FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/OOKB/LIS/2023/0025**
Property	**:**	**Flats 14 and 15 Underwood House, 4 Rothsay Gardens, Bedford, MK40 3QB**
Applicant	**:**	**Professor Eleni Theodraki (14) and Ms Ekaterina Soulioti (15)**
Respondent	**:**	**Underwood House Management Company**
Type of application	**:**	**An application under section 27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Shepherd** **Gerard Smith MRICS FAAV**
Date of Decision	**:**	**28th February 2025**

DETERMINATION

1. This matter originates from an application made by two leaseholders who own flats at Underwood House, 4 Rothsay Gardens, Bedford, MK40 3QB ("The premises"). The leaseholders are Professor Eleni Theodoraki who owns Flat 14 and Ekaterina Soulioti who owns Flat 15. They are jointly referred to as "The Applicants" in this decision. The freehold of the premises is owned by Underwood House Management Company ("The Respondent") whose representative is Bruce Wright.

2. The premises consist of the following: one building converted into seven flats; one bungalow and one purpose - built building.

3. The Applicants' challenge to the service charges centred on two matters. First whether the leases owned by the Applicants made provision for recovering from them the cost of a running a heater in the common areas. These costs included the electricity charges and safety testing of the heater. The challenge spanned all service charge years since 2017-18. Secondly the Applicants challenged a charge of £270 relating to accounting fees incurred in 2022-2023.

The law

4. The Landlord and Tenant Act 1985,s.19 states the following:

> *19.— Limitation of service charges: reasonableness.*
>
> *(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 provision 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.*

5. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

> *27A Liability to pay service charges: jurisdiction*
>
> *1. An application may be made to [the appropriate tribunal]2 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]2 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.

6. In *Waaler v Hounslow* [2017] EWCA Civ 45 the Court of Appeal held the following:

> *Whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations.*

The hearing

7. The Applicants appeared in person and the Respondents were represented by Bruce Wright. The Applicants repeated the assertion that there was no provision in the lease for the costs of the heater. Mr Wright said the heater had been in situ for at least six years. The premises were a converted Victorian building and the heater was in hallway. He had bought his flat in 2002 and he was sure that the heater was there even then. He said it was not uncommon to have heaters in a communal hallway. The Applicants said that the heater had been installed by one of the leaseholders. Mr Wright denied this but was unable

to say exactly when it was installed or by whom. Mr Wright said that it appeared properly installed.

8. In relation to the accounting costs Mr Wright said that these were caused by a change in managing agents. The Applicants said that the extra costs were caused by Mr Wright's mismanagement. Mr Wright denied this and said that the managing agents had to be changed due to retirement. All of the directors agreed to move to a new manager - HML. Unfortunately HML failed to deliver and they were dispensed with and the money paid to them was returned. HML were not formally appointed. The accountant who had done the transition work charged a reduced rate.

Determination

The heater cost

9. We consider that this cost is recoverable under the lease. Clause 3(i) (b) states that *in the event of any rates, taxes, charges impositions and outgoings being assessed charged or imposed in respect of the building of which the demised premises forms part [the leaseholder is required] to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the demised premises.*

10. This clause is wide enough to include the costs of the heater. Although the origin of the heater remains unclear it seems unlikely that it was fitted by a leaseholder and more likely that it was fitted by the developer. In any event the heater had become a fixture in the building. Moreover, it is prudent to have a heater in a communal area to prevent condensation amongst other things.

The accountant's costs

11. We consider that these costs are also recoverable. The fees were kept to a reasonable level and it is inevitable that during a period of transition of managing agents that extra costs would be incurred.

Judge Shepherd

28th 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).