FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BD/LSC/2023/0094**
Property	:	**37 Marina Place, Hampton Wick, Kingston upon Thames, KT1 4BH**
Applicant	:	**Douglas Anthony Job and Katrina Maria Job**
Representative	:	**No attendance**
Respondent	:	**Marina Place Limited**
Representative	:	**Ms Fisher of counsel**
Type of application	:	**For the determination of the liability to pay service charges**
Tribunal members	:	**Judge Professor R Percival** **Mr A Harris LLM, FRICS, FCIArb** **Mrs J Dalal**
Venue and date of hearing	:	**10 Alfred Place, London WC1E 7LR** **15 May 2025**
Date of decision	:	**20 May 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal concluded that it would hear the application in the absence of the Applicants.

(2) The tribunal makes the determinations as set out under the various headings in this Decision as to the reasonableness or payability under the lease of service charges.

(3) The Tribunal declines to make orders under section 20C of the 1985 Act (that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge) or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings).

The application

1. The Applicants seek determinations pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years from 2016 to 2024. The Applicants submitted two applications, dated 3 March 2023 and 9 July 2024. Directions were given for the two applications to be listed together on 16 September 2024.

The background

2. The property is a two bedroom flat in a modern waterside development. The wider estate consists of five blocks. Block A, in which the property is situated, comprises residential properties only. Block B is a mix of residential flats and commercial premises. Blocks C and D are wholly commercial. Block E is also residential, comprising 15 affordable housing flats. The estate includes a marina with nine berths and basement parking areas.

3. The Applicants holds a long lease of the property.

4. The freehold is owned by Marina Place Ltd. The Respondent states that the company is owned by most of the owners of flats in Blocks A and B.

The lease

5. The lease is dated January 2005, and is for 999 years.

6. The service charge is defined in schedule 6. It proceeds by defining three sets of services, schedules 1, 2 and 3. Schedule 1 services relate to the estate, schedule 2 to the building, and schedule 3 to the residential

common parts, each of which are described, respectively, in parts 1 to 3 of schedule 7. The relevant percentages are given as 1.35% for schedule 1 and 3.55% for schedules 2 and 3, and are stated to be subject to schedule 9.

7. Part one of schedule 7 makes provision for the repair, cleaning, lighting etc of the Estate Structure and Estate Common Parts. It makes express provision for the employment of "one or more concierges …".

8. Part 2 of schedule 7 makes similar provision in relation to the Building.

9. Part 3 of schedule 7 is titled "residential common parts and domestic water charge", and includes provision similar to that in the other two schedules.

10. In effect, therefore, the Respondent's repairing etc covenants are contained in the relevant parts of schedule 7.

11. Provision is made for an interim service charge to be paid on 1 May, in advance of the service charge year starting on 1 June

12. In addition to the general service charge, clause 3.23 provides that where car parking is provided to a tenant, the tenant is to pay the landlord

> "a fair proportion (reasonably determined by the Landlord's surveyor having regard to the total number of car parking spaces within the Car Park) of all costs reasonably and properly incurred in repairing … cleansing, lighting, venting, securing [etc] the Car Park …".

13. By clause 3.6, the tenant covenants to pay proper and reasonable costs

> "incurred by the Landlord in connection with the recovery or attempted recovery of arrears of Rent or for the purposes of or incidental to the preparation and service of any notice under Section 146 … of the Law of Property Act 1925 …". Rent is defined as meaning the ground rent (clause 1.1, definitions).

14. The tenants' repairing covenant in clause 3.7 applies to the demised premises generally. The demise is set out in detail in schedule 1, and includes the internal face of the walls (except internal walls) and the internal surfaces of the ceilings and floors, conduits, electrical, water, and sanitary apparatus exclusively servicing the flat. Excluded is any part of the Building Structure, Residential Common Parts and other Lettable Areas (all defined terms in clause 1.1).

15. We set out the provisions relevant to the Applicants' demise and its relationship to the Respondent's repairing etc covenants where it is relevant to our consideration of the payability of service charges in

relation to work to the balconies at the building below (see paragraphs [62] to [64].

The hearing

Introductory

16. The Applicants did not appear.

17. The Respondent was represented by Ms Fisher of counsel. Mr Buckley and Mr Coe, directors of the Respondent, attended. Mr Buckley had submitted witness statements.

Preliminary issue: the non-attendance of the Applicants

18. The Applicants did not attend at 10.00 on 15 May 2025. Phone calls were made. The calls went to voicemail, and messages were left. There having been no response from the Applicants by 10.35, we convened the Tribunal with the Respondents.

19. Initially, Ms Fisher said she was instructed to apply to strike out the application in the event of the non-appearance of the Applicants. We put it to her that the Tribunal was minded to consider hearing the application in the absence of the Applicants under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 34. Having taken instructions, Ms Fisher said that she invited us to do so, and to hear the application.

20. Rule 34 provides

> If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—
> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
> (b) considers that it is in the interests of justice to proceed with the hearing.

21. We concluded with no difficulty that, given the history of attempts to postpone the hearing, the criterion in rule 34(1)(a) was satisfied.

22. We went on to conclude that it was also in the interests of justice to do so. In doing so, we had regard to the history of the application, which we now set out. Given the significance of our decision, we will do so in some detail, drawing on previous directions and orders made by Tribunal judges and a legal officer.

23. The applications have been delayed. A history up to those dates is given in the background to the directions given by Judge Latham in 22

November 2024 and 11 March 2025, which we set out below, before bringing the narrative up to date.

24. The relevant sections of the background to the directions on 22 November 2022 are set out below. After relating the receipt of the two applications and the order that they be heard together, Judge Latham continues:

> "(2) Over the past eighteen months, the Tribunal has been trying to arrange a Case Management Hearing (CMH) to seek to identify the issues in dispute and to give directions as to how these can be determined in a proportionate manner. The Applicants have declined the option of a video CMH on the ground that they do not have wifi. The Tribunal understands that Mr Job is aged 74 and is registered disabled and that Mrs Job is in ill health.
>
> (3) The tribunal initially set the case down for a CMH on 25 May 2023, On 22 May, Mr Job stated that he was unable to attend on health grounds. He subsequently provided a report from Dr Wai Tze Cheng, dated 22 May 2023, which stated:
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> > 'The above patient states he is subject to harassment and stress from his freeholder which is causing him extreme anxiety and causing him to struggle with day to-day activities. He has informed me of a pre-case hearing with a property tribunal that has been set for Thursday 25th May 2023 which will be attended by the freeholder and their legal team. He tells me he will be unable to cope with and attend this hearing until his condition has been resolved. He states that the freeholder has served an eviction notice on him. He states his crippling anxiety is such that he will not, for the time being, be able to cope with the pre-case hearing. I feel it would be in the best interests of my patient if he would be allowed ample time to benefit from my treatment.'
>
> Dr Cheng did not specify the treatment that he is providing.
>
> (4) On 25 May 2023, the Tribunal then set the case down for a CMH on 6 June. On 5 June, Mr Job requested that this CMH be postponed. The tribunal adjourned it until 29 June. On 23 June, Mr Job informed the tribunal that he was unable to attend. On 23 June, the tribunal asked both parties if they could attend a CMH on 27 July 2023. Neither party responded.
>
> (5) On 9 July 2024, the applicants issued their second application. On 16 September, a Procedural Judge reviewed the file. The tribunal sent out listing questionnaires so it could arrange a CMH for the convenience of the parties. On 1 October, the Tribunal set the matter down for a CMH today.
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> (6) At 13.44 on 18 November, Mr Job wrote to the Tribunal in these terms:
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> > I am sorry to have to postpone the Pre-Management Hearing set for 1400 hours tomorrow. Last night after returning home

at approx. 2230 hours from two separate Accident & Emergency Hospitals and after my wife's serious fall outside Hampton Wick Library and after my her receiving a CT scan to her brain and neck (she has some chronic changes but nothing acute) and a X-ray for her badly affected right shoulder, knees and legs. My wife is very poorly and we are unable to travel to Central London - the Hospitals have advised to avoid stress and to rest as much as possible. She still has to attend a two week referral for her neck injury and several reports have been processed by the Hospitals. Please accept my sincere apologies as I did believe before yesterday we would be able to attend.'

(7) The Applicants must understand that it is not the role of this tribunal to carry out an audit of the service charge accounts over the past seven years. Any applicant must establish a prima facie case that any service charge is unreasonable or is not payable pursuant to the terms of their lease (see observations of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) at paragraph 28).

(8) This application can only be determined fairly at a Face-to-Face hearing. If the Applicants are unable to attend in person, they must arrange for alternative representation. It is probable that the Applicants will need to attend the final hearing in person to give evidence in support of their case. The Tribunal will provide a list of organisations from whom the Applicants can seek advice.

25. Judge Latham then turned to the case management meeting, relates that it was attended by counsel with Mr Buckley and Mr Coe, and gave further directions.

26. In the background to the directions dated 11 March 2025, Judge Latham again sets out the applications. He continues

(2) On 11 March 2025, the Tribunal held a further Case Management Hearing (CMH). The Applicants appeared in person. The Respondent was represented by Andrew Martin (Counsel) who is instructed by Protopapas, Solicitors. He was accompanied by M Roger Coe and David Buckley, both of whom are directors of the Respondent which is a management company owned and controlled by the lessees. The Respondent provided a Bundle of Documents (242 pages) and a Skeleton Argument. Mr Martin argued that the application should be struck out as the Applicants had failed to comply with the Directions which had been given on 22 November 2024 and had failed to establish any arguable case.

(3) At the last CMH, the Tribunal had highlighted that it is not the role of this tribunal to carry out an audit of the service charge accounts over the past seven years. The applicants must establish

a prima facie case that any service charge is unreasonable or is not payable pursuant to the terms of their lease. The Tribunal was also satisfied that this application can only be determined fairly at a Face-to-Face hearing. Neither of the Applicants are in good health. Mr Job had recently had a knee operation and used crutches. If the Applicants are unable to attend any hearing in person, they must arrange for alternative representation. They must attend in person if they are to give evidence. The tribunal has provided the Applicants with a list of organisations from whom they could seek advice.

(4) Marina Place consists of five blocks. This includes some affordable housing and mixed units. The Applicants occupy a two bedroom flat pursuant to a lease dated 24 January 2004. They acquired their leasehold interest on 16 May 2017. They challenge the payability and reasonableness of the service charges since that date. The Applicants complain of the cost and the quality of the services. They dispute the veracity of the service charge accounts. At the CMH they asserted that 'everything has been dishonest'.

(5) Mr Martin stated that there were currently arrears of £10,025.88. This is disputed by the Applicants. There are currently three sets of proceedings pending before the Kingston County Court in respect of arears of service charge:

(i) KS27X358: This claim was issued on 19 December 2023. The following sums are claimed: service charges of £3,910.08, administration charges of £774 and costs of £1,680. The Applicants stated that they had paid this sum.

(ii) L02YX740: On 22 January 2024, these proceedings were served on the Applicants. The Respondent claim £6,979.18. The Applicants stated that they had paid this sum.

(iii) L93YX587: The following sums are claimed: service charges of £7,617.92, administration charges of £1,218 and costs of £2,100. This claim relates to the service charge year 2024/25

(6) Mr Martin stated that on 7 November 2024, the County Court papers had been referred to a District Judge. The parties had been informed that they should wait for 20 weeks before chasing up the cases.

(7) The Directions given in November required the Applicants to fully plead their case as to why any service charges are not payable pursuant to the terms of their lease or having regard to the cost and/or the quality of the service. The Tribunal stated that it would review their pleaded case at this CMH. If the Applicants had failed to plead an arguable case that any service charges are not payable, it would be open to the Tribunal to strike out their case.

(8) By 4 December 2024, the Respondent had been directed to email to the Applicants copies of all relevant service charge accounts together with a statement of account recording all

demands made by the landlord and sums paid by the tenants (at p.27-185 of the Bundle). On 2 December, the Respondent emailed these documents to the Applicants. On 29 November, a further set had been sent by special delivery. The Applicants signed for this on 7 December. They did not open envelope. When asked to explain why they had not done so, they stated that they "did not know that it was honest". Their landlord had wrongly asserted that they owed money that they had paid.

(9) By 21 February 2025, the Applicants had been directed to email to the Respondent [Judge Latham sets out the standard direction requiring a Scott schedule and other documents]

(10) On 21 February 2025, the Applicants served a single document "Statement" (at p.186-194). This did not clearly identify the service charge items which are challenged. They stated that they had stored all their legal papers at Big Yellow Storage in Kingston. Someone had broken in and interfered with their papers.

(11) In preparation for this CMH, the Applicants sent a number of emails to the Tribunal enclosing a number of documents. These were not indexed. The Applicants stated that they were not able to send them in a single PDF as this exceeded their attachment size limit. These documents included "Dispute Table for Service Charges" which suggested that all the service charge items which they have been charged since 16 May 2017 were disputed.

(12) Whilst sympathetic to Mr Martin's application to strike out the claim, it was apparent that this would not assist either party. Both parties need a determination on the merits as to whether the service charges which have been demanded are reasonable and payable. If this Tribunal does not make such a determination, the County Court will have the option of determining it itself or transferring the proceedings to this Tribunal.

(13) The Tribunal is satisfied that the Applicants have had more than adequate opportunity between 4 December 2024 and 21 February 2025 to formulate their claim. The following Directions are to ensure that the merits of these applications can be determined at the earliest opportunity. It is for the Applicants to establish a prima facie case that any service charges are unreasonable or are not payable. It is only where a prima facie case has been established, that the evidential burden shifts to the Respondent to establish that the charge is payable.

27. Since the last set of directions given by Judge Latham, the directions were amended by Ms Gair, legal officer, on 26 March 2025, as a consequence of Ms Gair allowing a seven day extension for the delivery of the Applicants' bundle (and a concomitant extension of a Respondent's deadline). There followed two applications to postpone the hearing scheduled for 15 May 2025, on 4 April and the 5 May 2025, both

of which were refused (15 April, Judge N Carr, and 9 May, Judge Latham).

28. Finally, at noon on 14 May 2025, the Applicants submitted a further application to postpone the hearing scheduled for the following day. It was referred to me (Judge Percival) as the chair of the panel due to hear the application. I refused it. Given time constraints (I was appraised of the application at 4.00 pm, having been engaged on Tribunal business before then), I gave summary reasons, which I amplify now.

29. No substantive reason for postponement was given. Rather, the Applicants make a series of misconceived and absurd allegations about previous determinations by judges and a legal officer, none of which could possibly justify yet another postponement.

30. The Applicants objected, first, to Judge Latham considering their application for permission to appeal his decision not to postpone. This was wholly misconceived. The procedure in the Tribunal, as in virtually all civil tribunals and courts in England and Wales, requires the judge making a decision to first consider an application for permission to appeal that decision. Secondly, they alleged that Judge N Carr's earlier refusal was improper or defective, apparently on the basis that she had said that their substantive application had a "poor or hopeless chance". This is a surprising misinterpretation, as it was clearly the application to postpone that Judge Carr was so characterising (accurately), not the substantive application. Finally, they attack Ms Gair's determination, which in fact allowed them a seven day extension (in circumstances in which many judges would not have done). There is nothing whatsoever in Ms Gair's determination that could possibly be called biased or prejudiced, or as defaming their character. That they made these accusations is to be regretted.

31. The key documents containing the narratives of the Applicants' case are their two witness statements of eight pages and two pages, and their statement of case, three pages (which we refer to collective as their statements). These were supported with a bundle of 384 other pages. The total bundle, including the Respondent's material, amounted to 825 pages.

32. The narrative in the statements consists largely of material accusing the Respondent of various wrongs not related to the service charge, including dishonesty, organising the theft of property, harassment and bullying. The remedies they state that they seek are the reimbursement of service charges relating to parking, damages for personal injury and an injunction. The result is that there is little in the material supplied that relates to the Tribunal's jurisdiction under section 27A of the 1985 Act.

33. This history shows that the Applicants are serially either unwilling or unable to meet deadlines with appropriate documents or (save for one appearance at a CMH) to attend the Tribunal. The result of this is that twenty six months have elapsed since the Applicants made their first application. As Judge Latham, on two occasions, observed, if the Applicants are unable to attend at the Tribunal, it is up to them to secure alternative representation. We also endorse Judge Latham's sentiment, expressed in his directions of 11 March 2025, that both parties need a determination of the reasonableness and payability under the lease of the service charges.

34. If we were to postpone the hearing again, there is no evidence that the Applicants would be able and/or willing to attend another fixture made in the future. The only evidence of a medical issue is the letter for Dr Cheng dated 22 May 2023. That letter describes Mr Job's description of his anxiety, but does not offer a diagnosis. It does mention treatment, but not what that treatment was. But even then, the doctor suggests that time is required to allow Mr Job to benefit from the treatment. That was two full years ago. There has been no medical update, and the Applicants have not sought to rely on anxiety or any related mental health issue since then. If the medical evidence had cogency at the time of the letter, it no longer does.

35. These considerations alone induces us to conclude that the interests of justice require that we hear the application in the absence of the Applicants.

36. In addition, we have had regard to rule 3 of the 2013 Rules. That sets out that the overriding objective of the Rules "is to enable the Tribunal to deal with cases fairly and justly", and that doing so "includes dealing with cases in ways that are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal".

37. To allow yet another postponement of the hearing of this application is not, in our view, proportionate in any of the ways set out in rule 3.

38. Further, were we to strike out the application, rather than hear it, it would be open to the applicants to make another application or applications. That would result in yet further delay in reaching a final determination of the reasonableness and payability of the service charges, which is not a prospect that the Tribunal is prepared to entertain.

39. Decision: The Tribunal is satisfied that the Applicants had been notified of the hearing, and that it was in the interests of justice to proceed with the hearing in the absence of the Applicants.

The hearing

40. The Tribunal had carefully considered the core papers provided by the Applicants. As Judge Latham noted in his directions, it is up to the Applicants to raise a prima facie case in respect of reasonableness or payability, which it is then the responsibility of the Respondent to meet.

41. The Tribunal concluded that, read broadly, the Applicants' statements raised three areas in which there was a prima facie case that the Respondents should meet. In doing so, we considered the whole of statements provided by the Applicants, not just the remedies they stated they sought. In the result, one of the issues did appear in that list, the other two did not. We deal with each in turn below.

42. We confined ourselves to the statements. It is not for us to trawl through all the other documents provided in order to try to sift out other possible complaints that could be made referable to a service charge. That task is one to be performed by the Applicants in preparing their statements.

43. We do not consider it necessary to set out all of the areas in which there was not a prima facie case. In general terms, complaints about the state of the property (such as old carpets in the communal areas and the condition of the car parking area), even if made out, would not have any bearing on the reasonableness or payability of a service charge. The same is true of complaints about the conduct of the Respondent or its directors.

Car parking service charge

44. The Applicants relevant objection (we think, although the papers were sometimes difficult to interpret) was that there was no obligation to pay a separate service charge for car parking (they argue that there were three percentages set out in the lease, and they were charged a further percentage for car parking). We reject this specific way in which the issue is raised, in that the lease does provide for a service charge for car parking in clause 3.23, which we quote at paragraph [12] above.

45. We consider, nonetheless, that this is sufficient to properly raise the issue of calculation of the car park service charge. The Respondent, in its statement of case, explains the methodology. There are 90 spaces in total in the car park. To calculate the service charge figure, the Respondent disregarded the 15 spaces allocated to Block E, which, it stated, was paid for in another way, and nine other spaces, described in the Statement as "Landlord spaces".

46. We consider that there is no warrant in the lease for disregarding these spaces in calculating the proper proportions. The lease provision refers to the calculation having regard to "the total number of car parking spaces", not just allocated spaces per se, or spaces allocated to the relevant block.

47. However, in the hearing, the Respondent explained that Block E paid, in compliance with its lease (we assume, the headlease to the housing association) 18.5% of the car park costs. This is slightly over the percentage that would be paid in respect of those spaces if the proper calculation were done (ie on the basis of 90 spaces), and we can therefore disregard the error in not doing so as not relevant to the correct calculation of the service charge.

48. That does not apply to the nine spaces which were not allocated to tenants, referred to as Landlord's or management spaces. These, we were told, were effectively visitor's spaces. We conclude that these should have been included in the calculation – they are part of the "total number of car parking spaces".

49. *Decision*: The Respondent should recalculate the charge made to the Applicants on the basis of 75 car parking spaces rather than 66 for each year in issue (from 2017/18 to 2024/25) and credit the difference to the Applicants.

The receipt of service charge demands

50. The Applicants claim that they did not receive service charge demands (in any form) in relation to the service charge years 2022/23 and 2024/25. As noted above, a claim in relation to this heading does not feature in the section of the Applicants' case dealing with remedies sought.

51. We note the Respondent's point that this amounts to a bare denial, with no contextual material to support it. Nonetheless, we think, in the circumstances, that we should accept a bare denial as amounting to a prima facie case.

52. The Respondent has produced copies of service charge demands dated 6 May 2022 and 29 April 2024 addressed to the Applicants at the property. It was explained to us that the post is collected by the concierge, who then places it in the tenants' individual post boxes. These are located in a private part of the basement, to which the tenants have access.

53. We were also provided with an email from an "accounts admin team leader" with what appears to be a service used by the managing agents. It shows a record from a property management software package called Dwellent. The record is introduced by the statement "I believe the tenant has an email preference as it is showing on the ecoms documents on Dwellent. They would receive the accounts the preference they have chosen." The record then shows a number documents sent by email in March and October 2025.

54. Although it was in the bundle, counsel explained that it was a late addition that had not been disclosed before the bundle was prepared. At

the hearing, we agreed to accept it in evidence, in the expectation that it would assist the Tribunal. In the event, it is of very limited relevance, in that all it shows directly that some non-relevant documents were emailed to the Applicants. As such, it provides some limited support for the proposition that some documents were emailed to the Applicants.

55. The lease does not provide for any specific form of notice. Notice by post, or by email at least if the tenant so specified, would therefore be valid.

56. In addition to the evidence provided of actual service, and the mechanics of the provision of mail to the tenants, Ms Fisher relied on the postal rule, a common law rule (now also appearing in the Interpretation Act 1978 and its predecessor) that, where a notice may be given by post, it is assumed to be good notice unless the person denying service proves otherwise.

57. Considering such evidence as we have, and noting that the Applicants have provided no evidence other than there bare denial, we think it more likely than not that the demands were indeed served. There is no reason why the Respondent would not serve the notices, and good reason why they would. In the absence of any documented case for non-service, we accept the Respondent's evidence for service.

58. *Decision*: The Tribunal concludes that it is more likely than not that the service charge demands for 2022/23 and 2024/25 were served on the Applicants.

The issues raised in connection with section 20 consultations

59. Under a heading relating to section 20 consultations, the Applicants make three substantive objections to service charges (although, again, they do not figure in the list of remedies sought).

60. The first is that the Respondent should not have painted the iron work and varnished the balustrades of the balconies, as these are demised. The Respondents undertook this work, and passed on the cost in the service charge. The only balcony not so treated was the Applicants'. The Respondent produced a photograph of a notice on the Applicants' balcony stating that it should not be treated, and of what the Respondent said was some grease-like substance smeared on the balustrade apparently to prevent its treatment.

61. The balconies are not mentioned in Schedule 1 to the lease that deals with the demise. The extent of the demise is significant in this context, as the Respondent relied on paragraph 3 of part two of schedule 7, the part of the lease describing the "Services" attributable to the second service charge schedule, relating to the Building.

62. The general, opening part of paragraph 3 requires the Landlord to

> "… improve maintain repair cleanse rebuild and renew (except to the extent that the Tenant covenants in this lease to make good any want of repair) the Building Structure …".

63. The Building Structure is defined (clause 1.1) as

> "… the whole of the Building save and except the Building Internal Common Parts and the Flats and which in particular includes but is not limited to (i) the external walls, roofs, foundations and main structure …".

64. Paragraph 3.1 of part two of schedule 7, which the Respondent cites, reads

> "… to brush down repaint and clean all stonework and brickwork on the exterior of the building and to clean and prepare and paint in a good and workmanlike manner of the outside wood cement stucco and metalwork and other parts of the Building heretofore usually painted as often as may be necessary …"

Paragraph 3.1 is stated to be without prejudice to the generality of the main part of paragraph 3, quoted above.

65. We do not think that paragraph 3.1 can be construed as extending the remit of the broadly phrased general opening of paragraph 3, and in particular it cannot exclude the proviso that the obligation or service does not extend to that which the tenants are required to repair etc. The repairing obligation of the tenant is confined to that which is demised (clause 3.7).

66. Thus, the extent of the demise in respect of the balconies determines whether the obligation/service of the Landlord extends to the railings and balustrade of the balcony.

67. The demise, as set out in schedule 1 to the lease, includes only the interior face of the external walls, the interior only of the window frames and the internal surfaces of the ceilings and floors. In other words, it adopts the common approach of limiting the demise to what might be called the inner skin of the flat, excluding the structure beyond the inner surface of the features – walls, floors, ceilings – delineating the extent of the flat. Again, as is common, it is only the glass in the windows in respect of which both faces are demised.

68. The balconies serving the residents of the flat must have been intended to be included to an extent in the demise of the flat. In determining that extent, we should, we conclude, extend the logic of the demise that we have described in the paragraph above. On that basis, the demise of the balcony must be limited to the upper skin of the platform forming the floor of the balcony, and the lower skin of the "ceiling", provided by the

platform of the balcony above (as it appears from the photographs with which we have been provided).

69. The application of the same approach to the railings and balustrade of the balcony is less straightforward. This is because it makes no obvious sense to divide the balustrade and railings into external and internal surfaces, because of the form of their structure. One cannot sensibly divide either feature into an external and internal surface.

70. If the whole of the balustrade/railing structure must be either demised or not demised, we conclude that only the latter makes sense. It makes sense in terms of the external appearance of the building as a whole, and the repairing or repainting of the balustrade/railings structure is likely to be often impossible for the tenant, as it may require the erection of scaffolding to the exterior of the building. It is also, more generally, clearly not congruent with the evident intent of the lease to reserve the exterior elements of the building to the Landlord. If the balustrade/railings cannot sensibly be divided, then they must pass into the "external" category, and be reserved to the Landlord.

71. *Decision in respect of the balustrade/railings*: The balustrade and railings form a single structure that must have been intended to be reserved to the Landlord, to which, as a result, the covenant in paragraph 3 of section two of schedule 7 therefore applies. The service charge referable to the repainting/varnishing of the balconies is payable under the lease.

72. The second point raised under this heading relates to a claim by the Applicants that one of the section 20 consultations related to the provision of Sky satellite service inputs for the flats. They did not benefit, having not been offered a Sky input.

73. The Respondent denied that there had been a section 20 consultation in relation to this service, or any work associated with it. The building as a whole was, Mr Buckley said, wired for sky, and any leaseholder could contract with Sky to be provided with the service. It was not a matter for the Respondent. No service charge referable to this service was charged.

74. The Applicants have not produced any evidence that there was a section 20 consultation exercise. There is nothing on the papers to contradict the evidence of Mr Buckley, and we accept it.

75. *Decision in respect of Sky satellite service*: There was no section 20 consultation or service charge in relation to Sky satellite services.

76. The final point under this heading related to a section 20 consultation in respect of a lift in the property. The Applicants assert that there was nothing wrong with the lift.

77. Mr Buckley's evidence was that the lift was inspected by a specialist surveyor, who concluded that the "hoisting ropes" (that is, the steel cables upon which the lift cage depends) were required to be replaced. That this was the case did not obviously affect the operation of the lift as it would be apprehended by someone using it, but it was nonetheless a safety critical issue, and the Respondent was required to rectify it.

78. Again, there is no evidence to contradict Mr Buckley's evidence, and we accept it.

79. *Decision in respect of lift repairs:* The lift repairs were properly undertaken.

Applications for additional orders

80. The Applicant applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

81. We consider the applications for orders on the basis that the leases does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

82. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

83. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

84. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. Here, the Respondent is a company owned by a number of the leaseholders. We assume that its income is limited to rents, service and administration charges, and, possibly, to charges made under its articles of association (which we have not seen) on its members. The nature of the Respondent therefore weighs significantly in the balance. If we were to make the orders, then costs which would otherwise

have fallen on the Applicants will fall to be paid by (some of) the other residential leaseholders.

85. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

86. The Applicants' have been successful in one, relatively minor respect. Otherwise, their objections have fallen away as not amounting to a prima facie case, or we have rejected them.

87. We do not consider that we should take into account the intemperate accusations made by the Applicants against the Respondents and judges and staff of the Tribunal, and we do not do so.

88. *Decision*: In the circumstances set out above, we do not think that is just and equitable to shut the Respondent out of whatever contractual rights they may have under the lease. We decline to make the orders.

Application for costs

89. Miss Fisher indicated that the Respondent will consider whether to make an application for its costs under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Procedure Rules) once our decision was available.

90. The Respondent may make a free-standing application to the Tribunal under rule 13(1) if it so wishes.

Rights of appeal

91. 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 London regional office.

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

93. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

94. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Professor R Percival **Date:** 20 May 2025

APPENDIX: SOURCES FOR FREE LEGAL MATERIALS

Legislation

The legislation referred to in this decision may be found at:

https://www.legislation.gov.uk/ukpga/1985/70
https://www.legislation.gov.uk/ukpga/2002/15/contents

Case Law

The dedicated website for Upper Tribunal (UT) cases, which are binding on this Tribunal, is:

https://landschamber.decisions.tribunals.gov.uk/Aspx/Default.aspx

The search engine does not allow for free text searching. Sufficient information to use the provided search engine (such as the date of the case or the parties names) may be available via a google search.

Alternatively, the official National Archive website is at:

https://caselaw.nationalarchives.gov.uk/

This has a better search engine, but does not contain UT decisions before 2015, and there may be gaps in its provision thereafter.

The National Archive website can also be used for finding cases in higher courts, including those referred to in UT decisions.

Alternatively, many UT decisions, and most other important cases in all courts, are available on:

https://www.bailii.org/ .

Bailii stands for British and Irish Legal Information Institute. It is a charity that has published free caselaw for many years, and has in some cases loaded up earlier case law.