FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HA/LSC/2023/0020
Property	**:**	9 Sutcliffe house, London Road, Bath BA1 6AJ
Applicant	**:**	George Paddock
Respondent	**:**	Sutcliffe House (London Road, Bath) Management Co Ltd
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985
Tribunal members	**:**	Judge David Clarke Jan Reichel MRICS Michael Jenkinson

DETERMINATION AND STATEMENT OF REASONS

Determination

1. The Lease granted to and held by the Applicant dated 31 August 2012 for a term of 999 years at an annual rent of £60, provides that the Lessee should pay a service charge that constitutes a 'Fair Proportion' of the Lessor's costs expenses and outgoings.

2. Under section 27A (3)(c) of the Landlord and Tenant Act 1985 the Tribunal determines that the amount payable as a 'Fair Proportion' for the Applicant to pay of the sum for works for 'internal repairs and redecorations to include damp and fireproofing works' undertaken in the financial year 2021/22, is zero (0%) and not £10,565,44. It further determines as a consequence that the amount payable by the Applicant for the calendar year 2021/22 is the sum of £3,369.07.

3. The amount payable for the service charge in 2022/23 is a 'Fair Proportion' of the Lessor's costs and expenses and outgoings. It is for the Respondent to decide what a reasonable proportion should be.

4. The Applicant is not obliged to make any contribution at all to any major works to the interior entrances, passages, landings and staircases in Sutcliffe House because he only has to do so if they are so enjoyed or used by the lessees in common.

5. The Notice of Intention served by the Respondent on 13 February 2019 under section 20 of the Landlord and Tenant 1985 is deficient in relation to the works subsequently undertaken since the notice did not include in the works to be undertaken the damp and fireproofing works.

6. The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 in respect of the application by the Respondent but subject to the following conditions:

1. **The Respondent shall refund to the Applicant the fee paid in respect of his Application.**
2. **The Respondent shall meet the reasonable legal costs of the Applicant in obtaining advice on his Application.**
3. **The Respondent is not to charge any interest or penalty in respect of the late payment now due of £3,369.07 (especially since the Applicants remittances in respect of payments he considered due were returned by the Respondent). This condition is to include no charge being made or interest incurred through referring the matter to a debt collection agency.**

7. The Tribunal makes an order under section 20C of the 1985 Act in favour of the Applicant that any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant.

8. The Tribunal also makes an order in favour of the Applicant under Paragraph 5A of Schedule 11 to the 2022 Act extinguishing any liability to pay a particular administration charge in relation to the litigation costs of the Respondent in this case.

Statement of Reasons

The Application

1. This Application, for a determination of liability to pay and reasonableness of service charges, was made by virtue of section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") on 2 February 2023 by George Paddock, ("the Applicant"). It is made in respect of service charges amounting to £13,934.51 charged in respect of his long leasehold house known as 9 Sutcliffe House, London Road, Bath BA1 6AJ ("the Property"). The Property is part of a development ("the Development") of two houses and ten flats all contained within a Grade II listed building known as Sutcliffe House. The Respondent to this Application is the Sutcliffe House (London Road, Bath) Management Company Limited ("the Respondent") who is the freehold owner, and current lessor, of all units in Sutcliffe House. The Respondent is a management company vested in all the leaseholders for the time being in Sutcliffe House who each have one share in the Company. The day-to-day management responsibilities are delegated by the Respondent and undertaken by HML PM Ltd ("HML") whose registered offices are at 95 London Road, Croydon, Surrey CR0 2RF. A determination is sought for the accounting year 2021/22 and for the year that was current when the Application was made, 2022/23.

2. The Application includes two further applications under section 20C of the 1985 Act and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2022 ("the 2022 Act").

3. The Application sets out the total sum in dispute as £13,934.51, which includes the sum of £10,565.44 in respect of works for 'internal repairs and redecorations to include damp and fireproofing works' undertaken in the financial year 2021/22. From paragraph 1 of the Applicant's Statement of Case, it is the sum of £10,565,44 that is the amount that is primarily in dispute in this case (though in his application, but not in his Statement of Case, the Applicant also suggests that annual cleaning charges in respect of the internal hallways and staircases should also be considered).

4. It appears that the Applicant's Statement of Case dated 10 May 2023 and the Reply dated 5 July 2023 were drafted on the Applicant's behalf by a solicitor and the Respondents' Statement of Case dated 28 June 2023 appears to be drafted by Counsel and signed off by its solicitor. However, at the hearing on 31 July 2023 neither party had legal representation. Mr Paddock, the Applicant, appeared with a McKenzie friend, Sophia Pidala, and the Respondent was represented by Anthony Eyles and Joe Lowless, both of whom are property managers employed by the agents, HML.

Jurisdiction of the Tribunal

5. In the Respondent's Statement of Case, drafted by Counsel, it is submitted, in paragraphs 24 and 25, that the arbitration clause in the Lease (Schedule 6, Paragraph 6) operates to deny the Applicant the right to bring this case before this Tribunal. However, section 27A(6) of the 1985 Act, inserted by section 155 of the 2022 Act, and in force for over 20 years, makes an agreement in a lease to provide for a determination in a particular manner (such as an arbitration) void to the extent that it prevents an application under

that section. This was pointed out by the solicitor who drafted the Applicant's Reply, and it is surprising to receive such a submission from Counsel. The Tribunal has jurisdiction.

The Property and the Development

6. The Tribunal did not inspect the Property and Development prior to the hearing but were given a clear picture of the position from maps, photographs, and other evidence. The Property, 9 Sutcliffe House, is a house on one end of a broadly U-shaped building converted in about 2010 into a complex of ten flats and two houses. The Property has just one shared wall with number 8 next door, which is the second house within the Development. The Property is held by the Applicant, described as the Lessee, under a lease ("the Lease") dated 31 August 2012 for a term of 999 years at an annual rent of £60. Notwithstanding its position as a house with three exterior walls, and no unit above or below, by Schedule 1 of the Lease the Property only includes the internal spaces of that part of the building, with the foundations, external walls structural elements and roof retained by the Lessor. In other words, the demise is in a form commonly in use for horizontally divided properties such as those in a block of flats.

7. The Property has its own entrance and does not share any access with other units within the Development. The ten flats within Sutcliffe House (on ground, first and second floors of the building) have shared entrances (controlled by entry phone), hallways, landings, and staircases.

8. Within the Development as defined are shared open spaces, principally taken up by car parking spaces. Each of the units has such a parking space granted within the leases– the space for the Property is alongside it.

9. A curious feature is that two further properties are included within the freehold title of the Respondent, numbers 6 and 7 Weymouth Street. They are not structurally attached to Sutcliffe House. Little is said in the paperwork about these two units, and they do not appear to be included within the definition of 'Development' in the Lease (Recital A). However, the Tribunal was told of an aspect that have might have some borderline relevance for this case. While those two properties do not contribute to the service charge levied in respect of Sutcliffe House, the Tribunal was told that that the owners of those two properties do contribute (in a manner not explained) to the insurance premiums paid in respect of the Development and its properties. The Tribunal was told that the amount contributed was in the region of £160 per annum by each property. The Tribunal was given no further information. The presence of those two properties does not impact on the matters for determination in this case.

Two issues for decision

10. This case poses two issues for decision by the Tribunal. Firstly, the Applicant submits that the amount of the service charge that he is asked to pay for 2021-22 accounting year in respect of works for internal repairs and redecorations to include damp and fireproofing works are not payable by him because they are not calculated as a 'Fair Contribution' within the terms of the Lease (section 27A(1)(c) of the 1985 Act). The issue is therefore a decision on the meaning of the provisions of the Lease and an examination of what he is required to pay by way of service charge.

11. If the amount charged to him would otherwise be payable in whole or in part, the Applicant then submits that the consultation requirements set out in section 20 of the Act have not been complied with as the works for damp and fire safety were not included in the initial Notice dated 13 February 2019.

The provisions of the Lease

12. In determining the proper approach to service charge calculation under the Lease, and in the absence of legal advisers at the hearing, the Tribunal considered it helpful to refer to, and read out to the parties at the hearing, the relevant clauses and schedules in the Lease, particularly as Anthony Eyles, representing the Respondent, did not have either a paper or electronic copy of the bundle of documents. It was also important to do so because it appeared to the Tribunal that the way the service charge was to be calculated was unusual for a long lease of a residential unit. The Tribunal had to assume that the leases of all twelve units within Sutcliffe House were in the same form but there was nothing to suggest that there were differences of substance; and the Lease contained the usual standard clauses whereby the lessor covenanted to include and enforce similar covenants in the leases of the other units.

13. The relevant clauses from the Lease are set out verbatim below, with some comments on their meaning. After granting the term of the Lease and providing for a rent of £60, Clause 1 says:

> "and also paying by way of further or additional rent from time to time 12.70% of the amount by which the Lessor may from time to time spend in effecting or maintaining the insurance of the Development against the risks referred to in Clause 5(2) of this lease'.

Clause 5.2 is a standard landlord's insurance covenant. This provision therefore relates only to payment as additional rent of a precise share of the cost of insurance. It does not in any way relate to the service charge. (The Tribunal comments that it received no evidence of the proportions of insurance rent payable by other units and whether those other contributions to the costs of insurance included contributions from 6 and 7 Weymouth Street).

14. Clause 4 of the Lease sets out the Lessee's covenants. They include clause 4.2:

> 'pay the service charge and interim service charge in accordance with the service charge provisions set out in Schedule 6'.

15. Clause 5 of the Lease contains covenants by the Lessor. Clause 5.4 provides for the lessor to maintain, repair, decorate and renew the roof and foundations of the Development. Consequently, the external walls, roof and foundations of the Property are repairable and maintainable by the Lessor and the Applicant will pay a contribution towards any such works through the service charge. Clause 5.4.4 then provides that the Lessor will maintain, repair decorate and renew:

> 'the main entrances passages landings and staircases of the Development so enjoyed or used by the lessee in common as aforesaid'.

The phrase 'as aforesaid' refers back to clause 5.4.3, which provides for the repair, decoration and renewal of:

> 'the gas and water pipes drains and electric cables and wires used in common by any two or more units in the Development'.

16. Clause 5.5 is in a similar vein:

> That the Lessor will so far as is practicable keep clean and reasonably lighted and maintained in good and tidy order the passages landings and staircases and roadways paths and communal gardens and other parts of the Development so enjoyed or used by the Lessee in common as aforesaid'.

The Tribunal notes that in Clause 5.4.4 'lessee' is written without a capital L; in clause 5.5 it appears with a capital L. However, there seems to be no significance as to whether it is typed with a capital L or not, as the way it is written varies randomly throughout the Lease. But the phrase adopted is 'lessee' not 'lessees'.

17. Schedule 2 sets out the rights of the Lessee. Paragraph 1 of that Schedule reads:

> 'Full right and liberty in the Lessee and all persons authorised by him (in common with all other persons entitled to a like right) at all times by day or by night and for all purposes in connection with the use and enjoyment of the demised premises to go pass and repass over and along the roads and pathways serving the Development and the pathways passages landings and staircases leading to the unit and the area designated by the Lessor for the keeping of refuse'.

This is a very wide right of access to most parts of the Development which are not let on long leases. However, it is significant that the Applicant as Lessee has no legal right to access any interior 'pathways passages landings and staircases' unless they lead to his unit. The Applicant's house does not open into any such interior parts as his entrance is directly onto the exterior of the Development. He has no practical access to those interior spaces, entrance to which is controlled by entry phone.

18. Schedule 5 is headed 'Costs and Expenses and Outgoings and Matters in respect of which the Lessee is to contribute a Fair Proportion'. Paragraph 1 refers to the expenses of maintaining repairing decorating and renewing of various items.

Paragraph 1.4 repeats the wording of clause 5.4 set out above:

> 'The main entrances passages landings and staircases of the Development so enjoyed or used by the lessee in common as aforesaid'.

Paragraph 2 of the Schedule includes:

> 'The cost of cleaning and lighting the passages landings and staircases and other parts of the Development so enjoyed or used by the lessee in common as aforesaid'.

Paragraph 1.5 provides for payment of:

> The expenses of maintaining repairing decorating and renewing any other parts of the Development which do not form part of the demised premises or the premises demised by the leases of the other units in the Development.

Paragraph 1.7 requires contribution to:

> All other expenses if any incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Development.

There is a sweep-up clause (paragraph 11) to include any other expenses which the lessor may reasonably incur in the management of the Development.

19. Schedule 6 is the final Schedule and is headed Service Charge Provisions. It defines four terms, including 'Accounting Year', as the period from 1 April to 31 March of the next year. The other three are as follows:

> 'Expenses' means in respect of each accounting year the cost to the Lessor of the items set out in Schedule 5.

> 'Interim Payment' means such amount as in the opinion of the Lessor's surveyor fairly represents the percentage as defined in Schedule 5 of the estimated expenses for the current Accounting Year.
> 'Service Charge' means the percentage of the Expenses as defined in Schedule 5.

20. The remainder of Schedule 6 sets out some details. The calculation of the total amount of expenses is to be determined by reference to the Accounting Year; there are details of how to notify the amount of the Interim Service Charge; about when payments should be made; and for annual accounts. However, paragraph 3 of Schedule 6 should be noted:

> 'The decision of the Lessor as to the amount of the Expenses shall be accepted by the Lessees save for manifest error'.

21. This detail of the key relevant provisions of the Lease are set out below in order to provide the context for this determination. Overall, it is a surprising and unusual arrangement for a residential development, which was always intended to have the lessor as a tenant's management company once all the units were sold (as provided for by the Lessor's covenant in clause 5.8.1 of the Lease). There is no stated percentage, or percentages, setting out what the Lessee under this Lease is to pay by way of service charge. The Lease only provides that it is to be a 'Fair Proportion' (Schedule 5 heading). The phrase 'Fair Proportion' is not defined.

The submissions of the parties

22. The Tribunal now turns to summarise and consider the submissions of the parties in the light of the provisions of the Lease.

23. The Applicant makes two arguments on the interpretation of the Lease. First, he says that he is not obliged to make any contribution at all to the works to the interior entrances, passages, landings and staircases because he only has to do so if they are *so enjoyed or used by the lessee in common* by virtue of Schedule 5 paragraph 1.4 (set out above). He submits that they are for the exclusive use of the flat owners and are not for his use.

24. Secondly, and in the alternative, he argues that he is only liable, if at all, to pay a 'Fair Proportion' of the costs. He accepts that an equal distribution of most communal costs is fair but not in relation to the internal communal areas which are used exclusively by ten flat owners. He also notes that he is asked for the second highest contribution to the works.

25. In response to the two arguments put by the Applicant, the Respondent firstly attempted to argue that the arbitration clause in the Lease (Schedule 6, paragraph 6) ousted the Tribunal's jurisdiction. That is wrong as paragraph 5 above of this determination makes clear.

26. More substantively, the Respondent referred to clause 4.2 set out above and argued that the obligation to pay the service charge in clause 4.2 when combined with the definition of that term in Schedule 6 meant that the obligation on the Applicant is to pay towards all items set out in Schedule 5. The Respondent denies that paragraph 1.4 of

Schedule 5 absolves the Applicant of his responsibility to pay the service charge in relation to the items claimed, but without elaborating on the reason for this denial.

27. In the alternative, the Respondent relies on both paragraph 1.5 and paragraph 7 of Schedule 5, set out above, as giving rise to the obligation to pay for the works to the internal areas.

28. The Respondent does not clearly address the absence of a set proportion of expenses to be paid. It is only said that the fair proportion is 12.7%, without saying how this figure was reached; and suggests it is fair because 16.4% was payable by the lessee of the other house, number 8. The Respondent does not disclose the percentage paid by the flat owners.

29. Finally, the Respondent relies on Schedule 6, paragraph 3 that the decision of the Lessor as to the amount of the Expenses shall be accepted by the Lessees save for manifest error.

30. The Respondent referred to the case of *Criterion Buildings Ltd v McKinsey and Co Inc (UK)* [2021] EWHC 216 but only indicated in its Statement of Case that it would rely on it. However, with the Respondent choosing not to appear with legal representation at the hearing, it was not clear what the basis of the submission might be. The Tribunal has examined that decision and refers to it below.

31. At the hearing, the Tribunal sought further information on various matters from Anthony Eyles who had, of course, not drafted the Respondent's Statement of Case. Unfortunately, he appeared not to have been adequately briefed and was unable to say if the Respondent had considered what would be a 'Fair Proportion' in this case. He thought that the figure of 12.7% might have been taken from the percentage for the insurance payments or from the floor area of the units.

The amount of service charge payable by the Applicant

32. The amount of service charge payable by the Applicant is determined by the terms of the Lease which, in the opinion of the Tribunal, is in a form that is really not appropriate for residential long leases, especially when, as in this case, the Respondent is a management company vested in the leaseholders (so that a bare majority in general meeting or bare majority of directors decide what is fair) and when the units in the development are dissimilar in key respects.

33. The Tribunal would have expected to find a lease taking an approach that is usual in such situations. One very common solution is to provide a set percentage payable by each lessee in the Development for the totality of the service charge, which together amount to 100%. In such a case, there can be residual unfairness, such as when ground floor flats have to pay for maintenance of lifts, but the solution provides certainty and clarity. An alternative solution, often found, is to provide for two or more service charge schedules, with costs divided between unit owners as appropriate and percentages fixed to reflect the benefits given by the expenses incurred. Instead, this Lease provides only that the Lessee should pay a 'Fair Proportion' without defining that term or giving guidance as to

how it is to be ascertained, except that 'the decision of the Lessor as to the amount of the Expenses shall be accepted by the Lessees save for manifest error'. Applying all the provisions of the Lease, as set out above, the Tribunal must decide whether the sum demanded of the Applicant as service charges for 2021/22 is a Fair Proportion.

34. The Tribunal determines that a 'Fair Proportion' for the Applicant to pay of the sum of £10,565,44, being works for 'internal repairs and redecorations to include damp and fireproofing works' undertaken in the financial year 2021/22, is zero. It does so for a number of reasons.

35. The Tribunal considers that the first submission of the Applicant is correct, namely that he is not obliged to make any contribution at all to the works to the interior entrances, passages, landings and staircases because he only has to do so if they are so enjoyed or used by the lessee in common. In the words of Lord Briggs in *Aviva Investors Ground Rent GP Ltd v Williams* [2023] UKSC 6 (at paragraph 27) the service charge demand in respect of these matters is not contractually legitimate. The Applicant does not use any such entrances in common and is unable to do so as they are controlled by entry phone. Therefore, under the Lease, such expenses are not part of his service charge. The Respondent argues that the obligation can arise from the combination of the definition of service charge in Schedule 6 meaning that the obligation on the Applicant is to pay towards all items set out in Schedule 5. But if the correct interpretation of paragraph 1.4 of Schedule 5 is as the Tribunal sets out, then there is nothing in the combination of provisions to change that view. Similarly, the Tribunal believes the Respondent cannot rely on paragraph 1.5 and paragraph 7 of Schedule 5, set out above, as giving rise to the obligation to pay for the works to the internal areas. This is because the word 'other' in paragraph 1.5 and paragraph 7 of Schedule 5 must refer to other expenses, if any, not covered by the preceding paragraphs. They cannot bring back into the service charge matters which have been specifically excluded by one of those earlier paragraphs.

36. If the Tribunal is wrong in its interpretation of the Lease, then it also concludes that the alternative second submission of the Applicant is correct. Again, using the words of Lord Briggs in *Aviva Investors Ground Rent GP Ltd v Williams,* the service charge demanded is not legitimate under the statute since the service charge must be reasonable and it is not. In this case, the Applicant is only liable to pay a 'Fair Proportion' of the costs and expenses. The amount requested, £10,565,44, being 12.7% of the total incurred is neither a Fair Proportion nor is it reasonable.

37. The principal reason for this conclusion is that there is no evidence that the Respondent has ever considered the question of what is a Fair Proportion for the Applicant to pay. Andrew Eyles admitted the Lease did not provide for a service charge at 12.7% but indicated that the Respondent would continue to charge the Applicant at that percentage unless the Tribunal decided otherwise. From his comments at the hearing therefore, it seems that the 12.7% is based on the percentage set out in the Lease for insurance contributions and applied to all aspects of the service charge. However, the fact that there is that percentage stated for insurance contributions only suggests, on basic principles of statutory interpretation, that the amount payable in respect of the service

charges should be, or (at the very least) could be, different – it must be a Fair Proportion. If it was to be 12.7% in every case the Lease would have so provided.

38. The Tribunal does not accept that paragraph 3 of Schedule 6, which states that the 'decision of the Lessor as to the amount of the Expenses shall be accepted by the Lessees save for manifest error' ousts the jurisdiction of the Tribunal to rule on what should be the proper and reasonable Fair Proportion. Section 27A(6) of the 1985 Act applies equally to such a provision in a lease as it does to an arbitration clause since this Lease purports to provide for a determination in a particular manner, that is, by unilateral decision of the Lessor. The Supreme Court decision in *Aviva Investors Ground Rent GP Ltd v Williams* is the leading case on section 27A(6). It is an anti-avoidance provision that requires this Tribunal to treat as void any provision in a lease which purports to provide for questions arising under an application under section 27A to be determined in a particular manner. Since paragraph 3 of Schedule 6 is a term purporting to render the landlord's decision final, it falls to be ignored by virtue of section 27A(6).

39. There is no evidence at all that the Respondent as Lessor even considered what should be a Fair Proportion or that after such consideration that it concluded 12.7% of the costs of the interior works was a fair proportion for the Applicant to pay. In those circumstances, it is quite insufficient, as the Respondent's Statement of Case simply contended, to submit that the Respondent reached the proportion of 12.7% in good faith. Moreover, paragraph 3 of Schedule 6 only refers to 'Expenses' and therefore does not extend to what is or is not a 'Fair Proportion' of those expenses. While it is not for this Tribunal to rule on what a 'Fair Proportion' should be more generally (*Aviva Investors Ground Rent GP Ltd v Williams*), it does have to decide in this determination what is reasonable for the Applicant to pay in respect of the works for 'internal repairs and redecorations to include damp and fireproofing works' in Sutcliffe House.

40. The strongest argument for the Respondent is provided by the case cited - *Criterion Buildings Ltd v McKinsey and Co Inc (UK)* [2021] EWHC 216 (though the Tribunal had to refer to the judgement itself). That case was one involving a commercial lease where the service charge payable was to be a 'due proportion' of the total costs of the services, defined to mean a fair proportion to be determined by the landlord taking into account the use made and the benefit received from the services. It was held that in such a case the burden of proof is on the person disputing the charge. The judge also decided that a subjective approach to the issue of fairness was appropriate and not an objective test.

41. The Tribunal considers that the Applicant has satisfied the burden of proof as there is no evidence that the Respondent ever addressed the issue of what a Fair Proportion might be. As to the test to be applied, the Tribunal considers that in a lease such as the one in this case, an objective test needs to be applied to decide what is fair. The *Criterion* case involves a commercial lease and had a clear definition of what was to be taken into account in determining a fair proportion. This is a residential lease, and therefore subject to section 19 of the 1985 Act, which provides that relevant costs are only to be taken into account if they are reasonably incurred. This must include the service charge being reasonably incurred in relation to the leaseholder being charged. Secondly, many leasehold properties have the freehold title, or a reversionary leasehold estate, held by a

resident's management company, as in this case. A subjective test is inappropriate in a case where a Fair Proportion is to be applied. This is because a bare majority of leaseholders or directors with a pecuniary interest in the outcome might decide upon a charge that could be considered overall as being subjectively fair but was objectively unfair to a minority of units. Objectivity is vital if reasonable decisions on what is a Fair Proportion are to be made by the Respondent in this case (where there are two units as houses and ten flats).

42. The Tribunal therefore concludes that 12.7% is not a reasonable or Fair Proportion in relation to works for 'internal repairs and redecorations to include damp and fireproofing works' when applying an objective test of what is fair and applying the test of reasonableness under the 1985 Act.

43. The Tribunal further determines that the correct and reasonable percentage, or Fair Proportion of the total amount incurred by the Respondent to complete the works to the interior entrances, passages, landings and staircases is zero (0%). There are three linked reasons for this conclusion:

1. The Lease does not only not give the Applicant the right to use the entrances to the flats but actually denies him that right (schedule 2, paragraph 1). The interior entrances, passages, landings and stairways do not lead to the Property.
2. In practice, the Applicant cannot access the flat entrances. The Tribunal was told at the hearing that entrance is controlled, and access is only given to flat residents and their visitors.
3. The Applicant gets no benefit whatsoever from the work undertaken to these interior entrances, passages, landings and staircases.

44. For these reasons, both submissions of the Applicant are upheld and the sum of £10,565,44, being part of the service charge levied totalling £13,934.51 is not payable by the Applicant. The amount that is payable is the balance namely £3,369.07.

45. The Applicant did raise the fact that this latter sum would include a share of the costs of cleaning the interior spaces. But he also recognised in his Statement of Case that 'an equal distribution of most communal costs is fair'. The Tribunal agrees. He may have to contribute a small amount towards cleaning costs where he gets no benefit, but on the other hand (for example) he may have more windows to be cleaned than any one of the flat owners. But he is right that in relation to major works costing a very significant sum the Respondent must address under the terms of this lease what a Fair Proportion should be.

The notice under section 20

46. In the light of the decision on the proper interpretation of the Lease, the issue of the validity of the notice under section 20 of the Act is less critical to the Applicant. But the Tribunal considers that it should also decide this issue to assist the parties and, perhaps, other lessees.

47. The works to the interior common parts necessitated the service of a notice under section 20 of the 1985 Act. The Notice of Intention was served on 13 February 2019 and

referred to the works as 'internal redecoration to the communal areas and possible replacement of carpet'. There was then a delay of over two years (not entirely the result of Covid) and the Notice of Proposal dated 2 June 2021 stated 'we have now obtained tenders in respect of the proposed internal repairs and redecoration to include damp and fire proofing works'.

47. The Applicant contended that as the Schedule of Works included a substantial proportion of damp and fire proofing works, the Notice of Intention was deficient and inaccurate. The Respondent contended that the Notice was not deficient as it gave a sufficient general description of the works required and complied with the 2003 Regulations. However, at the hearing Anthony Eyles conceded that the notice was deficient. The Tribunal not only accepts that concession but believes it was rightly made. The additions were significant and a fresh notice should have been served, particularly taking into account 28-month time gap between the Notice of Intention and the Notice of Proposal.

49. The Tribunal therefore determines that the notice under section 20 of the Act dated 13 February 2019 was deficient in relation to the works subsequently undertaken which included significant damp proofing and fire safety works.

Dispensation under section 20

50. Prior to the hearing, the Respondent made an application under section 20ZA of the 1985 Act seeking dispensation from the requirement to serve another section 20 notice and especially from the consequences of the inadequacy of the 13 February 2019 notice. The Supreme Court decision in *Daejan Investments v Benson* [2013] UKSC 14 makes it clear that a Tribunal should normally grant such dispensation if the leaseholder is not prejudiced in relation to the extent, quality or cost of the works. In this case, no question is raised as to the extent or quality of the works and though the Applicant contends that he did not have an opportunity to suggest a firm to make a fresh tender for the works, there is no evidence provided to suggest that a lower cost might be achieved. The Applicant said that he tried to provide an alternative quotation after the Notice of Proposal, and that it was lower, but it was rejected as being out of time. However, the Applicant provided no written or further details.

51. On balance, the Tribunal concludes that (assuming that the Applicant is liable to contribute to the repair costs, contrary to the primary conclusion of the Tribunal) the Applicant has not established any prejudice. The Tribunal therefore grants dispensation in respect of the application under section 20ZA of the 1985 Act but subject to the following conditions:

1. The Respondent shall refund to the Applicant the fee paid in respect of his Application.
2. The Respondent shall meet the reasonable legal costs of the Applicant in obtaining advice on his Application.
3. The Respondent is not to charge any interest or penalty in respect of the late payment now due of £3,369.07 (especially since the Applicants remittances in respect of payments he considered due were returned by the Respondent). This

condition is to include no charge being made or interest incurred through referring the matter to a debt collection agency.

The Ancillary applications

52. The Applicant made ancillary applications under section 20C of the 1985 Act and under Paragraph 5A of Schedule 11 to the 2022 Act. It is important that the Applicant, in a case where he has obtained a ruling in his favour, is not later required to contribute to the Respondent's legal costs.

53. The Tribunal therefore makes an order under section 20C of the 1985 Act that any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant.

54. The Tribunal also makes an order under Paragraph 5A of Schedule 11 to the 2022 Act extinguishing any liability to pay a particular administration charge in relation to the litigation costs of the Respondent in this case.

Concluding Remarks

55. The Tribunal is painfully aware that the consequences of this determination will not be easy for the Respondent and the other lessees of Sutcliffe House. It will be necessary for the Respondent to assess what should be a fair proportion for the lessees of the flats to pay for the works to the interior common parts and there will probably need to be a supplementary service charge levied. HLM, as appointed agents, will need to consider this determination and respond accordingly and especially in relation to future service charges in the Development. However, the Tribunal has a duty to apply the terms of the Lease and apply the law as set out in the 1985 Act.

56. It is for the Respondent to determine in the future what the 'Fair Proportion' for the Applicant and all other lessees should pay in respect of service charge demands both in the light of the provisions of the leases and the statutory standard of reasonableness.

Right of Appeal

57. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case (RPSouthern@justice.gov.uk). The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

58. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

59. The application for permission to appeal must identify the decision of the Tribunal to

which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

10 August 2023