Neutral Citation Number: [2025] UKUT 173 (LC)

Case No: LC-2024-432

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPRETY CHAMBER)
Ref: CHI/43UD/LSC/2023/0101

Royal Courts of Justice,
Strand, London WC2A 2LL

4 June 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – agreement or admission – evidence – s.27A(4), Landlord and Tenant Act 1985 – appeal allowed in part

BETWEEN:

DAVID WEBBER

Appellant

-and-

RASHEEDA SYED

Respondent

1 Pinewood House,
115 Epsom Road,
Guildford GU1 2LE

Martin Rodger KC,
Deputy Chamber President

3 June 2025

The appellant and the respondent each represented themselves

The following cases are referred to in this decision:

Cain v London Borough of Islington [2015] UKUT 542 (LC)

G & A Gorrara Ltd v Kenilworth Court Block E RTM Co Ltd [2024] UKUT 81 (LC)

Waaler v London Borough of Hounslow [2012] EWCA Civ 45

Introduction

1. This appeal is from a decision handed down on 19 March 2024 by the First-tier Tribunal, Property Chamber (the FTT) in which it reduced the service charges payable by the respondent, Ms Syed, under her lease of flat 1 Pinewood House, in Guildford, for the years 2014/15 to 2022/23, from the total sum of £8,594.69 which she had paid, to a reduced total (by my calculation) of £3,450.54. Her landlord, Mr Webber, now appeals with the permission of the Tribunal.

2. The sums in dispute are modest and represented payments made over a period of nine years. The Tribunal originally directed that the appeal would be determined on paper but, characteristically, the parties were unable to agree which documents were relevant and the matter was eventually listed for hearing. At that hearing the parties each represented themselves.

3. The Tribunal gave Mr Webber permission to appeal on four grounds.

Ground 1: Had Ms Syed agreed the disputed charges?

4. Pinewood House is a modern block which was developed by Mr Webber. He owns four of the twelve flats and, except for one year, he has always preferred to manage the building himself.

5. Ms Syed acquired her lease in 2014. In July 2023 she applied to the FTT under section 27A(1), Landlord and Tenant Act 1985 for a determination of her liability to pay service charges in each of the nine years since her acquisition. By the time she made her application, Ms Syed had paid all of the service charges which had been demanded by Mr Webber, but since at least 2017 she had been making it clear to him that she was dissatisfied with the management of the building and the information she received to support the service charge demands.

6. Section 27A includes the following limitation on the making of applications to the FTT, in subsection (4)(a) and (5):

> (4) No application under subsection (1) or (3) may be made in respect of a matter which—
>
> (a) has been agreed or admitted by the tenant, …
>
> (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. In *Cain v London Borough of Islington* [2015] UKUT 542 (LC) this Tribunal (HHJ Gerald) held that, notwithstanding section 27A(5), a tribunal was entitled to infer that a service charge has been admitted or agreed from a pattern of payment without any challenge. More recently, in *G & A Gorrara Ltd v Kenilworth Court Block E RTM Co Ltd* [2024] UKUT 81 (LC), the Tribunal (Judge Cooke), emphasised that an agreement or admission cannot be inferred from payment alone and that something more than just payment is required. In *Cain* that something more which invited the inference of

agreement was that the tenant had waited six years after making the last of the payments before challenging the charges.

8. Mr Webber asked the FTT not to make a determination on Ms Syed's application because, he said, she ought to be taken to have agreed all of the charges because she had paid them all, after subjecting him to rigorous questioning about what they were for and why they were said to be justified.

9. The FTT did not accept Mr Webber's argument. It made this finding:

> "Whilst she may not have used the words 'without prejudice' or 'payment under protest' it is clear that Ms Syed has protested the service charges at every turn and frequently referred to past protests or disputes. The Tribunal finds that she continued to dispute the charges whilst making payment and therefore cannot be said to have admitted the charges were reasonable."

10. The material put before the FTT by the parties included selected email communications between them since 2017. The record was incomplete but the extracts I was shown included several threats by Mr Webber that if payment was not received he would commence proceedings to forfeit Ms Syed's lease. The material did not show when Ms Syed paid the service charges, but she told me that she did so in response to Mr Webber's threats.

11. For the purpose of the appeal, Mr Webber wanted to refer to additional material which he said evidenced Ms Syed's agreement to the charges at the time she paid them. I am not prepared to take into account documents which were not shown to the FTT, as this is an appeal and there is no good reason why they could not have been produced at the original hearing.

12. Nor am I prepared to interfere with the FTT's assessment that the material it was shown, and what was said about it by the parties during the hearing, showed that Ms Syed continued to dispute the charges while making payment. That was a finding of primary fact which cannot be contradicted on appeal by material which the FTT did not see.

13. Additionally, although what the parties did and what they wrote in their exchanges is a matter of record, whether an agreement should be inferred from those exchanges is not simply a question of fact. It involves an assessment or evaluation of the whole of the relevant circumstances. Unless it can be shown that the FTT made some fundamental error in its evaluation, such as by overlooking some important communication which it had the opportunity of considering, an appeal is not an occasion for this Tribunal to undertake a new evaluation of its own. The purpose of an appeal is to correct errors, where they can be seen to have occurred. Mr Webber has not demonstrated that the FTT made an error, based on the material shown to it and I therefore refuse the appeal on ground 1.

Ground 2: Insurance

14. Each of the leases of flats in Pinewood House includes a covenant by the landlord requiring him to insure the building with reputable insurers against loss or damage caused by specified risks. The cover was to be for an amount not less than the full cost of

reinstatement of the building "as reasonably determined by the Landlord's insurance provider from time to time". The insured risks were not unusual or specialist, the whole list comprising: fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else, loss of rent, service charge and insurance rent and any other risks which the Landlord reasonably decided to insure against from time to time.

15. The landlord's insurance covenant also required that he confirm the gross cost of the annual insurance premium to the tenant, stating how her contribution had been calculated and when it was due. He was to provide her with a copy of the insurance policy and schedule on request, notify any changes in cover, and procure that her interest and that of her mortgagee were noted on the insurance policy "either by way of a general noting of tenants' and mortgagees' interests under the conditions of the insurance policy or … specifically".

16. Ms Syed had expressed concern about the insurance arrangements for the building since at least 2017. In that year she had twice requested a copy of the insurance policy, which was not provided. She had occasionally been sent copies of the most recent policy schedules. Correspondence with Winkworths, who managed the property for a time, indicates that she was shown its file and sent copies of the certificates for 2018 and 2019. The certificates for 2021-22 and 2023-24 were shown to the FTT. These confirmed that the building was insured by a well-known insurance company but they named only Mr Webber as the insured and did not list all of the insured risks covered by the policy (referring simply to the sums insured for property damage, contents, loss of rent and public liability).

17. In her application to the FTT Ms Syed said that it was unclear whether the building was sufficiently insured or whether her interest was covered. She suggested that the building had not been revalued since 2010. She did not allege that the building was underinsured, nor that the premium was unreasonable. In his response Mr Webber stated that in 2019 the building had been covered for rebuilding to a value of £1.54m while in 2023 the figure was £2.18m.

18. The FTT found that Ms Syed had received her first service charge demand on 16 February 2017. It determined incorrectly that the 18 month time limit imposed by section 20B, Landlord and Tenant Act 1985 prevented the recovery of service charges in respect of costs incurred earlier than 16 August 2016. That was a miscalculation, and deprived Mr Webber of charges for the period of 12 months from 16 August 2015. Those charges included the 2016/17 insurance premium of £1,592.59, of which Ms Syed's proportion was £132.71.

19. As far as subsequent years were concerned, the FTT accepted Mr Webber's evidence that the building had been insured at all times and that the premiums shown in the annual demands had been paid. But he had not provided a copy of the insurance policy to the FTT and it was satisfied that he had failed to demonstrate that Pinewood House was adequately insured for reinstatement costs or against all the risks required by the lease.

Nor had Mr Webber shown that the leaseholder's (and any mortgagee's) interest had been noted by the insurer on the policy.

20. The FTT said that Mr Webber had confirmed that there had been no "independent valuation" to determine rebuilding costs and said that he had "belatedly" sought advice from the insurer which resulted in an increase in cover from £1.67m (the figure shown on the 2021 insurance schedule) to £2.18m (the figure on the 2023 schedule). It did not refer to his evidence that the figure had been £1.54m in 2019.

21. Having made those findings the FTT continued:

> "Accordingly, the Tribunal finds that Mr Webber has not demonstrated that the premiums charged to the service charge account were reasonably incurred. It therefore discounts them by 100% across all years […]".

22. The FTT accepted that the building had been insured each year and that the premiums had all been paid. It made no finding that the charges in any year were unreasonable, nor had Ms Syed suggested that they were. It based its decision that nothing should be paid for the years 2017 to 2023 on Mr Webber's inability to demonstrate that the sum insured was adequate, or that Ms Syed's interest was noted on the policy, or that the full list of insured risks was covered. From those assumed defaults it concluded that Mr Webber had not demonstrated that the premiums were reasonably incurred and disallowed them in full.

23. In *Waaler v London Borough of Hounslow* [2012] EWCA Civ 45 at [37] Lewison LJ pointed out that "whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome." On the evidence, the outcome which the FTT found had been achieved was that the building was insured with reputable insurers and that the amount insured increased from time to time. There was no evidence that the sum insured was inadequate. Ms Syed had not attempted to make a case that the reinstatement sums for 2021 or 2023 shown on the insurance schedules were too low; nor had she produced any evidence casting doubt on the adequacy of the figure which Mr Webber had asserted in his evidence for 2019 and about which the FTT made no finding. The pattern suggested by the evidence was of regular biennial reassessments of the reinstatement value of the property, at least since 2019.

24. Mr Webber was criticised by the FTT for not obtaining independent revaluations. But the lease did not require that the reinstatement cost be based on the view of an independent valuer. It required that the sum be such as was reasonably determined from time to time by the insurer. The FTT appears to have accepted that that was what had happened in 2023 and there was no evidence that it had not also happened in 2021 (the other documented year when the reinstatement value increased) or in 2019, as Mr Webber claimed.

25. As for noting Ms Syed's interest on the policy, the lease did not require insurance in joint names, nor did it require that the tenant's interest be specifically noted; a "general noting" was all that was required. The FTT had not seen the policy but knew that it was placed with a reputable insurer which was aware that the building was a block of flats let to third parties, because the insurance certificates said so. It is standard practice in the insurance industry for a policy for such a building to incorporate a general interest clause which

protects the interest of the leaseholders and their mortgagees. A policy including such a clause was what the lease required.

26. The FTT was prepared to assume from Mr Webber's failure to produce the policy that the interests of leaseholders were not noted in the normal way, and that it did not cover the usual risks which such policies cover. It is not necessary to consider how likely it is that policies placed by a well-known broker with a reputable insurer were on the unusual terms which the FTT imagined. Section 19(1)(a), Landlord and Tenant Act 1985 permits the recovery of relevant costs of insurance as part of a service charge "*to the extent* that they are reasonably incurred". The FTT did not consider to what extent the costs had been reasonably or unreasonably incurred. Had it done so it could not have found that the cost would have been lower if the policy had been on different terms from those which it assumed. The terms required by the lease are no more than are standard. The building was insured with a reputable insurer at a premium which was not suggested to have been unreasonable. There was neither any claim, nor any evidence, nor any reason to believe that the premiums were not reasonable for the cover obtained and in the absence of any such suggestion there was no basis for a finding that not a single penny of those premiums had been unreasonably incurred.

27. Ms Syed's complaint was not about the premium; her complaint was that she did not receive a copy of the insurance certificate every year when she asked for it and had never been shown the policy. Those were entirely legitimate complaints, but they did not justify the FTT's conclusion that the whole cost of insurance had been unreasonably incurred. I am satisfied that the FTT's finding that the property was not insured to the sum required by the lease was not supported by the evidence, and that the failure of Mr Webber to demonstrate that Ms Syed's interest was noted generally on the policy or that the defined risks were covered did not justify its conclusion that no part of the premium was payable.

28. On the appeal Ms Syed herself did not seek to maintain that extreme position, proposing instead that the premium should have been reduced. She did not suggest what reduction would have been appropriate and there is no evidence to support one. For all the incompetence and obstruction demonstrated by Mr Webber, there is no reason to think that Ms Syed was charged more than a reasonable amount for the cover obtained. The law provides other remedies for her complaints, the most obvious being an application to the FTT to appoint a manager to take over from the landlord, with others including prosecution for breach of the insurance obligations in the Schedule to the Landlord and Tenant Act 1985, or a claim for damages or specific performance of the terms of the lease.

29. For these reasons I allow the appeal on ground 2. Adopting the same approach as the FTT to section 20B, 1985 Act, but allowing the full 18 month period rather than only six months, the sums payable by Ms Syed in respect of insurance were as follows: 2015/16 - £127.70; 2016/17 - £132.71; 2017/18 - £151.28; 2018/19 - £157.83; 2019/20 - £170.72; 2020/21 - £189.34; 2021/22 - £212.92; 2022/23 - £263.94. The total additional sum is therefore £1,406.44.

Ground 3 – Electricity charges

30. The lease required the landlord to provide heating and lighting to the common parts of the building and the car park, which Mr Webber did. He included a charge for this service in the service charge demand for each year. The early years were poorly documented.

31. Ms Syed had not suggested that the charges for heating or lighting were unreasonable. The only challenge concerning either heating or lighting in her statements of case was to the style of lights installed in the car park. The FTT dismissed that challenge but embarked instead on a comparison of the invoices produced by Mr Webber with the costs claimed. On the basis of that exercise it decided to reduce the charge for each year to what it referred to as "the costs demonstrably incurred", saying that Mr Webber had been unable to provide a coherent explanation of "discrepancies" between the figures claimed and the invoices. Since there had been no challenge to the amount claimed other than on aesthetic grounds that was not a proper course for the FTT to take.

32. The FTT reduced the charge for 2016/17 by half saying that it did so in part to reflect costs incurred before 16 August 2016 which were said to be irrecoverable under section 20B, Landlord and Tenant Act 1985, and in part due to Mr Webber's failure adequately to document the costs. The first explanation was mistaken. The 18 month period before the demand served on 16 February 2017 began in August 2015, not August 2016. The second reason was unfair, because there was no challenge to the amount of the invoices and no reason why Mr Webber should have produced them.

33. For 2017/18 the FTT reduced the charge claimed from £1,924.75 to £1,012.38. Mr Webber had not produced any invoices for that year and the sum allowed was based on a schedule prepared by Ms Syed comparing invoices she had seen with the demands made. Since Ms Syed had not challenged the total claimed the reduction was again unfair.

34. The FTT allowed the electricity charges in full for 2018/19 (when the building was managed by Winkworths).

35. For 2019/20 the FTT reduced the sum claimed from £1,074.25 to £389.18 which was the figure shown in Ms Syed's schedule. It is not clear what that figure was based on. The electricity supplier had changed in the course of the year from EDF to Octopus, which had produced a saving. Mr Webber had provided bank statements showing debits from his account during the year to 30 April 2020. Monthly payments to Octopus Energy were made by direct debit for each of two meters each month. Mr Webber had listed all of these charges in a statement he sent to leaseholders and explained that, after an end of year credit from Octopus, the total paid out during the year had been £1,097.40. One charge of £23.15 was not supported either by an invoice from the previous supplier or a direct debit to Octopus, and when that is removed from the sum referred to by Mr Webber the resulting total is the figure of £1,074.25 which had been included in the service charge demand for 2019/20. The FTT gave no reason for reducing the charge to £389.18 other than that the general explanation that it allowed "the costs demonstrably incurred". The FTT took its figure from Ms Syed's schedule rather than considering what was demonstrated by the bank statements and invoices, but Ms Syed was unable to explain what the lower figure represented. I am satisfied on the basis of the material which was provided to the FTT that the cost demonstrably incurred for electricity in 2019/20 was the sum of £1,074.25 claimed by Mr Webber.

36. For 2020/21 the FTT reduced the sum claimed from £1,044.94 to £657.16. The total sum paid to Octopus during the year was £1164.77, but Mr Webber explained that he had deducted the sum by which the account was in credit at the end of the service charge year to arrive at the figure of £1,044.94 he had claimed. Had the FTT taken account of the

bank statements showing a monthly pattern of direct debits to Octopus it would have been satisfied that that sum had demonstrably been incurred.

37. The charges incurred for 2021/22 and 2022/23 were reduced by the FTT in the same way from £1,048.15 to £981.69 and from £632.21 to £149.69 respectively. The supporting material for the year 2021/22 comprises invoices from Octopus totalling £1,025.96. The bank statements provided by Mr Webber for the following year show that payments of £1070.41 were made to Octopus in 2022/23, although only £632.21 was included in the service charge (Mr Webber explained that this had been his mistake). The only discrepancies between the invoices and bank statements and the sums charged were in favour of the paying parties, the leaseholders, in that more was paid out by Mr Webber to Octopus than he reclaimed. He explained that the small differences were because generally he deducted the sum by which the account was in credit before passing on the charge, and the larger discrepancy in 2022/23 was because he had not included charges for half the year. The FTT gave no reason for not accepting the evidence of the invoices and bank statements other than that they did not reconcile with the total claimed and Mr Webber could not explain the discrepancies. Given that Ms Syed's statement of case had not warned Mr Webber that a detailed accounting exercise would be required and given that the invoices were entirely consistent with his evidence, there was no reason for the FTT to prefer the alternative figures put forward by Ms Syed.

38. Returning to the earliest years, 2016/17 and 2017/18, having found that the FTT was not justified in reducing the charges for those years for the reasons it gave, and having regard to the consistency of the charges for later years with the evidence of payments, there is no reason not to allow the charges for the earlier years in full.

39. For these reasons I allow the appeal on ground 3. The revised sums payable by Ms Syed in respect of electricity are:

2016/17 - £100.89 (an increase of £50.44)

2017/18 - £160.39 (an increase of £76.03)

2018/19 - £146.94 (no change)

2019/20 - £89.21 (an increase of £57.09)

2020/21 - £87.08 (an increase of £32.32)

2021/22 - £87.34 (an increase of £5.54)

2022/23 - £52.68 (an increase of £40.21)

The aggregate of the additional charges is therefore £261.63.

Ground 4 – Maintenance charges for 2020/21

40. In the service charge summaries prepared by Mr Webber to support the annual demands he grouped "repairs and fire alarm" together as a single entry. The FTT split this item into two lines, one for "maintenance and repairs" and one for "fire alarm". It allowed the amounts claimed in full for all years from 2017/18 with the exception of 2020/21. For that year Mr Webber had claimed £3,749.33 for repairs and fire alarm, which the FTT reduced

to £820.20. It did so because, it explained, the invoices and bank statements provided by Mr Webber showed that only £820.20 had been spent in relation to the fire alarm that year.

41. Mr Webber's complaint is that the FTT had omitted to take account of the invoices and bank entries for repairs and had included only those referable to the fire alarm. I am satisfied that he is correct and Ms Syed did not suggest otherwise. The bank statements for 2020/21 show expenditure of £3,749.33 on entries identified by Mr Webber as "maintenance". The invoices which he supplied to the FTT corroborated that expenditure. The only omission was the second page of an invoice for work done in September 2020 to repair a retaining wall in the garden. It is not suggested that the work was not done (it was referred to by the FTT), and the bank statements show that payments were made at that time to the tradesmen whose invoice it was. The FTT gave no reason for omitting the charges for repairs or maintenance and I am satisfied that the total sum of £3,749.33 ought to have been allowed and not simply the reduced figure of £820.20 for the fire alarm alone. Ms Syed's share of the balance is 244.09.

42. I allow the appeal on ground 4. The additional charge payable by Ms Syed is 244.09.

Disposal

43. For the reasons I have given the appeal is allowed on grounds 2, 3 and 4 but dismissed on ground 1. The additional charges payable by Ms Syed total £1,912.16.

44. The FTT directed that Mr Webber reimburse the tribunal fees of £300 which Ms Syed had paid to bring her application. In the same way, Mr Webber is entitled to make an application for the reimbursement of the fees he has paid in bringing this appeal. He has succeeded in only part of the appeal but it would be fair for Ms Syed to pay at least part of those fees. Unless Ms Syed wishes to make submissions to the contrary, which she may do within 14 days, she will make a contribution of £300 by way of reimbursement of fees paid by Mr Webber.

45. At the conclusion of the appeal Ms Syed expressed her frustration that the property continued to be managed in a chaotic manner either by Mr Webber or by managing agents selected and instructed by him. She anticipated a further application to the FTT under section 27A. I hope the parties will be able to avoid that as the sums about which they squabble so interminably are small and there is nothing to suggest that Mr Webber has tried to charge more than he was entitled to. His record keeping and his failure to adhere to statutory procedures were his undoing before the FTT. He would be well advised to put the management of the building in the hands of a competent professional managing agent with instructions to comply with the terms of the lease.

Martin Rodger KC,
Deputy Chamber President

4 June 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.