FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LSC/2024/0767**
Property	:	**Flat 5, 41 Craven Hill Gardens, London, W2 3EA**
Applicant	:	**38/41 CHG Residents Company Ltd**
Representative	:	**Dale & Dale Solicitors – Martin Comport**
Respondent	:	**Mrs I Hyslop**
Representative	:	**In person**
Type of application	:	**An application under section 27A Landlord and Tenant Act 1985**
Tribunal	:	**Judge N O'Brien** **Ms M Bygrave MRICS**
Date of Decision	:	**17 October 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £7,833.72 is payable by the Respondent in respect of the lift reserve fund and general reserve fund for the period 25 March 2019 to 29 September 2024 inclusive.

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 Respondent in respect of the service charge years 2019/2020 to 2023/2024. Specifically the Applicant seeks a determination in respect of the sums it has demanded as a contribution to a general reserve fund and a reserve fund in respect of the lifts serving the building.

The hearing

2. The hearing took place on 17 September 2025. The Applicant was represented by Mr Comport of Dale and Dale Solicitors. The Respondent appeared in person. We heard oral evidence from Mr Stepahnos Stephanides, a leaseholder and director of the Applicant, and from Ms Hyslop.

3. At the start of the hearing we considered an application by Ms Hyslop to strike out the application on the grounds that the Applicant breached the direction for the exchange of statements which should have taken place on or before the 11 June. The Applicant served its witness statement by post on 17 June. We were told by Mr Comport that the Respondent served her statement on 12 June 2025 however neither he nor anyone connected to the Applicant read the Respondent's statement before serving the Applicants. He explained that the delay was due to difficulties in collating documents relevant to the long history of litigation which has arisen between the parties since the Applicant became the freeholder of the building.

4. Ms Hyslop could not identify any prejudice which might have been caused by the delay. We considered that the breach was relatively trivial and had not prejudiced the Respondent in any way or interfered with the progress of the proceedings. Consequently it would have been wholly disproportionate to strike out the claim on the grounds of this breach of the directions. We dismissed the application.

5. We also considered whether the hearing should proceed in the light of the Respondent's assertions in her statement of case that there are ongoing proceedings in the Magistrates court arising from allegations of fraud which she has made against the Applicant. The Respondent raised this issue both in her statement and in an application she made on Form

Order 1 for a preliminary hearing. We noted that the tribunal had written to both the Applicant and the Respondent requesting that they send the tribunal any information or documentation in their possession relating to any ongoing criminal proceedings by 17 July 2025. The response from the Applicant was that they were unaware of any such proceedings. The response from the Respondent was that there were ongoing proceedings in the Bromley Magistrates' Court but that she was unable to supply the tribunal with any documentation relevant to those proceedings.

6. It is relevant to note that the Respondent has sought to raise allegations of fraud and/or breach of trust and/or misappropriation of service charge funds against the Applicant in at least three County Court claims and 3 separate Tribunal proceedings since 2003. We were told by Mr Stephanides that the kernel of all the Respondent's concerns is her belief that the present Applicant failed to take adequate steps to ensure that the previous freeholder accounted fully for all reserve funds it held on trust for the lessees prior to the Applicant's acquisition of the freehold in 2000.

7. We were not satisfied that there were any ongoing criminal proceedings engaging any matter of relevance to this application. Consequently there was no reason not to proceed to determine the application

The background

8. The property which is the subject of this application consists of two substantial Victorian villas which have been converted into a development of 36 flats. In or about 2000 the majority of the leaseholders purchased the freehold which is now held by the Applicant company. Each of the participating leaseholders is a member of the Applicant. The Respondent was one of two leaseholders in 41 Craven Hill Gardens who did not participate in the purchase of the freehold.

9. The Respondent purchased her leasehold interest in Flat 5 in 1989. The lease commenced on 26 September 1977 and was granted for a term of 99 years. The lease requires the lessor to provide services and the lessee to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are set out below.

The issues

10. In the course of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether the tribunal has jurisdiction to determine the payability and reasonableness of demands made in respect of reserve funds held on trust by the Applicant for the leaseholders under s27A of the 1985 Act;

(ii) Whether the sums demanded by the Applicant towards the reserve fund and lift reserve fund were not payable by the Respondent due to a breach by the Respondent of s.42A and 42B of the Landlord and Tenant Act 1987;

(iii) Whether the Respondent's lease permitted the Applicant to raise funds to replace, as opposed to simply repair and maintain, the lift.

(iv) Whether the Applicant accepted a cheque in the sum of £1095.85 sent by the Respondent on or about 27 September 2024 as full and final settlement of all outstanding sums owed by the Respondent as at that date.

11. The witness statement of Mr Stephanides sets out the sums held in both funds as at 31 March 2024. As at that date the general reserve fund stood at £141,952.16 and the lift reserve fund stood at £148,172. At paragraphs 12 to 14 he outlines the Applicant's planned program of external repairs and decorations for the building. The anticipated total cost is in excess of £315,000 payable over 4 years. At paragraph 16 he states that the Applicant has been advised by a lift consultant that both lifts which were installed in the mid 1970's are in need of complete renewal and that the likely costs will be approximately £300,000. The Respondent did not challenge any of this evidence nor did she seek to challenge the reasonableness of the sums demanded towards the lift fund and general building fund, simply their payability.

The Lease

12. Clause 4(4) of the Respondent's lease obliges the Respondent to pay service charges in advance and on account on 29th September and 25th March of each year. Clause 5(6) of the lease includes a standard landlord's repairing covenant to keep the exterior and structure of the building in good and substantial repair. Clause 5(10) of the lease obliges the lessor to '*maintain and keep in good and substantial repair and condition the passenger lifts lift shafts lift motor rooms and machinery and apparatus in connection therewith.*'

13. The Seventh Schedule to the lease provides that flat 5 is to contribute 2.5% of the general expenses and 3.5% of the lift expenses.

14. Paragraph A (4) of the Fifth Schedule to the lease includes the following as lift expenses:

"*such reasonable sum as the managing agents of the lessor may from time to time decide in respect of the expenditure within the Fifth Schedule hereto relating to the lifts and the installations equipment apparatus appertaining to the lifts which is of may be of a recurring*

nature whether previously or thereafter to be disbursed or incurred and in respect of any other anticipated expenditure.

15. Clause B(3) of Schedule 8 contains an identical clause respect of the general building expenses.

The tribunal's jurisdiction

16. The Respondent submits that the tribunal has no jurisdiction in respect of sums held on trust by the Applicant for the leaseholders. She submits that funds held on trust in a reserve account are not service charges within the meaning of s27A of the 1985 Act. She relies on section 42 of the Landlord and Tenant Act 1987. This provides that all service charges paid by residential lessees are to be held by the payee on trust for the leaseholders. It is not clear why the Respondent believes that the effect of this provision is to remove all questions relating to reserve funds from the jurisdiction of the tribunal. It is correct that the tribunal has no general jurisdiction to consider allegations of mismanagement in relation to service charges held on trust. In *Solitaire Management Company v Holden and Ors* [2012] UKUT 86 (LC)) the Upper Tribunal allowed an appeal against a decision of the Leasehold Valuation Tribunal which had held that the Landlord had acted in breach of trust when it used a reserve fund to cover shortfalls between the estimated service charge demands and the actual costs incurred. It was held that the Leasehold Valuation Tribunal had no jurisdiction to investigate whether a reserve fund had been wrongly depleted by a landlord where that issue was not relevant to its determination of the amount of service charges payable under s.27A of the Landlord and Tenant Act 1985.

At paragraph 32

> *It is puzzling as to why the LVT considered in these circumstances that it should examine the reserve funds provision in the way it did. The LVT did not consider the reserve funds position for the purpose of deciding a question arising under Section 27A as to how much was payable as service charge in any given year. In another case it could theoretically become relevant, for the purpose of deciding how much was payable by way of service charge by a tenant in a particular year, to decide questions regarding the status of money in the reserve funds. For instance if in a particular year a tenant argued that less should be demanded for a particular heading of expenditure because reserve funds should have been drawn upon for some or all of that head of expenditure, then the situation regarding such reserve funds could become relevant to decide this question under Section 27A – including consideration (if the landlord's case was that there was no money in the reserve fund to draw upon) of the question of whether the landlord had improperly spent the reserve funds in some unauthorised manner. However*

in a hypothetical case such as that the situation regarding the reserve fund is something which needs to be decided for the purpose of deciding a question expressly within the LVT's jurisdiction, namely how much is payable by way of service charges by a tenant in a particular year.

17. The tribunal's jurisdiction under s27A of the 1985 Act extends to determining the amounts payable towards reserves, notwithstanding the fact that they are held on trust. What it cannot do is determine any allegations of misappropriation of reserve funds save insofar as it may be relevant to the reasonableness of the sums demanded.

18. Consequently we reject the Respondent's contention that we do not have jurisdiction to determine the payability of the sums demanded by the Applicant towards the general or lift reserves.

Section 42A and 42B of the Landlord and Tenant Act 1987

19. The Respondent's next reason for disputing her liability to pay is an asserted failure to keep trust funds in a separate account as required by s42A of the Landlord and Tenant Act 1987. It is not clear when the Respondent asserts this failure occurred; she now accepts that the lift fund and general reserve fund are kept in separate accounts. The short answer to this point is that neither s42A nor s.42B have been brought into force and cannot be relied on by the Respondent to deny lability to contribute towards the reserve funds or to withhold payment.

The Recoverable Lift Costs

20. The Respondent submitted that the lease obliged her to contribute towards the cost of maintaining and repairing the lifts but not their replacement. We do not agree. The lease obliges the lessor not just to repair and maintain the lifts and their constituent parts, but also to keep them in good and substantial repair and condition. As the Supreme Court held in *Arnold v Britton [2015] UKSC 36* [*2015] A.C. 1619,* the words used in a lease should be given their natural meaning, having regard to their documentary, factual and commercial context. When considering the parties' likely intentions, the court should consider what reasonable person, with the parties background knowledge, would have understood the words of the contract to mean.

21. Certain constituent parts of the fabric of any building are generally understood to have a limited lifespan, in particular mechanical installations such as lifts. In our view a reasonable person in 1977 would have understood that in order to keep the lifts 'in good and substantial

repair and condition' the lifts would probably have to be replaced at some time during the 99-year term of the lease.

22. Consequently we consider that replacement of the lifts falls within Clause 5(10) of the Respondent's lease and therefore she is liable to contribute towards the cost or both maintaining them and replacing them if reasonably necessary. The Respondent has not suggested that it is not reasonably necessary to replace the lifts.

Did the Applicant accept £1095 in full and final settlement of all the Respondent's outstanding liabilities?

23. The Respondent submits that there was a binding agreement between the parties that the Applicant agreed to accept a cheque in the sum of £1095.85 in full and final settlement of all outstanding service charges. She relies on the covering letter which accompanied the cheque. It stated '*Please find enclosed my cheque number 100121 for £1095.85 this brings all my Service Charge payments fully up to date.*

24. At paragraph 22 of his statement Mr Stephanos explains that since 2019 *'the Respondent has paid the due contribution to the day-to-day service charges (i.e. those service charges used to pay the expenditure that is incurred throughout the year on the Building) but refuses to pay the contribution to (t)he reserve funds (both General and Lift)'.*

25. In our view the recipient of the covering letter would reasonably have understood that it was intended to discharge the Respondent's lability to pay the 'day-to-day' service charges. It would not have been understood that the Respondent intended to tender the cheque in full and final settlement of all sums outstanding as at the date of the letter. There are two reasons for this conclusion. Firstly the letter does not say in terms that it is being offered 'in full and final settlement' of any outstanding amount. Secondly both the Applicant and the Respondent were well aware that for the past 4 years the Respondent had only accepted liability to pay the sums demanded on account for annual expenditure, but had declined to pay any contribution towards the reserves. The acceptance of a cheque tendered by a debtor in settlement of part of debt which s/he has admitted does not amount to an agreement by the creditor to accept that cheque in settlement of the whole (see Ferguson v Davies [1997] 1All ER 315).

26. Consequently we reject the Respondent's argument on this point.

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

27. The Applicant has not sought an order for the refund of fees pursuant to Rule 13(2) of the 2013 Tribunal Rules. The Respondent has not sought any order under s.20C of the 1985 Act or paragraph 5A of Schedule 11 of the

2002 Act. Should either party wish to make such any such application they should do so in writing within 14 days of receipt of this determination.

Name: N O'Brien **Date:** 17 October 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 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)