FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CA/LSC/2024/0193**
Property	**:**	**Flat 1, Hesketh Manor, 12 Hesketh Road, Southport, Merseyside, PR9 9PD**
Applicant	**:**	**Olive Seddon**
Applicant's Representative	**:**	**Ian Seddon**
Respondent	**:**	**Hesketh Manor Management Limited**
Respondent's Representative	**:**	**Michael Stone**
Type of Application	**:**	**Landlord and Tenant Act 1985 s. 27A, s. 20C**
Tribunal Members	**:**	**Judge Colin Green (Chairman)** **Jessica O'Hare MRICS**
Date and venue:		**Determination following an inspection on 19 May 2025 and hearing on 28 May 2025**
Date of Decision	**:**	**30 June 2025**

REASONS FOR DECISION

DECISION

(1) In respect of s. 27A of the Landlord and Tenant Act 1985, the Applicant is liable to contribute by way of service charge the sum of £1,000.00 for the service charge year 2023.

(2) In respect of s. 20C of the 1985 Act, it is recorded that the Respondent agreed that it would not seek to recover any costs of these proceedings from the Applicant by way of service charge, as no such costs have been incurred.

REASONS

Background

1. Hesketh Manor is a three-storey, purpose-built block of flats consisting of nine flats, with a common drive, entrance hall, stairs and lift, a swimming pool in the basement, and garages at the rear. At the rear of the building there are two patio areas adjacent to flats 1 and 2 ("the Patio Flats"). There are also three balcony structures attached to the building at the rear which provide balconies to flats 4 and 7; 3, 6 and 9; and 5 and 8 ("the Balcony Flats"). The balconies have a concrete base, with a wooden frame and wooden slats, supported by a metal structure. Each of the three groups of balconies is supported by two metal pillars which extend from the ground up to the base of the top balconies. The pillars are located at the two front corners of the metalwork of the balconies. The total structure of balconies and pillars will be referred to as "the Balcony Structures".

2. This is an application under s. 27A of the Landlord and Tenant Act 1985, arising out of a service charge challenge for the years 2023 and following. The issue for the Tribunal is whether repairs to the Balcony Structures or any part thereof is a service charge expense or falls to be met by the owners of the Balcony Flats, so that the owners of the Patio Flats are not obliged to contribute. The Applicant accepts that if flat 1 is liable for such works, payment will be made. There is currently no challenge as to whether the costs were reasonably incurred or reasonable in amount. The only charge that has arisen to date is in respect of a £1,000.00 contribution to balcony works for the service charge year 2023. This has been paid to the Respondent under protest, pending the determination by the Tribunal of the above issue. Mr. Seddon

accepted that if works to the balconies were a service charge expense there would be no issue concerning liability for the £1,000.00 contribution.

3. The Tribunal panel undertook an inspection on 19 May and there was a hearing via CVP on 28 May 2025. Michael Stone, the owner of flat 8 and a director of the management company, represented the Respondent. The Tribunal is grateful to Mr. Seddon and Mr. Stone for the helpful way in which they advanced their respective cases and their patience in dealing with the Tribunal's questions.

The Leases

4. Two leases were provided as part of the hearing bundle: for flat 1 dated 25 April 1997, and for flat 8 dated 11 August 1993. For the purposes of this decision, it is assumed that the leases of the other seven flats are in all material respects in the same terms, save for the description of "the Premises" in the Third Schedule and the area edged in red on the plan to each lease which identifies what is demised. Each of the leases are for a term of 999 years from 1 January 1991.

5. At some point the original Lessor's freehold to the Development was transferred to Hesketh Manor Management Limited, the Respondent management company in which each flat owner owns a share and whose directors are drawn from the flat owners.

6. The relevant lease provisions are as follows. Under clause 1(c) and the First Schedule, "the Development" is defined as the land edged in blue on plan annexed.

7. Under clause 1(d), "the Buildings"

> *"means the buildings in which the flats are situate and Building has a corresponding meaning"*

8. Under clause 1(e), "the Flats"

"means the flats with the garages allocated to them forming part of the Development and Flat and Flats have corresponding meanings""

9. Under clause 1(f), "the Retained Property"

"means that part of the Development not included in the Flats nor demised as appurtenant thereto being the property described in the Second Schedule hereto"

10. The Second Schedule provides:

"FIRSTLY ALL THOSE gardens grounds drives paths forecourts entranceways and stairs and swimming pool forming part of the Development which are used in common by the owners or occupiers of any two or more of the Flats and including the swimming pool and SECONDLY ALL THOSE the main structural parts of the Buildings including the roofs roof spaces (other than the roof space (if any) appurtenant to the Premises) foundations and external parts thereof (but not the glass of the windows of the Flats nor the interior faces of such of the external walls as bound the Flats) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one Flat and the joists or beams to which are attached any ceilings except where those joists or beams also support the floor of a Flat.

The above description is subject to the declaration as to party walls at the end of the Third Schedule hereto and to any similar declarations in the leases of other Flats."

11. Under clause 1(g), "the Premises"

"means the property hereby demised as described in the Third Schedule hereto including for the purposes of obligation as well as grant the ceilings floors joists beams cisterns tanks sewers drains pipes wires ducts and conduits specified in the said Schedule"

12. The Third Schedule differs for flats 1 and 8. In the lease for flat 1:

"ALL THAT Ground Floor Flat forming part of the Development and being one of the Flats and know as Flat No. 1 Hesketh Manor 12 Hesketh Road Southport aforesaid TOGETHER WITH the patio area appurtenant thereto and the garage forming part of the Development allocated to and intended to be enjoyed with the Flat all which Flat and garage are for the purpose of identification only delineated on the plan

annexed hereto and thereon edged red TOGETHER WITH the ceilings and floors of the Flat and the joists or beams to which the ceilings are attached AND TOGETHER with all cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purposes of the Flat or garage but no others AND TOGETHER with the entrance doors and the glass of the windows of the Flat and the interior faces of such of the external walls as bound the Flat EXCEPT AND RESERVING from the demise the main structural parts of the Building including the roof roof space foundations and the external parts thereof

All internal walls separating the Premises from any other part of the Development shall be party walls and shall be used repaired and maintained as such"

The plan shows flat 1 and garage 1 edged red, and the patio area, although the delineation of the patio might not be entirely accurate. This does not matter for current purposes.

13. For Flat 8, the Third Schedule provides:

"ALL THAT Second Floor Flat forming part of the Development and being one of the Flats and know as Flat No. 8 Hesketh Manor 12 Hesketh Road Southport aforesaid TOGETHER WITH the garage forming part of the Development allocated to and intended to be enjoyed with the Flat all which Flat and garage are for the purpose of identification only delineated on the plan annexed hereto and thereon edged red TOGETHER WITH the ceilings and floors of the Flat and the joists or beams to which the ceilings are attached AND TOGETHER with all cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purposes of the Flat or garage but no others AND TOGETHER with the entrance doors and the glass of the windows of the Flat and the interior faces of such of the external walls as bound the Flat EXCEPT AND RESERVING from the demise the main structural parts of the Building including the roof roof space foundations and the external parts thereof

All internal walls separating the Premises from any other part of the Development shall be party walls and shall be used repaired and maintained as such"

14. The plan to the Lease of flat 8 shows the flat edged in red, but the balcony is not shown and the red edging does not incorporate the balcony.

15. It is also significant that whereas the description of flat 1 contains the words "TOGETHER WITH the patio area appurtenant thereto", the description of flat 8 does not contain "TOGETHER WITH the balcony appurtenant thereto" or similar words.

16. As noted above, it is assumed that the Third Schedule of the lease of flat 2, like that of flat 1, describes the patio area at the rear of flat 2 as "appurtenant thereto" and that the Third Schedule of the leases and plans of the other Balcony Flats are in the same terms as that of flat 8, with no reference to a balcony, nor with a balcony included in the land edged red on the lease plan. On that basis, none of the balconies form part of the Premises for any of the balcony Flats.

17. In the light of this, what rights are granted in respect of the balconies? Clearly, they cannot be accessed or used other than from the adjoining Balcony Flat. Indeed, nowhere in the leases does the expression "balcony" or the like appear. If each of the balconies was not demised with the corresponding Balcony Flat, no express right to use the balcony appears to be included in the rights granted in respect of the property demised as set out in the Fourth Schedule – the balconies provide no common access and are not used in common between flats, and entry upon them is not necessary for the proper performance of the Lessee's obligations under the Lease. Mr. Stone pointed out that the lift is not mentioned in the lease but paragraph 1 of Schedule 4 grants a right to use the lift as it is "for the purpose of access to and egress from the Premises".

18. Arguably, in the Tribunal's view there is an implied right to use the balconies for the owner of each Balcony Flat, by reason of necessity, but that is quite different to the balcony being included within the demise of "the Premises".

19. Clauses 4 and 5 of both leases contain a covenant that the Lessee will observe and perform the covenants contained in the Eighth and Ninth Schedule. These include repairing obligations and service charge provisions.

20. The Eighth Schedule contains covenant by the Lessee. Under paragraph 1:

> *"To keep the Premises and every part thereof and all fixtures and fittings therein and all additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts and to maintain uphold and wherever necessary for whatever reason rebuild reconstruct and replace the same"*

21. Under paragraph 10, to pay one equal ninth

> *"of all costs and expenses incurred by or on behalf of the Lessor in carrying out his obligations under and giving effect to the provisions of the Ninth Schedule hereto…"*

Such costs and expenses will be included in the service charge.

22. Paragraph 3 of the Ninth Schedule contains a covenant by the Lessor:

> *"To keep the Retained Property and all fixtures and fittings thereon and additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn and damaged parts providing nothing herein contained shall prejudice the Lessor's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor or the Retained Property by the negligence or other wrongful act or default of the Lessee or such other person"*

23. Therefore, the Lessee's repairing obligations are limited to "the Premises and every part thereof and all fixtures and fittings therein and all additions thereto" and the Lessor's repairing obligations (and the costs and expenses covered by the service charge) are in respect of "the Retained Property", as described in the Second Schedule "and all fixtures and fittings thereon and additions thereto". There is no suggestion that the balconies are "additions thereto" as it is accepted that they were constructed at the same time as the rest of Hesketh Manor, prior to the grant of any of the leases.

24. The first part of the Second Schedule concerns parts used in common and therefore won't include the balconies. The second part is:

> *"the main structural parts of the Buildings including the roofs roof spaces (other than the roof space (if any) appurtenant to the Premises) foundations and external parts thereof (but not the glass of the windows of the Flats nor the interior faces of such of the external walls as bound the Flats) and all cisterns tanks sewers drains pipes wires ducts and conduits* ***not used solely for the purpose of one Flat*** *and the joists or beams to which are attached any ceilings except where those joists or beams also support the floor of a Flat"* (emphasis added)

25. The balconies are "external parts" of the Buildings – more accurately, each of the Balcony Structures (which includes the balconies) are an external part – and fall within the Lessor's repairing obligation, and do not form part of "the Premises" as they were not demised with the Balcony Flats. External parts of the Building are excluded from "the Premises" – the Third Schedule (the description of "the Premises" demised) includes:

> *"EXCEPT AND RESERVING from the demise the main structural parts of the Building including the roof roof space foundations and the external parts thereof"*

26. Mr. Seddon argued that words emphasised in bold at paragraph 24 above exclude the balconies from the Retained Property because they are used solely for the purpose of one Flat. In the Tribunal's view this is incorrect. On the proper construction of the Second Schedule, the words in bold are a qualification limited to "all cisterns tanks sewers drains pipes wires ducts and conduits" so that pipes, wires and conduits that are within a flat and serve only that flat – for example, water pipes and electrical cabling in the flat – do not form part of the Retained Property. Indeed, it is clear from the description in the Third Schedule that "all cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purposes of the Flat or garage but no others" form part of "the Premises".

Other Arguments

27. Aside from the proper interpretation of the provisions of the lease, Mr. Seddon raised additional arguments as to why the cost of balcony works should be met by the Balcony Flats, not the Patio Flats.

28. Reliance was placed on a set of estate agents' particulars for one of the Balcony Flats, which contains a floor plan that shows the balcony as part of the flat. As a means of showing the physical layout of the flat this is correct, but in the Tribunal's view such a plan cannot alter the provisions of the leases and it has no legal affect.

29. Mr. Seddon contended that it is unfair that flat 1 should be solely responsible for the repair of the patio to flat 1 but must contribute by way of service charge to balcony repairs when it derives no benefit from the balconies. The benefit is limited to each of the Balcony Flats.

30. The point is understandable, but it is not uncommon in leases for a flat owner to be liable for service charge costs which solely or primarily benefit other flats, for example: repairs to the roof. Under the leases the costs are apportioned on a strict one-ninth basis and not a fair and proportionate basis. This is standard means of fixing each lessee's contribution as it is a more certain method and administratively convenient. Sometimes in works in favour of certain flats, other times not.

31. It would appear that in the past patio repair works have been funded by way of service charge. The Tribunal does not consider that this changes the proper construction of the lease provisions, and it was not argued that by this the leases have been varied in some way. The patios form part of "the Premises" for Flats 1 and 2 and not "the Retained Property" and therefore are the sole responsibility of each Patio Flat owner. If all the nine flat owners agree, repairs to the patios can be treated as a service charge expense, but otherwise they are not.

32. Mr. Seddon's position altered somewhat in that he also submitted that although certain works to the Balcony Structures were a service charge expense, others were not. His argument was as follows. There is an estimate of 22 July 2024 from PH Home Improvements in respect of taking up damaged tiles on the balcony to flat 7, sealing the area, laying porcelain tiles and

grouting, at a cost for labour and materials of £780.00. In respect of the porcelain tiles, it is stated "customer to pay".

33. The Respondent's minutes for the AGM held on 14 February 2025 show that balcony tiling for flats 4 and 7 were approved, the cost for flat 7 being £780.00, that is, that the cost of tiles is not a service charge expense but a cost to me met by the owner of flat 7. According to Mr. Stone, that is how the cost has been met.

34. From this, Mr. Seddon argued that this practice has set a precedent, ratified by the AGM, which is not just binding on flat 7 but on all the Balcony Flats. Work to the Balcony Structures is recoverable as a service charge expense, but work to the surface of the balcony, such as replacement tiles, and the slats should not be treated as part of the Retained Property and are not a service charge expense. Mr. Seddon also submitted that if new tiles were provided by a contactor they would amount to a service charge expense, but not if by a flat owner.

35. The Tribunal has the following observations concerning these submissions.

35.1. Neither the Respondent nor those members of the Respondent (flat owners) present at the AGM could alter the provision of the leases. That would require the consent of the owners of all nine flats.

35.2. As recorded in the minutes, the resolution did not purport to do this and there is no indication that what was approved was intended to be binding on anyone in the future.

35.3. Under the terms of the leases, the cost of replacement tiles will be a service charge expense, provided the replacement amounts to genuine work of repair. If replacement is purely for cosmetic reasons and the existing tiles are not in need of repair or do not need to be replaced as part of other repair works to the Balcony Structure, the cost would not qualify as a repair and therefore could not be a service charge cost.

35.4. Assuming that the replacement tiles were a genuine service charge cost they would still be subject to the requirement under s. 19 of the 1985 Act that the cost was reasonable, so that if for example, some particularly expensive tiles were chosen, it may be that only a reduced figure could be passed on as a service charge cost. There is currently no suggestion of that in respect of the above-mentioned tiles for flat 7.

35.5. The fact that a flat owner has chosen the tiles rather than the contractor is irrelevant as to whether the tiles are a service charge cost.

35.6. If a flat owner chooses to pay for replacement tiles himself, that is a matter for him, but it is not something that can alter the provisions of the leases.

35.7. There is no apparent justification for the slats being excluded.

35.8. Mr. Seddon's argument cannot affect the £1,000.00 contribution which has given rise to these proceedings as that arose in respect of different works carried out in an earlier service charge year.

35.9. Such a piecemeal approach as to dividing up the responsibility for the cost of balcony works would create real practical problems. Indeed, it confirms why, on the correct interpretation of the lease provisions, the Balcony Structures are to be regarded as part of the Retained Property. It is possible that repair work could extend to more than one balcony and section of pillars and that dividing responsibility for repairs amongst each of the Balcony Flat owners, and possibly the Respondent for the lower portion of the pillars at ground level, would be impractical and undesirable. As Mr. Stone put it: in the interests of uniformity the balconies should be treated as a collective responsibility. In the Tribunal's view, that is what is provided for under the leases and the matters raised by Mr. Seddon in respect of the AGM and flat 7 have not changed that.

Conclusion

36. In the light of the above, the Tribunal's findings can be summarised as follows.

36.1. The Balcony Structures (as defined above) form part of the Retained Property as defined by clause 1(f) and the Second Schedule to the Lease.

36.2. The costs incurred by the Respondent in respect of all or part of the Balcony Structures pursuant to its repairing obligations under paragraph 3 of the Ninth Schedule are costs for which the Applicant is liable to contribute by way of service charge under paragraph 10 of the Eighth Schedule.

36.3. Accordingly, the Applicant is liable to contribute by way of service charge the sum of £1,000.00.

36.4. Although the proper interpretation of the terms of the Lease has been resolved by this decision, the Tribunal is not able to make a determination concerning the recoverability of the cost of works to the Balcony Structures for which no service charge demand has currently been made, which will be subject to the restriction under s. 19 of the 1985 Act that such costs must be reasonably incurred and reasonable in amount, and compliance with any other statutory provisions such as those concerning the consultation process under s. 20 of the 1985 Act.

Section 20C

37. Under s. 20C of the 1985 Act, where the lease permits the recovery of costs as a service charge the Tribunal may order that some or all the costs incurred by the landlord in connection with the Tribunal proceedings are not to be included in the service charge payable by the tenant. The Tribunal may make such order as it considers equitable and regard will be had to what extent the tenant has been successful and the proportionality of any reductions, together with any other relevant factors. In making an order under s. 20C the Tribunal

makes no determination as to the amount of costs that are actually recoverable under the terms of the Lease, or whether such costs were reasonably incurred or reasonable in amount. Any challenges on those grounds would have to be dealt with on an application under s. 27A.

38. In the present case, Mr. Stone accepted that the Respondent would not seek to recover any costs of these proceedings from the Applicant by way of service charge, as no such costs have been incurred.

Dated this 30th day of June 2025.

Colin Green (Chairman)