FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/23UC/LSC/2024/0648
Property	**:**	19 Hillside Road, Bath BA2 3NU
Applicant	**:**	Kenneth Norman Pearson
Representative	**:**	In person
Respondents	**:**	Curo Places Limited
Representatives	**:**	Cobb Warren Solicitors
Tribunal Member	**:**	Judge M Loveday
Date of hearing/venue	**:**	11 November 2025 (Paper determination without a hearing)
Date of decision	**:**	11 December 2025

DETERMINATION

Introduction

1. This is an application to determine liability to pay service charges under s.27A Landlord and Tenant Act 1985 ("LTA 1985"). The Applicant also seeks orders pursuant to s.20C LTA 1985 and para 5A of Sch.11 Commonhold and Leasehold Reform Act 2002 ("CALRA 2002").

2. The determination is made on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber Rules 2013.

Background

3. The premises at 19 Hillside Road are a two-bedroom flat in a purpose-built block c.1968. They form part of a development of 11 flats at 17-32 Hillside Road Bath BA2 3NU.

4. The Flat is subject to a lease dated 12 May 2003 for a term of 125 years from 24 December 2002 ("the Lease"). The Lease was originally granted pursuant to the right to buy in the Housing Act 1985. The material covenants appear at Appx.A to this decision. For present purposes, it need only be said that that the Respondent's Management Charges included such amounts as it "shall from time to time consider necessary to put to reserve ("the reserve fund") for or towards the costs to be incurred by the Lessor in carrying out" inter alia repairs, making good any structural defect or any other major works of repair".

5. The Applicant is the leaseholder, and the Respondent is the landlord.

6. By an application dated 21 November 2024, the Applicant and two other leaseholders applied for a determination of liability to pay service charges for major works demanded on 26 January 2024. In the case of 19 Hillside Road, the Respondent demanded payment of £1,379.20 as a contribution to the cost of fire safety works and £5,656.08 as a contribution to the cost of roof works.

7. The application alleged that the Respondent was pressing leaseholders to pay charges for contractual work done above and beyond the balances of their Reserve Funds[1]. The two other leaseholders subsequently withdrew their applications. Directions were given on 2 April, 16 May, 27 June, 6 August and 13 October 2025, and the matter was listed for a paper determination.

[1] Both parties have from time to time referred to the "sinking fund" for the block which is at the heart of the application. The Respondent's Statement of Case and the Applicant's Reply do not agree about the way this fund should be described. The Tribunal adopts the term "Reserve Fund" used in the Lease.

8. In accordance with the previous directions, the Applicant submitted an (undated) statement of case and a Reply on 10 September 2025. The Respondent submitted a statement of case on 15 August 2025. The Tribunal is grateful to both parties for their helpful submissions.

Facts

9. There is no dispute about the primary facts.

10. The block itself is on four floors with a flat roof. The bundle includes an inspection report dated 2 June 2023 which suggests the block is covered in 300m^2 of mastic asphalt laid over a concrete deck with a chipping surface. By the stage the report was prepared, water had ingressed the screed through numerous cracks at the perimeter of the roof covering and the report suspected the main area waterproofing had also failed under the chippings that covered the surface. The roof had been subjected to a lot of maintenance over the years, evident by the amount of patch repairs to the perimeter and main roof area.

11. Following the report, the Respondent decided that due to the overall condition of the roof and the extent of the water ingress during wet weather, it would undertake the replacement of the roof covering at the earliest opportunity. It applied for dispensation from consultation requirements under s.20ZA of the 1985 Act and on 26 October 2023 the Tribunal granted a dispensation order. The roof works were completed, and the bundle includes a detailed breakdown of these costs which amounted to £98,497.20.

12. At around the same time, the Respondent completed substantial fire safety works, including work to the flat entrance doors, communal doors, fire stopping and signage). There is a "Fire Investment Strategy Budget Sheet" in the bundle detailing these works, which amounted to £61,755.05. The Respondent assessed the Applicant's service charge contribution by applying an apportionment of 6.25% to arrive at a figure of £4,252.19 for the fire safety works. The Respondent also incurred administration costs, which it assessed at 15% of this figure, or £637.83, bringing the total to £4,890.02[2]. On 29 January 2024, there is a letter which suggested that "the current balance" of 19 Hillside Road's Reserve Fund was £3,510.80. Since that balance was less than the fire safety works charges, the Applicant was invoiced the excess of £1,379.20 on 26 January 2024 (Invoice No.SFR004538).

13. In January 2024, the Respondent also assessed the Applicant's service charge contribution to the roof costs. It applied an apportionment of 6.25% to the costs of £98,497.20, to arrive at a contribution of £6,156.08 from the Flat. It then deducted £500 as a "scaffolding discount" to produce a service charge of £5,656.08. Since the Reserve Fund had already been exhausted by the fire safety works, the Applicant was

[2] Note the relevant costs of the fire safety works were therefore £61,755 + 15% = £71,018.31.

invoiced the full amount of £5,656.08 on 26 January 2024 (Invoice No.SFR004537).

14. As to the historic operation of the Reserve Fund, there is very little documentary evidence about levels of contributions over the years. In his Reply, the Applicant suggested that prior to 2012, the Reserve Fund contribution was £324pa for the Flat. From 2012, the Application suggests this was reduced to around £130pa. The Reply suggests that a decision was made to increase the 2023/24 Reserve Fund contribution to £1,767.66pa.

15. Again, there is little information about the Respondent's process for assessing Reserve Fund contributions in each year. It appears the Respondent has a dedicated in-house "Sinking Fund" team. In his Reply, the Applicant suggested the team met in January each year to determine the Reserve Fund contributions for the following financial year. The Tribunal application suggests the team may well have been in place "from 2012". The Applicant also referred to the team's "Ten-Year Plan of February 2022" and a 2025 'Planned Major Work - five-year plan'.

The Applicant's case

16. The Applicant did not explain the legal basis of his challenge to the two service charges. He focussed on the alleged failure by the Respondent to provide for major works costs by building up a sufficient Reserve Fund over the years. He relied on the Respondent's Leaseholder Handbook which made it clear the landlord was responsible for preparing leaseholders for future major works by building up the Reserve Fund. It said:

> 'The purpose of the Sinking Fund is to set aside money on a regular monthly basis **towards** the cost of future maintenance and repairs to external and communal areas of the building. In this way you are not presented with large unexpected bills'.

Contributions were made to the Reserve Fund through the interim service charges in each year. Given the need to replace the flat roof covering on a building erected in 1968, it was likely that roof works would be the most expensive cost by far. This deserved careful evaluation of the state of the roof, given its age. The major works costs were not 'unforeseen', since they related to the re-roofing of the building that had a predictable lifespan. The 2012 reduction in the Reserve Fund contributions also made matters worse for leaseholders in the long term. In his Reply, the Applicant calculated that had it not done so, there would have been £2,300.00 more in the Fund in 2023.

17. The onus was on the Respondent to prepare leaseholders through the Reserve Fund so that they were "not presented with large unexpected bills". He accepted that if the Respondent had built up a sufficient fund in the light of the need for major works and there was still a shortfall, then it

could ask the Applicant to pay for the shortfall. But that was not the case here. if a leaseholder did not have the funds to do this what can Curo do? Leaseholders have been invoiced for £7,035.28, the shortfall in our Sinking Fund.

The Respondent's case

18. [p.48] The Respondent suggested the Applicant had not set out that he was challenging the reasonableness of the service charge (as opposed to the way in which the Reserve Fund has been managed).

19. However, the crux of the Applicant's application related to management of the Reserve Fund. Decisions as to the management of the Reserve Fund are discretionary, since the Lease requires the Respondent to collect funds which "from time to time" it considers "necessary" for repairs and improvements. Establishing what the Respondent considers 'necessary' is an exercise of its discretion. The Respondent could not have considered it 'necessary' to recover costs in advance for works which it did not foresee as being needed (such as the Roof Works). As set out by the Supreme Court in *Williams and others v Aviva Investors Ground Rent GP Ltd and another* [2023] AC 855 [148-169] questions as to discretionary management decisions were not within the scope of section 27A of the Landlord and Tenant Act 1985 and, as such, the Tribunal lacks jurisdiction to consider them. Moreover, even if the Respondent had recovered higher levels of reserve fund contributions from the Applicant, the amount payable by the Applicant would not have changed - it would simply have been paid in advance.

Consideration

20. What is the basis of the challenge to payability under s.27A LTA 1985? The Respondent correctly points out that the Applicant has not expressly challenged the 'reasonableness' of the service charges. Neither the application itself nor the lengthy statements of case specifically refer to either s.19(1)(a) or 19(2) LTA 1985. But the Applicant is not legally qualified or represented, and it seems obvious from the nature of the challenges that the Applicant seeks to rely on s.19 LTA 1985 arguments about 'reasonableness'. Since the two service charge demands dated 26 January 2024 related to costs which had already been incurred by the Respondent, the challenges would be to relevant costs under s.19(1)(a) LTA 1985. The Tribunal therefore treats the Applicant's arguments that the underlying relevant costs of £98,497.20 (roof works) and £71,018.31 (fire safety works) incurred by the Respondent were not reasonably incurred.

21. The principles to be applied in s.19(1)(a) cases were summarised by the Court of Appeal in *Waaler v Hounslow* [2017] EWCA Civ 45; [2017] 1 WLR 315.

Rationality

22. The so-called first 'limb' of *Hounslow v Waaler* involves a focus on the landlord's decision-making process. The Court explained at 20 that:

> "The Supreme Court gave extensive consideration to this question in *Braganza v BP Shipping Ltd* [2015] UKSC 17; [2015] 1 W.L.R. 1661. It was, I believe, agreed by all members of the court that the exercise of a contractual discretion is constrained by an implied term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose; and that the result is not so outrageous that no reasonable decision-maker could have reached it: [30] (Baroness Hale); [53] (Lord Hodge) and [103] (Lord Neuberger)."

The first 'limb' of *Hounslow v Waaler* is essentially therefore a test of '*Braganza*' rationality and it is this first principle which the Supreme Court referred to in *Aviva Ground Rents*.

23. The Tribunal agrees with the Respondent's main submission on this point. The focus of the Applicant's challenge to the works costs was not on the Respondent's decision to incur the major works costs. He does not suggest the works were unnecessary. The operation of the Reserve Fund is irrelevant to the question whether the major works costs were rational.

24. Be that as it may, even if the operation of the Reserve Fund was relevant to whether the relevant costs were incurred, there is evidence the Reserve Fund was operated in a rational manner. The RICS Service Charge Residential Management Code (3rd Ed) suggests at para 7.5 that:

> "The level of contributions for simple schemes should be assessed with reference to the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.
>
> The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy agreement does not make any other provision, is to take the expected cost of future works, including an allowance for VAT and fees, and divide it by the number of years which may be expected to pass before it is incurred. The level of contributions should be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals. This will vary for each scheme depending on complexity, age, condition and the relative size of funds held."

The Applicant accepts the Reserve Fund contributions were based on periodic projections of works costs over a 5 or 10-year period. This is therefore self-evidently a rational approach which is consistent with best practice in the RICS Code. The Applicant argues that those estimates eventually proved inaccurate, and that the Sinking Fund Team ought to have anticipated costs more accurately. But that is not the same as saying the Respondent acted irrationally. Ultimately, as the Respondent says, it

had a discretion to set the Reserve Fund contributions at a particular level in a particular year.

Reasonableness

25. But in *Hounslow v Waaler,* the Court considered a second test applied to the question of whether costs were reasonably incurred under s.19(1)(a) LTA 1985. In an oft-quoted passage at [37], Lewison LJ stated:

> "In my judgement, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome. That said it must always be borne in mind that where the landlord is faced with a choice between different methods of dealing with a problem in the physical fabric of a building (whether the problem arises out of a design defect or not) there may be many outcomes each of which is reasonable. I agree with Mr Beglan that the tribunal should not simply impose its own decision. If the landlord has chosen a course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable."

26. As to this second 'limb' of the *Waaler* test, there is authority to the effect that insufficiency of a Reserve Fund is capable of supporting a contention that costs were not reasonable. In *Southall Court (Residents) Ltd v Tiwali* [2011] UKUT 218 (LC) the issue arose as to whether the insufficiency of a reserve fund was relevant to s.19 LTA 1985 considerations. HHJ Alice Robertson found at [14]:

> "14. In reaching this conclusion, I have not overlooked the fact that a sinking fund to spread the cost of major repairs over a number of years had only recently been established and that, at the relevant date, it was wholly insufficient to pay for the proposed roofing works. Although Mr Ward's primary submission on this matter was that the existence of the sinking fund was irrelevant to the question of reasonableness, he did not put forward any justification for that proposition. He simply asserted that either it was, as a matter of fact, given the state of the roof, reasonable to carry out the works now, or it was not. <u>I am satisfied that the existence of a sinking fund is not irrelevant. When deciding whether proposed works are reasonable, there is no warrant for excluding from consideration any part of the factual matrix, the weight to be given to each element of that matrix being a matter for the tribunal in the light of the evidence."</u>

Nevertheless, on the facts of that case, it was held that the existence of a very small sinking fund did not render the charges unreasonable:

> "It cannot in my judgment have made the difference between the reasonableness of a decision to re-cover the roof now or in 12-18 months time the difference between the reasonableness of a decision to re-cover the roof now or in 12-18 months time, by when the LVT considered the landlord may well have been entitled carry out the works in any event. Moreover, it was unreasonable of the tenants to rely on the very recent establishment of the sinking fund, since it was

only as a result of their objections that one had not been established some years earlier."

27. In reaching its decision on the facts of this case, the Tribunal considers the following matters:
    (a) There is a very real issue about affordability. There has been a very large claim for service charges in the single service charge year. These are 'right to buy' premises with a social landlord, and they would generally be occupied by people with fairly modest means. The Applicant, for example, is a pensioner, and he refers to the very large proportion of his pension taken up by the two service charges.
    (b) Although the Leaseholder Handbook is not a contractual document, it aptly expresses the purpose behind a Reserve or Sinking Fund. The purpose is to set aside money on a regular monthly basis towards the cost of future maintenance, repairs, etc., so that leaseholders are not presented with large unexpected bills. In this case, there were "large unexpected bills" in 2024.
    (c) The Applicant has not had to pay the suggested enhanced Reserve Fund contributions since 2012, and he has therefore had the use of the £2,300 he would have paid since that date. As the Respondent submits, the amount payable by the Applicant has not changed - it would simply have been paid in advance.
    (d) There is of course no challenge to the suggestion that the works were necessary in 2023-24 – either because fire safety is an urgent priority or because the roof was at the end of its useful life. There was no realistic option of delaying works until the Reserve Fund was built up over time.

    The Tribunal ultimately considers the third and fourth factors outweigh the first and second ones. The insufficiency of the Reserve Fund in 2024 does not mean the works costs were unreasonably incurred.

28. Overall, on both 'limbs' of *Waaler*, the Tribunal therefore finds that the relevant costs of works were reasonably incurred under s.19(1)(a) LTA 1985.

Costs

29. The Applicant seeks orders pursuant to s.20C LTA 1985 and para 5A of Sch.11 CALRA 2002. The case law and principles are summarised in *Conway v Jam Factory* [2013] UKUT 0592 (LC) at [51] to [58].

30. In this instance, the Applicant has not succeeded on any of his arguments. There are no other material considerations. The Tribunal declines to make orders limiting the recovery of costs under s.20C LTA 1985 or para 5A of Sch.11 CALRA 2002.

Determination

31. The Tribunal determines under s.27A LTA 1985 that service charges of £1,379.20 and £6,156.08 were payable by the Applicant to the

Respondent on 26 January 2024. It notes that a credit of £500 will be given for a “scaffolding discount”.

32. No orders are made unders.20C LTA 1985 or para 5A of Sch.11 CALRA 2002.

11 December 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.

APPX.A: MATERIAL LEASE TERMS

3. THE LESSEE HEREBY FURTHER COVENANTS with the Lessor that the Lessee will at all times during the term hereby granted:-
(a) pay (subject as hereinafter mentioned) to the Lessor such annual sum as may be notified to the Lessee by the Lessor from time to time as representing the due proportion (as hereinafter defined) of the reasonably estimated amount required to cover the costs and expenses incurred or to be incurred by the Lessor in carrying out services repairs improvements maintenance and management including the obligations or functions contained in or referred to in this Clause and Clauses 4 and 6 hereof and in the covenants set out in the Ninth Schedule hereto and including the costs of borrowing money for that purpose such costs and expenses being hereinafter referred to as "the Management Charges" such estimated amount (save such part as shall be declared by the Lessor in respect of the reserve fund hereinafter referred to) to be payable half yearly in advance on the First day of April and the First day of October in each year the first payment being a proportionate part in respect of the period from and including the date hereof to the *30th* day of September Two Thousand and *Three* to be made on the execution of these presents AND IT IS HEREBY DECLARED that the Management Charges shall include such amounts as the Lessor shall from time to time consider necessary to put to reserve ("the reserve fund") for or towards the costs to be incurred by the Lessor in carrying out
(i) repairs (including without prejudice to the generality of the foregoing redecoration renewal and making good any structural defect or any other major works of repair to the Reserved Property) and
(ii) improvements to the Reserved Property.
which amounts shall be payable in advance on the first day of each month the first payment being a proportionate part in respect of the period from and including the date hereof to the first day of *July* Two Thousand and *Three* to be made on the execution of these presents PROVIDED THAT (i) the Lessor shall hold the reserve fund in trust for the lessees of the Flats (ii) the reserve fund shall be kept in a separate account and any interest on or income of the reserve fund shall be added to the reserve fund (iii) the costs of any works for the purpose for which the reserve fund is established shall be paid from the reserve fund and only if and to the extent that the fund is insufficient shall such costs be charged as a service cost forming part of the Management Charges and (iv) the Lessor shall only be entitled to pay the costs of works from the reserve fund to the extent that such costs are properly recoverable from the Owners but nevertheless the Lessor shall if it is of the opinion that it is desirable and proper to do so having regard to the state of the reserve fund be entitled to appropriate any part of the reserve fund to other expenses forming part of the Management Charges.