



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

Tribunal Case reference	:	LON/00AM/LSC/2024/0233
Property	:	Flats 1 & 5, Alcock House, Queens Drive N4 2TB
Applicant	:	Alcock House RTM Company Limited who appeared by Hugh Rowan of counsel
Respondent	:	Roger Ashton, who appeared by Kevin Brown of counsel
Type of application	:	Transfer from County Court: service charges
Tribunal	:	Judge Adrian Jack, Tribunal Member Appollo Fonka FCIEH
Date of decision	:	25th February 2025

DECISION

Procedural

1. The respondent tenant holds long leases of two flats in the block, Flats 1 and 5, Alcock House. He had been a director of the applicant (“the RTM Company”), but there had been some falling out between him and the other shareholders (the rights and wrongs of which we are not asked to determine). On his case, his directorship terminated on 8th February 2022. Since 2022 the respondent has paid no service charges.
2. This matter was commenced by the claimant/applicant RTM Company on 26th August 2022 in the County Court by two separate actions. One action, with action number JOAY8A6M, claimed service charges and an administration charge of £3,263.40 in respect of Flat 1. The other, with action number JOAY8A5M, claimed service charges and an administration charge of £2,310.07 in respect of Flat 5. The prayers to both sets of particulars of claim in addition to the sums said already to be due made reference to a claim for “[a]rrears... continuing to accrue if

another Service Charge/Ground Rent period passes.” The service charges already accrued were said to be due as at 3rd March 2022.

3. Defences were filed in identical forms, denying that the particulars of claim disclosed a cause of action, putting the RTM Company to proof of the debt and claiming a set-off in respect of monies which the defendant was owed from his time as a director of the RTM Company. The two actions were consolidated by order of 30th December 2022.
4. By order sealed on 15th May 2024, but apparently made on 30th January 2024, District Judge Beecham ordered that the consolidated case be sent to this Tribunal “for consideration of the reasonableness of the service charges.” The County Court had made no other substantive orders. In particular, the issue was never determined of the adequacy of the particulars of claim and whether it disclosed a cause of action. Further, no details of any service charges accrued after 3rd March 2022 were ever given whilst the cases were still in the County Court, nor was any amendment made to either claim form.
5. Once the cases were transferred to this Tribunal, case management orders were made with the involvement of two Tribunal Judges and two legal officers. Unfortunately, the limitations on the extent of the transfers from the County Court were overlooked. Thus the parties came prepared to argue all matters regarding the service charges due up to the end of 2024 and also some pre-dating 2019. Issues included both reasonability and payability. An electronic bundle of some 1721 pages was prepared covering all years. Counsel were instructed on both sides, which is unlikely to have been the case if the only sums before the Tribunal were the £3,263.40 and £2,310.07 claimed in the two County Court claims.
6. Issues as to payability included the tenant’s liability to the RTM Company in respect of common parts. Alcock House is one of three blocks on the estate, the other two being Richard Fox and Barcham. The freeholder, against which the right-to-manage was exercised, was Rovergrange Ltd. The grounds of the estate were common parts of all three blocks. Pursuant to the Court of Appeal’s decision in *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372, [2013] 1 WLR 988, the RTM Company here, when it took over management of Alcock House, assumed various duties in respect the common parts. That has proved a mistake, because the Supreme Court in *FirstPort Property Services Ltd v Settlers Court RTM Co Ltd* [2022] UKSC 1, [2022] 1 WLR 519 held that an RTM company was limited solely to management of the building in respect of which the right-to-manage was given. How service charges claimed for expenditure made by an RTM company in respect of common parts under *Gala Unity* should be dealt with post-*FirstPort* is a difficult question. (In particular questions of unjust enrichment are normally for the County Court, not the Tribunal.)
7. We investigated whether it might be possible for us to sit as a “double-hatted” tribunal, with Judge Jack sitting as recorder in the County Court

as well as as a Tribunal Judge, so that the relevant amendments could be made to the two particulars of claim so as to cover all years in dispute and so as to expand the reference to the Tribunal to include the issues of payability. Unfortunately, the “double-hatting” pilot had ended, so this solution was not available.

8. We also discussed with counsel the possibility of a service charge application being made to this Tribunal to cover reasonableness and payability of all the service charge years, which we could then hear with the County Court transfer. This would, however, have entailed the Tribunal reconvening at some later date. No date could be found within a reasonable time.
9. In the circumstances, both counsel agreed that we should determine the issue of reasonableness of the £3,263.40 and £2,310.07 service charges. No other matters were before us.

The sums in dispute

10. The sums claimed in the County Court proceedings in respect of Flat 1 totalling £3,263.40 are these:

25.12.20	Interim service charge 25.12.20-24.3.21	495.88
25.3.21	Interim service charge 25.3.21-23.6.21	495.88
24..6.21	Interim service charge 24.6.21-28.9.21	495.88
29.9.21	Interim service charge 29.9.21-24.12.21	495.88
25.12.21	Interim service charge 25.12.21-24.3.22	1,159.88
1.3.22	Tenant liability R&P fee arrears chasing	120.00
11. The sums claimed in respect of Flat 5 are the same, but pro-rata'd down to reflect the smaller size of that flat. (No issue arises on the proportion due to be charged to Flat 5.)
12. The £120 fee for chasing arrears is not a service charge and is not before us.
13. Since the sums in dispute are all estimated interim service charge demands, our powers are limited to determining whether the amounts as estimated were reasonable. Nonetheless, the parties called evidence about various elements which comprised the interim demands.
14. For the RTM Company, we heard from Mr Rennie of the managing agents. He was a patently honest witness doing his best to assist the Tribunal. Most of the contracts in respect of which interim service charges were demanded were extensions of contracts which Rovergrange Ltd had taken out prior to the exercise of the right-to-manage in 2019.
15. This in our judgment was in principle a reasonable approach to take. Indeed the tenant failed to plead in the Scott Schedule, still less establish, any case that the amounts agreed for the various services were unreasonable.

16. Mr Brown's submission was that when considering reasonableness it was right to consider what expenditure was properly due under the lease and the RTM scheme. Thus, the insurance obtained, he submitted, included cover for damage to the boundary fences. These, pursuant to *FirstPort*, should not have formed part of the perils against which the RTM Company should have insured. We agree that it would not be reasonable for an RTM company to obtain insurance which should be the responsibility of the freeholder. However, here at the time the insurance was obtained, it was assumed in accordance with *Gala Unity* that it was for the RTM Company to obtain the insurance. The issue with insurance on the facts of this case is in our judgment a matter of payability. The premiums were reasonable and the sums were agreed after a proper testing of the market. The split between the three blocks was on the basis of rateable value, which is reasonable in our judgment.
17. A similar point arises in respect of the cleaning services. Yes, some works were done on the common parts, but the sums themselves were reasonable. The issue is one of payability. The same division of cost between the three blocks was adopted and was reasonable.
18. In respect of accounting services, the tenant complains that these expenses were incurred. However, it was he as director of the RTM Company who instructed Mr Rennie to have the work done. It does not lie in his mouth to object to the instruction of accountants. In any event the amounts claimed are reasonable.

Costs

19. The Tribunal has a discretion as to the fees payable to the Tribunal. These comprise a hearing fee of £220. The starting point in deciding who should pay the fee is the principle that costs should follow the event. Here the tenant has lost. We do not consider there are adequate grounds for refusing to make a costs order in favour of the RTM Company and we do so.

DECISION

- (a) All the service charges in dispute are reasonable in amount. (For the avoidance of doubt we make no determination as to payability.)
- (b) The respondent tenant shall pay the applicant RTM Company £220 in respect of the hearing fee payable to the Tribunal.
- (c) Any party seeking any further orders as to costs shall apply to the Tribunal in respect of the same (serving the other party with the application) shall do so by 10th March 2025

attaching a schedule of the costs claimed. The Tribunal will then give further directions in respect of such application.

Signed Adrian Jack

Date: 25th February 2025

SCHEDULE OF LEGISLATION

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.