



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

<b>Tribunal Case References</b>	<b>:</b>	<b>LON/00AG/LSC/2025/0819</b>
<b>Properties</b>	<b>:</b>	<b>104a Boundary Road, London NW8 0RH</b>
<b>Applicant</b>	<b>:</b>	<b>Darren Lewis</b>
<b>Representative</b>	<b>:</b>	<b>Rebecca Lewis</b>
<b>Respondent</b>	<b>:</b>	<b>Boundary Road Investments Ltd</b>
<b>Representative</b>	<b>:</b>	<b>Freedman Green Dhokia, Solicitors</b>
<b>Type of Application</b>	<b>:</b>	<b>Payability of service charges</b>
<b>Tribunal</b>	<b>:</b>	<b>Judge Nicol</b>
<b>Date of Decision</b>	<b>:</b>	<b>31<sup>st</sup> October 2025</b>

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**DECISION**

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- (1) The service charges challenged in this matter are reasonable and payable by the Applicant to the Respondent.
- (2) The Tribunal has refused to make an order under section 20C of the Landlord and Tenant Act 1985.

Relevant legal provisions are set out in the Appendix to this decision.

**Reasons**

1. The subject property consists of a 3-bedroom maisonette with its own separate ground floor entrance, situated above a solicitor's office which occupies the ground and basement floors. The Applicant is the lessee. The Respondent is the freeholder.

2. The Applicant has applied for a determination under the Landlord and Tenant Act 1985 that service charges in relation to buildings insurance of £4,419.81 for 2024-2025 and £4,759.08 for 2025-2026 are not reasonable or payable.
3. The Tribunal issued directions on 4<sup>th</sup> June 2025 (amended on 16<sup>th</sup> June and re-amended on 19<sup>th</sup> August 2025), allocating the case to the paper track. Neither party objected and so the Tribunal proceeded to determine the matter on the papers, without a hearing.

#### *Further Documents*

4. The relevant documents were contained in a bundle of 338 pages provided by the Applicant. The Respondent applied for further documents to be added to the bundle, namely correspondence between the parties.
5. The Respondent sought to explain that the reason for the late application was that the Applicant refused to discuss the contents of the bundle. If true, this is reprehensible and contrary to the Tribunal's directions. The Applicant has not addressed this allegation.
6. In an email dated 20<sup>th</sup> October 2025 the Applicant gave her reasons for not including the correspondence:
  - (a) *The communications were exchanged during a period when mediation was actively being explored and are therefore likely protected by the without prejudice rule.* The correspondence constituted arguments on liability. They were not marked "without prejudice" and did not mention the possibility of settlement. The Tribunal is satisfied that the correspondence was open, not without prejudice. The fact that arrangements for a mediation were being considered around the same time does not affect that conclusion.
  - (b) *One email was requested for inclusion by the Respondent without its preceding chain, which confirms that mediation was being discussed and that a date for mediation had been held.* As already mentioned, the contemporaneous consideration of mediation is irrelevant.
  - (c) *The correspondence contains earlier versions of arguments that have since been refined or omitted. While the Respondent's witness statements address certain arguments contained in this correspondence, these arguments were omitted from the Applicant's formal Statement of Case and are not relied upon before the Tribunal. Including these would cause confusion and is therefore inappropriate.* The Tribunal is capable of distinguishing between arguments now being pursued and those which are not. There is no confusion.
  - (d) *The documents have not been directly disclosed or identified in the Respondent's pleadings, evidence, or statements of case.* The documents consist of correspondence about the subject matter of the dispute. By definition, they have been disclosed. If a party wants the

Tribunal to see them, there is no reason to bar them from presenting them to the Tribunal.

7. For the above reasons, the Tribunal is satisfied that it is appropriate to admit the documents. In the event, the Tribunal did not rely on their contents for the decision but was able to reach a conclusion on the rest of the material.

### *Insurance*

8. Clause 4(5) of the Lease obliges the lessor to keep the building insured against loss or damage by fire and other risks. The Applicant's liability to contribute towards insurance is set out as follows:

3. THE Lessee HEREBY COVENANTS with the Lessor and with and for the benefit of the lessee...

(2) To pay to the Lessor a sum or sums of money equal to one half of (a) the basic amount or amounts (without including any adjustment to the same made by the Insurers as a result of the nature of the use of the ground floor lock-up shop) which the Lessor shall from time to time expend in or in respect of effecting or maintaining insurance of the building of which the demised premises form part against loss or damage by fire aircraft and other usual comprehensive risks in the full replacement value thereof

9. The Applicant had two arguments as to why the service charges arising from her half-share of the insurance premiums were unreasonable and/or not payable.
10. The downstairs commercial premises were severely affected by a flood, following which the insurance premiums went up. Although there was discussion that the building had previously been under-insured, the Respondent admitted that the main reason for the increase was the flood.
11. The Applicant argued that insurance against flood was for the exclusive benefit of the commercial premises, being on the ground and basement levels, and, therefore, did not constitute part of "the basic amount" referred to in clause 3(2). The Tribunal rejects this argument for two reasons:
  - (a) Obviously, a flood would be of more immediate impact to the lower levels of any building but it cannot be argued that charges should be varied to take account of the level of impact on each part of the building. For example, any damage to the roof would be more impactful on the upper levels and it might be said that the domestic premises carry a greater risk of fire due to the presence and use of a kitchen. Further, flooding can have a structural impact beyond the lower levels of the building even if water levels do not get that high. It is not feasible or appropriate to re-arrange liability for the premium around some assessment of the degree to which each part of the building is affected by different risks.

- (b) The Applicant appears to have misunderstood the reference to “the basic amount” which is defined in clause 3(2) as that part of the insurance which does not relate to any adjustment by the insurers to take account of the use of the commercial premises (no such adjustment has been made, given that the commercial premises are used for a solicitors’ practice). Flood is a standard insurable risk and, other than in areas particularly liable to flooding, would be regarded as standard in any buildings insurance policy.
12. The Applicant’s second argument was that the insurance includes Property Owners Liability. She relied on *Sadeh v Essefian Charitable Trust* (ref: LON/00AG/LSC/2012/0803) in which the Tribunal decided that the insurance charges should be reduced to take account of the fact that the lessees did not benefit from the Property Owners Liability element of the insurance. However, that decision turned on the evidence available to that Tribunal. There is no evidence in the current case that the Applicant may not benefit from this element of the insurance.
13. Further, the Respondent has pointed out that the Applicant has not identified how the insurance premium would be affected if this element were excluded. The policy is for the building as a whole, not for each part of the building separately, so it is not a simple matter to extract out one element and give it a particular value.
14. The Tribunal is not satisfied that the Applicant’s service charges arising from the insurance premium are unreasonable or not payable to any extent.

#### *Costs*

15. The Applicant included in her application a request for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be permitted to recover any of their costs of these proceedings through the service charge. In the light of the result of the application, the Tribunal is not satisfied that it would be just or equitable to make such an order and it is refused.

**Name:** Judge Nicol

**Date:** 31<sup>st</sup> October 2025

## **Appendix – relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (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 provisions 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 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

- application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Section 27A**

- (1) 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal 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.