



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

**Case Reference** : **MAN/00CG/LSC/2022/0067 and 0072**

**Property** : **KELHAM WORKS, 4 ALMA ROAD, SHEFFIELD**  
**(1) Apartments 106 and 107**  
**(2) Apartment 203**

**Applicants** : **(1) PAUL BUXTON**  
**(2) GEORGE FOSTER**

**Respondent** : **GUNES ATA**

**Type of Application** : **Application for orders under sections 27A and 20C, Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

**Tribunal Members** : **A M Davies, LLB**  
**S Kendall, MRICS**

**Date of Decision** : **23 August 2023**

**Date of Determination** : **4 September 2023**

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**DECISION**

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1. The service charge payable in respect of each of the Applicants' apartments for the year ending 31 December 2021 is 1/56 of the total shown in the third column of the Schedule to this decision.
2. No determination is made regarding the service charge account for the year ending 31 December 2022.
3. To the extent that the Applicants' leases might otherwise enable the Respondent to add his costs of this application to their service charge accounts, he may not do so.
4. Should the Applicants' leases provide for the imposition of administration charges, no administration charge may be applied to the Applicants' service charge accounts in relation to their withholding service charge payments pending receipt of this determination.

### **REASONS**

1. The Applicants are long leaseholders of apartments at Kelham Works, Alma Road, Sheffield ("the Property"), Mr Buxton owning flat numbers 106 and 107 and Mr Foster owning flat number 203. The apartments are sub-let. The Property was constructed and occupied from 2017. The Respondent is the freeholder and appointed his company Fix1st Limited to manage the Property on his behalf. In January 2023 management of the Property was transferred to a Right to Manage Company which appointed Horizon as the leaseholders' property managers.
2. The Applicants queried items on the Respondent's annual service charge account and required further information prior to agreeing to pay the sums demanded for the years ending 31 December 2021 and 2022. Information provided by the Respondent being in their view insufficient, they applied to this Tribunal for a determination as to the amount and payability of service charges under the terms of their leases. The Applicants' cases to the Tribunal are identical and the Tribunal ordered that the applications be dealt with together.
3. The Respondent chose not to comply with directions issued by the Tribunal and in due course was barred from making any representations in response to the applications. The case was determined on the basis of the Applicants' paper representations and without a hearing or inspection of the Property.

### **THE LAW**

4. Section 18(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") defines a service charge as

"18(1) ..... 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.....
- (3) For this purpose –
  - (a) "costs" includes overheads....."

5. Section 19 of the 1985 Act limits service charges as follows:
  - “(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.”
6. Section 21 of the 1985 Act permits a Tenant to request a summary of the Landlord’s costs, such summary to provide the information set out in that section. Subsection 21(6) provides that if the service charges are payable by the tenants of more than four dwellings, the summary shall be certified by a qualified accountant as being a fair summary and as “being sufficiently supported by accounts, receipts and other documents which have been produced to him”.
7. In considering the payability of service charges, the Tribunal first examines the wording of the lease which sets out the contractual obligations entered into by the landlord and tenant.

#### THE LEASES

8. All three leases have the same definition of “Service Charge”, namely “such proportionate part (calculated to provide the Landlord with 100% reimbursement when combined with the service charge contribution(s) attributable to other parts of the Building whether they are let or not) to be conclusively determined from time to time by the Landlord or the Surveyor (provided always that in determining the Service Charge...the Landlord or the Surveyor shall be entitled... in relation to any expense falling to be apportioned between the Lessees in the Building to take account of the respective benefits accruing to such Lessees from such expense and to adjust the proportional part of such expense to be borne by the Tenant as the Landlord or the Surveyor shall properly determine) of all costs and expenses...incurred or expended by the Landlord in connection....with the heads of expense for the Building referred to in the Fourth Schedule Parts 2 and 3....”
9. The Applicants’ leases differ as regards the procedure governing service charge accounts. All three leases provide at paragraph 1.1 of Schedule 4 that the tenant is to pay an advance yearly payment notified to him by the Landlord, the payment to be made quarterly on the usual quarter days. Mr Buxton’s two leases provide that such advance payment shall be equal to one sixth of the anticipated cost relating to the structure of the Building and one quarter of the cost incurred in respect of all other matters. Mr Foster’s lease provides that the payment is to be equal to 1/56<sup>th</sup> of the landlord’s anticipated costs. In practice, as there are 56 apartments in the Property, the Respondent has calculated each of the Applicant’s contributions as 1/56<sup>th</sup> of the whole for each apartment that he owns.

10. Paragraph 1.2 of Schedule 4 to each of the leases provides that the Tenant shall make a further payment within 14 days of demand to meet his contribution to the actual cost incurred by the Landlord in the previous year. In the event that the actual cost incurred is lower than the anticipated cost, the difference is credited to the Tenant's service charge account. The leases provide that "a true copy of the statement of the Service Charge certified as such by the Surveyor or the Landlord shall in the absence of manifest error be conclusive evidence of the amount of the Service Charge" and further provides that the Tenant may within 2 months after receipt of the Service Charge statement request in writing an opportunity to inspect "vouchers invoices and receipts evidencing the calculation of the Service Charge."

#### THE PROPERTY

11. The Tribunal has seen an email dated 24 February 2023 from the Property's insurers which describes the Property as being purpose built over 5 floors, the fifth floor being partly a roof terrace. The ground floor comprises a commercial unit (unoccupied at the time of the application) together with the following facilities for residential occupiers: a small gym, laundry with three washers and three dryers, bin store and plant room. There is one lift and a staircase to all upper floors.
12. Heating and hot water are provided by 3 auger-fed biomass boilers in the plant room. There is no gas supply. The insurers note that there is a CCTV system which is monitored from nearby premises.

#### THE APPLICATIONS

13. The Applicants query the final service charge account for the year 2021, and the budget or anticipated figures that they were asked to pay in 2022. The Tribunal has not seen any final account for 2022. The budget for 2022 is exactly the same as the budget for 2021 save for the addition of 4 items: biomass boiler pellets £20,000, refuse £4,000, water £12,000 and Wi-Fi £12,500. The Applicants say that prior to 2022 the Respondent charged the apartment occupiers directly for the same sums in respect of pellets, water and Wi-Fi. These charges did not appear on earlier service charge accounts and no evidence of expenditure or balancing account seems to have been provided by the Respondent. The Tribunal has not been informed of any previous claim for £4,000 for refuse and this appears to be a new cost.
14. The Tribunal has no figures for previous years and information supplied by the Respondent is limited. The Applicants rely in part on anticipated cost figures supplied by Horizon, the recently appointed managers of the Property, who have also produced a helpful report dated 27 February 2023. This confirms that for the years in question waste disposal was provided by a private company. The laundry had not been cleaned as required by the insurance conditions, and the roof terrace "appeared to not have been cleared of rubbish for a significant time". Horizon also state "we believe there have been many instances prior to our management of the block of false [fire alarm] activations. The cost of each [Horizon] call out is £80..."
15. In regard to the boilers, Horizon report that they have obtained an assessment of their condition and a quotation of £15,345.99 for necessary work on the boiler system and associated plumbing. They say "This quote.....had previously been provided to the previous management company by the contractor as he had identified these issues on past visits, but the quote had not been accepted..."

16. Horizon report that when they were appointed the lift had no lift line to enable anyone trapped in the lift to summon help. They had obtained a report which advised that the cold water tank and booster pump infrastructure had not been installed correctly. They had accessed the apartments in the Property for which the fire alarm panel was indicating faults in the detectors and had reconnected the detectors.
17. The Applicants raise a query about the management and whereabouts of the reserve fund. This is not within the Tribunal's jurisdiction on the present application. They also refer the Tribunal to service charge accounts of the Respondent in respect of a property at St Mary's House in Sheffield which contains budget student studio accommodation. The Tribunal has not taken this comparison into account, having insufficient information regarding any similarities and differences between St Mary's House and the Property.

#### DISPUTED 2021 SERVICE CHARGE ITEMS

18. Property insurance: at £6,099.03 the premium charged to the leaseholders is considerably lower than that quoted by Horizon for 2023. The insurance cover taken out by the Respondent may have been inadequate. The Applicants have not provided an alternative figure for the 2021 insurance costs. The Tribunal has seen an undated statement from Noble Design and Build indicating that insurance costs (for an unspecified period) were £5,391.03. However in the absence of further information the Tribunal has no basis on which to make any change to the amount charged.
19. Communal electricity: the 2021 budget provided for a cost of £7,500 and the actual figure charged is £4,892.35. As the Applicants acknowledge, it is not possible to calculate any alternative figure in the absence of further information and this cost is therefore accepted.
20. Repairs and maintenance: the budget for this was £4,000 and the actual charge is £5,484.60. Maintenance work at the Property is carried out by the Respondent's associated company Fix1st, who invoiced all their repair costs in the last quarter of the year. No explanation of work done has been provided. In the absence of further information, the Tribunal has no reason to adjust the amount charged.
21. Decorating: The anticipated cost for the year was £10,000 and the actual cost is said to have been £12,348. The work was carried out by Fix1st, whose invoices, supplied by the Respondent, show a charge of £10,774 for the period. The invoices supplied by Fix1st for the first three quarters of the year bear a VAT registration number but no VAT added to the sums charged. The last quarter's invoice sets out VAT separately in the usual way. No other VAT invoices have been supplied. The Tribunal has proceeded on the basis that the invoiced figures for decorating – and for all other services provided by Fix1st - in the first three quarters are VAT inclusive. There is no information as to what decorating was carried out or to what standard, and therefore no basis on which to challenge the invoices. £10,744 is allowed.
22. Lift servicing: £500 was provided for in the budget and £312 has been given as the actual figure. This appears reasonable and has been accepted.
23. CCTV: The budget stated £1,500 and £1,800 has been charged. Fix1st charged £375 per quarter, adding VAT to the final quarter's charge. This totals £1,575, which is the amount allowed as no other invoice has been provided.

24. Boiler management and repair: The budget for this was £1,750 and the actual charge is £3,787.74. Fix1st has charged £420 in the first quarter and £762 in the final quarter but the Tribunal does not accept that the company was qualified to repair biomass boilers and considers that its charges for management of the boiler room are provided for elsewhere in the service charge account. Under this heading, the service charge is limited to the invoiced costs of the boiler maintenance company rtb-uk, which for 2021 amount to £2,461.74.
25. Plant room management: £1,750 was budgeted for this cost and the actual charge was £2,412. The work involved emptying the ashcans and was carried out by Fix1st, who have invoiced £1,505 for the first three quarters of the year and £606 in the final quarter. The invoiced sums totalling £2,111 are allowed for this service.
26. Fire Alarm testing: the budget for the year was £1,000 and £1,200 has been included in the final account. This weekly check is now being performed by the property manager appointed by Horizon, and the cost is included in the expenditure attributable to the property manager. The Tribunal does not consider that this service warrants a separate charge.
27. Fire Alarm servicing: the budget for this was £720 and £1,060.80 has been charged. The Tribunal has no evidence that the fire alarm was not effectively serviced during 2021. Problems clearly arose, and the Tribunal has seen the 2021 invoice from Micro Alarms Ltd for £1,060.80 which is accepted as the correct charge.
28. Internal and external cleaning: the Respondent estimated £13,500 for internal cleaning and the eventual cost was £16,164. The work was done by Fix1st, whose invoices indicate a cost of £14,178. A further £2000 was in the budget for external cleaning and the actual charge for this was £2,400. Fix1st have invoiced £2,096. The Tribunal has no information about the extent and effectiveness of the cleaning. No witness statement was provided by any occupant of the Property. "External cleaning" it believed to relate to the roof space. Horizon have estimated £3,200 for internal and external cleaning in 2023, representing 4 man hours per week for 50 weeks of the year at £16 per hour. The Tribunal considers that this may be an underestimate but that the Respondent's figures are unreasonably high. At £16 per hour for 50 weeks of the year, Fix1st has invoiced for over 20 hours' cleaning per week. The Tribunal considers it reasonable to allow for 8 man hours per week for internal and external cleaning, the cost of which (at the same hourly rate) would be £6,400.
29. Common areas window cleaning: the 2021 budget allowed for £1,000 and the cost charged was £768. No invoice has been produced and there is no evidence that the window cleaning was not carried out. The Tribunal considers this cost to be reasonable and payable.
30. Carpet cleaning: no evidence has been provided regarding either regular or spot cleaning of the carpets in the common areas. The Respondent included £2,000 for this in the 2021 budget, and charged £2,226. The work was carried out by Fix1st who invoiced £2,118. There are no other invoices for carpet cleaning. The invoiced sum is considered reasonable and the service charge account has been amended accordingly.

31. Security and out of hours attendance: the budget for this was £8,500 and the actual charge was £11,130. The attendances were provided by Fix1st, who have invoiced a total of £9,743. There are no other relevant invoices. No evidence has been provided as to the number of out of hours attendances, but Horizon's report indicates that a large number might have been expected, at a rate of around £80 each. The cost invoiced by Fix1st is therefore payable.
32. Caretaker/property manager: the Respondent allowed a budget of £8,500 for this service, and charged £10,200. The work was carried out by Fix1st who have invoiced £8,925. No worksheet or other breakdown has been provided. As management of the plant room and bin store have been charged for separately, the remaining work comprises fire testing and recording, checking the boiler room, laundry and gym, and any additional work (other than cleaning) that may have been necessary in the roof garden. The new managers Horizon have allowed £3,145 for a caretaker charged at £40 per hour to spend approximately 1.5 hours at the property each week to undertake this work. This may be an underestimate and 2 hours per week for 52 weeks of the year has been adopted by the Tribunal as a reasonable charge for the year 2021: the allowed charge is £4,160.
33. Refuse management and bin store: the Respondent anticipated a cost of £3,500 and charged an actual cost of £4,134. At least part of the work was done by Fix1st and the Tribunal has seen no invoices from a waste disposal company. Fix1st's invoices for this service total £3,610. The Respondent was under no obligation to use the cheaper service provided by Sheffield Council, and the invoiced cost of £3,610 is considered to be payable.
34. Pest control: the Respondent budgeted £1,000 for this service and charge £1,380. The work was carried out by Fix1st who have not provided any detail but whose invoices amount to £1,208. Horizon has estimated an annual cost of £200 but this may be an underestimate. The Tribunal has no other evidence that the invoiced cost is unreasonable, and it is therefore payable.
35. Managing agents' fees: the budget for managing agent's fee was £10,000 and £12,000 has been charged. The work was carried out by Fix1st, who have invoiced £10,500 or just over £200 per apartment for the year. The Tribunal has no evidence that management of the Property was not carried out to a satisfactory standard during 2021 and considers the invoiced charge to be reasonable.
36. After making the adjustments indicated in the preceding paragraphs, the service charge payable in respect of each of the Applicants' apartments for 2021 is 1/56 of the total shown in the third column of the Schedule to this decision.

## 2022 SERVICE CHARGES

37. The Tribunal has not seen an adjusted final service charge account for 2022. The comments above will where appropriate also apply to the budgeted sums claimed on account of service charges in the year 2022. The Applicants may apply to the Tribunal again should they feel, when a final account has been taken, that they have been overcharged. All costs should be justified by the Respondent, who should allow inspection of the relevant supporting invoices and job-sheets if requested. In particular, the actual costs of pellets, water supply, electricity and Wi-Fi should be identified prior to preparation of the Respondent's final balancing account and demonstrated to the leaseholders if requested. Rounded or approximate figures are

not acceptable. Finally, the Tribunal notes (but without making any finding) that there are suggestions in the February 2023 report prepared by Horizon that during 2022 some of the services provided may have fallen short of an acceptable standard.

#### SECTION 20C COSTS AND ADMINISTRATION CHARGES

38. The Respondent has failed to explain and justify a number of the final charges in the 2021 service charge account. In view of the lack of information provided and a number of discrepancies in the accounts, the Applicants were right to apply to the Tribunal for a determination. For this reason, to the extent that the Applicants' leases might otherwise enable the Respondent to add his costs of this application to their service charge accounts, he may not do so. For the same reason, should the leases provide for the imposition of administration charges, no administration charge may be applied to the Applicants' service charge accounts in relation to their withholding service charge payments pending receipt of this determination.

#### SCHEDULE

<b>2021 Service charge item</b>	<b>Amount claimed by Respondent £</b>	<b>Amount allowed by Tribunal £</b>
Reserve fund	0	0
Buildings insurance	6099.03	6099.03
Electricity	4892.35	4892.35
Repairs and maintenance	5484.60	5484.60
Decorating	12348.00	10744.00
Mechanical and engineering	0	0
Lift servicing	312.00	312.00
CCTV	1800.00	1575.00
Boiler management and repair	3787.74	2461.74
Plant room management	2412.00	2111.00
Fire risk assessment	0	0
Fire alarm testing	1200.00	0
Fire alarm servicing	1060.80	1060.80
Internal and external cleaning	18564.00	6400.00
Window cleaning, common areas	768.00	768.00
Carpet cleaning	2226.00	2118.00
Out of hours attendance	11130.00	9743.00
Caretaker/property manager	10200.00	4160.00
Refuse management/bin store	4134.00	3610.00
Pest control	1380.00	1208.00
Audit and accountancy	0	0
Managing agent's fees	12000.00	10500.00
<b>TOTAL</b>	<b>99798.52</b>	<b>73247.52</b>

**Tribunal Judge A Davies**  
**23 August 2023**