



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

**Case reference** : **LON/00AG/LSC/2023/0087**

**Property** : **226 Finchley Road, NW3 6DH**

**Applicant** : **Freeholders of 226 Finchley Road Ltd**

**Representative** : **Charles Knapper of CWCS Solicitors**

**Respondents** : **1. Professor Kurinchi Gurusamy,  
2. Ms Suzanne Spencer,  
3. Ms Monir Alina & Mr Hassan Ali,  
4. Barclay Limited,  
5. Ms Maryia Berasneva**

**Representatives** : **The First, Second, Third, and Fifth  
Respondents in person.  
Mr Jonathan Silver on behalf of the  
Fourth Respondent.**

**Type of application** : **Reasonableness and payability of  
service charges under S27A of the  
Landlord and Tenant Act 1985**

**Tribunal Member** : **Judge Robert Latham**

**Venue** : **10 Alfred Place, London, WC1E 7LR**

**Date of Decision** : **22 August 2023**

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**DECISION**

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**The Decision**

(i) The Tribunal finds that the following interim service charges are reasonable and payable:

29.9.20-28.9.21: Schedule 1: £13,383; Schedule 2: £3,650;  
29.9.21-28.9.22: Schedule 1: £37,262; Schedule 2: £3,200;  
29.9.22-28.9.23: Schedule 1: £14,210; Schedule 2: £3,750.

(ii) The Applicant has yet to finalise the service charge accounts for these years and has agreed to use its best endeavours to provide these by 29 September 2023. When these accounts are available, it will be open to the Respondents to challenge any service charge item which they contend is not payable pursuant to the terms of their lease or is unreasonable.

(iii) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(iv) The tribunal determines that the Respondents shall pay the Applicant £100 (namely £20 per Respondent within 28 days in respect of the reimbursement of the tribunal fees paid by the Applicant).

### **The Application**

1. On 24 February 2023, the Applicant issued this application seeking a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are reasonable and payable.
2. 226 Finchley Road ("the Property") is a Victorian building which has been converted to create five flats:
  - a. Basement Flat: Professor Kurinchi Gurusamy ("the First Respondent");
  - b. Flat 1: Suzanne Spencer ("the Second Respondent");
  - c. Flat 2: Hassan Alinia & Monir Alinia ("the Third Respondent");
  - d. Flat 3: Barclays Limited ("the Fourth Respondent");
  - e. Flat 4: Maryia Berasneva ("the Fifth Respondent").
3. Under their leases, the "Maintenance Year" runs from 29 September to 28 September. The application relates to the interim service charges payable for the following years:
  - a. 29.9.20-28.9.21: Schedule 1: £13,383; Schedule 2: £3,650;
  - b. 29.9.21-28.9.22: Schedule 1: £37,262; Schedule 2: £3,200;
  - c. 29.9.22-28.9.23: Schedule 1: £14,210; Schedule 2: £3,750.

The Schedule 1 expenses are charged to the five flats, whilst the Schedule 2 costs are not charged to the basement flat. No final accounts have been prepared for these years.

4. There has been an unfortunate history relating to this Property:

- a. In November 2007, 226 Finchley Road RTM Limited was incorporated to acquire the statutory Right to Manage the property. Ms Spencer was the active director.
  - b. On 23 June 2017, the Applicant company was incorporated to acquire the freehold of the property. On 15 January 2019, the Applicant was registered as the freeholder of the property. All the lessees, except Barclays Limited, are shareholders. Professor Kurinchi Gurusamy has been the active director.
  - c. Pursuant to a Confidential Settlement Agreement, dated 24 December 2020, the lessees agreed that to transfer the management of the property from the RTM Company to the Applicant. It has been agreed that the Applicant took responsibility for the management of the property from 4 January 2021.
  - d. The RTM Company has not produced service charge accounts for the final years during which it was managing the property. It is essential that such accounts are prepared at the earliest opportunity so that any accrued uncommitted service charges can be repaid to the relevant lessee or they can be passed over to the Applicant.
5. On 15 June 2023, Judge Latham and Oliver Dowty MRICS approved a Consent Order (revised on 30 June) compromising a breach of covenant application (LON/00AG/LBC/2022/0083) brought by the Applicant against Ms Spencer. The Applicant withdrew its application and agreed to appoint Wayne and Silver to manage the property. It was agreed that none of the costs relating to the application should be relevant costs for the purposes of section 20C of the Landlord and Tenant Act 1985. An order was also made pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These orders only protect Ms Spencer.
  6. On 10 March 2023, a procedural judge issued Directions in respect of this current application:
    - a. On 7 April 2023, the Applicant emailed to the Respondents copies of the service charge budgets, together with all demands for payment and details of any payments made. The Applicant was unable to provide the service charge accounts for the years in question as these have not yet been prepared. On 14 April, the Applicant disclosed further documentation requested by Ms Spencer.
    - b. By 12 May 2023, any Respondent who opposed the application was required to email to the Applicant a Schedule specify the service charge items in dispute. On 23 May, the tribunal extended this deadline to 30 May 2023, to enable Ms Spencer to seek legal advice.
    - c. No Respondent has filed a schedule or supporting documents opposing the application.

- d. On 27 June 2023, the Applicant filed a witness statement from Professor Gurusamy in support of its application. This exhibits 476 pages of documents .
7. On 27 June 2023, the Tribunal set the matter down for a Case Management Hearing ("CMH"). All the Respondents were asked to specify whether they supported or opposed the application.
  8. The following attended the CMH: (i) Mr Charles Knapper, CWCS Solicitors, appeared for the Applicant and took his instructions from Professor Gurusamy; (ii) Professor Gurusamy (in his personal capacity as lessee of the Basement Flat); (iii) Ms Monir Ali; (iv) Mr Jonathan Silver LLB (on behalf of the Fourth Respondent); and (v) Ms Maryia Berasneva
  9. Ms Suzanne Spencer did not attend. On 11 July 2023, she notified the Tribunal that she did not intend to file a witness statement at this stage for three reasons: (i) her health is not good; (ii) she has family and Court commitments abroad later this year; and (iii) she does not wish to incur further legal costs which are already disproportionate to the amounts in issue. She stated that on 17 April 2023, she had made a payment of £11,400.82 and on 17 May 2023, she made a further payment of £1,796.00 towards her interim service charges. She had legal assistance in drafting this response. She stated that she was willing to pay the interim service charges on account, but she awaited the provision of the service charge accounts. She recognised that when these accounts are available, she will be entitled to challenge any service charge item which she contends is not payable pursuant to the terms of her lease or is unreasonable. She raised concerns about a number of legal costs charged to the service charge accounts. However, she overlooked the fact that no specific sums have been charged as no service charge accounts have been prepared. The following estimates were included: 2020/21: £500; 2021/22: £5,000; and 2022/23: £5,000. She did not admit that the service charges are payable. She did not consider that the costs of this application, apart from the hearing fee, have been reasonable incurred. She therefore seeks an order under section 20C of the 1985 Act.
  10. The other Respondents all accepted that the interim service charges which have been demanded were payable. Mr Silver questioned whether some of the budgeted items for legal costs should rather be a cost borne by the Applicant Company. However, he correctly accepted that the current application only relates to estimated service charges and that it will be a matter for the Applicant to account for such legal expenses when the accounts for the year are finalised. Ms Spencer may also be protected from paying some of the legal costs by reason of the Consent Order, dated 15 June 2023.
  11. At the CMH, the Tribunal was concerned that that no service charge accounts have been prepared either by the RTM Company or the Applicant for recent years. Mr Knapper suggested that the Applicant was unable to finalise the accounts for 2020/21, and 2021/22 because of the RTM Company has failed to prepare accounts for the years up to 3 January 2021

or to transfer any uncommitted service charges. The Tribunal did not accept this. The Applicant knows what sums it has expended on the provision of services since 4 January 2021 and can prepare accounts in respect of such expenditure. Mr Knapper agreed that the Applicant would use its best endeavours to provide the lessees with service charge accounts for 2020/21 and 2021/22 by 29 September 2023. The Tribunal also urged the RTM Company to prepare service charge accounts for the years up to 3 January 2021 by the same date.

12. The Tribunal made an order under rule 9(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 debaring the Second Respondent from defending the current claim. The Tribunal noted that it was making this order as the Second Respondent has failed to comply with the Directions made on 10 March, amended on 23 May 2023, requiring her to file her Schedule specifying any service charge items that she disputes by 12 May 2023 (extended on her application to 30 May 2023). These Directions had warned the Second Respondent of the potential consequences were she to fail to comply with the Directions.

13. The Tribunal made the following Directions:

(i) By 4 August, the Second Respondent was permitted to make written representations in respect of the debaring order.

(i) By 4 August 2023, the Applicant was permitted to email to the Tribunal and to the other parties any further representations in respect of (a) the payability of the interim service charges; (b) the refund of tribunal fees; and (c) whether any order should be made under section 20C of the 1985 Act.

(ii) By 4 August 2023, any Respondent was permitted to make written representations in respect of any application under section 20C of the 1985 Act and in respect of the Applicant's claim to be refunded the tribunal fees of £100 that it has paid.

14. The Tribunal notified the parties that it would determine the matter during the week commencing Monday, 14 August 2023 on the basis of the documents provided by the parties.

### **Events since 13 July 2023**

15. The Second Respondent is the only party who has made any further representations. On 27 July, she provided written representations and a Scott Schedule. In her written representations, she states:

“I am not disputing the service charges claimed for these years and only wish to rely upon the order made in LON/00AG/LBC/2022/0083 on 15th June 2023 under section 20C of the Landlord and Tenant Act 1985 in relation to legal or other costs of that application”.

16. She added:

“My letter of 11<sup>th</sup> July was intended to make it clear that although these interim service charges were admitted, that admission should not be taken as any concession for any further service charge years or for any charges when the final account for these service charges years been issued (sic).”

17. In her Scott Schedule, she raises five issues. Unsurprisingly, she is unable to quantify the sums challenged as the final accounts have not been prepared. It seems that she does not dispute the estimates included in the budgets. She rather wishes to revisit these issues when the service charge accounts are available. She pleads the following:

(i) Applicant’s Legal costs of LON/00AG/LBC/2022/0083: The Order of 15th June 2023 made under section 20C of the Landlord and Tenant Act 1985 prevents these being charged to the Second Respondent.

(ii) Applicant’s legal costs of County Court claim (H2QZ4W5D): Those costs which are in the bundle attached to Professor Gurusamy’s statement of 27 06 23 are payable as interim service charge in this claim.

(iii) Applicant’s legal costs relating to the freeholder’s application to apply for dispensation from consultation for qualifying works about service charges in LON/00AG/LDC/2021/0267: Those costs which are in the bundle attached to Professor Gurusamy’s statement of 27 06 23 are payable as interim service charge in this claim.

(iv) Applicant’s legal costs for the County Court injunction HO1CL577: Those costs which are in the bundle attached to Professor Gurusamy’s statement of 27 06 23 are payable as interim service charge in this claim

(v) Director’s insurance: Those costs which are in the bundle attached to Professor Gurusamy’s statement of 27 06 23 are payable as interim service charge in this claim.

### **The Tribunal’s Determination**

18. The First, Third, Fourth and Fifth Respondents all admit that the interim service charges are payable. Ms Spencer seems to adopt a similar position, but does not expressly state this. Her position seems to be: “I accept that the interim service charges are payable, but I reserve my position to challenge certain service charge item when the final accounts are available”. This could have been stated in one sentence. However, she has not done this. Her substantive case seems to be that an order should be made pursuant to section 20C of the 1985 Act in respect of the costs of this application.

19. Turning to Ms Spencer’s Scott Schedule, she expressly admits that items (ii), (iii), (iv) and (v) are payable as interim service charges. The Applicant has agreed to provide final accounts by 29 September 2023. These accounts will need to specify what costs, if any, are claimed in respect the Applicant’s Legal costs of LON/00AG/LBC/2022/0083. Whilst these will be payable by four of the lessees, they will not be payable by Ms Spencer.

The section 20C order made on 15 June 2023 was made after the budget was prepared and the interim service charge was demanded. It cannot affect the payability of the interim demand.

20. In these circumstances, the Tribunal is satisfied that the interim service charges are payable by all the Respondents. The Tribunal is also satisfied that the Applicant is entitled to recover the modest tribunal fee of £100 which it has paid from the five respondents.
21. Ms Spencer argues that this application has been unnecessary and that a further order should be made pursuant to section 20C of the 1985 Act so none of the costs of this application can be passed on through the service charge against her. The Tribunal disagrees. Ms Spencer has only admitted the payability of these charges at a late stage. The Tribunal is satisfied that the Applicant was entitled to issue this application to seek a determination that these charges are payable. It would not be just and equitable to make such an order. However, it is still open to any lessee to challenge any sum charged to the service charge account in respect of such costs if they consider that the sums demanded are not reasonable or are not payable pursuant to the terms of the lease.
22. There has been an unfortunate history to the management of this Property. Many of the problems would have been avoided had Professor Gurusamy and Mrs Spencer been able to communicate more effectively with each other. Mrs Spencer can be criticised for the manner in which she managed the RTM Company; Professor Gurusamy for the manner in which he has managed the Applicant Company. Both are at fault.
23. The parties have now appointed Wayne and Silver to manage the Property. It is hoped that they will be in a position to prepare the service charge accounts for the years in dispute. They will need to satisfy themselves that the sums included in the accounts are properly payable pursuant to the terms of the lease. Any final demand issued to Ms Spencer must reflect the section 20C order made by this tribunal in LON/00AG/LBC/2022/0083.

**Judge Robert Latham**  
**22 August 2023**

### **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).