

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0035/08/24

In the Matter of Flat 9 Bishop's Court, Hay Road, Brecon LD3 9SW

**And in the matter of an Application under section 27A, section 19 and s. 20C
of the Landlord and Tenant Act 1985**

Applicant: Wendy Hiller

Representation: In person, assisted by Julian Hill

Respondent: Bishops Court West (Brecon) Limited

Representation: Glen Stevenson of Stevensons Solicitors

**Tribunal: Colin Green (Chairman)
David Evans FRICS (Surveyor Member)
Bill Brereton (Lay Member)**

Date of hearing: 26 August 2025

DECISION

**For each of the following service charge years, the Applicant's service charge
account was in credit in the following sums:**

- (1) 2017/2018: £524.50**
- (2) 2018/2019: £1,040.17**
- (3) 2019/2020: £861.17**
- (4) 2020/2021: £926.00**
- (5) 2021/2022: £28.83**
- (6) 2022/2023: £456.83**
- (7) 2023/2024: £691.50**

REASONS FOR DECISION

Introduction

1. Bishops Court consists of two, purpose-built blocks, each block housing six flats. The Applicant, Mrs. Hiller, owns Flat 9 in the Western block. The lease for her flat, dated 17 October 2001 (“the Lease”), is for a term is 125 years from 1 December 1997 at a ground rent of £25.00 per annum. Mrs. Hiller has made an application under s. 27A of the Landlord and Tenant Act 1985 for determination of her service charge liability for the years 2018 to 2025.

Service Charge

2. Under the Lease, the service charge is expressed to be a one-twelfth share but is now one-sixth. At some point, Bishops Court West (Brecon) Limited, the Respondent, purchased the freehold to the block comprising flats 7 to 12 from the previous owner, from which time it was responsible for managing the service charge. It is likely that the Respondent is a tenant owned company, with directors drawn from the owners of flats 7 to 12.
3. The accounts which have been supplied by the Respondent are for the financial year 1 February to 31 January the following year. Since the relevant calculations have been carried out on this basis the Tribunal will treat this as the service charge year.
4. The relevant provisions of the Lease concerning the service charge are at clause 8.1. The machinery is standard. There is to be an estimate of the service charge expenditure for the forthcoming year, which sets the advance service charge for the year. Under clause 8.3 the Lessee is to pay the advance service charge by quarterly payments. Under clause 8.5.1 the Lessor is to keep full and proper accounts of monies received and costs and expenses incurred for the service charge year.
5. Under clause 8.5.2:
“As soon as reasonably practicable after the end of each accounting year the said accounts should be audited by the Lessor’s Accountants and a copy of the audited accounts shall be supplied to the Lessee by the Lessor forthwith upon the completion of the said audit”
6. Under clause 8.6:
“Together with the said audited accounts the Lessor shall supply to the Lessee a statement signed by the Lessor’s Accountants showing the amount of the expenses and outgoings and if the amount of the said proportion is more than the amounts paid by the Lessee in respect of the year in

*question under sub-clause 8.3 of this clause then the Lessee shall pay the balance to the Lessor within 21 days after receipt of the said certificate **but if the sums so paid by the Lessee under sub-clause 8.3 of this clause exceed the amount actually due from the Lessee in respect of such year then the excess shall be carried forward and credited to the lessee in respect of the next accounting year (or at the end of the term hereby granted shall be repaid to the lessee forthwith)***” (emphasis added)

7. Historically, the Respondent has proceeded on the basis that nothing further needs to be done in respect of the service charge other than fixing an advance service charge figure for the forthcoming year. No reconciliation accounts have ever been provided or statement served as to whether there has been a deficit or surplus. There are the annual accounts, but apart from 2018, these were not provided until the order for disclosure in these proceedings. No service charge demands have ever been served apart from those in respect of the advance service charge.

Hearing and issues

8. The nature of the issues raised did not require an inspection and the hearing took place via Microsoft Teams on 26 August 2025. Mrs. Hillier was assisted in the presentation of her case by Julian Hill, a friend, and the Respondent was represented by Glen Stevenson of Stevensons Solicitors.
9. For the hearing, Mrs. Hiller provided a document, “Presentation for the August Tribunal” which sets out various issues that she wished to have determined. The Tribunal will address each of her questions.

Mrs. Hiller is only obliged to pay one-sixth of the Service Expenditure Costs.

10. This was not disputed.
Mrs. Hillier’s advance service charge payments are overpayments and should have been refunded or credited to her in the next accounting period.
11. The figures relied on are as follows:
 - (1) 2017/2018: Advance service charge £1,350.00; Surplus £524.50
 - (2) 2018/2019: Advance service charge £1,500.00; Surplus £1,040.17
 - (3) 2019/2020: Advance service charge £1,500.00; Surplus £861.17
 - (4) 2020/2021: Advance service charge £1,500.00; Surplus £926.00
 - (5) 2021/2022: Advance service charge £1,500.00; Surplus £28.83
 - (6) 2022/2023: Advance service charge £1,500.00; Surplus £456.83
 - (7) 2023/2024: Advance service charge of £1,500.00; Surplus £691.50

12. As regards 2024/25, no figure has been provided, and the parties now accept that on this application we are not dealing with matters after 1 March 2024, when Bishops Court Brecon RTM Co Limited, (“the RTM Company”) was appointed a right to manage company, from which date responsibility for managing the service charge passed to the RTM Company. The Tribunal was informed that there are proceedings before the Tribunal between the RTM Company and the Respondent. None of the panel are involved in those proceedings, and since the RTM Company is not a party to these proceedings it will not be bound by our decision.
13. Concerning items (1) to (7), the surplus figure for each period was not disputed by the Respondent, save that Mr. Stevenson had no instructions in respect of (1) for 2017/2018. In the absence of any evidence to the contrary the Tribunal accepts Mrs. Hillier’s figure for (1).
14. Mrs. Hiller contends that the Respondent must comply with the Lease and refund her overpayments. There two points that arise from this. First, the Tribunal has no jurisdiction to order payment of a sum of money in respect of the above surpluses, and if there is a right to be refunded that is a matter that would have to be pursued in the County Court.
15. Second, the Tribunal is not persuaded that Mrs. Hillier is entitled to a refund. The words in clause 8.6 highlighted at paragraph 6 above make it clear that any surplus of advance service charge payments over actual expenditure for a service charge year are to be credited to the Lessee for the next service charge year, with the only payment being at the end of the term. This is a standard provision although no credits have ever been applied here. In principle however, Mrs. Hillier is entitled to have her accumulated surpluses credited to her service charge account, but is not entitled to payment of those monies, only for her future service charge liability to be reduced by her credits.
16. Mrs. Hillier was of the view that the appointment of the RTM Company may have affected matters and that any credits prior to 4 March 2024 should be refunded by the Respondent and that the credits cannot be carried over to the service charge periods managed by the RTM Company. Although Mrs. Hillier has carried out some research on the point no authority was cited in support. The Tribunal is sceptical that this is the correct legal position and considers regard must be had to the state of a service charge account at the time of the appointment of the RTM Company, including credits accumulated but not applied, in carrying out future service charge calculations. The appointment does not set a service charge account to zero for the purpose of calculating service charge liability after the appointment.

17. Nevertheless, the Tribunal will not make an express finding as to whether the RTM Company must give credit for accumulated overpayments as it is not a party to these proceedings and it is an issue which is best resolved in the other Tribunal proceedings mentioned above.

Must the service charge accounts be audited?

18. Mrs. Hillier has raised the point that not only was she never served with the accounts, but they are not audited, as required by clause 8.5.2 (paragraph 5 above). The Respondent's accounts for the years 2018 to 2023 are in the hearing bundle. Apart from 2018, which is not a full copy, in each of those accounts it is expressly stated that the accounts are unaudited. It is a fair inference that the 2018 accounts were also unaudited.
19. In the Tribunal's view, clause 8.6 (paragraph 6 above) requires that audited accounts be served on the Lessee together with a certificate signed by the Lessor's Accountants showing the sum to be paid by or credited to the Lessee. This is a condition precedent for making a valid demand for payment. The Respondent has tried to remedy matters in respect of 2019 to 2023 in their letter of 11 June 2025 with enclosures, but although the statutory information required by section 21 of the 1985 Act is included, the accounts are unaudited and there is no certificate signed by an accountant.
20. In the Tribunal's view however, although the absence of audited accounts and a certificate would affect an obligation to make a balancing payment, this will not prevent a credit arising on the figures found by the Tribunal, see: the decision of the Lands Tribunal in *Warrior Quay Management Co Ltd v Joachim* LRX/43/2006 and paragraphs 2-37 and 2-38 of *Service Charges and Management* Fifth Edition.

Entitlement to surplus monies.

21. Mrs. Hillier has referred to section 42 of the Landlord and Tenant Act 1987 (service charge contributions to be held in trust). Relying on sections 42(3) and (4), her argument appears to be that she is entitled to one-sixth of the surplus funds. Allegations concerning how surplus funds have been dealt with (payment of directors' loan accounts) and an analysis of recent accounts are set out in her written submissions and a spreadsheet.
22. There are a number of difficulties with this. First, under s. 52(2) of the 1987 Act, the County Court has sole jurisdiction to deal with the provisions of s. 42, and in these proceedings the Tribunal has no jurisdiction to deal with a breach of trust claim. In *Solitaire Property Management Co Ltd v Holden* [2012] UKUT 86 (LC), the Upper Tribunal held that neither a First-tier Tribunal

nor the Upper Tribunal had jurisdiction to embark upon a breach of trust inquiry in circumstances where such inquiry was not necessary to decide a question arising under section 27A. Further, it had no jurisdiction to require the landlord to make good trust monies which had been wrongly spent. The Tribunal has no jurisdiction to order payment.

23. Therefore, the Tribunal cannot make any finding in respect of a claim based on section 42 and an alleged breach of trust, and it is not necessary for it to do so for the purpose of determining Mrs. Hillier's service charge liability (credit balances) under s. 27A as set out above.

24. Second, it is difficult to see how Mrs. Hillier can be both entitled to the benefit of accumulated credits and payment of one-sixth of a surplus representing those credits. It is recommended that Mrs. Hillier seek legal advice concerning such matters.

Section 20C

25. Under section 20C of the 1985 Act, where the lease permits the recovery of costs as a service charge the Tribunal may order that some or all the costs incurred by the landlord in connection with the Tribunal proceedings are not to be included in the service charge payable by the tenant. The Tribunal may make such order as it considers equitable and regard will be had to what extent the tenant has been successful and the proportionality of any reductions, together with any other relevant factors. In making an order under s. 20C the Tribunal makes no determination as to the amount of costs that are actually recoverable under the terms of the Lease, or whether such costs were reasonably incurred or reasonable in amount. Any challenges on those grounds would have to be dealt with on an application under s. 27A.

26. Since the Respondent's legal costs of these proceedings will have been incurred since the RTM Company took over the management and exercise of the lessor's powers under the lease, there must be a query as to whether the Respondent can seek to recover costs incurred after 1 March 2024 by way of the service charge for 2024/25. Nevertheless, the Tribunal considers that it ought to decide the section 20C issue on the footing that all or part of the Respondent's costs are recoverable by way of service charge, even if that is not the case.

27. In respect of Mrs. Hillier's application under section 20C, the following directions should apply.

27.1. Mrs. Hillier should serve written submissions by email to the Tribunal and the Respondent's solicitors by 5.00 pm on 22nd October 2025.

- 27.2. The Respondent is entitled to reply by written submissions to be served by email on the Tribunal and the Applicants by 5.00 pm on 5th November 2025.
- 27.3. Mrs. Hillier is entitled to respond by written submissions to be served by email on the Tribunal and the Respondent's solicitors by 5.00 pm on 18th November 2025.
28. There will then be a paper determination by the Tribunal on the issue.

Dated this 8th day of October 2025.

Colin Green
Tribunal Judge