FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/21UD/LSC/2025/0716
Properties	**:**	17a Silchester Mews, Silchester Road, St Leonards on Sea TN38 0JB
Applicant	**:**	Browood Limited (landlord)
Representative	**:**	Alexander Bissett of counsel, instructed by Sussex Legal Consultants Limited
Respondent	**:**	Albert Rofrano, aka Riggs O'Hara (tenant)
Representative	**:**	Ms Dawn Alba
Type of Application	**:**	Liability to pay service charges under s.27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Judge MA Loveday Mr C Davies FRICS Mr E Shaylor MCIEH
Date and venue of hearing	**:**	8-9 December 2025 Brighton Tribunal Hearing Centre
Date of Decision	**:**	16 February 2026

DETERMINATION

Introduction

1. This is an application for determination of liability to pay service charges and administration charges. The matter has been transferred by the County Court to the Tribunal under s.176A Commonhold and Leasehold Reform Act 2002 ("CALRA 2002") and was dealt with by flexible judicial deployment at a hearing on 8-9 December 2025.

2. This determination is limited to matters which fall within the Tribunal's jurisdiction.

Background

3. The matter relates to a leasehold flat at 17a Silchester Mews, Silchester Road, St Leonards on Sea TN38 0JB, also known as the "Flour Loft". According to the lease plan, the same comprises a first floor flat with a large open plan kitchen/diner, family bathroom, main bedroom with ensuite facilities, guest bedroom and nursery. The Applicant is the registered freehold owner, and the Respondent is lessee of the flat. At all material times, the Applicant has retained Browood Ltd as managing agents for the property.

4. By a claim issued in the Civil National Business Centre on 25 March 2024 (claim no.L9QZ013W), the Applicant sought payment of service charges and administration charges of £19,011.62. The Claim Form was accompanied by a statement for the period 28 June 2017 to 24 October 2023 detailing charges of £16,879.55 together with interest of £2,132.07 said to be payable up to the date of the claim. The Respondent filed a Defence and Counterclaim on 3 May 2024. On 24 October 2024, DJ Harper transferred the service charge and administration charge matters to the Tribunal, with the matters beyond the Tribunal's jurisdiction allocated to a judge of this chamber.

5. Directions were given on 31 January 2025, 11 March 2025, 4 April 2025, 15 April 2025, 7 May 2025, 21 February 2025, 14 April 2025 and 15 May 2025. A final hearing listed for 23 May 2025 was vacated and relisted for 8-9 December 2025. The

proceedings have plainly had an unhappy procedural history, characterised by multiple procedural applications and alleged non-compliance with directions.

6. In addition to the statements of case in the County Court, the Respondent filed a statement of case on 24 April 2025, and the Applicant filed a statement of case on 7 May 2025.

7. At the hearing, the Applicant was represented by Mr Alexander Bissett of counsel. The Respondent was in Paris, and did not attend, but sought to be represented by one of his witnesses, Ms Dawn Alba. Mr Bissett objected to this but the Tribunal ruled under r.14 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Ms Alba should be permitted to represent the Applicant. This enabled the Tribunal to deal with the case fairly and justly. In particular, lay representation enabled the Applicant to participate fully in the proceedings and avoided unnecessary formality and delay.

8. The Tribunal was presented with a hearing bundle running to some 1,051 pages of documents. It heard submissions from both parties, and evidence from Ms Alba (31 Silchester Mews), Mr Aaron Hill AssocRICS Mr Patrick Donoghue, Mr Joseph Silberstein of Protect and Save Ltd, Ms Cheryl Harrington (Flat 1, 15a Silchester Road), Mr Trevor Gedge (10 Silchester Road), Mr Lorenzo Grossi (an electrician) and Mr Rothbart of the Applicant company. At the conclusion of the hearing, there was insufficient time for the County Court matters to be considered, and directions were therefore given for those matters to be considered on paper once the Tribunal's decision was provided to the parties.

9. The Tribunal is grateful to all the witnesses who gave evidence, even where it has not proved necessary to refer to that evidence in the decision below. It also thanks counsel and Ms Alba for their helpful submissions.

The Lease

10. By a lease dated 6 February 2003, the premises were demised for a term of 99 years from 6 February 2003 at an initial ground rent of £10pa rising to £100pa after 10 years ("the Lease").

11. By clause 1(1) of the Lease, the Respondent agreed to pay an insurance rent. By clause 2(3) the lessee further agreed to pay an interim service charge and an end of year service charge in accordance with Sch.5. The material Lease provisions appear in Appx.A to this decision. For present purposes, the service charge apportionment of costs applied to the flat is 50%: see para 1(2) of Sch.5 to the Lease.

The claim

12. The Applicant's Claim Form did not distinguish between the service charges (as defined by s.18(1) LTA 1985) and administration charges (as defined by Sch.11 to CALRA 2002). The schedule attached to the Claim Form gives details of service charges, insurance rent and credits for the period August 2017 to September 2023. But it was not possible to reconcile the figures given in the schedule with the demands for payment included in the bundle. The Tribunal therefore spent some time at the start of the hearing identifying with counsel the service charges and administration charges involved. Mr Bissett eventually settled on the following:

	Service charges (incl. insurance rent)	**Administration charges**
2016/17	£690.66	
2017/18	£724.24	
2018/19	£5,716.41	£100
2019/20	£852.08	£2,248.85
2020/21	£300.82	£21.50

2021/22	£1,922.28	
2022/23	£2,526.22	

For the reasons given below, the Tribunal does not agree with the allocation of charges in the 2019/20 service charge year. But in any event, Ms Alma indicated she agreed the basic formula used to arrive at the above figures and the arithmetical calculations.

The service charge issues

13. The single largest element of the claim relates to insurance rent. The spreadsheet attached to the claim refers to costs incurred for insuring the building in 2017-18, 2018-19, 2019-20, 2020-21, 20221-22 and 2022-23. The Applicant's apportioned contribution was £7,016.90. Under clause 1(1) of the Lease, the insurance rent is payable "from time to time". There are various demands for payment, some of which are incorporated into service charge demands.

14. The other communal costs are recoverable as service charges under Sch.5 to the Lease. Unlike the insurance rent, the tenant is liable to pay these by interim and balancing charges:
    (a) Para 2 of Sch.5 provides for an Interim Charge payable by equal instalments on 29 September and 25 March in each year. The Interim Charge is specified to be a fair and reasonable interim payment on account of the annual Service Charge.
    (b) Paras 2-5 of Sch.5 provide for the familiar accounting exercise at the end of each Accounting Period. Para 4 provides that if the Annual Service Charge in respect of any Accounting Period exceeds the Interim Charge, the lessee is to pay the excess within 28 days of a certificate described in para 5 of Sch.5.

15. This entirely conventional service charge regime ought to be familiar to any competent residential property manager. But the documentation in the bundle does

not suggest the Applicant applied the contractual service charge scheme during the relevant period. The bundle includes five demands for payment of a mix of ground rent, service charges, insurance rent and administration charges *inter alia* dated 23 September 2019, 24 March 2020, 28 September 2020, 25 March 2021, 28 September 2021 and 25 March 2022. Although at one point it was suggested these were all interim service charge demands, it is clear from the spreadsheet attached to the Claim Form that they sought contributions to expenditure in arrears on a six-monthly basis. None of these demands complied with either para 2 or para 4 of Sch.5 to the Lease. It is not until the 2022-23 and 2023-24 service charge years that we see evidence of attempts to operate an interim and balancing service charge regime. On 28 September 2022 there is a demand for advance contributions to the costs of "Cleaning", "LL Electric Supply" and "LL Water Supply". On 25 March 2023, there is a service charge demand which seeks (amongst other things) a contribution to "Estimated FY 2023/2024" costs of £3,838.22. On 28 September 2023 there is another demand which refers to "Estimated FY 2023/24" costs, but this time the estimated annual costs have risen to £4,434.82". Even these attempts to operate an interim/balancing service charge procedure resulted in wildly varying interim service charges which cannot possibly be in accordance with paras 1(3) and 2 of Sch.5 to the Lease. Counsel suggested there were also end of year service charge accounts and certificates for each year, but that they were not in the bundle. Why such essential documents were omitted from a bundle running to over 1,000 pages was not explained. But in any event, the Applicant accepted that at least para 4 of Sch.5 had not been complied with.

16. The Tribunal recognises the Respondent's Defence in the County Court does not raise any allegation that the service charges were not claimed in accordance with the Lease terms - and the point was not raised by Ms Alba at the hearing. But the service charge accounting in this case has made the Tribunal's task immeasurably more difficult. In particular, it is almost impossible to reconcile figures which appear in the service charge demands with the actual costs given in the spreadsheet attached to the Claim Form.

17. Notwithstanding these evident difficulties, the Tribunal was able to determine the issues raised by parties in relation to service charges.

18. In relation to the service charges, it is more convenient to begin with the Respondent's case. The pleaded Defence in the County Court makes two points in relation to the service charges:

    (a) The Applicant is put to proof that the services/works set out in the service charge statements have been completed.

    (b) The service charges levied are not reasonable.

19. The Respondent's two statements of case in the Tribunal proceedings largely overlap. The service charge arguments can be summarised as follows:

    (a) The service charge demands did not comply with s.48(1) Landlord and Tenant Act 1987 ("LTA 1987"): statement of case paras 7-9.

    (b) There are inconsistencies between the various service charge demands: paras 10-11.

    (c) No contribution is due towards the costs of £4,883.01 said to be incurred on 19 July 2019 for "UK Power and related works": para 12.

    (d) The "service charges are not reasonable" because of the Applicant's failure to co-operate with the insurance claim. In essence, the Respondent repeats the facts supporting the insurance counterclaim below: paras 15-28.

    (e) The Applicant failed to carry out repairs following the "second flood". Again, the Respondent essentially repeats the facts supporting the disrepair counterclaim below: paras 15-28.

    (f) Services were not of a reasonable standard, because they were not performed or performed to a poor standard. These included cleaning of communal areas, windows and guttering and repairs: paras 48-51.

    (g) The costs of previous tribunal proceedings are irrecoverable: paras 52-53.

20. The Tribunal will deal with each of these issues in turn.

Service charges: s.48 LTA 1987

21. The first issue is whether all or some of the service charges are not payable by reason of s.48 LTA 1987. The relevant provisions are as follows:

> **"48 Notification by landlord of address for service of notices.**
> (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
> (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection."

Evidence

22. The material evidence comprises the service charge demands themselves. Each demand was headed "Browood Ltd, Unit 4 70-72 Markfield Road, London N15 4QF" (which is the Applicant's registered office). From 28 September 2022, the demands also included the following statements:

> "Pursuant to Section 47(1) of the Landlord and Tenant Act 1987, the name and address of your Landlord is Browood Ltd. Unit 4 70 – 72 Markfield Rd. London N15 4QF."
> Pursuant to the Section 48(1) of the Landlord and Tenant Act 1987, the address at which notices (including notices in proceedings) may be served by you is Browood Ltd. Unit 4 70 – 72 Markfield Rd. London N15."

The case for the parties

23. Ms Alba accepted that section 48(1) was complied with on 28 September 2022. However, for the earlier service charge demands, they "should have been available at the time". A s.48(1) notice had to be served with every demand.

24. During oral submissions, the Tribunal raised the case of *Rogan v Woodfield* [1995] 1 EGLR 72, CA, and it provided copies to both Ms Alba and counsel. In closing, Mr Bissett relied on the words of Sir Ralph Gibson at p.74:

> "The contention that rent 'otherwise due' from a tenant, which is to be treated as not due because of failure to comply with section 48(1) is forever irrecoverable, is misconceived. It is contrary to the clear words of section 48(2)."

Counsel submitted that it was not necessary to serve a s.48(1) notice with every service charge demand. Once s.48 notice was given, previous demands became payable.

The Tribunal's decision

25. On this point, the Tribunal concludes it is not necessary for a s.48 notice to be given with every service charge demand. Section 48(1) makes no reference at all the service charge demands – unlike section 47(1) LTA 1987, which states that "any written demand" for payment "must contain the following information". Indeed, in *Rogan v Woodfield*, the court confirmed that s.48(1) could be complied with by giving the landlord's name and address in a tenancy agreement. And the effect of s.48(2) is suspensory only. Charges are treated as "not being due … at any time before the landlord does comply with" s.48(1). That clear meaning was confirmed by Sir Ralph Gibson in the passage cited above. It therefore rejects the Respondent's argument based on s.48(1) LTA 1987. Any failure to give notice before 22 September 2022 does not provide a defence to his liability to pay.

26. But in any event, the previous demands included the name and address of the landlord, even if they did not refer to s.48 LTA 1987. The Applicant referred to the decision in *Westlake Estates v Yinusa* [2019] UKUT 225 (LC); [2019] L.& T.R. 28, where Judge Cooke held that a demand which only specifies one name and address meets the statutory requirement. Section 47 does not require the tenant also to be told this is the landlord's name and address. This is a further reason why the s.48 LTA 1987 argument fails.

Service charges: the demands

27. The second argument is that there are inconsistencies between the various service charge demands. Para 10 of the statement of case refers to the demand for payment of £14,582.32 for the balance of unpaid ground rent, service charges, insurance

rent and administration charges of various kinds. By 24 October 2023, that had risen by £2,303.23 to £14,582.32. The demand of 28 September 2024 sought payment of £28,823.01, which was an increase of £11,937.46 in 11 months. The Respondent argued conflicting/inflated demands were simply not credible. At the hearing, counsel for the Applicant simply argued the demands were payable.

28. The mere fact that repeated and increasing demands were made does not in itself provide *prima facie* evidence that the landlord's relevant costs were not reasonably incurred under s.19(1) LTA 1985 or that the service charges were not payable. The argument was not any event pressed by Ms Alba in her submissions to the Tribunal, and the Tribunal does not need to consider the point any further.

Service charges: 2019 major works

29. The demand dated 23 September 2019 includes a charge of £4,883.01 as a 50% contribution to costs of £9,766.02 incurred for major works. The works are described as "Uk Power as per notice served plus prep works carried out to date". The Schedule attached to the Claim Form includes a line item of £9,766.02 for 19 July 2019 with the observation that the leaseholder "accepted liability" on 27 October 2020.

Evidence

30. Details of the works largely appear in paras 32-41 of the Applicant's Reply dated 7 May 2025, which Mr Rothbart adopted in evidence. It was discovered that the incoming electricity three-phase electricity supply to the property was in poor condition and that it presented a potential safety risk. The Applicant undertook a consultation under s.20 LTA 1985, and the works were carried out with the co-operation of UK Power Networks. The necessary groundwork to the rear of the property was done by a contractor, Mr Pat Donoghue, whilst the internal electrical works required to complete the new connection were subsequently undertaken by a qualified electrician, Mr Lorenzo Grossi. Mr Donoghue's witness statement in these proceedings gives some detail about the works. There is a witness statement from

Mr Grossi about the power supply. There are also estimates from UK Power Networks for carrying out all the works (or alternatively) for carrying out only elements of what was required

The case for the parties

31. The Respondent's case is that no contribution is due towards the costs of these works. Para 12 of the Reply simply states the Respondent has never received a satisfactory explanation about what the works related to, let alone a plausible one, and that nothing is therefore due. Ms Alba did not challenge the above evidence or press the matter in her closing submissions.

32. The Applicant relied on the above evidence which explained the nature of the works.

The Tribunal's decision

33. The Respondent has not expressly alleged the major works were not carried out, merely that he was not given a proper explanation about the costs. That explanation has now been given. There is no suggestion the works were unnecessary, that the costs were not reasonably incurred under s.19(1)(a) LTA 1985 or that they were not reasonably incurred under s.19(1)(b) LTA 1985.

34. The Tribunal therefore finds the Respondent is liable to pay a service charge of £4,883.01 in the 2019-20 service charge year in respect of the relevant costs of major works.

Service charges: insurance claims

35. One of the Respondent's main arguments is that the Applicant failed to co-operate with insurance claims in relation to a "flood" in October 2021. The Respondent counterclaims damages, which he seeks to set off against any service charge liability. Although the argument is also raised to support the contention that costs were not reasonably incurred, the Respondent does not identify any specific element of costs which this relates to. The Tribunal therefore solely deals with the argument as a counterclaim: see below.

Service charges: repairs

36. Another main argument is that the Applicant failed to carry out repairs, and once again this is raised both as a counterclaim and an objection to service charges. Carrying out defective works can of course be a ground for reducing service charges under s.19(1)(b) LTA 1985. But once again, the Respondent has not identified any specific service charges which are said to relate to deficient works. Once again, the Tribunal deals with the argument simply as a counterclaim: see below.

Service charges: cleaning

37. The schedule attached to the statement of case includes numerous costs associated with cleaning of the common parts. In 2018, there is a reference to contractors Noma. Between June 2019 and February 2020, the contractors are given as Beadles. From January 2022 to May 2023, there are references to Jason Boyd of Tempo Services. The charges by Beadles are supported by a selection of invoices, which refer to cleaning of the hallway, courtyard and windows. The charges by Tempo Services are supported by invoices, which refer to cleaning the "Communal area inside and out" and "Gutter clear/Window clean" repairs. No attempt has been made separately to identify the total of the cleaning costs.

Evidence

38. Apart from the invoices, there is little evidence about the cleaning. Paragraph 49 of the statements of case in the Tribunal proceedings alleges that cleaners have never been upstairs to the area of the property nor cleaned the windows – but the Respondent did not attend to give evidence of this. Ms Alba did not refer to cleaning in her witness statement or give evidence of the standard of cleanliness at the hearing. The Tribunal was not referred to any specific photographs showing the condition of the internal or external common parts or the gutters, let alone evidence of the condition of these parts throughout the period of challenge.

39. The Tribunal therefore finds on the facts there is no *prima facie* evidence that the cleaning services were sub-standard.

The Tribunal's decision

40. There is no need to set out the submissions on both sides. The above conclusion on the facts inevitably means the Tribunal must find the cleaning services were of a reasonable standard under s.19(1)(b) LTA 1985. The Respondent's challenge to cleaning costs therefore fails.

Service charges: legal costs

41. The Applicant suggested there were administration charges of £2,248.85 in the 2019-20 service charge year. In his submissions, Mr Bissett was prepared to treat them as administration charges.

42. The Tribunal does not agree. The bulk of these costs comprised "Admin costs" of £2,230.35 which appear in a demand for payment dated 24 March 2020. However they might be described, it is common ground that the figure of £2,230.35 relates to legal costs incurred by the Applicant and that these were wholly or mainly incurred in connection with previous tribunal proceedings. The schedule to the Claim Form shows the charge was not for 100% of the Applicant's costs incurred in connection with the previous tribunal proceedings. The charge was instead an apportioned 50% share of the Applicant's legal costs of £4,460.70. The disputed charge is therefore a 50% contribution to relevant costs incurred by the landlord and it falls within the definition of a "service charge" in s.18(1) LTA 1985. It also follows that the £2,230.35 legal costs contribution is subject to s.19-27A LTA 1985 (rather than Sch.11 to CALRA 2002) and that both 2019-20 figures in para 12 above require adjustment. The 2019-20 service charges in dispute should be £3,082.42m, and the administration charges should be £18.50.

The evidence

43. There are invoices from Sussex Legal Consultants Ltd dated 18 October 2019, 31 October 2019 and 23 November 2020 for payment of legal fees. The Applicant's case is that these relate to advice in respect of the s.20 consultation referred to above and in relation to the previous tribunal proceedings involving the Respondent. The bundle includes a tribunal decision dated 5 September 2019 (case no.

CHI/21UD/2019/0001) and a costs decision in the same matter dated 16 December 2019. In the tribunal application, the Respondent unsuccessfully sought to vary his lease by reducing his service charge apportionment. The Applicant pursued an application for costs under r.13 of the Tribunal Procedure Rules, and this also failed. No s.20C LTA 1985 costs limitation order was made on either occasion.

The case for the parties

44. The focus of the Respondent's objection was on the costs incurred by the Applicant in relation to the previous tribunal proceedings. In para 52 of his statement of case, he argued the earlier tribunal required the Applicant to write by 30 November 2019 if it wished to pursue its costs application. No such letter was ever sent. In oral submissions, Ms Alba pointed to the Tribunal's refusal of the Applicant's application for reimbursement of its costs.

45. The Applicant argued that the r.13 costs findings were not relevant to service charges. Absent any order under s.20C LTA 1985, the Applicant was free to recover a contribution to the previous tribunal costs.

The Tribunal's decision

46. The Tribunal agrees with the Applicant in relation to the legal costs. Rule 13 costs applications relate to the Tribunal's power to award costs under s.29 Tribunal Courts and Enforcement Act 2007. They do not affect a landlord's contractual right (if any) to include the relevant costs of litigation in the service charge payable by a lessee. That is the very purpose of the limitation in s.20C LTA 1985. As counsel stressed, the previous tribunal made no costs limitation order under s.20C. As to the earlier tribunal's direction in paragraph 31 of its decision, this again related to the Applicant's r.13 application. It had nothing to do with any contractual right to recover a contribution to costs under the Lease.

47. The Tribunal therefore finds the Respondent is liable to pay service charges of £2,230.35 as a contribution to the legal costs incurred in connection with the proceedings.

The administration charges

48. Once the legal costs are treated as service charges, there is no challenge to any of the other administration charges set out above.

Insurance counterclaim

49. In paras 10, 15 and 16 of his County Court Defence, the Respondent counterclaims damages for breach of an implied term requiring the Applicant to co-operate with insurance claims. He seeks to set this off against his service charge liability. The Tribunal may determine counterclaims by tenants under its s.27A LTA 1985 jurisdiction, where the counterclaim constitutes a partial or complete defence to a service charge claim: per HHJ Rich KC in *Continental Property Ventures Inc v White* [2007 L.& T.R. 2 at [15].

Evidence

50. The Respondent's case is the flat first suffered water ingress in the week of 25 October 2021, which has been described as the first "flood". On Friday 5 November 2021, Ms Alba emailed Mr Rothbart of the Applicant company with the subject line "INSURANCE CLAIM; week commencing 25 October one of the outside pipes at the back of the Flour Loft burst and caused water ingress to the inside". The email suggested that one of the outside pipes had burst at the back of the Flour Loft causing water ingress. Ms Alba said it could not be left and had to be rectified immediately. She went on to say the Respondent was proposing to carry out the remedial works himself and then deduct the cost from his service charges. Ms Alba went on to say "Alternatively, you could initiate a claim against the buildings insurance to cover the cost". Mr Rothbart emailed on the evening of Saturday 6 November 2021 asking for "detailed pictures of the incident and full reports from competent contractors". There was no immediate response from Ms Alba. Instead, Mr Rothbart emailed on 8 November saying he had made enquiries with the other occupants. He stated that "for us to make an insurance claim, we need pictures and contractors report, estimates and invoices if applicable, to submit a claim". Mr Rothbart chased Ms Alba again on 14 November 2021, apparently also sending a copy by post. Ms

Alba eventually replied on 15 November 2021 stating that "We are arranging for another damp course report to be done and will keep you informed of progress". On 29 November 2021, Mr Rothbart again chased, stating "We await the report aforementioned together with all other items mentioned in our email dated 14/11/21, 06/11/21 and registered post". Eventually, on 29 December 2021, Ms Alba forwarded an estimate from "Fibrecare for internal damage caused by burst pipes". Mr Rothbart replied (within 45 mins), asking for "full details of the incident which were needed to make an insurance claim". On 6 January 2022, Ms Alba emailed Mr Rothbart, saying "Mr O'Hara … has decided to organize the repairs himself as he cannot endure the interior damage due to flooding. Furthermore, the insurance has taken far too long to arrange". Mr Rothbart replied the same day, reminding Ms Alba the Applicant had "demanded on various occasions from your good selves and the leaseholders proof of detailed insurance claims and estimates, which have never been received". He did not accept that "the insurance has taken far too long to arrange", the allegation being "totally false". Mr Rothbart was plainly not impressed with the Fibrecare estimate, a copy of which was in the bundle. Fibrecare's estimate was solely for damage to the carpets, and included obvious non-insurance items such as paint staining, moth damage and urine stains. Mr Rothbart therefore made enquiries with Fibrecare about their estimate, and on 5 January asked Ms Alba for pictures.

51. On 17 January 2022, Mr Rothbart forwarded Ms Alba's emails to the brokers Protect and Save Ltd. He suggested they write to the tenants and "advise what information and estimates you need from them accordingly". On 17 January 2022, Mr Silberstein of Protect and Save contacted Ms Alba asking for some basic details of the claim, including:

- Date of incident and description what happened
- Photos
- Estimates of the works required

On 31 January 2022, Mr Silberstein emailed to say that since no claim had been reported, he was "closing this case". Ms Alba replied on 1 February 2022, suggesting

that details had already been sent to the freeholder. Mr Silberstein replied the next day, again asking the Respondent for "estimates".

52. At this stage, there is a gap in the bundle documentation about the insurance claim. On 10 December 2022, Mr Rothbart emailed Mr Silberstein asking if he had received any correspondence since 2 February 2022. On 19 January 2023, Ms Alba emailed Mr Silberstein with a subject line "Re: Insurance Claim The Flour Loft". She enclosed an insurance estimate in relation to the "flood damage". Mr Silberstein replied on 24 January 2023 that:

> "In order to submit a claim we need a consent email from the freeholder direct, As well please provide us with full details of the occurrences (dates etc.) and a second estimate."

Ms Alba said she would be in touch. On 30 January 2023, she provided a second estimate from GK Building and Property Maintenance dated 30 January 2023. On 1 February 2023, Ms Alba asked Mr Rothbart for freeholder consent to the claim [p.239].

53. The only further emails about insurance claims that need to be mentioned at this stage are:

(a) On 14 December 2023, Ms Alba thanked Mr Silberstein for confirming "Freeholder's consent to complete this claim".

(b) On 27 December 2023, Mr Silberstein requested that the Respondent provide "details of [the] incident and the date of [the] incident", which was needed to process the claim.

(c) There is also correspondence about later water ingress. For example, on 27 November 2024, The Respondent complained about storm damage. Mr Rothbart asked for evidence, copying in the insurance brokers. The Respondent replied the same day "Too late it has to be fixed immediately to stop flooding. I know how long it takes you to prepare anything so I got on with this and had it done and it's done". Mr Rothbart replied that "It's not too late to report it to the insurance broker".

54. Apart from the emails, Mr Silberstein provided a witness statement and gave evidence at the hearing. He stated that following his emails of 14, 17 January and 2 February 2022, "the full information aforementioned was never received" from the Respondent. He did not agree the Applicant had obstructed the insurance claim. "In contrary, [its] actions were not only appropriate but exceeded the standard expectations and demonstrated exceptional diligence and care to assist the [Respondent] in his claim". Mr Silberstein's evidence was summarised in a letter dated 24 July 2023, which stated that:

"1. Our client Browood Ltd. never stopped any claims relating to The Flour Loft.
2. Attempted Claims made by the Flour loft in 2021 and 2022 were never complete for submission i.e., missing information, evidence to the nature of the claim that's covered by the policy.
3. We wrote to the Flour Loft on 31/01/22; that as they did not provide us with relevant information we are closing the claim.
4. No genuine Estimates/ Quotes that prove damages that's covered by the policy, other than fair wear and tear, were received."

The case for the parties

55. The Respondent's pleaded case is there is an implied term at clause 3(2) of the Lease that:

> "in relation to any legitimate potential insurance claim raised by the Defendant, the Claimant would facilitate and pursue with reasonable diligence with its insurer any such claim and not delay or otherwise obstruct its pursuance"

It is further argued that in breach of this implied term, the Applicant failed to facilitate and pursue with reasonable diligence legitimate insurance claims raised by the Respondent in relation to a flood in the week commencing 25 October 2021. It is suggested the Applicant persistently and deliberately sought to delay the claim and refused to provide its consent to the insurer to pursue a claim.

56. Ms Alba was unable to assist with the legal basis of implication or terms. But she was asked for the best example of obstructive behaviour on the part of the Applicant. She referred to a solicitor's letter of 24 January 2024, which asserted that:

"on 1 February 2023 Ms Alba sought your consent to pursue the claim. At present, we have not seen any evidence that this was forthcoming and this is a point raised in our letter of 11 January 2024 (again)".

Ms Alba argued that the Respondent's failure to facilitate and pursue the claim with reasonable diligence and its obstructive behaviour caused damage by prolonging the water damage to the flat. As a result, the flat had been damp, and the Respondent suffered inconvenience discomfort and distress, as well as special losses. Both general and special damages were pleaded in the Respondent's Defence to the County Court claim.

57. For the Applicant, Mr Bissett referred to the well-known principles for implication of terms. He accepted that some kind of duty to co-operate would have to be implied into clause 1(1), especially given the fact the lessee covered the cost of the insurance premiums. In the event an insurer refused to entertain a claim from lessees directly, there would be at least a duty to pursue a *bona fide* claim. But counsel did not accept the wider implied term pleaded by the Respondent.

58. Counsel's main argument was there was no evidence of breach. The Applicant had referred the first flood claim to the insurance brokers, it had encouraged the Respondent to provide information to the broker, and it did nothing to delay or obstruct the claim. Any delay or obstruction was down to the Respondent, who had not replied to repeated requests for information.

The Tribunal's decision

59. The first question is whether there is an implied term and what that term should be. The Tribunal has had limited assistance with these issues. The principles were summarised by the Supreme Court in the well-known decision of *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72. Lord Neuberger noted the two tests commonly used when determining whether a term should be implied into a contract:

    (a) Under the 'business efficacy' test, a term may be implied if it is necessary to give business efficacy to the contract (*The Moorcock* (1889) 14 PD 64).

(b) Under the 'officious bystander' test, a term may be implied if it is so obvious that it goes without saying. In other words, if an officious bystander suggested to the parties they should include the term in the contract, "they would testily suppress him with a common 'oh of course'" (*Shirlaw v Southern Foundries* [1939] 2 KB 206).

60. In reaching a decision about the alleged implied term, the Tribunal starts with the terms of the Lease itself. The Applicant seeks to imply the term into the insurance rent provision of clause 1(1) of the Lease, which appears in Appx.A to this decision. The Tribunal notes there is no express requirement in clause 1(1) of the Lease that the lessees' interest should be noted on the insurance policy. There is therefore no right for lessees to pursue insurance claims directly. Moreover, the lessees have an interest in the building insurance policy, since they fund the cost of the policy through their insurance rents. The Tribunal considers there must be an obligation on the landlord to exercise its rights in such a way as to preserve the tenants' interests in what they are paying for, and finds it is necessary to imply a term to give business efficacy to clause 1(1) of the Lease. Indeed, there is in all probability a fiduciary or quasi fiduciary duty on the landlord to co-operate with insurance claims: *Vural Ltd v Security Archives Ltd* (1990) 60 P. & C.R. 258. As to the wording of the implied term, once again the parties did not produce any authorities about the nature of a landlord's obligation to co-operate with insurance claims[1]. Absent any alternative formulation, for present purposes the Tribunal is prepared to accept the covenant which to be implied is that formulated by the Respondent in para 22 above.

[1] *Woodfall* suggests at 11.102 that "it is also probable that there will be an implied term obliging the party in whose name the property is insured to present and prosecute a claim under the policy with all reasonable speed". But in this case, even the Respondent does not advocate an unqualified obligation to present *any* kind of claim to insurers, no matter how weak - or to pursue claims "*with all reasonable speed*".

61. On this assumption, has there been a breach of the implied term? The Tribunal concludes that in relation to the first "flood", there has been no breach. On the evidence, the Applicant "facilitated" and "pursued [the claim] with reasonable diligence". Mr Rothbart passed the claim to the insurers on 17 January 2022, notwithstanding his concerns about the material supporting the claim. The Applicant's general approach can be seen in the later email of 27 November 2024, where it advised the Respondent that it was not too late to report claims to an insurance broker. The Applicant co-operated with the insurers when asked to do so and there are several emails from Mr Rothbart chasing the Respondent for more evidence to support the claim. It is true the Applicant did not itself pursue the claim. But it was reasonable to put the lessee in direct contact with brokers, since this avoided the inevitable delays with passing on information, and the Applicant itself had had little success asking the Respondent for information. For largely the same reason, the Applicant did not "delay" or otherwise "obstruct" the insurance claim. The emails, supported by Mr Silberman's evidence, show the claim was delayed because the lessee failed to answer requests for information, particularly the enquiries in the emails of 17 January and 2 February 2022. Even as late as 27 December 2023, Mr Silberstein was still asking the Respondent for basic details about the claim.

62. The only specific "obstruction" alleged is the landlord's failure to tell the broker it consented to the claim. The Respondent relies on the broker's email of 23 January 2023. But by then, the insurance claim had been with the broker for over a year. There is some evidence the Applicant did in fact give consent: see Ms Amba's email of 14 December 2024 and Mr Silberman's evidence at the hearing. But even if the Applicant failed to provide the broker with requisite consent, there is no evidence this obstructed the claim at all. The email correspondence shows (and Mr Silberman confirmed) that the main obstacle to the claim proceeding was the Respondent's own failure to provide basic supporting information.

63. The counterclaim fails because there was no breach of the implied covenant, and it is unnecessary to consider causation or damages.

Disrepair counterclaim

64. The allegations of disrepair and lack of maintenance form a large part of the documentation in the bundle and took up much of the two-day hearing. The Respondent's case was hindered by the fact the counterclaim was often unfocussed and involved overlapping allegations.

65. In paras 11 and 16 of the Defence filed in the County Court, the Respondent counterclaims damages for alleged breaches of the landlord's obligations in clause 3(3) and paras 1 and 3 of Sch.6 to the Lease. Like the previous alleged breach, the Respondent seeks to set off these damages against the service charges claimed. This is again therefore within the Tribunal's jurisdiction.

66. The two obligations are set in Appx.A. The Tribunal considers para 3 of Sch.6 adds little or nothing to the substantive para 1 obligation to repair and maintain. It therefore focusses on the alleged breaches of para 1 of Sch.6 to the Lease.

Breaches

67. Paragraphs 17(ii)-(vi) of the Respondent's Defence pleads the following breaches of covenant:

    (a) Failure to unblock a roof valley and guttering and failure to properly maintain downpipes, which led to repeated flooding to the property.
    (b) Failure to properly maintain and/or repair four windows to the property such that the window frames fell into disrepair and rotted.
    (c) Failure to maintain a secondary exterior wrought iron staircase such that it is in a dangerous condition and unusable.
    (d) Failure to maintain the roof to the property, which has a "hole in it".

    Paragraphs 17(i) and (vi) of the Respondent's Defence refer to other matters, but they cannot be said to be breaches of para (1) of Sch.6.

68. The alleged breaches are further particularised in paras 31-45 of the Respondent's statement of case in the Tribunal, although it is not altogether easy to relate all these points to the four specific allegations made above.

69. In assessing whether there has been a breach of covenant, the Tribunal adopts the Five-part analysis of liability suggested in *Dilapidations: The Modern Law and Practice* (7th Ed).

The subject matter of the covenant

70. The first issue is whether the four areas of the building alleged to be in disrepair fall within the subject-matter of the covenant at para 1 of Sch.6 to the Lease. The primary obligation is for the landlord to repair the "external walls and roof and chimney stacks and foundations and exterior of the Building (including drains gutters and external pipes)". There can be no doubt that the roof valley, gutters, hopper and downpipes all fall within this obligation. The same can be said for the roof. But what about the window frames and the metal staircase to the side of the building?

71. The "Building" is defined in the first recital to the Lease as:

> "the Freehold properties known as Land and Buildings at the back of 9, 11, 13 and 15 Silchester Road, St Leonards on Sea, East Sussex and land and buildings at the back of 7 Silchester Road, St Leonards on Sea aforesaid which properties are shown and edged red on Plan Number 1 and 2 annexed hereto"

Plan no.1 is a large-scale OS plan showing the freehold title. The word "Building" in recital is apt to include the flats as well as the elevations, roof and other parts of the structure retained by the landlord.

72. However, para 1 of Sch.6 to the Lease limits the repairing and maintenance obligation to <u>parts</u> of the premises, namely "the external walls and roof and chimney stacks and foundations and exterior of the Building". There is no mention here of windows, doors or other things attached to the structure. The intention to exclude the windows to the flat is reinforced by:

(a) The express reference to other things affixed to the structure in para 1 of Sch.6, such as "drains gutters and external pipes".
(b) Where the draftsman wishes to refer to "windows" and "doors", it does so: see

paras 10, 11 and 13 of Sch.4.

(c) There is some support given by Lease Plan 3. This clearly draws a red edging around the outer face of the exterior walls and includes the whole of the window frames and windows within the demise. This red edging shows the extent of the Flat demised to the Respondent, albeit that it is "for the purpose of identification only": see Sch.1 to the Lease.

(d) Clause 2(5) makes the tenant responsible for repairs to the premises demised by the Lease "other than the parts thereof referred to in the Sixth Schedule hereto". The plain meaning is that unless something is expressly mentioned in Sch.6, the tenant is responsible for repairing it.

It follows the window frames are demised to the Respondent, and the Respondent is responsible for repairing them.

73. By similar reasoning, the external metal staircase is not the subject the Applicant's repairing obligation in para 1 of Sch.6:

(a) The staircase is not mentioned in Sch.6.

(b) Where the draftsman wishes to refer to "staircases", it does so: see paras 9 and 15 of Sch.4. The same applies to "iron or other metal work" in clause 2(7).

(c) The intention to include the staircase in the tenant's demise is clearly indicated in Lease Plan 3. This draws the red edging around the outer face of the metal staircase. This point is even stronger than in the case of the window frames. The purpose of the red edging is the "identification" of the premises demised by the Lease: see Sch.1 to the Lease. The red edging therefore identifies the flat and staircase as demised to the tenant.

(d) Again, clause 2(5) makes the tenant responsible for repairs to the premises demised by the Lease "other than the parts thereof referred to in the Sixth Schedule hereto". The plain meaning is that unless something is expressly mentioned in Sch.6, the tenant is responsible for repairing it.

It follows that Respondent, not the Applicant, is responsible for repairing the metal staircase.

Condition

74. The second question is whether the subject matter of the covenant is in damaged or deteriorated condition. This is essentially a matter of evidence.

75. Roof valley, getters and hopper. Starting with the alleged failure to unblock the roof valley and guttering and failure to properly maintain downpipes, Ms Alba principally relied on the expert evidence of Mr Aaron Hill BSc (Hons) AssocRICS MRPSA. Mr Hill had prepared a Defect Analysis Report for the Applicant on 3 May 2023, which was the subject of various case management decisions. He also prepared a further Condition Report on 25 March 2025, this time for the Respondent. Mr Hill's expert evidence was permitted by directions given on 4 April 2025.

76. Mr Hill's first report was limited to the lower ground floor kitchen, bedroom and hallway external walls and the corner of the first floor living room. The overview did not mention defects to the roof, but it did refer to inadequate gutters and downpipes together with plant growth and repairs required to rendering and pointing.

77. Mr Hill's second report followed an inspection on 26 February 2025. In particular, it advised that "plant growth" should be removed from the external walls and that gutters required "hedgehog gutter guards". The deep flow gutter units should be cleared biannually. Although the roof had moss and lichen growth (which should be removed), no defects were noted to the slate roof covering. The valley gutter was "free flowing and operational".

78. Mr Hill was asked questions by both parties and by the Tribunal. He had reached no conclusions about the causes of damp to the Flat because there were multiple issues around the building. The second report did not intend to give any opinion about the cause of the damp in the Flat: it was a condition report. He explained that the "plant growth" in the second report referred to plant growth lower down the wall, and not higher up.

79. The Applicant relied on evidence of routine maintenance. For example, there was an invoice for gutter and hopper cleaning from GWC Cleaning Services Ltd dated

13 September 2018 and invoices for "unblocking of down pipes, hoppers, drains" and "unblocking of roof valley, and down pipes" from PJC Builders dated 3 October 2021 and 29 January 2022. 1066 Gutter Cleaning cleaned the gutters in June 2023 and there is another invoice dated 26 September 2024.

80. As to the issues found in the first of Mr Hill's reports, the Applicant served s.20 consultation notices on 27 June 2023 in respect of the necessary remedial works and sought quotations from multiple contractors. Eventually the Applicant instructed Mr Pat Donoghue to carry out the necessary works. The Respondent told Mr Donoghue not to proceed because his own builders were undertaking the work, but he later advised that the works had not been carried out, as his builder had been fired. The Respondent therefore asked Donoghue take over the job. Upon inspection, Mr Donoghue confirmed no works had been carried out. Mr Donoghue therefore carried out work in June-July 2024 to remove vegetation, repoint brickwork, and to paint and repair drainpipes.

81. Mr Donoghue also provided a witness statement. Much of this evidence relates to the difficulties carrying out the works. But he stated the Respondent failed to help pinpoint the so-called leaks, despite requests. Without Mr Donohue attending to be cross-examined, the Tribunal can only place very limited weight on this evidence.

82. The Tribunal has considered the wide-ranging evidence about alleged failure to unblock the roof valley and guttering. The only evidence about the roof valley referred to in argument was unblocking work in June 2022. This appears to have been effective, since Mr Hill's 2024 Condition Report found it to be "free flowing". As to the guttering, Mr Hill's 2023 report recommended replacing the existing gutters with deeper gutters. This seems to have been done by the time of the 2024 Condition Survey. There is also some evidence of periodic roof gutter clearing. Mr Hill's 2023 report further noted a hopper head blocked with plant growth, but it appears this was also cleared in response to the report. When this was done is unclear, but there is no reference to a blocked hopper head in the 2024 Hill Condition Report. There is no evidence in either of Mr Hill's reports of any poorly maintained "downpipes".

83. Direct evidence of defects to the rainwater goods is therefore minimal. Insofar as there were problems, the Tribunal considers the Applicant did sufficient to put them into the condition contemplated by para 1 of Sch.6 to the Lease. There is some evidence of periodic gutter clearing and inspections. Insofar as Mr Hill identified defects in 2022, the problems with the hopper head and gutters were resolved within a reasonable time of the defects becoming evident, given the evident delays caused by the requirement to consult and the need to obtain access and the history of dealings with the Respondent.

84. Windows. The pleaded allegation is that four "window frames" are in disrepair and that they are rotted. There are numerous photographs in the bundle showing defective window frames in the flat. Windows do not close, and paintwork and reveals are peeling. Mr Hill's, 2024 report notes that to the rear of the property, "the seals around the windows are in poor condition and should be replaced." To the front, "the windows are dated and require new linseed oil putty in exposed areas". This is consistent with the photographs. There is therefore *prima facie* evidence the windows require repair and maintenance.

85. However, since the Tribunal has found the Applicant has no obligation to repair the window frames, there is no breach of para 1 of Sch.5.

86. External metal staircase. The same applies to the external metal staircase to the side of the building, which is a former fire escape. There are numerous photographs showing the poor condition of the staircase. Mr Hill's 2025 Condition report advised about his "concerns about the external staircases and decked areas". These were "slippery, suffering from decay and overall pose a risk to everyone using them. The fire escape is in the worst condition of the areas and should not be used". The Tribunal finds the metal staircase requires maintenance and repair. But since the Tribunal has found the Applicant has no obligation to repair it, there is no breach.

87. Roof. Finally, there is no general evidence of roof defects. Mr Hill does not mention any "hole" in the roof. From the aerial drone photographs of the roof there are no obvious defects, although there appears to be a small hole in a roof slate. Photos of

the same hole are also exhibited by the Respondent. The Tribunal's conclusions on this hole are set out below.

88. The hole in the roof can be disposed of fairly briefly. The Tribunal concludes the flooding referred to in the bedroom of the Flat could not be the result of this particular hole. The Tribunal notes the internal location of the dampness within the Flat shown in the Respondent's photographs, and the lack of any reports of problems in the second floor flat immediately above. The second floor flat is within the roof space, so any water ingress affecting the first floor flat would have a severe impact on the flat above.

Causation

89. It follows the Tribunal finds there is no breach of covenant which might support the alleged claim for damages. It is strictly unnecessary to determine any other element of the counterclaim. But given the lengthy argument and evidence about the various "floods", the Tribunal will say something about them.

90. The alleged "floods" are the main damage said to be caused by the defects which supports the counterclaim. The Respondent's statement of case speaks of three different "floods" affecting the Flat. The exact meaning of "flood" was not explained, except where the Defence says "the property was severely affected by water penetration and damp such that it was not fit for human habitation". In para 37 of his Statement of Case, the Respondent says the "property floods every time it rains heavily". The Tribunal therefore assumes the term "flood" simply means a degree of water penetration to parts of the Flat such as to the plaster finishes of the ceilings and walls or to the wooden window and door frames. It does not necessarily mean water coming into the flat in overwhelming quantities, which would be one obvious meaning of the word "flood".

91. The first alleged "flood" is referred to above. Paragraph 16 of the Respondent's statement of case suggests this occurred in the week commencing 25 October 2021, and that it was caused "at least in part by an outside pipe to the rear of the property

bursting". The bundle does not include any contemporaneous photographs or any professional report showing the burst pipe in question. The Respondent's statement of case refers to the email exchanges between Ms Alba and Mr Rothbart, none of which explain the location or the alleged problem with the "outside pipe". The only estimate provided to the landlord at that time, namely the Fibrecare estimate (see above), deals only with damaged carpets. Paragraph 18 of the Respondent's statement of case refers to various estimates and invoices from contractors:

(a) An estimate provided to the Respondent by PJC Builders dated 18 January 2023. This quotes for work to "Remove gutters, down pipes and clear" and "Refix same replacing any missing or broken parts.

(b) An "insurance quotation" from GK Building & Property Maintenance dated 31 January 2023. This quotes for work to "Remove existing downpipe to left hand elevation of lower basement flat and repoint all missing areas of pointing replace downpipe and repair any defected downpipe."

Both are much later than October 2021. They neither identify the "outside pipe" nor explain the alleged defect. The only near contemporary documents (apart from the emails) are invoices from the Applicant's contractors PJC Builders dated 3 October 2021 and 29 January 2022 which include "unblocking of down pipes, hoppers, drains" and "unblocking of roof valley, and down pipes". These do not suggest the contractor saw any "burst" pipe. In terms of oral evidence, para 6 of Ms Alba's witness statement adopts the statement of case, but she only confirms she "directly witnessed the effects of flooding at the property".

92. Paragraphs 27 and 30 of the Respondent's statement of case refer to two other "floods" said to have occurred on 5 January and 27 November 2024. The 5 January 2024 event was the only one which was said to be shown in photographs in the hearing bundle. These undated photographs show what appears to be a damp floor under the carpet, with staining to skirting boards and to the bottom of the door (which could have been dampness, but this was not conclusively shown in the photos). In oral evidence, Ms Alba located the damp floor shown in these photographs by reference to the Lease plan. She suggested it was in the first-floor master bed-

room, by the door leading to an internal staircase and the adjoining en-suite bathroom. Ms Alba said that in her opinion this damp was caused by a lack of maintenance to the roof and rainwater goods.

93. With regard to the 27 November event, the only detail is given in an email exchange around that time, in which it is discussed whether to report the "flood" to insurers. In an email to the Applicant dated 27 November 2024, the Respondent simply says "I have had storm damage but don't worry I have hired someone I have it repaired".

94. The Tribunal's review of this evidence suggests there may well have been a problem with damp in the Flat on three occasions in October 2021, January 2024 and November 2024. But the evidence that any of this was caused by any of the suggested breaches of covenant is weak:

    (a) There are conflicting explanations in correspondence for the cause of the "first flood". What is lacking is a direct statement from a witness who observed the alleged defect, or a surveyor giving an expert opinion of the cause of the first flood. The Tribunal finds there is no evidence to support the suggestion the first flood was caused by a blocked roof valley and guttering, inadequately maintained downpipes.

    (b) The location of the damp shown in the photographs of the January 2024 "flood" is well away from the external elevations of the building. The Tribunal considers this damp was not therefore caused by blocked gutters, poorly maintained downpipes or poorly maintained windows. Ms Alba's opinion was the "flood" was caused by defects to the roof and rainwater goods. But she is not an expert, and she gave no detailed evidence to explain how she said this occurred. Given that the damp under the carpet and water staining may have had numerous causes, the Respondent has not discharged the burden of proving that the second "flood" was caused by any disrepair or want of maintenance.

    (c) The Respondent says the 27 November "flood" was storm damage, not any breach of covenant on the Applicant's part.

95. Ultimately, it was Mr Hill whose expert evidence did most damage to the Respondent's case. He has been instructed in the past by both the Applicant and the Respondent, and the Tribunal considers he gave his evidence impartially and honestly. The only professional to have inspected the property was asked a straight question about causation. Mr Hill was simply unable to say that in his opinion the defects relied on by the Respondent caused the flooding referred to in the counterclaim.

Conclusions

96. The Tribunal rejects the counterclaim for damages for disrepair. There are no damages to set off against the Respondent's liability to pay service charges.

Costs: Section 20C LTA 1985 and para 5A of Sch.11 to CALRA 2002

97. There is an application for limitation of costs under s.20C LTA 1985. There is also an application under paragraph 5A of Sch.11 to CALRA 2002.

98. 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."

Similar principles apply to para 5A of Sch.11 to CALRA 2002.

99. The Tribunal makes no order under s.20C LTA 1985 or para 5A of Sch.11 to CALRA 2002. The Applicant has succeeded on all items of cost and on both counterclaims – although it did not properly formulate its claim until the hearing began. The Tribunal also bears in mind that the Applicant's conduct of the service charges does

not appear to follow the formula applied by the Lease. But ultimately, the Applicant has succeeded, and no reduction has been achieved in the Respondent's liability to pay the service charges or administration charges in question.

The Tribunal's decision

100. The Tribunal determines under s.27A that the Respondent must pay the Applicant the following disputed service charges and administration charges:

	Service charges (incl. insurance rent)	**Administration charges**
2016/17	£690.66	
2017/18	£724.24	
2018/19	£5,716.41	£100
2019/20	£3,082.42	£18.50
2020/21	£300.82	£21.50
2021/22	£1,922.28	
2022/23	£2,526.22	

101. No orders are made under s.20C LTA 1985 or para 5A of Sch.11 to the CALRA 2002.

APPENDIX A: MATERIAL SERVCIE CHARGE PROVISIONS

1. IN CONSIDERATION of the rents and covenants on the part of the Lessee and the conditions hereinafter reserved and contained the Lessor demises unto the Lessee **ALL THAT** the premises described in the First Schedule hereto … **YIELDING AND PAYING THEREFOR** … and also paying by way of further or additional rent from time to time a sum or sums of money equal to one-half of the amount which the Lessor may expend in effecting or maintaining the insurance of the Building against loss or damage by fire and other risks as hereinafter mentioned such last mentioned rent to be paid without any deduction on the day for payment of rent next ensuing after the expenditure thereof

2. **THE** Lessee **HEREBY COVENANTS** with the Lessor as follows:-

…

(2) That the Lessor will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee or the owner lessee or occupier of any flat or maisonette in the Building) insure and keep insured the Building against loss or damage by fire lightning explosion earthquake landslip subsidence riot civil commotion aircraft aerial devices storm flood impact by vehicles bursting and overflowing of water tanks and similar apparatus and damage by malicious persons and vandals and such other risks (if any) normally covered by a comprehensive policy in some insurance office of repute in the full reinstatement value thereof and whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the Building being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Building

3. **THE** Lessor **HEREBY COVENANTS** with the Lessee as follows:-

…

(3) Provided the Lessee shall have duly paid the sums of money referred to in Clause2(3) hereof to observe and perform the obligations set out in the Sixth Schedule hereto

...

THE SIXTH SCHEDULE above referred to

1. At all times during the said term to keep the external walls and roof and chimney stacks and foundations and exterior of the Building (including drains gutters and external pipes) and the entrance path and steps (not included in this demise) and such boundary walls and fences as belong to the Lessor in good and substantial repair and (so far as practicable) in clean and proper order and condition and properly painted decorated or treated and also to keep the structure of the Building together with arty dustbin area and an electric wires cables and meters and gas and water pipes and meters and drains and soakaways enjoyed or used by the Lessee in common with the tenants of other flats or maisonettes in the Building in good and substantial order and condition

...

3. To do all such acts, matters and things as may in the Lessor's reasonable discretion be necessary or advisable for the proper maintenance or administration of the building including in particular (but without prejudice to the generality of the foregoing) the performance of all acts matters and things and the payment of all expenses required or desirable in managing the Building and the provision of reasonable depreciation of fixtures and fittings in the common parts of the Building and the appointment of managing or other agents surveyors and accountants and the payment of their proper fees in connection with the supervision and performance of the Lessor's covenants contained in this Lease and the provision of the certificates mentioned in the Fifth Schedule to this Lease.

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.