FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UD/LSC/2023/0071**
Property	**:**	**5 Thames Bank Thames Road Goring on Thames RG8 9AH**
Applicant	**:**	**Miss Carol McKearney (leaseholder and Chair of Thames Bank Tenants Association)**
Respondent	**:**	**Thames Bank (John Lavin)**
Represented by	**:**	**Cognatum Estates Limited**
Type of application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Shepherd**
		Roland Thomas FRICS
Date of decision	**:**	**18th June 2025**

Determination

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1. In this case the Applicant challenged an overspend by the Respondent on staffing costs. The Applicant is a leaseholder and chair of the Thames Bank Tenant's Association. The Applicant lives at 5 Thames Bank, Thames Road, Goring on Thames, Oxon RG8 9AH ("The premises"). The premises is one of 21 flats all let on long leaseholds.

2. The Applicant stated the following in her application:

Staffing (and sundries) overspend 2022 of £5,549 (Actual 2022 - Budget 2022). Staff worked and claimed more hours than budgeted for. Cognatum Estates Ltd has admitted fault (in writing) but maintains that the 21 tenants collectively, still have to pay for this overspend. Various and contradictory reasons (in a series of emails and notes) have been put forward for this error by the line manager of the staff member(s) concerned. Cognatum Estates Ltd maintains that as a non profit organisation they have no funds to pay for this overspend. The uplift for the Staffing and Sundries item in the 2023 (£29,365) and 2024 (£31,326) budgets has erroneously been based on the 2022 actual overspend figure. Cognatum should re calculate the Staffing and Sundries budget figures for both these years and give evidence to tenants of the actual staffing hours worked and staffing spend in 2023 within two months of 31st December 2023, the end of the accounting period.

Description of the question(s) you wish the Tribunal to decide:

Should Cognatum refund this amount of £5,549 to the 21 tenants? Should Cognatum recalculate their 2023 and 2024 budgeted figures and issue revised Service Charge Budgets for these two years? Should Cognatum give evidence to tenants of the actual staffing hours worked and staffing spend in 2023?

3. At the hearing which took place online the Applicant represented herself and the Respondents were represented by John Lavin who is the managing director of Thames Bank. He explained that there had been an accepted overspend as a result of extra hours being claimed by the estate manager in 2022. He accepted that this was not a reclaimable sum and the overspend of £4459 had been repaid into the service charge fund by adjusting the budget for 2025.

4. The Applicant said that the leaseholders ought to have been reimbursed individually even though some had sold on and moved from the scheme since 2022. This was the essence of the dispute that came before the Tribunal. The Applicant also said that the accounts were late and at one stage the leaseholders had been provided with 24-hour management cover.

The law

5. The law applicable in the present case was limited.

   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.

6. 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.*

7. 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

Determination

8. We consider that the overspend issue was dealt with correctly. It is unrealistic for the leaseholders to expect to be repaid sums individually when some of those who were living at the scheme in 2022 had moved on. It was perfectly appropriate for an adjustment to be made to reflect the admitted overspend.

9. It came to light during the hearing that the Respondent did not reveal salary levels to leaseholders in so much as salaries and sundries were not separated in the budget figures. We consider the leaseholders are entitled to know the salaries of staff for whom they are financing. Therefore, the salaries and sundries figure should be separated and individual salaries shown.

10. We make an order pursuant to s.20C Landlord and Tenant Act 1985 accordingly the Respondents cannot recover their costs of the hearing from the service charge. We also order the Respondents to pay the Applicant's hearing and application fee – total of £300. She was entitled and indeed right to bring the application in order to clarify the issues before us.

Judge Shepherd

18th June 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).