FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	HAV/00HQ/LSC/2025/0690
Property	**:**	26B Curzon Road, Bournemouth, BH1 4PN
Applicant	**:**	Steven Godwin (tenant)
Representative	**:**	Ms G Hems, solicitor apprentice, of Preston Redman LLP
Respondent	**:**	Tyrrel Investments Inc
Representative	**:**	Mr I Newbery, solicitor, Ian Newbury & Co
Type of application	**:**	Determination of liability to pay service charges s.27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Tribunal Judge M Loveday Mr A Hetherton MRICS Tribunal Judge P Pattni-Evans
Venue	**:**	Havant Justice Centre
Date of Hearing	**:**	22 April 2026
Date of decision	**:**	22 May 2026

DECISION

Introduction

1. This is an application to determine liability to pay service charges under s.27A Landlord and Tenant Act 1985 ("LTA 1985") and liability to pay administration charges under Sch.11 to the Commonhold and Leasehold Reform Act 2002 ("CALRA 2002"). The matter relates to a leasehold flat at 26B Curzon Road, Bournemouth, BH1 4PN. The Applicant is the lessee of the flat and the Respondent is landlord.

Background

2. 26 Curzon Road is a detached two storey house in the Springbourne area of Bournemouth which has been converted into two flats. The subject property is a 2-bedroom flat on the ground floor.

3. By a Lease dated 13 August 1973, the flat was demised for a term of 99 years from 25 March 1973. On 21 August 2007, the Applicant acquired the leasehold interest, with a registered charge in favour of Topaz Finance Ltd. At some stage, 26 Curzon Road RTM Company Ltd acquired the right to manage under CALRA 2002. However, the RTM company was dissolved in July 2023 and the management obligations under the lease reverted to the Respondent landlord. It appointed Napier Management Services as managing agents. As part of this process, in 2024 the agents undertook various surveys, specifications, safety inspections and tendering processes in relation to internal and external redecoration and repairs.

4. The dispute relates to six sets of charges as follows:
   (a) **2 November 2023** – a charge of £258.86 for the period 25 June 2023–24 September 2023. None of this is now disputed.
   (b) **7 February 2024** - a charge of £331.70 for the period 25 September 2023–24 December 2023. Service charges of £181.70 are agreed.
   (c) **22 April 2024** – a charge of £1,211.32 for the period 25 December 2023–24 March 2024. Service charges of £814.82 are agreed.

(d) **30 July 2024** – a charge of £1,373.50 for the period 25 March 2024–24 June 2024. Service charges of £89 are agreed.

(e) **20 January 2025** - charges of £1,173 and £5,611.35 (£6,784.35) for the period 25 June 2024 to 24 December 2024. Service charges of £4,861.35 are agreed.

(f) **28 May 2025** – a charge of £1,123.83 for the period 25 December 2024 to 24 March 2025. Service charges of £793.33 are agreed.

5. In the meantime, in September 2023, a possession order was made in favour of the mortgagees and Topaz Finance went into possession. On 29 May 2025 Topaz, as mortgagee in possession, paid the charges in full, together with other sums. Topaz completed the sale of the flat to a third party on 30 May 2025.

6. The present application was issued on 12 May 2025 seeking a determination of liability to pay the first five sets of charges. Directions were given by the Tribunal on 24 September 2025 and 11 November 2025. Following a hearing, the Tribunal issued a Preliminary Decision on 21 January 2026 confirming it retained jurisdiction despite the sale and mortgagee payment. Both parties then filed statements of case and witness statements.

7. A hearing took place at Havant Justice Centre on 22 April 2026. The Applicant was represented by Ms Georgina Hems, a solicitor apprentice of Preston Redman LLP. The Respondent was represented by Mr Ian Newbery of Ian Newbury & Co. At the hearing, the solicitors for both parties agreed the Tribunal should also consider liability to pay the final set of charges in para 4 above, which only arose after the application was made.

The Lease

8. It was common ground that the main (if not the only) issues were whether various costs were recoverable under the terms of the Lease.

9. The service charge provisions in the Lease are fairly brief. There are two parallel routes to recovery of cost, which appear to overlap.

10. First, the reddendum at clause 1 of the Lease includes the following provision:

> "YIELDING AND PAYING unto the Leasor by way of additional or further rent a sum or sums of money equal to one moiety of the amounts which the Lessor shall expend (i) in effecting or maintaining the insurance of the Building as mentioned in Clause 3(iii) hereof and (ii) in complying with the covenant by the Lessor contained in Clause 3(ii) hereof such last mentioned rent to be paid on demand following the expenditure by the Lessor

Clause 3(ii) is as follows:

> "(ii) The Lessor will (subject to contribution and payment by the Lessees as hereinbefore provided) maintain repair and renew (a) the fences indicated by 'T' marks on the said plan walls footings foundations exterior walls and general structure roof chimney stacks gutters and rainwater pipes of the Building and (b) the gas and water pipes tanks drains and electric cables and wires in under or upon the Building or the gardens and curtilage thereof and enjoyed or used in common by the Lessees in common with the Lessor or any occupiers of the First Floor Flat (c) any other pert or parts of the Building or premises whatsoever (not included in this demise) used in common by the Lessees the Lessor or any Lessees or owner for the time being of the First Floor Flat (d) so often as reasonably required paint (in the same colours as at present or such other colour as may be agreed with the Lessee) with two coats of good quality paint and in a proper and workmanlike manner all the exterior wood stone and iron work of the Building"

11. Secondly, clause 2(b) is a covenant by the lessee "To contribute and pay one equal half-part of the costs expenses outgoings and matters mentioned in the Second Schedule". The full text of Sch.2 is as follows:

"THE SECOND SCHEDULE hereinbefore referred to
Costs expenses outgoings and matters in respect of which the Lessee is to contribute a half share

1. The expense of maintaining repairing and renewing (i) the fences indicated by 'T' marks on the said plan walls footings foundations exterior walls and general structure roof chimney stacks gutters and rainwater pipes of the Building (ii) the gas and water pipes tanks drains and electric cables and wires in under or upon the Building or the gardens and curtilage thereof and enjoyed or used by the Lessee in common with the Lessor or any occupiers of the First Floor Flat and (iii) any other part or parts of the Building or premises whatsoever not included in this demise used in common by the Lessees and the Lessor or any Lessee or owner for the time being of the had First Floor Flat
2. The cost of painting the exterior wood stone and iron work of the Building
3. The insurance of the Building"

12. There is a proviso for re-entry at clause 2, and a provision at clause 2(h) for payment of costs by the lessee:

> "(h) To pay all costs charges and expenses (including Solicitors cost and Surveyors fees incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court"

Service charge demands

13. Before turning to the substantive issues, the Applicant sought to raise an issue about whether the 20 January 2025 and 28 May 2025 charges had been properly demanded. For present purposes it is assumed that residential service charges are only payable if demanded in writing. Clause 1 of the Lease provides (*inter alia*) that the expenses detailed at

clause 3(ii) will be payable "*on demand following the expenditure of the Lessor*". And in any event, there is a need for demands to comply with s.21B LTA 1985 and s.47 Landlord and Tenant Act 1987.

14. The issue arose in an unusual way. The hearing bundle included six demands for payment corresponding with the charges set out in para 4 above. The application itself did not expressly suggest none of those demands had been received by the Applicant, although it invited the Tribunal to decide whether the "the sum/charge has been validly demanded". On 19 February 2026, the Applicant filed a detailed Statement of Case and Witness Statement, which confirmed the disputed sums now totalled £5,208.90. Neither suggested non-receipt of any of the service charge demands. Indeed, para 7 of the Applicant's Statement of Case stated that:

> "… there is no dispute as to whether or not service charges (as distinct from administration charges) have been validly demanded. The Application now simply concerns whether certain sums are actually due under the Lease (which the Applicant submits that they're not) and in the case of certain administration charges, whether those were validly demanded."

The Respondent's statement of case dated 10 March 2026 was accompanied by a witness statement form Ms Gail Drysdale of Napier Management. This referred to a Letter of Claim from the Respondent's then solicitors, Messrs Brethertons. Ms Drysdale confirmed that after September 2024:

> "… such service charge (and ground rent) demands as were raised for internal accounting purposes, and are marked "BRETHERTONS" as a reminder that the matter was in the hands of solicitors, and the demands [would] not be submitted to the Applicant, but sent to Brethertons for information"

In the light of this, the Applicant sought to raise a new argument in paragraphs 4-15 of his Reply of 26 March 2026, namely that the demands

dated 20 January 2025 and 28 May 2025 were not served on the Applicant.

15. At the hearing, Ms Hems argued that non-service had been squarely raised in the Reply. It would be helpful for the parties to have a determination on this issue rather than having to consider separate proceedings. The Applicant relied on the evidence of Ms Drysdale that the two demands for payment had not been served on the lessee. When asked about the copies of the two demands in the bundle, Ms Hems accepted the first one (at least) had been provided to the Applicant's solicitors before they issued the application. In closing submissions, Ms Hems confirmed she did not seek to call the Applicant to give oral evidence. But she was unable to say precisely when the Applicant first became aware of the two demands.

16. Mr Newbery contended that the argument did not form part of the Respondent's statement of case, which in part it appeared to contradict. Neither was the issue the subject of any direct evidence. In any event (he said), the two demands had in fact been served on the mortgagees in possession, who was the proper person to be served at the time. But he accepted he did not have any evidence of service on the mortgagees.

The Tribunal's decision

17. The Tribunal determines the Applicant may not raise the issue of alleged non-service of the two demands:

    (a) It accepts the contention that paragraphs 4-15 of the Reply are inconsistent with paragraph 7 of the Applicant's original statement of case. The new point cannot simply be raised in the Reply in a general manner, without an application to amend the original statement of case. By analogy, in civil litigation, a subsequent statement of case must not contradict or be inconsistent with an earlier one: see CPR PD16.9.2. Procedurally, the Applicant's proper course was to apply to amend para 7 of its statement of case to withdraw the admission.

(b) The Applicant's two inconsistent pleadings have caused confusion and prejudice to the Respondent. Had the argument been consistently made, the Respondent could have sought directions to call further evidence about service of the demands on the mortgagee to support any argument that the service charges were properly served.

(c) In any event, there was also a lack of clear evidence precisely when the Applicant first received the two demands.

18. In the light of the above, it is not fair or just to allow the argument to be raised. The point is a subsidiary one relating to only some of the service charges in dispute. Plainly, were the Tribunal to allow the point to be considered, the Respondent could not fully participate in the hearing, but the same can be said about the Applicant if the argument is allowed in. The Tribunal cannot deal with the issue properly on the available evidence, and an adjournment would delay the proceedings and waste the costs of the parties and the Tribunal's resources. For all these reasons, and applying the overriding objective in rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), the Tribunal does not permit the Applicant to rely on the argument that the two charges were not properly demanded.

Reports and surveys

19. The Applicant challenged the costs of various reports and specifications.

Description	**Date**	**Cost**	**S/C (50%)**	**S/C demand**
Property condition report	06.03.24	£475	£237.50	22.04.24
Visit site, carry out survey and prepare specification to include Schedule of Works and Form of Tender (**external decorations**)	12.04.24	£600	£300	30.07.24
Visit site, carry out survey and prepare specification to include Schedule of Works and Form of	12.04.24	£600	£300	30.07.24

Tender (**internal decorations**)				
Health and Safety Survey and MSAFE Fire Risk Assessment	08.04.24	£600	£300	30.0724
Tender Report for External and Internal Redecorations and Associated Repairs	17.07.24	£960	£480	20.01.25
Survey and specification fo works		£1,200	£600	20.01.25
		£4,435	£2,217.50	

Various of these reports and surveys and the invoices by the contractors to the Respondent were included in the hearing bundle

20. Ms Hems argued the relevant costs of these reports and surveys were not recoverable as service charges under the Lease. Schedule 2 to the Lease lists items which, notably, did not include the preparation of reports and/or surveys. Similarly, clause 3(ii) of the Lease was a 'word for word copy' of those provisions. The items provided for in clause 3(ii) and Sch.2 were particularly detailed and the exhaustive list did not refer to reports and/or surveys. Ms Hems submitted that when applying the test in *Arnold v Britten* (below), the natural and ordinary meaning of these covenants did not extend to allowing the Respondent to recover costs incurred by way of reports and/or surveys. Moreover, no additional obligation should be implied into the Lease. Whilst it may be argued that commercial common sense should allow for the costs of reports/surveys to be recoverable, *Arnold v Britton* confirmed the importance of the natural and ordinary meaning of clauses. She stressed the words of Lord Neuberger that "commercial common sense… should not be invoked to undervalue the importance of the language of the provision which is to be construed".

21. Mr Newbery did not argue for any implied term. But he submitted that the words used in the reddendum were wider than those in clause 2(b). The significance was that this route permitted recovery of costs expended "in complying with the covenant contained in Clause 3(ii)". The words

used in the reddendum clearly meant something more than mere expenditure on repairs, etc. At the time of the Lease, the parties would have been aware that (save in the simplest of cases), it would be necessary to obtain appropriate reports and advice as to what work was required in order to carry out works of maintenance, renewal, repair and redecoration. Carrying out such works without proper reports and professional advice could well result in necessary work being overlooked and unnecessary works being undertaken - which of themselves would constitute a failure to comply with the covenant. Obtaining appropriate advice was therefore an essential precursor to carrying out the works, and the money paid for such reports and advice was expended "in complying with" the covenants in clause 3(ii).

22. Neither party sought to distinguish between recovery of Health and Safety / Fire Safety costs and the other reports and surveys.

The Tribunal's decision

23. The Tribunal starts with the principles for interpretation of contracts generally, which were helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] EWSC 36; [2015] A.C. 1619 at [15].

> "[15] When interpreting a written contract, 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", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, 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."

24. No special rules of interpretation of course apply to leases: *Arnold v Britten* at [23]. But Lord Neuberger did state that leases needed to be "clear" about the costs which are covered by service charges provisions:

> "120. In the courts below there was some discussion of the "restrictive" approach said to be appropriate to service charge provisions (*McHale v Earl Cadogan* [2010] 1 EGLR 51, para 17 per Rix LJ). I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services."

25. In *Dell v 89 Holland Park (Management) Ltd* [2023] EWCA Civ 1460 at [22], the Court of Appeal said:

> "There appears to be an element of tension between the principle that service charge clauses are not subject to any special rule of interpretation and Lord Neuberger's approval of Rix LJ's statement in *McHale v Earl* Cadogan. However, I consider that this is more apparent than real. It must be borne in mind that leases are typically long-term obligations with the potential for significant future liabilities. It is inherently unlikely that parties entering into such a transaction would intend to commit themselves to obligations that are neither expressly spelled out nor of a nature that clearly fall within general words, read in their context."

On the other hand, leases are intended to be practical arrangements which should be interpreted and applied in a businesslike way.

26. It is against this background that the Tribunal considers the intention of the parties who entered into the Lease. The *reddendum* requires the lessees to reimburse the landlord for the costs "of complying with" the suite of management obligations in clause 3(ii) and Sch.2 to the Lease. The Tribunal agrees with Mr Newbery that the ordinary and natural meaning of these words is wider than the opening words of clause 2(b) of the Lease. They extend to costs associated with assessing whether there was or was not a breach of covenant. As to the specifications of works which incorporate reports, and tender reports, these are also costs of "complying with" the landlord's covenants to repair and decorate. But they are also an "expense" of maintaining repairing and renewing the Building within the meaning of Sch.2. In each case they fall within the ordinary and natural meaning of the words used in the covenants. As the Respondent submits, the need for both routine condition reports and the works specifications and tenders would have been obvious and within the contemplation of all parties entering into a long-term Lease of parts of the Building.

27. As to other covenants of the Lease, it should be noted that the draftsman does not spell out the need for professional "reports" in clause 2(f) of the Lease, where such reports would clearly be contemplated. As to the overall purpose of the service charge covenants, they are to indemnify the landlord against the costs of complying with its repairing and decorating covenants. There is no obvious reason why part of these costs should be borne by the landlord. And for similar reasons it makes commercial common sense for professional fees associated with repairs and decoration to be treated in the same way as the costs for contractors to perform the same tasks. From the point of view of the client who pays for works, why distinguish between the fees of the surveyor who draws up a works specification and the pay of the foreman who reads that specification on site?

28. Neither party suggested the 2024 Health and Safety Survey and Fire Risk Assessment (£600) should be treated any differently to the above. But in

any event, the costs of such reports fall within the words "maintain" and "maintaining" in clause 3(ii) and para 1 of Sch.2 to the Lease.

29. For these reasons, the costs of the 2024 Wrangham Joyce property condition report (£475), the two 2024 Winkle-Bottom surveys and specification (£600 + £600), the 2024 Winkle-Bottom tender report and the 2025 site survey and specification (£1,200) are all relevant costs that fall with the Applicant's service charge obligations in the Lease. The Tribunal therefore determines that the Applicant is liable to pay service charges set out in para 20 above in relation to the relevant costs of reports, tenders and specifications.

Management costs (£2,991.40)[1]

30. The Applicant challenged various management and related costs as follows:

Description	Date	Cost	S/C (50%)	S/C demand
MF - Napier Management Service Management Fees	01.09.23	£300	£150	07.02.24
MF - Napier Management Service Management Fees	01.01.24	£300	£150	22.04.24
MF - Napier Management Service Management Fees	01.01.24	£300	£150	30.07.24
Admin fee 24hr emergency service	31.12.23	£18	£9	30.07.24
In house audit fee	25.03.24	£175	£87.50	30.07.24
Post	03.04.24	£60	£30	30.07.24
External decorations	08.08.24	£1,320	£660	20.01.25
MF - Napier Management Service Management Fees	09.07.24	£300	£150	20.01.25
MF - Napier Management Service Management Fees	25.09.24	£300	£150	20.01.25
MF - Napier Management Service Management Fees	13.01.25	£300	£150	28.05.25
In house audit fee	24.03.25	£175	£87.50	28.05.25
Prep of accounts for year end 25.03.24	26.11.24	£186	£93	28.05.25

[1] Although described as "administration charges", these are not administration charges within the meaning of para 1 of Sch.11 to CALRA 2002. The Tribunal refers to them as management costs.

31. Ms Hems argued there was no covenant in the Lease that allowed for the recovery of managing agents fees, administration costs, audit fees, accountancy or post costs. She repeated her submissions relating to reports and surveys above. Ms Hems relied on *Woodfall: Landlord and Tenant* at 7-170 which states that "as a general rule the costs of employing managing agents will not be recoverable by way of service charge unless the lease expressly so provides" (which cites *Embassy Court Residents' Association v Lipman* [1984] 2 EGLR 60 in support of this proposition). Exceptions to this "rule" were detailed in *Woodfall*, but none applied to the present circumstances. The "external decorations" costs of £1,320 were in fact costs incurred for the preparation of s.20 consultation notices for major works. The bundle included a receipted invoice from Napier Management for £1,100 + VAT, which described the work as "Section 20 Admin fees re: INTERNAL & EXTERNAL REDECORATIONS". These were not closely connected with the works required by para 1 of Sch.2 to the Lease.

32. In his oral submissions, Mr Newbery accepted that the "pure management fees" of "£300 per quarter were not recoverable under the Lease. Indeed, all the remaining costs set out above were irrecoverable under the Lease, apart from the £1,320 cost of preparing the s.20 notices. Those costs were incurred by the Respondent "in complying with the covenant contained in Clause 3(ii)", and he repeated his submissions relating to the reports and surveys above.

The Tribunal's decision

33. In the light of the Respondent's concession, the only remaining issue relates to the preparation and service of consultation notices for major works. Although commonly described as "section 20 notices", these are strictly speaking notices or information specified by paras 1, 4 and 6 of Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2003. It is unnecessary to set out the full terms paras 1, 2 and 6 of Pt.1 of Sch.4, but in each case, they provide that before

undertaking qualifying works, a landlord "shall" give or supply a relevant notice or information to the lessees.

34. The issue for the Tribunal is whether, the cost of such notices can be said to be "expen[ses] … in complying with the covenant by the Lessor" to maintaining repair and renew the "exterior walls and general structure … of the Building": see *reddendum* to the Lease and para 1 of Sch.2. The Tribunal has already set out the general principles applicable to interpretation of contract and leases set out above. No cases or texts were cited to the Tribunal which specifically dealt with the recovery of the costs of complying with Pt.2 of Sch.4 to the 2003 regulations.

35. The Tribunal has regard to the words of Lord Neuberger in *Arnold v Britten* above, as explained by the Court of Appeal in *Dell*. A lease is a long-term obligation, and a lessee will only be liable to pay a service charge cost if the obligation is "clear". But the words of this Lease do not clearly extend to the costs of complying with Pt.2 of Sch.4 to the 2003 regulations:

    (a) Para 1 of Sch.2 to the Lease focusses on works, not management – a meaning which is consistent with the concession made by the Respondent in respect of managing agents fees and associated costs.

    (b) The purpose of s.20 of the 1985 Act and the 2003 regulations is not to enable or facilitate works. The consultation requirements are a feature of service charges and management, not works to the structure of a building and repairs.

    (c) It is possible (indeed common) to dispense with service of section 20 notices before undertaking works. Notices are not needed for non-qualifying works, or where the Tribunal has given a s.20ZA dispensation. And the consequence of not consulting is merely that the service charges may be capped at £250, not that the obligation to repair cannot be complied with.

    (d) Moreover, the analogy with the reports and specifications referred to above is not a good one. Whereas reports and

specifications are a familiar and necessary feature of work projects for all kinds of buildings, consultation with leaseholders is not.

(e) Some support for the above is given by the timing of the relevant legislation. The primary predecessor legislation that first introduced formal consultation requirements for service charges was the Housing Act 1974. It would not therefore have been in the contemplation of the parties at the date of the original Lease that such costs might be incurred.

36. For these reasons, the relevant costs of the s.20 consultation do not fall within the Applicant's service charge obligations in the Lease. The Tribunal determines that the Applicant not liable to pay any of the service charges set out in para 31 above.

Pre-action legal costs (£974.40)

37. The issue relates to clause 2(h) of the Lease which is a covenant by the tenant in the following terms:

> "(h) To pay all costs charges and expenses (including Solicitors cost and Surveyors fees incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court"

38. The Applicant referred to a Letter of Claim from the landlord's solicitors dated 3 September 2024 seeking payment of arrears of service charges. The letter referred to legal costs of £720 and disbursements of £14.40 (Land Registry fees). The costs related to the costs of preparing the Letter of Claim. The Applicant sought a determination under para 5(1) of Sch.11 to CALRA 2002 that these administration charges were not payable.

39. Ms Hems acknowledged that clause 2(h) of the Lease entitled the landlord to recover legal costs incurred "for the purpose of or incidental

to the preparation and service of a notice under section 146 of the Law of Property Act 1925". It was doubtful that a lessee was required to pay legal costs under a provision which covered costs "incidental" to a s.146 notice unless such a notice is actually served: *Tower Hamlets LBC v Khan* [2022] EWCA Civ 831 at [50]. But she accepted the words "for the purpose of" were wider than that: see *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725 at [43]. In *Boakye*, they covered the costs of tribunal proceedings brought by a landlord to establish liability to pay service charges. But the landlord had not brought the present proceedings. And there was no evidence in this case of any intention to forfeit. By 23 May 2025, the Respondent's solicitors were still emailing the mortgagees to suggest it would pursue outstanding sums from the Respondent directly. This suggested there had been no genuine intention to serve a s.146 notice.

40. The Respondent referred to para 16 of the witness statement of Gail Drysdale (a senior property manager with the managing agents) dated 11 March 2026, which stated that:

> "Because of arrears of service charge and ground rent owed in respect of the Property, Napier instructed Brethertons solicitors to recover the arrears and to take steps to forfeit the lease if payment was not forthcoming."

Mr Newbery argued that the costs of the letter fell within clause 2(h) of the Lease. He pointed to the rubric at the end of the Letter of Claim which stated:

> "Should you not pay the amount owing; nor provide a proposal to make payment; nor provide evidence that payment is not due, within 30 days of the date of this letter, further action will be taken against you which will result in additional legal costs being payable. Such proceedings are the first step towards forfeiture of your lease and <u>this letter and any subsequent proceedings are in contemplation of forfeiture</u>."

The first stage in pursuing the arrears had been the Letter of Claim. The second had been a reference of the arrears to the mortgagees. The third stage would have been forfeiture. The Letter of Claim had therefore been "for the purpose of … a notice under section 146 of the Law of Property Act 1925".

The Tribunal's decision

41. The Tribunal was invited to take into account the evidence of Ms Drysdale on this point, although the witness was not tendered to give evidence and therefore not cross-examined. The evidence is admissible, although the Tribunal is naturally cautious about it. However, the evidence is corroborated and supports the rubric set out at the end of the Letter of Claim itself. The Tribunal accepts that the managing agents instructed the landlord's solicitors to take steps to forfeit the lease if payment was not forthcoming. Moreover, the rubric itself is unambiguous. It states, in terms, that the Letter of Claim was "in contemplation of forfeiture". The parties to the Lease agreed the tenant should bear costs incurred "for the purpose of" the service of a s.146 notice, and the Tribunal finds that costs which the Respondent incurred in relation to the solicitors' letter fit that description. It determines that the Applicant is liable to pay the administration charge of £974.40.

Costs

42. The Applicant has further applied for an order for costs under r.13 of the Rules and for orders under s.20C LTA 1985 and para 5A of Sch.11 to CALRA 2002.

43. The parties did not address these issues at the hearing and agreed with the suggestion that they could be addressed by way of written submissions after the decision was made. Directions for the resolution of these issues accompany this decision.

Conclusions

44. The Tribunal determines under s.27A LTA 1985 that the Applicant is liable to pay the following service charges:

(a) Demand dated **2 November 2023** for the period 25 June 2023–24 September 2023. Service charges of **£258.86** are agreed and payable.

(b) Demand dated **7 February 2024** for the period 25 September 2023–24 December 2023. £150 of charges are not payable, and **£181.70** are payable.

(c) Demand dated **22 April 2024** for the period 25 December 2023–24 March 2024. £159 of charges are not payable, and **£1,052.32** are payable.

(d) Demand dated **30 July 2024** – for the period 25 March 2024–24 June 2024. £267.50 of charges are not payable, and **£989** are payable.

(e) Demand dated **20 January 2025** - for the period 25 June 2024 to 24 December 2024. £1,077 of charges are not payable, and **£5,941.35.35** are payable.

(f) Demand dated **28 May 2025** for the period 25 December 2024 to 24 March 2025. £330.50 of charges are not payable, and **£793.33** are payable.

45. The Tribunal determines under para 5(1) of Sch.11 to CALRA 2002 that the Applicant is liable to pay an administration charge of **£960** for costs demanded on **3 September 2024**.

46. The Tribunal gives the attached directions for the determination of costs under r.13 of the Rules, and in relation to the applications under s.20C LTA 1985 in para 5A of Sch.11 to CALRA 2002.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

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 state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

APPENDIX A: Lease Covenants

Clause 1 (reddendum)

YIELDING AND PAYING unto the Lessor by way of additional or further rent a sum or sums of money equal to one moiety of the amounts which the Lessor shall expend (i) … and (ii) in complying with the covenant by the Lessor contained in Clause 3(ii) hereof such last mentioned rent to be paid on demand following the expenditure by the Lessor

Clause 2

2. THE LESSEES hereby jointly and severally covenant with the Lessor as follows:-

…

(b) To contribute and pay one equal half part of the costs expenses outgoings and matters mentioned in the Second Schedule hereto

Clause 3

3. THE Lessor hereby covenants with the Lessees as follows:-

…

(ii) The Lessor will (subject to contribution and payment by the Lessees as hereinbefore provided) maintain repair and renew (a) the fences indicated by "T" marks on the said plan walls footings foundations exterior walls and general structure roof chimney stacks gutters and rainwater pipes of the Building and (b) the gas and water pipes tanks drains and electric cables and wires in under or upon the Building or the gardens and curtilage thereof and enjoyed or used by the Lessees in common with the Lessor or any occupiers of the First Floor Flat (c) any other part or parts of the Building or premises whatsoever (not included in this demise) used in common by the Lessees the Lessor or any Lessee or owner for the time being of the First Floor Flat (d) so often as reasonably required paint (in the same colours as at present or such other colour as may be agreed with the Lessees) with two coats of good quality paint and in a proper and workmanlike manner all the exterior wood stone and iron work of the Building

Clause 2

"2. THE LESSEES hereby jointly and severally covenant with the Lessor as follows:

…

(h) To pay all costs, charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court"

Sch.2

Costs expenses and outgoings and matters in respect of which the Lessee is to contribute a half share

1. The expense of maintaining repairing and renewing (i) the fences indicated by "T" marks on the said plan walls footings foundations exterior walls and general structure roof chimney stacks gutters and rainwater pipes of the Building (ii) the gas and water pipes tanks drains and electric cables and wires in under or upon the Building or the gardens and curtilage thereof and enjoyed or used by the Lessees in common with the Lessor or any occupiers of the First Floor Flat and (iii) any other part or parts of the Building or premises whatsoever not included in this demise used in common by the Lessees the Lessor or any Lessee or owner for the time being of the First Floor Flat

2. The cost of painting the exterior wood stone and iron work of the Building