FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/38UD/LSC/2025/0659** **CAM/38UD/LSC/2025/0628** **CAM/38UD/LSC/2025/0634** **CAM/38UD/LDC/2025/0654**
Property	:	**Flat 3, Faringdon Court, Cholsey, Wallingford OX10 9GE** **Flat 4, Hermitage Court, Cholsey, Wallingford OX10 9GE** **Flat 14 and 15, Hermitage Court, Cholsey, Wallingford OX10 9GE**
Applicants (s27A)	:	**James Day** **James Davidson** **Mandy Gibson**
Respondent (s27A)	:	**Cholsey Fairmile Limited**
Applicant (s20ZA)	:	**Cholsey Fairmile Limited**
Respondents (s20ZA)	:	**James Day** **James Davidson** **Mandy Gibson** **Andrew Winter**
Representatives	:	**Miss Everson, of counsel, for Cholsey Fairmile Limited** **Mr Day, Mr Davidson, Ms Gibson and Mr Winter acting in person**
Type of application	:	**Application for a determination of liability to pay and reasonableness of service charges** **Application to dispense with the requirement to consult lessees about major works pursuant to section 20ZA of the Landlord and Tenant Act 1985**
Tribunal	:	**Judge A. Arul** **Ian Perry BSc FRICS**

Date of hearing : **5 and 6 March 2026**

Date of decision : **13 April 2026**

DECISION AND REASONS

Decisions of the Tribunal

(1) The Tribunal determines that the consultation requirements under section 20 of the Landlord and Tenant Act 1985 in respect of intended works for the redecoration of windows to the Estate were complied with.

(2) The Tribunal grants, for the avoidance of doubt, and to the extent necessary, dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of works undertaken or to be undertaken for the redecoration of windows to the Estate.

(3) The Tribunal determines that, for the purposes of section 27A of the Landlord and Tenant Act 1985, the service charges payable for the Property in respect of the 2025 service charge year are as set out in this decision.

(4) The application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.

(5) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is refused.

(6) There is no order for reimbursement of fees.

REASONS

The Application

1. By applications dated 2 May 2025 (by Mr Day), 23 May 2025 (by Ms Gibson) and 1 July 2025 (by Mr Davidson) ("the Leaseholders") the Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the liability to pay and reasonableness of service charges for the properties known as flats 4, 14 and 15, Hermitage Court, Cholsey, Wallingford OX10 9GE and flat 3, Faringdon Court, Cholsey, Wallingford OX10 9GE (together "the Property"). The applications relate to the service charge year 2025.

2. The Leaseholders also seek an order under section 20C of the Act/paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") preventing or limiting Cholsey Fairmile Limited's ("the Freeholder") ability to seek the costs of these proceedings or associated administrative costs via a service charge. These applications were dated 4 February 2025 (by Mr Day), 27 February 2025 (by Ms Gibson) and 24 February 2025 (by Mr Davidson).

3. By an application dated 21 July 2025, the Freeholder seeks a determination under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation of all or any of the consultation

requirements provided for by section 20 of the Act in respect of the redecoration of windows to the various flats comprised in the estate known as Cholsey Meadows, Cholsey, Wallingford OX10 9GE ("the Estate").

4. On 30 June 2025, 8 July 2025 and 31 July 2025, the Tribunal gave directions ("the Directions") providing, amongst other things, for the applications to be heard together and for the filing and service of evidence.

The Hearing

5. The hearing took place remotely using the CVP platform over two days.

6. On both days, Mr Day, Mr Davidson and Ms Gibson appeared in person and Miss Everson appeared for the Respondent. There were several observers at the hearing, including officers or employees of the Freeholder, representatives from its solicitors, leaseholders from other flats in the Estate and Ms Gibson's partner.

7. The documents before the Tribunal comprised a joint bundle produced by the Respondent and which ran to 694 pages. This included copies of the applications, statements of case, supplemental statements of case, a sample lease, together with some service charge demands and supporting invoices and related correspondence covering periods from 2023 to 2025. The Tribunal was also provided with a skeleton argument and bundle of authorities from Miss Everson.

8. There were witness statements produced by the parties; each Leaseholder either had a statement or relied on their statement of case. Mr Winter had produced a written but unsigned statement and submitted a reply form. Mr William Beauchamp had produced a statement and exhibits as evidence on behalf of the Freeholder. The Tribunal took the view that it was not necessary to hear live witness evidence given the issues and that a fair hearing could proceed on the basis of submissions only. There were no objections to this approach.

9. There were some preliminary points to determine.

10. Firstly, Mr Winter did not attend the first day of the hearing. He emailed the Tribunal office saying that he could not attend due to an urgent personal matter but expected to attend the second day of the hearing. There was no detail given as to the nature of the personal matter. There was no request for an adjournment. None of the parties present sought an adjournment, they were asked for their position as to proceeding in the absence of Mr Winter and confirmed that they were content to continue. In light of the position of the parties present, the absence of a request or application to adjourn from Mr Winter and given his limited role in only contesting the application for dispensation, we considered it in the interests of justice to proceed. Mr Winter had not submitted any evidence so was likely to rely on that of the other parties. The matter was

likely to go into a second day, meaning he would have the chance to make submissions.

11. Secondly, there was a late bundle of 93 pages filed on 9 February 2026 comprising 83 pages of documents and 10 pages of other documents. This was after the deadline set by the Directions of 19 January 2026. This bundle comprised a supplemental statement from the Leaseholders, witness statements from a Julie Illott and a James Pickup, a supplemental statement from Ms Gibson and the service charge demands sent to the Leaseholders. There was no formal application to admit the documents. There was a formal application by the Freeholder dated 10 February 2026 to strike them out as being late. We considered that, since no permission had yet been given to admit the documents, they could not be struck out, and we should properly consider this to be an application to admit late documents. Miss Everson did not object to this approach. We heard submissions and, after a short adjournment, refused the application to admit pages 1-83. We considered that the demands should be admitted, these assisted the Leaseholders and there was no prejudice to the Freeholder as they are the Freeholder's documents. We considered that there been noncompliance with the Directions. There were statements from two witnesses who were not present and we would not hear live testimony from. The new evidence seemed to widen the case to other leaseholders who were not party to the proceedings. The documents were not all probative, such as correspondence and photographs of other properties which would not tell the Tribunal what we needed know about the prejudice to the Leaseholders beyond photographs we had already seen of the actual subject properties. The Leaseholders had submitted comprehensive documents already. We considered that it was not enough to say that the Leaseholders did not know that they could not submit further evidence or thought they could submit more. There had to be a line in the sand somewhere on new evidence. We were prepared to admit the demands for service charge as these were common documents and the fact that they were sent was not disputed.

12. Thirdly, a matter arose during the course of submissions but which it is appropriate to address here as a preliminary point in this decision. Ms Gibson had ticked box 6.1 to say this was a Building Safety Act 2022 case. She referred to fire boarding at her flat, which had become soaked by an upstairs balcony leak. We did not hear full submissions on this claim but our broad understanding is that she had challenged management fees charged in 2023, 2024 and 2025, essentially arguing that the leak was not addressed at all/in a timely manner/properly and she should not pay management fees (or perhaps a proportion). We heard that, potentially, there had been some credit applied against those fees, but it was not clear if that was satisfactory or Ms Gibson had a partial claim or there had been a settlement. The Directions had indicated the hearing was not to decide 'disrepair'. It became clear that the parties had understood that this meant the claims relating to the management fees. Ms Gibson had not produced all her evidence relating to this. Miss Everson had not prepared on the basis of cross examining on these points; and not all the

relevant material was in the bundle to do so, nor had Ms Gibson sought to give live evidence. We considered that there was some ambiguity in the Directions – this was not quite a disrepair claim, it was a properly constituted application for determination of payability and reasonableness of service charges. However, to determine that, one had to consider the evidence of disrepair, leading to whether the management fees were reasonably incurred and reasonable in amount. It was not clear what the Procedural Judge had in mind when directing that disrepair would not be considered. We took the view that it would not be fair on either party to proceed to consider that part of the application. Ms Gibson agreed it could be ringfenced. We indicated that we would continue with the hearing and give a decision on the dispensation application and service charges relating to redecoration or repair. We would not give a decision on the challenge to management fees relating to the balcony for flats 14 and 15.

13. We give the following directions:

Ms Gibson to indicate within 28 days of the date of this decision if she has any further challenge to service charges relating to management fees. If so, the matter is to be referred to a Procedural Judge to give directions on paper for filing and service of evidence for that matter to be dealt with as a discrete issue on a separate day. Those directions may extend to the discrete issue of whether there has been a binding settlement in respect of all or part of any further service charge challenge. For the avoidance of doubt, no order is made under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in relation to the Freeholder's costs of dealing with any such application or claim.

14. No inspection of the Property was requested, and the Tribunal did not consider that one was necessary to determine the issues.

The Issues

15. The primary issues to be determined in this case were:

(i) Whether the Freeholder should be granted a dispensation under section 20ZA of the Act from the consultation requirements imposed on it by section 20 of the Act;

(ii) A determination under section 27A of the Act in respect of the service charges payable for the year 2025, in particular whether the relevant charges for window redecoration works are payable under the leases and are reasonable in amount;

(iii) Whether an order under section 20C of the Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made i.e., an order to reduce or extinguish the leaseholders' liability to pay legal costs or an administration charge in respect of these proceedings; and

(iv) Whether any fees relating to these proceedings paid by the Leaseholders should be reimbursed by the Freeholder.

The Property and Leases

16. The Property, comprising flats owned by each Leaseholder, sits within the Estate, which comprises a mixture of Grade II listed buildings which have been converted into 130 residential units and common parts.

17. Cholsey Fairmile Limited is the Freeholder of the estate, including the Property, having become registered proprietor on 5 October 2018. It is the Landlord for the purposes of the leases.

18. Cholsey Meadows Management Company Limited is a leaseholder-owned company, every leaseholder is a member, including the Leaseholders. It is the Management Company for the purposes of the leases.

19. We were provided with a sample lease. It was common ground that the leases for the flats comprising the Property contained similar provisions to each other. There were no material disputes as to the majority of the lease provisions, so it is not necessary to set those all out in full here, however it is convenient to set out those relating to redecoration and the apportionment of service charges.

    (i) Clauses 4 and 5 contain obligations on the Landlord and the Management Company respectively to observe and perform the covenants under schedules 9 and 10. Schedules 9 and 10 in turn include amongst other things obligations to carry out the works and do the acts and things required to be done by each respectively under Schedules 6 and 7.

    (ii) Schedule 6 sets out various repairing obligations in relation to the Estate Common Parts and Building Common Parts (defined in Schedule 2) and Schedule 7 sets out the mechanics of determination and payment of the Tenant's Proportion.

    (iii) Schedule 2 defines the Estate Common Parts and Building Common Parts. The latter includes: *"4. The external decorative parts of the Units"*. This falls within the repairing obligation of the Landlord under Schedule 6.

    (iv) Part B of Schedule 6, under *Building Common Parts Charge* includes the following: *"8. Redecorating and cleaning the external parts of the Building including all doors door frames windows and window frames and any railings affixed to the exterior of the Buildings and carrying out all remedial work to the structure of the Buildings so often as in the opinion of the Landlord is reasonably necessary.*

(v) Schedule 3 defines the Demised Premises and this includes: *"1. the doors and windows thereof including the glass in the windows but not the external decorative surfaces thereof"*.

(vi) Paragraph 10 of Schedule 8 contains a leaseholder covenant to repair and keep in good and substantial repair the Demised Premises.

(vii) Paragraph 1 of Schedule 8 contains a covenant by the leaseholders to pay the *"Tenant's Proportion"*. This is defined at clause 1.1 as being the proportion of the Maintenance Expenses payable in accordance with Schedule 7. Schedule 7 refers to the costs payable to the Landlord or Management Company in relation to the repairing obligations set out in Schedule 6. It in turn refers to the Part A Proportion, Part B Proportion (each defined as 8% in clause 1.1) and contains provisions for the Landlord varying the proportion on an equitable basis in certain circumstances such as a change to the layout of the estate.

(viii) Clause 1.1 defines Fair and Reasonable Proportion as: "*… a fair and reasonable proportion as determined by the Landlord or the Management Company acting reasonably and where applicable in accordance with Paragraph 2 of Schedule 7 calculated primarily by reference to the number of Properties benefiting from the expenditure but if this is inappropriate due to the nature of the expenditure such other method of calculation as is fair and reasonable"*.

20. There are provisions relating to recovery of other costs incurred by the Landlord or Management Company in Part D of Schedule 6 as follows:

(i) Paragraph 7 and 7.1: the payment of all costs and expenses incurred by the Management Company and/or the Landlord as applicable *"7.1 in the running and management of the Development and the collection of the rents (if any) and service charges and in the enforcement of the covenants and conditions and regulations contained In the leases and transfers of the Units and any Estate Regulations (subject to the Management Company and the Landlord as applicable taking all reasonable and proper steps to recover the costs from the defaulting tenant"*.

(ii) Paragraph 8: *"Enforcing or attempting to enforce the observance of the covenants on the part of any transferee or tenant of any of the Units"*.

(iii) Paragraph 15: *"All other reasonable and proper expenses (if any) incurred by the Management Company and the Landlord as applicable in and about the maintenance and proper and convenient management and running of the Development including… any legal or other costs reasonably and properly incurred by the Management Company and the Landlord as*

applicable and otherwise not recovered in taking or defending proceedings (including arbitration) arising out of…any claim by or against any transferee or tenant thereof…" (emphasis added).

21. The principal issue between the parties is redecoration works to the external windows within the Estate. The initial estimates provided as part of consultation under section 20 of the Act wrongly assumed that the Freeholder was responsible for repairs as well as redecoration and provided for both (repairs being listed as a contingency). The works were largely carried out in 2025 following some communications with the leaseholders of the Estate, including the Leaseholders. The extent to which those communications were sufficient to comply with statutory consultation requirements or, if not, dispensation should be granted, were very much in issue. If there had been compliance, or dispensation was granted, on the face of it service charges were payable in relation to those works subject to the applications to determine the payability and reasonableness of the sums demanded. In this context, there was some common ground in relation to the lease provisions cited earlier in this decision, in that (1) the leaseholders were responsible for the repair of windows falling within their demise, (2) the Freeholder was responsible for redecoration of the external parts (but not repair of the windows), (3) the Freeholder could pass on redecoration costs as a service charge, (4) the Freeholder could determine a *"fair and reasonable proportion … acting reasonably* which had historically been by reference to the number of bedrooms in each flat. There was a dispute as to whether the apportionment for the costs of redecoration by bedroom count was lawful under the leases.

22. The demands sent out to the Leaseholders on 3 December 2024 were pertinent. Ms Gibson had been required to pay £2,836.27 for flat 14 and £2,836.27 for flat 15 and Mr Day £2,836.27 for flat 4; all in Hermitage Court. Mr Davidson had been required to pay £1,418.13 for flat 3 in Faringdon Court. The challenge to these demands was on the basis that, if consultation was not adequately carried out, the costs recoverable would be limited to £250 per flat. If consultation had been carried out, or was dispensed with, then the Leaseholders sought a determination as to whether the demands were payable under the leases, and the amount having regard to apportionment and quality of works.

23. There is some history to the issues with the windows on the Estate. It seems that the windows were already in need of repair when the Freeholder took ownership in 2018 and its predecessor, Thomas Homes, had commissioned a condition report around that time. This was referred to as the Purdy Report. It seems that the Freeholder attempted to have repairs as identified in the report covered under the terms of a guarantee in around 2022 but the claim was rejected in around 2023.

24. We did not have detail on precisely why the claim was rejected however what is clear is that, in 2024, the Freeholder decided to undertake both repair and redecoration of the external windows. This was a programme

of major works, subject to consultation but in principle involving costs recoverable from leaseholders. What was not identified at that time, by either the leaseholders or the Freeholder, was that the leaseholders were responsible for window repairs and the Freeholder for decoration as we have noted above. We were told that the Freeholder only discovered this on receiving advice in or around June 2025.

25. Thereafter there were meetings of the Management Company and a vote was made for repair costs to be covered by the ground rent reserve and for the annual ground rent payments to resume; having been suspended the preceding year, according to the Freeholder for tax reasons. This was suggested due to the impracticality of redecorating windows which need repair without first carrying out the repairs. We were told of, and shown minutes of, an Extraordinary General meeting held in August 2025 where it is said that 38 out of 43 leaseholders voted in favour of using ground rent to fund the repairs.

26. The question of whether consultation had been properly undertaken in respect of the redecoration, given that the estimates included amounts for repair which were not properly recoverable as service charges, therefore became live and prompted the present applications. In the meantime, the Freeholder credited each leaseholder's service charge account with the amount applicable to repairs (which were a contingency in the estimates).

27. We were shown copies of the Notice of Intention to carry out works dated 22 April 2024 and Notice of Estimates dated 6 September 2024. Mr Beauchamp's witness statement and exhibits explained in detail the process followed to serve these on leaseholders and of meetings which took place, including a site visit to another site where the successful contractors, Stonebridge, had undertaken works of a similar nature.

The Law

28. The law applicable in the present case is as follows:

Dispensation

29. The Act (as amended) imposes statutory controls over the amount of service charge that can be charged to long residential leaseholders. If a service charge is a "relevant cost" under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).

30. Sections 18 to 23A of the Act comprise provisions intended to protect long residential leaseholders from having to pay excessive, unreasonable, unexplained, or unexpected service charges. Sections 20 and 20ZA provide protection by requiring landlords (and others entitled to levy service charges) to consult with leaseholders before they enter into an agreement for which a service charge will be payable. To comply with consultation requirements a person collecting a service charge must

follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") (see section 20ZA(4) of the Act). Those procedures differ depending on whether public notice of the intended agreement or works are required, in accordance with schedules 1, 2, 3 or 4 therein.

31. Section 20 of the Act imposes an additional control by providing for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from each leaseholder in respect of such works unless the consultation requirements have either been complied with or dispensed with.

32. The Freeholder seeks dispensation under section 20ZA of the Act from the consultation requirements imposed on it by section 20 of the Act.

33. Section 20ZA of the Act reads as follows:

> *"Where an application is made to … [the First-Tier] Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."*

34. In *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*), the Supreme Court considered the proper approach to an application for dispensation under section 20ZA. The Supreme Court concluded that securing compliance with the statutory consultation requirements was not an end in itself. Sections 20 and 20ZA were intended to reinforce, and to give practical effect to the twin purposes of section 19, which were to ensure that leaseholders are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard.

35. Lord Neuberger explained, at [44]-[45], that the issue on which the Tribunal should focus when determining an application under section 20ZA(1) was *"… the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements."* If *"… the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements …"* dispensation should normally be granted, because, *"… in such a case the tenants would be in precisely the position that the legislation intended them to be – i.e. as if the requirements had been complied with."*

36. Lord Neuberger considered, at [46]-[47], that it would not be right to focus on the seriousness of the breach of the consultation requirements; the only relevance of the extent of the landlord's oversight was *"… in*

relation to the prejudice it causes". The overarching question was not whether the landlord had acted reasonably but was whether the Tribunal was satisfied that it was reasonable to dispense with compliance.

37. In assessing the prejudice to the leaseholders if dispensation was granted Lord Neuberger explained, at [65], that it was necessary to take account only of the sort of prejudice which section 20 was intended to protect against: *"… the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted."*

38. Lord Neuberger also observed in the *Daejan* case that dispensation could be granted on conditions. One such condition of dispensation could be to require that the landlord compensate the tenants for any costs they may have incurred in connection with the application under section 20ZA. At [64], Lord Neuberger considered that a landlord seeking dispensation was in a similar position to a party seeking relief from forfeiture, in that they were *"… claiming what can be characterised as an indulgence from a tribunal at the expense of another party."*

39. Summarising his conclusions, at [71], Lord Neuberger said that: *"Insofar as the tenants will suffer relevant prejudice as a result of the landlord's failure, the [First-Tier Tribunal] should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice. That outcome seems fair on the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall."*

40. The following broad guidance can therefore be distilled from the legislation and the *Daejan* case:

    (i) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the leaseholders flowing from the landlord's breach of the consultation requirements.

    (ii) The nature of the landlord or financial consequence to it of not granting a dispensation are not relevant factors.

    (iii) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

    (iv) The Tribunal has power to grant a dispensation as it thinks fit, provided that any conditions are appropriate.

    (v) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application.

(vi) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the leaseholders.

(vii) The term "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard. In other words whether the non-compliance has in that sense caused prejudice to the leaseholders.

(viii) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the leaseholders had suffered prejudice.

(ix) Once the leaseholders have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

41. The general approach to be adopted by the Tribunal, following the *Daejan* case, was summarised in paragraph 17 of the judgment of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

> *"The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered."*

42. It is therefore for the Freeholder to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; if they do so, it is for the Leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the Freeholder then to rebut that case.

Service Charges

43. Section 19 of the Act states:

19.— Limitation of service charges: reasonableness.

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 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.

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.*

....

44. The Tribunal's jurisdiction to address the issues in section 19 is contained in section 27A of the Act, which states the following:

27A Liability to pay service charges: jurisdiction

(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.

45. In construing the meaning of words used in the leases, the Tribunal is concerned to identify: *"What a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"*. In making this determination the Tribunal must focus: *"on the meaning of the relevant words…in their documentary, factual and commercial context."* (Lord Neuberger in the case of *Arnold v Britton* [2015] UKSC 36 at [15]).

The parties' submissions

46. The Tribunal is required to determine the question of what a fair sum of service charge should be for each of the flats comprised in the Property in respect of the 2025 service charge year. It is also asked to consider the dispensation application, which in turn involves close consideration of prejudice to the Leaseholders from any failures in the consultation process.

47. The parties' respective positions were set out in their statements of case and in oral submissions.

48. The Freeholder's case was essentially that consultation had been properly carried out but it recognised issues with this referring to both repairs and redecoration, hence an application for dispensation out of an abundance of caution. As to process, a Notice of Intention was served on 22 April 2024 and, following the consultation period, a Notice of Estimates on 6 September 2024. Its case was that the notices were emailed to all leaseholders save those who had specified non-use of email, to whom hard copies were sent. Notices were also posted on a leaseholder portal. There was no requirement in the Regulations, as alleged, to provide hard copies; and, in any event, no prejudice from a failure to do so. There were six contractors approached, who attended site and of which three provided estimates. These were summarised in the Notice of Estimates. Therefore, the consultation requirements set out in Schedule 4, Part 2 of the Regulations were complied with save that the

estimates obtained included a contingency for repair work to the windows, as did the service charge demands subsequently. Miss Everson emphasised that the leaseholders had sufficient information to understand the nature and cost of the works and by which to respond. A mistake had been made but it was easy to strip out the elements relating to repair, which had been listed as a contingency in any event.

49. The Freeholder argued that it is for the Leaseholders to show that the inclusion of the repair contingency has caused them some relevant prejudice. In other words, it was a narrow focus only on the actual deficiency in the consultation process. There was no prejudice because the Notice of Estimates clearly identified the amount of the repair contingency within each estimate received, the Leaseholders were able to ask questions and make representations about the costs and the repair contingency can (and was) easily stripped out of the costs and credited back. They have neither paid for inappropriate works nor paid more than they should have. We were reminded that in the *Daejan* case, it was emphasised that the underlying purpose of the statutory consultation regime was to protect leaseholders from having to pay for inappropriate works or more than they should arising from a failure to comply. The Leaseholders' must show what their position would have been had the Notice of Intention and Notice of Estimates only referred to redecoration (and not repairs); and that it would have been different. Miss Everson contended that no leaseholder was able to show financial prejudice because the amount for repairs had been credited.

50. As to the works themselves, the Freeholder says that the Leaseholders must show that the costs were not reasonably incurred, or that the redecoration works are not of a reasonable standard. There are various points arsing under this, which were helpfully summarised from paragraphs 30 onwards of Miss Everson's skeleton argument and are addressed as follows:

51. Firstly, on the absence of a condition survey (or at least a more recent or more comprehensive one to that undertaken by Purdy's in 2018), as repairs were a leaseholder responsibility, the costs of a repair related survey could not be recovered. In any event, the contractors visually inspected the estate during tendering and the decision to not commission a more comprehensive condition report was reasonable. Miss Everson pointed out that there was no statutory requirement for a condition survey and the Purdy report was dated and could not be relied upon.

52. Secondly, on contractor selection, Stonebridge were the cheapest and in such circumstances, there was no obligation to state reasons. There has been leaseholder engagement through a working group and the Regulations did not require the Freeholder to view comparable work by the contractor (but it did in any event).

53. Thirdly, on apportionment, the service charge has been apportioned by bedroom count since the Estate was redeveloped in 2012 and each

Leaseholder purchased their flat in knowledge of this. It was irrelevant whether a particular leaseholder benefited at all, or more or less than any other. We were directed to authorities supporting the proposition that the only question for the Tribunal is whether apportionment by bedroom count is permitted under the terms of the leases. In essence, the apportionment by bedroom count adopted by the Freeholder will be unlawful only if it is one that no reasonable landlord could have reached. The Freeholder's case was that apportionment by bedroom count is a fair and reasonable indication of the size of a property and of the number of occupants using the services provided by the landlord. It provides a consistent basis for apportionment of service charges which cover a wide range of services and is to be preferred to a system which changes by service type. We were referred to the case of *Thomas Homes Limited v MacGregor* [2016] UKUT 495 (LC) which concerned an issue over the recoverability of service charges and a nuance arising from an agreement under section 106 of the Town and County Planning Act 1990 relating to 39 units allocated as social housing. In practice, this means that the cash contributions from the social housing units would be deducted from service charges and the remaining figure allocated amongst other leaseholders. Paragraph 49 of the decision by the Upper Tribunal confirms that the sum demanded (which was by reference to bedroom count) constituted a reasonable sum which was properly recoverable under paragraph 6.1 of Schedule 7 of the leases. Miss Everson highlighted that in all service charge years since this decision, apportionment has been by bedroom count. In line with the authorities, continuing this apportionment by bedroom count is open to the Freeholder. Putting it another way, it is not a decision no reasonable landlord would reach and hence not one that the Tribunal can interfere with under its contractual review jurisdiction. Miss Everson conceded that apportionment by bedroom, number of properties, floor area or windows would all would be permissible under the leases. However, she maintained that bedroom count is the most appropriate. Going by number of properties would not account for some larger than others. The number of windows does not necessarily correspond to the amount of work involved. It is a large Estate, all leaseholders benefit to see everything in good repair. Altering the methodology just for window redecoration would mean an inconsistency with window cleaning, which is part of the service charge, and apportioned by bedrooms so would not be proportionate.

54. Fourthly, on quality, Stonebridge was formally appointed as contractor following completion of the consultation process. They were the only contractor to provide a warranty. It was recognised that some works were not perfect, but there was nothing to suggest that Stonebridge would not honour the warranty. The warranty was with Stonebridge so it did not matter whether the paint manufacturer did not uphold any materials warranty (for example if it were true that inappropriate paint for particular types of surface was used or surfaces were inadequately prepared). The Freeholder's case was that leaseholders had the choice of whether to arrange repairs themselves or for Stonebridge to repair whilst undertaking the redecoration and, of the parties to these proceedings,

only Mr Day and Ms Gibson declined. In response to the allegation that Stonebridge used masonry paint (this being inappropriate for wooden frames and sills) this was put to the site managers, Common Ground, who arranged for an independent site visit and inspection to be carried out by Akzo Nobel. We were shown their report confirming that the paint system was appropriate.

55. The Leaseholders' position was also comprehensively set out in their respective statements of case.

56. In relation to the dispensation application, they invited us to refuse this. They maintained that the Regulations were not complied with. Firstly, based on lack of proper service because notices were not posted. Secondly, as the Notice of Estimates included repairs, which were not properly payable to the Freeholder.

57. In relation to their applications on payability and reasonableness of service charges, they alleged that the costs of redecoration were not reasonably incurred and that the redecoration works are not of a reasonable standard. There were considerable submissions on this and we were helpfully taken to a number of photographs and other documents in the bundle.

58. Mr Day's position was that the consultation process did not provide enough information to understand the financial consequences . He considered the absence of survey to create financial prejudice. He could not understand the scope of works without a survey. The estimates provided included a repair contingency so it was not clear which flats in fact required repair and what the condition of the windows really was compared to 2018.

59. In relation to apportionment, he considered the methodology flawed. There was no clear relationship between the works required on the windows and apartment size. Each flat has different windows so this was the proper measure - bedroom count has no rational correlation to windows. He referred us to the case of *Avgarski v Alphabet Square Management* (2016) UKUT 367 in which the Upper Tribunal found on the given facts that an evenly split apportionment could not be considered a 'fair and proper proportion' of the service charge. He said that it was obvious to apportion by number of windows, accepting that he was 'by no means the biggest loser'; meaning other leaseholders with fewer or smaller windows were being charged a tenant's proportion based on bedroom count. There was nothing in the leases referring to bedroom count. He said that these were specific works under the section 29 process so different to the standard services provided; hence apportionment could be considered specifically.

60. In relation to the quality of works, he considered that Stonebridge had used the wrong methods, wrong paint, and undertaken work in poor weather (contrary to good practice). He referred us to the laboratory testing from Dulux. He was generally critical of Stonebridge and

contended that merely because they were the cheapest did not automatically make their selection reasonable.

61. In relation to financial prejudice and the test under the *Daejan* case, he said that this extended to the risk of prejudice and it was not necessary to prove he had actually suffered prejudice.

62. Ms Gibson's position adopted and echoed Mr Day's in most respects, for example relating to consultation, contractor selection and quality of works. She clarified that she part owns flats 14 and 15 Hermitage Court, her ex-partner lives in one and she lives in the other (number 15). Both are two bedroomed.

63. In relation to quality, she drew our attention to the fact that the breakdown of works supporting the estimate from Stonebridge did not mention any masonry paint, nor did she consider that there were any areas where it would apply. The Dulux testing was based on two samples taken from a newly painted windowsill. She said that the extract from the laboratory report demonstrated that masonry paint was used. It was put to her that the report extract referred to the substrate being masonry, rather than expressly identifying the paint itself, so this could be referring to the surface. She maintained that it was a (wooden) windowsill so the reference to masonry was to the paint used, not the surface it was applied to. Ms Gibson helpfully took us to the emails with Dulux, including a summary prepared by her partner (experienced in building and restoration but not presented as an independent expert), and some photographs of masonry paint tins standing on grass around the site. It was clear from the emails with Dulux that their advice was that their paint products comprising masonry paint should only be used on masonry, render or exterior blockwork. In other words, masonry paint was not recommended for wooden windowsills. In any event, from the samples they considered, Dulux had formed the view that the paint had not properly adhered, and this was due to the surfaces not being adequately prepared. We were given some examples of allegedly poor workmanship, for example another leaseholder, Mr Pickup's windows, showing a rough surface after painting. In addition, apparent painting over Mr Davidson's windows when shut. Ms Gibson pointed us to some work she had arranged for her own flats where priming had been carried out and believed this level of surface preparation had not been carried out by Stonebridge.

64. In relation to apportionment, Ms Gibson said that there was a significance difference to her from the Respondent's methodology. For example, she is expected to pay £4,100 more than a one bedroomed flat. She feels she should have had a choice, not just be told she had to have repairs carried out. She also had concerns about transparency over the repair contingency to be taken from the ground rent. This started at around £15,000, but the Purdy's report refers to 133 windows needing repair so she expects this will be substantially greater. There was a general complaint that people were in the dark as to what they had to pay. She also took the view that the work could be undertaken in phases,

this could have protected some of the leaseholders, a full survey would mean it might not have gone straight to redecoration.

65. As noted earlier in this decision, Ms Gibson was also asked about section 6.1 of her application form which was completed affirmatively to state that her application include issues arising under the Building Safety Act 2022. When asked whether this was a mistake, she confirmed it was not. On further exploration, it transpired that there had been a leak from the balcony above her flat. The fireboards were sodden and this was an ongoing issue. In essence, she considered that this was preventable and that she had not been provided with a service, or an adequate service, for which management charges were sought. Hence, she was claiming those back. As identified earlier in this decision, the parties had understood that these issues of 'disrepair' would not be considered at this hearing. There was some suggestion from the Freeholder that those claims had been compromised. We informed the parties that we would not determine these issues but would make the necessary directions to afford Ms Gibson a chance to consider whether she wished to pursue such claims in whole or in part. We did caution Ms Gibson that, were to be the case that a valid compromise of a claim, or part thereof, had been reached, and she elected to continue to pursue that claim, there might well be some risk that the Freeholder would seek a costs order or some other sanction against her. We put it no higher than that, however.

66. Mr Davidson's position also in most respects adopted and echoed that of Mr Day and Ms Gibson.

67. In relation to prejudice, he considered that the lack of a detailed condition survey had prejudiced him. He also alleged that the Freeholder had carried out unauthorised works, its contractors having forced open his windows. The crime reference number was noted in his statement of case. He confirmed that, to the best of his knowledge, none of his possessions had gone missing and there seemed to be no physical entry. He notified the building insurers. we were shown photographs of the damage said to have been caused by his windows being forced open.

68. In relation to consultation, he referred to a lack of communication. It was supposed to be a 14-day notice period, there was a message on *Dwellant* (a property software management platform) but he gave an example of another leaseholder, Robert Webb, who is based in Australia, who he said had not received notice. He said the consultation was based on incorrect information and that he had placed faith in the management company to have knowledge of procedures. This was particularly directed at the mistaken belief that the repairs to the windows formed part of the service charge.

69. Mr Winter raised concerns with how the project was run and emphasised his view that there needed to be transparency from the Freeholder and this had not been the case in relation to the redecoration or repair works for the windows.

The Tribunal's determination

70. As noted earlier in this decision, there were some overarching points raised and we address these in turn:

Consultation

71. The Freeholder seeks a dispensation however such would only be necessary if there had been noncompliance.

72. The question is therefore whether consultation under section 20 of the Act applied to any costs and, if so, whether it was carried out/the effect of not carrying it out.

73. Section 20 is engaged where there are works expected to cost each leaseholder over £250,

74. If consultation was not carried out adequately or at all, the costs are limited unless a dispensation is granted. This does not negate the assessment of other considerations of payability and reasonableness.

75. The first issue is whether there was sufficient notice of the consultation. We find that notice was given in writing, email was sufficient.

76. The second issue is whether there was sufficient consultation. We find that the Freeholder went to six contractors and secured three estimates. We consider this to be complaint with paragraphs 5 and 6 of Schedule 4 to the Regulations. There was sufficient detail in the Notice of Intention and Notice of Estimates to meet the requirements and provide information by which leaseholders could respond. We do not consider there to be any requirement to obtain a condition survey, nor would one be appropriate given the nature of the works. It would have been disproportionate from a logistical and costs perspective to inspect every window, including those at height, to determine condition prior to tendering. To the extent that the condition survey had a dual purpose of identifying repair and redecoration needs, there might also have been some difficulty with the Freeholder recovering that cost as a service charge. The contractors who tendered undertook visual inspections so would have been able to form a view on the likely labour and materials costs and allow for differing issues on each flat. The repairs were ringfenced as a contingency, no doubt on the same basis that one could assess the fuller extent once on site. It would be more proportionate to undertake any necessary works there and then rather than inspect, report and then attend again to undertake those works, thereby deploying any necessary equipment twice.

77. It cannot be right that removing the repairs, thus creating a lesser cost than notified to leaseholders invalidates the consultation. It would be different if something was being added but that was not the case here.

78. We therefore find that section 20 of the Act was complied with. Therefore, dispensation is not necessary. To the extent it is necessary, we would have granted it, for the following reasons.

Dispensation

79. The Tribunal is required to determine the question of dispensation from the consultation requirements of section 20 of the Act. This may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the *Daejan* case, as referred to earlier in this decision.

80. It is important to distinguish between the reasonableness of dispensing with the consultation requirements and the reasonableness of the subject works. A determination under section 20ZA is only concerned with whether or not it is reasonable to dispense with the requirements.

81. In our view, the Leaseholders have not shown prejudice. We accept their position that, had the consultation been done properly limited to just redecoration, they might have been in a different position. However, we were not satisfied that they did or would in fact have suffered prejudice. The repair costs were those they would always have had to incur. That this is now paid from ground rent and those with more disrepair pay the same amount as those with less might be prejudice. We had limited information on this. However, we have to ask whether the failure to consult is the true cause. We find that the true cause is the Leaseholders own breach in not repairing the windows themselves. But for that, there would never have been a need to include a repair contingency. That there was and this might have led to a situation years later when ground rent is used to cover the cost is unfortunate but not prejudice caused by the Freeholder.

82. The Leaseholders were told what redecoration would be involved in the quotation specification. They were not deprived of the opportunity to be involved in the redecoration costs. We cannot see any basis to say that incorrect inclusion of a repair contingency alters this position.

83. The true argument is that, by not obtaining a report, the Leaseholders have suffered prejudice as this would have enabled better quoting. As explained earlier in this decision, there was no obligation on the Freeholder to obtain such a survey and we were not persuaded that it was in fact a viable and proportionate step to take in any event. If there was no obligation to obtain such a report as part of the consultation process, there cannot have been prejudice from not doing so. In any event, as we have observed above, even armed with such a report, the Leaseholders have not demonstrated that the costs specific to the redecoration would have been any different. We were provided with no comparables, and an estimate for one particular flat is insufficient when the proper position under the leases is for landlord works apportioned under the service charge.

84. The water is muddied because the Leaseholders are also shareholders of the Management Company; but they are separate legal entities. In our view any complaints relate to corporate governance rather than the consultation process.

85. Ms Gibson may have paid part of the costs of repairs. This is unfortunate, but this relates to the original error everyone made rather than any failure to consult.

86. The only possible financial loss relates to the leaseholders' own breach of the leases by not undertaking repairs previously. We recognise that they were ignorant of their responsibilities at that stage, but that does not change the fact that, had repairs been carried out, no or no significant contingency would have been needed.

87. Given it was mutual mistake, it would be reasonable to grant dispensation in any event. However, we find that there is no financial prejudice. The burden is on the Leaseholders to prove prejudice, and we find that they have not shown prejudice or a real likelihood of prejudice – even if we had found a breach of the consultation requirements.

88. On this basis, we find no prejudice to the Leaseholders arising from any failure to consult and consider dispensation to be appropriate in principle. We have considered whether any conditions would be appropriate but conclude that there are none of relevance, noting that the works have been largely completed.

89. To the extent that it would have been necessarily had the Tribunal concluded noncompliance, the Tribunal therefore grants dispensation from the consultation requirements of section 20 of the Act in respect of the window redecoration works to the Estate.

Apportionment

90. Our view is that the Freeholder can decide and apply the proportion that each flat pays for service charge and the relevant legal test is simply whether this is contractually legitimate. In *Hawk v Eames* [2023] UKUT 168 (LC) the Upper Tribunal confirmed that there is no statutory restriction on a freeholder's power to make any apportionment so any concepts of fairness, reasonable or otherwise must derive from the wording in the lease itself.

91. The Freeholder has discretion to choose any contractually permissible apportionment method. The meaning of 'fair' involves an objectively reasonable assessment, which includes a consideration of the outcome for the lessees. See, for example, *Bradley v Abacus Land 4 Ltd* [2024] UKUT 120 (LC) at [50] to [52].

92. *Williams and others v Aviva Ground Rent Investors GP Ltd* [2023] UKSC 6 distinguished the need for rationality. In *Hayes v Willoughby* [2013] UKSC 17, [2013] 1 WLR 935. Lord Sumption says at paragraph 14: *"Rationality is not the same as reasonableness. Reasonableness is*

an external, objective standard applied to the outcome of a person's thoughts or intentions. … A test of rationality, by comparison, applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse."

93. The Leaseholders must therefore satisfy the Tribunal that the determination by the Freeholder falls outside of the contractual right to determine a fair and reasonable apportionment.

94. In essence the argument from the Leaseholders was that apportionment by number of bedrooms was unreasonable and that a method using number of windows would be a fairer approach. It was argued for the Freeholder that this would have knock on effects, for example, window cleaning costs, which would then have to be adjusted also from bedrooms to windows. We agree with the Leaseholders that, in principle, a landlord could act reasonably by apportioning costs for some purposes by number of bedrooms but, for other purposes, such as larger, one off or unique costs, by a different method such as number of windows. We find that these were unique costs and of a substantial sum.

95. We were not persuaded, however, that apportionment by number of windows necessarily provided a fairer solution. In some flats, windows were smaller, for example some could have two larger windows and others might have eight smaller windows. We were not provided with a full schedule for the entire estate. It seems at least likely that flats with more bedrooms have larger windows.

96. We find that proposing apportionment by number of windows as an alternative is not enough to displace the present system of number of bedrooms. Other options such as number of units is also not a sufficiently better alternative. For example, this might depend on which floor a flat is situated, due to the logistics of reaching higher levels. Short of a quotation for individual flats, there is no easy way to address quoting for such a large scale of works. Floor area gives the same problem as bedrooms and windows. Ultimately, we have to ask whether the contractual discretion under the leases is being exercised unreasonably by the Freeholder. We find that it is not, the number of bedrooms is as good a method as any. The fact that the Freeholder has adopted a blanket approach for all costs and decided not to depart from that for this unique cost does not in itself make it unreasonable. Having considered the alternative options, we find that it is in fact a sensible approach.

Section 27A

97. In relation to the section 27A applications, as consultation was complied with, or in any event dispensation is granted, the question is then

whether the redecoration costs are reasonably incurred and reasonable in amount.

98. As to reasonably incurred, a critical question is whether redecoration would have been cheaper with a (current) condition report? We do not think this is the case because all three contractors quoted separately for contingencies. The Freeholder could have commissioned a survey ground around 130 properties, gaining sufficient access either internally or externally but in some cases needing an elevating work platform (cherry picker). This would likely have incurred a significant cost. It might hypothetically have led to cheaper costs overall, but the question is whether it was unreasonable *per se* to take the approach of a broad quote and sorting things out for each flat once on site for the main works. We find that it was certainly not a cavalier approach to obtain a broad-brush estimate given the nature of the works.

99. As to reasonable in amount, this comes down to quality. One issue raised was whether the correct paint was used. There was much commentary on whether masonry paint had been used. We find that this was unproven. It was not clear what Dulux looked at when they did their assessment. The Akso report is better, they attended site and were clearer on what they tested. They confirmed that the paint is of the thickness expected. Their report makes no suggestion of incorrect paint. We would have expected to see a comment if the assessor, Mr McCartney, felt the paint was incorrect. He said he observed the decorators using the stated products which includes base coat. We were not satisfied the Leaseholders have discharged the burden to show that masonry paint was used on all or any of the four flats we are concerned with. We also observe that the Dulux report was not a full report, it was just an extract, and refers to substrate so does not actually say masonry paint was used. In any event, this could relate to a small section of wall. We are aware that the Leaseholders say that the sample was taken from a freshly painted door however we did not have full set of the emails with Dulux or any clarity over their findings. We cannot accept Mr Grieve's evidence, which is headed 'independent report' but he is not independent as he is Ms Gibson's partner.

100. We were shown photographs of some dust and spiders webs on some windows. This is not in itself evidence of poor quality work, not least given that there is a warranty and no evidence that Stonebridge were not willing to return to site for snagging or under the terms of the warranty.

101. The Leaseholders also did not provide an alternative figure for what they say reasonable redecoration costs would have been. They accepted that Stonebridge were the cheapest estimate. We consider that reasonableness must be viewed through the lens of a warranty available, of which they were the only contractor to offer one.

102. As to the specific claims by each Leaseholders:

103. In relation to Mr Davidson, we had insufficient information to determine whether windows had been forced, to what extent and the cost of remedial works. We consider that any issue over forced windows is peripheral to payability and reasonableness of the costs. He may have a right of set off against such costs but this does not detract from the core question of whether the costs of redecoration were reasonably incurred and reasonable in amount. We find that they were.

104. In relation to Mr Day, the fact that he obtained a £1,150 estimate for redecoration to his own windows is not relevant. The £2,836.27 demanded from him comes down to whether the Freeholder has a contractual right to charge this sum under his lease. We have addressed this point above under apportionment. A cheaper individual estimate does not negate the reasonableness of a bulk estimate under a tendering process.

105. In relation to Ms Gibson, the photographs we were shown in relation to quality of work (bundle pages 440-447) relate to different properties. The photograph on page 447 is an old window, we would not expect a decorator to remove the window, strip this all back and sand down for redecoration purposes. There are also a very small selection of photos not relating to the Leaseholder's properties. We were not satisfied that this was demonstrative that there were grounds to reduce Stonebridge's costs, especially given the existence of a warranty.

106. We find therefore the demands sent out to the Leaseholders on 3 December 2024 requiring Ms Gibson to pay £2,836.27 for flat 14 and £2,836.27 for flat 15, Mr Day to pay £2,836.27 for flat 4 and Mr Davidson to pay £1,418.13 for flat 3 are properly payable, relating to sums reasonably incurred and reasonable in amount.

Section 20C/Schedule 11

107. In relation to the applications under section 20C of the Act and paragraph 5A of Schedule 11 to the 2002 Act, the Leaseholders invited us to restrict the ability of the Respondent to recover legal and administrative costs related to these proceedings via a service charge. The Leaseholders have not succeeded, in respect of any of the applications. These proceedings have in part been caused by an error. We recognise that the Freeholder was acting in a professional capacity however it was a mutual error which also resulted in the Leaseholders being in breach of their own leases. We find that it is not just and equitable to make an order under section 20C of the Act and paragraph 5A of Schedule 11 to the 2002 Act in respect of any costs incurred in these proceedings. The Freeholder should be entitled to recover costs incurred as part of a future service charge, however it may wish to consider before doing so whether the error in overlooking the Leaseholders' obligations of repair and assuming them to be Freeholder obligations is something which should or could be discussed with those managing agents advising at the time. We are also mindful that, if these costs are not charged as

service charge, they would be charged through company accounts which every leaseholder is a member of anyway.

108. To the extent that the Freeholder does seek to recover legal or administrative costs as service charges, having not attempted or been successful in recovering from a third party, the Leaseholders would of course have the usual rights under section 27A of the Act to challenge those items. This may involve consideration of both payability and amount. That is not a matter for this Tribunal to determine without an application before us. We were directed to Part D of Schedule 6 to the Leases and various sub paragraphs therein, as cited earlier in this decision. We observed at the hearing that some of the provisions, for example insofar as they relate to enforcing observance of covenants, may be of less relevance than others given the nature of these proceedings and the role which the Leaseholders have played. We put it no higher than that at the hearing and certainly make no findings or determinations as to any of those provisions.

109. The Leaseholders did not seek reimbursement of any Tribunal fees paid and, in any event, they have not succeeded on any of the applications and no compelling circumstances exist which would justify an order requiring the Freeholder to reimburse such fees. Accordingly, the Tribunal makes no order in respect of the same.

Name: Judge A. Arul **Date: 13 April 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).