FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HC/LSC/2025/0611
Property	**:**	23-28 Gateway Terrace, Portishead, Bristol, BS20 7EW
Applicants	**:**	John & Jacqueline McGrath Michael & Susan Tippins Michelle Mead Raymond & Valerie Buttress Robert & Emma Tilke Maureen Landers
Representative	**:**	Mr John McGrath
Respondent	**:**	FirstPort Property Services Limited
Representative	**:**	Andrew Carter (Counsel)
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge D Cowan, Mr J Reichel MRICS, and Mr L Packer.
Date and Hearing Venue	**:**	24th October 2025, Bristol Magistrates' Court and Tribunals Hearing Centre, Marlborough Street, Bristol, BS1 3NU.
Date of Decision	**:**	4th November 2025

DECISION

Background

1. By an application dated 11th May 2024, the Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of
   a. actual service charges for the years 2023-24 on the basis that the charges for certain works conducted at the property should be capped at £250 per applicant as a result of the failure of the Respondent to consult them under section 20, the 1985 Act;
   b. that, in any event, the charges for those works were not reasonable and nor reasonably incurred under section 19, the 1985 Act; and, further,
   c. the Applicants claim that certain electricity costs levied by the Respondents were not reasonable.

2. The Applicants also seek orders under section 20C of the 1985 Act and paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

3. The Applicants are individual leaseholders of residential properties contained in the building at 23-28 Gateway Terrace, Portishead, Bristol, BS20 7EW (the property). The property, which was constructed in or around the 2000s, and is located in or around a marina, has six flats held by the Applicants.

4. The lead Applicant, Mr McGrath, holds his property under the terms of a lease (the Lease) dated 27th April 2007 for a term of 999 years.

5. The freehold to the Property is held by Fairhold Properties No 9 Limited. The Respondent is the named management company in respect of the lease. The premises is one of a number of buildings in the locality under the Respondent's management. Mr Ramsamy, a development manager employed by the Respondent, gave written and oral evidence to the Tribunal. He managed the property and, indeed, the other buildings in the locality.

6. In brief, the issues in this case stem from the following events:
   a. Water ingress into the top floor flat in the property in or around January 2023;
   b. Works conducted from January 2023, including the erection of scaffolding in or around January 2023, repair works in or around February-March 2023, and further scaffolding and

works in August and September 2023 – on the Applicants' case, the total cost of those works was £23,131.22; and,

c. A cost of electricity for the building from 30th December 2023 to 29th March 2024 of £1,719.08

7. Following a case management hearing on 7th July 2025, the Respondent was required to send to the Applicant any application for dispensation under S20ZA, the 1985 Act, together with the appropriate application fee.

8. On 21st September 2025, the Respondent sent their application under section 20ZA, the 1985 Act, to dispense with the consultation requirements.

9. In his helpful statement of case, the Applicant identified the issues, the parties' representations on which were then summarised in the form of a Scott Schedule in our bundle.

10. The 272 page bundle also contained the parties' respective position statements. References to page numbers in this decision are references to page numbers in that bundle (and not the pdf bundle). There were some additions to that bundle, prefaced by the Respondent's original position statement to explain certain invoices, provided the day before the hearing.

The Law

11. The relevant statutory provisions are to be found in the 1985 Act.

12. Sections 18, 19, and 27A provide as follows:

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.

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 provision 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

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.

13. Section 20, the 1985 Act and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement

has been dispensed with by the Tribunal. An application may be made retrospectively.

14. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

15. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

16. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because of the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "*a means to an end, not an end in themselves*".

17. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

18. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> *I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.*

19. The "*main, indeed normally, the sole question*", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

20. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the cost of works arising or which have arisen.

21. If dispensation is granted, that may be on terms.

22. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT

177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

The Issues

23. There were four issues for the Tribunal:
    a. Should the Respondent have served a notice under section 20, the 1985 Act, for the works conducted to the roof from January through to September 2023?
    b. If those works did require a s. 20 consultation, should the Tribunal dispense with the consultation requirement under section 20ZA, the 1985 Act? If so, what, if any conditions should be attached to such dispensation?
    c. Were the service charges levied in respect of those works reasonably incurred and reasonable in amount?
    d. Were the electricity charges levied for the period reasonable?

24. The Tribunal was provided with a chronology by Mr Ramsamy during the hearing. It was helpful context for the Tribunal in addition to the documents in the bundle:
    a. In or around January 2023, the leaseholder of the top floor flat notified the Respondent of water ingress at the property;
    b. On or around 19th January 2023, a company called AllBuild Bristol Ltd ("AllBuild") supplied and erected a scaffold tower, to inspect the roof, it being impossible to inspect from the ground level (as it is a pitched roof with valley below the roofline and below the parapet coping stone level) (invoices 1267 and 1269, pp 123-4, totalling £3,007.20);
    c. On inspection, it appeared that a patch repair could be completed. On or around 13th February, AllBuild provided a quotation for those works. It was unfortunate that quotation was not put before the Tribunal and nor was it in the bundle. It appeared to have been accepted by the Respondent.
    d. In or around February and March 2023, the work under that quotation was in fact done, and that patch repair was subsequently monitored by inspection as work progressed to confirm the extent of the repair needed (Invoices 1423-4, pp 125-6, and possibly 1425, p 127, totalling £4026);
    e. On that inspection, it became apparent that there were hairline cracks on the render which needed to be addressed, and there was no apparent DPC membrane fitted from construction and no capping. It was also noted that further along the parapet there were potentially additional similar issues. It was thought that the render was cracked around the building and potentially the DPC was missing;
    f. On 13th June 2025, following discussion with Mr Ramsamy, AllBuild provided a written quotation for further works (p 141), which included removing existing coping stones, hacking off existing rendering, installing code 4 lead capping, applying

textured cement rendering, and redecorating the newly rendered surfaces. Those works were to an area around six metres away from the initial work and required separate scaffolding. The cost stated in the quotation was £12,660.

g. Mr Ramsamy clarified to the Tribunal that these works were to be sequenced and further monitored during progress to ensure that the next step was required. The full extent of the required works would not be known until the coping stones were removed which works could only be commenced once the further scaffolding was erected.
h. The AllBuild quotation was accepted at around the end of July 2023.
i. In or around early 17th August 2023, the further scaffolding was erected around a different part of the building to enable a further inspection as to the works which would be required to that part. That scaffolding was provided by a company called EasyAccess under invoices dated 22nd August 2023 (Invoices 14139 and 14140, pp 137-8, totalling £2,568).
j. Residents were provided with notices in advance of the scaffolding being erected which explained that it would be erected and that it would be necessary to take care when walking around the building. The notices were put in the communal hallway and the individual letter boxes to the flats.
k. In the event, all the works in the AllBuild quotation were said to have been necessary and completed. 10 invoices were levied on the same date for the same amount, each being 10% of the quotation price (Invoices 1956-65, pp 129-35, £1260 each).

Issue 1: Consultation

25. At the outset of the hearing, Counsel for the Respondent conceded that consultation was required in respect of the following:
    a. The works in February – March 2023;
    b. The works conducted under the AllBuild quotation dated 13th June 2023, including the erection of scaffolding by EasyAccess on 17th August 2023.

26. The Applicants conceded that annual roof inspections did not require consultation and gutter cleaning work did not require consultation.

27. Accordingly, the only issue for the Tribunal was whether the scaffolding erected on or around 19th January 2023 (invoices 1267 and 1269, totalling £3,007.20) also required consultation.

The Parties submissions

28. Counsel for the Respondent submitted that the purpose of that scaffolding was investigative only. At that time, it was unclear whether there was any defect in the roof which required remedying. Therefore it was not qualifying works.

29. Mr McGrath submitted that the only reason to erect the scaffolding was as part of dealing with the water ingress to the top floor flat. Accordingly, the works should be seen as a whole so that the scaffolding was not a divisible element.

The Tribunal's Decision

30. In section 20ZA(2), qualifying works "means works on a building or any other premises".

31. Having considered all the documents, including those presented at the hearing, and the parties' oral evidence, the Tribunal finds that the erection of scaffolding was not "qualifying works" because, at that time, it was not known what works were required. In agreement with the Respondent, it was for the purposes of investigation only.

32. There is a further invoice (1640, p 128), dated 9th June 2023, from AllBuild for £516, but which is described to relate to "QuoteRef EO656. 39978. Feb 2023). On balance, for the avoidance of doubt, the Tribunal finds that this invoice related to the work completed by AllBuild in February 2023.

33. The only other issue concerned whether the invoice for gutter cleaning in June 2023, 12431, at p 136, required consultation. Mr McGrath submitted that the gutter cleaning should have been done using the materials on site already. The Tribunal finds that it was not the case. It was not related to the works undertaken and any scaffolding then erected would not have been sufficient in and of itself to complete the gutter cleaning work.

Issue 2: Dispensation

34. Following the Respondent's concession on the first issue, this became the central issue at the hearing.

The Statements of Case

35. The Respondent's position was outlined as follows:
    a. The works were entirely necessary;
    b. The Applicants had not provided any or any proper evidence that works cost more than would have done otherwise;
    c. The Applicants had not provided any or any proper evidence that the extent and quality of works were different from what they would otherwise have been;
    d. The Applicants had benefited from the works, and were required to pay the costs of those works under the lease – the Respondent was not required to bear any loss;
    e. There was no serious or egregious breach by the Respondent, which did not act in a cavalier manner;
    f. An outright refusal to dispense with consultation would be financially catastrophic for the Respondent;

g. If prejudice to the Applicants is found, it would be possible to make a limited/reasonable/modest reduction to service charges to represent that prejudice;
h. The Respondent appreciated it must bear the costs of and occasioned by any dispensation; and,
i. It is reasonable to grant dispensation.

36. The Applicant's position was outlined as follows:
a. There had been no competitive tendering and only one quotation had been obtained;
b. The Applicants had been deprived of the opportunity to obtain more reasonable, competitive quotations or contractors;
c. They had obtained two alternative quotations for similar works on the other side of the property ("the North Side"), conducted in or around late 2024, and which were included in the bundle at pp 143-4 ("the HAT quotation") and pp 145-8 ("the Aquagard quotation"). Those quotations were cheaper than the AllBuild quotation;
d. The Applicants had suffered financial hardship as a result of the works;
e. The Respondent had not been open and transparent, the Applicants finding out about the extent and cost of the works only when the accounts were issued - and it was alleged that they had deliberately split their invoices as a method to avoid exceeding the trigger amount;
f. The Respondent is not a small organization, which did not check their interpretation of the statutory requirements, and continued to refuse to engage in a consultation process; and,
g. The Respondent is in a better position to absorb the costs should dispensation be refused.

The hearing

37. At the hearing, Mr Ramsamy made the following points to the Tribunal:
a. There were reasons why no consultation had occurred. This was because:
i. It was necessary to weigh up the threat to life from falling render, particularly as there is a public right of way adjacent to the area;
ii. It was necessary to investigate and after that conduct a patch repair and then the other work because of the appropriate time of year to repair the render (as it required the weather to be above a certain temperature);
iii. It was unclear precisely how much work was required to be done under the AllBuild quotation dated 13th June 2023 because the full extent of the works might not have been necessary and the quote was prepared on a worst case scenario; and,
iv. The consultation requirement had "crossed his mind" after the coping stones had been lifted on the second occasion but there was a balance to be struck between

consultation, on the one hand, and the potential harm and damage to property and person from blown render which could fall.

b. An application for urgent consideration to dispense with consultation had been considered but he had been informed internally that there would be delay in such application, and the works were time sensitive as well as being risks of harm.
c. Mr Ramsamy had scrutinised the quotation and monitored the work. In fact, the entire works on the AllBuild quotation had not been accepted as a whole – the works were broken down into a sequence such that the following sequence was only necessary if the previous one had not resolved the issue.
d. Mr Ramsamy himself had monitored the works and verified that there was no damp proof course or lead capping to the coping stones in August.
e. Mr Ramsamy had arranged for EasyAccess to provide the scaffolding because it was cheaper than that offered by AllBuild
f. Mr Ramsamy recognised that one can have a relationship with contractors but one should not become overly complacent in that relationship.

38. Mr McGrath told the Tribunal:
    a. Leaseholders wanted verification and validation of what work was necessary, but had lost that benefit.
    b. AllBuild appeared to have been used extensively by the Respondent for works and the Respondent had admitted that they were not the most competitive contractor.
    c. The leaseholders had been denied the benefit of obtaining three quotations for the works.
    d. The leaseholders were aged, and wished for the works to be spread out for affordability reasons.
    e. The Respondent had made excuses for why there had been no consultation and simply took AllBuild's word for the nature and extent of the works.
    f. The initial notice from the Respondent was in January or late 2022, but not completed until September 2023 which suggests that there was no urgency.
    g. The Applicants were given excuses as to why a section 20 consultation was not required and each invoice (including for the scaffolding) was below the "trigger level" for consultation.

39. In cross-examination, Mr McGrath told the Tribunal that
    a. The cost of the HAT quotation was £8220 (including VAT) and the scaffolding had in fact been provide by Aquagard at a rough cost of £1500.
    b. The HAT quotation and Aquagard quotation was to resolve a water leak to the North Side of the building, which was comparable to the works in issue before the Tribunal, but he accepted that hacking off the render was not included on those quotations (although he did not accept that was necessary work

under the AllBuild quotation because it had not been verified as such).

c. Although there was nothing to suggest that AllBuild were not acting with integrity, there was nothing to suggest that they were so acting. It would have been good practice to obtain more than one quotation for such work.
d. The lead capping was an improvement which had resolved the problem and stopped water ingress.
e. If the render had been proved to be defective, then he accepted it was work that needed to be done – but his point was that there had been no verification and only one quotation obtained.
f. He accepted that, if the cost of the works was a small amount above the threshold, then perhaps there would have been a need for only one further quotation, but these works cost double the budget for the year.
g. It was right for the Respondent to be capped at the statutory amount of £1500 due to the lack of consultation and validation, and the consultation requirement had been raised in the first lot of works when it exceeded £4,000.
h. He accepted that they did not have a separate quotation in respect of the works actually done by AllBuild.
i. The Respondent had made deliberate attempts to avoid consultation.
j. The entire cost of the work was approximately £23,000 and, although he did not have comparators for the last set of works (viz August and September), £6,000 cost seemed reasonable, and the other costs should be proportionate.

40. The Tribunal and Mr McGrath asked Mr Ramsamy about the invoices from AllBuild being for precisely the same amount and whether, in his experience, that was normal or contrived.

41. Mr Ramsamy told the Tribunal
    a. He had scrutinised the quotation and negotiated with AllBuild, as was his duty, to ensure that all the works were necessary;
    b. Scrutiny is a development manager's duty despite working relationships with contractors.
    c. He did not know if AllBuild usually invoice in that way, but they invoice against a purchase order raised by him in a contract such as this where there was a staged process of elimination.
    d. It might have been their accounts process such that one invoice was issued on a weekly basis, although he accepted that was unlikely given that the works started on 17th August and the invoices all dated 26th September 2023.
    e. He described the invoicing system used by the Respondent at the time, which might take a while to match the invoice with the purchase order and move through the management system. However, when he is notified of an invoice, he must check and confirm that the work has been done, which might not be then for a while before the invoice is approved and paid.

f. The consecutive numbering on the 10 invoices may relate to the work done solely on this building according to AllBuild's invoicing system.
g. He could not answer why the earliest number invoice (1956) was in fact for the last piece of work.
h. There was no reason for the Respondent to hide the need for consultation. Indeed the contrary was the case because:
    i. The Respondent charged a fee of 10% for instructing and monitoring major works projects;
    ii. They would gain more from the consultation process, particularly as a surveyor is needed for construction, design, management ("CDM"), and the surveyor used would come from one of the Respondent's group of companies
i. He denied that he was "trying to cover his tracks". There was a health and safety risk, and as a result a high chance he would take the same course again in the future. There were multiple factors at play in the decision-making process, and he stressed the advice to him was that it would take time to obtain dispensation from the Tribunal.

The parties' submissions

42. Counsel for the Respondent submitted, first, that this was not a case in which the Respondent was seeking to hide or avoid consultation. With hindsight, they might have done things differently but this was not an egregious failure on the facts.

43. The section 20 limit to £1500 (viz £250 per leaseholder) if imposed would be disproportionate to any potential small prejudice if found to the leaseholders.

44. The works to the North Side of the building were different in that they did not include dealing with the defective render, and there was a different method used for proofing the coping stones. Given the size of these works, the Applicants could have shown the AllBuild quotation to other contractors and obtained comparative quotations. In any event, the cost difference between the HAT quotation and the works done by AllBuild was roughly £6,000.

45. The Tribunal does have power to assess for itself the broadbrush cost, which would be appropriate in a case of this kind where there was an improvement to this building which addressed the leak. He submitted that the hacking off and repair of the render was necessary and had to be done, which was an improvement for the benefit of the leaseholders.

46. He submitted that, in making a broadbrush assessment, the following was relevant (as opposed to a price reduction for failure to consult):
    a. Scaffolding had been sought from a different provider which was cheaper than AllBuild;

b. The focus was on the sequencing of the works to ensure that the next stage was necessary, and on value for money;
c. Mr Ramsamy had been monitoring the works needed and done;
d. There is no dispute as to the methodology of repairing the render and dealing with the proofing issues;
e. There was no dispute about whether investigations were needed, nor that the works had been successful;
f. What had been lost by way of the failure to consult?
g. There should be a light touch assessment given that there was a need for supervision of (as the Tribunal suggested) 10% or thereabouts; and
h. As regards costs, this should be considered in the round and in the light of the concessions made at the hearing and the entrenched positions of the parties up to this point.

47. If the Tribunal was to accept the submission that the Respondent had been deliberately seeking to mislead the Applicants, the Tribunal would also have to accept that the Respondent was seeking to mislead the Tribunal today. However, Mr Ramsamy had been seeking to assist the Tribunal and his evidence had been clear and consistent. He had not been trying to hide anything and noted that there was a profit element to the Respondents of the section 20 consultation.

48. Mr McGrath submitted that, if the £6,000 difference between the HAT quotation and the work done by AllBuild concerned the render, that might have been staged so that it was work to be done in the future. It was work that was done that was not related to the underlying problem - a point which could have been raised in consultation. There was no independent verification of the need for the works and so that cost might not have been necessary.

49. The consultation process, while a cost to the Applicants, might have found that the works were, in fact, not necessary.

50. He maintained that the Respondent knew, or should have known that there was a requirement for consultation, eliciting that the Respondent had a flow chart in its office and that (even in Mr Ramsamy's absence through illness) staff were aware of the section 20 consultation requirements. Accordingly, their failure so to do was deliberate.

51. The Respondent had shown no consideration for the problems which the Applicants were experiencing, and their sacrifices, as a result of the works. As Mr McGrath told the Tribunal, "we were really struggling".

The Tribunal's Decision

52. There are three sub-issues for the Tribunal's decision:

a. Were the works to the roof conducted as a set, such that only one dispensation was required, or two sets of works (in February to March and July-September 2023) requiring two dispensations?
b. Is it reasonable to dispense with the requirement for consultation?
c. If so, on what terms should the dispensation be given, if any?

Set or sets of works?

53. This is a question of fact and degree: *Francis v Phillips* [2014] EWCA Civ 1395, [36]. It is a multi-factorial question to which the Court of Appeal indicated the following are likely to be relevant factors:

> *(i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other.*

54. In this case, as Mr McGrath emphasised, the works were to remedy water ingress in to the property from the roof and surrounding area, and were conducted by the same contractor.

55. The works in July – September were conducted under a different quotation and contract from the works earlier in the year, to an area of the roof which was approximately six metres away.

56. The works in February – March were patch repairs, which uncovered an underlying defect in the lack of lead capping or a damp proof course beneath the coping stones. The works in July – September rectified those issues in a different location.

57. The Tribunal finds that there were two sets of works (hereafter referred to as "the first/second set of works") because they were in different areas, requiring different means of access, different solutions, and under a different quotation and contract. The first set of works were described as patch and repair, which the Tribunal accepts. The second set of works remedied an underlying defect, improved the property, and dealt with other issues including the render.

Dispensation?

58. The factual burden rests with the Applicants to demonstrate the prejudice suffered by them by reason of the failure to undertake the consultation process. What would have happened had the consultation process been followed? Did the failure to undertake that process cause prejudice to the Applicants by requiring them to pay a sum in the form of service charges that was not appropriate or was more than appropriate.

Was the behaviour of the Respondent egregious or cavalier?

59. First, the Tribunal must determine whether the Respondent's failure to consult was "egregious" because, as the Supreme Court in *Daejan* (at [67]) noted, "the more egregious the landlord's failure, the more readily an LVT would be likely to accept that the tenants had suffered prejudice".

60. The submissions on this point have been noted above and, in particular, the points raised by the Applicants were noted. The Tribunal, accordingly, raised those issues with Mr Ramsamy.

61. The Tribunal finds that the Respondent's actions did not reach that threshold. In particular, the Tribunal was satisfied that Mr Ramsamy was seeking to assist it in his oral evidence before it and that he did, in fact, monitor and supervise the works to ensure that each sequence of the second set of works was required. His evidence was clear and consistent, and he did not seek to evade any questions put to him by the Tribunal or Mr McGrath.

62. The following factors weighed with the Tribunal in making that assessment of Mr Ramsamy's evidence:
    a. While relationships with contractors might develop, he accepted that it was necessary not to become complacent, and to engage in sufficient and appropriate scrutiny;
    b. He had obtained cheaper scaffolding for the second set of works than that offered by AllBuild;
    c. He had monitored the works conducted by AllBuild and the sequencing might have meant that there would have been less cost to the Applicants (although that did not come to fruition);
    d. He recognised that any section 20 consultation would have potentially added costs, and was particularly persuasive in making the point that the Respondent has a financial incentive to engage in consultation;
    e. He recognised that there was a health and safety risk as a result of the issues to the render and was particularly persuasive on this point;
    f. He recognised that there did come a point when the consultation threshold was reached, but balanced against that the advice provided to him by the Respondent's officers about the timescale for a dispensation application as well as the health and safety issues on site and the need for the work to be completed during a particular weather window; and,
    g. While the invoicing scheme was perplexing, he provided an explanation from the Respondent's position and recognised that he could not speak for its contractors.

63. Accordingly, while there was an undoubted (and conceded) failure to consult, and there came a point at which that became known to Mr Ramsamy, the Tribunal finds that the failure to consult was neither egregious nor cavalier.

The first set of works

64. In relation to the first set of works, the Applicants have not overcome that factual burden. They have not established that they have been prejudiced by reason of the failure by the Respondent to undertake the consultation process. There is no evidence that the sum payable was anything other than appropriate. The Tribunal accepts the Respondent's case that these were essential works that evolved as investigation was undertaken and were necessary to remedy the water ingress issue at that time, and that the patch and repair approach was reasonable.

65. For those reasons it is in the view of the Tribunal reasonable to grant dispensation pursuant to section 20ZA of the 1985 Act from the statutory consultation requirements in respect of the first set of works.

The second set of works

66. The second set of works were the focus of much of the hearing.

67. The Tribunal accepts the submissions of Counsel for the Respondent that the Applicants have not shown the requisite degree of prejudice beyond the values of consultation as a goal in its own right.

68. The principal issue is that, even when considering their position with the considerable sympathy demanded by their situation, the Applicants' alternative quotations (the HAT quotation and the Aquagard quotation) relate to a different side of the building and for different sets of works. The AllBuild quotation included works in relation to the render which were not included in those alternative quotations. Although the Applicants were able to point to the Respondent suggesting that AllBuild might not be the most competitive contractor, the Applicants cannot demonstrate that, in relation to these works, they were financially prejudiced.

69. A key fact was that Mr Ramsamy used a cheaper scaffolder than AllBuild, and he did scrutinise the AllBuild quotation. The Tribunal finds as fact that Mr Ramsamy engaged in discussions with AllBuild to determine the nature, scope and sequencing of the works before the June 13th quotation was provided. He did not simply take AllBuild's word in relation to any part of the works before and after the quotation, and sought to monitor and obtain value for money.

70. Although the Applicants point to their inability to have the works independently verified, they had the benefit of Mr Ramsamy's experience, and, in particular, his monitoring of the works which the Tribunal accepts he did in fact undertake.

71. Further, there was no dispute that the works had been successful and as to the methodology behind the works and sequencing approach.

72. For those reasons it is in the view of the Tribunal reasonable to grant dispensation pursuant to section 20ZA of the 1985 Act from the statutory consultation requirements in respect of the second set of works.

Terms?

73. The Tribunal finds, however, that it is appropriate that both such dispensations should be on terms. The Tribunal explored at the hearing whether a staged payment of the service charge would be appropriate but was informed by Mr McGrath that the payments had already been made.

Costs

74. Although Counsel for the Respondent resisted the Tribunal's suggestion that a costs order against the Respondent in relation to these proceedings might be appropriate as a condition of dispensation, the Tribunal finds that such an order is appropriate.

75. Even though, as Counsel for the Respondent suggested, the parties positions had become entrenched such that this hearing was necessary, the concessions made by the Respondent on the first issue regarding the need for consultation meant that the focus of the hearing was largely on the dispensation issue. Further, as Lord Neuberger put it in *Daejan*, such a "condition [for dispensation] would be a term on which the LVT granted *the statutory indulgence* of a dispensation to the landlord" (our emphasis). In other words, it would be inequitable for the Respondent to be in a position where they could recover the costs of the hearing which has been caused largely by their own errors.

76. Accordingly a condition of the dispensation for both sets of works is that the Respondent cannot recover their costs of these proceedings as part of or under any future service charge.

Reduction

77. Although it was not Counsel for the Respondent's primary submission, he recognised in his submission, when it was put to him by the Tribunal, that it was open to the Tribunal to make a broadbrush assessment of an appropriate cost for the works. The Tribunal agrees with that submission.

78. Mr McGrath submitted that the cost of the second set of works should be reduced to the price of the HAT quotation, and that the cost of the first set of works should be reduced in the same proportion.

79. Given that the works completed by AllBuild extended beyond that completed under the HAT quotation, the Tribunal finds that is not an appropriate method of calculation.

80. In the Tribunal's professional judgment and experience, consultation and subsequent securing of several quotes "sharpens pens" in pricing quotations and one can anticipate a 10% reduction in a competitive tendering process. And, further, as Mr Ramsamy accepted, one should not become "complacent" about individual contractors with which one might have an existing relationship.

81. Given the concession that the first and second sets of works should have been the subject of consultation, the Tribunal finds that the cost of the first and second set of works (under the AllBuild quotation) should be reduced by 10%, as Counsel for the Respondent accepted was open to the Tribunal in these circumstances.

82. However, as the scaffolding for the second set of works was procured at a lower cost than offered by AllBuild, it would not be appropriate to apply that reduction in respect of the EasyAccess scaffolding invoice.

83. Accordingly, a condition of the dispensation for both sets of works is that the Respondent agrees to reduce the recoverable cost of the works to the following extent:
    a. £4,087.80 in respect of invoices 1423, 1424, 1425, and 1640 (ie £4,542 less 10%); and,
    b. £11,394 in respect of the works completed by AllBuild under their quotation dated 13th June 2023 and for which they invoiced in 10 tranches (ie £12,660 less 10%).

Issue 3: Reasonableness

84. At the hearing the parties made only brief submissions on the question of the reasonableness of the cost of the works, directing their submissions in the main to the issues under section 20ZA, the 1985 Act, and repeating them on this issue in summary.

85. The Tribunal regarded that as a sensible and proportionate use of the hearing, and noted that the issue had not been addressed by the Applicants in their written statements of case separately, such that the Respondent's original position was that "no comparable quotations or similar for servicing have been provided, so the allegations pertaining to unreasonableness are essentially bare" ([42], para 34). For the sake of completeness, the Tribunal agrees with the Respondent's position.

86. Further, the Tribunal has addressed this issue in the second issue above. Accordingly, it repeats its observations there about the HAT quotation, and in regards to the reduction condition of the dispensation.

Issue 4: Electricity charge

87. The Respondent had accepted in the Scott Schedule that the electricity charge had been regarded as excessive and they had

challenged it with the supplier/energy agent. The energy agent had told them that it had been billed incorrectly. The outstanding issue occurred because of the change of manager from the Respondent to a different company such that the provider had not felt able to correspond with the latter.

88. At the hearing the parties informed the Tribunal that, numerous attempts had been made to deal with this issue, and shortly before the hearing, it had become known to the Respondent that a refund had been issued. The parties were unclear about to which company the refund had been issued and a short recess was taken for the parties to discuss between themselves.

89. Sensibly, the parties agreed that, if the refund had been paid to the Respondent, they would pay it over to the new manager; and, if the money could only be claimed by the new manager, then the Applicants would not pursue this element of their application.

90. Accordingly, it is not necessary for the Tribunal to make any findings or determination on this issue in this determination. Should it become necessary, the Tribunal directs that no later than six weeks from the date of this determination, either party can make representations to the Tribunal in respect of this issue, at which point the Tribunal will make a further order as necessary.

Section 20C and Paragraph 5A Applications

91. In view of the Tribunal's determination as to the costs condition for dispensation under section 20ZA, the 1985 Act, The Tribunal believes that it is not necessary to make a finding on these applications. However, should the Applicants wish to pursue these applications, they should notify the Tribunal by 4pm on 18th November 2025 following which the Tribunal will issue directions as necessary.

Judge D Cowan

4th November 2025

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.