



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

Case reference : **LON/00BK/LSC/2025/0902**

Property : **Apartment 20, 21 Sheldon Square,
Paddington, London W2 6DS**

Applicant : **Mr Mark Aung
Ms Hla Hla Win**

Respondent : **Berkely Seventy Seven Ltd**

Representative : **Mr C Fain instructed by Forsters LLP**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985**

Tribunal : **Judge N O'Brien
Mr Simon Johnson MRICS**

**Date of
Determination** : **25 June 2026**

DETERMINATION

Decisions of the tribunal

- (1) The Tribunal makes the determinations set out in paragraphs 27-32 of this decision.
- (2) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be charged to the Applicants as an administration charge.

The application

1. By an application sent to the Tribunal on 2 July 2025, 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 in respect of the service charge years 2023 and 2024.

The hearing

2. The Applicants appeared in person at the hearing and the Respondent was represented by counsel, Mr Fain.
3. The Respondent prepared a bundle consisting of 1946 pages and a supplemental bundle consisting of a further 19 pages. We had skeleton arguments prepared by both parties and a bundle of authorities prepared by counsel for the Respondent. We heard oral evidence from the First Applicant, from a Mr Darren Osgood on behalf of the Respondent and from a Mr Michael McDonnagh of the Respondent's managing agent- First Port Property Services Ltd.
4. At the start of the hearing the tribunal heard an application by the Respondent to rely on the witness evidence of Mr Osgood and an application by Mr Aung to rely on a further witness statement dated 6th May 2026 and a brief witness statement from Ms Win. Neither application was opposed and both were granted.
5. The hearing was listed for two days, but we were able to complete the parties' evidence and submissions in one day primarily due to the fact that the parties were able to significantly narrow the issues that were in dispute at the start of the hearing. Following the hearing the Tribunal received an email from the Applicants consisting of further submissions regarding the heating ventilation and air conditioning (HVAC) system serving their apartment. We have not had any regard to those submissions but in any event it appeared to the tribunal that the Applicants were essentially repeating submissions that already been made in the course of the hearing.

The background

6. The property which is the subject of this application is a 3-bedroom apartment in Sheldon Square, a mixed use and mixed tenure estate near Paddington Station in Central London. The estate comprises 164 residential units across two buildings which themselves are divided into two blocks: 7 and 11 Sheldon Square and 21 and 27 Sheldon Square. Both buildings have commercial units on the ground floor. The lower residential floors of both buildings (7 and 27 Sheldon Square) are leased to a housing association which has played no part in these proceedings. The upper floors in both buildings (21 and 11 Sheldon Square) consist of privately owned leasehold flats. There are 79 apartments in 21 Sheldon Square. Sheldon Square was constructed in around 2002, and forms part of a wider estate, known as the Paddington Central development.
7. The Respondent is the registered owner of a lease of part of Sheldon Square that includes 7, 11, 21 and 27 Sheldon Square. The Applicants are the leasehold owners of Apartment 20 in 21 Sheldon Square pursuant to a lease dated 6 January 2004 granted for a term of 999 years.

8. Neither party requested an inspection and the tribunal did not consider that one was necessary.
9. The dispute between the parties essentially has arisen as a result of long-standing problems with the HVAC system serving the Applicant's apartment. The apartments in 21 Sheldon Square are served by a number of HVAC systems. The HVAC system serving the Applicant's apartment has not functioned properly since about 2018 and has not functioned at all since 2020. It is common ground that the whole system serving the block requires an extensive overhaul and partial replacement. The Respondent's position is essentially that the HVAC system serving 21 Sheldon Square has reached the end of its useful life, that resolving the issue has proved to be complex and will likely involve considerable expense for leaseholders and that this had been the reason for the extended delay in restoring proper ventilation and heat to the Applicant's apartment. We were told in the hearing that the required works will commence in Spring 2027.

The issues

10. In their application the Applicants sought to challenge the costs associated with the HVAC system serving the block, their contributions towards the reserve funds, and legal and administrative charges added to their service charge accounts for the years 2023 and 2024.
11. The tribunal issued directions in standard form on 4 September 2025. The directions which provided for the exchange of completed Scott schedules of disputed charges, and for the Respondent to disclose all invoices relevant to any disputed charge. Subsequently the Applicants sought to challenge all service charges demanded since 2019. At a case management hearing on 30 October 2025 Judge Nicol considered that he would not grant the Applicants permission to extend their challenge beyond the years which were challenged in their initial application at that stage. They were advised to seek legal advice in the first instance before making such an application. No further application to extend the years in dispute was made but there were three further interim applications made by the Applicants primarily relating to disclosure. The parties consented to an order giving the Respondent further time to disclose any additional documents which it considered relevant to the issues in dispute.
12. At the start of the hearing Mr Aung identified the remaining issues for determination as follows:
 - (i) The payability and/or reasonableness of the following service charges which the Applicants were required to pay in respect of the year ending 30 November 2023 relating to;

• Building Reserve Funds	£343.10
• Freeholder's estate costs	£1772.50
• Electricity charges	£2608.79

• Cleaning	£223.21
• Repairs to the HVAC system	£575.27
• Block Reserve funds	£1607.89
• Management fees	£413.49

- (ii) The payability and/or reasonableness of the following service charges which the Applicants were required to pay in respect of the year ending 30 November 2024 relating to;

• Building Reserve Funds	£504.14
• Freeholder's estate costs	£1978.83
• Electricity charges	£1318.43
• Repairs to the HVAC system	£894.63
• Block Reserve funds	£12601.87
• Management fees	£430.03

In respect of both years the first item relates to the building in which 21 Sheldon Square is situated i.e. 21 and 27 Sheldon Square. The second item under challenge is the Respondent's proportion of the costs incurred by its superior landlord in maintaining the surrounding estate. The above figures were obtained from a schedule included in the bundle at page 547 prepared by the Respondent. They are based on the figures in the final accounts for each year. While the Applicants did complete a schedule of disputed costs they did so by attaching the budget for Sheldon Square for 2023 and 2024 and highlighting the items which they wished to dispute, which made it difficult to ascertain what was being disputed and how much the Applicants actually had been charged for those items. They did not put forward any alternative sums that they would be willing to pay for those items.

13. We record that for the years in dispute the Respondent has applied credits of £624.98 and £676.16 to the Applicants' service charge account to be offset against the freeholder estate costs which the Respondent sought for both years. Additionally the Respondent has agreed to issue a credit to administration charges totalling £350 which were added to the Applicants' service charge account.

The Lease

14. The mechanics of the service charges are not in dispute and the Applicants accept that in principle they are liable to pay the service charges demanded by the Respondent subject to their challenges in relation to reasonableness. The relevant terms of the Lease are summarised as follows:

- (i) Paragraph 13 of the Sixth Schedule permits the lessor to put aside such sums as it reasonably considers necessary to provide for a reserve fund.

- (ii) The lessee is required to pay the Lessee's Proportion of the Maintenance Expenses in accordance with the service charge mechanism in the Seventh Schedule.
- (iii) The Lessee's Proportion is split:
 - (a) 1.0177% for Sector 1 Shared Building Costs;
 - (b) 1.3304% of the fair and reasonable proportion of either sums paid or incurred pursuant to the covenants performed pursuant to the superior lease for Sector 2 Building Estate Costs;
 - (c) 1.3304% for Sector 3 Private Residential Costs.
- (iv) The Maintenance Expenses are set out in the Sixth Schedule.
- (v) The service charge year ends on 30 November in each year.
- (vi) The Seventh Schedule provides for the lessee to pay in advance an amount of the Lessee's Proportion of the estimated Maintenance Expenses for that year on 1 December and 1 June. A certificate is then to be produced by the landlord and audited by an independent accountant setting the actual expenditure and the reserve for future expenditure. On service of this certificate, the lessee is required to pay any deficit or if there is a credit, then that will be applied against future payments due.

15. The Shared Building Costs relate to the external parts of the building comprising 21 and 27 Sheldon Square. The Building Estate Costs are the freeholder's costs of maintaining the external parts of the Paddington Central development. The Private Residential Costs are the costs relating solely to 21 Sheldon Square.

The Legal Framework

16. The tribunal's statutory power to determine variable service charges is contained in sections 18-30 of the 1985 Act. 'Service charge' is defined in section 18 of the 1985 Act as 'an amount which is payable directly or indirectly for services repairs maintenance improvements or insurance or the landlords costs of management, the whole or part of which varies or may vary according to the relevant costs'. Section 19(1) provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. Section 19(2) provides that where a service charge is payable before a relevant cost is incurred, no greater amount is payable than is reasonable.
17. Section 27A of the 1985 Act gives the tribunal jurisdiction to determine by whom and to whom service charges are payable, and in what amount.

18. Disputed facts are decided on the balance of probabilities. The legal burden of proof lies on the party who requires the assistance of the tribunal i.e. if it is the tenant who asserts he has overpaid, it lies on the tenant; if it is the landlord seeking payment, it lies on the landlord. If the tenant is challenging the reasonableness of a service charge he or she must firstly properly identify the challenge in his or her pleadings and secondly provide some evidence that the charges he or she wishes to challenge are unreasonable. If the tribunal is satisfied that there is some credible evidence which, if unchallenged, would support a finding that the charge was unreasonable, the burden of proof will move to the landlord to show that the sums claimed are in fact reasonable; *See Spender v FIT Nominee Ltd [2025] EWCA 1578 at paras 79, 89.*
19. In *Continental Properties v White* LRX/60/2005 His Honour Judge Rich QC held that the jurisdiction granted to the tribunal by section 27A of the 1985 Act included the power to determine a claim for damages for breach of covenant insofar as it constituted a defence to the payability of a service charge which they are asked to determine. It is open to the tribunal to assess such damages and reduce the service charge accordingly. He went on to say that the jurisdiction should only be exercised in a straightforward case and cautioned against exercising it if the tribunal considers that the nature of the issues engaged by the set-off defence would make a court procedure more appropriate.

The Applicants Challenge

20. Mr Aung has prepared two statements of case dated 16 September 2025 and 8 October 2025, a witness statement in response to the Respondent's statement of case dated 28 February 2026, a further witness statement dated 6 May 2026. It has been difficult to discern which charges are disputed and the basis of the Applicants' challenge. The items disputed and the reasons for the challenge have evolved over the course of the proceedings. In the course of his evidence and when cross examining the Respondent's witnesses Mr Aung sought to challenge the staff/concierge costs despite the fact these costs were not identified by him at the start of the hearing as items he wished to challenge. The Applicants have not stated what sum they would consider paying for any of the disputed items and have not supplied the tribunal with any comparable evidence insofar as their challenge relates to the reasonableness of the amounts sought.
21. The Applicant's primary concern relates to the fact that their apartment has not been served by the HVAC system since 2020. They are also concerned by what they consider to be a lack of transparency on the part of the Respondent and its managing agent. They also are concerned about the extent to which their service charges have increased since 2019. They consider in particular that the sum that they have been required to pay in relation to the block reserve fund for 2024 was too high and not justified but accepted that the increase in the demand when compared to 2023 is due to the works planned to the HVAC systems in 21 Sheldon Square and accepted that the Respondent had carried out two consultation exercises in respect of those anticipated works.

22. Mr Aung told us that the managing agent had supplied his apartment with one portable heater and he has purchased others for use throughout the apartment which is let to tenants. First Port Properties have declined to compensate him for the additional cost of running these heaters. In the course of the hearing he told us that the electricity charges which he has been required to pay include the cost of supplying power to the functioning HVAC systems serving 21 Sheldon Court.
23. When giving evidence Mr Aung sought to argue for the first time that some of the electricity bills disclosed by the Respondent related to meters which were not in Sheldon Court or even in the Paddington Central Estate. Mr Fain objected on the grounds that that assertion had not been raised before despite the fact that the Applicants have been in possession of the relevant invoices since January 2026. We agree with Mr Fain that it was too late to seek to raise that particular argument for the first time at the hearing.

The Respondent's Response

24. The Respondent's position is that all of the charges are payable under the lease, were reasonably incurred and reasonable in amount. Mr Fain submitted in his skeleton argument that the Applicants have failed to establish a *prima facie* case in respect of any of their challenges and furthermore are in reality asking the tribunal to undertake an audit of the disputed costs. He points out, rightly, that this is not the function of the Tribunal. He submits that as the Applicants have failed to establish a *prima facie* case, there is no obligation on the Respondent to prove that the costs were reasonably incurred and/or reasonable in amount.
25. In his oral evidence to the tribunal Mr Osgood accepted that the HVAC system serving the Applicants' flat had not functioned since 2020. He told Mr Johnson that the Respondent was aware that the HVAC systems were starting to malfunction in 2018. The Respondent started to plan for the complete overhaul of the non-functioning HVAC systems in 2021 when it first failed completely. Initially it was thought that the non-functioning parts of the system could be repaired rather than replaced however it transpired that they were beyond repair. They engaged a specialist company BMCG Ltd to report on their options and their report, dated 14 December 2023 is included in the bundle at page 1408. There have been two statutory consultation procedures undertaken pursuant to s20 of the 1985 Act, in 2023 and 2025, and it is anticipated that work will be completed next year. He agreed that the cost of running the HVAC systems formed part of the electricity charges which were under challenge. In answer to questions put to him by Mr Johnson he accepted that it is generally well known that HVAC systems have a finite lifespan and by the time the system serving the Applicants' apartment failed completely it was approximately 18 years old.
26. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decisions

27. The tribunal determines that the Applicant has failed to make out a *prima facie* case in relation to the building reserve fund contributions, the remaining freeholder estate costs, the staff/concierge costs and the cleaning costs for 2023 insofar as they are challenged. The Applicants have failed to put forward any comprehensible reason for their challenge other than to say that they consider that the Respondent has not justified the charges. It follows that they are payable by the Applicants for the service charge years 2022/2023 and 2023/2024
28. Similarly we are satisfied the Applicants have failed to make out a *prima facie* case in relation to the block reserve funds. Despite the fact that they have had disclosure of the planned maintenance programmes for both buildings, the reports commissioned by the Respondent in respect of the HVAC system and have seen the costs estimates in relation to the anticipated cost of the works to the HVAC system, they have failed to put forward a positive case as to why the amounts sought by the Respondent towards the block reserve are unreasonable, nor have they stated what sum they consider would be reasonable in the light of the disclosure they have had. It follows that the sums demanded are reasonable and payable.
29. In respect of the electricity costs, the position is that the Applicants have been required to contribute to the cost of heating and cooling their neighbours' apartments while having no access to this service themselves over a period of at least 6 years. In our view the standard of service they have had was not just unreasonable; it has been non-existent. Consequently we consider that in principle the additional cost of supplying electricity to the HVAC systems would not be recoverable from the Applicants as the service which is directly linked to this cost was not in fact supplied by the Respondent.
30. Unfortunately Applicant has not attempted to quantify what portion of the electricity costs relate to the running costs of the HVAC systems serving 21 Sheldon Square. The Respondent has not supplied this information and as far as we can see it has not been asked to do so. We considered whether in this regard we can have regard to our experience as an expert tribunal as to what would be a reasonable charge for supplying electricity to the communal parts and facilities of a similarly sized block without a HVAC system. We have concluded that there are simply too many variables for us to begin to assess what a reasonable range of charge might be. The electricity charges in a block without communal HVAC could be impacted by many factors such as age and type of construction, the number of floors and lifts, the lighting installed in the common parts, and, potentially the biggest variable, the tariff from the supplier. Consequently we cannot be satisfied that the sum demanded by the Respondent for the years in dispute was unreasonable.
31. As regards the cost of repairs to the functioning HVAC system in 21 Sheldon Square we have considered whether this should be disallowed on the grounds that the Applicants may have a valid defence of set-off in respect of this charge.

Mr Aung did not seek to argue that the repair works were of a poor standard, merely that he has seen no benefit from them. Mr Fain submitted that any claims that the Applicants may have in relation to the non-functioning of the HVAC system serving their flat would be best determined in the County Court. The quantum of any claim that the Applicant's may have for breach of covenant is not something that we can easily ascertain and we consider that we will not attempt to do so. In addition it is possible that the quantum of any such claim would exceed this head of charge in any event. It follows that the repair charges are payable in relation to both of the years in dispute.

32. As regards the management fees we consider that the Applicants have had a poor level of service. It should have been obvious that the HVAC systems serving 21 Sheldon Square had a finite life span and in our view neither the Respondent nor their managing agent had adequately prepared for their inevitable decline and failure. We find it surprising that more serious consideration was not given to this issue prior to 2021. We understand that the issue has been a complex one to resolve and that will require significant expenditure. However we do not think that it is acceptable that the Applicants have been left without any proper heating or ventilation for over 6 years. For this reason we reduce the sum payable by the Applicants in respect of the management fees to £200 per annum.

Application under s.20C and refund of fees

33. Taking into account the fact that the Applicants challenges have largely failed, the Tribunal does not order the Respondent to refund the fees paid by the Applicants within 28 days of the date of this decision.
34. In the application form and at the hearing, Mr Aung applied for orders under section 20C of the 1985 Act, preventing the Respondent from seeking to recover its costs as a service charge, and under paragraph 5 A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing them from seeking to recover their costs as an administration charge. We make an order under Paragraph 5A as we consider that it would not be fair to permit the Respondent to recoup all its costs from the Applicants as an administration charge bearing in mind that they have been partially successful and bearing in mind our criticisms of their approach to the HVAC repairs. However we see no reason why the Applicants should not contribute towards those legal costs as part of their service charge, bearing in mind that the majority of their challenges have failed. We were not impressed by the fact that their case, which was reasonably clearly set out in their initial application, was subject to so much change in the course of the proceedings. In addition we consider that the Applicants failed to put their case clearly, making it difficult for the Respondent to know the case that they had to meet.

Name: Judge N O'Brien

Date: 25 June 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal