



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

- Case reference** : CHI/21UD/LSC/2024/0117
- Property** : Flats 1-5, 17 Devonshire Road, Hastings, East
Sussex, TN34 1NE
- Applicants** : Louise Attfield (1) and Neil Marriot (2)
- Respondent** : Ivor Henderson (by his Litigation Friend, Ms
Clayton)
- Representative** : Richard Miller, Counsel
- Type of application** : For the determination of the liability to pay
service charges under section 27A of
the Landlord and Tenant Act 1985
- Tribunal members** : Judge Taylor (Chair)
Judge Dovar
Mr C Davies FRICS
- Date and Venue of
hearing** : 20 January 2026, Brighton Tribunals
Hearing Centre
- Date of decision** : 19 February 2026

DECISION

Decisions of the tribunal

1. The Tribunal determines that the service charge demands sent to the Applicants for the major works in 2023/2024 are not payable by the Applicants.
2. For the service charge year 2023/2024 the Tribunal determines that (1) the service charges demanded for fire safety doors are not payable by the Applicants; and (2) the remaining service charges demanded are payable by the Applicants.
3. For the service charge year 2024/2025 the Tribunal determines that the service charges demanded are payable by the Applicants.
4. The Tribunal makes orders under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 in favour of the Applicants, so that none of

the landlord's costs of the Tribunal proceedings may be passed to the Applicants through any service charge or administration charge.

5. The Tribunal's reasons are set out below.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable to the Respondent. In respect of the service charge year 24 June 2023- 23 June 2024, the Applicants challenge: (1) service charges incurred by the Respondent for major works for which invoices were sent to the Applicants on 21 March 2024 ("the Major Works"); and (2) various charges incurred for regular maintenance items. The Applicant also disputes various costs arising in the service charge year ending 23 June 2025. The Applicants also seek orders pursuant to section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
2. Following Directions issued on 1 May 2025, the hearing of this Application was originally arranged to take place on 20 August 2025 at Hastings Law Courts. By Directions issued on 18 August 2025, that hearing was adjourned and Directions were given for the parties to produce statements on the questions of (1) the Respondent's mental capacity to conduct proceedings, and (2) whether Ms Clayton had power and was a suitable person to conduct the proceedings on behalf of the Respondent.
3. Further Directions were given on 19 August 2025 and 7 October 2025 and witness statements were prepared on behalf of the Respondent by Emma Bush and Valerie Henderson.
4. The Tribunal considered those statements and finds that the Respondent lacks mental capacity to conduct this Application and that Mrs Henderson is suitable to act as the Respondent's litigation friend for this Application.
5. The Tribunal is grateful to the parties for their clarity at the hearing. The Tribunal read the bundle of documents provided which comprised 426 pages; references to page numbers in the bundle below are shown as numbers in square brackets.

The hearing

6. The Applicants appeared in person. The Second Applicant confirmed to the Tribunal that the First Applicant was presenting the case for both Applicants. The Respondent was represented by Mr Miller of Counsel. Hannah Dennis of Oakfield PM Limited, the managing agent appointed by the Respondent, was present and gave evidence.

The background

7. The property at 17 Devonshire Road, Hastings, TN34 1NE (“the Property”) is a converted terraced property which now contains five flats situated in the town centre of Hastings. It is a brick structure, with a rendered and painted exterior. There is a flat on each floor, including the basement and attic. It has a front communal entryway at ground floor level. Above the ground floor entrance, at first floor level, there is an empty room/landing area that is part of the communal stairway/passageway going up from the first floor to the upper floors. Above that first-floor area there is a flat roof.
8. Photographs were provided of the property [107] showing the first-floor room/landing area above the ground floor entrance. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The First Applicant is the leaseholder of Flat 3 (first floor) at the property and the Second Applicant is the leaseholder of Flat 2 (ground floor).
10. The Respondent is the registered freehold proprietor of the property.
11. The leases of Flats 2 and 3 (“the Leases”) are in identical terms and contain the following terms relating to payment of service charges by the lessors, and the provision of services by the landlord:
 - (i) *Clause 1: “the Lessors hereby demise unto the Lessee... YIELDING and PAYING therefore... by way of Service Rent the sums payable under Clause 2 hereof at the times and in the manner therein provided”;*
 - (ii) *Clause 2(i): “THE Service Rent shall consist of one fifth of the expenses outgoings and matters mentioned in Part I of the Fourth Schedule hereto and one quarter of the expenses and outgoings in respect of the common hall passageways and stairways (hereinafter called “the Service Expenses”) Part II thereof shall be incorporated in this Lease”;*
 - (iii) *Clause 6(c): “That (subject to contribution and payment as hereinbefore provided) the Lessors will maintain repair redecorate*

and renew (i) the roofs and main structure of the Building (ii) the boundary walls fences gutters and rainwater pipes of the Building (iii) the gas and water pipes drains and electric cables and wires in under and upon the Building other than those serving only one flat in the Building (iv) the entrance hall landings and staircases of the Building leading to the Flat”;

(iv) Fourth Schedule, Part I: items in respect of which the service charge is payable.

The issues

12. The Application, Applicants’ Statement of case and Applicants’ Response to the Respondents Statement of Case identify the challenges as follows:

(1) the cost of the Major Works incurred of £32,636.31;

(2) the Service charge year ending 2024:

Fire and safety £2,600; Fire safety major works £6,276; Health & Safety £700; Repairs & maintenance £3,000; Electrical maintenance £1,500; Repairs & maintenance £4,000; Fire safety doors £600 x 5; Installation of new mains supply £696.24 x 5;

(3) the Service charge year ending 2025:

Fire Safety £2,532; Health & Safety £600; Repairs & maintenance £2,500; Electrical maintenance £1,000; Repairs & maintenance £5,000.

The Major Works

13. The facts concerning the scope and completion of the Major Works are not in dispute. In January 2023, the flat roof over the first floor landing area collapsed. In November 2023, Oakfield PM Limited (“Oakfield”) (who were by then the managing agents appointed by the Respondent) engaged Standen Associates, building surveyors, to prepare a specification for structural repairs and associated redecoration. The specification prepared by Standen Associates [71- 86] described the works in detail, which can briefly be summarised as:(1) ground floor entrance area -removing rotten beams, joists and lintels, installing new steel beams, remove existing damaged ceiling and replace, and re-plastering and decoration; and (2) first floor landing area - take down remains of false ceiling framework including removing and disposing of

old galvanised steel tank; remove rotten flat roof joists and ceiling; install new joists; reinstate new ceiling; replace window lintels; replaster and redecorate.

14. The works were completed by the contractor, Total Project Management, by around 11 June 2024. Demands were sent to leaseholders on 21 March 2024[223], which confirmed the total costs of the works and associated professional fees at £32,636.31, apportioned as to £6627.26 to each leaseholder.
15. The Applicants' case is that the charges for these works are either not payable at all, or that the amount payable should be reduced. The Applicants contend that the need for the Major Works arose because the Respondent has failed to comply with his obligation to repair under the Leases over a long period, namely the landlord covenant in clause 6 c of the Leases as set out above. They say that if the Respondent had undertaken regular maintenance over a 20 year period as required by the Leases, the Major Works costs could have been avoided.
16. The Respondent denies any such breach of covenant and/or that the cost of the Major Works has been increased as a result of any such breach. The Respondent contends that the costs of the Major Works are payable by the Applicants in full.

The Evidence on Major Works

Applicants

17. The Applicants' evidence was given by the First Applicant only and was set out in her Statement of Case, Response to the Respondent's Statement of Case, in the evidence she gave at the hearing, in answers to questions from the Tribunal and in cross examination.
18. The First Applicant has owned Flat 3 since 2004. She said that she tried to contact the Respondent from the outset of her ownership to discuss maintenance of the Property but she did not get any answer. The Respondent did not insure the Property, as he was required to do under the Leases, and so the Applicants made their own arrangements for that and organised some repairs that the Respondent was responsible for. She described the Respondent as being in persistent and deliberate neglect of the entire property.

19. In November 2005 she received a letter from Hastings Borough Council [36- 38], which notified her that the Council had served the Respondent with a notice under Section 190(1A) Housing Act 1985, namely a notice to execute repairs to part of a building containing a flat in multiple occupation (“ the s190 Notice”). It provided that:

(1) The Property “*is in such state of disrepair that, although the flats are not unfit for human habitation, substantial repairs are necessary to the part of the building outside the flat comprising The Main roof and the flat roof over the stairwell*”;

(2) The Respondent was required to carry out the works specified in the Schedule by 10 December 2005;

(3) The Schedule included the following works:

“...3.Strip off the defective roof covering and associated defective support timber above the second floor front room of the property, and reform a new flat roof to suitable falls in appropriate, materials, leaving all weathertight. Undertake any necessary works to ensure that means of rainwater disposal to this area are adequate and in good working order.

4 Take down the water-damaged ceiling to the second floor front room of the building and properly dispose of arisings. Strip out and dispose of the defective timbers and remains of redundant galvanised water tank situated above the false ceiling. Reform a new ceiling in appropriate materials, properly decorated to match existing.”

The First Applicant said that the works required by items 3 and 4 above are the same works that were eventually done by the Major Works in 2024. She said the Respondent did not respond to the s190 notice or do any of the works required by it. Because of this, she arranged for some works to be done herself, but these were just “patch repairs”, not the repairs called for in the notice, as she only had limited funds.

20. The First Applicant said that the flat roof area above the first floor landing area continued to leak for the 19 years that passed between the s190 Notice and the Major Works. This was manifested by damp staining on the ceiling and mould on the walls, which got worse during periods of heavy rain.

21. It was put to her in cross examination that the work specified in paragraphs 3 and 4 of the s190 Notice was not work in the same area as the Major Works, because the notice described work to the second floor front room, not the first floor and flat roof above, and that the notice did not say that the flat roof was leaking. She said it was the same area because the s190 Notice referred to the galvanised water tank which was in the false ceiling of the first floor and that it was clear the notice was referring to a leaking flat roof because items 3 and 4 referred to a water damaged ceiling. She also said there was only one flat roof, above the first floor landing area.

22. The First Applicant received another letter from Hastings Borough Council dated 21 November 2012 [46] concerning the condition of the Property and intimating that it may take enforcement action under s215 Town and Country Planning Act 1990 if works to remedy were not carried out. On 18 March 2013 Hastings Borough Council served the Respondent with a notice under that provision [327] which required him to do ten items of work at the Property.

23. The Respondent obtained quotes for these works. One was from Martin & Bowles dated 3 April 2013 [48-49]. The First Applicant referred to part of that letter which said : *“The front elevation has a few bad areas mostly being the bottled walling around the 2nd floor balcony. I would normally suggest replacing the missing bottles but the brick pier on the corner looks in such a bad state that it would mean removing the complete surround and rebuilding, so I have only included to remove without replacing.”* The quote included a *“PC sum of £2,000 for unforeseen repairs”*.

24. Another quote was obtained from P R Pompeous & Sons dated 27 June 2014 [50].

25. P R Pompeous were engaged by the Respondent and the works in their quotation (and subsequent invoice dated 27 September 2014 [329] were completed in 2014.

26. The First Applicant said that she thought that if the damaged brick work had been removed and rebuilt as suggested by Martin & Bowles, and not just patched up, that would have prevented the structural collapse that occurred in January 2023. It was put to her in cross examination that the s215 Notice did not relate to works to the first floor landing area ceiling and she agreed it did not.

27. The First Applicant said that the first floor landing area roof continued leaking after the 2014 works had been completed and those leaks continued up until the Major Works.

28. In January 2023 the roof over the first floor landing area collapsed which led to the Major Works being commissioned and completed. It was put to the First Applicant that the cause of the leak which led to need for the Major Works was growth of vegetation on the flat roof, but she did not accept that was the cause. She obtained a quote for the required remedial works from Grain Creations [261] in the sum of £14,550.

Respondent

29. As noted above, the Respondent lacks mental capacity and so he gave no evidence. The Respondent's evidence was given by Hannah Dennis, an employee of Oakfield, in her witness statement dated 26 June 2025, and in evidence she gave at the hearing. The Tribunal took into account the difficulty the Respondent faced in that he was unable to give evidence as to contemporaneous matters; however, ultimately the clear picture painted was of an absentee landlord who had, save on one occasion when prompted to do so by a council enforcement notice, ignored the leaseholders and the Property. The necessitated self-insurance by the leaseholders speaks volumes as to his lack of engagement.

30. Ms Dennis said that Oakfield were appointed by the Respondent on 3 April 2023 and at that time the Respondent was overwhelmed with the management responsibilities for the Property. She confirmed that there was very little by way of hand over material; consistent with the Respondent's absenteeism.

At the time of Oakfield's appointment, the flat roof over the first floor landing area had collapsed. She thought the cause of the collapse was a small buddleia tree that had taken root in the felt of the flat roof, which had lifted the felt and created an entry point for rainwater. She referred to photographs [110 and 111] which showed vegetation growing on the flat roof area and the collapsed ceiling inside the first floor landing area. She confirmed that other photographs [261 and 262] showed the damage at first floor level and also water damage at ground floor level below the first floor landing area, where the ceiling was badly damaged by water penetration.

31. In September 2023 Oakfield arranged for SDS Builders to repair the flat roof above the first floor landing area, to stop further water penetration. The invoice for the work [66] shows the work done as: "*FLAT ROOF To cut out all weeds and prepare roof then apply primer and two coats of Rapid Roofing System Clear rubbish and leave clean and tidy*". The cost was £1250 including VAT. Ms Dennis said that when the same contractor removed what was left of the ceiling in the first floor landing area, this exposed rotten beams and joists.

32. Following discovery of the rotten beams and joists, Oakfield appointed Standen Associates Ltd, chartered building surveyors, to inspect. They prepared a Specification/Schedule of Works dated January 2024 [71-86]. The Specification set out substantial structural works to both the First Floor landing area and the Ground Floor entrance area below it, including in both areas replacement ceilings, removal of damaged joists and replacement, removal of damaged lintels and replacement. At first floor level to the main front wall, new galvanised steel beams were required to replace the existing damaged timber beams. Following consultation with the leaseholders under section 20 Landlord and Tenant Act 1985, the works in the Specification were completed in June/July 2024. The invoices for the work totalled £32,636.31, and service charge invoices were sent to both Applicants on 21 March 2024, in the sum of £6527.26 each.

33. In April 2023 Ms Dennis attended a meeting at the Property with Mr Faithfull, a member of the Housing Licencing Team at Hastings Borough Council. This arose because Hastings BC had sent a Notice of Entry to the Respondent under section 239 Housing Act 2004 to inspect the Property. Mr Faithfull sent an email to Ms Dennis on 18 April 2023 [118] which, amongst other things, recorded defects noted at the inspection including:

“ Extensive areas of damp affected render to street elevation, particularly at first floor level above main entrance door. This is likely connected with water ingress and defects to flat roof*

** Vegetation growth and defects to flashing of flat roof above main entrance lobby, which has resulted in the damage seen to 1st floor landing”.*

34. In answers to questions from the Tribunal Ms Dennis confirmed it was her view that water penetration had entered the Property through the flat roof because of buddleia growth in the roof and that was the cause of the damage which was set out in the Standen Associates Specification. She thought that the buddleia growth would have been discovered if there had been regular, quarterly, maintenance inspections at the Property. When asked if the major damage would not have happened if there had been regular maintenance of the Property, she said it would not have and from Oakfield’s perspective the damage was caused by the buddleia growth. She also confirmed that all of the works in the Standen Associates Specification were required because of the water penetration through the flat roof.

The legal principles

35. The Applicants in this case do not contend that the costs incurred by the Respondent in relation to the major works were unreasonably incurred within the meaning of section 19 Landlord and Tenant Act 1985. Instead, the Applicants' challenge is that the costs incurred should not be payable because they were caused by the Respondent's breach of his covenants to repair in the Leases over a long period of time.

36. This issue is often referred to as "historical neglect". The approach to the remedy that is potentially available to leaseholders in such cases was confirmed by the Lands Tribunal in *Continental Property Ventures Inc v White* [2007] L&TR 4 in which HH Judge Rich QC held:

"[T]here can be no doubt that breach of the landlord's covenant to repair would give rise to a claim in damages. If the breach results in further disrepair imposing a liability on the lessee to pay service charge, that is part of what may be claimed by way of damages. At least to that extent it would, as was held by the Court of Appeal in Filross Securities v Midgley (Peter Gibson, Aldhous and Potter LJJ, July 21, 1998), give rise to an equitable set-off within the rules laid down in Hanak v Green[1958] 2 QB 9, and as such constitute a defence. This would not mean that the costs incurred for the 'nine stitches' were not reasonably incurred. It would however mean that there would be a defence to their recovery. What the LVT was engaged upon was determining whether these costs were 'payable' within the meaning of section 27A "

37. These principles were approved and considered in *Daejan Properties Ltd v Griffin and another* [2014] UKUT 206 (LC) in which the Upper Tribunal held [at paragraph 80]:

"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 a 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 parties' submissions

38. The Applicants submitted that all of the costs incurred for the major works arose because the Respondent had been in breach of his covenant to repair since at least 2005. They relied on the s190 Notice as evidence that the flat roof was leaking in 2005 and the Respondent had been told what repairs were needed. They submitted that water damage had spread over the 19 year period that passed before the roof was eventually repaired. This had damaged the timber beams and the ceilings. The water damage had spread all the way down to the ground floor as the water penetrated down the walls from the first floor landing area. They suggested that if the flat roof had been repaired earlier, when the disrepair first arose, the cost would have been limited to the £1250 that was paid for the basic roof repair/sealing in 2023 carried out by SDS Builders. If that had been done in time, then all of the major works costs would have been avoided. They said that there should have been regular maintenance inspections over the years by the Respondent.

38. On behalf of the Respondent, Mr Miller submitted as follows:

(1) It is for the Applicants to prove that the Respondent has breached his covenant to repair and that the remedial works could have been avoided if repairs had been done earlier. He suggested neither has been proved.

(2) The Applicants' case in the application notice was that the Respondent should have repaired the flat roof in 2013. The Applicants have changed their case at the hearing to say that the repair should have been done in 2005 following the s190 Notice. He says the Applicants should be limited to the case put forward in the Application, namely that 2013 is the key date for consideration of the question of whether the failure to do work then has caused higher costs later.

(3) In relation to the works done in 2013, the s215 Notice required works do not relate to any disrepair to the flat roof/ceiling above the first floor landing area. It relates to different works concerning the amenity of the area (for example removing vegetation from the front elevation), not disrepair to the Property. Accordingly, the Applicants are not right to say that doing any additional works in 2013 would have avoided the major works.

(3) In any event, the s190 Notice is very old and is hard to follow. It refers to the "second floor front room", not to the first floor front room. The Tribunal should

not be satisfied that the defects identified in the notice are the same as caused the need for the major works in 2023.

(4) The best evidence for the cause of the water penetration that caused the major works is it was caused by the vegetation as Ms Dennis said in her evidence. This is supported by the comments in Mr Faithfull's email, noted in paragraph 33 above. In the absence of any expert evidence, the Tribunal should accept that the cause of the water penetration was the vegetation growth. Further, the fact of vegetation growth is not evidence of neglect by the Respondent as there is no evidence of how long the growth was present and no evidence of how soon vegetation would lead to damp penetration. Expert evidence is needed to prove causation and the Respondents have failed to provide any.

Decision on major works costs

39. Firstly, we are satisfied that the Applicants' case is not limited to contending that the Respondent's historical neglect is to be considered by reference to the events that took place in 2013. The Respondent is correct in saying that the section in the Application Form relating to the challenge to the major works costs [21] stated the question for the Tribunal to decide as: *"That the leaseholders should have reduced, or no liability for these remedial works on the following grounds; These costs could have been significantly reduced, or even avoided if the freeholders had acted upon advice given by a building contractor in 2013. The freeholders were sent a quote and advised that the front elevation was 'in a very bad state' "*. Accordingly, in this section, the Applicants referred only to the 2013 events.

40. However, the Tribunal's Directions dated 1 May 2025 required that the Applicants should by 29 May 2025 send to the Respondent : *"A signed and dated statement with a statement of truth (i.e. "I believe that the facts stated in this witness statement are true") which sets out each aspect of its case namely which items of expenditure that the Applicant disputes and why, for the Respondent to respond to."* The Directions also provided, as is usual, for the Respondent to provide a response to such Statement of Case, and for the Applicants subsequently to provide a reply.

41. The Applicants' statement of case [23-26], referred to the s190 Notice served in 2005, as well as the s215 Notice served in 2013 and asserted that the Respondent had completely abandoned the Property for over 20 years. In the

Applicants' reply [94-97] they said (in response to the Respondent's Statement of Case) :

“The claim that the collapse of the flat roof was caused as a direct result of a small tree taking root is incorrect. This section of flat roof had been allowing the ingress of water since, at least, 2005. The Notice to Execute Repairs issued to the Freeholder on 8th November 2005, by Hastings Council quite clearly refers to the damage to this area of the building on page 1 of the schedule, points 3 & 4. This evidence has previously been submitted.”

42. The Applicants represented themselves without the benefit of legal assistance. While the Applicants' case may have been more precisely drafted with the benefit of such advice, we are satisfied that the case set out in the Application and the reply is sufficiently clear that the Respondent was made aware of the case it had to answer at the hearing, and in preparation for the hearing. All the evidence that the Applicants relied on was contained in the bundle of documents prepared well in advance of the hearing. In the circumstances, we are satisfied that the Applicants' case on historic neglect is not limited in the way contended by counsel for the Respondent and includes the Applicants' arguments based on neglect prior to 2013.

43. We turn next to the question of whether the Respondent has breached his covenant to repair. There was no dispute that the works that are in issue are within the scope of the Respondent's covenant in clause 6 (c) of the Leases (paragraph 11 above). The covenant required the Respondent to keep the roofs and main structure of the Property in repair.

44. We need to consider when repairs within the scope of the covenant were required. The s190 Notice was served on the Respondent in November 2005. As noted above, the notice stated that: *“substantial repairs are necessary to ...the flat roof over the stairwell”*. Paragraph 4 of the notice required the water damaged ceiling to the *“second floor front room”* to be taken down and reformed, and to remove and dispose of the *“redundant galvanised water tank situated above the false ceiling”* [38]. The Respondent put in issue whether the notice related to the flat roof we are concerned with, due to the reference to *“second floor”*.

45. We are satisfied that the works in paragraph 4 of the s190 Notice were works required to the flat roof over the first floor landing area and the ceiling in that

area. Although there is a reference to “*second floor front room*”, we are satisfied that is a simple misdescription in the notice. The first page of the notice specifies repairs are needed to the flat roof over the stairwell [37]. It is clear from the photographs [106- 107] that there is only one flat roof, which is above the first floor landing area. The galvanised steel tank was situated within the false ceiling to the first floor landing area. We are accordingly satisfied that the notice relates to the same area as we are concerned with in this application.

45. We accept Mrs Attfield’s evidence, and find, that those works were not undertaken by the Respondent. Mrs Attfield’s evidence on this was not challenged by any evidence from the Respondent. We are also led to this finding by the fact that paragraph 4.3.1 of the Standen Associates Specification for the major works in 2025 provided for “*Take down remains of false ceiling framework including removing and disposing of old galvanised steel tank*”. Since that confirms the galvanised steel tank remained in place in 2025, it is clear that the work to remove it set out in the s190 Notice had not been done in the 19 years that had passed between the two documents. We also find, on balance, that because the galvanised tank had not been removed, the other works in the s190 Notice were not done.

46. We also accept Mrs Attfield’s evidence, and find, that water penetrated through the flat roof throughout the period 2005 – 2023. We accept her evidence that water penetration was in evidence throughout that period. We also find on the basis of Mrs Attfield’s evidence that the Respondent did not undertake any maintenance inspections, or do any maintenance work throughout that period, save for the work in 2014 which we will turn to below. Mrs Attfield was firm in her response to questioning about her memory on these issues and we were satisfied she gave truthful evidence to the Tribunal.

47. As for the work carried out by the Respondent in 2014 following the Section 215 Notice served in 2013, we find that the notice and the works noted in it related to different parts of the Property than are the subject of this Application. There is in our view nothing in the notice, nor in the description of the work in the invoices, that shows work relating to the flat roof area. We do not agree that there is anything in the Martin and Bowles quotation that indicates he was including any provisional price for undertaking work to the flat roof. While we are satisfied that these events do not provide evidence of any work relating to the flat roof, we do find that this was the only repair work that the Respondent undertook at the Property throughout the period 2005- 2023, and that he did this work under the compulsion of the section 215 Notice, rather than in compliance with his repair covenant in the Leases.

48. On the basis of our findings above, in our view the Respondent breached his covenant to repair in clause 6(c) of the Leases by (1) failing to make good the defect in the flat roof that was in existence by November 2005, the date of the s190 Notice , and (2) failing to undertake any maintenance inspections throughout the period 2005- 2013.

Indeed even if the Tribunal were confined to allegations of breach from 2013, we consider that the allegation is made out in any event. As set out above, it is clear that the flat roof above the first floor landing was in disrepair in 2013 and was not remedied then.

49. Having found the Respondent is in breach of covenant, we need to go on to consider whether, but for his failure to make good the defect in the flat roof following the s190 Notice, and/or his failure to carry out maintenance inspections throughout the period in question, all or part of the costs incurred in the Major Works would have been avoided.

50. We have found that there was water penetration into the Property through the flat roof from 2005 to 2023. The Respondent says that we should accept that the cause of the water penetration which caused the major works, was the buddleia vegetation growth. We do not agree. We find that the buddleia growth may have been a contributing factor to the water penetration, but that water penetration had been ongoing for many years by the time the vegetation growth was discovered. We do not believe that the comments by Mr Faithfull in his email of 18 April 2023 are to be read as giving a considered opinion on the cause of water penetration damage. The comments followed an inspection at that date and there is no suggestion that Mr Faithfull had any historical knowledge of the Property. It is clear that vegetation was growing on the flat roof by that date but no basis is given for any belief that the vegetation was the sole cause of the defects discovered subsequently. The extent of the vegetation was such that it was clear that it had been established for some time.

51. As noted earlier, there is no expert evidence to assist the Tribunal. We do not however agree with the Respondent's submission that we cannot properly determine the remaining questions without such evidence. The Tribunal has special expertise and should use it to further the overriding objective. We believe that the evidence of fact (as we have found it) is such that expert evidence is not required. It was sufficiently obvious that a failure to repair the flat roof for a number of years had not only permitted vegetative growth to establish itself but also that it had permitted water penetration not just to the first floor structure, but also the ground floor internal structure.

52. In our view, the Respondent was required to repair the flat roof in 2005 following the s190 Notice, which we find as evidence that the flat roof was out of repair at that date. In breach of covenant, he failed to do so. We find on Mrs Attfield's evidence that water penetration was ongoing through the flat roof from 2005 to 2023. There is independent evidence of the extent of damage caused by the historical water penetration. Firstly, this is in the photographs in the Grain Creations quotation obtained by Mrs Attfield in January 2024 [261]. These show significant water damage has travelled through the first floor landing area and into the ground floor ceiling and walls. Secondly, there is the Standen Associates Specification prepared in January 2025, which lists the substantial repairs that are needed as a result of the water penetration. In our view, the fact that the damage has gone down to the ground floor level demonstrates water penetration over a long period of time. The works on the ground floor included replacing the ceiling, joists, the decayed lintel above the front door. On the balance of probabilities, we find that damage of this nature and extent is consistent with water penetration over a long period of time.

53. In our view, this damage would have been avoided if the Respondent had made good the defect in the flat roof, by undertaking repairs to make it watertight in 2005 and therefore prevent the water penetration that continued for 18 years thereafter. We find that such repairs could have been completed for no more than (and most probably less than) the cost that was incurred in 2023 to make the flat roof watertight. That work was undertaken by SDS Builders for the cost of £1250 [66]. It is apparent from the brief description of the work done - "*FLAT ROOF To cut out all weeds and prepare roof then apply primer and two coats of Rapid Roofing System Clear rubbish and leave clean and tidy 1,250.00*" - that the repair needed to make the flat roof watertight was straightforward.

54. It is also our view that the requirement for this repair would have been discovered and dealt with as part of regular maintenance if the Respondent had not been in breach of covenant by failing to undertake such inspections. We agree with Ms Dennis's assessment in her evidence that quarterly maintenance inspections are reasonable for a property of this nature.

55. We find that all of the major works costs were incurred as a result of the water penetration; Ms Dennis accepted that was the case in her evidence.

56. Accordingly, we determine that all of the costs incurred for the major works would have been avoided but for the Respondent's breach of covenant. The Applicants are entitled to claim damages for breach of covenant equal to the full sum that has been demanded, and that claim can be set off against their liability for the service charges demanded for the major works. It follows

that we determine that the service charge demands for the major works are not payable by the Applicants.

Service charge year ending 23 June 2024

57. The Applicants contend that the service charge demands they have received for the following items/amounts are not payable by them:

Fire and safety £2,600;

Fire safety major works £6,276;

Health & Safety £700;

Repairs & maintenance £3,000;

Electrical maintenance £1,500;

Repairs & maintenance £4,000;

Fire safety doors £600 x 5;

Installation of new mains supply £696.24 x 5.

58. The Respondent's Statement of Case confirmed that the Respondent accepted that the charges that had been demanded for the fire safety doors were not recoverable as service charges. The Respondent indicated that he contended he was entitled to recover the costs expended by a different common law claim, but the Tribunal has no jurisdiction to consider such a claim. The costs claimed for the fire safety doors are not payable by the Applicants and the Respondent confirmed the service charge accounts for the year would be amended accordingly to remove those costs and credit the service charge account.

59. In respect of the costs for the installation of the new mains supply, the Respondent confirmed that these costs had, in fact, not been incurred. Service charge demands were sent to the leaseholders for this proposed work on 1 September 2023 in the total sum of £3,481.20, being £696.24 invoiced to each leaseholder. This sum was however refunded to each leaseholder because the funds were available from the service charge budget for that year. Credit notes were sent to each of the Applicants on 1 November 2024 [242] to "cancel" the earlier invoices for these works. This item accordingly does not need to be considered.

60. In respect of the remaining items, the Applicants challenge was again that they should not be payable, or only a reduced amount should be payable because the Respondent's historic neglect in remedying the respective issues had caused increased costs by the time the work was eventually done.

61. The largest item challenged is the costs incurred for fire safety major works. The undisputed facts concerning these works are that in early 2023, Hastings Borough Council were threatening to prosecute the Respondent for breach of conditions in the HMO licence he held for the Property, if he did not instal a grade A LD2 control panel fire alarm system and new rated fire doors. The Respondent applied to the Tribunal for dispensation from the consultation requirements and an order was made on 23 June 2023. The cost of the works was £6276, pursuant to a quotation from Moore & Saunders electrical contractors.

62. The Applicants did not contest that this work was within the scope of the service charge provisions but contended that the Respondent should have done this work in 2015. Mrs Attfield's evidence was that she thought the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 required landlords to instal appropriate fire alarm systems from 2015. She said she owned another flat, where the fire alarm system cost £680. She said that if the work had been done in 2015 it would have cost 50% less because construction costs have increased since then. In cross examination, she said she had calculated the 50% figure by reference to the Office for National Statistics tables.

63. The Respondent denied there was any statutory obligation to instal the fire alarm system before the middle of 2022 and denied there was any evidence that failure to do the work earlier had caused loss. The Respondent also relied on *Daejan* (see paragraph 37 above) at paragraph 19, where the Upper Tribunal held that it would not be proportionate to consider whether work could have been done more cheaply at an earlier date, as that was to be balanced against the benefit to the tenant of notional interest on the money they had not been spent earlier.

64. We are satisfied that the charges demanded for these works are payable by the Applicants. The Applicants have not established that there is any statutory provision that required the Respondent to do the works at an earlier time than they were done. The Applicants also did not point to any breach of covenant as a result of the failure to do the works. Therefore, the first stage of the claim for historical neglect is not made out. In any event, we agree with the Respondent that it would not be proportionate in this case to consider whether the work could have been done more cheaply at any earlier date, following the guidance given in *Daejan*.

65. The Applicants' case in respect of the remaining items in this year was again based on the allegation of historical neglect and that all of the costs are more expensive because of the Respondent's failure to do the works at an earlier stage. However, the Applicants did not provide any evidence to support their

claim that the Respondent is in breach of the repair covenant for these items, nor of any alternative cost for which the works could have been completed at an earlier date.

66. We determine that the service charges demanded for the remaining items under challenge are payable by the Applicants. We are satisfied that it has not been proved that the Respondent breached his covenant to repair for these items at any earlier point in time. Nor have the Applicants proved that any part of the costs charged could have been avoided if the work had been done at an earlier time.

Service charge year ending 23 July 2025

67. The Applicants contend that the service charge demands they have received for the following items/amounts are not payable by them:

Fire Safety £2,532;

Health & Safety £600;

Repairs & maintenance £2,500;

Electrical maintenance £1,000;

Repairs & maintenance £5,000.

68. The Applicants' case was again that these charges should not be payable, or only a reduced amount should be payable, because the Respondent's historic neglect in remedying the respective issues had caused increased costs by the time the work was eventually done.

69. The Applicants did not provide any evidence to support their claim that the Respondent is in breach of the repair covenant for these items, by failing to do the works at any particular earlier time, nor of any alternative cost for which the works could have been completed at an earlier date.

70. We determine that the service charges demanded for the items under challenge are payable by the Applicants. We are satisfied that it has not been proved that the Respondent breached his covenant to repair for these items at any earlier point in time. Nor have the Applicants proved that any part of the costs charged could have been avoided if the work had been done at an earlier time.

Costs applications under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

71. In the application form and at the hearing, the Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 Act. Such an order may restrict costs incurred by the landlord in these proceedings being levied in the service charge payable by the tenant or any other leaseholder who signs up to the section 20C application. Additionally, an application was made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Such an application may reduce or extinguish the tenant's liability to pay an administration charge under the terms of their lease. The application form applied for such orders not only for the Applicants, but also for the other leaseholders at the Property who are not parties to the Application. The Applicants confirmed at the hearing that none of the other leaseholders had given their consent for such an application. Without such consent, no application can be made and so we have considered the applications on behalf of the Applicants only.

72. The most significant issue for the Tribunal to determine in this application was the costs of the major works and the question of historical neglect. That is the issue that took up most of the hearing and to which most of the parties' evidence and preparation was directed. The Applicants have entirely succeeded on that issue. We do not consider that this matter would have come to the Tribunal had it not been for that issue. In the circumstances we are satisfied that it is just and equitable for the Tribunal to make orders under section 20C and 5A in favour of the Applicants.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).