

Increased obligations when charging for improvements could prove a headache for landlords

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A recent decision of the UK Upper Tribunal (Lands Chamber) could influence Jersey's Royal Court in interpreting the "reasonableness" of service charge items.

Local landlords could see their administrative burden increase as they demonstrate they have considered alternative approaches and sought tenant opinions, as well as assessing the financial impact on those tenants of proposed improvements before proceeding.

However Ogier's Katharine Marshall wonders "whether the decision is perhaps of more relevance in a residential context than for commercial tenants, especially the requirement to consider tenant means, but only time will tell."

In *Waalder v Hounslow LBC* [2015] UKUT 17 (LC) the Tenant was disputing an obligation to pay through the service charge for replacement windows in a block of flats where the hinges were inadequate for the weight of the glass in the tilting windows. At first instance the Tribunal had upheld payment but the Upper Tribunal ruled that a landlord must show, when arguing that a service charge relating to improvements (as distinct from repairs) is "reasonable", that he has considered both:

- The availability of an alternative and less expensive remedy; and
- The views and financial means of the tenants who will be required to pay for the works

Katharine added: "Although only a Lands Tribunal decision, and set in the context of the protection offered by the English Landlord & Tenant Act 1985 to tenants of "reasonable" service charges, this case may nevertheless influence Jersey's Royal Court if a tenant challenged a charge. Many Jersey leases use the word "reasonable" liberally in the context of fees and charges."

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