



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

Case reference : **LON/00BK/LSC/2024/0253**

Property : **46 Henry Wise House, Vauxhall Bridge Road, London SW1V 2SU**

Applicant : **Sami Amri**

Representative : **In person**

Respondent : **The City of Westminster**

Representative : **Andrew Pye, Leasehold Litigation Team Manager**

Type of application : **Determination of the liability to pay and the reasonableness of service charges, s.27A Landlord and Tenant Act 1985**

Tribunal : **Judge Mark Jones**

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

Date of hearing : **10 January 2025**

Date of decision : **10 January 2025**

DECISION

Decisions of the tribunal

- (1) In respect of the service charge year 2024 to 2025, the Tribunal is satisfied that the determination made by the Respondent landlord as to the apportionment of Pimlico District Heating Undertaking (“**PDHU**”) charges for the provision of heating and hot water is reasonable, and finds that the sums of £13.25 per week which have been demanded by the Respondent from the Applicant in respect of heating and hot water costs associated with his tenancy at 46 Henry Wise House, Vauxhall Bridge Road, London SW1V 2SU are payable.

The Tribunal’s Reasons

The application

1. By application notice in form *Leasehold 3* dated 13 June 2024 the Applicant tenant 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 him in respect of the provision by the Respondent landlord of heating and hot water for the service charge year 2024 to 2025.
2. Directions were given on 30 July 2024 and amended on 3 December 2024, each of which included provision for the application to be determined on the papers, unless an oral hearing was requested by 10 December 2024. No party requested an oral hearing, and the Tribunal is satisfied that this application is suitable for a paper determination.
3. The Respondent filed its statement of case dated 5 September 2024 and the Applicant, after some delay, filed his own statement of case on 18 November 2024. The Respondent filed a statement of response, with the permission of the Tribunal, on 10 December 2024.
4. The documents referred to are contained in a statement of case of some 17 pages from the Respondent, augmented by a bundle of 188 pages, and in a statement of case of 11 pages, accompanied by a bundle of documents comprising some 40 pages from the Applicant. The Respondent’s response to the Applicant’s statement of case, with additional documents, runs to a further 121 pages.
5. Whilst the Tribunal makes it clear that it has read the parties’ statements of case and supporting evidence, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

6. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the parties presented in their statements of case.

Background

7. The Property is a one-bedroom flat, with one reception room, situated on the 5th floor of a purpose-built block of some 96 flats. The Applicant tenant, Mr Amri, is a secure tenant of the Property, by virtue of a written tenancy agreement dated 23 December 2009, and commencing on 4 January 2010. This requires him, among other things, to pay a service charge in respect of heating and hot water provided by the Respondent landlord, the City of Westminster.
8. The evidence discloses that the sums claimed are assessed against the costs incurred by the Respondent during the previous year. The Tribunal is satisfied that this is a variable service charge as defined by section 18 of the 1985 Act, bringing consideration of the reasonableness of such charge within the Tribunal's jurisdiction.
9. The Applicant's complaint, in summary, that as at 1 April 2024, for the service charge year 2024-2025 his service charge for '*PDHU Heating and Hot Water*' was increased by the Respondent from £5.82 per week, to £16.52 per week, an increase of 184%.
10. Having reviewed its charges following complaints by the Applicant on 9 and 17 April 2024, and indeed from other residents, the Respondent concedes that due to what it attributes to "*human error*" this weekly charge of £16.52 was excessive, and has both reduced its demands for payment to £13.25 per week, and reimbursed the Applicant's account with the sums it agrees were over-charged, in the total sum of £24.03, credited to his account on 27 May 2024.
11. The increase from £5.82 to £13.25 per week is still an increase of 128%. The Applicant disputes the Respondent's justification for the increase, based (in summary) upon asserted substantial inflation in the costs of obtaining its energy supplies, and complains that he is charged more than his neighbours who reside in similar sized accommodation.

The Respondent's Case

12. The Respondent was directed by the Tribunal to provide its evidence first. Such evidence, contained in the Respondent's statement of case of

5/9/24 signed by Ms Beverley Frimpomaah, Leasehold Litigation Officer, is that the PDHU is a communal hot water and heating system, serving a large number of over 3,000 households, commercial units and 3 schools across a variety of properties, including Henry Wise House, which itself forms part of the Lillington Gardens Estate. It is this system, based upon generation of heat and hot water from a facility known as the Gas Pump House that provides heating and hot water to the Property.

13. The PDHU plant room is supplied with gas from Total Energies Gas & Power Ltd., procured by the Respondent through the Crown Commercial Service, to seek to secure preferential tariff rates with the economies of bulk purchasing.
14. There are 13 blocks on the Lillington Gardens Estate that are each connected to the PDHU system, 12 of which have an independent block meter, while Henry Wise House does not, instead sharing a meter with the far smaller, nearby block named Fairchild House. This meter is known as *Meter L16*, and it specifically captures the total heating and hot water consumption, measured in kilowatt hours (“*KWh*”) used by both buildings.
15. The Respondent charges its tenants 2 distinct types of PDHU heating and hot water charges. The first is described as “*Heating and hot water charge (non-fuel)*”, which relates to repairs and maintenance of the PDHU plant, and related delivery systems. This is said to be a block charge, divided between all estate residents, and does not form part of the Applicant’s complaint.
16. The second element of PDHU charges, which forms the substance of this application, is identified as “*Heating and Hot Water Charge (fuel)*”.
17. The Respondent’s evidence is that it employs 2 alternative methods to calculate such fuel charges. The first, for a small minority of residents who have individual meters connected to their properties, is based upon calculating charges based upon their individual metered consumption.
18. The other method, which is applied in the Applicant’s case (where the Property does not contain an individual meter), is based on an apportionment method, attributable to the number of habitable rooms within the individual flat, defined in turn as a living room or a bedroom. As a 1 bed flat with a living room, the Applicant’s flat has accordingly been subject to apportionment based upon containing 2 habitable rooms.
19. Where Henry Wise House and Fairchild House share a meter, the Respondent considers them together when calculating apportionment of heating and hot water (fuel) charges. Upon receipt of the annual invoice from Total Energies Gas & Power Ltd., the Respondent’s engineers

obtain the meter readings from Meter L16, and the Respondent then applies a formula based upon multiplying the KWh consumption recorded by the meter by the tariff rate provided by its gas supplier, to obtain the total cost of heating and hot water (fuel) for the 2 blocks.

20. This total cost is then apportioned between individual dwellings based upon the number of habitable rooms each contains, where Henry Wise House is said to contain 192 habitable rooms, and Fairchild House 34, a total of 226 habitable rooms. Essentially, the annual total cost is divided by the total number of habitable rooms, to obtain a price per such room, and then multiplied by the number of habitable rooms in a particular flat to obtain the specific charge attributable to that flat.
21. The *human error* that led to the admitted period of overcharging in April and May 2024 is said to have been based upon an error in calculation of the correct number of habitable rooms in the Property, and in neighbouring flats.
22. The Respondent admits that its charges for fuel have increased markedly. This is said to be attributable to substantial increases in the costs it incurs in purchasing energy, specifically gas, in part attributable to the ongoing energy crisis and to the Russian invasion of Ukraine. It is also said to be attributable to erroneous undercharging of residents for fuel in previous years, based upon administrative errors on the part of the Respondent's staff.
23. These factors, the Respondent asserts, have led to systematic increases in the cost to it of obtaining gas, from between 1 penny and 1.5 pence per KWh, rising to 5.6 p/KWh in 2022-3, and rising again to 7.8645 p/KWh in 2023-4. While these are substantial increases, it is said they compare favourably with the open market, where the average price for the 2023-4 financial year was 10.3 p/KWh. These notable savings have been possible due to the Respondent being able to purchase gas in substantial bulk through the Crown Commercial Service.
24. The Respondent makes the point that all residents, including the Applicant, are billed for fuel in arrears, so that the fuel charges levied in 2024-2025 are a reflection of the true costs of consumption incurred in the financial year 2023-4. They are not, as might otherwise be the case, based upon anticipated projected costs.
25. The Respondent has provided a detailed breakdown of the basis for the charges levied for the 2024-5 year, based upon consumption of 428,090 KWh in the previous year, at a supply cost of £7.8645 per KWh. The total cost of gas consumption for the estate was £658,979.07, to which was applied a deduction of £48,790.28 in respect of the commercial properties on the estate, to ensure that residents were not unfairly billed for use of heating by commercial premises, giving a total costs of fuel for the estate of £610,188.79. A series of detailed meter readings have been

disclosed to support such calculations, accompanied by a substantial series of the invoices delivered to the Respondent by its supplier.

26. This was then divided by 1738, the total number of habitable rooms in the estate, to obtain an annual rate of £351.08676 per habitable room. In the Applicant's case, this was then multiplied by his 2 habitable rooms to provide an annual fuel cost for the Property of £702.17352. The Tribunal notes that this method, of division across the entire estate, differs from that said to have been employed in previous years, based upon the readings from Meter L16 alone.
27. The total of £702.17352 was then divided by the 53 weeks said to fall within the financial year 2024/5 to provide a weekly figure of £13.248, which is the weekly sum charged to the Applicant by the Respondent.
28. Rounded to £13.25, the Respondent contends that the methodology and calculations used to calculate the charges levied for heating and hot water are fair and reasonable, and that the charge itself is reasonable for the size of the Property.
29. As to the Applicant's claim that he is billed more for fuel than his neighbours who live in comparable accommodation, this is simply denied. The issue was checked by Mr Paul Halpin, the Respondent's head of Leasehold, Income and Engagement, who wrote to the Applicant by email on 22 May 2024 confirming (amongst a variety of other matters) that all flats of the same size as the Property were billed the same sums as the Applicant.

The Applicant's Case

30. The Applicant responded to the Respondent's statement of case by his own, dated 18 November 2024. This, firstly, contains an allegation that following a mediation that took place on 14 October 2024, the Respondent had taken to switching off the hot water supply to the Property at night, in breach of its obligations. He speculates that the Respondent might also take to switching off the heating at night, as its former management company, Citywest Homes, was apparently accustomed to doing.
31. The Applicant then asserts that the Respondent's case is that, prior to the 2024/5 service charge year, the Respondent calculated heating and water charges based on actual meter readings, but (he alleges) now states that heating and hot water are supplied directly from the plant room at Churchill Gardens. He challenges this, asserting that boilers at Henry Wise House remain operational. He opines, in §13 of his statement, that Henry Wise House has never been connected to a wider heating system, and relies on its own boilers and a meter provided by Total Energies Gas & Power Ltd.

32. The Applicant then provides his own calculations based upon a series of postulated figures to assert that he should be charged no more than £7.50 per week for heating and hot water. More widely, he challenges the methodology employed by the Respondent.
33. In his supporting documents, the Applicant produces no evidence of the asserted functioning boilers within Henry Wise House, and nothing to demonstrate that the Respondent's assertion that the Property has been served by the PDHU system for decades. He adduces no evidence in support of his claim that other residents of flats of a comparable size to the Property have been charged less than him for heating and hot water. His evidence includes a variety of medical letters and supporting documents, demonstrating the Respondent's most regrettable health difficulties, and evidence to establish that other residents on his estate are unhappy with the escalation of service charges.

The Respondent's Response

34. By its response, signed by Ms Frimpomaah on 10 December 2024, the Respondent denies the allegation that it has in some way responsively commenced turning off the hot water supply at night, asserting that hot water has always been supplied between the hours of 4.30 am and 23.00, and that heating is usually switched off between the late May bank holiday and switched back on again on 1 October each year.
35. The Respondent states that the Applicant's characterisation of the alteration in its method of heating supply, summarised at §31 of this decision, is incorrect, and that heating and hot water have been provided by the PDHU system for something in the region of 70 years. It denies the assertion that Henry Wise House relies upon its own boilers and gas meters, and invites the Applicant to produce evidence in support of this claim. He has produced none.
36. The remainder of the Respondent's response essentially joins issue with the Applicant's case, while introducing a series of further documents requested by him, notably in relation to historical meter readings and calculations of hot water and heating charges.

Determination

37. The Tribunal notes, first, that the disputed charges are based upon an apportionment of sums that have already been paid by the Respondent to its supplier. These are sums of money that have, demonstrably, been expended in obtaining a supply of gas to permit the onward supply of heating and hot water to Henry Wise House, amongst other blocks, and to the Property.

38. The Tribunal rejects the assertion that Henry Wise House is served with its own boilers for the provision of heating and hot water. There is no evidence of the existence or functionality of any such boilers, as against the cogent evidence produced by the Respondent of the existence and use of the PDHU system.
39. Insofar as it may potentially impact upon the reasonableness of the Respondent's conduct, the Tribunal also rejects the assertion that the Respondent has in some reactive fashion decided to cut off the hot water supply to the Property at night, finding that the cessation of hot water supply between 11 pm and 4.30 am has been a regular feature of the supply at Henry Wise House for a considerable period.
40. There is no evidence that the Respondent makes any profit from such supply, the costs passed on to tenants being directly referable to the charges for gas supply invoiced to the Respondent, at rates substantially lower than what the open market might command.
41. Ultimately, the increase in costs and thus in the service charges billed to the Applicant, are but one reflection of the inflationary pressures across the energy sector, and more generally in what is widely reported as the *cost-of-living crisis*.
42. Having incurred the costs of providing the PDHU hot water and heating, it is incumbent on the Respondent to apportion the same between the tenants and long leaseholders benefitting from such supply. The Tribunal finds that the methodology employed as explained in the statement of case for the Respondent is entirely fair and reasonable, based upon a transparent application of a formula contingent upon the respective sizes of flats within the estate, so that larger flats containing a greater number of habitable rooms will be billed more than smaller flats, against the overwhelming likelihood that larger premises will use more heating and hot water than smaller flats.
43. It follows that the Tribunal finds that the determination made by the Respondent as to the apportionment of the PDHU heating and hot water costs is reasonable, and that the sums demanded by the Respondent in respect of the costs associated with such supply at Henry Wise House, and to the Property in particular, are therefore payable.

Name: Judge M Jones

Date: 10 January 2025

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).