In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00AW/LSC/2024/0298**
Properties	**:**	**Flat 1 Cope House, Cope Place, London W8 6AA**
Applicants	**:**	**Cope House Freehold Ltd**
Representative	**:**	**Mischon de Reya LLP**
Respondent	**:**	**Kiama Services Ltd**
Representative	**:**	**Thackray Williams LLP**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	**:**	**11th and 12th June 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**16th June 2025**

DECISION

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(1) The Respondent's application dated 6th June 2025 to admit two further expert reports is refused.

(2) The charges set out in the application are payable, save for items 12 and 20 in the attached Schedule which the Applicant has conceded are limited to £250 each.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The subject property consists of four-storey block, with a basement garage below. There are commercial premises on the ground floor and 4 flats above. It was developed and completed in around 2010 by Ridgewood (Kensington) Ltd, a company related to the Respondent. The Respondent has retained the lease on one of the flats. The Applicant is a company owned by the lessees of the other 3 flats which acquired the freehold from Carsten Management Ltd, a company also related to the Respondent.

2. The Applicant applied for a determination under the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of certain service charges. The Tribunal heard the case on 11th and 12th June 2025. The attendees were:

- Mr Jonathan Upton, counsel for the Applicant
- The Applicant's witnesses:
  - Mr Marat Djafarov, lessee of Flat 2 and director of the Applicant
  - Mr Trevor Rushton
  - Mr Tom Hester of Cook & Associates
- Ms Ellodie Gibbons, counsel for the Respondent
- Mr Alan Williamson, the Respondent's witness.

3. The Applicant had two further witnesses, Mr John McBretney, a representative of the Buddhist charity whose meditation centre occupies the ground floor commercial premises, and Mr Alick Lawrence of Haus Block Management, the Applicant's managing agents. Their witness statements were contained in the main bundle but the Respondent had no questions for them and so they did not give live evidence.

4. The documents before the Tribunal consisted of:

(a) a bundle of 1,942 pages;
(b) a supplementary bundle of 110 pages; and
(c) skeleton arguments from each counsel.

5. The bundles included multiple versions of the Scott Schedule setting out the individual items in dispute but also numerous items not in dispute. The Tribunal asked the parties to provide a final version setting out only those items remaining in dispute and this was done on the second morning.

Preliminary Application

6. On 6th June 2025 the Respondent made an application for permission to rely on two further pieces of expert evidence:

a) The Respondent relied on an expert report dated 2nd March 2025 from Mr David Cooper in relation to maintenance works to the passenger and car lifts at the property. Unfortunately, Mr Cooper was unavailable for the hearing. Mr Michael Ford had assisted Mr Cooper in the production of his report, including carrying out the site visit. Mr Cooper's report was

now amended with a statement of truth from Mr Ford and his CV, effectively adopting Mr Cooper's report. The Respondent sought to admit this report so that Mr Ford could give live evidence in relation to it.

b) Prior to the commencement of the proceedings, the Respondent commissioned a report dated 25th January 2023 from Mr Alan Williamson BSc (Hons) CEng MICE MIStructE FIOR. When it came to exchanging expert reports in accordance with the Tribunal's directions, the Respondent simply relied on this existing report, without any updating. However, when the parties' respective experts met, also in accordance with the Tribunal's directions, it became apparent that Mr Williamson had not seen the evidence produced by the Applicant in the meantime. The Respondent sought to admit an addendum report dated 6th June 2025 and an amendment to the Joint Statement of Experts comprising Mr Williamson's further opinion.

7. The Tribunal refused the application and informed the parties during the first morning of the hearing. The Tribunal's reasons are as follows.

8. In relation to Mr Ford's adoption of Mr Cooper's report, it was not justified on its face. Despite the fact that Mr Ford had been involved, it was clearly Mr Cooper's report. In order to allow Mr Ford to adopt it, the Tribunal would have needed a clear and compelling explanation for Mr Cooper's unavailability and evidence from Mr Ford as to how he is able to adopt the report. Ms Gibbons said that Mr Ford could give live evidence on the latter point but it would be unfair to surprise the Applicant in this way – such evidence should have been provided in advance, at least with the application to admit the report, if not earlier. Further, the application could have been made considerably earlier but there was no explanation for its being made just two clear working days before the hearing.

9. The Respondent had received the Applicant's evidence on 18th March 2025 comprising a witness statement which, amongst other things, attached expert reports previously commissioned by the Applicant but of which Mr Williamson had been unaware. For reasons which were not explained, the Respondent did not send the witness statement and attachments to Mr Williamson for his comment until after they had a conference with counsel on 23rd May 2025. The addendum report addresses matters of substance of which the Applicant required fair notice. The Respondent had no excuse for failing to obtain Mr Williamson's comments earlier and so failing to give any such notice. The addendum report and the application to rely on it simply came too late and was unsupported by any justification for being so late.

The dispute

10. Mr Upton's skeleton argument summarised the matters in dispute as follows:

a) £1,083.29 for electricity supply charges demanded on 20.6.23;

b) £5,232.20 being the total of the balancing charges for the years ending 2021 and 2022 demanded on 20.6.23;
c) £8,974.82 being the first half yearly estimated charge 1 January – 30 June demanded on 4.7.23;
d) £130,585.83 being the second half yearly estimated charge 1 July – 30 December demanded on 30.6.23 and comprising the following:
    i. £8,974.82 being Kiama's share of routine expenditure for the second half of 2023, as set out in the 2023 budget;
    ii. £80,567.643 being Kiama's 23% share of the total estimated cost of works to the roof and façade in the sum of £350,294.10;
    iii. £21,765.43 being Kiama's 30% share of the total estimated cost of works to the passenger lift in the sum of £72,551.43; and
    iv. £19,277.94 being Kiama's 30% share of the total estimated cost of works to the vehicle lift in the sum of £64,259.80.

11. The Scott Schedule sets out the points in dispute, and the Tribunal has put its decision in relation to those items in the attached version, but some issues require separate consideration, as set out below.

Lack of invoices

12. In compiling the final version of the Scott Schedule, Ms Gibbons noted that she did not have the corresponding invoice for a number of items and put them into the Schedule on that basis. However, an alleged lack of invoices had not previously been raised. It turns out that the Applicant is confident that they have the relevant invoices but did not provide them because they understood there was no dispute in relation to the relevant costs. In the circumstances, the Tribunal has removed from the Schedule those items where the only allegation is a lack of an invoice.

Roof

13. The building suffered from severe water penetration for some years. At the instruction of Haus, the Applicant's agents, Mr Guy Kilbey, a specialist roofing consultant, produced a report on 1st June 2020. He concluded that there were two possible sources, namely damage to the asphalt layer of the roof and around the rainwater outlets around the perimeter of the roof. He recommended opening up the area around each water outlet for inspection.

14. By the time Mr Djafarov and his wife purchased their flat and he became a director of the Applicant in June 2021, no progress had been made. Given the passage of time and the apparent worsening of the water penetration, he decided to commission a further report. Mr Paul Kelley of Metcalfe Briggs Surveyors reported on 1st October 2021.

15. Mr Kelley criticised the design of the roof in which water penetrated through the porcelain tiles at the surface of the terraces onto the waterproof membrane but could not drain away through the water outlets as these were set at a higher level. Instead, the water ran down either the outer or inner surface of the façade and, in the latter case, into

some of the apartments. He warned that the continual saturation of the substrate layers could cause them damage.

16. He said there were two options:

(1) Lower the outlets so the water could drain away. However, he said this would not address the saturated screed and insulation that would deteriorate with time. Also, this would not allow inspection of the asphalt to see if it had deteriorated.
(2) Remove the porcelain tiles, screed, insulation and aluminium gutter lining to expose the asphalt and, depending on its condition, leave it or overlay it with a new membrane. The outlets would also be lowered and sealed to the waterproof membrane. His preference was for this option.

17. Mr Paul Lynch, representing the Respondent, had been present at Mr Kelley's inspection of the property. The Applicant understood the Respondent to be content to proceed on the basis of his recommendations. Mr Lawrence of Haus prepared a scope of works and tendered them. However, the Respondent then objected. In particular, they wanted to prioritise re-decoration of the façade. A number of meetings were held but the Respondent said they would not pay for any roof or lift works unless their concerns were addressed.

18. In order to try to appease the Respondent, Mr Djafarov initiated a fresh consultation process on 6th June 2022 and got Mr Kilbey to re-attend. In his report of 29th June 2022, he essentially agreed with Mr Kelley's recommendation, stating at 6.2:

> I am now of the opinion the next course of action on this roof will have to be the removal of the existing tiles, screed and insulation and the full drain down of standing water on the roof to allow a through inspection of the asphalt roof coverings with any asphalt repairs undertaken prior to reinstatement of the roof build up including insulation, screed and porcelain tiles.

19. The Respondent continued to object, saying that the proposed works went beyond the Applicant's repairing obligations and they would not contribute to the cost. Ms Gibbons later suggested that the Applicant was wrong not to stand up to her client and insist on going ahead over their objections. However, Mr Djafarov foresaw that this would end up in litigation, at considerable cost, and understandably wanted to try to avoid this. He arranged for works, applying waterproof coatings to the outlets, to provide the ground floor meditation centre with some temporary respite but otherwise sought to continue his efforts to bring the Respondent on board. The Applicant's solicitors, Mishcon de Reya, arranged for another specialist, Adair Ltd, to inspect the roof.

20. In their report of 30th November 2022, Adair stated that both the design and construction of the roof have inherent defects (5.3) and agreed that Mr Kelley's second option "would be far more suitable, and a long-term solution to water ingress" (4.19) whereas the Respondent's preference for the first option would not be adequate (4.21). Ms Gibbons accused

Mr Djafarov of having a fixed idea of what he wanted to do and getting a sequence of experts to agree with him. In fact, it was the other way around. Mr Djafarov has no expertise in roof construction or maintenance and was happy to follow expert advice. He did not know what advice Adair would give and it was coincidental that their advice was consistent with the previous advice rather than the Respondent's wishes.

21. The Respondent then instructed their expert, Mr Williamson. In his report dated 25th January 2023, he recommended only addressing the defective outlets and pointed out that there was no evidence that the asphalt had failed. He asserted that there was no need to strip the roof down.

22. When the Respondent's solicitors provided a copy of Mr Williamson's report on 30th May 2023, the Applicant instructed Adair to review it. In their addendum report dated 28th June 2023, Adair commented that Mr Williamson's proposals would not be cost-effective or suitable long-term to prevent water ingress.

23. The Applicant decided to proceed with the works to the roof and façade recommended by their experts. They carried out a competitive tendering exercise. The lowest estimate was submitted by Axel Group Ltd in the sum of £350,294.10.

24. When the tiles, the screed and the insulation were removed, Axel found water under the asphalt in the entire perimeter of the roof. The Applicant saw this as proof that their course was right and the Respondent's wrong but, in any event, it resulted in a change to the works. The Applicant instructed Adair to inspect the asphalt and advise whether it could be repaired and/or left in place as had been intended.

25. In their report dated 28th November 2023, Adair stated that the asphalt cannot be repaired and left in place. Various sample holes had been drilled and found the concrete layer beneath the asphalt and the underside of the asphalt were saturated so that the asphalt would have to be removed to release the moisture and prevent its being trapped under the new system.

26. Further, Langley, the supplier of the new roof system, advised that the asphalt would need to be stripped before the new roof system could be laid, without which they would not provide a warranty.

27. In their evidence to the Tribunal, the parties' respective experts, Mr Rushton and Mr Williamson disagreed on whether the asphalt showed any damage and to what extent a lack of damage should change the approach as to what works should be carried out. However, it is not the Tribunal's task to decide which expert is correct. The question for the Tribunal is whether the costs of fixing the roof were reasonably incurred. The matters set out above permit of only one conclusion, namely that they were.

28. Ms Gibbons suggested that a cheaper alternative of addressing only the water outlets was proposed at an early stage and should have been tried first. However, that is not what happened. Mr Kilbey's first report did not have a clear conclusion. From then on, Mr Williamson was the only expert who did not advise the Applicant to do what they did. The Applicant was entitled to rely on the overwhelming preponderance of expert advice.

29. Ms Gibbons also suggested that the only rational course open to the Applicant, on both the roof and lift works, was to carry out a comprehensive cost-benefit analysis of each option instead of just accepting the experts' assertion that the preferred option was better in the long-term. However, none of the experts, including those advising the Respondent, thought that this was necessary in order to reach firm conclusions as to the way forward. Again, the Applicant was entitled to rely on the consistent advice of several experts rather than conduct further analysis.

30. The Tribunal is not satisfied that the Applicant's objections are sufficient to bring into question whether the costs of the works to the roof or façade were reasonably incurred.

Lifts

31. The building is served by 2 lifts, one for people and one for cars. When Mr Djafarov came to the property, he was told, and his experience confirmed, that the passenger lift was unreliable, with residents and guests constantly getting stuck. The service charge accounts also indicated that the passenger lift had been expensive to maintain, with frequent repairs failing to address the safety and operational issues. The repairs were performed by Emerald Lifts (a contractor appointed by the previous freeholder), and in 2021 alone the costs for passenger and car lift repairs and maintenance amounted to £12,229. Mr Djafarov decommissioned the lift in 2021 and engaged Cook & Associates as lift consultants.

32. Mr Hester explained that he understood his instructions were to ensure there was an operating lift service. Ms Gibbons tried to suggest to Mr Djafarov and Mr Hester that the instructions were to install a new lift rather than to repair it but the Tribunal is satisfied that, again, Mr Djafarov had no fixed ideas and was happy to take expert advice while Mr Hester had been open-minded as to how his objective may be achieved.

33. Mr Hester prepared a scope of works and Haus arranged for the lessees to be consulted in November 2021. The Respondent again objected that the proposed works were outside the Applicant's repairing obligations. The Respondent put forward two alternative contractors and it was one of them, Arrow Lifts, which was ultimately successful in being commissioned to do the work at a cost of £69,521.13 inclusive of VAT.

The works commenced in March 2024 and were completed a few months later.

34. The proposed works to the car lift turned out to be less controversial, eventually being completed by Arrow Lifts in accordance with their quote of £55,708.08 inclusive of VAT.

35. The Respondent's expert, Mr Cooper, disagreed with Mr Hester's scope of works in the following respects:

(a) Mr Hester felt that the control panel should be replaced. According to the manufacturer, it was obsolete and, according to the lessees' experience, it didn't work properly. It had a predicted life of 10-15 years and was already within that period. Mr Cooper conceded the last point but said that the lift had relatively low usage, had never been modernised and could continue without being replaced. He did not mention the obsolescence.
(b) Given that the control panel was going to be replaced, Mr Hester felt that it should be relocated from the top floor to the bottom. At the top, it was surrounded by insulation, probably to reduce noise, which had the effect of trapping heat. Together with being on the top floor where it was warmer, it would sometimes overheat. Mr Cooper felt that the overheating could be addressed by cutting into the lift and installing a fan and then providing for the nearby skylight to open. Mr Hester conceded that he is not a fire safety expert but strongly disagreed with Mr Cooper's suggestions in that smoke from a fire in the lift would escape, rather than being contained, and would be channelled directly onto a fire escape route. He also understood the skylight to have a role in the fire safety system and so would not be available for temperature control.
(c) Mr Hester felt that the push button control panel should be replaced since it was longer than current regulations allow. Mr Cooper thought this unnecessary.

36. The Tribunal found Mr Hester's evidence the more convincing but, again, the issue is whether the costs were reasonably incurred. The Applicant was entitled to rely on Mr Hester's expert advice and acted reasonably in doing so. Mr Cooper did not cost his alternative works and so it is not clear that there would have been a significant saving, particularly when compared with the longer life Mr Hester's works could expect to achieve.

Conclusion

37. By reason of the matters set out above and in the attached Schedule, the Tribunal has decided that the service charges set out in the application are payable other than the two items conceded at 12 and 20 in the Schedule.

Name: Judge Nicol **Date:** 23rd June 2025

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.