FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2025/0813**
Property	:	**103 Earls Court Road, London W8 6QH**
Applicants	:	**Kirpal Nandra and Dinah McLeod**
Representative	:	**In person**
Respondents	:	**Dalilah Dabbs (leaseholder of Flat 3) and Seema Ahmed (leaseholder of Flat 5)**
Representative	:	**In person**
Type of Application	:	**For a service charge determination pursuant to Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge P Korn** **Judge L Hussein-Venn** **Mr S Johnson MRICS**
Date of hearing	:	**5 March 2026**
Date of decision	:	**24 March 2026**

DECISION

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Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

(1) The bank charges are not payable in any of the service charge years.

(2) The other service charge items specifically disputed by the Respondents are payable in full.

(3) All other service charge items for the years 2021/22 to 2024/25 inclusive are payable in full.

Introduction

1. The Applicants are the Respondents' joint landlord. Ms Dabbs ("**the First Respondent**") is the leaseholder of Flat 3 and Ms Ahmed ("**the Second Respondent**") is the leaseholder of Flat 5.

2. The Applicants seek a determination pursuant to section 27A of the 1985 Act that the service charges levied by them on the Respondents for the years 2021/22 to 2024/25 inclusive were reasonably incurred and are payable in full.

3. The Property is a terraced house converted into 5 flats plus some common parts. The lease of Flat 3 is dated 9 March 1990 and the lease of Flat 5 is dated 5 October 1990. It was common ground between the parties that the two leases are in an identical form for all relevant purposes.

4. The Applicants and the Respondents were all present at the hearing. Also in attendance were Monika Kiddie and James Harrington of Congreve Horner, the Applicants' managing agents, and both had given written witness statements.

Debarring application

5. At the start of the hearing the Applicants applied for a debarring order in respect of the Respondents' bundle submitted on 23 February 2026. This was a renewal of a debarring application which had not been addressed earlier by the tribunal for administrative reasons caused by exceptional pressure on the tribunal's resources.

6. Mr Nandra said that the tribunal's directions had required a series of steps to be taken by specific dates. A long time after all of the deadlines had passed the Respondents sought to introduce new material in the form of a new bundle. The new material raised new issues and it was in

his submission not fair on the Applicants to be expected to deal with those new issues and/or with any other new material in these circumstances.

7. In response, Ms Dabbs said that the material was clearly relevant to the case, and the Respondents' further bundle was simply in response to the Applicants' reply to their original statement of case.

8. The tribunal asked both parties questions on their respective positions and then adjourned to make a decision on this procedural issue. After the adjournment the tribunal notified the parties of its decision on the debarring application. The tribunal said that the directions were perfectly clear and did not permit a further response by the Respondents. The time for providing written evidence was when making their statement of case, and it was their responsibility to have put together a full statement of case. Not only were the Respondents not entitled to introduce new evidence, but it would be unfairly prejudicial to the Applicants to permit them to do so that close to the hearing.

9. Accordingly, the tribunal granted the Applicants' request and ordered that the Respondents' bundle submitted on 23 February 2026 be **excluded** pursuant to paragraph 18(6)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The issues in dispute

10. A case management hearing was held on 19 November 2025. That date had been set as the final hearing date, but for the reasons set out in the directions dated 19 November 2025 (and subsequently amended on 21 January 2026) the case was not ready to proceed on that date. Those directions set out, amongst other things, a list of the issues in dispute and these are set out below:

For all the Service Charge Years in dispute (2021/22 to 2024/25 inclusive)

(i) Repairs and maintenance (reasonableness of cost only)

(ii) Cleaning (whether the works are within the landlord's obligations under the lease, whether the cost of works are payable by the leaseholder under the lease and whether the costs are reasonable)

(iii) Pest control (payability and reasonableness)

(iv) Managing agent's fees (reasonableness only)

(v) Surveying fees (payability and reasonableness)

(vi) Bank charges (payability only)

(vii) The possibility of set-off due to historic neglect and financial loss caused by disrepair.

For the Service Charge Year 2022/23

Building insurance (reasonableness only)

For the Service Charge Year 2023/24

Accountancy fee (reasonableness only)

For the Service Charge Year 2024/25

(i) Major works: Damp proofing (whether the landlord complied with the consultation requirement under section 20 of the 1985 Act "consultation" and whether the costs were reasonable)

(ii) Major works: external decorations and roof (consultation and reasonableness).

Agreed points

11. During the course of the hearing the Respondents said that they were no longer disputing (a) the cleaning charges or (b) the pest control charges.

Introductory points by Applicants

12. The Applicants state that the Respondents have consistently failed to make their service charge payments and have been in arrears in every year since at least 1 April 2021. This, they state, has resulted in severe difficulties in managing the Property and has depleted the service charge fund while preventing essential major works from proceeding. The Respondents' arrears as of 1 April 2025 were £20,680.09 for the First Respondent and £26,647.18 for the Second Respondent.

13. The Applicants also state that the Respondents' comments consist of, in the main, a list of purported "Tribunal Benchmarks" for costs. These were provided without any source or reference, and the Applicants have been unable to verify their origin. The Respondents have also supplied a long list of names of potential alternative service providers with associated cost numbers for the various service charge items. These

costs, the Applicants say, are also unevidenced and the Applicants suggest that they are likely to have been fabricated by AI tools. The Respondents also offer approximately 20 legal citations, the vast majority of which cannot be identified by the Applicants from standard sources or in their submission are not relevant to the issue of payability or reasonableness of the service charges for the Property. The Applicants also note that the directions warn explicitly against the citation of irrelevant legal authorities. They add that, with one exception, the Respondents have provided no verifiable alternative quotation or estimate for any service charge item, nor have they provided any evidence of value to assess the reasonableness of any service charge item. The exception is that they have obtained alternative estimates for management fees, but in the Applicants' view these quotes support the reasonableness of the charges levied by the existing managing agent.

Overarching submission by Respondents

14. In written submissions the Respondents state that the burden of proof lies upon the Applicants to establish that each disputed charge was reasonably incurred and reasonable in amount.

THE OUTSTANDING ISSUES

Repairs and maintenance

Respondents' case

15. The Respondents state that these charges are not reasonable because the Property has suffered recurring roof/water ingress issues over a prolonged period and that the Applicants' approach has repeatedly relied on interim/temporary works rather than durable remediation. They add that there has been repeated expenditure on the same defective roof element across multiple years.

16. In their 'Scott' schedule the Respondents state *"Benchmark: £425 - £595 / Flat. Slightly high. Astberrys £550. Westleigh v Bryant FTT 2022"*. They have subsequently also stated the following in relation to possible alternative providers: *Astberrys (£95–£120/hr; £450–£650/year), Aspect (£90–£110/hr), Pimlico (£110– £125/hr), Henderson & Taylor (£400– £600/year), FixFlo (£80–£100/hr), MyBuilder (£350–£700 jobs).* These comments in relation to alternative providers has then been slightly expanded on in a submission headed "Expanded Tenant's Comments".

Applicants’ case

17. The Applicants rely on the opinion of their surveyors and their experience in judging the cost and reasonableness of repairs and maintenance charges for this building. Actual costs are based on the needs of the building, as identified and overseen by the surveyors, who engage reputable contractors known to them for their reliability, work quality and cost reasonableness. The Property has particular issues which increase the need for, and costs of, maintenance (see pages 252-255 of the hearing bundle).

Other point to note

18. Although they were not referred to in detail at the hearing, it is worth noting that the hearing bundle contains over 40 pages of copy invoices relating to repairs and maintenance.

Managing agent’s fees

Respondents’ case

19. The Respondents note the Applicants’ contention that the managing agent’s fees increased due to the additional burden caused by the Respondents’ alleged obstruction, but the Respondents dispute that this justifies increasing fees, particularly where the underlying driver of correspondence was – in the Respondents’ submission – recurring defects and lack of durable repair. Legitimate scrutiny of costs and consultation does not of itself make increased charges reasonable.

20. The Respondents have obtained an alternative quotation obtained from Brompton Block Management of £2,250 including VAT which they state is materially lower than the Applicants’ managing agent’s fees. They add that there is no evidence of competitive tendering for managing agent services on the Applicants’ part during the relevant years.

21. In their ‘Scott’ schedule the Respondents state *“Benchmark: £234 - £425 / Flat. Excessive. Hoffen West / Bawtrys £275 - £500. Daejan v Benson FTT 2017”*. They have subsequently also stated the following in relation to possible alternative providers: *Hoffen West (£350–£450), Bawtrys (£300– £420), Haus (£325–£480), Ringley (£350– £500), Foster & Co (£300–£450), Portico (£320–£450).* These comments in relation to alternative providers have then been slightly expanded on in a submission headed “Expanded Tenant’s Comments”.

Applicants' case

22. The Applicants state that the managing agent's fees range from £3,000 to £5,535 including VAT (see pages 37-45 of the hearing bundle), which is either within or below the range of £4,500 to £6,000 quoted by three of the four alternative providers contacted by the Respondents. The Respondents' own evidence therefore supports the reasonableness of the managing agent's fees. The Respondents have also obtained a quotation from Brompton Block Management of £2,250 including VAT, which is much lower than all other providers. The Applicants comment that it is unclear what services this company would provide for this fee, and in their e-mail exchange they have requested a further discussion with the Respondents to clarify this. The Respondents have not provided details of their reply.

23. The Applicants also make the point that the providers approached will not be aware of the difficulties and associated additional management time that have been caused by the Respondents' failure to pay and what the Applicants characterise as their obstructive behaviour (see pages 244-255 of the hearing bundle).

Surveying fees

Respondents' case

24. The Respondents' position is that there were repeated inspections and misdiagnoses without resolution of the water ingress issues.

25. In their 'Scott' schedule the Respondents state *"Benchmark: £170 - £340 / Flat. Excessive. SurveyMatch / Level 3 survey. Timothy Taylor Ltd v Mayfair House Corp [2016] EWHC 1075 (Ch)"*. They have subsequently also stated the following in relation to possible alternative providers: *SurveyMatch (£950–£1,400), RightSurveyors (£900–£1,600), Peter Barry (£900–£1,300), Arnold & Baldwin (£1,000–£1,600), Jasper (£250–£350).* These comments in relation to alternative providers has then been slightly expanded on in a submission headed "Expanded Tenant's Comments".

Applicants' case

26. The Applicants state that Congreve Horner's rates for surveying are £200 + VAT per hour for a Building Surveyor and £230 + VAT per hour for a Partner (see pages 152-176 and 252 of the hearing bundle). Two comparable firms have quoted £205 per hour and £250 per hour respectively (see pages 339-342 of the hearing bundle), which shows that Congreve Horner's hourly charges are reasonable. Their charges correspond to actual hours spent on surveying work required for the Property (see pages 252-255 of the hearing bundle).

Bank charges

Respondents' case

27. The Respondents question the contractual basis for liability for these charges under their leases.

Applicants' case

28. The Applicants note that only payability is in dispute. They add that banking services are provided by HSBC who apply their standard charges.

Discussion at hearing

29. At the hearing Mr Nandra said that he felt that bank charges were a reasonable part of management and therefore should be recoverable under the leases.

Set-off

Respondents' case

30. In written submissions the Second Respondent states that she relies upon equitable set-off in respect of quantified losses arising from repeated water ingress attributable – she states – to the Applicants' failure to repair.

Applicants' case

31. The Applicants state that the Respondents have not provided any actual arguments to support their set-off claim.

Building insurance (2022/23 only)

Respondents' case

32. The Respondents dispute the Applicants' assertion that insurance cost increases are primarily attributable to the Second Respondent having made a claim and having sublet to students. Her claim arose from roof/structural water ingress, and had the roof been properly maintained the need to claim would not have arisen. Furthermore, the claim referred to relates to a 2022 leak that was repaired in 2023 and does not in the Respondents' submission justify treating Flat 5 as a continuing driver of premium increases.

33. As regards the subletting, the Second Respondent was only informed in August 2024 that student occupancy affected insurance, and she then acted promptly by serving notice on the students who then vacated.

34. In their 'Scott' schedule the Respondents state *"Benchmark: £765 - £1,020 / Flat. Excessive. Aviva / Hiscox £765 - £1,020. London & Quadrant v Reeve FTT 2019"*. They have subsequently also stated the following in relation to possible alternative providers: *Aviva (£4,800– £6,200), Hiscox (£5,200– £6,900), NFU Mutual (£4,500–£5,800), Zurich (£5,000–£6,200), Gallagher (£4,800– £6,000), Deacon (£4,900–£6,500)*. These comments in relation to alternative providers has then been slightly expanded on in a submission headed "Expanded Tenant's Comments".

Applicants' case

35. The Applicants state that, contrary to the Respondents' claim that competitive quotations were not sought by the Applicants, their appointed insurance broker St Giles approached 10 insurers (see pages 336-338 of the hearing bundle). Of these, 8 declined to quote. Costs increased significantly, primarily due to (a) an open claim by the Second Respondent relating to water ingress from the roof terrace above her flat and (b) her subletting to students, which attracted additional fees exceeding £1,400 per year (see pages 239-242 of the hearing bundle). The cheaper of the two quotes received (from Faversham) was selected.

Discussion at hearing

36. At the hearing Mr Nandra referred the tribunal to the email correspondence in the hearing bundle between the Applicants' insurance broker and Ms Kiddie regarding the impact on insurance premiums of having students in one or more of the flats.

Accountancy fee (2023/24)

Respondents' case

37. The Respondents dispute the reasonableness and transparency of accountancy costs. The claimed figure of £3,372 also appears to them inconsistent with disclosed figures showing only £2,215 paid. The Applicants' explanation that costs were apportioned across prior years on an accrual basis does not in the Respondents' submission address the discrepancy between the actual expenditure and the total claimed.

38. In their 'Scott' schedule the Respondents state *"Benchmark: £350 - £640 / Flat. Claimed fee unusually high. Glazers / Ringley £510 - £640/year. Ringley v Taylor FTT 2019"*. They have subsequently also

stated the following in relation to possible alternative providers: *Glazers (£510–£640), Ringley (£550–£650), Haines Watts (£450–£650), Fisher Michael (£350–£550), Streets PCC (£400–£600), LeaseholdToday (£475–£600).* These comments in relation to alternative providers has then been slightly expanded on in a submission headed "Expanded Tenant's Comments".

Applicants' case

39. The Applicants state that the fees for preparation of the annual accounts by Michaelides Warner for 2023/24 were £600 +VAT and that comparable firms in the Property's managing agent's portfolio charge between £800 and £1,035 per year + VAT for preparation of the annual service charge accounts. In 2023/24, additional accountancy fees were incurred related to specific additional accountancy items as shown on the invoice at pages 55-56 of the hearing bundle. In this year, accounts were also prepared for the three previous years (2020/21, 2021/22 and 2022/23) and the costs were apportioned back to those service charge years on an accrual basis. There was no double charging, as confirmed by the invoices, accounts and bank records.

Discussion at hearing

40. At the hearing Mr Nandra said that the extra charge in 2023/24 was for an analysis of the sinking fund and of existing arrears and he referred the tribunal to the relevant invoice.

Major works – damp proofing (2024/25)

Respondents' case

41. The Respondents dispute that the statutory consultation requirements were complied with in a transparent and non-prejudicial manner. The Respondents' case is that the consultation approach, including the way distinct workstreams were presented and later handled, limited meaningful engagement and the ability of leaseholders to comment effectively on scope, priority, and contractor nomination.

42. The Respondents also dispute that the costs are reasonable, seemingly for the same reasons advanced in relation to the works relating to external decorations and the roof (see later).

43. In their 'Scott' schedule the Respondents state *"Benchmark: £2,500 - £3,500 / Flat. Annex H. Daejan v Benson FTT 2017"*.

Applicants' case

44. The Applicants deny that the scope of works changed compared to the Stage 1 notice and state that the Respondents have not explained or substantiated their claims that it did change. Following, and in response to, the leaseholder consultation process, the work was prioritised and staged, with the damp-proofing work being tendered for and performed first. Thereafter, the external renovations and roof works were tendered for but have not been performed due to non-payment by the Respondents.

45. Two separate consultation and contractor-nomination periods were allowed for, the first expiring more than 30 days after service of the Stage 1 notice on 3 July 2023 (see pages 248-249 of the hearing bundle). A further nomination and consultation period for the external renovations and roof works (see pages 615-616 of the hearing bundle) was offered, expiring on 5 June 2024, during which a contractor nomination from Flat 3 was accepted almost one year after the original Stage 1 notice. Leaseholders were therefore offered more opportunities and time for comment and contractor nomination than strictly necessary.

46. The Respondents' claims regarding their consultation and nomination opportunities are flatly contradicted by the evidence presented by the Applicants, including the consultation notices, tenders and tender analyses (see pages 423-468 of the hearing bundle), extensive correspondence between Congreve Horner and the leaseholders during the consultation periods and thereafter (see e.g. pages 469-521 of the hearing bundle), plus the fact that leaseholder-nominated contractors (including Flat 3's nominated contractor) were approached to tender and that Flat 1's nominated contractor was eventually chosen for the damp-proofing works.

47. The Applicants add that, while they are obliged to consider leaseholder comments, they are not required to follow the suggestions of individual leaseholders. For example, both Respondents claimed during the process that the building was in good condition and did not need external renovation (see pages 471, 482, 620 of the hearing bundle), but this claim is contradicted by the expert opinion of the Applicants' surveyors and by the obviously poor state of the building (see the photographs on pages 217-227 of the hearing bundle, which were provided to the Respondents in October 2024).

48. As regards the reasonableness of the costs, rigorous tendering processes were employed throughout. Three quotes were obtained and a detailed tender analysis performed (see pages 435-468 of the hearing bundle). The cheapest qualified tender was chosen in each case. The Respondents' claimed benchmarks for the major works are

unevidenced, and the Applicants state that they appear to be fabricated. They also bear no relation to the work actually tendered for.

Major works – external decorations and roof (2024/25)

Respondents' case

49. The Respondents also dispute consultation compliance for the external decorations and roof works. They state that the scope of the works changed and that the consultation process (including sequencing, presentation and subsequent handling of elements of the works) was not conducted in a way that enabled proper consultation on necessity, prioritisation, and affordability and that leaseholder objections were not meaningfully addressed. The Respondents note that the test is whether relevant financial prejudice arose, and they submit that prejudice is evidenced by the inability to obtain competitive alternative pricing for the revised works and by the cumulative financial exposure imposed.

50. The Respondents dispute that the costs are reasonable and consider that earlier durable remediation of roof/water ingress issues would have reduced deterioration and cost escalation. They also question whether alternatives (including staged works and prioritisation of urgent elements) were properly evaluated and costed, and whether the Applicants' decision-making was reasonable in the light of the financial impact on leaseholders and the building's repair history.

51. In their 'Scott' schedule the Respondents state *"Benchmark: £16,000 - £20,000 / Flat. Annex H. Timothy Taylor Ltd v Mayfair House Corp [2016]"*.

Applicants' case

52. The Applicants deny that the scope of works changed compared to the Stage 1 notice and state that the Respondents have not explained or substantiated their claims that it did change. Following, and in response to, the leaseholder consultation process, the work was prioritised and staged, with the damp-proofing work being tendered for and performed first. Thereafter, the external renovations and roof works were tendered for but have not been performed due to non-payment by the Respondents.

53. Two separate consultation and contractor-nomination periods were allowed for, the first expiring more than 30 days after service of the Stage 1 notice on 3 July 2023 (see pages 248-249 of the hearing bundle). A further nomination and consultation period for the external renovations and roof works (see pages 615-616 of the hearing bundle) was offered, expiring on 5 June 2024, during which a contractor

nomination from Flat 3 was accepted almost one year after the original Stage 1 notice. Leaseholders were therefore offered more opportunities and time for comment and contractor nomination than strictly necessary.

54. The Respondents' claims regarding their consultation and nomination opportunities are – state the Applicants – flatly contradicted by the evidence presented by the Applicants themselves, including the consultation notices, tenders and tender analyses (see pages 423-468 of the hearing bundle), extensive correspondence between Congreve Horner and the leaseholders during the consultation periods and thereafter (see e.g. pages 469-521 of the hearing bundle), plus the fact that leaseholder-nominated contractors (including Flat 3's nominated contractor) were approached to tender and that Flat 1's nominated contractor was eventually chosen for the damp-proofing works.

55. The Applicants add that, while they are obliged to consider leaseholder comments, they are not required to follow the suggestions of individual leaseholders. For example, both Respondents claimed during the process that the building was in good condition and did not need external renovation (see pages 471, 482, 620 of the hearing bundle), but this claim is contradicted by the expert opinion of the Applicants' surveyors and by the obviously poor state of the building (see the photographs on pages 217-227 of the hearing bundle, which were provided to the Respondents in October 2024).

56. As regards the reasonableness of the costs, rigorous tendering processes were employed throughout. Three quotes were obtained and a detailed tender analysis performed (see pages 435-468 of the hearing bundle). The cheapest qualified tender was chosen in each case. The Respondents' claimed benchmarks for the major works are unevidenced, and the Applicants state that they appear to be fabricated. They also bear no relation to the work actually tendered for.

Discussion at hearing

57. At the hearing the Applicants said that due to the lack of rear or side access, and in order to undertake works to the rear of the Property, scaffolding first had to be erected to the front in order to allow access over the roof to erect scaffolding at the rear. This limitation on access made it more cost effective to do the external works in one go, rather than splitting the works into separate packages front and rear as proposed by the Respondents.

Witness evidence

Monika Kiddie

58. Ms Kiddie is a property manager at Congreve Horner, the Applicants' managing agent. She has worked in residential property management for 15 years but has only been responsible for the management of the Property since January 2023.

59. In her witness statement she sets out her responsibilities and how service providers and contractors are chosen. She states that the Property is a large Victorian terraced house located in central London on an extremely busy double red route with no nearby parking, a bus stop directly in front, and no side or rear access. These factors, she states, result in relatively higher costs for services compared to other buildings, and many providers simply prefer not to offer services in such an environment. Nevertheless, due to Congreve Horner's many years of experience working with properties in central London she feels that they are able to rely on service providers and contractors who can provide reliable, high-quality and cost-effective services to the Property.

60. Ms Kiddie goes on to summarise the various services provided and then to provide a detailed chronological record of the various steps taken in relation to the major works.

61. At the hearing Ms Kiddie accepted that she had only been managing the Property since January 2023 but said that she had access to information on what had happened prior to her arrival including every email. She also said that she had responded to all representations received from leaseholders in relation to the major works.

62. In cross-examination she again said that the scope of the works had not changed after service of the Stage 1 notice. She agreed that the Responfdents had objected to paying certain service charges but said that she had dealt with all queries.

James Harrington

63. Mr Harrington is a partner at Congreve Horner with over 25 years of experience in the field of property management, building surveying, and major works project coordination. He is a professional surveyor and a member of the Royal Institution of Chartered Surveyors, and he states that he holds relevant qualifications and experience to manage and oversee building maintenance projects and conduct tender analyses for residential properties such as the Property. Much of his witness statement echoes that of Ms Kiddie.

64. He states that the surveying team at Congreve Horner have conducted routine and specific inspections of the Property for over 20 years and that he is therefore well placed to identify areas requiring repair or maintenance in accordance with leaseholder obligations and statutory duties. In his professional opinion, and based on his direct experience, all repair and maintenance work performed under the supervision of Congreve Horner at the Property during the years in dispute was necessary and was undertaken by competent contractors at a reasonable price.

65. He adds that Flat 1 was suffering from damp penetration causing damage and a possible health hazard, the external condition of the building is very poor and redecoration was last carried out in 2012, and the rear flat roof above Flat 5 has been the subject of multiple temporary repairs which have ultimately proved ineffective and a permanent solution is now required.

66. He notes that the Respondents have asserted that the section 20 consultation process prejudiced their ability to nominate contractors to perform the work but states that this is manifestly untrue. In the case of the damp-proofing, one leaseholder (Flat 1) nominated a contractor and that contractor was eventually chosen to perform the work. In the case of the external renovation and roof works, Flat 1 again nominated a contractor, the only such nomination received before the appropriate deadline, and that contractor submitted a tender which was duly considered. The leaseholder of Flat 3 nominated a contractor ('A. Haywood') after the deadline for nominations had passed. Congreve Horner nonetheless approached this contractor to invite them to tender for the work. No response was received by the tender deadline. Despite this, Congreve Horner approached 'A. Haywood' after the deadline inviting a late tender submission, but they responded by requesting details of the competing tenders which Congreve Horner considered to be unethical, thereby disqualifying them from further participation.

67. At the hearing Mr Harrington said that contractors were generally chosen on a combination of past performance and cost. In cross-examination he accepted that there was sometimes a build up of moss on the roof, but it was not a major amount and gutters were cleaned annually. On the question of whether the original works to the roof carried out in 2012 were inadequate, he said that those works were a temporary cheaper fix, the view having taken that it was not appropriate to carry out more expensive works to the roof at that time.

First Respondent

68. In her witness statement the First Respondent makes a number of points that are not directly relevant to the issues before the tribunal.

69. In relation to the major works, she states that the Applicants bundled together several unrelated projects—roof repairs, external decorations, and damp proofing— into a single Stage 1 notice, thereby obstructing leaseholders from properly considering or commenting on the necessity or priority of each item. She adds that the scope later changed (e.g. damp proofing was removed), that no new Stage 1 consultation was issued, and that this amounts to a procedural breach of the statutory process.

70. In 2012 the Applicants carried out roof works intended to resolve longstanding water ingress issues. However, leaks have continued ever since, affecting both her flat and the Second Respondent's flat, resulting in the loss of use of her terrace. As the Applicants failed to act, she states that she was forced to cover the roof terrace with tarpaulin to limit the damage. Due to the Applicants' continued failure to act, the Respondents then jointly arranged temporary roof repairs in 2020, which were paid for privately, despite the landlord's obligations under the lease to maintain the building structure.

<u>Second Respondent</u>

71. In her witness statement the Second Respondent also makes a number of points that are not directly relevant to the issues before the tribunal.

72. In relation to the leaks, she gives her account of the history and summarises the loss that she says she has suffered. She makes similar points to those of the First Respondent in relation to the major works.

Tribunal's analysis

<u>General observation</u>

73. The Respondents have stated that the burden of proof lies upon the Applicants to establish that each disputed charge was reasonably incurred and reasonable in amount, but the legal position is more nuanced than that.

74. In the Upper Tribunal decision in *Wynne v Yates and another [2021] UKUT 0278 (LC)*, Judge Elizabeth Cooke stated as follows at paragraph 11: *"It is well established (see for example Schilling v Canary Riverside Development Ptd Limited [2005] EWLands LRX_26_2005) that a tenant's challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable. Of course, the burden is on the landlord to prove reasonableness, but the tenant cannot simply put the landlord to proof; he or she must produce some evidence of unreasonableness before the landlord can be required to prove reasonableness"*. This does not mean that the landlord does not need to demonstrate 'in principle' legal liability under the lease. In

addition, as Applicants, the joint landlords do need to be able to make a 'prima facie' (i.e. a basic) case. But if a landlord makes a basic case then the burden switches to the tenant to offer evidence that a particular service charge is not payable at all or in part; the tenant cannot simply sit back and expect the landlord conclusively to prove the payability of every single item regardless of whether the tenant has any evidence to the contrary.

Repairs and maintenance

75. The Applicants have provided over 40 pages of copy invoices relating to repairs and maintenance. Two people from the Applicants' firm of managing agents with 40 years of experience in property management between them have given witness statements and have been cross-examined on those witness statements. Both witnesses came across well, and they were able to provide convincing responses to any questions raised and plausibly to explain some particular factors that increased repair and maintenance costs.

76. The Respondents' complaint that the charges have been unreasonably increased due to water ingress issues is – to put it mildly – not properly evidenced. Whilst it is clear that they have a concern about water ingress, they have completely failed to make their case. There is no proper analysis of what they claim did or did not happen back in 2012 or on any subsequent occasion, and they have provided no costings, no expert evidence, nor anything else that demonstrates that repair and maintenance costs have been unreasonably increased by failings on the part of the Applicants. Just to take one example, they complain about the temporary nature of a repair to the roof in 2012, but they offer no evidence whatsoever to show that the decision at the time to carry out a temporary – and therefore cheaper – repair at the time was unreasonable. Similarly, they have provided no evidence whatsoever to indicate that the Applicants' more recent approaches to dealing with water ingress issues have been flawed.

77. As regards the Respondents' benchmarking evidence, it does not hold up to even basic scrutiny as – in the absence of further details – it is effectively meaningless. It should not be necessary to point out that the Applicants and the tribunal cannot reasonably be expected to do the Respondents' research for them by trying to investigate where the various figures have come from (assuming that is even possible), what they cover and how they relate to the specific invoices or charges that the Respondents believe to be unreasonable.

78. On the basis of the evidence provided by the Applicants and in the absence of any proper analysis on the part of the Respondents these charges are reasonable and payable in full.

Managing agent's fees

79. Unlike in relation to the other heads of charge, the Respondents have obtained actual comparable evidence in relation to managing agent's fees. The problem for the Respondents, though, as the Applicants have already pointed out, is that the Respondents' own comparable evidence does not prove their case.

80. Congreve Horner's fees have fluctuated within in a range which is either consistent with or below the amounts quoted by three of the four alternative providers contacted by the Respondents. The quotation obtained from Brompton Block Management is significantly lower, but (a) it is out of line with all of the other quotations obtained by the Respondents themselves, (b) Brompton Block Management indicated that they would need more information in order to firm up their quotation, and the tribunal has heard persuasive evidence of reasons why the Property might require more intensive management than the average block and (c) landlords are not under an obligation to use the cheapest managing agent available; the test is whether the fee is reasonable.

81. Having considered the Respondents' comparable evidence, the Applicants' and Congreve Horner's evidence as to the level of work involved and also having regard to the tribunal's own expert knowledge of managing agent fees, we are satisfied that the managing agent's fees for the years of dispute are reasonable and payable in full.

Surveying fees

82. The Respondents complain about the manner in which the water ingress issue has been dealt with over the years, but as stated above these complaints lack any evidential basis.

83. As regards the Respondents' benchmarking evidence, for the reasons given above in the context of repairs and maintenance this does not hold up to even basic scrutiny as in the absence of further details it is effectively meaningless.

84. On the basis of the evidence provided by the Applicants and in the absence of any proper analysis on the part of the Respondents these charges are reasonable and payable in full.

Bank charges

85. The Fifth Schedule to each lease defines the 'Service Charge' as a percentage of 'Total Expenditure' and it defines 'Total Expenditure' as *"the total expenditure incurred by the Lessors … in carrying out their obligations under Clause 5(5) and the Fifth Schedule … and any other*

costs and expenses reasonably and properly incurred in connection with the Building including … (a) the reasonable cost of employing Managing Agents … and (b) the reasonable cost of any Accountant or Surveyor employed to determine the Total Expenditure …". Clause 5(5) cross-refers back to the Fifth Schedule which itself lists the various services, which can be briefly summarised as repair and maintenance (including administration of the building), decoration, insurance, payment of outgoings, employing relevant professionals, and a small number of more specific items. Clause 4(4) contains the actual obligation to pay the service charge.

86. Having considered the service charge provisions in the leases, our view is that the service charge provisions summarised above are not wide enough to entitle the Applicants to recover bank charges from leaseholders through the service charge.

87. The bank charges are therefore not payable in any of the years of dispute.

Set-off

88. The Respondents claim an equitable set-off but have not offered any analysis as to why there should be a set-off in this case. Set-off is a complicated legal doctrine of limited application and the Respondents have failed to make a case. In particular they have not demonstrated their alleged loss, let alone quantified it, and nor have they demonstrated that the circumstances of any such alleged loss are such that it should be set off against their service charge payments.

89. Accordingly, the claim for equitable set-off fails.

Building insurance (2022/23)

90. The Second Respondent has sought to defend her actions in relation to the claim made by her and the subletting to one or more students, but the issue is not about whether she is to blame but rather whether the insurance premiums claimed are reasonable.

91. Contrary to the Respondents' assertions, the evidence indicates that the Applicants have tested the market through their insurance broker and that the subletting to one or more students has affected insurance premiums. The evidence also indicates that the situation in relation to water ingress has affected premiums, and the Respondents have been unable to show that this has been as a result of some fault on the part of the Applicants.

92. The Respondents' benchmarking evidence is of no value because it just consists of a series of insurance company names and figures. There is

no evidence before us that these insurances have actually quoted for insuring the Property and, if so, on what basis and subject to what conditions. There is also no evidence that these insurance companies had details of the Property's insurance claims history if and when they were contacted by the Respondents.

93. The Applicants' evidence is that many insurers declined to quote and that they chose the cheaper of the two who were prepared to quote.

94. In the absence of any basis for concluding that the amount of the building insurance premium for 2022/23 is unreasonable, this sum is payable in full.

Accountancy fee (2023/24)

95. The Respondents claim that there is a discrepancy between the actual expenditure and the total claimed but this does not appear to be the case. The Applicants have provided a detailed explanation of the accountancy charges, backed up by copy invoices, accounts and bank records, and in the absence of a more persuasive challenge from the Respondents we are satisfied with their explanation.

96. The Applicants have also offered some comparable evidence of other firms' charges. Admittedly they have not provided copies of formal quotations from other firms, but likewise nor have the Respondents who again have provided what they call a 'benchmark' but which is no more than a series of figures and names with no context, as a result of which neither the Applicants nor the tribunal are able to assess the reliability of the Respondents' evidence.

97. In conclusion, the accountancy fees for 2023/24 are payable in full.

Major works – damp proofing

98. There is an overlap between the arguments relating to the damp-proofing and the arguments relating to the external decorations and roof and we will therefore deal with them together.

99. The Respondents maintain that the scope of the works changed, but there is no evidence before us to support this contention. What does seem to be the case, as acknowledged by the Applicants, is that the works were split into two groups after the Stage 1 notice was sent out. The Applicants' evidence, which has not been seriously challenged by the Respondents, is that after the first stage of the consultation process and in the absence of sufficient funds to carry out all of the works at once (due in large part to the Respondents having withheld payment of a large part of their service charges) the Applicants were forced to prioritise and that after obtaining feedback they decided to prioritise

the damp-proofing works. On the basis of the information before us that was a prudent thing to do and the Applicants should not be penalised for it.

100. Congreve Horner have provided a detailed chronological record of the various steps taken in relation to the major works. Ms Kiddie and Mr Harrington have between them over 40 years' experience in property management and have been unequivocal in stating that the consultation process was followed properly and that the costs incurred were reasonable, and they have provided some supporting evidence in the hearing bundle. This does not by itself make Ms Kiddie and Mr Harrington correct, but the Respondents have no expertise in this area, they have not provided an opinion from someone else who does have expertise in this area and they have not offered any objectively compelling arguments. We do not accept that merely splitting the works renders the original Stage 1 notice invalid, and the evidence indicates that the Applicants not only complied with the section 20 process but also chose a contractor nominated by a leaseholder, invited other leaseholder-nominated contractors to bid for the work and even allowed extra time outside the required period for a leaseholder-nominated contractor to respond.

101. The Respondents' benchmarking comments are meaningless in the context of specific sets of major works in that – in the absence of proper quotes based on the actual scope of works for this Property – they cannot possibly amount to evidence that the cost of those works was unreasonable in amount.

102. Accordingly, the major works charges are payable in full.

Costs

103. Both parties indicated that they were considering the possibility of making one or more cost applications.

104. As directed at the end of the hearing, if either party wishes to make any cost applications they must send their written costs submissions by email to the tribunal, with a copy by email to the other party, **within 14 days after the date on which this determination is sent to them**. Any cost applications must clearly specify the nature of and basis for the application.

105. If any cost applications are made, the party against which those cost applications are made may send a response to the relevant cost application(s). Any such response must be sent by email to the tribunal, with a copy by email to the other party, **within 14 days after the date on which that party receives the relevant cost application(s)**.

106. The tribunal will make a determination on any cost applications on the basis of the written submissions alone without an oral hearing.

Name: Judge P Korn **Date:** 24 March 2026

RIGHTS OF APPEAL

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

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are 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.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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
  (b) where they are incurred on the provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(1) Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either –
  (a) complied with in relation to the works ..., or

(b) dispensed with in relation to the works ... by (or on appeal from) the appropriate tribunal.

Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment

(6) An agreement by the tenant of a dwelling ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.