FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBK/LSL/2025/0003**
Property	**:**	**Flat 5, 103-105 Harley Street, London W1G 6AJ**
Applicants	**:**	**Mr Kaveh Shakib and Mrs Sarah Jayne Neale**
Representative	**:**	**Mr Sami Allan of Counsel**
Respondent	**:**	**Norwich SPV Limited**
Representative	**:**	**Ms Diane Doliveux of Counsel**
Type of Application	**:**	**For a service charge determination pursuant to Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge P Korn** **Mr A Morrison MRICS**
Date of hearing	**:**	**2 September 2025**
Date of decision	**:**	**9 October 2025**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

(1) The following service charge items are determined not to be payable at all:

- 2023 electric charge late payment fee of £50.00.
- 2024 buildings insurance business interruption charge of £73.33.
- 2025 estimated window cleaning charge of £108.27.
- 2025 external wall inspection estimated charge - £865.73.

(2) In respect of the following service charge items, only the reduced amounts set out below are payable:

- 2023 management fees – reduced to £750.00 per flat.
- 2024 management fees – reduced to £750.00 per flat.
- 2025 estimated management fees – reduced to £800.00 per flat.

(3) The following service charge item is determined to be payable in full:

- 2023 installation of AOV smoke vent & maintenance - £891.57.

(4) It is noted that the Applicants are no longer pursuing the following items:

- 2023 electric charges credit of £169.14.
- 2024 accountancy charge reduction of £72.04.
- 2025 estimated accountancy charge reduction of £72.04.

(5) It is noted that the Respondent has conceded that the 2025 estimated buildings insurance business interruption charge of £73.33 is not payable.

(6) It is noted that the parties now agree (as established at the hearing) that the 2024 Work to Fire Doors charge of £694.24 is not a service charge item.

(7) Pursuant to section 20C of the Landlord and Tenant Act 1985 ("**the 1985 Act**"), the tribunal makes an order that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

(8) Pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**CLARA**"), the tribunal makes an order extinguishing the Applicants' liability to pay towards the costs incurred by the Respondent in connection with these proceedings.

Introduction

1. The Applicants seek a service charge determination pursuant to section 27A of the 1985 Act. The application concerns various service charge items for the 2023 and 2024 years and various estimated service charge items for 2025 in relation to the Property.

2. 103-105 Harley Street ("**the Building**") is a purpose-built block of residential flats and the Applicants are the leaseholders of Flat 5 ("**the Property**") pursuant to a lease ("**the Lease**") dated 5 April 2022 and made between Howard de Walden Estates Limited (1) and the Applicants (2). The Respondent is the Applicants' direct landlord and the freehold interest in the Building is held by Howard de Walden Ltd.

3. Both parties were represented at the hearing. Also in attendance were Mr Andy Tilsiter, the Applicants' property manager, and Ms Beverley Wootton, the Respondent's building manager. Both had given written witness statements.

The issues (excluding those recorded above as having been conceded by one party or agreed between the parties)

2023 electric charge late payment fee of £50.00

4. This charge was discussed at the hearing. The Applicants did not know why the fee had been charged to them. The Respondent's position was that it was payable because there was an invoice.

2023 to 2025 (inclusive) management fees

5. In written submissions the Applicants state that the management fees increased substantially from £757.00 per flat to £990.60 per flat in 2023. They then increased further in 2024 and the estimated fees for 2025 were based on the 2024 charge. In response, the Respondent state that the level of fees took into account the fact that the Building was a higher risk building.

6. In her witness statement, Ms Wootton for the Respondent states that *"the general consensus and my experience is that block management … fees in London generally range from £250.00 to £700.00 per flat per year and that for high-end developments … fees can be higher due to the increased demands placed on managing agents"*.

7. The Applicants have provided some comparable evidence and propose a charge of £750.00 for 2023 and 2024 and an estimated charge of £800.00 for 2025.

2023 installation of AOV smoke vent and maintenance charge of £891.57

8. The Applicants challenge the payability of this charge on the basis that the works in question related to a "relevant defect" as defined by the Building Safety Act 2022 ("**the BSA**") and are irrecoverable by virtue of Schedule 8 to the BSA.

9. The Respondent disputes that the charge related to a "relevant defect" and has referred the tribunal to the decision of the Upper Tribunal in *Markus Lehner v Lant Street Management Company Limited [2024] UKUT 135 (LC)*. It also states, for a reason that will be referred to later, that the Headlease indicates that the Building was built in or around the 1950s.

2024 buildings insurance business interruption charge of £73.33

10. In written submissions the Applicants state that the Building has been completely residential since July 2024 but that the insurance policy designated it as a commercial building throughout the insurance year. As a result, there was included in the insurance premium a charge for insuring against business interruption which – for the period during which the Building was wholly residential – worked out at £73.33.

11. In response, the Respondent does not dispute the accuracy of the figure but states that it was unable to recover this sum from the insurer as the insurer's policy was not to refund in relation to part of a year.

2025 estimated window cleaning charge of £108.27

12. In written submissions the Applicants state that there should be no window cleaning charge as the only communal piece of glass is the front door which is cleaned by the cleaner. In response, the Respondent states that window cleaning is desperately required and that it is impossible for residents to clean the outside of their own windows.

2025 external wall inspection estimated charge of £865.73

13. The Applicants dispute the necessity of these works and state that it is clear even to a lay person that the walls of the Building comprise traditional masonry. In any event, they consider the cost to be unreasonable.

14. In response, the Respondent states that this work is an essential requirement for a building safety case to be submitted to the Building Safety Regulator. It adds that a cheaper quote was obtained but that it came with a caveat that the contractor's insurance did not cover losses arising out of a scenario in which the contractor's report was

inaccurate. The two quotes obtained were from two professional companies who work on high rise building cases regularly and hold the relevant insurance.

Other key points arising at the hearing

15. In relation to the management fees, Ms Wootton said at the hearing that the previous agent's fee was higher than the amount being proposed by the Applicants. She reiterated the view that the Building is a higher risk building and added that the new agents took over the management in circumstances where there were a lot of defects in the Building and had to deal with large numbers of emails from leaseholders as well as issues such as site inspections. She also said that some landlords have a separate building safety manager and that they charge for this service separately.

16. Mr Tilsiter was asked some questions on the Applicants' comparable evidence relating to management fees. He was asked about the Applicants' evidence relating to a property known as Park House (page 153 of the hearing bundle), although it transpired after the hearing that he had got his figures wrong and that the charge was about £760.00 per flat per annum, not £420.00 as previously thought. As regards the comparable quote for the Building itself of £600.00 per flat per annum, Ms Doliveux noted that the quote was from Simon Smith – a previous managing agent who had previously charged significantly more – and she suggested that it was therefore not particularly reliable. In relation to the quote on page 149 of the hearing bundle, Ms Doliveux put it to Mr Tilsiter that it did not appear to relate to a higher risk building and was not comparable for other reasons – for example it was not in as nice an area.

17. In relation to building insurance, Ms Wootton said that the insurers did not give credits halfway through a year. When it was put to her that pages 117-118 of the hearing bundle showed that an amendment of the policy for 2025 did result in a credit, she said that the difference was that this amendment related to the whole of the year.

18. In relation to the external wall inspection, Mr Tilsiter reiterated the view expressed by him in written submissions that the walls of the Building were of traditional masonry and therefore no inspection was needed, and he referred the tribunal to what he considered to be the relevant guidance.

19. In relation to the AOV smoke vent installation, Mr Allan for the Applicants said that the Respondent had not produced a valid landlord's certificate. He also talked the tribunal through his analysis of the BSA generally and its application to the facts of this case. The Applicants' position was that the works in question related to a relevant

defect and were therefore irrecoverable by virtue of Schedule 8 to the BSA.

20. In response to the Applicants' position on the AOV smoke vent, Ms Doliveux disagreed that there was a relevant defect. She accepted that the Building was a relevant building but said that the purpose of the BSA was to protect leaseholders in relation to unsafe buildings and not to avoid their having to contribute towards the cost of updates to comply with current regulations. She also submitted that the Applicants' position did not meet the test laid down in the decision of the Upper Tribunal in *Markus Lehner v Lant Street Management Company Limited [2024] UKUT 135 (LC)*.

21. As part of her submissions for the Respondent, Ms Doliveux noted that Mr Tilsiter was employed by a company whose sole director was Mr Kaveh Shakib (one if the Applicants) and she put it to him that he was therefore not in a position to be wholly objective in his analysis. She also noted that Mr Tilsiter was neither a fire risk assessor nor a fire engineer.

Point arising after the hearing

22. In relation to the external wall inspection issue, the Applicants made a post-hearing written submission drawing the tribunal's attention to what they characterise as a very important discovery/omission in the disclosure by the Respondent. They state that the Respondent's managing agent said during the hearing that she did not know the construction of the Building and they also state that she did not disclose any Fire Risk Assessment. In the Applicants' submission it turns out, after a follow-up query by Mr Tilsiter following the hearing, that not only did the Respondent have a Fire Risk Assessment but that this confirmed the details of the Building's construction as masonry and concrete. The Assessment also states at 9.14 and 9.15 that there are no premises features that could spread fire and there is no potential for fire and smoke to spread. Further, the Assessment makes no recommendation that a Fire Risk Appraisal of External Walls ("**FRAEW**") is required.

23. In response, the Respondent's solicitor argued that a request to admit further evidence should be made by formal application supported by evidence that serves to explain (i) the reason why the evidence was not put forward before; (ii) the significance of the evidence; (iii) the prejudice to the Applicants if the application is refused; and (iv) the prejudice to the other parties if the application is allowed. He added that evidence as to the nature of the construction of the subject building was provided via paragraph 5 of Mr Tilsiter' s witness statement of 20 June 2025 and that as such the new evidence that the Applicants were seeking to introduce did not serve to expand the knowledge that the

tribunal had before it and which it otherwise obtained during the course of the hearing.

Tribunal's analysis

2023 electric charge late payment fee

24. We have considered the invoice provided by the Respondent but there is nothing on its face to show that the Applicants themselves were late in paying or why it should be payable by the Applicants for any other reason. The Applicants have raised a reasonable objection and there is no evidence before us in support of the Respondent's position. Therefore, this late payment fee is not payable.

2023 to 2025 (inclusive) management fees

25. The Applicants' comparable evidence on management fees is not particularly compelling. The Park House comparable contains an error, and the quote from a managing agent who had previously managed the Building and had charged more than he was quoting now does not constitute particularly reliable evidence.

26. However, in our view it is still the case that the amounts being charged by the Respondent were high, and the Applicants have challenged them. On the Respondent's own submission, fees range from £250.00 to £750.00 per flat per year. Our view, as an expert tribunal, is that managing agents' fees should not be above £750.00 per flat per year (and should often be substantively less than that) unless it can be demonstrated that there is a good reason for them to be higher.

27. In this case, the Respondent describes the Building as a higher risk building but does not substantiate in any meaningful way why the fees should be as high as they are. Whilst we acknowledge that the Applicants' own evidence on this point could have been better, our view on the information before us on balance of probabilities is that the fees should not have been higher than the sensible and realistic alternative figures proposed by the Applicants. Therefore, the management fees for 2023 and 2024 are reduced to £750.00 per flat per year and the estimated management fees for 2025 are reduced to £800.00 per flat.

2023 installation of AOV smoke vent and maintenance charge

28. The Applicants rely on paragraph 3(1) of Schedule 8 to the BSA.

29. Under paragraph 3(1) of Schedule 8, *"No service charge is payable under a qualifying lease in respect of a relevant measure relating to*

any relevant defect if the landlord under the lease at the qualifying time … met the contribution condition".

30. Under section 120(2) of the BSA, *""Relevant defect", in relation to a building, means a defect as regards the building that — (a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and (b) causes a building safety risk".*

31. Applying the above definition of "relevant defect" to the present case, the service charge being objected to is the cost of installing an AOV smoke vent. The need for the installation of an AOV smoke vent has not arisen "as a result of anything done" as its purpose is simply to install a smoke vent so that a smoke vent is in place. But has it arisen as a result of anything "not" done? In a sense it has, because the absence of a smoke vent is part of the reason for its installation. However, for a defect to be a "relevant" defect it first of all has to be a "defect", and there is no actual evidence before us that the absence of an AOV smoke vent was causing "a building safety risk" as per the second limb of section 120(2).

32. In addition, section 120(3) states that *""relevant works" means any of the following — (a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period; (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period; (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph)"* and that *""The relevant period" here means the period of 30 years ending with the time this section comes into force".*

33. If the Applicants' argument is that the defect arises as a result of something not done in connection with relevant works then there is also a timing problem for the Applicants. This is because the Respondent states, and the Applicants do not dispute, that the Headlease indicates that the Building was built in or around the 1950s. To qualify under paragraph 3(1) of Schedule 8, a "relevant defect" must under section 120(2) arise in connection with "relevant works" and under section 120(3) the "relevant works" – which must for these purposes include the failure to carry out particular works – need to have been undertaken (or omitted) within the period of 30 years ending with the coming into force of these statutory provisions, i.e. no earlier than the early 1990s. As the Respondent's uncontested evidence is that the Building was constructed in or around the 1950s and as the Applicants have given no evidence of the relevant works having been carried out within 30 years before the coming into force of these statutory provisions, the relevant measure does not relate to relevant works.

34. We note that the detailed decision of the Upper Tribunal in *Markus Lehner v Lant Street Management Company Limited [2024] UKUT 135 (LC)* covers various other points in connection with the application of the BSA, but many of those points are not in contention here and we have therefore just focused on what appear to be the primary points in the context of the parties' respective submissions.

35. In conclusion, therefore, the AOV smoke vent and maintenance charge does not fall within paragraph 3(1) of Schedule 8. The Applicants have not challenged this charge on any basis other than the BSA, and they have not challenged the amount of the charge, therefore the charge is payable in full.

2024 buildings insurance business interruption charge

36. The challenge here is that the Applicants were charged an amount for business interruption despite the fact that the Building was completely residential since July 2024. The Respondent does not dispute this point and accepts that this sum is not payable in relation to the 2025 year. Its objection to refunding this sum in relation to the 2024 year is based solely on an assertion that the insurer was not prepared to refund it.

37. The Respondent has not provided any real proof to support its position or to demonstrate the efforts made to obtain the refund and therefore, based on the information before us, we determine that this sum is not payable.

2025 estimated window cleaning charge of £108.27

38. The Applicants' position, which has not been effectively challenged by the Respondent, is that there are no communal windows other than the glass on the front door which is cleaned by the cleaner. The Respondent states that window cleaning is desperately required and that it is impossible for residents to clean the outside of their own windows, but this is not a proper basis for the Respondent to decide unilaterally to clean – and then to charge for the cleaning of – the Applicants' own windows. Therefore, this sum is not payable.

2025 external wall inspection estimated charge

39. There is a statutory requirement to carry out periodic fire risk assessments, and this point is not disputed by the Applicants. The issue here is whether there is/was also a need in this case to carry out an intrusive physical inspection in addition to a desktop risk assessment.

40. In principle, if having carried out a desktop assessment one cannot reasonably be sure of the risk posed by – in this case – the external wall in question then a physical inspection can be justified.

41. The Applicants have made a post-hearing submission on this issue (see paragraph 22 above) to which the Respondent has objected (see paragraph 23 above). The Respondent notes that the application for the Applicants' post-hearing submission to be relied on has not been made in a formal manner, and we agree that it should have been. The Respondent then goes on to object that the submission is not supported by evidence that serves to explain (i) the reason why the evidence was not put forward before; (ii) the significance of the evidence; (iii) the prejudice to the Applicants if the application is refused; and (iv) the prejudice to the other parties if the application is allowed. However, all of these points are entirely self-evident from the context. In addition, the Respondent's substantive response is that evidence as to the nature of the construction of the subject building was provided via paragraph 5 of Mr Tilsiter' s witness statement of 20 June 2025 and that the new evidence that the Applicants are seeking to introduce does not serve to expand the knowledge that the tribunal had before it and which it otherwise obtained during the course of the hearing. Therefore, the Respondent's own position seems to be that it is not prejudiced by this further submission. The Respondent also does not seek to cast doubt on the veracity of, or otherwise counter, the Applicants' submission.

42. It would have been better for the Applicants to have made their submission in a more formal manner, but the reason for the late submission is very clear and we consider it appropriate for the Applicants to have drawn this point to the tribunal's attention.

43. In the light of the Applicants' further submission, on which the Respondent has been afforded an opportunity to comment, the evidence indicates that the Fire Risk Assessor, who has a duty to consider the risk posed by the external walls as part of the Fire Risk Assessment as required under the Regulatory Reform (Fire Safety) Order 2005 as amended, concluded that an FRAEW was not required. Given the parties' competing claims on this point and the absence of any other compelling evidence, this written evidence of the Fire Risk Assessor's view is the best evidence available and should have been disclosed by the Respondent.

44. We therefore do not accept that the Respondent has shown that this work constituted an essential requirement for a building safety case to be submitted to the Building Safety Regulator

45. In conclusion, the evidence indicates that there is/was no need to carry out a physical inspection of the external wall and therefore this estimated charge is/was not a reasonable charge to incur.

Costs

46. The Applicants have applied for (a) a cost order under section 20C of the 1985 Act ("**Section 20C**") and (b) a cost order under paragraph 5A of Schedule 11 to CLARA ("**Paragraph 5A**").

47. The relevant parts of Section 20C read as follows: *(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".*

48. The relevant parts of Paragraph 5A read as follows: *"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

49. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under his lease.

50. The Applicants' main application has been largely successful. Although the Respondent has been successful on one point and the Applicants have conceded three points, it is normal for a party not to be 100% successful and we consider in all the circumstances that it is appropriate to make a Section 20C Order that all of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. For the same reasons it is appropriate to make a Paragraph 5A Order extinguishing the Applicants' liability to pay all of the costs incurred by the Respondent in connection with these proceedings. Accordingly, we hereby make both of these Orders.

Name: Judge P Korn **Date:** 9 October 2025

RIGHTS OF APPEAL

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

B. 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.

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

D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

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

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

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

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

(6) An agreement by the tenant of a dwelling … is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.