FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AQ/LSC/2020/0263**
Property	:	**Trident Point, 19 Pinner Road, Harrow, Middlesex HA1 4FW**
Applicants	:	**Georgette Dyer** **Vidhita Rustagi** **Alok Rustagi** **Falak Sheikh** **Awnish Upadhyay** **Lilian Tumaini Nsemwa** **Baiju Antony** **Saurabh Jain** **Kasun Wimalagunasekara** **Amina Ahmed** **Rachel Hill**
Representative	:	**Mr Rustagi**
Respondent	:	**(1) Metropolitan Housing Trust Limited** **(2) Avon Ground Rent Ltd** **(3) Harprop Ltd**
Representative	:	**(1) Mr Beresford of counsel** **(2) Ms Muir of counsel** **(3) Mr Cockfield of counsel**
Type of application	:	**For the determination of the liability to pay service charges and cost-related applications**
Tribunal members	:	**Prof R Percival** **Ms A Flynn MA MRICS**
Venue and date of hearing	:	**10 Alfred Place, London WC1E 7LR** **10 December 2024**
Date of decision	:	**16 January 2025**

DECISION

Decisions of the tribunal

(1) In the light of the Applicants' explanation that they no longer contested the service charges during the relevant years, the Tribunal made no determination in respect thereof.

(2) The Tribunal orders under section 20C of the 1985 Act that the costs incurred by the first Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant;

(3) The Tribunal orders under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicants to the substantive application under section 27A of the 1985 Act to pay litigation costs as defined in paragraph 5A be extinguished; and

(4) The Tribunal makes no order under section 20C of the 1985 Act in respect of the second Respondent's costs of the proceedings before the Tribunal.

The substantive application

1. The Applicants sought 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 first Respondent in respect of the service charge years 2017/18 to 2020/21.

2. Initial directions were given in October 2020, but the application did not thereafter progress. We were not informed of the reasons for this. Following a case management hearing on 30 January 2024, further directions were given on 31 January 2024 by Judge Sheftel. Initially, the wrong respondent had been identified (Y and Y Management Ltd, the second Respondent's managing agent). Judge Sheftel substituted the respondents shown above. Both the first and second Respondents were represented by counsel at the case management hearing. The original Applicant was Ms Dyer. The additional applications were added at and after Judge Sheftel's directions.

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

The background

4. Trident Point is a development comprising two blocks of residential flats, commercial premises and a car park. This application is brought in relation to one of the two blocks, which is leased to the first Respondent (Metropolitan) by the second respondent (Avon), the head lessee. The Metropolitan block has its own entrances and bin stores. The freeholder is the third Respondent (Harprop), who had taken no part in proceedings before the hearing, but was represented before us.

5. The block leased by Metropolitan consists of 42 flats on eight floors. The Applicant's flats are on "shared ownership" leases. There are 12 shared ownership leaseholders' flats, located on floors 7 and 8.

The hearing

6. Of the Applicants, Mr Rustagi, Mr Sheikh and Mr Wimalagunasekara attended the hearing. Mr Rustagi acted as primary spokesperson. Mr Beresford represented Metropolitan, Ms Muir represented Avon and Mr Cockfield represented Harprop, all of counsel.

7. At the start of the hearing, we asked Mr Rustagi to clarify what issues were still in dispute, particularly in the light of the witness statement of Mr Kuszneruk, the home ownership contracts manager of Metropolitan.

8. We interpose a brief summary of Mr Kuszneruk's evidence. His witness statement, which exhibited 1,074 pages of documents (of a bundle comprising in total 2,571 pages), was dated 24 September 2024. Mr Kuszneruk explains that he undertook an "audit" of the service charges and the service charge apportionment on behalf of Metropolitan, it appears over the summer of 2024. His witness statement contains an account of the audit and the revisions that had been made as a result. The audit covered the service charge from 2017 to 2023.

9. As a result of the audit, a number of items were moved from being charged at block level to being charged as estates charges (the apportionment for which is different, to the advantage of the Applicants), removed a number of others altogether for various reasons, including that they should not have been charged at all and, in respect of lift maintenance, in recognition of the limited service provided as a result of numerous breakdowns. In respect of some charges, Mr Kuszneruk noted that charges that could have been made had not, but he did not reintroduce them. Given the extent of the revisions resulting from the exercise, Mr Kuszneruk removed all fees for audit certification from the service charge. While it was not immediately clear from the witness statement, our understanding was that Mr Kuszneruk also rectified anomalies in the apportionment of the service charge.

10. Mr Rustagi submitted that the tenants had complained of excessive service charges in 2020, but it was only in the last two months that corrections had been made (ie as a result of Mr Kuszneruk's audit). He emphasised the extent of the adjustments made. Mr Rustagi complained that, in each year, the Applicants had sought information pursuant to section 22 of the 1985 Act, which had not been provided.

11. If the correct sums could be arrived at as a result of Mr Kuszeruk's audit now, they could have been properly provided at the outset, Mr Rustagi argued. He noted that the accounts had been professionally audited in each year (we interpose that among the charges that Mr Kuszeruk removed from the service charge was that for auditing services). Mr Rustagi submitted that there were to two possible reasons for the errors. One was that the original calculation of the service charge had been incompetent. The other was that it was the result of wilfully miscalculation. He adverted to significant trauma, both financial and mental, that the erroneous services charges had imposed on the Applicants.

12. Mr Rustagi expressed the Applicants' concerns that errors and overcharging would continue into the future. He observed that the new service charge demands, from 2023/24, had again gone up very significantly.

13. Mr Rustagi emphasised that it was only as a result of this application having been made in 2020 that the errors had been corrected.

14. Mr Rustagi then accepted before us that the Applicants now had no challenge to the service charges in the relevant years, following the adjustments made as a result of Mr Kuszeruk's audit.

15. It had been clear to us from the papers that the Applicants' understanding of the Tribunal's jurisdiction was exaggerated. In particular, they had referred to a number of different statutes which, they asserted, had been breached, and we understood from the papers that they expected that we could provide appropriate remedies. At the hearing it became apparent that that was no longer the case, but that they also expected that we could make declarations as to the conduct of Metropolitan (and possibly Avon) in the future. We explained the basis of our jurisdiction under section 27A of the 1985 before Mr Rustagi made his submissions.

16. The result of Mr Rustagi's acceptance that there was now no dispute in relation to the relevant years (2017/18 to 2020/21) that was amenable to the Tribunal's jurisdiction was that the substantive section 27A dispute fell away. We note that neither the Tribunal nor the other parties had anticipated that this would be the case.

17. We accordingly, after an adjournment, went on to consider the cost-related applications.

The applications for cost-related orders

18. There were before the Tribunal two applications for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and one application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

19. Before considering each in turn, we set out some general points relevant to these orders.

20. Firstly, we consider these applications on the basis that the leases (between the Applicants and Metropolitan in the first instance, and between Metropolitan and Avon in the second) do provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that is the case or not. Whether the leases do make such provision is, accordingly, an open question should the matter be litigated in the future.

21. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

22. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

23. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.

24. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

25. With these considerations in mind we turn to the first application, that by the (substantive) Applicants for orders under both provisions against Metropolitan.

26. Mr Beresford invited the Tribunal to make the orders sought up to, but not after, 7 November 2024. He provided us with a copy of a letter sent to all of the Applicants on that date.

27. The letter is from Metropolitan's solicitor. It refers to Metropolitan's evidence, and in particular Mr Kuszneruk's witness statement and subsequent adjustments to the service charges. In the passage that Mr Beresford particular relies on, the letter said

> "We are due to begin preparations for the hearing very shortly which will increase significantly the legal costs. Accordingly, we request that you reply to this letter by 4.00 pm on 14th November 2024 by email … setting out our position as to whether you accept that no further adjustments are necessary."

28. Mr Beresford argued that the Applicants did not take up the opportunity to confirm that no further adjustments were necessary at that point, and as a result Metropolitan incurred substantial extra costs. Mr Beresford accepted that it would be said that the Applicants were litigants in person, but, he submitted, that only went so far. He referred us to a paragraph in Metropolitan's statement of case in the bundle. That paragraph is under the heading "Health and Safety at Work etc Act 1974". It quotes the Applicants' case that they had suffered "negative psychological, physical, emotional, financial, and social impact since moving into Trident Point", asserts that it is not clear what breaches of that Act were alleged and states that the Tribunal does not have a relevant jurisdiction. He also referred to a statement by Avon, in their statement of case, in which, following a reference to the lack of invoices to support the service charge being a matter for Metropolitan, not Avon, goes on to observe that seeking compensation from the Tribunal is not the correct forum.

29. Mr Rustagi argued, first, that the mistakes only came to light because the application had been made. Secondly, the letter of 7 November 2024 did not make any mention of the Applicants' having to pay costs through the service charge if they did not respond as requested. Thirdly, the Applicants wanted to come to the Tribunal to ensure that similar mistakes would not be made in the future. They did not want to waste time, but rather to have a judgment about how matters should proceed henceforth.

30. Mr Beresford accepted that costs before 7 November 2024 should not be passed on in the service charge. In doing so, we consider that Metropolitan is accepting Mr Rustagi's first point, that it was the fact that the application was made that resulted in Metropolitan reconsidering the services charges (eventually) and making appropriate adjustments. In our view, this is clearly right. The question is whether the letter of 7 November 2024 sufficiently put the Applicants on notice that costs would be passed on if they did not withdraw their application at that point. We do not consider that it came anywhere near doing so. It does

not refer at any point to legal costs being passed on to the Applicants in the service charge. It does not put before the Applicants the position as stated by Mr Beresford – that costs before that date would not be passed on, but would be if the Applicants declined to withdraw. A reference to Metropolitan itself incurring additional costs is clearly insufficient to put the Applicants, who are all litigants in person, on notice of the consequences of not withdrawing. This is sufficient to negative the reliance that Mr Beresford puts on the letter of 7 November 2024.

31. The references to the Health and Safety at Work etc Act 1974, and to compensation, in Avon's statement of case, are relevant, if at all, to the persistence with the application by the Applicants after the audit adjustments were made. They are not relevant to whether the Applicants appreciated that costs might be passed on to them in the service charge as a result of the choices they made.

32. Again, the Applicants are litigants in person. First, it is not obvious that when an opponents says a party has got something wrong, it will be clear to a litigant in person that they should forthwith drop that point. Secondly, both of these references are to specific issues – the 1974 Act and an argument about invoices – which go nowhere near covering the application as a whole. Thirdly, it was clear to the Tribunal that the Applicants were persisting with the application in the belief that forward-looking remedies, such as declarations or injunctions, would be available to them from the Tribunal. They were not by the point of the hearing seeking compensation, or an endorsement of their position as to the 1974 Act. They were mistaken in that belief, but it is not something which Metropolitan had addressed, and is not a clearly absurd belief for a litigant in person to hold.

33. Standing back, it is clear to us that the Applicants have, in the round, been very largely or completely successful in challenging their service charges for the relevant years, even if the reasoning behind each individual adjustment made by Mr Kuszneruk was not necessarily that for which the Applicants contended.

34. As to the nature of the landlord, Metropolitan are a large scale landlord of social housing, and therefore not in a position comparable to, for instance, a leaseholder owned company, the only income of which is derived from the service charge. We accept that Metropolitan are not a in the same position as a private sector commercial landlord/freeholder, but nonetheless, they are a substantial organisation with resources.

35. Our conclusion is that we should make the orders contended for against Metropolitan and in favour of the Applicants.

36. The second application was for an order under section 20C made by Metropolitan against both Avon and Harprop, to prevent Avon from

passing the costs of these proceedings as a service charge to Metropolitan under their lease.

37. As a preliminary, it seems to us that the application is strictly only against Avon, but as such it includes any service charge made by Harpop against Avon that Avon then seeks to pass on as a service charge to Metropolitan.

38. Mr Beresford's first submission was that Metropolitan had not challenged any of the charges made by Avon (or, above them, Harprop). The challenge had come from the Applicant tenants. The dispute, in this context, was between Avon and Harprop and the Applicants, and Metropolitan was not a party to that dispute.

39. Secondly, Metropolitan were not responsible for adding Avon and Harprop. Mr Beresford took us to an email (in the additional material) dated 24 September 2020 from Scott Cohen, Avon's solicitors, which noted that Y and Y Management Ltd (Avon's managing agent) were the wrong respondent, and observed that, given the structure of leases, Avon and Harprop should be added as second and third Respondents. In Judge Sheftel directions, it was recorded that all those present at the case management conference agreed that Avon and Harprop should be joined as Respondents (Avon were present through counsel; Harprorp were not). Avon recognised that some of the costs incurred were incurred by them and it would fall upon them to defend those. Metropolitan should not be left with Avon's legal costs in those circumstances, Mr Beresford submitted.

40. Finally, Mr Beresford argued that if Avon were to pass on its costs to Metropolitan, it would pass those down to the Applicants via its service charge. However, because Metropolitan in practice paid the equivalent of the service charge that would be attributable to the assured tenants in the block if they paid a service charge, Metropolitan would be unable to pass on all of those costs contractually, and would have to pay them itself.

41. Ms Muir, noting that Avon became aware of the proceedings as a result of the initial identification of its managing agent as the Respondent, argued that it was necessary for Avon to become a party, as a significant proportion of the service charges contested by the Applicants were attributable to service charges charged by Avon on Metropolitan (somewhat misleading referred to as "third party management fees"), even if those had not troubled the Tribunal at this hearing.

42. Ms Muir noted that all of the matters set out by Mr Rustagi in his submissions at the hearing were directed at Metropolitan, not at Avon. Despite the fact that these problems were caused by Metropolitan, and then solved by them (via the audit adjustments), Metropolitan's position was that Avon should be lumbered with the costs of its necessary and

inevitable contribution to the proceedings, despite the proceedings being caused by their accounting errors.

43. In the event, Ms Muir submitted, the Applicants had not proceeded with any complaints directed at Avon and no findings had been made against Avon. It would, then, be "somewhat strange" if Avon were to be left with the costs of preparing and appearing at the hearing.

44. We decline to make the order in favour of Metropolitan. As we noted above, the making of an order under section 20C is an interference with the contractual rights of the party against whom it is made. The way things turned out, we were not called on to make any findings as to the justice of the Applicants' challenges. If we had, then we might have been obliged to have considered the comparative fault between Metropolitan and Avon, but we were not. In those circumstances, we do not see how it can really be argued that it is just and equitable for us to interfere with Avon's contractual right (which, as again we note above, we assume rather than find) to pass on its costs of these proceedings to Metropolitan.

45. We note Ms Muir's contention that it was the accounting and other errors made by Metropolitan that were uncovered by Mr Kuszneruk. This is of course right, but, the correction of those errors by Mr Kuszneruk does not necessarily endorse the fees passed on to Metropolitan by Avon. Rather, it corrects (from the Applicants viewpoint) errors in Metropolitan's handling of Avon's service charge by Metropolitan when assessing Metropolitan's service charge to the Applicants (in part, by effectively endorsing Metropolitan's failure to pass Avon's service charges on). But ultimately, as far as this application is concerned, that is just a further feature of the fact that we did not have to and do not make any assessment of comparative fault (if any) between Avon and Metropolitan.

46. Finally, we consider that our section 20C order against Metropolitan passing on the cost of these proceedings in the service charge to the Applicants encompasses both its own direct costs of the proceedings, and the costs incurred in respect of the proceedings that Avon (assuming it can) passes on to Metropolitan. We did not invite submissions on the question, but in our view the terms of section 20C are broad enough to encompass those costs as well as Metropolitan's direct costs. The formula that the order relates to "all or any of the costs incurred … by the landlord in connection with proceedings before … the First-tier Tribunal" must include costs incurred in the proceedings passed on to it by its superior landlord.

47. Judge Sheftel's directions made reference to the possibility of an application for reimbursement of Tribunal fees to the Applicants (ie under rule 13(2) of the 2013 Rules) to be considered at the hearing. We

asked Mr Rustagi if the Applicants wished to make such an application. After consulting the other Applicants present, he declined to do so.

48. *Decisions*:

(1) The Tribunal orders under section 20C of the 1985 Act that the costs incurred by Metropolitan in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant;

(2) The Tribunal orders under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicants to the substantive application under section 27A of the 198 Act to pay litigation costs as defined in paragraph 5A be extinguished; and

(3) The Tribunal makes no order under section 20C of the 1985 Act in respect of Avon's costs of the proceedings before the Tribunal.

Further observations

49. When we explained to Mr Rustagi that the Tribunal could not make any determinations as to the conduct of Metropolitan in the future, we noted that we could make observations, but that they would not be determinative in any way. Mr Rustagi positively invited us to make observations.

50. Mr Beresford urged caution on us in making observations, when the evidence of the parties had not been subject to testing in cross-examination or submissions by the parties.

51. We agree with Mr Beresford that we should be careful with any observations we make, for the reasons he gives.

52. Nonetheless, we can draw conclusions from Metropolitan's own evidence, in the form particularly of Mr Kuszneruk's witness statement and the exhibits thereto in relation to the period from 2017/18 to 2022/23 (the audit was more extensive than the relevant years). That shows beyond any doubt that Metropolitan's administration of the service charges payable by the leaseholders at this property was woefully inadequate during that period. We understand that the main business of Metropolitan as a housing association is to provide social housing, usually on assured tenancies, and usually without a service charge. But where it does have leaseholders on long leases, including "shared ownership" leases (whether technically assured tenancies or otherwise) which attract service charges, it should be capable of properly and accurately administering those service charges, even if the necessary skill set is rather different from that required in respect of the management of social housing assured tenancies.

53. Further – and we accept Mr Beresford's point that we are on more difficult ground here – it does at least appear that Metropolitan failed to communicate effectively with the leaseholders in relation to service charge matters. Again, communicating the basis of a service charge – which may well involve providing documentary evidence of expenditure or anticipated expenditure, including invoices where appropriate – may be a rather different thing than the sort of communication necessary or desirable with social housing assured tenants.

54. As will be evident, these are merely observations, and none of our substantive conclusions can be said to depend on them.

Rights of appeal

55. 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.

56. 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.

57. 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.

58. 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:** 16 January 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.