



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

Case reference : **LON/00AT/LSC/2024/0131**

Property : **Flat 13 Concord Court Palladian
Gardens London W4 2ER**

Applicant : **Ms Szasza Szalay**

Representative : **In person**

Respondent : **Metropolitan Housing Trust Limited
("MHTL")**

Representative : **Mr John Beresford, Counsel**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985; costs
orders**

Tribunal : **Mr C Norman FRICS
Mr S Wheeler MCIEH**

**Venue and Date of
Hearing** : **10 Alfred Place London WC1
25 October 2024**

Date of Decision : **23 February 2025**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision and the attached Scott Schedule.
- (2) 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.
- (3) The Tribunal makes an order under Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 that none of the landlord's litigation costs may be recovered as an administration charge from the applicant.
- (4) The Tribunal has no jurisdiction to consider claims for stress caused by a service charge dispute.

The application

1. 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 the Applicant in respect of the service charge years 2022-3, 2023-4 and 2024-5.
2. The applicant also seeks orders to extinguish any liability to pay landlord's costs, under section 20C of the 1985 Act and Paragraph 5A of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

The hearing

3. The Applicant appeared in person at the hearing (accompanied in part by Ms T Holt). The Respondent was represented by Mr John Beresford, Counsel. The Applicant clarified and confirmed that she represented herself only and no other leaseholders.
4. The Respondent objected to the scope of the application being widened in the applicant's skeleton argument to include the years 2020-21 and 2021-2, citing *Birmingham City Council v Keddie* [2012] UKUT 323 (LC). The Tribunal accepted the Respondents' submissions and disallowed inclusion of the earlier years.
5. During the course of the hearing, the parties helpfully agreed and produced a Scott Schedule to better particularise the issues in dispute. This the Tribunal have utilised to set out its decision supplemented by other findings, below.

The background

6. The property which is the subject of this application is a one-bedroom flat in a purpose-built block completed in 2017. The flat forms part of a large estate owned by Adriatic Land 12 Limited, freeholder. The Respondent has individual leases over a number of such flats. MHTL underlet such flats on shared ownership leases, including to the applicant.
7. Neither party requested an inspection, and the Tribunal did not consider that one was necessary.

The issues

8. 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 years ending 31 March 2023, 2024, and 2025 relating to:
 - a. Service charges payable to the freeholder.
 - b. The audit fee incurred by MHTL.
 - c. The management fee paid to MHTL.
 - d. The cost of communal heating.
 - (ii) The findings for 2022/3 are final. Those for 2023/4 and 2024/5 are findings of payments on account only.

The Respondent's Case

9. It is convenient to set this out first. The freeholder is responsible for all services both on the estate and block. This includes all external repairs maintenance and decoration, internal repairs, heat interface unit (HIU) maintenance, insurance, grounds maintenance, security and lift maintenance. MHTL is liable to pay its contribution to the freeholder via a service charge obligation in its headlease. That liability is then passed down to the sub-lessees, including the applicant.
10. The applicant's case was that service charges have been incorrectly calculated, particularly the balancing charge. She had not been provided with breakdowns or invoices. She claimed damages for health problems

allegedly caused by the stress of the dispute. The applicant did not comply with directions to support the challenge to the service charges. In any event the applicant confirmed that she did not dispute the Respondent's contractual right to pass on to her service charges that it paid the freeholder. Her complaint was about the amount that she pays and more generally the lack of transparency on the part of the Respondent.

11. Mr Beresford set out salient parts of the service charge provisions of the sublease, which the Tribunal sets out below in the Annexe.
12. Counsel submitted that the bulk of the service charges payable by the applicant consist of service charges that the Respondents are paying to the freeholder. Although this was not conclusive as to reasonableness of such charges, the applicant had not produced sufficient material to suggest that the service charges payable to the freeholder were not reasonable. In *Assethold Ltd v Lessees of flats 1 to 14 Corbin Mews* [2023] UK UTD 71 (LC), it was said "it is of course well established that the lessees cannot simply put the landlord to proof of the reasonableness of expenditure; they have to provide some evidence that a cost was excessive". Normally this would be the production of alternative quotes. No such evidence has been adduced in the subject case. There are no specific complaints about the quality of services provided by the freeholder. The Tribunal does not have jurisdiction to carry out an audit of the service charges payable by the applicant, which is not the Tribunal's function. Therefore, there is no basis for the Tribunal to make any adjustment to the applicant service charges insofar as they comprise service charges payable to the freeholder. Alternatively, MHTL is limited as to as regards documents it can be expected to provide to the applicant. As the size of the development is large, this will involve thousands of invoices. The Respondent has provided the invoices it has received from the freeholder and disclosed some of the service charge budget.
13. MHTL has charged a management fee of £258.80 for each of the years in dispute¹. According to Mr Odukoya, this had been benchmarked against open market values. MHTL has also charged an audit fee of £18.84 for the first 2 years and £9 for the third year in issue. This was undertaken by an external auditing firm. The communal heating was charged as part of the on-account demand but then removed from the end of year balancing charge. Therefore, no adjustment was needed.
14. Mr Odukoya was called as a witness, having given a witness statement verified by a statement of truth. He is the Service Charge Team Manager at MHTL. The salient points of his evidence may be summarised as follows. Rendall and Rittner are the managing agents acting for the freeholder. The Respondent receives three invoices annually, two half-yearly invoices and one end of year invoice. Mr Odukoya's job is to review the invoices and ensure that they are correctly charged. The financial

¹ In 2024/25 this was reduced to £150 per Mr Odukoya's evidence

year for MHTL runs from 1st April to 31st of March, whereas that for the freeholder runs from 1st January to 31st December. For the year ending 31 March 2023, a 10% uplift was applied to the managing agents' fees, based on estimated figures. The audit fee related to the cost of an independent audit firm employed by MHTL. The management fee is MHTL's administration charge. This was benchmarked against open market values with the last benchmarking exercise carried out in 2023. The communal heating cost was the individual resident's share of the overall heating charge for the whole block. This had increased substantially owing to changes in the global energy market. In addition, there was a monthly balancing charge. This related to the year 2020 to 2021 and is outside the scope of this application. The position for year ending 31 March 2024 was broadly similar as to structure. However, the respondent noted that the total managing agents' costs passed on to the Applicant included an inadvertent overcharge of £1727.06. This was subsequently credited to the Applicant's account.

15. For the year ending 31 March 2025, Mr Okoyuda referred to a letter setting out estimated service charges. This omitted the communal heating cost, as a mistake. The actual account for 2022-2023 had been supplied with the three invoices totalling £3955.64. There was an error including a £60 debit. All accounting errors have now been fully corrected. Mr Okoyuda also stated that the management fee for 2024/5 had been reduced to £150 owing to economies of scale.

The Applicant's Case

16. The Applicant produced a skeleton argument and served a witness statement verified by a statement of truth. Her case may be summarised as follows. The service charges that the Applicant had received from MHTL and the conduct of MHTL raised doubts about their competence. There was a lack of transparency about the freeholder's costs and the amount in addition that the head leaseholder was charging. In December 2023, the Applicant finally received information showing what had been charged by the freeholder to MHTL. However, this information did not provide proof of payment. The invoices did not explain the charges levied by the head leaseholder itself including audit fees, communal heating, and management fees. The Applicant also complained that the respondent had not complied with Tribunal directions. Late disclosure was finally made on 11 September 2024.
17. The Applicant accepted that she was required to meet the freeholder's costs of maintaining the estate by way of a proportionate contribution. However, no such invoices had been provided. All the Applicant received were invoices which the freeholder levied on MHTL. It had failed to pass on the freeholder's costs accurately. A refund of £1727.46 was made to correct an error. In relation to management fees incurred by MHTL, there is no evidence of any benchmarking exercise having

been carried out. No evidence has been provided in relation to auditing by MHTL.

Discussion

18. The Tribunal agrees with the respondent that the freeholders' costs have not been directly challenged and there is no evidence that such services have not been provided to a reasonable standard. Nor have any alternative quotes been provided.
19. However, the tribunal agree with the Applicant that the accounts and invoicing are opaque and difficult to follow. It notes that for the three years in issue, final accounts are available only for the first year. The Tribunal's findings for the latter two years are therefore findings of on-account payments only. The Tribunal also notes that the head leaseholder's management charge has been reduced from £258 in 2023/4 to £150 in 2024/5. The explanation given was that this is due to economies of scale. The Tribunal considers that the benchmark figure should be £150 per annum for this work had the head leaseholder's management been carried out to a satisfactory standard. The Tribunal sets out its detailed findings on the attached Scott Schedule.

Application under s.20C and paragraph 5A Schedule 11.

20. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. The Tribunal found that poor communication and opaque invoicing had contributed substantially to the need for the application to be made to the Tribunal. Therefore, the Tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge levied against the Applicant.
21. For the same reason the Tribunal orders under paragraph 5A of Schedule 11 of the 2002 Act, that the landlord's legal costs may not be recovered as an administration charge from the Applicant under the lease.

Name: Charles Norman FRICS

Date: 23 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).

Lease Extract – Sublease to Applicant

14. Schedule 9 incorporates the following definitions:

(1) "Account Year" means "a year ending on 31 March".

(2) "Authorised person" means "the individual nominated by the Landlord to estimate expenditure in relation to the Service Provision in accordance with Clause 7.3...".

(3) "Headlease" is defined in each respective Shared Ownership Lease to be the lease by which MHT has acquired its interest in the respective Leaseholder's individual flat.

(4) "Service Charge" means the "Specified Proportion of the Service Provision".

(5) "Service Provision" means "the sum calculated in accordance with Clause 7.3 (How calculated) Clause 7.4 (Service Provision) and Clause 7.5 (Adjustment to actual expenditure)". 15. In the Particulars, the "Specified Proportion" is defined as "a fair proportion".

In the Particulars, the "Headlease Proportion" is defined the "amounts due under the Headlease as defined in the Headlease including but not limited to The Tenants Proportion and Energy Charge therein defined".

Clause 7.1 incorporates a covenant by the Leaseholder to "pay the Service Charge during the Term by equal payments in advance at the same time and in the same manner in which the Specified Rent is payable under this Lease."

Clause 7.2 provides that the "Service Provision in respect of any Account Year shall be calculated before the beginning of the Account Year and shall be calculated in accordance with Clause 7.3...".

Clause 7.3 provides that:

"[t]he Service Provision shall consist of a sum comprising the expenditure estimated by the Authorised Person as likely to be incurred in the Account Year by the Landlord for the matters specified in Clause 7.4 (Service Provision) together with:

a) an appropriate amount as a reserve for or towards the matters specified in Clause 7.4 (Service Provision) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without limitation) such matters as the decoration of the exterior of the Building (the said amount to be calculated in a manner which will ensure as

far as is reasonably possible that the Service Provision shall not fluctuate unduly from year to year); but

(b) reduced by any unexpended reserve already made pursuant to Clause 7.3(a)”

Clause 7.4 provides as below:

7.4 Service Provision

The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management improvement renewal (including any latent defect) redecoration maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing):

(a) the costs of and incidental to the performance of the Landlord's covenants contained in Clause 5.2 (Insure) and Clause 5.3 (Repair redecorate renew structure) and Clause 5.4 (Lighting and cleaning of Common Parts), and Clause 5.10 (Headlease);

(b) the costs of and incidental to compliance by the Landlord with every notice regulation or order of any competent local or other authority in respect of the Building (which shall include compliance with all relevant statutory requirements);

(c) all reasonable fees charges and expenses payable to the Authorised Person any solicitor accountant surveyor valuer architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work;

(d) any Outgoings assessed charged imposed or payable on or in respect of the whole of the Building or in the whole or any part of the Common Parts; and (e) any administrative charges incurred by or on behalf of the Landlord including but not limited to:

(i) the grant of approvals under this Lease or applications for such approvals;
(ii) the provision of information or documents by or on behalf of the Landlord;
(iii) costs arising from non-payment of a sum due to the Landlord; and/or

(iv) costs arising in connection with a breach (or alleged breach) of this Lease

(f) any expenditure which the Landlord may be required to make towards the maintenance management and repair or otherwise of land adjoining or in the vicinity of the Estate and which provides a benefit to the Leaseholder or the owners tenants or other occupiers of the flats in the Building”

Clause 7.5 provides that a balancing charge will be payable by the Leaseholder in the event that the actual expenditure for the services exceeds the estimated expenditure:

7.5 Adjustment to actual expenditure

As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in Clause 7.3 (How calculated) shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or (as the case may be) shall pay immediately following receipt of the certificate the Specified Proportion of the excess or the deficiency”.

22. Clause 5.10 provides that “[t]he Landlord shall pay the rent reserved by and observe and perform the covenants and conditions relating to the Premises contained in the Headlease and on its part to be paid observed and performed except only in so far as they do not fall to be paid observed and performed by the Leaseholder under this Lease or another party under the terms of the Lease or any other lease”.

23. Pursuant to clause 3.3.5, the Leaseholder covenanted to:

“pay the Headlease Proportion and any variation without deduction to the Head Landlord or the Landlord or the Manager and in the manner as set out in the Headlease the first payment to be made on the granting of this Lease to the Landlord Head Landlord or Manager provided always if and whenever the Headlease Proportion and any other monies due to the Landlord or Head Landlord or Manager from the Leaseholder shall at any time be unpaid after becoming payable the same shall until paid bear interest as set out in this Lease and the Headlease”.