounds maintenance', it is hard to see what 'general repairs and maintenance' could cover in respect of the Estate (rather than the Property) that could cost £4,493 in a single year.
27. In the circumstances and in the absence of any alternative figure being proposed by the Respondent, we consider that a reasonable charge would be the budgeted figure of £500.

Lift maintenance (£1,197)

28. The Applicants' challenge to this item is unclear and involves much speculation unsupported by evidence. In the circumstances, this challenge fails and this amount is payable in full.

Building insurance (£10,032)

29. For the same reasons as for 2020, we consider this amount to be unreasonably high. Again we consider that a reasonable charge would be £6,000, this being the amount that the Respondent itself has budgeted for in 2022.



#### Grounds maintenance for the Estate (£2,350)

30. The Applicants state that there is no garden to maintain, that the grounds are very small in size and that they are covered in asphalt. They consider this charge to be unreasonably high.
31. This challenge is both coherent and logical, but again the Respondent has simply not responded to it. Again, it has neither engaged with the Applicants' concerns nor explained what it has spent the money on. In the circumstances and in the absence of any alternative figure being proposed by the Respondent, we consider that a reasonable charge would be the budgeted figure of £500.

#### Water for the Estate (£694)

32. The Applicants state that there is no garden and that it is difficult to see what water charges would arise. Again this is a coherent and logical challenge, but again the Respondent has simply not responded to it. On the basis that it is arguable that some water may be needed in the Estate, we consider that a reasonable charge would be £100.

#### Legal & professional fees for the Estate (£3,240)

33. The Applicants questions the handover fee paid to Warwick Estates and raise a question regarding the fire consultancy fee. However, in our view this does not amount to a clear set of challenges, and nor is it clear how these charges break down and what if anything the Applicants consider to be payable or why. In the absence of a clearer challenge, these charges are payable in full.

#### Sundries for the Estate (£735)

34. The Applicants question whether this sum is reasonable and correctly charged, but in our view it does not represent a sufficiently clear challenge that we are in a position to determine that all or part of the sum is not payable. Therefore, this sum is payable in full.

#### Gate maintenance for the Estate (£1,130)

35. Part of this challenge relates to the question of whether the developer should be paying for it. As with the charges for general repairs and maintenance of the Property, this is too speculative a challenge and we do not accept it in the absence of better evidence. The other argument is that it is significantly higher than the budgeted figure of £600. However, gate maintenance costs are not easy to predict, and they will vary depending on what issues arise, how well the gates are treated, etc. In the circumstances, we do not accept that the fact that the Respondent set a budget of £600 by itself means that a charge of £1,130

is necessarily unreasonable. This challenge therefore fails and this amount is payable in full.

Electricity for the Estate (-£565)

36. This appears as a negative amount and therefore might constitute a refund. On the basis of the information before us, it is not susceptible to challenge as it is not clear that it is an amount that the Respondent is or was seeking to charge.

**2022 service charge year (budget only)**

Building insurance (£6,000)

37. The Applicants have raised a question rather than made a challenge to this budgeted figure. In the absence of more information or supporting evidence or a clearer challenge, this sum is payable in full.

Communal electricity (£800)

38. The Applicants' comments are not a challenge to this charge, rather they seem to be a comment on the previous year's charges. In the absence of a proper challenge, this sum is payable in full.

Cleaning (£2,400)

39. The Applicants' challenge is more of a question, namely as to whether it is reasonable for the budgeted sum to increase by £400. In any event, there is no evidence before us to indicate that such an increase is unreasonable, and therefore to the extent that it is an actual challenge this challenge fails.

Window cleaning (£1,100)

40. As well as objecting to the split of charges between the Property and Barnabas Apartments, the Applicants object to the budgeted figure of £1,100 being much higher than the actual charge for 2021 (£660). This is a reasonable point to raise, there have been no comments from the Respondent and it is hard to see why the budgeted figure should be so much higher and why the cost of cleaning windows in 2022 should be so much higher than the cost of cleaning those same windows in 2021.
41. In the absence of any alternative figure being proposed by the Respondent, we consider that a reasonable charge would be the budgeted figure of £660.

#### Water pumps (£1,000)

42. The Applicants state that this is a budgeted sum for a service in respect of which there was no charge in 2020 or 2021. This is a reasonable point, and the Respondent has not answered it. The Respondent has provided no information as to why a sum needs to be set aside for a service relating to the water pumps, and in the absence of any explanation it is unreasonable to budget for it. Therefore, this item should not form part of the budget at all.

#### Water tanks and testing (£1,500)

43. The Applicants make the same observation here as they make in relation to the charge relating to water pumps. Again it is a reasonable point, and again the Respondent has not answered it. Therefore, again, this item should not form part of the budget at all.

#### Garden and ground maintenance for the Estate (£3,600)

44. The same objection has been made by the Applicants as for 2021, and again we accept the logic and reasonableness of their challenge in the absence of any response from the Respondent. We consider that a reasonable charge would be an amount equal to the previous budgeted figure of £500.

#### Electricity for the Estate (£600)

45. The Applicants raise a question as to how estate electricity charges are calculated, but this does not by itself amount to a valid challenge. Therefore, this challenge fails.

#### Health and fire risk assessment for the Estate (£600)

46. The Applicants ask what this is for, but the answer to this question would seem to be clear from the description. It is perfectly normal, and indeed it is a statutory requirement, to carry out periodic health and fire risk checks. In the absence of any other challenge this item is properly chargeable.

#### Engineering insurance for the Estate (£400)

47. The Applicants state that there was no engineering insurance charge for the Estate as a whole in 2020 or 2021 and they question why it is necessary to budget for this charge in 2022. This is a reasonable objection, the Respondent has provided no explanation, and it is unclear in the absence of any explanation why it should be necessary to

budget for engineering insurance across the Estate as a whole. Therefore, this item should not form part of the budget at all.

#### General comment on budgeted sums

48. The tribunal's determination for 2022 is just a determination on the budgeted sums. Therefore, although we do not make this comment to encourage more litigation, once the actual service charge for 2022 is known this will itself be capable of being challenged separately.

#### Cost applications

49. The Applicants have applied for a cost order under section 20C of the 1985 Act ("**Section 20C**") and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

50. The relevant parts of Section 20C read as follows:-

*(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ...".*

51. The relevant parts of Paragraph 5A read as follows:-

*"A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

52. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the tenant as an administration charge under the Lease.

53. The Applicants have been successful on a significant number of issues in dispute and the Respondent has completely failed to engage with the process or to communicate properly with the Applicants. The Applicants therefore should not have to pay any of the Respondent's costs in opposing the application. Accordingly, we make a Section 20C order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge, and we also make a Paragraph 5A order in favour of the Applicants that none of the costs incurred by the Respondent in

connection with these proceedings can be charged direct to the Applicants as an administration charge under their leases.

54. The Applicants have also applied for an order under paragraph 13(2) of the Tribunal Rules for the Respondent to reimburse their application and hearing fees (£300.00 in total). Under that paragraph the tribunal “*may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party ...*”. The Applicants have been successful on a significant number of issues and the Respondent has completely failed to engage with the process or to communicate properly with the Applicants. It is entirely appropriate in the circumstances for the Respondent to reimburse these fees, and accordingly we order the Respondent to reimburse these fees to the Applicants.

**Name:** Judge P Korn

**Date:** 29 March 2023

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **aAPPENDIX**

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985 (as amended)**

##### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

##### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

##### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be

liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (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.
- (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
- (6) An agreement by the tenant of a dwelling ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.