FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CW/LSC/2025/0014**
Property	**:**	**34 Oaklands Road Pennfields Wolverhampton WV3 0DS**
Applicant	**:**	**Susan Caines**
Representative	**:**	**None**
Respondent	**:**	**Midland Heart Ltd**
Representative	**:**	**Blake Morgan LLP**
Type of applications	**:**	**Applications for determination of reasonableness of a service charge under s27A, and for an order under s20C of Landlord and Tenant Act 1985 and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002**
Tribunal member	**:**	**Judge C Goodall** **Regional Surveyor V Ward FRICS**
Date and place of hearing	**:**	**Paper determination**
Date of decision	**:**	**02 December 2025**

DECISION

Background

1. This application is dated 6 February 2025 and relates to service charge years 2011/12 to date. The service charge year is 1 April to 31 March. The Applicant is a weekly tenant of the Property. She pays a weekly rent, and from April 2011 has also been charged a small sum each week as a service charge. She has always disputed this payment, claiming that it is not legally charged under her tenancy agreement.

2. She has therefore brought this application to establish that she should not have had to pay the service charge levied upon her.

3. Although the decision made by the Tribunal is that is has no jurisdiction to determine the application and must therefore strike it out, it is appropriate to set out the facts so far as we can determine them so as to understand the Applicant's concerns and reasons for bringing the application.

Facts

4. The Applicant entered into a tenancy agreement dated 3 June 1997 (the Agreement") with the Respondent's predecessor housing association with rent payments starting from 2 June 1997.

5. Clause 3 of the Agreement provides:

   "3. How much do you have to pay and what are the payments for:

Rent	£65.66
Service Charge	-
Weekly Total	£65.66

   Please note that these amounts are subject to change"

6. The Agreement had general terms attached, two of which provided:

   "8. Rent Review

   The rent will be revised not less than once but not more than twice a year normally on the 1st of April. Focus will give the tenant at least four weeks notice of any increase in writing to take effect on the date specified in the notice. The new rent will be the rent specified in the notice.

   9. Services

   A charge will be made for any additional services Focus provides. This will be part of your weekly rent and changes will be made as part of the rent review.
   The services provided for you are shown below:-

	Yes	No
Warden		
Cleaning of Communal Areas		
Lighting of Communal areas		
Maintenance of Gardens		
Cleaning of Outside Windows		
Other as listed"		

7. On 17 January 2011 (by when the Respondent had become the landlord), the Respondent informed the Applicant of its intention to introduce a mobile concierge service in the area to provide night time security and some low level caretaking work. Views were invited from the Applicant and all others affected. The Respondent intended to charge for the service at an initial rate of 46p per week.

8. It is clear that the Applicant objected to the introduction of the concierge service.

9. On 4 March 2011, the Respondent informed the Applicant that following the consultation, it had decided that the service would indeed be introduced, as "the majority of residents did not object".

10. From 1 April 2011, therefore, the Respondent has charged a service charge to the Applicant for the concierge service of initially £0.46 per week with slight variations in subsequent years. Copies of Notices of increase of rent under section 13 Housing Act 1988 have been provided to the Tribunal for a selection of years from 2011 to 2025. Each Notice included reference to a service charge of between £0.46 - £0.56 per week. In each notice, the service charge is described as a "fixed service charge".

11. In 2014, possession proceedings were commenced in the County Court (in claim reference 4PB39146) against the Applicant due to alleged rent arrears of £1,470.71. On 4 February 2015, Deputy District Judge Burns Beech directed that the Respondent must provide evidence that the Applicant is liable to pay the service charge in addition to the rent.

12. The evidence provided was in the form of a witness statement dated 15 February 2015 from Mohammed Quayum, the Respondent's Income Legal Manager. In paragraph 6, he said:

    "The nature of the service charge applied at the Defendant's Property is that of a fixed service charge which means that the residents pay a known amount each week and the figure does not change during the rental year. The fixed service charge is based on how much the Respondent estimates it will reasonably cost to run the services in the scheme."

13. Mr Quayum then outlined the correspondence and consultations that had taken place concerning the introduction of the concierge scheme as his justification for the Applicant's liability to pay it.

14. The Tribunal has not seen copies of any defence and/or counterclaim in these possession proceedings.

15. On 30 March 2015, District Judge Gailey made a suspended possession order in case number 4PB39146 upon payment of current rent and rent arrears of £398.27. There is no reference in the order to any separate order concerning liability to pay the service charge.

16. On 17 July 2017, the Respondent commenced possession proceedings again on the grounds that rent arrears were in the sum of £1,062.99.

17. The Applicant filed a defence in letter form accepting that some rent arrears had arisen but disputing the inclusion of any service charges within her rent on the grounds that she never agreed to pay a service charge, and her particular property does not require any services and she does not use any.

18. On 15 August 2017, District Judge Webb granted the Respondent a suspended possession order with judgement for rent arrears of £1,343.09 and costs. The order made dismisses the counter-claim (which the Tribunal surmises must have been relating to the dispute over the inclusion of the service charge within the rent – there is no documentation before us suggesting any additional document apart from the letter referred to in the paragraph above) on the grounds that "it stands no prospect of success". There are no reasons given as to why not.

The Jurisdiction Issue

19. Directions were issued on 21 October 2025 directing that the Tribunal considered it may not have jurisdiction to determine the application, following the Tribunal's initial consideration of the application. In those directions, the Tribunal said:

> "3. Prior to considering the substantive issues identified by the parties, the Tribunal first considered whether it has jurisdiction to determine the application.
>
> 4. The application is brought under section 27A of the Landlord and Tenant Act 1985 ("the Act") which gives the Tribunal jurisdiction to determine the payability of a "service charge". That phrase is defined in section 18 of the Act. The definition includes a requirement that the "whole or part of the [service charge] varies or may vary according to the relevant costs".

5. "Relevant costs" are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable.

6. In the tenancy agreement dated 3 June 1997 entered into by the Applicant, there are no provisions indicating that the service charge is to be calculated in any particular manner, or linking any alteration in the service charge to the cost of providing the service. It appears there is therefore no direct relationship between the amount of the service charge as a cause and the amount of the service charge as a consequence. The landlord appears to make a direct decision on the amount of the service charge which it fixes for a year. If the amount is inadequate to cover the charge, the landlord appears to bear the excess cost.

7. In these circumstances and following the cases of *Home Group Ltd v Lewis* [LRX/176/2006] and *Chand v Calmore Area Housing Association Ltd* [LRX/170/2007], the Tribunal considers it highly arguable that the service charge in issue in this case is a fixed service charge, rather than a variable service charge. If so, the Tribunal would not have jurisdiction to determine the application.

8. This question of jurisdiction has not been raised by either party; it is the Tribunal that has identified the concern. Before making a final determination therefore, the Tribunal wishes to provide the parties with the opportunity to make representations on the question of whether the service charge levied by the Respondent is a fixed or a variable service charge."

Response to the Directions

20. In response to these directions, the Respondent provided a submission dated 3 November 2025. The Respondent says the service charge is a fixed service charge and therefore argues that the Tribunal has no jurisdiction under the Landlord and Tenant Act 1985 ("the Act") as the service charge levied does not fall within the definition in section 18 of the Act. It claims that the service charge "forms part of the rent payable under the Tenancy, does not vary according to the actual costs incurred, and any challenge by the tenant to the level of such fixed charges would arise within the Tribunal's rent jurisdiction, not the service charge jurisdiction."

21. The submission continues by saying that the service charge is set annually in advance, based on contractual costs known at the time of calculation. Once the charge is set, there is no mechanism to recover overspends or refund underspends.

22. As a result, the Respondent submitted that the Tribunal indeed did not have jurisdiction to determine the application.

23. The Applicant also provided a further communication to the Tribunal following the 21 October 2025 directions in the form of a letter. The focus of the letter related to a suggestion that the handling of her application was improper and procedurally irregular due to the Tribunal's failure to identify her application as a joint application made by the Applicant and three other tenants of the Respondent. The letter did not address the jurisdiction issue.

Discussion

24. We recognise that the Applicant strongly believes that there is no legal basis for the service charge to be levied upon her and her fellow tenants. Her main arguments for disputing the service charge from April 2011 onwards are:

    a. Her house has no shared facilities and no need for any services charged under the service charge;

    b. Her Tenancy Agreement does not contain a contractual basis for it to be charged;

    c. A number of local residents objected to the imposition of the service charge – indeed her suggestion is that nobody on her street accepted the imposition of the service charge;

    d. She has support from other residents in the area.

25. The truth is that this Tribunal may only consider the Applicant's points if the service charge is a variable service charge under section 18 of the Act.

26. Our decision is that, for the reasons put forward by the Respondent, we determine that the service charge as set out in the Tenancy Agreement is a fixed service charge. The Respondent's submissions correctly follow the Upper Tribunal authorities quoted in the 21 October 2025 directions. Those cases have been confirmed to be good law in a decision of the Upper Tribunal issued on 30 October 2025 in *Barton v Platform Housing Ltd* [2025] UKUT 369 (LC).

27. In that case, the Deputy Chamber President said, at paragraph 34:

    "To be a service charge within the meaning of section 18(1), as currently drafted, it is necessary that the charge must vary or be capable of varying "according to the relevant costs". Mr Barton's service charge does not vary according to the relevant costs incurred by Platform. In practice it is set by Platform on the basis of its estimate of relevant costs, and other factors, but that is not a requirement of the agreement. It is then fixed and does not change whether the relevant costs are greater or less than had been estimated. No consideration is ever required to be given to the relevant costs actually incurred by Platform. In those circumstances, for the

reasons given in *Home Group*, at [21], the service charge payable by Mr Barton is not a service charge within the meaning of section 18(1)."

28. In our view, these crucial features identified in *Barton* are also features of the Applicant's Tenancy Agreement. The outcome of this application must therefore be the same as in the authorities referred to above; the Tribunal has no jurisdiction to determine the application.

29. Had we not determined that the application is outside the jurisdiction of the Tribunal, we would have been required to consider whether liability for the service charge had already been determined by a court, as if so, that would also mean we would be unable to consider the application (see section 27A(4)(c) of the Act). It is not entirely clear for which years the County Court had determined liability to pay the service charge, and more information would have been required, but it appears highly likely that at least some of the years challenged by the Applicant would have been excluded from our consideration.

30. We have some sympathy with the Applicant, who it appears has never received an explanation for why her contract obliges her to pay a service charge (if it does) despite the service charge being nil in her tenancy agreement, and despite two visits to the County Court and one to this Tribunal. She may wish to seek further advice from organisations such as Citizens Advice, or LEASE (at www.lease-advice.org), or a solicitor.

Decision

31. The application is struck out for lack of jurisdiction pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

S20C of Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

32. We decline to make the orders requested under these provisions, as the Applicant has had no success in her application. Having said this, we are not aware of any contractual basis upon which the Respondent may seek its costs from the Applicant.

The Joint Applicants

33. As referred to above, the Applicant has complained that the Tribunal has not addressed the fact that the application was submitted by four applicants. In fact, there is only one name in the box marked "Applicant" on the application form submitted. That box does allow for more than one applicant if the names of the joint applicants are submitted on a separate sheet, but it was far from clear to the Tribunal staff that the form was for four separate cases. We have made our determination therefore only in relation to the Applicants tenancy.

34. If the three other applicants wish to pursue a case to determine the payability of their service charges, they can certainly do so. If their tenancies are in the same terms as the Applicants tenancy, they would have to overcome the jurisdiction point on which the Applicant's application has floundered.

35. Alternatively, the three other applicants may wish to await the coming into force of section 53 of the Leasehold and Freehold Reform Act 2025 which will at least allow the Tribunal to consider fixed service charges. The other applicants are strongly advised though to take competent advice if they contemplate this course.

Appeal

36. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)