



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

**Case reference** : **LON/00AG/LSC/2024/0254**

**Property** : **Carlow House, Carlow Street, London  
NW1 7BS**

**Applicant** : **Stephen Francis Colchester & Vivienne  
Ann Colchester (Flat 407)  
David Walker & Beatriz Lemos (408)  
Zhi Bing Mao (323)  
Antonio Preguieiro & Ramzi Nasir (320)**

**Representative** : **Stephen Colchester**

**Respondent** : **Carlow House RTM Co Ltd**

**Representative** : **Dr Graham Bloor, Director**

**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 H Carr  
Ms F. Macleod**

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

**Date of decision** : **7th February 2025**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £29,872.36 is payable by the lessees in respect of the electricity charges for the service charge year 2022. This means that electricity charges should be refunded to the Applicants as follows:
  - a. Stephen Francis Colchester & Vivienne Ann Colchester (Flat 407) - £319.12
  - b. David Walker & Beatriz Lemos (406) - £360.08
  - c. Zhi Bing Mao (323) - £123.94
  - d. Antonio Pregarieiro & Ramzi Nasir (320) - £220.82
  
- (2) The tribunal determines that no service charges are payable in respect of the repair of the atrium roof prior to the completion statement. This means that monies should be refunded to the Applicants as follows:
  - a. Stephen Francis Colchester & Vivienne Ann Colchester (Flat 407) - £220.14
  - b. David Walker & Beatriz Lemos (406) - £248.39
  - c. Zhi Bing Mao (323) - £694.26
  - d. Antonio Pregarieiro & Ramzi Nasir (320) - £1,236.89
  
- (3) The tribunal makes the determinations as set out under the various headings in this Decision
  
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
  
- (5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

## **The application**

1. The Applicants, lessees of four flats in the block, seek 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 the Applicant in respect of the service charge year 2022.

### **The hearing**

2. Mr Walker and Mr Colchester appeared for the Applicants and Mr Colchester represented them. The Respondent was represented by Dr Graham Bloor.

### **The background**

3. The property which is the subject of this application is a block comprising 102 flats, 99 of which were converted from offices in 2015. The conversion was completed in 2017.
4. At the time of the conversion the 13 preexisting top floor flats were granted new long leases (Lease A) and the newly converted flats had similar but slightly different long leases (Lease B).
1. Of the Applicants, Stephen Colchester and Vivienne Colchester of flat 407 and Beatriz Lemoz and David Walker of flat 406 have leases in the form of Lease A. The other two Applicants, Zhi Bing Mao of flat 323 and Antonio Pregueiro and Ramzi Nasir of flat 320 have leases in the form of Lease B.
5. Both Lease A and Lease B require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent is the RTM which took over the management of Carlow House in March 2022 from the freeholder.

### Relevant provisions of the Leases

8. Lease A provides at Schedule Six, paragraph 3 the following

To initially provide and thereafter to keep in good repair and decorative condition and where necessary renewing and or replacing:

- (a) The roof (which without limitation shall include the Atrium and individual roof light pyramids forming part of the flats on the

fourth floor of the building) foundations main wall and other structural parts of the Building.

### **The issues**

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for service charge year ending 28<sup>th</sup> September 2022 relating to
    - a. Electricity costs which the Applicants say have been double charged
    - b. Electricity charges which the Applicants say are out of time
    - c. Roof repair costs which the Applicants say should have been borne by the landlord
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Electricity invoices double charged leading to a service charge total of £49,737.**

11. Following the Applicants inspecting the accounts and associated invoices the Applicants believe that some electricity costs have been allocated twice to the service charge expenditure and as a result the Applicants have been double charged electricity costs in 2022. The Applicants were alerted to the potential double counting because the charges were double the previous year's costs of £24k.
12. The Applicants were particularly concerned that the additional charges had been paid either to the supplier to a third party.
13. The Applicants provided a table showing all the invoices that related to the total electricity charge of £49,737. The Tribunal worked through the table which showed that 8 invoices had been duplicated to a total of £19,864.64.
14. The Respondent agreed that there was double counting of the electricity charges to the sum of £19,864.64. He said that there had not been payments to a third party, but that the money was sitting in the service charge account.

### **The tribunal's decision**

15. The tribunal determines that the amount payable in respect of electricity charges for 2022 for the property is £29,872.36.
16. The Applicants have been overcharged as follows:
  - a. Stephen Francis Colchester & Vivienne Ann Colchester (Flat 407) - £319.12
  - b. David Walker & Beatriz Lemos (406) - £360.08
  - c. Zhi Bing Mao (323) - £123.94

Antonio Preguieiro & Ramzi Nasir (320) - £220.82 .

### **Reasons for the tribunal's decision**

17. The invoices provided demonstrated that the electricity costs had been double charged on several occasions.
18. The Respondent agreed at the hearing that this was the case. He also agreed that the RTM would refund the Applicants their overpayment.
19. The Applicants had calculated the overpayments and provided copies of their calculations to the Respondent. There was no challenge to those calculations.

### **Electricity charges are timebarred by s.20B of the LTA 1985**

20. In their application the Applicants argued that some of the electricity charges are time barred because the costs were incurred more than 18 months prior to the demand.
21. At the hearing the Applicants decided not to pursue this part of the application.
22. Therefore the tribunal makes no determination on this claim.

### **Recovery of atrium roof restoration costs that the landlord should have paid for**

23. The Applicants say that the atrium roof was not provided to the lessees in good repair or decorative order and therefore service charges demanded in 2022 relating to its disrepair are not payable.

24. They explained that in the middle of the building there is an atrium which is covered by a roof made of steel and glass. Prior to the restoration which occurred during the conversion of the offices into flats, it had last been repaired in 2003.

25. They provided a chronology of the works as follows:

- 2003 Major repairs to the Roof
- Sept 2015 Construction work commences to convert the office block and integrate top floor flats.
- 15 Apr 2016 Lease A granted to original leaseholders of block including flats 406 and 407.
- November 2016 Lease B granted to Flat 320 applicant with NHBC guarantee. This flat was viewed before exchange of contracts and completion, during ongoing construction.
- 19 Jan 2017 Lease B granted to Flat 323 applicant (page 548) with NHBC guarantee. This flat was bought “off plan”.
- Apr 2017 Construction work on the building ceases. The Roof is left in a state of disrepair.
- 30 Aug 2017 A Settlement Consent Order between the landlord and Lease A leaseholders was signed. It requires at para 4 that the Roof be restored, in accordance with Lease A terms, by September 2018
- 30 Sept 2018 Deadline for completion of the Roof as per Settlement Consent Order not met
- 7 Aug 2019 Section 20 notice for the Roof Case Number: LON/00AG/LSC/2024/0254 Property: Carlow House, Carlow Street, London NW1 7BS Page 7 of 11
- 17 Aug 2020 Section 20 notice for the Roof
- 16 Oct 2020 Section 20 notice for the Roof
- 28 May 2021 Section 20 notice for the Roof page ??
- 11 July 2022 Practical completion certificate issued for the Roof restoration(nearly four years after the deadline in Settlement Consent Order).

26. The Applicants explain that means of payment for the Roof restoration came to light following the publication of the Accounts, an inspection of costs charged to leaseholders and recent information supplied by the Respondent. The following is a summary

Landlord contribution to the Roof	18,470.84
Carlow House Roof Works contribution	5,005.92
Total “landlord” contribution	<b>23,476.76</b>
Lease B contribution	<b>81,017.05</b>

Total paid into sinking fund for roof works **£104,493.81**

Shortfall of total cost of roof works paid out of sinking fund (belonging to both Lease A and Lease B leaseholders) £13,973.27

Total paid out of sinking fund for the Roof **£118,467.08**

27. The Applicants argue that the Applicants with Lease A should not be charged for the roof restoration. They rely on paragraph 3 of the Sixth Schedule to their leases and on the settlement consent order dated 30<sup>th</sup> August 2017 and attached at Appendix 1.
28. The Applicants say that the settlement consent order provided that the landlord would comply with the requirements in the lease to repair and redecorate the roof and that this was to be undertaken within the period 28<sup>th</sup> September 2017 and 2018. It also provided that the fourth floor leaseholders would pay their service charges when this (and other Items) had been certified as completed. The Applicants note that practical completion was not until 8<sup>th</sup> July 2022.
29. They argue that the roof was patently defective prior to the works. They accept that the landlord's contribution fulfilled the settlement order but argue that they should not have to pay their share of the £13,973,27 that was taken from the sinking fund to complete the works. The effect of the settlement order they say is that they do not have to pay for those works.
30. The Applicants argue that the lessees with Lease B brought newly built flats which should have no patent defects and they were given NHBC guarantees which included the Roof. Therefore, despite the fact that there is no phrase saying 'initially provide', those leaseholders should still not have to pay.
31. The Applicants point out that the Lease B leases were granted before the completion of the development in April 2017 so that no survey prior to purchase could have identified a patent defect. Nor did the landlord inform them that they would have to pay for the roof restoration at the time of purchase.
32. They argue that as the condition of the roof was a patent defect, the lessees with Lease B should not have been charged for the restoration of the roof.
33. They further submit that the cost of rectifying a patent defect relating to the contract of purchase should not be charged as a service charge item, but the section 20 notices and the demands for payment demonstrate that it was so charged.

34. The Applicants accept that the Roof requires maintenance that should be paid for, but repairing a patent defect at the start cannot be the subject of service charge demands.
35. Dr Bloor for the Respondent explained the extent of the difficulties faced by the Respondent which took over the management of the building. The finances were in a mess because the previous agent employed by the developer did not provide the RTM with proper paper work. The Respondent was faced with serious fire safety and other requirements for urgent works. The RTM has spent three years mitigating fire safety and have finally been reimbursed by the developer.
36. The Respondent says that the accounts were a mess, and that it still does not have all the documents from the managing agent that have been requested. Dr Bloor says that the previous agent sent £52k to the freeholder, ostensibly in repayment of a loan less their share for the costs for roof works, despite the RTM instructing them not to do so.
37. The Respondent argues that there is no case to answer with regard to the roof. It says that the works carried out in early 2022 were not putting right a patent defect nor restoration. The Respondent says the works were works of maintenance.
38. The Respondent also asks why the Applicants did not pursue the developer holding it to account for the agreement made at the FTT.
39. Dr Bloor says that the RTM is not responsible for previous failures and it would be irresponsible of it to invest time, effort and service charge funds on pursuing the developer.

### **The decision of the tribunal**

40. The tribunal determines that no service charges are payable for the roof works demanded in 2022.
41. This means that the Applicants are to be reimbursed as follows:

Stephen Francis Colchester & Vivienne Ann Colchester (Flat 407) - £220.14

David Walker & Beatriz Lemos (406) - £248.39

Zhi Bing Mao (323) - £694.26

Antonio Pregueiro & Ramzi Nasir (320) - £1,236.89



## **The reasons for the decision of the tribunal**

42. The tribunal recognises that the RTM has had a very difficult time resolving the difficulties that the developer and its managing agent left unresolved.
43. However it considers that the settlement consent order was designed to ensure that the Applicants with Lease A were not required to contribute to the roof works and therefore no service charge monies should have been demanded in connection with these. Whilst no fresh demands were issued, the contribution from the sinking fund to the costs of the work represents a contribution from them and should be refunded.
44. With regards to the Applicants with Lease B, the tribunal notes that there is no evidence before it that the defect was a patent defect. However it determines that no service charges can be demanded for works which were required before the practical completion certificate. This completion certificate was not provided until July 2022. Therefore the demands for works previous to that date are not payable.
45. It is not sufficient for the Respondent to assert that these are maintenance works. It has provided no evidence and in the absence of any evidence, the tribunal considers that all of the works, or at least the overwhelming majority of the works must have been done in order to enable the provision of the practical completion certificate. .
46. This decision is not a determination about who is responsible for the costs of works to the roof prior to the completion certificate but it seems to the tribunal that the developer is most likely to be responsible for the costs of those works.

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

47. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing<sup>1</sup>. Having heard the submissions from the parties and considering the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants.
48. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge H Carr

**Date:** 7th February 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).