



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

Case reference : **BIR/44UE/LIS/2023/0053**

Property : **Flat 86 Rosalind Court, Brunel Way,
Stratford-upon-Avon CV37 6EL**

Applicant : **Mr Robert Vernon**

Representative : **Ms Wendy Banks of counsel (acting pro
bono)**

Respondent : **Orbit Housing Association Ltd**

Representative : **Mr David Nuttall of counsel instructed
by Shakespeare Martineau LLP**

Type of application : **Application in respect of liability to pay
and reasonableness of service charges
under section 27A Landlord and Tenant
Act 1985 (“the Act”) (1)
Application for an order under section
20C of the Act (2)
Application for an order under
paragraph 5A of the Commonhold and
Leasehold Reform Act 2002 (3)**

Tribunal member : **Judge C Goodall
Mr D Satchwell FRICS**

**Date and place of
hearing** : **11 November 2024 (in person) and 25
March 2025 (by video hearing)**

Date of decision : **10 April 2025**

DECISION

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Background

1. Mr Vernon (“the Applicant”) is challenging a charge which is called a Scheme Based Support Charge (“SBSC”) and is demanded from him as a service charge by virtue of the terms of his tenancy of Flat 86, Rosalind Court, Brunel Way, in Stratford-upon-Avon. That flat is one of 102 flats in Rosalind Court.
2. This is not the first time the payability of the SBSC has been litigated. In 2022 payability of the SBSC for service charge years 2021/22 and 2022/23 was considered by the First-tier Tribunal. It determined that the SBSC was not a variable service charge and so struck out the application for lack of jurisdiction.
3. That decision was appealed to the Upper Tribunal under case reference [2023] UKUT 156 (LC). The Upper Tribunal dismissed the appeal, though on a different basis.
4. The issue returns to this Tribunal as Orbit Housing Association Ltd (“the Respondent”) has demanded a SBSC from the Applicant again for the service charge years 2023/24 and 2024/25.
5. Consequently, the Applicant submitted a new application for a determination of the reasonableness of the SBSC on 3 December 2023.
6. In Directions dated 26 June 2024, following a Case Management Conference, Judge Gandham recorded the Applicant’s agreement to the scope of this case being confined to consideration of the payability of the SBSC for 2023/24 and 2024/25, whether the demand was incorporated within the proposed budget for the year (so section 19(2) of the Act was the basis for our jurisdiction) or whether the actual costs were reasonably incurred (so our jurisdiction is based upon section 19(1) of the Act).
7. The case came on for hearing on 11 November 2024. The Applicant’s evidence was heard first. During cross-examination, the Applicant made it very clear that he considered that the Respondent provided a poor cleaning service to Rosalind Court, he considered the cleaning charge to be a fabricated charge, and it was or should have been apparent to the Respondent that there was a challenge to the reasonableness of the cleaning charge.
8. The Respondent applied for an adjournment to respond to the challenge to the cleaning costs, as it was not clear in the Applicant’s Statement of Case that cleaning costs were being challenged.
9. The Tribunal agreed that there was a lack of clarity on the nature of the Applicant’s challenge and agreed to adjourn. Appropriate directions for further statements and witness statements were made. The hearing resumed, and concluded, on 25 March 2025.

Law

10. The Tribunal's jurisdiction in this case derives from sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") which contains statutory provisions relating to recovery of variable 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.
11. 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:-
 - The person by whom it is or would be payable
 - The person to whom it is or would be payable
 - The amount, which is or would be payable
 - The date at or by which it is or would be payable; and
 - The manner in which it is or would be payable
12. 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."
13. 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."

The Tenancy

14. The Applicant's tenancy agreement is dated 22 April 2021 and is made between the Applicant and the Respondent in respect of 86 Rosalind Court. It requires payment of three separate items, being payment of rent, what is described as a "variable service charge" and a separate and distinct "Scheme based support charge" (the "SBSC"). Those three separate items together make up what is labelled the "total weekly payment" which must be paid on Monday each week. The wording in the tenancy agreement is:

"General terms

The payment of Total Weekly Rent and other charges that form your Total Weekly Payment are due in advance on the Monday of each week...

Payment for the property

...

The payments due weekly for your property are detailed below, or as varied from time to time in accordance with this Agreement.

Weekly rent: £138.38
Weekly variable service charge: £46.02
Total Weekly Rent: £184.40

Weekly support charges:
o Scheme-based support charge: £18.00
o Emergency Alarm charge: £0.00
Weekly heating charge: £0.00
Weekly water charge: £0.00
Weekly Council Tax charge: £0.00

Total Weekly Payment: £204.30

The variable service charge is made up of the services listed in Appendix A.

For the avoidance of any doubt, any rent, variable service charge, support charge or other charges which make up your Total Weekly Payment are your personal responsibility and you must make sure all such payments are made in full in accordance with this Agreement.

The Total Weekly Payment must be paid in advance every Monday. We can change your Total Weekly Payment without your consent in line with the Variable Service Charge, Supporting Charge and other charges section of this Agreement.”

15. The SBSC is the charge of £18 per week set out under “Weekly support charges”.
16. Appendix A is in fact an annual budget sheet (presumably for the year in which the tenancy is entered into), which lists the component costs of the service charge in conventional form – estate costs, and block costs including items such as staff costs, gas and electricity supply, cleaning, equipment maintenance and repairs, general repairs, and service contract costs.
17. The agreement continues with numbered clauses as follows.
18. Clause 1.1 sets out how the rent may be increased.

19. Clause 1.3 is entitled “Variable Service Charge, Support Charge and other charges” and says this:

“1.3

(i) In addition to the rent, we may charge for variable service charges. The details provided in Appendix A have been calculated on the basis of how much we expect the services provided to cost during this financial period taking into account the reasonable costs incurred during the previous year, estimates for future years, and allowing for any surplus or deficit from the previous accounting periods.

We may increase your variable service charge (if one applies to you) at any time if we give you at least one month’s notice in writing, but we will not do so more than once a year unless there is a change in the services provided. We may vary, add to, suspend or cancel any service charge items listed in Appendix A (which may increase your variable service charge) but will provide you with notice of any changes to your services or charges.

(ii) In addition to the rent and variable service charge, we will charge for support services provided or other charges shown in this Agreement on the basis of reasonable costs incurred during the previous year and estimates for future years. We will give you one calendar months’ notice of any changes to these charges by writing to you at the property. If the property is subject to funding, for scheme based support services or emergency alarm (Lifeline) services, you agree to accept and pay for these services

(iii) If the property is subject to funding, for scheme based support services or emergency alarm (Lifeline) services, you agree to accept and pay for these services

If you receive a service currently paid for by funding from a 3rd party, but during the term of this Agreement your circumstances change and you are no longer entitled to the funding, have a reduced entitlement, or the funding is withdrawn, you still will be responsible for the full payment due for this service.

20. Clause 1.4 of the agreement is headed “”Support and/or Furniture” and says:

“(i) This tenancy is to facilitate the provision of support for you or a member of your household. The nature of this provision, and your obligation pay for it are set out in the separate Support Agreement....

(ii) This clause will only apply if you receive support and/or live in furnished accommodation.”

21. Clause 2 sets out the tenant’s obligations; it says

You agree:...

2.2 Weekly Payment

To pay the Total Weekly Rent and other charges that form your Total Weekly Payment in advance on the Monday of each week. ...”

The Previous Proceedings

22. The Applicant’s previous proceedings (“the Previous Proceedings”) to challenge the SBSC for service charge years 2021/22 and 2022/23 before the FTT were determined under case reference BIR/44UE/LIS/2022/0010. The FTT determined that the SBSC levied was not a variable service charge, so the Applicant’s proceedings were outside the FTT’s jurisdiction and thus the application was struck out.
23. The FTT did however find, in case it was wrong, that on the basis of the evidence then presented, the SBSC was a charge for the provision of care for the residents between the hours of 10pm and 7am, but only for those who had a separate support agreement in place, and that it was not a charge for all residents or for a service provided in connection with the occupation of Rosalind Court.
24. The Respondent appealed to the Upper Tribunal (“UT”). Its decision, under reference [2023] UKUT 156, was to dismiss the appeal though on a different basis.
25. The UT firstly considered the terms of the tenancy agreement and said (para 10) that it is common ground that clauses 1.3(iii) and clause 1.4 are relevant only to the “extra care tenants” who have a separate Support Agreement, and that they are therefore not relevant to Mr Vernon.
26. Then the UT reviewed the tenancy agreement and concluded:

“37. The calculation of the total weekly payment in the opening pages of the agreement lists its components as rent, “variable service charge” and the SBSC. There is nothing at that point in the agreement to say what, if anything, the SBSC is a payment for except its name. A “Scheme-based support charge” sounds very much like a charge for support.

38. That impression is confirmed when we look at clause 1.3(ii), which indicates that the charge is calculated by reference to costs incurred in the preceding year and estimates of future costs. The agreement is not specific about the services provided, but it seems clear that the charge is a payment to the landlord for costs it has incurred or will incur in the provision of services.

39. That being the case, the SBSC is “an amount payable by the tenant of a dwelling ... in addition to the rent, which is payable ... for services ... the whole or part of which varies or may vary according to the relevant costs.”

40. I find that the SBSC is a variable service charge within the meaning of section 18 of the Landlord and Tenant Act 1985. The FTT therefore had jurisdiction under section 27A to decide whether it is payable both pursuant to the contract and pursuant to statutory requirements, in particular section 19 of the 1985 Act. ...”

27. The UT then considered whether the SBSC was a service charge payable under the tenancy agreement. Judge Cooke’s conclusion was:

“46. In my judgment the obligation to pay the SBSC at £18 per week is clearly and unambiguously stated in the opening definition of the total weekly payment and in the covenant at clause 2.2. That obligation is not qualified, nor in any way defined, by clause 1.3(ii), whose function is to explain how it is calculated and may be re-calculated in the future by reference to the cost of services. The obligation to pay is not expressed to be conditional upon those services being provided.

47. That being the case the charge is payable under the tenancy agreement.”

28. Next, Judge Cooke considered whether the charges levied for the SBSC were reasonable (as required by section 19 of the Landlord and Tenant Act 1985). She identified that the FTT had made findings of fact regarding the services supplied for that charge to the effect that the SBSC is a charge for the provision of overnight personalized care for those residents who have a separate Support Agreement in place. It is not a service provided for the benefit of all residents.
29. That being established by the FTT, Judge Cooke’s conclusion was that the FTT’s alternative conclusion that the SBSC was not reasonable was upheld.
30. The Respondent, following the Upper Tribunal decision, has refunded the SBSC element of his charges for 2021/22 and 2022/23 to the Applicant.

The section 106 Agreement

31. This is a key document in this case, and we summarise its terms here.
32. The agreement is dated 8 July 2016 and is made between the Orbit Homes (2020) Ltd (“the Owner”), Stratford-on-Avon District Council, and Warwickshire County Council.
33. In clause 9, the Owner covenants to fully perform and observe the covenants contained in Schedules, 1, 2, and 7.
34. Schedule 1 is headed “Extra Care Housing” and it contains definitions. The most relevant are:

“Emergency Personal Care” means the provision of emergency assistance cover 24 hours a day every day of the year (especially at night) and activities and services incidental or conducive to the well-being of a Qualifying Person and “well-being” in this context shall have the same meaning as described in section 1(2) of the Care Act 2014 funded by the Wellbeing Charge

“Qualifying Person(s)” means (a) a person who is in receipt of Emergency Personal Care and is aged fifty five or over: or (b) a person who is the spouse or civil partner or widow or widower of a person falling within sub paragraph (a) above and who is aged 55 or over and who has occupied the Extra Care Unit with that person and did so up to the date of their death excluding any period of time when that person was unable to occupy the Extra Care Unit by reason of their health needs

“Wellbeing Charge” means a periodic charge payable by occupiers of the Extra Care Development for the duration of their occupancy

35. The “Extra Care Development” is the development at Rosalind Court, and an “Extra Care Unit” is a residential flat in that development.
36. Only Qualifying Persons can occupy any of the residential units (paragraph 3.1.1).
37. Paragraph 3.2 provides that a person is deemed to be in need of Emergency Personal Care if they pay a Wellbeing Charge.
38. In paragraph 2.1.5 of Part 2 of Schedule 1, the Owner covenants to levy a Wellbeing Charge in accordance with Part 4 of Schedule 1 or otherwise put in place such alternative arrangements for the provision of Emergency Personal Care as may be agreed with the County Council.
39. Paragraph 4.1 of Part 4 of Schedule 1 provides that all tenants must pay an equal levy, being the Wellbeing Charge, in these terms:

“4.1 The Wellbeing Charge shall be such charge as may from time to time be determined by the owner or the Domiciliary Care Agency and notified in advance to each Qualifying Person and the County Council and shall be levied equally upon all occupiers of the Extra Care Development irrespective of tenure type or level of personal care need.
40. Schedule 1 also makes provision for the establishment of a domiciliary care service at Rosalind Court by the Owner. Paragraph 2.1.2 requires that domiciliary care services are made available to all residents of Rosalind Court for 24 hours a day and 365 days a year.
41. Section 1(2) of the Care Act 2014 provides:

(2) “Well-being”, in relation to an individual, means that individual's well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);

- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual's contribution to society.

The Unique Contract

- 42. The Respondent's case is that the SBSC is to cover the costs of complying with the s106 agreement by providing an on-site staff member to provide the service which the Respondent has contracted to be provided by a care company called Understanding Care (Extra Care) Ltd, t/a Unique Senior Care ("Unique").
- 43. In fact, arrangements prior to October 2022 had been that the whole of the cost of an overnight employee had fallen within the SBSC. But on 1 October 2022, in a new contract with Unique, the Respondent ceased charging all of the costs to the SBSC. Instead, in order to reduce the amount of the SBSC, the cost of the contract is apportioned between the SBSC and the cost of providing cleaning services to Rosalind Court. The employee working for Unique splits the nine hour shift partly between cleaning (44.44%) and partly to providing an on-site nighttime presence to support residents (55.56%).
- 44. The contract is dated 1 October 2022. In fact, it covers three schemes operated by the Respondent, one of which is Rosalind Court. It is for a term of 5 years. It was procured by a public competitive tender process which commenced in May 2024.
- 45. The service provided is described as:

"Emergency support to all Customers in the schemes. This Service includes response to alarm calls, the provision of emergency care at night times and cleaning services."
- 46. More specifically, for Rosalind Court, the contract is for the maintenance of "a 9 hour overnight on-site staffing [due] to the size and nature of the Premises".
- 47. Although the contract refers to a specification in Schedule 1, that Schedule appears to be missing. Schedule 1a applies. The Tribunal's copy of this Schedule appeared to have become detached. It is a cleaning specification. An undated copy of a cleaning schedule was included in the bundle of

documents (describing itself as document 1a) and the Tribunal assumes that is in fact Schedule 1a. It contains a detailed specification for the cleaning of premises such as Rosalind Court.

48. Unique's remuneration is set out in Schedule 2 and is £2.12 per resident per day for Rosalind Court, equating to an annual sum of £78,927.60. The contract rate is described as "firm and fixed", though there is a mechanism for increases to be negotiated in certain eventualities. The Tribunal was not informed of any changes to the contract rate applying to the years under discussion in this decision.

Analysis of the tenancy agreement and identification of the issue for determination

49. The core issue in this case concerns the correct interpretation of "Scheme Based Support Charge". The heavy lifting required to answer this question is contained in paragraphs 46 and 47 of the UT decision. It is a contractually payable sum, with an initial weekly sum of £18 being payable.
50. To add a little more commentary on the tenancy agreement, the Tribunal notes that there is clearly a distinct and separate charge for support of a personal nature, referred to in clauses 1.3(iii) and 1.4 of the tenancy agreement which is not payable by the Applicant (see paragraph 25 above). Unfortunately, clause 1.3(iii) makes specific reference to "scheme based support services". Without the benefit of the binding judicial interpretation of the agreement the Tribunal has in the UT decision, and in the absence of any further definition in the tenancy agreement, it was not clear that there are two prospective support charges – a scheme based support charge which is compulsory and payable by everyone, and a support charge which is for personal care only, not provided by the Respondent, and contracted separately.
51. The Tribunal has to determine whether it accepts the Respondent's case that the SBSC is the charge which is compulsory and payable by everyone (in which case it is payable by the Applicant), or whether the SBSC is in fact only provided to those residents with a separate personal care contract in place (as the FTT in the previous case found), in which case the Tribunal would consider determining that it was not provided to the Applicant and so it would not be reasonable for him to be charged it.

The Facts

52. The Tribunal considered a bundle of documents totalling 904 pages, including witness statement on behalf of the Respondent from Mr Tristram Hopper, whose role is the Property Charges Operations Manager for the Respondent. Additionally, certain further documents were provided to the Tribunal post-hearing (see paragraph 107 below). Both the Applicant and Mr Hopper gave oral evidence to the Tribunal, and each were cross-examined by counsel. From this evidence, we find the following facts.

53. Rosalind Court was constructed in or around 2019 as an extra care facility to be operated by the Respondent for 102 residents over the age of 55. The basis of occupation is as weekly tenants, under a tenancy agreement. There are five charges that can be made to the residents under the agreement, being rent, a variable service charge, the SBSC, a charge for a “*How are You*” service (regular checks on residents), and a bespoke care package charge. Only the first three charges are levied upon the Applicant.
54. As a weekly tenant, the Applicant is subject to the terms of the tenancy agreement described above. He is obliged to pay a variable service charge (not in dispute save for a charge for cleaning costs made charged by Unique), and the SBSC. This case is about what is comprised in the SBSC.
55. Rosalind Court is staffed during daytime hours, being 9am to 5pm on weekdays. Overnight staffing is provided from 10pm each day (including weekends) to 7am the following morning. The Respondent is obliged to provide the overnight staff because of its obligations in the s106 agreement. That service is provided through the Unique contract.
56. The Unique contract provides for the Respondent to pay a charge per resident of £2.12 per day from 1 October 2022. For 102 residents, the annual cost is therefore £78,927.60 per annum. There is a set-off against that cost for the provision by the Respondent of welfare facilities for the Unique employee. Initially the set-off amount was £1,467.00 pa, but it reduced by agreement to £733.50 on 1 August 2024.
57. During 2021/22 (and possibly earlier) it had been identified that the Unique employee had capacity to carry out more duties due to being under-utilised during the nine hour shift. The arrangement was that some cleaning duties would be included in the contract.
58. In 2022, the Respondent therefore changed its approach to the SBSC by reducing it so that it covered only 55.56% of the cost of the Unique employee’s time each night. The rest of the employee’s time (44.44%) was to be spent on cleaning and charged through the variable service charge.
59. Mr Hopper’s evidence was that prior to the date of the Unique contract, the SBSC had been the whole cost of providing the Wellbeing Charge as set out in the s106 agreement, as had always been intended by the Respondent (and indeed as it believed had been explicit in the tenancy agreements). From 1 October 2022, the SBSC was to cover the costs of a cleaning service in addition, though the overall price payable to Unique was not to change. In effect, the SBSC became cheaper from 1 October 2022. For convenience, we describe the non-cleaning elements of the s106 services as the Care Element.
60. To clarify, we understand the Respondent’s case to be:
 - a. It is obliged under the s106 agreement to provide the Care Element to all residents;

- b. The service it pays Unique for (and has done since 1 October 2022) comprises a payment for the Care Element and a payment for cleaning;
 - c. The proper apportionment of the payment to Unique between the two charges is 44.44% for cleaning and 55.56% for the Care Element;
 - d. The SBSC is only the cost of the Care Element.
61. Unique provide an employee between the hours of 10pm and 7am each day at Rosalind Court. That employee, Mr Hopper said, provides the following services, this being the Care Element:
- a. Answering emergency calls, such as when an emergency cord is pulled;
 - b. Summoning medical assistance if required;
 - c. Supporting residents whilst waiting for further assistance to attend;
 - d. Alerting next of kin in any emergency;
 - e. Undertaking security checks;
 - f. Reporting any emergency building issues.
62. The Respondent requires the Unique employee to complete a handover sheet at the end of each shift. The Tribunal was provided with sample handover sheets covering the period 1 March – 30 April, and 1 – 31 December 2024. The sheets requires a report on number of call outs following activation of residents' pendant calls, security checks carried out, fire alarm activations, emergency services attendances, and cleaning carried out.
63. The Tribunal also has the hand-over sheets for 1 & 28 September 2022, 3 July 2023, 17 October 2023, and 8, 12 & 19 July 2024.
64. The copy handover sheets provided are signed by the Unique employee. There is a space for sign-off by a Team Leader, but these sign-off signatures have not been completed.
65. There is no indication on the hand-over sheets or otherwise that the overnight staffing provision under the Unique contract is restricted to the provision of services to those Rosalind Court residents with personal care contracts only. It is clear (and we expressly find), that the Unique employee provides services for the benefit of the whole of Rosalind Court (whether a resident wishes to receive those services or not).
66. In relation to cleaning, the Respondent has a written and documented system specifying the cleaning required. There is a detailed but undated

specification, and there are daily task sheets setting out tasks for the days Monday – Sunday.

The Applicant's case

67. The Applicant's case is that he should not have to pay the SBSC at all. His criticisms of the charge are that the costs for which it is charged are opaque and he personally receives no benefit from it. He says that despite requesting a breakdown of the charge, he has never received one, so he does not know what it is for. He is sceptical of the suggestion that part of the charge is for cleaning services, believing that this suggestion is an attempt to obfuscate an already confusing position, and that this suggestion is fabricated.
68. The Applicant also believes that the Tribunal should follow the decision reached in the Previous Proceedings and find that no services are provided for the SBSC charge and therefore it is unreasonable. Indeed, Ms Banks submits in her skeleton argument that opposing this application should be regarded as an abuse of process as there has not been a material change in the provision of services.
69. If a cleaning element is included in the SBSC, the Applicant's case is that it is unreasonable and for an unreasonable amount, as the accounts show cleaning costs of £10,994.04 for 2021/22, £30,760.72 for 2022/23, and £59,440.89 in the budget for 2024/25. The level of increase is wholly unreasonable. No cleaning costs are shown in the 2023/24 service charge accounts.
70. Responding to the elements of the SBSC that the Respondent claims justify the charge, the Applicant's case is he derives no benefit from them, as detailed below:
 - a. Emergency Call Response. Any charge for an emergency call response should not be charged to him as he is disconnected from the service, at his own request;
 - b. Summoning Medical Assistance. The Applicant has never required medical assistance, but in any event that service should only be provided if the person summoning assistance is appropriately trained under the Health and Social care (Regulated Activities) Regulations 2014, and the Respondent's night staff are not;
 - c. Supporting Residents Awaiting Medical Assistance. A similar argument applies to any activities carried out to support residents awaiting assistance; staff are not trained for this;
 - d. Contacting Next-of-Kin. Staff are not able to contact next of kin in an emergency for the Applicant as he has never consented to this service. His consent would be required under the General Data Protection Regulations;

- e. Carrying out security checks. Staff should not carry out security checks unless they have a licence as required by s3 of the Private Security Industry Act 2001. In addition, the service is demonstrably ineffective as there was a break in that was not prevented in February and March 2024;
 - f. Reporting Building Issues. The Applicant points out that residents have a duty under their tenancy agreements to report these issues. He points out there is no evidence to establish that the night staff actually do this work;
71. The Applicant also claimed a number of shortcomings in the provision of the service provided by the Unique employee:
- a. The sample daily hand-over reports were not counter-signed by the Team Leader;
 - b. The Applicant's flat is not connected to the emergency pull-cord / pendant system;
 - c. The service did not appear to summon medical assistance; there was an example incident on 8 July 2024 when all the employee appeared to do was to let the emergency services in, rather than summon them;
 - d. There were occasions when the employee did not attend and there was no cover;
 - e. So far as reporting building issues was concerned, tenants already have a contractual obligation to report building problems to the Respondent;
 - f. There was one occasion when there was a security breach which it appeared night staff did not report;
 - g. The Unique employee was not properly trained to carry out cleaning or security duties.
72. Essentially, the Applicant's case is that any services the Respondent now says are covered by the SBSC are inadequately supported by evidence, and such documentation as is provided is sparse and inadequate. The SBSC is therefore unreasonable, and the Tribunal should find that it is irrecoverable.

The Respondent's case

73. The Respondent's case (as identified in paragraph 53 above) is that at Rosalind Court there are five charges that can be made to the residents, being rent, a variable service charge, the SBSC, a charge for a "*How are You*" service (regular checks on residents), and a bespoke care package charge. Only the first three charges are levied upon the Applicant.

74. The SBSC is to cover the services already described in paragraphs 61 – 66 above.
75. The Respondent says that it is obliged to provide these services under a section 106 agreement entered into with Stratford-on-Avon District Council and Warwickshire County Council in 2016. That agreement requires it to charge what is known as a Wellbeing Charge to residents. So, the Wellbeing charge is recovered from residents at Rosalind Court through the mechanism of the SBSC charge.
76. When Rosalind Court was commissioned, the Respondent intended the cost of the overnight provision required in the s106 agreement to be available to all residents on the payment of the SBSC. Its case is that the obligation to pay was explicit in the tenancy agreements.
77. In around October 2022, the activities of the employee were expanded to include nighttime cleaning, in order to more efficiently utilise the time provided by the Unique employees. The employee's costs are therefore split between cleaning and care, the former being part of the variable service charge, and the latter being the SBSC cost. The apportionment of these two elements has been calculated following review with Unique to be 4 hours of cleaning and 5 hours for care, so split 44.44% care and 55.56% cleaning.
78. An annual budget is prepared showing the variable service charge costs and the charge for the SBSC (which is also variously described as a Wellbeing Charge and a Care Charge) separately. Accounts are prepared at the end of each year and copied to residents. No separate refunds or shortfall demands are made; the credit or debit is carried forward to the following year.
79. The Respondent says it sought to explain the process (and respond generally to resident's queries) by communicating with residents in the following way. On 26 February 2024, a manager called Johanna Massey wrote to all residents with information about a number of matters. The letter included a reference to communal cleaning. That paragraph said:
- “We continue to work with Unique Senior Care on the standard of cleaning carried in the communal areas overnight. Katie carries out weekly inspections with Unique Senior Care and I am meeting with their management team on Monday 26th February to discuss performance in this area. We will continue to monitor this to ensure improvements are seen.”
80. The letter then moved on to provide information about the Personal Charge. This extract is from that section:
- “I can confirm at this stage though that the Wellbeing Charge will have reduced this year, due to the cleaning element of work that Unique Senior Care carry out now being budgeted for under the heading Contract Cleaning, instead of under the Wellbeing Charge.”

81. The Respondent then held a meeting at Rosalind Court on 1 March 2024, chaired by Mr Tristan Hopper and attended by Kate Huckvale, a member of the Respondent's staff who appears to have had some management duties at Rosalind Court. Thirty three residents attended including the Applicant.
82. Cleaning was discussed. The minutes record:
- “Cleaning – Tristan explained that some of the cleaning was undertaken by the care provider undertaking overnight cleaning duties. This had resulted in the scheme based support charge reducing but had now meant that there was a budget provision for Cleaning Contracts which was the proportioned costs of the care provider. The cleaning during the day was undertaken by our estate team.
- Residents voiced their concerns around the standard of cleaning and suggested a cleaning survey – Kate Huckvale said that this is something that could be done internally, due to the ongoing issues within the scheme.”
83. The minutes also record an altercation with the Applicant. They state that he tried to discuss the outcome of the UT case and made a demand that the SBSC be refunded for all residents. Mr Hopper and Ms Huckvale refused to engage in a specific discussion about the case.
84. Overall, the Respondent seeks a determination from the Tribunal that the Unique contract charges are reasonable / reasonably incurred; that the SBSC comprises the Care Element of those charges, and that the SBSC and the nighttime cleaning element of the variable service charge is payable by the Applicant.

Discussion

The SBSC

85. The FTT in 2022 found that the SBSC was only for those who had a separate support agreement in place, and that it was not a charge for all residents or for a service provided in connection with the occupation of Rosalind Court. On the basis of that finding of fact, it determined (as an alternative to striking out) that the SBSC was not payable by the Applicant. The s106 agreement provided in this case was not made available to either the FTT nor the UT in the Previous Proceedings.
86. A very different picture has emerged in this case, no doubt because the Respondent has presented its case in a different way. Our view is that the terms of the s106 agreement are highly relevant in determining what is included within the SBSC. We remind ourselves that the Applicant is contractually obliged to pay the SBSC and that the Respondent is legally obliged to comply with the s106 agreement.

87. The s106 agreement (presumably imposed in order to allow Rosalind Court to be built) clarifies that:
- a. No person is entitled to occupy a flat at Rosalind Court unless they are a “Qualifying Person”;
 - b. A “Qualifying Person” is a person in receipt of “Emergency Personal Care” who is also over 55;
 - c. A person receives “Emergency Personal Care” if they are provided with emergency assistance cover 24 hours a day every day of the year (especially at night) and activities and services incidental or conducive to the well-being of a Qualifying Person;
 - d. Choosing not to accept the provision of Emergency Personal Care or activities incidental to the well-being of the residents does not mean that it is not provided;
 - e. All those permitted to occupy a flat are required to pay a Wellbeing Charge.
88. In our view, it is unarguable that simply because the Applicant is an occupier of a flat, the Respondent is obliged by the terms of the s106 agreement to charge him a Wellbeing charge, whether he uses the services provided by it or not, provided of course that those services are in fact provided.
89. On the balance of probabilities, we are satisfied that the services provided through the Unique contract are such services. The evidence is that an employee is provided to be present at Rosalind Court and to carry out the tasks listed on the hand-over sheets, which the Respondent has summarised, overnight from 10pm to 7am. Occasionally, something goes wrong, and the staff member does not attend, but that does not mean that for the majority of time the service is provided.
90. We therefore find that the Respondent is obliged under the s106 agreement to charge the Applicant with a Wellbeing Charge.
91. This then begs the question – what is the Wellbeing charge? There is no reference to it in the tenancy agreement, nor is there any other contractual document under which it is expressly payable.
92. We are in no doubt that the Respondent’s nomenclature is confusing. The tenancy agreement refers to two types of support charge. The annual accounts do not mention either a scheme based support charge or a Wellbeing charge. Instead, they use the phrase “Care Charge” (again undefined) and the phrase “Personal Care”. We sympathise with the Applicant’s disquiet about the lack of transparency in defining what residents are expected to pay for.

93. It is therefore not necessarily the case that the Wellbeing Charge is the SBSC. But the Respondent's case before the Tribunal is that it regards 55.56% of the sum it has to pay under the Unique contract to be the Wellbeing Charge, which it considers it has a contractual claim to because it is entitled to charge residents the SBSC, and it equates the two.
94. Our view is that this is a reasonable argument, and we support it. The Respondent's management made a reasonable judgement in levying the SBSC in order to partially recover the costs payable to Unique. It is not our role to second guess reasonable decisions of the Respondent.
95. The alternative is that the Unique contract cost is irrecoverable because if it is not the SBSC there is no contractual basis for it to be charged to the residents (or at least not for the Care Element), whilst at the same time there is a right under the tenancy agreement to claim an SBSC for something, but if the Wellbeing Charge / the Care Element of the Unique contract charge is not the SBSC (or incorporated within it), no service is provided which can be recovered.
96. There is no other charge that has been brought to our attention that might be the SBSC. We note Rosalind Court is described as an extra care facility. It is entirely to be expected by occupiers that there is likely to be a charge for the extra care; it makes sense.
97. What then are we to make of the Applicant's two key criticisms; firstly, that he derives no benefit from the SBSC, and secondly that the service provision is poor (we have in mind paragraphs 70 and 71 above).
98. Our view on the first criticism is that the extra care scheme at Rosalind Court is set up to provide the availability of support for residents, not to oblige them to use it. As Mr Nuttall put it, the scheme provides a passive service, existing in the background and available when needed. That passive service IS the benefit that the Applicant receives. We agree. This first criticism therefore has no force.
99. On the second criticism, we do not think it is the correct approach to focus on finding examples of alleged poor practice by the Unique employee. The service is essentially supplied by the employee's presence, not his/her competence. Just to take one example, the Applicant is critical of the employee failing to be the person who called the emergency services in one instance, when all he/she did was let them in. Our view is that being there to let the emergency services in is precisely the service which is required.
100. Evidence at the hearing as to the Applicant's use or otherwise of his emergency pendant was given. The Applicant's evidence was that his flat was no longer connected to the emergency system, as he had specifically requested that it be disconnected. Mr Hopper said in fact there had not been a physical disconnection, and the pendant still worked. Our view is that this is not a relevant issue due to our conclusion that the use of the

pendant is not required for a charge to be made; it is the availability of the service that matters. Voluntary disavowal of the benefit of the call system cannot in our view result in cessation of the obligation to pay for its availability.

101. We accept that it is not inconceivable that the Unique employee might exhibit behaviours that would lead a tribunal to conclude that the service was not of a reasonable standard, but nothing in paragraph 71 in our view justifies such a conclusion.
102. We conclude that the Wellbeing Charge required to be charged to occupiers, and contracted for in the Unique contract, is the SBSC and is payable by the Applicant to the Respondent.

The hourly rate / reasonably incurred

103. The Applicant challenges the overall cost of the service provided by Unique on the grounds that it is unreasonably incurred.
104. The reason the Applicant alleges cost (whether, we think, as a budgeted sum or an actual outturn sum) was not reasonably incurred relates to the overall cost charged for it. On the basis that the Unique employee provides services for 9 hours per day (63 hours per week), the hourly cost is £24.09 per hour. The Applicant suggests the service could have been procured more cheaply.
105. Mr Hopper defended this hourly rate by pointing out that it would have to comprise an operative's basic rate (and nighttime staff need to be paid more than daytime staff), on-costs for NI and pension, costs of managing a rota of staff on the part of Unique, supervision, and a profit element for Unique. In comparison with the Respondent's cost of day staff, which he put at between £21 and £26 per hour, he suggested that the rate was reasonable.
106. The Tribunal asked the parties at the hearing, as a subsidiary question, whether the fact that the Unique contract was competitively tendered might mean that the Tribunal could determine in any event that the rate was reasonable. The parties were asked to make written submissions following the hearing.
107. The Respondent's short answer was that the Respondent was obliged to procure the contract via a competitive tendering process under the Public Contract Regulations 2015 ("the PCR"), in force at the time of the contract. We are informed that the tender was jointly procured with Warwickshire County Council.
108. Ms Bank's response challenged this interpretation, her submission being that the PCR did not apply. That assertion was then further challenged on a point of law by the Respondent.

109. Both parties agreed that even if a public competitive tender process was obligatory, the Tribunal still has jurisdiction to consider whether the cost is reasonable.
110. What was only a comment from the Judge to the effect that the short answer to his question might be a conclusive answer to the question of whether the hourly rate was reasonable turns out not to have a straightforward answer. The Tribunal's view is that it would be disproportionate and impractical to reach a determination on the question of the correct route for the procurement of the Unique contract post-hearing, and with the Applicant not having raised the tendering process for the Unique contract before. We therefore decline to make any determination on the subsidiary question, particularly as we consider we can answer the question of whether the cost was reasonably incurred on ordinary principles.
111. We note that no comparator cleaning costs were offered by the Applicant. The Applicant's argument on this point boils down simply to an assertion that the service could have been procured more cheaply. No suggestion of what the cheaper amount could have been has been offered.
112. Our view is that in law the Respondent is not obliged to obtain a service at the cheapest available cost. It is obliged to act reasonably in deciding when to contract for a service. Whether it was obliged to pursue a public tender in fact is not the material consideration; the question is whether the decision to use that procurement method was a reasonable decision. We consider that it was. Competitively tendered contracts generally provide a route to assurance of value for money.
113. Using our expertise and experience, we agree with Mr Hopper that £24.09 is a reasonable hourly rate bearing in mind the on-costs that would be required.
114. The Tribunal finds that the charge out rate for the Unique employee is a reasonable sum.
115. The Applicant also provided two written submissions on the question raised by the Judge at the hearing and strayed into other points as well. We have read the submissions, but we did not find that they added anything to Ms Bank's submission. We had not requested comment on any additional issues. As the hearing had closed (apart from our request for comment on the subsidiary point), we will not take the Applicant's submissions on those additional issues into account.

Cleaning

116. It is important to clarify that the part of the Unique contract charge that relates to cleaning is not chargeable as part of the SBSC. The cleaning service is provided as part of the variable service charge due under the tenancy agreement.

117. In relation to nighttime cleaning, the Tribunal was asked to find that the cleaning service was not reasonably incurred and was not provided to a reasonable standard.
118. As to the first of those challenges, this has been dealt with in the immediately preceding paragraphs.
119. So far as the question of whether the cleaning was of a reasonable standard is concerned, the evidence to the contrary is that residents complained about the quality of the cleaning at a meeting on 1 March 2024.
120. The minutes of that meeting record:
- “Cleaning – Tristan explained that some of the cleaning was undertaken by the care provider undertaking overnight cleaning duties. This had resulted in the scheme based support charge reducing but had now meant that there was a budget provision for Cleaning Contracts which was the proportioned costs of the care provider. The cleaning during the day was undertaken by our estate team.
- Residents voiced their concerns around the standard of cleaning and suggested a cleaning survey – Kate Huckvale said that this is something that could be done internally, due to the ongoing issues within the scheme.”
121. In addition, the Applicant’s case is that the overnight staff were not trained as cleaners. Furthermore, the Respondent did not pursue Unique to rectify sub-standard cleaning as it had a right to do under the Unique contract.
122. The Respondent acknowledged some concerns about cleaning but denied that expressing some concerns means the cleaning was below the standard required. Mr Hopper’s view was that he always found the cleaning to be of a good standard and there are no other documented concerns about the cleaning of Rosalind Court.
123. A Tribunal asked to determine that cleaning was not of a reasonable standard would need to be convinced, on the balance of probabilities, that the evidence pointed to that conclusion. The only evidence to that effect is a minute stating that residents voiced their concerns, with no evidence being supplied establishing what was not cleaned satisfactorily, when this occurred, or who was the complainant. In our view, that is not sufficient for us to determine that the cleaning was not of a reasonable standard. We do not find the complaints about training or failure to pursue a dispute with Unique to be persuasive.
124. There is no evidence before us that the Unique staff were not trained. Nighttime cleaning was part of the Unique contract service, and the Respondent would have been entitled to rely upon its contractor to provide competent staff. Given that the Respondent was generally happy with the standard of cleaning (according to Mr Hopper’s evidence), there

would be no reason for it to pursue contractual dispute resolution mechanisms.

125. Our conclusion is that there is no reason to find that the cleaning service provided at night by Unique was not reasonably incurred or of a reasonable standard.

Our determination

126. The Applicant's focus in this case has been to challenge the Respondent's re-charge of the contractual cost payable by it to Unique, by arguing that such part of it as was allocated to the SBSC is not payable, and that the part allocated to cleaning should not be allowed because it was not reasonably incurred and not of a reasonable standard. There has been no focus on whether the amounts charged are correct, nor has there been any focus on whether the Applicant seeks a determination under section 19(1) or section 19(2) of the Act.

127. Our determination above is that both of the Applicant's arguments fail.
128. In theory therefore, the sum payable by the Applicant should be his share of the Unique contract costs. Had the budgeted sums for 2023/24 and 2024/25 been for the likely contract cost, we would have approved the budget. Where actual costs in the final accounts are in line with the contractual obligation, we would approve them.
129. In this case, we know roughly what the contractual sum payable to Unique actually is. It is set out in the Unique contract as £2.12 per resident per day, which equates to £78,927.60. The final figure would require minor adjustments for days missed and the set off for welfare provision.
130. Final accounts for 2023/24 were provided to the Tribunal in December 2024, though the personal care charge (which we have found is the SBSC charge) was missing. These reveal the charges for cleaning were:

Estate cleaning (by the Respondents daytime staff)	£6,941.93
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Cleaning contracts (the Unique charge)	£34,690.46
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131. At the hearing, the personal care element of the final accounts was provided. The charge (on a per resident basis) was £452.22 per annum, or £46,126.44 for the whole of Rosalind Court (£8.70 per week per resident).
132. Therefore, for 2023/24, the charge to residents to cover the Unique contract cost was £80,816.90 (£34,690.46 + £46,126.44), when it should be no more than £78,927.60, and in fact should be less.
133. For 2024/25, the budget for contract cleaning (the Unique service) is £48,848.67 and daytime cleaning is £15,592.22. The budget for the SBSC is £6.61 per resident per week, equating to an annual overall cost of £35,059.44. The total chargeable for the nighttime cleaning and for the

SBSC in the budget is therefore £83,908.11, when again it should not be more than £78,927.60, and in fact should be less.

134. We have decided not to make formal determinations on the specific sums payable as service charges in view of the fact that the parties did not address actual amounts, and it is far from clear that the Applicant was seeking these determinations; his issue was the point of principle about whether the SBSC was payable at all.
135. Furthermore, the Unique invoices for 2023/24 were provided to the Tribunal in the hearing bundle. The charges for 2023/24 total £79,143.84, which is not an amount that can easily be reconciled to the final outturn accounts for that year.
136. If the parties in fact require specific determinations on the amount of the service charge payable by the Applicant for the years in question, the Tribunal is willing to make such determinations. Either party should apply to the Tribunal within 28 days of the date of this decision setting out what determination is sought and explaining what amounts that party argues should be payable, and copying that communication to the other party, who will have 28 days to respond. Both parties should indicate whether they seek determinations for 2023/24 under section 19(1) or section 19(2). The Tribunal will make determinations thereafter on the basis of the written submissions only.

Applications under Section 20C of Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

137. Both of these provisions allow us to make protective costs orders in the Applicants favour if we are of the view that it is just and equitable to do so.
138. We cannot escape the fact that the Applicant has failed to persuade the Tribunal to make a determination in his favour. Our view is that it would therefore not be just and equitable to make protective costs orders in this case.

Appeal

139. 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)