FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/00HN/LSC/2024/0023/**
Property	**:**	**Viewpoint, 7-9 Sandbourne Road, Bournemouth, BH4 8JR.**
Applicant	**:**	**Keith Brown**
Representative	**:**	**Frank Groome**
Respondent	**:**	**Viewpoint Limited**
Representative	**:**	**Napier Management Services Ltd**
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	**:**	**R Waterhouse FRICS** **K Ridgeway FRICS** **T Wong**
Venue	**:**	**Havant Justice Centre, The Court House, Elmleigh Road, Havant, Portsmouth PO9 2AL**
Date of decision	**:**	**11 April 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sums identified in the Tribunal decision below are payable.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985; the cost of the proceedings may be passed through the service charge.

(3) The Tribunal does not make an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002; the costs of any administration charges may be passed through the service charge.

The application

1. The Applicant Keith Brown submitted an application form for the years 2018, 2019, 2020, 2021, 2022, 2023 and the future year 2024 ("the service charge years") disputing a collective service charge of £300,000 where the Applicant has an apportionment of 1.76% giving £5300.00 dated 5 February 2024. There is also an Application to the Tribunal to make an Order under section 20c Landlord and Tenant Act 1985, and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

2. Directions were issued on 3 December 2024, and a conciliation hearing was set down for 24 January 2025.

3. Directions were issued on 24 January 2025 following a Case Management and Dispute Hearing on 24 January 2025. The Directions of the 24 January stated;

   Only evidence and documents exchanged between the parties in accordance with the timetable below shall be included within the bundle.

   - The Applicants case to be submitted by the 7 February 2025
   - The Respondents case by 28 February 2025
   - The Applicant's Reply 14 March 2025.
   - The agreed Bundle submitted by 28 March 2025.

4. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years.

5. The Tribunal was furnished with an agreed bundle comprising 395 pages, which the Tribunal has read. In particular it includes, the

Applicant's statement of case, an annotated copy by the Respondent, and a further supplementary Reply by the Applicant dated 14 March 2025, and a Response dated 24 March 2025 by the Respondent to the Applicants Supplementary Reply. Scott schedule [99].

6. The Tribunal is grateful to the parties for their clarity at the hearing.

The hearing

7. The Applicant Keith Brown was represented by Frank Groome at the hearing and the Respondent Viewpoint Limited, the freeholder was represented by Aileen Lacey-Payne of Napier Management Services Ltd. Two Directors of the freeholder were present; Jean Mirfield and Christian Loehry.

The background

8. The property which is the subject of this application is known as View Point 7-9 Sandboune Road, Bournemouth BH4 JR. The property comprises 64 flats in 2 purpose-built blocs and one flat owned by the landlord company.

9. The two purpose-built blocks were built in 1975, the North block comprises flats 1-28 and the South Block comprises flats 29-65 with three entrances. In 1987 the leaseholders purchased the freehold from the original landlord and created a residential management company, Viewpoint Limited (VL) to hold and manage the property. In 2016 Napier Management Services Limited (Napier) was appointed managing agents.

10. Photographs [185] of the building were provided in the hearing bundle. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

11. The Applicant is the leaseholder of Flat 48 Viewpoint , 9 Sandbourne Road, Bournemouth, Dorset BH4 8JR.

12. The landlord under the lease is covenanted to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

Preliminary Issues

13. The Applicant at the start of the hearing produced a single A4 table. The Respondent had not been copied on it previously. The Applicant noted

the figures bar one or two were already in the agreed bundle. The Respondent agreed. The Tribunal admitted the paper in so far as both parties recognised the contents.

The Issues

14. The Applicants Statement of Case [51-62] categorises the challenges as follows;

(i) Repairs to J Block Walls West Elevation

(ii) Balcony Ceilings

(iii) Internal Cracking

(iv) Reserve Fund Contributions

(v) Insurance Costs

(vi) Administration Costs

(vii) Managing Agent Fees

Repairs to J Block Walls West Elevation

Chronology

In 2017 works took place to the West Wall of Southern Block including repairing lintels and cracked brickwork. These works were undertaken by Southern Concrete Services under the supervision of Greenward Associates but did not include any expansion or vertical joints.[65] In August 2018 R Elliott Associates Ltd, structural engineers produced a report in respect of external and internal cracking and reported that it could be solved by insertion of horizontal and vertical expansion joints. In November 2018 Winkle Bottom drew up a specification and in March 2019 a tender report. In September 2020 works were being undertaken to the wall when three of the existing lintels were found of inadequate specification for the inclusion of the vertical and horizontal joints. These three were replaced during the works.

15. It is the Applicant's position that in 2017/18 works were undertaken to "J" block west elevation. That the lintels were replaced to the 4th, 5th , and 6th floors along with the installation of horizontal expansion joints and substantial brickwork repairs. In 2020, as part of the investigations

carried out on the major works project to renovate all of the walls to both buildings VL received a Structural Engineers report into the earlier works. The report detailed the substandard quality of repairs to the 4th and 5th floors. A subsequent report from the Structural Engineer dated July 2021 confirmed the cost of the 2020 major works project had increased due in part to the additional cost of remedying the defects. [134]

16. The Applicant continues that when the report was received the original contractor should have been asked to correct the defects. However, instead the new contractors were authorised to remedy with the costs added in 2020/21.

17. The Applicant contends that they are not liable for the original works.

18. The Applicant notes the Structural Engineer found no fault in the works to the 6th floor but fault in 4th and 5th floor, so the Applicant contends that 2/3rds were at fault and so the reduction should be 2/3 which they calculate as being £26,882 with the applicants service charge apportionment being 1.764%.

19. The Respondent says that the September 2020 report from Elliots Structural Engineers was circulated in November 2020. By way of background the Respondent says, that in August 2018 R Elliott Associates Ltd (structural engineers) suggested external and internal cracking throughout View Point were due to movements between the brickwork and could be solved by the insertion of horizontal and vertical expansion joints to rectify the inherent defect. In November 2018 a specification was drawn up by Winkle Bottom and in March 2019 a tender report was made by the same. Application to Tribunal CHI/00NH/LIS/2018/0065 for determination as to whether such works were payable.

20. The Respondent says at [68] the lintels (on the 5th floor) had to be replaced on 5th floor specifically three lintels, noting the report of September 2020 which states that only lintels to the 5th floor will need to be replaced in the West Wall to accommodate the installation of expansion joints. The Respondent says the costs of addressing the three defective lintels on 5th floor was £601.77 plus vat. The reason the lintel replacements were modest in price was because there was already in place scaffolding for other works.

21. The Respondent says that during the drawing up of the specification for the insertion of horizontal and vertical expansion joints, specification of the three subject lintels was established by the Respondents Structural Surveyor as being below the standard needed to coexist with the vertical and horizontal joints. The Respondent says the amount is properly chargeable under the service charge.

22. The Tribunal has considered application CHI/ooNH/LIS/2018/0065 which was subject to a decision on 10 May 2019 which said

> *" if the works proposed by the Applicant to renew the roofs of the blocks and associated works, brickwork repairs to include the installation of vertical and horizontal movement joints to external brickwork and for the renewal of tanks and fans are carried out in accordance with the specifications produced by the Applicants then the costs thereby incurred by the Applicant (provided the costs are reasonable and the work of a reasonable standard) may be recovered by the Applicant from the Lessees as part of the service charge."*

23. In respect of the original works from 2017/18. The Tribunal finds they were properly specified and over seen. The evidence is that three lintels were subsequently replaced and the reason for this being that the further works of 2020 needed these three to be altered in specification. The Tribunal on balance therefore finds the costs levied through the service to be allowable.

24. The Tribunal's view is that a Structural Surveyor has identified the need for the vertical and horizontal joints to be inserted into the wall to remedy defect and put the wall into repair. The Respondent says the R Elliott (Structural Engineer) identified that three of the lintels would need to be replaced in order for them to have the correct specification to work with the vertical and horizontal joints. The Tribunal finds the replacement of the three lintels to be appropriate works, and the cost £601.77 plus VAT reasonable. The Applicants service charge apportionment is 1.76% which is therefore £10.59.

Balcony Ceilings

Chronology

In February 2018 an extreme cold weather spell caused cracking to appear in some balcony ceilings. Two insurance claims were made both rejected. An insurance loss adjuster was used for review the claims and concluded that there was little prospect of success. Two section 20 Notices were issued, with the first was subsequently cancelled and the costs of which were returned through the service charge.

Balcony ceilings- Insurance claims

25. The Applicant says, in mid to late February 2018 cracking to balcony ceilings of several flats was identified. All the affected balconies bar one was located on 5th floor. A survey was carried out which proposed the cause as poorly fitted membranes. An insurance claim was rejected with

the insurance company citing, "a failure of management" when the membranes were installed in 2010.

26. A second survey carried out by a structural engineer concluded differently that the damage was done by water penetration that had then frozen. A second insurance claim was made and again rejected, citing that VL had failed to maintain adequately and so was rejected.

27. The works to repair remain outstanding at the date of the hearing.

28. The Applicant believes that the alleged failings of management have led to this inability to secure payment from the insurance company. As such the Applicant does not believe they should pay further, their payment covering insurance being sufficient they contend.

29. The Respondent says that they approached the insurance company twice in order to try and make a claim. The Respondent also noted they employed the services of a loss adjuster to give an independent view on the possibility of making a successful claim. The loss adjuster held the view that the claim would not succeed.

Balcony ceilings- section 20 Notices

30. The Applicant [72] believes the amount paid to Napier for carrying out section 20 consultation procedure is well in excess of what is reasonable, alleging Napier was incompetent in not supervising. The Applicant contends that s 20 Notices were not necessary for the ceiling repairs nor mastic renewals.

31. The Applicant says the statutory limit for View Point below which, in cost terms, section 20 notices are not required is £14170, lumping them together may seem reasonable but not when it leads to delays in excess of 7 years. The leaseholders have paid over £25,000 without any repair being carried out.

32. During the hearing the Respondent confirmed there had been two sets of section 20 Notices served the first, at a cost of £4250 plus vat and the second £4500 plus vat. The Respondents also confirmed that the cost of first section 20 notice procedure had been reimbursed by the managing agents Napier.

33. The Respondent said the second section 20 procedure had been delayed and so expired because the works were delayed pending the outcome of this application.

34. The Tribunal finds that the section 20 was properly undertaken and the delay in the delivery was outside the

control of the Respondent. The Tribunal therefore finds the cost of the second section 20 procedure allowable. The service charge apportionment is 1.76 % of the second section 20 notice of £4500 plus VAT which is £79.20.

Balcony ceilings- mastic

35. The Applicant was concerned that specification stated that "all balconies" were included, however the estimate did not cover all. At the Tribunal, the Respondent confirmed the estimate covered all, on this basis the Applicant chose not to pursue this issue.

Balcony ceilings- decoration

36. The Applicant asserted two points. The first, that the balconies are in the demise of the leaseholders and as such the responsibility for decoration rests with the leaseholder. The second, that the price is excessive, the Applicant having, obtained a quote using the same specification as that used by the Respondent. The Applicant states that the decoration quote is made under the assumption that the balcony areas can be accessed from within and not need specialist access.

37. The Respondent in terms of the responsibility to decorate says this rests with them under proper construction of the lease. Further that the quotation for the works is reasonable given the need to access from outside. Additionally requesting and obtaining access to all the flats for decorating contractors is a difficult task, and the Respondent has indicated that a number of leaseholders have already indicated they would not be willing to have decorating contractors accessing the balconies through their flats.

38. The relevant lease extracts in respect of the demises are below, the lease plan [40] shows the balconies outlined in red indicating they are part of the demise however the Sixth Schedule provides;

The Sixth Schedule

To maintain and keep in good and substantial repair and condition and (where necessary) renew:

(a) *The main structure of the Building and the Estate including the principle internal girders and the exterior walls and balconies and the foundations and roofs thereof with their main water tanks main drains gutters and rainwater pipes (other than those included in this demise or in the demise of any flat in the Building).*

39. The Tribunal finds in respect of the first issue that the responsibility for decorating the balconies falls within the responsibility of the landlord

because the sixth schedule part (a) says "and balconies", and that the cost thereof is properly recoverable under a service charge.

40. On the second issue, the Respondents lower quote for the decorating is on the same specification as the Respondents however, the quote fails to take into account health and safety and the logistics of access, which may cause complications with the delivery of the contract. The Tribunal finds the Respondents quotation of £59,000 reasonable. Application of the service charge apportionment of 1.76% which is £1038.40.

Internal Cracking

41. The Applicant says [55] between May 2020 and August 2021 major repairs were carried out to the external brickwork of all the walls at View Point. The total costs of these renovations were around £600,000 which included a 5% retention for snagging repairs. The works were carried out using hammer drills which the Applicant says caused additional cracking to the interior of the Applicants flat. The 5% for snagging was paid to the contractors.

42. The Respondent says the Tribunal in decision dated 4 March 2021 stated

> *"20. Having considered all of the lease terms in my judgement nothing within the lease requires the Applicant to undertake the repairs to internal plasterwork or redecorations to the individual flats. The obligation to undertake such works rests with the individual flats. The obligation to undertake such works rests with the individual leaseholder under the leasehold structure.*
>
> *21. I determine that the answer to the question posed in paragraph 2 of this determination is that the Applicant is not entitled to recover the costs of internal works to the flats at the property as a service charge expense."*

43. There is no specific sum being challenged, nor is it necessary for the tribunal to determine the cause. The Tribunal finds that repairs to plaster and redecorations are the responsibility of the leaseholder. As a consequence, the freeholder cannot undertake repairing the plaster inside the leaseholder's demise. There are no provisions within the lease that provide for retention of funds by the leaseholder in order to pay for alleged damage to the leaseholder's demise by the landlord or their contractors.

Reserve Fund Contributions

44. The Applicant submits [56] that from the beginning of the accounting year commencing 24 June 2022 VL has increased the amount demanded

as annual contribution to the Reserve Fund to £65,000 rising to £70,000.

45. The Applicant asserts: VL's ability to require a contribution to the Reserve Fund is set out in the lease in the Sixth Schedule cl 11. The clause permits the Lessor

> *"to set aside such sums of money as the Lessor shall reasonably require to meet such future costs as the Lessor shall reasonably expect to incur of repairing maintaining those items which the lessor has hereby covenanted to replace maintain or renew."*

46. The Applicant says that implicant in this clause is: the requirement that the funds must be raised for a specific works that have been identified and that this is not the case here. The Applicant contends that the intention is to protect lessees from being required to pay special levies for "unexpected expenditures"

47. Under the terms of the Lease (L 4.4(ii)) VL has the right to raise an additional levy in the case of unforeseen or urgent expenditures if there are insufficient funds in the Service Charge and Reserve Accounts. The Applicant says, implicant again in this clause is that the relevant works have been identified.

48. The Applicant argues there is no provision to raise additional sums for unplanned works and the planned surplus of £134,000 should be eliminated. [74 para 39]

49. The Applicant is of the position that none of the demands for the reserve fund contributions are payable until the relevant works are identified.

50. The Respondent says there is a ten-year plan which includes a commitment of £113,000 for major works of external decoration, and balconies, a further £57,000 for Fire Doors, this makes £170,000. The Reserve Fund Account as at date of bundle was £178,969.89. The Respondent is also aware of issues with the swimming pool but not yet quantified. The Respondent says that View Pint is a 50-year-old building, and it is reasonable to take into account sums in the service charge account to cover for potential, unforeseen, works.

51. The Tribunal finds that the provisions in the lease providing for a reserve fund can reasonably be interpreted to allow for funds from both specifically identified works and works that, given the age of the building, are not yet known but a reasonable property manager, may envisage given the nature of the building, from time to time works are needed and so allows these sums. The Applicant's service charge apportionment is 1.76%.

Insurance Costs

52. The Applicant says they are concerned whether the costs of the insurance policy and commissions have been reasonably incurred.[75]

53. The Applicant asserts that the buildings are over insured and there is no relationship between the "buildings declared value" of £31,232,831 and the 2023 insurance revaluation of £25,805,000.

54. The Applicant's contentions fell into two parts, the first, that the building's declared value was inflated unnecessarily at the point of the most recent RICS Surveyor assessment of rebuilding cost by use of the "day one uplift". Two that the commission attached to the premium had been calculated on the gross premium rather than the net. The latter being the method agreed in the service agreement between the Viewpoint and the Napier Management Services Ltd.

55. The Respondent says, the brokers, who Napier are "an appointed representative", include "day one uplift" which addresses the cost of any "significant inflation during the policy year" and this counters the risk of labour or materials inflation. The property is subject to a revaluation every 3 to 5 years, undertaken by a suitably qualified surveyor. The insurance company then annually adjusts the figure to reflect building costs this figure becomes the "declared value". The Respondent agrees with the Applicant that the service agreement between the parties provides for the commission to be applied to a net premium not the gross premium. The Respondent was unable to confirm at the hearing whether the commission had been applied to a net or gross premium. The Respondent undertook to check and reissue the insurance service charge on the basis of the calculation being commission applied to net premium if not already done so.

56. The parties agree that Napier correctly sought and gained assessments of rebuilding costs from a suitably qualified person.

57. The Tribunal finds that on the evidence provided the "day one uplift" is a reasonable approach to the creation of the insured value. The tribunal determines that on evidence, contractually, the Insurer is ensuring the correct cover for the property, it has considered the submitted revaluation assessments, but it has reserved itself the right to determine the Declared Value for the property.

58. The Applicant has not provided any alternative quotes; the tribunal finds the premium net of commission reasonable.

59. The Tribunal also determines that the 15% commission applied to the premium should be applied in accordance with the service agreement that is calculated based on a net premium. The managing agent should

recalculate the insurance premium in accordance with the determined basis. The Applicant's service charge apportionment is 1.76% and this should be applied to the revised insurance premium with commission.

Lift Insurance Commission

60. The Tribunal notes that the parties agree that this item should not form part of the service charge.

Administration charges

61. The Application dated 5 February 2024 before the Tribunal relates to service charges.

62. The table below is extracted from the Scott Schedule [99]

Administration Costs

Admin Charges 2023	**Amount**
Company Accounts	£690
Data Protection Costs	£40
"Admin arrears"	£150.00
Copy Lease	£3.00
EGM hotel cost	£175.00
AGM	£335.00
Company sec costs	£613.00
Admin Charges 2024	
Building regs	£251.00
Copy Lease	£3.00
Charge for Registration	£450.00
AGM room hire	£175.00
Total	**£1532.00**

63. The Tribunal only has jurisdiction under this Application to consider items of service charge.

64. The Applicant says the VL charges various costs that should have been paid directly by the company, to the service charge account instead. The

Applicant at [51] believes the rent received by the company from letting the caretakers flat, flat 64, rented out under an assured shorthold tenancy, provides funds from which these costs are funded.

65. The Respondent at the hearing concurs that these items do not amount to service charges and should not appear in the service charge for the property, with the exception of the Data Protection costs of £40 in service charge year 2023, and Building Registration cost of £450, which is a "Building Safety case" for the year 2024. The Application's service charge apportionment is 1.76% which provides £7.04 and £7.92 respectively.

66. The tribunal allows the two items listed in the above paragraph as being legitimate service charge costs.

Management Agent Fees

67. The Applicant submits that the annual fees charged by the managing agent are subject to the same statutory requirements that apply to any service charge costs in terms of quality and reasonable costs. Best practice guidance is found within the RICS service charge residential management code. The Applicant submits that the service has fallen short of what is expected and that the reduction in the level of management fee allowed under the service charge should be reduced. In particular the Applicant cites several issues including poor communication, the Applicant settled on a 50% reduction.

68. The Respondent says they provide a quality and responsive service at a reasonable cost and that they are transparent in the declaration of the 15% insurance commission.

69. The Tribunal is aware of the general level of management fee employed in the industry and finds the level charged here to be reasonable. On the question of whether there should be a reduction, the Tribunal does not find any material issues with the provision of services, given the age and nature of the block. The Applicants service charge apportionment is 1.76%.

Application under s.20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002.

70. In the application form and at the hearing, the Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 Act. Such an order may reduce such costs incurred by the landlord in the proceedings being levied in the service charge payable by the tenant or any other person specified in the section 20C application. Additionally, an application was made under paragraph 5A of Schedule 11 to the

Commonhold and Leasehold Reform Act 2002. Such an application may reduce or extinguishes the tenant's liability to pay an administration charge. The Respondent argued against these applications on the basis that the Applicant had not engaged well rejecting the offer of mediation. The Tribunal declines to make an Order under either of these two Applications.

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).