



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

Case Reference : **CHI/00HB/LSC/2024/0019**

Property : **Flat 13
Underdown House
Guinea Street
Bristol
BS1 6TA**

Applicant : **Ms Ramraji Persad**

Representative : **None**

Respondent : **Bristol City Council**

Representative : **Mr James Fuller, Counsel**

Type of Application : **Determination of liability to pay and
reasonableness of service charges
Section 27A Landlord and Tenant Act
1985. Orders pursuant to Section 20C of
the Landlord and Tenant Act 1985 and
paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform Act
2002. Refund of application fee.**

Tribunal Members : **Mr I R Perry FRICS
Mr D W Cotterell FRICS
Mr L G Packer**

Date of Hearing : **17th February 2025**

Date of Decision : **17th February 2025**

DECISION

Summary of Decision

1. The Tribunal determines that the Service charges incurred and demanded by the Bristol City Council are correct and should be paid.
2. The Tribunal has considered the applications for orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and determines that the costs incurred in this matter are **not** to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant in respect of her property.
3. The Respondent shall refund the Applicant her Tribunal fee of £200. This refund to be paid within 21 days of the date of this decision.
4. In addition, the Tribunal notes that the Respondent will refund the Applicant £500 in respect of General Repairs for the year 2022-2023.
5. The Tribunal further notes that the Respondent offered to revise the lease, by agreement with the Applicant, to bring it into line with other leases in the block, and to meet the Applicant's legal costs of making the change.

Background

6. On 30th January 2024 Ms Persad, the tenant of the property, applied to the Tribunal for a determination of the reasonableness and payability of the service charges for her property for the years 2017-2018, 2019-2020, 2020-2021, 2022-2023, 2023-2024 and 2024-2025 plus future years.
7. The Tenant also sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
8. On 19th July 2024 the Tribunal issued directions for a conciliation hearing which took place on 17th September 2024. The Applicant was in attendance together with her son Mr L Dookie. Robin Denford and Julie McKay attended on behalf of Bristol City Council.
9. Following discussion between the parties it was agreed that they would accept the Tribunal's offer of mediation which would take place on a date to be arranged.
10. The Applicant stated that she had included the service charge for the year 2017-2018 as she wanted the Tribunal to decide regarding issues surrounding a refund that had been ordered by an earlier Tribunal. The Tribunal informed the Applicant that it did not have the power to look at accounting regards or enforce an award, that this was a matter for the County Court.
11. The Applicant stated that she was frustrated by the Councils failure to produce accurate invoices. It was clear to the Tribunal that the Applicant had lost confidence in the Council and that there had been a breakdown in communication between the parties.

12. On 11th October 2024 the Case Officer wrote to the parties to advise that it had not been possible to accommodate the mediation and that the case would be referred for further Directions.
13. The Tribunal issued further Directions on 21st October 2024 and a hearing was arranged for Monday 17th February 2025 to be held at Bristol Justice Centre.
14. Two further Case Management Applications were made and granted in respect of the extension of deadlines.
15. A hearing was held on the date arranged. Ms Persad was accompanied and assisted by her son Mr L Dookie. The Council was represented by Mr James Fuller, Counsel, and Ms J McKay, Home Ownership Service Manager of the Council.
16. These reasons address the key issues raised by the parties. They do not recite each and every point referred to either in submissions or during any hearing. However, this does not imply that any points raised, or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, then it was considered by the Tribunal. The Tribunal concentrates on those issues which, in its opinion, are fundamental to the application.

The Law

17. 27A Liability to pay service charges: Jurisdiction

18. (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
 19. (a) the person by whom it is payable,
 20. (b) the person to whom it is payable,
 21. (c) the amount which is payable,
 22. (d) the date at or by which it is payable, and
 23. (e) the manner in which it is payable.
24. (2) Subsection (1) applies whether or not any payment has been made.
25. (3) An application may also be made to a leasehold valuation 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—
 26. (a) the person by whom it would be payable,
 27. (b) the person to whom it would be payable,
 28. (c) the amount which would be payable,
 29. (d) the date at or by which it would be payable, and
 30. (e) the manner in which it would be payable.

The Property

31. The property comprises a 3-bedroom maisonette within a high-rise (5 stories) block of flats known as Underdown House, which contains 23 flats in total and is situated close to the centre of Bristol. The block forms part of a larger development, joined with two other high-rise blocks known as Waring House, which consists of 90 flats, and Francome House which consists of 70 flats.
32. The blocks are owned and managed by Bristol City Council. Many of the flats are let by the Council on weekly or monthly tenancies.
33. There are communal facilities within the blocks including laundry facilities and a hot-water/ heating system
34. Long leases have been purchased in some of the flats. Ms Persad purchased her property on 8th March 2004. The Tribunal was informed that the long leases of the flats that have been sold are not all written in the same form so that there are variances between the service charges payable by each long-leaseholder and council tenants.

The Lease

35. The Lease for the property was made on 8th March 2004 and was included at [AB106].
36. Clause 5 (2) relates to the Tenant's covenant to pay to a service charge to the Council on demand "being a proportion of the reasonable expenses and outgoings incurred or anticipated by the Council in respect of the repair maintenance and renewal of the structure and exterior of the building and in respect of the other matters specified in the Third schedule hereto"
37. Clause 5(B) relates to the reasonable expenses and outgoings incurred or anticipated by the Council for shared facilities or services.
38. Clause 5 (C) states that the Tenant shall not be required to contribute to the cost of repairing or the making good any structural defect in the building.....unless:-
 - i) **The Tenant was prior to the making of this notified in writing of its existence or**
 - ii) **The Council did not become aware of such defect earlier than 10 years after the granting of this lease.**
39. Clause 5(D) sets out that the Service Charge may include a proportion of past or anticipated future expenses etc.
40. Clause 5 (E) sets out how the Service Charge is to be calculated annually.
41. Clause 5 (I) sets out a method to be used to calculate the amount of the Service Charge payable by each Tenant.

42. Clause 5 (K) sets out how the Council shall furnish accounts for the Service Charge payable by the Tenant for the year in question with due credit being given therein for all interim payments made by the Tenant.
43. Clause 5 (4) requires the Tenant to pay “the heating charge” in respect of the provision of hot water and central heating supplied to the flat through the Council.
44. The Third Schedule of the Lease sets out the Council’s expenses and outgoings and other heads of expenditure in respect of which the Tenant is to pay a proportionate part by way of service charge. This includes repairs to “structure and exterior etc” and “additional costs and expenses”. Other costs and expenses may include laundry facilities, repairing or replacing furniture, provision of a caretaker, television and radio aerials, repair and maintenance of heating, hot water systems and lifts, fire alarms, fuel to boilers.

Submissions

45. The Tribunal was provided with an Applicants Bundle (“AB”) of 124 pages, a Respondents Bundle (“RB”) of 509 pages, a witness statement from the Applicant of 7 pages, an Applicants Skeleton (“AS”) argument of 3 pages and a Respondent’s Skeleton argument (“RS”) of 8 pages. References in square brackets refer to page numbers from the documents above.
46. With the agreement of the parties the Tribunal took Ms Persad’s skeleton argument as an ‘agenda’ for the Hearing. Representations were taken on a point-by-point basis from both parties in turn. Ms McKay was able to give helpful explanations on behalf of the Council and Mr Dookie was able to support his mother in referring to specific issues as each arose.

Matters Considered and Determined

47.

- 1.1 **Outstanding refund (2017/2028 Invoice) £1,348.87.** The Tribunal reiterated the Directions which stated that it could not make determinations regarding accounting issues, which remain a matter for the County Court.
- 1.2 **Errors in Service Charges.** In respect of the 2018/2019 invoice this had already been corrected. The Applicant wanted the Tribunal to note that errors had been made in calculation service charges.

The 2019/20 invoice included asbestos removal costs. The Applicant asserts that asbestos removal is not an item that can be recharged under the terms of the lease. The Tribunal determines that asbestos removal or treatment is part of the cost of keeping the structure in good repair. Accordingly, the cost is payable as part of the service charge.

- 1.3 **Unjustified Electricity & Gas Charges.** Communal electricity in 2020/21 had initially been charged at £104,956 for the Blocks. The Tenant had queried this amount, and the charge had been reduced to £16,230. Ms

McKay informed the Tribunal that this had been a clerical error which had been corrected at the time. Ms Persad asked the Tribunal to note the amount of stress such errors cause her.

In 2022/2023 there had been “a sudden increase in block electricity and block gas”. Mr Fuller explained that these had been actual increases in energy costs and that the amounts were proportionate and reasonable. Given that these were actual costs of energy supplied to the Council the Tribunal confirmed the amounts as charged.

The Applicant questioned whether some of the communal costs of electricity may have increased when Film or TV production crews were filming close to the block. Did they use electricity from the block? Ms McKay stated that film crews routinely use generators to provide their own electricity supply on such occasions.

Ms McKay stated that some lighting in the common areas within the blocks needs to be on 24 hours a day where light levels are very low. Following a request from Mr Dookie she agreed to share actual invoices of energy as supplied at forthcoming meetings with tenants.

- 1.4 **Management Fees and ‘Management Fee at 20%’.** Ms Persad questioned whether the management fees are reasonable. From the annual statement each flat is charged a fixed fee per annum for management of the block, in the region of £100 per annum. In addition, expenditure incurred on the block carries a management fee of 15% of the cost of that expenditure, including building works and the like.

Mr Fuller referred the Tribunal to Clause 5 (2) (B) of the lease [RB492] and the Third Schedule of the lease [RB503] referring to other heads of expenditure in respect of which the Tenant is to pay a proportionate part by way of a service charge. The Tribunal noted that the total management fee payable for the property in 2022-2023 was £172.86 and in 2023-2024 was £202.31

Ms Persad accepted that she has to pay reasonable management charges and offered no evidence as to any different amounts that she would consider reasonable.

The Tribunal determines that the management charges as levied are reasonable and payable.

- 1.5 **Building Insurance Discrepancies.** Ms Persad maintains that building insurance charges have increased inconsistently and that she was advised by the Council to claim for water damage within her flat through her own contents policy, despite the damage being caused by a leak from the flat above.

Ms MacKay explained that the management of insurance claims had been taken ‘in house’ in 2022-2023 so that the premium per the property reduced from £259 per annum to £166 per annum. The following year Zurich, the

insurance provider, declined to offer insurance in social housing sector and the Council were obliged to find a new provider who charged £370 per flat.

The Tribunal was referred to [RB280] which showed that building insurance costs had risen by some 92% between 2019 and 2024. Ms Persad did not introduce any alternative insurance quotes. Accordingly, the Tribunal determined that the charge was reasonable and payable.

When questioned Ms Persad stated that she had not attempted to claim for the damage to her flat on her own insurance.

- 1.6 District Heating Fixed Charge & Pipes.** The block has a 'district system' for the provision of heating and hot water. A standing charge is made to each flat for the provision of this facility and actual use is charged by way of a metered system.

In recent years the accounting for the system has been provided by Brunata and the way in which the charges are shown in the service charge statements has altered. Formerly a fixed charge was applied to each flat (what might be described as a standing charge for supply) and then a second charge was made at the end of each accounting period for actual metered usage.

From the information provided it seems that a much higher charge is now levied as 'the standing charge', £526.37 per annum in 2024-2024, before a second charge being made for metered usage.

Ms Persad states that she had been told by the Council that the 'standing charge' is for the heating pipes which, she suggests, are not mentioned in her lease.

Ms Persad has a sense of injustice as she states that she does not use the heating within her flat but prefers to rely on electric heaters. She does however use the hot water.

The Tribunal agrees that it is difficult to understand from the Council's service charge demands how hot water and heating is provided and charged, but no evidence was provided that the charges are excessive. Having taken a lease of the property, albeit many years ago, Ms Persad is responsible for a share of the cost of providing the facility of hot water and heating, a 'standing charge' and the cost of any use she makes of that provision.

The Tribunal determines that the heating/hot water costs are reasonable.

- 1.7 Structural Defects and Contributions.** Ms Persad suggests that the Lease explicitly states that tenants are not required to contribute to certain structural repairs. She referred the Tribunal to Clause 5 (C) [AP108] which states that "the Tenant shall not be required to contribute to....." Ms Persad had omitted to understand sub paragraphs (i) and (ii) which qualify 5 (C) such that the Tenant shall not be required... "unless the Tenant had been notified of them prior to granting of the lease or the Council did not become aware of the defect earlier than ten years after the granting of this Lease". The date of the lease was 8th March 2004. Accordingly, the Tenant will be

responsible for a share of any unknown defects and defects occurring or noted from 8th March 2014 onwards.

The Applicant questions whether asbestos removal, roof repairs and rewiring are structural issues. The repair clauses in the lease are widely drawn.

No evidence has been provided that the structural repairs were known of prior to 8th March 2014. Mr Fuller again referred the Tribunal to the lease, specifically Schedule III Clause 1 [RB503]. Accordingly, the Tribunal determines that the contributions to structural defects are payable.

The Applicant questioned whether repair works were guaranteed and whether any contractors had been asked to return and remedy any faulty workmanship. Ms McKay informed the Tribunal that any major works would be covered by warranty and that general repairs are supervised.

Within the service charge for 2022/23 the Respondent had included a charge for repairs of £500 [AB54]. The Applicant had queried this as part of the process and the item had been withdrawn but an additional £1552.04 had been added to under General Repairs.

Ms McKay confirmed that this had been an error and noted that as the alteration had been made 'out of time' she would arrange for £500 to be credited to the Applicant's account.

- 1.8 **Planned Major Works.** The Applicant has been made aware of planned major works which would require a contribution of £50,704.05 from her.

She states that this will be an excessive financial burden and asks the Tribunal to investigate whether these costs are reasonable.

The Tribunal explained that as these costs are not part of any service charge that has been levied then they have no jurisdiction to consider the matter.

Ms McKay informed the Tribunal that it is the intention of the Council, when the costs are known, to refer the cost of the works to the Tribunal for a determination that the costs are reasonable and payable. This will give the Applicant the opportunity, should she wish, to submit her comments to the Tribunal.

- 1.9 **Direct Debit & Unaccounted Payments.** The Tribunal explained that it has no jurisdiction to rule on accounting matters.

- 2.0 **Applicant's Position & Requests.** The Applicant repeats that the Council has a history of overcharging, poor transparency, and billing errors and asks the Tribunal to order a refund of £1,348.87, to remedy unjustified charges and miscalculations and ensure that future invoices are transparent and fairly calculated.

The Tribunal has already explained to Mrs Persad that the refund she has requested is not a matter for the Tribunal to determine, although the

Tribunal would hope that the parties might reasonably resolve the difference without a further County Court case being heard.

The administration of the services and service charges for the three blocks at Guinea Street are complicated and complex, made even more so by there being differences between the leases for those flats that have been sold by the Council.

There have been errors in the calculation of service charges for the Applicant over some years. This has been fully accepted by Ms McKay on behalf of the Council.

Ms McKay has apologised to Ms Persad for those errors and explained to the Tribunal that various changes to systems have already been made and are being made to improve the systems, audit and communication with tenants.

Ms Persad has lost confidence in the service provided by the Council and has suffered from stress and exasperation over many years in trying to reconcile the service charges for her property. Notwithstanding the angst involved it is for tenants to check and question their service charges.

The Applicant states that she has requested Bristol City Council buy back the flat and that the Council has made an offer subject to a deduction for the planned future major works. The Applicant asks the Tribunal to decide if this offer is reasonable. The Tribunal explained that this was outside its jurisdiction.

The Tribunal explained the limit of its powers in this case stating that any issues with the specific payments on her account by Ms Persad should be made to the County Court, that 'Florrie's Law' was not, to the Tribunal's knowledge a law at all and the Tribunal could not rule or advise on the Council's offer to buy back Mr Persad's flat.

3. **Stress & Ill Health.** Ms Persad states that the ongoing disputes have severely impacted her health (heart condition & rheumatic flare ups). She states that tracking accounting errors and preparing Tribunal reports is exhausting.

The Tribunal hopes that the initiatives described by Ms McKay are successful in improving communication and trust between Landlord and Tenant.

There is clearly a wish on behalf of Bristol City Council to improve communication, accuracy and transparency in its dealings with leaseholders and tenants. In that spirit Ms McKay told the Tribunal that the Council would be prepared to grant Ms Persad a revised lease for her property so that it was on the same basis as other leaseholders in the development and that the Council would cover Ms Persad's legal costs for making that change.

Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

48. The Tribunal has considered the applications for orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Whilst finding that the service charges raised have all been payable, it is clear and has been accepted that errors have been made in preparing the service charge accounts and the Applicant could only elicit satisfactory explanations of other matters by commencing these proceedings.

The Tribunal therefore determines that the costs incurred in this matter are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

49. The Tribunal has also considered the Applicant's request that her application fee of £200 should be refunded to her. Given that the Respondent has accepted that a number of administrative errors have been made over a period of some years in the service charge accounts for the property, the Applicant felt it necessary to make the application to the Tribunal in order to receive information that could otherwise and should have been provided by the Respondent, and the Tribunal orders that the Respondent shall refund the Applicant her fee for the Tribunal in the sum of £200. This refund to be paid within 21 days of the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpcsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.