



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

Case reference : **CHI/19UJ/LSC/2023/0165/BS**

Property : **Atlantic House, 1 Ayton Drive, Portland,
Dorset DT5 1DT**

Applicants : **Gareth Hamilton Fletcher (i)
Lewis Janes (Flat 18) (ii)
Serverbox (Flat 52) (iii)
Clive Bishop (Flat 53) (iv)
Mrs S McAleese (Flat 146) (v)
Karen Potts (Flat 104) (vi)
Dean Senior (Flat 83) (vii)
David Robson (Flat 94) (viii)
Anthony Tanner (Flat 107) (ix)
Matthew & Denise Whitchurch
(Flat 79) (x)**

Representative : **Timothy Clarke (representing
Applicants)**

Respondent : **Fulca Limited represented by Sinead
Lisibach Comer Property Management**

Type of application : **Determination of liability to pay and
reasonableness of service charges
Section 27A Landlord and Tenant Act
1985**

Tribunal members : **Valuer Chair R Waterhouse FRICS,
Ms C Barton MRICS
Ms J Dalal**

Venue : **Havant Justice Centre**

Date of Hearing : **18 October 2024**

Date of Decision : **7 November 2024**

DECISION

DECISION OF THE TRIBUNAL:-

Initial Comment

1.The Tribunal is very grateful to the parties for their careful explanations of their submissions.

Procedural History

Background

2. The Applicants seeks determination of liability to pay and reasonableness of service charges for the periods 2019/2020, 2020/2021, 2021/2022, and in respect of future years (for specified items of expenditure). The total sum in dispute is said to be some £593,308.02

3. The Applicants further seek Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering the costs of the proceedings through the service charge or by way of an administration charge.

4. In accordance with Directions issued by Judge Jutton on 29 May 2024 nine lessees returned forms to the Tribunal requesting that they be joined to the application, four of which had provided written authority for Mr Clarke to act, and receive documentation, on their behalf. These nine lessees were joined to the application.

5. The matter was set down for a Case Management Hearing (CMH) on 17 July 2024 which was attended by Mr Timothy Clarke representing the Applicants and Ms Sinead Lisibach of Comer Property Management for the Respondent.

Preliminary Matters

7. The Tribunal first confirmed with Mr Timothy Clarke, that he represented all the leaseholders included on the directions namely;

Gareth Hamilton Fletcher (Flat 185)

Lewis Janes (Flat 18)

Serverbox (Flat 52)

Clive Bishop (Flat 53)

Mrs S McAleese (Flat 146)

Karen Potts (Flat 104)

Dean Senior (Flat 83)

David Robson (Flat 94)

Anthony Tanner (Flat 107)

Matthew & Denise Whitchurch (Flat 79)

8. The second issue the Tribunal addressed was the papers. The Applicants had combined three sets of documents for the Tribunal to make up the hearing bundle, which ran to 1458 pages. However, the respondent had not received all three elements which comprised the final bundle. The applicant forwarded a copy of the final bundle to the Respondent at the start of the hearing in order that all present could work from the same documents. The Respondent was content for the hearing to proceed after the completed bundle had been received. Further to the bundle an issue of the exchange of documents specifically fire assessments arose later in the hearing, this was address below.

The Hearing

9. The Applicants are all leaseholders from Atlantic House and are represented by Timothy Clarke. The Respondent Fulca Ltd is represented by Comer Property Management's Ms Sinead Lisibach. The Tribunal invited opening submissions from each of the parties to explain the ownership structure and the various parties and their involvement in the building.

The Nature of the Property

10. Atlantic House is a block comprising 208 flats formed out of a building previously used as accommodation for the Royal Navy. Of the 208 flats 40 have been sold on long leases, the remainder retained by the freeholder. There are leisure facilities within the block comprising swimming pool, steam room and spa.

Relationship of Parties involved with Atlantic House

11. The Tribunal understands that the freehold of Atlantic House resides in Fulca Ltd, that the service management company providing services to the freeholder is Comer Property Management Ltd. When Comer Property Management Ltd require services for the building they obtain them from Opec Prime Development Limited. There is additionally a separate company Oceanview Limited that organises the renting out of the properties on the site that are owned by the freeholder.

12. In essence the Applicants had concern that the 40 long leaseholders were bearing an unreasonable proportion of the costs. However, the Respondent felt that all costs had been reasonably incurred under the lease and were of a reasonable cost. The Tribunal adopted an approach that examined each of the issues detailed in the Scott Schedule provided. For each item, the procedure adopted by the Tribunal, was for Mr Timothy Clarke representing the leaseholders to open. The Respondent represented by Ms Lisibach had an opportunity to question the Applicants' representative. The Respondents then made their case for the item with the subsequent opportunity for Mr Timothy Clarke representing the leaseholders to ask questions of the Respondent submission. Lastly there was an opportunity to make a closing statement by each party.

13. The Tribunal sought and gained confirmation from the parties that all the figures being contested today are for the management of the whole block. The figures are not a proportion established in reference to the number of flats held on long leaseholds as opposed to those held by the freeholder. Thereby any figures determined by the Tribunal will be then subject to the apportionment detailed in the individual leaseholders' leases.

The Discussion

14. The Scott schedule helpfully divides the issues into those occurring across years and those present within a specific year. Turning first to the issues occurring across years.

Service charge issues reoccurring from 2019

Caretaker Wages

15. These amount for 2019/2020 £12904.32, 2020/2021 £14194.75 and 2021/2022 £15614.23,

16. **The Applicants say** ... the two caretakers complete a "blue book" which contains their tasks. The Applicants has requested and obtained copies of these books from the Respondent and analysed them. The Applicants has concluded from the analysis that the caretaker tasks that benefit leaseholders take 22 hours per week. The Applicants were also concerned at the requirement to visit different locations to see the blue books, also that the hourly rate of pay to the caretakers was above the National Minimum Wage for the relevant years.

17. **The Respondents say**...only works specifically associated with the block management of Atlantic House are charged to leaseholders. The Respondents say that in addition to the tasks noted in the blue book there is a further red book which details work carried out by the caretakers in checking fire safety. The wages paid to the caretakers are at the appropriate market rate to attract and retain employees of the required competence, these costs are recoverable. 2020/2021 £14194.75 2021/2022 £15614.23

18. **The Tribunal decision**, the Respondent noted that the caretakers who are employed by Opecprime are also responsible for the fire safety checking, this was recorded in a red book, this including checking fire doors, signage and testing emergency lighting.

19. There is within the Applicants' contention a theme that certain items such as caretakers' wages should by inference include a number of other items that could be expected to be carried out under the main heading.

20. For example, later there are items concerning drain clearance which are contended by the Applicants to be expected to fall under the main heading of caretakers' wages. The Tribunal accepts this contention in general but considers that each item must be considered on its own merits. So, in the case of caretakers' wages ascertaining the quantum of wages by reference to the blue book provides only a partial picture. The red book to which the Respondent alluded but the detail of which did not form part of the evidence should also be considered as contributing an addition to the blue book hours of the caretaker and hence the level of wages. Atlantic House is a substantial building, and the fire protection checking would not be a minor matter. The Applicants contend Tribunal does not determine a specific addition to the blue book hours, but it is reasonable that it may make up the wages requested within the service charge demand.

21. The Tribunal therefore determines the levels of caretaker wages demanded are reasonable.

Megadene

22. **The Applicants say** ...satellite TV, Terrestrial TV Antennas & boosters, entryphone system and CCTV security systems are standard on an estate this size and are expected as part of the original purchase cost.

Ongoing rental fees for such systems are unreasonable. A 20-year contract for a total cost of £560,000 starting multiple years after construction is equally unreasonable. Further the Applicants contend the contract was entered into without section 20 consultation.

23. **The Respondents say** ...rental fees are reasonable as Megadene maintains intercoms, gates, barriers and all wiring within Atlantic House. The contract is not subject to the section 20 consultation requirements as it can be terminated before the end of any calendar year by giving six months' notice. These costs are recoverable.

24. **The Tribunal decision.** Upon examination of the Megadene contract in the bundle it was apparent the contract was not signed, the Respondent confirmed. The Applicants, had prior to the hearing requested a copy of the contract, the Respondent supplied a copy of a contract which is in the bundle.

The Respondent confirmed they had sent it but were unable to show a copy of a signed contract.

25. Given the absence of a signed contract, the Tribunal disallows the service charge in full associated with the Megadene contract.

Lift Telephones

26. **The Applicants say**....no supporting evidence has been provided in multiple years accounts.

27. **The Respondents say** ...the BT contract for the lift phones is a global contract across all the Comer Properties Ltd sites. The Respondents say the actual level of cost is determined in relation to each individual phone line.

28. The Tribunal determinesthe Respondents identified the invoices referring to the BT contract at page 331. The Respondent then provided a breakdown of the figures specifically relating to Atlantic House. The Tribunal therefore accepts that these have been reasonably incurred.

Pool Running costs

29. **The Applicants say**....costs are unreasonable as they duplicate other reasonable costs. Invoice to Opecprime p 158 notes £4500 for April 19 to June 19 for example. The Applicants is not disputing other running costs of the pool. The Applicants believes that the cost of running the pool is reasonably charged under the other items for example, utilities, pool chemicals, pool cleaning invoices. Noting that CPML had refused to provide additional details.

30. **The Respondents say**these charges for example the £4500 per quarter relate to the costs of running the pool and additional invoices provided in respect of ad hoc costs.

31. The Tribunal decides that it is not unreasonable for the service provider to have a standing charge plus a charge which addresses individual disposable items in addition. The Tribunal decides the charges are allowable.

Specific Year only items – 2019-2020

Gas Invoices Late Fees 2019/2020

32. The matter has been conceded by the Respondent and there is no need for the Tribunal to make a decision on the matter.

Caretaker uniforms 2019/2020 £274.25

33. **The Applicants says....** that the leaseholders only benefit from the services of one caretaker, in terms of the proportion of work carried out specifically for them. Additionally, the Applicants says that the provision of caretakers by Opecprime should reasonably come with their uniforms. Charging separately would be double counting.

34. **The Respondent says**leaseholders benefit from the services of two caretakers, each employed, on a part time basis. Their wages are charged separately as are their uniforms. Each item forming a separate invoice.

35. **The Tribunal determines** ... it is not unreasonable for a caretaker to have a spare uniform for day-to-day use. There are two caretakers, deployed to work in Atlantic House. The separate charging for the uniform and the wages is not in itself unreasonable nor is there any evidence that the wages include the provision of uniforms.

The Tribunal determines £274.25 is allowable.

Office Sundries 2019/2020

36. **The Applicants says**the charges are not payable under the lease. Leaseholders should not be charged for office supplies for Comer Group businesses

37. **The Respondent says**these charges relate to office supplies used by the caretakers and are recoverable. The lease under Part II The Services para 13 states “maintaining insuring staff running repairing inspecting and upgrading the leisure facility, and paying the reasonable salaries fees and expenses of any employees employed to carry out work as part of the other services to be provided for the benefit of the estate,”

38. **The Tribunal determines** ...the purchase of these “office sundries” fall within the lease provision of Part II The Services - paragraph 13 “fees and expenses”. The practice of Opecprime is to charge for individual items. There is no evidence that one item should by necessity or implication already include items demanded for other items. Therefore, the provision of caretakers – charged for their labour would not include the office sundries used by them. In this case the items are reasonably associated with the fulfilment of their duties. The items are allowable.

Gardening tools 2019/2020

39. **The Applicants says** ...that two hedge trimmers were purchased in short succession to each other. The invoice on p 107 is from Opecprime for £973.80 which lists a “Makita 18V 52cm hedge trimmer body only”. Similarly on p 108 of the bundle, an invoice from Opecprime for £338.59 lists “Makita 18V 52 cm Hedge trimmer Body only” along with other items. The Applicants contends that one is sufficient given the number of hedges present.

40. **The Respondent** saystwo hedge trimmers could be used at the same time.

41. **The Tribunal determines**it is reasonable that two could be used at the same time by the two caretakers. The invoice is allowed.

Specific service charge year 2020-2021

Fire Assessment Report

42. **The Applicants says**the report has never been provided to leaseholders

43. **The Respondent says**the report has been provided to leaseholders. This cost is recoverable.

44. **The Tribunal determines**....it became apparent in the hearing that there were two items relating to Fire Assessments. The one in contention here at p 157 for £1134.00 was stated to have been carried out by the Respondent, the Respondent handing the Applicants a copy in the hearing.

It would have been preferable for clarity if the report had been made available before the hearing, notwithstanding this, the report is a legal requirement.

On Sunday 20 October 2024, the Applicants wrote to the Tribunal saying;

“With regard to the fire safety assessment under dispute per page 157 of the electronic bundle) is from “elitefire” with an invoice date of 26th July 2020.

The fire assessment reports provided to Gareth-Hamilton-Fletcher by Sinead Lisibach on Friday 18th during the hearing were

11th February 2022- Adena Fire Safety Services Ltd

30th June 2023 – Staines Safety Services (Fire Solutions)

17th April 2024 –SA.UK (Safety Assessments Uk)

We believe this report was clearly identified on page 12 of our filing, page 3 of the statement of truth provided to the respondent on 13th August 2024 and within the bundles provided to both the Respondent and The Tribunal.

As such we believe this issue was not satisfied on the day and to be still outstanding.”

The Tribunal wrote to the Respondent requesting that if they had any representations to make on the email of the 20 October that they should do so to the tribunal by 31 October 2024.

No such representations were received.

The Tribunal determines that in the absence of the report, the invoice for the Fire Assessment of £ 1134.00 is not payable.

Face Masks

45. **The Applicants say**the charges are not payable under the lease. Leaseholders should not be charged office supplies for Comer Group businesses

46. **The Respondent says** ...face masks were used by caretakers and in relation to block management during the pandemic. These costs are recoverable. The specific lease provision being found under para 13 states “maintaining insuring staff running repairing inspecting and upgrading the leisure facility, and paying the reasonable salaries fees and expenses of any employees employed to carry out work as part of the other services to be provided for the benefit of the estate,”

47. **The Tribunal determines** These were obtained during the covid period and needed for the protection of the caretakers and the people who worked around them within buildings. The amount of the cost is reasonable given the period and the quality or nature of the face protection. The lease provides for their claim under “fees and expenses”.

Leisure Centre Running costs Gas £789.05 Electricity £168.78

48. **The Applicants say** reasonable in amount during Covid, the Leisure Centre was closed to leaseholders. Costs given represent standing charges. CPML should have shut off major items, eg pumps and furnace for pool.

49. **The Respondent says** ... professional advice was sought and the cost of shutting down the pool outweighed the cost of keeping it running/maintained. These costs are recoverable. Upon questioning the Respondent conceded that the advice was in relation to another site.

50. **The Tribunal determines** ..the Respondent says that although the advice was received for another site suggesting it was more efficient to keep the pool operating, that this advice was equally applicable to the subject site. The Applicants said that this advice did not relate to the specific site so could not be relied upon. The Tribunal believes the advice was transferable and that to keep it open would be a reasonable conclusion, in particular given the novelty of the situation.

51. The Tribunal allows the costs.

Brady invoice

52. **The Applicants says**the charges are not payable under the lease. Specific details have not been provided by CPML despite requests for clarification. Legal costs associated with a single flat should be charged to a single flat. A management company is deemed to be competent by their operation. Engagement with externals is part of their fees.

53. **The Respondent says**... these costs are recoverable and did not relate to a cost which could have been recovered from a single leaseholder as an administration charge. Upon questioning the Respondent said, the reason for the invoices is for legal advice to freeholders to understand whether the freeholder should or could recognise the Atlantic House leaseholder's association.

54. **The Tribunal decides**....there are two years where these invoices are present. The Applicants says they relate to recognition of a leaseholders' association. The Invoices do not detail this as the reason, the invoices are present for several consecutive months and amount to around £12,000. The Tribunal finds no evidence as to what these invoices were for and if in the alternative, they were for advice for recognition of a leaseholder's association, they seem excessive. **So the Tribunal disallows these costs.**

Disputed Service Charges S/C Year Ended 2021-2022

Bolton Gate Services

55. The Respondent concedes the Tribunal does not make a decision in respect of this item.

Patio Cleaner

56. The Applicants withdraws the objection to this item. The Tribunal therefore does not make a decision in respect of this item.

Fire Exit Signage

57. **The Applicants says** the same items purchased in prior year.

58. **The Respondent says** ... these items are not duplicates and are recoverable. Upon questioning the Respondent explained these are stickers and are often required to be replaced.

59. **The Tribunal says**....there were two occasions where items of similar or the same were purchased, the Tribunal notes these are items that require regular replacement and that a stock of such items is not unreasonable.

60. The Tribunal allows the item as a reasonable charge,

Re-attach downspout and clear drain blockage

61. **The Applicants says**that minor tasks caretaker should have performed.

62. **The Respondent says** these tasks were not appropriate for the caretakers as they involved working from a height. These costs are recoverable.

63. **The Tribunal determines**the nature as a specialist task for example; the down pipe may be at height – we do not know if it is or if it is not from the invoice. Given the size of the building, it is reasonable to suppose there was a specialist requirement involved beyond that of which a caretaker could provide. It was understood from the Respondent, that the Invoice for unblocking the drain that was said to run under the building was given its location and nature as a specialist task.

64. The Tribunal allows both items to form part of the service charge.

Insurance

65. **The Applicants say** ..insurance £44,000, the Applicants statement of truth at p 60 in the bundle specifically challenges the year 2020-21.

66. **The Respondent says** ...increase in premiums due to fire safety issues. This issue is not specific to Atlantic House. These costs are recoverable.

67. Upon questioning of the parties, it became apparent that the concern of the Applicants' was that while the freeholder was not indicating there was an issue with the building in terms of fire, post Grenfell, the insurers were expressing concern over a potential, but uncertain, fire risk

68. The concern felt by the insurers resulted in increased premiums, at a time before in March 2023 the freeholder obtained a report that detailed fire protection concerns of the building.

69. The Applicants felt that as the freeholder had not been transparent so the increased premiums should not be paid. The Applicants had attempted to gain alternative quotes, but stated their attempts had been unsuccessful because the insurers were reluctant to provide quotes if the person seeking them was not an actual potential client. The lease provides that the landlords insure the building, paragraph 5.3 of the lease and that the leaseholders are liable to pay.

70. The Tribunal finds that the freeholder had attempted to gain competitive quotes for the years 20/21 and 21/22 and that the premiums were competitive given their attempts to engage with different providers of the insurance market.

71. Additionally, verbally in the Tribunal the Applicants raised the issue of whether in an earlier year 2019-2020 the contractor Opecprime had obtained a commission from an insurance broker for placing the building insurance with them. As a consequence, whether the commission should be passed back to the leaseholders.

72. This was not an item specifically raised within the Application nor the submissions within the bundle. The Respondent being unaware of the challenge. The Tribunal makes no finding on this as the issue was out of scope of the Application and hearing.

Brady invoice

73. See above at para 54 of this decision the Tribunal disallows this item.

CCTV Descale

74. The Applicants realised upon explanation by the Respondent that the invoice related to CCTV use in a drain rather than CCTV potentially under the Megadene contract. As such the Applicants accept the item.

Other matters

76. The Applicants made a request for an Order under Landlord and Tenant Act 1985 section 20C, an application preventing the landlord from recovering the costs of the proceedings through the service charge.

77. The Applicants made a further request under Landlord and Tenant Act 1985 Para 5A Schedule 11, to prevent administration charges being levied by the landlord from recovering litigation costs from a tenant.

78. In both cases the Tribunal makes an order preventing the passing on of the charges to the Applicants. The Tribunal notes that there have been occasions where the information provided by the Respondent had been inadequate or unintentionally misleading for example the Megadene contract.

79. The Respondent noted that the Applicants could have sought them out to discuss rather than go to Tribunal, but the Tribunal finds the onus should be on the managing agent to address misunderstandings or mis communication proactively.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written Application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time

limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking. 7