FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/00ML/LSC/2024/0081**
Property	**:**	**1 and 6 Devonian Close, Park Crescent Terrace, Brighton, BN2 3JF**
Applicant	**:**	**N Wilson (Flat 1) and C Marionneau (Flat 6)**
Representative	**:**	**None**
Respondent	**:**	**Mike Stimpson**
Representative	**:**	**None**
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	**:**	**R Waterhouse FRICS** **N Robinson MRICS** **J Dalal**
Venue	**:**	**Brighton Tribunal Hearing Centre, 185 Dyke Road, Brighton, BN3 1TL**
Date of decision	**:**	**7 July 2025**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sums of £ 20,241.13 and £7904.45 are payable by the applicants in respect of the service charges for the years 2022 and 2023 for "the works".

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 nor the Commonhold and Leasehold Reform Act 2002 Paragraph 5A of Schedule 11.

Preliminary

(3) The applicants attended the hearing, Nick Wilson as owner of flat 1 and Charlotte C Marionneau as owner of flat 6.

(4) Mike Stimpson the freeholder attended

The application

1. 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 the applicant in respect of the service charge years 2022 and 2023.

Background

2. An application was made to the tribunal on 1 May 2024 under section 27A Landlord and Tenant Act 1985 challenging the service charge for years 2022, 2023 and 2024.

3. The tribunal gave directions, 8 November 2024, for a case management hearing on the 6 December 2024 to take place at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL.

4. The directions required the parties submit a position statement by 22 November 2024 in advance of the case management hearing. None were received.

5. The second applicant Ms C Marionneau submitted a case management application on 19 November 2024 requesting a postponement of the case management hearing due to caring responsibilities in France.

6. The tribunal wrote to both applicant's on 26 November 2024 requesting further information and clarification as to whether the first applicant Mr Wilson could attend the case management hearing as representatives of both applicant in the second applicant's absence,

7. Neither applicant commented, the second applicant provided documentation confirming their caring responsibilities and the respondent did not comment.

8. The case management hearing of the 6 December 2024 was vacated and new directions issued. Directions dated 3 December 2024 provided for the applicant's case to be sent to the respondent by 21 January 2025, the respondent's case 11 February 2025, and an applicant's Reply by 25 February 2025, with a hearing to take place on 19 March 2025.

9. The first applicant Mr Wilson submitted a case management application dated 31 January 2025 requesting a postponement of the hearing for personal reasons. The request was granted, and the hearing of the 19 March 2025 was vacated, and a revised hearing date of 1 May 2025 was set down.

10. The second applicant Ms C Marionneau submitted a case management application dared 3 February 2025 requesting a postponement following the passing of her mother. This application was approved, and a revised hearing date of the 1 May 2025 was set down.

11. By directions dated 14 March 2025, the tribunal set down that unless the bundle was received by the tribunal by 28 March 2025 in accordance with the directions dated 3 December 2024 paragraphs 32 to 39 the applicant's case would be struck out.

12. The first applicant Mr Wilson submitted on the 18 March 2026, a case management application seeking an adjournment of the final hearing listed on 19 March 2025 on the basis they were in Australia and unaware of the previous directions timetable. The hearing by this stage had been vacated and a revised hearing date of 1 May 2025 had been set down.

13. The second applicant Ms Marionneau by case management application dated 18 March 2025 requested an extension of time to pay the hearing fee and time to submit their statement, the reason given were personal circumstances.

14. By Directions dated 18 March 2025, the tribunal directed that unless the bundle is submitted by 28 March 2025 in accordance with directions dated 3 December 2024 the tribunal will strike out the application without further notice in accordance with Rule 9 (1).

15. The tribunal by Directions dated 25 March 2025 revised the Directions as follows; applicant's case to be sent to the respondents by 28 March 2025, the respondent's case 11 April 2025, and an applicant's Reply by 15 April 2025.

16. The hearing was confirmed for 1 May 2025 at the Havant Justice Centre,

17. At the hearing of the 1 May 2025, it was noted the bundle had been received by the tribunal on the 16 April 2025. The bundle, whilst submitted did not comply with the Directions in terms of contents, nor timetable, nor did it give an opportunity for the respondent to agree contents or insert additional unagreed material.

18. The tribunal felt the non-compliance with the Directions placed the respondent at a disadvantage. Additionally, there were significant omissions in the documentation that would have been of assistance to the tribunal.

19. The tribunal considered the three options of immediate strike out of the applicant's case; to proceed with the hearing or to adjourn pending further directions, the tribunal determined the last course of action.

20. The tribunal provided in the directions that the applicant should send the draft bundle to the respondent by 23 May 2025. The respondent to review and submit to the applicant's any additional material they wished to include by the 6 June 2025. The finalised bundle to reach the tribunal by 13 June 2025.

The Property

21. The property comprises six flats, all six flats were built in 1933. Three flats, 2,4 and 6 had bathroom extensions built in the 1980s, flats 4 and 6 extended onto the balconies.

22. The property in the years before Mr Stimpson took back management of the property in August 2023, was managed by Ellmans. The estimates of costs for the works of replacing the balcony steel beams, re-roofing the whole property and redecorating the exterior to the rear and south elevation were obtained through Philip Hall Associates. The contractor was Packhams.

Chronology of "the works"

23. The freeholder remained Mr Stimpson before and after the works. Mr Stimpson had contracted Ellmans to act as property managers for the building.

24. When "the works" were identified as needing to be carried out Ellmans instructed Philip Hall Associates to advise on the nature and specification of the project. Ellmans after tendering selected Packham Construction to carry out the works.

25. During the hearing Mr Wilson gave evidence that the issue of the disrepair of the steel beams that run at the rear of the property first became apparent during the course of a mortgage valuation around 2022.

26. Ellmans [114] issues a Notice under section 20, "statement of estimates in relation to the external repairs to the rear, the balconies and to the RHS elevation of Devonian Close Park Crescent, Terrace, Brighton, East Sussex BN2 3JF. The section 20 notice specifies a cost of £ 121,446 which equated to £20241.42 per flat.

27. By email 23 June 2023, Mr Stimpson informs Mr Wilson that the agents Ellmans no longer manage the building, and management has reverted to Mike Stimpson Properties

28. By email 23 June 2023, Mr Stimpson informs Mr Wilson that the structural engineers have miscalculated the length of two steel beams. This will lead to the rehousing of occupants of flats 2, 4 and 6 for 13 weeks.

29. By letter dated 2 August 2023, letter stating that Mike Stimpson Properties has taken over responsibility for managing Devonian Close. Adding the steel beam calculation will add a further £ 47,426.70 to the cost which is equivalent to £7904.45 for each lessee. [93]

30. By e mail 7 September 2023 16:25 Mr Wilson enquires on how the length of the steel beams were miscalculated earlier and the breakdown of the £47426.70

31. By e mail date illegible - (around 8 Feb 24 15:21) Mr Stimpson explains that the structural engineers had assumed the length of the steel beams to be replaced only went from Flats 3-6 not 5 up to a point where the bathroom extensions were, not to the end of the building.

32. Mr Wilson noting on 21-2-24, talks to "George" of Philip Hall Mr W says George agreed that there were assumptions made that led to incorrect calculations.

33. By email dated 21 February 2024, the owner of flat 3 Louise Horsfield alleges that (i) that extension works to flats carried out in 1981 did not have planning permission of building control work. (ii) steel balustrading not replaced at regular intervals (iii) alleging that the owner knew of the extent of the existing beams and did not notify the structural engineers. (iv) section 20 only issued for the original works but not the additional works necessitate by the discovery of the extent of the beams. (v) the duration and cost of the works and their impact on the amenity.

34. An application is submitted by Louise Horsfield of flat 3 to the tribunal challenging the service charge years 2022, 2023 and the future year of 2024. The amount stated to be in dispute is £28,915.55. The application also included a Landlord and Tenant Act 1985 section 20 C application and a Commonhold and Leasehold Reform Act 2002 Paragraph 5A of Schedule 11 application. The application is later taken over by Mr Wilson and Ms Marionneau of flats 1 and 6 respectively.

The submissions

The Applicants

35. The applicants submitted a joint statement of case dated 11 June 2025, bundle [4-5].

Service charge years 2022 and 2023

36. Ms Marionneau submitted that the whole issue of the works had been very stressful and disruptive. For several months her flat had been disrupted by the works and she had no bathroom. The applicant noted that the respondent had offered her alternative accommodation, but that she declined because she would need to pay and that she felt it was not suitable.

37. Prior to the works the balcony to Ms Marionneau's flat had been tiled, this had been carried out by a previous leaseholder. The nature of "the works" required the removal of the tiles. The contractor undertaking to replace them. This had not happened.

38. Mr Wilson in his submission was concerned that the original steel beams had not been maintained properly and as a consequence had rusted and hence needed replacement. There was concern expressed that Mr Stimpson ought to have known about the actual length of the beams and so ought to have liaised with the property managers on the specification of their replacements.

Service Charge Year 2022, 2023, 2024 maintenance fees and other matters

39. Mr Wilson and Ms Marionneau were both concerned about the lack of transparency of the service charges. There was a general discussion on these items, but challenge was restricted to the "maintenance fee". In particular the item of "maintenance fees". This varied from year to year , in 2022 £564, in 2023 £500 and in 2024 £500.

40. Concern was also expressed that no reserve fund was in place to deal with major works.

The Respondent

41. The respondent submitted a statement of case dated 3 June 2025.

Service Charge Years 2022 and 2023

42. The respondent submitted that during the design and specification of the works the management of the property was carried out by Ellmans. That Ellmans had instructed Phillip Hall Associates to survey and specify the works. The respondent noted that having owned the building for many years and having carried out works of improvement to the building in the 1980s he was aware that the steel beams spanned the whole length of the building. The respondent relied upon the property managers and their contractors to specify the works correctly. The respondent noted that the original works had comprised the replacement of the steel beams, replacement of the roof, making good, and decoration. This is the original demanded figure of £ 20,241.13 per flat. The discovery by Philip Hall Associates of the need to replace longer than anticipated beams, caused a knock on effect of having to replace the structures (bathrooms) of the directly impacted flats. The longer beams but more significantly the requirement to replace bathrooms and to replace to modern building regulation standards of insulation and plumbing caused the additional £7904.45.

43. The respondent noted that the issue was discovered before the previously shorter beams had been ordered and so there were no abortive costs. Additionally noting that the rehousing of tenants in flats 2 and 4 to allow the works to be done, was done at the cost of the freeholder and this had not been passed to the leaseholders.

Service charge year 2022, 2023 and 2024 "maintenance fee" and other matters

44. The respondent explained that the heading of "Maintenance fees" covered a range of different items. It included accounting fees, office expenses management fees and general day to day small scale repairs.

45. The respondent explained that in the year of the handover of management firm Ellmans to Mike Stimpson Properties around half the "maintenance fee" was returned to the leaseholders as an act of goodwill.

46. In terms of the lack of a reserve fund the respondent agreed that the lease had no provision for one.

The tribunal's decision

47. The tribunal determines that the amount payable in respect of service charge year 2022 and 2023 for the works is £ 20,241.13 and £7904.45 respectively.

48. The tribunal notes the challenge against the maintenance fee in years 2022. 2023 and 2024, is, following explanation dropped and so makes no determination here.

Reasons for the tribunal's decision

Service Charge Year 2022 and 2023 "the works"

49. The tribunal notes that Mr Stimpson knew of the original length of the steel beams, the tribunal also notes that the management of the building was contracted to Ellmans , a professional firm of property managers. The tribunal also notes that the issue of the steel beams length was discovered before any costs had been expended on the incorrect specification, as such no economic loss or increased service charge was incurred by the leaseholders.

50. The question of whether adequate maintenance of the original beams had occurred over the years is not a matter for the tribunal to determine, the respondent noting the beams were painted regularly and the applicants saying not sufficient maintenance occurred. The tribunal jurisdiction is limited to where actual service charge costs were correctly and reasonably incurred not on the position prior to the works.

51. The tiles to the balcony of Ms Marionneau's flat were an improvement to the flat carried out by a previous leaseholder. There is no evidence that such an improvement had gained prior consent from the freeholder, prior to its undertaking. In the circumstances therefore there is no requirement for the specification of the works to include their replacement. Therefore, the tribunal does not find that the quality of the works undertaken falls short in this regard.

52. The tribunal has heard no evidence indicating that the sums demanded in years 2022 and 2023 namely £20,241 and £7904.45 were excessive. The respondent noting they had three flats in the block and so also had an interest aligned with the other leaseholders to keep the costs down. The tribunal taking into account its expertise determines the figures given the nature of the work and the access for the work was not unreasonable and confirms the amounts.

Service charge year 2022, 2023 and 2024 "Maintenance fees" and other matters

53. The respondent explained that the heading of "Maintenace fees" covered a range of different items. It included accounting fees, office expenses

management fees and general day to day small scale repairs. The applicants accepted that the lack of transparency had led to the issue of challenge. The applicants accepted that the maintenance fee covered a number of different items and in the absence of any alternative figures withdrew their challenge.

54. The lease does not provide for the collection of a reserve fund and the issue of altering the lease if that were requested lies outside this application.

Application under s.20C and para 5A refund of fees

55. In the application form and at the hearing, the applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002 paragraph 5A Schedule 11. The tribunal took representations from the parties concerning this application. The landlord Mr Stimpson noting for the record that he did not intend to seek any costs of his participation in the proceedings and so consider the issue negated. The applicant's noting that they did not feel they should be liable for any costs, should the landlord have sought them.

56. The tribunal is grateful for Mr Stimpson's clarification in this matter, and records that the landlord will not seek any costs and so does not make an Order under Landlord and Tenant Act 1985 section 20C nor the Commonhold and Leasehold Reform Act 2002 paragraph 5A Schedule 11.

57. Finally, during the hearing it became apparent that a considerable contribution to the issues reaching a hearing was that of communication between the parties in particular what lay behind the headline cost of individual service charge items. The tribunal reminded the parties that the Landlord and Tenant Act 1985 section 22 provides for the leaseholders to attend the office of the landlord to view hardcopies of invoices and receipts that underpin the service charge. The tribunal was heartened that parties towards the end of the hearing had agreed to meet with a view to utilising this provision.

58. No application was made for the return of the hearing and application fees.

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).