

The Gatehouse is a block containing 23 flats on Hayling Island. Mrs Godfrey was the leaseholder of flat 60.

She applied to the FTT for a determination of the reasonableness and payability of her service charges because they had risen considerably since the freehold had changed hands in 2018, and she regarded a number of the charges as unreasonable.



In *ASP Independent Living Ltd v Godfrey* [2021] UKUT 0313 (LC), the Upper Tribunal (Judge Elizabeth Cooke) cited *Schilling v Canary Riverside Development Ltd* [2005] EWLands LRX_26_2005), and said:

... where a lessee seeks to challenge the reasonableness of a service charge they must put forward some evidence that the charges are unreasonable; they cannot simply put the landlord to proof of reasonableness.

Allowing the landlord's appeal from three elements of the FTT's decision, she continued:

The ... decisions (as to the charge for a warden in 2019/20 and 2020/21, and for gardening in 2019/20) are set aside [because] they are unexplained and impossible to understand. There is insufficient material for the Tribunal to substitute its own decisions and so all three matters have to be remitted to the FTT for proper consideration.

However, she urged the parties

...to try to come to an agreement about these charges rather than going through a further round of directions and a hearing before the FTT. Many of the issues about which the lessee understandably feels strongly are simply not ones that the FTT has jurisdiction to consider – for example, the contractual or any other relationship between the landlord and [one of its suppliers]. A rise in prices does not in itself mean that a charge is unreasonable. Nor does the fact that a service charge costs a large fraction of the lessee's pension. Nor does the absence of consultation if the precise statutory conditions that trigger a consultation requirement are not met. The parties may be able to make progress if they can give some thought to, and find out about, what would be a reasonable charge for the service received, by looking at other similar properties and getting some information about charges made for similar services. If they can focus on what the FTT is empowered to decide they may be able to reach an agreement about these charges and about future arrangements, to the benefit of everyone involved.