FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00MG/LSC/2024/0607**
Property	:	**11 Moonstone House** **304 South Row** **Milton Keynes, MK9 2FR**
Applicant	:	**Ms Fola-Sade Tolani**
Representative	:	**Ms Ayomide Sanwo**
Respondents	:	**(1) Notting Hill Genesis** **(2) Avon Ground Rents Limited**
Representatives	:	**For Notting Hill Genesis: Mr Tom Owen** **For Avon Ground Rents Limited: Mr Simon Allison KC**
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	:	**First-tier Tribunal Judge K Gray** **Tribunal Member Mr G Smith**
Venue	:	**Remote hearing by CVP**
Date of decision	:	**14 May 2025**

DECISION

Decisions of the tribunal

(1) The service charges demanded by the First Respondent of the Applicant in the service charge years in dispute are payable in full.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 in respect of the costs incurred by the First Respondent in connection with these proceedings.

(3) No application was made by the First Respondent for any order under section 20C of the Landlord and Tenant Act 1985 against the Second Respondent and the tribunal makes no such order.

The application

1. By an application dated 29 May 2024, 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 her in respect of the service charge years 2021, 2022, 2023, and "on account" for 2024. The service charge year in this case runs to the 31st March.

The background

2. The background to this matter is set out in the 631 page hearing bundle (which was split into two electronic PDF bundles) and the helpful skeleton arguments prepared by each of the parties, which we have considered in detail.

3. 11 Moonstone House (being the flat that is the subject of this application) is a one bedroom ground floor flat in a purpose built block of flats which is situated within a wider mixed-use estate in Milton Keynes known as the Vizion Estate. The estate comprises one large interconnected block of flats with an internal "podium" courtyard garden, and three smaller adjacent blocks, one of which contains the subject flat. The estate also includes commercial property, play areas, and car parking.

4. Neither party requested an inspection of the flat or the estate and the tribunal did not consider that any inspection was necessary nor proportionate to the issues in dispute.

5. The Applicant is the underlessee of the flat under the terms of a shared ownership lease dated 16 December 2010 between Paddington Churches Housing Association Limited as landlord and the Applicant as tenant.

6. The First Respondent housing association is the headlessee of the flat under the terms of a headlease dated 8 August 2008 between Abbeygate

Helical (C4.1) LLP and Paddington Churches Housing Association Limited.

7. The Second Respondent is the registered freehold owner of the block in which the property is situated and of the wider estate under title number BM332544.

8. As will become clear from the terms of the leases referred to in more detail below, the maintenance (etc.) of the estate is carried out by the Second Respondent, who (under the terms of the headlease) charges the First Respondent a service charge in respect of the costs that it incurs. The First Respondent passes this cost on to the Applicant under the terms of the Applicant's lease by way of a further service charge.

The hearing

9. The Applicant attended the hearing and was assisted by Ms Ayomide Sanwo. The First Respondent was represented by Mr Tom Owen, an employee of the housing association. The Second Respondent was represented by Mr Allison. We are grateful to them all for their helpful submissions and assistance.

10. At the outset of the hearing, Mr Allison raised a point that had been foreshadowed in his skeleton argument and in correspondence between the parties in advance of the hearing. He said that the tribunal should not place any reliance on various documents included by the Applicant in the second PDF hearing bundle, as these documents had not been disclosed in accordance with the tribunal's directions, had been added to the hearing bundle at the last minute and were in any event not relevant to the issues in dispute between the parties.

11. Ms Sanwo asserted that the documents were relevant to the issues in dispute, particularly to the standard of service provided by the Second Respondent in return for the service charges demanded. She accepted that documents had not been provided before the hearing bundle was prepared, but pointed out the Applicant had made a list of the documents in her supplementary statement of case.

12. Ms Sanwo also sought permission to rely on the oral evidence of Ms Ann Savell, a lessee of a different flat on the estate who has been involved in the acquisition of the right to manage a part of the estate. Ms Sanwo apologised for failing to provide a written statement from Ms Savell, but said that her evidence was also relevant to the standard of service provided by the Second Respondent.

13. Mr Allison opposed the application to call Ms Savell to give oral evidence. Mr Owen took no position on the application to exclude the documents nor to admit the evidence of Ms Savell.

14. Though we were concerned about the failure to disclose the documents at an earlier stage and in accordance with the tribunal's directions, we considered that the key issue was whether it would have been in accordance with the overriding objective for us to have regard to documents that were not relevant to the issues that were raised by the parties in this case. The parties had in advance of the hearing completed schedules of their allegations in which the only challenge made by the Applicant to the relevant costs incurred by the Second Respondent was the general assertion that the charges were higher than those incurred in previous years and that they had not been "fairly, transparently or reasonably incurred". In our judgment, documents raising issues with the standard of service provided by the Second Respondent were not relevant documents when no challenge to the standard of service had been raised by the Applicant before the hearing.

15. Though we took into account the fact that the Applicant is a litigant in person and that the overriding objective includes avoiding unnecessary formality and seeking flexibility in the proceedings, the Applicant was given clear directions by the tribunal on 15 January 2025 which required her to set out in a schedule the item of service charge and amount in dispute and the reason why the amount is disputed. No reference to the standard of service provided by the Second Respondent was made in the Applicant's schedule. If the Applicant were permitted to raise this issue at this late stage of proceedings, this would in our judgment have required an adjournment of the hearing, an updated schedule and counter-schedule and, in all likelihood, further written evidence. In our judgment, to proceed in this way would not have been proportionate and would have caused significant delay.

16. For these reasons, we agreed with Mr Allison that we should not consider the documents at page 432 – 439 and page 621 - 626 of the hearing bundle.

17. For like reasons, we refused Ms Sanwo's application to call Ms Savell to give oral evidence. The tribunal's directions were clear about the need to provide signed witness statements by 12 February 2025. Ms Savell's evidence was said to go to an issue, namely the standard of service provided by the Second Respondent, that had not previously been raised. It would not in our judgment have been in accordance with the overriding objective, nor procedurally fair, to hear oral evidence from a witness who had not given a witness statement in advance of the hearing and who intended to give evidence about matters that had not previously been raised in the application.

18. Accordingly, we heard oral evidence from the Applicant, who adopted her statements of case as her oral evidence in chief. She was cross-examined by Mr Owen. No oral evidence was adduced by the First Respondent. For the Second Respondent, we heard the oral evidence of Mr Hazan and Ms Armstrong. They adopted their witness statements,

both dated 5 March 2025, and were cross-examined by Ms Sanwo. All the representatives made helpful submissions. We reserved our decision.

The issues

19. The parties agreed that the issues in dispute between the Applicant and the First Respondent were:

    (i) Whether the First Respondent was entitled to send service charge demands to the flat, or whether it was required to send them to a different address.

    (ii) If the First Respondent was not entitled to send service charge demands to the flat, whether any of the service charges incurred in the years in question are subject to the statutory limitation period under section 20B of the Landlord and Tenant Act 1985.

    (iii) Whether the service charge demands relied on were accompanied by a summary of rights and obligations under section 21B of the Landlord and Tenant Act 1985.

    (iv) Whether the Applicant has made a request of the First Respondent under section 21 of the Landlord and Tenant Act 1985 and, if so, whether any failure to comply with such a request by the First Respondent affects the Applicant's liability to pay the service charges demanded or the reasonableness of those sums.

20. The parties agreed that the issues in dispute between the Applicant and the Second Respondent were:

    (i) Whether the Applicant is liable to pay both what she refers to as "Block M" service charges and "Estate Charges" or whether she is only liable to pay "Block M" charges.

    (ii) Whether the relevant costs incurred by the Second Respondent have been reasonably incurred or are reasonable in amount.

21. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal makes determinations on the various issues as follows.

The tribunal's decision and reasons

Was the First Respondent entitled to send service charge demands to the flat?

22. The Applicant does not live at the flat. She says (and we accept her unchallenged evidence to this effect) that she moved out of the flat in 2017. We accept that she obtained permission from the First Respondent to sub-let the flat at that time. Permission was granted in part because at the time there were fire safety issues on the estate which meant that the flat could not be sold.

23. Between 2010 and 2021, we find that the First Respondent made a combined demand for rent and service charges from the Applicant which was usually around £300 per month. After 2021, the rent and service charges were demanded separately. This is when arrears on the Applicant's service charge account began to accrue.

24. The hearing bundle included copies of the service charge demands made by the First Respondent from 17 June 2021 to 25 June 2024. They are all addressed to the Applicant at the flat. The Applicant agreed that she did not know whether the demands were in fact received at the flat, as there have been numerous tenants living there during the relevant period. We have no reason to doubt that these demands were sent to the flat by the First Respondent at around the time that each invoice is dated and we so find.

25. As the Applicant was not living at the flat between 2021 and 2024, she did not personally receive these demands and they were not paid. Ground rent demands were also sent to the flat, however, unlike the service charge demands, ground rent reminders were sent to the Applicant by email and the ground rent was paid by her on receipt of those emails.

26. As a consequence of these matters, between 2021 and 2024 service charge arrears of over £8000 accrued. The First Respondent has not provided any clear explanation about why it allowed these arrears to accrue over four years without contacting the Applicant about them by email. It appears to us that, had the First Respondent contacted the Applicant by email with payment reminders as it did with the ground rent demands, and as it appears to have done before 2021, these arrears would not have accrued and this application would have been avoided.

27. Though the Applicant stated at paragraph 3.2.2 of her statement of case that she had notified the First Respondent's predecessor (Genesis Housing Association Limited) of her change of address in 2017, Ms Sanwo confirmed in the course of closing submissions that the Applicant's case was that the Respondent had actual or constructive knowledge of i) an alternative service address for her and/or ii) that the property was not an appropriate place to serve service charge demands. Such knowledge was said to arise in the following ways.

28. First, the Applicant relies on an undated licence to underlet relating to the flat which appears to have been drafted in 2017. However, all the

licence does is to grant prospective permission to underlet the flat. The Applicant was not required to underlet the flat on the grant of the licence, she merely had permission to do so. The licence does not provide any alternative service address for the Applicant whatsoever. In our judgment, the mere grant of a licence to underlet in this case did not provide the landlord with actual or constructive knowledge that the Applicant was no longer living at the flat, nor of any alternative address for service of service charge demands.

29. Secondly, on 25 August 2020 the Applicant submitted a form to the First Respondent in which she applied to "staircase" her shared ownership in the flat to 100%. She gave her address as C/o Mayowa Tola-Voss, 132 Kestrel Road, Corby, NN17 5FP. In our judgment, the provision of a "care of" address on an application to staircase ownership of the flat did not amount to notification to the First Respondent that the Applicant was no longer living in the flat, nor that service charge demands should be sent to a different address.

30. Thirdly, the Applicant points out that on 26 August 2021, Francesca Dee, a property manager employed by the First Respondent, emailed the Applicant stating that she had encountered the Applicant's tenant in the flat and asked whether permission to sublet the flat had previously been granted. We agree with Ms Sanwo that at this point, the First Respondent knew that the Applicant was not living at the flat, however no alternative service address was provided by the Applicant to Ms Dee in August 2021. It was not until 10 March 2024 that the Applicant emailed the First Respondent asking for her correspondence address to be updated to 132 Kestrel Road, Corby, NN17 5FP.

31. The Applicant's email of 10 March 2024 was passed to the property manager for the Applicant's flat. On 11 March 2024, the property manager emailed the Applicant attaching a letter informing her that arrears of over £8000 had accrued on her service charge account. In due course, this application was made in respect of the service charges that made up the arrears. We accept and find that the Applicant did not personally receive copies of the service charge demands that we have found were sent to the flat until they were disclosed by the First Respondent in these proceedings.

32. Ms Sanwo asserted that at least after August 2021, the First Respondent was aware that the Applicant was not living at the flat and that the flat was therefore not an appropriate place to send service charge demands. She points out that there was a pattern of email correspondence between the Applicant and the First Respondent in 2022, 2023 and 2024 relating to the fire safety issues and the potential sale of the flat, and also that the First Respondent regularly sent the Applicant ground rent reminders by email during this period, which prompted payment. She asserts that the First Respondent should therefore have served service charge demands on the Applicant by email and that, by failing to do so, there has been no

valid service of any service charge demand in the service charge years in question. She points out that the purpose of a notice is to ensure that the matters referred to in the notice are promptly and effectively communicated to the recipient.

33. In our judgment, the difficulty with this argument is that clause 10 of the Applicant's lease states that "*a notice to be served under this Lease shall be served in writing and shall be properly served if served … upon the Leaseholder at the Premises…*". The Applicant's obligation to pay service charges to the First Respondent arises under clause 3.3.4 of her lease, which is a requirement "*to pay … service charge…due under the Headlease such sums to be payable to the Landlord or as they may direct at the times and in the manner specified in the Headlease*".

34. It was not disputed that a demand to pay service charges falling due under clause 3.3.4 of the Applicant's lease is a notice served under the lease – indeed, the Applicant accepts in her skeleton argument that the lease permits service of demands at the property. In our judgment the Applicant's lease expressly deems service charge demands served on the Applicant at the flat to have been validly served. As we have found that the First Respondent served service charge demands at the flat on or around the date that each demand bears, it follows that they have been properly served on the Applicant.

35. If we are wrong about that, then in our judgment it is for the Applicant to keep her service address with the First Respondent up to date or to make arrangements for mail received at the flat to be forwarded to her. This is not a case like that in ***Grimes v The Trustees of the Essex Farmers And Union Hunt*** [2017] EWCA Civ 361 (an authority relied on by the Applicant) in which the Applicant had expressly notified the First Respondent of an alternative service address before March 2024. The fact that the First Respondent knew that the Applicant was not living at the flat does not in our judgment put it under a positive obligation to make enquiries with the Applicant about an alternative address for service or to send service charge demands by an alternative method, such as email.

36. For these reasons, we find that though the Applicant did not personally receive the service charge demands made by the First Respondent until after this application was issued, they were nevertheless properly served upon her at the flat from time to time during the service charge years in dispute in this application.

37. It follows that the second issue, namely whether or not the sums demanded by the First Respondent are subject to the statutory limitation period under section 20B of the Landlord and Tenant Act 1985 does not arise, because this argument is premised on the basis that there had been no valid service of service charge demands upon the Applicant until 11 March 2024.

Were the service charge demands accompanied by a summary of rights and obligations under section 21B of the Landlord and Tenant Act 1985?

38. The service charge demands contained in the hearing bundle were all accompanied by a summary of rights and obligations. As set out above, the Applicant acknowledges that she does not know what documents were sent to the flat with the service charge demands. Mr Hazan's unchallenged evidence, which we accept, was that the Second Respondent always serves a summary of rights and obligations when it serves service charge demands on the First Respondent.

39. In light of the documents that we have seen and the evidence we have heard, we are satisfied that the service charge demands served at the flat during the service charge years in question were accompanied by a summary of rights and obligations under section 21B of the Landlord and Tenant Act 1985.

Section 21 of the Landlord and Tenant Act 1985

40. On 30 March 2024, the Applicant sent the First Respondent an email asking for "a detailed breakdown of what makes up the Service Charges compiled by YY Management for the whole Vizion Complex and how it is apportioned to the respective flats". This request was repeated on 25 April 2024 and 24 May 2024. Ms Sanwo says that this was a request made under section 21 of the Landlord and Tenant Act 1985 for a written summary of the costs incurred in the last accounting period. The First Respondent denies that it has failed to comply with a properly made section 21 request – Mr Owen points out there is no reference to the statute relied on in the email and the request for a "breakdown" is not sufficient to engage the statute.

41. Though a request for a written summary of costs under section 21 of the 1985 Act need not be in any particular form (save for that the request must be in writing), we are doubtful that a simple request for a breakdown of service charges and their apportionment, without reference to the particular section of the statute relied on, would be sufficient to engage the obligations under section 21 of the 1985 Act, especially in light of the criminal sanctions which attach to failure to comply.

42. In any event however, whether or not the First Respondent failed to comply with a valid request under section 21 of the 1985 Act does not in our judgment take matters much further in this case. The Applicant remains liable to pay service charges that have fallen due under her lease and the First Respondent is effectively the "middle-man", passing on costs that have been incurred by the Second Respondent. It was wholly unclear to us how any failure on the First Respondent's part would have had any effect on the Applicant's liability to pay and we find that it does not have any such effect.

Is the Applicant required to pay both "Block M" service charges and "Estate Charges"?

43. The Applicant's case as it is put in her statement of case is that the service charges demanded of her include estate-wide costs and are not limited to costs that are solely attributable to her block. The Applicant says that she is only liable to pay costs relating to her building (being Block M or Moonstone House)

44. As set out above, the Applicant is obliged under clause 3.3.4 of her lease to pay the service charge that is due under the headlease.

45. Under the terms of the headlease, the First Respondent is required to pay the Second Respondent "*a sum equal to the fair and proper proportions (based on the proportions which the gross internal area of the Property bears to the aggregate gross internal areas of both the Property and the premises demised or intended to be demised to the Other Owners entitled to use or share the benefit of the Building, Pocket Park or the Car Parking Spaces (as the case may be) as determined by the Developer (acting reasonably) of the Building Service Charge the Pocket Park Service Charge and the Car Parking Spaces Service Charge for each Maintenance Year…*".

46. The Building Service Charge, Pocket Park Service Charge and the Car Parking Spaces Service Charge are defined in clause 1.1. of the headlease. In summary, the service charges relate to the costs incurred by the Second Respondent in maintaining the building (being Block M or Moonstone House) and wider parts of the estate including the "pocket park" and the car parking areas.

47. Mr Hazan explained in his written and oral evidence that expenditure on the estate is apportioned to reflect the benefit / access to services enjoyed by the lessee. The Second Respondent categorises service charge expenditure into schedules. The Applicant pays a proportion of Schedule 3 and Schedule 4 expenses, which include car parking and garden areas. Mr Hazan's evidence on this point was given in a clear and straightforward manner and we accept what he says.

48. We find that the Applicant's liability to pay service charges is not limited to costs incurred in respect of Block M. The terms of the lease and the headlease require the Applicant to pay for certain costs relating to the upkeep and maintenance of parts of the wider estate. There was no challenge to any particular cost incurred, nor the method of apportionment adopted by the Second Respondent. We find no reason to interfere with the sums demanded by the Second Respondent on this ground.

Reasonableness

49. The Applicant's main complaint is that the service charges demanded in the years in question are significantly higher than in previous years and that she has not been provided with a breakdown of the sums incurred. However, no particular challenge is raised about any of the particular items of expenditure incurred in any service charge year and no comparable quotations for works or services have been provided.

50. As to the increase in costs in the years concerned, the evidence of Mr Hazan was that the cost of insurance was the main driver of the increase in service charges. The Second Respondent has found it difficult to place insurance because of the fire safety issues on the estate. This evidence was supported by the contemporaneous documents in the hearing bundle, including a comparison of the service charges incurred in the 2019/20 and 2024/25 service charge year and letters sent to leaseholders in 2021 and 2023, and we accept what he says. There was no challenge to the reasonableness of the insurance premiums incurred by the Second Respondent. In our judgment, the increase in the service charges has been adequately explained by the Second Respondent.

51. Likewise, the Applicant says that the 2024/25 service charge budget is excessive and unreasonable, however she has not identified any particular provision for service charge expenditure that is said to be unreasonably high. It is for the Applicant to prove her case and it is incumbent upon her to identify which items of expenditure she takes issue with. She has not done so. In these circumstances, we do not find that the 2024/25 budget is an excessive budget as alleged.

52. As to the breakdown of the service charges demanded, Mr Hazan's unchallenged evidence, which we accept, was that the Second Respondent provides yearly service charge budgets with a covering letter that provides commentary on the proposed costs. Service charge accounts are prepared at the end of the service charge year.

53. Various service charge statements were included in the hearing bundle. These statements gave details of the headings of expenditure incurred. The Applicant has not identified what further information she is expecting to receive. In our judgment, the Second Respondent has provided an adequate breakdown of the service charge expenditure that it has incurred in the years in dispute in this application.

54. The final point raised by the Applicant is whether she has been charged a duplicated cost of £106.13 in respect of the building's intercom in 2023, as intercom costs were included in the general service charge expenditure as well as an additional charge of £106.13 appearing on the service charge demand.

55. We were shown contemporaneous documents in the hearing bundle sent in 2021 and 2023 which stated that the intercom system was identified in 2021 as being obsolete as new parts were no longer available to

undertake repairs. There were plans to replace the system in a phased project of works over the longer term, however the works became urgent when the systems failed earlier than expected and the cost of a phased block-by-block replacement was found to be considerably higher than an immediate replacement of all the units. Accordingly, the Second Respondent carried out a statutory consultation under section 20 of the Landlord and Tenant Act 1985 in respect of the major works required. In the meantime, the existing systems had to be maintained. There was no duplication of costs – the replacement and maintenance works were running alongside each other. This explanation was not challenged and we are satisfied, having carefully considered the contemporaneous correspondence, that there has been no duplication in service charge cost.

Conclusions

56. For the reasons set out above, we find that service charge demands have been properly served on the Applicant at the flat and that the relevant costs incurred or budgeted by the Second Respondent in the service charge years in dispute are payable under the headlease and under the lease and have been reasonably incurred and are reasonable in amount.

57. Accordingly, the amount demanded by the First Respondent of the Applicant (being the First Respondent's proportion of the costs incurred by the Second Respondent under the headlease) are payable in full.

Application under s.20C and refund of fees

58. In her application form, the Applicant applied for an order under section 20C of the 1985 Act in respect of the costs incurred by the First Respondent in connection with these proceedings. Mr Owen submitted that no order should be made as costs have been incurred because the Applicant has failed to pay service charges that are due.

59. We have considered carefully the fact that we have found that the service charges demanded are payable in full and that the service charge demands were properly served at the flat. However, as set out above, no clear explanation was provided for why the First Respondent allowed such significant service charge arrears to accrue over the course of four years without contacting the Applicant by email, as it did with the ground rent demands and other correspondence. We feel sure that had the First Respondent done this, the arrears would not have accrued and this application would have been avoided. Furthermore, we do not understand (and no explanation was provided) why the First Respondent did not provide copies of its service charge demands to the Applicant before it was ordered to do so in these proceedings. Again, we think it likely that early disclosure of the service charge demands would have at least narrowed the issues between the parties. For these reasons,

in our judgment it is just and equitable to make the order sought by the Applicant.

60. The Second Respondent does not have any contractual right to recover legal costs directly from the Applicant. No application was made by the First Respondent for any section 20C order against the Second Respondent and we make no such order.

Name: Judge K Gray **Date:** 14 May 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).