



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

**Case reference** : **BIR/00FY/LIS/2023/0026**

**Properties** : **Flats 3, 4, and 5, 78 Musters Road, West  
Bridgford, Nottingham NG2 7PS**

**Applicants** : **Ms Tia Rose Edwards (1)  
Ms Holly Hales (2)  
Mr Luke Smith (3)**

**Representative** : **None**

**Respondent** : **Brigante Properties Ltd**

**Representative** : **J B Leitch, Solicitors**

**Types of application** : **(1) Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985  
(2) Application for an order under section 20C of the Landlord and Tenant Act 1985  
(3) Application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing a tenant's liability to pay an administration charge in respect of litigation costs**

**Tribunal member** : **Judge C Goodall  
Mr R P Cammidge FRICS**

**Date and place of hearing** : **Paper determination**

**Date of decision : 23 April 2024**

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**DECISION**

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## **Background**

1. On 31 May 2023, the First Applicant applied for a determination of the payability of service charges for her flat at Flat 4, 78 Musters Road, West Bridgford, Nottingham. On 17 November 2023, the Second and Third Applicants were joined as Applicants to the proceedings in respect of their flats at respectively Flat 3 and Flat 5.
2. The Respondent is the owner of the freehold of the Property. It is managed by Principle Estates Management.
3. The Application stated that service charge years 2022 and 2023 were in issue, and the form referred to a number of headings of service charge expenditure. At the time of the Application, final accounts for 2022 had not been produced, so the challenge at that point was to budgeted expenditure for both 2022 and 2023. The application form said that £13,720 was in dispute in relation to the 2022 service charge years, and for 2023, the sum in dispute was £14,502.40.
4. Following a Case Management Conference on 17 November 2023, the Respondent provided disclosure of relevant invoices, the Applicants provided a very short statement of case, and the Respondent provided a response.
5. The parties wished the case to proceed on the basis of written evidence and representations rather than at an oral hearing. The Respondent provided a Bundle of Documents running to 399 pages.
6. The Tribunal has convened and determined the Application in the manner set out in the following paragraphs.

## **The Property**

7. The Tribunal did not inspect the Property. It is apparent from the bundle of documents however that it is a substantial residential property in the West Bridgford, Nottingham comprising a ground floor and two upper floors, with a basement, and a rear garden area and parking at the front. It has been converted into six flats. It is clear that there are one or two internal access doors, and then internal corridors and staircases serving the individual flats. The accounts include charges for emergency lighting and fire protection systems which the Tribunal surmises are included in the services provided by the landlord to the common parts.

## **The Application**

8. At the Case Management Conference, the Tribunal directed the Applicants to:
  - “11. Within 21 days of receipt of the disclosure provided by the Respondent as directed at paragraphs 8 and 9 above, the Applicants must send to the Respondent a statement of case and confirm in writing

to the Tribunal that they have done so. The Tribunal would prefer a joint Statement of Case from all Applicants, but if that cannot be achieved, will accept individual Statements.

12. The Applicants' statement must identify in respect of each year in dispute, the service charge costs or items which are disputed. This should be done by means of a schedule arranged in date order with separate columns to show (a) each disputed item, (b) the reasons why the item is disputed, (c) the amount (if any) the Applicant is willing to pay and (d) a space for the Respondent's comments on each item. Such a document is known as a Scott Schedule. A sample is supplied to the Applicants with these directions. Use of the form should not prevent the Applicants from explaining any other elements of their case in a conventional text document.

13. The statement of case must be accompanied by copies of any other documents the Applicant wishes to rely on at the hearing including any witness evidence and submissions in respect of an order preventing a proportion of the costs incurred in connection with these proceedings from being recovered from the Applicants as part of the service charge, and an order reducing or extinguishing the Applicants' liability to pay a particular administration charge in respect of costs incurred in connection with these proceedings."

9. The Applicants provided a Scott Schedule on which they have identified three specific challenges to the service charges for their flats in 2022. There is no reference to a challenge to charges in 2023. The 2022 challenges are to charges for:

- a. Ground Maintenance, the issue raised being that there is no evidence that grounds maintenance is being carried out;
- b. Electricity, the issue being that it is unclear how this has been calculated;
- c. Building Insurance, the issue being that no invoice for a building insurance premium had been provided.

10. The Scott Schedule does not clarify what amount is being disputed under these headings.

11. The Applicants only document which can be construed as their statement of case is an email from the Third Applicant dated 28 December 2023 which states:

"Having looked through the invoices and statements please see below the points which we would still like answers to, which are also included in the Scott Schedule, are;

- 1) We are being charged around £15 a month for grounds maintenance, I am not sure what this includes as I have only seen the cleaner working

in the main building. We would like to know if this service we are being charged for is being performed.

2) The electricity invoices are difficult to reconcile to the amounts in the accounts so it is difficult to know if we are being charged correctly. This includes an invoice that has been provided which does not relate to our property. We need to see a more detailed reconciliation between the invoices and accounts to understand this better.

3) I cannot find an invoice for the Building Insurance so it would be good to see how the budget and actuals have been calculated.”

12. There is a further email from the Third Applicant dated 11 February 2024 which further outlines the Applicants’ case. It states:

“Having now seen the further documentation from the respondent I want to add a few notes to enable greater clarity going forwards;

- The electricity charges for FY22 include £578.63 of invoices that relate to FY20, these should have been accrued for and not impacted on the FY22 accounts. This could also cause incorrect charging in future periods if not accounted for correctly.
- It has been useful to see the breakdowns for FY22 but we have not received any similar breakdowns for FY23. As discussed in the first hearing this is something that should become standard each year and will help with any further communication on charges.”

13. The above review of the Applicants’ case clarifies that there are three issues for us to determine, all in relation to 2022, being:

- a. Whether ground maintenance has been carried out;
- b. What sum should be charged for electricity;
- c. Whether the charge for insurance is supported by an invoice.

**Law**

14. Sections 18 to 30 of the Landlord & Tenant Act 1985 (“the Act”) contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.

15. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

- a. The person by whom it is or would be payable

- b. The person to whom it is or would be payable
- c. The amount, which is or would be payable
- d. The date at or by which it is or would be payable; and
- e. The manner in which it is or would be payable

16. Section 19(1) of the Act provides that:

“Relevant costs shall be taken into account in determining the amount of the 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 and 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. Section 19(2) of the Act provides that:

“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.”

18. On the question of burden of proof in a service charge case, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten [1985] 2EGLR100 / Daejan Investments Ltd v Benson [2011] EWCA Civ 38*).

19. In relation to the test of establishing whether a cost was reasonably incurred, in *Forcelux v Sweetman [2001] 2 EGLR 173*, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

“39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord’s actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code

and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. The second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.”

### **The Leases**

20. A sample of the leases for the individual flats at the Property was provided in the bundle. The leases are for a term of 125 years each, commencing in 2012. A premium was paid on the grant of the leases. A ground rent of £240.00 per flat is payable for the first 25 years, rising thereafter. The landlord covenants to keep the building in which the flats are located in good repair and to provide certain services for which the flat owners are each to contribute by way of service charge.
21. In the sample lease, the contribution is 16.7%, or one sixth, and the Tribunal surmises that all lessees contribute the same proportion so that there is 100% recovery by the landlord of the cost of the services.
22. The services and service costs are defined in clause 1 of the lease and include the cost of grounds maintenance, electricity, and insurance premiums.
23. There is no specific lease provision allowing collection of a sinking fund towards future major expenditure. Nor is there a provision defining the service charge year. There is a provision allowing the landlord to serve a demand for a contribution towards the service charge costs after “incurring, making a decision to incur, or accepting an estimate” relating to service charge costs.
24. In practice, the landlord (through its agent) appears to provide an annual budget and demand service charge payments quarterly in advance, with a balancing credit or debit at the end of the year, following the provision of annual accounts.

### **Discussion**

25. Accounts for 2022 show the following charges for the items that are now in dispute in the case, as follows:

Grounds maintenance	£390.00
Electricity	£1,134.08
Insurance	£997.91

26. We are satisfied that in principle these costs are chargeable under the lease. The question we have to determine is whether they were reasonably incurred. If not, under section 19 of the Act, we are able to make a

determination that such element of the costs that was not reasonably incurred is not payable by the Applicants.

Grounds maintenance

27. In the Respondent’s statement of case, it explained that a contractor is engaged to attend the Property roughly every fortnight to carry out internal common parts cleaning and external grounds maintenance. For 2022, the internal clearing charge was £25.00 per visit, and the grounds maintenance charge was £15.00 per visit. The contractor often (though not always) invoiced cleaning and grounds maintenance together, charging £40.00 per invoice.
28. The bundle includes invoices for these charges from the named contractor who is based in Chesterfield.
29. The work carried out, according to the Respondent’s statement, includes, but is not limited to, weed removal and litter picking.
30. There are invoices in the bundle supporting 20 visits by the contractor during 2022 for grounds maintenance work (not 21 as claimed in the Respondent’s statement of case, the 2021 invoices not in our view being relevant).
31. Our analysis of the invoices for both cleaning and grounds maintenance charges is as shown below in Table 1:

Table 1 – Cleaning and Grounds Maintenance costs

Page no	Inv no	Date of work	Amount for cleaning (£)	Amount for grounds (£)
282	151	05/01/22	25	0
114 & 283	164	21/01/22	25	15
284	177	03/02/22	25	0
115	187	17/02/22	25	15
285	200	03/03/22	25	0
116 & 286	209	18/03/22	25	15
117	233	01/04/22	25	15
118 & 287	248	19/04/22	25	15
119	258	05/05/22	25	15
120 & 288	272	18/05/22	25	15
121	297	17/06/22	25	15
122 & 289	306	30/06/22	25	15
123 & 290	309	14/07/22	25	15
124 & 291	329	26/07/22	25	15
125 & 292	337	12/08/22	25	15
126 & 293	357	25/08/22	25	15
127 & 294	367	09/09/22	25	15



128 & 295	387	23/09/22	25	15
129 & 296	396	07/10/22	25	15
130	421	21/10/22	0	15
297	422	21/10/22	25	0
131	439	03/11/22	0	15
298	440	03/11/22	25	0
132	464	18/11/22	0	15
299	465	18/11/22	25	0
133	474	01/12/22	0	15
300	475	01/12/22	25	0
310	478	14/12/22	25	0
			600	300

32. The Tribunal therefore has before it prima facie evidence establishing the existence of a contractual arrangement for a contractor to attend the Property, and evidence that he did so on 24 occasions in 2022. Cleaning was charged for in each visit, but grounds maintenance was charged on only 20 of those visits. We have no evidence from the Applicants challenging the carrying out of regular visits by the contractor. We therefore determine that a charge of £300.00 (as opposed to the accounts charge of £315.00) for grounds maintenance would have been a reasonable charge within the 2022 service charge accounts.
33. In fact, as the Respondent's statement of case makes clear, there was a charge for grounds maintenance in 2022 of £390.00. Thus, there is an overcharge for grounds maintenance in the accounts of £90.00.
34. Part of the explanation provided by the Respondent is that 3 specific charges for cleaning of £25.00 per visit were incorrectly allocated to grounds maintenance, thus inflating the grounds maintenance charge by £75.00 to £390.00 from the £315.00 that was charged in the accounts. If this is right, it would not be right to reduce the grounds maintenance charge for 2022 if the Applicants have in fact been undercharged for cleaning.
35. The accounts charge for cleaning is £575.00 and for grounds maintenance is £390.00 (total £965.00). As the analysis in Table 1 shows, there are invoices in the bundle to support an actual cost of £600.00 for cleaning and £300.00 for grounds maintenance (total £900.00).
36. Our decision is that the cleaning and grounds maintenance charges should in effect be considered together. There is an overall overcharge in the accounts of £65.00. We determine that the costs reasonably incurred for cleaning and grounds maintenance in 2022 were £900.00, and not £965.00, and each Applicant is therefore entitled to a service charge credit of one sixth of the overcharge, i.e. £10.83 each.

Electricity

37. The Tribunal has not inspected the Property and no party has provided any evidence to us of the devices and equipment which use electricity from the landlord's electricity supply. We have assumed that the common parts require an electrical supply for lighting of the stairs and corridors, the fire protection system, and emergency lighting as a minimum and that there are no electrical appliances which demand unusual amounts of electricity.
38. The Respondents have provided a number of electricity bills in the bundle, as identified in Table 2. We have ignored the invoice starting on page 324 as it relates to a different property. The supply appears to be a single supply to the Property for meter D10W677351, described as the landlords supply:

Table 2 – Electricity invoices

Bundle Page	Period	Consumption (kwh)	Charge (£)
303	27 Nov 2016 – 14 April 2020	1,272	543.21
309	27 Nov 2016 – 14 April 2020 with adjustments and a late payment fee	n/a	35.42
312	9 Dec 2021 – 31 Dec 2021	910.7	274.50
316	1 Jan 2022- 31 Jan 2022	1,269	380.17
320	1 Feb 2022 – 28 Feb 2022	1,110.6	333.54
325	8 Dec 2021 – 6 March 2022	77.8	92.01
328	1 March 2022 – 31 March 2022	1,175.6	512.71
332	3 April 2022 – 30 April 2022	100.7	122.66
336	1 May 2022 – 31 May 2022	87.1	80.00
340	1 June 2022 – 30 June 2022	79.9	75.83

344	1 July 2022 – 4 July 2022	13.4	11.08
348	1 July 2022 – 7 October 2022	132	105.87

39. All invoices except the final invoice on page 348 of the bundle were from E-on. It appears from page 348 that the Respondent changed supplier to SSE as from around 4 July 2022.
40. The only readings that were not estimates on any of the invoices were these:

Date of reading	Reading (kwh)
27 Nov 2016	01860
1 April 2020	03010
5 April 2022	3712
1 July 2022	3957.4

41. Charges included a standing daily charge of up to £1.50 per day for certain periods in 2022.
42. The Respondent's accounts charge of £1,134.08 was explained as being the product of the following calculation:

Accrual b/f	-24.00
E-on invoice (bundle page 303)	543.21
E-on invoice (bundle page 309)	35.42
E-on invoice (bundle page 325)	92.01
E-on invoice (bundle page 332)	122.66
E-on invoice (bundle page 336)	80.00
E-on invoice (bundle page 340)	75.83
E-on invoice (bundle page 344)	11.08
SSE invoice (bundle page 348)	105.87
Accrual to 31/12/22	92.00
Total	1,134.08

43. The consumption actually recorded as real readings between 27 November 2016 and 1 July 2022 was 2,097.4 kwh, yet the total

consumption invoiced for in the twelve invoices recorded in Table 2 was 6,229 kwh. The invoices for electricity have to be regarded as wholly unreliable as much more electricity has been charged for than would appear to have been consumed.

44. We can see no good reason for including electricity invoices relating to previous years (i.e. the invoices recorded on pages 303, 309, and 312 of the bundle) in the 2022 service charge accounts.
45. Failure to take regular meter readings means that in any event all electricity invoices between 2016 and 2022 must be regarded as highly unreliable.
46. We cannot understand why some invoices received in 2022 were included in the service charge total for 2022, but others (i.e. those on pages 316, 320, and 328) were not.
47. The invoice on page 325 is wholly inconsistent with those on pages 312, 316, and 320.
48. Clearly, something has gone awry in calculating the cost of electricity to the service charge for 2022. We regard the actual charge as unsupported by the evidence. Respectfully, it appears to us that the agent lost control of the electricity expenditure over a period of years by failing to take an actual reading of the meter at the start of each service charge year so that charges could be based on real consumption. It should also have been apparent to the agent that consumption charged in the invoices was excessive for a landlord's electricity supply to a small block of flats, and steps should have been taken to investigate the charges so that excessive charges were avoided.
49. In our view, in between around 370 - 420 kwh is likely to have been consumed in 2022, taking that figure as a rough approximation of either one year's consumption using the recorded consumption for November 2016 to July 2022 (5.66 years) of 2,097 kwh or taking the recorded consumption from 1 April 2020 to 1 July 2022 of 947 kwh (821 days). Using the E-on invoice on page 332 as a guide, in which approximately 100 kwh cost £122 in mid-2022, we estimate that the cost for that year would have been in region of £450.00 – 512.00. To that sum, a standing charge would have to be added. We consider a standing charge of £1.50 per day is clearly excessive. The standing charge for the final invoice in the year was c£0.50 per day, and we intend to use that figure as an annualised reasonable standing charge, which would add £182.50.
50. We determine that the sum that would have been reasonably incurred for the landlord's electricity supply for 2022 is £650.00. This is our best rough and ready estimate, it being impossible to produce an accurate figure because of the inadequacy of the data available. The balance of the sum actually charged in that year of £484.08 was not reasonable incurred.

Each Applicant is entitled to a credit on their service charge account for the electricity charge of £80.00 (rounded).

### Insurance

51. The Applicant's challenge is that no invoice was provided. There is no challenge to the amount charged itself.
52. At page 135 of the bundle, the Respondent has provided an invoice from insurance brokers for the sum of £998.46, being the insurance premium for insurance of the Property, including Terrorism insurance and IPT. We determine that the sum of £997.91 charged in the service charge accounts for insurance was reasonably incurred.

### **Summary**

53. We determine that the service charge reasonably incurred for grounds maintenance and cleaning in 2022 for each Applicant was £150.00 each. The sum actually charged in the 2022 accounts to each Applicant was £160.83. Each Applicant is therefore entitled to a credit of £10.83 for those costs.
54. We determine that the service charge reasonably incurred for the landlord's electricity costs in the 2022 accounts was £108.33 each. The sum actually charged in the 2022 accounts to each Applicant was £189.00 (rounded). Each Applicant is therefore entitled to a credit of £80.00 for those costs.

### **Costs**

55. There are applications for orders to restrict the impact on the ability of the Respondent to charge its costs to the individual Applicants under any clause in the lease (Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002) and restricting the Respondent from charging its costs through the service charge (section 20C of the Landlord and Tenant Act 1985). The Tribunal, under both provisions, may make such order as it considers to be "just and equitable".
56. We have no hesitation in making an order under Paragraph 5A. It would be wholly unjust to pursue the Applicants individually for the Respondent's costs. We order that any claim by the Respondent against any of the Applicants for them to pay the Respondent's costs on an individual basis is extinguished.
57. We realise that preventing the Respondent from charging their costs through the service charge is potentially unjust to the Respondent, as it is being denied what might otherwise be a contractual right to those costs.
58. This case was one where the amounts determined to be unreasonably incurred were small sums. We suspect that the costs of attending the CMC and preparing the Respondent's statements and the bundle will be

significantly greater than the benefit derived by the Applicants from our determinations.

59. Furthermore, we recognise that the fact that the challenges were low value challenges only became apparent after 28 December 2023 when the Applicants' Scott Schedule and statement were provided.
60. The extent to which the Applicants have won or lost on their challenges to the service charges is usually highly significant when considering a section 20C application. In this case, on both the grounds maintenance costs and the electricity supply costs issues, the Respondent's account were incorrect, and adjustments (albeit small) have been determined to be required.
61. Weighing these matters up, our view is that it would be more unjust to the Applicants were they have to pay significantly greater sums in costs than they have gained in this decision, and we therefore order that the Respondents costs incurred in this case shall not be regarded as relevant costs to be included in the service charge levied or to be levied upon the Applicants.

### **Appeal**

62. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
First-tier Tribunal (Property Chamber)