FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/26UK/LSC/2025/0637** **F2F**
Properties	**:**	**1 Edison Court, Franklin Avenue, Watford, Herts WD18 6AB**
Applicant	**:**	**Graham Eke**
Respondent	**:**	**Hightown Housing Association**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Wayte** **Tribunal Member Smith MRICS**
Date of Hearing	**:**	**12 February 2026**
Date of decision	**:**	**24 February 2026**
Amended	**:**	**2 April 2026**

DECISION

This decision has been amended under rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to correct the name and role of Hightown's witness, referred to in paragraphs 17, 19, 20 and 29. The amendments are shown in bold for ease of reference. This amended decision does not attract fresh rights of appeal.

<u>Decisions of the tribunal</u>

(1) The ground rent is not payable as a service (or administration) charge. Hightown must refund the applicant all monies taken from his service charge account in respect of the ground rent from 2008 to date.

(2) The respondent's management fee is capped at £100 and reduced by 50% for the period from 2008 to date. Again, a refund of the overpaid sums is due to the applicant.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondents through any service or administration charge.

(4) The tribunal also orders the respondent to repay the applicant his tribunal fees amounting to £341.

The application

1. On 29 May 2025 the tribunal received an application from Mr Eke for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of ground rent under his lease. He also challenged the respondent's management fee. His application explained that he held a 50% interest in his property under a shared ownership lease with the respondent ("Hightown"). His claim went back to the start of his lease in 2008.

2. The application included a lengthy statement from Mr Eke which explained that he had only discovered in 2024 that he had been paying ground rent since the start of his lease. Hightown had never sent him any demands, the £250 payable to the freeholder (Hightown itself hold a head lease) had been added to management expenses payable to the freeholder's agents, without any clarity on either the estimates or accounts. He had made a formal complaint which had been denied.

3. Mr Eke also made an application for orders under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the landlord's costs of the proceedings to be excluded from either service or administration charges.

4. The application was set down for a case management hearing on 1 October 2025. At that hearing, which was attended by Mr Eke and three representatives for Hightown, the respondent confirmed that the ground rent paid by Hightown had indeed been "passed on" to Mr Eke through his service charge accounts as an "administration charge". In the circumstances, directions were given for a final hearing for the following issues to be determined:

- whether the respondent can pass on ground rent charged under a headlease as a service/administration charge;
- whether a notice under section 166 of the Commonhold and Leasehold Reform Act 2002 should have been served by the respondent on the applicant;
- whether any management fee relating to the recharge of ground rent is payable and/or reasonable;
- whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made;
- whether an order for the reimbursement of application/hearing fees should be made.

5. The relevant legal provisions are contained in an Annex to this decision.

<u>The Lease</u>

6. Mr Eke's lease commenced on 14 August 2008. He is the original leaseholder. The lease explains that there is a superior landlord and headlease. Ground rent is defined as "*The yearly rent payable from time to time under the headlease*". As this is a shared ownership lease, there is a further definition of "*specified rent*", which is the rent payable on the unsold equity pursuant to the "staircasing" provisions in the Fourth Schedule. Mr Eke purchased a 50% share in the property.

7. Clause 2(2) of the lease provides that the ground rent is payable within 14 days of demand.

8. Clause 7 deals with the service charge payable to Hightown. Clause 7(5) sets out details of the relevant expenditure to be included in the service charge which "*shall comprise all expenditure reasonably incurred by the Landlord in connection with the management of the Premises*"; including insurance, costs of and incidental to the performance of the landlord's covenants or in respect of statutory notices and any administration charges as defined in that section.

<u>The Applicant's case</u>

9. Mr Eke had included a number of documents with his application and produced a further bundle in accordance with the tribunal's directions. In the "Information for Shared Owners" which was undated but clearly related to the start of the lease, Hightown confirmed that the first payment of rent and service charges would be due on 1 October 2008. The information stated that "*Your charges are made up of your rent on the unsold equity, communal service charges (grounds maintenance) buildings insurance and management fees, managing agent fee and water bill.*" Mr Eke also provided a letter from his solicitors dated 22

July 2008 which confirmed that "*Ground rent under the lease will not become payable unless and until the entire 100% share in the property has been acquired*". The memorandum of sale for the property confirmed that the annual rent at the start of the lease for the 50% rented from Hightown would be £3,093.75.

10. As stated above, Mr Eke had only discovered in late 2024 that Hightown had been charging him ground rent paid to the freeholder for the whole property from the start of his lease, in addition to his specified rent for the 50% retained by them. He had never received any demands for the ground rent from Hightown and no mention had been made of ground rent in either the estimated charge letters in advance of each service charge year commencing 1 April or the accounts produced at the end of each service charge year. Assuming he had paid the ground rent since 1 October 2008 to 2025, that would amount to some £4,250.

11. Having sought advice from LEASE, the Government funded advisory service for leaseholders and carried out his own research, Mr Eke now understood that section 166 of the 2002 Act required a notice in prescribed form to be served on long leaseholders before ground rent was payable. Again, he had never received such a notice from Hightown.

12. Mr Eke complained to Hightown in January 2025. Their Stage One response, dated 21 February 2025, was that the lease was clear that ground rent was due to be paid to Hightown. The email continued that "*As Hightown is requesting ground rent due under the head lease, which is outlined in your underlease, we do not agree that a section 166 Notice should have been served as part of the demand and accordingly we will not reimburse any ground rent*".

13. Mr Eke escalated his complaint to Stage Two. That response, dated 27 March 2025, confirmed that "*Ground rent is not usually charged to a shared ownership property until final staircasing had occurred*". The original paperwork for the sale had not been discovered but Hightown had traced two budget statements which apparently listed the ground rent in 2013/14 and 2014/15 and a passing reference to ground rent being payable had also been made in an email dated February 2016. Again, a refund was refused. Mr Eke escalated his complaint to the Housing Ombudsman but that referral has been stayed pending the conclusion of this application.

14. In accordance with the directions, Mr Eke provided a further statement in support of his case. He pointed out that the lease requires a demand of the ground rent and none have been received. Hightown had added the ground rent to the external managing agents' fees without notification, which they had no right to do. Those agents had nothing to do with the ground rent and were not the freeholder. Ground rent

did not meet the definition of services used in the 1985 Act and service charge clauses in the lease should be construed restrictively. In this case, the definition of Hightown's services in clause 7(5) of the lease did not cover ground rent, referring to the provision of documents to third parties, granting approvals and other similar matters. In any event, he argued that any "sweeper" clauses in a lease are not intended for areas that have already been detailed elsewhere.

15. As to Hightown's own management fee, which had varied during the period in dispute from £100 to £156 per year but was now set at £100 again, Mr Eke submitted it should be reduced in the light of Hightown's poor quality of service and administration. In particular, their failure to demand ground rent and the lack of clarity of their service charge information in breach of the RICS Code, which required that accounts "*should be transparent and reflect all of the expenditure in respect of the account period*."

16. Mr Eke also sought reimbursement of his tribunal fees and a restriction of the landlord's costs. He had attempted to resolve matters since late 2024 but felt he had no option but to issue this application due to Hightown's stance.

<u>The respondent's case</u>

17. Hightown were represented at the hearing by Donna Spikings, the Head of Home Ownership and Commercial and **Lindsay Fenn, Home Ownership Team Leader**. They were further supported by their colleague, William Fitzgerald.

18. Their statement produced after the Case Management Hearing was brief, effectively maintaining Hightown's position set out in their response to Mr Eke's complaint. At the hearing, Ms Spikings was clear that Hightown had never demanded the ground rent as such and relied on their ability to include it as part of the service charge due to them under clause 7(5) of the lease. That said, the ground rent was actually added to the sum payable to the external managing agents for the purposes of the estimates and accounts but paid separately to the freeholder's agent following receipt of their demands.

19. As to their management fee, Hightown confirmed that it was for collection of sums due from the leaseholders and monitoring their accounts. Ms Spikings was unable to explain the increase and decrease in the fee over the years but Ms **Fenn** confirmed that Hightown used bands to calculate their charges, according to the amount of work required. They had reviewed the charge for this property in 2020 and decided it should be reduced to the lowest band, equating to £100 per annum.

20. Ms **Fenn** also confirmed that it was unusual in her experience for lessees with a share of less than 100% to pay ground rent and as far as she was aware, it was only this development that Hightown managed on that basis. She confirmed that there were 4 other properties in a similar position to Mr Eke.

21. Hightown confirmed they had no intention of seeking costs from Mr Eke but felt he should pay his own fees as they had tried to resolve his complaint in good faith.

<u>The tribunal's decision</u>

22. The tribunal is well aware that it does not have a statutory jurisdiction to consider liability for ground rent. That said, in this case Hightown have added £250 to the amount claimed from Mr Eke as part of his service charge and therefore we consider that section 27A applies, giving us jurisdiction to determine what "service charge" is payable by him.

23. The first question for the tribunal is whether the "service charge" is payable under the lease. Clause 2(2) is clear that any ground rent is payable within 14 days of demand. Hightown were equally clear that they had never demanded any ground rent. The demands produced in their bundle made no mention of ground rent at all, the sum of £250 was apparently merely added to the amount claimed for "external managing agents fees" without notification or explanation. A summary of the service charges for 2014-15 did show £250 under the heading "rent payable" but that had disappeared by 2016/17. No summary was produced in Hightown's bundle for 2013/14. In any event, the summary is not a demand. In those circumstances, the ground rent is not yet payable, assuming that the lease requires it to be paid by Mr Eke as an owner of a 50% share.

24. On that point, we consider that the lease is ambiguous. While it is correct that the ground rent is in principle payable on demand, the most logical interpretation is that such a demand would only be made in the event Mr Eke increased his share of the property to 100%, as advised by Mr Eke's solicitor in 2008. That conclusion is consistent with the failure to mention any ground rent in the "Information for Leaseholders" referred to in paragraph 9 above and would appear on the evidence presented to this tribunal to be the intention of both parties on entering into the lease as well as standard practice in shared ownership leases.

25. For the avoidance of doubt, even if Hightown could get past their failure to demand the rent in accordance with the lease, Mr Eke is correct to argue that it cannot be considered as part of his "service provision" as specified in clause 7(5) of that lease. As he points out, that clause refers to expenditure incurred by Hightown in connection

with their management of the premises and refers to their costs of enforcing the sub lease, insuring the premises, legal expenses and administration charges incurred for approvals, the provision of information and arrears of service charge. None of those items come remotely close to a ground rent payable by Hightown to the freeholder under their own headlease and in any event, that ground rent was added to the sum claimed from Mr Eke for external managing agents' fees, not theirs.

26. Further support for this conclusion is the fact that, as identified by Mr Eke, ground rent simply cannot be defined as a service charge or administration charge as set out in the 1985 or 2002 Acts in the annex.

27. It follows that Mr Eke is due a rebate in respect of all the ground rent wrongly added to his monthly payment for external managing agents' fees from the date of commencement of his lease to date.

28. The tribunal also considers that section 166 of the 2002 Act is broad enough to require any demand for ground rent to comply with that provision ("*A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment…*"). It is true that the definition of "long lease" in section 76 of that Act at first blush appears only to apply to a shared ownership lease of 100% but as Mr Eke pointed out, the Court of Appeal in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd* [2023] EWCA Civ 616 is authority that any lease in excess of 21 years meets that definition, regardless of whether a shared ownership lease is of less than 100%. As Mr Eke pointed out, if no section 166 notice is served when due, no rent is payable.

29. We also consider that Hightown's management fees are excessive in the light of the work they actually do and their poor service to Mr Eke. Ms **Fenn** conceded that the appropriate charge now was a maximum of £100, given the limited service Hightown provide in respect of this property. In those circumstances, the tribunal has decided that the service charge for those services should be capped at £100 per annum but reduced by 50% to reflect the poor service provided from the start of Mr Eke's lease to date. Again, this will mean that a rebate must be provided to Mr Eke.

Application under s.20C and paragraph 5A in respect of the Respondent's costs and the reimbursement of tribunal fees

30. Although Hightown confirmed that they did not intend to seek costs in respect of this application and the lease does not appear to allow for recovery of any costs incurred in tribunal proceedings, the tribunal considers it just and equitable to make the orders sought for the avoidance of doubt. Mr Eke has been wholly successful in his application. In those circumstances, the tribunal determines that

Hightown must also reimburse the tribunal fees of £341, in addition to the other sums mentioned.

Name: Judge Wayte **Date:** 24 February 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).

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 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.

<u>Section 20C</u>

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, Paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.