



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

Case reference : **CHI/00HB/LSC/2023/0006**

Property : **5 Edward VII Wing, French Yard,
Bristol, BS1 6SF**

Applicants : **Richard James Butterworth and Holly
Elizabeth Hilton Vickers**

Representative : **None**

Respondent : **The General (Bristol) Management
Company Limited**

Representative : **Longmores Solicitors LLP**

Type of application : **For the determination of the payability
and reasonableness of service charges
under section 27A of the Landlord and
Tenant Act 1985 and limitation of
landlord's costs under section 20C of
the Landlord and Tenant Act 1985 and
paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform
Act 2002**

Tribunal member : **Judge H. Lumby**

Venue : **Paper determination**

Date of decision : **9 June 2023**

DECISION

Decision of the tribunal

The amounts in respect of service charge demanded by the Respondent in respect of the service charge year ending 30 June 2023 are all payable in full by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability of certain internal block service charges demanded by the Respondent in respect of the service charge year ending 30 June 2023.

2. The Applicants seeks a determination in respect of the following items of expenditure:

- | | |
|--------|--------------------------------|
| (i) | Electricity - £294.51 |
| (ii) | Cleaning - £273.38 |
| (iii) | Caretaker services - £177.95 |
| (iv) | General maintenance - £66.94 |
| (v) | Lift maintenance - £137.89 |
| (vi) | Door entry system - £20.08 |
| (vii) | Engineering insurance - £25.42 |
| (viii) | Health & safety - £17.38 and |
| (ix) | Major works provision - |

£160.64

The total amount in dispute amounts to £1,174.19.

3. The internal block charge also included a fire safety element but the Applicants are not challenging this.

4. There was a query as to whether the application has been made simply by Richard James Butterworth or both Applicants. The second of the two applicants (Holly Elizabeth Hilton Vickers) has confirmed that she is indeed one of the Applicants by her signature of the Applicants’ Statement of Case.

The background

5. The property comprises a three bedroom ground floor flat within a residential development of the former Bristol General Hospital; the development comprises new built and converted blocks as well as car

parking. The property is located within a converted block and has its own direct entrance.

6. The Applicants are long leaseholders, holding their interest pursuant to a lease dated 30 June 2021 for a term of 175 years from 1 January 2015. The freehold reversion to the lease is vested in the City and Country Bristol Limited. The Respondent is the management company for the development, responsible for the provision of services and the collection of service charges. It is a party to the lease.
7. The Applicants state that the charges in dispute relate specifically to the internal facilities which are only enjoyed by properties accessed via the communal entrance to the building. Their flat has its own separate dedicated entrance on the diagonally opposite corner of the building and they assert that they have no benefit from the communal entrance/facilities whatsoever and feel it is unfair and unreasonable to have to contribute towards this. The issue therefore for the tribunal to determine is the appropriateness of the Applicants contributing to those costs and so whether they are reasonable and payable, in accordance with section 27A of the 1985 Act.

The lease

8. The lease provides by clause 5.1 and paragraphs 2, 21, and 22 of Schedule 4 that the Tenant will pay a service charge to the landlord or the management company (i.e. the Respondent) as appropriate. That service charge is calculated by reference to the “Tenant’s Proportion” of the cost of the relevant services.
9. The Tenant’s Proportion is defined in clause 1.1 of the lease as:

“A fair and reasonable proportion determined by the Landlord of the total expenditure reasonably and properly incurred by the Company in performing the Services PROVIDED ALWAYS that in the event of any such proportion being inappropriate having regard to the nature of the expenditure (or item of expenditure) or otherwise the Landlord shall be at liberty in its discretion to adopt such other method of calculation of the Tenant’s Proportion of total expenditure to be attributed to the Demised Premises as shall be fair and reasonable in the circumstances”
10. The Services are set out in schedule 10 to the Lease and also include:

“any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building and/or the Estate”
11. Schedule 10 of the lease lists at Part 1 the services to be provided to the Internal Common Parts; these are defined as:

“all halls landings staircases pathways Company employee's office (if applicable) corridors service cupboards and other common parts of the Building”

12. The services listed in Part 1 of Schedule 10 are:

“1.1 Repair maintain and replace when necessary the fire monitoring system in the Internal Common Parts.

1.2 To carry out when necessary a fire risk assessment and health and safety risk assessment to ensure compliance with health and safety regulations in the Internal Common Parts

1.3 Keep the Internal Common Parts in good and substantial repair and in clean and proper order

1.4 Keep the equipment and all the fixtures and fittings in the Internal Common Parts and all fittings and equipment ancillary thereto and the door telephone and video equipment (if any) in good order and repair and enter into service agreements with the installers or other appropriately qualified contractors for these to be properly and regularly inspected and maintained and replace the fixtures and fittings as and when replacement is necessary or requisite and pay the rental from time to time in respect of the said door telephone and video equipment (if any)

1.5 In every fifth year from the date hereof or as is reasonably necessary to prepare as necessary and paint all the inside wood and ironwork of the Internal Common Parts and all additions thereto with two coats of good quality paint in a proper and workmanlike manner and afterwards to grain varnish distemper wash stop whiten and colour all such parts as are usually so dealt with and to repaper with paper of suitable quality the parts usually papered

1.6 Keep the Internal Common Parts clean and tidy and maintain the lighting and the supply of electricity to the same

1.7 To clean any windows in the Internal Common Parts internally save in respect of windows where cleaners cannot gain access”

13. Schedule 2 of the lease grants various rights to the tenants of the Property including:

1. Access to and from the Demised Premises

Full and free right and liberty for the Tenant his servants and licensees at all times for the purposes only of access to and from the Demised Premises to pass and re-pass on foot only over and along the footways on the Estate and the Internal Common Parts AND to pass or re-pass with or without vehicles (as appropriate) over and along the Accessways the External Common Areas and the Estate but for the avoidance of doubt not to obstruct or to grant rights to park on the same or on any other parts of the Estate other than the Parking Space (if any) hereinafter specifically referred to

2. Service Media

The free passage and running of cold water soil gas and electricity telephone and all other services or supply to and from the Demised Premises and any part thereof in and through the Estate Service Media

3. Access to the Retained Parts

The right at all reasonable times upon giving at least forty eight hours previous notice to the Landlord and/or the Company (except in the case of emergency) to enter upon the Building, Internal Common Parts, Accessways, External Common Areas and Estate (as appropriate) for the purpose of carrying out repairs to or repainting or cleaning the Demised Premises or any part thereof making good any damage caused thereby without delay.”

The service charges

14. The estimated service charge for the service charge year ending 30 June 2023 allocates a charge of £4,475.44 to the Applicants.
15. This is broken down as follows:
 - (a) Block charge for the building – 1.1389% - £222.09 charge
 - (b) Block charge for internals – 1.3387% - £1,196.23 charge
 - (c) Estate charge – 0.7201% - £1,926.90 charge
 - (d) Block insurance – 1.1438% - £770.06 charge
 - (e) Communal heating – 0.7550% - £184.97 charge
16. The Applicants challenge relates to the block charge for internals, referred to Conversion - Internals. As referred to above, they are not however challenging the fire equipment element within it. The items challenged are listed in paragraph 2 above. Their challenge is as to the percentage allocation of 1.3387% to them; their contention is that this should be 0%.

Law

17. Section 19(2) of the 1985 Act provides:

“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.”

Tribunal determination

18. This has been a determination on the papers. The documents that the tribunal was referred to are in a bundle of 124 pages, the contents of which the tribunal have noted. The bundle contained the application, the tribunal’s directions in the case, the Applicant’s statement of case together with four exhibits including the lease and the service charge budget for the relevant year, the Respondent’s statement of case

together with a witness statement from Simon Marner and two exhibits to this.

19. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Payability and reasonableness

20. The tribunal has considered first whether as a matter of contract it is fair and reasonable for the Respondent to have determined that the Applicant's proportion of the relevant costs should be 1.3387%, as opposed to 0%. It then considered whether that proportion was reasonable for the purposes of section 19(2) of the 1985 Act.
21. It began by considering whether all the elements in issue are items for which the Respondent is entitled to make a charge under the lease. With one exception, all clearly fall within the recoverable services for the Internal Common Parts listed in Part 1 of Schedule 10. The exception is costs relating to the lift as this is not expressly referred to. However the definition of Internal Common Parts refers to other common parts of the Building, which would include the lift. Paragraph 1.4 of Part 1 of Schedule 10 refers to the maintenance of equipment in the Internal Common Parts and this would include the lift equipment. Finally, the definition of Services includes other services the landlord may in its reasonable discretion provide for the benefit of the tenants and occupiers of the building and this would include maintaining the lift and insurance of it. As a result, the tribunal finds that all the charges in issue are items for which the Respondent is entitled to charge under the lease.
22. There is no challenge by the Applicants to the estimated overall costs for the services in issue, just the proportion allocated to them.
23. The Applicants argue that the proportion charged is not fair and reasonable because they have no use of or benefit from the communal entrance/facilities whatsoever and so should not have to contribute towards them.
24. The Respondent argues that the apportionments were determined by the landlord in 2014 on the basis that they represented an appropriate balance between, on the one hand, a perfectly accurate, bespoke apportionment for each property and, on the other hand, the time and management cost that creating an apportionment of that nature for each property would take. They refer to the witness statement of Simon Marner, who sets out the approach taken and argues that a line needs to be drawn somewhere. Mr Marner is a director of the landlord of the Property and the wider development.

25. Their submission is therefore that, whilst a leaseholder may not directly benefit from every element of every cost to which they contribute, it is not reasonable to require the landlord to break each cost down to a minute level of detail because the administration of the service charges will then become unmanageable and unduly expensive. In any event, leaseholders all benefit generally from the services being provided across the estate because they help to maintain the overall high class nature of the development and therefore the value of individual properties.
26. The tribunal finds that it is for the landlord to determine the appropriate proportion of the costs in issue to be allocated to the Property.
27. The tribunal finds that the Applicants do benefit from each of the services in dispute, whether directly or indirectly. Overall, whilst they do not use the main entrance in order to access the Property, they do have a key to the main entrance and are entitled to access the common parts of the block, including to carry out repairs to the Property. The tribunal also accepts the Respondent's argument that ensuring the building as a whole is secure through a secure door entry system and properly lit provides indirect benefits to the Applicants in terms of security and building quality.
28. Turning to the specific services, the tribunal finds the following benefits to the Applicants from each of the services in issue:
 - (i) Electricity – the cost includes supply to items from which from the Applicants benefit, such as the fire alarm and smoke vents;
 - (ii) Cleaning – this maintains the overall quality of the development and the building;
 - (iii) Caretaker services – by providing services such as fire alarm testing, repair standards, deliveries, cleanliness and key handling, benefits are provided to all occupiers, including the Applicants;
 - (iv) General maintenance – benefits include fire risk minimisation and protecting utility services that serve the Property;
 - (v) Lift maintenance – lifts are an integral part of the building and its appeal and help to ensure its quality and protects values;

- (vi) Door entry system – this enables the Applicants to exercise their right of access and helps maintain the security and value of the whole building and the flats within it;
 - (vii) Engineering insurance – this is for the lift, which provides an indirect benefit to the Applicants;
 - (viii) Health & safety – this provides a direct benefit by ensuring that the utilities in the building are safe, the example is given of legionella in the water supply; and
 - (ix) Major works provision – this is a reserve to cover major works such as lifts and alarms and internal common parts decoration. This helps maintain the value of the building and its individual flats whilst smoothing the size of service charge contributions to which the Applicants will be obliged to contribute.
29. The tribunal accordingly finds that each of the service charge heads in issue are items for which the Respondent is entitled to seek recovery pursuant to the lease. They all benefit the Property to some extent. Some level of service charge in respect of all these items is therefore payable and the lease permits the landlord to set that level.
30. The tribunal then considered whether that proportion was reasonable for the purposes of section 19(2) of the 1985 Act. The witness statement of Simon Marnier provides the service charge apportionments for the whole development and explains that these are based on a method reflecting bedroom numbers as well as unit size. This method was used as, due to the inconsistencies in size and layout, if the apportionment is simply based on areas then that produces anomalies which in the landlord's judgement would be unfair. The tribunal accepts that this is a reasonable methodology and notes that the Applicants would have had a full opportunity to understand this, the apportionments and the heads of charge when they acquired the Property.
31. It is accepted by the Respondents that this method might lead to potential imbalances between individual units but to endeavour to split out costs further would overly complicate the service charge arrangements and increase the management costs. The tribunal accepts that this approach is reasonable; the alternative of creating a a tailored set of apportionments that reflected the direct benefit to each unit of the individual services would be unmanageable and require an

unreasonable additional level of accounting resources with commensurate increase in costs to tenants.

32. The tribunal therefore finds the proportion allocated to the Property for the charges in issue is reasonable. It therefore determines that the charges in issue are reasonable and payable by the Applicants.

Applications under s.20C and paragraph 5A

33. The Applicants have applied for cost orders under section 20C of the 1985 Act (“Section 20C”) and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“Paragraph 5A”).

34. The relevant part of Section 20C reads 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...”.

35. The relevant part of Paragraph 5A reads 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”.

36. A 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 of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

37. In this case, the Respondent has been successful on the substantive issues. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and the Applicants’ Section 20C Application is therefore refused.

38. For the same reasons as stated above in relation to the Section 20C cost application and further because the lease does not allow the landlord to levy administration charges, the Applicants’ Paragraph 5A application is also refused.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.