



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

- Case reference** : CAM/00KG/LSC/2013/0149 & 2014/0019, 0030 and 0031
- Properties** : 16, 28, 34 & 38 Garner Court, Tilbury, Essex RM18 7BG
- Applicant** : Freehold Managers (Nominees) Ltd. Represented by Simon Allison of counsel
- Respondents** : Ibrahim Mohammed Jalloh (16)  
Amy Hazel Davies (28)  
Abimbola Akomolede (34) and  
Adegboyega Oluyale Adekunle & Mrs. Moriam Oluwakemi Adekunle (38)
- Date of transfer from Basildon County Court** : various
- Type of Application** : To determine reasonableness and payability of service charges and administration charges
- The Tribunal** : Bruce Edgington (lawyer chair)  
Stephen Moll FRICS  
David Cox
- Date and venue of hearing** : 18<sup>th</sup> June 2014, Park Inn Thurrock, High Road, North Stifford, Grays RM16 5UE Essex SS2 6EU

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**DECISION**

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1. In respect of the amount claimed by the Applicant from the 1<sup>st</sup> Respondent, Ibrahim Mohammed Jalloh in the Basildon County Court under claim no. 3QT36357, the decision of the Tribunal is as follows:-

	<u>Claim(£)</u>	<u>Decision(£)</u>
Service charges on a/c 01/01/12	488.34	488.34
Service charge deficit y/e 31/12/11	13.55	nil
Service charges on a/c 01/07/12	488.34	488.34
12/12/2012 late payment fee	48.00	25.00

19/12/2012	late payment fee	48.00	25.00
Service charges on a/c 01/01/2013		485.60	485.60
28/01/2013	Land Registry fee	3.00	3.00
12/02/2013	late payment fee	48.00	25.00
19/02/2013	solicitor Referral fee	96.00	96.00
Various	ground rent	400.00	no jurisdiction
06/02/2013	administration charge	48.00	25.00
26/02/2013	arrears charge	<u>48.00</u>	<u>25.00</u>
		2,214.83	1,686.28

Thus the amount owed is £1,686.28 plus any ground rent. HOWEVER the service charges for the year ending 31<sup>st</sup> December 2011 have been assessed at £931.76 rather than the £1,022.43 claimed which means that there is an amount due back to the Respondent of £90.67 - £13.55 (above) = £77.12.

2. In respect of the amount claimed by the Applicant from the 2<sup>nd</sup> Respondent, Amy Hazel Davies in the Basildon County Court under claim no. 3QT80250, the decision of the Tribunal is as follows:-

		<u>Claim (£)</u>	<u>Decision (£)</u>
Service charges on a/c 01/07/12		57.36	57.36
12/07/2012	late payment fee	48.00	nil
12/12/2012	late payment fee	48.00	nil
19/12/2012	late payment fee	48.00	nil
Service charges on a/c 01/01/2013		485.60	485.60
14/01/2013	Land Registry fee	3.00	3.00
14/01/2013	solicitor Referral fee	96.00	nil
Various	ground rent	100.00	no jurisdiction
15/01/2013	arrears charge	<u>24.00</u>	<u>nil</u>
		909.96	545.96

Thus the amount owed is £488.60 plus any ground rent. HOWEVER the service charges for the year ending 31<sup>st</sup> December 2011 have been assessed at £931.76 rather than the £1,022.43 paid which means that there is an amount due back to the Respondent of £90.67.

3. In respect of the amount claimed by the Applicant from the 3<sup>rd</sup> Respondent, Abimbola Akomolede in the Basildon County Court under claim no. 1BQ00468, the decision of the Tribunal is as follows:-

		<u>Claim (£)</u>	<u>Decision (£)</u>
Service charge deficit y/e 31/12/08		312.61	withdrawn
Service charges on a/c 01/01/11		627.16	627.16
20/01/2011	professional fee	37.60	37.60
04/02/2011	late payment fee	48.00	25.00
23/02/2011	Land Registry fee	4.00	4.00
23/02/2011	solicitor Referral fee	96.00	96.00
24/02/2011	Maybeck LBA	<u>85.00</u>	<u>nil</u>
		1,210.37	789.76

Thus the amount owed is £789.76 less the overpayment for the year ending 31<sup>st</sup> December 2011 which is £1,271.16 - £1,158.11 = £113.05

4. In respect of the amount claimed by the Applicant from the 4<sup>th</sup> Respondents, Adegboyega Oluyale Adekunle & Mrs. Moriam Oluwakemi Adekunle in the Basildon County Court under claim no. 3QT43028, the decision of the Tribunal is as follows:-

	<u>Claim(£)</u>	<u>Decision(£)</u>
Service charge deficit y/e 31/12/08	312.61	nil
Service charges on a/c 01/01/10	1.25	1.25
Service charges on a/c 01/07/10	598.64	598.64
Service charges – major works	262.01	262.01
06/10/2010 late payment fee	48.00	25.00
16/11/2010 late payment fee	48.00	25.00
Service charges on a/c 01/01/11	627.16	627.16
10/08/2011 late payment fee	48.00	25.00
Service charges on a/c 01/07/11	627.16	627.16
10/08/11 late payment fee	48.00	25.00
Service charges on a/c 01/01/12	606.98	606.98
12/04/2012 Land Registry fee	4.00	4.00
Service charge deficit y/e 31/12/11	16.85	nil
Service charges on a/c 01/07/12	606.98	606.98
12/07/2012 late payment fee	48.00	25.00
12/12/2012 late payment fee	48.00	25.00
19/12/2012 late payment fee	48.00	25.00
Service charges on a/c 01/01/2013	603.57	603.57
14/01/2013 Land Registry fee	3.00	3.00
14/01/2013 solicitor Referral fee	96.00	96.00
Various ground rent	100.00	no jurisdiction
15/01/2013 arrears charge	<u>24.00</u>	<u>24.00</u>
	4,826.21	4,235.75

Thus the amount owed is £1,686.28 plus any ground rent. HOWEVER the service charges for the year ending 31<sup>st</sup> December 2011 have been assessed at £1,158.11 rather than the £1,271.16 claimed which means that there is an amount due back to the Respondent of £113.05 - £16.85 (above) = £96.20.

5. These matters are now transferred back to the Basildon County Court to enable any party to apply for any further order dealing with those matters which are not within the jurisdiction of this Tribunal or any other matter not covered by this decision including interest, costs and enforcement, if appropriate.

### **Reasons**

#### **Introduction**

6. The 4 claims which are dealt with in this decision arise because the long lessees in the Applicant freeholder's property have not paid service charges and/or ground rent. In the first 2 claims the "question of whether the service charges and administration charges claimed and/or challenged are reasonable and payable" has been transferred to this Tribunal for determination. In fact those questions

were transferred by the chair of this Tribunal who was then sitting as a county court judge. As no conflict arises, such judge has decided not to recuse himself. The matter was raised by the chair at the hearing and no objection was raised to his chairing this Tribunal.

7. In respect of the other 2 claims, the court has simply purported to stay the claim pending resolution by the Leasehold Valuation Tribunal and transfer the claim to the Lease Hold Tribunal (sic) respectively. In fact (a) a transfer of a 'claim' to this Tribunal is not technically possible and the Tribunal has therefore inferred that the same questions are asked of the Tribunal in these other claims and (b) in any event, the jurisdiction and powers of the Leasehold Valuation Tribunal in England were subsumed into this Tribunal in 2013.
8. The Respondents have all filed defences in the court and there have been some fairly convoluted procedural problems in the court processes. The Tribunal does not see that it is proportionate or necessary to go into those matters in any detail. Suffice it to say that the general message conveyed by the Respondents in their defences is that they complain of a failure to maintain the building and the grounds and the Applicant charges excessively for what was actually done. In the case of 16 Garner Court, there is a helpful Scott Schedule commencing at page 121 in the bundle which sets out the detailed allegations being made by Mr. Jalloh and, alongside, the Applicant's responses.
9. The Tribunal considered that all 4 cases should be heard together for the obvious reason that they all relate to the same service charges and administration charges for the same development and consistency is clearly beneficial. It is also relevant to record here that a decision dated 17<sup>th</sup> September 2012 ("the previous decision"), with the same chair, relating to 16 Garner Court set out guidance as to the reasonableness of the service charges claimed for the year ending 31<sup>st</sup> December 2011.

### **The Inspection**

10. The members of the Tribunal has inspected this estate before for previous cases but decided to inspect again. This was in the presence of Simon Allison of counsel representing the Applicant and Dean Cooper from the managing agents, Mainstay. All Respondents were present except Mr. Jalloh.
11. The development was built about 10-15 years ago and consists of a terrace of blocks of 8 flats each over 4 storeys and a separate smaller terrace of 2 blocks of 6 flats each over 3 storeys. There appear to be some 68 flats in the development. The members of the Tribunal walked around the grounds which consisted of a large car park, some grass areas with beds of shrubs and fenced areas for rubbish bins. The common areas inside the building containing the subject flats were seen where stair cases go to the upper floors. The stairs were carpeted and reasonably clean and the internal walls, although marked, were in reasonable condition subject to 'wear and tear' bumps and scrapes which are bound to happen in such confined spaces with people moving in and out of the flats.
12. The development is close to the centre of Tilbury which is a small town adjacent

to docks. Most of the shops in the high street had metal shutters covering the doors and windows. Both the town and, to a lesser extent, the development had the look of being neglected and unkempt.

13. The grass areas had not been mown for some time and there were long weeds growing in the grass. The perimeters were overgrown. There was a great deal of litter and the bin areas contained rubbish which had not been put into the large industrial bins provided and general items were lying around such as an ironing board, sofas and what appeared to be 2 bed bases.
14. The members of the Tribunal looked at all the particular areas that the parties directed them to. The internal common parts contained pushchairs prams and other items, particularly on the ground floor. The lights in the first block were on but not in the other blocks. In one of the smaller blocks the Tribunal was shown some metal internal doors which had allegedly been fitted by lessees whose flats had been broken into because the security doors did not work. In fact, the Tribunal was also told that the faulty security doors had been replaced in 2011 and the security problems referred to had improved greatly since then. It was also shown a side pedestrian gate with a number security code which could be easily opened without using the code and, as a result, people were using the car park as a walk through. Mr. Cooper said that this had been mended but immediately vandalised. This was disputed.
15. A matter of some concern to the Tribunal was the entrance to block 1 where the gutters above were still full of vegetation despite the observations of the Tribunal in the previous decision. The damage to the wall from streaming water was evident and the windows and cills in this area were all water stained. There also seemed to be additional problems with drainage which may or may not be linked to or exacerbated by this problem. It was said that there was 'blow back' from the foul drainage system and that the car parks soon became under water when it rained. The Tribunal noted many entries in the 2011 accounts for work to the drains which means that Mainstay is aware of a problem. These matters clearly need immediate attention.

### **The Lease**

16. The Tribunal was shown a copy of a sample lease i.e. a certified copy the lease of flat 28. It is dated 25<sup>th</sup> February 2005 and is for a term of 99 years from the 1<sup>st</sup> January 2004 with an increasing ground rent.
17. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondents are liable to pay 1.4053% (flats 16 & 28) and 1.7467% (flats 34 & 38) of the total estate charges. As no issue is raised in the defence about the payability of any item of service charge or administration fee, these reasons will not repeat the relevant provisions in the lease.
18. Clause 7(b) provides a contractual basis for the landlord to claim interest from the lessee at 4% above Barclays Bank base rate or 10% per annum whichever is the higher. However, as the Applicant appears to have claimed interest in the

court proceedings pursuant to Section 69 of the County Courts Act 1984, the Tribunal will leave the question of interest to the court.

19. The Fourth Schedule sets out what can be claimed as a service charge and it is confirmed that an amount can be claimed on the 1<sup>st</sup> January and the 1<sup>st</sup> July of each year as an estimate of the likely service charge for that year. Paragraph 13 allows the Applicant to claim "*all proper and reasonable costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred...in or in contemplation of any ...court or arbitral proceedings against the Tenant*" to enforce the covenants.
20. It is said throughout the lease that the obligations of the landlord e.g. to maintain the building etc. are subject to the lessees paying the rent and service charges.

### **The Law**

21. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
22. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
23. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

*"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."*
24. Paragraph 2 of the Schedule, which applies to amounts payable after 30<sup>th</sup> September 2003, then says:-

*"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"*

### **The Hearing**

25. The hearing was attended by those who attended the inspection. The above matters in issue were raised. The Tribunal was told about the application for a Right to Manage Company to take over management of the buildings but this was not relevant to this application.
26. After Mr. Allison had opened his case and dealt with queries from the Tribunal members, each Respondent present was asked to explain their case. In essence they all said that their main complaint was that the development was not being managed properly. They had complained to Mainstay on many occasions and referred the Tribunal to their letters in the bundle. It was not necessarily that

contractors had not been employed to do the work, it was just that they are not supervised and do not do all the work necessary.

27. Ms. Davies said that she had had to remove some nasty graffiti herself which was disturbing to children, after having asked Mainstay to do this. When she had done it and had asked to be reimbursed so that the cost could be borne from the service charge account, she was refused. She also said that she had tried to pay her ground rent but this had been refused. The Tribunal accepted her evidence on these points.
28. The problem faced by the Applicant was that Mr. Cooper had only been manager of this development since October 2013. Mr. Allison kept saying that all the allegations about having told Mainstay about problems had to be proved. He did not deal with the letters of complaint in the bundles of which he and his clients had notice. Mr. Cooper was unable to help about these matters.
29. Mr. Cooper was asked whether he had called any meeting of the lessees because all Respondents at the hearing were saying that their main complaint apart from the failure to manage was that they felt that they were always being ignored. He said that he was liaising with one lessee. When the Tribunal chair suggested that there should be a meeting, he seemed to accept that this may be a good idea.
30. There were many individual complaints mentioned by the Respondents but really they lost significance in the larger picture being portrayed. They also started to make assertions that the flats in this development were not going up in value as much as other flats in the area and that the service charges were less in other developments locally, with better services. However, when pressed to produce evidence about this, they could not.

### **Discussion**

31. The Tribunal is disappointed to see questions relating to this estate being referred back following the guidance given in the previous decision. In essence this is both a challenge to the service charges claimed and a counterclaim by the tenants for damages for breach of the Applicant's obligations to repair and maintain.
32. It is obviously impossible for the Tribunal to determine very precisely whether service charges incurred several years ago were reasonable or not, bearing in mind the arguments put forward i.e. that the work undertaken was not thorough or adequate.
33. The problem which the Respondents have is that much of the service charge element of the claims is simply a request for the payment in advance of future service charges. Whatever may have been defective in the management of the site in the past, the amounts required on account would appear to be reasonable for an estate of this size. The administration charges are high and repetitive but the Respondents accepted that they had simply refused to pay as a matter of principle. People who refuse to pay service charges when they have a lease which enables the landlord to recover all fees and expenses which arise as a result of

such refusal to pay can only expect to have to pay such amounts, particularly when they do not challenge the level of fees being claimed.

34. The Applicant's evidence recites allegations that 'a number of residents have been treating the development appallingly'. The sort of problems which are said to be encountered are:-

- Dog mess in communal halls in 1 block
- Urine stains on the carpet
- Couches, barbeques, glass, beds and other bulk items being dumped
- 1 resident fixing a motorbike in the communal hall
- Residents stealing electricity from the communal supply
- Kitchen fires causing smoke damage
- 1 resident using the car park to sell cars (10 at one point)
- Residents throwing rubbish out of windows
- Fires being lit in the bin store
- Locks on the meter cupboards being broken
- Residents breaking entrance doors to get in after losing keys

35. The Tribunal's approach to this case is to start with the guidance it gave in the previous decision which, as has been said, related to the year ending 31<sup>st</sup> December 2011. For completeness, the Tribunal said:-

*".....the entries under the headings **Management and administration** and **Contribution to reserves** were reasonable and payable. As to the items under the other heading **Maintenance costs**, the Tribunal's conclusions under the various subheadings are as follows:-*

*Communal cleaning – the claim is for £5,304 which, if the job was done properly, would be a reasonable figure. There are allegations that it was not done properly and one such instance was actually witnessed by Ms. Day and referred to in her evidence. A substantial discount would appear to be appropriate.*

*Window cleaning – the claim is for £1,040. Again, if the job were done properly, this would be a reasonable figure. There are complaints that it is not done properly with Mr. Adekunle saying that the windows had only been cleaned once in the last year i.e. in March 2012. Once again, a discount would appear to be appropriate.*

*Gardening – the claim is for £3,900 or about £75 per week which is excessive. One issue raised by Ms. Day was that many people allowed dogs to defecate on the grass and this has to be cleared up. The Tribunal estimated that ½ a day a week would be enough to clear this up, mow the grass and keep the shrubs*



*maintained from April to October with less in the winter months. The Tribunal's view is that this could be done within a budget of £1,500 per annum.*

*Communal electricity – this claim is for £3,446 which is substantially less than in some previous years. The lessees do not dispute this figure as such but say that it should be less for the reasons stated in the defence. The internal lights are on 24 hours a day whereas they could be on timed/sensor switches which would save money. Ms. Dalby told the Tribunal that the necessary equipment is fitted but it just needs setting up and activating properly. However, the problem is that the lessees want better lighting in the car park. The Tribunal agree that timed/sensor switches do save money. Last year, if that had happened, the communal electricity could have been as low as £2,000. However, with better lighting in the car park, a true and reasonable cost would be £3,000 per annum.*

*Day to day maintenance – this is the item which really puzzled the Tribunal. It is a claim for £15,108 i.e. about £290 per week following a budget of £6,000. When asked what this was for, Ms. Day said that it was for replacing light bulbs, sorting out trip hazards and reacting to calls from residents. With all the other claims and, in particular, a management fee, the Tribunal simply could not see any justification for any figure under this heading at all.*

*Pest control – the claim is for £1,512. The Tribunal did notice some traps at the site but this figure seemed to them to be very high. No-one at the hearing suggested that there was a particular infestation which needs a great deal of attention. A fair and reasonable figure for this work would be 4 visits to the site per year at £60 i.e. a gross figure of £240.*

*Refuse removal – the claim for £1,866 for the emptying of all the bins seemed to be reasonable.*

*Out of hours fees – this is a claim for £330 and no-one was able to say what it was for. Assessed at nil.*

*Door entry system – the claim is for £543 which would be reasonable for a maintenance contract. However, there is a dispute about whether the system installed in 2011 is the correct one which is, of course, a different issue.*

*TV and satellite maintenance – a claim for £366 which would appear to be reasonable*

*Emergency services – again, there seemed to be no justification*

*for this claim which is assessed at nil.*

*Buildings insurance – the claim is for £16,082 or just over £235 per flat. This seemed to the Tribunal to be a very high figure. In dealing with insurance, a Tribunal would normally want to see the claims record, alternative quotes and details of any commission paid to intervening agents. This Tribunal had none of this information and is therefore reluctant to interfere.*

36. There is a copy of the 2011 service charge account in the bundle. The total claim for the year is £72,775 to include an amount transferred to reserves. Taking the above guidance into account and the evidence given to the Tribunal at this hearing the Tribunal took the view that it would have to just take a broad brush approach to that year which was the last year when final service charge amounts, as opposed to payments on account, were included in the claims.
37. The Tribunal reduced the **communal cleaning** item to £3,978 i.e. a reduction of 25%. It reduced **gardening** to £1,500 and **electricity** to £3,000 for the reasons stated. It was satisfied about the day to day maintenance claim. The other claims were either allowed or reduced as stated making a total amount of £66,303.00 which is what the Tribunal found to be a reasonable and payable figure for that year. In other words £931.76 for those paying 1.4053% and £1,158.11 for those paying 1.7467%.
38. As far as the day to day maintenance claim is concerned, the Tribunal was troubled by the substantial claims for car park security but as the evidence to suggest that these charges were unreasonable was scant, to say the least, the decision was to confirm that they were reasonable, particularly as the lessees were saying that security was one of the problems they had and the amount per flat was relatively small.
39. It can be seen from the Scott Schedule commencing at page 121 in the bundle that the Applicant has in fact made some effort to moderate the service charges in the following year ending 31<sup>st</sup> December 2012. The cleaning and gardening charges have reduced substantially and it is said that there are plans to improve other areas. The budget for 2013 has been reduced to £69,110.

### **Conclusions**

40. As far as the individual claims are concerned, the Tribunal reduces the late payment letters down from £48 to £25 each as is set out in the previous decision. The claims for payments on account of service charges have been allowed in full because they are, after all, just estimates of future service charges. If lessees refuse to pay monies needed in advance to cover expenses to be incurred, the whole service charge regime just goes into a downward spiral particularly, as in this case, the lease requires service charges to be paid before the landlord is obliged to carry out maintenance. If the lessees want to allege breach of contract then they have to counterclaim in the county court.
41. One way of doing that is to tackle each matter, e.g. the drains, by writing a formal

letter giving Mainstay notice of the problem and stating that if nothing is done within a reasonable fixed time, a respectable tradesman will be employed to do the work and the cost will be claimed back as part of the service charge. That said, it is not this Tribunal's function to give advice to either party.

42. The decision above gives details of the amounts due with explanations as to the deductions to be made because of the finding relating to the 2011 accounts. The Land Registry fees and referral fees to solicitors are reasonable. The claim against Abimbola Akomolede for £85 for 'Maybeck LBA' was not explained and is not found to be reasonable. The first claim against Mr. and Mrs. Adekunle for £321.61 was waived and withdrawn in respect of Mrs. Akomolede without explanation. There should be consistency as between lessees and the Tribunal therefore treats this as having been waived and withdrawn from both accounts.
43. The claim against Ms. Davies for a £24 arrears charge for the ground rent arrears has not been allowed as she satisfied the Tribunal that she had offered to pay this and such offer was refused. If the Applicant wants to refuse ground rent for tactical reasons connected with forfeiture, then it cannot expect lessees who offer the money to be penalised in this way. The other administration charges are also assessed at 'nil' as only £57.36 was outstanding for most of the time and the fees claimed are totally disproportionate. When the larger amount of £485.60 became due, it was unreasonable to refer to solicitors within 14 days of the due date.
44. This decision will probably not satisfy anyone. The reasons for the problems encountered are threefold. Firstly the property is in a very run down area and even the Respondents did not seem to be a bit surprised that people from outside were just driving into the car park and dumping rubbish. They call for more security but the only effective security is to have high fencing and security gates which will make the development look like a prison. Ultimately, they may have to 'grasp the nettle' and agree between themselves to pay for such an 'improvement'.
45. Secondly, the number of subtenants in the larger block in particular make the problems worse as they don't appear to have any pride in or respect for the development as a whole.
46. Thirdly, Mainstay is not managing matters properly. The Tribunal has been involved in this development for some time and things were being pointed out to Mr. Cooper of which he was unaware. There were problems such as the gutters and the water 'pooling' in the car park which have not been dealt with. Mainstay have clearly been aware of a drainage problem since 2011 but no action seems to have been taken to resolve the problem as opposed to just coping with it. There have been no regular meetings of lessees as often happens with an estate of this size.
47. Mr. Cooper will no doubt say that he is doing his best in an atmosphere where service charges are not being paid and a Right to Manage company has been formed. Nevertheless there are still self evident communication problems and

the Tribunal has suggested meetings which the Respondents say that they would welcome.

48. The Respondents must also understand that a Right to Manage company can be a mixed blessing particularly if lessees disagree amongst themselves about how to tackle such problems about rubbish removal when the leases do not automatically allow for improvements to be undertaken by the landlord.



.....  
**Bruce Edgington**  
**Regional Judge**  
**23<sup>rd</sup> June 2014**