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

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| **Case Reference** | **:** | HAV/45UC/LSC/2025/0789<br>HAV/45UC/LLC/2025/0003<br>HAV/45UC/LDC/2025/0769 |
| **Property** | **:** | Eversley Court, 18 Aldwick Avenue, Bognor Regis, West Sussex, PO21 3AZ |
| **Applicant** | **:** | David Broome & Ruth Broome (Flat 1)<br>Julia Cake (Flat 4) |
| **Representative** | **:** | ---- |
| **Respondent** | **:** | RHK Investments Limited |
| **Representative** | **:** | Rizwan Khan, director |
| **Interested Persons** | **:** | Lee Godfrey – Flat 3<br>Kieran Smith – Flat 6 |
| **Type of Application** | **:** | Determination of liability to pay and reasonableness of service charge<br>Section 27A Landlord and Tenant Act 1985 and ancillary applications |
| **Tribunal Member** | **:** | Judge J Dobson<br>Ms T Wong |
| **Dates of Hearing** | **:** | 30th April 2026 |
| **Date of Decision** | **:** | 18th May 2026 |

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**DECISION**

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## Summary of Decision

1) **The Tribunal determines that the service charges challenged by the Applicants in respect of accounting and administration charges levied by the Respondent itself and the service charges in respect of works following flooding to the basement Flat 5 are not payable.**

2) **The Tribunal determines that if service charges were demanded in respect of the proposed works to the bay window to Flat 3 such service charges would not be payable under the terms of the Lease.**

3) **The Tribunal determines that the service charges challenged by the Applicants in respect of structural engineer fees are payable as demanded.**

4) **The Respondent's application for dispensation from consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of major works is granted (although nevertheless the actual service charges in respect of the works and proposed works are not payable).**

5) **The Applicants' application for the Tribunal to order that the Respondent's legal and litigation costs of the proceedings may not be recovered are granted.**

## Background- Property and proceedings

1. An application for determination of liability to pay and reasonableness of service charges for the service charge year ended 2024 in respect ("the Property") by the Applicant on 28th September 2025, given the first listed case reference [A11- 32]. The Applicants further sought 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.

2. Subsequently on 4th December 2025, the Respondent made an application for dispensation from consultation requirements for major works [R35- 46] pursuant to section 20ZA of the 1985 Act, given the third- listed case reference. It is common ground that the consultation requirements had not been met.

3. Directions given in the proceedings have categorised the Applicants as that in respect of their applications regarding service charges and the ability of the landlord to recover costs but also as some of the respondents to the dispensation proceedings. Likewise, the Respondent was identified as the applicant in the dispensation proceedings. The other lessees solely involved in the dispensation proceedings were described as other respondents to those proceedings.

4. The Tribunal considers that for the purposes of this Decision it is both unwieldy and potentially confusing to give the parties different titles in the different proceedings. The Tribunal therefore gives the titles shown above. The Applicants applied first and the section 27A proceedings are the main ones, so they are the obvious parties to be called applicants. Hence, the Respondent is just that and the fact it made the dispensation application, which was in response to the section 27A one, need not change that. The Interested Persons as termed are only involved in the dispensation proceedings and have said nothing about those or at least had not until the hearing day. The title given to them reflects them having an interest in the outcome, although the determinations in the section 27A proceedings do not bind them as they are not a party to those proceedings, much as the likelihood is that if they brought the same applications as the Applicants, they would receive the same outcome.

5. The Property comprises a detached building, appearing likely to have formerly been a single house, and now containing six flats across four floors.

6. The Applicants are the lessees of flats with the numbers stated. The Interested Persons likewise.

7. The Respondent appears to own or effectively own the other two flats, together with the freehold title for the Property as a whole. The Applicants identified in their application that the title for Flat 3 is registered to Gatehouse Bank PLC, but the Tribunal understands that is in effect a mortgage arrangement but one structured to comply with Sharia law. Hence it has not been considered necessary by the Tribunal to include Gatehouse as a party- and no party has suggested it ought to be so included.

8. Directions were principally given at a case management hearing in January 2026 [A3- 10], including permission for the Applicants to add the service charge year ending 2025.

9. A bundle for the final hearing was directed to be prepared by the Applicants. The Applicants produced a PDF bundle amounting to 212 pages in respect of the service charge application. The Respondent also produced a bundle comprising 186 pages in relation to the dispensation application. There was a large degree of overlap between the two bundles, which was unhelpful and where a single bundle across the two applications would have been preferable. The Tribunal principally used the larger Applicants' bundle.

10. Whilst the Tribunal makes it clear that it has read the bundles, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left

them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, which it does on occasion were there were specific points of particular relevance but not otherwise, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering, such numbering /preceded by "A" for the Applicants' bundle and "R" for the Respondent's bundle.

11. This is an imperfect, although as good as any, time to record that the Tribunal has been mindful of the guidance of the Senior President of Tribunals to seek to keep decisions relatively short. Given the various issues the Tribunal has been unable to fully achieve that- the Tribunal finds it necessary to provide its findings and reasoning on the different issues and it has taken some pages for the Tribunal to be able to do so. The Decision nevertheless seeks to focus solely on the key issues. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in these applications and those are not mentioned. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and necessarily limited to matters to which the Tribunal was referred.

## The Lease

12. The lease of Flat 1 (and a garage and a parking space) dated 5th April 2002 ("the Lease") was provided [A39- 53].

13. The Tribunal understands that the leases of the other flats at the Property are in the same or substantively the same terms.

14. The provisions of the Lease are essentially as would be expected. The Respondent is required under what are termed the "Service Obligations" and detailed in clause 5 to insure the Property (5.8), to decorate the common parts and exterior (5.7), and to keep the Property in repair (5.2). Additionally, there are obligations in respect of the common parts and the lift and requirements to undertake the usual sorts of other tasks.

15. The lessees are required to pay for that by way of service charges, termed "Tenant's Contribution". Those include on account charges payable on 25th March and 29th September of the given year in such sum as "the Landlord or agents may reasonably consider sufficient". The accounting year runs from 25th March to 24th March. The Contribution includes sums towards a reserve fund.

16. The Contributions also include the final amount of "the Tenant's Contribution less any amount paid on account within fourteen days of receipt of a copy of the Auditor's Certificate of the total expenditure on Service Obligations incurred by the Landlord for the previous accounting year". The Respondent is specifically required by clause 5.14 to procure an audit by professional auditors who must then certify the expenditure.

17. The Respondent is required to pay an equivalent sum to the Tenant's Contribution in relation to flats not let.

18. The Applicant is required to pay the Respondent's "all proper costs charges and expenses" including legal costs and surveyor fees for various types of action which the Respondent may take. Not only do those include potential forfeiture but also other failures or breaches by the lessee and also the granting of consent. The Respondent is able to "Engage and/ or retain managing agents surveyors solicitors and accountants and such contractors as may be necessary".

19. The demise is described in the First Schedule and includes ceiling plaster and floor surface, the surface of all walls, plus windows and window frames. The lessee is by clause 3.9 not permitted to make structural alterations. The lessee is required by clause 3.3.1 to keep that in good and substantial repair.

## The relevant law- service charges

20. Essentially, pursuant to the Act, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.

21. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. That includes whether any service charge is payable both in respect of the particular expense and generally pursuant to the provisions of the Lease and the wider law.

22. Section 19 provides that a service cost is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the costs which gives rise to the service charges. Assuming service charges to be payable in principle, the Tribunal determines the amount of the service charges payable by a given lessee in respect of the service cost.

23. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016- going forward it will be the Fourth Edition but that came into operation on 7th April of this year and that post-dates the service charges under consideration. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

24. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

25. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute, and none were referred to by the parties. The Tribunal does not therefore seek to refer to any specifically. The Tribunal is however aware of the case authorities and applies the principles identified.

26. Those include by way of examples and without in any way suggesting what follows is comprehensive, that there are two elements to whether a cost is reasonably incurred, namely was the decision-making process reasonable and is the sum to be charged reasonable in light of the evidence; whether proposed method is a reasonable one in all the circumstances, even if other reasonable courses could be adopted and other reasonable decisions could have been made; the fact that the costs of the work will be borne by the lessees is part of the context and interests of the lessees must be conscientiously considered and given the weight due, although the lessees have no veto and are not entitled to insist on the cheapest possible means of fulfilling the landlord's objective or a minimum standard; any significant increase to costs in previous years and the financial impact on the tenants are relevant to the question of whether costs have been reasonably incurred; the allowance or otherwise of service charges is not an all or nothing decision, rather if the specific cost incurred is not a reasonable one for service or works, the Tribunal should determine the level of cost that is.

27. There are also authorities in respect of lease construction, but nothing turns on any disputed construction in this case.

## The relevant law- dispensation

28. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

29. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements". It is appropriate in respect of

consultation to set out the key caselaw, which is very significant to the manner in which the question of dispensation is approached.

30. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

31. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

32. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

33. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): 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."

34. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

35. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

36. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils- appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

37. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in Daejan but none are relied upon or therefore require specific mention in this Decision.

38. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it

considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in Daejan it was said "on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect".

## The Hearing

39. The hearing was conducted in person at Havant Justice Centre.

40. The Applicants attended and represented themselves and each other, dividing submissions and questioning between them. They had provided a joint witness statement [A33- 38]. Oral evidence was given by Mrs Broome.

41. The Respondent was represented by Mr Khan, its director. He also made submissions, asked questions of Mrs Broome and gave oral evidence. He had also provided a written statement [R70- 75].

42. The Tribunal is grateful to all the above for their assistance with these applications.

43. The Tribunal did not inspect the Property. The Tribunal was content that insofar as information was required about the nature of the Building and any other matters in respect of which there was a need for visual evidence those were demonstrated by photographs such that it was not necessary to inspect in order to the determine the matters remaining for determination.

44. The Tribunal started by seeking clarification from the parties as to exactly which matters required determination and for which service charge years. Various matters had been raised which fell beyond the jurisdiction of the Tribunal, about which the Tribunal makes no comment, and others were mentioned but it was unclear that they required a determination. It was established that there are four elements for determination pursuant to the Applicants' application (leaving aside for now the costs of the proceedings) plus the dispensation application of the Respondent.

45. It was further established that the value of the dispute as given in the application form reflected two lots of the twice yearly on- account service charges demanded in 2024 and had no direct relationship to the specific costs figures challenged- or the share payable by each Applicant or any significance to the actual application made. The Tribunal disregarded that specific figure. In addition, it was agreed by the parties that in addition to Flat 1 being required to contribute 19% of the service costs incurred by way of service charges, so too did Flat 4. Whilst not directly relevant, it was agreed that overall four of the flats pay that percentage and the other two flats each pay 12%. The Tribunal explained the need to identify service charge figures, given that the determination is of payable service charges.

46. The Applicants suggested that there was or should be an extra party to the proceedings and sought to adduce a witness statement from Mr Smith, the lessee of Flat 6. The Tribunal noted that not only was the statement very late but also Mr Smith was not in attendance and could not be questioned about it. He was also not a party, not being an original Applicant or having asked to be added and neither had he in any event asked the other Applicants to represent him. The Tribunal took no account of any further evidence.

## Consideration

47. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the matters below. The Tribunal takes matters item by item.

48. The Tribunal also explains for the avoidance of doubt that it has not sought to determine the total service charges payable by each Applicant, lacking sufficient information on which to do so. Rather, the Tribunal determines whether the specific service charges challenged by the Applicants ought to be reduced and if so, then to what extent.

i)- Dispensation from consultation in respect of major works

49. This aspect of the case is effectively rendered irrelevant by determinations of the Tribunal with regard to the related service charges. However, the Tribunal works through this aspect first all the same.

50. The Applicants asserted that the Respondent failed to carry out the dispensation process, failing to provide the relevant three notices and related information. The Respondent contended that the lessees had agreed a relatively informal approach to management of the Property, including avoidance of external managing agent fees- although in the event the Respondent has decided rather more recently to instruct a managing agent. Indeed, it was common ground that there had been some level of agreement, at least about the approach to some tasks.

51. However, matters more recently went awry and in 2025, Mr and Mrs Brome instructed solicitors, who wrote to the Respondent about the lack of a section 20 consultation, amongst other matters [A207- 208]. For completeness, a response was sent by solicitors on behalf of the Respondent [A209- 211]. Mrs Broome said that until she obtained advice, she was unaware of the process.

52. The Respondent's position as expressed in his application is that with regard to works undertaken to the basement flat owned by the Respondent, Flat 5, they were also urgent. The Respondent states that the area became flooded and that the water level rose significantly with damage caused to the belongings of the resident tenant. It contended a health and safety risk and risk of structural damage.

53. The Respondent said that it had provided two quotations from contractors to the lessees. It was also said that there were no objections or alternative proposals and no other course of action was suggested.

54. The Respondent's case was that the advice received was that urgent action was required. Mr Khan said that he therefore proceeded with the works without formal consultation in order to avoid risk and delay.

55. The Tribunal identifies that urgency or lack of it creates no different test. Urgency of the works is not of itself a sufficient reason to grant dispensation. The question remains one of prejudice to the lessees.

56. The most important aspect by some distance in relation to this issue is that the Applicants could not demonstrate what they might have done if there had been a consultation in relation to one or other set of works, both which might have altered the approach taken by the Respondent and, if relevant, otherwise. Indeed, at least on what was presented to the Tribunal, the Tribunal considers it very likely that the outcome would have been the same as it actually was.

57. There was nothing directly relevant said by the Applicants in writing. Mrs Broome said in oral evidence that they would have wanted there to be an effort to recover the money from the insurance company and that they would have sought a 5- year guarantee for the work to the basement flat. The Tribunal could not identify that would have altered what the Respondent did or the cost. The concern expressed by Mrs Broome was about whether there was a structural matter and so whether service charges were payable, which were matters about payable service charges and not prejudice from lack of consultation.

58. The fact that Mr Godfrey had responded to the Respondent in respect of the works was referred to earlier in the hearing and there was something of a disagreement in the course of Mr Khan's questioning of Mrs Broome about the meaning of that. Similarly, there was about the effect of the lack of response or nature of response from the Applicant, but nothing turns on any of that so no more need be said.

59. Further, the Respondent's case as expressed in the application is that Mr Khan instructed building contractors in respect of works to the roof and gables of the Property but that they identified significant cracking and movement in the structure of the Property and refused to proceed.

60. However, the bundles contained notices and correspondence [A174-176] in relation to that set of works and the Tribunal understands that the consultation process was subsequently followed in relation to those works. Given the determination regarding the actual service charges- they are not payable- if the Tribunal is in error, that has no practical effect.

61. The Tribunal therefore determined that the Respondent's application for dispensation from consultation requirements in respect of the works to the basement flat should be granted and without conditions.

ii)- Flooding Works- £7,188.00

62. These works fell within the 2024- 2025 service charge year. The works were undertaken in November 2024. The Applicants did not, Mrs Broome said in oral evidence, challenge the cost as unreasonable for the work undertaken. The challenge was to the requirement to pay at all.

63. The Respondent incurred cost of the above amount in relation to works to Flat 5. That was said to have flooded in January 2024. It was apparent from the parties' cases that one of the relevant features was the ownership of the flat by the Respondent- the works were felt by the Applicants to be for the Respondent's benefit.

64. The Applicants also complained that the sum had been paid out to the contractor from the service charge account without the lessees being aware. They became aware at a meeting in March 2025 after the work had been completed and the payment had been made to the contractor from the service charge account. It was amply clear that had contributed to their sense that the Respondent was acting in a way in which it ought not and taking advantage of the existence of service charges funds to pay for works which should be paid for by the Respondent. Mrs Broome was unhappy about the order of events, including that the insurer had not been contacted sooner.

65. The Applicants' case also suggested that the service charges were unreasonable because the work should have been paid for by the insurers if there had been a suitable policy, which they said there was not. That is returned to below. They clarified that there was no challenge nevertheless to the cost of the policy.

66. The Applicants also contended that the basement flat had flooded previously- the indication was twice [A107]. Mr Khan was able to establish from Mrs Broome in cross- examination that the Applicants had not seen any report about the previous work, did not know about any claim then through insurance or what work had been undertaken. He did not challenge there having been previous work and indeed it was his position that there had been but it had failed. Mr Khan also said in response to cross- examination that he had obtained a valuation survey prior to the Respondent purchasing the Property- but not a more detailed survey- and implicitly that had not revealed a difficulty in relation to the basement flat.

67. The grant of dispensation is no more than that. As has been explained during the proceedings, that decision involved no determination that the Applicants should meet any share of the cost of the works.

68. The basic circumstances themselves- ownership of the flat by the Respondent and the significant payment from the service charge account- were sufficient to provide the Applicants with a prima facie case and require the Respondent to demonstrate the reasonableness of incurring the cost as a service cost.

69. The Respondent in its application for dispensation asserted that it had sought assessments from "a few" damp- proofing and waterproofing specialists who it said identified a structural defect related to the tanking of the basement, which had not been carried out correctly. The Respondent had work carried out which Mr Khan said in oral evidence carried a ten- year guarantee.

70. The Applicants queried why the Respondent had not gone back to the previous contractor given the asserted defect with the previous works. The Applicants suggested that there ought to have been a guarantee or similar. Mr Khan said in oral evidence that he had contacted the vendor to the Respondent, but there was no paperwork available. None had been provided to the Respondent earlier on purchase of the Property.

71. The Respondent did not provide any photographic or other evidence of the condition of the relevant parts of the Property prior to the flooding, during the flooding or after. Mr Khan accepted that he possessed no report identifying the cause of the flooding, only the quotation of the contractor for the work it was to undertake [A108- 110] and not an indicator of the problem which prompts the works. The furthest it went was to express a belief that remedial works have been carried out in the past. The bundles also provided the invoice from City Damp Solutions Ltd for the works undertaken [A89], which the Tribunal notes is just that. Another quotation from a different contractor [A125- 128] added no additional relevant information.

72. The Respondent provided no good evidence of the cause of the flooding or of the nature of it. Most significantly, in a situation in which there could be a number of potential causes, the Respondent did not provide any expert opinion as to the actual cause. The summary of the Respondent's case was that when the Tribunal suggested that there was no evidence of the cause of the problem, Mr Khan simply replied that it flooded and came in through the walls.

73. There was in particular no explanation of what issue arose with the structure and exterior which permitted the water penetration. There was no suggestion that anything had changed in relation to the structure and exterior since the Property had been built which had any relevance, if indeed that had been any change in the relevant part of the Property at all. In particular, there was no evidence that any deterioration in the structure or exterior of the Property or other change to one of those has produced flooding.

74. It may therefore be that there was what would be termed an inherent defect. That would not fall within an obligation to repair and maintain

and so carry with it the ability to recover the cost as service charges unless the Lease made specific provision for the Respondent to be able to rectify such inherent defects at the lessees' cost. The Lease does not.

75. The Tribunal wholly lacks the evidence to make any specific assessment and determination about that. It also need not do so. It was for the Respondent to demonstrate that something was required to be done and was done which fell within the matters on which service costs can be expended and the Respondent has failed to. Any speculation about what might have been will not assist.

76. The Tribunal does, it should be said, accept that the Respondent provided a document from a Mr Paul Clarke of Clarkes Estates [R120-124], an estate agent and letting agent which was intended to be instructed to manage the Property, although that has not subsequently occurred. That provided an opinion that works required to the Property were structural but considering the other information with which they were presented. The document is not an expert report in these proceedings, there is not nearly adequate information about the expertise of the author and there was an apparent conjunction of interest of the Respondent and the agent given that the agent was proposed to be instructed by the Respondent- indeed part of the document sought to advance the merits of instructing that practice.

77. For those reasons, the Tribunal considered that very little weight could be placed on the opinion expressed and not nearly enough to affect the determination to which the Tribunal has come.

78. Mr Khan said that the work was structural because it belongs to the structure. He could not identify any advice received demonstrating that was correct. He said that it was normal common sense.

79. The Tribunal applied its expertise and experience in relation to tanking. That is, as the name indicates, the creation of an enclosed space by creating an impermeable barrier. That is within the structural walls of the Property. Those remain in situ. The enclosed space is created by attaching a membrane to the inside of the walls or by applying an impermeable coating to the inside of the walls. The tanking does not prevent water or damp getting into the external walls or foundations of the Property. It is aimed at preventing that water or damp then reaching the living accommodation inside. If the structure were affected by flooding or similar, the tanking would not assist with that.

80. The tanking is in practice provided within the confines of the given residence. There is no suggestion that did not occur and some unusual other method was adopted. The Tribunal accepts that the barrier is applied to the internal face of a wall and that wall may well be a structural wall but considers that is broadly akin to the application of plaster or a similar finish (although not the same and accepting there may then be a plaster finish on top of the tanking method).

81. The Tribunal further notes that the Lease does not permit structural alterations and hence a lessee would not be able to alter the structure. The Tribunal notes what is stated as included in the demise. The Tribunal determines that the tanking forms part of the subject matter of the demise and does not form part of the structural walls, even where applied to structural walls.

82. No evidence has been provided of deterioration in the structural integrity of the Property because of water penetration into the basement. The Property is of style which would be described as "Period" and appears to have been standing for some decades. There was no suggestion from a party of any difficulty having arisen at any time. The Tribunal perceives that prior to conversion into the six flats, the basement may have been no more than a storage area insofar as that was required. As for whether or not it then ever flooded is not known. As to whether there has been any change to the ground outside or change to the water table is not known. Speculation will not assist

83. Mr Khan contended that if the flooding had not been attended to, there would have been an issue caused to the structure. However, he had failed to establish such an effect. The Tribunal found on the evidence that no issue arose with the structure and exterior of the Property. It necessarily follows that the Tribunal disagrees with Mr Khan's individual assessment of there being a structural matter.

84. In light of the above, matters in relation to the insurance and insurance claim are not of direct relevance to the service charges payable- they are not payable in any event. The Tribunal seeks to deal with the aspect briefly.

85. Following the Applicants becoming aware of the payment for the works and their unhappiness about that, and the Tribunal understands on their urging, the Respondent then made a claim under the insurance for the Property in March 2025. When the Respondent made its rather belated insurance claim, the insurers declined to pay out. The reason was given in summary was that the flooding, or at least the effects, arose from poor design and construction of the previous works to the flat.

86. The Tribunal did not accept the Applicants' argument that there was a defect with the insurance policy for the Property because of a lack of cover for flooding. They asserted that similar issues had been covered under insurance previously on one occasion. The evidence demonstrated no more than that the specific incident had been argued by the loss adjusters appointed for the insurer to not be an insured event.

87. That did not support a lack of any cover for flooding at all and the Applicants adduced no other evidence of such a lack of cover. Indeed, the wording used by Gallagher Bassett in refusing pay out by the insurer indicated very much that other events could have been covered-

the references were very much of the nature of the issue giving rise to the flooding and not the much simpler position that there was no cover at all for flooding.

88. However, the fact that the Respondent made an insurance claim following objections to the cost of the works by the Applicants and that by the time of the insurance claim the works had been completed had significance in various ways.

89. Most obviously, the insurers had not considered the cause and potential effect of that issue whilst it remained and had not assessed the question of potential cover with the ability to investigate the problem. Rather, the insurer was presented with a claim about an issue which had existed but had been addressed and which it could not therefore properly investigate.

90. In addition, the insurers had not obtained a report from their loss adjusters with knowledge of the situation which had arisen. The loss adjusters had not attended and carried out any assessment. They had also not sought other evidence. They had not obtained expert evidence or required the Respondent to do so. The Tribunal finds it very likely that one or other of those would have occurred if the Respondent had reported the matter to the insurers and sought to make a claim prior to having the work undertaken.

91. As it was, the loss adjuster's rejection of the claim said that they suspected that the flooding was due to failed tanking and that was as far as they said anything. It was established that they had no evidence even of actual failed tanking, still less was there demonstration of a structural issue and even less that it was chargeable to service charges.

92. The Tribunal surmises that it would have been of as little assistance to the loss adjusters as it was to the Tribunal to be aware of flooding and works and not receive much more than that. The Tribunal, for example, identified no merit at all in potentially inspecting the Property to see the outcome of works undertaken some time ago which will reveal nothing of identifiable assistance in relation to the issue which arose and the cost which was incurred.

93. Other than that there was nothing from the insurance claim which the Tribunal found of assistance, the upshot is that the insurance and insurance claim has had no effect on the outcome of the Decision.

94. The Tribunal's determination is that no cost chargeable under the Lease as a service cost has been shown by the Respondent to be reasonable. The Respondent failed to prove its case. The Tribunal determined that no service charges were payable by the Applicants in respect of this item.

95. Hence the service charges of 19% of £7,188.00 which the Tribunal understands were rendered to each of the flats owned by the Applicants, that is to say £1,365.72 each, are not payable.

iii)- Structural Engineer fees- £2,750.00

96. This item also fell within the 2024- 2025 service charge year.

97. The Respondent included these fees, from a company Benco Design Limited which seems to trade as Benco Structural Engineers, in the application for dispensation from consultation. The fees relate to works to replace roofing issues and related. The Respondent's case is that in light of the position taken by the building contractor which had been instructed, the Respondent sought to engage a structural engineer. The application describes one attending but deciding that as he was close to retirement he was not prepared to deal with the matter and that the Respondent approached others, but they were not able to assist within what was regarded as a suitable timeframe.

98. The key point in relation to section 20 consultation is that the fees are for engineer services. They were not incurred for works and consequently there cannot be major works which require consultation. The Tribunal accepts that the services were received in connection with the undertaking of major works but that does not make them part of the wider major works or major works themselves for the purposes of consultation. That is essentially the end of that point.

99. There is specific caselaw addressing what are works and what are services. The Tribunal accepts that prior to the current form of section 20 there was a decision that professional services in connection with works could be regarded as part of the works but then the section changed and so that decision no longer constitutes authority. It has been said that there is no recent more authoritative decision. However, more importantly the Tribunal considers that it is generally accepted that services are not works for this purpose and hence the point is not argued.

100. Consequently, although some questioning by the parties related to dispensation in respect of the engineer instruction, nothing came out of assistance and so does not require stating. It is not necessary to say more about this aspect.

101. The Applicants also did not challenge the instruction of a structural engineer in principle.

102. The fees incurred therefore require determination only in respect of their reasonableness.

103. In relation to that, the Applicant relied firstly upon a comparison with the fees quoted by a Mr Patrick Broggan of an entity called Fingerprint Studios of £1,250.00.

104. However, as the Respondent submitted, those fees were proposed fees of an architect for the provision of architect services- Mr Khan said that the builder had advised that an architect report was required. They were not fees for the provision of structural engineering services. Indeed, it is notable that when Mr Khan provided the quotation by email 12th November 2024, that was described to be "the architectural work required in addition to the structural quote" [A63].

105. The Applicant's second line of argument was that the time spent did not justify the fee. Mrs Broome said in oral evidence that two men had attended, that they had been at the Property for approximately 30 minutes and that they had then left saying that they would share their findings. Photographs had been taken by them on a mobile phone.

106. The Tribunal did not find it particularly surprising that the inspection took that sort of length of time. There would be a certain amount which the engineer(s) could usefully see on site. The Tribunal considers from its experience that will only have been a modest portion of the work which the engineer is likely to have undertaken. More than that was not apparent on the information provided by the parties.

107. It was apparent that the engineer had produced a report and that was relied upon by the Respondent in relation to relevant works. Whatever the specifics of the tasks undertaken and time spent, it was obvious that went well beyond a short attendance and simply that short attendance was as much as the Applicants knew about.

108. In Mr Khan's statement, he asserted that there had been 2 site visits and ongoing liaison with the builders. He also said that the structural engineer has assumed professional responsibility for the works, including the provision of indemnity cover. That was not clarified. It was difficult for the Tribunal to understand what the engineer might have provided indemnity for beyond his own work, without specifically determining that there was not more. However, the decision did not rest on that aspect.

109. Mrs Broome said that one of the builders said that he had not seen the report and so it had served no purpose. When matters were clarified with her, the Tribunal understood that whilst the owner of the building contractor- Allbright Limited- was on site at the time, he was not the person who said he had not seen the report. The Tribunal did understand from the oral evidence of Mr Khan that the report had not been shared at first due to what seemed to be a misunderstanding but that it subsequently had been provided. Mr Khan said that the engineer was still working with the builder and the implication was that was part of the work for which the engineer had charged. The Tribunal was content overall that the Applicants had not demonstrated that the report cost should not be payable for that reason. The position as asserted by Mr Khan was accepted.

110. Significantly, the Applicants did not provide any alternative quote for provision of the structural engineering services which might have indicated the fees quoted by Benco and incurred by the Respondent to be unreasonably high.

111. The Tribunal was also mindful that the instruction was a matter for the Respondent and that there might be a number of decisions made about which engineer to appoint and at what cost, all of which could be rational ones for the Respondent to take and might fall within a reasonable service cost. Hence, even if other quotes had been lower, that would not necessarily have rendered the cost of the particular engineer unreasonable.

112. The Tribunal determines that the service costs incurred by the Respondent were ones which it was able to incur and that the charges charged to the Applicants in respect of the structural engineer fees are payable.

iv) Flat 3 Bay window works

113. The Applicants contended that the costs of replacement of the bay window or other works to the window are not payable as service charges. The works in dispute are again ones to a flat owned by the Respondent or at least in which it has an interest and of which it will be the owner, subject to the terms of the Sharia law- compliant mortgage entered into. Further, they contended that works to the window are not structural works.

114. There are two parts to works required. One is to the bay window. The other is to the gable and area of roof immediately above that. They are separately priced in the building contractor's estimate, arranged by and sent to Mr Godfrey of Flat 3. There has been no dispute raised about the latter works and so there is no determination for the Tribunal to make about that, although the two elements of work are related. Mr Khan suggested in the hearing that the front of the Property could be caused to collapse and suggested that scaffolding was required to avoid that, although Mrs Broome observed that scaffolding which had been erected for a time had been down for most of the last year. In any event, that is not a matter within the application made.

115. It was established early in the hearing that works commenced in March 2026 but were paused and that no related service charges have yet been demanded. No service charges have yet been rendered in respect of this item.

116. The Tribunal expressed some doubt about making any determination where there was not any sum yet said to be payable as service charges and in dispute. However, on balance and in light of the parties' comments, the Tribunal is prepared to answer the question of whether if service charges were demanded for the time, those would be payable

under the provisions of the Lease. The Tribunal has jurisdiction to determine such a question pursuant to section 27A (3) of the 1985 Act.

117. The Respondent's position was that the works required to the bay window are in consequence of that being damaged because of structural problems above. Mr Khan accepted that the windows of each flat fall within the demise of the flat and so would not in the usual course be the subject of costs chargeable as service charges. However, he asserted that because the damage to the bay window arose from another part of the Property, there was in effect an exception. The repair and maintenance of the retained parts meant that where those had cause damage, the required works to the other parts damaged i.e. the window, was a service cost.

118. The Tribunal accepts that as correct in principle. It was necessary to consider the cause of the damage.

119. The report from the structural engineer was included in each bundle [A78- 82]. That expressed conclusions about the defects to the roof above the bay window and the cause of that. It identified that "the original timber posted bay window units have been replaced with UPVC"

120. The report specifically said as follows:

> "3.0 Observations
>
> The original stacked bay window, which featured load- bearing timber posts at the corners to support the roof above, have been replaced with window lacking sufficient mullions or structural integrity. This alteration deviates from the original design and function, as evidenced by the comparison with neighbouring property ....."
>
> 4.0 Conclusions and Recommendations
>
> Following our visual inspection and review ..... we have identified cracks and movement- related damage in the property, which we attribute to insufficient support of the bay window [with an exception].
>
> To secure the bay window roof and prevent further damage to the property, we recommend replacing the existing inadequate mullions with appropriately designed ones capable of adequately supporting the roof load.
>
> ..... we recommend verifying the detail between the bay window and the roof to ensure there is no gap and that the roof load is effectively transferred to the bay window's load- bearing structure"

121. That is a clear and unequivocal statement of the expert opinion of the engineer with the benefit of considering the Property. The opinion was not challenged by the Applicants.

122. Mr Khan said in oral evidence that when the gable area had been opened up and the inside could be seen, rotten timbers were seen. That

was as far as his evidence went, or indeed could go given that he is not the structural engineer. He had not sought a further opinion from the engineer and there was none.

123. The Tribunal therefore accepts the evidence of the engineer as given in his report.

124. The balance of evidence before the Tribunal is therefore that it is the previous replacement undertaken of the bay window and the removal of the mullions to the original window which has reduced the support provided to the gable roof above and so has caused that area of roof to deflect.

125. That in turn is indicated to have placed more weight on the bay window as replaced and has caused the consequent damage to that.

126. The engineering evidence indicates that if the bay window had been replaced like for like or otherwise incorporating suitable support for the gable roof above, or if alternative support had been created, the problems would not have arisen. It is the failure to do that and the act of replacing the bay window in a manner which removed the support for the gable and roof which has created the problem.

127. As to whether there has therefore been a structural alteration as provided for in the Lease is a matter which the Tribunal leaves to one side. It is not necessary to go that far. That does not alter the practical effect that structural support to the gable and roof was removed and caused the damage to them.

128. The Tribunal received no direct evidence of the exact position before the bay window was replaced. However, the photographs of the window now in situ give no hint that it is anything other than a standard UPVC window. There is also nothing above or around the window or gable which visibly offers support to the gable and area of roof. The engineering evidence was amply clear. Mrs Broome said that she had lived at the Property for 24 years and that the UPVC window had been in situ all of that time, suggesting it was installed when the Property was converted into flats, although that may not be correct and nothing turns on it. The engineer guessed at 10 years which is therefore incorrect but equally nothing turns on that.

129. The Tribunal raised the above with Mr Khan in the hearing. He did not accept the point despite the opinion being that of his engineer. He asserted that there was another problem which had caused the roof damage and consequent bay window damage.

130. Mr Khan emailed the case officer on 30th April 2026, the day after the final hearing, providing an email from Ms Ayling at Albright Limited, the builders undertaking the work, in which it was said that:

"the load from the gable from the purling which has rotted has fallen onto the bay.
If we do this work it will release pressure off of the bay. The window may lift back."

131. The Tribunal refuses to permit the Respondent to rely upon that additional evidence.

132. The Directions were very clear in stating:

"**Only evidence and documents exchanged between the parties in accordance with the timetable below shall be included within the bundle. At the hearing the Tribunal will only consider evidence previously exchanged. If a party wishes to rely upon oral evidence at the hearing they must have provided a written statement in accordance with the Directions below."**

The highlighting appears in the original Directions.

133. Hence, the effect of those Directions is that the Respondent cannot rely upon any witness statement or document in evidence unless it has been provided to the other party by the date directed. .

134. The Tribunal made its determinations on the basis of the evidence presented and on which they could rely. It had done prior to the Respondent seeking to adduce the further evidence.

135. The Respondent has not in terms applied for the additional evidence to be permitted to be relied upon. Strictly, there is nothing for judicial consideration. However, the Tribunal considers that it would have been extremely unlikely in any event for it to have altered its decision set against the clear conclusion expressed by a structural engineer and in the absence of the engineer altering his opinion. The Tribunal would have needed to determine that the engineer was not correct and that the actual cause of the damage to the bay window was something entirely different which had not ben raised with the engineer. The email does not state that, merely that the "purling", or presumably correctly 'purlin' has rotted and fallen. It does not even start to say that the engineer was incorrect about the mullions. The Tribunal considers the far more likely scenario that even if the additional evidence had been provided in good time, it would have preferred the evidence of the structural engineer.

136. It is additionally relevant, although does not in the event change anything, that the Applicants had no opportunity to consider and respond to the additional information.

137. The Tribunal determines on the evidence which has been admitted in by the Tribunal that it is work to the bay window undertaken by the freeholder at the time or by the lessee at the time, the successor in title

to the first of which is the Respondent and to the second of which appears to be the mortgage company but where the Respondent has an interest in the flat, which has led to the issues with roof and hence the issues with the bay window. So, previous works to the window are at the root of the current problems with the window.

138. Therefore, rather than the gable and roof which are parts of the Property for which works would ordinarily be payable from service charges being the cause of problems with the bay window, it is the bay window itself which is the problem and that does not take responsibility for attending to it out of the responsibility of the lessee and into being an item for which service charges may be rendered.

139. The Tribunal mentions that in the application for dispensation, the Respondent suggested that the insurers had also refused to cover this work because of inherent defects in design and construction. However, that is all that was said.

140. The expenditure is to rectify work which was not payable by service charges to a demised part and which the Tribunal determines is not payable by service charges now.

141. There is of course no sum yet demanded which is not payable by reason of this Decision given that no demand has been made.

v)- <u>Accounting and/ or administration expenses- £480.00 plus £840.00</u>

142. The Applicants challenged the fees charged by the Respondent itself in respect of preparing accounts and similar, separate to the later charges of an external accountant, a Mr Talati. That relates to both service charge years.

143. The Applicants also wished to challenge the fees of Mr Talati but it was established that those had been incurred in late 2025 and would fall within the 2025 to 2026 service charge year where, firstly, the application, even as permitted to be extended, did not include that year and where, secondly there were no accounts for the 20205 to 2026 year yet and so no finalised service charges. The Tribunal determined that it was not in a position to consider those fees at this time.

144. The witness statement sought to be of all three Applicants concentrated on those fees. They only asserted that the Respondent's own fees were given insufficient justification. The Tribunal considered that came very close failing to be enough to produce a prima facie case for the Respondent to answer and in the event provided just enough.

145. It was established that the £480.00 figure was for fees in 2023- 2024 and the £840.00 figure was for fees in 2024- 2025. Those were set out in the service charge accounts for each of the completed years.

146. The Respondent's case was that the Respondent had undertaken administration and what the Tribunal understood to be book-keeping tasks during each year. Mr Khan contended that the cost would have been much higher if there had been managing agents instructed at the time. The Applicants accepted that it had been agreed that agents would not be instructed and that the Respondent would undertake tasks. They had not agreed that there would be a fee charged.

147. As to the amount of the fee, Mr Khan said in response to a request for clarification of his evidence that there had been no time recording and there was no hourly rate applied. He had settled on a figure he thought was reasonable for the work undertaken during the 2023- 2024 year and then for the 2024- 2025 year there had been significantly more work undertaken and so he had settled on a higher figure he considered reasonable for that work.

148. In response to questioning from the Tribunal, neither Mrs Broome or Mr Khan could identify whether the Lease did or did not permit the Respondent to charge for time it spent on such tasks as it had charged for.

149. The Tribunal determines that the Lease does not enable the recovery by the Respondent of fees for its own time much as, as quoted above, it may instruct various other parties and it may recover their fees as provided for. The Tribunal considered whether there was any relevant provision to establish what the Respondent could do and so what fees might be justified by the provisions. However, the Tribunal established that there is none.

150. It follows from the fact that the Lease does not permit the Respondent to charge fees for its own work that the service charges demanded which would pay towards the amount of those fees are not payable. The amount of them and any other matters are not relevant

151. Hence the service charges of 19% of £480.00 and £840.00 which the Tribunal understands were rendered to each of the flats owned by the Applicants, that is to say £91.20 and £159.60 each, are not payable.

## Decision

152. The service charges are payable in respect of the engineer's fees but none of the other elements challenged are or, in the case of works to the Flat 3 bay window, would be the subject of payable service charges.

## Costs and Fees

153. As referred to above, applications were made by the Applicant that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985. In addition, an application was made

pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act that the costs of the Applicant's application should not be recoverable as administration charges.

154. Section 20C (3) of the 1985 Act, provides "the … Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances". The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.

155. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:

> "although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).

156. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger QC suggested that, when considering such an application under section 20C, it was:

> "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make".

157. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income but that is not relevant to the position here. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

158. The Tribunal considers that the outcome of the substantive case is highly relevant. The Applicants in the main succeeded in their challenges to the service charges in dispute.

159. The Tribunal does not consider that it would be just and equitable in this instance to interfere with the Respondent's contractual right to recover legal costs of proceedings insofar as the Lease gives it such a right.

160. However, the Tribunal also determines that the Respondent is not given such a right by the Lease. The various circumstances within clause 3.13 of the Lease in which the Respondent is able to recover costs, as referred to above do not include to an application in respect of payable service charges or dispensation from consultation.

161. It is questionable whether there is therefore any purpose served in granting the Applicant's application if that simply would prevent recovery of the Respondent of legal and litigation costs if there had been any such right in the first place and where there is no such right. On balance, the Tribunal determines that in order to avoid any later issues about the matter, it is better to grant the application despite the doubtful need to do so.

162. The section 20C and paragraph 5A applications are therefore granted.

**Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.