FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2025/1074**
Property	:	**1-26 Davoll Court, Marine Street, London SE18 4RJ**
Applicant	:	**The Salmon Youth Centre in Bermondsey**
Representative	:	**Niraj Modha (Counsel)**
Respondent	:	**Hyde Housing Association Limited**
Representative	:	**Sarah Salmon (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	:	**Mr A Harris LLM FRICS** **Mr S Wheeler MCIEH CEnvH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**4 March 2026**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the method of apportionment of the insurance premiums used by Salmon Youth Centre is reasonable and in accordance with the lease.

(2) The tribunal makes the determinations as set out under the various headings in this Decision

~~(3)~~ The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the insurance for the years 2021/2022, 2022/2023 and 2023/2024.

The hearing

2. The Applicant was represented by Niraj Modha of counsel at the hearing and the Respondent was represented by Sarah Salmon of counsel.

The background

3. The property which is the subject of this application is a block of 26 flats forming part of a larger complex (the Building) consisting of the Salmon Youth Centre (SYC) and the subject property. The freehold is owned by SYC. In around 2007 to 2008 Davoll Court was constructed by the Respondent under a design and build contract. The contractor is no longer in business. The youth centre is known as phase 1 and Davoll Court as phase 2. The 2nd to 7th floors of Davoll Court are demised to the Respondent under a lease for a term of 127 years from 15 May 2008. SYC occupy part of the basement, ground floor and 1st floor of Davoll Court.

4. SYC have approximately 59.5% of the internal floor area and Hyde approximately 40.5% of the internal floor area of the Building.

5. In 2021 it was discovered that the external wall system of Davoll Court between the 1st and 7th floors was constructed using combustible cladding. 88.6% of the combustible cladding is on the 2nd to 7th floors in phase 2 and 11.4% on the part of phase 2 on the 1st floor.

6. As a consequence of this discovery insurers had to be notified and it became difficult or virtually impossible to procure insurance. Prior to notification of the cladding the annual cost of insuring the Building in

2021 was approximately £13,000. For the year ended 7 June 2022 the premium rose to £187,163.95, for the year ended 7 June 2023 the premium was £201,296.09 and for the year ended 7 June 2024 £232,124.83.

7. 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.

8. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. The parties have helpfully agreed all of the salient facts and provided a comprehensive agreed bundle. Counsel have both provided skeleton arguments for which the tribunal is grateful. At the start of the hearing the parties identified that the sole issue for determination was how the insurance premiums should be apportioned.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Lease terms

11. ""**Building"** the building known as 43 Jamaica Road London SE16 and which is shown for edged in red on plan number 1…"

12. ""**Insurance Rent**" a fair proportion calculated with reference to floor area attributable to the Premises of the cost to the Landlord of insuring the Building against the Insured Risks"

13. ""**Insured Risks**" means fire…"

14. ""**Premises**" more particularly described in the Fourth Schedule being part of the Building being all those premises forming part of the Building at 43 Jamaica Road London SE16 shown edged in red on plans numbered 2 – 10…"

15. Clause 2.1 sets out that the demise to Hyde was the Premises:. The Fourth Schedule sets out, so far as is relevant, that the Premises excludes "those parts of the main structure (including without limitation foundations and external walls) which surround or support the Premises":

The Applicant's case

16. Prior to the discovery of the cladding and subsequent increase in insurance premiums they have been apportioned at 59.5% to SYC and 40.5% to Hyde.

17. Following the identification of the cladding issue on Davoll Court SYC's advisers determined that 88.6% of the cladding was on the part demised to the Respondent and 11.4% on the part retained by the Applicant.

18. For the 3 years in question SYC considered that the fair way of apportioning the additional premium was on the basis of the proportion of the buildings covered by the cladding rather than floor areas as before, and since the remediation has been completed.

19. SYC argues this is a fair apportionment it was entitled to implement under the lease. It argues that if the premiums had been increased by cladding or some other activity carried out by SYC in its premises and premiums increased as a result the Respondent would have objected to having to pay increased premiums.

20. SYC further argues that the apportionment takes into consideration the increased risk caused by combustible cladding on the outside of the demised parts of the Building while acknowledging that part of phase 2 of the Building remains in their freehold ownership. SYC's approach is rational and objectively reasonable.

21. It is common ground that the service charge provisions of the Landlord and Tenant Act 1985 (the 1985 Act) apply to the lease.

22. Section 19 of the 1985 Act provides that relevant costs *"shall be taken into account in determining the amount of a service charge payable… only to the extent that they are reasonably incurred, and, where they are incurred on the provision of services… only if the services… are of a reasonable standard"*.

23. The leading case on the interpretation of contracts is Arnold v Britton [2015] UKSC 36 where Lord Neuberger PSC said the Court must identify *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"* (citing Lord Hoffmann in another case). The meaning must be assessed:

"in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v)

commercial common sense, but (vi) disregarding subjective evidence of any party's intentions"[1] at [15]

24. The language used is therefore all-important.[2] In addition, commercial common sense is significant, but *"a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed"*.[3]

25. SYC argue that the burden of proof is on the Respondent to present a prima facie case it has been overcharged and, if it does not discharge the burden, SYC must succeed.

26. Section 27A of the 1985 Act does not prevent the landlord from exercising discretionary management decisions as to apportionment and does not give the tribunal jurisdiction to decide for itself what the apportionment should have been.[4]

27. The Applicant argues that the Tribunal's jurisdiction under Section 27A is limited to deciding whether a landlord has complied with the contractual provisions within a lease and not to make a landlord's decision for it. Under Section 27A, the Tribunal must "*review… the contractual and statutory lawfulness of the service charge demanded". Put differently,* "it is deciding *whether the apportionment complies with the requirements of the lease… Essentially the dispute is about what the lease requires"*.[5]

28. The Applicant further argues that the Tribunal must review a landlord's apportionment and then consider whether that apportionment was fair, as required by the Lease; unless it was unfair (or arguably not one any reasonable landlord could have taken) the Tribunal must apply it rather than substituting its own apportionment.[6]

29. The tribunal heard evidence from Mr Chris Chapman and Mr Gungor Baykan as to the difficulty of obtaining insurance cover once the presence of combustible cladding had been identified. The witnesses gave a detailed account of the steps taken to obtain insurance, which was only provided by Ecclesiastical after intervention by the Bishop of Southwark. They have considered whether it would be possible to insure the 2 phases

[1] *Arnold* at [15]

[2] *Arnold* at [17]

[3] *Arnold* at [20]

[4] *Williams v Aviva Investors Ground Rent GP* [2023] UKSC 6; [2023] AC 855 per Lord Briggs JSC at [28]

[5] *Hawk Investment Properties v Eames* [2023] UKUT 168 (LC) per Judge Elizabeth Cooke at [47]-[48]

[6] Hyde does not argue that the discretionary decision to apportion was irrational in the *Braganza* sense: *Braganza v BP Shipping* [2015] UKSC 17, cited in *Aviva* per Lord Briggs JSC at [15]

separately but this was not an option. The tribunal accepts their evidence.

30. SYC presented a written report from Mr Tony Hymers, a chartered surveyor involved in managing the property. He was not available to give oral evidence and the tribunal finds his report of little help.

31. Mr Adrian Greenwood, a trustee of SYC also gave evidence on the historical context and background.

32. Mr Mohda then invited the tribunal to consider a four-stage process:

34. What does the Lease mean?

35. How did SYC apportion?

36. Did SYC comply with the Lease?

37. Did SYC unreasonably incur any insurance charges?

38. What does the lease mean?

39. The lease provides a framework for calculating the insurance rent but does not specify a percentage. Decision-making is left to the landlord who contends the lease is probably read as obliging Hyde to pay a fair proportion attributable to the Premises of the costs of insuring the Building with reference to the floor areas.

40. The method of apportionment is not mandatory or prescriptive and the words "with reference to" are by way of guidance. Calculation of the insurance rent is not based on or determined by relative floor area. Reference means regard must be had to floor area but SYC plainly has had regard to floor area.

41. The word fair must mean something. The lease could easily provided for a calculation using floor area alone and not use the evaluative or discretionary word fair. The tribunal may infer that floor areas were known when the lease was granted or could be calculated from plans. This is relevant background information that was known at the time of the lease but instead of a defined or static proportion the lease provides for a wider scope of fairness.

42. 'Fair' does not signify or require equality.[7] It is not a descriptor used anywhere in the 1985 Act. It is plainly different from, and more nuanced

[7] *Howe Properties (NE) v Accent Housing* [2024] HLR 24 per Snowden LJ at [38]

than, 'reasonable'. It may be that *"fair"* means the same as 'just and equitable'.[8] There may be a subjective element.[9]

43. The lease allows for adjustment of the premium if especially dangerous or high risk activities take place in one part of the Building or the premium increases because of a poor claims record. The lease permits a flexible approach.

44. How did SYC apportion?

45. SYC obtained a surveyor's assessment of the proportion of the total cladding on the building in phase 2 relating to each party's occupation.

46. SYC separated the basic cost from the uplifted cost sharing the basic cost in proportion to relative floor areas. The basic cost was based on previous premiums. The uplifted cost is the increase in premium following the discovery of flammable cladding.

47. The decision-making process is transparent. There is no challenge to the calculation of the parts of phase 2 covered in the flammable cladding occupied by each party.

48. The Respondent has not pleaded that the methodology for calculating these proportions was not fair and has not produced any evidence by way of challenge.

49. Did SYC comply with the lease

50. Mr Mohda argues that after considering the method of apportionment the tribunal should consider whether SYC has complied with its express obligation to apportion fairly and the implied obligation to exercise the power of apportionment rationally.

51. SYC has a discretion which the tribunal can assess but it should be slow to criticise if it has been exercised rationally. The word fair imports a discretion which is wider than indicated by the reasonable. There must be a range of fair apportionments rather than a single figure or percentage and it is not for the tribunal to decide upon a fair apportionment.

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[8] Section 93(8) of Banking Act 2009: *"The expression 'fair' is used in this Part as a shorter modern equivalent of the expression 'just and equitable' (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression)"*

[9] SYC relies on *Criterion* per HHJ Matthews at [45], alongside its argument that SYC has made an objectively fair apportionment

52. A fair apportionment does not mean there is a single proportion and the lease does not prevent the premium being split into basic and uplifted costs.

53. Different landlords may adopt different approaches and SYC's apportionment is one which other reasonable landlord could have made

54. Did SYC unreasonably incur any insurance charges

55. SYC considers this question to be a section 19 point. SYC argues that Hyde has failed to raise a prima facie case. Hyde vaguely alleges delay, SYC occupies part of the Building which is affected by combustible cladding and that the external wall system is not demised. There are no comparable quotes or counterfactuals. If the tribunal considers there is a prima facie case SYC's evidence more than adequately rebuts the suggestion insurance charges were unreasonably incurred.

56. Any suggestion that SYC failed to mitigate is flawed. There is no evidence as to when remediation works should have been completed. SYC took steps on advice and relied on reports, sought funding and engaged a contractor without any assistance from Hyde despite their experience of remediation on its own buildings nearby.

57. The Respondents case

58. The Applicant is responsible for insuring the Building and the Respondent required to contribute to the insurance.

59. Long leases often provide that the proportion of the landlord's costs to be paid by tenant is to be a fair and reasonable proportion determined by the landlord. In general terms fair proportion may be taken to mean a fair and reasonable proportion appropriate to the property or its use but the words alone are not greatly helpful when used in the lease. This can be seen in the 3rd schedule to the Lease where service charge is to be a due proportion.

60. In contrast the insurance rent specifically sets out that a fair proportion is to be calculated by reference to floor area of the Premises. The words "fair proportion" have to be construed in the light of the whole clause and there is good reason for such qualification given the importance of having to be understood and having an unambiguous contractual obligation.

61. It is plain that the fair proportion is calculated by reference to the floor area of the Premises which is 40.5% of the total.

62. Even if the lease did not set out in terms how a fair proportion should be calculated floor areas are a fair way to determine liability.

63. The Premises are defined in the lease and exclude the exterior and structural walls of the Building. It is clear that any apportionment is linked to the demised Premises and there is no additional wording to suggest that Hyde should be liable to pay an increased cost in respect of part of the Building not demised.

64. There is nothing in the lease to indicate that Hyde should pay a higher amount if they are in a position to afford it depending on the financial position of the Applicant.

65. If the tribunal disagrees with Hyde on interpretation of the lease it argues that the Applicant was responsible for the remediation works and that there were delays between the Applicant's knowledge in February 2020 and completion of remediation in September 2024. Combustible cladding was only present on areas of the Building not demised to Hyde. Combustible cladding was only one of several factors that made the insurance market difficult for high-rise buildings and social housing.

66. The apportionment calculated by the Applicant is neither fair nor reasonable or in accordance with the lease.

The law

67. Section 19(1)(a) Landlord and Tenant Act 1985 provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred.

68. Section 19(2) Landlord and Tenant Act 1985 provides that where a service charge is payable before relevant costs are incurred no greater amount than is reasonable is so payable.

69. In Forcelux v Sweetman [2001] 2 E.G.L.R. 173 the Upper Tribunal held there is a two-stage test when determining whether a service charge sum is reasonably incurred.:

70. a. Whether the decision-making process was reasonable; and

71. b. Whether the sum charged is reasonable in light of market evidence.

72. In Okoye v Grays Inn Capital Ltd [2025] UKUT 195 (LC) Judge Cooke held at paragraphs 2-4:

The legal background

73. *Section 27A of the Landlord and Tenant Act 1985 gives the First-tier Tribunal jurisdiction to determine whether service charges in respect of leasehold property are payable. Section 19 of the 1985 Act provides:*

"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, …

and the amount payable shall be limited accordingly."

It follows that to the extent that a cost was not reasonably incurred the related service charge is not payable. It is well-established that a tenant who wishes to challenge a charge on that basis must make a "prima facie case" that the cost was not reasonably incurred; in other words, he or she must produce some reason or evidence that indicates that the cost was not reasonable. The tenant cannot simply put the landlord to proof that it was reasonable.

That prima facie case might be, and often is, a cheaper quote for the same work or service; but it might be an observation that certain events or circumstances make the cost look unreasonable. For a recent example, see Priyanj Shah v Assethold Limited [2025] UKUT 174 (LC).

74. The leading case on interpretation of contracts is Arnold v Britton [2015] UKSC 36 where Lord Neuberger gave the leading judgement

When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd ***v*** *Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (**v)** commercial common sense, but (**vi)** disregarding subjective evidence of any party's intentions….*

First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes

of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning…

The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language….

Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed,…

The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties

Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56, 2012 SCLR 114, where the court concluded that "any … approach" other than that which was adopted "would defeat the parties' clear objectives", but the conclusion was based on what the parties "had in mind when they entered into" the contract (see paras 17 and 22).

Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation…

AC Williams v Aviva Investors Ground Rent GP Ltd [2023] UKSC 6

Lord Briggs JSC

Held, dismissing the appeal, that although the jurisdiction of the First-tier tribunal on an application under section 27A(1) or (3) of the Landlord and Tenant Act 1985 for a determination whether a service charge was or would be payable extended to determining the contractual and/or statutory legitimacy of a landlord's discretionary management decisions, such as what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants, it was not a part of the tribunal's task under section 27A(1) or (3) to make those discretionary decisions itself

33 …But that subsection did not avoid the power of the landlord to trigger and conduct that re-apportionment, because the jurisdiction of the FtT to review it for contractual and statutory legitimacy was not in any way impeded. The original question, whether there should be a re-apportionment and if so in what fractions, was not a __question__ for the FtT within the meaning of section 27A(6). The question for the FtT was whether the re-apportionment had been reasonable, and that question the FtT was able to, and did, answer in ruling on the tenants_ application under section 27A(1).

Discussion

75. Mr Modha submitted that the burden of proof is on Hyde to present a prima facie case that it has been overcharged and if it does not do so SYC must succeed. The tribunal is satisfied that an increase in the insurance rent payable by Hyde from 40.5% of the total insurance charges to 88.6% when applied to the uplifted part (which is the bulk of the total during the relevant years) does raise a prima facie case.

76. The first question for the tribunal to consider is what does the lease mean. Does it lay down a prescriptive method of apportioning the Insurance Rent or does it give the Landlord discretion over the apportionment so long as he acts fairly.

77. With reference to Arnold, what would a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean?

78. As the facts in this case illustrate, insurance premiums change according to the perceived risks which apply. The insured risks are set out in the lease and the relevant one in this case is fire. Insurance rent is defined as

"a fair proportion calculated with reference to floor areas attributable to the Premises of the cost to the Landlord of insuring the Building against the Insured Risks".

79. The tribunal agrees with the Applicant that the word "fair" must be given meaning and that its purpose is to allow the landlord to adjust the proportion if risks change. So for example if SYC were to undertake some activities in its part of the premises, or demolish part, which increase the premium which would otherwise be payable by Hyde one would expect them to object and seek adjustment of the proportion.

80. There is no suggestion in the evidence that Hyde are to blame for the presence of combustible cladding. Applying the 5th point in Arnold, the facts surrounding the Grenfell fire and issues with combustible cladding were not known at the time the lease was granted.

81. While commercial common sense should be used sparingly it would suggest that there needs to be some flexibility in the arrangements given the length of the lease and possible changes in circumstances.

82. Just as the word fair must be given meaning so must the phrase "with reference to floor areas attributable to the Premises…" The question is which comes first. Does the landlord have to act fairly or is he constrained by floor areas. It would be possible to recalculate the apportionment of the premium by reference to the areas of the 1st to 7th floors of phase 2 rather than the external surface area but that is not a calculation the tribunal is empowered to make under Williams v Aviva. This supported by the decision of Judge Cooke in the Upper Tribunal in Hawk Investment Properties [2023] UKUT 168 (LC)

"I bear closely in mind that it was not open to the FTT to impose its own conception of what would be the fairest method. Nor did it do so."

83. Does calculating by external surface area instead of floor area for the uplifted aspect make the decision of SYC unreasonable?

84. As Mr Modha pointed out, different landlords may adopt different approaches. He submits that SYC's apportionment is one which another reasonable landlord could have made. He relied on a passage from *Bradley v Abacus Land 4 [2025] EWCA Civ 1308*

"it was not a decision of the type where it could be said that no reasonable landlord in a similar position could ever have made it"

85. The tribunal is of the view that the apportionment adopted by SYC is one which another reasonable landlord could have made.

86. The tribunal accepts the evidence of the Applicant that the insurance premiums were the best they could be obtained in the market at the time and indeed no alternative figures are put forward on behalf of the Respondent.

87. The tribunal also accepts that splitting the increased premiums into a basic premium and an uplifted premium by reference to what had been paid previously is a reasonable approach to adopt in the circumstances.

88. The tribunal notes that the Respondent has paid 40.5% of the insurance premium demanded and in response to a question from the tribunal it emerged that the 40.5% paid is of the amount demanded and not of the actual premium and therefore represents an underpayment on the Respondents own case.

Conclusion

89. The tribunal is of the view that the split of the premium adopted by SYC of 40.5% of the basic cost of insuring the Building plus 88.6% of the uplifted cost of the Building represents a fair proportion of the cost of insuring the Building in accordance with the terms of the lease.

Application under s.20C and refund of fees

90. In the statement of case the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not make an order under s20C of the 1985 Act.

Name: A Harris **Date:** 4 March 2026

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).