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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AQ/LSC/2024/0611**
Property	**:**	**Flat 4 Orchard Court, Stonegrove, Edgware HA8 7SX**
Applicant	**:**	**Orchard Court (Edgware) RTM Company Limited**
Representative	**:**	**Mr S Clayton**
Respondent	**:**	**Mr David Meisles and Mr N Hakkak**
Representative	**:**	**N/A**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Judge Prof R Percival** **Mr A Fonka FCIEH**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **26 June 2025**
Date of decision	**:**	**17 September 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal determines that the estimated service charges for the service charge years 2021/22 to 2023/24 are payable under the lease and reasonable in amount.

(2) The Tribunal makes an order under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant the amount of that the Applicant paid in application hearing fees to the Tribunal, in the sum of £340, to be paid within 28 days of the date of this decision.

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 estimated service charges payable by the Respondent in respect of the service charge years 2021/22 to 2023/24.

2. Sources of free legal information, including the legislation referred to in this decision, are set out in the appendix to this decision.

The background

3. The property is a two bedroom flat in a purpose built block. For service charge purposes, there are three blocks, consisting of 47 flats.

4. The Applicants hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Details of the relevant provisions are set out below.

The lease

5. The lease is dated December 1984. It is for a term of 99 years from 1981.

6. The fifth schedule contains the lessee's covenants. Paragraph 26 provides for a service charge, called the maintenance contribution, to be paid in six monthly instalments. The definition of the maintenance contribution (clause 2.5) is the flat's share (now worked out on a per-bedroom basis) of the aggregate maintenance provision, as computed as provided in the seventh schedule, Part II.

7. Part II of the Seventh schedule makes provision for an advance estimated service charge to be paid, and for reconciliation, following certification of actual expenditure by the surveyor or auditor employed by the lessor. Provision is made for a reserve fund.

8. Clause 5.4 provides that notices are to be in writing and may be given in any of the modes provided by section 196 of the Law of Property Act 1925.

The hearing

Introductory

9. Mr Stephen Clayton, who is both the company secretary of the Applicant company and the managing agent for the property, represented the Applicant. The Respondents did not appear.

The absence of the Respondents

10. We dealt first with the absence of the Respondents. We referred to Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules"), rule 34.

11. The first criterion in rule 34 is that the Tribunal is "satisfied that the [absent] party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing."

12. We heard from Mr Clayton that he had been the managing agent of the development since 2009. In 2021, following an offer from the then freeholder, the Applicant bought the freehold, in an exercise organised by Mr Clayton. We note that, as result, it appears to the Tribunal that, despite its name, the Applicant does not appear to be a company exercising the right to manage under Commonhold and Leasehold Reform Act 2002, part 2, chapter 1.

13. The Respondents were included in the exercise to purchase the freehold, but only at the last minute, having disputed the methodology for working out what contribution each flat should make. Mr Clayton characterised this as a "falling out".

14. Before the purchase of the freehold, the Respondents had regularly paid their service charge, communication being affected by a postal address and an email available to the Applicant. After 2021, the Respondents ceased paying the service charge.

15. On 24 August 2024, Mr Clayton sent a final letter before making the application by registered post. The document issued by the Post Office confirming delivery had been lost, but Mr Clayton's oral evidence was that he had received the confirmation. Mr Clayton also said that in respect of emails relating to the application, he included a delivery receipt request, which provided evidence that the email had been delivered. He had not thought to include documentary evidence of this, but his oral evidence was that emails were, indeed, delivered.

16. The postal address and email address had been provided to the Tribunal, and it was those that were used by the Tribunal to notify the Respondents of the application, the directions and the hearing date.

17. The Respondents did not comply with the directions. On 10 April 2025, a letter sent by the case officer at the Tribunal related a review by a legal officer, in which the Respondents were directed to inform the Tribunal whether they had complied with the directions, and if not why not; if in breach, what action they were going to take to remedy it; and why they should not be barred from taking further part in the proceedings. There was no response. It appears that the Respondents were not subsequently barred under rule 9 of the 2013 Rules.

18. Mr Clayton said that he expected people to notify him of a change of address and contact details. That routinely took place with other people.

19. As to the second criterion in rule 34, that the Tribunal "considers it in the interests to proceed with the hearing", Mr Clayton said that all of the other tenants in the building paid their service charges, and that the Respondents had had every opportunity to object to the service charge or to otherwise engage with him or the company, since 2021, and had not done so.

20. We adjourned and concluded that both criteria were met. The Applicants had been in communication and engaged with Mr Clayton before the "falling out", and thereafter had not. There was no reason to suppose that their postal or email addresses had changed. If they had, it would have been incumbent on the Respondents to notify the Applicant. The Tribunal relied on the same addresses.

21. Where a tenant is not living at the address concerned, once avenues of communication have been clearly and successfully established, it is not reasonable to expect either a landlord or the Tribunal to take further steps to ensure that such avenues continues to be effective in the absence of any effort by the tenant.

22. Further, we consider that continuing in the absence of the Respondents is in the interests of justice. It follows from what we have found in respect of the first criterion that the Respondents could have taken part in the proceedings, or have communicated in any other way, with the Tribunal, but have not done so (or have not ensured that they could be communicated with by the Applicant, and therefore the Tribunal). The Applicant is entitled to apply for the payability and reasonableness of its service charges to be endorsed, or otherwise, by the Tribunal, and the unjustified lack of engagement by the Respondents should not be allowed to stand it is way.

The reasonableness of the estimated service charges

23. The application was in respect of the estimated service charges in each year. In order to establish a prima facie case that these service charges were reasonable, Mr Clayton took us through the estimating process.

24. The service charge year runs from 1 November. Estimates were sent out in the last week of October or early in November each year. They were based on the previous year's actual service charges, and took account of any known changes in costs in advance. Since 2009, when Mr Clayton assumed the role of managing agent, the Applicant and its predecessor in title had used the same gardeners, caretaker, cleaner and (since 2013) the same insurance broker. The estimated charges were based on continuing with a group of contractors and were largely stable year by year.

25. The estimates were prepared by Mr Clayton and sent to the directors for approval. They were then sent to the leaseholders, who had the opportunity to query them. There had been disputes in relation to one family (one of whom was the partial developer, and the freeholder before the immediate predecessor in title of the Applicant), which resulted in three tribunal cases, in 2012, 2016 and 2017. In each, the Applicant had been overwhelmingly successful, and a costs order had been made in favour of the Applicant in the last.

26. Mr Clayton explained that they properly undertook section 20, 1985 Act consultations when those were necessary, as they had been as part of a planned programme of re-roofing the blocks.

27. The Applicant maintained a sinking fund which was used for the major roofing projects. Surpluses were applied to the sinking fund, and deficits funded from the same fund. In the relevant period, there had been moderate surpluses, except in 2021/22. In that year, there had been unexpected additional expenditure on drains and plumbing as a result of particular difficulties with the system in that year. As a result, there had been an overspend, which was funded from the sinking fund.

28. Our conclusion is that the process showed a sensible and prudent approach to estimated service charges, including an appropriate approach to the funding of the sinking fund and major works.

29. Our finding is that the Applicant has shown that the estimated service charges were both payable under the lease, and reasonable in amount.

30. At the conclusion of the hearing, Mr Clayton applied for the application and hearing fees to be reimbursed by the Respondent, under rule 13(2) of the 2013 Rules.

31. We allow the application. The Applicant has been wholly successful in its application, and the Respondent has failed to take any part. It is fair and

reasonable for the Respondent to pay the application and hearing fees, rather than that be a cost to be passed on in the service charge.

Rights of appeal

32. 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 London regional office.

33. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

34. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

35. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Professor R Percival **Date:** 17 September 2025

APPENDIX: SOURCES FOR FREE LEGAL MATERIALS

Legislation

The legislation referred to in this decision may be found at:

https://www.legislation.gov.uk/ukpga/1985/70
https://www.legislation.gov.uk/ukpga/2002/15/contents

Case Law

The dedicated website for Upper Tribunal (UT) cases, which are binding on this Tribunal, is:

https://landschamber.decisions.tribunals.gov.uk/Aspx/Default.aspx

The search engine does not allow for free text searching. Sufficient information to use the provided search engine (such as the date of the case or the parties names) may be available via a google search.

Alternatively, the official National Archive website is at:

https://caselaw.nationalarchives.gov.uk/

This has a better search engine, but does not contain UT decisions before 2015, and there may be gaps in its provision thereafter.

The National Archive website can also be used for finding cases in higher courts, including those referred to in UT decisions.

Alternatively, many UT decisions, and most other important cases in all courts, are available on:

https://www.bailii.org/ .

Bailii stands for British and Irish Legal Information Institute. It is a charity that has published free caselaw for many years, and has in some cases loaded up earlier case law.