



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

|                            |                                                                                                                                                      |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Case Reference</b>      | : HAV/00ML/LSC/2025/0656                                                                                                                             |
| <b>Property</b>            | : Flat 10 Hereford Court, 61 The Drive, Hove,<br>East Sussex, BN3 3PF (“the premises”)                                                               |
| <b>Applicant</b>           | : John Patrick Norris                                                                                                                                |
| <b>Representative</b>      | : Max Burton (Applicant’s friend)                                                                                                                    |
| <b>Respondent</b>          | : Maxiwood Limited                                                                                                                                   |
| <b>Representative</b>      | : Noah Gifford ,Counsel instructed by Coole<br>Bevis Solicitors (Jonathan Everett)                                                                   |
| <b>Type of Application</b> | : Application for a determination of liability to<br>pay and reasonableness of service charges<br>Section 27A of the Landlord and Tenant Act<br>1985 |
| <b>Tribunal members</b>    | : Judge H Lederman<br>P Smith<br>T Wong                                                                                                              |
| <b>Date of hearing</b>     | 2 <sup>nd</sup> February 2026                                                                                                                        |
| <b>Date of Decision</b>    | : 1 <sup>st</sup> April 2026                                                                                                                         |

---

**DECISION AND  
REASONS**

---

**Communications to the Tribunal MUST be made by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk). All communications must clearly state the Case Number and address of the premises.**

### **Summary of Decision of the Tribunal**

- A. The £5578.85 claimed in an invoice from the Respondent's agent dated 25 12 2024 is not payable**
- B. The £1000.00 claimed in an invoice from the Respondent's agent dated 25 12 2024 is not payable**
- C. None of the management or legal costs of these Tribunal proceedings shall be relevant costs for the purpose of calculating service charges payable by the Applicant, pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") or litigation costs which shall be charged to them under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**
- D. The Respondent's application for costs against the Applicant under rule 13 of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") is dismissed.**
- E. There is no order for reimbursement of application and hearing fees.**

### **REASONS**

#### **Background**

1. The Applicant Mr John Norris together with his wife Toulla Norris are the leaseholders of Flat 10 Hereford Court. The Applicant made an application for determination of liability to pay and reasonableness of service charges for the year 2024 relating to the premises. The application was received on 3 April 2025.
2. The Applicant further asked for orders pursuant to Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
3. The Applicant requested an expedited hearing due to his age and chronic illness. The Tribunal issued Directions in June and 13 October 2025.
4. Some of the relevant factual background was set out in the Respondent's skeleton argument.
5. The evidence from the Respondent consisted of a Statement of Case dated 26<sup>th</sup> July 2025 from Jonathan Everett of Coole Bevis LLP solicitors and a bundle containing additional documents. There was no witness evidence from the Respondent or its managing agents. No explanation or

justification for the absence of witness evidence from the Respondent or its managing agents was given.

6. Hereford Court, 61 The Drive, Hove, BN3 3PF (the building) is a purpose-built block of 24 flats constructed in the late 1960s. The Respondent is the freehold landlord of the building. The Applicant is the current lessee under the lease of Flat 10 (the flat) within the building dated 24 June 1971 which demised the flat for a term of 99 years from 25 December 1969. References to “the lease” are to that document.

### **The key issues for determination**

7. Although other issues were mentioned, the key issue raised by the Applicant was the payability and reasonableness of the following invoices rendered by Harper Stone Freehold Management (“HS”) on behalf of the Respondent to the Applicant and his wife Mrs Norris in respect of the premises:

6.1 25 12 2024 “STW Interim service charge Fire Door compliance works” £5578.85;

6.2 25 12 2024 “STW Interim service charge Installation of AOV system” £1000.00;

### **Preliminaries**

8. The Respondent argued in paragraph 22 of its skeleton argument there had been no demand for Fire Alarm works, and thus, there was no issue requiring determination. The Respondent said this was not a fire alarm but an automatic ventilation system as required by the Notice from the East Sussex Fire & Rescue Service referred to below. Accordingly, so it was said there has been no demand for Fire Alarm works, and there was no issue requiring determination on the same.
9. The Tribunal understood the Applicant’s application to deal with the AOV system. The point made on the Respondent’s behalf in the skeleton argument appears to be one of description only. It was a technical point to take against a litigant in person and does not address the substance of the concerns raised by him.

### **Summary of key concerns raised by the Applicant**

10. In various documents and letters referred to, the Applicant raised the following issues:
  - 10.1 Failure by the Respondent’s agents (HS) to allow him to inspect the tender document for the fire compliance works despite 3 separate requests (letter to Tribunal 3<sup>rd</sup> April 2025);
  - 10.2 Scope of works beyond that permitted by the Lease;

- 10.3 Non-compliance with the Consultation requirements not complied with under the Service Charges (Consultation Requirements) (England) Regulations 2003;
- 10.4 Reasonableness of the sums claimed;
- 10.5 Failure to provide breakdown contract or invoice for the works;
- 10.6 Failure to provide a specification for the works;
- 10.7 Contractor who made recommendation had a connection to the Respondent (letter Greenbuild Construction 3<sup>rd</sup> May 2024) – Certified FD30S Full Door and Frame Replacement.

**Documents and evidence available for the Tribunal at the hearing**

- 11. The Tribunal issued directions requiring the Applicant to produce a bundle of documents relied upon to support his application. The Tribunal heard the Applicant describe his age (over 93 at the date of the hearing), his heart condition, diabetes and advanced stage of cancer, combined with reduced hearing. He was assisted in the conduct of the hearing by Max Burton a friend who accompanied him. It is unclear whether he was assisted in the preparation of bundle for use at the hearing.
- 12. The Tribunal is satisfied that it would not be proportionate or consistent with its duty to take account of and make reasonable adjustments for the Applicant's protected characteristics, if it were to draw any adverse inference from his failure to produce a bundle in accordance with those directions. Fortunately the Respondent prepared a hearing bundle of 103 pages and an "authorities bundle" comprising statute and case law (186 pages).
- 13. The Tribunal is satisfied the Applicant could not reasonably have had access to the Lease of the premises, which for reasons presently unexplained was not available from the Land Registry. A copy was produced in the Respondent's bundle, and not available as far as could be ascertained before then
- 14. In addition the Applicant produced a 20 page bundle including the following:
  - a. Invoice 15 12 2024 from HS as agents for Maxiwood Limited "interim service charge fire door compliance works £5578.85);
  - b. Invoice 15 12 2024 from HS as agents for Maxiwood Limited "interim service charge installation of AOV system £1000.00;
  - c. Letter Harper Stone to Mr and Mrs Norris 17 12 2024 on behalf of Maxiwood Limited entitled "Fire Door compliance funding"

referring to a consultation period in a “statement of estimates” which was said to have expired on 7<sup>th</sup> October 2024;

- d. The Lease (the reference to the Lease was to an official copy of the land register as at 09 January 2025 showing the Applicant and his wife Toulla Norris as registered proprietors);
  - e. Document entitled “here is an outline witness statement” with statement of truth (unsigned and undated);
  - f. Hand written document - (page 14) making objections to service charges;;
  - g. Statement of account service charges as at 25 December 2024;
  - h. Quotation from Greenbuild Design & Construction Limited 03 May 2024 addressed to HS - Certified FDSOS Full Door & Frame Replacement £12288,00 pus VAT;
15. Separately accompanying the application was the Applicant’s letter of 17 March 2025 which set out 5 “grounds of the application”. (Mr Gifford said that document had not been copied to or sent to the Respondent), Its gist was read out in the course of the hearing as it largely reflected other evidence and documents the Applicant had referred to). The Tribunal formed the view the Respondent a landlord with a portfolio (as described by Mr Gifford) represented by experienced solicitors and Counsel was not prejudiced by the late production of that letter. Had there been any difficulty in addressing those issues this would have been dealt with by Mr Gifford or the Respondent either asking for an adjournment or the opportunity to provide further comment after the hearing had finished.
16. The Respondent asserts the Applicant's statement of case dated 4 July 2025 was received by the Respondent's solicitors on 14 July 2025. The Respondent says it was not accompanied by any documents upon which the Applicant wished to rely. At the hearing Mr Gifford or the Respondent’s solicitors did not identify to refer to any document or letter which it had not received except the Respondent’s letter of 17 March 2025.

**Issue number 1 Were the proposed Fire compliance works within the scope of the service charge obligations to which the Respondent was require to contribute costs?**

17. The Respondent contended the Applicant (and indeed all lessees of flats in the building) are liable to contribute to the costs of the fire safety works and its case is set out below. All references to "the lease" herein are to the lease of the flat. The Respondent’s statement of case asserted “all leases and lease plans are in the same/similar format”.

18. In the lease, the lessor demises "the Flat" to the lessee. "the Flat" is defined in preamble (3) as meaning "ALL THAT the flat numbered 10 and being on the Second Floor of the Building edged pink on one of the annexed plans". The Respondent acknowledged the lease plan is not a detailed floor plan, but argued the flat entrance door falls outside the pink edging. The Respondent argued it was reasonable to conclude that the entrance door does not form part of the demised premises. This was a surprisingly difficult issue. On a first reading the pink edging in the plan incorporated into the Lease at page 16 of the Respondent's bundle could be understood as depicting the diagonal line showing an entrance door into the flat was part of the area demised by the lease. There was no evidence about this from the Respondent or its agents. Mr Gifford argued that lease plan showed the flat entrance area to be outside the area demised by the Lease. He sought to persuade the Tribunal that the relevant line depicting the entrance door on the lease plan depicted that door as being part of the area demised by the lease.
19. In clause 4(i) of the lease, the leaseholder covenants with the landlord and the owners and leaseholders of the other flats in the Building as follows:
- “to.... (i) Keep the interior of the Flat including the internal partition walls the glass and the opening sashes of the windows and the door to the balcony· the ceilings and the floors above the level of the structural slab and the interior faces of the walls thereof and all cisterns tanks sewers drains and sanitary and water apparatus and the pipes cables wires and appurtenances thereto belonging in good and substantial repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to give such support shelter and protection to the parts of the Building other than the Flat as is consistent with the due performance of the Lessee's obligations herein contained”
20. The Respondent argued the leaseholder's obligation extended to "the interior of the Flat, including the internal partition walls and the glass and the opening sashes of the windows and the door to the balcony...and the interior faces of the walls thereof". The Respondent noted, the only specific reference to a door is the door to the balcony. The Respondent's statement of case accepted there is no reference to the front door to the flat, and argues this supported the analysis of the lease plan that the flat entrance door falls outside the premises demised.
21. In clause 6(D)(i) of the lease, the landlord covenants (subject to other matters which are not relevant to this issue) it will:
- “(i) Keep the main structural parts of the Block (not comprised in the Flat or any of the flats in the Block and not the subject of the Lessee's covenant in Clause 4(1) hereof or any similar lessee's covenant in any Lease of any

other flat in the Block) including the roofs main walls and timbers and external parts thereof (including fixed lights and frames of all windows) and the foundations thereunder and all cisterns tanks sewers watercourses drains pipes wires aerials gutters ducts and conduits not-used solely for the purposes of the Flat or any one of the other flats or car ports in the Block and the entrance and entrance halls passages stairs and landings in the Block in good and substantial repair and condition throughout the term hereby granted”

22. The Respondent acknowledged there is no specific reference in clause 6(D)(i) to the front door of the flat, but noted the Landlord is obligated to keep the "main structural parts of the Block ... including the roofs main walls and timbers and external parts therefore (including fixed lights and frames of all windows)..." in good and substantial repair and condition. This obligation does not extend to those parts of the main structure of the block that are comprised in the Flat or any of the flats in the Block, nor to those matters which are the subject of the lessee's covenant in clause 4(i) If, as the Respondent contends, the flat entrance door is not demised, then its repair/maintenance does not fall within the scope of the leaseholder's covenant in clause 4(i). The Respondent contended the front entrance door to the flat must fall within the landlord's covenant in clause 6(D)(i) on the basis that the door is a main structural part and/or part of the main walls. Responsibility for the common ways doors also falls within the scope of the lessor's covenant in clause 6(D)(i).
23. The Respondent argued the landlord's covenant includes, expressly, "fixed lights" which the Respondent believes are the window lights shown to the side of the flat entrance doors in the photographs forming part of the Soteria Partners report.
24. The Respondent contended the landlord's obligation to keep the parts for which it is responsible in good and substantial "condition" as well as "repair" is sufficiently wide to cover the installation of fire compliant doors instead of ones that do not comply. It was said a covenant to keep property in good condition imposes a greater liability than a covenant to keep property in repair, because under a covenant to keep property in good condition it is no defence that the means necessary to do so go beyond repair (*Credit Suisse v Beegas Nominees Ltd* [1994] 1 EGLR 76).
25. All of these contentions stand or fall with the interpretation of the Lease plan, taken against the background to the other parts of the Lease.
26. For the purpose of deciding how to interpret clauses such as those relating to the service charges in the Lease, one of the leading decisions is *Arnold v Britton* [2015] A.C. 1619. That decision identified the following important principles which apply to Tribunals as well as Courts.

“The Court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focusing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions.”

27. That passage can be described as referring to an “objective” test of what the Lease means.
28. In the same case Lord Hoffman made the following points of importance in interpreting a Lease:

“First, the reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. ....However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

The third point .....is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. ....

Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. ....Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

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

Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention.”

29. The Tribunal found Mr Gifford’s interpretation of the Lease plan of the Flat to be distinctly possible. Ultimately however whether the drawing on the lease plan showed the configuration of the entrance door to be outside the demise was a question of fact which could only be decided by reference to the area outside the front door of the flat and the Lease plan. The Tribunal was not persuaded that it could reach a conclusion that the front entrance door to this flat was outside the demise *on the available evidence*. The statement of case prepared by Mr Everett was of limited value as he did not profess first-hand knowledge of the layout of the flat or the entrance door or how (or whether) that plan reflected the layout of the entrance area and front door.
30. The “Door Survey” prepared by Soteria Partners in August 2023 or January 2024 (both dates were in the survey) contained photographs of the entrance door but did not assist on this issue.
31. As the Tribunal explained during the course of the hearing, Mr Gifford’s submissions about how the lease plan was to be interpreted were not

evidence from which a finding of fact could be made. The Tribunal was struck by the absence of witness evidence from the managing agent (HS) who had issued the demands which were challenged or from the Respondent. Such a witness could have explained the physical layout of the entrance to the flat (and other flats in the Building) and attempted to relate that to the lease plan at the date of the grant of the lease and at the date of the service charge demand. On this issue the absence of any evidence from a witness whose evidence could be cross examined or assessed was noteworthy, given the resources available to the Respondent described by Mr Gifford as a landlord with some 136 properties. There was no satisfactory explanation for the absence of such evidence.

32. A second area of uncertainty arose from the configuration of the entrance area to a number of the flats in the Building appeared to show differences from that depicted in the Lease plan and to the area of the entrance to Flat 10 depicted in the Soteria Partners report at pages 10 and 40 of the Respondent's Bundle. Photographs of the entrance to Flats 12, 15 and 16 in the Soteria Partners report at pages 42, 45 and 46 illustrate some of these differences. In paragraph 6 of the Respondent's Statement of Case it was said the Respondent "confirmed" that all leases and lease plans are in the "same/similar format". Mr Everett was not tendered to give evidence about this and even if he had been, there was no indication he (as opposed to the unnamed directors or agent of the Respondent) would have the relevant knowledge. No one from the Respondent or their managing agents (HS) gave evidence or prepared a witness statement. Accordingly the assertion that all the lease plans were in identical format could not be tested. Not could the Respondent's implicit assertion that all of the entrance doors were outside the demise of each flat be tested. The relevance of this is that the service charge demands in issue was calculated by reference to an apportionment of the costs for all flats not just the premises.
33. Mr Everett accompanied the Respondent's Statement of Case with a statement of Truth. The Respondent's Statement of Case was not, however, a witness statement. Insofar as he gave evidence, Mr Everett did not identify the Person or persons at the Respondent from whom he obtained the relevant information or identify his sources of knowledge.
34. Accordingly on the available evidence, the Tribunal does not find the Respondent has established that the front entrance door to the flat was excluded from the demise to the premises. Additionally, the Respondent has not established on the evidence that the entrance doors to all of the flats in the building fall outside the demise so as to fall within the Landlord's repairing covenant.
35. This should not be treated as a finding that entrance doors to the premise were within the demise or that this was true of flats held by other leaseholders at the Building. There was not sufficient evidence to reach a satisfactory conclusion on this issue.

## **Issue no 2 compliance with the statutory Consultation Requirements**

36. The Respondent's Statement of Case argued that through HS its managing agent, the Respondent fully complied with statutory consultation in relation to the fire safety works. With the lowest estimate (Danfire at £83,180.00), professional fees and VAT, the total cost of the works was £111,577.00. It was argued the Applicant's contribution was £5,578.85. In broad terms for qualifying works of this kind section 20 of the 1985 Act and the Service Charges. (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") *if applicable* would require 3 stages of consultation to take place if the relevant costs in excess of £250.00 are to be taken into account as service charge.
37. As it transpired much later in the hearing, Mr Gifford accepted that none of the work in the service charges demands challenged by the Applicant had been carried out. Accordingly even if there had been a breach of the 2003 Regulations, the sum recoverable as an interim payment of service charge would not be limited to £250.00. This might become a relevant issue when any balancing charge or year-end accounting came to be considered: see *23 Dollis Avenue (1998) Limited v Vejdani* [2016] UKUT 0365. Breach of the requirements in the 2003 Regulations remain be relevant to whether the costs claimed on account were reasonable.
38. Page 97 of the Respondent's hearing bundle contained a copy of what was expressed to be a stage 1 Notice of Intention from the Respondent's agent HS for fire door compliance works dated 18 07 2024 inviting written observations. That notice did not expressly refer to the AOV work but the narrative on page 98 could be taken to include that work.
39. Pages 99 -101 of the Respondent's hearing bundle contained a copy of what was expressed to be a stage 2 "Statement of Estimates" dated 30 August 2024 for the proposed fire door works including replacement of fire door sets in common parts and flat entrances and repairs identified on site. Page 100 contained details of the cost of the works, contract administration fees (Soteria Partners) and additional fees for Paymaster fees and VAT on all of the above. It said that copies of the successful tender and specification were available for inspection at the offices of HS "upon appointment". The works were described in very vague terms "Building Works".
40. The Respondent did not introduce into evidence the specification or the priced estimates referred to in that Stage 2 notice.
41. Pages 15-16 of the Applicant's Bundle contained a copy of the stage 3 letter from HS of 1<sup>st</sup> December 2024 enclosing the demands for funds.
42. Page 12 of the Applicant's Bundle contained a statement asserting the stage 1 and stage 2 notices were not served upon him. This was his evidence at one stage in his oral evidence. At another stage in his oral evidence the Applicant said he "could not remember" those letters being

sent to him. Having heard the Applicant and the way he gave evidence, the Tribunal is satisfied that despite his ill health and age he was fully able to participate and articulate his concerns. On the balance of probabilities it is more likely than not those stage 1 and stage 2 letters were sent to him and received by him even though at the date of the hearing he could not remember receiving them.

43. In the course of the hearing the Applicant produced a copy of an email to HS dated 17<sup>th</sup> September 2024 saying that he had tried to get inspection of the “tender documents” “in accordance with your section 20 notice” on 3 occasions “without success” It is unlikely he would have written in that way if he had not received the earlier letters from HS in the form of the stage 1 and stage 2 notices.
44. The Applicant’s letter alleging failure to permit inspection of the tender documents sent to the Tribunal was not included in his hearing Bundle. Mr Gifford said that had not been received by the Respondent. Nor was his complaint that inspection of the tender documents had been refused in his application or referred to in Mr Everett’s statement of Case.
45. The Tribunal is not satisfied this complaint (non-availability of tenders etc for inspection) had been notified to the Respondent in these terms or included in the Applicant’s hearing bundle in a form which put them on notice before the hearing that they would have to meet this allegation. The Tribunal is not prepared to draw any inferences adverse or otherwise from the Respondent’s omission to address this issue in its evidence.
46. Accordingly the Tribunal is unable to reach a finding upon whether access to the specification and tender was not granted despite the Applicant’s request. The Tribunal does not find that there was a breach of the Consultation requirements in the 2003 Regulations on the evidence produced by the Applicant.

### **Complaint 3 reasonableness of the sums which are the subject of demand in advance of works**

47. The Tribunal’s role is governed by sections 27A and 19 of the 1985 Act (as amended). In very broad terms, these provisions require the Tribunal to decide several questions. Firstly whether a particular service charge cost is authorised by the terms of a Lease. Secondly where a service charge cost has been incurred or paid, whether that cost was reasonably incurred. Thirdly the Tribunal can decide whether works or services charged to service charge have been provided to a reasonable standard. There are also separate statutory requirements for consultation for certain types of “qualifying” works that are charged to service charge which lead to each lessee being charged £250.00 or more for particular works, which if not complied with, limit the cost of those works or services recoverable as service charge.
48. These statutory provisions have been considered by higher Tribunals and Courts. Guidance has been provided in case law (some of which is

mentioned in the Respondent's skeleton argument), which this Tribunal is required to follow, where it is relevant. Initially, where works have been carried out, and charged a service charge the Tribunal is required to consider whether the landlord's decision to carry out works was objectively rational taking into account the interest of the lessees who would be paying for the works.

49. There is a different statutory regime, where the Tribunal is asked to consider the reasonableness of service charge costs invoiced in advance of the services and works being carried out. This sometimes arises in the context of a budget for estimated service charges to be paid for the following service charge year or years. The Tribunal is required to consider whether the sums asked to be paid in advance are authorised by the lease, and then to consider whether the amounts demanded in advance are reasonable.. The Tribunal is required to take into account all relevant circumstances as they existed at the date of the hearing, giving such weight to the various factors as it considers just and reasonable. That said, the Tribunal will not usually substitute its views for estimated service charges unless there is particular reason for believing that the amount requested in advance is not reasonable.
50. The above summary is intended as a general outline for those who may read this decision who may not be familiar with legal concepts or terminology.

Section 19 of the 1985 Act provides:

”(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—  
(a) only to the extent that they are reasonably incurred, and  
(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.”

51. Subsection (2) is about interim charges, demanded in advance and before expenditure has been incurred. If such charges are found to have been unreasonable in amount, then to that extent they are not payable. The reasonableness of an advance payment is usually judged at the time when it is demanded, and the likelihood of the relevant work being carried out is obviously relevant to whether it is reasonable to charge the

tenants in advance for it. In *Knapper v Francis* [2017] UKUT 3 (LC) , the Tribunal (the Deputy President, Martin Rodger KC) said this at paragraphs 32 and 40:

”32. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked.

...

40. If there is doubt over the time at which the proposed expenditure may be incurred or whether it may have been incurred during the relevant accounting period at all, it may not be reasonable to require the whole payment in advance.”

52. It emerged after a comment from the Applicant that a “Right to Manage” company had taken over the management of the building and was demanding service charges for fire compliance works which (the Applicant said) were considerably lower than those demanded previously.
53. The Applicant’s evidence was new managing agents had been appointed to act for the RTM company namely Austin Rees.
54. The Applicant produced a demand from Austin Rees on behalf of Hereford RTM Company Limited addressed to Flat 2 Hereford Court dated 28th January 2026.
55. When this issue was put to Mr Gifford he frankly accepted an RTM company had now taken over management and drew the Tribunal’s attention to the provisions of the 2002 Act which provided for transfer of contracts from the Respondent to the RTM company.
56. Mr Gifford also confirmed that none of the fire compliance works had been carried out as funds had not been raised.
57. The date when the acquisition of the right to manage by Hereford RTM Company Limited took place was not in evidence. The Tribunal infers that process would have been ongoing for some 6 months – 12 months, if not earlier as that company was incorporated in March 2025.
58. It would have been apparent at an early stage in the course of the acquisition of the right to manage that any sums paid to the Respondent for such works would need to be part of transfer process subject to any deduction for the Respondent’s costs under section 94 of the 2002 Act.
59. It would have become clear at an early stage from non-payment of funds towards the fire compliance works that the fire compliance works which

were the subject of the demands in issue would not be carried out *by the Respondent*. Accordingly, whatever the position was at the date of the demands in December 2024 by the time of the issue of this application it was very likely or distinctly possible that the Respondent would not be in a position to carry out or arrange for those works to be carried out because of the right to manage process.

60. In the course of the hearing the Applicant mentioned he had been informed that the Notice had been varied or withdrawn by East Sussex Fire & Rescue Service. Mr Gifford was unable to assist the Tribunal whether this was accurate.
61. The Tribunal concluded that in the unusual circumstances it was not reasonable for the payment for the fire compliance works or the AOV work to be made to the Respondent in advance of the work being carried out.
62. It was extremely unfortunate the existence of the acquisition of the right to manage by Hereford RTM Company Limited was not referred to by the Respondents or its representatives at an earlier stage in these proceedings.

#### **Complaint 4 Soteria Partners and the overall costs of the works**

63. In his statement of case of 4<sup>th</sup> July 2025 the Applicant asserted that the “surveyor” was owned by the Respondent and that there was a conflict of interest and raised question about impartiality. This was reference to Soteria Partners. This ownership was denied in the Respondent’s statement of case (paragraph 17). It was also denied (although this does not appear to have been alleged) that the Respondent “owned” the corporate entity through which HS operated.
64. HS operate through Harper Stone Properties Limited. Mr Gifford acknowledged a director of HS is Christopher Brotherton, who the Tribunal was told is the son of Philip Brotherton a director of the Respondent.
65. The Respondent says that on 21 August 2023, Mr James Pears of Soteria Partners undertook an extensive fire door safety inspection of the Building (“the Report”) at pages 17-85 Respondent’s bundle. The Report detailed the works required to be undertaken to the fire doors. The Report also bears the date 3<sup>rd</sup> January 2024. As mentioned at the hearing, unusually for such reports there is no address or contact number for Mr Pears and no details of his relevant qualifications (if any). On looking at the website for Soteria Partners (for the purposes of ascertaining if there was any conflict of interest affecting the composition of the Tribunal) the Tribunal could find no detail of an address or contact number only an email address. Mr Gifford was unable to provide an explanation for this or to obtain an explanation from his instructing solicitor.

66. On 1 February 2024, East Sussex Fire & Rescue Service served the Respondent with an enforcement notice under Article 30 of the Regulatory Reform (Fire Safety) Order 2005 (“the Notice”) [86]. The Notice required the Respondent to undertake a number of works to the Property so as to comply with the 2005 Order [88-92]. Namely: (1) install an automatic smoke ventilation system (also known as an automatic opening ventilation); (2) undertake all of the remedial works recommended within the Report; and (3) install clear identification markings.
67. On 3 April 2025, the Applicant filed his application for determinations as to the fire alarm, doors in common ways and fireproofing.
68. The Tribunal found it unusual that the contact details or qualifications of Soteria Partners were not available. This was particularly significant as they were due to charge £7057.00 contract administration fees. HS or Maxiwood Limited were then due to charge VAT on those fees according to the schedule in the stage 2 notice on page 100 of the Respondent’s Bundle.
69. The Tribunal was satisfied that the Applicant had put in issue the probity and integrity of Soteria Partners and had questioned whether this might have affected the cost of the works. The Respondent and its agents omitted to adduce any evidence about Soteria Partners which might have allayed or responded to these concerns. The Respondent and its agents had omitted to provide copies of the tender or specification which might have provided some reassurance to the Applicant that the sum claimed in advance for the services of Soteria Partners was reasonable or that it was appropriate or reasonable to charge VAT in addition for their services in the absence of evidence of VAT number or VAT registration.
70. Separately the Applicant questioned the charge of £2906.00 plus VAT for “paymaster Fees Harper Stone Properties” in the stage 2 notice. No attempt was made to justify this fee by evidence. The Applicant asserted from his work experience and the description of the services provided this was simply a matter of writing a cheque or presumably in today’s business environment arranging a bank transfer and the fee charged at the rate of 3.5% of the total project costs plus VAT was excessive.
71. As the priced tenders or specification were not put in evidence, the Tribunal could not be confident that the tenders referred to by the 2 companies were inclusive or exclusive of VAT.
72. For all the above reasons, the Tribunal finds the Respondent has failed to show that the sums claimed in the stage 2 statement of estimates was reasonable to charge in advance of the works being carried out.

### **Automatic ventilation system costs**

73. The Respondent did not adduce evidence to show what the cost of this work was due to be carried out. Mr Eevertt’s statement of case did not

address this. The fact that a notice from the Fire and Rescue Service required such work does not of itself explain or justify the sums demanded in advance of works to be carried out. The Tribunal was not satisfied that the Notice remained in force in its original form, or that if it did, the RTM company with responsibility for this work intended to carry out the proposed works or require the same contributions from leaseholders.

### **The Respondent's application for costs under rule 13 of the Tribunal Procedure rules**

74. The Respondent argued the Applicant conducted the proceedings unreasonably and incurred unnecessary additional costs. The application for costs was supported by a statement of costs claiming costs of solicitors and Counsel in a total of £5478.00 (inclusive of VAT).
75. The Respondent drew attention to the following. On 9 June 2025, the Tribunal issued case management directions towards a paper determination of the Application. Paragraphs 27-29 of the Directions required the Applicant to file and serve a determination bundle and that if he did not do so by 18 August 2025, the Applicant would be struck out.
76. The Applicant failed to comply with those directions; On 29 August 2025, Regional Judge Whitney struck out the Application.
77. On 24 September 2025, the Applicant made an application to extend the timetable, citing hospitalisation and ill health. Judge Rai, on 13 October 2025, ordered that unless the bundle be served by 27 October 2025, the Application would be struck out. On 13 November 2025, Mrs Cooper (a Legal officer) directed that although the Applicant's bundle did not comply with the directions of Judge Rai, it be allowed and the Respondent should serve its own bundle.
78. Subsequently, the Respondent made an application for the Application to be struck out on the basis of the Applicant's failure to comply with Judge Rai's direction. On 27 November 2025, Judge Jutton refused the application.
79. The issue is whether there has been unreasonable conduct by the Respondent within rule 13 of the 2013 Rules as that phrase has been considered in *Lea and Others v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241. Having heard from the Applicant his health condition his difficulty in participating and his obvious need for assistance the Tribunal is satisfied that in his particular circumstances he did his best to act reasonably. There was a reasonable explanation for the conduct in issue, namely his incapacity ill health and need for assistance. Had the Tribunal not so found it would have declined in the exercise of its discretion to make an order for payment of costs under rule 13. The Tribunal took into account the omission of the Respondent to provide relevant information about the management of the Building, and the RTM process in advance of the hearing. Additionally the

Tribunal would not have been satisfied that it was reasonable, proportionate or appropriate for the Respondent to incur the cost of solicitor and Counsel for a challenge to this level of interim service charge which could have been dealt with by HS as managing agents who hold themselves out as having affiliation with professional association.

### **The conduct of the hearing itself**

80. The hearing took place and was scheduled to take place remotely by cloud video platform. Unfortunately the Applicant and his friend Max Burton struggled to make a video connection and could not get the device from which they were working to produce a video connection. They managed to obtain an audio connection to the hearing. This meant the start of the hearing was delayed. Initially the Applicant's friend (Mr Burton) asked for an adjournment but the Applicant immediately said he did not want an adjournment and referenced his poor health. The Tribunal took the view that an attempt should be made to proceed with the hearing. The issue of communication was kept under review throughout the hearing.
81. It became apparent during the course of the hearing that the Applicant was unable to hear some of the questions or submissions made by others. The Tribunal and the Applicant's friend repeated or summarised what had been said where necessary. The Tribunal was satisfied that, taken with the occasional break when needed, the Applicant was able to fully participate in the hearing.

### **Reimbursement of fees**

82. The Applicant did not seek reimbursement of hearing or application fees.

### **Section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

83. The Tribunal was not asked to determine whether there is provision in the Lease which enables legal costs or other costs of these proceedings to be charged to service charge. It does not do so.
84. The Tribunal can only make an order under section 20C of the 1985 Act on behalf of those of who apply for such an order or who are specified in the application: see *Re SCMLLA (Freehold) Ltd [2014] UKUT 58 (LC)*. Given the Applicant's success in this application it is appropriate to make such an order in respect of his service charge costs. It is also just and equitable to make an order extinguishing any litigation costs which the Applicant may have arising out of the costs of these proceedings under paragraph 5A of Schedule 11 to the 2002 Act for the same reason. The Respondent argued the Applicant's conduct of the proceedings and his failure to comply with directions had incurred legal costs which should not be shouldered by other service charge payers. That argument assumes that the Respondent's legal costs incurred were within the terms of the leases, were reasonably incurred and that it was reasonable

or appropriate to incur legal costs at all in this application in the light of remarks about proportionality in *Avon Ground Rents Ltd v Child* [2018] UKUT 204. The explanation given by Mr Gifford that the Respondent had over 136 freeholds and habitually used Coole Beevis LLP solicitors to address applications of this kind, did not address this issue.

### **Effect of this decision**

85. Nothing in the reasons given above or the decision should be understood to restrict or prevent other leaseholders from making applications for similar orders under section 20C of the 1985 Act or paragraph 5A of Schedule 11 to the 2002 Act should they wish to do so. Nor does this Decision determine the questions addressed above which may arise when there are other leaseholders or the Right to Manage company has issued demands for fire compliance works. This is a decision based upon the limited evidence available to this Tribunal.

**This has been a remote hearing which has been consented to by the parties. The form of remote hearing was partly by CVP and partly audio. All issues could be determined in a remote hearing. The documents that we were referred to are set out above**

### **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.