



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

**Case reference** : **LON/00BG/LSC/2021/0026**

**HMCTS code** : **CVPCOURT**

**Property** : **54 Arbour Square, London, E1 0PS**

**Applicant** : **Ms Alexandra Hulegaard**

**Representative** : **In Person**

**Respondent** : **The Mayor and Burgesses of the London  
Borough of Tower Hamlets**

**Representative** : **Mr Jeff Hardman (Counsel)**

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

**Tribunal members** : **Judge Robert Latham  
Kevin Ridgeway MRICS  
John Francis**

**Date and Venue of  
Hearing** : **23 September 2021 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **5 November 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a hybrid hearing due to Covid-19 restrictions. Mr Francis joined the hearing by CVP. The other parties attended in person. The Respondent has provided a Bundle of Documents consisting of 759 pages.

## **Decisions of the tribunal**

- (1) The Tribunal determines that the sums demanded in respect of insurance for the service charge years 2015/6 to 2021/2 are both payable and chargeable. The sums demanded for 2015/6 to 2019/20 are sums actually expended. The sums claimed for 2000/21 and 2021/22 are interim service charges.
- (2) The Tribunal reduces the sum claimed in respect of repairs in 2017/8 by 50% namely from £468.32 to £234.16.
- (3) The Respondent has conceded that the sum of £250 demanded for repairs in 2019/20 is not payable.

## **The Application**

1. By an application dated 7 December 2020, which was received by the Tribunal on 5 January 2021, Ms Hulegaard, the applicant, seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by her in respect of the service charge years “April 2016 to April 2021”. The substance of her case appears at p.10.
2. The application relates to the flat which she occupies at 54 Arbour Square (“the Flat”) as a tenant of the London Borough of Tower Hamlets (“Tower Hamlets”), the respondent. 54 Arbour Square is a three storey Georgian terraced property with three bedrooms. It is Grade 2 listed. There is a studio flat on the lower ground floor. Ms Hulegaard occupies the Flat pursuant to a lease dated 19 July 1999 which had been granted pursuant to the Right to Buy (RTB) legislation. The lease is for a term of 125 years from 11 December 1989. On 10 January 2003, Ms Hulegaard acquired the leasehold interest for £320k.
3. It is for an applicant to clearly identify the issues that she seeks a tribunal to determine in respect of the payability and/or reasonableness of the service charges which she has been required to pay. Unfortunately, the Applicant has found it difficult to do so. She does not have access to a computer and has had to utilise the facilities at a local library.
4. The Tribunal is accustomed to dealing with litigants in person and issues Directions to enable them to identify the issues in dispute so that they can be determined fairly and in a proportionate manner.
5. On 13 April 2021, Judge Donegan conducted a Case Management Hearing by telephone. Ms Hulegaard and Mr Yates who represented the respondent, attended. The Judge advised Ms Hulegaard to seek legal advice. He noted that Ms Hulegaard would need to clearly identify the disputed service charges for each of the years in dispute. The Tribunal

could then determine the 'payability' of these charges. He noted that the applicant also contended that the respondent has breached covenants in her lease and sought to set-off a claim for breach of covenant against the disputed service charges. The tribunal would need full details of the alleged breaches and any alleged losses, if it was to determine the set-off claim.

6. The Judge directed that the application should be determined at a face-to-face meeting with a time estimate of two days. On 29 April, the Tribunal notified the parties that the case had been set down for hearing on 23 and 24 September.
7. The Judge directed Tower Hamlets, by 4 May, to email Ms Hulegaard (i) copies of all relevant service charge accounts and budgets for the six years in dispute, together with all demands for payment and details of any payments made; and (ii) a copy of her lease. On 4 May, the Respondent complied with this Direction.
8. The Judge directed Ms Hulegaard, by 1 June, to email to Tower Hamlets a Schedule in a form attached to the Directions identifying the service charges which she disputed over the six years of her claim, specifying (i) whether she accepted that they were payable under the terms of her lease; (ii) whether she considered them to be reasonable in amount/quantity; and (iii) whether they have been correctly demanded. She was directed to send copies of any documents or alternative quotes on which she sought to rely. Finally, she was directed to serve a Statement of Case setting out any additional submissions in support of her claim. On 2 June, a Procedural Judge, Mrs Flint, granted Ms Hulegaard an additional week to comply with this Direction, namely by 8 June.
9. Ms Hulegaard failed to comply with this Direction. On 2 August, she finally provided the required Schedule covering the seven service charge years from 2015/6 to 2021/2. On 8 September, she amended this Schedule (at p.136-150). This is not acceptable, even for a litigant in person. It is for an applicant to identify the issues that it requires a tribunal to determine. These should have been identified in the application form or pursuant to the Directions. The parties agreed that this amended Schedule sets out the matters which the Tribunal is required to determine.
10. On 7 June, Ms Hulegaard filed a Statement of Case (at p.224). This did not specify any claim for damages arising from any alleged breach of covenant as would have been required were the applicant to be seeking to establish any equitable set-off (see *Continental Property Ventures Inc v White* [2016] 1 EGLR 85; [2007] L&TR 4). On 8 September, Ms Hulegaard filed a second Statement of Case. The materials upon which she seeks to rely are at p.151-338 of the Bundle. In the week before the hearing, Ms Hulegaard filed a further Bundle of Documents.

11. Tower Hamlets have found it difficult to respond to the case given the manner in which applicant's case has evolved. They have rather sought to justify all the service charges which have been demanded during the relevant years. They have sought to comply with the Directions to the extent to which this has been possible. On 6 July, they filed their Statement of Case (at p.339). On 31 August (at p.467), Ms Hulegaard filed a Reply to this (at p.467). On 13 September, the respondent filed a Bundle of Documents which extends to 759 pages. This includes all the documents which Tower Hamlets had disclosed to Ms Hulegaard and all the documents which she has filed in support of her case. Whilst Ms Hulegaard complained about the extent of the documentation, this merely reflects the manner in which her claim has evolved.

### **The Hearing**

12. Ms Hulegaard appeared in person. She gave evidence.
13. Mr Jeff Hardman (Counsel) appeared for Tower Hamlets. He was accompanied by Mr Barnaby Yates, a Solicitor in the Tower Hamlets Legal Department. Mr Hardman provided a Skeleton Argument. He relied upon a witness statement from Christopher Martin, a member of the Tower Hamlets' Repair Team (at p.487).
14. Judge Latham and Mr Ridgeway, the professional member, were present in the hearing room. Mr Francis, the lay member, was only able to join remotely due to Covid-19 restrictions. The Tribunal was able to conclude the hearing in one day.
15. On 18 October, Ms Hulegaard emailed a number of further documents to the tribunal. These could, and should, have been produced at the hearing. This includes a sick certificate, dated 9 July 2021. The applicant made no application to the Tribunal to adjourn the case on grounds of ill health. The applicant has also produced a "Skeletal Argument". She objects to the Skeleton Argument which was adduced by the respondent at the hearing. She should understand that this did not adduce any new evidence. It merely summarised the arguments that Counsel intended to make to the Tribunal. The Tribunal is satisfied that we have had regard to all the arguments raised by Ms Hulegaard which are relevant to our jurisdiction.

### **The Lease**

16. The lease, dated 19 July 1999, is at p.102-128. The Lessee's covenants to repair, maintain and decorate the demised premises are set out in Clause 4. The Lessee further covenants to pay a service charge and an interim charge. The service charge provisions are set out in Schedule 5. The accounting period is 1 April to 31 March. The Lessee's contribution to the service charge is "such reasonable proportion of Total Expenditure as is

attributable to the Demised Premises”. If there is any surplus between the budgeted and the actual expenditure, this is to be credited to the Lessee’s service charge account. If there is a shortfall, a further charge is payable.

17. The Lessor’s covenants are set out in Clause 5. The Lessor covenants to keep in good and substantial repair the main structure of the Building. The Lessor also covenants to insure the Building. By Clause 5(5)(c)(ii), the Lessor covenants to produce at the Lessee’s request a copy of the insurance policy and a confirmation of payment of the last premium.

**The Service Charges in Dispute**

18. Mr Hardman provided a schedule of the modest service charges which have been charged over the relevant period of six years:

	2016	2017	2018	2019	2020	2021	2022
<b>Repairs</b>	-	-	£468.32	-	£250.00	£202.00	£203.85
<b>Insurance</b>	157.13	161.99	200.85	372.54	376.91	398.52	410.47
<b>Total</b>	157.13	161.99	669.17	372.54	636.91	600.83	614.32

19. At the start of the hearing, the Tribunal took Ms Hulegaard through her amended Schedule (at p.136-150) to clarify the issues that the Tribunal was required to determine:

(i) 2015/6: The Service Charge certificate is at p.33. The applicant accepted that the insurance premium of £157.13 was reasonable. She accepted that the credit in respect of the of surplus of £32.18 had not been returned to her as it had been credited to her service charge account.

(ii) 2016/7: The Service Charge certificate is at p.43. The applicant accepted that the insurance premium of £161.99 was reasonable. She accepted that the credit in respect of the of surplus of £96.29 had not been returned to her as it had been credited to her service charge account.

(iii) 2017/8: The Service Charge certificate is at p.51. The applicant accepted that the insurance premium of £200.85 was reasonable. She disputed the sum of £468.32 which related to repairs. This related to repairs to the roof hatch.

(iv) 2018/9: The Service Charge certificate is at p.61. The applicant contends that the insurance premium of £372.54 is unreasonable. The premium was 85% higher than that charged in the previous year.

(v) 2019/20: The Service Charge certificate is at p.71. The applicant contends that the insurance premium of £376.91 is unreasonable. The applicant disputed the sum of £250 which related to “block repairs”. She contended that this did not relate to the Flat. The applicant accepted that the credit in respect of the of surplus of £11.12 had not been returned to her as it had been credited to her service charge account.

(vi) 2020/1: This is a demand for an interim service charge. The service charge accounts for the year are not yet available. The service charge demand is at p.81. It is accompanied by the requisite summary of rights and obligations. The applicant contends that the insurance premium of £398.52 is unreasonable. The figure of £202.31 for repairs is only an estimate. The applicant does not challenge this estimate.

(vii) 2021/2: This is a demand for an interim service charge. The service charge demand is at p.93. It is accompanied by the requisite summary of rights and obligations. The applicant contends that the insurance premium of £410.32 is unreasonable. The figure of £203.85 is only an estimate. The applicant does not challenge this estimate.

## **The Tribunal’s Determination**

### **Issue 1: Insurance**

20. Ms Hulegaard does not challenge the insurance premiums for 2016, 2017 and 2018 in the sums of £157.13; £161,99; and £200.85. She restricts her challenges for the years 2019, 2020, 2021 and 2022 in the sums of £372.54, £376.91; £398.52 and £410.47. her complaint is the increase of 85% which occurred between 2018 and 2019. The sums claimed for 2021 and 2022 are interim charges.
21. Ms Hulegaard complains that Tower Hamlets did not send her a certificate of insurance as required by the lease. Ocaso, the insurer, informed her that Tower Hamlets was not insuring her property. She is therefore seeking a refund of the premiums.
22. Tower Hamlets accept that Clause 5(5)(c)(ii) of the lease covenants imposes an obligation on the landlord to produce at the tenant’s request a copy of the insurance policy and a confirmation of payment of the last premium. The respondent denies that there has been any breach of this obligation. Ms Hulegaard has failed to identify any written request to which Tower Hamlets has failed to respond. The respondent state that they sent insurance details to the applicant after she acquired the leasehold interest in 2003 (see p.736).
23. In any event, even if there had been such a breach, it would not remove the obligation to pay a service charge in respect of the insurance.

24. Tower Hamlets arrange a block policy for all its leasehold properties in the borough which have been acquired under the Right to Buy legislation. The respondent has provided a copy of their current policy with Zurich Municipal at p.435-462. In 2018/9, Tower Hamlets insured 11,000 properties at a total cost of £3.356m (see p.297).
25. In March 2020 (at p.250), Tower Hamlets notified Ms Hulegaard of the formula for the insurance premiums for 2020/1. As a three bedroom property, her charge would be £398.23. The premiums ranged from £318.46 for a bedsit to £507.59 for an eight bedroom property. The letter stated that Tower Hamlets was entering the third year of a five year agreement with Zurich. The policy was renewed on the existing rates, but with an index linked increase of 3%.
26. Tower Hamlets have produced a certificate from Ocaso, confirming that the Flat was insured (p.503). For the past six years, the Flat has been insured with Zurich Municipal (see p.708).
27. In an email dated 2 October 2018 (at p.592) Aklak Shahid explained to Ms Hulegaard how the respondent had carried out a Section 20 Consultation in September 2007 and had decided to change to Zurich Municipal in the light of that procurement exercise. He attributed the increase between 2018 and 2019 to two factors:
  - (i) There had been a fixed premium (excluding insurance tax) for the previous three years;
  - (ii) A general increase in premiums due to the increasing number of claims, an increase in the value of those claims and the higher risks to the insurer following the Grenfell fire.
28. Ms Hulegaard has obtained a number of quotes which are at p.264-5. These range from £139.26 to £201.73. However, these seem to relate to the insurance of the whole building. From the details provided, it is impossible to discern the extent of the cover.
29. This is an expert tribunal. We are satisfied that Tower Hamlets has tested the market through an arm's length transaction. The premiums charged are not unreasonable. The respondent has provided limited evidence in respect of the insurance. This reflects the piecemeal manner in which this case has developed.
30. The Tribunal has been concerned by the large increase in insurance which occurred between 2018 and 2019, an 85% increase. We are satisfied that this partly reflects the impact of the Grenfell Tower fire tragedy on 14 June 2017. This has led to a significant increase in the premiums charged to social landlords, particularly for blocks with cladding.

31. The Tribunal has considered whether the allocation of the block premium according to bedroom size is reasonable. Is there a danger that some flats are subsidising others? For example, is it reasonable for the applicant to be required to pay a higher premium because of the increase in the cost of insuring blocks with cladding?
32. The issue for this Tribunal to determine is whether the insurance premiums which have been charged have been reasonable for this Flat. We are satisfied that they are. This three bedroom flat in a three storey Grade 2 Georgian terrace property is likely to be substantially more valuable than the average three bedroom flat in Tower Hamlets. The rebuilding costs, were it to be destroyed by fire, would likely to be much higher than the average flat. Further, there have been a number of insurance claims in respect of this property (see p.736). To conclude, the Tribunal is satisfied that the premiums are reasonable, albeit that there has been a significant increase between 2018 and 2019.

#### Issue 2: Roof Hatch Repairs (2018)

33. Ms Hulegaard challenges the charge of £468.32 which appears in the 2018 service charge account. This relates to repairs to the roof hatch. This represents two invoices of £250 and £218.32 (see p.548 and p.552).
34. There is a roof hatch from which access can be obtained onto the roof. There are photographs at p.555-6. It was on hinges and could be opened from inside the Flat. The hinges apparently corroded and the hatch was dislodged in a storm. On 25 January 2018, workmen attended but were unable to gain access to the roof through the hatch to carry out the necessary repair. On 29 January, workmen returned with a cherry picker. There is a picture of the cherry picker at p.556. The workman screwed down the hatch. It is no longer possible to obtain access from the Flat onto the roof through this hatch.
35. Ms Hulegaard complains about the cost of these works. Given the need for a cherry picker, the cost of the works is not unreasonable. However, the applicant has a more substantial complaint. She no longer has access to the roof. If this was merely a temporary repair, the cost would seem unduly high. When the cherry picker was on site, a full repair should have been carried out and the hinges should have been replaced. We agree. We are therefore satisfied that a proper repair was not executed and reduce the sum demanded by 50% to £234.16.
36. It seems that in July 2019, Ms Hulegaard complained that she could not obtain access through the hatch. Appointments were made which were cancelled by the applicant. This account was not accepted by Ms Hulegaard. However, no service charge has been demanded in respect of this and it is not necessary for the Tribunal to resolve the factual dispute.



37. It also seems that Ms Hulegaard complained that the workmen damaged a frame and a painting. The contractors subsequently paid her £110 to settle her claim (see p.659). However, this is not relevant to our determination.

### Issue 3: Block Repairs (2020)

38. Ms Hulegaard challenges the charge of £250 which appears in the 2020 service charge account. The Tribunal can deal with this briefly. The respondent conceded that this item should not have been charged to the applicant's service charge account. It rather relates to Arbour House (see p.616). This item is therefore disallowed.
39. Ms Hulegaard made a more general complaint about items relating to Flat 54 Arbour House have wrongly been charged to her service charge account. Her application form and Schedule include references to a £50 charge for a communal container and fuel charges. The applicant has adduced no evidence that any other items have been wrongly charged to her account.

### Other Issues

40. The Tribunal has addressed all the service charges which Ms Hulegaard has sought to challenge in her application. It is apparent that her main complaint is the failure of the respondent to keep her Flat in a proper state of repair. This is a matter for the County Court through an action for disrepair. Judge Donegan noted that in certain limited circumstances a tenant may be able to set-off a claim for breach of covenant against disputed service charges. However, a tribunal can only do so if the alleged breaches and any losses are clearly pleaded. That has not occurred in this case. The Tribunal notes that Tower Hamlets have spent little on this property over the past seven years. Had more been spent, the service charges would have been substantially higher.

### Application under s.20C and refund of fees

41. Mr Hardman indicated that that respondent does not intend to pass on any of the costs incurred with this application through the applicant's service charge account. It is therefore not necessary for the tribunal to consider any order under section 20C of the 1985 Act.
42. The applicant has not paid any tribunal fees. Therefore, no issue of any refund of fees arises.

**Judge Robert Latham**  
**5 November 2021**

## **Rights of appeal**

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

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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