



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

Case reference : **LON/00AJ/LSC/2018/0416**

Property : **Flat 4, 50 Adrienne Avenue,
Southall UB1 2QW**

Applicant : **Ms Khushe MILLEGHI**

Respondent : **WOOD TRUSTEES LIMITED**

**Respondent's
Representative** : **Mr J Wragg, Counsel
instructed by PDC Law**

Type of application : **Section 27A Landlord and Tenant
Act 1985 – payability and
reasonableness of service charges**

Tribunal members : **Judge T Cowen
Mr Barlow**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **2 July 2019**

DECISION

Order of the tribunal

- (1) In the County Court claim number E01YX416, the Tribunal determines that the following service charges in the following amounts are payable by the Applicant to the Respondent:

Period	Item	Charge (£)
Sep 2016-Mar 2017	Service charges: Half-yearly estimated in advance	529.94
Sep 2016-Mar 2017	Service charges: Half-yearly reserve fund	136.00
Sep 2016-Mar 2017	Service charges: Insurance premium	193.12
Mar 2017-Sep 2017	Service charges: Half-yearly estimated in advance	529.94
Mar 2017-Sep 2017	Service charges: Half-yearly reserve fund	136.00
Mar 2017-Sep 2017	Service charges: Insurance premium	193.12
TOTAL		1,718.12

- (2) In the County Court claim number E01YX416, the Tribunal determines that the following administration charges in the following amounts are payable by the Applicant to the Respondent:

Period	Item	Charge (£)
20.09.16	Admin charge: debt collection agency fees	192.00
20.09.16	Admin charge: managing agents referral fee to debt collection agency	80.00
24.02.17	Admin charge: debt collection agency fees	192.00
24.02.17	Admin charge: managing agents referral fee to debt collection agency	160.00
TOTAL		624.00

- (3) In the Applicant’s Tribunal application, the Tribunal determines that the following administration charges are payable by the Applicant to the Respondent:

Year	Item	Charge (£)	
2009	Legal fees	766.34	
2016	Legal fees	192.00	Included in county court claim above
2016	Admin fees	80.00	Included in county court claim above
2017	Legal fees	192.00	Included in county court claim above
2017	Admin fee	160.00	Included in county court claim above
2017	Legal fees	432.00	
2017	Admin fee	160.00	
2017	Reminder fee	30.00	

- (4) In relation to the remaining items of those challenged by the Applicant in her Tribunal application:

- (a) The tribunal determines that the sums of £115.00, £170.00 and £205.00 claimed as court fees are not payable by the Applicant.
- (b) The legal fees credit of £138.06 credited in the year 2004 is not within the Tribunal’s jurisdiction to consider in these proceedings.
- (c) The sums charged in 2010, 2013 and 2016 as “insurance excess” and “plumbing repairs” (a total sum of £896) are not in the nature of service charges or administration charges at all and are therefore not within the Tribunal’s jurisdiction. For the avoidance of doubt, the Tribunal makes no decision as to whether those sums are payable by the Applicant on any other basis.

- (5) The Applicant’s application for orders in relation to the Respondent’s costs 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 is refused.

- (6) The reasons for the orders made above are set out in the remainder of this decision.

REASONS

1. The Property is a flat in a purpose-built block in Uxbridge. Since 1994, the Applicant has been the registered leasehold proprietor of the Property (title no. AGL14146) under a lease dated 27 October 1989 for a term of 125 years from 25 March 1987 (“the Lease”). The Applicant is sometimes known by the name “T Dhamu”.
2. At the date of the Lease and its accompanying trust deed (see below), the Property was known as “number 16”. The definition of the “Flat” in the Lease is “Number 16 on the first floor of the Building and known or intended to be known as No. 4 50 Adrienne Avenue Southall in the London Borough of Ealing”.
3. The Respondent is the “Maintenance Trustee” under the Lease to whom the service charges are payable. The Lease names “Holding & Management (Property Administration) Limited” as the “Maintenance Trustee”. In May 1992, the company which had earlier been known as “Holding & Management (Property Administration) Limited” (company number 01405476) changed its name to “Wood Trustees Limited”, the current name of the Respondent.
4. On 29 May 2018, the Tribunal received from the Applicant an application to this Tribunal for a determination of her liability to pay administration charges and an application in relation to costs under section 20C of the Landlord and Tenant Act 1985.
5. Before the Applicant’s application had been issued at this Tribunal, in January 2018, the Respondent had commenced and served county court proceedings (E01YX415) against the Applicant which consisted of a money claim for the sum of £3,195.27 service charges, reserve fund payments and insurance premiums together with a claim for the court fee and legal costs in the sum of £840.00. Those county court litigation costs are not within our jurisdiction to consider, for the reasons set out below.
6. On 16 August 2018, District Judge Atkin in the county court at Uxbridge ordered that matter to be transferred to this Tribunal for determination. In the context of this case, the effect of that order is only to refer to the Tribunal those matters which the First-tier Tribunal would have jurisdiction to determine under the 2002 Act and the Landlord and Tenant Act 1985 on an application to the Tribunal - see section 176A of the Commonhold and Leasehold Reform Act 2002. This means that in this case we have the jurisdiction only to consider:
 - a. under section 27A of the 1985 Act, the payability of “service charges” as defined in section 18 of the 1985 Act; and

- b. under para 5(2) of Schedule 11 to the 2002 Act, the payability of “administration charges” as defined in para 1 of Schedule 11.
7. On 12 March 2019, this Tribunal ordered that the county court referral and the Tribunal application should be dealt with together. We also decided that the matter was not suitable to be decided on paper and that a substantive hearing would be necessary.
8. The hearing of this matter took place in the absence of the Applicant. The background to the Applicant’s absence is as follows. The Applicant had informed the Tribunal that she is “housebound” and suffering from chronic fatigue and ME. The Tribunal has offered:
 - a. a hearing by remote or video link
 - b. a hearing to take place near to where the Applicant lives; or
 - c. a domiciliary hearing to take place in the Applicant’s own home.
9. The Tribunal has also strongly encouraged the Applicant to obtain legal representation and has supplied her with a list of possible sources of free advice and assistance.
10. All of the above offers and suggestions were contained in a letter from the Tribunal dated 2 April 2019. The Applicant has turned down all three of these offers of alternative hearing arrangements and on 17 April 2019 informed the Tribunal by letter that she was in the process of obtaining legal representation.
11. On 24 April 2019, the Applicant was informed by letter from the Tribunal that the hearing had been fixed for 2 July 2019 at 10 am. Emails dated 10 June 2019 and 15 June 2019 from the Applicant to the Tribunal demonstrate clearly that the Applicant was aware that there was a hearing fixed for 2 July 2019. In those emails she asked for the hearing to be postponed for her to obtain legal representation.
12. On 19 June 2019, Judge Powell decided to refuse the Applicant’s request for a postponement with reasons given in a letter to the Applicant of the same date.
13. After that date, the Applicant did not inform the Tribunal in advance whether she or any representative would be attending the hearing on her behalf. She sent to the Tribunal an “Addendum” to her Reply on 26 June 2019, but did not refer to the hearing.
14. The Tribunal delayed the start of the hearing until 10:15 am in case the Applicant or her representative was running late. The Tribunal’s clerk telephoned the Applicant and left a message on her answerphone.

15. At the commencement of the hearing, the Tribunal considered whether to proceed with the hearing in her absence under rule 34 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. For the reasons stated above, the Tribunal is satisfied that the Applicant has been notified of the hearing and that reasonable steps have been taken to notify her of the hearing. The Tribunal also considers that it is in the interests of justice to proceed with the hearing for all the reasons stated in the Tribunal's letter dated 19 June 2019 and in particular because:
 - a. The Applicant has turned down all reasonable for the hearing to be conducted by alternative methods or in an alternative venue. The Tribunal has endeavoured to ensure, so far as practicable, that the Applicant is able to participate fully in the proceedings pursuant to rule 3(2)(c) of the 2013 Rules.
 - b. The Applicant has had ample time to organise legal or other representation.
 - c. The matter has been unresolved since the commencement of county court proceedings in January 2018 and the commencement of Tribunal proceedings in May 2018 and there is no prospect that any further adjournment would achieve anything other than further delay. The overriding objective in rule 3(2)(e) of the 2013 Rules requires the Tribunal to avoid delay, so far as compatible with proper consideration of the issues. In our judgment, in the light of the large amount of written material submitted by the Applicant, it is possible to give proper consideration of the issues in the absence of the Applicant in the circumstances.
16. At the hearing, the Tribunal heard the Respondent's counsel's submissions and considered all of the written submissions and evidence of the Applicant.
17. In both the County Court claim and the Tribunal application, the relevant test (in relation to any specific charge which has been referred to the Tribunal by the Applicant in her application or by the county court) is:
 - a. in relation to service charges, that contained in section 19 of the 1985 Act, namely whether they are reasonably incurred and, if relevant, whether the services or works carried out were of a reasonable standard; and
 - b. in relation to any variable administration charge, that contained in paragraph 2 of Schedule 11 to the 2002 Act, namely whether it is reasonable.
18. The Applicant has submitted a large amount of material to the Tribunal. Most of it is not relevant to those issues which the Tribunal

has to resolve. For example, much of the Applicant's submissions are concerned with her ability to pay the service charges. The Tribunal appreciates that the Applicant appears to be in financial difficulty and that her medical condition contributes further to her problems. However, the Tribunal's jurisdiction is concerned only with the payability of the service charges and administrative charges which have been referred to us. The Applicant's ability to pay or the reasons for her inability to pay are not matters which we can take into account, nor can we look into her entitlement to state benefits.

19. On the basis of all of the above, we have considered the County Court claim and the Tribunal application as follows.

County Court claim

20. The items claimed by the Respondent in the county court claim are as follows. We will refer to the item numbers of that table for ease of reference.

The County Court Table

Item No.	Period	Item	Charge (£)
C1	Sep 2016-Mar 2017	Service charges: Half-yearly estimated in advance	529.94
C2	Sep 2016-Mar 2017	Service charges: Half-yearly reserve fund	136.00
C3	Sep 2016-Mar 2017	Service charges: Insurance premium	193.12
C4	Mar 2017-Sep 2017	Service charges: Half-yearly estimated in advance	529.94
C5	Mar 2017-Sep 2017	Service charges: Half-yearly reserve fund	136.00
C6	Mar 2017-Sep 2017	Service charges: Insurance premium	193.12
C7	20.09.16	Admin charge: debt collection agency fees	192.00
C8	20.09.16	Admin charge: managing agents referral fee to debt collection agency	80.00
C9	24.02.17	Admin charge: debt collection agency fees	192.00
C10	24.02.17	Admin charge: managing agents referral fee to debt collection agency	160.00

21. There is an error in the arithmetic of the county court claim form and Particulars of Claim. The service charge claim in fact amounts to the sum of £1,718.12 not “£1,721.27” as shown in the claim form and Particulars of Claim. The administration charge claim in fact amounts to £624 and not “£634” as shown in the claim form and Particulars of Claim.

County Court: Service charges

22. All of the service charges claimed in the county court proceedings are on-account estimated service charges for the service charge year 2016/2017.
23. By clause 4.1 of the Lease, the lessee covenanted to pay the Maintenance Contribution to the Maintenance Trustee in respect of every Maintenance Year by two equal instalments on the half-yearly day. The half-yearly days are defined as 25th March and 28th September in part 10 of the particulars to the Lease. The Maintenance Contribution is defined in clause 1.12 of the Lease as a sum equal to the appropriate percentage of the Annual Maintenance Provision. The “Annual Maintenance Provision”, the percentage and the Maintenance Year are all defined in a Trust Deed dated 31 March 1987 made by the original lessor and the Respondent. The Lease refers to the Trust Deed in that regard (clause 1.11 of the Lease).
24. The Trust Deed defines the Maintenance Year as every year ending on 28 September. The percentage proportion appropriate to the Property (then known as “number 16”, see above) is defined by the Second Schedule to the Trust Deed 1.36%. The Annual Maintenance Provision is defined by the Third Schedule to the Trust Deed to include:
- a. the expenditure estimated as likely to be incurred in the Maintenance Year for the usual various purposes including the maintenance of the estate and insurance set out in the First Schedule to the Trust Deed.
 - b. Contribution to a reserve fund
25. Items C1 and C4 in the County Court Table above are estimated expenditure within the meaning of the Lease. Items C2 and C5 are contributions to the reserve fund. Items C3 and C6 are insurance premiums.
26. We have seen copies of service charge demands for those sums which the Respondent says that it sent to the Applicant. The Applicant does not deny having received any service charge demands.

27. We were also referred by the Respondent's counsel to a statement of anticipated expenditure showing the budget for the maintenance year in question and showing the Applicant's share calculated at 1.36%. We saw the budget signed by the Respondent's chartered surveyor showing the certified estimate for the maintenance year ended 28 September 2017 and also showing the previous year. There was nothing in these figures which appeared to the Tribunal to be obviously unreasonable. We have also seen the final accounts for the year to 28 September 2017 showing the actual expenditure and we note that the actual expenditure (£124,475) was close to the estimated expenditure (£126,332) and we conclude that the estimates were reasonable at the time they were made.
28. We have also considered all the specific challenges made by the Applicant in her written statements of claim and submissions to various items of service charge expenditure and we have read and heard the Respondent's response to all of those challenges. We accept the Respondent's explanations in relation to all of those specific items and we have decided that the expenditure is reasonable for that reason and for the reasons given above.
29. The Applicant also puts the Respondent to proof on the claim, by saying that she thinks the service charges are too high and that she wants more transparency. She also complains about a large number of items which are not actually claimed by the Respondent in these county court proceedings. She makes various allegations of crimes being committed against her which are not relevant for the purposes of these proceedings. She queries whether the amounts charged have really been incurred, but that is not a valid challenge, because the invoices which are the subject of the county court claim are estimated service charges and it is therefore not being claimed that they have been incurred in these proceedings. She also questions whether payments she has made have been properly credited to her account. That is also not a matter for this Tribunal. Our jurisdiction consists only of considering whether the charges themselves are reasonable and payable - not whether they have been paid. See section 27A(2) and 27A(5).
30. We are satisfied that the service charges (items C1 - C6 in the County Court Table above) are payable, and we make that determination accordingly.

County Court: Administration Charges

31. By paragraph 13 of the Third Schedule to the Lease, the lessee covenanted:

“to pay to the Lessor on demand all costs charges and expenses (including legal costs and surveyor’s fees) which may be incurred by the Lessor or which may become payable by the Lessor in respect of the preparation and service of a schedule of dilapidations or under or in contemplation of any proceedings in respect of the Flat under sections 146 and 147 of the Law of Property Act 1925 or in the preparation or service of any notice thereunder...”.

Paragraph 6(a) of the Sixth Schedule to the Trust Deed provides for the Respondent to take such proceedings against a Lessee as are reasonably necessary to enforce the payment of rent and the performance of covenants and is appointed as the Lessor’s attorney for that purpose. Paragraph 6(b) anticipates that the costs incurred in that regard can be recovered by the Respondent against the lessee directly.

32. The Respondent claims in the county court proceedings items C7, C8, C9 and C10 in the County Court Table above under this clause. Their case is that these are fees incurred by the managing agents in instructing a debt collection agency and also the fees of the debt collection agency itself.
33. The charges claimed are variable administration charges within the meaning of Schedule 11 to the 2002 Act.
34. We have seen letters written by the debt collection agency and we note that the Applicant was in arrears at the time when the debt collection agency was instructed. We also note that the “final demand” letter dated 5 October 2017 from the debt collection agency to the Applicant threatens enforcement proceedings which may include: “preparation and service of a section 146 notice under the Law of Property Act 1925 and further application to the court for possession of your property”.
35. There is no reason for the Tribunal not to accept the Respondent’s evidence that these sums were incurred, that they are reasonable and that it was reasonable to instruct debt collectors in the circumstances. There has been a long history of non-payment and late payment by the Applicant.
36. We therefore determine that these administration charges are reasonable and are payable by the Applicant to the Respondent.

Tribunal Application

37. In the substantive tribunal application, the Applicant raises challenges to the following charges:

The Tribunal Application Table

Item No.	Year	Item	Charge (£)	Credit (£)
T1	2004	Legal fees		138.06
T2	2009	Legal fees	766.34	
T3	2010	Insurance excess	250.00	
T4	2013	Insurance excess	250.00	
T5	2016	Plumbing repairs	396.00	
T6		Legal fees	192.00	
T7		Admin fees	80.00	
T8		Court fee	115.00	
T9	2017	Legal fees	192.00	
T10		Admin fee	160.00	
T11		Court fee	170.00	
T12		Legal fees	432.00	
T13		Admin fee	160.00	
T14		Reminder fee	30.00	
T15		Court fee	205.00	

38. The Tribunal Application Table above is the same as the table which was included in the Tribunal's directions order of 12 March 2019, save for the following differences. We have numbered the items and we have removed two credit items from the bottom of that table, because they were not in fact challenged in the Applicant's application.
39. Our consideration and decision on each of the numbered items in the Tribunal Application table are as follows:

T1: This sum of £138.06 is a credit applied to the Applicant's account in 2004. The Applicant's challenge in her application form is simply that she does not know what it is for and that she wants to know. The Respondent in paragraph 8 of its statement of case tries to offer an explanation. In our judgment, this matter does not fall within our jurisdiction. We have the power to determine the payability of **charges**. We do not have the power to determine the provenance of credits applied to the tenant's account. The Applicant does not claim that this credit was too low and that she was therefore charged too much for some item in 2004. She simply states that she does not know the basis for the credit.

T2: The sum of £766.34 represents legal costs charged in 2009 and challenged by the Applicant on the basis that this is someone else's liability. In particular, she claims that the Department of Work and Pensions' failure to pay her benefits correctly is responsible for her being in arrears of rent. The Respondent claims that these legal fees were incurred in debt recovery against the Applicant by Brethertons LLP from June 2006 onwards. We have seen a bill for £1,532.68 from that firm dated 8 November 2008 and the Respondent's case is that only half of that sum was charged to the Applicant at the time as a gesture of goodwill. The Tribunal accepts the Respondent's case. The charges were reasonably incurred. The Applicant's position on this charge does not amount to a valid challenge because she is liable under the lease and the landlord is entitled to incur legal costs for debt recovery, regardless of the Applicant's position in relation to DWP payments. The Applicant does not make a specific challenge about the reasonableness of the level of these charges. We therefore determine that they are payable to the Respondent.

T3, T4
& T5: These three sums are for insurance excess and plumbing repairs in 2010, 2013 and 2016. The Respondent submitted at the hearing before us that they were not items which could be the subject of a section 27A application because they are not service charges. The sums in question are the costs of carrying out works inside neighbouring flats as a result of leaks allegedly emanating from the Applicant's Property. The sums in question may be recoverable by the landlord against the Applicant as damages for breach of covenant or as damages for some other duty of care. But they are not service charges. We therefore make no finding on whether these sums are recoverable. They are not within our jurisdiction to consider.

T6 & T7: These two sums are included in the county court claim and are dealt with in our determination of that claim above.

T8: This court fee of £115 charged in 2016 was conceded by the Respondent at the hearing. The Respondent's counsel stated that they intended to credit it to the Applicant's account. The Tribunal therefore determines that the sum in question is not payable by the Applicant.

T9 & T10: These two sums are included in the county court claim and are dealt with in our determination of that claim above.

T11: This court fee of £170 charged in 2017 was also conceded by the Respondent at the hearing. The amount has already been credited to the Applicant's account in two instalments of £115 and £55. The Tribunal therefore determines that the sum in question is not payable by the Applicant.

T12, T13
&T14: These items labelled legal fees, admin fees and reminder fees are the fees charged for chasing the Applicant's arrears in September and October 2017. We saw copies of some of the letters written to the Applicant in that regard and we saw the demands for the sums in question. There is no specific challenge by the Applicant to the reasonableness of the quantum of these charges. The Applicant, as above, claims that they should not have been incurred at all. We have dealt with that type of challenge above. She also claims at paragraph 16 of her statement of case dated October 2018, that she already pays about £14.00 per annum towards legal fees as a part of her service charges and that she should not be liable for any more. That charge is, of course, a contribution towards the general legal expenses of the running of the estate. The amount which is being challenged here is a separate charge which she is required to pay under separate provisions in the Lease, as a result of her own arrears. We have therefore decided that the amount in question was reasonably incurred and is payable to the Respondent.

T15: This item is a "court fee" of £205 demanded by the Respondent by an invoice dated 16 November 2017. It became clear during the hearing that the Respondent was unable to show that they had incurred any such court fee prior that date. The court fee for the county court claim which has been referred to this Tribunal was in the sum of £205, but those proceedings were not commenced until 3 January 2018. The Respondent's counsel conceded that the Respondent was not entitled to claim payment of a court fee which had not been incurred at the date of the demand. The Respondent therefore indicated that it was no longer pursuing that sum as claimed and reserved the right to re-demand the court fee pending the outcome of the county court claim. Of course, the question of costs in the county court is not within our jurisdiction. It follows that the Tribunal determines that the sum in question is not presently payable by the Applicant.

40. Those are our findings on the Tribunal Application.

The Respondent's Costs

41. The Applicant has made applications 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 for orders preventing the Respondent from demanding reimbursement of the costs of these proceedings under the terms of the Lease. Exercising our discretion under those provisions, we take account of the fact that the Respondent has succeeded in its entire county court claim (subject to some arithmetical errors) and that the Respondent has also succeeded in defending almost all of the challenges made by the Applicant in the Tribunal Application. We also take account of the fact that almost all of the large amount of material submitted by the Applicant was either irrelevant to the issues or rejected by the Tribunal. We further note that the Applicant did not co-operate in attempts by the Tribunal to make alternative arrangements for a hearing which she could attend. For all those reasons we refuse to make any orders in the Applicant's favour under section 20C and under paragraph 5A.
42. As a result of all of the above, we have made the order set out at the start of this decision.

Name: Judge T Cowen

Date: 11 July 2019

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 (Lands Chamber).