



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

<b>Case references</b>	:	CAM/34UD/LSC/2024/0012
<b>Property</b>	:	Flats 19-24 Palace Gate, Irthlingborough, Wellingborough NN9 5FD
<b>Applicant</b>	:	Samy Solaiman & Ors
<b>Applicant's Representative</b>	:	Mr Silva
<b>Respondent</b>	:	Assethold Limited
<b>Respondent's Representative</b>	:	Mr Cullen of Counsel
<b>Type of application</b>	:	Application for determination of liability to pay service charge pursuant to s. 27A Landlord & Tenant Act 1985
<b>Tribunal members</b>	:	Mr Max Thorowgood & Dr Jan Wilcox FRICS
<b>Venue</b>	:	CVP
<b>Date of Decision</b>	:	19 <sup>th</sup> August 2025

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**DECISION**

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**1. The application**

- 1.1. The Applicants are the lessees of Flats 19-24 Palace Gate, Irthlingborough, Wellingborough NN9 5FD. Those premises form part of an estate which comprises three blocks, one comprising 4 units, one comprising 6 units (which is the Applicants' block) and one comprising

8 units, i.e. 18 units in total. The service charge account is also divided into what are described as Service Charges and Estate Service Charges. We were informed that there are an additional 6 units which are liable to pay the Estate Service Charge.

- 1.2. The Applicants' challenges relate to the completed years of account ending March 2019 – March 2023 and for the prospective year of account to December 2023 at which point the Applicants' application for the Right to Manage their block took effect.

## **2. Debarring of the Respondent**

- 2.1. Before proceeding to consider the substantive matters in issue it is necessary first to address the preliminary matter which we dealt with at the outset of the hearing: the Respondent's application for the bar upon its further participation in the proceedings automatically imposed by reason of its failure to comply with the order of Judge Wyatt dated 31<sup>st</sup> January 2025 which required it, by no later than 12<sup>th</sup> February 2025, to provide its Statement of Case and its supporting documents, including all relevant invoices relating to the disputed matters, amongst other things.
- 2.2. By his order dated 14<sup>th</sup> February 2025 Judge Wyatt refused the Respondent's application for permission to appeal against his order dated 31<sup>st</sup> January 2025 but made it clear that that did not prevent the Respondent from applying to us to lift the bar.
- 2.3. Counsel for the Respondent, Mr Cullen, attended before us to make an application for the bar to be lifted. Any such application must necessarily have been made pursuant to r. 9(5) & (6) of the Tribunal's rules. The relevant provisions for these purposes are:

“(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) *An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.*

(7) This rule applies to a respondent as it applies to an applicant except that—

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.

*(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.” (Emphasis added)*

2.4. The Respondent had not made an application in writing and had filed no evidence in support of it. Mr Cullen was accordingly reduced to contending that the Respondent’s failure to comply was not contumelious, it had made some efforts to comply, he said, and ought to be given further time to comply fully. The difficulty with those submissions, leaving aside the failure of the Respondent (which is a professional landlord with substantial holdings and access to the assistance of expert legal advice and can accordingly be expected to be familiar with the Tribunal’s rules of procedure) to comply with the mandatory requirements of r. 9(6), was that the Respondent had utterly failed to provide any form of explanation for its failure to comply with the order of 31<sup>st</sup> January 2025. Accordingly, even assuming that it would be appropriate for us to waive the failure of the Respondent to comply with the mandatory requirements of r. 9(6) applying the requirement of the Overriding Objective to facilitate participation in the proceedings

and not to take an unduly formal approach to compliance with the rules of procedure, we do not consider that it would be appropriate to lift the bar. There is simply no excuse, let alone a good reason, for the Respondent's failure to comply with the order of 31<sup>st</sup> January 2025. Its excuse for its failure to comply with the original directions order was poor enough but the failure to comply with the unless order is simply unexplained and seemed to us to be wholly unjustified. For that reason we rejected the Respondent's application and Mr Cullen accordingly took no further part in the proceedings.

- 2.5. We considered whether we should consequently determine the disputed matter summarily in favour of the Applicant but decided against doing so on the basis that it would be preferable for the parties to have a reasoned decision particularly as regards the apportionment questions which represented the main burden of the Applicants' challenges.

### **3. The leases**

- 3.1. The sample lease with which we were provided stated very simply that the lessee should each pay, "a fair proportion," of the service charge.

### **4. Apportionment**

- 4.1. As we have said, the key area of disagreement between the parties is as to the apportionment of the costs between the 18 units which comprise the estate. Save in respect of costs which could be attributed specifically to a particular unit or block, costs which are properly to be spread across the estate have been apportioned by the Respondent equally between the three blocks. It is the Applicants' position that those costs should instead be divided equally between the individual units, i.e. by 18.
- 4.2. The approach which should be adopted by the Tribunal to disputes of that sort has recently been the subject of significant decisions by the Supreme Court and the Upper Tribunal namely: *Aviva Investors Ground*

*Rent GP Ltd v Williams* [2023] UKSC 6 and *Hawk Investment Properties Ltd v Eames* [2023] UKUT 168 (LC).

- 4.3. According to *Hawk* the first question for us is whether the apportionments which have been made by the Respondent are in accordance with the terms of the lease. In this case, that means the first question is whether the proportions are 'fair'.
- 4.4. Insofar as the question whether the proportions are fair can meaningfully be distinguished from the question whether they are reasonable we must then also consider that question.
- 4.5. It is our view, in the absence of any explanation from the Respondent, that the Applicants' criticisms of the Respondent's apportionment of the general costs in three between the blocks is obviously unfair. There is no apparent reason why the lessees of the 4 unit, two storey, block should pay the same amount as the lessees of the 8 unit, three storey, block, i.e. twice as much for the same services. The same logic applies to the estate service charges although there are 24 units which benefit from the estate services.
- 4.6. It is therefore our conclusion that, save as regards costs which are specifically attributable to a particular block or unit, the service charge costs should be apportioned equally between the 18 units. Likewise, the estate service charge should be apportioned equally between the 24 units.

## **5. Burden of proof**

- 5.1. This question assumes particular significance in the absence of the Respondent. The basic principle is that he who asserts must prove. Thus, insofar as the Applicant's claim that the Respondent's apportionment of the costs was not in accordance with the terms of the lease, i.e. that it was not fair, they must prove that.
- 5.2. However, it is the effect of s. 19 Landlord & Tenant Act 1985 that service charges will only be payable if they were:

5.2.1. Reasonably incurred; and

5.2.2. Were carried out to a reasonable standard.

The onus is therefore upon the Respondent to prove reasonableness insofar as that question arises either in relation to specific items of expenditure or in relation to apportionment. However, it seems to us that for practical purposes, if service charges are fair, then they are also reasonable. Accordingly, we are required to determine whether on the balance of probabilities the apportionments are fair and in the case of any specific challenges they were incurred, were payable in principle and whether they were reasonable per s. 19.

## **6. Conclusions**

- 6.1. We have reached general conclusions as regards the apportionment of the various costs which we have set out above. Where we consider that a particular item of expenditure should be apportioned to a specific block rather than per unit across the three blocks we have said so in the section provided for our comments in the Scott Schedule. Further conclusions as a matter of principle in relation to the disputed items identified in the Scott Schedule are set out in the column provided for our comments. These two sets of conclusions are to be read together.
- 6.2. It will be for the parties to make and we hope agree upon the necessary calculations.

## **APPENDIX 1- RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.