

Neutral Citation Number: [2025] UKUT 174 (LC)

Case No: LC-2024-778

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
Refs: LON/OOAQ/LSC/2022/0265, LON/OOAQ/LSC/2023/0255

Royal Courts of Justice, Strand,

5 June 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – insurance costs – prima facie case raised by the tenant and not considered by the First-tier Tribunal – relevance of an earlier decision about the same service charge at the same property

BETWEEN:

PRIYANJ SHAH

Appellant

and-

ASSETHOLD LIMITED

Respondent

2 Chandos Court,
Buckingham Road,
Edgware,
HA8 6HR

Upper Tribunal Judge Elizabeth Cooke
Determination by written representations

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The following cases were referred to in this decision:

Rana v Assethold Limited [2025] UKUT 19 (LC)

Introduction

1. This is an appeal from a decision of the First-tier Tribunal about whether service charges were reasonably incurred. It has been decided under the Tribunal's written representations procedure. Neither party has been legally represented. The respondent has filed a Respondent's Notice but not a statement of case.

The legal background

2. Section 27A of the Landlord and Tenant Act 1985 gives the First-tier Tribunal jurisdiction to determine whether service charges in respect of leasehold property are payable:

> "(1) An application may be made to [the FTT] 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."

3. Section 19 of the 1985 Act provides:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
> (a) only to the extent that they are reasonably incurred,
> …
> and the amount payable shall be limited accordingly."

4. The effect of section 19 is that to the extent that a cost was not reasonably incurred the related service charge is not payable. It is well-established that a tenant who wishes to challenge a charge on that basis must make a "prima facie case" that the cost was not reasonably incurred; in other words, he or she must produce some reason or evidence that indicates that the cost was not reasonable. The tenant cannot simply put the landlord to proof that it was reasonable.

5. That prima facie case might be, and often is, a cheaper quote for the same work or service; but it might be an observation that certain events or circumstances make the cost look unreasonable. For a recent example, see *Rana v Assethold Limited* [2025] UKUT 19 (LC).

The factual background and the FTT's decision

6. The appellant holds a long lease of Flat 2, Chandos Court. The respondent acquired the freehold of the block of eight flats in 2018. Applications were made to the FTT by the appellants and by the leaseholders of Flats 6 and 7 for determinations under section 27A of the 1985 Act in relation to the service charges over several years from 2019/20 onwards, and were heard together by the FTT in May 2024. With those three applications the FTT also made a determination arising from proceedings brought in the county court by the respondent against the appellant in respect of certain unpaid service charges and associated costs; in May 2023 the county court transferred to the FTT the issue of whether

the charges were payable, pursuant to section 176A of the Commonhold and Leasehold Reform Act 2002. Accordingly there were four different matters before the FTT and a large number of service charges in issue spanning several years. The FTT gave its usual directions for the parties to provide a Scott Schedule setting out the charges in dispute with the tenant's comments and the landlord's response, which they did.

7. The FTT's decision is at first sight alarmingly long, at 107 pages; on further reading it could be described as alarmingly short in the sense that the narrative decision extends to eight pages but is concerned largely with procedural issues and does not address either party's arguments about the individual charges in issue. However, the rest of the decision consists of the Scott Schedule, with each party's comments and then a final column with the FTT's response. That may be a good way to deal with a long list of issues, provided that it does not distract the FTT from engaging properly with a party's arguments – which is what seems to have happened here.

8. The appellant has sought permission to appeal the FTT's determination as to just one of the service charges in dispute, namely insurance costs, which feature in the Scott Schedule three times and were allowed by the FTT in full, as follows:

    a. £4,75.34, being Flat 2's 1/8 share of £3,803, being the cost of the landlord's buildings insurance for 2019/20

    b. £730.26, being 1/8 of £5,840 for the insurance renewal on 29 December 2022, which I assume was for 2022/23.

    c. £658.33, being 1/8 of £5,266 for insurance renewal in November 2023 for 2023/24.

9. The tenant's comments on the Schedule explain that the insurance for the building obtained by the previous landlord in 2017/18 was £1,631. In 2018/19 when the respondent took over it jumped to £2,704.20, and then to £3,803 in 2019/20. As can be seen above, it rose again in the tow further years complained of. The tenant's arguments that this was unreasonable were:

    a. That the increases were well above the rate of inflation;

    b. That it obtained a quotation in May 2023 of £2,166 (or £271 per leaseholder) and

    c. That in another decision of the FTT in relation to a challenge brought by the tenant of Flat 7 the FTT decided that the insurance costs in 2019/20 were not reasonable and reduced them to the £2,704 charged in 2018/19, and likewise in 2021/22.

    d. That the insurance appeared to include cover for £20,000 for the landlord's contents, for which the tenant is not responsible.

10. The respondent appears to have made no comment about the 2019/20 charge; as to the 2022 charge it simply said that the quote was not "like for like", without elaborating. As to the 2023/24 the respondent said that the challenge was "not clear", that there had been a change of broker resulting in savings for the leaseholders, and that the contents insurance was taken over from the previous freeholder and has been on the policy every year. Why that would justify it was not explained.

11. The FTT's comments in response to each of the three charges were very brief: the FTT observed that the respondent was able to use the insurer or its chose, and that although the cost of insurance was not the cheapest the appellant had "failed to provide any persuasive evidence showing that this charge had been unreasonably incurred."

The appeal

12. The appellant complains that his arguments have been ignored. He is right. I need not elaborate; the FTT has not said why his observation about inflation, his alternative quote, his reference to the decision relating to Flat 7, and his comment about the extent of cover. The FTT was well aware of that earlier decision because it referred to it in the substantive part of its judgment, in order to explain that service charges in respect of which it had already made a determination in that decision could not be re-opened by the leaseholder of Flat 7 in the present case.

13. I should add a further comment about the FTT's decision in relation to Flat 7. Of course the FTT is not bound by its own decisions. A decision made between identical parties can create an issue estoppel between them, but that was not the case here because the earlier decision was made between the same respondent but a different tenant. Nevertheless it was not open to the FTT simply to ignore so obviously relevant a decision in relation to the same insurance cost. The FTT's comments in relation to the 2019/20 charge in its earlier decision (LON/ooAQ/LSC/2022/0290) were as follows:

> "24. The applicant says that the amount charged represents a 100% increase in annual buildings insurance from 2018-2019 to 2019-2020. This is seen as an unreasonable increase as the building has not seen a material change …
>
> 25. The charge is anomalous. It is way above insurance fees for previous and subsequent years. Interestingly the applicant did produce an alternative insurance quote from a reputable insurance company for the year 2022 and for the same cover where the premium was £1,607.10 excluding any markups for management and brokerage. … The Tribunal were not satisfied that the charge was reasonable when compared to other years and the alternative quote provided. The Tribunal therefore sets this charge at £2,705 inclusive of management and brokerage giving an individual charge of £259.38."

14. That £2,705 was the cost incurred in 2018/19 (see paragraph 9 above). The FTT went on to allow in full a charge for insurance of £243.86, being 1/8 of £1950.88 for the following year 2020/21, because in the absence of comparable evidence it felt unable to say that this was not reasonable (and of course it was lower than the figure allowed by the FTT for 2019/20). But the charge of £524.62 for Flat 7 for insurance in 2021/22, being 1/8 of £4,196.91, was again described as "anomalous", and much higher than earlier years and

than the alternative quotation provided. The sum of £259.38, being 1/8 of £2,705, was again allowed as a reasonable cost.

15. The FTT in 2024 and in relation to Flat 2 was not bound by that decision. But as a matter of commonsense and fairness it needed to say why it disagreed.

Conclusion

16. The appeal is allowed and the FTT's decision set aside in relation to the three charges listed at paragraph 8 above.

17. I have to decide whether to remit the matter to the FTT for a fresh decision. That will take some time and will involve cost and stress for both parties. The respondent has had its opportunity to engage with the appellant's arguments but has failed to do so properly in the FTT or at all in the appeal, so it is unlikely that it will be of any assistance to the FTT on a redetermination. In my judgment it is neither useful nor, in view of the amount in issue, proportionate to remit the matter. The appellant has raised a strong prima facie case that the insurance premiums for the years in question were too high, bearing in mind the disproportionate increase in those costs and the much lower quotation that he was able to obtain. The respondent has not answered any of his points. I bear in mind the careful and pragmatic decision take by the FTT in the early decision in relation to Flat 7, and I consider that there is much to be said for a consistent outcome. I take a similarly pragmatic approach and substitute the Tribunal's decision that a reasonable cost for Flat 2's share of the landlord's insurance costs for 2019/20, for 2022/23 and for 2023/24 was on each occasion £259.38, being 1/8 of £2,705.

18. The appellant also seeks to appeal the FTT's refusal to make an order in his favour that the respondent reimburse the fees incurred by him in the FTT. I do not know whether he had applied for such an order. I will proceed on the basis that he has made that application in the Upper Tribunal in respect of both the FTT and the Upper Tribunal fees and will give the respondent the opportunity to respond to it.

Upper Tribunal Judge Elizabeth Cooke

5 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.