



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

Case reference : LON/00AM/LSC/2026/0155

Property : 2 Swimmers Lane, London, E2 8FR

Applicant : Mr Marc Cutler

Representative : In person

Respondent : London & Quadrant Housing Trust

Representative : Mr Keith Chipato

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

Tribunal : Tribunal Judge N O'Brien
Mr A Gee RIBA
Tribunal Judge R Parmar

Date of Hearing : 17 September 2026

**Date of
Determination** : 14 October 2026

DETERMINATION

- (1) The block service charges demanded for the years 2019-2020 to 2024-2025 are payable in full by the Applicant.
- (2) The Tribunal does not make orders under Section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The Proceedings

1. By an application sent to the Tribunal on 29 January 2026, the Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of block service charges payable in respect of the service charge years 2019-2020 to 2024-2025. He also sought orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) preventing the Respondent from seeking to recover its costs of these proceedings from him as either an administration charge or as a service charge. The Tribunal issued standard directions to the parties on 15 April 2026 and listed the matter for a final hearing on 17 September 2026.

The hearing

2. The Applicant appeared in person at the hearing, and the Respondent was represented by counsel, Mr Chipato. The Applicant prepared a bundle consisting of 983 pages and a skeleton argument. We heard oral evidence from the Applicant and from Ms Shelly Wallis, a service charges team manager employed by the Respondent.
3. At the start of the hearing counsel for the Respondent objected to the Applicant being permitted to raise the issue of apportionment as part of his challenge to the disputed service charges. He drew our attention to parts of the Applicant’s statement of case in which the Applicant had stated that he did not intend to challenge the way in which the service charges were apportioned, merely the Respondent’s decision to include certain charges in the overall costs towards which he was required to contribute. Mr Chipato submitted that Mr Cutler had only challenged the apportionment of those charges for the first time in his skeleton argument. We considered that while Mr Cutler may not have expressed his challenge strictly in terms of apportionment, it was clear from his statement of case and his schedule of disputed charges that he was in general terms challenging the decision of the Respondent to seek to calculate the block service charges payable by him in the same way as it calculated block service charges payable by the leaseholders of other flats in his building on the grounds that his flat did not benefit from those services to the same extent as other properties. We considered that in general terms this raised the question of apportionment. In any event Ms Willis described how and why the service charges were apportioned as they are in her statement and furthermore the apportionment issue was addressed by the Respondent in its statement of case. In the circumstances even if Mr Chipato was strictly correct in his submission that the question of apportionment had not been raised before, the reality was that the Respondent was not prejudiced because it had addressed this issue in its statement of case and in its evidence.

The background

4. The property which is the subject of this application is a 3-bedroom ground floor apartment in a development which was built by the Respondent in about

2013 as part of a larger scheme. It was purchased by the Applicant in 2013 and is presently sublet. The development has the appearance of a single rectangular building with communal gardens in the middle. It is bounded by Laburnum Street to the north, Whiston Road to the south, and Swimmers Lane, which runs a north-south direction, to the east. The development is open on its west side. The east side of the development consists of what appears to be a 5-storey block of flats facing Swimmers Lane. However that appearance is deceptive as what appears to be a single block is treated by the Respondent as two conjoined blocks separated vertically in the middle. The apartments on the southern half of the 'block' are known as the London Mill Apartments and face both Swimmers Lane and Whiston Road. The apartments on the northern half of the 'block' are known as the Basin Mills Apartments and face both Swimmers Lane and Laburnum Street. The entrance to Basin Mills Apartments is via a lobby leading out to Laburnum Street and the entrance to the London Mill Apartments is via a lobby leading out to Whiston Street. Access to the upper floors of both blocks is via stairs and lifts located in the lobbies. There are four ground floor apartments facing Swimmers Lane, known as 1 to 4 Swimmers Lane, each with their own front entrance and a rear entrance leading to the communal gardens.

5. The remainder of the development facing onto Laburnum Street and Whiston Road respectively consists of eight self-contained town houses, four on each side, all with their own front entrance to the street and rear entrance leading to the communal gardens at the centre of the development.
6. There was a dispute between the parties as to whether 1-4 Swimmers Lane, formed part of Basin Mills Apartments or whether 3 and 4 Swimmers Lane formed part of London Mill Apartments. Ms Willis's evidence was that all 4 of these apartments formed part of Basin Mills Apartments for the purpose of calculating their service charge contributions, notwithstanding the fact that the flats above them formed part of London Mill Apartments, while Mr Cutler's understanding was that Nos 3 and 4 Swimmers Lane are treated as part of London Mill Apartments whereas 1 and 2 Swimmers Lane are treated as part of Basin Mills Apartments.
7. Ms Willis told us that 1-4 Swimmers Lane were all 3-bedroom flats whereas the flats on the floors above were a mixture of 1 and 2-bedroom flats. She told us that it was her understanding that the internal common parts of London Mill Apartments cannot be accessed from the internal common parts of Basin Mill Apartments despite the fact that from the outside it looks like a single block of flats.
8. On the ground floor of the southeastern corner of the development there is an internal bike store and bin store. Similarly there is a ground floor internal bike store and bin store on the northeastern corner of the development. The bike stores and the bin stores can be accessed either from Laburnum Street and Whiston Street respectively, or can be accessed from the rear via the communal gardens. Access to both is via a key.
9. Neither party requested an inspection nor did the Tribunal order one.

The issues

10. The essence of the Applicant's challenge to service charges to the Respondent's practice of charging 1-4 Swimmers Lane for the cost of services which he considered relate to the internal parts of Basin Mills Apartments and are of no practical use to the residents of 1-4 Swimmers Lane such as the cost of maintaining the internal communal parts of Basin Mills Apartments and the cost of maintaining the lifts. In his Schedule of disputed services charges Mr Cutler has challenged costs which in his view were of no practical benefit to his apartment. They are:
 - communal electricity
 - electrical testing
 - fall arrest system
 - lightning protection
 - equipment telephone lines connected to communal equipment
 - lift maintenance/servicing and if the insurance
 - Fire protection equipment servicing
 - Fire risk assessment
 - water testing
 - dry Riser servicing/maintenance
 - CCTV maintenance
 - emergency lighting servicing
 - block caretaking costs
 - L & Q management fee
 - sinking fund contribution
 - communal repairs
11. The list of charges differed slightly in some years. The Respondent accepts it did not charge the Applicant all of these costs for all of the years in dispute. For example it did not seek to recover any costs associated with the lift in 2019/2020 and did not seek to recover the cost of communal electricity or communal repairs in 2023/2025. It is its case that this was due to inconsistencies between the approach taken by its service charge specialists over the years. Its primary position is that the Applicant is liable to contribute to all of the costs listed above insofar as they relate to the internal common parts of Basin Mills Apartments. Somewhat anomalously the Respondent requires the Applicant to contribute towards the cost of maintaining the lift, but does not require the Applicant to contribute towards the reserve fund insofar as it relates to the future cost of the lift's refurbishment or replacement.
12. In the course of the hearing and in his statement of case Mr Cutler confirmed that he was not challenging the reasonableness of any of the underlying costs incurred in providing the above services, or the standard of the services provided. He challenged his liability to pay for those services under the terms of his lease. Alternatively he challenged the reasonableness of the method used by the Respondent to apportion those costs between leaseholders.

The Lease

13. The Applicant's obligation to pay service charges is set out in Clause 7 of his lease. Clause 7.1 requires payment of the service charge by the leaseholder. Clause 7.2 provides that the service charge provision will be calculated in accordance with Clause 7.3 which provides that the service charge provision is to be based on the sum estimated to be incurred by the landlord for the matters specified in Clause 7.4.

14. Clause 7.4 of the lease provides:

The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair, management, maintenance and provision of services for the Building and/or the Estate and shall include

- (a) the costs of and incidental to performance of Landlord's covenants including clause 5.2 (Insure) clauses 5.3 (to repair redecorate renew the structure); 5.4 (lighting and cleaning of Common Parts); and Clause 5.10 (heating)*

15. Schedule 9 of the Lease contains a list of defined terms which includes the following:

'Building' means the building within the landlord's title of which the Premises form part and each and every part of the Building and any other areas within the Landlord's title the use and enjoyment of which is appurtenant to the Building, whether or not within the structure of the Building, and including the Consumer Interface Unit.

'Common Parts' means those parts of the Building (whether or not within the structure of the Building) to be used in common by any of the Leaseholder, other tenants and occupiers of the Building, the Landlord... includes (but without limitation) the atrium and entrance hall, corridors, lobbies, staircases, lavatories, access ways, passages, lifts...

'Outgoings' means (in relation to Premises) all existing and future rates, taxes, charges...which are now or may at any time be payable, charged or assessed on property, or owner or occupier of property.

'Service charge' means the specified proportion of the Service Provision

Service provision means the sum calculated in accordance with Clause 7.3 (how calculated), Clause 7.4 (Service Provision) and

Clause 7.5 (Adjustment to actual expenditure)

16. The Particulars of the lease define ‘Specified Proportion’ as “a fair and reasonable proportion to be determined by the Landlord from time to time”.

The Legal Framework

17. 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 landlord’s 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.
18. 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. It enables the tribunal to consider not just questions of reasonableness under s.19 but also questions as to whether a service charge is payable under the terms of the lease. It provides:
- (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.*
19. In *Aviva Investors Ground Rent GP Ltd v Williams* [2023] UKSC 6; [2023] A.C. 855 the Supreme Court decided that where a lease granted a landlord a discretion to apportion costs between leaseholders in such a manner as it may reasonably determine, the role of the First tier Tribunal when considering its powers under s27A(1) of the 1985 Act was not to decide for itself what the apportionment should be but to determine whether the landlord had acted reasonably in calculating the apportionment in accordance with the lease.
20. In *Bradley v Abacus Land 4 Ltd* [2025] EWCA Civ 2026; [2026] H.L.R. 5 the Court of Appeal considered that where a lease granted a landlord a discretion, regarding how it should allocate specific costs to one of a number of ‘pots’ and thereafter a discretion as to how those pots would be

apportioned between lessees, subject to a requirement of reasonableness, the questions of allocation and apportionment should be considered separately and sequentially. The landlord's decisions in relation to designation and apportionment will only be unreasonable if either decision is one which no landlord acting reasonably could have reached.

How does the Respondent Calculate Service Charges?

21. Ms Willis describes the method adopted by the Respondent in paragraphs 11 and 12 of her statement as follows

Services can be listed at either Block, Scheme and Estate level. This will be due to the area the service covers. For example, bulk refuse may show at Block or Scheme level. This will be due to the location of the bulk refuse i.e. specific to a particular block or located around the wider Estate. Listing costs at different levels ensures that we are able to apportion the costs fairly between the properties.

Estate is the top level designation and includes all properties on that estate. Scheme is a group of blocks within the estate who share communal areas such as play areas and communal open spaces. The block is the smallest level of the breakdown and the services charged at block level relate solely to maintenance and repairs provided specifically to that block. Only the units within the "block" will contribute towards the services provided at this level. The number of properties that make up a block, scheme or estate can though vary across our stock.

22. According to the Respondent it calculates the Applicant's block service charge by calculating the costs attributable to Basin Mills Apartments and Flats 1-4 Swimmers Lane and dividing the result equally between the number of units in that section of the development. As set out above it was Mr Cutler's understanding that Flats 3 and 4 were included with London Mills Apartments rather than Basin Mill Apartments. However nothing turns on this difference for the reasons which will become apparent.

The Applicant's Challenge

23. The Applicant's primary contention is that the costs associated with the maintenance of the internal parts of Basin Mills Apartments, such as the costs of maintaining the lift, of maintaining the common parts, the costs of lighting and heating and the costs relating to fire safety are not recoverable from him both under the terms of his lease and by virtue of s.19 of the 1985 Act. He argues that his service charges are not reasonable because they include services which are of no practical benefit to his flat. He considers that by including what he describes as the internal block costs in the 'pot' towards which he is required to contribute, the landlord is in breach of the requirement that the specified proportion which he is required to pay be 'fair and reasonable' as provided in the Particulars of his lease. In the alternative he argues that the apportionment

should be adjusted to take account of the fact that his flat does not benefit from the internal block costs. In the course of the hearing he suggested that he should pay the same proportion as the townhouses in the development.

The Respondent's Response

24. The Respondent's primary position is that Mr Cutler's flat does derive some benefit, either directly or indirectly, from all the services which it provides to the block, which it defines as 1-4 Swimmers Lane and the Basin Mills apartments. According to Ms Willis' statement at paragraph 14

It is the Respondent's policy to apportion charges within a block where there is a liability under the lease in equal shares unless the lease stipulates otherwise. No particular method of apportioning charges is required under this Lease but after review and to ensure a consistent approach we consider that equal shares is the best method across our estates where leases grant rights to leaseholders and shared owners notwithstanding any particular use the current occupier makes of any such right. As explained below, leaseholders and shared owners do benefit from all the services for which they are charged even if only indirectly. This also avoids escalating costly disputes about service charges should charges be made based on the particular use of any resident

25. The Respondent notes that irrespective of whether Mr Cutler or his tenants make use of the common parts, they have the right to use them under the terms of the lease. Additionally the Respondent submits that costs such as fire safety and electrical testing benefit the whole block and not just Basin Mills Apartments. Additionally it submits that the stairs and lift are not just used by residents but also by contractors and employees of the Respondent engaged in the delivery of services to the block as a whole.
26. In answer to our questions Mr Cutler confirmed that he had been given a key to the internal bin store and the bicycle store in the northeastern corner of the block. He accepted that both of these areas were secured, lit and cleaned. He accepted that he had a fob that permitted him to enter the common areas of Basin Mill Apartments. He was unsure whether the fire alarm in his apartment was connected to the fire alarm system serving the block.

The tribunal's decision

27. As is clear from the foregoing the method chosen by the Respondent to classify service charges does not sit easily with the language of the lease. The lease refers to building costs and estate costs whereas the Respondent in its service charge demands refers to block costs, scheme costs and estate costs. Additionally it is not immediately obvious that one should equate the word 'building' as it is used in the lease to the complex configuration of what the Respondent refers to as the

block. The definition of 'building' in the lease does not assist nor is there a lease plan showing what it encompasses.

28. Mr Cutler did not seek to argue that the word 'building' in his lease had any other meaning than that ascribed to it by the Respondent. We are satisfied that the word 'building' in the lease must at least refer to 1-2 Swimmers Lane and Basin Mill Apartments. We note that at the key schedule dated 13 March 2013 exhibited to Ms Willis's statement indicates that the leaseholders of both 1 and 2 Swimmers Lane were supplied with a key to the communal front door, a key to the bike store and bin store and three fobs. Mr Cutler has retained a fob which permits access to the communal areas of Basin Mill Apartments and which would permit him, should he wish to do so, to access the bin store from the communal garden through the communal lobby on the ground floor although he says that he and his tenants access the bin store from Laburnum Street. Interestingly nos.3 and 4 Swimmers lane do not appear on this key schedule.
29. As the Court of Appeal emphasised in *Bradley v Abacus Land 4 Ltd* where a lease requires a lessee to contribute to one of a number of 'pots' and grants the lessor discretion as to how those pots are apportioned between lessees, the questions of allocation and apportionment should be considered separately and sequentially. Clause 7.4 of the Applicant's lease includes in the service provision *all* the expenditure reasonably incurred by the Landlord in connection with the management maintenance and provision of services for the building and/or the estate and specifically includes the cost of lighting cleaning and heating of the common parts. In our view this precludes the landlord from subdividing the building 'pot' between the lessees on the ground floor with their own entrances and the lessees of Basin Mills.
30. Additionally we consider even if it were open to the Respondent to fillet out those costs which do not directly benefit the Applicant's flat, that it was reasonable for it not to do so. As we noted above the Respondent's practice is to divide the building costs equally between the units in the building, irrespective of their size. Any argument to the effect that it is unfair to require the Swimmers Lane apartments to contribute towards costs which do not directly benefit them is counterbalanced by the argument that the apartments in the upper floors pay the same proportion as the ground floor apartments notwithstanding the fact that they are smaller.
31. Furthermore we agree with the Respondent's submission that the subject premises directly benefits from many of the services which the Applicant seeks to exclude such as fire safety, electrical testing, lighting and cleaning. The cost of lighting cleaning and maintenance will include the costs relating to the whole building including the internal bin and bicycle stores. In our view it is more likely than not, given that this is a modern development, that the fire alarm serving the premises is connected to the system serving the block as a whole. Obviously the Applicant's flat will benefit from fire safety measures relating to the parts of the development immediately above it. Additionally the premises derives some indirect benefit from the provision of the lift which is used not just by the residents of the upper floors but also by the Respondent's employees and contractors when engaged in the provision of services to the building as a whole.

We note that in our experience it is not uncommon for the leases of ground floor flats to require the lessee to contribute towards the costs of a lift notwithstanding the fact that they have no practical use for it

32. Finally we agree that the Respondent's decision to divide the costs equally between the lessees, rather than attempting to work out what benefit each leaseholder was likely to make of any given service or facility, was one that was reasonably open to it.
33. For these reasons we consider that the whole block service charges for the years in dispute are payable by the Applicant.

Application under s.20C and refund of fees

34. Taking into account the fact that the Applicant's 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.
35. In the application form and at the hearing, Mr Cutler 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. However given that the Applicant has not succeeded we see no reason to make those orders.

Name: Judge N O'Brien

Date: 14 October 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