FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/00CN/LSC/2025/0043**
Property Lane	**:**	**Apartment 409 The Franklin Bournville Bournville Birmingham B30 2HP**
Applicant	**:**	**Yiu Mo Cheung**
Representative	**:**	**None**
Respondent 1 Management	**:**	**The Franklin House (Bournville) Company Ltd**
Representative	**:**	**Boothman Property Associates**
Respondent 2	**:**	**SF Ground Rents No 15 Ltd**
Representative	**:**	**E & J Estates**
Type of Application	**:**	**An application under Ss 27A & 20C Landlord and Tenant Act 1985 And Schedule 11 para 5A Commonhold and Leasehold Reform Act 2002**
Tribunal	**:**	**Judge P.J Ellis.** **Tribunal Member Mr C Birds JP. FRICS**
Date of Hearing	**:**	**2 July 2026**
Date of Decision	**:**	**29 July 2026**

DECISION

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1. ***Tribunal is satisfied that the mechanism applied by the landlord in apportioning equally across all apartments in the Franklin, the service charges and the insurance rent is not irrational amounting to a breach of contract. The terms of the lease give the landlord a discretion to apportion the charges as they have. The Tribunal has no jurisdiction to vary the terms of the lease in the manner proposed by the Applicant. The Applicant's claim is dismissed.***

2. ***The Tribunal makes no order on the application for a determination under s20C Landlord and Tenant Acy 1985 or paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.***

REASONS

Introduction and Background

3. This is an application for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") whether or not service charges, are reasonable, due and payable.

4. The challenge relates to the apportionment of service charges for the period 2017 - 2025. There is no challenge to the charges for the services per se. The reason for the claim is that the Applicant contends the insurance rent charges and the service charges should be apportioned between the leaseholders of the Frankin Building by reference to the relative sizes of the apartments which receive the services.

5. The Applicant also seeks Orders under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

6. Following a Case Management Hearing (CMH) on 2 February 2026, this matter was stayed to allow for informal discussions between the parties in the hope that they would be able to reach common ground. Unfortunately, they

have not been able to reach agreement, accordingly the Tribunal has made this determination on the papers submitted by the respective parties.

7. Franklin House is an apartment block converted from an office building in or about 2014. The Applicant holds a lease for a term of 150 years from 1 January 2015. Relevant terms of the lease are:

At Cl 1.05 "Development" the Landlord's development comprising the Apartments Maintained Areas and Service Installations

At Cl 1.10 "Insurance Rent" the Tenants Proportion (applying the same principles as set out in paragraph 1 of the Sixth Schedule) of the Landlord's costs for effecting building insurance for the Insured Risks

At Cl 1.24 "Service Charge" the monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Landlord at all times during the Term in carrying out the obligations specified in the Fifth Schedule

At Cl 1.28 "Tenant's Proportion" the proportion(s) of the Service Charge payable by the Tenant in accordance with the provisions of the Sixth Schedule

Part one of the Fifth Schedule specifies "Maintenance obligations expenses and administration of the Maintained Areas"
Section One Part two relates to "Management Company's expenses, outgoings, other heads of expenditure and administration"
Section Two relates to Costs applicable to any or all of the previous parts of this Schedule
The relevant clause of the Sixth Schedule is at clause 1 "
The Tenant's Proportion shall (having regard to those of the owners of Properties on the Estate that will share enjoy or otherwise benefit or be affected by the particular category in question) be such fair and equitable proportion(s) as determined by the Management Company (or the Landlord in its absence) and in either case acting reasonably of the amount attributable to the total Service Charge and the Management Company (or the Landlord in its absence) shall be entitled (again acting reasonably) to vary the proportion(s) attributable to the Demised Premises and other Apartments from time to time as may be deemed appropriate (for the avoidance of doubt the Tenant may be required to pay different proportions of specific amounts of the Service Charge making up the total Service Charge to which the total of the Tenant's Proportion applies as shall be fair and equitable)"

The Parties Submissions

8. The Applicant's application referred to insurance rent charges being apportioned equally between all apartments. The application further pleaded that a new service charge statement for 2025 indicated all apartments in the Building were charged substantially the same amount irrespective of their size. He observed that currently, some components of the service charge are apportioned by dividing the amount by the number of flats in the block. This means all the flats pay the same amount even though some flats are larger than others.

9. As far as the applicant was concerned apportioning without reference to the size of the apartments was a breach of contract in that the apportionment was not equitable as required by clause 1 of the sixth schedule.

10. He then claimed a sum for each year since 2017 which he contended was the difference if these components of the service charge were apportioned based on the footage of the flat and not apportioned equally between the 79 flats in the block.

11. The Applicant did not provide which components of the service charge were improperly apportioned or how the excess charge was calculated. Moreover, no evidence of the differing sizes of the apartment was adduced. By Directions of 13 March 2026 the Applicant was ordered to *"set out in a written statement, the reasons why the apportionments used by the Respondents during the period … were incorrect, making reference to the lease and other documents as appropriate"*. The Applicant has not complied with that order.

12. A statement by Frederick Sadler-Coppard made on 12 May 2026 was served on behalf of the Respondent. He substantially restricts himself to the insurance rent charges without discussing the other components of service charges although his arguments are applicable. He directs the Tribunal to *Aviva Investors Ground Rent GP Ltd v Williams [2023] UKSC 6,* from which he drew three conclusions "*First, section 27A(6) is an anti-avoidance*

provision preserving the Tribunal's jurisdiction, not a provision enlarging it. Second, the Tribunal does not thereby take over ordinary management decisions which affect the amount of service charge. Third, the natural inference is that the Tribunal determines payability by applying the lease and any relevant statutory restrictions."

13. He contends there is no challenge to the reasonableness and payability of the insurance charges therefore the Tribunal should dismiss the claim. Further the apportionment of the charges is in accordance with the mechanism provided by the lease. The Tribunal should not attempt to rewrite the lease.

The Statutory Framework

14. This case is concerned with apportionment of the service charges under ss18 to 30 of the 1985 Act as summarised by Nugee LJ in *Bradley and Rhodes v Abacus Land 4 limited [2025] EWCA Civ 1308 "54. Legislation controlling the recoverability of service charges was first introduced by the Housing Finance Act 1972 and is now found in ss. 18 to 30 L&TA 1985. The protection for tenants has been progressively extended by amendments and additions to these provisions since they were first enacted.*
55. The primary protection is in s. 19(1) L&TA 1985 which provides that costs incurred or to be incurred by a landlord shall be taken into account in determining the amount of a service charge only "to the extent that they are reasonably incurred", and, where incurred on services or works, only if they are "of a reasonable standard". As already referred to, it is not suggested in the present case that either limb of s. 19(1) is engaged.
56. Instead, the application is brought under s. 27A L&TA 1985. This was introduced by the Commonhold and Leasehold Reform Act 2002. It provides, so far as relevant, as follows: "27A Liability to pay service charges: jurisdiction (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable

Discussion and Decision

15. *In his judgment at paragraph 72 in Bradley Lord Justice Nugee following Avon summarised the decision for the Tribunal in this way:*

"So I agree that the requirement that the Landlord act reasonably does mean reasonably, and not just rationally. But I do not think that by itself answers the question. The question for the FTT as I have said is whether the Landlord acted in breach of contract. The Landlord will have acted in breach of contract if, and only if, it can be said to have acted unreasonably, or to have not exercised a reasonable discretion. The very fact that the Landlord is given a discretion indicates that where there is a range of possible views, it is the Landlord who is entitled to choose between them. It is not therefore a question of how the FTT would have chosen had the decision been for them, but of whether the Landlord's choice was outside the range of permissible decisions. Only if it was will the Landlord have acted in breach of contract such as to entitle the FTT to decide that the service charge is not payable.

73 A decision is a permissible one if it is one that a landlord acting reasonably could reach. Or to put it negatively, the landlord's decision will be flawed only if it is one that no reasonable landlord could have reached.

16. In considering its decision the Tribunal has also reviewed the duty established by the Supreme Court in *Braganza v BP Shipping [2015] UKSC 17* holding that where an implied contractual obligation exists that discretion must be

exercised fairly and rationally. Apportioning the charges equally is not outside the terms of the lease, as it is within the discretionary powers held by the landlord.

17. Further in Bradley at 82 Nugee LJ said “Nor is it difficult to see why the Judge thought that unfair. But that is not the question. The question is whether the FTT could properly have taken the view that a reasonable landlord could charge the costs to the leaseholders”

18. In that connection, Nugee LJ applying the principle determined by *Aviva* said “The effect of s. 27A(6) is not to transfer a landlord’s discretionary powers in relation to service charges to the FTT (something which would produce “bizarre and surely unintended” results); rather, it is to enable the FTT to conduct a “review of the contractual and statutory lawfulness of the service charge demanded”. In other words the jurisdiction of the FTT is “limited to deciding whether the landlord acted in breach of contract or in contravention of the statutory scheme regulating residential service charges”: Aviva at [21].”

19. In the Bradley case the issue was whether or not costs had been apportioned to the correct pots. In this case the issue is narrower. The parties are substantially agreed that it is only a matter of whether or not costs reasonably incurred are not payable unless they have been modified by reference to a factor which is not in the lease namely the size of the apartment.

20. Having considered the circumstances the Tribunal is satisfied that the mechanism applied by the landlord in apportioning the service charges and the insurance rent is not irrational amounting to a breach of contract. The terms of the lease give the landlord a discretion to apportion the charges as they have. The Tribunal has no jurisdiction to vary the terms of the lease in the manner proposed by the Applicant. The Applicant’s claim is dismissed.

21. The Tribunal makes no order on the application for a determination under s20C Landlord and Tenant Acy 1985 or paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.

Appeal

22. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge P.J.Ellis