



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

**Case Reference** : **MAN/OOBN/LSC/2018/0017**

**Property** : **357 Charlestown Road, Moston M9 7BS**

**Applicant** : **Contour Property Services Limited**

**Respondent** : **Reverend Elvis Tabeth**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 27A**

**Tribunal** : **Laurence Bennett (Tribunal Judge)  
Ms S Latham MRICS (Valuer)**

**Date of hearing** : **29 April 2021 (Video)  
11 March 2022**

**Date of determination** : **24 February 2023**

**Date of Decision** : **28 March 2023**

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**DECISION**

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## **Application**

1. Contour Property Services Limited (Contour) apply under Section 27A of the Landlord and Tenant Act 1985 (the Act) for a determination of service charges payable by Reverend Elvis Tabeth in respect of his Property 357 Charlestown Road, Moston M9 7BS (the Property).
2. By order of District Judge Evans sitting in the County Court Manchester on 9 March 2018 the matter was transferred for a determination by the Tribunal.

## **The hearing**

3. Hearings took place on 29 April 2021 (video) and 11 March 2022 (face-to-face).

## **Attendance**

4. The Applicant was represented by Mr Sebastian Gollins, a Barrister instructed by Capsticks LLP. Its witness was Mr Philip Marne, Debt Recovery Officer.
5. Reverend Tabeth attended the hearings. He did not have witnesses.

## **Preliminary**

6. The referral has been extant some time and the parties' submissions are lengthy. An electronic bundle of 1,077 pages was presented to the Tribunal together with supplemental documents provided in response to post-hearing directions to facilitate further information and identify outstanding issues.
7. The Respondent has submitted copies of emails between the parties regarding clarification of invoices and charges. On 14 December 2022 Reverend Tabeth submitted a list of points taken by the Tribunal as a summary of the Respondent's outstanding issues.
8. Contour submitted post-hearing spreadsheets and further information. A spreadsheet entitled 'Accounts final version' similarly identifies matters undisputed, matters where agreement to credit have been reached and issues remaining for the Tribunal's determination. Although it is difficult to reconcile both parties' final submissions the Tribunal has limited its consideration to those matters which are not agreed. As set out below we consider relevant service charges for the years in dispute save for those identified in issue are reasonable and in line with the Tribunal's expectation for a development of the nature observed. The Tribunal does so after consideration of the extent, complexity and location of the development and the service charge obligations in the subject Lease.

## **The Lease**

9. The parties' service obligations in respect of the Property are set out in a Lease made between George Wimpey (Manchester) Ltd (1), George Wimpey (N West) Limited (2) and Elvis Tabeth (3).

10. The Lease provides for an Estate Management Charge, the Estate being defined as that “Now or formally within the Title No GM968537.” At the hearing the Applicant outlined an approximation of the extent of the Estate on a copy Deed Plan. The Managed Area defined in the Lease is that part of the Estate on ground floor level only, including any parking spaces but subject to exclusive rights of use granted by the Leases shown edged blue on the Plan. This appears to comprise an approximately triangular site bounded by roadways. The Respondent’s Leasehold Property is a town house on the southern edge (or base of the triangle) directly fronting Charlestown Road. Access to the parking spaces within the development is from Ainsbrook Avenue.
11. It was observed that there are 2 apartment blocks, The Pines and The Oaks at one corner of the development.

### **The Property**

12. The Property is located within a mixed development of houses and flats in Moston, a secondary residential location convenient for commuting via the M60 to Manchester and other major cities.

### **The Law:**

13. Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:
  - (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 provides that

- (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.

Section 27A provides that

- (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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which –
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Standard of proof

14. In reaching our conclusions we have considered all the evidence available and applied a civil standard of proof, that is the balance of probabilities. Where the evidence is insufficient, as an expert Tribunal we have relied on our knowledge and experience. This has been necessary as indicated below.

### **Evidence and submissions**

15. The Applicant issued a claim at the County Court in respect of unpaid service charges of £757.15. The Respondent has longstanding complaints and queries which not been resolved.
16. The issues were identified in the parties’ written submissions. The post-hearing submissions set out the parties’ final disagreements.
17. Reverend Tabeth spoke of his dissatisfaction with the management of the Property particularly addressing the removal of rubbish and the maintenance of car park gates. He believes that failure to maintain the gates has resulted in vandalism and thefts of his motor vehicles. He questions the insurance premium attributed as an Estate charge. He is concerned this includes elements of building insurance for the residential blocks noted above.
18. The bundle contains statements and exhibits from Mr Marne and Ms Michelle Howard who is the Manager of Contour. The Respondent’s first and second statements of case were included within the original bundle.

19. Evidence and submissions are referred to in our conclusions below.

### **Parties' final positions**

20. Reverend Tabeth's final submissions prior to this determination set out 10 points. Those we find relevant comment upon:
- difficulty tracing invoices through to spreadsheets
  - lack of clarity about apportionment between the expenses that fall within the Estate Charge and those attributable to the "houses and flats."
  - proportions attributed for payment by Reverend Tabeth in respect of individual Estate Charge issues such as electricity, gardening .....
21. Contour's post-hearing documentation particularly its final spreadsheet sets out apportionments updating charges between the different classes of dwelling. Contour did not otherwise provide closing submissions.

### **Tribunal's conclusions with reasons**

22. Whilst Reverend Tabeth set out consequences of the alleged failure to maintain car park gates and stated this in a manner which might suggest he sought a set-off, he did not particularise or assist in this regard. The Tribunal finds that it is not in a position to consider any such claim. Clearly, it is open to Reverend Tabeth to pursue a claim presumably arising from an alleged Breach of Covenant in the County Court which has jurisdiction to consider damages.
23. In reaching our conclusions we have borne in mind the provisions of the Lease. This is admirable in its brevity but does not include specific proportions establishing the Lessee's liability for individual elements of the Estate Charge. It does not specify a mathematical proportion of the overall Estate Charge although clearly payable by the Lessee under the Lease Covenants.
24. Contour's spreadsheet sets out varying percentages of charges attributable to the Respondent's Lease obligations ranging from 0.909% - 1.9% dependant on the service.
25. We take some guidance from the parties' statements in which particular items and apportionments are not disputed. Whilst Reverend Tabeth's response is vague, noting the number of undisputed items within the spreadsheets and that our observations of the development, we conclude that these apportionments and resultant charges are consistent with the characteristics of the development and are reasonable and payable.
26. The spreadsheet sets out costs which have not been applied to Reverend Tabeth. It is not clear whether this is a result of an adjustment, clarification or concession. We note this has arisen during the proceedings and conclude those charges not now sought by Contour do not constitute a reasonable service charge and are not payable.
27. We have considered the overall service charges save for the disputed items and repeat our findings at paragraph 8; taking into account our knowledge and

experience of service charge levels in similar developments with comparable management functions, they are within the range expected. Accordingly, we conclude save for the items below they are reasonable and payable. Our findings regarding disputed items are as follows.

#### Insurance

28. Reverend Tabeth did not submit alternative quotations for insurance nor raised queries in respect of commissions, block policy issues or other matters. The sole point raised is whether the premium sum included within his Estate Charge is appropriate as it might include cover such as buildings insurance for residential blocks which should not be included.
29. Contour has provided a schedule entitled Charlestown Insurance. This identifies insurance responsibilities in respect of the blocks 1 and 3 at Ainsbrook Avenue and “External common parts only” for the 26 houses forming the development. A tab entitled “Allocations” appears to indicate that the overall insurance policy is a block policy covering such matters as Fidelity Guarantee, Directors and Officers Liability, Motor Fleet etc. It highlights cover in respect of combined engineering, property stock rented, property stock leasehold and terrorism which we presume are the sums applied to the Estate Charge. This appears in the invoice included in the spreadsheet for year 2021/2022 not a subject year, within this determination.
30. The spreadsheet indicates apportionment of the insurance premium between apartments and houses and further apportionment of Reverend Tabeth’s liability. It is not clear whether the calculation is a proportion of the identified housing costs or an overall proportion of the entire account. Apportionments between apartments and houses appear to be agreed in respect of other expenditure although they vary to some extent depending on the nature of the service, for example caretaker or electricity.
31. Recovery is sought for insurance service charge for year 2016/2017, £203.60 and for 2017/2018 £135.95. The variance is wide and we have not found an explanation within the documentation submitted. Either figure seems high in respect of the insured risks relevant to the Estate Charge by and large Public Liability and surface risks relating to ground level. The extent of the insurance obligation within the Lease; Third Schedule Paragraph 4 is “To keep the managed area insured against all risks from time to time included in the nominated insurance policy of insurance and such other risks as the Management Company shall in its absolute discretion deem necessary.” The managed area contains the definition “That part of the estate at ground floor level only.....”
32. The total derived from the final spreadsheet would indicate that the overall cost of insurance was £11,589.40 and £8,255.73 respectively including a rollover balance. Reverend Tabeth’s point 5 does not expressly address the overall cost but in effect queries the proportion attached to the parking spaces. However the definition of managed area includes the parking spaces.
33. Reverend Tabeth did not provide alternative quotations or evidence upon which the Tribunal could further consider his proportion of the insurance cost.

Accordingly, the Tribunal relies upon its knowledge and experience. No explanation is given for the variation between the years although this may be largely due to a rollover amount assumed attributable to the earlier year. Although at the top end of our expectations we find that the 2017/2018 apportionment further reflects a reasonable sum for Reverend Tabeth's obligations in respect of each of the years. Accordingly, we conclude that the element of insurance payable by Reverend Tabeth by way of service charge for each year is £135.95.

Rubbish removal – waste disposal

34. Amounts are queried in respect of both service charge years. The amounts in dispute are relatively small to the point they might be considered de minimis at less than £10 for 2016/2017 and a similar sum in respect of 2017/2018. The Lease obligations relate to costs at ground level; we accept rubbish removal relates to ground level. We understand from Reverend Tabeth's oral submissions that his concern is that the rubbish accreted from particular sources for which he should not be responsible. This in our view does not suggest that Management Company should not remove the rubbish. The particular invoices highlighted are criticised by Reverend Tabeth as not specific. On balance we find they relate to the removal of waste and properly fall within the Estate Charge and the apportionment to Reverend Tabeth for each of the years is reasonable and payable.

Repairs

35. The Tribunal has been requested to determine certain items of repair occurring during service charge year 2017/2018. The 3 amounts relate to work to gates at the premises which note are not the car park gates. Reverend Tabeth's query appears to relate to a lack of clarity on the invoices and specification of the work carried out. Further we note the possibility that work might be considered to be for the benefit of a residential block specifically The Pines. The amounts are small. We are satisfied that the work falls within the Estate Charge. Reverend Tabeth may not appreciate that service charges reflect communal living and certain obligations might not directly benefit a particular individual. From the information available we find the amounts are reasonable and payable by Reverend Tabeth.

## **Order**

36. The service charges claimed for 2016/2017 and 2017/2018 are payable to the extent now agreed between the parties, summarised in the final accounts spreadsheet and adjusted in respect of the insurance amount as ordered above.

**Laurence J Bennett**  
**Tribunal Judge**  
**28 March 2023**