FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HA/LSC/2024/0613
Property	**:**	Flat 8, The Hexagon, Kempthorne Lane, Bath, Somerset, BA2 5RS
Applicant	**:**	Keith Knaggs (tenant)
Representative	**:**	In person
Respondent	**:**	The Hexagon Property Management Company Limited (landlord)
Representative	**:**	Mr Bertrand-Leslie Kweku Aggrey-Orleans of counsel, instructed by Rradar Ltd solicitors
Type of Application	**:**	Liability to pay service charges under s.27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Tribunal Judge M Loveday M Ayers FRICS M Jenkinson
Date and venue of hearing	**:**	9 January 2026, CVP
Date of Decision	**:**	5 February 2026

DETERMINATION

Introduction

1. This is an application under s.27A Landlord and Tenant Act 1985 ("LTA 1985") for determination of liability to pay service charges.

2. The application relates to Flat 8, The Hexagon, Kempthorne Lane, Bath, Somerset, BA2 5RS, which comprises a 2-bedroom flat on the second floor of a block of 25 similar properties. The block forms part of the Hexagon, which is a development on the site of the historic St Martin's Hospital in Bath.

3. The Applicant is lessee of the flat, and the Respondent is the lessee-owned landlord.

4. The Respondent has employed managing agents throughout. For most of the period under consideration, the agents were West of England Estates Management Company Ltd ("WEEMCO"). But since 15 January 2024, the agents have been Easton Bevins. The agents have throughout accounted for service charges using a service charge year ending on 31 December of each year.

The application

5. The application to the Tribunal is dated 7 October 2024. It seeks a determination of liability to pay £2,558.75 in charges.

6. The matter was originally listed for hearing on 28 August 2025, and both parties attended that hearing. It was clear the matter was not capable of being tried on that date, and the hearing was adjourned for reasons given in directions. The directions also required the parties to complete a further Scott Schedule.

7. The application was heard on 9 January 2026 as a fully remote hearing. The Applicant appeared in person, and the Respondent was represented by Mr Bertrand-Leslie Kweku Aggrey-Orleans of counsel. In addition to submissions from both parties, and a bundle of some 453 documents, the Tribunal heard evidence from two witnesses. These were Victor de Cuhna, a director of the Respondent company, and Arial Hinton, a property manager with Easton Bevins.

8. The Scott Schedule which was produced ran to some 16 pages of A3 paper. The Tribunal has considered the schedule and identified 12 separate issues (albeit that in many instances these issues involved more than one argument). The Tribunal's decision on each is set out below.

The Lease

9. The flat lease is dated 22 December 2006 ("the Lease"). Under the terms of the Lease, the flat was demised by the Respondent for a term of 999 years from 6 November 2006.

10. The Lease includes service charge provisions which require the Applicant to pay a block service charge (described as the "Apartment Service Charge"), an Estate Service Charge and an insurance rent (described as the "Insurance Charge"). The block service charge is calculated as 4% of other costs and expenses in Sch.5 to the Lease. These include:

    (1) the costs of complying with the landlord's covenants in clause 3.1 of Pt.I of Sch.5; and
    (2) the matters in Pt.II of Sch.5.

    The Estate Service Charge is calculated as 2.56% of the costs and expenses in Sch.5 to the Lease. These include:

    (3) the costs of complying with the landlord's covenants in clause 3.1 of Pt.III of Sch.5; and
    (4) the matters in Pt.IV of Sch.5.

    The insurance rent is calculated as a fair proportion of the cost for the landlord of complying with its insurance obligations in clause 3.2 of the Lease.

11. Insofar as they are relevant to the application, the other Lease provisions are set out below.

Issue 1: Chimney insurance

12. The Applicant challenged Estate Service Charges for chimney insurance in the 2021-23 service charge years.

13. The application and the Scott Schedule did not include any figures for the individual items of service charge costs which were challenged. The Applicant calculated the contributions to the chimney insurance at the hearing for 2021 service charge year based on insurance premiums shown in the service charge accounts. The 2021 figures given by the Applicant and the equivalent figures for 2022 and 2023 are:

(1) A contribution of £38.88 towards the "chimney premium" of £1,518.72 incurred in the 2021 service charge year.

(2) A contribution of £45.80 towards the "chimney premium" of £1,719.10 incurred in the 2022 service charge year.

(3) A contribution of £10.62 towards the "chimney premium" of £415.02 incurred in the 2023 service charge year.

There were also invoices from the brokers, Arthur J Gallagher Insurance showing cover had been placed with Aviva Insurance Ltd in each year.

14. The Tribunal heard evidence about the chimney from Mr de Cuhna. He explained that there was a tall, listed chimney within the site. There had been an issue with Guinness Trust, which owned the adjacent land, as to who owned the chimney. The Respondent had considered it prudent to insure the chimney (before Mr de Cuhna's involvement with the company). In 2023, Mr de Cuhna contacted Guinness Trust about the chimney and Trust took legal advice. Although the advice was equivocal, the trust nevertheless agreed to take over the maintenance and insurance of the chimney. Mr de Cuhna produced relevant correspondence, including a letter from Guinness dated 9 June 2023 agreeing to take over responsibility. This agreement enabled the Respondent to release the chimney from its insurance requirements. In response to questions from the Tribunal, Mr de Cuhna suggested the chimney was a very tall brick-built industrial chimney, which he identified on Plan 2 of the lease plans. It was to the east of and outside the land and premises edged blue on Plan 2. Although the Applicant suggested at one point that the references to the "chimney structure situate on the property adjacent to the Estate" in para 1.7 of Pt.III of Sch.5 to the Lease might have been "to the chimney on the Old Bakery, Old Stables or Chapel", the Tribunal accepts Mr Cuhna's evidence that the

tall listed chimney was a striking feature of the site and the most obvious candidate for any discussion about chimneys. It therefore finds, as a fact, that the references to the chimney in the Lease and in the insurance documentation is to the same chimney described by Mr Cuhna.

15. The Applicant's main case was that the cost of insuring the chimney was not recoverable under the Lease terms. There was a reference to the "chimney structure situate on property adjacent to the Estate" in clause 1.7 of Pt.III of Sch.5, but this was a landlord repairing obligation, not an obligation to insure. The insurance rent is defined in the Lease recitals as "a fair proportion of all sums which the Lessor may from time to time expend or be required to expend in complying with its covenant in Clause 3.2 of this Lease". Clause 3.2 (which appears in Appx.A to this decision) refers to insurance of "the Estate" (which again appears in Appx.A to this decision). Even on the Respondent's evidence, the chimney was outside area of the "the Estate" as defined in the Lease recitals.

16. Counsel accepted that the chimney was outside the area of the Estate edged blue on Plan 2, and that the route to recovery of costs could not be through the insurance rent and clause 3.2. Instead, he referred to the sweeper clause at para 3 of Pt.IV of Sch.5 (which appears in Appx.A to this decision). The chimney could provide "services to the Estate on behalf of the lessees of the Estate".

The Tribunal's decision

17. In relation to chimney insurance, the Tribunal applies the well-known principles of interpretation of leases, helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619 §15/23. It also has regard to the decision of the Court of Appeal relating to general words and "sweeper clauses" in *89 Holland Park Management Ltd v Dell* [2023] EWCA Civ 1460; [2024] L. & T.R. 11.

18. In this instance, there is an obvious and detailed mechanism for the recovery of landlord insurance costs in the Lease: see clauses 3.2 and the definitions of "Insurance Charge" and "Estate" in the recitals. That applies a discrete mechanism for

recovery of those costs, with its own discrete apportionment of costs and date for payment by the lessee. The insurance rent provisions are carefully drawn so as to limit the insurance obligations to "the Estate", notwithstanding it being clear the draftsman was aware of the existence of the "chimney structure situate on property adjacent to the Estate". The Tribunal considers that was the obvious and chosen route for recovery of insurance costs, not the service charge machinery. Another indication is the express reference to the "chimney structure" in clause 1.7 of Pt.III of Sch.5. Taken together, the existence of these two provisions provides some indicator that costs incurred in relation to insurance of the chimney were not intended to fall within para 9 of Pt.IV. The cost of repairing chimney structure is recoverable by way of the definition of "Estate Service Charge" in the recitals. Again, one would have expected the draftsman to make express provision for the recovery of chimney insurance if that had been intended. Finally, the Tribunal rejects the suggestion that insurance of the chimney is connected to any "services to the Estate on behalf of the lessees of the Estate". Counsel did not refer the Tribunal to any authority to support this contention. But the focus of paras 1-8 of Pt.IV is on general management administration and maintenance, and the word "services" in para 9 should, be understood in that sense. It is hard to see how the provision of a chimney outside the Estate are "services" of this nature, let alone insurance of such a chimney. At best, the chimney provides visual amenity to the lessees of the Estate, which the Tribunal finds is not within the meaning of "services" in para 9.

19. For these reasons, the Tribunal concludes that the relevant costs of chimney insurance in the 2021, 2022 and 2023 are not recoverable under the Lease terms. It determines under s.27A LTA 1985 that the contributions of £38.88, £45.80 and £10.62 are not payable in these three years.

Issue 2: Insurance commissions

20. The Applicant challenged insurance commissions paid to the managing agents under s.19(1) LTA 1985.

21. The Applicant calculated these relevant costs based on the figures given in the service charge accounts. The figures given by the Applicant were not easy to understand. Given the Tribunal's findings in relation to Issue 1, one can ignore commissions paid on chimney insurance. But the commissions declared in the 2021-23 accounts were as follows:

    (1) Commissions of £1,022.19 declared on building insurance premiums of £7,458.41 in the 2021 service charge year, or 13.71% of the gross premium.

    (2) Commissions of £1,250.10 declared on building insurance premiums of £9,278.57 in the 2022 service charge year, or 13.47% of the gross premium.

    (3) Commissions of £1,551.20 declared on building insurance premiums of £11,250.32 in the 2021 service charge year, or 13.79% of the gross premium.

    Apportioning these commissions as Estate Service charges (using the 2.53% figure above) represented a contribution by the Applicant of £12.06 across all 3 years.

22. The Applicant's case was the commissions were excessive for any work done by the Respondent. He asserted they should be no more than 2% of the premiums to cover the minima work for placing cover each year. This would amount to £20.44 (2021), £25 (2022) and £31.02 (2023) = £76.47. Apportioning these commissions as Estate Service in each year (2.53%) represented a contribution by the Applicant of £1.96 across all 3 years.

23. Ms Hinton's evidence was that the agents used a broker to advise on appropriate policies. When questioned hy the Tribunal, she explained that since the current agents had come on board, the brokers tested the market and returned with quotations. These were then considered by the board. She believed there was a written agreement relating to commission with the brokers, but did not have a copy. The commission was paid by the broker and related to the work done in placing the insurance, but also some claims handling. She had not seen

any claims since taking over in January 2024, but the previous agents had evidently handled more than one insurance claim. The insurance had remained with Aviva for the last 2 years. The brokers had changed from Gallagher to St Giles in the past year. Returning to the placing of cover, this involved reviewing the recommendations from the broker, liaising with the directors and then reverting to the broker.

24. Mr de Cuhna says in his statement §5 that:

> "By way of example there is at pages 1 to 5 of VDC.l a copy of an exchange of emails relating to the 2022 renewal from which it is clear that the brokers provided an assessment of the premium increases by reference to the state of the market. I understand that this is a procedure adopted by many management companies who have appointed a managing agent and is a procedure which the Directors inherited. I also understand that it is usual for the broker be paid a commission by the insurance company with which the insurance is placed and that this is permissible so long as it is disclosed."

25. The Respondent submitted that commission is standard throughout management companies. There was also sufficient evidence to show reasonable services were provided in return for commissions. Even if claims handling was not in fact done in any particular year, there may be multiple claims in the next year. The commissions covered both eventualities.

The Tribunal's decision

26. The sums involved are fairly modest. But the Tribunal applies the principles applicable to s.19(1) LTA 1985 recently summarised by the Court of Appeal in *Spender v Fit Nominee Ltd* [2025] EWCA Civ 1578 19-24. The leading modern case on insurance commissions is *Octogan Overseas v Cantlay* [2024] UKUT 72 (LC); [2025] HLR 1.

27. How much of the gross premium paid to the insurer was properly included in the insurance rent paid by the brokers to the managing agents? The evidence

is that commissions are paid by the broker to the managing agents out of the gross premiums paid by the Respondent. They are part of the sums which "the Lessor may from time to time expend … in complying with its covenant in Clause 3.2" of the Lease. The commission element of the premiums are therefore recoverable under the Lease.

28. As far as s.19(1) LTA 1985 is concerned, the Tribunal was not told what commission was taken by the broker in addition to the agent's commissions. Neither was there any evidence of comparable commissions paid in relation to other premises in the locality. There is evidence of services provided for arranging insurance in 2022. provided by Mr de Cuhna. There is less evidence of claims handling or any other insurance services provided by the managing agents in 2021-23, although there was at least one claim for theft of lead from a bin roof (see below).

29. The management agreement between the Respondent and Weemco dated 19 July 2016 excludes work in arranging insurance cover from the basic management fee, and makes specific provision for this to be paid by way of commission in clause 8.5:

> "8.5 The Manager reserves the right to take fee payments from insurance brokers in lieu of services provided to the Client for insurance policy renewals and claims management, all such fees to be clearly identified in the annual service charge accounts."

There is therefore no suggestion of double recovery – the agents did not both claim a basic fee for arranging cover and a commission as well.

30. Even having regard to the fact that tenants rarely have access to details of commissions, this does not in itself shift the burden of proving costs were reasonably incurred to the landlord: *Octagon* §61. The Tribunal finds the Applicant has not discharged this burden. There is no evidence that a commission of 13.47%-13.79% is excessive for arranging cover and some claims handling for similar developments in the Bath area. Even if that burden was discharged, the Respondent has provided sufficient evidence of insurance services provided by the agents in return for

annual costs of between £1,022.19 and £1,5551.20. This was a substantial multi-block estate within period buildings, as the lease plans make clear.

31. For these reasons, the Tribunal concludes that the insurance commission elements of the 2021, 2202 and 2023 service charges are recoverable under the Lease terms and reasonably incurred. It determines under s.27A LTA 1985 that the contributions of £20.44 (2021), £25 (2022) and £31.02 (2023) are payable in these three years.

Issue 3: Planning fees

32. This is a challenge to a single item of cost incurred during the 2021 accounts. It is shown separately in the 2021 accounts as £231.30 "*Dr Jonathan Moon* Pre-planning application for repair and restoration of windows". There is an invoice for £231.1.30 in the bundle dated 2 November 2021 rendered by Jonathan F Moon for "pre-planning application regarding repair and restoration of windows regarding local planning regulations and site visit by planning officer". If included in the block service charges, the Applicant's contribution would be £9.32.

33. The facts are not in dispute. Dr Moon was at the time a director of the Applicant and lessee of 24 The Hexagon. He enquired with Bath Council about works to the six windows in the flat. There is a copy of the pre-application advice in the bundle and states that the enquiry was as follows:

> "The proposal is to repair and install draught proof measures for the six windows which comprise the property - the repair includes the replacement of three window sashes as they are warped. The single glazing will be maintained and the new sashes will match the existing in size and design."

The Respondent apparently later agreed to 'buy' the benefit of this planning advice.

34. The Applicant argued this cost was not recoverable under the Lease, because replacement of the windows was outside the Respondent's repairing obligations. In essence, the Applicant suggested the windows did not need replacing at the time,

the window glass was in any event a tenant repairing obligation, and the actual plan had been to improve the windows by installing double glazing.

35. Counsel argued that it was a repair and taking planning advice about proposed repairs was within the covenants in the Lease.

The Tribunal's decision

36. Given the modest sums involved, the Tribunal deals with this briefly. By clause 1.2 of Pt.I of Sch.5, "the Lessor shall keep in repair the external parts of all window frames of all external windows of the Building (but not the glass therein)". The pre-app referred to above specifically related to draft proofing and "the replacement of three window sashes as they are warped". At the hearing, it was at one stage suggested the pre-app related to double glazing, which would of course be an improvement, but that is not what is said in the pre-app itself. Repairs are "services" to the building, and obtaining pre-application advice is within the sweeper clause in para 9 of Pt.II. It follows that the costs fall within the Lease terms.

37. Two further questions arise:
    (1) Is this affected by the point that the advice was given to Dr Moon in his private capacity as lessee of his flat and then passed onto the Respondent? The Tribunal does not see any particular reason why the Lessor cannot buy the benefit of legal advice, in much the same way that it might buy second-hand goods.
    (2) Is it affected by the point that not all the windows needed replacement? Having pre-application advice on hand is in the Tribunal's view also a "service" of benefit to the lessees which falls within the sweeper clause.

38. For these reasons, the Tribunal concludes the insurance commission elements of the 2021, 2202 and 2023 service charges are recoverable under the Lease terms and reasonably incurred. It determines under s.27A LTA 1985 that the contributions of £20.44 (2021), £25 (2022) and £31.02 (2023) are payable in these three years.

Issue 4: Zone 1-3 fire alarm callouts

39. The Applicant challenged three items in the 2021-23 block service charges relating to fire alarm callouts.

40. The figures given by the Applicant are:

(1) A contribution of £6.48 towards a "Callout Fire Alarm Normal Hours" of £162 incurred in the 2021 service charge year.

(2) A contribution of £6.48 towards a "Callout Fire Alarm Normal Hours" of £162 incurred in the 2022 service charge year.

(3) A contribution of £8.36 towards the £208.94 cost of a "Callout Fire Alarm Out of Hours" incurred in the 2021 service charge year.

There are invoices from Balmoral Systems Ltd dated 14 January 2021, 28 January 2021 and 18 November 2021 for each of these.

41. The Applicant's argument was again that these were not payable under the Lease terms. He referred to a plan of the four fire zones in the block. Three of these zones (Zones 1-3) were for the six flats. The remaining zone (Zone 4) served the common parts. Logs suggested the three callouts were for alarms triggered in Zones 1-3. He then referred to the Lease at clause 1.11 of Pt.1 to Sch.5. The Respondent could recover the cost of "any fire prevention and security/alarm or other equipment in the Building not exclusively serving a Unit". But Zones 1-3 exclusively served units within the block. Callouts for alarms tripping in the flats were not therefore service charge items. When asked about clause 1.6 of the same Part of Sch.5, the Applicant suggested the two provisions needed to be read together, and the exclusion in clause 1.11 applied to clause 1.6 as well.

42. Counsel suggested that clause 1.6 was the complete answer to the point.

The Tribunal's decision

43. The Tribunal has no hesitation in rejecting the Applicant's argument about the meaning of Pt.1 of Sch.5 to the Lease. Clauses 1.6 and 1.11 deal with different things. Clause 1.6 deals with "fire alarm systems and equipment for the Building", with the

"Building" being defined in recital 1 to the Lease. An alarm system serving both the flats and the common parts is an alarm system "for" the building. Indeed, it is difficult to see how one could easily or conveniently have separate alarm systems for the flats and the common parts. By contrast, clause 1.11 deals with "fire prevention and security/alarm or other equipment". Neither "Fire prevention" not "security" are apt to describe a fire alarm system. A fire alarm warns occupiers of the existence of a fire. Not all "alarms" are "fire alarms".

44. The Tribunal concludes that the relevant cost of fire alarm callouts for Zones 1-3 which are included in the 2021, 2202 and 2023 service charges are recoverable under the Lease terms. It determines under s.27A LTA 1985 that the contributions of £6.48 (2021), £6.48 (2022) and £8.46 (2023) are payable in these three years.

Issue 5: Works to emergency lighting

45. The Applicant challenged block service charges for two items in the 2021 and 2023 service charge years relating to emergency lighting works.

46. The figures given by the Applicant are:

(1) A contribution of £29.06 towards repairs to emergency lighting of £726.48 incurred in the 2021 service charge year.

(2) A contribution of £38.05 towards repairs to emergency lighting of £971.36 incurred in the 2023 service charge year.

There are four invoices from Balmoral Systems Ltd dated 20 May 2021 (£231.12, £213.12, £141.12 and £141,12) and three dated 9 February 2023 (£311.73, £406.69 and £252.94). These all relate to "Quoted Works Emergency Lighting".

47. The Applicant's case is that the costs are not reasonably incurred under s.19(1) LTA 1985 because the works were unnecessary. The mean time between failures ("MTBF") on emergency light bulbs should be around 20,000 hours, or over 2 years of continuous operation. He did not produce any documentary support for MTBF periods argued for. In oral submissions, the Applicant added that in his block, the bulbs were replaced, but not the protective cowlings covering the bulbs.

48. The Respondent argued the repairs were needed as per various job sheets. The contractors confirmed the units (not just the bulbs) were at the end of their useful life and need replacing, and this would appear to be the reason for the frequency and the need for a like for like replacement. Not replacing faulty units could lead to a catastrophe, invalidate insurance and breach of legislation.

The Tribunal's decision

49. The Tribunal has carefully read the engineering reports attached to the 2021 invoices. It is clear the works to the emergency lighting related to repairs to different ceiling mounted and hanging lighting units in different parts of what are described as "Block D", "Block E" and "Block F". There is no evidence the 2023 works were to the same units, or even to the same floors in the same parts of blocks D, E and F. Similarly, there is no evidence when the units were installed. It follows there is no evidential basis for the suggestion that units (or indeed bulbs) were replaced at unreasonably short intervals. As to the suggestion bulbs in the units did not need replacing, there is neither any evidential basis for this, nor any expert evidence to support it. There is no *prima facie* case that the emergency lighting works were unnecessary.

50. The Tribunal concludes that the relevant cost of works to the emergency lighting which are included in the 2021 and 2023 block service charges are reasonably incurred. It determines under s.27A LTA 1985 that the contributions of £29.06 (2021) and £38.85 (2023) are payable in these three years.

Issue 6: Weekly fire alarm testing

51. The Applicant challenged block service charges for weekly fire alarm testing in the 2021, 2022 and 2023 service charge years.

52. The Applicant referred to alarm testing costs of £1,065.60 in 2021, £1,350 in 2022 and £1,440 in 2023, and these figures were supported by Weemco invoices dated 31 December 2021, 31 December 2022 and 31 December 2023. This suggests the

Applicant's block service charge contributions, based on an apportionment of 4%, were £42.62 (2021), £54 (2022) and £57.60 (2023). But in his oral submissions, the Applicant gave slightly different figures.

53. The Applicant's case in the Scott Schedule raised numerous points. But at the hearing, his arguments were twofold. First, he argued the service provided by the testers was not of a reasonable standard under s.19(1)(b) LTA 1985. Under para 44.2 BS 5839-1 required that in addition to weekly testing of the alarm panel, there ought to have been weekly testing of at least one of the manual call points on each floor. He had observed testing on three occasions over the 3 years, and on each occasion the tester had not activated any of the call points. To gather evidence of this, on 1 November 2024 the Applicant taped over the recessed testing button on one of the call points with a label. The label was still there on 19 November and 16 December 2024, despite call logs suggesting the system had been tested every week. Secondly, the building unnecessarily operated a simultaneous evacuation policy in the event of a fire. According to fire safety legislation and guidance, a 'stay put' strategy should be applied, and this did not require a fire alarm for the common parts (indeed, the use of a common parts alarm was discouraged). It followed from this that weekly testing was unnecessary and the cost not reasonably incurred. The Applicant assembled an impressive body of technical guidance to support this argument. The Tribunal intends no disrespect by not summarising this material, because ultimately it does not consider it assists the Tribunal for the reasons set out below.

54. The Respondent's main answer to the first argument was that the Applicant was giving evidence of fact, and there was no witness statement supporting the evidence given at the hearing. Had proper notice of the evidence been given, the Respondent would have checked with the tester, and potentially called the tester to give evidence. The Applicant's case also relied partly on expert evidence. As to the second argument, this again involved expert evidence. But in any event, Mr de Cuhna explained in his evidence that the building operates a simultaneous evacuation policy due to the age and form, and an alarm was essential for this. The

Respondent followed professional advice from a reputable company, and it was best practice to follow professional guidance. The Respondent referred to an extract from a November 2020 Fire Risk Assessment prepared by the consultants CS Todd & Associates. Recommended 5 stated that "The fire detection and alarm systems should be tested weekly in accordance with the recommendations of BS 5839-1". Counsel submitted it was reasonable to rely on advice from competent consultants.

The Tribunal's decision

55. The Applicant's first argument is essentially that the services provided were not of a reasonable standard under s.19(1)(b) LTA 1985.

56. The first argument relied on oral evidence given by the Applicant, which referred in turn to photographs in the bundle. This evidence was first given at the hearing in the course of oral submissions, since the Applicant had not provided a witness statement and the issue arises as to whether the evidence should be permitted under r.18(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and under the Tribunal's inherent power to control evidence. Relevant considerations are:

    (1) The Applicant has acted in person throughout.
    (2) Rule 3(2)(b) of the Procedure Rules. Permitting the Applicant to give oral evidence would further the overriding objective by avoiding unnecessary formality and allowing flexibility in proceedings.
    (3) It would further ensure the Applicant was able fully to participate in proceedings under r.3(2)(c), by putting his full case.
    (4) Para 23 of the directions of 13 May 2025 required the Applicant to serve any witness statements he wished to rely on by 1 July 2025. This date was later extended to 8 July 2025 and para 12 of the directions of 5 September 2025 gave a further opportunity to any party to serve witness statements by 26 November 2025. The Applicant has therefore failed to comply with directions as to evidence.
    (5) The prejudice alleged by the Respondent.

57. Ultimately, the Tribunal considers that it would not be fair or just to take into account the evidence of what the Applicant saw in relation to the fire alarm tests. It is unclear whether they related to the period in question – and the photographs certainly related to the 2024 service charge year. Had specific incidents on specific dates been clearly flagged up at an earlier time, the Tribunal accepts the Respondent may well have called the tester to explain matters. The prejudice to the Respondent is significant. This is not mitigated by the photographs in the bundle, which were not clearly explained in the Scott Schedule. It is not for the Respondent to try to second guess the significance of these photographs, particularly since they did not relate to any of the service charge years in question. And the Applicant has been given three opportunities to prepare witness statements with this evidence – and he has not prepared one. The first challenge to the weekly fire alarm testing costs therefore fails on the basis that there is no evidence to support it.

58. In any event, the first argument also relies on analysis of the extensive fire safety guidance. The Tribunal's view is that this would require some expert evidence to assist with the question whether there is indeed a requirement to test call points when testing an alarm panel in the common parts to a building.

59. As to the second argument, this essentially asserts the costs were unreasonably incurred under s.19(1)(a) LTA 1985. The Tribunal rejects the specific argument in relation to weekly fire safety testing, which was clearly recommended in the 2021 fire safety report. The Respondent acts reasonably by relying on the advice of specialist fire safety consultant, even if that advice is wrong: *Assethold v Adam* [2022] UKUT 282 (LC); [2023] H.L.R. 8. And in any event, post-Grenfell, the Respondent is entitled to take a cautious approach to fire safety costs.

60. And again, the second argument relies on analysis of the extensive fire safety guidance. Although the Applicant has assembled extensive materials to support the argument, the Tribunal is not prepared to determine crucial fire safety issues without expert assistance.

61. The Tribunal concludes that the weekly fire testing in 2021, 2022 and 2023 was of a reasonable standard and that the costs were reasonably incurred. It determines under s.27A LTA 1985 that the block service charge contributions of £42.62 (2021), £54 (2022) and £57.60 (2023) are payable.

Issue 7: Emergency lighting tests

62. The Applicant challenged block service charges for monthly testing of emergency lighting in the 2021, 2022 and 2023 service charge years.

63. The figures given by the Applicant are:

(1) A contribution of £29.06 towards £230.40 paid for testing the emergency lighting in 2021.

(2) A contribution of £13.20 towards £330 paid for testing the emergency lighting in 2022.

(3) A contribution of £14.40 towards £360 paid for testing the emergency lighting in 2023.

These figures are supported by the same three Weemco invoices set out above.

64. The Applicant argued firstly that the tests were not completed in accordance with BS 5266-01 and that maintenance of emergency lighting was not necessary under the Regulatory Reform (Fire Safety) Order 2005. Secondly, he argued that in any event, the work was not a "repair" under Pts.I-IV of Sch.5 to the Lease.

65. The Respondent's case was that monthly emergency light testing was advised by Recommendation 6 of the November 2020 Fire Risk Assessment. This stated that "The emergency escape lighting should be subject to a monthly functional test, in addition to an annual full discharge test, in accordance with the requirements of BS 5266-8, and the results recorded in a fire logbook". This is a 'simultaneous evacuation' building and checks reflect the risk level and advice given by competent professionals. The management company is following professional advice from a reputable consultant, and it is best practice to follow professional guidance. The Respondent has an obligation to mitigate fire risks under legislation and protect

leaseholders. The item was reasonably incurred and reasonable in amount. Counsel also addressed the Tribunal on the relevant covenants in the Lease.

The Tribunal's decision

66. The Applicant's first argument is essentially that the services provided were not of a reasonable standard under s.19(1)(b) LTA 1985 and that since emergency lighting was unnecessary, it was not reasonable to incur the costs under s.19(1)(a) LTA 1985. On both these points, the Tribunal would ordinarily require the assistance of expert evidence. It is not prepared to make findings about whether fire safety requirements have been complied with and whether emergency lighting is necessary at all, without the assistance of fire safety expertise. In any event, a s.27A LTA 1985 challenge to service charges is not the appropriate forum for such a discussion.

67. As far as contractual payability is concerned, Pt.I of Sch.5 to the Lease requires the Lessor "to keep in a good state of repair and decoration" various parts of "the Building", including the commonly used stairways, "any fire alarm systems and equipment for the Building" and "any fire prevention and security/alarm or other equipment in the Building not exclusively serving a Unit". The lighting system plainly falls within these parts of the Building. The Tribunal considers that the ordinary natural meaning of the word "keep" extends beyond mere reactive repairs. It extends to checking condition to ensure compliance with the obligation to repair. So, condition checks are within Pt.I . The Tribunal also considers that emergency lighting is "equipment within the Common Parts of the Building" as set out in para 2 of Pt.II of Sch.5 to the Lease. The costs of "inspection" are expressly dealt with in para 2. Emergency lighting inspections would (on the Respondent's case) be undertaken for "compliance with the Laws affecting the Building". Compliance with a recommendation of a Fire Risk Assessment is at least arguably "Compliance with Laws affecting the Building" under para 3 of Pt.II. But in any event, the Tribunal finds that emergency lighting units are "services to the Building on behalf of the lessees", and that periodic inspections recommended by a Fire Risk Assessment are in "connection" with the provison of [those] services" under the para 9 sweeper provision.

68. The Tribunal concludes the relevant costs of monthly emergency lighting tests were reasonably incurred and that the services were of a reasonable standard. The costs incurred in 2021, 2022 and 2023 were also recoverable as service charges under the Lease terms. It determines under s.27A LTA 1985 that the block service charge contributions of £29.06 (2021), £13.20 (2022) and £14.40 (2023) are payable.

Issue 8: 2021 Horizon Safety report

69. The Applicant challenged a £480 item of cost incurred for work by Safety Horizon included in the 2021 block service charges. The Applicant's apportioned 4% contribution was £19.20. Safety Horizon's invoice for a "Bath site visit at The Hexagon" dated 28 April 2021 is in the bundle. There is also a report from Mr Mark Stallard following the site visit, which apparently took place on 19 March 2021.

70. The Applicant's case is essentially that this work was unnecessary. The 2021 Fire Risk Assessment had been undertaken in November 2020, only 5 months before. Art.9(3) of The Regulatory Reform (Fire Safety) Order 2005 also only required annual assessments if there was a "significant change to the building to warrant a new assessment", and there had been no change in that time. The Applicant also addressed the Tribunal on the requirements of the new Fire Safety Order which applied from 16 May 2022.

71. The Respondent's case in the Scott Schedule was the Directors considered it "appropriate to carry out FRAs in the cycle agreed".

The Tribunal's decision

72. As to the first argument, the Tribunal has effectively dealt with it under Issue 4.

73. It is of course striking that the Respondent commissioned two safety reports within a short period of time. But the Tribunal considers there is a simple explanation, and one which does not require any detailed consideration of Fire Safety legislation. Careful consideration of Mr Stallard's report shows various references to asbestos, lighting of external areas, road salt-grit, potential slip or trip hazards, "fall from height" risks, legionella etc. There are also various generalised references to

fire safety. But the report does not say it is a Fire Risk Assessment, and it does not contain any of the granular detail about fire safety that appears in the 2020 report. The 2021 Horizon Safety report was not a Fire Risk Assessment at all; it was a general safety risk assessment. And there is no suggestion the Respondents acted unreasonably in incurring the cost of such a report. But even if the Tribunal were wrong about this, the change in the Fire Safety Orders which occurred after the 2020 report would have been a reasonable justification for reviewing fire safety.

74. The Tribunal concludes the £480 cost was reasonably incurred for the purposes of s.19(1) LTA 1985. It determines under s.27A LTA 1985 that the Applicant is liable to contribute £19.20 for this as part of his 2021 block service charges.

Issue 9: 2023 fire alarm repairs

75. The Applicant challenged fire alarm repair costs of £2,336.77 included in the 2023 service charge years. The Applicant's apportioned 4% contribution was £93.47. There is an invoice from Balmoral Systems Ltd dated 29 June 2023 for "Quoted Works Fire Alarm PJ-75641", and it was common ground that this cost was for replacement of the fire alarm panel in the common parts.

76. Although various issues were raised in the Scott Schedule, at the hearing the Applicant limited himself to three points. First, he repeated the 'Zone 4' argument in issue 4 above. The alarm panel served the flats as well as the common parts, and the Applicant suggested an allowance should be made for that. Secondly, the costs were not reasonably incurred for the purposes of s.19(1)(a) LTA 1985 because the panel had not reached the end of its useful life. He pointed to the Fire Alarm Record of Events, which did not suggest the alarm panel had reached the end of its useful life. The Respondent had not acted reasonably in following the advice of installers, because manufactures knew more than installers.

77. In relation to the second and third issues, the Respondent relied on advice given by the service provider that the panels were at end of their useful life. There was a note on one of the Balmoral Systems Engineering reports dated 13 October 2021

that the contractor "ADVISED [managing agents] THAT NEW PANEL AND DETECTION IS REQUIRED DUE TO AGE OF PANEL AND UNAVAILABILITY OF PARTS". Ongoing issues with the fire alarm panel were also noted on the 2021 Safety Horizon report.

The Tribunal's decision

78. The first argument is effectively dealt with under Issue 4 above. An alarm system serving both the flats and the common parts is an alarm system "for" the building under Pt.1 of Sch.5 to the Lease.

79. There is some evidence about the second and third issues. The Fire Alarm Records in the hearing bundle covered various different parts of the Building. The page referred to by the Applicant refers to replacement of "All Devices and mains Panel" on 15 June 2023. But assuming this is the panel in question, the same log also shows a fault on 20 December 2022 "PROCESSOR FAULT, – SYSTEM IS UNRESPONSIVE AND WILL NOT OPERATE. FIRE PANEL IS NON-OPERATIONAL. FOUND PSU ONLY GIVING OUT 4V DC – FITTED TEMPORARY PSU TO GIVE RESIDENTS FIRE PROTECTION". It may well be a matter for debate about the significance of this fault, but it does not support the Applicant's case that there had been no recent problems with the system. There was also the 2021 Balmoral email referred to above. But the relevant pages of the Fire Risk Assessment were missing and the 2021 Horizon safety inspection simply noted various fault indicators on the alarm panels.

80. The Tribunal derived most assistance from an exchange of emails produced by the Applicant. In 2024, he contacted Global Fire Equipment, who apparently manufactured the old alarm panels. The Applicant suggested Global had "now discontinued this product". But in response to the question when the panel "officially goes end of life / end of support", Global said:

> "The JUNO-Net and JUNIOR panels were discontinued some time ago now with the last parts purchase request sent to customers in the summer of 2021. Since that time we have replaced the panels with OCTO+

(replacing JUNO-NET) and GEKKO / G-1 (replacing the JUNIOR).

Therefore replacement parts are no longer manufactured for the older panels.

If they are still in working condition we can support you technically if required and the older software can still be downloaded if required (FOC). However, if anything does go wrong with the panel it would now require a swap out for the newer panels stated."

However, if it is well looked after and serviced what I would say "if its not broken it does not require replacement." Please just bare [sic] in mind that if anything does happen new parts are no longer available I am afraid."

81. It may well be the control panels were still capable of being serviced in 2023. But since original replacement parts were no longer available for the discontinued panels, the Tribunal finds it was a reasonable course of action to incur the cost of replacing them in mid-2023. The service contractor had advised in 2021 of the need to replace the panels, and (crucially) given reasons. There is then some evidence the panel had completely ceased to operate for a period in December 2022 and had to be supported with "temporary" parts. As explained by Global, if anything went wrong with the panel it would now require a swap out for newer panels. Given that fire alarm panels are critical safety items, it was in the Tribunal's view reasonable to replace them in 2023 rather than wait for them to fail for a final time.

82. The Tribunal concludes the £2,336.77 cost was reasonably incurred for the purposes of s.19(1) LTA 1985. It determines under s.27A LTA 1985 that the Applicant is liable to contribute £93.47 for this as part of his 2021 block service charges.

Issue 10: 2022-3 bin store roof replacement

83. It was common ground that the Respondent undertook repairs to the bin store roof after thieves stole the lead roof in 2022. The roof was replaced with a non-lead roof by contractors PR Roofing.

84. The Applicant suggested the Respondent incurred costs of £3,450, £1,351.89, £250, £389.16 and £258, amounting to £5,699.05. There were no receipts for some of these costs in the bundle. The 2023 service charge accounts refer to a payment of £3,450 to PR Roofing on 14 April 2023, £258 paid for building regulation approval on 8 March 2023 and £1,351.89, £250 and £389.16 paid to surveyors on 27 January 2023, February 2023 and October 2023[1]. These costs total £5,699.05. The Tribunal is satisfied costs of £5,699.05 were incurred in 2023 in relation to the bin store roof. The Applicant's 4% apportioned contribution would be £227.96.

85. It was common ground the Respondent received an insurance payment of £5,079.20 (calculated as £5,579.20 less an excess of £500). In para 12 of her witness statement, Ms Hinton stated the insurance payment was made on 4 September 2022, although the exhibit supporting this was omitted. The date for payment (i.e., before the costs of the works was known and the works were carried out) seems improbable, and the Tribunal rejects this evidence. But in any event, there was no credit for this figure given in the 2022 or 2023 service charge accounts. Moreover, Ms Hinton's figure for the insurance payout cannot be reconciled with the Applicant's figures for the cost of the bin store repairs set out above.

86. The Applicant's case was threefold. First, the bin roof works should properly have been covered by the insurance payout, and it was not therefore reasonable to have incurred the costs. Secondly, the work was an improvement, because the lead roof was not replaced like for like. However, at the hearing, the Applicant accepted the works were repairs under the landlord's obligations in the Lease. Thirdly, there was no record of an income of £5,079.20 in the 2022, 2023 or 2024 accounts.

87. The Respondent contended that if the works were repairs, it was reasonable to pay for the costs from the service charge moneys. The Applicant received the insurance moneys but simply could not show where the moneys appeared in its accounts.

[1] The 2022 service charge accounts refer to costs of £269.38 for attaching "tarpaulin to bin store roof following theft of lead" in October 2022. But these costs were not raised at the hearing.

The Tribunal's decision

88. The Tribunal considers the Applicant's remaining two arguments are effectively the same:

    (1) As to the first argument, the Tribunal accepts that failure to give credit for third-party funding (such as insurance payouts) can be a ground to reduce service charge costs under s.19(1) LTA 1985: *Avon Ground Rents Ltd v Cowley* [2018] UKUT 0092 (LC). But it always depends on the facts of the individual case. The unusual situation here is that the Respondent admits having received the insurance payment. The Applicant's complaint is not therefore that it was unreasonable to incur the costs of bin store repairs in the first place. Indeed, the Applicant accepted the Respondent was obliged to carry out the repairs and incur the costs. The issue (unlike *Avon v Cowley*) is rather where the Respondent properly accounted for the insurance receipt in the service charge accounts and whether it failed to apply the insurance moneys in accordance with clause 3.2 of the Lease. Those are effectively the Applicant's third argument.

    (2) The third argument is that the Tribunal should simply disallow a figure of £5,079.20 from the cost of repairs. But this approach betrays the reality that the Applicant is not challenging the service charges at all. The challenge is instead that the Respondent failed to account for the £5,079.20 as income in the 2022 or 2023 service charge accounts. The Tribunal accepts that any such failure may well be a breach of the obligation in clause 3.2 of the Lease to "apply … insurance monies … in the repair rebuilding or reinstatement of the Estate". It may also be that any failure to apply insurance monies to the service charge account is a breach of trust on the part of the landlord. But the Tribunal does not have any jurisdiction under s.27A LTA 1985 to determine landlord's breaches of covenant or breaches of trust.

89. It follows the Tribunal does not have jurisdiction to deal with the issue whether the sum of £5,079.20 was properly withheld from the service charge accounts. That does not of course mean the Respondent need not ensure it has properly applied

the insurance moneys. Plainly, it risks further challenges in the courts if it has failed to credit the Block Service Charge account with the insurer's payment of £5,079.20 in accordance with the Lease and the statutory trust.

90. The Tribunal concludes the costs of £5,699.05 incurred in 2023 for replacing the bin store roof were reasonably incurred for the purposes of s.19(1) LTA 1985. It determines under s.27A LTA 1985 that the Applicant is liable to pay service charge contributions to these costs of £227.96.

Issue 11: Loft hatch

91. The Applicant challenged two items of cost relating the installation of loft hatches in the top floor stairwells. The first was a figure of £322.97 included in the 2023 Block Service Charge accounts for installing one hatch outside Flat 9. The second was for £936 for three further loft hatches in other stairwells which appears in the 2024 accounts. The first is supported by an invoice from Bath & Bristol Maintenance dated 17 October 2023, although there is no similar invoice for the 2024 works. The Applicant's apportioned 4% contributions were £12.92 and £37.44.

92. The Bath & Bristol Property Maintenance invoice included a report explaining the contractors had been called out to investigate damp in Flat 9. Although they only found condensation in Flat 9, the contractors recommended that a loft hatch be fitted to enable the loft space to be checked for "sweating". The lofts were next discussed at an Extraordinary EGM held on 4 October 2023, where it was queried how the Fire Risk Assessor and Building Control had been able to carry out their duties without access to the loft spaces. The minutes of the meeting state "it was confirmed loft hatches need to be installed in order to confirm if there is fire compartmentalisation between the flats in the loft". The meeting decided that agents would obtain quotes for loft hatches to be installed in the communal areas, in order to inspect the loft spaces further". Mr de Cuhna gave evidence about the about loft hatches. The first loft hatch was first installed to investigate and resolve the water ingress from the roof into flat 9. When installed, it meant that a fire safety inspection could also take place to check the fire safety measures of the roof spaces. It

was clear from the inspection that some work was required to better prevent the lateral spread of fire. The majority view of the residents meeting was that in order to access the roof area and loft space of other stairwells, hatches should be installed in the remaining 3 communal staircases to check the fire protection, carry our remedial action if needed and allow maintenance in future. The Tribunal accepted Mr de Cuhna's evidence, which was broadly supported by the invoice and EGM minutes.

93. The Applicant firstly suggested the installation was not reasonably incurred because the hatches were unnecessary. The Applicant referred to the Secretary of State's guidance: *A guide to making your small block of flats safe from fire (2024 Rev)* which suggested that "Access into roof voids to check the compartment walls is essential as part of your fire risk assessment". But this was something that the 'responsible person' under the Regulatory Reform (Fire Safety) Order 2005 had to deal with, not the Respondent. Secondly, this was an improvement not a "repair" under the Lease terms.

94. The Respondent's case was that the loft hatches were not simply installed to deal with fire safety. The first hatch had initially been recommended to allow access to investigate damp in Flat 9, and access helped with maintenance of the roofs and the roof voids above the stairwells. Moreover, the Respondent was the occupier of the common parts, and as such, it was the "responsible person" under Art.3 of the Fire Safety Order. As to contractual recoverability, the Respondent relied on the sweeper clause in para 9 of Pt.II of Sch.5 to the Lease.

The Tribunal's decision

95. As already explained, the Tribunal accepts Mr de Cuhna's evidence about the loft hatches. They facilitated maintenance of the roof and the roof void above the stairwell (this part of the roof void was not apparently demised to any of the flats). They also enabled fire safety checks. The Tribunal agrees with the interpretation of the Fire Safety Orders suggested by the Respondent, namely that it was the responsible person with obligations to carry out Fire Safety Assessments. In the light of both of

these, it is hard to see how the costs were not reasonably incurred, since the hatches enabled maintenance and safety checks over a very long period of time. As to whether the costs fell with the scope of the service charges, the costs (i) were incidental to "Compliance with Laws affecting the Building" in para 3 of Pt.II of Scvh.5 to the Lease, namely the Respondent's Fire Safety Order obligations, and (ii) fell within the sweeper clause in para 9 of Pt.II of Sch.5 to the Lease. The focus of Pt.I and II is maintenance and management of the building, and convenient access to the roof voids over the 999-year term of the Lease seems to the Tribunal to be squarely within the contemplation of the parties to enable the Building to be properly maintained and managed.

96. The Tribunal concludes the costs of £322.97 incurred in 2023 and £936 incurred in 2023 for installing loft hatches were reasonably incurred for the purposes of s.19(1) LTA 1985. The costs were also recoverable under the Lease. It determines under s.27A LTA 1985 that the Applicant is liable to pay service charge contributions to these costs of £12.92 and £37.44 in each of these two service charge years.

Issue 12: Window replacement

97. The background to the window works at 24 The Hexagon is set out above. There was no dispute the window frames in Dr Moon's flat were warped, and therefore in disrepair. Dr Moon eventually replaced these single glazed windows with double glazed units. The Respondent reimbursed Dr Moon £702.89 for this work in March 2023 and included the cost in the 2023 Block Service Charge. The Applicant's 4% apportioned contribution amounted to £28.12.

98. The Applicant's case was these costs were not reasonably incurred under s.19(1)(a) LTA 1985. In 2023, the Respondent already had in hand a wider programme of window replacement works. The very fact the work was carried out by Dr Moon individually meant it was a "much more expensive" job than doing the work under a larger contract Secondly, the double-glazed units were an improvement, rather than a repair under the Lease terms.

99. The Respondent argued there was no evidence that the costs were higher than would be the case under the wider window replacement programme. It also argued the new units were not an improvement.

The Tribunal's decision

100. There is no dispute the relevant cost of work to replace the defective window frames was properly recoverable under the Leases. The s.19(1) argument can be disposed of quite briefly. There is no evidence the repair costs would have been less than £702.89 if procured through a wider programme of works. It may well be the costs would have been lower under the programme. But equally, the costs of replacing windows under the later programme might have been more than £702.89 at a time of rising trades costs. There is simply no evidence either way. The Applicant has not produced any alternative estimates for the window work, and the argument fails on the evidence.

101. As to the question of improvements, the original units were single glazed. Moreover, the "glass in all windows and doors" was included in Dr Moon's demise (see recitals at clause 1). Under para 1.2 of Pt.I of Sch.5 to the Lease, the landlord is required to repair "the external parts of all window frames of all windows of the Building (but not the glass therein)". The glass was therefore Dr Moon's responsibility. However, it was obviously impossible to replace the window frames without replacing the glass. The general principle is that the landlord's obligation to effect repairs carries with it an obligation to make good any consequential damage to the demised premises: *Dilapidations: The Modern Law and Practice* (7th Ed) at 22-61. If, in the course of such repairs, the tenant obtains something better, such as new redecorations, that is its good fortune. There is no reduction for betterment: *McGreal v Wake* [1984) 13 HLR 107 at p.112. It follows the window repair costs could properly include the cost of improved double glazing.

102. The Tribunal concludes the costs of £702.89 incurred in 2023 for window replacement were reasonably incurred for the purposes of s.19(1) LTA 1985. The costs

were also recoverable under the Lease. It determines under s.27A LTA 1985 that the Applicant is liable to pay service charge contributions to these costs of £28.12 in the 2023 service charge year.

Section 20C

103. At the end of his submissions, the Applicant confirmed the above 12 issues were the only matters he wished to pursue with the Tribunal. However, there was an application for limitation of costs under s.20C LTA 1985.

104. The case law and principles are summarised in *Conway v Jam Factory* [2013] UKUT 0592 (LC) at [51] to [58]. In *Schilling v Canary Riverside Development PTE Limited* (2006) LRX/26/2005, HHJ Rich stated at [14] that:

> "In service charge cases, the "outcome" cannot be measured merely by whether the Applicant has succeeded in obtaining a reduction. That would be to make an Order "follow the event". Weight should be given rather to the degree of success, that is the proportionality between the complaints and the Determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other hand."

105. In this instance, the Applicant has succeeded on one issue out of twelve. The initial application challenged £2,558.75 in service charges, although that figure may well have increased during the course of the application. But even this understates the proportionality of the complaint, since many issues involved multiple arguments over more than one year. As to outcome, the Applicant has succeeded to the extent of only £95.30, which represents less than 4% of the claim, and on only one out of multiple arguments. Moreover, that success is historic, in the sense that the Respondent has since handed over responsibility for the chimney to Guinness Housing. On the other hand, although the Tribunal has not been given details, the costs of the dispute must have been very significant indeed. The Respondent has twice attended for a full hearing with counsel, and it has retained solicitors throughout. Based on the "outcome" alone, the Tribunal declines to make any s.20C costs order.

106. There are of course other considerations relevant to s.20 LTA 1985. The Applicant referred to two documents which he contended were material to the decision in relation to s.20C. On 2 September 2024, and again on 5 November 2024, he had made measured enquiries about service charges, but he had not received any reasonable response. But the Tribunal considers this consideration is far outweighed by the Applicant's approach to the proceedings themselves. This undoubtedly led to complexity and additional costs, including making this decision very much longer than would normally be the case. The main difficulty is the Applicant has relied throughout on spreadsheets with hyperlinks to explain his case, rather than setting out his arguments in narrative form. These spreadsheets, when included in hearing bundles, were formatted in A3 and difficult to follow. The spreadsheet available for the first hearing included figures, but no explanation of the Applicant's argument. Worse still, the Scott Schedule available for the final hearing included argument, but no figures. This meant a great deal of work cross-referencing figures which ought to have been supplied in clear narrative form. The Tribunal accepts that its directions did not make it entirely clear to a litigant in person, but ultimately it is the Applicant's responsibility to present his case in manageable form. These additional considerations support the decision above not to make any order under s.20C LTA 1985.

Conclusions

107. The Tribunal concludes that the relevant costs of chimney insurance in the 2021, 2022 and 2023 are not recoverable under the Lease terms. It therefore determines under s.27A LTA 1985 that the Applicant is not liable to make contributions of £38.88, £45.80 and £10.62 to these costs in the three relevant service charge years. Other than that, the application fails.

108. The Tribunal also declines to make any orders under s.20C LTA 1985 or para 5A of Sch.11 to the 2002 Act.

APPX A: SELECTED LEASE TERMS

WHEREAS

1. In this Underlease unless the context otherwise requires:

...

"Estate" means the land and premises edged blue on Plan 2 known as St Martins Hospital, Midford Road, Bath

3. COVENANTS BY LESSOR

The Lessor hereby covenants with the Lessee (but so that such covenants shall not be binding on the Lessor after it has parted with its interest in the Estate):-

...

3.2 that it will at all times during the Term (unless such insurance shall be vitiated by any act or default of the Lessee or any other lessee of the Estate or any visitor sub-tenant or invitee of the Lessee or any visitor sub-tenant or invitee of any other lessee of the Estate) insure and keep insured the Estate against the Insured Risks with some insurance company of repute in the full reinstatement value thereof (inclusive of Architects' and Surveyors' fees) and will (unless such insurance shall be vitiated as aforesaid) in the event of the Estate or any part thereof being damaged or destroyed by any Insured Risk as soon as reasonably practicable apply the insurance monies payable in respect thereof in the repair rebuilding or reinstatement of the Estate (or the damaged part thereof) in good and substantial manner and if the money to be received under any such policy of insurance shall be insufficient for the purpose to make good the deficiency out of the Lessor's own monies (save for where any such shortfall is due to any act or default of the Lessee or any other lessee or any visitor sub-tenant or invitee of the Lessee or any other lessee of the Estate) and the Lessor shall procure that the interests of the Lessee and all other lessees of the Estate (and their mortgagees) are noted on such policy of insurance and shall on demand (but not

more than once each year) produce to the Lessee full details of such policy of insurance

THE FIFTH SCHEDULE

Part I

Covenants by the Lessor with the Lessee

1. The Lessor shall keep in a good state of repair and decoration (as appropriate):-
   - 1.1 all structural parts of the Building including the foundations roofs structural walls and balconies (if any)
   - 1.2 the external parts of all window frames of all external windows of the Building (but not the glass therein)
   - 1.3 the Service Media which are within and which serve the Building but which do not serve any Unit exclusively
   - 1.4 all commonly used stairways entrance and exit doors and other entrances to the Building including the exterior of the entrance door to each Unit
   - 1. 5 any entry phone or other security systems for the Building
   - 1.6 any fire alarm systems and equipment for the Building
   - 1.7 any communal TV or radio aerials or satellite dishes for the Building
   - 1.8 any post boxes for the Building
   - 1.9 any heating plant or equipment in the Building not serving any Unit exclusively
   - 1.10 any meter rooms and storage rooms and any office or area for any concierge or caretaker in the Building
   - 1.11 any fire prevention and security/alarm or other equipment in the Building not exclusively serving a Unit
   - 1.12 the Bin Store
   - 1.13 the Cycle Store

2. The Lessor shall keep the Common Parts of the Building cleaned heated lighted and carpeted (as appropriate) to a high standard and shall clean the external face of the glass in all windows of the Building as and when reasonably necessary

Part II
Other costs included in the Apartment Service Charge

1. The preparation of the Statement and any accounts (audited or otherwise) relating to the Apartment Service Charge or any statutory procedures relating to such matters
2. The cleansing inspection maintenance and repair of all plant and equipment within the Common Parts and the Building (including the costs of insurance and any maintenance contracts)
3. Compliance with Laws affecting the Building
4. Costs interest and/or expenses in connection with borrowing by the Lessor to perform any services for the Building.
5. The reservation of a reasonable amount as a reserve fund for future expenditure
6. Compliance with the requirements of the insurers of the Building from time to time
7. Services of architects surveyors accountants and/or solicitors in connection with the Apartment Service Charge and matters set out in this Fifth Schedule
8. Employing a suitably professionally qualified managing agent for the general management administration and maintenance of the Building (or a fair and reasonable fee for the Lessor if the Lessor does not employ a managing agent)
9. Any other reasonable costs and expenses incurred by the Lessor in connection with the provision of services to the Building on behalf of the lessees of the Building

Part III

Covenants by the Lessor with the Lessee

1. The Lessor shall keep in a good state of repair and decoration (as appropriate);-

   ...

   1.7 The chimney structure situate on property adjacent to the Estate

Part IV

Other Costs Included in the Estate Service Charge

1. The preparation of the Statement and any accounts (audited or otherwise) relating to the Estate Service Charge or any statutory procedures relating to such matters.
2. The cleansing inspection maintenance and repair of all plant and equipment within the Estate (but not within the Building or any other building on the Estate) (including the costs of insurance and any maintenance contracts).
3. Compliance with Laws affecting the Estate.
4. Costs interest and/or expenses in connection with borrowing by the Lessor to perform any services for the Estate.
5. The reservation of a reasonable amount as a reserve fund for future expenditure.
6. The repair and maintenance of signs and line and/or space marking in any car parking areas of the Estate,
7. Services of agents architects surveyors accountants and/or solicitors in connection with the Estate Service Charge and/or matters set out in this Fifth Schedule.
8. Employing a managing agent for the general management administration and maintenance of the Estate (or a fair and reasonable fee for the Lessor if the Lessor does not employ a managing agent).

9. Any other reasonable costs and expenses incurred by the Lessor in connection with the provision of services to the Estate on behalf of the lessees of the Estate.

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.