FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BD/LSC/2025/0622**
Property	:	**Flats 7 and 21 Matthias Court, 119 Church Road, Richmond, TW10 6LL**
Applicants	:	**Christopher Hicks and Adrian Kennedy**
Respondents	:	**Matthias Court Management Company Limited**
Type of Application	:	**Application for determination under s 27A LTA 1985**
Tribunal Member	:	**Judge Shepherd** **Stephen Mason FRICS**
Date of decision	:	**7th October 2025**

DETERMINATION

1. The Applicants seek a determination pursuant to Landlord and Tenant Act 1985,s.27A as to whether particular service charges are reasonable and payable. The Applicants are leaseholders of Matthias Court (The premises). The First

Applicant occupies Flat 7 and the Second Applicant, Flat 21. Their landlord is Matthias Court Management Company (Richmond Upon Thames).

2. Matthias Court is a residential development comprising three separate blocks of flats. Each of the three blocks comprises 11 flats, spread over four storeys. Each of the 33 flats within Matthias Court are held subject to the terms of a long lease agreement. Those long lease agreements are tripartite, and made between: the Landlord, Matthias Court Management Company (Richmond Upon Thames) Limited; and the lessee.

3. The Respondent is a lessee owned and controlled vehicle and each of the lessees is a member of the Respondent company. The Respondent's sole function is to provide the management services for Matthias Court, as prescribed by the occupational leases. In order to do so, they collect service charge contributions from the lessees. These sums are spent on services. It is a self funded body which makes no profit.

4. The Applicants' application is brought in relation to the service charge period 1st January to 31st December 2025. The main issue is that of payability rather than reasonableness.

5. The service charge mechanism is uncontroversial; it requires an interim payment on the part of the Applicants, and, following the reconciliation undertaken at year end, it requires parties to deal with any surplus or deficit as the case may be. The Tribunal has previously been called upon to interpret the service charge mechanism at Matthias Court. As recognised by the Tribunal in the determination of 11th September 2019 there are essentially three elements to the mechanism, followed by the year end reconciliation process. As per paragraph 12 of the 2019 Determination, the leases require the Applicants to pay: a. all sums which the Respondent may reasonably require (clause 2(15)); b. the service charge and such further sums as the Respondent may in its own reasonable discretion request (clause 3(2)(i)); c. the sums expended by the Respondent as an urgent necessity where reimbursement is not possible from the annual service charge paid or from any sinking fund.

6. By clause 2(15), the Applicants are required to pay service charges to the Respondent in accordance with the "specified proportion". The specified proportion is calculated by reference to the number of shares held in the Respondent company. There are, in total, 69 issued shares. The Applicants each hold 2 shares, meaning their apportionment is 2/69 respectively. Of the 33 lessees within Matthias Court, 30 pay 2/69 by way of their specified proportion. The 3 "penthouse lessees" hold 3 shares each, meaning they each pay 3/69 respectively.

7. Clause 3 of the lease is the operative clause dealing with the service charge mechanism. There are a number of limbs to clause 3(2)(i). Firstly, this clause sets out the general proposition that services charges are payable by the Applicants to the Respondent – "to pay to the Management Company in every year at the time herein provided for the payment thereof the annual service charge". Secondly, this clause obliges the Applicants to pay to the Respondent "such further sums …. (being a payment in advance for the next ensuing year)

as the [Respondent] may in its own reasonable discretion request..". Thirdly, this clause obliges the Respondent to credit such sums (as described above) against the estimated liability of the Applicants.

8. At the commencement of each service charge year (1st January to 31st December), the Respondent causes a budget to be prepared. Thereafter, the Respondent causes a statement of anticipated expenditure to be prepared, which is individualised for each lessee. It is by reference to the budget and the statements of anticipated expenditure that service charges are demanded.

9. The advance, or interim, payments on the part of the Applicants are then credited against the estimated liability of the Applicants in line with the mechanism set down by clause 3(2)(i). 26. By clause 3(2)(ii), the Respondent is able to raise further service charges during the course of the service charge year, should circumstances permit. Finally, clause 3(2)(iii) deals with the payment of any deficit following the year end reconciliation undertaken by the Respondent, including the production of service charge accounts. By this clause, the Applicants are obliged to pay any deficit within 28 days of the production of the accounts
10. Paragraph 4 to the Fifth Schedule of the lease makes clear that the "total amount" payable by the Applicants in any one year is the amount certified as the service charge, "less the sum paid by the Tenant in advance for such accounting period". This complements and confirms clauses 2(15) and 3(2) by again re-iterating that service charges are to be paid in advance and on account.

The Applicants' challenges

Issue 1 – recovery mechanism

11. The Applicants suggest the lease "states quite clearly that service charges are only payable once expenditure for the previous year (2024) has been certified and that an adjustment must be made for the amount by which the budget overestimated the expenditure" The Respondent rejects this interpretation. Apart from anything else they state that the Respondent would be completely without funds until such time as the accounts had been prepared, deficit demands issued, and 28 days had passed (clause 3(2)(iii) allowing a window of 28 days for payment). The Respondents say this is nonsensical. Although the budget and accounts are essential ingredients to the overall service charge mechanism, the budget does not stand and fall on the accounts. They also state that the Applicants rely on clause 3(2)(iii) and suggest that the demands in 2024 were raised under this provision. The Respondent says this is not correct and the demands raised on 17th December 2024 for the 2025 service charge year are raised by reason of clauses 2(15) and 3(2)(i). The demands represent the interim service charges payable by the Applicants. They are the sums the Respondent "reasonably requires" to perform its obligations under the Sixth Schedule (clause 2(15)). They are the sums the Respondent "in its own reasonable discretion" requests (clause 3(2)(i)).

Issue 2 – admin fees.

12. This was a non - issue because **t**he Respondent has not sought to recover interest or late payment fees from either Applicant. Accordingly, no such charges are before the Tribunal to be adjudicated upon as part of the present proceedings.

Issue 3

13. To an extent this issue represented repetition of issue 1 **.**The Applicants suggest paragraph 4 to the Fifth Schedule "sets out how much service charge a Tenant must pay in a year". The Respondent say this is incorrect. The clause makes clear that the "total amount" payable by the Applicants in any one year is the amount certified as the service charge, "less the sum paid by the Tenant in advance for such accounting period". The Respondents say this complements and confirms clauses 2(15) and 3(2) by again reiterating that service charges are to be paid in advance and on account. The amount due by way of interim demand *can* be calculated, and is calculated by reference to the budget and the statement of anticipated expenditure.

Issue 4 -reserve fund

14. In their application the Applicants sought to criticise the 2019 decision of the Tribunal when they did not appeal against that decision by seeking permission to appeal from the Upper Tribunal. By the 2019 Determination, the Tribunal determined the leases permit the Respondent to collect a reserve fund (which it does by the collection of a general reserve fund) and to collect sinking funds (which it does by reference to specific projects of works and/or specific items of anticipated capital. The Respondents say that they are entitled to operate these funds. The Respondent has demanded such sums in accordance with clauses 2(15) and 3(2)(i). Their ability to do so was previously recognised in the 2019 Determination. The Respondents say that the sinking fund contribution represents the contributions the Respondent "reasonably requires" to perform its obligations under the Sixth Schedule (clause 2(15)) and the sums the Respondent "in its own reasonable discretion" requests (clause 3(2)(i)).

Issue 5 – general reserve fund

15. The Applicants invite the Tribunal to "find against the retention of our money in the general reserve fund". This issue has already been litigated by the 2019 Determination where it was clearly held the Respondent was entitled to collect reserve fund contributions from the First Applicant. In any event the issue was not one before this Tribunal because the Respondent has not sought to recover any contribution in this particular service charge year to the general reserve fund.

The law

16. S19 of the Landlord and Tenant Acy 1985 states the following.—

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.

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

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.*

18. 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

19. This was a relatively dry and technical challenge to the Respondents' interpretation and application of the lease provisions. The First Applicant was previously a director of the Respondent company. He told us that during his tenure he operated differently. This does not mean that he was correct to do so. Indeed, we consider that the Respondents' interpretation of the lease provisions is the correct one. Taking each individual issue in turn:

Issue 1

20. The Respondents are entitled to operate the service charge recovery mechanisms in the way that they do. The lease provisions allow them to do this and in circumstances where the Respondents are a self - funded body it would be surprising if they operated in any other manner. The operative clauses are clauses 2(15) and 3(2)(i). The demands by the Respondents represent the interim service charges payable by the Applicants. They are the sums the Respondent "reasonably requires" to perform its obligations under the Sixth Schedule (clause 2(15)). They are the sums the Respondent "in its own reasonable discretion" requests (clause 3(2)(i)).

Issue 2

21. This was not an issue before us and we don't intend to address it.

Issue 3

22. Once again we consider that the Respondents' interpretation of the lease is the correct one. Paragraph 4 of the 5th Schedule makes clear that the "total amount" payable by the Applicants in any one year is the amount certified as the service charge, "less the sum paid by the Tenant in advance for such accounting period". This is a familiar way of operating service charges.

Issue 4

23. We do not intend to go behind the 2019 decision which was not appealed to the Upper Tribunal. In any event we consider that decision to be correct.

Issue 5

24. The First Applicant reluctantly accepted that this was not a live issue for the Tribunal to determine. We are not in the practice of making general

determinations at the request of the parties when they are not necessary to address the live issues between the parties.

Costs

25. Any costs applications should be made within 14 days of receipt of this decision.

Judge Shepherd
7th October 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.