FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HY/LSC/2024/0040/HP
Property	**:**	Flat 30 Pembroke House, Fisherton Street, Salisbury, Wiltshire, SP2 7SX
Applicant	**:**	James Munro
Respondent	**:**	Stonewater Limited
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Member	**:**	Judge Dovar
Date of Determination	**:**	5th June 2025

DETERMINATION

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1. This is an application for a determination of liability to pay and reasonableness of service charges for the year 2023/2024 in relation to:

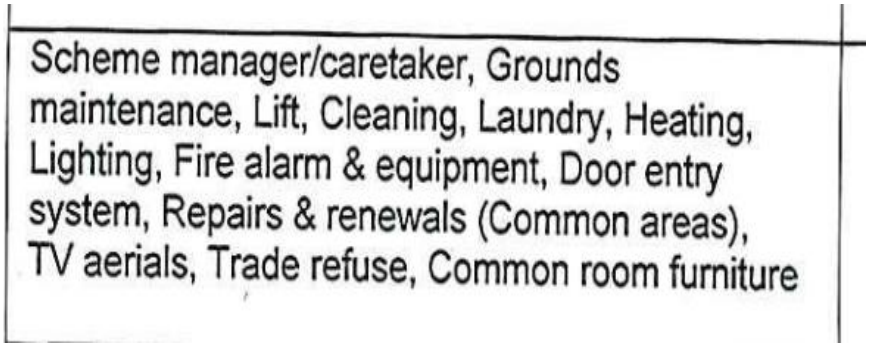
   a.) the reasonableness of increased electricity related charges, which have increased from £12.18 to £54 per week.

   b.) the reasonableness of the service charges as it is said that the services provided 'appear to fall short of the landlord's obligations to provide timely repairs and maintenance'.

2. It has been prompted by a rise of £40.83 per week in the variable service charge that the Applicant pays in addition to his rent. The application has been determined without a hearing as notified to the parties, without objection.

3. The Applicant's flat is contained within a grade 2 listed building ('the Building'), currently containing 38 self contained one and two bedroom retirement flats on five floors, having been converted from the Old Salisbury Infirmary which dates back to 1797. The Applicant relies in part in his application on the fact that the flats are intended to be affordable retirement accommodation; which he says is no longer the case given the rise in service charges. He has also relied on the planning permission for the conversion of the Building which provides that it is to be used for affordable housing for individuals over the age of sixty.

4. The Applicant, as it seems with all the other occupiers, is a tenant pursuant to an assured tenancy; his is dated 19th October 2015. That provides for a fixed rent plus a weekly service charge. The terms of the tenancy provide at clause 5, that each year an estimate will be made of the anticipated cost of services and that will be charged over a period of a year, paid weekly. At the end of the year, the actual cost will be calculated and then if the estimate was too much, the following years service charge will be reduced, but if it was too little, then it will be increased. The services are set out in the tenancy agreement as



5. The agreement also provides at clause 3 for the Respondent to carry out repairs to the Building.

6. The Applicant has made reference to and relied on another determination of this Tribunal in ref CHI/00HY/MNR/2023/0044 between one of his neighbours and the Respondent in the same building. However, that was an application for the determination of a market rent under ss.13 and 14 of the Housing Act 1988 and proceeded on the basis that the service charge element of the sums payable under the applicant's tenancy was a fixed charge. In this case, both parties have proceeded on the basis that it is a variable service charge, that accords with my reading of clause 5 of the tenancy agreement. Therefore I can derive no assistance from the previous decision which was determining the market rent, not the reasonableness of the service charge payable.

7. The challenge that this Tribunal is able to entertain is firstly whether the costs are recoverable under the terms of the lease. If so, then the issue is whether the actual service charge costs are reasonably incurred or whether the services provided are to a reasonable standard (s.19(1) of the Landlord and Tenant Act 1985). Alternatively, when the costs are based on an estimate, it is whether that estimate is a reasonable one to make (s.19(2)). In the latter case that usually involves an assessment of the previous years actual costs, and then an allowance for known matters (such as one off items of expenditure in the forthcoming year). The issue raised by the Applicant as to the planning permission for the site and the claim that this is affordable housing, are not ones that I consider impact on the challenges that I can deal with. They do not as

far as I can see help me determine what is recoverable under the terms of the agreement, which are clear, nor do they assist in providing any inference of a cap on the amount of service charges. They also do not assist in determining whether the costs should be capped under s.19.

Electricity

8. The first issue taken by the Applicant is the rise in electricity costs which are passed onto him. As well as the rise per se in charges, the Applicant also considers that the cost has increased because of the use of an old and outdated heating system, insufficient draft-proofing, single glazed windows and a lack of management oversight meaning that windows are left open and heaters are turned on in warm periods.

9. It is unfortunate, but widely known, that the cost of electricity has increased nationwide. It also seems that because this building has a communal heating system, it is not subject to the energy price cap set by Ofgem. Whilst this may increase the cost of electricity, I do not see how that inhibits the Respondent from passing on that cost to the Applicant under the terms of the tenancy agreement. Those terms include as part of the services, heating, lighting and other items which require the consumption of electricity. As a result, the Respondent is entitled to pass that cost on.

10. This is an old building and is listed. There is nothing express in the tenancy agreement regarding any obligation to make improvements, over and above repair. Most of the Applicants other complaints relate to improvements which he says would decrease energy consumption. Whilst that may be the case, the Respondent is not under any obligation to provide improvements. Further, if they did, that would no doubt increase the service charge even further as the cost of the improvement would be passed on.

11. The final complaint is a lack of management oversight with regard to leaving windows open or having heaters on in warm periods. The latter appears to be the result of resident conduct, the former is blamed on

staff. However, I assume that this situation has pertained for a number of years and the issue is only raised now because of the overall increase in the cost of electricity consumption. I am not able to properly quantify the increase, if any, that this conduct causes to the cost of electricity but taking a broad view do not consider that it would be sufficient to merit any adjustment.

12. Therefore in the absence of any evidence that the costs are too high because the Respondent could have been obtained at a significantly lower tariff, this challenge fails.

Other Services

13. The Applicant has also challenged a retrospective cost that has been added to his service charge. He says this has been done because it is said the costs were not initially charged correctly. In addition he challenges an administrative fee that has been added. Collectively this amounts to an additional £1,120.56 for the year in question, and he refers to a balance brought forward of £21.55.

14. In their email of 22nd October 2024, the Respondent stated that the £21.55 was the additional balance to be paid in relation to a variance in costs over the past 18 months. They said

> This takes into account the charge you paid over the period of 30th May 2022 – 17th September 2023 and compares this to the actual charges incurred over the same period. In this case for your property there was a shortfall in costs of £1,120.56 (The Actual costs came in £1,120.56 higher than estimated for your property). This is then split over 52 weeks making the additional weekly charge £21.55.

15. I understand this to be reflective of the position in clause 5 of the lease which enables the Respondent to add to the service charge an amount to reflect under budgeting for the previous year. I therefore do not see any basis for challenge given that this additional charge is reflective of the provision in tenancy agreement to allow the Respondent to recover a deficit. I note that it is also reflective in part of a rise in rent from £128.68 to £138.59, which I have no jurisdiction to deal with.

16. Despite setting out in his application that other examples would be given, I was not able to ascertain what they were. If they were complaints about the condition of the Building, then the same point mentioned above applies; this is an old building and is listed and there is no obligation to improve, just to repair.

Conclusion

17. For the above reasons the application fails and no adjustment is made to the service charge payable by the Applicant. In their submissions the Respondent has confirmed that it will not seek to recover the costs of this application and so there is no need to make any order restricting recovery.

JUDGE DOVAR