



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	MAN/00BL/LSC/2022/0102 and MAN/00BL/LDC/2024/0067
Property	:	Old School Rooms, Great Moor Street, Bolton BL1 1NR
Applicants	:	Various leaseholders (as listed in the Annex)
Representative	:	Rebecca Ackerley, Counsel
Respondent	:	Irwell Valley Housing Association Limited
Representatives	:	Daniel Dovar, Counsel Alice Ferguson, Solicitor (Trainee), Ward Hadaway LLP
Type of Application	:	Service charges Landlord and Tenant Act 1985 – s27A, s 20ZA & s20C Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A
Tribunal	:	Judge Joanne Hadley Mr J Faulkner FRICS
Date and venue of Hearing	:	11, 12 and 13 November 2024 Manchester Civil Justice Centre
Date of Decision	:	16 December 2025

DECISION

DECISION

- A. The Tribunal determines that those parts of the consultation requirements provided for by s.20 of the Landlord and Tenant Act 1985 ("the Act") which have not been complied with in respect of the Additional Works (if any) are to be dispensed with.**
- B. The Tribunal makes the determinations under the various headings below.**
- C. By 5pm on 30 January 2026 the Respondent shall send each of the Applicants a schedule setting out the sums which are payable by them following the Tribunal's determinations. If these figures are not agreed, any party may apply to the Tribunal (on notice to all other parties) for a determination, setting out the reasons for the dispute, by 5pm on 20 February 2026.**
- E. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that 90% of the Respondent's costs of these proceedings may potentially be passed to the Applicants through any service charge.**
- F. The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 10% of the Applicants' liability, if any, to pay any administration charges in respect of the Respondent's costs of these proceedings.**

REASONS

INTRODUCTION AND OVERVIEW

1. The Old School Rooms ("the Building") is an apartment block on the south side of Great Moor Street on the edge of the town centre of Bolton. The Building is a Grade II listed property built in 1897 and was the former county grammar school. The Respondent converted the Building into 35 residential apartments in 2004. The Building is laid out over four floors including one floor below ground. Half of the floor below ground is undeveloped but is referred to as "the commercial unit" and that is how it was designated in the original planning permission. There is no commercial lease for the commercial unit. The original external walls of the Building are solid brick. There is a pitched original roof with two internal valleys and mostly original slate. The windows are mostly original timber sliding sash windows with secondary internal glazing fitted internally. There is a main entrance, three internal staircases and a lift. Internally, original features have been retained such as doors, wood panels and bookcases. Externally, there are car parking areas to either side of the building, to the west and to the east.

2. This case concerns a dispute about the service charges payable by the leasehold owners of those residential apartments. The case was brought by many leaseholders who say that the amount of the service charges they have been required to pay over several years are unreasonable. Some of the leaseholders have withheld their service charge payments.
3. The totality of the residential service charge expenditure has increased significantly in recent years: in 2017-2018, for example, it was £41,036 and, by 2021-2022, that figure had risen to about £311,936. This is due to major works which were carried out by the Respondent in 2019-2020 costing over £300,000 which created a large sinking fund deficit and led to further significant demands being sent to the leaseholders.
4. The Building was in a poor state of repair before the major repair works were undertaken (something which is substantiated by both parties' evidence). The state of the Building led to damage to some of the individual apartments; the repair of which the Respondent paid for. The Respondent also funded some of the repairs to the Building itself. The Applicants believe that the state of disrepair which the Respondent allowed the Building to reach exacerbated the cost of the subsequent repair work. Furthermore, the Applicants have concerns as to the standard of the work and services provided by the Respondent. Given all that and the amount by which the service charge has increased over the years, it is understandable that the Applicants might be dissatisfied with the Respondent.
5. However, for the reasons set out below, we are, in the main, satisfied that the costs comprised within the residential service charge for each year were reasonably incurred by the Respondent landlord and that the works and services carried out were of a reasonable standard. There are, however, some instances where that is not the case.
6. The reasons for these conclusions are explained in the paragraphs that follow.

PROCEDURAL HISTORY

7. In October 2022, an application was made to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay and reasonableness of service charges in the respect of the residential parts of the Building. The application concerned the service charge years which ended on 31 March in each year from 2017 to 2022. At the time that the application was made, the service charges for the year 2021-2022 had not been certified. However, they had been certified by the hearing. The Applicants were the long leaseholders of 24 of the 35 residential apartments in the Building, represented by JMW Solicitors LLP. By the time of the final hearing, the Applicants were the long leaseholders of 23 of the residential apartments (as listed in the Annex hereto), and the Applicants had ceased to instruct JMW Solicitors LLP but had instructed Ms Ackerley to represent them at the hearing on a direct access basis.

8. In addition, an application has been made for an order under section 20C of the 1985 Act preventing the costs incurred by the Respondent in connection with these proceedings from being recovered as part of the service charge, as well as an application for an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the costs incurred by the Respondent in connection with these proceedings from being recovered as an administration charge.
9. The Respondent is Irwell Valley Housing Association Limited, the Applicants' immediate landlord.
10. The Respondent subsequently made a protective application under s 20ZA of the 1985 Act on 21 August 2024 ("the s 20Z Application") for dispensation in respect of some additional work undertaken during the relevant service charge years as part of the major works, which s 20ZA Application has been joined to these proceedings to be heard together. The Applicants opted not to file and serve a Statement of Case in response to the s20ZA Application.
11. Directions were initially issued on 3 March 2023, and a hearing date was originally listed for 15 April 2024 which was subsequently adjourned. Case management hearings took place on 22 August 2024 and 13 May 2025 and further directions were issued which included permitting the parties to rely upon their own expert evidence and to call oral expert evidence. Judge Christopher Goodall's case management note dated 15 May 2025 helpfully set out the issues for consideration at the hearing which were:
 - a. Major Works
 - i. Has R consulted in respect of the major works. If not, should they have dispensation for those works not consulted on;
 - ii. Do A's have a claim for historic neglect, if so, what is the value of that claim;
 - iii. Does the standard of the major works fall below a reasonable standard (s.19 (1) (b)).
 - b. General Service Charge
 - i. Has R issued proper demands
 - ii. Has R properly apportioned that SC
 - c. Individual Items (s 19 challenges) as per the Schedule of Items in dispute
12. The hearing took place in Manchester over three days on 11, 12 and 13 November 2024. The Applicants were represented at the hearing by Ms Rebecca Ackerley and the Respondent by Mr Daniel Dovar, both of counsel. We are grateful to both for their assistance in navigating the procedural complexities of this case, and to Mr Dovar for his helpful skeleton arguments.

13. We heard oral evidence from the Applicant's expert Mr Adrian Dawson and from the Respondent's expert Mr Stephen Macey.
14. In addition to hearing the oral expert evidence and submissions from counsel, we were provided with bundles containing witness statements and documentary evidence running into thousands of pages. The Tribunal did not hear oral evidence from the witnesses but read the witness statements.
15. The Tribunal inspected the Building on the morning of 11 November, accompanied by the parties' representatives, the parties' respective experts, by six of the leaseholders and Mr Parlett and Ms Pickup both of the Respondent. The Tribunal did not inspect the basement of the Building.
16. Judgment was reserved.

FACTUAL BACKGROUND

The Leases

17. Each of the apartments is demised to its leasehold owner for a term of 99 years from 1 January 2001, with the Respondent being the current landlord. These residential leases are all in materially the same terms.
18. The pertinent parts of the service charge provisions contained in the Lease are as follows:

Clause 2 [to pay] the Service Charge by equal monthly payments in advance on the first day of each month ...

Clause 3(2)(b) To pay by way of additional rent the Service Charge in accordance with Clause 7

Clause 7 (1) In this Clause the following expressions have the following meanings-

7(1)(a) "Account Year" means a year ending on the 31st March

7(1)(b) "Specified Proportion" means a reasonable proportion of the Service Provision such proportion to be determined from time to time by the Landlord as being attributable to the Premises

7(1)(c) "the Service Provision" means the sum computed in accordance with sub-clauses (4), (5) and (6) of this Clause

7(1)(d) "the Service Charge" means the Specified Proportion of the Service Provision

7(1)(e) "the Surveyor" means the Landlord's professionally qualified surveyor and may be a person in the employ of the Landlord

7(2) The Leaseholder HEREBY COVENANTS with the Landlord to pay by way of further Rent the Service Charge during the term by

equal payments in advance at the times at which and in the manner in which rent is payable under this Lease...

7(3) The Service Provision in respect of any Account Year shall be computed before the beginning of the Account Year and shall be computed in accordance with sub-clause (4) of this Clause

7(4) The Service Provision shall consist of a sum comprising-

7(4)(a) the expenditure estimated by the Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in sub-clause (5) of this Clause together with

7(4)(b) an appropriate amount as a reserve for or towards such of the matters specified in sub-clause (5) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without prejudice to the generality of the foregoing) such matters as the decoration of the exterior of the Building (the said amount to be computed in such manner as to ensure as far as is reasonably foreseeable that the Service Provision shall not fluctuate unduly from year to year) but
7(4)(c) reduced by any unexpended reserve already made pursuant to paragraph (b) of this sub-clause in respect of any such expenditure as aforesaid

7(5) The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Building including the Common Parts and shall include (without prejudice to the generality of the foregoing)-

7(5)(a) the costs of and incidental to the performance of the Landlord's covenants contained in clauses 5(2) and 5(3) and 5(4)

7(5)(b) the costs of and incidental to compliance by the Landlord with every notice regulation or order of any competent local or other authority in respect of the Building including the Common Parts

7(5)(c) all reasonable fees charges and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the Common Parts including the computation and collection of rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work

7(5)(d) any rates taxes duties assessments charges impositions and outgoings whatsoever whether parliamentary parochial local or of any other description assessed charged imposed or payable on or in

respect of the whole of the Building or on the whole or any part of the Common Parts

7(5)(e) the maintenance repair upkeep and replacement of all external fencing at the Building including fencing separating individual premises demised by way of Lease by the Landlord

7(5)(f) the painting and decorating as often as the Landlord shall reasonably require to so do in accordance with the principles of good estate management of all parts of the Building which are the Landlords responsibility

7 (6) As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in paragraph (a) of sub-clause (4) of this Clause shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or as the case may be shall pay forthwith upon receipt of the certificate the Specified Proportion of the excess or the deficiency

7 (7) The Landlord will for the period that any premises in the Building are not let on terms making the tenant liable to pay a Service Charge corresponding to the Service Charge payable under this Lease provide in respect of all such premises a sum equal to the total that would be payable by the tenants thereof as aforesaid by way of contribution to the reserve referred to in paragraph (b) of sub-clause (4) and the said reserve shall be calculated accordingly

19. The Respondent's repairing obligations, as landlord, are set out in clause 5 (3). These include the obligation to "*maintain repair redecorate and renew...the roof...and main structure of the Building and all external part*".

The Major Works

20. In March 2017, the Respondent commissioned a report by BWP Construction and Property Consultants ("BWP") called the Sinking Fund Review Report ("the 2017 Report"). The 2017 Report came after an earlier report by BWP in 2015 or 2016 (which earlier report was not available to the Tribunal). The purpose of both reports was to undertake a site survey of the communal areas of the Building to assess the condition of the building fabric and review the sinking fund allocation for planning future budgets. The 2017 Report records (with some photographic evidence) the condition of the Building at that time. Whilst some internal areas are deemed to be in reasonable condition, other elements are deemed to be defective including plasterwork and paint decoration to internal wall and ceiling surfaces to west facing elevation, rotten timber window frames and boards to west facing elevation, internal wall surfaces within rear staircases affected by water ingress/damp, and damaged plasterwork exposing potentially rotten timber lintel to front staircase. Externally, the condition of the brickwork is said to be consistent with the age of the property, recording that various areas

of weathered pointing are evident and the brickwork is soiled particularly with algae staining, mis-aligned / disturbed brickwork at high level to east elevation and vegetation growth, window and door frames are soiled and weathered, to the west elevation window frames are rotten. The roof was inspected from ground floor level, and the roof covering was found to be in reasonable condition in the main, although disrepair was identified – in particular, pointing to terracotta copings cracked, numerous cracked, damaged and slipped slates, indications of movement to coping stone along east elevation, rainwater goods to two flat roofs are defective, missing or blocked. It was said that a number of metal rainwater goods were believed to be leaking.

21. The 2017 Report set out a summary of the cyclical work necessary to address the identified issues with the Building and the budget for those costs for the years from 2017 to 2046. The total cost of the work, over that 29-year period, was over £1.5M.
22. Towards the end of 2017, the Respondents commenced a consultation exercise under s 20 of the 1985 Act for the project management of the works identified by the 2017 Report. Subsequently, the Respondent's consultant, BWP, commenced a consultation exercise under s 20 in respect of works identified as follows:
 - a. Isolated roof repairs to pitched roofs where missing/slipped slates identified
 - b. Repairs to low level flat roofs where ingress currently recorded
 - c. External joinery repairs to windows and doors
 - d. Full external decoration of all joinery items and metalwork including windows and doors, railings, car park gates
 - e. Removal of all vegetation growth from all brickwork elevations
 - f. Isolated re-pointing of brickwork where mortar eroded
 - g. Cleaning of all brick elevations removing all staining
 - h. Overhauling of rainwater goods including cleaning/rodding of all downpipes and gutters ensuring all are free flowing and re-sealing of all joints to eliminate all leaks
 - i. Replacement of broken glazing to windows
 - j. Reinstatement of external high-level lighting to elevations

(“the Major Works”).

23. By the hearing, there was no dispute between the parties that the Respondent had complied with its obligations to consult under s 20 of the 1985 Act both in relation to the project management of and in relation to the Major Works.

The Additional Works

24. The Respondents sent the leaseholders an update letter on 13 July 2020 outlining additional work which had been identified and which the Respondents carried out. The additional works included:

- a. Extensive masonry repairs identified at high level;
- b. Full re-pointing of the elevations to the upper levels whilst the scaffolding is in place;
- c. Inclement weather;
- d. Additional scaffolding cost associated with the above.

(“the Additional Work”)

PRELIMINARY ISSUES AND APPROACH

25. Unfortunately, when the case came to the hearing, it was in somewhat of a disordered state; there was not a complete set of documents and the documents received had arrived in a piecemeal fashion. As a result, the Tribunal needed to make several case management decisions at the outset of the hearing.

Bundles of documents

26. The Tribunal initially had three bundles called “the Final Trial Bundle_Optimized” (874 pages) (“the Final Bundle”), “the Major Works Bundle” (82 pages) and “the Leaseholder Bundle” (1321 pages). The first bundle had been filed by the Applicants, the latter two by the Respondents.
27. Ms Ackerley raised a number of issues with the bundles. First, that the Respondents had not included in their bundles documents (running to 1900 pages) which the Respondents had disclosed earlier in the proceedings (“the Respondent’s Earlier Disclosure”) which included a copy of all the leases for all the leaseholders and all vouchers for each service charge year. Second, the Applicants had omitted to include in their bundle the exhibits to the witness statements. Third, the Respondent’s Major Works Bundle and Leaseholder Bundle contained some new documents, in particular the Major Works Bundle contained some new drawings of the Building showing the major works to be undertaken which Mr Dawson had not seen when he prepared his report (“the New Drawings”) and the Leaseholder Bundle contained some other documents which related to other properties and seemed to have been included in error.
28. Having heard from Ms Ackerley and Mr Dover on these points, the Tribunal took a practical approach, using its broad case management powers under rule 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having regard to the overriding objective and, in particular, the need to deal with the case proportionately, flexibly and to avoid delay, and determined that it would overcome the irregularities in relation to the bundles of documents as follows so that the case could proceed:
- a. The Tribunal would permit the inclusion by the Respondent of the New Drawings in the Major Works Bundle notwithstanding their

late disclosure on the basis that they will assist the Tribunal and that Mr Dawson would be permitted to comment on the New Drawings when he gave evidence so the Applicants would not be prejudiced.

- b. In terms of the missing Respondent's Earlier Disclosure, there was a sample lease contained in the Final Bundle and the Tribunal did not need to see all the leases as it was agreed they were all in the same form. There were some missing documents that would be useful for the Tribunal to have which were the underlying vouchers in relation to the outstanding disputed invoices. The Respondent would provide them to the Tribunal and Ms Ackerley by email.
- c. The parties would send to the Tribunal and each other by email the missing exhibits to the Witness Statements of Giles Parlett and Mr McCarthy also.

These documents were subsequently sent by email to the Tribunal and the respective other party during the hearing.

New evidence

- 29. There was a late evidence application from the Applicants, to introduce a new witness statement from Chris Bridgeman, one of the Applicants, containing details of works (including internal paintwork) undertaken to the Building by the Respondent ahead of the inspection and finished only the Friday before the hearing, and photographs of the condition of the Building prior to that which the Applicants said demonstrated the substandard nature of the Major Works. It also exhibited a notice of intention to undertake further work from the Respondents, which work the Applicants said was similar in description to the Major Works. Mr Dovar objected.
- 30. Having adjourned the hearing briefly to consider both parties' submissions, the Tribunal determined not to allow this late evidence on the basis that it would not assist the Tribunal. In particular, the proceedings were in relation to the service charge for the years 2017-2022, and the statement related to events which had occurred subsequently. There was no prejudice to the Applicants who had adduced expert evidence as to the standard of the Major Works undertaken and had had the opportunity to adduce photographic evidence of the condition of the building upon completion of the Major Work earlier in the proceedings. It was not relevant that further works were being planned in the future, since there was a cyclical maintenance schedule for the Building. Furthermore, it was not in the interests of justice nor proportionate to allow the new evidence, which the Respondents would necessarily want to respond to, and which would, therefore, if introduced, most likely require the hearing to be adjourned, causing further delay and wasted Tribunal costs.
- 31. The Respondent had, with Mr Dovar's skeleton argument, also submitted to the Tribunal, the day before the hearing, an updated

version of the Applicant's Schedule of Items in dispute, into which the Respondent had inserted its responses to the leaseholders' queries ("the Updated Schedule"). The Respondents had omitted to provide these responses earlier in the proceedings in breach of the directions.

32. The Tribunal considered whether to permit the Respondent to introduce this late evidence notwithstanding that non-compliance. The Tribunal determined that it would assist the Tribunal to have this information which was required for the proper and just determination of the disputed issues, and so would permit this late evidence. The Tribunal also had in mind proportionality and the low value of the disputed items, in comparison to the Major Works, and the need to find a practical way to resolve this matter without further delay. To avoid any prejudice on the part of the Applicants, the Tribunal determined that it would permit Ms Ackerley to raise by email to Mr Dover overnight any questions or seek any clarification in relation to the Respondent's responses, and to make further submissions to the Tribunal in respect of those items if required. In the end, Mr Dover's responses were adequate, and no further submissions were required or made by Ms Ackerley.

Approach

33. The Tribunal sought clarification from the parties on which of the issues identified for consideration at paragraph 11 above were still at issue and how the Tribunal would resolve them giving the time limits of the hearing:
- a. S 20ZA Application - Given that the Applicants had not responded to the s20ZA Application, Ms Ackerley confirmed that was no longer a live issue between the parties.
 - b. Major Works - In terms of the allegation of historic neglect and the standard of the Major Works, the Tribunal agreed that those issues could be dealt with together, and that it would make sense for the two experts to give evidence simultaneously (i.e. "hot tubbing") so that they could go through the final account for the Major Works on a line-by-line basis.
 - c. General service charge issues - the Tribunal agreed that the demands and apportionment could be addressed in legal submissions only. This was on the basis that the Tribunal agreed that Ms Ackerley could raise some questions with the Respondent via Mr Dover outside of the hearing by email in relation to the demands, to avoid the need to hear oral evidence from Ms Pickup, which Ms Ackerley duly did and received responses.
 - d. Other items - The Applicants had initially taken what could be described as a detailed audit approach to the service charge. The Scott Schedule in which they originally set out all the individual costs they disputed was 24 pages long. It would not be practicable, or proportionate, for the Tribunal to adopt a similar, full audit

approach to the service charges. However, a large majority of those items had been included in the schedule only on the basis that the Applicants disputed the validity of the demands (which would be dealt with as set out above). The parties agreed that the remaining outstanding items to be resolved were

- i. the door entry system (which appears on the Updated Schedule)
- ii. the management fee
- iii. the cleaning charges
- iv. the responsive repairs carried out in 2021 which the Applicants alleged overlapped with the Major Works and were set out in the Updated Schedule.

It was agreed that these outstanding items would also be dealt with by legal submissions.

34. Having adopted that approach, we have framed our decision with reference to those headings.

Demands

35. The Applicants' original position was that the demands were defective rendering the services charges unrecoverable. However, during closing submissions, Ms Ackerley accepted that the demands (or subsequent copies of demands served prior to the hearing) complied with the statutory requirements such that the initial allegations raised by the Applicants had all been resolved.
36. The Applicant's representative sought to introduce, during closing submissions, a new issue in relation to the demands which was that the Respondent had not complied with clause 7 (4) (a) of the Lease in that a surveyor ought to estimate the annual expenditure for the year in calculating the service charge budget. This was an entirely new issue which had not been raised by the Applicants before closing submissions. The Tribunal considered that the Applicants could have raised this matter at the outset of the proceedings, when they did have the benefit of legal representation, and that the fact that they may not have received all of the documents from the Respondent until later in the proceedings had not prevented them from raising this point sooner, and that there was no justification for allowing the Applicants to raise this new issue now, which would be to ambush the Respondents. Therefore, the Tribunal determined that the Applicant could not pursue this new line of argument during closing submissions. The outcome of that was that Ms Ackerley conceded during closing submissions that the validity of the demands was no longer a point being pursued by the Applicants. Therefore, the Tribunal was not required to determine that issue in the end.

LAW

Recoverability of service charges

37. Section 27A(1) of the 1985 Act provides:

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.

38. The Tribunal is “the appropriate tribunal” for these purposes and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

39. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.

40. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

41. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

42. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, they will need to specify the item complained of and the general nature of their case. However, the

tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

S 20 consultation and dispensation

43. S.20 of the Act provides for the limitation of service charges if the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

44. Dispensation is dealt with by s.20ZA of the Act which provides:-

"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements"

DISCUSSION AND CONCLUSIONS

S 20ZA Application

45. Given that the Applicants failed to respond to the s 20ZA Application and, therefore, have not provided any evidence of prejudice in respect of the Additional Works, Ms Ackerley acknowledged at the hearing that this was no longer a live issue. The Tribunal does not need to consider whether the Additional Works came within the scope of the Major Work. The Tribunal is satisfied that, as the s 20ZA Application is uncontested and there is no suggestion of prejudice, it is reasonable to dispense with the consultation requirements in respect of the Additional Work insofar as they were not included within the scope of the consultation for the Major Works.

Major Works – Historic Neglect and Standard of Works

46. The allegations made by the Applicants in relation to the Major Works carried out in 2019 and 2020 can be summarised as follows:

- a. The Applicants allege that the Building was in disrepair and that the Respondent's breach of the Lease led to the deterioration of the condition of the Building and to an increase in the cost of repair; and
- b. In terms of some of the items of the Major Works carried out, the Applicants either dispute that the work was carried out at all or that the work was a reasonable standard.

47. As set out above, the Tribunal heard from the parties' respective experts simultaneously; they went through the final account for the Major Works on a line-by-line basis, dealing with the allegations in terms of historic neglect and the standard of the work as they went along.
48. The final account for the Major Works in Mr Dawson's report was stated to be £338,590.41. Of that, Mr Dawson concluded in his report that £247,715.12 was not chargeable to the leaseholders, meaning that £90,875.29 was not disputed.
49. Mr Macey's report gave a lower figure for the final account of £328,839.98 which was not explained. As Mr Macey is the Respondent's expert, the Tribunal has taken this as the correct starting point. In his report, Mr Macey agreed that deductions of £30,259.97 net of VAT should be made from the final account based upon £23,534.35 of works which he found to have been ineffective, together with proportionate adjustments to the preliminaries and scaffolding costs of £6,725.63. In addition, the contingency sum of £5000 was excluded entirely.
50. During evidence, Mr Macey said that having now seen the New Drawings (which he said he had not been provided with when he produced his report) he considered that his conceded reductions were generous and that some areas of work he had discounted had in fact been completed. The Tribunal considered that it was for the Respondent to have provided its own expert with the New Drawings at the relevant time and, in the absence of Mr Macey having seen those drawings, his report had been prepared based upon his visual inspection of the Building. Therefore, the Tribunal did not think it would be reasonable to permit Mr Macey to revisit the deductions he had made in his report. Rather, **the Tribunal accepted the concessions which Mr Macey made in the sum of £30,259.97 plus £5000 in respect of the contingency as its starting point and determined that those amounts had not been reasonably incurred and are not payable.**

General approach to Historic Neglect

51. Mr Dawson's principal argument is that, in his expert opinion, had the Building been inspected and maintained on a regular basis, most of the costs would not have been incurred by the Respondent. He said that general regular inspection and maintenance of the water maintenance system would have picked up issues earlier and would have avoided the significant issues arising down the line because of long-term water ingress. In his report, Mr Dawson quantified the cost of the regular (twice annual) inspections of the Building at £6000 plus VAT (albeit he did not reflect that amount in his final account).
52. Mr Macey's opinion was that this was a timing issue only; the fact that the work was done later does not impact the cost. The costs of maintenance would still have existed if the work was carried out at an earlier date. If the works had been carried out earlier on a one-off basis,

Mr Macey said that it would not have saved costs due to economies of scale. In Mr Macey's opinion, had it been done earlier, it may have cost more.

53. Mr Dovar referred the Tribunal to the case of *Daejan Properties v Griffith* [2014] UKUT 206 (LC) and paragraphs 88 and 89 which states:

88. As the Lands Tribunal ...explained in Continental Ventures v White [2006] 1 EGLR 85 an allegation of historic neglect does not touch on the question posed by s 19 (1) (a), Landlord and Tenant Act 1985, namely, whether the costs of remedial work have been reasonably incurred and so are capable of forming part of the relevant costs to be included in a service charge. The question of what the cost of repair is does not depend on whether the repairs ought to have been allowed to accrue. The reasonableness of incurring the cost of remedial work cannot depend on how the need for a remedy arose.

89. The only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that, but for the failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects would have been avoided. In those circumstances the tenant to whom the repairing obligation was owed has a claim in damages for breach of covenant, and that claim may be set off against the same tenant's liability to contribute through the service charge to the cost of the remedial work. The damages which the tenant could claim, and the corresponding set off available in such case, is comprised of two elements: first, the amount by which the cost of remedial work has increased as a result of the landlord's failure to carry out the work at the earliest time it was obliged to do so; and, secondly...general damages...if the demised premises were affected by the landlord's breach of covenant."

The second element is not relevant to this case.

54. Mr Dovar submitted that Mr Dawson's approach overlooked accounting for the cost of work which would have had to be carried out in any event including actual maintenance of the rainwater goods, items above the rainwater goods such as ridge and roof tiles, and the cost of general maintenance. Mr Dawson had not provided any cost for that work and Mr Macey said that the costs would not have changed. Furthermore, whilst Mr Dawson accepted the £62,468.50 for access costs (initial scaffolding), he had not appreciated that economies of scale meant that a landlord would not incur that cost to remove a small amount of vegetation. The cost of maintenance such as removing vegetation, cleaning brickwork and fixing high up items was in fact the cost of gaining access.

55. Ms Ackerley accepted *Daejan Properties v Griffith* set out the correct test to be applied in relation to set off for historic neglect. However, she submitted that the broad repairing obligation on the Respondent here placed an obligation on the Respondent to proactively maintain the Building, rather than simply repair the Building when it fell into disrepair, and that, in the absence of evidence from the Respondents that they were carrying out regular inspections / maintenance since the conversion, the Applicant's position was that the work which had been undertaken would not have been required to have been carried out at all if regular inspections and maintenance had been carried out. Ms Ackerley invited the Tribunal to reflect Mr Dawson's estimate of £6000 plus VAT for a twice annual inspection in the amount it found payable.
56. It was not disputed that the Respondent had been in breach of covenant in relation to its repairing obligations although it is not clear when that first arose. The Tribunal considered that it did not need to determine the cause of the issues with the Building (whether water ingress or condensation or otherwise) nor to determine when the Respondent was first in breach of its repairing obligation in this instance. Given the test set out in *Daejan Properties v Griffith*, the crucial question was whether the Applicants had shown that the cost of the work had increased because of the Respondent's failure to carry out the work at the earliest time it was obliged to do so (or indeed at an earlier time).
57. The Tribunal found, on the evidence before it, that it was more likely than not that the costs which the Respondent would have incurred in undertaking earlier inspections / maintenance work over the years would have been broadly equivalent to or greater than those incurred on the Major Works in any event. The Tribunal made that finding on the following basis:
- a. The Tribunal considered it is reasonable and common for landlords to factor in economies of scale, and this included the significant and potentially disproportionate cost of obtaining, safely, access to high up areas of buildings. Whilst Mr Dawson had made a comment in evidence that a cherry picker could have been used, the Applicants had neither provided any evidence to substantiate that claim nor any costings. Therefore, in the absence of evidence to the contrary, the Tribunal accepted Mr Macey's evidence that scaffolding would have been required at least on some occasions to inspect and maintain the higher areas of the Building and, on the basis of the Respondent's costs, those costs would easily have become disproportionate to the cost of the work undertaken and could have accumulated, over the years, to a cost in excess of that being disputed now;
 - b. The Tribunal did not accept the Applicant's assertion that, had regular inspections been undertaken, that would have avoided the need for carrying out any of the work. There would inevitably have been some work required to remedy issues found on inspection and the Applicants had not allocated any costings for such

maintenance. Therefore, insofar as part of the cost might have been avoided, the Applicants had not provided a reliable figure by which such savings could be assessed. Furthermore, the Tribunal considered that any building (and particularly one of the age and character of the Building) would require some more significant cyclical repairs to the fabric of the Building over time and these were likely to be of significant cost (based upon the Respondent's costings).

- c. The costing provided by the Applicants of £6000 for twice yearly inspections was an estimate only. Furthermore, it did not include a breakdown and did not include any maintenance / repair costs nor access costs and so was of very limited value.

58. In light of the above finding, the Applicants did not satisfy the test in *Daejan Properties v Griffith*; they have not demonstrated that part of the cost eventually incurred in remedying the disrepair, or the whole of the cost of remedying the disrepair, would have been avoided by the Respondent carrying out the work or inspecting the Building earlier. Therefore, the Applicants do not have a claim in damages which they are entitled to set off against the service charge. Furthermore, even if the Applicants had made out a potential claim in respect of part of the costs, the Applicants also failed to evidence an amount by which the cost of remedial work increased as a result of the landlord's failure to carry out the work sooner. **Therefore, the Tribunal is not willing or able to make a set off against the Applicants' service charge liability based on alleged historic neglect.**

Covid / furlough items

59. A significant proportion of the sum disputed by Mr Dawson related to what was termed "Covid" or "furlough". These were listed in the final account under the headings "Additional Prelims", "Additional Scaffold Hire" and "Additional Scaffold Hire (COVID-19 Lockdown Period)" and amounted to £74,454.07 of costs in total which Mr Dawson had discounted in his report on the basis that these "*costs would have been covered by government furlough and grant payments, do not form part of service charge costs*".
60. In evidence, Mr Dawson expanded on his rationale, saying that, in his experience, sites were not charged for scaffolding and plant hire during lockdown periods because the equipment couldn't be used elsewhere, and that grants were also available beyond the lockdown period when restrictions were still in place. He also referred to employers obtaining bounce back loans.
61. In contrast, Mr Macey said that whilst government schemes were in place at the time, the items in the final account, which had been signed off, told him that employees were still working on the site, at a distance, albeit things had to be done differently during that time. The discount

that was agreed was likely the outcome of negotiations when that was not possible.

62. Ms Ackerly in closing submissions argued that the Respondents could have produced evidence of negotiations for the reduction if that was the case, and that, in the absence of evidence, there might have been other reasons for the reduction being given.
63. Having considered the final account, the Tribunal is satisfied that only a small number of the items listed under these headings related to the Covid lockdown period. Those are:
 - a. NV P2 which refers to “*site shutdown period, following government COVID-19 guidelines*” for the period 27/03/2020-05/06/2020 during which the charge for additional preliminary costs is specified as 10 weeks @ £287.50 (which appears to be a significant reduction from the cost of £1,550.41 per week attributable to the other items listed under that heading);
 - b. NV Sc8, NV Sc9 and NV Sc10, all of which are listed under the specific heading “Additional Scaffold Hire (COVID-19 Lockdown Period)” and refer to additional scaffold hire for the gable elevation for the period wc 30/03/2020-wc 01/06/2020, 10 weeks @ £358.80, additional scaffold hire to front elevation for the period w/c 30/03/2020 – wc 01/06/2020, 10 weeks @ £652.50 and additional scaffold hire to gable elevation (left section) for period wc 30/03/2020- wc 01/06/2020, 10 weeks @ 35% £365.10. These costs do not differ from the costs incurred for the scaffolding of the same areas during different weeks.
64. The Respondent said that the work halted in March 2020 and resumed in July 2020, and the dates specified in those entries above broadly correspond with that description and the first lockdown in relation to Covid.
65. It seems to the Tribunal that Mr Dawson erred in assuming that all the costs in these sections related to the Covid period simply because some of the costs related to (and expressly refer to) the Covid lockdown period. Rather, the Tribunal considers it more likely than not that most of the costs under these headings were simply what they said they were; additional preliminary and additional scaffolding costs necessitated by the project and incurred in addition to the original budget.
66. In relation to those costs that were incurred during the Covid lockdown period (as set out above), it appears to the Tribunal that a reduction in costs was put in place in respect of the additional preliminary costs during the 10-week period of 27/03/2020 to 05/06/2020. The Respondents have not provided any evidence as to how that reduction was achieved whether by contractual negotiation or actual reduced costs or otherwise. However, the Tribunal did not consider that the Responded needed to. In the absence of any specific evidence that other

cost savings means were available, Mr Dawson's broad comment that these costs (and the other costs under this heading) would have been covered by government furlough and grant payments was mere speculation. **The Applicants have put forward no evidence to seriously question the reasonableness of the charges under this section, and the Tribunal finds that these costs were reasonably incurred and are payable.**

Preliminaries

67. The final account includes "Preliminaries" in the sum of £23,036.65. Mr Dawson's position was that these should be excluded because the Respondents had provided no further breakdown as to what these related to and because preliminaries usually include scaffolding costs but those have been specified elsewhere in the account. Mr Macey's considered that it was likely that the scaffolding costs had been specified separately because it was such a large item, but maintained that there would be other overheads which always make up preliminaries on any site, and that the figure of £23,036.65 seemed right given that it was roughly 10% of the total costs (albeit Mr Macey had adjusted the preliminaries to account for the ineffective costs as set out above).

68. The Tribunal did not accept Mr Dawson's position that the preliminaries should be excluded in their entirety because no further breakdown had been provided, and because the scaffolding costs had been accounted for elsewhere. Even without the scaffolding costs, the site would have had other costs which would be classified as preliminaries. The Tribunal considered that the term "preliminaries" was a standard term in construction, and it was understood what sorts of costs were included in that description. The Applicants had not provided an alternative figure. In contrast, Mr Macey's expert opinion was that the figure was an appropriate one for a project of this size. **The Tribunal accepted that evidence and determined that the preliminaries in the sum of £23,036.65 had been reasonably incurred and were payable (subject to the adjustment which the Tribunal has made to the preliminaries below).**

Adjustments

69. These are the Additional Works which the Respondent carried out (as discussed above).

70. Mr Dawson's approach in respect all items from AI 1.1 – AI 7.5, work totalling £51,51,140.65, is first, this work should have been included in the original work package and, second, that all items have been caused by the historic neglect and would not have been required but for that neglect, such that he costed them at £0.

71. Ms Ackerley accepted, in closing submissions, that these were variations to the contract and the first point was not a valid one.

72. Therefore, the Tribunal has considered these items with reference to the general positions put forward by the parties in relation to the historic neglect. As set out above, and for the same reasons, the Applicants have not demonstrated to the Tribunal that the cost of the remedial work (which includes the Additional Work) has increased because of the Respondent's failure to carry out the work or inspect earlier. Furthermore, the Applicants have not evidenced a figure by which it could be said to have increased either. **Therefore, the Tribunal is not willing or able to make a set off against the Applicants' service charge liability for the additional work based on the historic neglect claimed.**

73. **Mr Macey had, however, made deductions in his report to some of these costs in recognition of ineffective work which the Tribunal has already determined are not payable.**

MAJOR WORKS – STANDARD OF WORK – S 19

Gable Elevation overlooking car park

74. Having now seen the New Drawings, Mr Dawson took the view that there was no evidence that a number of items at 4.02.1, 4.02.2 and 4.02.6 (relating to rake out and repointing work) totalling £4,337.17 had been carried out (which he said he would have queried had he had sight of the New Drawings at the time he produced his report). These items were not listed on the New Drawings and so, Mr Dawson said, there was no evidence that the work had been undertaken.

75. Mr Macey acknowledged that the New Drawings did not show this work and, further, that he could not say with certainty exactly what work was done and where: he was relying on his visual inspection, the drawings he had seen, and the contract administrator having undertaken its role.

76. The Tribunal considered that the Applicants had raised sufficient doubt as to whether these items had been carried out, and the Respondent had failed to address that doubt adequately. The Respondent's New Drawings did not demonstrate that the work had been undertaken, and Mr Macey himself acknowledged that he could not say with certainty that it had. It was not adequate simply to say that the Respondent relied upon the final account having been signed off, or that Mr Dawson had visually inspected the Building. **The Tribunal preferred the Applicant's position and found, as a fact, that the disputed items of work had not been undertaken. Therefore, the cost of £4337.17 had not been reasonably incurred and is not payable, and that sum should be deducted from the final account.**

Rear Elevation- Ivy

77. There was a dispute as to whether the ivy at the rear elevation and on the railings had been removed effectively. Items 5.01.0 and 5.01.08 related to this.
78. Mr Dawson said that the ivy had not been removed effectively; he had pointed out during the inspection that ivy was still present on the railings, and he said that would not be the case had it been removed effectively the first time. Furthermore, he said that the ivy that had been on the rear elevation had been the same plant, from the same source, and so would grow back in future on the basis it had not been removed fully.
79. Mr Macey conceded that if there was ivy currently present on the railings then the root system may not have been dealt with adequately. However, no ivy was present on the rear elevation, and he queried whether it was the same plant and whether it was of the invasive variety.
80. **The Tribunal clearly saw the ivy present on the railings during the inspection and so, on that basis, found that the treatment of that issue had not been dealt with adequately such that item 5.01.8 in the sum of £455 should be excluded as that work had not been carried out to a reasonable standard and was not payable.**
81. The Applicant had produced no evidence, however, that the ivy which had been present on the rear elevation had come from the same plant / source, nor was there evidence that that ivy had regrown. **Therefore, the Tribunal found, as a fact, that the work to that plant had been properly carried out and, therefore, to a reasonable standard, such that the sum charged for item 5.01.0 was payable.**

Roof Works

82. Item 5.03.3 is for the sum of £4,777.50 and states “re-bed all ridge tiles to the roof, sand, cement and mortar”. Mr Dawson understood this to mean that *all* the ridge tiles to the roof should have been rebedded, which he said had not been undertaken (from a visual inspection) and, further, that over pointing was seen to have failed in several locations.
83. Mr Macey’s view was that it can never have been intended to re-bed literally *all* the tiles, since that would have costed far more than circa £5000. The cost of circa £5000 was in line with the work which had been undertaken, which was to re-bed the tiles as necessary. Mr Macey conceded that there was some erosion of the over pointing and quantified that at 20% of the cost, being £955.50.
84. The Tribunal noted that the original specification for the Major Works stated, “*Isolated roof repairs to pitched roofs where missing/slipped slates identified*”. This was consistent with Mr Macey’s version of events. Mr Macey’s evidence that £5000 was an appropriate amount for such isolated roof repairs, and that the cost of re-bedding the whole of what

was a very large roof would have been much more, seemed very plausible. **Therefore, the Tribunal preferred the Respondent's position and found, as a fact, that the cost of £4,777.50 was for the rebedding of some ridge tiles (not literally *all* ridge tiles) and that that work had been undertaken to a reasonable standard, such that the charge was payable (save for the £955.50 already discounted by the Respondent).**

Front Elevation – removal of vegetation and cleaning

85. Mr Dawson challenged whether items 6.01.2, 6.01.3, 6.01.5, 6.01.6, 6.01.7, 6.01.8 and 6.01.9 had been carried out since they were missing from the New Drawings.
86. Mr Macey pointed out that there had been no charge for 6.01.6 and 6.01.7. He had already made a partial concession in respect of these works in the sum of £2751.58.
87. The Respondent had not been able to explain the absence of these works from the New Drawings. However, unlike in the case of the repointing above, some of this work was work which was quite significant in nature and could have been seen easily from a visual inspection. However, Mr Dawson had not challenged whether that work had been done in his report. Items which would have been visible on inspection being 6.01.03 "Clean down all brick work and remove all staining to all areas" £7,452.90 and 6.01.5 "Undertake full clean of all glazing units to the elevation" £3,460.28 were quite significant in nature. The Tribunal considered that Mr Dawson would surely have queried the completion of that work in his report if it had been evident at the inspection that that work had not been carried out. **Therefore, the Tribunal found, as a fact, that those works had been carried out notwithstanding that they did not appear on the New Drawings, such that they are payable.**
88. In terms of the other disputed items, it was possible that Mr Dawson had not been able to fully observe those on a higher level visually and, had he seen the New Drawings, he might have reconsidered whether those had been carried out. **However, the total cost of those items was significantly less than the £2,751.58 deducted by Mr Macey already, and so the Tribunal did not need to determine whether those items had been completed since the Respondent's deduction already covered the cost of that work.**

Front Elevation – Building Work

89. Mr Dawson says Items 6.02.5 and 6.02.6 were not completed because they do not appear on the New Drawings. These both relate to extensive rake out and repointing work, to all feature brick window cills and the heads and joints of all feature brick plinths top head of the ground, first and second window floor. This made up nearly £6000 of costs.

90. Mr Macey in his report has made deduction of £1,077.77 to account for some failure in pointing work.
91. Again, Mr Dawson did not raise the issue of the work having not been carried out in his report. Again, the Tribunal considers that this work would have been evident on visual inspection as it is not all high level. **Therefore, the Tribunal makes a finding of fact that this work was carried out, and the cost is payable save for the £1,077.77 already conceded by Respondents.**

General dispute in relation to mortar type

92. A dispute existed in relation to the standard of the repointing work because of the mortar mix used. The total repointing work amounted to around £60,000 of work in total, although the dispute arose from the description given at item AI 11.2 of the final account, the repointing of the upper section of gable elevation overlooking the car park for £7,963.20. The description on the final account stated, “*Mix 1:1:6 cement hydrated lime, sand*”.
93. The experts gave significant technical testimony on this matter, but in summary, their respective positions were as follows:
- a. Mr Dawson said that a mortar containing cement was not suitable for repointing the brickwork at the Building, and so the work carried out had not been effective and, therefore, to a reasonable standard. Mr Dawson also queried whether the old mortar had been raked out sufficiently;
 - b. Mr Macey said that the mortar was a mix which contained cement at an acceptable level, was entirely appropriate, that the contractor was experienced, and the fact that this detail was specified in the final account demonstrated that it had been considered. Further, there was no evidence of inadequate pointing; if it had been ineffective, it would have fallen out.
94. Mr Macey had made some deductions, in his report, for areas where he had accepted (at that time) that repointing had not been carried out. However, that did not mean that the standard of the repointing which was carried out was ineffective. Whilst noting Mr Dawson’s expert opinion on the mortar, it was based upon a sentence in the final report only and the Applicants had not obtained nor presented any evidence as to the actual make-up of the mortar and its alleged unsuitability. Furthermore, even if there was a theoretical issue with the mortar make up, the Tribunal would need to be satisfied that the work had been defective. The Tribunal did not consider that there was adequate evidence that the repointing carried out was ineffective; during its inspection, the Tribunal observed that the repointing looked to be in reasonable order. **Therefore, in the absence of evidence as to the unsuitability of the mortar and, in particular, the ineffectiveness of the work as a whole, the Tribunal preferred**

Mr Macey's evidence and found, as a fact, that the mortar was of a suitable specification and that the repointing work had been effective and to a reasonable standard such that the costs associated with it are payable. Therefore, the Tribunal did not make any deductions to the cost of the repointing generally (save for the exceptions set out elsewhere in this determination).

Conclusions in relation to final account

95. In addition to Mr Macey's deductions of £23,534.35, the Tribunal has determined that a further £4,792.17 should be removed from the final account as it is not payable. That gives a total of £28,326.52 deductions plus the contingency of £5000.

96. Mr Macey also made a proportionate adjustment to the preliminaries and scaffolding costs on account of the reduction in overall costs. Having accepted Mr Macey's approach as a starting position, the Tribunal considers that this is an appropriate adjustment and adopts a similar approach. The Tribunal finds that a proportionate adjustment of 8.75% should be applied to those figures meaning that the following sums should be deducted on the basis they have not been reasonably incurred and are not payable:

Preliminaries:	£2,015.71
Additional Preliminaries:	£3,356.54
Scaffolding:	£2,801.26

97. In total, therefore, the Tribunal finds that £41,500.03 should be deducted from the final account for the Major Works, and that the remaining costs which make up the final account are reasonable and payable.

General service charge issues

Apportionment – Commercial Unit

98. In relation to "the commercial unit" in the basement, there is no dispute that it had never been developed or let as a commercial unit. The Respondent has taken an inconsistent approach over the years in dealing with it in relation to the service charge. Some years it had included the unit in its calculation and had divided the Service Provision (or part of it) between 36 (i.e. the 35 residential units plus the commercial unit). Other years, the Respondent had excluded the commercial unit and divided the Service Provision between the 35 residential units only.

99. Clause 7(1)(b) of the Lease sets out that the "Specified Proportion" (the proportion payable by means leaseholder) means "*a reasonable*

proportion of the Service Provision such proportion to be determined from time to time by the Landlord as being attributable to the Premises” (underlined for emphasis). Therefore, the Respondent had discretion under the Lease to decide what proportion of the Service Provision to allocate to each of the leaseholders, which included deciding how to approach the commercial unit in that calculation, albeit that the Respondent was required to act “reasonably” in exercising that discretion.

100. The Applicant’s position, set out in their Statement of Case and Reply, can be summarised as a “reasonable proportion” would be a proportion of the cost of the service charge that reflects a contribution from the commercial unit, which unit enjoys the benefit of repairs and maintenance to the Building and that the inclusion of the commercial unit would reflect an equitable proportionate split. The Applicants further questioned the reasonableness of the Respondent’s approach given the inconsistent way it has approached the commercial unit.

101. Mr Dovar directed the Tribunal to the case of *Bradley v Abacus [2025] EWCA Civ 1308*, a recent Court of Appeal decision which considered how the Tribunal was to approach a similar discretion on the part of a landlord to apportion a service charge at a “fair and reasonable proportion”, and, in particular, paragraph 79 of that decision which suggests the test to apply as follows

“the role of the FTT is limited to deciding whether a landlord has acted in breach of contract; that a landlord will only have acted in breach of contract if the decision it has made was not one open to it in the circumstances; and that where the lease requires the landlord to act reasonably or exercise reasonable discretion, that will only be so if the decision is one that no reasonable landlord could have reached”.

102. In closing submissions, Ms Ackerley referred to correspondence in which it had been raised that the Respondent had previously calculated the apportionment on a square footage basis. However, insofar as the Applicants sought a return to a square footage basis, Ms Ackerley acknowledged that square footages had not been provided and so that could not be put forward.

103. The Tribunal had some sympathy with the Applicants on this issue. It seemed a contradiction for the Respondent on the one hand to exclude the commercial unit on the basis there was no physical unit and no lease, but on the other hand to include the commercial unit in its apportionment of the service charge some years. However, the Tribunal considered that the approach set out in *Bradley v Abacus* was the correct one for it to take; the Respondent had discretion under the terms of the Lease and the Tribunal’s role was to decide whether a landlord had acted in breach of contract which, in this case, would require the course of action to be one which no reasonable landlord could have reached.

104. The Tribunal determined that it was not unreasonable for a landlord to have reached the decision to exclude the commercial unit from its apportionment on the basis that the unit was not just unlet but had not even been physically developed.
105. Similarly, it was not unreasonable for a landlord to have reached the decision to include the commercial unit either.
106. The fact that the Respondent had done both at different times was inconsistent. However, the fact that it had adopted an inconsistent approach did not make its approach unreasonable, in the Tribunal's view, and it had in fact benefitted the Applicants in the sense that they had paid a lower contribution where the commercial unit had been included than they would have done if the commercial unit had been excluded every year.
- 107. The Tribunal found that the Respondent was reasonable in its approach and was entitled, under the terms of the Lease, to approach the apportionment in respect of the commercial unit in the way that it had done.**

Other items

Management fee

108. Although the Applicants had initially challenged the recoverability of such a fee under the terms of the Lease, the Applicants accepted that was not an issue at the hearing. Therefore, the only issue was the amount of the management fee and whether it was reasonable given the standard of services provided.
109. In relation to the management fees charged, the Applicants alleged that the management had been inadequate; the Respondent's mismanagement and lack of proactive response had allowed the Building to fall into a state of disrepair, resulting in significant water ingress which had damaged several individual apartments. The Applicants had sent numerous complaints to the Respondent over the years, the Respondent's communication was poor, there was a lack of transparency, and the Applicants are unclear what exactly they were getting for their money.
110. The Respondent's position is that the management fee covers all the usual management tasks including arranging insurance, sorting out cleaners, paying bills, reacting to issues raised by leaseholders etc. In addition, during the years in question, the Respondent had undertaken work planning the Major Works programme including dealing with the s 20 consultation. The issues raised by the Applicants in terms of the standard of management received was just one aspect of the management function and does not warrant a reduction in the fees.

111. The Tribunal considers that the management fees charged are not high ones. Furthermore, the Tribunal acknowledges that the charges will include a host of work which the Respondent has undertaken in terms of the management of the Building, as well as the more significant work associated with dealing with the Major Works. However, it is not necessary (nor would it be proportionate) for the Tribunal to consider individual complaints made by the Applicant and whether they were responded to by the Respondent in a timely fashion to reach the conclusion that the Building has been mismanaged. That is self-evidence from the fact that the Building was allowed to get into such a state of disrepair, to the extent that damage was caused to individual apartments. Furthermore, there has clearly been issues on the part of the Respondent in communication and transparency since much of the documentation and other clarificatory information were only provided to the Applicants during these proceedings, and some of it late. Therefore, the Tribunal accepts the Applicant's evidence and finds as a fact that a proportion of the management function carried out by the Respondent has not been of a reasonable standard.

112. The Respondents calculated the amount of the management fees (to include *all* the work carried out), and the Applicants are entitled to expect the service provided to be of a reasonable standard. It cannot be said by the Respondent now that, even discounting a proportion of the services which may not have been up to standard, the overall amount of work done at a reasonable standard is sufficient to justify the fee in full.

113. As no further breakdown of the management fees has been provided, the Tribunal considers it reasonable to take a practical, broadbrush approach and has determined that 30% of the management fees for each year which is the subject of this application should be deducted on the basis that it broadly corresponds with the estimated proportion of the service/work not to a reasonable standard. The Tribunal considers that this proportion takes account of the mismanagement and poor service provided by the Respondent whilst acknowledging that significant other tasks were undertaken by the Respondent to a reasonable standard, such that 70% of the management fees for each year which is the subject of this application are reasonable and payable.

Cleaning charges

114. The Applicants had two concerns in relation to the cleaning charges. First, that they had not seen evidence of general cleaning being carried out at the Building (for example, a failure to mop up leaked water in a timely fashion) and, second, that the cost of the cleaning had been exacerbated by the disrepair at the Building and water ingress, for example, by requiring additional cleaning to carpets due to stains and cleaning of woodwork. In closing submissions, Ms Ackerley said that, whilst the Applicants acknowledged that there would have been some

cleaning undertaken by the Respondents, there should be some discount to reflect the issues raised.

115. The Respondents said that since 2013 or 2014, J Morson Cleaning Services had provided a good service. The Respondents had provided a schedule of the routine cleaning undertaken. In 2021, a new company was appointed but, after a few months, that contract was terminated due to poor service, and a new cleaner was brought in whom, the Respondent said, is performing satisfactorily.

116. The Tribunal considered the schedule of routine work undertaken by J Morson Cleaning Services until they were replaced in 2021. The Tribunal considered that it was evidence that cleaning was undertaken three days a week, and that more significant cleaning tasks were undertaken quarterly, six monthly and annually. This included a “steam clean” of carpet quarterly and cleaning woodwork / window frames quarterly. Whilst acknowledging that J Morson Cleaning Services had been replaced some time in 2021, and that there had been a period of a few months when the replacement service was not adequate, the Tribunal considered it was reasonable to assume that the new cleaners had undertaken similar tasks at a similar regularity to J Morson Cleaning Services.

117. Considering the above, the Tribunal considered it more likely than not that the regular cleaning undertaken at the Building would have incorporated any items of additional cleaning which arose as a result of the disrepair, because those areas of the Building would have been cleaned anyway. For example, the carpets would have been steam cleaned quarterly anyway. Therefore, the Tribunal did not think that the cleaning costs were likely to have been exacerbated because of the disrepair.

118. Whilst the Applicants had raised a general issue as to the standard of the work, they had not provided evidence to demonstrate that the standard of the service had fallen short of reasonable. Furthermore, the Applicants acknowledged that general cleaning work had been undertaken. The Tribunal acknowledged that the Respondent had identified an issue with the standard of the service provided by the company which undertook the cleaning for a short period in 2021, but there was no evidence of any incidents in that period.

119. Considering the above, the Tribunal determined, on the evidence before it, that the standard of the cleaning was reasonable and that the disrepair did not exacerbate the charges, such that no reduction is made to the cleaning charges which are reasonable and payable.

Outstanding invoices in dispute in the Updated Schedule

Cleaning faeces and photocell replacement (door entry system)

120. These charges of £234 plus VAT and £495 plus VAT related to the same incident; the Applicant's alleged that inadequate security led to the need for the waste to be removed before the work could be undertaken. The door entry system was then repaired another day. The Applicants had concerned that they had paid for a duplicate visit. The Respondent provided two separate invoices (one for the cleaning and one for the repair) and explained that parts had to be ordered before the repair could be done, and there was no separate second call out charge. **Based upon the Respondent's evidence, the Tribunal is satisfied that there was no duplicated cost and that these charges were reasonably incurred and payable.**

DMC Scaffolding Services Ltd

121. There were several instances where the Respondent had incurred costs carrying out repair work shortly after the completion of the Major Works and the Applicant had concerns that this was due to the Major Works being defective, and that these were effectively duplicated costs. The Applicants are unclear why further repair work would be required less than 12 months after completion of the Major Works. The Respondents say that the work was required to repair new leaks in the roof / issues which occurred after the Major Works; that it is an Old Building and the Major Works were not a complete set of works such that it will be the case that new leaks arise. In closing submissions, Ms Ackerley said that it is possible that the leaks stemmed from the Major Works, and that the invoices for the work did not clarify the exact location nor exactly what the works were.

122. The Respondent has provided evidence that the works were undertaken, and the charges were incurred by way of the invoices. The Tribunal did not consider that the Respondent needed to show the exact location of the leaks / works nor provide further details of what the works entailed. The Respondent's explanation that the work related to new leaks which had appeared after the Major Works, and that the Major Works were not a complete set of work such that new leaks would arise, seemed perfectly plausible to the Tribunal. **The Tribunal accepted the Respondent's evidence and, therefore, found that the charges were reasonably incurred and payable.**

123. There were some other scaffolding charges in respect of which the Respondent confirmed they had not been charged to the leaseholders such that they were no longer live issues.

Repair works to window

124. The Applicant challenged an invoice in the sum of £1,250 plus VAT dated 15/09/2021 in respect of repair work to windows. The Applicants said that several windows were repaired during the Major Works, and they did not know which window this related to. Furthermore, they said they had observed repairs being undertaken to resolve the issue of windows having been painted over during the Major Works. The

Respondent said this was a new leak around a window (after the Major Works).

125. Similarly to the case in respect of new leaks to the roof, the Tribunal accepts the Respondent's evidence that the Major Works were not a complete scheme of works and that new leaks will arise. Therefore, the Tribunal considers it to be perfectly plausible and accepts that this was a new leak which needed to be addressed. **Therefore, the Tribunal finds that this charge was reasonably incurred and payable.**

Other items

126. Ms Ackerley confirmed in closing submissions that none of the other items in the Updated Schedule were still in dispute, the Respondent having provided copies of invoices and explanations.

APPLICATIONS UNDER SECTION 20C OF THE 1985 ACT AND PARAGRAPH 5A OF SCHEDULE 11 OF THE 2002 ACT

127. The Applicants' arguments were like those in respect of the management fees; that the Building had been managed badly and that communication / transparency had been poor on the part of the Respondent and it was necessary for the Applicants to bring these proceedings to obtain information which the Respondent had not provided previously despite repeated requests. In addition, they queried whether the Lease permitted the Respondent to recover legal costs as part of the service charge. Ms Ackerley also pointed out that the Respondent had made concessions in the Updated Schedule of disputed invoices.

128. Mr Dovar directed the Tribunal to clause 7 (5) (c) of the Lease which stated that the Service Provision shall include:

“all reasonable fees charges and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person who the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building...”

129. Mr Dovar said that the Applicants' approach had been unacceptable; they had run arguments in respect of which they had then made significant concessions during the hearing in relation to the s 20ZA dispensation and the demands. He said that the major dispute relating to the Major Works, which had led to it being listed for a three-day hearing, had not been warranted. Furthermore, the Applicants accepted £90,000 of the Major Works from the start, but some Applicants had withheld all the service charges.

130. **The Tribunal found that clause 7 (5) (c) did permit the Respondent to potentially recover its legal costs.** Whilst there was no express reference to legal costs, it referred to the “reasonable

fees” of “any solicitor” which the Tribunal considered to be the same thing.

131. Generally, it will be just and equitable to make an order depriving the Respondent of the ability to recover their costs of proceedings as part of the service charge in the normal way if leaseholders have been successful in their challenge to the service charge. In the present case, the Applicants have been successful, but only to a small extent. In the main, the Tribunal has found in favour of the Respondent. That said, in addition to the reductions made by the Tribunal, it is noted that the Respondent also made several, late, significant concessions in the Updated Schedule.
132. It is the case that the Applicants decided not to pursue a few significant points at the hearing. However, the Tribunal considers that the Applicants cannot be criticised too much for that, since they no doubt relied upon the legal advice they received initially, and there was a period before the hearing when they were without legal assistance and without the benefit of Ms Ackerley’s input. The decision to concede those points at the hearing was a sensible, albeit late, one.
133. Whilst acknowledging that the length of the hearing was not proportionate to the outcome for the Applicants in terms of the deductions made, the Tribunal had some sympathy for the Applicants in that the Building had been mismanaged by the Respondents over the years and that had clearly caused significant distress to the Applicants. Furthermore, the Respondent’s failures in terms of communication and transparency meant that the Applicants felt they had to pursue the proceedings to obtain clarity. That had not, however, justified the position of some of the Applicants in withholding all the service charges, and the Tribunal also acknowledged that the Respondent had acted reasonably in paying for some of the repair work itself.
- 134. Having balanced all the above, the Tribunal determined that it was just and equitable to make limited orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, restricting the Respondent to recovering 90% of its legal costs (and extinguishing 10% of the Applicants’ liability).**

Signed: J L Hadley
Judge of the First-tier Tribunal
Date: 16 December 2025

ANNEX

List of Applicant Leaseholders

Flat 1	Michelle Neighbour
Flat 2	Henry Semanda
Flat 3	Denise Senior
Flat 6	Mohammed Zubair
Flat 7	Alicia Leontieff and Wendy Davis
Flat 8	Tuesday Holder
Flat 9	Peter Dyer
Flat 11	Kevin Marshall
Flat 14	Adam Clough and Andy Entwistle
Flat 15	Nina Brocklehurst and Levi Brocklehurst
Flat 16	David Williams
Flat 18	Samantha Owens
Flat 19	Mark Williams
Flat 20	Andrew Charlton and Gemma Wardle
Flat 21	Marco Li
Flat 22	Chris Bridgeman
Flat 23	Huma Ali
Flat 26	Tom Cotton
Flat 30	Matt Hatton
Flat 31	Heather Rylance
Flat 32	Dylan Longworth
Flat 33	John McCarthy
Flat 36	Michael Del Rosso