



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

Case reference	:	LON/00AF/LSC/2024/0735 Previous Case ref LON/00AF/LSC/2024/0148
Property	:	Flat 16 & 40 Brooklyn House, Anerley Road London SE20 8 AZ
Applicant	:	Mr Apostol Arnautu and Mrs Lenuta Arnautu
Representative	:	n/a
Respondent	:	Brooklyn House Management Limited
Representatives	:	Mr Michael Bottomley (Director) Mr A Govender (Director) Mr Martin Anderson of Ad Interim Limited (Managing agent)
Type of application	:	An application under section 27A Landlord and Tenant Act 1985
Tribunal	:	Judge N O'Brien, Mr S Wheeler MCIEH CEnvH
Date of Hearing	:	24 April 2025
Date of Determination	:	19 May 2025

Determination

1. The tribunal has no jurisdiction in respect of the service charge years 2009/2010 to 2018/2019.
2. The tribunal makes the findings as set out in the schedule attached to this determination in respect of the service years 2019/2020 to 2024/2025. Any reductions to the sums demanded appear in red.
3. The tribunal does not make any order under s20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

4. The tribunal does not make an order for the reimbursement of tribunal fees paid by the applicants

Background

1. The Applicants are the long leaseholders of Flats 16 and 40 Brooklyn House. The Respondent is a non-profit-making leaseholders management company. Since February 2019 the parties have been involved in litigation in both the County Court and the tribunal. The proceedings were transferred from Bromley County Court to the tribunal by order of District Judge Watson on 21 February 2024. The matter was considered by Tribunal Judge Daly who directed the Applicants to make a new application to the tribunal pursuant to s27A of the Landlord and Tenant Act 1985 in respect of that part of their claim which engaged the recoverability of service charges which they did. By order of Judge Tildesley dated 2 December 2024 the remainder of the proceedings were transferred back to the county court because the Tribunal considered that the Applicant's claim was principally about the landlord's covenant to repair and the director's fiduciary duties. Neither of those matters were within the jurisdiction of the Tribunal. The s.27A application which the Applicants sent to the tribunal on 27 May 2024 was given a new case number (LON/00AF/LSC/2024/0735).
2. Judge Tildesley identified the following issues to be determined by the tribunal in these proceedings:
 - (1) Whether the Applicants have admitted the service charges for the years 2009/10 to 2018/19 by virtue of their payment and lack of challenge during those years?
 - (2) The reasonableness and payability of the actual service charges, limited to those sums over £100.
 - (3) The reasonableness and payability of the estimated service charge for 2024/25.
 - (4) Whether the Respondent has complied with the section 20 consultation process for major works.
 - (5) Whether the sums payable for the lease of the roof space ought to be set off against the service charges, and if so the amount of the set off.
 - (6) Whether the Applicants have a claim for damages for historic neglect, and if so whether an amount ought to be set off against the service charges?
 - (7) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.

- (8) Whether an order for reimbursement of application/ hearing fees should be made.

The Hearing

3. Neither applicant attended the hearing. On the morning of the hearing the tribunal received an email from both Applicants saying that one of them had been admitted to hospital the night before and was awaiting tests. The case officer, at the tribunal's request, asked the Applicants to specify which of them was in hospital and by return email the Applicants indicated that it was the Second Applicant Mrs Arnautu who was in hospital and who was due to undergo an MRI and CT scan. The email was accompanied by a photo of Mrs Arnautu in a hospital bed but no medical evidence was supplied. The tribunal determined that it would refuse the adjournment and asked the case officer to inform the Applicants that the hearing would start at 11.15 am. No good reason was given for Mr Arnautu's absence and no medical evidence had been supplied to show that Mrs Arnautu was unable to attend the tribunal due to a medical emergency. The tribunal noted that this was the second application which the applicants had made for an adjournment, the first being refused by Judge Martyński on 12 March 2025. The Applicants had made submissions in their witness statement and in the body of the schedule of disputed charges which set out their position.
4. The hearing commenced at 11.30 am. Neither Applicant attended. The tribunal considered that should proceed to determine the application notwithstanding the applicants' non-attendance. These proceedings have been ongoing for some time. Two directors of the lessee management company, Mr Bottomly and Mr Govender had attended the hearing as had Mr Martin Andreson, of Ad Interim Ltd, the presently appointed managing agent. Both Mr Bottomley and Mr Govender are volunteer directors and are themselves leaseholders in Brooklyn House.

Issue 1- Does the Tribunal have jurisdiction in respect of the challenges to the service charges paid from 2009/2010 to 2018/2019?

5. Section 27A(4) of the Landlord and Tenant Act 1985 provides that no application may be made in respect of a service charge that has been agreed or admitted by the tenant. S27A(5) provides further that the tenant is not to be taken to have agreed or admitted that a service charge is payable because he has paid it. However where a service charge is paid without challenge the tenant may be taken to objectively accepted that it was payable and reasonable (see *Cain v Islington [2015] UKUT 0117 (LC)*).

6. The applicants submissions on this issue start at page 31 of their statement of case. It is clear that the reason for the cessation of payment in 2019 was not based on any challenge to the payability or reasonableness of the service charges they had paid in respect of the preceding years but centred on their concerns about the management of the building, the decisions that had been made in respect of income earned from the letting of the roof for communications equipment and other matters regarding abandoned plans to redevelop parts of the building. As far as can be ascertained from the material in the bundle, the first time there was ever any challenge to the reasonableness and payability of these earlier charges was on 17th May 2024 when the Applicants submitted a s.27A application to the tribunal. Certainly the applicants have not pointed to any earlier challenge in their statement of case.
7. We consider that by waiting so long to challenge the payability and reasonableness of the service charges from 2009 to 2019, the applicants would objectively have been taken to have admitted them. Consequently we have no jurisdiction to make a determination in respect of those years.

Issues (2) and (3) The reasonableness and payability of the actual service charges for the years 2019/2020 to 2023/2024 and the reasonableness and payability of the estimated service charge for 2024/25.

8. The applicants have completed a schedule of disputed charges for the years 2019/2020 to 2024/2025. However many of the entries relate to income received by the Respondent and the manner in which it has dealt with the reserve fund. Those complaints are not justiciable in this tribunal. In respect of the actual charges for the years in question the basis for the vast majority of the challenges raised by the Applicants relate to either an increase in cost from the year before or a lack of documentary evidence.
9. The Respondent's position is that its ability to supply documentary evidence in respect of charges levied before the service charge year 2023/2024 has been hampered due to a dispute between it and its former managing agent, Block Management Ltd regarding the amount held in the reserve account. This dispute was settled on the basis that the former agent would transfer £62,000 to the new agent but have no further responsibilities under the terms of the management agreement. They have declined to provide any further documentation. The present managing agent was appointed in January 2023 and was responsible for the preparation of the service charge accounts for the 2022/2023 to 2024/2025 which are the only years for which full invoices are available.
10. The burden of proof lies on the Applicants. It is for the Applicants to show, on the balance of probabilities that the sums demanded as service

charge were either unreasonable in amount, unreasonably incurred or not payable under the terms of the lease. The applicants have challenged practically every item on the service charge accounts for the years under consideration. The basis for the majority of the challenges is either that the charges have increased compared to previous years without explanation or that there is a lack of documentation to support the charges. The applicants have not supplied any alternative quotes for any of the specific items they seek to challenge.

11. In light of the difficulty the Respondent has had in obtaining relevant documents from its previous managing agents we determined that the most sensible way to proceed would be to consider first the year for which all the relevant invoices are available, then to consider the actual charges for each of the proceeding years in reverse chronological order and then consider the budget for the year 2024/2025. Mr Anderson supplied the tribunal with a copy of the recently completed service charge accounts for 2024/2025 at the hearing.
12. Our determinations in respect of each challenged item are set out in the schedule attached to this decision. We have made reductions for those items which appear in red.

Issue 4 - Whether the Respondent has complied with the section 20 consultation process for major works.

13. The Applicants' case in this respect is set out at page 34 to 36 of their joint statement. However they have not identified the major works they are concerned about. They again appear to be concerned about sums collected from leaseholders for major works in the past and way in which sums paid into the reserve fund were managed and spent. None of the matters raised by the Applicants under this heading relate to any of the actual charges set out in the Scott schedules. It seems to us that the matters raised by the Applicant under this heading relate to the governance issues which the Tribunal has already determined are outside of its jurisdiction and which it has transferred back to the County Court.

Issue 5 - Whether the sums payable for the lease of the roof space ought to be set off against the service charges, and if so the amount to be set off

14. Part of the wider dispute between the Applicant and the Respondent relates to the sums paid to the Respondent pursuant to a lease agreement dated 30 May 2014 in respect of the roof between it and AP Wireless (UK) Ltd for a term of 50 years for a premium of £180,000. Prior to 2014 the roof had been leased at an annual rent of £26,000 per annum. It appears that the income from the roof leases was used by the Respondent to supplement the service charge income, which kept the charges demanded of leaseholders being lower than they otherwise would have been. It also appears that a significant portion of this money was used by the Respondent to explore the potential redevelopment of parts of the

building with a view to generating further income. In the event those plans came to nothing.

15. The Applicants have not set out any legal case their statement of case as to why they are entitled to set off income generated by the Respondent from leasing the roof of the building against their service charge liability. The tribunal considers that the issues raised by the applicants in respect of the roof lease income relate back to their overall concerns regarding governance of the freehold company. These issues are outside the jurisdiction of the Tribunal.

Issue 6 - Whether the Applicants have a claim for damages for historic neglect, and if so whether an amount ought to be set off against the service charges?

16. The applicants have complained generally about historic neglect in their statement but have not clearly identified any specific area of neglect which has resulted their service charges being higher than they otherwise would have been. There is no evidential basis on which the tribunal could set off any sum against service charge by reason of historic neglect.

Issues 7 and 8 - Costs and reimbursement of fees

17. The Applicants' challenges to the service charges for the years 2009/2020 to 2024/2025 have largely failed. Consequently it would not be just to make any order limiting the Respondent's ability to recover its costs of these proceedings as either an administration charge or a service charge. Similarly it would not be just to order the Respondent to reimburse the tribunal fees paid by the Applicants.

Name: Judge N O'Brien

Date: 19 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).