FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/LSC/2024/0610**
Property	:	**Apartments 402 & 502 Beetham Tower, 111 Old Hall Street, Liverpool L3 9BD**
Applicant	:	**Wallace Estates Limited**
Representative	:	**Stevensons Solicitors**
Respondent	:	**Ross Smith (in absence)**
Representative	:	**N/A**
Type of Application	:	**Landlord and Tenant Act 1985 – s27A**
Tribunal Members	:	**Judge J Hadley** **Ms Jessica O'Hare MRICS**
Date and venue of Hearing	:	**3 February 2026** **Virtual hearing**
Date of Decision	:	**13 February 2026**

DECISION

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DECISION

1. **The Respondent is barred from taking further part in the proceedings pursuant to Rule 9 (3) (a).**

2. **In respect of the following service charge years, which each ended on 31 December of the relevant year, the Respondent is liable to pay service charges and insurance rent to the Applicant in the sums set out in the table below. For the avoidance of doubt, the insurance rent is part of the total service charge but has been separated out for ease of reference. The total sums due are £42,554.47 in relation to Flat 402, and £40,487.27 in relation to Flat 502.**

Year	Flat 402 Service Charges	Flat 502 Service Charges
2017	£199.86	£175.17
2018	£3,093.92	£3,022.54
2019	£3,055.91	£2,942.95
2020	£3,127.38	£3000.33
2021	£3,801.78	£3,664.65
2022	£4,117.22	£3,615.24
2023	£4,643.43	£4,045.98
2024	£4,599.84	£4,105.28
Total	**£26,639.34**	**£24,572.14**

Year	Flat 402 Insurance Rent	Flat 502 Insurance rent
2017		
2018	£809.74	£809.74
2019	£2,715.63	£2,715.63
2020	£1,993.53	£1,993.53
2021	£2,367.16	£2,367.16
2022	£2,696.62	£2,696.62
2023	£2,824.86	£2,824.86
2024	£2,507.59	£2,507.59
Total	**£15,915.13**	**£15,915.13**

3. **The Applicant's application for costs pursuant to Rule 13 (1) (b) is dismissed.**

REASONS

Background

1. The Tribunal has received an application under Section 27A of the Landlord and Tenant Act 1985 for a determination regarding whether certain unpaid service charges are payable by the Respondent to the Applicant under his leases of Apartments 402 & 502, Beetham Tower, 111 Old Hall Street, Liverpool L3 9BD, respectively ("Flat 402" and "Flat 502", together "the Flats).

2. The Applicant provided a breakdown of the unpaid service charges which it said were due and payable by the Applicant in relation to the Flats. This included general service charges and insurance rent. A breakdown of these charges is shown in the tables below. The total sums due are £42,554.47 in relation to Flat 402, and £40,487.27 in relation to Flat 502.

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3. The Applicant in these proceedings is Wallace Estates Limited, the freehold owner of the building known as Beetham Tower ("the Building"). The Applicant also owns a long leasehold interest in the

Building which it holds under a lease dated 30 January 2004 and made between (1) Beetham Landmark Limited and (2) Beetham Tower Limited ("the Head Lease"). The Applicant is the Respondent's direct landlord and superior landlord.

4. The Respondent is Mr Ross Smith. The Respondent owns long leasehold interests in the Flats which he holds under two leases both dated 24 March 2004 and made between Beetham Tower Limited (1) and the Respondent (2) ("the Leases"). The Leases are in the same terms.

5. The Tribunal did not inspect the Building, but we understand it to comprise a tower of residential apartments which is connected to a hotel at its base. It is a well-known landmark in Liverpool.

6. The Tribunal has seen copies of proceedings which were previously issued by the Applicant in the County Court for the recovery of unpaid rent, insurance charge, and interest. Those proceedings were issued in 2021 against the owner of the hotel situated at the base of the Building, as well as the Respondent and another leaseholder. The Respondent submitted a defence disputing the charges ("the Defence"). The County Court stayed the proceedings against the Respondent and directed that the proceedings against the Respondent should be transferred to the Tribunal for determination. For unknown reasons, the case was never transferred and so the Applicants brought this application.

7. On 1st October 2025, the Tribunal issued Directions to the parties for the preparation of statements of case ("the Directions"). The Respondent's statement of case was to be sent to the Applicant within 21 days of receipt of the Applicant's financial information. The Directions contained a warning that:

   "*If the Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.*"

8. Whilst the Respondent acknowledged receipt of documents from the Applicant's solicitors by letter dated 4 December 2025, the Respondent failed to submit his statement of case in compliance with the Directions. As a result, on 23 January 2026, the Tribunal sent a proposal to bar the Respondent from the proceedings and to convert the hearing to a video hearing ("the Proposal to Bar") and invited the Respondent to make any representations on that proposal by 5pm on 30 January 2026. The Proposal to Bar expressly warned the Respondent that:

   "*If the Respondent is barred from participation, then the Tribunal Panel hearing the matter will endeavour to reach a determination on the contested service charges based on the evidence available to it*

(including, if needed, inviting subsequent written submissions which may assist in reaching its determination)."

However, no representations were received from the Respondent in response to the Proposal to Bar.

9. In the absence of any objections from the Respondent, the hearing was converted to a video hearing and notice of such was provided to both parties.

The hearing and preliminary issue

10. Representing the Applicant at the hearing was Ms Hannah Payne of Stevensons Solicitors. Also in attendance was Julie Ward and Megan Stevens both of Berkeley Shaw Real Estate Limited (the Applicant's managing agents, previously named Keppie Massie Residential Limited) and Marcia Berry of Albanwise Insurance Services Limited (the Applicant's inhouse insurance brokers).

11. The Respondent did not attend the hearing. At 9.10 am on the morning of the hearing, Mr Andy Smith, the Respondent's son, sent an email to the Tribunal stating:

    "I refer to your email sent to my Father Mr Ross Smith in relation to a notification of a video meeting this morning at 10am. Unfortunately Mr Smith who is age 82 is quite unwell and unable to participate and sends his apologies".

12. That email was the first time the Respondent (or someone on behalf of the Respondent) had contacted the Tribunal to notify it that he would not attend the hearing. Prior to that, the Respondent had not engaged with the Tribunal, had failed to comply with the Directions and did not respond to the Proposal to Bar. The Tribunal is confident that the Respondent is aware of the proceedings and has been receiving communications because (in addition to the fact that an email has been sent from his son in relation to the same) the Respondent is communicating with the Tribunal in relation to other (separate) cases using the same email address. Furthermore, the Tribunal has seen letters from the Respondent dated 4 December 2025 addressed to the Applicant's solicitors and to Albanwise Insurance Services Ltd which acknowledged receipt of the Applicant's documents and refer to a hearing in February 2026.

13. Whilst recognising that Mr Andy Smith has stated that the Respondent is age 82 and is unwell, no medical evidence was provided nor further details to substantiate that claim. Furthermore, that does not explain why the Respondent, who owns a number of properties, has been able to participate in relation to other cases with the Tribunal but has not engaged with this case at all. The Respondent has had many opportunities to contact the Tribunal to explain his position and ask for

more time if required but has chosen not to do so. In particular, the Respondent was served with the Proposal to Bar and chose not to respond.

14. Considering the above, the Tribunal determined, at the outset of the hearing, to bar the Respondent from taking further part in the proceedings pursuant to Rule 9 (3) (a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") on the basis that the Applicant failed to comply with the Directions and to respond to the Proposal to Bar and has failed to engage with the Tribunal in relation to the proceedings at all before the email sent by his son less than an hour before the start of the hearing.

15. It was confirmed at the start of the hearing that the relevant service charge years to be considered were from 2017 to 2024 (the Tribunal having declined an earlier request by the Applicant to extend the application to include later years).

16. The Tribunal considered all the evidence submitted by the Applicants including the written witness evidence of Ms Ward, Ms Stevens, and Ms Berry. The Tribunal also heard brief oral evidence from Ms Berry.

17. In the main, the Respondent had not made out any prime facie case for the Applicant to answer. However, whilst the Respondent had not submitted any evidence or allegations in relation to this application, the Tribunal had seen the Defence submitted in relation to the previous County Court proceedings which raised some specific issues in relation to the insurance charges being levied. Therefore, Tribunal considered it was prudent and reasonable to address those points specifically. In the absence of any evidence from the Respondent, the Tribunal was tasked with reaching a determination based upon the evidence submitted by the Applicants alone.

18. The decision below deals, first, with the general question of whether the service charges (excluding the insurance charges) are payable and then goes on to address the question of whether the insurance charges (which are part of the service charges but are dealt with separately for the reason set out above) are payable.

Law

19. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

> *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-*
> *(a) the person by whom it is payable,*
> *(b) the person to whom it is payable,*

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

20. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

21. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

> *... an amount payable by a tenant of a dwelling as part of or in addition to the rent–*
> *(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
> *(b) the whole or part of which varies or may vary according to the relevant costs.*

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

> *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*

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

> *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

The Leases

24. The key provisions in the Leases are

Clause 2.3 which states that the Insurance Rent is payable by the Tenant to the Landlord "*on demand*". The Insurance Rent is defined as "*the Tenant's proportion of the annual sum or sums payable from time to time by the Landlord in procuring or effecting and maintaining insurance pursuant to the Landlord's insurance covenants in this Lease...*"

Clause 2.4 which states that the Service Charge is payable by the Tenant to the Landlord in accordance with the provisions of the Fourth Schedule.

Clause 3.1 in which the Tenant covenants to pay the Landlord the Rents (which includes the Service Charge and the Insurance Rent) "*during the Term on the days and in the matter provided by this Lease*".

Clause 5.2 in which the Landlord covenants to comply with the Landlord's obligations set out in the Fourth Schedule hereto.

Clause 5.6 in which the Landlord covenants to observe and perform the tenant's covenants contained in the Head Lease.

Clause 5.7 which says, "*in the event of the Superior Landlord failing to comply with its covenant in clause 7.3 (a) of the Head Lease to insure the Estate in accordance with the provisions of clause 7.3 (g) of the Head Lease*."

The Fourth Schedule which sets out the provisions in relation to the calculation of the service charge including the Tenant's Proportion of the Service Charge, as well as the services which the Landlord is obliged to provide, and for the payment of the Service Charge including that "*Interim Payments shall be due and payable on 1 January, 1 April, 1 July and 1 October in each year in advance*"

25. The key provisions in the Head Lease are:

Clause 7.3. (a) by which the superior landlord covenanted to "*keep the Estate…insured with an insurance office or underwriters of repute and through any professional agency including the Landlord's as decided from time to time by the Landlord acting reasonably…in the joint names of the Landlord and the Tenant and other parties having an interest in the Retained Property (and with the interest of any undertenants of all parts of the Property and all mortgagees of whom the Landlord is notified noted on the policy or policies) against the Insured Risks…*"

Clause 6.2 in which the Landlord covenanted to pay within 21 days of receipt of written demand the Insurance Charge.

26. The Tribunal is satisfied that the amounts payable under the relevant provisions of the Lease, whether they are called service charges or insurance rent or insurance charges, are "service charges" for the purposes of the 1985 Act.

27. The Tribunal is also satisfied that the Leases contain an obligation on the part of the Landlord to repair and provide other services to the Building and there is a corresponding obligation on the part of the Respondent,

as tenant, to reimburse the Landlord for a proportion of the costs of doing so.

28. In terms of the insurance, the principal obligation to insure the Building is on the superior landlord (under the Head Lease). Whilst there is an obligation under the Head Lease for the tenant of that lease (the landlord in the Leases) to pay the Insurance Charge, there is a corresponding obligation on the tenant under the Leases to effectively reimburse the Insurance Rent "on demand". Furthermore, the insurance obligation on the superior landlord is mirrored in the Leases in that, if the superior landlord fails to comply with its obligation to insure the Building, the landlord under the Leases is obliged to comply with the same covenant. Here, the superior landlord and the landlord are the same entity, the Applicant. Therefore, it makes no practical difference under which covenant the Applicant insured the Building. The result is that the Applicant is obliged to insure the Building and the Respondent, as tenant, is obliged to pay a proportion of the cost of doing so.

Determination

General service charges

29. The Applicant has provided copies of all the service charge demands sent to the Respondent in relation to the above charges. These were sent by the Applicant's managing agent, Keppie Massie Residential Limited (now known as Berkeley Shaw Real Estate Limited), save for the demands for insurance rent which were sent directly by the insurance brokers, Albanwise Insurance Services Limited (previously known as Cox Braithwaite). Whilst the Respondent has not raised any specific challenges in relation to the validity of the service charge demands (save that the Respondent appears to take issue, in his Defence, with the fact they have not been sent by the Applicant directly), the Tribunal is satisfied that the Applicant has demonstrated that they have complied with the legal requirements. In particular:

    29.1 They appear to comply with the requirements of the Lease;
    29.2 They have been sent by the managing agents and the insurance brokers acting on behalf of the Applicant and there is nothing preventing such an approach. The Respondent is mistaken if he believes such demands need to come from the Applicant directly;
    29.3 They include the name and address of the landlord in compliance with s 47 of the Landlord and Tenant Act 1987;
    29.4 Ms Stevens confirmed in her witness evidence that a Summary of Tenants' Rights & Obligations was sent out with every demand from the managing agents in compliance with s 21B of the Landlord and Tenant act 1985, and Ms Berry confirmed in oral evidence that a Summary of Tenants' Rights & Obligations was sent out with every demand from the insurance brokers.

30. The Applicant has provided a breakdown of service charge expenditure for each year. The Tribunal notes that the Applicant's witness evidence confirms that none of the service charges relate to cladding remediation work undertaken at the Building which was separately funded.

31. The proportion of the service charge allocated to the Respondent for each of the relevant years is as set out in the table below and is based upon square footage as required by the Lease.

	Flat 402	**Flat 502**
Apartments charges	0.90230%	0.90230%
Car Park charges	1.47000%	1.47000%
Air Conditioning charges	0.99010%	0.99010%
Waking Watch charges	0.90230%	0.90230%
Insurance Rent (2018)	0.526%	0.526%
Insurance Rent (2019 – 2024)	0.527%	0.527%

32. The Respondent has not raised any specific challenges as to the amount of the charges nor to the proportion allocated to the Respondent nor to standard of the underlying services provided. In the absence of any such submissions from the Respondent disputing the payability and / or reasonableness of that expenditure, based upon such information as has been provided by the Applicant, the Tribunal is satisfied that the Applicant has demonstrated that the services changes were properly incurred and are reasonable in the circumstances. We therefore determine the expenditure to be reasonable and the service charges to be payable as claimed by the Applicant.

Specific issues raised in the Defence in relation to insurance.

33. As stated above, whilst the Respondent did not raise any specific issues during these proceedings, his Defence did raise some specific concerns in relation to the insurance. The Tribunal considered the issues raised therein (not already dealt with above) for completeness. The issues raised by the Respondent in the Defence can broadly be summarised as whether the Applicant has proven payment of the insurance, whether the insurance costs are unreasonable in amount and unreasonably incurred particularly as a result of the Applicant's approach to cladding remediation work undertaken at the Building, that the Applicant has failed to use its reasonable endeavours to obtain insurance at competitive rates and that the commissions are unreasonable in amount and not recoverable because the broker is part of the same group of companies as the Applicant.

34. Ms Berry's witness statements addresses these points. It sets out details in relation to the insurance acquired by the Applicant and the insurance renewal process. The renewal of the insurance for the Building is based upon the broker's standard Property Owners All Risks policy. Ms Berry

explained the difficulties which arose after the Grenfell disaster in terms of insuring the Building and how and why this was resolved on a co-insured basis involving more than one insurer via an international broker, Marsh (and, later, Howdens) and how the cladding remediation works impacted the insurance whilst it was being undertaken, leading to an increase in the premiums. Ms Berry also explained that the brokers receive a commission for placing the insurance policy (not the Applicants) and set out the amount of those commissions. Ms Berry exhibited to her statement copies of the insurance policies for each year.

35. In the absence of any further submissions from the Respondent, the Tribunal is satisfied that the Applicant has adequately addressed the issues raised in the Defence in relation to the insurance. The Applicant has proven payment of the insurance premiums each year, has provided a reasonable explanation for the renewal process including how difficulties faced were resolved and, therefore, the amount of those premiums, and has also provided a reasonable explanation of the commission charged. The fact that the commission was paid to a broker company which is related to the Applicant company does not prevent a commission being recoverable. The Respondent has not provided any comparable evidence to challenge the amount or recoverability of the insurance charges including the commission. The Tribunal is satisfied that the Applicant has demonstrated that the insurance changes were incurred and are reasonable in the circumstances. We therefore determine the expenditure to be reasonable and the insurance charges (which make up the total service charges) to be payable as claimed by the Applicant.

Costs

36. At the end of the hearing, the Applicant's representative made an oral application for costs pursuant to Rule 13 (1) (b) on the basis that they said the Respondent had acted unreasonably in defending the proceedings. After the hearing, the Applicant submitted written submissions in relation to the same dated 5 February 2026 which the Tribunal has also considered.

37. The Tribunal is usually a no costs forum and the threshold for this test is high. An award of costs is exceptional; being wrong, misguided, or unsuccessful is not enough. There must be conduct which permits of no reasonable explanation.

38. The Tribunal considers that it is not so unusual for a tenant in a case such as this, where they contest their service charge, to opt not to engage but rather to let the proceedings run their course and for the Tribunal to make its determination. The Respondent has already been sanctioned for failing to comply with Directions. Whilst the Tribunal notes that there are significant unpaid service charges spanning a considerable number of years and that the Respondent has been unsuccessful, those facts do not push the conduct over the threshold required. Neither do any of the points set out in the Applicant's letter of 5 February 2026.

39. It is also apparent to the Tribunal that, whilst the Respondent did not engage with these proceedings, he did apparently instruct a lawyer to draft his Defence in relation to the County Court proceedings. The Tribunal considers that it is possible that the Respondent mistakenly believed that he did not need to do anything else in respect of these proceedings but merely relied upon that Defence.

40. Considering the above, the Tribunal finds that the Respondent did not act unreasonably in defending the proceedings such that it would justify a costs order under Rule 13 (1) (b) and, therefore, dismisses the application for costs.

41. The Applicant has secured a determination in its favour and will now be able to enforce it in the County Court in which forum it will be able to make arguments in relation to costs.

Signed: J. Hadley
Judge of the First-tier Tribunal
Date: 13 February 2026

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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