



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

Case reference : **LON/00AH/LSC/2025/0649**

Property : **Flat 4, 42 London Road, Croydon CR0 2TA**

Applicant : **Mr Alexander Brett Dunwell**

Representative : **In Person**

Respondent : **Mr Rafee Butt**

Representative : **Mr Asim Hussain (managing agent)
greencapmanagement@outlook.com**

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 : **Valuer Chair D Jagger MRICS,
Ms S Beckwith MRICS**

Venue : **10 Alfred Place WC1E 7LR
By Video Conference**

Date of Hearing : **31 July 2025**

Date of Decision : **8 August 2025**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because Judge Korn directed that due to medical grounds given by the respondent's representative.

Decisions of the Tribunal

- (1) The Tribunal determines that only the sums in respect of the insurance premium and lighting of the common parts for the relevant service charge years are payable by the Applicant. Such charges are to be apportioned as 1/10th of the total insurance premium and 1/5th for electricity charges in accordance with the 4th and 5th Schedule of the lease.
- (2) The Tribunal determines that the service charge demands for the relevant years set out in the application are invalid as each demand was not accompanied by a summary of leaseholder's rights and obligations.
- (3) The respondent can only recover the service charge for valid demands that seek payment from the leaseholder within 18 months of incurring the relevant costs.
- (4) The Tribunal finds that the tenant is unable to offset from any service charges due the costs incurred in connection with works undertaken by his contractors in connection with remedial works to the box valley gutter.
- (5) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985, so the landlord's costs, if any, of the Tribunal proceedings may not be passed to the lessees through any service charge.
- (6) The Tribunal determines that the Respondent shall pay the Applicant, the full amount that the Applicant paid by way of Application fee and Hearing fee. This amounting to £200 payable within 28 days of the receipt of decision.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") , an Order under section 20 C and an Order under Schedule 11 to the Commonhold and Leasehold Reform Act

2002 (“the 2002 Act”) as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years of ; 2021-2022, 2022-2023 and 2023-2024.

Background

2. The Tribunal is grateful for the way the parties conducted themselves during the hearing. The hearing was a video hearing and the Applicant and Respondent joining remotely via video link.
3. An Application, was received from the Applicant Alexander Brett Dunwell on 30 January 2025 in respect of Flat 4, 42 London Road, Croydon CRO 2TA
4. Directions were provided by Judge Pittaway of the Tribunal on **17 February 2025**, in the usual terms which set the timeframe for the case management.
5. The case relates to the service and administration charges for Flat 4 London Road, Croydon CRO 2TA. The two-bedroom flat is located on the second floor and forms part of a three storey Victorian building converted into 5 flats with commercial premises on the ground floor.
6. The Applicant holds Flat 4, on a long leasehold interest from 27 July 1989, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
7. It is common ground between the parties that the lease does not provide for the accumulation of a reserve fund to tackle one off large item.
8. There are service charge arrears at the property which the respondent claims amount to £4,463.09

The hearing

9. The Tribunal was furnished with the Applicant’s revised bundle of 206 pages, and the Respondent’s Case part of which was included in the aforesaid bundle together with a “Zip File” containing assorted documents and photographs which were not paginated and therefore presented the Tribunal some difficulty during the hearing. Further emails were submitted to the Tribunal on the morning of the hearing.
10. The Respondent failed to comply with paragraph 3 of the Tribunal’s directions insomuch that there were no service charge accounts, invoices from contractors for building works and cleaning. Only one service

charge demand was submitted as evidence, which will be considered in this decision. The Respondent also did not comply with paragraph 5 of the Tribunal's directions – all supporting documents and statements were submitted late on 25 June.

11. The Applicant, Mr Alexander Brett Dunwell appeared in person, at the hearing together with the Respondent Mr Rafee Butt and his representative Mr Asim Hussain
12. Photographs of the building were provided in the respective parties hearing bundles. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
13. The Tribunal raised a preliminary issue with the Applicant. In his application Mr Dunwell stated "Yes" in section 7 C: Service charges determined under the provisions of Schedule 8 to the Building Safety Act 2022. This flat is contained in a building three storeys in height and therefore the provisions in the Building Safety Act 2022 do not apply.

The issues

14. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years ending; 2021 through to 2025 inclusive.
 - (ii) The principal issue for the Tribunal to consider are the remedial works undertaken to the box valley gutter by the Tenant and whether the cost can be "offset" in the service charge account.
 - (iii) The apportionment of the relevant service charge items which include insurance, cleaning costs and works to the fabric of the building.
 - (iv) Whether the Landlord's service charge demands are valid.
 - (v) The **section 20 C** Application
 - (vi) An Application under **Paragraph 5A of Schedule 11**
 - (vii) Refund of the **Application and hearing fees.**

The Law

15. The law applicable in the present case was limited. It was essentially a challenge to the payability of the sums sought under the lease.

16. *The Landlord and Tenant Act 1985 S 1 states the following:*

19.-Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of 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.

17. *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

a. An application may be made to [the appropriate tribunal] 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.

b. Subsection (1) applies whether or not any payment has been made.

c. An application may also be made to [the appropriate tribunal] for 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.

d. 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.

(e) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.....

Section 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.

Section 20B – Limitation of service charges: time limit on making demands. (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. (2) Subsection (1) shall not

apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

(1) The correct apportionment.

18. The Applicant submits that the apportionment of the service charge is clearly set out in the 4th and 5th schedule of the lease.

19. *THE FOURTH SCHEDULE above referred to COSTS EXPENSES OUTGOINGS AND MATTERS IN RESPECT OF WHICH THE LESSEE IS TO CONTRIBUTE **ONE FIFTH**.*

1 The expense of maintaining, repairing, redecorating or renewing lighting or cleaning the entrance hall staircases, landings and passageways which serve solely the flats in the Mansion and of providing any entry phone system.

20. *THE FIFTH SCHEDULE above referred to COSTS EXPENSES OUTGOINGS AND MATTERS IN RESPECT OF WHICH THE LESSEE IS TO CONTRIBUTE **ONE TENTH**.*

42.1. 1 the expense of maintaining repairing redecorating and renewing: 42.1.1. (a) the roof Foundations main structure boundary walls and paths the main water tanks gutters and rainwater pipes of the mansion 42.1.2. (b) the gas and water pipes, drains and electric cables and wires in under or upon the Mansion and enjoyed or used by the lessee in common with the owners and lessees of the other flats 42.1.3. (C) the main entrance passage landings and staircases of the Mansion 42.2.

2. Such sums (if any) as the lessor may from time to time be called upon to pay by way of General and Water Rates in respect of the parts of the Mansion used in common 42.3.

3. The cost of decorating the exterior of the Mansion 42.4.

4. The provision of lighting to the common parts of the Mansion 42.5.

5. The cost of insurance premiums payable by the lessor for taking out and maintaining in force the insurance policy or policies referred to in clause 5(e) hereof and such other insurance as the lessor may from time to time reasonably deem necessary and desirable. 42.6.

6 The cost of keeping in good and substantial repair the boundary walls and fences of the Mansion 42.7.

7 Any other expenses of a recurring nature which the lessor may deem reasonably expedient in the interest of good management. The lessor shall be entitled to add to all and any of the above items the administration expenses of the lessor and its managing agents and where any repairs decorations or renewals are carried out by the lessor it shall be entitled to charge as the expenses or costs thereof its normal charges (including profits) in respect of such work.

The Decision

21. The Tribunal determines that service charge demands for the relevant years in the application and forthcoming years must be in accordance with the 4th and 5th schedules in the lease. For example, the Applicant is to contribute one tenth of the insurance premium. Alternatively, lighting and any cleaning of the common parts is based on a fifth of the relevant cost.

(2) Can the Applicant offset the cost of roof repairs in the service charge and are the Respondent's alleged roofing works payable.

22. The Applicant sets out in his evidence a chronological sequence of events in connection with defective valley roof gutter. It is claimed that that following persistent notifications to the landlord regarding this matter, his requests for repair works were ignored. Things came to a head for the Applicant when the ceiling collapsed following excessive leaks to the box valley. The Tribunal were shown photographic evidence in connection with the roof and ceiling following significant water ingress. The Applicant confirms that the Respondent undertook repairs to the roof in January 2023. However, it is contended that this was an emergency repair and considered inadequate. This is somewhat confirmed by the relatively small cost attributable to these works in the apportioned sum of £225. Following considerable discussions and correspondence the Applicant was of the opinion he had no option other than to undertake the works himself.
23. The Applicant consulted Foxtons, his letting agent to inspect the valley gutter and prepare a condition report. Following this report the Applicant instructed Noah Roofing to undertake repair works during the months of November 2023-January 2024 at a cost of £2,500. Further repairs were undertaken by MK Constructions in connection with repair to the ceiling at a cost of £650.
24. It is claimed by the Applicant that due to historic neglect, the Respondent is in breach of the covenants in the lease and he is now seeking a refund or offset the costs incurred in the service charge account.

25. Mr Hussain submits that repairs were undertaken to the roof and valley gutter in 2022, 2023 and 2024 evidenced by the receipts provided in his documentation. It is submitted the Respondent was in constant discussion with the Applicant in this matter and “*tried his best to resolve the issues with the flat roof*”. This is evidenced by two receipts for roofing works.
26. For his part, Mr Butt stated that the majority of the roofing works were undertaken by his in-house builders, and no charges were made to the leaseholders.
27. Turning to the question of offset/compensation, in his Witness Statement Mr Dunwell draws the attention of the Tribunal to the Second Schedule clause 5 “*The right of the lessees with servants workmen and others at all times (except in the case of emergency) to enter into and upon other parts of the Mansion for the purposes of repairing maintaining renewing altering or rebuilding the flat or any part of the Mansion giving subjacent or lateral support shelter or protection to the Flats*”
28. The Tribunal considers the roof repairs undertaken by the Applicant following significant water ingress and collapse of the ceiling to be emergency works and therefore the above clause does not take effect.
29. Mr Hussain confirms the roof is in the ownership of the Respondent and the Applicant has no rights whatsoever to undertake any repair works. This is evidenced by the following clause in the lease.
30. *Not at any time during the said term to make any alteration in or addition to the demised premises or any part thereof nor to cut maim or injure any of the walls timbers floors or ceilings thereof or make any alteration in the mode or construction of the said premises or the drains watercourses gas or water pipes or the electrical wiring or install any heating appliances without first obtaining the previous written consent of the Lessor...*”
31. This clause somewhat contradicts the clause 5 in the Second Schedule, but clearly supports the fact that Mr Dunwell had no right to carry out any works without the freeholder’s consent, and any repairs or alterations he made are unauthorised and not claimable under the service charge dispute.

The Decision

32. The Tribunal having heard from the Respondent and the Applicant in respect of the roofing works determine that the Applicant is unable to offset the cost of his roofing works in the service charge account. The Tribunal agree with the Respondent that the lease states the roof is does not form part of the demise and is the responsibility of the Landlord.

33. Otherwise, an allegation of historic neglect may provide a defence to a claim for service charges if it can be shown that, but for a failure by the Landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided. In those circumstances the tenant to whom the repairing obligation was owed has a claim in damages for breach of covenant, and that claim may be set off against the same tenant's liability to contribute through the service charge to the cost of the remedial works.
34. In the case of *Daejan Properties Ltd v Griffin* (2014) UKUT0206 the Upper Tribunal considered this matter and the issue was whether the work would have cost less (i) If completed earlier and (ii) if it had been tendered and contracted as a single programme. The principal issue was whether the remedial works could have been carried out at a lower cost if done earlier. In this case, the expert evidence did not support that conclusion. It was unlikely that there would have been any significant savings had the work been completed as one project rather than in phases. The argument for savings fell away when the need for emergency work was appreciated.
35. There are comparisons to be drawn from this case, and it is for these reasons the Applicant has failed to persuade the Tribunal that the sums expended by him could have been avoided and are therefore not recoverable.

3. The Insurance

36. The Tribunal has already confirmed that the appropriate apportionment is 1/10th of the annual premium. The Tribunal was concerned at the large variance in the recent premiums. In 2023-2024 the premium was £3,235.36, 2024-2025: £6,843.15 and in 2025-2026: £1867.81. The Respondent could not provide any reasons for the variation, other than a supposed claim from a leaseholder, but was pleased that the most recent charge is similar to that of 2021.

Decision

37. In the absence of any alternative "like for like" quotes provided by the Applicant the Tribunal accepts the insurance premiums are payable for the years in question.

4. Lighting in the common parts

38. In his evidence the Respondent provided electricity bills for the years in question. When questioned the Applicant was satisfied this cost was payable and to place this in context the charge for 2024-2025 is £48.00.

Decision

39. The Tribunal determines this cost is payable at 1/5th of the total charge.

Cleaning of the common parts

40. For all the years in question the Respondent is charging £360 per annum at apportionment of 1/5th in accordance with the 4th Schedule of the lease.
41. The Applicant claims the common parts are in poor condition and is not aware of any cleaning services provided by the Respondent.
42. Mr Hussain states the common parts are cleaned on a regular basis. There are no invoices provided as payment is made in cash.

Decision

43. The Tribunal determines that in the absence of any invoices the charge for cleaning of the common parts is not payable.

The Management Fees

44. Mr Hussain confirmed the management fee charged by him is £300 per unit (£1,500 in total). He confirmed this is a reasonable charge for management of a small building. When questioned by the Tribunal, there is no management agreement setting out the precise terms of management responsibilities and charges.
45. The Applicant states that there is no real management function in the building. Mr Hussain has not provided the leaseholders with a telephone number, and all discussions and correspondence is with Mr Butt.

Decision

46. In the absence of a management agreement with the Respondent, invoices for the management fees and an absence of management activities, the Tribunal determines that the management fees are not payable for the years in question.

Are the Service Charge demands valid

47. The Respondent provided the Tribunal with a copy of one service charge demand titled "Application for Payment on behalf of Mr Rafee Butt". A demand for a service charge must be accompanied by a summary of the leaseholder's rights and obligations together with the landlord's details.

If the summary is missing, the leaseholder is legally entitled to withhold payment of the service charge. This requirement is mandated by S153 Commonhold and Leasehold Reform Act 2002. This can be cured retrospectively. In other words, a new demand can be provided with the necessary rights and obligations.

Decision

48. The Tribunal determines that based upon the demand provided in the bundle of evidence the Service Charge demands are invalid. If and when revised demands are prepared, they will be subject to The Service Charges (Summary of Rights and Obligations and Transitional Provision) Regulations 2007. In essence, the Respondent can only recover the service charge if he has demanded payment from the leaseholder within 18 months of incurring the relevant costs. Therefore, as the demands are deemed invalid the Respondent can only recover service charges 18 months from the date of reissue.

Service Charge Accounts

49. Clause 5G (i) of the lease “ *Not later than 30th day of September in each year to produce accounts certified by a qualified accountant detailing all expenditure under the fourth schedule here too and all receipts of contributions made under clause 4(ii) of this lease and any provisions in the leases of other flats in the mansion for the previous year ending on the 30th day of September.*

Decision

50. When questioned by the Tribunal Mr Hussain confirmed that accounts have never been prepared for the building. He stated that this serious omission will be rectified in future with accounts to be prepared this year. It is the opinion of the Tribunal that if these were prepared in previous years it would have provided the Applicant a degree of transparency and confidence in the changes being requested.

Late Fees

51. The Updated Service Charge Statement Summary prepared by the Respondent makes charges for “late fees” which range from £85 (2021-2022) to £170 (2022-2023) When questioned, Mr Hussain very generously is prepared to waive these fees.

52. **Application under s.20C and refund of fees**

53. In his application the Applicant made an Application for a refund of the fees that he had paid in respect of the Application/ hearing¹. The Tribunal determines that the Respondent should pay the Applicant the Application and Hearing fees in full, which amounts to £200.00, within 28 days of receipt of the decision. This determination is based upon the outcome of this decision.
54. In the Application form, the Applicant applied for an order under section 20C of the 1985 Act. The Tribunal determines that it is just and equitable in the circumstances, particularly with the perceived lack of explanation or transparency, for an Order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Duncan Jagger MRICS

8 August 2025

Rights of appeal

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.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013