FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UF/LVL/2025/0001** **CAM/26UF/LSC/2024/0006**
Property	**:**	**Old Bank Chambers** **Station Place** **Letchworth Garden City SG6 3AL**
Applicant	**:**	**Veltrim Limited**
Respondents	**:**	**1. Grace Jane Middleton (No.1)** **2. Liam Martin and Agnes Kuroki (No. 2)** **3. Richard Henry Robinson & Margaret Robinson (No. 4)** **4. Thomas Maximilian Volker (No. 5)** **5. Charlotte Nicole Brassett (No. 6)** **6. Letchworth Garden City Heritage Foundation**
Applications	**:**	**(1) Vary leases and (2) determine payability of service charges**
Tribunal members	**:**	**Judge David Wyatt** **Dr J Wilcox BSc MBA FRICS**
Date	**:**	**4 July 2025**

DECISION

Summary and further directions

(1) The disputed matters in relation to service charges payable, and those matters which it appears appropriate to decide now in relation to the lease variation applications, are determined below.

(2) By **11 July 2025** the Applicant (Veltrim Limited) must send a copy of this decision to the Respondents, by first class post and (where Veltrim Limited has e-mail addresses for the Respondents) by e-mail.

(3) The tribunal will make its final decision on all remaining matters (those which have not been determined below) on paper, unless by **15 August 2025** any party requests a further hearing or the tribunal decides a hearing is necessary.

(4) To prepare for that, the parties must comply with the following further directions, ensuring they deal with all remaining matters identified in this decision and all other matters they wish to rely upon:

a. by **8 August 2025** Veltrim Limited must send to the Respondents:

i. table(s) in editable electronic format setting out for each lease type in the first column(s) the clause/paragraph reference and precise wording of each part of the lease variation(s) sought by Veltrim, and in the next column(s) a summary of the reasons for the proposed variation(s), with the last column(s) left blank for the Respondents to insert their comments and any proposed changes;

ii. all other representations relied upon, including any representations about the illustrative wording in Schedule 1 to this decision (if not dealt with in the table(s) required above) and the matters canvassed in paragraphs numbered [53-67] and [118-120] below;

iii. full details and evidence of the current position in relation to the claim(s) from the freeholder and Veltrim's proposals in relation to this;

iv. if Veltrim wishes to rely on expert evidence (on a contingency basis or otherwise) in relation to any potential compensation, the report of their expert valuer (this must comply with rule 19; see below) setting out their evidence on potential compensation (allowing for the different potential terms of variation); and

v. any witness statement of fact and any other evidence relied upon,

b. by **5 September 2025** the flat leaseholders must send to Veltrim:

i. Veltrim's table(s), with the relevant column(s) completed to insert the comments of the leaseholders and any changes (or alternative variations) they propose. If Veltrim has failed to produce table(s), the leaseholders should simply set out in a single document the precise lease variation wording they propose for each lease type and their reasons;

ii. all other representations relied upon, including any representations about the illustrative wording in Schedule 1 to this decision (if not dealt with in the above) and the matters canvassed in paragraphs numbered [53-67] and [118-120] below;

iii. if the leaseholders wish to rely on expert evidence in relation to any potential compensation, the report of their expert valuer (this must comply with rule 19; see below) setting out their evidence on potential compensation (allowing for the different potential terms of variation); and

iv. any witness statement of fact and any other evidence relied upon,

c. by **17 September 2025** Veltrim Limited must prepare a supplemental bundle, in accordance with the guidance attached to the earlier directions, of the documents produced under these further directions, delivering an electronic copy and **two hard copies** to the tribunal and a copy to each Respondent (or their representative) in a format of their choice. Such bundle may include a brief reply to anything new in the response from the leaseholders.

(5) Permission is granted to rely on expert evidence if this is produced in reports which comply with Rule 19 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as set out in the above directions (one expert per opposing party). If there is a hearing and the expert evidence is not agreed, the expert(s) will be expected to attend the hearing.

(6) All parties are warned that they must read this decision carefully, take any necessary legal advice immediately and ensure they comply with the above directions. The tribunal is unlikely to allow any further extensions of time or any further opportunities for submissions or evidence before it makes its final decision on the remaining matters.

Reasons for the decision

Basic details

1. The freehold title to the property is owned by Letchworth Garden City Heritage Foundation. They were added to these proceedings as Respondents to give them the opportunity to make submissions, but have not participated.

2. On 10 December 2010, the freeholder granted a head lease to Veltrim Limited ("**Veltrim**") for a term of 125 years from 25 March 2010 (the "**Head Lease**"). The building was formerly known as NatWest Chambers. As required by the Head Lease, Veltrim converted the upper floors into residential flats. Apart from No.3, noted below, these residential flats are held by the other Respondents under leases which were all granted between 6 January and 23 March 2012 (the "**Leases**"), apparently all for terms of 125 years (less five days) from 25 March 2010.

Applications

3. On 13 January 2024, Richard and Margaret Robinson, the leaseholders of flat No. 4, applied to the tribunal (CAM/26UF/LSC/2024/0006) under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**"), seeking determination of payability of disputed service charges for the years from

2014 to 2024. It seems their application was prompted by lease variation applications made by Veltrim in 2023 and/or concerns about the costs of major works arranged by the freeholder which included substantial repairs, on a default basis, to external windows (and perhaps other areas) demised to Veltrim.

4. The service charge payability case was delayed by attempts to consider the lease variation cases at the same time. The leaseholders of the other Leases were added as additional applicants, all represented by Mr Robinson. The lease variation applications made in 2023 were ultimately struck out for repeated failures to comply with directions. On 4 February 2025, the tribunal gave case management directions for the remaining service charge application. In view of the delays caused by Veltrim, the tribunal gave permission to add the 2025 service charge year to these proceedings.

5. On 28 February 2025, having indicated that they would, Veltrim made replacement applications (CAM/26UF/LVL/2025/0001) seeking variation of the flat leases under section 35 of the Landlord and Tenant Act 1987 (the "**1987 Act**"). They did not seek variation of the lease of No.3, because the leaseholder (who Mr Robinson says is connected with Veltrim) was willing to consent to the variation(s) they sought. On 5 March 2025, the tribunal gave supplemental directions, providing for the service charge proceedings and the lease variation proceedings to be considered together. In response to the questions in the directions, Veltrim confirmed they were not seeking any retrospective variation which would affect previous leaseholders.

6. The leaseholders also sought order(s) for the limitation of Veltrim's costs in the proceedings under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

7. Veltrim (belatedly, after another strike out warning) produced a bundle for the hearing. The bundle was not well prepared, leaving the reader to attempt to make sense of documents which were not in chronological order and (in the case of invoices) seem disorganised and were often almost illegible. On various dates up to and including the date of the hearing, Veltrim then produced various sets of basic documents in relation to the service charge proceedings which they had failed to include in the bundle.

8. At the hearing on 24 June 2025, Veltrim was represented by Desmond Kilcoyne of counsel, instructed by LMP Law Ltd. The flat leaseholders were represented by Mr Robinson. We are grateful to Mr Kilcoyne and Mr Robinson for their help. The freeholder did not attend. The only other attendees were leaseholders or their families, observing. On the morning of the hearing, outline submissions and copy authorities from Mr Kilcoyne were produced.

Lease variation applications - background

9. On 4 March 2020, EMW solicitors (who had acted for Mr & Mrs Robinson on the grant of their lease in 2012) wrote to Fresh Property Management Ltd

(then Veltrim's managing agents). EMW disputed liability for service charges which apparently included anticipated costs of works proposed by Veltrim. EMW explained why they said there was no provision (at least in the leases of Nos. 2, 4 or 5) for payment of any service charge other than the relevant share of the service charge payable under the Head Lease to the freeholder. They also pointed out that none of the leases made provision for payments towards a reserve fund (it seems the charges sought had been for a reserve fund to prepare for proposed works).

10. In April 2022, Veltrim's solicitors wrote to leaseholders, saying that as a result of a "*clear drafting error*" there was an argument that leaseholders were not liable for any of the services that Veltrim (as opposed to the freeholder) provided. They said service charges were needed to keep the building in repair and service charges which had included the costs of such services had been paid for years. They asked leaseholders to enter into a deed of variation (with the same variation wording as proposed in these applications) and warned that if they did not agree an application would be made to the tribunal to vary their lease.

11. In their statement of case in these proceedings, Veltrim said that "*due to a drafting error by*" their previous solicitors in clauses 1.16/1.17, defining the "Service Charge" as the service charge as defined in the Head Lease, the terms of the Leases were "*unworkable*" and on a "*strict interpretation*" the leaseholders were only liable for the costs due to the freeholder, not the costs Veltrim incur in providing other services under the Leases. They said the current wording was causing problems with delivery of services because some leaseholders were disputing liability, preventing collection of service charges "*as intended*". Their only proposed variation was to change the "Service Charge" definition in the Leases to read:

> *'service charge' means 16.667% of the costs incurred by the Landlord in providing the Services in this lease.*

12. The leaseholders produced their statement of case promptly on 29 April 2025. Subject to one point, they did not contest the proposed variation, noting that it would add the cost of the services to be provided by Veltrim as set out in Schedule 1 to the Leases. Their only concern about this was a reference in Schedule 1 to "*insuring*", as explained below. They noted that Veltrim's insurance covenant in some of the Leases also seemed wrong, because Veltrim should not itself be insuring (under the Head Lease, the freeholder insures the building and the insurance costs are recovered through the separate Insurance Rent).

13. The leaseholders pointed out in their statement of case that (they said) this would not solve the problem, because Schedule 1 said nothing about maintaining the Common Parts, only the lighting and heating. They noted that section 38(4) of the 1987 Act enables the tribunal to make the variation specified in the application or such other variation as the tribunal thinks fit. They suggested that a variation could extend their liability to include repair/decoration of the interior.

14. However, they said, if liability was extended to "exterior"/other areas which Veltrim (but not the freeholder) were responsible for repairing under the Head Lease, then substantial prejudice would be likely for the purposes of s.38(6)(a) and an award under s.38(10) would "apply". They said the compensation for any such variation should include the costs of the repair works carried out by the freeholder to the windows and any legal or other costs and interest charged by the freeholder in relation to those works.

15. The leaseholders explained their concerns by referring to a letter of claim dated 10 October 2024 from Clarke Wilmott (solicitors for the freeholder) to Veltrim. This notes that a repair notice dated 8 June 2022 had been served on Veltrim. The leaseholders had requested a copy of this notice and as requested the tribunal had directed Veltrim to provide this, but Veltrim had failed to do so. The letter of claim sought:

    a. £80,955.06 plus legal costs in respect of works said to have been carried out under the freeholder's rights to remedy failures to repair areas demised to Veltrim (entirely or mainly, Mr Robinson suggested, the external windows);

    b. £28,765.01 as the service charge under the Head Lease (the leaseholders said that sum relates to works to the roof and exterior areas for which the freeholder is responsible and has already been "discounted by 50% according to the terms of the Headlease"; they agree this would fall within the current service charge terms of the Leases); and

    c. any other costs, and interest.

16. The freeholder had conducted a consultation process with the flat leaseholders before carrying out these works. The leaseholders said the windows were in a substantially dilapidated state when the flats were sold in 2012 and argued they would not have purchased if they had been responsible for the costs of repairing the windows.

17. Veltrim had been given permission for a reply, but failed to respond to any of this. At the hearing, it was confirmed that no demands had been made for service charges for the repair works. It was suggested that the outcome of these proceedings was awaited before any such demands were made. Veltrim has explained nothing about the claims made against them by the freeholder, let alone the current position in relation to these claims.

Review

18. Sections 35 and 38 of the 1987 Act are set out in Schedule 2 to this decision. Section 38 sets out the tribunal's powers in respect of orders on applications under section 35. Since each of the Leases is a long lease of a flat and Veltrim is a party to each of them, we are satisfied that it was entitled to make these lease variation applications under section 35(1).

19. At the hearing, we referred the parties to the recent decision in 56 Westbourne Terrace RTM Company Limited v Polturak & Ors [2025] UKUT 88 (LC). The

numbered headings below follow the potential issues described in that decision.

(1) Whether there are grounds under s.35(2)

20. The grounds on which applications may be made under section 35 of the 1987 Act to vary a long lease of a flat are set out in s.35(2). They are that the lease fails to make "***satisfactory provision***" with respect to one or more of the matters specified in s.35(2).

21. Veltrim relied on the matters specified in section 35(2)(a)(ii), (e) and (f). They had also referred to s.35(2)(g), but Mr Kilcoyne confirmed that was a mistake. This means that the key parts of s.35(2) are:

"(a) the repair or maintenance of … (ii) the building containing the flat …"

"(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;"

"(f) the computation of a service charge payable under the lease;"

"(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

"(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

> *(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and*
>
> *(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and*
>
> *(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure."*

"(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act."

<u>Head Lease</u>

22. The Head Lease demises the ground floor entranceway and staircase, the rear yard and the first and second floors of the building (the "*Premises*"). These exclude the ground and mezzanine floors below. They include such areas as the floor slabs above the lower floors, a "*…roof immediately above the*

mezzanine level shown edged green on the Plan…", the steel staircase at the rear of the building and the windows and window frames.

23. The landlord is to insure the entire building. The landlord is to perform the "*Services*" set out in Schedule 4, which include repair of the other roofs, the foundations, the external, structural or load-bearing walls, columns, beams and supports (excluding floorboards, interior plaster and decorative finishes of the external walls), adjoining conduits and an accessway. The costs incurred by the landlord in providing these Services are the "*Service Cost*". The fees for providing/procuring the Services are the "*Management Fee*".

24. In clause 3.5, the tenant must repair "*…the Premises (save for any part for which the Landlord is responsible as part of the Services)…*" and plant, decorate internally and externally whenever necessary, and pay the Insurance Rent and the Service Charge.

25. The "*Service Charge*" is defined in clause 1.1 as, "*…subject to paragraphs 3-7 and 3-8 of Schedule 3…"* (which enable variation of the percentage referred to in this definition):

> "*…50% of the Service Cost (and includes any amount payable on variation of that percentage as provided by this lease) plus the Management Fee*".

26. The "*Insurance Rent*" is the aggregate of various elements, including a fair proportion of the buildings and public liability insurance premiums and the "*Service Charge Percentage*" of the cost of insurance valuations, plus excess deductions, other potential costs and insurance premium tax.

Leases

27. Veltrim had been directed to include in the bundle a sample lease with details of the relevant differences in the wording of the other leases, and a draft variation order. They did not. The bundle included copies of the leases of No.1 and No.4, with no explanation, and a copy of the deed of variation they had proposed in 2022. At the hearing, Mr Kilcoyne understood that all of the Leases save No.4 were in the same terms as the lease of No.1. We proceed on that basis; Mr Robinson believed this was correct.

28. The sample Leases provided create the usual modern demise of a flat, defined as the "*Premises*". These include internal surfaces and exclude such matters as external windows and window frames.

29. In clause 6.1, the tenant covenants to pay the Insurance Rent and the Service Charge ("Service Charge Rent" in the lease of No.4).

30. Clause 1 (definitions) includes the following:

> "*1.2 'Building' means the building situated at Station Place … of which the Premises forms part and shown edged blue on Plan 1.*"

"1.3 'Common Parts' means any parts of the Building not let or intended to be let or constructed or adapted for letting including … structural features … entrances … staircases … passages … all and any Service Media situated in any part of the Building which do not exclusively serve the Premises…".

"1.6 'Insurance Rent' means the insurance rent [1/6th of the insurance rent, in clause 1.7 in the lease of No.4] *as defined in the Head Lease".*

In the lease of No.1:

"*1.16 'Service Charge' means the service charge as defined in the Head Lease*"

In the lease of No.4:

"1.17 'Service Charge Rent' means 1/6th of the service charge as defined in the Head Lease".

31. Clause 6.11 provides in more detail for payment of the Insurance Rent. In clause 6.12, the tenant covenants to pay on demand the "*Service Charge Rent payable in accordance with the provisions of clause 8*."

32. In clause 6.20, the tenant covenants to "*…observe and perform the covenants on the Lessees part and the conditions contained in the Head Lease so far as they relate to the Premises and to keep the Lessor fully indemnified against all claims damages costs and expenses in any way relating thereto*."

33. In clause 7 of the lease of No.1, the landlord appears to covenant to insure the "*Building*". In the lease of No.4, the landlord covenants to procure that the head landlord insures the Building.

34. In clause 8, the tenant covenants to pay the Service Charge (the Service Charge Rent, in the lease of No.4) within 14 days of written demand and the landlord is to provide the "*Services … set out in Schedule 4 of the Head Lease and in Schedule 1 of this Lease*."

35. Schedule 1 provides makes no reference to the services to be provided by the freeholder, saying only: "*Maintaining and renewing the lighting and heating, insuring and managing the Common Parts without limitation and the Landlord shall be entitled to appoint a Managing Agent … and the Landlord shall be entitled to pass on the Managing Agent's costs in the Service Charge* ["*Service Charge Rent*" in the lease of No.4]".

<u>Interpretation</u>

36. At the hearing, Mr Kilcoyne focussed his efforts on seeking to persuade us to construe the Leases so that they were satisfactory, and (as he put it) "*all expenditure incurred by Veltrim in performing its obligations under the head lease or the subleases*" is payable, without any need for variation. He described that as his primary case, but it was a surprise. Veltrim's statements of case made no such case (only the "*strict interpretation*" reference mentioned above, in the lease variation statement of case). Their statement of

case in the service charge proceedings said that the "*issue*" with the Leases "*results in [Veltrim] not being able to recover…*" and "*Subject to [the proposed variation] taking place the Respondents should be liable for the Applicant providing the Services*."

37. Mr Kilcoyne argued that the obligations of the head lessor were imported into the subleases and placed on Veltrim, so the definitions and machinery should be translated accordingly. We recognise his point that the insurance provisions in the "No.1 type lease" would (as he put it) produce "absurd" results if not interpreted broadly because Veltrim should be procuring that the head lessor insures, not insuring itself, and the flat leaseholders should be paying a fair proportion of the Insurance Rent payable under the Head Lease, not the entire amount each. Similarly, the flat leaseholders should each be paying a fair proportion of the Service Charge payable under the Head Lease, not the entire amount each.

38. Mr Kilcoyne then had another surprise, raising the issue that (at least if not interpreted as he argued) the Leases themselves do not oblige Veltrim to repair any of the Common Parts.

39. We have considered the overall scheme in the Head Lease and the Leases, as Mr Kilcoyne urged, trying to find a permissible construction by reference to the overall purpose of the relevant provisions and the leases (ignoring the assertions from Mr Robinson about what he says he, at least, intended). However, this can only take us so far beyond the natural and ordinary meaning of the words used in the Leases, following the well-established principles confirmed in Arnold v Britton [2015] UKSC 36 at [15].

40. As Mr Kilcoyne suggested, it might be possible to read the "Insurance Rent" definition imported from the Head Lease as if it referred to the "Premises" demised by the Lease(s) instead of the premises demised by the Head Lease. That might help clarify that only a proportion of the "Insurance Rent" under the Head Lease is payable under each No.1-type Lease, in view of the "fair proportion" references in some (although, as Mr Kilcoyne noted, not all) of the components of Insurance Rent as defined in the Head Lease.

41. We do not agree that attempting to take a similar approach to the "Premises" in reverse, or the desire to create by interpretation a repairing obligation on Veltrim under the Leases, or any of Mr Kilcoyne's other submissions, are enough to bring service charges for such repairs (or, automatically, all costs incurred by Veltrim in performing its obligations) within clause 6.20.

42. This clause cannot be split to read as if the indemnity at the end applies to all costs "*in any way relating*" to the Premises (the flat, excluding the external windows and other Common Parts), even if those words could in isolation include costs incurred by the landlord in relation to repair of Common Parts which benefit those Premises, as Mr Kilcoyne seemed to be suggesting.

43. Clause 6.20 must be read as a whole. It requires the flat leaseholder to observe/perform the lessee's covenants (and the conditions) in the Head Lease so far as they relate to the Premises, and give an indemnity against costs in any way relating thereto. This is a normal protective provision in relation

to the area over which the flat leaseholder will have control because it is being sublet to them.

44. This clause cannot include the lessee's covenants in the Head Lease in relation to repair of the unlet parts of the "Premises" demised by the Head Lease. It is not being argued that the flat leaseholder has damaged, or has any right to repair, the Common Parts. The indemnity is against the flat leaseholder's failure to observe/perform covenants in the Head Lease so far as they relate to the flat Premises demised to them, not Veltrim's own failure to do so in relation to the unlet parts of the wider Premises demised to Veltrim. The clause cannot be construed as an indemnity against the latter. The Head Lease requires Veltrim to repair, without qualification (such as whether it has enough money to do so, or otherwise).

45. Similarly, even if the definition of Service Charges in the Leases can be read as if the amendment proposed by Veltrim had already been made, we are not satisfied that Schedule 1 includes the costs of repairing the external windows, for example (or, automatically, all costs incurred by Veltrim in performing its obligations). We assume he is right that "*without limitation*" in "*managing the Common Parts without limitation*" indicates that "*managing*" and perhaps the preceding words could be interpreted broadly. However, we do not accept Mr Kilcoyne's argument that this can be stretched far enough to include repairs, let alone compliance with all of Veltrim's covenants in the Head Lease and the Leases. These words have to be read with the other wording in Schedule 1. This begins with specific provision for maintaining and renewing the lighting and heating, as Mr Robinson had emphasised throughout. That is unhelpfully specific, indicating that repair is limited to repair of lighting and heating, not repair of anything else in Veltrim's parts of the Common Parts. We cannot read maintenance and renewal across to interpret the overall wording more broadly, not least because the wording is broken by "insuring". Schedule 1 is too badly drafted to be saved by interpretation.

Conclusion

46. We refer to 56 Westbourne Terrace at [140], where the Deputy President observed:

"In Morgan v Fletcher the Tribunal referred, at [19], to the mischief which Part IV of the 1987 Act was intended to address (and which justified intervention to vary a contract freely entered into). That mischief was the problem of schemes for the maintenance of residential blocks which are seriously defective in circumstances where the defects "have a direct bearing on the upkeep and fitness for habitation of the flats in the block". That cannot be taken to be a complete statement of the purpose of Part IV, but it is an indication of the balance which has to be struck in these cases. On the one hand, the principles of contractual autonomy and the freedom of parties to agree whatever terms they wish are very important; on the other hand, the terms which parties agreed often many years ago may contain drafting errors or incomplete or poorly thought out contractual arrangements…"

47. We are satisfied that the Leases fail to make satisfactory provision with respect to repair of the building for the purposes of section 35(2)(a)(ii), because there is no (or no sufficiently clear) obligation for repair of the common parts held by Veltrim. We recognise that Veltrim is obliged to the freeholder under the terms of the Head Lease to repair. It was not suggested that this is enough to solve the problem and we do not consider that it is, as explained below.

48. We are also satisfied that the Leases fail to make satisfactory provision (for the purposes of section 35(2)(e)) with respect to the recovery by one party (the landlord) from another party (the leaseholder) of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party (the leaseholder). There is no satisfactory provision for the costs of repair of Veltrim's parts of the Common Parts, particularly given the terms of the Head Lease, and there is unsatisfactory scope for uncertainty and argument about apportionments.

49. In view of those findings, it does not seem necessary to consider the alternative ground s.35(2)(f), which has been held to be limited by reference to s.35(4).

50. We note here that Veltrim did not provide any evidence of its own resources or show that it could not comply with its obligations under the Head Lease, when this was its own development. It took the Head Lease and granted all of the Leases. However, it was (rightly) not disputed by the leaseholders that the current terms of the Leases are unsatisfactory as described above. As we noted at the hearing, the problem has (at least in one sense) been avoided or deferred because Veltrim is obliged to the freeholder to repair and the freeholder has intervened to repair on their behalf, seeking the costs from Veltrim. However, there is no satisfactory provision in the Leases themselves to give the flat leaseholders a remedy if their landlord fails to repair.

51. Even apart from the lack of provision in the Leases themselves, this seems a precarious situation which is unsatisfactory for all parties. The Head Lease does not include the lower floors (which are controlled/let by the freeholder) and, as we observed at the hearing, is only a few days longer than the Leases, so it may have limited value (we do not know). Mr Robinson thought that the Head Lease was some two years longer than the Leases, but he appeared to be thinking of the dates of grant, not the actual terms of the relevant leases as noted above. We cannot advise, but for example any risk of forfeiture of the Head Lease and the potential consequences and costs could be out of all proportion to the window (etc) repair costs.

Illustrative variation wording

52. The wording which Veltrim had proposed throughout is inadequate, failing to deal with the problems identified by the leaseholders in advance or the other problems identified by Mr Kilcoyne at the hearing. No party proposed any other variation wording, despite being pressed again at the hearing to do so. The flat leaseholders' position is noted above and below. Mr Kilcoyne could suggest only that any variations should achieve the purpose he had sought by

interpretation, so that the proportions payable are clarified and the service costs for which a service charge is recoverable are the costs of:

a. providing the services in Schedule 4 to the Head Lease (whether incurred by the head lessor or the landlord); and

b. complying with the tenant covenants in the Head Lease and satisfying the landlord's obligations under clauses 7, 8 and Schedule 1 to the Lease (not only repairing obligations; he asked us to "go further").

53. The tribunal cannot advise or draft leases for parties. If Veltrim would like to go further than the wording they had proposed they will need to set out their proposed variations to achieve this. Since the first set of lease variation cases has already failed, in this second set the parties still seemed not to have appreciated the types of amendment they might need to consider and the situation seems likely to (at some point) cause problems for all parties, in Schedule 1 to this decision we give examples of types of variation which might be worth considering. Each of these might bring prejudice and/or benefit for any party. These may not follow what the parties have said they want, would not solve all potential problems or result in well-drafted leases and might cause their own problems. They cannot be relied upon; if anyone chooses to adopt all or any of them they do so at their own risk.

54. The precise wording used in leases is very important. Parties should take specialist independent legal advice on any proposed variations. This is their last chance to do so. After the time directed above has passed, the tribunal will proceed to determine the remaining matters and may order any or all of any variation(s) proposed by any party and/or set out in Schedule 1 - or decline to make any variation if the parties have failed to engage or make proposals which seem worthwhile, or if the illustrative wording in Schedule 1 does not stand up to scrutiny.

55. Under section 38 of the 1987 Act, since we are satisfied that there are grounds under s.35(2), we "*may*" make an order varying the specified leases unless section 38(6) applies (section 38(7) is not relevant here). Section 38(6) provides that a tribunal shall not make an order effecting any variation of a lease if it appears to the tribunal that: (a) the variation "*would be likely substantially to prejudice any respondent … or any person who is not a party to the application*" and that compensation would not be an adequate remedy; or (b) that: "*for any other reason it would not be reasonable in the circumstances for the variation to be effected*." Section 38(10) gives power to provide for a party to pay "*compensation in respect of any loss or disadvantage*" the tribunal considers is likely to be suffered as a result of the variation.

(2) Whether the variation would substantially prejudice any person

56. This may depend on the precise terms proposed by the parties. As we pointed out at the hearing, it was noted in Triplerose Ltd v Stride [2019] UKUT 99 (LC) that it was hard to see how creating a requirement on a party to pay for something for which they at present pay nothing would not be a loss or disadvantage requiring the payment of compensation, particularly if this is not

only addition of repair costs but any other (unknown) costs of compliance with the lessee covenants in the Head Lease or the covenants in the Leases.

57. Here, the prejudice of additional liabilities for the flat leaseholders may be offset by the benefits to all parties of clearer and more obviously viable long term provisions in the lease structure for repair, insurance and apportionments. These may benefit the leaseholders generally and/or in relation to the values of their leases, because the current situation might discourage prudent and well-advised purchasers. Mr Kilcoyne argued no compensation was needed, as noted below, but accepted that the variations sought might call for a certain amount of compensation, allowing for any such offsetting.

58. Mr Robinson said the leaseholders had not yet fully applied their minds to the potential costs apart from the window (etc) repair works/legal costs which had been the focus of their attention. Subject to that, we understood their position to be that if the costs in relation to those specific works which had been Veltrim's responsibility were paid by Veltrim (themselves or by way of compensation) that might largely address the prejudice.

59. This is difficult to assess at present, because Veltrim have said nothing about the situation and we have little information about the works. As the leaseholders seemed to be suggesting, one way to seek to mitigate potential prejudice (or compensation) might be to make any relevant variation conditional on Veltrim paying all, or a proportion, of the costs incurred by the freeholder and Veltrim in connection with the works carried out by the freeholder to repair those areas which Veltrim were obliged to repair (or exclude these from the scope of any variation). The parties must provide any representations about this as set out in the directions we have given.

(3) If so, whether money would be adequate compensation for that prejudice and (4) whether for any other reason it would not be reasonable in the circumstances for the variation to be effected

60. Again, this may depend on the precise variations and any conditions/exclusions as described above, and/or how Veltrim proposes to resolve the current position in relation to the freeholder as part of any variation package.

61. During his submissions at the hearing, Mr Robinson attempted to give evidence, telling us that he was retired and the other leaseholders had limited resources, with two NHS workers, a couple with children, and so on. If the leaseholders wish to rely on any such evidence, they should set it out properly in a witness statement and provide it as directed above. It appears this point was focussed on whether prejudice would be caused by an immediate demand for substantial costs in relation to the window (etc) repairs for which leaseholders are currently not liable (rather than future costs which might be anticipated and budgeted for over time).

62. Subject to those matters, we agree with Mr Kilcoyne that, it appears, an award under section 38(10) would afford adequate compensation, and we do not see any other reason why it would not be reasonable for the types of variation

canvassed to be effected. Again, the parties must provide any representations about this as set out in the directions given above.

(5) Whether any variation should take effect retrospectively, or only from the date of the application(s) or any order

63. At the hearing, it was confirmed that the request that any variation be backdated to April 2012 was wrong. Mr Kilcoyne confirmed that the tribunal was being asked to order that any variation take effect from the date we have recorded below for the relevant lease.

Flat	Leaseholder	Acquired	Title number
1	Grace Jane Middleton	10 July 2020	HD515315
2	Liam Martin and Agnes Kuroki	21 December 2023	HD515480
4	Richard Henry Robinson & Margaret Robinson	14 March 2012	HD516445
5	Thomas Maximilian Volker	10 September 2021	HD515635
6	Charlotte Nicole Brassett	13 November 2020	HS516788

64. This was not contested, subject again to the question of the window (etc) repairs by the freeholder and the legal costs in connection with them/compensation.

(6) Whether compensation should be paid to any person in respect of any loss or disadvantage they are likely to suffer as a result of the variation

65. Again, this may depend on the terms which the parties wish to propose and the matters noted above. Again, Mr Robinson said the leaseholders were content with liability for internal repairs/decoration but there was a strong argument for compensation if liability for what he described as "external" repairs was added.

66. Mr Kilcoyne argued there was no need for compensation in relation to the window (etc) works/costs because leaseholders had many protections in relation to service charges, including the reasonableness limits in section 19 of the 1985 Act, where no demand has yet been made.

67. We agree with Mr Kilcoyne that, if any compensation is appropriate by reference to the terms proposed, the assessment of the amount would be a broad assessment, where there is no real formula. The parties may find it helpful to refer to such matters as the discussion in Triplerose v Stride from [48], but that was one approach based on the specific defects in that case. The parties must provide any expert evidence on compensation, and any representations about compensation, as directed above.

Service charge payability

68. Our assessments below largely focus on which disputed costs were reasonably incurred (or which charges based on estimates are reasonable). Subject to that, generally, the leaseholders agreed payability of those historic items which may not have been recoverable under the terms of the Leases. Each service charge year is a calendar year, to 31 December in the year stated below. Accounts were available only for the years from 2017 to 2023.

2014

69. The leaseholders originally disputed repair costs of £772. As with the future years, they had disputed these costs by reference to the terms of the Leases. At the hearing, Mr Robinson confirmed these were no longer disputed, the defect in the Leases was not relied upon, the only challenge to the repair costs was to those (in later years) said to be unreasonable in amount.

70. The relevant schedule of items in dispute had referred to £772 cleaning costs by mistake, when it was agreed the actual cleaning costs were £324. Mr Robinson had said the cleaning costs were excessive in all years, no services have been provided for two years after the development and then cleaning had not been regular. He had produced a quotation for £48 including VAT per visit, say £288 pa, which at the hearing he adjusted to £336 to allow six-weekly cleaning. Accordingly, he agreed the figure of £324.

71. Apparently, managing agents were not appointed until late 2014.

2015

72. The previously disputed repair costs of £411 were now not disputed.

73. The cleaning costs of £410 were disputed for the same reasons noted above. Mr Kilcoyne noted that the leaseholders had provided only one quotation which provides no details and that monthly cleaning even at this rate would equate to £672, which was close to the cleaning costs charged in most years. Mr Robinson acknowledged that he did not live at the property, but said by and large the cleaning was not good. There was no dispute that these costs had been incurred and all service charges had been paid without evidence of any queries save for proposed reserve fund payments for major works in 2019 and thereafter. We consider the cleaning cost for this year (and each year save for 2021, explained below) reasonably incurred for the reasons given by Mr Kilcoyne; monthly cleaning appears reasonable.

74. A charge of £233 for fire equipment was not (or was no longer) disputed.

75. Finally, the management fee of £1,894 was disputed. The leaseholders had proposed reduction by £260.56, assuming removal of some costs from the total for the year. They had provided quotations referring to 12.5% or 15% of expenditure. It was pointed out that percentage-based fees were no longer encouraged, and the RICS Code of Practice (Service charge residential management) indicates that fixed fees are considered to be preferable. Mr Kilcoyne suggested £250 per flat up to 2020 (£1,800 including VAT) or £300

from 2021 (£2,160 including VAT). Mr Robinson thought that £200 plus VAT would be nearer the mark, emphasising the limited premises needing to be managed. We consider that costs up to those proposed by Mr Kilcoyne were reasonably incurred for each year; this is a converted building and these costs appear within a reasonable market range, across these periods. Accordingly, the management fee for this year is reduced slightly, to **£1,800**.

2016

76. The repair costs of £311 were no longer disputed. We consider the £414 cleaning costs reasonably incurred, for the reasons explained above.

77. The leaseholders disputed £1,582 fire equipment/emergency costs. They initially said this should have been provided by the freeholder under the head lease, so only 50% would be chargeable to flat leaseholders. They had been informed these works included fire alarm testing and emergency light repairs, by PLP Fire Protection, Nirvana Maintenance and JOB Electricals. Mr Robinson said no emergency lights had been installed at this time, only PIR lights inside. Although Schedule 4 to the Head Lease does refer to fire alarm installations and the like, the area leased to Veltrim under the Head Lease, for which they are responsible, includes the common parts. There was no indication of who had procured these works or, if this was the freeholder, whether these had already been split. Mr Kilcoyne acknowledged there is no time bar but emphasised the difficulty for the landlord of explaining such costs when there is no evidence of any challenge at the time and all service charges were paid for and following this period. In view of the passage of time, we are not satisfied that the leaseholders have done enough to challenge these costs and/or that anything more is required by way of explanation, despite the queries from Mr Robinson about the explanations he had been given earlier.

78. For the reasons explained above, we reduce the management fees of £2,160 to **£1,800**.

2017

79. The repair costs of £630 and the cleaning costs of £352 were no longer disputed, as noted above.

80. Costs of £1,818 for fire equipment/health and safety were disputed as excessive. Veltrim had produced relevant invoices and it was pointed out that from the summer of 2017 there was a heightened sense of the need to assess and address fire risks even in small residential developments, following the Grenfell tragedy that summer. In any event, for the same reasons as noted above, we are not satisfied that the leaseholders have done enough to challenge these costs.

81. For the reasons explained above, we reduce the management fees of £2,232 to **£1,800**.

2018

82. The leaseholders had disputed repair costs of £1,379 as excessive. Mr Robinson said there was no information about what work this was, there were few flats and no external repairs, with the conversion having been carried out to a good standard to 2012. Mr Kilcoyne had taken instructions and explained at the hearing that costs for this year included two drainage items of £170 and £118 (which Mr Robinson confirmed were not disputed), £336 for a consumer unit, £303 in relation to communal lights said to be out, and £950 and £140 for roof repairs. The headings used in the accounts have on occasion been unhelpful but some of these costs must fall under the £2,058 also disputed for this year under the health and safety heading.

83. Mr Robinson challenged the roof items disclosed during the hearing as making up most of the repair figure (as noted above, totalling £1,090), emphasising that the roof is the responsibility of the freeholder so they ought to have repaired the roof and only 50% of their costs should be payable. Mr Kilcoyne pointed out that the area leased to Veltrim includes a roof area above the mezzanine level (as noted above), but there was no indication of which roof areas this work related to or whether it had been split already, acknowledging that if this related to the main roof then it should have been 50% of the freeholder's costs. In the absence of any previous challenge about this, where the managing agents had changed in 2020, he said the leaseholders had not done enough to put the onus on Veltrim to justify these costs.

84. For the reasons given by Mr Kilcoyne and noted above in relation to fire safety matters, we are not satisfied that enough has been done to challenge the roof charges or the £2,058 fire equipment (etc) charges, particularly when they were paid without dispute at the time and there is no actual evidence from occupiers to challenge works carried out some seven years ago. The fact that repair costs were modest in the previous four years and following five years does not mean that these repair costs were unreasonably incurred.

85. For the reasons explained above, we allow the £600 cleaning costs.

86. A cost of £460 for emergency lights was disputed, with Mr Robinson suggesting these should have been provided by the freeholder, so half of the cost should be payable. This emergency lighting was for an external staircase, included in the premises demised to Veltrim, and within "lighting" in Schedule 1 to the flat leases. There was nothing to suggest these lights had not been required, or anything to indicate whether they had been provided by the freeholder and the cost had been halved or Veltrim had incurred the full cost. For those reasons, and those in relation to the fire safety items above, we are not satisfied that this cost has been sufficiently challenged.

87. For the reasons explained above, we reduce the management fees of £2,280 to **£1,800**.

2019

88. The repair costs of £144, health and safety costs of £527 and electrical repairs of £1,161 were not disputed.

89. For the reasons explained above, we allow the £600 cleaning costs for this year, and reduce the management fees of £2,280 to **£1,800**.

90. It appears £10,000 had been collected for anticipated major works. The details in the accounts (headed reserve fund, although it is now agreed there is no provision for a reserve fund) refer to £3,565 costs of internal redecoration, where the need for such works had previously been queried. Mr Robinson now agreed the amount was reasonable, and payable if we varied the lease to include it. Mr Robinson disputed the other three major works costs paid, as considered below.

91. First, a cost of £600 for Blakeney Leigh preparing a specification of works. Mr Robinson said this was for proposed repair works to the entire exterior which did not happen, with the managing agents changing shortly afterwards. At the hearing, he told us that he understood there had been discussions with the freeholder but these had broken down. Mr Kilcoyne said this sum could not be split precisely. Second, Mr Robinson had disputed fees of £3,613 of the managing agents (Fresh Property Management) for "*section 20 notice charges*". We observed that this fee seemed unreasonable, since only somewhere between one and three notices had been produced (the parties disagreed about this, but had produced insufficient evidence) and the works had not proceeded (apparently as a result of queries about whether leaseholders were required to pay the repair costs relating to the areas demised to Veltrim). Since the works had not proceeded, the agents had not needed to carry out all the work involved in actually awarding/administering a works contract and managing the works. Mr Kilcoyne accepted that both charges could be reduced by a proportion (25%-50%) if we were concerned about inclusion of works to the entire exterior, rather than the relevant parts, and invited us to use our general experience to assess a reasonable figure for the managing agent's fees. We consider it was reasonable use a single professional to prepare the relevant documents, particularly since it might have been possible for the combined works to be procured with the freeholder (where the consultation requirements needed to be complied with in relation to the flat leaseholders), but part of the cost should have been shared with the freeholder (so that in effect only 50% of an appropriate share was paid by the flat leaseholders). In any event, the total fee is too high for the reasons we put to the parties. In our assessment, the total cost reasonably incurred in connection with these two items is **£1,800** including VAT.

92. Third, Mr Robinson disputed a cost of £1,200 for "C P Roofing – roof repairs". Again, he said, roof costs should have been for the freeholder under the Head Lease, so only 50% of this might be payable. Again, we do not know whether this relates to the roof area within the Veltrim demise or whether the cost (which, for roof works, does not seem a large sum) had already been split with the freeholder. In view of the amount, we are not satisfied that this is likely to relate to the main roof or was not reasonably incurred.

2020

93. The repair costs of £366 and asbestos survey costs of £300/£360 were no longer disputed. For the reasons explained above, we allow the cleaning costs of £658.

94. We are not satisfied that the leaseholders have done enough to challenge the £894 cost under the fire alarm maintenance heading. The query seems largely to be the result of the inaccurate heading; at the hearing, Mr Robinson treated these as fire safety costs. There is no dispute that this sum was incurred, as shown in the accounts. It appears reasonably incurred, particularly in view of the matters noted above in relation to fire safety.

95. For the reasons explained above, we reduce the management fees of £2,284 to £**1,800**.

2021

96. The £450 cost of repairs and £348 cost of electrical repairs were no longer disputed.

97. We reduce the £1,346 cleaning costs in this year to **£720**, in line with the cost incurred in the previous and following years and within a reasonable range of the quotation produced by Mr Robinson for monthly cleaning. The amount appears unreasonable, for the reasons given by Mr Robinson and noted earlier. The invoices produced by Veltrim in the bundle are almost illegible and not in date order. They suggest changes in cleaners, which may indicate attempts to test the market, but also suggest twice-monthly cleaning at some points, when no explanation has been given for cleaning more often than once per month (cleaning this property more than that does not seem reasonable).

98. Mr Robinson had previously referred to a charge of **£270** for health and safety as undisputed, but then discovered the (almost illegible) invoice in the bundle [p.468] which suggests this was actually for another asbestos survey and had been shown in the accounts under the wrong heading, so was disputed. For the reasons explained below, we disallow this cost.

99. For the reasons explained above, we reduce the management fees of £2,701 to **£2,160**.

2022

100. The £384 shown in the accounts for repairs was no longer disputed. Nor were the figures for fire equipment and electrical repairs.

101. The **£975** cleaning costs are reduced to £720, for the reasons explained above.

102. For the reasons explained above, we reduce the management fees of £2,819 to **£2,160**.

2023

103. The costs of repairs (estimated at £350, £864 in the accounts), the costs of general/fire risks (estimated at £570, £732 in the accounts) and the costs of

electrical repairs (estimated at £350, £300 in the accounts) were no longer disputed. Nor were the actual insurance costs, which had been correctly charged in the accounts.

104. For the reasons explained above, we allow the £720 cleaning costs.

105. The costs of an asbestos survey (estimated at £900, with £390 ultimately incurred as shown in the accounts) was disputed. The leaseholders pointed out that the Control of Asbestos Regulations 2012 only require regular review and there had been no reason to suspect there had been a significant change to the premises or the previous survey was no longer valid, so it had not been reasonable to incur these further costs. Mr Robinson noted that the asbestos survey procured by the freeholder for their major works [p.300] confirmed no asbestos was suspected. Mr Kilcoyne observed that some costs of asbestos assessment were inevitable, and said the first £300-odd, in 2020, could not be challenged (it had not been). There was no evidence to support the "almost annual" further "asbestos surveys". We are not satisfied that Veltrim's costs of asbestos surveys from 2021 onwards were reasonably incurred, so the **£390** cost in this year is disallowed.

106. For the reasons explained above, we reduce the management fees of £3,100 to **£2,160**.

2024 (charges based on estimated costs)

107. Since no accounts had been produced yet, the charges for these periods are based on estimates. After the accounts have been prepared, any of the parties could make a new application to the tribunal to determine payability of the actual costs reasonably incurred (such as the lock which Mr Richardson raised at the hearing), if any of these are sufficiently disputed. Our assessment in these proceedings is of the reasonable estimated costs for 2024 and 2025 (for the purposes of section 19(2) of the 1985 Act).

108. First, the leaseholders disputed £1,500 for repairs, noting this was much higher than the earlier years and nothing seemed now to be in disrepair, where the interior has only "two little corridors and two staircases". Mr Kilcoyne had taken instructions and proposed reduction to **£800** for each year. In the circumstances, we agree that is reasonable.

109. £350 for fire equipment/H&S/emergency had been mentioned but was not disputed. A query about the estimated insurance cost had been resolved. There was no disputed cleaning cost charge for this year.

110. For the reasons explained above, we disallow the **£500** estimated for an asbestos survey and reduce the estimated management fees of £3,410 to **£2,160**.

2025 (charges based on estimated costs).

111. For the same reasons as explained above, we reduce the £1,500 for repairs to **£800**, allow the £720 for cleaning costs and disallow the **£500** for an asbestos survey.

112. £1,000 for "fire remedial action" was disputed and said to be a reasonable estimate. Mr Robinson had been troubled by explanations which refer to stair nosing (when the covering is carpet on concrete steps) and costs which should be modest, such as signage and PAT testing (he states there are no portable electrical appliances; he suggested less than £100). We recognise his concerns, but as an overall estimate of potential costs of compliance with fire safety requirements, where it was acknowledged for example that some signage was missing, no comparable estimate/quote had been provided and compliance with any foreseen or unforeseen fire safety requirements during the year is important, this seems to us to be a reasonable estimate.

113. £1,500 for staircase/ladder checks was disputed. Again, Mr Robinson had been troubled by an explanation which referred to the Provision and Use of Work Equipment Regulations 1998; he argued this meant power tools or other specific equipment, and could not include the stairs. At least currently, it seems to us that these Regulations could apply to any work equipment, which is defined widely and could include such matters as fire escape stairs in this building. He said at the hearing that the major works carried out by the freeholder had included works to the stairs, but checks by the managing agents had referred to problems with the stairs/works. In the circumstances of this building, it seems reasonable to include provision for checks of such matters as the external staircase, but we agree with Mr Robinson that the estimate is excessive for checks. This should be a matter of someone visiting and carrying out a proportionate check of any appropriate matters, so an estimate of up to **£500** would be reasonable.

114. **£216** for "AOV maintenance" was disputed; the leaseholders believe there is no AOV in this building. Mr Kilcoyne had no answer beyond explaining that the managing agents thought there was no provision in the budget for AOV maintenance (this part of the copy budget they had given to Mr Kilcoyne was illegible). The copy provided by Veltrim's solicitors (as one of their additions to the bundle) was legible, clearly showing this item. We disallow it.

115. For the reasons explained above, we reduce the estimated management fees of £3,649 to **£2,160**.

Potential costs of freeholder's repair works

116. No demand had been made for the costs of the major works to repair/decorate those part of the Common Parts which are demised to Veltrim under the Head Lease, but the leaseholders had previously sought a determination of whether such costs would be payable. That was not pursued at the hearing. In these proceedings, it does not appear appropriate to attempt to make any further finding about payability beyond those under the "Interpretation" heading above (under the current terms of the Leases, no service charges for such costs would be payable in any event). Even if the Leases are varied in terms which would include any such costs, payability may depend on many factors including (subject to anything the parties do or do not agree) when a demand is made and full details of the actual works, the costs of the works and any justification for any legal and other costs incurred as a result of Veltrim's failure to repair.

Summary

117. The basic reductions in the amounts which were/are payable (subject to any issue of payability under the terms of the Leases not dealt with above, if the Leases are not varied to include all such costs) are as follows.

Year	Item	Charge (£)	Determination (£)
2015	Management fees	1,894	1,800
2016	Management fees	2,160	1,800
2017	Management fees	2,232	1,800
2018	Management fees	2,280	1,800
2019	Fees for planned major works	600 + 3,613	1,800
	Management fees	2,280	1,800
2020	Management fees	2,284	1,800
2021	Cleaning costs	1,346	720
	Fire/asbestos survey	270	0
	Management fees	2,701	2,160
2022	Cleaning	975	720
	Management fees	2,819	2,160
2023	Asbestos survey	390	0
	Management fees	3,100	2,160
2024	Repairs	1,500	800
	Asbestos survey	500	0
	Management fees	3,410	2,160
2025	Repairs	1,500	800
	Asbestos survey	500	0
	Staircase/ladder checks	1,500	500
	AOV maintenance	216	0
	Management fees	3,649	2,160

Section 20C/paragraph 5A

118. In their final submissions as directed above, the parties should include any submissions as to whether the tribunal should make an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act in relation to all of the proceedings (the lease variation proceedings which were struck out, the current lease variation proceedings and the service charge proceedings). They should include any points they wish to make in relation to the matters noted below.

119. There is no obvious provision in the Leases for the costs of these proceedings to be included in the service charge. The parties may wish to refer to the relevant authorities on this, but it seems well established that generally management costs will not include legal costs of proceedings. Accordingly, subject to any submissions, we would be minded to make an order under section 20C of the 1985 Act to avoid any potential dispute about this in future.

120. Since no particular administration charge has been identified, we would be minded, subject to any submissions the parties wish to make about this, not to make any order under paragraph 5A of Schedule 11 to the 2002 Act. This would not prevent any party from applying for such an order if any such administration charge is sought in future.

Judge David Wyatt **4 July 2025**

Rights of appeal

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

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

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

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

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

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

SCHEDULE 1
Examples of the type of variation which might be considered.

At the end of clause 1.4 of the No.1-type lease, insert "*and 'Head Landlord' means the person or entity entitled to the reversionary interest immediately expectant on the determination of the term of the Head Lease*"

In clause 1.6 of the No.1-type lease, immediately after "means", insert "*a fair proportion of*". In clause 1.7 of the lease of No.4, delete "*1/6th*" and substitute "*a fair proportion*".

In clause 1.15 of the No.1-type lease, after "Service Charge", insert "*Rent*".

In clause 1.16 of the No.1-type lease and clause 1.17 of the lease of No.4, delete the wording and replace it with: " '*Service Charge Rent' means:*

> *(a) a fair proportion of the service charge as defined in the Head Lease; and*
> *(b) a fair proportion of the costs of providing the services set out in Schedule 1 to this Lease.*"

In clause 6.1.1.2 of the No.1-type lease, after "Service Charge" insert "*Rent*".

In clause 7.2.1 of the No.1-type lease, delete "*insure the Building and to keep it insured*" and replace with "*procure that the Head Landlord insures the Building and keeps it insured*".

In clause 8.1 of the No.1-type lease, after "Service Charge", insert "*Rent*".

In clause 8.3.1 of each lease, delete "*provide and perform the Services*" and replace with "*(a) procure that the Head Landlord provides and performs the services set out in Schedule 4 to the Head Lease; and (b) provide and perform the services set out in Schedule 1 to this Lease,*".

In Schedule 1 to each lease:

- at the start, before "Maintaining", insert "*Insofar as the following matters are not services set out in Schedule 4 to the Head Lease to be provided by the Head Landlord*:"

- immediately after "renewing", insert "*the Common Parts, including without limitation*"

- delete "*insuring*" [and substitute "*complying with the tenant covenants in the Head Lease, and satisfying the obligations of the Landlord under clauses 7.2 and 8.3 of this Lease*"]

- in the No.1-type lease, after "Service Charge", insert "*Rent*".

Veltrim shall ensure that any variation order is promptly registered at the Land Registry in respect of each leasehold title, including the head lease title.

SCHEDULE 2

Sections 35 & 38 of the Landlord and Tenant Act 1987

35.— Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease ;

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, "appropriate tribunal" means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

38.— Orders varying leases.

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—
(i) any respondent to the application, or
(ii) any person who is not a party to the application,
and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.