FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2023/0335**
Property	**:**	**Flats 1-14, 171, Tower Bridge Road, London, SE1 2AW**
Applicant	**:**	**The leaseholders of Flats 1-14, 171, Towers Bridge Road, London Se1 2AW**
Representative	**:**	**Ms Vanessa McDonnell (Flat 14)**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr Sam Madge-Wyld (Counsel) Instructed by Eagerstates Limited (Mr Ronni Gurvits)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Deputy Regional Judge Nikki Carr** **Mrs Sarah Phillips MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**24 June 2024**

DECISION

Decisions of the Tribunal

(1) The sum of £42,478.80 for "Hydrock Fire Safety Report and related Investigations" (including a Management Fee) is not payable by the Applicant leaseholders and is repayable to them.

(2) None of the Respondent's costs of these proceedings may be passed to the leaseholders through any service charge, pursuant to section 20C of the Landlord and Tenant Act 1985

(3) The Respondent is not entitled to recover any costs of these proceedings as an administration charge, pursuant to paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

(4) The Respondent shall pay the Tribunal fees paid by the Applicant in the sum of £300, within 28 days of this Decision.

The application

1. The Applicants, represented by Ms Vanessa McDonnell of Flat 14, apply for the Tribunal's determination that the sum of £42,478.80 **[31]** is not payable by virtue of the provisions of the Building Safety Act 2022 ('the 2022 Act'), or because they are unreasonably incurred or unreasonable in amount by virtue of section 19 of the Landlord and Tenant Act 1985 ('the 1985 Act'). The sum was demanded by the Respondent in (what is described in its heading as) the "*Accurate Service Charge Account December 2022/2023*" as "*Hydrock Fire Safety Report and related Investigations*", together with related management fees. Mr Madge-Wyld, counsel for the Respondent, contends that the Tribunal should determine that sum is payable.

2. The hearing was arranged on 17 June 2024 after Eagerstates Limited's confirmation on 9 May 2024 that it was available (and before counsel was instructed). It is therefore disappointing that Mr Gurvits did not attend or provide any reason as to why counsel was unaccompanied at the hearing.

3. The directions in the case were provided on 2 November 2023, after a case management hearing at which the Respondent did not attend.

4. The Respondent was directed to give disclosure by 7 December 2023. Mr Gurvits did not comply, and gave no disclosure. He failed to provide the as-directed accompanying short statement identifying whether the building is a 'relevant building', the Respondent a 'relevant landlord', and the Hydrock report and associated costs were in connection with a 'relevant defect'.

5. The Respondent was directed to provide its statement of case, including copies of all relevant invoices, other documents on which it relied, any witness statements of fact, and any legal submissions, by 8 February 2024. Mr Gurvits did not comply.

6. On 13 February 2024, the Applicants asked for the Respondent to be debarred from further participation in the proceedings. The Tribunal was delayed in dealing with that application, and issued a notice of intention to debar pursuant to rule 9(3)(a) and (b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') on 17 May 2024, requiring an explanation why the Respondent should not be debarred for those failures by 21 May 2024.

7. In the meantime, after the application to debar was made, on 16 February 2024, by a single page 'statement' unsigned by any statement of truth Mr Gurvits set out the Respondent's 'case'. He chose to frame the case as a single issue: that while costs of remedial works or costs of pursuing the developer under the 2022 Act could not be passed to leaseholders, "professional fees" incurred in relevant works could. He continued to fail to answer the questions that were required by the Respondent's disclosure statement. He continued to fail to provide any disclosure.

8. In a response to the notice of intention to debar, at 20:30 on 21 May 2024 (and therefore not in fact within the time required by rule 15(1) of the Rules), Mr Gurvits wrote to the Tribunal as follows (omitting those lines that were not in the 16 February 2024 statement of case but sought to add to that case, and that were immaterial to the failure to comply):

> *We thank you for your email.*
>
> *However, we find the comments very strange.*
>
> *This matter was listed for 18th April 2024 and a bundle has been submitted by the Applicants, which contains all the case details, together with all the required documents, including those by the Respondent. This includes a statement of case at pages 467-468 of that bundle. There is only one item in dispute in this case and the Respondent has provided the accounts and invoices for this, which forms part of the bundle…*
>
> *The hearing has now been re-listed for 17th June so it is not clear what documents are missing…*

9. The invoices for the works and sums in question were not in fact included in the bundle (only Eagerstates' demands for the same), contrary to Mr Gurvits' assertion, and remain outstanding to this day. The demands that had been provided in the bundle were provided by the Applicants. The sole document that Mr Gurvits provided was the 'statement'.

10. At 15:16 on Friday 14 June 2024, Mr Gurvits supplied the Tribunal with counsel's skeleton argument and accompanying authorities. It was only by the skeleton argument that the Hydrock report, now in its 'version 3' dated 21 February 2024, was disclosed.

11. The Hydrock report is a FRAEW obtained from a fire safety engineer. In it are identified remedial works required due to risk factors from or connected with fire performance, façade configuration and fire strategy/fire hazards. The report identifies combustible cladding, combustible balcony materials, and lack/ineffectiveness of cavity barriers (including a concerning lack of cavity barrier between what appears to be restaurant premises on the ground floor and the residential parts above). It is said that the block is not provided with sprinklers, fire mains, or a firefighting lift, that AOVs are broken at top floor level, and the AOVs in the corridors open directly into a re-entrant corner with the single stair windows. Significant remedial works are recommended by the report.

The hearing

12. The first matter we dealt with was the debarring application that remained to be determined after 21 May 2024. Mr Madge-Wyld was not provided with instructions (beyond what was in the email above) regarding the Respondent's conduct of these proceedings, in particular why Mr Gurvits failed to comply with the disclosure direction, why he failed to provide his 'statement' in time, or to reply to the debarring notice in time or remedy any of the deficiencies identified. Mr Madge-Wyld had not been provided with any instructions to explain that conduct.

13. Not for the first time, we are unimpressed with the Respondent's conduct. As the email above demonstrates, Mr Gurvits appears to consider that directions do not apply to him, and that he can just provide what he considers relevant at a time that suits him. Mr Gurvits is what might be legitimately described as 'a regular' at the Tribunal, and well-knows that directions must be complied with. Having recently qualified as a solicitor, he must be taken to be aware of the seriousness of disclosure obligations and directions compliance.

14. Mr Madge-Wyld took matters in his skeleton that Mr Gurvits simply had not taken in his 'statement' of 16 February 2024. He submitted that he did so on instructions. We asked why the Respondent should now be permitted to rely on those additional arguments not raised or foreshadowed in the 'statement'.

15. Mr Madge-Wyld called in aid the overriding objective, relying on 'fairness'.

16. In order to deal with cases fairly, the Tribunal makes such directions as it seems to it are relevant and proportionate. Any party who considers that there should be a variation of directions is able to make an application to do so. A party who simply does not comply for whatever reason then requires allocation to them of additional resources, whether through case management or through adjourned hearings. Sometimes those additional resources are warranted. In this case, as is evident from Mr Gurvits' email, the inference to be drawn is that the Respondent failed to comply because Mr Gurvits wished only to conduct the litigation on his own terms. Additional resources were not warranted.

17. The Tribunal must ensure parties are on an equal footing. The Applicants in this case cannot be on an equal footing if the arguments raised only in Mr Madge-Wyld's skeleton argument, delivered zero clear working days prior to the hearing (no doubt in consequence of Mr Madge-Wyld's late instruction), are permitted to proceed. If no proper chance is provided to the Applicants to consider what their response to those submissions might be (and as was their entitlement per the directions), that would result in unfairness. To allow the Applicants additional time would necessitate an adjournment, at cost to the tax-payer paying for the resources allocated to this case, costs in both time and money of the parties' appearances before the Tribunal, and delay to the Applicants.

18. A party should not benefit from its own unexplained failure to comply with clear directions and to the issues raised six months ago by the Applicants' statement of case. That would result in injustice.

19. On the other hand, the Applicants had the Respondent's 'statement', confined to the single issue identified above, within 8 days of the date provided for in directions (albeit there was no evidence provided in support of it).

20. The overriding objective requires the parties' cooperation. The Respondent has wholly failed in its rule 3 obligations. Mr Gurvits did not attend at the hearing, that he confirmed on 9 May 2024 he was available for, to offer his explanation or evidence.

21. We decided that the Respondent should be permitted to rely on the single page 'statement', albeit that it was provided 8 days late, and despite the fact that Mr Gurvits provided no explanation for his conduct whatsoever. However, we did not permit counsel to introduce arguments that were not identified in that 'statement', and so to that (limited) extent the Respondent was debarred pursuant to rule 9(3)(a) and (b) as applied by rule 9(7).

22. We did not appreciate, as it had not been provided to us by the case officer, that the Applicants had made a further application to 'strike out' the skeleton argument on Sunday 16 June 2024. That only became apparent in the drafting of this decision by reference to the Tribunal's correspondence folder. We consider that nevertheless that matter has been dealt with in our decision above.

The background

23. 171 Tower Bridge Road is a six storey, 18.12 metre high building, in which there are 14 residential flats. Google streetview appears to show it has restaurant and office space at ground floor level.

24. Applying the helpful steps suggested in *Lehner v Lant Street Management Company Limited* [2024] UKUT 0135 (LC), on behalf of the Respondent Mr Madge-Wyld concedes that the building is a relevant building, that Hydrock report identifies relevant defects (including cladding-related defects), and that the Hydrock report identifies relevant measures that ought to be taken in pursuit of the Respondent's liabilities under the 2022 Act. It is evident from the papers that the charges in question became payable after 20 July 2022. Mr Madge-Wyld also concedes that the landlord is a relevant landlord and that the Respondent's Landlord Certificate provided to leaseholders was flawed, so that in any event the presumption that the Respondent meets the contribution condition in paragraph 3 of schedule 8 applies (paragraph 14(1) of schedule 8 of the 2022 Act).

25. No evidence is provided, and no argument is made, that the leaseholders are anything other than qualifying leaseholders, and indeed the presumption in paragraph 13 of schedule 8 of the 2022 Act applies.

26. The sole objection asserted by Mr Madge-Wyld on behalf of the Respondent is that the Hydrock report (and unidentified associated costs, including Eagerstates' management fee) are not a 'relevant measure' within the meaning of paragraph 1 of schedule 8 of the 2022 Act, and therefore the leaseholder protections do not apply.

The issues

27. The issues for us to decide are:

    (i) Whether the 2022 Act prevents the Respondent from passing on the costs of the' Hydrock Fire Safety Report and related investigations' and Eagerstates' management fee;
    (ii) Whether the sums incurred were reasonably incurred, are reasonable in amount and are payable.

The law

28. Section 27A of the 1985 Act confers on us jurisdiction to determine whether a service charge is payable and if so, by whom, to whom and in what amount and manner, and on what date.

29. Section 19 of the 1985 Act provides as follows:

    (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
        (b) where they are incurred in the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
    and the amount payable shall be limited accordingly.
    (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

30. As regards interim service charges (in this case, the management fees), for the purpose of section 19(2) reasonable means objectively reasonable, assessed in the light of the specific facts of the particular case (*Carey Morgan v De Walden* [2013] UKUT 134 (LC); *Avon Ground Rents v Cowley* [2018] UKUT 92 (LC)).

31. Schedule 8 of the 2022 Act provides what is being called by practitioners a 'waterfall' of leaseholder protections.

32. Insofar as the present case is concerned, the following are the relevant paragraphs of Schedule 8 for our consideration:

> 1 (1) In this Schedule –
> …
> "relevant measure" in relation to a relevant defect, means a measure taken –
>
> (a) To remedy the relevant defect; or
> (b) For the purpose of –
> (i) preventing a relevant risk from materialising, or
> (ii) reducing the severity of any incident resulting from a relevant risk materialising
>
> "relevant risk" here means a building safety risk that arises as a result of a relevant defect
>
> …
>
> *No service charge payable if landlord meets contribution condition*
>
> 3 (1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the landlord under the lease at the qualifying time ('the relevant landlord') met the contribution condition
>
> …
>
> *No service charge payable for legal or professional services relating to liability for relevant defects*
>
> 9 (1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of the relevant defect.
>
> (2) In this paragraph the reference to services includes services provided in connection with –
>
> (a) obtaining legal advice;
> (b) any proceedings before a court or tribunal;
> (c) arbitration; or
> (d) mediation.
>
> *Paragraphs 2 to 4, 8 and 9: supplementary*

10 (1) This paragraph supplements paragraphs 2 to 4, 8 and 9 (the 'relevant paragraphs').

(2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing –

(a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else) –

(i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or

(ii) are to be met from a relevant reserve fund;

(b) any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).

(3) In this paragraph –

"the relevant provisions" means sections 18 – 30 of the Landlord and Tenant Act 1987 (service charges) and section 42 of the Landlord and tenant Act 1987 (service charge contributions to be held on trust);

"relevant reserve fund" means –

(a) a trust fund within the meaning of section 42 of the Landlord and Tenant Act 1987;

(b) an express trust of a kind mentioned in subsection (9) of that section, comprising payments made by the tenant under the lease and others, or

(c) any other fund comprising payments made by the tenant under the lease and others, and held for the purposes of meeting costs incurred or to be incurred in respect of the relevant building in question or any part of it (or in respect of that building or part and anything else).

33. In *Triathlon Homes LLP v Stratford Village Development Partnership & Ors* LON/00BB/HYI/2022/0018-22 [2024] UKFTT 26 (PC) Mr Justice Edwin Johnson and His Honour Martin Rodger KC, respectively President and Deputy President of the Upper Tribunal, sitting as the FTT, said this about the distinction between 'relevant defect' and 'relevant measure', in the context of the application for a remediation contribution order under section 124 of the 2022 Act:

103. "Beginning with the statutory language, we agree that the word remedy and its variants are readily capable of being applied to measures short of eliminating the existence of a defect altogether. Measures which alleviate symptoms of an illness or reduce the risks of damage being caused by a building defect can properly be called remedies. A remedy which produces a complete cure is one type of remedy but that is not the

only outcome which can result from a remedy. In ordinary usage if it is intended to convey that, as a result of a remedy, some defect or illness had been removed entirely the user might be expected to say so specifically, or to qualify the word to add emphasis, referring perhaps to a complete remedy, or to comprehensive remedial works. An example can be found in paragraph 8(2) of Schedule 8, where the expression "cladding remediation" is defined as "the removal or replacement of any part of a cladding system"; rather than referring simply to "remediation of a cladding system" the drafter chose instead to focus on one specific form of remediation (removal or replacement) in order to avoid doubt about the scope of that particular leaseholder protection.

104. Section 124 is about the cost of "remedying relevant defects". Not all defects are relevant defects. As defined in section 120(2) a relevant defect has two characteristics: it must arise as a result of something done or used (or not done or used) in connection with "relevant works" (including the construction or conversion of the building); and it must be a defect that "causes a building safety risk". A "building safety risk" means a risk to the safety of people in or about the building arising either from fire or from the collapse of the building.

105. Any measure which either eliminates a defect altogether, or reduces it to a point where it no longer presents a risk to the safety of people in the building from fire or building collapse would cause it to cease to be a relevant defect. In that sense the relevant defect would have been remedied. One example referred to in argument was of a balcony constructed of timber, or with timber components. The presence of timber in the balcony structure creates a risk to the safety of people in the building arising from the spread of fire. One way of addressing that risk might be by removing the timber altogether; an alternative approach might be to coat the timber with a fire retardant paint. One method removes the component which gives rise to the defect, while the other leaves it in place but removes or reduces the risk to safety which the defect presents. If both methods have the effect of removing the building safety risk it is very difficult to see why one could aptly be said to have remedied the relevant defect while the other could not.

106. This simple example illustrates the complexity of the subject matter of the 2022 Act as a whole, namely securing the safety of people in or about buildings, and of sections 117 to 125 in particular, being the remediation of relevant defects. That complexity seems to us to require an interpretation of section 124 which focuses on the practical outcome of the things which have been done, or are to be done, rather than any interpretation which tends to narrow the scope of the remediation provisions.

107.We would therefore have no difficulty, whether simply as a matter of ordinary language, or additionally in view of the definition of relevant defect, in concluding that any measure which causes a building defect to

cease to be a relevant defect, or which is part of a larger programme of measures for that purpose, is capable of being the subject of a remediation contribution order.

108. Mr Selby KC's argument to the contrary is a linguistic one, turning on the presumption that because the definition of "relevant measure" in Schedule 8 differentiates between measures taken to remedy relevant defects, and other measures, those other measures must be taken to be excluded wherever the Act refers only to remedying relevant defects. We see the force of that point, but we do not accept that it is determinative.

109. The group of sections with which we are concerned is headed "Remediation of certain defects" and begins with a statement in section 116(1) that "sections 117 to 125 and Schedule 8 make provision in connection with the remediation of relevant defects in relevant buildings". Effect is given to Schedule 8 by section 122, which is headed "Remediation costs under qualifying leases etc" and the same heading is applied to Schedule 8 itself. The impression created by these indicators is that all of the provisions referred to, including those in Schedule 8, are concerned with remediation. That is perhaps not a matter of great weight, but it contributes to the interpretation of the provisions as a whole.

110. Schedule 8 is concerned with the treatment of remediation costs for the purpose of service charges. It begins with a series of definitions which are stated to be applicable "in this Schedule"; that is a slight indicator that the drafter was focussed on the specific subject matter of the Schedule and not on the wider operation of the Act as a whole.

111. Paragraph 1(1) defines "service charge" by reference to section 18 of the Landlord and Tenant Act 1985, which itself defines the expression as an amount payable by a tenant which is payable, directly or indirectly "for services, repairs, maintenance, improvements or insurance or the landlord's costs of management". The language used to describe service charges in leases is often exhaustive or tautologous for fear of implying some unintended exclusion. In that context it would be understandable, when it comes to those parts of the 2022 Act concerned with service charges, if the drafter was less concerned with economy of expression than with the avoidance of doubt.

112. The definition of "relevant measure" is expressed in wide terms, in particular by the use of "measure" rather than some narrower word, such as work, or service, to describe the activity in question. Nor is there any definition of what a defect is, which similarly leaves open the range of acts, omissions or changes capable of being covered by the provisions.

113. Relevant measures are all measures in relation to a relevant defect and are described in three parts: measures taken to remedy a relevant defect;

measures for the purpose of preventing a relevant risk from materialising; and measures for the purpose of reducing the severity of any incident resulting from a relevant risk materialising. As a relevant risk is a building safety risk that arises as a result of a relevant defect, all three types of measures are, in principle, capable of being taken in response to the same defect.

114. The three-fold description of relevant measures does not appear to us to create sealed compartments with precise lines of demarcation. Each measure is described by reference to the purpose for which it is taken - to remedy, to prevent, to reduce - rather than by reference to a particular activity. The definition could be visualised as a Venn diagram of overlapping descriptors by which the same activity might easily fall within more than one classification. The removal of a combustible cladding panel would remedy a building defect, but at the same time it would prevent the risk associated with its presence from materialising. If an escape route is designed without adequate compartmentation, so that smoke is allowed to enter a corridor or staircase in the event of fire, the building would be said to suffer from a defect; the installation of appropriate fire doors would both remedy the defect and reduce the severity of any incident arising as a result of the defect (by delaying the entry of smoke into the corridor for long enough to enable residents to escape).

115. A further example of the difficulties created by treating the three-fold description of relevant measures as divided into sealed compartments is provided by the recently introduced building safety standard PAS 9980: 2022. As we have explained above, PAS 9980: 2022 offers a more nuanced assessment of fire risks and enables the justification of alternative remedial solutions short of replacing all combustible materials, components and systems, in contrast to so-called full or ADB remediation; that is to say remedial works required by current Building Regulations and Approved Document B. The demarcation required by the respondents' argument could, it seems to us, leave PAS works at risk of falling outside the scope of Section 124. By way of example, in the case of a relevant defect such as the presence of combustible materials in a building PAS works could constitute an approved method of dealing with the relevant defect falling short of actual replacement of the relevant combustible materials. It would be an odd, and undesirable result if such works were excluded from the scope of Section 124 because, while qualifying as an approved method of dealing with the relevant defect, they fell short of being the most extensive and, no doubt, most expensive method of dealing with the relevant defect.

116. We therefore part company with Mr Selby's argument at its first stage. We do not accept that each component of the definition of "relevant measure" is intended to describe a different activity with no room for crossover or duplication. The presumption against redundancy is not sufficiently strong to compel that conclusion and is outweighed by other considerations. Nor do we think Parliament is likely to have intended the

scope of remediation contribution orders to depend on fine distinctions between measures taken to remedy a defect or to prevent a relevant risk from materialising.

117. It is also relevant to consider the effect the respondents' interpretation would have on the achievement of the purposes of the 2022 Act. In the context of issue 1 we have previously described as untenable an interpretation of section 124 and Schedule 8 which would discriminate between individual leaseholders on the basis of when and if they had already contributed to the cost of responding to building safety defects. The respondents' argument for the purpose of issue 3 also has that consequence in that it treats leaseholders who have paid differently from those who have not yet paid, notwithstanding that they may live next door to one another and have received identical service charge bills for the same measures. Mr Selby KC did not suggest any reason why Parliament should have intended leaseholders to enjoy different degrees of protection by reference to whether they had already contributed to costs incurred in preventing relevant risks from materialising (in respect of which section 124 would not be available to them), or had not yet done so (hence enjoying the protections afforded by Schedule 8). To read the Act in such a way that section 124 and paragraph 8 discriminate between different leaseholders in materially comparable situations seems unlikely to reflect Parliament's intention.

…

118. For these reasons our conclusion on the third legal issue is that a remediation contribution order can be made in respect of costs incurred in preventing risks from materialising or in reducing the severity of building safety incidents.

34. *Lehner* did not deal with paragraph 9 of schedule 8 of the 2022 Act, as His Honour Judge Rodger KC identifies in paragraph 41 of his decision. That provision was instead one of the subjects considered in the decision of Mr Justice Johnson in *Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point* [2023] UKUT 271:

(iii) <u>Are the costs of a dispensation application, as a matter of language, capable of falling within the terms of Paragraph 9?</u>
103. Mr Allison's principal argument on the construction of Paragraph 9, in support of the second part of the Appellant's case, was that a dispensation application is not concerned with, or focussed upon the liability or potential liability of a leaseholder, within the terms of Paragraph 9. A dispensation order is not made against leaseholders. Nor is a dispensation order made in respect of the liability of any leaseholder. The focus of a dispensation application, as is clear from Daejan, is upon the question of whether prejudice has been suffered or will be suffered by leaseholders as a result of the relevant failure to comply with the

consultation requirements. The focus is not upon prejudice suffered as a result of a relevant defect.

104. Further to this argument Mr Allison also raised the question of what is meant by the reference to "any person" in Paragraph 9(1). He submitted that these words were not apt to include a leaseholder. The liability referred to in Paragraph 9(1) was a liability to put things right, in terms of remedying relevant defects. The purpose of Paragraph 9 was to give the leaseholder protection in respect of having to pay for professional costs relating to such liability. The leaseholder could never be in the category of persons who might end up with a liability incurred as a result of a relevant defect. Mr Allison also pointed out that the driver for many dispensation applications was a desire to ensure that Building Safety Fund funding could be obtained and retained. Service charges needed to be payable as a condition of funding, and strict timetables had to be met in terms of contracting for the required works. All this created problems for landlords, in terms of compliance with the consultation requirements, and created the need for dispensation applications, as in the present case. It would be odd, so Mr Allison submitted, if the landlord's ability to recover the costs of making such dispensation applications was cut off by Paragraph 9.

105. The starting point for considering these arguments seems to me to be the reference to "the liability (or potential liability) of any person incurred as a result of a relevant defect". Whose liability or potential liability is being referred to? The answer to this question seems to me to be relatively straightforward. The relevant liability or potential liability is one which is incurred as a result of a relevant defect. The liability or potential liability can be the liability or potential liability of any person. This seems to me to mean what it says. Any person can include anyone subject to the liability or potential liability. Given however the definition of a relevant defect in Section 120, given the jurisdiction to make remediation orders against relevant landlords in Section 123, and given that Paragraph 9 is concerned with what is payable by a service charge, the person most likely to be subject to such a liability or potential liability is a landlord or management company. It is difficult to think of circumstances in which a leaseholder (in their capacity as leaseholder and not, for example, in a separate capacity as joint owner of the freehold) would be such a person. To that extent I agree with Mr Allison. I do not think however that it is right to say that a leaseholder could never be the person referred to in Paragraph 9. It seems to me that the words "any person" are capable of including a leaseholder, even though it is difficult to think of circumstances in which a leaseholder would be the person liable or potentially liable to deal with a relevant defect. I am however doubtful that this particular point matters much. What seems to me to be important is that the liability or potential liability is the liability or potential liability of the person who is liable or potentially liable to remedy the relevant defect. The most obvious example of such a person is a landlord who is obliged to remedy a relevant defect. Indeed, the Appellant may be said to be a good example of such a person.

106. One other point which arises in this context is whether the reference to a liability or potential liability in Paragraph 9(1) means, and only means, a liability arising under the 2022 Act itself, or extends to include other liabilities, such as a landlord's contractual liability to remedy a relevant defect, arising pursuant to the landlord's covenants in leases of flats in a building. In support of his arguments on the correct approach to the construction of Paragraph 9 Mr Allison referred me to the Explanatory Notes to the 2022 Act, and specifically to paragraphs 1756-1759, which are within the section of the Explanatory Notes which deals with Paragraph 9. I should mention at this point that Mr Allison's position was that I was able to look at the Explanatory Notes, as an aid to the construction of the 2022 Act. It is clear that courts and tribunals do have the ability to look at explanatory notes as an aid to the construction of a statute; see the explanation of the correct approach to statutory interpretation given by Lady Arden and Lord Burrows JJSC in their joint judgment in Kostal UK Ltd v Dunkley and others [2021] UKSC 47, at [109].

107.The Explanatory Notes comment on Paragraph 9 by reference to the liabilities of landlords under the 2022 Act, which might be said to support the argument that the liabilities referred to in Paragraph 9(1) are only those arising under 2022 Act. The reference to "any person" in Paragraph 9(1) may also be said to reflect the fact that a number of different categories of person can be liable to remedy relevant defects under the terms of the 2022 Act.

108. As against these considerations, the reference to a liability or potential liability in Paragraph 9(1) is open ended, in terms of its wording. As such, it may be said to include liabilities arising under the 2022 Act and liabilities arising from other sources. In the present case I do not think that the point matters a great deal, and I make no final decision on this particular point. I assume that the Appellant's liability to carry out the Works arises or is capable of arising both from the Appellant's contractual obligations under the leases of the Flats and from the provisions of the 2022 Act. In any event Section 123(1) defines a remediation order as an order requiring a relevant landlord to remedy specified relevant defects. Section 123(3) defines a relevant landlord in the following terms:

"(3) In this section "relevant landlord", in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect."

109. As can be seen, this definition ties the liability of a landlord to be made the subject of a remediation order to a landlord's contractual or statutory liability to remedy a relevant defect.

110.This analysis of the second part of Paragraph 9 clears the way to considering the wording of the first part of Paragraph 9(1). The first section of this wording is straightforward. No service charge is payable under a qualifying lease in respect of legal or other professional services. The

mechanism by which this is achieved is set out in paragraph 10, which deems the costs incurred or to be incurred in respect of legal or other professional services not to be relevant costs within the meaning of Section 18(2) of the 1985 Act, and thus irrecoverable by way of the service charge.

111. What remains is identification of the legal or other professional services referred to in Paragraph 9. They are not any legal or other professional services. The relevant services must be services "relating to" the liability or potential liability which I have discussed above.

112. The words "relating to" are very wide. All that is required is a relationship between the services and the liability or potential liability of the relevant person incurred as a result of the relevant defect. I find it difficult to see how such a relationship can be said not to exist between the costs of a dispensation application made by a landlord, in relation to works required to remedy a relevant defect, and the liability of that landlord to remedy the relevant defect.

113. It seems to me that one can test this by reference to the present case. The Costs are the Appellant's costs of the Dispensation Application, representing legal and (it may be) other professional services rendered to the Appellant in relation to the Dispensation Application. As I understand the position, the Works comprise or, at the least, include works required to deal with a relevant defect or relevant defects, within the meaning of Section 120. There was no argument to the contrary from Mr Allison. The Appellant is the person liable or potentially liable to remedy the relevant defect or defects. I assume that such liability arises under the terms of the leases of the Flats and, at least potentially, also under the terms of the 2022 Act. The Appellant thus has a liability or potential liability incurred as a result of relevant defects, within the meaning of Paragraph 9. As I have already noted, it is not necessary, given that this liability or potential liability arises under the terms of the 2022 Act and as a matter of contract, to decide whether the reference to liability or potential liability refers only to a liability or potential liability arising under the 2022 Act or includes a liability or potential liability arising from another source.

114. In order to ensure that the Appellant's ability to recover the costs of the Works by the Service Charge is not capped at £250 per Flat, the Appellant has been obliged to make the Dispensation Application. It seems to me that the legal or other professional services rendered to the Appellant in the Dispensation Application are quite easily and naturally described as services "relating to" the liability or potential liability of the Appellant incurred as a result of the relevant defects to which the Building is subject. The relationship seems to me to be an obvious one.

115. I take Mr Allison's point that this construction of Schedule 9 is capable of causing problems for landlords making dispensation applications for the purposes of ensuring Building Safety Fund funding for works required to remedy relevant defects to buildings. I do not think however that this point is anywhere near sufficient to justify a reading of the words "relating to" in Paragraph 9 as excluding the professional services rendered to the

Appellant in the Dispensation Application. Put simply, the words "relating to" are very wide, and were no doubt intended to be very wide. I also note that sub-paragraph (2) of Paragraph 9 contains a wide-ranging set of categories of services which are included in the reference to services in sub-paragraph (1). In particular, such services include services provided "in connection with…..(b) any proceedings before a court or tribunal". It is hard to see how this is not capable of extending to services provided in relation to a dispensation application, in circumstances where the dispensation application is made by reason of the landlord having a liability or a potential liability to remedy a relevant defect or relevant defects.

116. As I have already noted, in support of his arguments on the correct approach to the construction of Paragraph 9 Mr Allison referred me to the Explanatory Notes to the 2022 Act, and specifically to paragraphs 1756-1759, which comment on Paragraph 9. I do not need to set out each of these paragraphs, but I note that paragraph 1758 states as follows:

> *"The terms of many leases will allow for landlords to pass legal and other professional costs through the service charge. The purpose of Schedule 8 is to protect leaseholders from costs associated with historical building safety defects. Where landlords incur costs in connection with their new liabilities under the Act, this paragraph prevents these costs incurred by landlords from being passed to leaseholders. Without these protections, it would be possible for landlords to pursue spurious or unrealistic legal claims and charge these costs to leaseholders; this paragraph mitigates against that and ensures incentives are aligned by requiring building owners and landlords to absorb the costs of their own legal and other professional advice."*

117. The language of this paragraph and the remainder of the commentary on Paragraph 9 in the Explanatory Notes does not seem to me to provide any support for the argument that the professional services rendered to the Appellant in the Dispensation Application are not services relating to the Appellant's liability to carry out the Works incurred as a result of the relevant defects. The relevant words used in paragraph 1758 are "associated with" and "in connection with". Both of these terms have a width similar to "relating to".

118. I therefore conclude that the costs of a dispensation application are capable of falling within the terms of Paragraph 9, with the consequence that the Costs are capable of falling within the terms of Paragraph 9…

35. Finally, in *(1) Almacantar Centre Point Nominees No 1 Limited (2) Almacantar Centre Point Nominees No 2 Limited v The Leaseholders of Centre Point House* LON/00AG/LSC/2023/0012, we (Regional Surveyor Ms Helen Bowers, Mr Ian Holdsworth MSc FRICS, and I) said this about paragraph 10 of schedule 8 of the 2022 Act:

303. In the alternative in relation to the alternative finding that only parts of the façade are a 'cladding system' within the terms of paragraph 8, paragraph 10(2) of schedule 8 of the Act (said to supplement paragraph 8 but being more interpretative than additional) states as follows:

10
(2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing –
(a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else)
(i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of service charge payable under the lease, or
(ii) are to be met from a relevant reserve fund…

304. The Proposed Scheme is either completely in pursuit of cladding remediation and therefore is 'that thing', or is partly in pursuit of cladding remediation. Is that other part therefore 'anything else'?

305. That term is as wide as possible. No assistance can be derived from either the Explanatory Notes or Hansard in that regard, but what else could 'anything else' refer to but parts of the self-same works that encompass parts that are 'the thing' and parts that are 'another thing'?

306. If it is partly in pursuit of cladding remediation, and any other part of the Proposed Scheme is not in pursuit cladding remediation but is in pursuit of façade remediation of the same structure of which there is no identifiable divisible set of works that can be done to achieve remediation of the cladding, we consider that other part is something apt to be described as 'anything else'. In our view, 'the thing' and the 'other thing' must have a nexus and be in the pursuit of an outcome that relates to the cladding.

307. That might be to add a gloss to the words used by the statute. We do so intentionally. A wider interpretation, that would nevertheless be supportable on the natural meaning of the words used, would potentially lead to absurdity in the case of unrelated works. If the purpose of paragraph 8 is to ensure that leaseholders do not pay for the remediation of unsafe cladding, the provision of the protection in relation to 'anything else' must be to ensure that the protection applies to the whole of the works that will achieve remediation of the unsafe cladding, whether or not they also form part of a more extensive scheme of works as part of which the remediation of the cladding will be achieved. It is not to protect leaseholders from costs that are not related. For example, no-one would say that a leaseholder should not pay for garden re-walling works simply because the same contractors were carrying out cladding remediation to a building as part of the same contract.

308. In this case there is no other element of the Proposed Scheme that is not in pursuit of the remediation of the façade that has been left to get into an unsafe state. The nexus in this case is the façade remediation, which comprises cladding remediation. The outcome will be a remediated façade with no unsafe cladding (and which is put into a condition to meet the Applicants' obligations under the lease by being overclad).

36. It should be said that all of those decisions (except *Lehner*, so far as we are aware) are currently the subject of appeals. *Hippersley Point* and *Triathlon* are appealed, we believe, on the basis of arguments that do not arise in the present case. *Centre Point House* is appealed on points of statutory interpretation, which (if maintained) includes interpretation of paragraph 10. That is of course to be expected from new legislation, particularly legislation as difficult as the 2022 Act.

(a) Does the 2022 Act prevent the Respondent from passing on the costs of the "Hydrock Fire Safety Report and related services" and Eagerstates' management fee?

37. Mr Gurvits' simple submission on this point in the Respondent's 'statement' was: "*The legislation is quite clear that the costs of remedial works cannot be passed on. The Act is also clear that the costs of pursuing the developer may not be passed on. However, the costs that can be passed on do include professional fees incurred in the relevant works*."

38. As may be seen, this was a bare assertion without the legal argument required by directions, and apparently made without reference to the 2022 Act. Mr Madge-Wyld sought to confine Mr Gurvits' assertion within paragraph 3 of schedule 8 of the 2022 Act.

(i) Paragraph 9 – 'professional fees'

39. We asked him first to address us on paragraph 9, which directly deals with professional fees incurred in connection with relevant defects.

40. Mr Madge-Wyld sought to persuade us that the Respondent had had no notice of the argument as it is not what the Applicants' application says in terms. While that is true, it is very clear that Mr Gurvits understood that what was being referred to was professional fees. As Assethold's designated manager of a very substantial portfolio, one would hope that he would be familiar with the 2022 Act, which places a substantial additional burden on the landlord to achieve the safety of their residents. We further drew Mr Madge-Wyld's attention to paragraph 49 of the decision in *Lehner* in which His Honour Judge Rodger KC says: "*It is for the FTT to determine in every case whether the leaseholder protections apply, and the burden on it is particularly heavy where one or both of the parties is unrepresented*."

41. Mr Madge-Wyld's argument ran thus: paragraph 9 of schedule 8 of the 2022 Act does not apply to the costs, the subject of this application. That is because there is no 'liability' of a person that has been incurred as a result of a relevant defect. Paragraph 9 is not connected with questions of payment of the service charge, but with suing the developer, or obtaining legal advice or a report to defend a claim against the landlord. He submitted that he could not conceive of there being any 'potential liability' in the instant case on which paragraph 9 would bite, given the narrow circumstances in which he argued paragraph 9 applies.

42. Mr Madge-Wyld conceded that it was unlikely that a £30,000 report to deal with identifying remediation of defects would be commissioned without prior knowledge or suspicion of a potential liability, whether civil or criminal (under the 2022 Act or another). He conceded that, had there been a previous investigation leading to the intrusive investigations carried out by Hydrock, that would be sufficient to indicate that the sums incurred in obtaining the Hydrock report 'relat[ed] to the potential liability of any person… as a result of a relevant defect'. He submitted there was however no evidence to demonstrate why the report had been prepared.

43. Ms McDonnell stated that the Hydrock report was in fact the second report. There had been a previous report in connection with an application to the Building Safety Fund ('BSF'), which application the BSF had rejected. The leaseholders were told that was because of the insufficiency of the first report.

44. That evidence appears to be supported by email exchanges between 22 September 2022 – 21 July 2023 between leaseholders and Mr Gurvits, in which the leaseholders note they had discovered that the Respondent's application to the BSF had been rejected "*due to an unsatisfactory initial review owing to the application not meeting the requirements as set out by the relevant guidance*". Mr Gurvits replied on 17 May 2023: "*We are in touch with the BSF about arranging a meeting to discuss what further information they require, together with Hydrock. The BSF are now dealing with this and we had no response from Hydrock.*" The leaseholders sought answers by an email reply of 21 June 2023: "*Why is Hydrock no longer cooperating with you – did the Government reject the Hydrock report (which you commissioned and strongly defended) because it was flawed? What are the specific issues that were given on why this funding was rejected?*". No response appears to have been made.

45. The demand for 'estimated' sums for the Hydrock report in addition to Eagerstates' management fees was after that date, on 13 July 2023, by email **[443]**. The cost was said to be £30,000, plus a 'management fee' of £3,600. The total said to be demanded was mathematically incorrect – leaseholders were asked to pay £36,000 between them. That appears to indicate that the demand was in respect of at least a version 2 of the Hydrock report, since there had already been a report provided to the BSF before 22 September 2022.

46. No application to the BSF would in any event have been sustainable without the Respondent having first identified that cladding required remediation within the scope of the fund.

47. We consider that evidence is decisive of the paragraph 9 point. We have no hesitation in determining that the sums are for professional fees incurred for the Hydrock report and "related investigations", which Mr Gurvits has failed to identify. They are, in addition to the £30,000 for the Hydrock report, £546 for Optimal and £7,440 for Dunn CPS. There is no evidence from the Respondent to the contrary. Where we refer to the Hydrock report below, we use that term to refer to all of these 'other investigations', as Eagerstates does in its demand (and because the Respondent has not put us in a position to do otherwise).

48. Even if we had not so determined, we would nevertheless have rejected Mr Madge-Wyld's submissions that, to paraphrase, the Respondent did not know it had liability until relevant defects were identified in the Hydrock report, and therefore the cost of the report could not have been incurred in respect of the Respondent's liability or potential liability.

49. That is a position that simply fails to acknowledge the breadth of the 'potential liability' part of the provision. Whether liability under the 2022 Act, contractual liability, other civil liability, liability arising from statutory obligations, or indeed criminal liability (and one must not forget that the 2022 Act creates a swathe of new criminal offences yet to come into force, in particular in respect of higher risk buildings like this one and the failure to adhere to the new part 4 obligations), a FRAEW report does not exist in a vacuum.

50. Paragraphs 106 – 108 of *Hippersley Point*, as set out above, seem to support that position, even if the comments in that regard are *obiter*.

51. The use of the words 'in connection with a relevant defect' also indicate that the provision is much wider than either just 'for' or 'because of a relevant defect', which is the way in which we would need to read the provision in order to give it the effect Mr Madge-Wyld argues for. We suggested to him that this was a 'chicken and egg' scenario. There is no simple answer to 'which came first'. The circumstances must be looked at in the round. We are satisfied those words do not indicate that there has to be certainty that there is a relevant defect or certainty of liability in order or any professional report to be caught by the provision, and therefore disagree with the Respondent's submission.

52. If the report crystalises the fact that there is liability or potential liability because it confirms the landlord's suspicions that a relevant defect exists, then it is a report obtained 'in connection with a relevant defect'.

53. We cannot envisage circumstances in which a landlord would obtain such a report, at a cost of £30,000, unless it was obliged to in connection with, at the very least, its suspicion of its potential liability as regards the fire safety of a building. If it did so, it would be at significant risk that its leaseholders would succeed in an application seeking a determination such a cost was unreasonably incurred under section 19 of the 1985 Act. If the report confirms a fire safety risk, that establishes the connection with a relevant defect.

54. We further note that the relevant defects identified in the Hydrock report are cladding/compartmentation. Paragraph 8 of schedule 8 would seem to potentially doubly-exclude recovery of this sum, as the report was obtained in connection with remediation of the cladding which is said to be unsafe due to its flammability.

55. The question of whether a management fee is a sum incurred for professional services relating to liability (or potential liability) of a person in connection with a relevant defect is more nuanced. It might be that such (unidentifiable) services as Eagerstates might have provided could be described as relating to the Respondent's liability, or to Eagerstates' own management obligations to the Respondent to which the Respondent's liability is incidental. We consider that paragraph 9 is sufficiently wide as to be capable as incorporating that management fee, and would reason as above that therefore it is not recoverable by reason of paragraph 9.

56. However, even if we are wrong in that, we determine that, regardless of whether those fees are also covered in paragraph 9, the management fees are covered by paragraph 10 of schedule 8 of the 2022.

57. In *Centre Point House*, we considered the meaning of a '*thing*' and '*anything else*' in paragraph 10(2) at paragraphs 303 – 305 of our decision as set out above. We determined that 'anything else' must have a common nexus with the 'thing' as otherwise the provision was so wide as it would lead to absurdity.

58. One of the 'things' to which paragraph 10 applies is paragraph 9 professional costs. Reminding ourselves of what paragraph 10(2) says:

> (2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing –
>
> (a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else) –
>
> (i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or
>
> (ii) are to met from a relevant reserve fund…

59. As explained in *Hippersley Point*, the 'relevant provisions' referred to in paragraph 10(2)(a)(i) are sections 18 – 30 of the 1985 Act.

60. Mr Madge-Wyld submits that there is no nexus between the management fee and the professional fees. To find the management fees to be caught by the provision would be alike saying the leaseholders did not have to pay for the garden wall (taking the analogy we used in *Centre Point House*).

61. While we agree that there is no explanation of the management fees provided by Mr Gurvits, that does not mean there is no nexus that can be established between the management fee and the professional fees. As demonstrated by the July 2023 demand, Eagerstates added a 12% fee onto the then-estimated sum for the Hydrock report. No other estimated charge was demanded and that sum can only have been in connection with the Hydrock report. The fact that there is no explanation for what Eagerstates did to earn their 12% is neither here nor there.

62. The final sum for the "Hydrock Fire Safety Report and related investigations" was stated in the "accurate accounts" as £41,932.80. 12% of that sum is £5,031.94. Again, Mr Gurvits has provided no invoice from Hydrock, Optimal or Dunn CPS.

63. The leaseholders say their charges amounted to £37,986. 12% of that sum is £4,558.32. Adding those sums together comes out at a sum of £42,544.32, around£50 more than the sum the leaseholders say they do not owe. There is no evidence to demonstrate this is anything other than the 12% shown to be added onto the Hydrock estimate, and no evidence to show that Eagerstates did anything other than add the same percentage across all three reports as it demonstrably did in relation to the Hydrock report. If anything, the leaseholders' sum gives the Respondent a small benefit. The Respondent was given a *prima facie* case to answer, and Mr Gurvits, acting on its behalf, chose not to.

64. We reject Mr Madge-Wyld's submission that there is no nexus. On the evidence with which we have been provided, the management charge is part and parcel of the same investigations, with the managing agent just charging a extra percentage. That percentage is no garden wall.

(ii) Alternative argument: Paragraph 3 - "relevant measure"

65. In the circumstances, we need not deal with the alternative argument made by Mr Madge-Wyld that the investigations are not 'measures' taken to remedy the relevant defect; or for the purpose of preventing a relevant risk from materialising, or reducing the severity of any incident resulting from a relevant risk materialising, within the meaning of paragraph 1 of schedule 8, so that they are not caught by paragraph 3(1).

66. In case the argument were to become relevant, however, our decision would have been that, in light of what was said by Mr Justice Johnson and His Honour Judge Rodger KC in *Triathlon*, the investigations are indeed within the broad ambit of that term. Taking the analogy made there further, in order to 'cure' or 'reduce the symptoms' of a malady, such that the prognosis of the patient in the future is (for want of a better word) 'acceptable' (whether by cure or minimisation of the condition), there are a number of steps. The first step is that a patient identifies a number of of symptoms. The patient then presents their consultant with those symptoms.That leads the consultant to a suspected diagnosis, which will have a likely course of treatment. to the consultant then commissions tests to support the suspected diagnosis and confirm the right course of treatment. The outcome of those tests confirms the diagnosis and treatment. The treatment is what leads to the prognosis, but cannot be recommended or commenced without the tests. Part of the process of achieving an acceptable patient prognosis is those tests – they are either one of the measures, or one of the steps within a wider measure, taken in seeking to achieve an end outcome. The tests are ordered with a particular condition in mind, not in a vacuum.

67. We would therefore have determined that the Hydrock report was such a 'measure'. As has now been said a number of times both by this Tribunal and the Upper Tribunal, the Act is outcomes-focussed. We consider that our conclusion is supported by the analysis in *Triathlon*.

68. Having made such a finding, we would have also found that Eagerstates' management fees were encompassed by paragraph 10(2) (as applied by paragraph 10(1)), for the same reasons as set out above.

(b) Whether the sums incurred were reasonably incurred, are reasonable in amount and are payable.

69. We deal with this section only briefly.

70. By virtue of the above analysis, the sums incurred are not payable by the leaseholders by virtue of the provisions of the 2022 Act and are repayable to them. For the same reasons, they are not reasonably incurred, reasonable in amount or payable.

71. In the alternative, were our above analysis to be considered wrong on every point, the Applicants raised a *prima facie* case that the sums in question are not reasonably incurred and not payable. The Respondent chose not to engage with that case and was debarred from putting forward new arguments not raised anywhere but in Mr Madge-Wyld's skeleton argument.

72. We are entitled to determine the Applicants' case summarily on the basis of their documents alone (rule 9(8) of the Rules). It is for the Respondent to justify its decisions, including decisions made by reference to the lease in terms of actions/investigations, and in terms of the contracts it entered into

(or, in the case of estimated costs, how they derived a 'reasonable estimate'). It has not done so.

73. In the circumstances, we would have found that the costs were not recoverable pursuant to section 19 of the 1985 Act.

Application under s.20C and refund of fees

74. By their Application the Applicants apply for an order under section 20C of the 1985 Act, an order under paragraph 5A of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), and for a refund of the fees that they have paid in connection with these proceedings.

75. Neither party addressed us orally on that matter. Having read the skeleton arguments, and considering our findings above, we determine that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, and under paragraph 5A of the 2002 Act.

76. We further note, applying the analysis in *Hippersley Point* in connection with the dispensation application in those proceedings, paragraph 9 would also apply to the legal or professional fees of these proceedings.

77. We also direct the Respondent to pay to the Applicants, via their representative Ms McDonnell, the sum of £300 comprising the fees charged in the course of these proceedings, within 28 days.

Name: Judge N Carr **Date:** 24 June 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).