



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

Case reference : **LON/00BF/LSC/2022/0373**

Property : **Cheyham Park, Mickleham Gardens,
Surrey, SM3 8QN**

Applicant : **Carole Ellison, 21 Fitznell Court, 12
Pond Hill Gardens, SM3 8QN;
Deborah Longhurst, 23 Travers Court,
11 Pond Hill Gardens, SM3 8AE;
and 10 other leaseholders**

Representative : **Carole Ellison and Deborah Longhurst
in person**

Respondent : **Southern Housing**

Representative : **Stephen Evans (Counsel)**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Robert Latham
Alison Flynn MA MRICS**

**Date and Venue of
Hearing** : **31 October and 1 November 2023
at 10 Alfred Place, London WC1E 7LR**

Date of decision : **5 December 2023**

**Date of revised
decision** : **15 December 2023, 20 February 2024**

REVISED DECISION

The Tribunal is exercising our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct typographical and clerical errors in our decision. We have had regard to the Respondent's email of 4 December and the Applicants' email of 13 December. We had erroneously stated that the Applicants had received Ms Emery's statement before the mediation on 1 August 2023. We accept that a signed copy was not received until 29 September 2023. The amendments are highlighted in **bold**.

Judge Robert Latham, 15 December 2023

On 5 February, the Applicants identified further clerical mistakes, none of which are material to the decision. The further amendments are also highlighted in **bold**. The Tribunal has confirmed that these are the final corrections which we will be willing to entertain.

Judge Robert Latham, 20 February 2024

Decisions of the tribunal

- (1) The Tribunal finds that the service charges claimed are reasonable and payable, save for the following:
 - (i) **Item 3**: The computation of the Independent Living/Support Charges: In July 2023, the Respondent reviewed the manner in which this charge is apportioned. The Tribunal is satisfied that the manner in which the Respondent now intends to apportion it is reasonable.
 - (ii) Item 16: Management fee in respect of expenditure funded from the reserve fund. The Tribunal is satisfied that it is not reasonable to charge an uplift of 15% in respect of standard items of expenditure.
 - (iii) Item 17: The Applicants have identified an accountancy error in the manner in which the service charge for Travers has been computed for 2020/21 and 2021/22. The Respondent had acknowledged this error for 2020/21 in July 2023.
 - (iv) Item 22: A minor error of £3.15.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings incurred up to **27 October 2023** may be passed to the Applicants through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicants.

The Application

1. By an application dated 1 December 2022, the Applicant tenants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of the service charges payable in respect of the service charge years 2019/20, 2020/21 and 2021/22. The application was issued by Carole Ellison, the lessee of 21 Fitznell Court, 12 Pond Hill Gardens, SM3 8QN and Deborah Longhurst, the lessee of 23 Travers Court, 11 Pond Hill Gardens, SM3 8AE. Fitznell Court and Travers Courts are two of four blocks at Cheyham Park (“the Estate”).
2. On 10 October 2023, the following tenants were joined as applicants: (i) Roy Douglas Prytherch and Christine Elizabeth Prytherch, 7 Fitznell Court; (ii) Ann Swepson, 8 Fitznell Court; (iii) Tina Holland, 9 Fitznell Court; (iv) Loraine Roe, 10 Fitznell Court; (v) Brian Anthony Forster, 28 Fitznell Court; (vi) Ariane Sollberger, 20 Fitznell Court; (vii) Thomas Anthony Russell and Jeanette Anne Russell, 14 Travers Court; (viii) Maureen Patricia Johnston, 22 Travers Court; (ix) Marion Driscoll, 26 Travers Court; and (x) Jacqueline Mattyasovsky, 27 Travers Court. None of these applicants have played any active part in these proceedings.
3. The Tribunal has given Directions on numerous occasions, including 13 December 2022 (amended on 6 February 2023); and 31 March 2023 (amended 6 October 2023), pursuant to which:
 - (i) The parties have filed Scott Schedules for the three years in question. The Applicants challenge a total of 24 different items. Some of these are extremely minor, for example a challenge of £87.72 relating to an accounting error in 2019/20, in respect of which Ms Ellison was liable for £1.95. It transpired that this error had been corrected in 2021/22.
 - (ii) The Applicants have both served witness statements. No statements have been provided by any of the additional ten applicants. Ms Ellison’s statement is limited to three pages, whilst Ms Longhurst’s statement extends to two pages. The Applicants have not provided any alternative quotes to suggest that any of the services could have been procured more cheaply.
 - (iii) The Respondent has filed a witness statement from Ms Michelle Emery, the Respondent’s Head of Service Charges. The statement extends to 19 pages, but refers to a large number of documents to support the Respondent’s contention that the service charges were reasonable and payable. This includes a transaction list of all the items included in the service charge accounts. Ms Emery addresses each and every item raised by the Applicants in their Scott Schedule.

(iv) The Respondent has have filed a Bundle of Documents which extends to 1,467 pages.

The Hearing

4. Ms Ellison and Ms Longhurst appeared in person to represent themselves and the ten other leaseholders at Fitznell Court and Travers Court. Both Applicants are retired. Ms Ellison was a company secretary whilst Ms Longhurst has a background in human resources. They both gave evidence.
5. Mr Stephen Evans (Counsel) appeared on behalf of the Respondent. He provided a Skeleton Argument and an annotated Scott Schedule which was cross referenced to the relevant documents in the Bundle. Ms Emery gave evidence. She is in a senior management position and had only attended the Estate once in the past two years. Ms Natalie Wilson, a Senior Property Manager also attended the hearing and was able to assist on some points of detail.
6. Ms Ellison and Ms Longhurst came ill prepared to present their case. The tribunal is currently working with digital hearing bundles. The Applicants attended with an iPad. However, it became apparent towards the end of the first day that they were no longer able to access the documents in the digital bundle. The Respondent had provided them with a hard copy of the 1,467 page bundle. However, they had not brought it to the hearing, stating that it was too heavy to bring. The Tribunal rose early. On the second day, the Applicants attended with a hard copy of the Bundle. Throughout the hearing, the Applicants sought to refer to Tribunal to documents which could, and should have been in the Bundle. The Applicants had made no reference to these documents in either their Scott Schedule or their witness statements. They had not provided a supplementary bundle or copies of these documents. The Tribunal was not willing to have regard to these documents.
7. This Tribunal is used to dealing with litigants in person. It gives Directions to enable the parties to identify the issues that the Tribunal will be asked to determine and the evidence (including documents) on which each party will rely in support of their respective cases. The purpose of these directions is to ensure that the tribunal will be able to deal with an application fairly, in a proportionate manner, and avoid unnecessary costs to the parties, in accordance with the Overriding Objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).
8. The starting point is the service charge accounts for the years in question. A Scott Schedule is intended to identify the service charge items in dispute, and provide the opportunity for an applicant to identify why it is contended that service charges are not payable pursuant to the terms of their lease and/or why it is contended that the service charges are

unreasonably high or that the services have not been provided to a reasonable standard. The Applicants have rather sought to embark upon an audit of the service charge account for three years, seeking disclosure of all the invoices for the years in question. This is not the role of this Tribunal.

9. The Tribunal gives two examples arising from the Service Charge Accounts for **Fitznell** Court for 2019/20 (at **p.111**):

- (i) Insurance is an estate charge of £12,762.21, in respect of which Ms Ellison was liable for **£97.42** (1/131 of the total cost). This was a block policy. The Applicants complained that the invoice covered many developments without a schedule. The Tribunal asked Ms Ellison why she considered this to be unreasonable for her two-bedroom flat. She had not adduced any evidence that this was unreasonable. This is an expert tribunal. We indicated to Ms Ellison that in our experience, this charge was at the lower end on the scale. Ms Ellison had no answer to this.

- (ii) Southern Housing charges a management charge. Whilst the estate charge was £32,240.41, the sum charged to Ms Ellison was £246.12. Ms Ellison complained that there were too many discrepancies in the service charge statement and wanted an explanation as to why leaseholders and renters pay different fees. It should have been apparent that more management costs were being apportioned to the social tenants because the Respondent was responsible for the day-to-day management of these flats. The issue for this Tribunal was whether an annual management fee of £246.12 per flat was unreasonable. The Applicants had not adduced any evidence that this was unreasonable. Again, we indicated to Ms Ellison that in our experience, this charge was at the lower end on the scale. Managing agents would normally charge some £200 to £400 per flat. Again, Ms Ellison had no answer to this.

10. On 31 March 2023, Judge Powell held a face-to-face Case Management Hearing. Directions had initially been given on 13 December 2022, which had been amended on 6 February 2023. However, due to alleged non-compliance with these directions and a dispute about disclosure, these directions had been suspended. Having secured a substantial refund obtained for communal heating costs, the Applicants now had no confidence in the Respondent's accounting procedures. They therefore sought full disclosure of all invoices for the service charge costs for the three years covered by their application. They said they could not formulate their challenge to the service charge costs until they had seen those invoices. Mr Meethan, Counsel who appeared for the Respondent, raised concerns about the scope and cost of such disclosure. Judge Powell concluded that "for transparency and to ensure the application progressed", disclosure of all the invoices should be made, but in a proportionate way. The Tribunal directed that all invoices should be placed on a secure web site with links provided to the Applicants.

11. The two applicants subsequently complained that they were unable to access the invoices. They therefore requested hard copies. The Applicants stated that they had been provided with 7,000 pages of documents and had needed two suitcases to transport these to their flats. This was not the proportionate disclosure that Judge Powell had directed.
12. On 19 May 2023, the Applicants met on the Estate with Ms Emery and Ms Wilson. The Tribunal is satisfied that Ms Emery and Ms Wilson did their utmost to answer any queries raised by the Applicants. However, as became apparent from the hearing, the Applicants do not hear the explanations that are provided. Their response is rather to ask more and more questions.
13. An illustration is provided by their challenge to an invoice of £61.20, dated 28 October 2020 (at p.94), for “bad smell in the communal hall way entrance next flat 29 – dead rodents – please investigate”. Ms Ellison stated that there was no rodent infestation on the Estate. Ms Emery responded that a housing officer had reported a smell when she had visited the Estate and that it had been necessary for this order to be raised. This was discussed at the meeting on 19 May. Ms Ellison then suggested that Ms Emery had stated that no rat had been found. In evidence, Ms Emery stated that she did not know whether a rat had been found, and this is what she would have told Ms Emery at the meeting. We accept Ms Emery’s evidence on this point. She would not have told Ms Ellison something that she did not know to be true. It is apparent to the Tribunal that Ms Ellison had not heeded the explanation that had been provided. However, this is not material. This was a modest charge. Had a housing officer reported the smell of dead rodents, it was appropriate for an order to have been raised. It is irrelevant whether the operative who visited the Estate actually found a dead rat.
14. On 1 August 2023, there was a mediation. The mediation did not resolve the dispute and its proceedings therefore remain privileged. However, the Tribunal is satisfied that the mediation would have provided a further opportunity for the Applicants to clarify the service charge items in dispute. On 29 September 2023, the Applicants received the signed witness statement of Ms Emery, dated 27 September 2023. This made an important concession in respect of the independent living charges.

The Law

15. Section 18 of the Landlord and Tenant Act 1985 (“the Act”) defines “service charge”:

(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.”

16. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

“(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.”

17. The Supreme Court recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. In the current case, the Respondent has a discretion as to how the cost of these services is to be apportioned. The landlord is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord acted reasonably (see [33]).

18. Mr Evans highlighted the following passage from the judgement of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC);

“28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains

applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.”

The Leases

19. Southern Housing is a registered social landlord which is a registered society under the Cooperative and Community Benefit Societies Act 2014. It manages some 70,000 homes. The leases were granted by Viridian Housing. On 22 May 2017, Viridian Housing merged with Amicus Horizon Ltd to form Optivo. On 16 December 2022, Optivo merged with Southern Housing Group Limited to form Southern Housing.
20. The land on which the four blocks at Cheyham Park have been constructed is owned by the London Borough of Sutton (“Sutton”). Between 8 July 2014 and 18 December 2015, Sutton granted four leases to the Respondent of the four plots which were to become part of Elizabeth House Development, namely “Area A, Block 2”, “Area C, Block 1”, “Area B, Block 3” and Area D, Block 4”. Sutton granted the Respondent 125 year leases of these four plots.
21. The four blocks on the Estate now consists of a total of 131 one and two bedroom flats. There are 45 leaseholders who hold shared ownership leases and 86 social tenants who occupy their flats under assured tenancies. Leases and tenancies are offered to applicants who are aged over 55.
22. The Estate consists of the following:
 - (i) Fitznell Court (Area A, Block 2): There are 29 flats, with 16 leaseholders and 13 social tenants. There is a communal lounge on the first floor.
 - (ii) Travers Court (Area C, Block 1): There are 29 flats, with 7 leaseholders and 22 tenants. There is a communal lounge on the first floor and a disabled toilet. Ms Longhurst complained that the lounge tends to be used by carers to the exclusion of residents. However, this is not relevant to the matters which we are required to determine.

(iii) Bethell Court (Area B, Block 3): There are 48 flats. The main communal lounge is on the ground floor. There is also a small room upstairs and a disabled toilet.

(iv) Elizabeth House (Area D, Block 4): There are 25 flats. There is no communal lounge or toilet.

23. All the Applicants are leaseholders of Fitznell Court and Travers Court. They all occupy their flats under shared ownership leases. The leases are all similar. The Tribunal therefore considers the lease held by Ms Ellison in respect of her flat at 21 Fitznell Court.
24. Ms Ellisons' lease for 21 Fitznell Court is at p.943-995. The lease is dated 20 November 2014. It is a standard shared ownership which makes no specific reference to the care facilities which are provided. The lease is for a term of 125 years from the commencement date (less three days).
25. The service charge provisions are set out in Clause 7 of the lease. The relevant expenditure includes the costs of and incidental to the performance of the Landlord's covenants contained in Clause 2 (the obligation to insure), Clause 5.3 (the maintenance, repair, decoration of the exterior and structure of the Building and the common parts) and Clause 5.4 (the lighting and cleaning of the common parts).
26. The relevant terms are defined in Schedule 8. The "Account Year" means the year ending 31 March. The "Building" means the building known as Phase 2 Extra Care Block. The "Estate" means "the Elizabeth house development being carried out by the Landlord". The Tenant's "Specified Proportion" of the service charge is defined as "1/131" in relation to the Service Provision in respect of the Estate (including the Building)" ... "or such other proportion as determined by the Landlord from time to time (acting reasonably)".
27. In practice, the Respondent has split the service charges between "Block Services" in respect of which Ms Ellison has paid 1/29 and "Estate Services" in respect of which she pays 1/131, reflecting the number of flats in the Block and on the Estate.
28. The Tribunal raised some concerns as to how the leases had been drafted. However, the Applicants accepted that the sums demanded are payable pursuant to the terms of their leases. The issue for this Tribunal is rather the reasonableness of those charges and the quality of the services that have been provided.

The Background

29. On 19 December 2014, Ms Longhurst acquired the leasehold interest in 23 Travers Court. On 19 July 2019, Ms Ellison acquired the leasehold interest in 21 Fitznell Court.
30. In 2020, Ms Ellison noticed that there were items in her service charge account which appeared to be wrong. She asked for the relevant invoices to be provided. The communal heating costs appeared to be unduly high. The Respondent provided her with meter readings and costings which confirmed her view that the charges were wrong. In March 2022, the Respondent conceded that the Estate had been wrongly charged for heating and agreed to refund £130,013.07, namely some £992 per lessee.
31. Having scored this success, Ms Ellison convinced herself that there were other errors in the service charge accounts and embarked upon an audit of all the items in the service charge accounts for 2019/20, 2020/21 and 2021/22. We are satisfied that the Respondent sought to address the points that Ms Ellison raised. However, the more answers that were provided to her questions, the more questions she raised.
32. The Tribunal has been provided with the Service Charge Statements for these three years. The Statements for 2021/22 were only provided at the hearing. Most of the challenges relate to Estate Charges, in respect of which all the lessees have been charged the same. Some of the challenges relate to Building Charges, which relate either to Fitznell Court or Travers Court. The Respondent has provided Transaction Lists summarising all the invoices included in the accounts for 2019/20 (at p.309-318) and 2020/21 (at p.91-105).

Issues in Dispute

Item 1: Cleaning (Estate Charge)

33. The Applicants challenge the following charges:
 - (i) 2019/20: Estate Cost: £27,382; Individual Service Charge: £209.04.
 - (ii) 2020/21: Estate Cost: £28,877; Individual Service Charge: £220.44.
 - (iii) 2021/22: Estate Cost: £28,554; Individual Service Charge: £217.96.
34. The Applicants accepted that the cleaning was of a reasonable standard. However, they contended that the cleaner did not appear to spend his contracted hours on his cleaning duties. He rather carried out jobs for residents and worked in the vegetable garden. Ms Emery explained that the service is provided by the Respondent's contractor, Chequers. The cleaner spends 6.5 hours a day on site from Monday to Friday. The cleaning specification is at p.1,465 to 1,467.

35. It is an unusual criticism that a cleaner has been too helpful to residents. The Tribunal is satisfied that the sum charged is reasonable for the services that have been provided. The Applicants have provided no evidence that the cleaning specified in the Specification could be provided more cheaply.

Item 2: Grounds Maintenance (Estate Charge)

36. The Applicants challenge the following charges:
- (i) 2019/20: Estate Cost: £7,820; Individual Service Charge: £59.70.
 - (ii) 2020/21: Estate Cost: £13,824; Individual Service Charge: £105.53.
 - (iii) 2021/22: Estate Cost: 13,824; Individual Service Charge: £105.53.
37. The Applicants complained that the ground staff only worked 4 hours per week and that the hourly rate of £37.60 could not be justified. They also complained of the poor standard of the gardening.
38. Ms Emery explained that when the grounds maintenance service was procured, the contractor had incorrectly assumed that the grounds to maintain were only around Elizabeth House and had priced accordingly. As a result, some of the gardening was not up to standard. In November 2019, a variation had been agreed to extend the contract to the whole Estate. This variation is at p.1,459-1,461. Two gardeners now attended. The monthly charge is £960 + VAT. This includes on costs.
39. On 19 May 2023, Ms Emery inspected the Estate and took a number of photographs (at p.69-89). These show the Estate to be well maintained. Ms Emery stated that there were two areas of concern and she arranged for these to be addressed at no expense to the lessees. We were surprised that Ms Emery should not have included these photographs in the Bundle.
40. The Applicants primary complaint was that only one gardener attended. We prefer Ms Emery's evidence on this point. We accept her explanation as to why the cost increased in November 2019. We are satisfied that the cost of this service is reasonable. We are not satisfied that any reduction should be made because of the quality of the service. Had there been serious concerns, we would have expected to see letters of complaint. There was no such evidence.

Item 3: Independent Living/Support Charges (Estate Charge)

41. The Applicants challenge the following charges:
- (i) 2019/20: Estate Cost: £91,370; Individual Service Charge: £697.52.
 - (ii) 2020/21: Estate Cost: £77,104; Individual Service Charge: £606.29.
 - (iii) 2021/22: Estate Cost: £87,576; Individual Service Charge: £686.37.

42. The Independent Living Service provide the Intensive Housing Management and Support Service described in the “Happy to Help” Service Manual (at p.307-308). The Applicants contend that this charge is excessive for the service provided.
43. In the light of the Applicant’s objections, the Respondent have agreed to review the manner in which it charges for this service. The adjustment is described in the schedule at p.1463. The charges will be reduced to: (i) 2019/20: £59,989; 2021/22: £59,566; and (iii) £62,345.83. As a result of this, each lessee will be entitled to a refund of £569.20.
44. Ms Emery explained that the Respondent had apportioned this service so that all flats covered by the scheme within their property portfolio paid the same. However, the Respondent now recognised that because of the large size of the Estate compared with the other estates to which the charge was made, Cheyham Park residents were paying a disproportionately large sum compared with the staff time assigned to the Estate. The scheme now costs some £475 per flat. We are satisfied that this charge is reasonable for the service that is provided.
45. The Respondent are to be commended for revisiting their charging mechanism in the light of this application. The manner in which the Respondent apportion such charges, is a discretionary management decision for the landlord. We are satisfied that the manner in which the Respondent has now decided to apportion the charge is reasonable. We note, however, that Ms Emery described this adjustment in her witness statement which was served on **29 September** 2023. From this date, the Applicants should have been aware of the amended charging structure.

Item 4: Management Fees (Estate Charge)

46. The Applicants challenge the following charges:
- (i) 2019/20: Estate Cost: £32,240; Individual Service Charge: £246.12.
(ii) 2020/21: Estate Cost: £33,012; Individual Service Charge: £252.01.
(iii) 2021/22: Estate Cost: £33,374; Individual Service Charge: £254.77.
47. Southern Housing charges a management charge. We have discussed this at [9(ii)] above. We are satisfied that these charges are reasonable.

Item 5: Electricity and Lighting (both Estate and Block Charges)

48. The Applicants challenge the following charges:

Estate Charge

- (i) 2019/20: Estate Cost: £3,432.86; Individual Service Charge: £26.21.
- (ii) 2020/21: Estate Cost: £9,076.80; Individual Service Charge: £69.29.
- (iii) 2021/22: Estate Cost: £3,733.97; Individual Service Charge: £28.51.

Fitznell Court

- (i) 2019/20: Block Cost: £4,561.70; Individual Service Charge: £157.30
- (ii) 2020/21: Block Cost: £4,328.74; Individual Service Charge: £149.27.
- (iii) 2021/22: Block Cost: £3,589.24; Individual Service Charge: £123.06

Travers Court

- (i) 2019/20: Block Cost: £3,876.98; Individual Service Charge: £133.69.
- (ii) 2020/21: Block Cost: £5,431.74; Individual Service Charge: £187.30.
- (iii) 2021/22: Block Cost: £4804.69; Individual Service Charge: £165.68

49. The Applicants complain that the individual block charges are disproportionate with Bethell Court paying lower charges than the other blocks. They suggest that the invoices do not total the sums claimed. They complain that no credit has been made for the electricity generated by solar panels and that the panels at Travers Court were not connected for six years. They query why not?
50. The Respondent has provided a breakdown of the charges. For example, the breakdowns for 2019 are £3,432.86 (at p.309); £4,561.70 (at p.314); and £3,876.98 (at p.316). Meter readings are at p.312-323 and p.645-742. Some of the meter readings are estimates. In some years, five quarterly bills have been included because of the manner in which the bills were submitted.
51. The Tribunal is satisfied that these charges are based on actual readings and are reasonable. Ms Emery explained that The Photo Voltaic Panels feed directly into the communal supplies for each block and reduce giving direct benefit to the residents. Bethell Court uses less communal electricity than the other blocks.

Item 6: Building Insurance (Estate Charge)

52. The Applicants challenge the following charges:
- (i) 2019/20: Estate Cost: £12,762; Individual Service Charge: £97.42.
 - (ii) 2020/21: Estate Cost: £13,480; Individual Service Charge: £102.90.
 - (iii) 2021/22: Estate Cost: £13,480; Individual Service Charge: £102.90.
53. Insurance has been a block policy. We discuss this at [9(i)] above. We are satisfied that these charges are reasonable.

Item 7: Water Drainage (Estate Charge)

54. The Applicants challenged the following charges:
- (i) 2019/20: Estate Cost: £1,026; Individual Service Charge: £7.83.
 - (ii) 2020/21: Estate Cost: £2,105; Individual Service Charge: £16.07.
 - (iii) 2021/22: Estate Cost: £1,973; Individual Service Charge: £15.06.
55. At the hearing, Ms Ellison informed the Tribunal that this item is no longer challenged.

Item 8: Guest Room Hire (Block Charge)

56. The Applicants challenge the following credits:

Fitznell Court

- (i) 2019/20: Estate Cost: £155; Individual Service Charge: £5.34,

Travers Court

- (i) 2019/20: Estate Cost: £525; Individual Service Charge: £18.10.

57. The Applicants asked for an explanation as to how the guest room hire of £2,880 was apportioned. Ms Emery explained that the revue from the guest room is credited to the block in which the guest room is situated. There was no income in 2020/21 and 2021/22 due to Covid-19.

Item 9: Lifts (Block Charge)

58. The Applicants challenge the following charges:

Fitznell Court

- (i) 2019/20: Block Cost: £2,652; Individual Service Charge: £91.46
- (ii) 2020/21: Block Cost: £3,466; Individual Service Charge: £119.52.
- (iii) 2021/22: Block Cost: £5,000; Individual Service Charge: £172.42.

Travers Court

- (i) 2019/20: Block Cost: £2,781; Individual Service Charge: £95.91.
- (ii) 2020/21: Block Cost: £3,669; Individual Service Charge: £126.51.
- (iii) 2021/22: Block Cost: £4,996; Individual Service Charge: £172.27.

59. The Applicants complain that the invoices do not add up. The transactions are at p.314-315 (2019/20); and p.426-434 (2020/21). The Applicants were unable to identify any errors. We are satisfied that the sums charged are reasonable.

Item 10: Fire Prevention (Block Charge)

Fitznell Court

- (i) 2019/20: Block Cost: £1,489.50; Individual Service Charge: £51.36.
- (ii) 2020/21: Block Cost: £4,970.28; Individual Service Charge: £171.39.
- (iii) 2021/22: Block Cost: £3,534.56; Individual Service Charge: £121.66.

Travers Court

- (i) 2019/20: Block Cost: £3,548.95; Individual Service Charge: £129.67
- (ii) 2020/21: Block Cost: £5,496.68; Individual Service Charge: £189.54.
- (iii) 2021/22: Block Cost: £4,342.97; Individual Service Charge: £149.76.

60. The Applicants complain that the invoices do not have schedules to show how the charges have been allocated. Transaction lists have been provided for 2019/20 (at p.314 and p.317); and 2020/21 (at p.98-99 and p.103). Ms Emery provides an explanation of a number of the invoices in her statement at [75] to [86]. The Applicants were unable to identify any errors. We are satisfied that the sums charged are reasonable.

Item 11: Door Entry System (Block Charge)

Fitznell Court

- (i) 2020/21: Block Cost: £2,327.99; Individual Service Charge: £80.28.
- (ii) 2021/22: Block Cost: £1,125.00; Individual Service Charge: £38.79.

Travers Court

- (i) 2019/20: Block Cost: £6,286.36; Individual Service Charge: £216.77.
- (ii) 2020/21: Block Cost: £1,547.66; Individual Service Charge: £53.37.
- (iii) 2021/22: Block Cost: £2,263.76; Individual Service Charge: £78.06.

61. The Applicants have queried a number of the invoices. Ms Emery has addressed these in her witness statement at [53] to [58]. We are satisfied that the sums demanded are reasonable.

Item 12: Accounting Error (Fitznell Court)

62. This is not a service charge dispute. It is conceded that there was an error of £87.72 on the addition of the actual costs on the service charge statements for Fitznell Court. Ms Emery states that the credit will be passed back in the 2021/22 year end accounts.

Item 13: Repairs (Estate Charges)

63. The Applicants challenge the following charges:

- (i) 2020/21: £4,392.01; Individual Service Charge: £33.53.
- (ii) 2021/22: £3,734.51; Individual Service Charge: £28.51.

64. The Respondent has provided the transaction sheets for 2020/21 at p.93. The Applicants complain that there are invoices without the contractors' information. In 2020/21, these invoices totalled £3,860.01, and in 2021/2 £2,911.23.
65. Ms Emery described how Southern Housing use a self-billing portal for some of our contractors. They enter the sum claimed into their system for works against specific jobs. Where a job has been paid in this way, the Respondent have provided a copy of the job from our housing system which shows the contractor, the address, the issue, the charges claimed and confirmation it has been paid. The costs shown exclude VAT which is also paid. The final figures are quoted on the transaction lists. There are also some repairs completed by the Respondent's in-house direct labour team for which invoices are not created. The Respondent has provided a copy of the job from our housing system which shows the address, the issue, and the cost. The costs shown exclude VAT which is also paid. The final figures are quoted on the transaction lists. In her evidence, Ms Emery explained Transaction Reference 1541605 (£409.50). The reference to "Do not attend" was specified as the contractor had already attended to carry out a CCTV survey of the drains. The rate charged was taken from the National Housing Federation Schedule of Works.
66. The Tribunal accepts this explanation. The issue for the Tribunal is whether the sums claimed are reasonable. We are satisfied that they are.

Item 14: Repairs (Block Charges)

67. The Applicants challenge the following charges:

Fitznell Court

- (i) 2020/21: £462.61; Individual Service Charge: £15.95.

Travers Court

- (i) 2020/21: £1,059.33; Individual Service Charge: £36.54.

68. The Respondent has provided transaction lists at p.98 and p.103. The Applicants complain that the invoices do not add up. They further complain that many of the invoices are not identified. We are satisfied that the works were adequately described. Ms Emery addressed this both in her witness statement and her evidence. The Applicants were unable to establish any error.

Item 15: Pest Control (Estate Expense)

69. The Applicants challenge the following charges:
- (i) 2020/21: Estate Cost: £2,531; Individual Service Charge: £19.32.
 - (ii) 2021/22: Estate Cost: £2,145.60; Individual Service Charge: £16.38.
70. The Respondent has provided transaction lists for 2020/21 at p.94. The Applicants again complain that insufficient information is provided. We have already discussed (at [13] above) the challenge to the invoice of £61.20 in respect of the dead rodent. Ms Emery satisfied us that all these sums were expended and that the service charge is reasonable.

Item 16: Reserve Fund Expenditure (Block Expense)

71. The Applicants challenge the following charges:

Fitznell Court

- (i) 2020/21: £4,768.98.
- (ii) 2021/22: £4,174.50.

Travers Court

- (i) 2020/21: £7,344.37.
- (ii) 2021/22: £5,726.33.

72. The Applicants complained that a 15% uplift has been added to the works which are funded from reserves. Ms Emery explained that this was an additional management charge. The Tribunal does not consider this to be reasonable. Southern Homes charge a standard management fee. We accept that an additional charge could be justified if the landlord was supervising the execution of major works. However, it was apparent that a management decision is taken each year as to what block expenditure should be funded from reserves. These are not major works and we can therefore see no justification for this 15% uplift.
73. We therefore disallow this uplift, namely £622.04 and £544.50 in respect of Fitznell Court and £957.96 and £746.91 for Travers Court.

Item 17: Accounting Error (Travers Court)

74. In her witness statement (at [88]), Ms Emery accepts that there was an error in the computation of the 2020/21 accounts for Travers Court. This relates to the fact that one cell has been omitted in computing sub total D. As a result of this, the reserve fund contribution of £8,411.10 has been omitted. The Respondent accepts that each lessee will be entitled to a credit of £129.84. This is to be applied to the 2022/23 year end accounts.

75. Unfortunately, it became apparent at the hearing that a similar error has been made in the 2021/22 accounts for Travers Court, and the reserve fund contribution of £8,411.10 has been omitted. A similar adjustment will need to be made.

Item 18: Caretaker (Estate Charge)

76. The Applicants challenge the following charges:

(i) 2021/22: Estate Cost: £10,719; Individual Service Charge: £81.83.

77. The Applicants complain that caretaker spends most of his time working for the rented flats and the lessees should therefore not have to contribute to this. Ms Emery states that Southern Homes decided to introduce the charge in April 2021. She lists the services that are provided at [19] of her statement. She states that services such as cleaning bins, changing bulbs and communal repairs would be much more were a contractor to attend. The Respondent recognise that some services are for the tenants, and these costs are met by Southern Homes. Only 55% of the salary costs are recovered as an estate service charge. The caretaker is on duty for 25 hours per week from 08.00 to 13.00. The Tribunal accepts this evidence and is satisfied that the charge is reasonable.

Item 19: Refuse (Estate Charge)

78. The Applicants challenge the following charges:

(i) 2021/22: Estate Cost: £4,284; Individual Service Charge: £32.70.

79. The Applicants complain that five quarterly invoices were included. The Respondent respond that the accounts are not kept on an accrual basis. This all depends when the invoices are received. If five quarterly invoices are received in one year, only three will appear in the next. The Tribunal accepts this explanation. The sum charged is reasonable.

Item 20: Security (Estate Charge)

80. The Applicants challenged the following charges:

(i) 2021/22: Estate Cost: £727; Individual Service Charge: £5.55.

81. At the hearing, Ms Ellison informed the Tribunal that this item is no longer challenged. She accepted that the charge was too small to query.

Item 21: Media (Estate Charge)

82. The Applicants challenged the following charges:

(i) 2021/22: Estate Cost: £1,088; Individual Service Charge: £8.31

83. At the hearing, Ms Ellison informed the Tribunal that this item is no longer challenged. The charge is too small to query.

Item 22: Communal Laundry (Estate Charge)

84. The Applicants challenge the following charges:

(i) 2021/22: Estate Cost: £412; Individual Service Charge: £3.15.

85. The Applicants complain that they normally receive a credit in respect of the income from the laundry and question why this charge has appeared. In her witness statement, Ms Emery conceded that an error was made. An invoice of £1,002.22 to install a new cooker and cooker point in the communal lounge at Bethell Court. A refund will appear in the 2022/23 accounts. The Tribunal notes that this error will only save the Applicants £3.15.

Item 23: Parking (Estate Charge)

86. The Applicants challenge the following charges:

(i) 2021/22: Estate Cost: £367.19; Individual Service Charge: £2.80.

87. The Applicants complain that this item for repairs to a bollard appeared as an estate charge. They suggest that it should rather be a parking charge. A separate account is kept for the parking area from which Southern Homes derive an income. The Respondent respond that this was not a repair to a bollard in the parking area. It was rather a repair to a light bollard on the communal pathway close to the entrance to Elizabeth House. The Tribunal accepts that this was a matter that was properly charged as an estate charge. The cost to each Applicant is £2.80.

88. The Applicant response was to question why the parking revenue is not credited to the service charge account. They state that their leases make no provision for this to be retained by Southern Homes. There is no merit to this argument. Southern Homes are quite entitled to keep a separate account for the income and expenditure from the parking areas.

Item 24: Accountancy Issue

89. The Applicants complained about the figure of £97,919.47 which appeared in a “Notice of Expenses” for 2021/22 at p.819. This was not a service charge item. It was merely a notice served pursuant to section 20B of the 1985 Act to alert them to the service charges for which they might to be held liable. This suggested that there was a sufficient deficit of the estate service charge account. However, when the service charges were prepared, the actual expenditure on estate services was £144,341.95, compared with the budgeted expenditure of £164,513.72 which had been collected through the interim service charge. The Applicants should rather have welcomed the final accounts.

Application under s.20C and refund of fees

90. The Applicants applied for an order under section 20C of the 1985 Act to limit the costs of these proceedings which the Respondent is entitled to charge to the service charge account. We must consider whether it is just and equitable in all the circumstances to make such an order. The Respondent made a number of concessions in Ms Emery’s witness statement. However, despite these concessions, the Applicants continued with their application. We are satisfied that this application has been litigated by the Applicants in a disproportionate manner. They have sought to challenge almost every item in the service charge accounts requiring the Respondent to produce 7,000 pages of invoices.
91. On 1 August, a mediation was held at which the Applicants had an opportunity to clarify any issue in dispute. On **29 September 2023**, the Respondent served Ms Emery’s witness statement. A number of concessions were made in that statement. We consider that a month, up until **27 October 2023**, gave the Applicants an adequate opportunity to consider the concessions that had been made and whether to continue with the rest of their application. They decided to continue and have lost on almost every item.
92. We are therefore satisfied that it is just and equitable to make an order that the Respondent should not pass on any of the costs that they have occurred in connection with these proceedings up to **27 October 2023** against the Applicants through the service charge. However, we make no order after that date. In so far as the leases permit it to do so, it would be open to the Respondent to pass on these costs through the service charge.
93. The Applicants have paid tribunal fees of £300. They have sought a refund of these fees pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. They have succeeded on some points. Concessions were made in **September 2023**. We therefore order the 2022/23-year Respondent refunds them 50% of the fees within 28 days of this decision.

**Judge Robert Latham
5 December 2023**

**Revised by Judge Robert Latham
15 December 2023**

**Further revised by Judge Robert Latham
20 February 2024**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).