FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/34UE/LVH/2024/0001** **CAM/34UE/LIS/2024/0003**
Property	**:**	**1-12 Kings Walk, King Street, Kettering NN16 8JF and 1-12 Regent Gate, Regent Street, Kettering NN16 8JD, known as the "Old Bakery"**
Applicants	**:**	**1. The Kettering Old Bakery Apartments Ltd** **2. All leaseholders of dwellings at the Property**
Respondent	**:**	**John Socha**
Types of applications	**:**	**Order/directions following expiry of appointment under management order, payability of service charges**
Tribunal	**:**	**Judge David Wyatt** **Dr J Wilcox BSc MBA FRICS**
Date of directions	**:**	**10 April 2025**

DECISION

Decision

The tribunal orders as follows:

(1) by **12 May 2025** the Respondent (John Socha) shall pay to the First Applicant (The Kettering Old Bakery Apartments Ltd) the cash closing balance of £4,164;

(2) by **12 May 2025** the Respondent shall pay to the First Applicant the further sum of £1,000 (in respect of the 2020 payment from the insurance brokers);

(3) the service charges determined below as payable were payable, leaving the balance(s) set out in the table at paragraph 56 below (which may be recoverable from the Respondent subject to any defences he may have). Unless by **12 May 2025** the Respondent gives the First Applicant the Gate Certificate (as set out in paragraph 34 below), the balance will be increased by £1,449 because the service charge payable for installation of the gates will be reduced by that amount; and

(4) by **12 May 2025** the Respondent shall pay to the First Applicant the further sum of £320 to reimburse most of the tribunal fees paid by them.

We have split the payments required under (1) and (2) above because the First Applicant may need to hold or account for them separately (as service charge monies held on trust, or repayments to leaseholders).

By **17 April 2025** the First Applicant must send copies of this decision to the Respondent (using all contact details they have for him) and to all leaseholders to ensure they receive this promptly.

Reasons

Background

1. The Property was previously a bakery and food warehouse. In the 1990s/2000s, it was converted into 24 flats by a developer, Templewood Estates Limited, who sold leases "*off plan*" largely to buy-to-let investors, until 2011/12 when receivers were appointed. The parties agreed that each lease provides for payment of an equal (1/24) share of service charge costs.

2. On 16 April 2012, Powell & Co Property (Brighton) Limited ("**Powell**") purchased the freehold title at auction. The developer was dissolved in 2013. Powell later transferred part of the title to a related company, apparently seeking to frustrate a right to manage claim.

3. The Property has a basement and is composed of two main buildings, extending up to three storeys, accessed by external staircases. The flats are of varying sizes and layouts, some extending over several storeys. The conversion works did not comply with the relevant Building Regulations or fire safety requirements. The Property is described in detail in a tribunal decision dated 4 April 2014, which determined payability of disputed service charges (CAM/34UE/LSC/2013/0130). Powell had sought over £750,000 for major works. The relevant tribunal decided that a reasonable estimated cost was £123,268. Powell then collected over £80,000 towards those anticipated costs, but did not carry out any of the works. A further tribunal case decided payability of insurance costs in 2016. Those costs were relatively high in view of the fire safety and other problems with the Property but limited by reference to the breaches of the landlord's repairing obligations.

Management orders

4. The Respondent, John Socha of Orchard Block Management Services Limited ("**Orchard**") was first appointed manager of the Property by a tribunal from 6 September 2018 until 5 September 2020, under the terms of a management order made in CAM/34UE/LAM/2018/0003. This order required Powell to pay over to the Respondent the service charge sums they had collected and continue to insure the property, expecting that the Respondent would then carry out any works required by the local authority and fire service.

5. Powell refused to hand over the funds they were holding, saying (in effect) that they needed these funds to pay for insurance and other costs. No enforcement action was taken by the leaseholders or the Respondent (who said leaseholders had, understandably, been unwilling to pay the requisite legal costs). Instead, most of the leaseholders refused to pay ground rent and insurance premium contributions. Powell then brought nine sets of County Court proceedings against leaseholders, seeking for example over £98,000 for the insurance premium to March 2019. In early 2020, the County Court (HHJ Hedley) found breaches of the landlord's repairing covenants, ordered the leaseholders to pay their share of an insurance cost of £20,750 and ordered Powell to pay the costs of those proceedings.

6. The period of appointment under the first management order expired, but the Respondent continued to manage the Property with agreement (or acquiescence) from Powell. On 14 June 2021, the leaseholders of 17 of the 24 residential flats at the Property applied for an order re-appointing the Respondent (CAM/34UE/LAM/2021/0001). In support of their application, they relied on the Respondent's discussions with Powell, helping them to procure insurance at a more reasonable cost (introducing a broker identified by one of the leaseholders) and said 21 of the 24 leaseholders were now making payments towards service charges. They said the "*Phase 1*" work which the Respondent had procured and paid for had been successfully carried out, improving security (public access was causing a range of problems), clearing waste, stopping a roof leak, paying for the electricity supply, installing lighting and the like.

7. On 10 November 2021, the tribunal made a new management order appointing the Respondent from 12 November 2021 until 24 March 2024. The tribunal had not been persuaded that the Respondent should be appointed to embark on unfunded litigation against Powell, or leave the risk that Powell would fail to insure (as leaseholders had requested); leaseholders were already in further County Court litigation with Powell. The management order recited that the purpose of the order was to provide for adequate independent future management of the Property, including insurance of the Property by the Respondent and (subject to receipt from the leaseholders of sufficient funds) carrying out urgent fire safety and other works. The tribunal had made it clear that it was only prepared to appoint the Respondent on this basis, and did so after that was accepted. The relevant decision notice, dated 1 December 2021, describes the background in more detail.

8. Following that appointment, the Respondent seems to have worked to pursue mediation with Powell to seek to collect any remaining funds from them and purchase the freehold to remove the threat they represented. He also seems to have been endeavouring to obtain substantial unpaid service charges from mortgagees exercising their power of sale over some of the leases, hoping these would help fund the next phases of works. He apparently persuaded leaseholders to co-operate and set up The Old Bakery (Kettering) Freehold Ltd as proposed purchaser, with himself and one of the leaseholders as directors and shareholders, naming that company on the buildings insurance policy in readiness. It appears that he paid substantial legal/mediation costs himself, expecting to be reimbursed by leaseholders.

9. However, following mediation, Powell sold the freehold title(s) on 9 June 2023 to the First Applicant, The Kettering Old Bakery Apartments Ltd, a new company established by those leaseholders who were funding the purchase (we will refer to this company as the "**freeholder**"). Relations between the parties rapidly deteriorated, if they had not already.

Procedural history

10. On 19 December 2023, the freeholder (represented by Conor O'Sullivan, a director) applied to the tribunal (CAM/34UE/LVH/2024/0001). This was made and treated as an application under section 24(9) of the Landlord and Tenant Act 1987 (the "**1987 Act**") and/or under the management order for directions. Amongst other things, they sought accounting for ground rent, service charges, disclosure of insurance commission details and statements for funds held, and directions for reimbursement of unexpended monies. The Respondent replied that some leaseholders had not paid service charges sought from them and 15 of the leaseholders had previously agreed to pay for litigation/mediation costs, so he had paid them, but he had not been reimbursed. Mr O'Sullivan said leaseholders had not been invoiced for such costs. The other correspondence between the parties was similarly unproductive.

11. On 23 February 2024, a prohibition notice was imposed by the fire and rescue service, describing insufficient fire resistance between the undercroft car park, and the flats above and escape staircases. On 14 March 2024, they lifted the prohibition (because, it seems, the residents had cleared the car park). They replaced this with a restriction notice to the effect that no vehicles of any description were to be parked, stored or allowed access to the car park until specified fire resistance measures had been taken.

12. On 28 February 2024, the tribunal gave initial directions, warning that it would not have jurisdiction to deal with some of the matters sought by the freeholder, such as claims for compensation for alleged breaches of the management order(s) and a range of complaints. The directions required the Respondent to produce accounts and any other documents and information which could readily be provided to answer the queries raised.

The directions also reminded the parties of the provisions in the management order in relation to closing accounts.

13. No application was made to extend the period of appointment under the management order, which expired on 24 March 2024. The freeholder appointed a new managing agent. The Respondent failed to produce the closing report required by the management order. The Respondent produced various accounts following the directions, but sought more time to produce some, including the final closing accounts. On 16 April 2024, the tribunal gave further directions. The time limits were extended and the potential need for an application under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") to deal with some matters raised by the freeholder was noted.

14. On 19 June 2024, the freeholder provided an update stating that no progress had been made over the last two months. They indicated that they had been willing to mediate but sought accounting information first. At the same time, the freeholder made their application under section 27A of the 1985 Act (CAM/34UE/LIS/2024/0003). This sought determinations as to whether disputed service charges are/were payable for the service charge years from 2018/19 to 2023/24.

15. On 6 September 2024, the tribunal gave detailed case management directions to prepare for a final hearing. These added all the residential leaseholders as parties to these proceedings, to ensure they could make representations if they wished to do so. The directions fixed a video case management hearing ("**CMH**") for 10am on 16 October 2024 to enable the tribunal to ask questions of the parties and give any further directions beyond those set out for normal exchange of case documents. In readiness for the CMH, the Respondent was directed to provide by 2 October 2024:

    a) details of ground rents collected in respect of the current freeholder's period of ownership;

    b) all service charge accounts for the years/periods in dispute but not yet produced (apparently, those for the year/period to 24 March 2021 and the year/period to 24 March 2024);

    c) sample demands for payment;

    d) details of any payments made;

    e) buildings insurance documentation (including the policy schedules detailing the relevant cover and premium) for the years in dispute;

    f) a witness statement signed by the Respondent with a statement of truth which confirms that he has carried out reasonable enquiries of his insurance brokers and searches of his records to provide the following information, and confirms:

i. a breakdown of all remuneration, commission or other sources of income and other benefits in connection with placing or managing insurance received by the Respondent, any person associated with them, their broker and any other agents in relation to insurance;

ii. what services were provided for the income received; and

iii. any claims history taken into account in relation to the relevant policy or policies.

16. The directions also required the Respondent to by the same date, if so requested by any of the Applicants a reasonable time in advance, produce for inspection at the Respondent's offices receipts or other evidence of expenditure. The Applicants promptly contacted the Respondent, on 12 (followed up on 20 and 29) September 2024 to ask when they could visit his offices for this purpose. There was no response.

17. The Respondent failed to comply with these directions and failed to attend the CMH. He sent an e-mail in the early hours of the morning asking for a stay, in response to an e-mail from the case officer the previous morning sending him the link needed to join the hearing by video. On 16 October 2024, the tribunal gave further directions, refusing to stay the proceedings. To help ensure all parties could participate effectively, the tribunal arranged for the final hearing to be remote (by video). The Applicants alleged that the Respondent's failures to comply with directions were deliberate and without good reason; the further directions warned that this would appear more likely if the Respondent failed to comply with them.

18. The directions of 16 October 2024 repeated the directions which had been given earlier, requiring the Respondent to disclose the matters noted above by 1 November 2024. They required the Respondent to apply by 23 October 2024 with any medical or other evidence if he was unable to comply. They required the Applicants to produce their case documents by 22 November 2024 (which they did) and the Respondent to produce his case documents by 13 December 2024.

19. The Respondent then wrote to the tribunal. He said that he had only been notified of the CMH the day before, but made no suggestion that he could not comply with the directions. On 17 October 2024, the tribunal refused to set the directions aside, noting that the parties had been informed on 6 September 2024 of the date and time of the CMH, and the Respondent had received the joining instructions before the hearing. The Respondent was encouraged to focus on reading carefully, and ensuring he complied with, the directions which had been given.

20. The Respondent failed to comply with the directions. His only response appears to have been an e-mail dated 26 November 2024 stating that £27,312.57 was still owed to the Respondent "*personally*" for "*legal works to acquire Kettering Old Bakery Apartments Ltd…*".

21. On 20 December 2024, the tribunal office notified the parties that the substantive hearing would be on 1 and 2 April 2025, providing video joining instructions. Pursuant to the directions, the Applicants provided the hearing bundle in January 2025. We understand that, in about February 2025, the Respondent provided the missing accounts for the year to March 2021 and the final year to March 2024 (the Applicants had received them at that time; they were sent to us during the hearing).

22. On 17 March 2025, the tribunal sent a witness summons to the Respondent (together with copies of the notification and joining instructions for ease of reference) to seek to ensure his attendance. On 19 March 2025, Kerry Socha-Ayling (who works with the Respondent in his property management business(es)) e-mailed the tribunal saying that the Respondent was away, returning on 24 March, requesting adjournment. Later that day, the tribunal refused the adjournment. On the afternoon of 31 March 2025, the Respondent sent an e-mail to the tribunal office, stating that he had received "*no bundles or e-mails regarding this case*".

23. At the hearing on 1 April 2025, the freeholder was represented by Mr O'Sullivan. Richard Eisler (a shareholder and former leaseholder) and Hitesh Shah (a leaseholder) also attended and made submissions. The Respondent attended and confirmed that since his e-mail he had found his copy of the bundle and had read it overnight to prepare for the hearing. He represented himself, assisted by Kerry Socha-Ayling.

Ground rent

24. The only issue which had remained between the parties about ground rent was agreed at the hearing. It had related to the leaseholder of 1 Regent Gate, who had paid their annual ground rent of £350 on 19 July 2022 and 12 December 2023. The Respondent had paid the latter to the freeholder. Mr O'Sullivan accepted the explanation given at the hearing as to the timings and that the former had been paid to Powell on 30 March 2023, in the interval between the agreement which had apparently been reached at mediation in the autumn of 2022 and completion of the freeholder's purchase in June 2023.

Service charges and accounting - to March 2020

25. The Applicants challenged £400 for bank charges, pointing out that only invoices from Orchard had been provided for £100 per quarter. The Respondent said these were for bank charges from Metrobank for the two business accounts, plus direct debit charges, but no evidence was provided of the actual costs. Mr O'Sullivan observed that the freeholder's bank charges were about £100 for the year and most did not pay by direct debit. In the circumstances (a current account and a deposit account were operated, with some leaseholders paying many small sums by cheque, and the actual charges claimed in a later year were £200) we consider that bank charges of £200 for the year to March 2020 were reasonably incurred but the rest was not.

26. The Applicants had been concerned about a figure of £30,759.84 for fire-boarding, observing that this work had not been carried out. At the hearing, the Respondent thought that some fire-boarding work had been carried out, albeit perhaps not until later. Some very limited fire-boarding work might have been carried out during the Respondent's periods of management under the general cost headings in the accounts, but we have no real evidence of this. The fire-boarding appears at least mainly to have been carried out by the freeholder over the last year, since they took over management.

27. We understand why the Applicants had queried this, when the Respondent did not carry out outstanding fire-boarding works (of any substance), the freeholder had to carry out urgent fire-boarding work themselves funded by leaseholders following expiry of the management order to satisfy the requirements of the fire service, and the closing accounts were not produced until little more than a month before the hearing.

28. However, this is an entry in the accounts for sums receivable (the accounts list various service charges receivable and balance this on later pages by reference to overall unpaid service charges). It does not show the sum actually received and is not a cost paid. We do not make a direction in respect of the sums which were paid by leaseholders towards the demands under this heading for £1,281.67 sent to each leaseholder in April 2019 (the Applicants having observed that sums paid under these demands should have been held on trust for the purpose of these works, not used for other costs) because:

    a) some minor costs shown in the accounts (such as cladding a meter cupboard) may fall under this heading; and

    b) in any event, we are not satisfied that the Applicants paid more than will be covered by the cash balance shown in the closing accounts which the Respondent is directed below to pay over.

29. The Applicants had also been concerned that copy invoices had not been provided for £6,601 of the £17,743 costs shown in the service charge accounts for the period to March 2019. As had been explained, these proceedings are not an audit of all service charges. No real case was made to challenge these costs. All of the service charge accounts have been prepared by the same firm of accountants (Cobley Desborough). We recognise that these accounts make it clear they are based on samples of invoices, in the usual way. We are not satisfied that the Applicant has shown sufficient grounds to reopen these accounts, which we accept as evidence that these costs were incurred.

Service charges and accounting – year to March 2021

30. The bank charges for this year were disputed on the same grounds as those in the previous period. For the same reasons, we allow £200 of the £396 recorded in the accounts for this period.

31. The Applicants had been concerned about a figure of £29,652.96 for the "*Phase 1*" site security, clearance, lighting and repair costs, but again this appears a figure for income expected to be received from leaseholders, not itself a cost. The actual costs were accounted for in later years, so they are dealt with below.

Service charges and accounting – year to March 2022

32. The bank charges for this year were disputed on the same grounds as before, but the challenged figure of £400 was the estimated cost. The accounts record an actual cost of £200 for bank charges, which is allowed for the reasons given above.

33. The next challenged items were said to total £6,998 in respect of the electric security gates. The Applicants claimed the gates had never worked. The Respondent disputed that, saying they were important for the security of the site, particularly to stop fly tipping and other problems with trespassers, but had been attacked and misused (which is consistent with his contemporaneous correspondence in the bundle). Mr O'Sullivan accepted the gates had worked, but never for more than about 24 hours at a time. He observed that a certificate of conformity (it was not disputed that a certificate/declaration of conformity was required from the manufacturer/installer to comply with the machinery directive or the relevant regulations) had been requested several times, but never provided. The Applicants could only take us to relevant sums in the accounts for this period totalling £6,698. These are £5,796 for installation of the automatic gates, £156 for attending the gates, £530 for replacing damaged gates and £216 for replacing a gate.

34. The parties had produced little evidence for their assertions. In general, we consider these costs reasonably incurred. They were part of the security works carried out by the Respondent in his "*Phase 1*" works which were relied on by the relevant leaseholders when asking the tribunal to make a further management order re-appointing the Respondent. It appears at least most of the leaseholders do not live at the Property, which makes it more difficult to give weight to their complaints about the gates in the absence of evidence from their tenants or the like. However, the complaint about the repeated failure to provide the requisite certificate of conformity has force, in view of the importance of safe operation of these gates. In our assessment, no more than 75% of the installation cost was reasonably incurred without this, but it is fair to give one final opportunity to produce it. If by **12 May 2025** the Respondent gives the freeholder the certificate(s) or declaration(s) of conformity from the manufacturer or installer in relation to the electric motorised gates (the "**Gate Certificate**"), the relevant cost was reasonably incurred. Otherwise, we are not satisfied that any more than 75% of the installation cost of £5,796 was reasonably incurred and the remaining 25% (£1,449) may be recoverable from the Respondent.

35. Next, the Applicants were concerned about buildings insurance. On re-appointment in November 2021 with responsibility for insuring, the

Respondent had requested £980.30 from each leaseholder to cover the buildings insurance premium of £23,525.94. The Applicants assumed at least 10 leaseholders had paid, some by lump sum payments and some by monthly instalments. They had discovered that the buildings insurance policy had been cancelled in March 2022 (because, it appears, works required by the insurers had not been carried out), so asked whether two thirds of the sums collected should be refunded.

36. We note, and it seems troubling, that the Property was uninsured:

    a) from April 2022 until January 2023 (the Respondent said that a leaseholder was the cause of one of the policy cancellations, but as noted above it appears at least the first cancellation was the result of works required by the insurer not having been carried out); and

    b) from August 2023 (although this had taken everyone by surprise, it appears the insurers would not accept the new freeholder because its name was too similar to the previously proposed purchaser named on the insurance policy; apparently that was the result of a problem in the insurance market where properties are transferred to new related companies to avoid disclosing claims histories).

37. The Applicants could only take us to the Respondent's payment records which indicate total relevant payments in the region of £6,000. All of these are accounted for as part of the overall service charge payments. The accounts show £11,837 incurred for insurance in this period, which is in line with the breakdown obtained recently by Mr O'Sullivan from the brokers (£10,016.40 to cancellation plus a balance of £970.39 which was later added to the refund on cancellation of a subsequent policy). Mr O'Sullivan confirmed that the total refund of £2,530 (apparently including that £970.39) was recently recovered by the freeholder from the brokers for the service charge account. Accordingly, we are not satisfied that there are any remaining sums in relation to buildings insurance which have not been accounted for, save as follows.

38. When asked at the hearing whether he had received any commissions in relation to insurance for this Property, the Respondent said he had not. It seems to us that he had assumed this, or could not recall receiving any commission, not checked. Mr O'Sullivan took us to the e-mail in the bundle from the insurance brokers dated 3 January 2025, which notes that nothing further had been paid as a result of cancellation of the later policies but a commission rebate of £1,000 had been paid for 2020. At that time, the Respondent had introduced the new broker to Powell. The Respondent was not himself insuring or collecting service charges for insurance at this point, but the management order(s) set out the only sums which the Respondent was permitted to charge as fees or otherwise as a tribunal-appointed manager. In the absence of any explanation from the Respondent, and because the Respondent failed repeatedly to comply with case management directions (including the directions requiring a witness statement confirming searches to identify any commission or other payments in connection with insurance), we are satisfied on the

balance of probabilities that the Respondent or his company received this apparently undisclosed "commission rebate" of £1,000 from the brokers and the Respondent must pay this over.

39. For the next three disputed service charge items, the explanations given by the Respondent during the hearing were accepted. £10,048 had been queried for "brick maintenance", but it was explained that Brick Maintenance was the name of the contractor and, after the £5,068 shown in the accounts as received for the corresponding insurance claim, the amount charged for this work to repair water leak damage was £4,980. £2,631 had been charged for new electrical consumer units required for the two communal supply cupboards to comply with the new electrical standards. £2,400 had been spent on paving works because rodents had dug under the paving stones and around inspection hatches.

40. The Applicants had questioned £60 for resetting an alarm, pointing out that there is no "alarm". The Respondent explained that the electric gates had an alarm which was triggered if they were obstructed and had to be re-set. This seems to be in the nature of a safety/fault code and we consider it was reasonably incurred.

41. The Applicants had disputed £5,441 for roof works. They believed this cost had been charged to a leaseholder, but had provided no evidence of that. We are not satisfied that it had been. The invoices in the bundle for this figure are from Alderman Roofing in April 2021 for scaffolding and works which appear, as the Respondent said, to be focussed on repairing and replacing the valley linings and connecting areas between the two main buildings which make up the Property, to stop leaks. Again, this seems to be part of the "*Phase 1*" work described by the Respondent and the leaseholders who asked that he be re-appointed. We consider this cost was reasonably incurred as a service charge item.

42. Finally for this year, the Applicants queried £8,704 described in the accounts as "*temporary installation of collingwood lighting*". It became clear this referred to the £8,704.20 invoice dated February 2021 from Drage Electrics Ltd for replacing the standard and emergency lighting and related works. We are not satisfied that this cost was charged twice, which seemed to be the Applicants' main concern. We understand why the Applicants had queried this, by reference to other breakdowns of sums shown as receivable in relation to the "*Phase 1*" works. The worries about duplicate charges seem (again) to be the result of the Respondent funding these works himself in 2021 then seeking reimbursement through the service charge in 2022, and the parties failing to communicate adequately with each other.

43. The Applicants mentioned that the consultation requirements had not been fully complied with in relation to these electrical works. A notice of intention had been given in 2018 for such work and it was not suggested that any leaseholder had nominated a contractor from whom the Respondent should obtain a quotation. However, no statement of estimates had been provided. Mr O'Sullivan was concerned that the cost

appeared high and following the consultation process might have resulted in a cheaper quotation, but the Applicants had not provided any alternative quotations. Again, this was part of the "*Phase 1*" works which leaseholders said had been carried out and relied upon as a reason for re-appointing the Respondent. It seems to us that the fair way to deal with this is as follows:

a) unless any of the Applicants notifies the Respondent in writing by **12 May 2025** that they wish to dispute this charge on the ground of failure to fully comply with the consultation requirements, the full £8,704 (£362.67 per leaseholder) is payable and no further action will be needed in relation to this;

b) if any of the Applicants gives such notification, the Respondent may by **9 June 2025** make an application to the tribunal under section 20ZA of the 1985 Act (using the relevant application form, available from the public website) to dispense with the consultation requirements. The tribunal would normally then give directions to deal with any such application, which would typically require the Respondent to provide their case documents to all parties and any objecting Applicants to provide their case documents in response, providing evidence of any relevant prejudice (i.e. prejudice which would not have been suffered if the consultation requirements had been complied with);

c) if any of the Applicants gives notification under a) above and the Respondent does not apply for dispensation, the amount payable by the notifying leaseholder(s) would be limited to £250 rather than £362.67 (for the avoidance of doubt, the amount payable by the non-notifying leaseholders shall remain £362.67).

44. We do not consider that we should attempt in the table below to specify the balance of £112.67 which might be recoverable from the Respondent in respect of any leaseholder who objects as set out above if the Respondent does not then apply for dispensation or dispensation is not granted. The Upper Tribunal has indicated there is no strict time limit for the making of a dispensation application. Although a very late application might be an abuse, it seems this potential ground of dispute has been raised only relatively recently. If there is a dispute on this ground and dispensation is not sought, it will be for the relevant Applicant(s) to take advice on whether to seek a refund of the relevant amount(s) from the Respondent.

Service charges – year to March 2023

45. The bank charges for this year were disputed on the same grounds as for the previous periods. For the same reasons as given above, we allow £200 of the £400 recorded in the accounts for this period.

46. The Applicants had queried a cost of £528 for "intercom services", observing that there were no intercoms in the flats. The Respondent explained that the security system uses mobile phones to allow entry,

with the occupying tenants providing their telephone numbers which were then added to the system. The attending leaseholders had not been familiar with the arrangement. The explanation had been provided late, but we accept it, and this cost, as reasonably incurred.

47. The Applicants queried a cost of £9,387 for rewiring of communal areas, stating that the consultation requirements had not been complied with in relation to such work, if it was not a duplicate, and asking why it had been grouped in the accounts with references to an insurance claim. The Respondent explained that there had been a leak from a flat which had caused damage to other flats and to wiring in the communal areas. That had been the subject of an insurance claim, resulting in the £6,032 payment from insurers in addition to the other credits shown in the accounts. Mr O'Sullivan then rightly accepted that even if we include the £1,670 for removal of builders' waste with the £9,387 and deduct only the £6,032, the cost charged to the service charge account is below the £6,000 threshold (£250 x 24 flats each with an equal share of the service charge liability) for application of the consultation requirements. As with the similar items noted above, this was not a duplicate charge and appears reasonably incurred.

48. The next challenged items were £2,398 for "patch line pipework" and £437 for painting a corridor. The Respondent explained these were for, respectively, relining collapsed sewer pipes and painting a corridor which was in (even) worse condition than the rest of the building at the back of Kings Walk. Mr O'Sullivan accepted those explanations and so do we.

49. The next disputed item is £580 for hire of a dehumidifier. The Respondent explained that following a leak from a flat above Flat 1, the occupying family had needed this and it had helped avoid an insurance claim. He accepted that an insurance claim had been made in relation to other costs of the same leak (as above). He had not sought to obtain the funds from the leaseholder whose flat was the source of the leak because, he said, that was Mr del Prado, who would not pay charges. Mr O'Sullivan took us to some screen shots said to have been provided by or in respect of that leaseholder and to indicate some payments at least in 2021 and 2022. Ultimately, providing the dehumidifier to help the occupiers may have been a decent thing to do, but we are not satisfied that the cost is payable through the service charge.

50. The next item is £3,455 for "waste and soil removal". Again, that description had puzzled the Applicants and no explanation had been given. At the hearing, the Respondent explained that these were the costs of clearing sewage from Flat 4 close to the Christmas period, after the communal drains blocked. It was suspected that the cause of the blockage was another resident flushing away cat litter, but that was difficult to prove, and it was important to clear the blockage and the waste before it caused any more damage. We were told that the leaseholder of Flat 4 sought to claim under the buildings insurance policy for redecoration/other losses only to find that the policy had been cancelled (it appears a new policy had been procured but was cancelled as a result,

the Respondent said, of a dispute raised by a leaseholder with the broker). We accept the explanation given in relation to this £3,455 cost. Although it appears high, in view of the time of year and need to avoid further damage it appears reasonably incurred.

51. The last disputed service charge item for this year was £195 for replacing broken window handles. The Applicants said there were no communal windows. The Respondent said there were, in a staircase on the Kings Walk side up to a "couple" of flats. It may be unusual that such windows open and so have handles, but the residential conversion was conducted poorly. This item appears reasonably incurred.

Year to 24 March 2024

52. The Applicants had been concerned about anticipated charges for this period, but were largely satisfied by the closing accounts which had been produced. These accounts show relatively little was collected and done, with an accumulated balance of £180,657 in unpaid service charges. The only disputed charge is the same £400 for bank charges as before and we determine that £200 was payable for the same reasons.

53. The closing accounts show £3,898 and £266 cash remaining in the current and deposit accounts respectively, a total of £4,164. The Respondent agreed that he should hand this over, if the total of over £27,000 which he said he had paid for the Powell litigation/mediation costs was repaid to him. He was concerned that those leaseholders who he believed had agreed to refund the costs but had not participated in the actual purchase by the freeholder would not pay their share, and those who had participated would not be prepared to share the entire cost between them.

54. We recognise the potential force of the Respondent's argument, but in these proceedings he has failed to set out his case as required by the directions or provide sufficient evidence of what he said was agreed and what was paid. He has not invoiced anyone for these costs. Moreover, we are not satisfied that he can set off whatever claim(s) he may have (against some leaseholders) against the service charge money that he holds on trust under section 42 of the 1987 Act, as the Applicants pointed out.

Conclusion

55. For the purposes of the application under section 24(9) of the 1987 Act and/or the management order, we will direct the Applicant to pay over the cash closing balance and the insurance commission. These matters appear within the terms of the management orders and the scope of orders which may be made under section 24(4) and (9) of the 1987 Act in relation to a tribunal-appointed manager.

56. For the purposes of the application under section 27A of the 1985 Act, in respect of the disputed service charges which have not been fully upheld above, the sum shown in the second column of the table below is payable

and will leave the balance shown in the third column of the table below (which may be recoverable from Respondent subject to any defences he may have).

Item	**Charged**	**Determined**	**Balance**
Years to March 2020			
Bank charges	£400	£200	£200
Year to March 2021			
Bank charges	£396	£200	£196
Year to March 2022			
Install automatic gate(s)	£5,796	£4,347, or £5,796 if certificate provided [34]	£1,449 if certificate not provided [34]
Year to March 2023			
Bank charges	£400	£200	£200
Hire of dehumidifier	£580	Nil	£580
Year to March 2024			
Bank charges	£400	£200	£200
Total			**£1,376/£2,825**

Costs

57. Under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, we have a discretion to order any party to reimburse to another the whole or part of any tribunal fee paid by them. We do not consider that the £100 application fee paid for the first application should be reimbursed.

58. However, we consider that the Respondent should reimburse to the freeholder the application fee of £100 in respect of the service charge application and the £220 hearing fee. The Respondent failed to comply with directions, gave explanations only at the hearing and has not been successful in relation to the matters we have directed/determined above. However, we should not be taken to be encouraging any further costs application of the type mentioned by the parties at the hearing. This is generally not a cost-shifting jurisdiction (see rule 13).

59. We were glad to hear from Mr O'Sullivan that the fire-boarding works have been completed by the new freeholder and Building Control approval has now been obtained.

Judge David Wyatt **10 April 2025**

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).