FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00LC/LSC/2025/0647
Property	**:**	10 The Hamptons, Pier Road, Gillingham, Kent ME7 1FJ
Applicant	**:**	Liu Chi Chau (Mr Keith Liu)
Representative	**:**	In person
Respondent	**:**	The Hamptons RTM Limited
Representative	**:**	Anthony Allder of AM Surveying & Block Management
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges and administration charges, Section 27A Landlord and Tenant Act 1985 and Paragraph 5, Schedule 11 to Commonhold and Leasehold Reform Act 2002
Tribunal Member	**:**	Judge D Gethin Ms C Barton MRICS
Date and venue	**:**	30 September 2025, Ashford Tribunal Hearing Centre
Date of Decision	**:**	15 December 2025

DECISION

Decisions of the Tribunal

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

a. 2023/24 Legal Costs of £705.90
b. 2024/25 Legal Costs of £554.12

(2) The following variable administration charge items are determined not to be payable at all:

a. 2024/25 Late Payment Fee of £42.00
b. 2024/25 Solicitor Referral Fee of £120.00

(3) Pursuant to section 20C of the Landlord and Tenant Act 1985 ("the LTA 1985"), 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 Applicant.

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

(5) Pursuant to rule 13(2), the Respondent shall reimburse the Applicant the application and hearing fee in the sum of £337.00 within 28 days of the date of this decision.

(6) The Applicant's application under rule 13(1)(b) is refused.

The Application

1. The Applicant made an application [1-13] for determination of liability to pay and reasonableness of service charges for the years March 2023 to March 2024 and March 2024 to March 2025 "*and ongoing*".

2. The application was received on 23 March 2025.

3. The Applicant further sought orders pursuant to Section 20C of the LTA 1985 and paragraph 5A of Schedule 11 of the CLRA 2002.

4. The Applicant outlined the disputed service charges in a document attached to the application named 'Schedule A'.

5. Directions were issued on 27 May 2025 [14-18] listing the application for a case management and dispute resolution hearing ("CMDRH") on 20 June 2025, which was attended by Liu Chi Chau for the Applicant and Anthony Allder and Abbie Johnson for the Respondent. At the CMDRH, the Applicant explained that the items in dispute are as follows:

   2023/2024

   i) Legal Costs: £705.90

   2024/2025

   ii) Legal Costs: £554.40
   iii) Late Payment Fee: £42.00
   iv) Solicitor Referral Fee: £120.00

6. Directions [not included in the bundle] were agreed with the parties in attendance at the CMDRH.

7. The Applicant made a Case Management Application ("CMA") on 27 June 2025 [78-89] seeking disclosure of documents by the Respondent. Further Directions [19-29] dated 7 July 2025 were issued requiring the Respondent to provide certain documents to the Applicant by 21 July 2025.

8. A hearing took place on 30 September 2025 to determine the application. The Applicant provided an electronic bundle. The Tribunal was addressed by the Applicant, Mr Liu, and by Mr Allder, Business Development Manager/Legal at AM Surveying & Block Management ("AMSBM") on behalf of the Respondent, The Hamptons RTM Limited. Ms Abbie Johnson, Insurance Supervisor at AMSBM, attended as a witness on behalf of the Respondent.

The Background

9. The Property is situated within a purpose-built block of flats comprising of three towers with a total of 24 units and a basement car park, built circa 2009 of concrete, brick and block construction. Tower 1 rises to the fourth floor and houses 5 units, Tower 2 rises to the fifth floor and houses 8 units and Tower 3 rises to the eighth floor and houses 11 units. The height of the building to the uppermost occupied floor level is approximately 27 meters. The external façade of the building is a mixture of EPS render, zinc cladding, cement cladding and cantilevered balconies with concrete floor and timber decking.

10. The Applicant purchased the long leasehold interest in Flat 10 although the date of purchase and a copy of the current long leasehold title was not provided. The Applicant's lease [548-598] was dated 9 May 2014, and had originally been granted by F. Parham Limited to John Alban Copley and Gillian Copley. The term was 999 years from 9 May 2014 at an annual rent of £250 for the first 25 years of the term and then rising.

11. The Respondent acquired the right to manage in 2016, and Ground Rent Estates 3 Ltd acquired the freehold interest in the Building from F. Parham Limited, the original developer, in 2017. The Respondent appointed AMSBM to manage the Building from 1 September 2021.

12. Following the Grenfell Tower fire of 14 June 2017 the safety of all modern high-rise buildings came under scrutiny.

13. As a consequence of the installation of external ACM cladding on the Building, Kent Fire Rescue Services ("KFRS") issued an enforcement notice dated 5 February 2018. This was handled by the previous managing agents and not AMSBM. The ACM cladding and timber panelling were replaced under an NHBC Buildmark Warranty Claim, but not the external walls with Sto render.

14. Following completion of the remedial cladding works on 5 February 2021, leaseholders were led to believe that the fire safety issues had been satisfactorily resolved, that the external walls would not support combustion and that an External Wall System (EWS1) certification would be issued for the Building.

15. Following an intrusive Fire Risk Appraisal of External Walls ("FRAEW") carried out by Adam Kiziak of Tri Fire on 15 July 2022 [239-272] at the instruction of AMSBM on behalf of the directors of the Respondent, further issues were identified.

16. The Respondent has sought to bring a further NHBC Buildmark Warranty Claim in respect of these further issues, but the NHBC refused that claim on the basis that the issues identified in the Tri Fire report were outside the scope of the warranty and by this point the warranty claim had expired.

17. The Respondent, understandably, took action and incurred costs in instructing solicitors to challenge the decision of the NHBC not to fund the further remediation of the Building. The Respondent's solicitors instructed a subsequent inspection on 5 October 2023 by Stephen Manchester of Ridge and Partners LLP [372-412].

18. It was not apparent to the Tribunal from the Hearing Bundle as to the potential cost of the further remediation works, but oral evidence from both parties and their witnesses during the hearing was consistent that the cost could be of the order of £2m or more.

19. The Respondent and the NHBC have agreed a further extension to a standstill agreement to allow an expert contractor to prepare a scope of remedial works to go to tender. In the meantime, the NHBC has made an interim payment towards the Respondent's costs incurred ("the NHBC Interim Payment").

20. The Applicant submits [30-31] that they are not liable to contribute towards the costs of the Respondent engaging solicitors in the dispute with the NHBC, relying upon Paragraph 9 of Schedule 8 to the Building Safety Act 2022 ("the BSA 2002") as the Respondent did not incur those costs in respect of legal or other professional services provided to the Respondent in connection with an application or possible application by the Respondent for or relating to a remediation contribution order under section 124.

21. In the alternative, the Applicant later submits [36] that the Respondent failed to consult with the leaseholders regarding the engagement of solicitors, and that his liability to contribute to the costs should not exceed £100 per annum on the basis that this is a qualifying long-term agreement ("QLTA").

22. The Applicant seeks relief from the Tribunal [31 and 44] in respect of a number of matters including a declaration that leaseholders are not liable to pay future, as yet undemanded, charges over which the Tribunal does not have jurisdiction, and a direction that the Respondent should credit the NHBC Interim Payment against the service charge account.

23. The Respondent submits [46-47] that the Respondent is entitled to recover its costs incurred on seeking legal advice in the NHBC Buildmark Warranty Claim, relying on BSA 2022, Sch. 8, para. 9(1A) which was inserted by section 117 of the Leasehold and Freehold Reform Act 2024 ("the LFRA 2024") and which states that:

"*Sub-paragraph (1) does not apply to the extent that the service charge is payable to a management company in respect of legal or other professional services provided to the company in connection with an application or possible application by the company for or relating to a remediation contribution order under section 124.*"

24. In accordance with BSA 2022, Sch. 8, para. 9(3)(b), a management company includes "*an RTM company within the meaning of Chapter 1 of Part 2 of the*

Commonhold and Leasehold Reform Act 2002 (right to manage)." The Respondent notes that the Respondent is a not-for-profit RTM company.

25. The question before us is whether the Respondent's costs of engaging solicitors are relevant costs that can be recovered from leaseholders through the service charge in accordance with BSA 2022, Sch. 8, para. 9(1A), or are prohibited as a result of the BSA 2022, Sch. 8, para. 9. If they are recoverable, we will need to consider whether the Applicant is liable to pay those costs under the terms of the Lease and, if so, whether the costs are reasonable.

The Issues

26. The Tribunal has identified the relevant issues for determination as follows:

    i) Whether the sums demanded in relation to the Legal Costs were payable as a service charge;
    ii) Whether any of the Late Payment and Solicitor Referral Fees were payable.

27. Having considered the Hearing Bundle and Applicant's Skeleton Argument provided, together with the oral evidence of the Applicant, Mr Standing and Ms Johnson, the Tribunal has made determinations on the various issues as follows.

The Relevant Law – The Building Safety Act 2022

28. The long title of the BSA 2022 identifies one of the purposes of the Act as "*to make provision about the safety of people in or about buildings and the standard of buildings*". Part 5 of the BSA 2022, comprising sections 116-160, contains, as its heading states, "*Other provision about safety, standards etc*".

29. Section 116(1) explains that sections 117-124 and schedule 8 "*make provision in connection with the remediation of relevant defects in relevant buildings*".

30. Schedule 8 to the BSA 2022 is introduced in section 122. As section 122 states, schedule 8:

> *(a) provides that certain service charge amounts relating to relevant defects in a relevant building are not payable, and*
>
> *(b) makes provision for the recovery of those amounts from persons who are landlords under leases of the building (or any part of it).*"

31. Subject to certain exceptions, a "*relevant building*" is "*a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and (a) is at least 11 metres high, or (b) has at least 5 storeys*", see section 117(2).

32. "*Relevant defect*" is defined by section 120(2) to refer to "*a defect … 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*".

33. By respectively section 120(5) and section 120(3), "*building safety risk*" is "*a risk to the safety of people in or about the building arising from (a) the spread of fire, or (b) the collapse of the building or any part of it*" and "*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).*

34. The "*relevant period*" is specified as the period of 30 years preceding the coming into force of section 120, see section 120(3).

35. Paragraphs 3-9 of the BSA 2022, Sch. 8 apply only in relation to "*qualifying leases*". By section 119(2), a lease is a "*qualifying lease*" if:

> *(a) it is a long lease of a single dwelling in a relevant building,*
>
> *(b) the tenant under the lease is liable to pay a service charge,*
>
> *(c) the lease was granted before 14 February 2022, and*
>
> *(d) at the beginning of 14 February 2022 … —*
>
> > *(i) the dwelling was a relevant tenant's only or principal home,*

(ii) a relevant tenant did not own any other dwelling in the United Kingdom, or

(iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease.

36. A "*relevant tenant*" is a person who was a tenant under such a lease at the beginning of 14 February 2022, see section 119(4)(c). Where, however, a dwelling was at that point let under two or more leases to which subsection (2)(a) and (b) apply, "*any of those leases which is superior to any of the other leases is not a 'qualifying lease'*", see section 119(3). Section 119A was added by the Levelling-up and Regeneration Act 2023 to extend the protection for leaseholders where a "*qualifying lease*" has been extended, varied or replaced by a new lease.

37. Paragraphs 3-9 of schedule 8 to the BSA all serve to relieve tenants with "*qualifying leases*" from liability for service charges. Paragraph 9 of schedule 8 to the BSA 2022, as amended by the LFRA 2024, s.117 and in force by the time of the present appeal, provides:

(1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.

(1A) Sub-paragraph (1) does not apply to the extent that the service charge is payable to a management company in respect of legal or other professional services provided to the company in connection with an application or possible application by the company for or relating to a remediation contribution order under section 124.

(2) In this paragraph the reference to services includes services provided in connection with—

(a) obtaining legal advice,

(b) any proceedings before a court or tribunal,

(c) arbitration, or

(d) mediation ….

(3) In sub-paragraph (1A) "management company" means—

(a) a resident management company, or

(b) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage).

38. The effect of the BSA 2022, Sch. 8, para. 9(1A) is that resident management companies and RTM companies that require funds in order to apply for a remediation contribution order may do so through the service charge as long as the lease already permits legal and professional costs to be incurred in connection with an application or possible application, and it is also not retrospective and so paragraph 9(1A) does not apply to any costs incurred before its commencement, namely when the LFRA 2024 came into force on 24 July 2024.

39. BSA 2022, Sch. 8, para. 9 is supplemented by paragraph 10. Paragraph 10(2) states:

(10) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing—

(a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else)—

(i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or

(ii) are to be met from a relevant reserve fund;

(b) any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).

40. Returning to the body of the BSA 2022, the following are noteworthy at this stage:

i) Section 123 empowers the Secretary of State to provide by regulations for the FTT to make "*remediation orders*" requiring relevant landlords to remedy defects;

ii) Section 124 empowers the FTT, if "*it considers it just and equitable to do so*", to make "*remediation contribution orders*" requiring specified bodies corporate or partnerships to make payments for the purpose of meeting costs "*incurred or to be incurred*" in remedying defects. By section 124(3), a body corporate or partnership may be specified only if it is:

"*(a) a landlord under a lease of the relevant building or any part of it,*

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c)";

iii) Section 130 empowers the High Court, "*if it considers it just and equitable to do so*", to make an order providing for a body corporate which has been associated with another body corporate to share a liability which the latter has incurred under the Defective Premises Act 1972 ("the DPA 1972") or section 38 of the Building Act 1984 ("the BA 1984") or as a result of a building safety risk;

iv) Section 135 extended the limitation period for claims under section 1 or 2A of the DPA 1972 or section 38 of the BA 1984; and

v) Section 149 introduced a new liability in respect of cladding products which have rendered buildings or dwellings in them unfit for human habitation.

41. Section 121 of the BSA 2022 explains when a partnership or body corporate is "*associated*" with another person for the purposes of sections 122-124 and schedule 8.

42. The Applicant referred to two appeals in the Court of Appeal concerning the operation of Part 5 of the BSA 2022, namely *Triathlon Homes LLP v Stratford Village Development Partnership*, [2025] EWCA Civ 846 ("the *Triathlon* appeal") and the other being *Adriatic Land 5 Ltd v The Long Leaseholders at Hippersley Point*, [2025] EWCA Civ 856 ("the *Adriatic* appeal"). The detailed issues in the two appeals are different, but there is an inevitable overlap in some respects, and so both appeals were heard sequentially by the same appellate judges.

43. Permission to appeal to the Supreme Court has been granted in both appeals, but in reaching our decision we must do so on the basis of the Court of Appeal

decisions and, in particular, the *Adriatic* appeal decision on whether the effect of the BSA 2022, Sch. 8, para. 9 is retrospective and to what extent.

44. The Court of Appeal decided by a 2-1 majority (Lord Justice Newey dissenting) in the *Adriatic* appeal to uphold the decision of the Chamber President in the Upper Tribunal, and that the correct construction of paragraph 9 was that from 28 June 2022 no further service charges are payable "*in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect*".

45. This is the case irrespective of whether the costs had been incurred, or the service charges had been demanded and were payable before that date. The first demand was not demanded until 26 February 2024 [151] and, therefore, even if the Supreme Court reach a different decision on the point of statutory interpretation of the retrospective effect of paragraph 9, it will not affect the outcome of this decision.

The Legal Costs

46. Does paragraph 9 of Schedule 8 to the Building Safety Act 2022 ("BSA 2022") preclude the recovery of legal or professional costs by way of service charge from leaseholders holding a qualifying lease where those costs were incurred before the BSA 2022 came into effect?

47. Since the Property is situated within a purpose-built block of flats comprising of three towers of which Tower 3 rises to the eighth floor, and the height of the building to the uppermost occupied floor level is approximately 27 meters, the Building satisfies both limbs of the definition of a relevant building under BSA 2022, s. 117(2).

48. We are satisfied that the reported defects, including the Sto render, cause a building safety risk and arise from the original construction of the Building which was built well within the relevant period, and therefore satisfies the definition of a relevant defect under BSA, s.120(2).

49. The Applicant's lease [548-598] was granted before 14 February 2022, and it is a long lease of a single dwelling in a relevant building. By Clause 5(4), the Applicant is required to "*To pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such charges to be recoverable in default as rent in arrear*" [566].

50. As at the beginning of 14 February 2022, the Property was the Applicant's only or principal home and there were no submissions made by the Respondent that the Applicant owned another dwelling in the United Kingdom.

51. The Applicant therefore holds a qualifying lease under BSA 2022, s. 119(2) and is considered to be a relevant tenant under s. 119(4)(c) and so enjoys the benefit of the protections afforded to qualifying leaseholders under the BSA 2022, Sch. 8, para. 9.

52. Given all the Legal Costs have been demanded on or after 26 February 2024, and the costs incurred relate to legal services relating to the liability (or potential liability) incurred as a result of a relevant defect, we find that the BSA 2022, Sch. 8, para. 9(1) applies.

53. Consequently, the Applicant is not liable to pay the Legal Costs in the sum of £705.90 demanded on 26 February 2024 [151], nor those in the sum of £554.12 demanded on 3 January 2025 [163].

54. If we are wrong, then we briefly address the Respondent's submissions that these costs have been incurred by the Respondent as an RTM company "*in respect of legal or other professional services provided to the [Respondent] in connection with an application or possible application by the [Respondent] for or relating to a remediation contribution order under section 124*" under the BSA 2022, Sch. 8, para. 9(1).

55. Paragraph 9(1A) is not retrospective and does not apply to any costs incurred before the LFRA 2024 came into force on 24 July 2024, and so the costs demanded on 26 February 2024 are not recoverable in any event.

56. The costs demanded on 3 January 2025 were incurred in the ongoing instruction of the Respondent's solicitors in relation to the NHBC Warranty Claim.

57. We are not required to do so and make no finding on whether the Respondent should have sought to claim under the NHBC Warranty rather than pursue an application for a remediation contribution order against "*[a] body corporate or partnership*" which could include either F. Parham Limited as either "*a person who was such a landlord at the qualifying time*" or "*a developer in relation to the relevant building*", or Ground Rent Estates 3 Limited as "*a landlord under a lease of the relevant building or any part of it*", see. BSA 2022, s. 124. We note that the Respondent has received legal advice from a nationally recognised firm of solicitors before embarking on any action.

58. We do find that where the Respondent has incurred costs in relation to an NHBC Warranty Claim, those costs are necessarily <u>not</u> incurred in respect of legal or other professional services in connection with a remediation contribution order as the NHBC does not fall within the list of parties prescribed under BSA 2022, s. 124(3) against whom such an order can be made.

59. We are therefore satisfied that, in the alternative, the Respondent cannot rely upon the exception under the BSA 2022, Sch. 8 para. 9(1A) and the Legal Costs would not be recoverable through the service charge in any event.

60. Given our findings, it is not necessary to address this point, but the Applicant submitted that the Respondent's instruction of solicitors was a QLTA.

61. Although the solicitors may have been engaged on this dispute for more than 12 months, standard terms of engagement will not specify a minimum term and the Respondent could cease instructing the firm at any time. For the avoidance of doubt, the solicitor's retainer is not a QLTA and consultation of leaseholders by the Respondent would not have been necessary on this basis had we found the Legal Costs were recoverable through the service charge.

Administration Charges – Late Payment Fee and Solicitor Referral Fee

62. Paragraph 5 of Schedule 11 to the 2002 Act provides:

Liability to pay administration charges

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

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

63. Administration charges are defined by paragraph 1 of Schedule 11 to the 2002 Act as:

Meaning of "administration charge"

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) …,
(b) …,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant…

Late Payment Fee & Solicitor Referral Fee

64. The Respondent submits that it is permitted to recover a Late Payment Fee and Solicitor Referral Fee under Clause 4(9) which states that:

> "*4(9) To pay to the Landlord all costs and expenses (including legal costs stamp duty on any consents licences or duplicates bailiffs' fees and fees payable to any managing agents or surveyors and any legal or other professional fees and any value added tax thereon) which may be incurred by the Landlord in or in contemplation of:-*
>
> > *(a) The preparation and service of any notice or of any proceedings under Sections 146 and/or 147 of the Law of Property Act 1925 (notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court) and*
> > *…*
> > *(c) The recovery of arrears of rent or any other sums payable hereunder and any proceedings in connection therewith and*
> > *…*"

65. With regards to Clause 4(9)(a), where the right to manage has been exercised, the right to forfeit is retained by the landlord. Therefore, it is not open to the Respondent to claim it has incurred costs in or in contemplation of the preparation and service of any proceedings under Section 146 of the Law of Property Act 1925.

66. With regards to Clause 4(9)(c), once the Respondent sought to apply the Legal Costs, the Applicant stopped paying their service charge. Prior to this, the Applicant had routinely paid promptly [599-600].

67. The arrears that had accrued when the Late Payment Fee was applied comprised the £705.90 which we have found the Applicant is not liable to pay together with the *1st Quarter Charge 25Mar2024 - 20Jun2024* in the sum of £934.46. The Late Payment Fee in the sum of £42.00 was demanded on 29 May 2024 [158].

68. Demands state in the notes that "*We reserve the right to charge interest on late payment in accordance with the terms of your Lease/transfer document and a Late Payment Charge of £35 + VAT or 5% + VAT of the defaulted sum for debts over £7,500, may be applied to your account should payment not be received within 30 days of the due date.*"

69. The Solicitor Referral Fee in the sum of £120.00 was demanded on 31 October 2024. There was no evidence of any letter before action contained within the Hearing Bundle.

70. Should the Applicant dispute any future charge, a safer course of action would be to pay the entire invoice under protest and make an immediate application for a determination of his liability to pay.

71. No administration charges have been demanded in respect of subsequent invoices which the Applicant had not paid by the time of the hearing. Following the outcome of this appeal, the Applicant should liaise with the Respondent to pay all outstanding monies as quickly as possible to avoid the risk of further action.

72. Having regard for the fact that the principal reason for the Applicant not paying the outstanding sum was because the Respondent sought to recover a sum we have determined it was not entitled to, we find that the Late Payment Fee is not payable.

73. We also note that there was no evidence in the Hearing Bundle of action taken by the Respondent's solicitors. Consequently, we find that neither the Late Payment Fee nor the Solicitor Referral Fee are payable by the Applicant.

General Observations

74. Although we do not have jurisdiction to consider many of the complaints raised during the hearing by the Applicant, and by Mr Standing as witness on behalf of the Applicant, regarding the conduct of the Respondent and AMSBM more generally, we would make the following observations.

75. As we observed above, we are not required to make any finding regarding the Respondent's chosen course of action to remediate the relevant defects and to do so in a way which minimizes the leaseholder's exposure to further costs. However, it appeared to us that it falls within the range of reasonable options the Respondent could have sought to explore. There can be no certainty that pursuing a remediation contribution order rather than an NHBC Warranty Claim would afford greater financial protection to leaseholders.

76. Mr Standing, and Dr Standing who was in attendance but did not give evidence, are both former directors of the Respondent. They were involved in the successful first claim under the NHBC warranty regarding cladding on the Building. They have first hand experience of the challenges of undertaking such a claim, and it is clear the emotional toll it has taken and the concerns that they feel about the current claim.

77. The Applicant and Mr Standing are of the view that the Respondent has not communicated sufficiently well with leaseholders in this matter, and that because the NHBC warranties are held with individual leaseholders rather than the Respondent, any action much have unanimous support.

78. The Respondent, and the leaseholders, are in a precarious position. Without funds to instruct solicitors, they would be less likely to succeed in the NHBC Warranty Claim.

79. To the extent that the NHBC Warranty Claim is not wholly successful, the leaseholders are likely to have to bear the cost of the shortfall. That cost may be hugely significant. Until the remediation is successfully resolved, the opportunity to sell their homes or secure remortgages is hampered.

80. As we have found that monies for such action cannot be recovered through the service charge, and the Respondent does not have any assets, the Respondent may need to make a call on its members to place it in funds. Those members include the Applicant and Mr Standing. Whilst the Applicant and Mr Standing may end up contributing towards the Respondent's costs of obtaining legal advice, that does not mean such costs should be treated as a service charge.

81. We were informed that the Respondent has not held an Annual General Meeting for several years in breach of the relevant provisions of the Companies Act 2006. We make no finding on that, but we record our significant concerns if that is the case.

82. As so often is the case, the underlying dispute is not about the service charge but the wider relationship between the parties. None of the Respondent's directors attended the hearing. They are not required to do so, but it may have been helpful if they had been present to listen to the concerns of the Applicant and Mr Standing.

83. For his part, Mr Allder of AMSBM was somewhat taken aback by the criticism directed towards himself and the Respondent. We were satisfied that although there may be disagreement as to the strategy employed, Mr Allder is clearly committed to resolving the remediation issues as quickly as possible and to protect leaseholders as much as possible.

84. We would encourage the parties to engage in further discourse to try and resolve those concerns.

85. Finally, given we have found that the Legal Costs are not recoverable through the service charge, it follows that we cannot make any direction that interim payments received from the NHBC be applied against the outstanding service charge account.

Application Under s.20C and Para.5A and Refund of Fees

86. In the application form, the Applicant applied for an order under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the 2002 Act preventing the Respondent from recovering any of its legal costs of these proceedings either as a service charge or as an administration charge from the Applicant.

87. Given Mr Standing attended as a witness on behalf of the Applicant, we invited Mr Standing and Dr Standing as to whether they wished to be joined to the application.

88. They, generously in our view, declined on the basis that they should not be placed in a more advantageous position that any other leaseholder should the Respondent seek to pass its costs through the service charge.

89. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the 2002 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal either through the service charge or as an administration charge.

90. In doing so, we do not make a determination as to whether the Respondent is permitted under the terms of the leases to do so in respect of other leaseholders, or if it does whether such costs are in themselves reasonably incurred or reasonable in themselves.

91. The Applicant has applied for an order for the reimbursement of fees paid by the Applicant in connection with these proceedings. Having considered submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund all fees paid by the Applicant in connection with these proceedings in the sum of £337.00 within 28 days of the date of this decision.

Rule 13 Application

92. Finally, the Applicant had previously indicated in his Further Statement of Case dated 4 August 2025 [32-45] that he wished to make an application for an order under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).

93. Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case.

94. The Application is made within the time limits prescribed by Rule 13(5)(a) namely "*at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends… a decision notice recording the decision which finally disposes of all issues in the proceedings*".

95. Rule 13(4)(a) provides that the "*person making an application for an order for costs… must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made*". The Applicant had complied with this requirement.

96. Rule 13(6) provides that the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations.

97. Given the Application has been refused, it is not necessary to require the Respondent to respond under Rule 13(6).

The Applicant's Case

98. In the Application, the Applicant submitted that the Respondent had acted unreasonably in defending the substantive Right to Manage application for the following reasons:

    i) Repeated refusal to disclose relevant documents;
    ii) Strategic non-compliance with disclosure obligations;
    iii) Prolonging costs disputes without a valid legal basis;
    iv) Mischaracterisation of the NHBC policy;
    v) Improper reliance on the Building Safety Act 2022;
    vi) Late disclosure of NHBC offer letter;
    vii) Falsely attributing an incorrect assumption to the Applicant.

99. The Applicant had not provided a Statement of Costs incurred, but given the Application has been refused, it is not necessary to require the Applicant to provide a breakdown.

The Law

100. Rule 13(1)(b) provides:

13.—(1) The Tribunal may make an order in respect of costs only—
…

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or…

101. The three stages that the tribunal need to go through when considering whether a costs order should be made under Rule 13 are set out in *Willow Court Management Company Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) ("*Willow Court*") at paragraphs 27 and 28 which are set are below.

*27 When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: "*the Tribunal may make an order in respect of costs only … if a person has acted unreasonably*…." We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.*

28 At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

102. What does it mean for a person to have acted unreasonably? In *Lea & Ors v GP Ilfracombe Management Company Limited* [2024] EWCA Civ 1241, the Court of Appeal approved and followed the decisions in *Ridehalgh v Horsefield & Anr* [1994] Ch 205 ("*Ridehalgh*") and *Willow Court*.

103. Firstly, neither *Ridehalgh* nor *Willow Court* decided that unreasonable conduct must involve vexatious conduct or harassment. Secondly, that deciding whether or not there has been unreasonable conduct, and if so, whether an adverse order for costs should be made, is a fact-specific exercise. Although sufficient guidance in respect of rule 13(1)(b) had been set out in *Ridehalgh* and *Willow Court*, a good practical rule is for the Tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?

The Reasons for the Tribunal's Decision

104. Both parties are litigants in person, albeit AMSBM are professional managing agents. Neither party has instructed legal representatives in this appeal.

105. It is apparent that the relationship between the Applicant and the Respondent has broken down, and that the relationship between the Applicant and Mr Allder of ASMBM is also damaged. That is no doubt not helped by the sums at stake nor by the fact that the Respondent's directors are the Applicant's neighbours.

106. Whilst we have found in favour of the Applicant on the narrow substantive question in dispute, much of the information sought by the Applicant to be disclosed was not relevant to those matters for which the Tribunal has jurisdiction.

107. On the facts of this case, and in light of the authorities referred to above, the Tribunal finds that the Respondent did not act unreasonably albeit it may have been helpful had the Respondent disclosed information earlier.

108. The Application therefore has no reasonable prospect of succeeding. Having regard for the overriding objective under Rule 3(1) to deal with cases fairly and justly and in particular the matters under Rule 3(2)(a) and (e) of:

    (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; and
    ...
    (b) avoiding delay, so far as compatible with proper consideration of the issues

    no directions are made for further submissions, and the Application is hereby refused and no order for costs is made.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

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.