FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/38UE/LSC/2025/0640**
Property	:	**5 Dibleys, Blewbury, Didcot, OX11 9PT**
Applicant	:	**Dean Evans**
Representative	:	**Mr Rawdon Crozier of Counsel**
Respondents	:	**Dibleys Heritage Ltd**
Representative	:	**Miss Sally Blackmore of Counsel**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Tribunal Judge Stephen Evans** **Mr David Hunt MRICS FHEA**
Venue/Hearing date	:	**Remote video, 22 to 24 March 2026**
Date of decision	:	**27 May 2026**

DECISION

DECISION

(1) Oral application by Respondent to strike out the application refused;

(2) The Tribunal determines that the Applicant does not have permission to rely on the expert evidence of Mr Smith;

(3) The Applicant is to be taken to have admitted all service charges demanded for the period up to and including 30 September 2022;

(4) The Tribunal makes the determinations on payability/lease construction detailed herein;

(5) The Tribunal determines that the Applicant's roof and window apportionment is fair and proportionate;

(6) No order for reimbursement to the Applicant of the application and hearing fee, given the relative preponderance of success of the Respondent on the findings in this decision and all other circumstances.

REASONS

Parties

1. The Applicant is a joint leaseholder of the Property, registered as from 22 January 2014. The Respondent is a Residents Management Company.

The Property

2. This consists of a 3-bedroom house on an estate of about 6.5 acres, comprising 56 properties for the over 55s. It was built in the 1960s or 1970s.

3. There are 49 leaseholds, of which nine houses and 40 are bungalows. There are also 25 leasehold garages. There are 7 freehold bungalows and 2 freehold garages, following an enfranchisement process in 2012.

The Application

4. The Applicant challenges the payability and reasonableness of service charges for the years ending 2019 through to 2025. The application was filed in June 2025.

5. There have been various directions issued by the procedural judge between 7 October 2025 and 6 January 2026.

The Lease

6. The Applicant's lease is dated 26 August 1988. The relevant lease provisions are contained in Annex 1 to this decision.

7. In about 2019 a revised lease was introduced for other leaseholders on the Estate, which is different in terms to the Applicant's.

The hearing

8. The parties were represented by counsel, Mr Crozier and Miss Blackmore respectively. The Tribunal is grateful for their oral and written representations.

9. The Applicant and Mrs Evans (witness) attended the hearing, as did their solicitor Mr Knapper.

10. Miss Scarlet Doyle (solicitor) attended for the Respondent, along with its witness Mr Curtis and Jacqueline Maguire.

11. The Tribunal identified the following preliminary issues:

    (1) Lease construction points (legal fees, conveyancing, litigation type advice, internal works, external non-structural works, insurance, internal works;

    (2) S.20;

    (3) Estoppel by convention/admission of service charges;

    (4) Expert evidence.

Oral application to strike out

12. The Respondent made an oral application that the application be struck out pursuant to rule 9(3)(b) of the Tribunal Procedure Rules, for the reason that the bundles it had were in a poor state and served late; and the Applicant had not co-operated in getting them trial worthy. The hearing was beset by difficulty at the start, given the parties could not agree which bundle to use.

13. The Respondent contended the Scott Schedule was in such small type and had no cross referencing, making it very difficult to handle.

14. Further, the Respondent said the Applicant should not be able to rely on an expert report in the bundle, because there had been no compliance with Rule 19.

15. Lastly, Miss Blackmore contended the Applicant was seeking a full audit of service charges, some of which were very small in amount, which is precisely what the procedural judge in his directions had said the application should not be.

16. Alternatively, Miss Blackmore sought an adjournment so that the bundles could be put in order and the case properly presented.

17. The Applicant responded to admit there had been some difficulties with the bundles (such as the Scott Schedule being in portrait format and not landscape) but these had been remedied, and it would be disproportionate to strike out the application. Mr Crozier went into detail on the evolution of the bundle(s). He agreed there had been no disclosure of the appendices to the expert report, and that the Applicant was still asking to call this expert. Mr Crozier contended some use could be made of the 3 days of hearing time on matters which were not fact-sensitive.

18. The Tribunal made an oral determination (1) not to strike out the application, and (2) not to adjourn. The Tribunal considered that the difficulties with the bundles could be overcome, including that there was an excel spreadsheet version of the Scott Schedule, and progress could still be made in the resolution of the parties' disputes, including a determination on the s.27A(5) issue and the lease construction points.

Application concerning expert evidence of Mr Smith

19. The Respondent then made representations against the Applicant being able to call Mr Smith as an expert. She contended his report was highly tendentious and not directed towards the issues in the case (i.e. service charge reasonableness, as she put it). Instead, Mr Smith's report was all about potential fraud by the Respondent/ financial mismanagement. She relied on Rule 19(5) of the Tribunal Procedure Rules, which states what an expert report must contain. She contended the report was not directed to the Tribunal, did not use the correct statement of truth / statement that the expert's opinions are correct, and there was no summary of instructions in the report. Moreover, the 1000 or so pages of Appendices were not included at the end of the report in the bundle, and which are referred to in the text of the report. Miss Blackmore said it would be unfair and unjust to proceed, when neither she nor her solicitor had not seen these.

20. Mr Crozier contended that Appendices A, B and P were in the bundles separately; that Appendices C-J and L were all the Respondent's own documents; that Appendices M, N and O were only generic background documents and referred to in just a couple of places in the report. He contended the report went to the matter of the veracity of the Respondent's service charge accounts figures. He contended the report contained a sufficient summary of instructions, but accepted it was prepared in May 2025 and not specifically with these proceedings in mind (which were commenced

in June 2025). He contended the effect of the declaration, such as it was, in the report was that the expert was indeed contending his opinions were correct.

21. The Tribunal made an oral determination not to admit the expert evidence, for the following reasons. Primarily, the Tribunal did not consider the report would assist the Tribunal to determine the 3 main issues of lease construction, whether service charges were reasonably incurred, and whether they were reasonable in amount. We also agreed the report was concerned with wider matters of financial mismanagement, and insufficiently focussed on the issues in hand. The Tribunal was also unsatisfied as to the Rule 19(5) requirements, save as to signature by the expert and some details of his qualifications. Lastly, the case could not be dealt with fairly and justly, given that not all the Appendices were in the bundle, and seemingly never served on the Respondent.

Application for determination that Applicant had admitted service charges

22. The parties agreed this could be taken as a preliminary issue.

23. Section 27A(4)(a) and (5) provide:

"(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

...

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."

24. Miss Blackmore relied on *Islington BC v Cain* [2015] UKUT 542 (LC) at paragraph 17, as applied in *Gorrara v Kenilworth Court Block E RTM Company Limited* [2024] UKUT 81(LC):

"The effect of sub-section (5), however, is to preclude any such finding "by reason *only* of [the tenant] having made *any payment*" (italics supplied). The reference to the making of "any payment", and "only" such payment, indicates that whilst the making of a single payment on its own, or without more, will never be sufficient to found the finding of agreement or admission, the making of multiple payments even of different amounts necessarily over a period of time (because that is how service charges work) may suffice. Putting it another way, the making of a single payment on its own, or without more, will never be sufficient; there must always be other circumstances from which agreement or admission can be implied or inferred. And those circumstances may be a series of unqualified payments over a period of time which, depending upon the circumstances, could be quite short, it always being a question of fact and degree in every case."

25. Miss Blackmore contended the Applicant here had made, without protest, a series of unqualified, unconditional payments towards his service charges. Some of those payments had been made over 8 years ago.

26. Miss Blackmore accepted the pleaded position was of admission of service charges up to the service charge year ending September 2023.

27. The Respondent drew the Tribunal's attention in particular to paragraph 49 of *Gorrara*:

"...it is clearly correct that, as the judge put it at paragraph 25 of *Cain*, "the F-tT is entitled to look at matters in the round and find that where there has been substantial delay in making any challenges to the items now in dispute, and most if not all of which have long-since been paid, that the tenant has agreed or admitted the amounts claimed which, after all, have long-since lain dormant without challenge"".

28. We note that UT Cooke had earlier observed in *Goraya*:

"45... in circumstances where the tenant delayed before challenging the charge or charges, and had the information during that time to raise a challenge, then the payments *in those circumstances* may indicate agreement."

29. *Gorrara* itself has been applied by UT Cooke in *Bradley v Abacus Land 4 Ltd* [2024] UKUT 120 where a leaseholder paid for gym charges for 8 years, knowing they were included in the service charges. He was held to have admitted the charges.

30. Mr Crozier took us to paragraph 32 of Mrs Evans' witness statement. This reads as follows:

"Concerns arose during the Applicants' involvement in the section 20ZA proceedings before the tribunal (reference CAM/38UE/LDC/2022/0032) and following subsequent inspection of service charge invoices and supporting documentation for the years 2017 - 2023. Review of that material raised concerns regarding the reasonableness, recoverability, apportionment, and documentation of certain costs. The Applicants then sought legal advice in order to clarify their rights and frame the present application."

31. We also note paragraph 31, preceding:

"Prior to engaging in tribunal proceedings, the Applicants proceeded on the assumption that the Respondent was administering the service charge in accordance with the leases and relied on the information and explanations provided by the Respondent in relation to those matters.”

32. Mr Crozier contended:

(1) A leaseholder’s state of knowledge may not come in until later and must be seen in a wide context;

(2) Payment by itself or series of payments is insufficient to meet the test. There must be something else;

(3) The Applicant was not put on enquiry until the dispensation application was heard. The very fact of the proceedings made him look at everything else with greater scrutiny. It was then that he began to believe something had gone wrong with the service charging by the Respondent;

(4) There were queries about invoices in 2024 and the Applicant was still not getting the information he needed to make an application.

33. Miss Blackmore responded to assert we should follow *Cain*, but accepted that paragraph 50 of *Gorrara* says:

“Delay is not the only relevant factor. The availability of information may be another. But unqualified payment or payments alone do not meet the requirements of section 27A(4)(a), as is clear when one thinks through practical possibilities and as section 27A(5) expressly provides.”

34. The Tribunal determined in an oral decision on the second day of the hearing, with written reasons to follow herein, that the Applicant is to be taken to have admitted all the service charges demanded of him up to and including 30 September 2022, because (looking at all matters in the round):

(1) There had been a substantial delay in challenging those service charges. Some six years for the earliest (2018/2019) and three years for the latest (2021/2022). By way of illustration, in *Shersby v Greenhurst Park Residents Co Ltd* [2009] UKUT 241 (LC) a delay of 3 years was sufficient delay, and we consider it proportionate to apply that longstop;

(2) All the service charge demands have long since been paid, without qualification or protest;

(3) Requests for information are not enough, as such requests do not of themself indicate a challenge: see *Cain*;

(4) The Applicant in this case places the most emphasis on an argument that many of the service charge items he challenges do not fall within the terms

of the lease. The Applicant could have made that challenge at any time – he had sufficient material (the lease) on which to bring his challenge, just as Mr Cain had had sufficient information to challenge the contractual payability of his insurance management fees;

(5) The dispensation proceedings in decided in February 2023 were restricted to an issue over a single gas contract dating from March 2022, not hundreds of lines of different service charge items over a number of years. That Tribunal's determination made it clear that it was not making any determination of whether it was reasonable to incur certain costs. The dispensation application focused on an alleged lack of transparency in relation to accounts and due diligence with regards to that contract which had resulted in prejudice to the Applicant. It is also clear from paragraph 61 of the dispensation decision that the decision would not affect the Tribunal's jurisdiction on any future section 27A application. Despite that clear statement, no sufficient explanation has been provided by the Applicant for not pursuing a challenge under s.27A in this Tribunal between February 2023 and June 2025;

(6) However, it was reasonable for the Applicant to await that determination we find, and the 5 months it took for those proceedings to be resolved weighs against making the guillotine date later, i.e. 30 September 2023;

(7) There has been no reply to the Respondent's Statement of Case clearly raising this issue of admission of service charges. There are only paragraphs 31 and 32 of Mrs Evans statement (with which the Applicant agrees), but there has been nothing specific from the Applicant as to his own state of mind at all material times;

(8) In any event, paragraphs 31 and 32 of Mrs Evans statement beg more questions than they answer. She states that she and the Applicant were reliant on the information and explanations of the Respondent, but she does not say that the information she received was misleading, nor why. Nor is there any explanation for the failure to have progressed the lease construction argument. Mrs Evans links the obtaining of legal advice to delay, but this was something Mr Crozier expressly eschewed during submissions.

The lease construction/payability points

35. Mr Crozier then took instructions on whether he was in a position to advance the lease construction/payability points as another preliminary issue. After some discussion, he indicated that he was. The Respondent also agreed.

<u>Garage maintenance</u>

36. In relation to the years for which there had been no admission of service charges, this appears in the Scott Schedule at entry 1 (2023) and entry 2 (2025). The works carried out on the garages by the Respondent include repairs to doors and windows of these garages.

37. Mr Crozier contended the following:

(1) The Property is defined on page 1 of the lease and includes the dwelling and garage number 5 on the Plan, and "shall include where the context so admits for the purpose of obligation as well as grant:
(i) all internal and external walls
(ii) the foundations and/or the roof space void".

(2) In clause 1 of the lease "buildings" is defined as meaning all the buildings on the Estate including that of which the Property forms part;

(3) Clause 4 contains a covenant by the Respondent to comply with the 4th Schedule, which includes at paragraph 4(a) a covenant that the Respondent

"will in an efficient manner in accordance with the principles of good estate management unless prevented by any cause or event beyond its control and subject payment by the Applicant of the service charge:
(a) repairs tend and maintain and where appropriate redecorate
(i) the structure foundations and roof of the building and the conduits."

(4) The Applicant covenants by clause 3 to comply with the 5th Schedule. By paragraph 1.1 of that Schedule, the Applicant must pay a fair and proportionate part of the costs and expenses incurred by the Respondent in respect of (emphasis by the Applicant):

"(a) Supplying and maintaining all works and services ("the Services") done or provided by the [Respondent] in connection with the Property the Building the Common Parts and the Estate the Services being all the Services actually supplied or procured by the [Respondent] from time to time which shall *usually* include the items set forth in Part 2 of this Schedule and which shall be the subject of the *exclusive control* of the company";

(5) Accordingly, an item not in the exclusive control of the control of the Respondent is not to be the subject of recovery by way of service charge;

(6) As the garage is wholly demised to the Applicant, properly construed the lease does not require the Respondent to repair the garages, or if it does, it cannot recover any such costs by way of the service charges;

(7) The Respondent could not reply on the "sweeper" clause in paragraph 6(l) of Part 2 of the 5th Schedule to remedy this deficiency.

38. Miss Blackmore contended:

(1) Part 2 of the 5th Schedule provides a list of services for which the Respondent may incur costs and expenses, including:

"1. Inspection maintenance repair repointing decoration and servicing where appropriate the replacement on the regular basis in keeping with good estate management:
(a) the structure and all external parts of the Building including roofs and foundations
(b) the Central Heating System
(c) the Grounds including the costs of watering mowing and of the replacement of grass plants and trees
(d) the Common Parts including the resurfacing and relaying of all paths accessways and garage areas"

(2) The doors and windows of the garages are part of the structure of the Buildings (as defined) which the Respondent must repair etc, pursuant to paragraph 4(a) of the 4th Schedule;

(3) The word "usually" in paragraph 1.1(a) of the 5th Schedule, Part 1, simply reflects the fact that services on the Estate may change over time;

(4) Accordingly the Respondent may recover these costs subject, of course, to section 19 reasonableness.

39. The Tribunal gave an oral determination with written reasons to follow herein, that this was a matter failing within the Respondent's obligations and for which it might potentially recover a service charge proportions from the Applicant, because:

(1) The key to understanding the respective obligations of the parties under the service charge machinery is a proper interpretation of the repairing etc covenants of the parties. In this regard:

(a) The Applicant's obligations are contained in Schedule 2, para 6.1. He must, at all times during the term, keep the <u>internal</u> parts of the

Property in good and substantial repair redecoration and condition to the reasonable satisfaction of the Respondent, with some exceptions;

(b) The Respondent covenants to repair etc the structure, foundations, and roof of the Building, the conduits, the boundary, the walls and fences belonging to the Estate, the Common Parts, the Central Heating and the plumbing of the properties: see paragraph 4 of the 3rd Schedule;

(c) "Exclusive control of the [Respondent]" in the 5th Schedule is properly interpreted as a reference back to the respective covenants of the parties, including those repairing covenants which, in relation to the Respondent, extend to external parts and structure of the Buildings;

(d) The definition of "Property" as potentially including foundations, external walls, foundations and roof space does not undermine this analysis, since the definition provides "where the context so admits".

40. Accordingly, the Tribunal determines that the doors and windows of the garages are in the exclusive control of the Respondent as being a structural and/or external part of the Buildings as defined.

<u>Directors and Officers' insurance</u>

41. In relation to the years for which there had been no admission of service charges, this item appears in the Scott Schedule at entry 2 (2023) and entry 2 (2024) and entry 3 (2025).

42. Mr Crozier's simple submission for the Applicant is that the lease does not expressly cite this insurance as a Part 2, Schedule 5 cost.

43. Miss Blackmore relied on the 5th Schedule, Part 1, para 1,1(b):

"The costs and expenses incurred by the [Respondent] in respect of the management and supervision of services as specified in Part 2 of this Schedule"

44. She contended that "management" includes directors and officers' insurance costs.

45. Further, she relied on both paragraphs 1 (above) and 6(l) of Part 2 of the 5th Schedule, the latter of which provides (emphasis by counsel):

"(l) Other acts cost outgoings expenses and things done which in the opinion of the [Respondent] are for the *efficient running of the Estate* or for the benefit of the residents (whether or not of a like nature to the foregoing) or for the purpose of carrying out the covenants or powers of the [Respondent] hereunder."

46. The Scott Schedule entries by the Respondent contend that maintaining directors and officers insurance is an essential part of certain governance obligations because it protects the company and its volunteer directors against claims arising from their undertaking Estate management.

47. The Tribunal determines that directors and officers insurance does not fall within Schedule 5 of the lease as a service charge cost or expense. The starting point, we determine, is the fact that the lease:

(1) By the 5th Schedule expressly provides for the recovery of "the cost of Insurance is specified in Part 2 of this Schedule": see paragraph 1.1 of Part 1 of the 5th Schedule;

(2) By Schedule 5, Part 2, para 8, expressly sets out the insurance premiums which are relevant costs. These are limited to 3 items only: (i) Estate buildings insurance; (ii) third party property owners public and employers liability risks/ risks under the Defective Premises Act 1972; (iii) Respondent's plant and machinery by way of engineering insurance policies.

48. It is clear the parties to the lease turned their mind to insurances wider than simple buildings insurance, and carefully set out what could be claimed by the Respondent. Directors and Officers Insurance is not one of those insurances. In such circumstances, the Respondent would have to satisfy the Tribunal that, notwithstanding such an omission, the cost should be recoverable as a maintenance or management item/ under the sweeper clause.

49. In *Dell v 89 Holland Park* [2022] UKUT 169 (LC), the UT considered a sweeper clause in these terms:

"Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the reasonable discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building."

50. The UT noted that it is a useful reminder that a "sweeper" clause should not be construed so as to bring into the service charge expenses of a kind that could not otherwise have been included (para 40). It held that the sweeper clause before it was part of a wider clause 4(4), the purpose of which was to ensure that the landlord maintained the building and employs staff and professionals

where necessary, but did not include litigation costs, especially where solicitors' costs were covered elsewhere, and the sweeper clause made no hint of litigation costs. The Court of Appeal then agreed with the UT: see [2023] EWCA Civ 1460; [2024] H.L.R. 9.

51. By analogy, in the instant case there are carefully circumscribed clauses concerning insurance costs, and no hint of D&O's insurance in Schedule 6, Part 2, para 6(l). The sweeper clause here focuses on efficient running of the Estate and benefit of residents; not the benefit of the Respondent's directors. Nor is it necessary to have such insurance for the Respondent to carry out its covenants or powers under the lease.

52. We therefore determine that costs in relation to D&O's insurance as claimed in the Scott Schedule are not contractually payable by the Applicant under the terms of his lease.

<u>Door/window maintenance</u>

53. This appears in the Scott Schedule for 2023 (entry 5), 2024 (entry 5) and 2025 (entry 6).

54. Both parties relied on their arguments under "Garage maintenance" above.

55. Mr Crozier further contended that if this was an internal door/window, the leaseholder was responsible, but if it was an external door/window, it was not in the exclusive control of the Respondent and not structural.

56. Miss Blackmore was not aware these items concerned any internal door, and invited us to proceed on the basis they were external doors.

57. The Tribunal proceeds on the premises these costs related to external door(s) as well as windows.

58. The Tribunal makes a determination for the same reasons as under "garage maintenance" - that that this was a matter failing within the Respondent's obligations and for which it might potentially recover a service charge proportion from the Applicant.

<u>Drain maintenance</u>

59. This appears in the Scott Schedule for 2023 within entry 5.

60. Mr Crozier relied on the definition of Conduits within clause 1.4 of the lease:

““Conduits” means all aerials ducts shafts systems tanks radiators water electricity and telephone supply pipes wires and cables and all sewers drains gutters and pipes other than those belonging to the relevant supply authorities other than those within the Property.”

61. Mr Crozier could not say where this drain was, in particular whether it was “within the property”.

62. Miss Blackmore contended that the word drain would suggest this concerned an external part of the building, and that “conduits” (which include drains) are part of the definition of “Common Parts” in clause 1.2. As such, she contended, this was a physical item which the Respondent is obliged to repair etc by virtue of paragraph 4(a)(iii) of the 4th Schedule to the lease, and recoverable as a service charge item pursuant to paragraph 1(a) and (d) of Part 2 of the 5th Schedule to the lease.

63. In the Tribunal's determination, looking at the definition of “Conduits”, the words “other than those within the Property” qualifies all preceding words, not just “sewers drains gutters and pipes other than those belonging to the relevant supply authorities”.

64. Accordingly, if the drain in question is within the Property, it would be an internal part which the Applicant must repair etc pursuant to paragraph 6.1 of Schedule 2 of the lease. If, on the other hand, the drain was not “within the Property”, we agree it would be a common part which the Respondent has to repair etc by virtue of paragraph 4(a)(iii) of the 4th Schedule being within its exclusive control, and recoverable as a service charge by virtue of Schedule 5, Part 1, paragraph 1.1(a) and Part 2 paragraph 1(d) - subject of course to s.19 reasonableness and standard of work.

65. However, given the factual difficulty of discerning where the drain was, we considered this item would have to be explored later in evidence. See below for our determination.

Heating system maintenance

66. This concerned 2024 entry number 1 in the Scott Schedule: replacement of radiators within individual properties.

67. Mr Crozier relied on the definition of conduits (see above) in so far as it excludes radiators “within the property”; accordingly, each leaseholder must repair their own radiators. The Applicant should not have been charged for repairs to other persons’ radiators.

68. He appeared to accept that, given para 4 of the 4th Schedule imposes on the Respondent at sub-para 4(v) an obligation to repair etc the central heating and plumbing of the properties, there would be a dual obligation on both landlord and lessee. Nevertheless, the item in question was not within the exclusive control of the Respondent as required by the 5th Schedule, paragraph 1.1(a), and accordingly not recoverable as a service charge.

69. Miss Blackmore contended there was no need to construe the lease as the Applicants did. It was sufficient there is an obligation to repair etc the central heating and plumbing of the Properties (4th Schedule para 4(a)(v)) in conjunction with paragraph 1.1(b) of Part 1 and paragraph 1 of Part 2 of the 5th Schedule). As for the apparent difficulty posed by paragraph 1.4 (definition of "Conduits") she contended that the words "other than those Belonging to the relevant supply authorities other than those within the property" only qualified the items "sewers drains gutters and pipes".

70. The Tribunal disagrees with Miss Blackmore as to her final point above: see paragraph 71 of this decision. Accordingly, we determine that a radiator within the Property is not a Conduit. Taking a purposive approach, the intention of the parties to the lease, we determine, was that items within the 4 walls of the Property would generally be the responsibility of the lessee.

71. However, it would also have been in the contemplation of the parties at the time of the lease that this was an Estate wide communal heating system, such that replacement of (for example a radiator) in 1 property might affect the whole system. In addition, the "Common Parts" as defined include the boiler houses, for which the Respondent has a responsibility to repair etc; and it can recover costs for those services under paragraph 1 of Part 2 of the 5th Schedule, as well as for the maintenance etc of all plant and machinery serving or for the benefit of the Estate: ditto, paragraph 3.

72. Paragraph 4 of the Second Schedule requires the Respondent to repair etc the "central heating and plumbing of the Properties", including pipework inside the Applicant's premises and those of others, as well as radiators.

73. We do not see the leaseholder's repairing covenant as being in tension or causing a problem with the above analysis; whilst paragraph 6.1 of the Second Schedule requires a leaseholder to keep a radiator inside their premises in good and substantial repair and condition, no leaseholder may replace such a radiator; and in this context the leaseholder's covenant is no more than ensuring an individual radiator does not become damaged or out of condition. The repair etc of the "system" lies at the feet of the Respondent and is in their exclusive control, and is therefore potentially recoverable by way of service

charge, we determine, including the situation where a particular radiator requires replacement.

Heating reserves

74. The Applicant withdrew his challenge to this item.

Boundaries

75. This appears within entry 4 for 2024 on the Scott Schedule.

76. The Applicant's contention is that walls and boundaries of each demised bungalow or house remain the responsibility of the leaseholder; walls and boundaries between or enclosing individual properties are therefore not recoverable through the service charge.

77. Mr Crozier directed us to the definition of "Grounds" in clause 1.6 as meaning:

> "The parts of the estate shaded grey on the plan comprising the communal areas paths common entrances boundary walls gates fences and all other parts the use of which is common within the estate"

78. He also directed us to the Respondents obligation to repair etc the boundary walls and fences belonging to the Estate: 4th Schedule, para 4(a)(ii).

79. However, given that Mr Crozier could not direct us to any leaseholder covenant to maintain their own boundaries/walls, and there was no plan attached to the lease in the bundle, this item could not be pursued by way of preliminary issue.

Brickwork

80. This item appears on the Scott Schedule for 2023 (entry 5) 2024 (entry 4) and 2026 (within entry 6).

81. Mr Crozier contended that the documents show that this was brickwork cracking on the internal leaves of external walls in other properties, including 49 Dibleys. He took us to section 17 on p.39 of Mrs Evans' witness statement in this regard, as well as an invoice dated 28 November 2022 and a report from Andrew Eades Chartered Surveyors dated 28 November 2022, both concerning no.49 Dibleys.

82. As such, he contended this was a repair within the leaseholder's responsibility under paragraph 6.1 of the Second Schedule. Moreover, this was not a matter within the *exclusive* control of the Respondent as required by paragraph 1.1 of Part 1 of the 5th Schedule.

83. He agreed the work might potentially concern part of the structure of the Buildings, but contended it was an internal cosmetic matter.

84. Miss Blackmore emphasised that these costs concerned external walls, which were part of the structure for which the Respondent was liable under paragraph 4 of the 4th Schedule, and could charge for under paragraph 1.1(a) of Part 1 of the 5th Schedule / paragraph 1(a) of Part 2 thereof. The Scott Schedule made it clear that these cracks were caused by structural movement and required stitching with metal rods, and were not just a problem with internal/cosmetic finishes.

85. In the Tribunal's determination, the internal leaf of a cavity wall was part of the structure for which the Respondent was responsible, and might recover a service charge contribution. The evidence before us (including the expert report) was that there were vertical cracks in the blockwork/brickwork inner leaf but none on the external leaf. In *Irvine v Moran* (1990) 24 HLR1, the High Court held that structure concerns elements of the overall dwellinghouse which give it its essential appearance, stability and shape; the term is not limited to those parts of the dwelling-house which are load bearing. A fortiori, in this case the cracks are 3-4mm wide in walls located in a direct load path, with associated cracking to the ceiling of the room. As such, we consider the internal leaf of the external wall is indeed part of the structure, and there has been damage to the same, requiring both repair to the walls and the associated consequential ceiling cracks.

86. We note that the Applicant accepts (skeleton argument, para 20) that where repairing obligations are imposed on more than 1 party, the court should lean in favour of a construction which results in there being a complete code so far as repair is concerned: *Holding & Barnes v Hill House Hammond* [2000] L&TR 428, per Neuberger J. Whilst paragraph 6.1 of the Second Schedule in the instant case requires the leaseholder to keep in repair etc the "internal parts" of the Property, in our determination the remediation of the vertical cracks in this case did not fall upon the leaseholder. We do not construe the intention of the parties of the lease to have been that cracks such as this, caused by structural movement and requiring the repair that they did, were to fall within the leaseholder's repairing covenant.

Gutter maintenance

87. Mr Crozier accepted this item was fact sensitive, depending on the location of the gutters, so this item could not be pursued by way of preliminary issue.

Reserves

88. The 5th Schedule paragraph 1.1(d) enables the Respondent to charge a fair and proper proportionate part of the costs and expenses, if demanded, of an amount in respect of the provision of a reserve fund as specified in Part 2 of the 5th Schedule.

89. Mr Crozier contended that the 5th Schedule, paragraph 7 permitted the collection of a "contingency reserve fund" to cover only 3 matters: (a) The replacement of the Common Parts, the Building, the Conduits and all plant machinery and equipment including any Central Heating System; (b) decoration of the Building; (c) "further items of expenditure which are not of an annually recurring nature".

90. The parties agreed, after some discussion, that the simple tag of "reserves" meant there would need to be a further analysis on a fact sensitive basis.

91. We also agree. This item could not be pursued by way of preliminary issue.

Depreciation

92. The parties agreed that this was not a service charge, but an accounting issue. The Tribunal therefore struck this matter out by consent.

Legal and company reserves

93. The 5th Schedule paragraph 1.1(d) enables the Respondent to charge a fair and proper proportionate part of the costs and expenses, if demanded, of an amount in respect of the provision of a reserve fund as specified in Part 2 of the 5th Schedule.

94. Paragraphs 95 and 96 above are repeated. Mr Crozier contended that legal reserves and company reserves did not fall within the 5th Schedule, paragraph 7, and had to be linked to forecasted costs.

95. The Scott Schedule entry for the Respondent further contends that no link to forecast costs is required.

96. Miss Blackmore relied on sub-paragraph (c) in paragraph 7 as being broad enough in drafting to cover this cost.

97. In the Tribunal's determination, the parties to this lease did not objectively intend that the leaseholder would be expected to contribute to a reserve/fighting fund for legal expenses. Whilst the lease envisages the costs incurred by the Respondent in enforcing covenants in other leases of properties for the general benefit of the residents might be recoverable pursuant to Schedule 5, Part 2, para 6(i), the Tribunal considers that such costs would expected only to form part of the estimate of anticipated expenditure for each year (see 5th Schedule, para 2(a)(ii)), not as part of a reserve fund pursuant to paragraph 7.

Scott Schedule items

98. Having taken instructions, Mr Crozier indicated to the Tribunal that the Applicant would not seek to challenge any remaining items on the Scott Schedules for 2023 to 2025 or advance any other challenges save for the following:

(1) Drain maintenance
(2) Roof apportionment;
(3) Window apportionment.

(a) Drain Maintenance

99. Paragraphs 59 to 65 above provide the background.

100. Mr Crozier was able to identify the relevant invoice, which revealed this was work at 54 Dibleys on or about 24 November 2022, undertaken by CM Plastering and Home Improvements, consisting of "remove soil from brick area. Using cement board create a French drain. Paint with blackjack. Back filled with new stone". The invoice cost is £230.

101. Mr Crozier contended this was a French drain next to an external elevation, and as such constituted a "Conduit….within the Property" for which the leaseholder of 54 alone was responsible.

102. Miss Blackmore referred us to the 1st Schedule, Part II, para 1 for the exceptions and reservation of free passage of water etc. through the "Conduits now or hereafter during the perpetuity period applicable to this Lease to be constructed under or upon the Property and the right of the Society and any persons authorised by it to enter the Property to lay construct or replace the conduits…"

103. She also contended this conduit was incidental to the structure.

104. In the Tribunal's determination:

(1) This was not a "Conduit" within the meaning of clause 1.4 of the Lease. A French drain in essence is merely a ditch dug and filled with gravel next to an external wall to allow water/moisture affecting the wall to drain downwards and away from the wall, thus mitigating issues of penetrating dampness into the external wall;

(2) Even if we are wrong on our determination that it is not a *Conduit*, we conclude it was not a Conduit *within the Property* (i.e. internally to number 54 in this case, assuming an identical lease);

(3) We agree with Miss Blackmore that the work equates to a repair or maintenance of the structure (external wall) which must have been subject to lateral water penetration;

(4) Accordingly, pursuant to the 4th Schedule para 4(a), the Respondent was solely responsible for it, and could charge a proportionate part from the Applicant of the £230 cost, pursuant to the 5th Schedule, Part 1, para 1.1(a)/ Part 2, para 1(a).

(b) Roof Apportionment

105. Mr Crozier directed us to section 15 of Mrs Evans witness statement. By way of summary, the Applicant complaints that the Respondent applies a formula introduced around 2017 that divides total roof expenditure by the combined internal floor area (in metres square) Of all leasehold dwellings and then multiplies that figure by the internal area of each property type. By relying on internal area, there is no rational connection with either the cost of the roof works or the benefit derived. Roof replacement costs generally determined by external roof surface area not by the number of stories or rooms within the dwelling.

106. The Applicant contends that the two Storey house is roughly the same roof as a single Storey bungalow of similar footprint but twice the internal area; By using internal areas the multiplier, the Respondents method overstates the houses share of roof expenditure.

107. The total area of all 56 properties on the Estate is 2386 msq. A house on the Estate has an area of 86.4 msq. Accordingly, if the works cost, for example, £2386, the Applicant would have to pay £86.40.

108. The Applicant contends this is unfair, and a method whereby the number of storeys is taken into consideration would be a fair and proportionate method. He contended that a house should be considered to have 43.2 msq, as it has 2 storeys. If this is undertaken, there are 9 houses on the estate, and so the 2386 total figure would reduce to 1997.2.

109. Applying the Applicant's apportionment (revised) to the figures for the years in dispute would mean the following sums payable by the Applicant:

(1) 24/25: (£39000/1997.2) x 43.2 = £843.58;
(2) 23/24: (£30000/1997.2) x 43.2 = £648.91;
(3) 22/23: (£15000/1997.2) x 43.2 = £324.45.

110. The Respondent's statement of case avers the apportionment adopted follows a rational process, based on relevant considerations, has been applied consistently, and produces a fair and proportionate allocation of the relevant costs. Such an apportionment is not outside the range of reasonable

approaches, and is not a decision that no reasonable landlord or manager would adopt: *Bradley v Abacus Land 4 Ltd* [2024] EWCA Civ 1308.

111. Mr Curtis' evidence reveals that in 2015 total estate costs were divided equally amongst all leaseholders, but residents raised concerns that smaller one-bedroom bungalows were contributing the same amount as larger three-bedroom houses despite the material differences in size and configuration. As a result, the Respondent reviewed its approach. From 2016 service charges have been divided into separate elements with a defined formula reflecting how that cost arises. For example, heating costs are apportioned using a BTU based method, whilst property related maintenance was apportioned using objective measures that reflect dwelling characteristics. In 2025 the Respondent enhanced its calculations, using an asset-based method aligned with industry recognised principles. Referring to the requirement for leaseholders to contribute a fair and proportionate part under their leases, Mr Curtis contends that the 2016 revisions and the 2025 asset-based enhancement were introduced to align individual contributions with measurable differences between dwellings and with how specific costs arise across the estate.

112. Miss Blackmore added that it would not be proportionate simply to divide by 2 for the houses. To do so would overlook additional costs such as scaffolding, health and safety working at height, and transportation. There would also be additional management costs.

113. In our determination, the starting point must be the Supreme Court case of *Aviva Investors Ground Rent GP Ltd and anor v Williams* [2023] AC 255, which held that it was not a part of a Tribunal's task under section 27A(1) or (3) to make discretionary management decisions itself, although the question whether the landlord's discretionary management decision was reasonable would be. In that case the relevant provisions of the leases gave the landlords two closely related rights, namely, to trigger a re-apportionment of the originally agreed contribution proportions and to decide what the revised apportionment should be, in both respects obliging the landlords to act reasonably. The FTT is, as Lord Briggs puts it in *Aviva*, "limited to deciding whether the landlord acted in breach of contract".

114. In *Bradley v Abacus Land 4 Ltd* [2024] EWCA Civ 1308, the CA followed the above principles.

115. In the instant case, the service charge payable shall represent a fair and proper proportionate part of the costs and expenses incurred by the Respondent. We are unable to conclude on the evidence before us that the Respondent is in breach of contract; nor in so far as necessary for us to do, to find that the Respondent's apportionment is/was unreasonable. There are clearly many other factors involved (as cited by Miss Blackmore in paragraph 118 above) than just floor area. Further, on page 1205 of the bundle, we note

there is a list of 47 equations relating to all manner of costs. The Respondent has had to balance all of these, when coming to the conclusions it has in relation to roof apportionment.

(c) Window apportionment

116. The equation on p.1205 for window maintenance is stated to be:

(Total window maintenance costs/ total number of leaseholder windows) x number of windows in property type

117. Photographs in the bundle reveal that many properties on the Estate have floor to ceiling windows or doors on their rear elevations. This includes the houses at 1 Dibleys to 5 Dibleys, whether or not those houses have rear additions, although it does seem that there are more floor to ceiling height windows/French doors in the bungalows.

118. The data on p.1206 of the bundle reveals that each of the houses has 8 windows, meaning that there are a total number of windows in the houses of 72. We note that 8 windows is the lowest number for any property type, and that, for example, 3 bed bungalows have double that amount.

119. Mr Crozier accepted that the Applicant had not proposed an alternative to the method or equation adopted by the Respondent. He contended however that the only reasonable alternative was to measure the surface glazing areas, and calculate costs accordingly, whether or not that resulted in an increase or decrease of the amount payable for his lay client.

120. Miss Blackmore represented but the Respondent is making the calculation is fair and proportionate, and although Mr Curtis does not in his witness statement explain why window apportionment is not calculated using surface area, she contended this is not surprising given that the Applicant had not raised this issue in correspondence before the application was brought. (However, we note this does not explain why there is not some detail in Mr Curtis' statement in relation to the decision-making process itself).

121. In the instant case, again the service charge payable shall represent a fair and proper proportionate part of the costs and expenses incurred by the Respondent. We are unable to conclude on the evidence before us that the Respondent is in breach of contract; nor in so far as necessary for us to do, to find that the Respondent's apportionment is/was unreasonable as regards proportion of window costs. We apply similar reasoning to that in paragraphs 113 to 115 above.

Section 20C/para 5A Sch 11

122. In the afternoon of day 3, the Applicant withdrew his application under section 20C/para 5A.

123. However, Miss Blackmore did invite the Tribunal to determine whether the costs of tribunal proceedings are contractually recoverable under the provisions of the Lease, so as to assist the parties going forward. Mr Crozier did not object, and they made submissions accordingly.

124. The following are not essential parts of our reasoning on the s.27A decision, and must be read in that light.

125. Miss Blackmore indicated she was not relying on Schedule 2, para 8, but Schedule 5, Part 2, paras 6(h) and (l). Reliance was placed on *Bretby Hall Management Company Ltd v Pratt* [2017] UKUT 70 (LC), wherein the UT held that the words "all other expenses (if any) incurred by the Manager in and about the maintenance and proper and convenient management and running of the development" were wide enough to cover the costs of intended proceedings threatened by Mr Pratt against the Manco. The UT preferred the submissions of the Manco, including the point that the Manco's members were the individual tenants, and that the service charge was its only source of income, so that there would be no way of recovering the costs outside the service charge; it was therefore inconceivable that the parties could have intended that the reasonable costs incurred by the Manco should be recoverable if proceedings were actually commenced but not if they were merely threatened.

126. Mr Crozier relied on a line of authorities cited in his skeleton argument from *Sella House v Mears* (1988) 21 HLR 147 through to *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725; [2022] H.L.R. 26. We have read his submissions in full, but the essence of his representations both oral and written is that tribunal proceedings costs are not expressly mentioned in the Lease, and we should not bring within the general words of a service charge clause something which does not clearly belong there. That latter sentiment has been re-affirmed recently in the *Dell* case by the CA (above), albeit not cited to us by either party.

127. On reflection, the Tribunal prefers the Respondent's submissions - although not as to paragraph 6(h), which we determine concerns works only. However, as regards para 6(l), in line with the *Bretby Hall* case, we consider that it is inconceivable that the parties to this Lease could have considered that the Respondent could not recover the costs of *defending* tribunal proceedings as long as such costs were for the efficient running of the Estate or for the benefit of the Residents. This is, of course, different to the costs

incurred by the company in *enforcing* covenants in other leaseholders under para 6(i).

128. Because of those additional words "for the efficient running of the Estate or for the benefit of the Residents", each case will have to be looked at carefully on a fact sensitive basis. It is not a one-size fits all scenario. In simple cases, legal costs may not need to be expended at all for the efficient running of the Estate or for the benefit of the Residents.

129. The instant case, concerning important matters such as apportionment and lease construction, was one where the Respondent's costs (including legal costs) incurred in defending the proceedings brought by the Applicant was "for the efficient running of the Estate or for the benefit of the Residents", we conclude.

Post hearing matters

130. The Tribunal at the hearing gave the Respondent 7 days to notify it and the Applicant whether it considered the costs of the 2022/2023 dispensation proceedings were chargeable to the Applicant, given the terms of the dispensation order.

131. The Tribunal now records a concession by the Respondent made in writing on 1 April 2026 that it would not be appropriate for the Respondent to seek to recover any share of the costs from the Applicant in relation to his proportion of its legal costs of the 2022/2023 tribunal proceedings. These costs had been included in a service charge demand already sent out, but the amount of £622.39 will be effectively withdrawn, and this sum will be subtracted from the amount that is currently outstanding on 5 Dibley's account.

132. Following the hearing also, the Tribunal Legal Officer brought to the Tribunal's attention another application for dispensation from consultation requirements, made by the Respondent on 20 March 2026, which refers to the statement of Mr Curtis on this service charge application, but gives no other details. We note Mr Curtis' statement is just 1 line on this matter: "In addition, the company has submitted an application to the first-tier tribunal for dispensation from the consultation requirements in relation to the window, door and radiator works completed during 2025 and those scheduled for summer 2026." We heard no representations from the parties on this application, nor was it mentioned in the hearing, and we make no determination on it. If the Respondent wishes to pursue such an application, it will need to inform the Tribunal, and directions will be given accordingly by a procedural judge under a new case number.

133. Lastly, we have been sent correspondence between the parties on the matter of PII insurance, which we are told is in the Scott Schedule but was not addressed at the hearing because "everyone forgot", to adopt the Applicant's solicitor's words. The Applicant wishes to contend that the same arguments apply to PII as to directors and officers insurance. The Respondent's solicitor has replied in correspondence to contend that the Applicant had withdrawn all other claims, and the Tribunal had indicated that no further applications/ submissions were to be made.

134. Given that the matter was not raised, and we heard no submissions on PII insurance, we decline to make any determination.

Costs of application and hearing

135. The Tribunal makes no order for reimbursement to the Applicant of his application and hearing fee, given the relative preponderance of success of the Respondent on the findings in this decision and all other circumstances.

Name: S J Evans **Date:** 27 May 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex 1 (Lease provisions)

Page 1:

2. “the Property” means the dwelling known as No 5 Dibleys South Street Blewbury (and garage number 5) shown edged red on the Plan. The term “the Property" shall include where the context so admits for the purpose of obligation as well as grant:-

(i) all internal and external walls
(ii) the foundations and/or the roof space void (second)

Page 2:

1.1. "the Building” means all the buildings on the Estate including that of which the Property forms part

1.2. "the Common Parts" means collectively the Conduits the paths the grounds the garage areas the boiler houses the office and any garage used for the storage of all plant machinery and equipment and all common entrances not comprised in any of the Properties ...

1.4. “the Conduits” means all aerials ducts shafts cisterns tanks radiators water electricity and telephone supply pipes wires and cables and all sewers drains gutters and pipes other than those belonging to the relevant supply authorities other than those within the Property.

1.11 “the Property" means the Dwelling demised by this Lease hereinbefore more particularly described

Page 3

1. DEMISE: I
   In consideration of the Price now paid by the Owner to the Society (the receipt of which sum the Society hereby acknowledges) and of the covenants hereinafter contained the Society HEREBY DEMISES unto the Owner All THAT the Property TOGETHER WITH the rights set out in Part I of the First Schedule EXCEPT AND RESERVING as set out in Part II of the First Schedule TO HOLD the same unto the Owner from the first day of January 1988 for the term of 999 years (determinable as hereinafter provided)

Page 5

5.6 If at any time during the term any dispute shall arise between the Owner or the Occupier and any of the Residents relating to any party structure or any conduit or any easement right privilege or appurtenance contained or implied in this lease or the carrying out of any repairs or services under this lease and any contribution to be made thereto by either party to such dispute or the Service Charge or any nuisance or annoyance arising from any of the matters aforesaid then and in every such case such dispute shall be referred to the determination and award of an independent expert (acting as an expert and not as an arbitrator) appointed by the President for the time being of the Royal Institution of Chattered Surveyors whose determination and award shall be final and binding on the Residents and all other parties to such dispute and the said expert shall also have power to decide how his costs shall be borne between the parties to the dispute

5.7 In relation to any additional duties or services which the Warden or other employee of the Company may undertake at the request of the Owner or Occupier the Secretary or such other employee as aforesaid shall be deemed to have undertaken such duties or services as agents of the Owner or Occupier only and the Company shall not be rendered liable or responsible in any way to the Owner or Occupier in respect of any act or omission arising therefrom

...

Page 6-8

THE SECOND SCHEDULE

Owner's covenants with the Society and the Company ...

6.1 At all times during the term to keep the internal parts of the Property in good and substantial repair decoration and condition to the reasonable satisfaction of the Company (damage by any risk insured against by the Company excepted provided that no policy of insurance effected by the Company has been avoided by the Owner or Occupier or any servant or licensee or independent contractor of the Owner or Occupier)

6.2 To permit the Company at all reasonable times after giving reasonable notice to enter upon and examine the condition and external state of the Property and of all defects and wants of repair then and there found and permit the Company to carry out any necessary repairs for which the Company is responsible under the Fifth Schedule hereto

Page 8

THE THIRD SCHEDULE

Owner’s covenants for the benefit of the Estate ...

2. To pay to the Company the Service Charge and the payments on account of the Service Charge at the times and in the manner prescribed by the Fifth Schedule such Service Charge to be recoverable in default as rent in arrear and for the avoidance of doubt such Service Charge shall be payable by the Owner at the time of Service of the Certificate referred to in Paragraph 2 of the Fifth Schedule Part I in respect of the whole of the Accounting Period to which such Certificate relates.

...

...

Page 9-11

THE FOURTH SCHEDULE

The Society's and the Company's Covenants

...

2. In any lease of the properties to procure the inclusion of terms similar to those contained herein

...

4. That the Company will in an efficient manner and in accordance with the principles of good estate management unless prevented by any cause or event beyond its control and subject to payment by the Owner of the service charge:-

(a) Repair tend and maintain and where appropriate redecorate: -

(i) The structure foundations and roof of the Building and the Conduits

(ii) The boundary walls and fences belonging to the Estate

(iii) The Common Parts

(iv) The emergency alert system and all fire precaution systems lighting and other electrical or mechanical systems installed for the benefit of the Estate

(v) The central heating and plumbing of the Properties

(b) Employ the Estate Manager on such terms as the Company thinks fit to supervise the day to day administration of the Estate

(c) Employ the Warden on such teras and ,conditions as the Company thinks fit:-

(i) to answer emergency calls and to summon emergency medical help or other necessary help as the case may require and to give general assistance in case of accident or illness until medical help or the assistance of a relative can be obtained

(ii) To maintain personal contact with the Residents so far as practicable

...

PROVIDED ALWAYS the Company shall be under no obligation to provide the services of the Warden to any person who continues to reside in the Property after he ceases to be entitled to be an Occupier of the Property PROVIDED FURTHER that in performing its obligations under the lease the Company shall be entitled in its discretion to employ agents contractors and such other persons as it may think fit and to delegate its duties and powers to them and their fees shall form part of the Service Charge

5. To pay such annual sum as the Company shall from time to time deem expedient from the Service Charge into a contingency reserve fund

Page 11-13

FIFTH SCHEDULE

The Service Charge

PART ONE

1.1. The Service Charge payable by the Owner ·to the Company shall be such yearly sum (and so in proportion for any part of a year) as shall represent a fair and proper proportionate part of the costs and expenses incurred by the Company in respect of:-

(a) Supplying and maintaining all works and services ("the Services") done or provided by the Company in connection with the Property the Building the Common Parts and the estate the Services being all the Services actually supplied or procured by the Company from time to time which shall usually include the items set forth in Part Two of this Schedule and which shall be the subject of the exclusive control of the Company

(b) The costs and expenses incurred by the Company in respect of the management and supervision of services as specified in Part Two of this Schedule

(c) Tax as specified in Part Two of this Schedule and

(d) If demanded an amount (to be revised annually by the Company at its discretion) in respect of the provision of a reserve fund as specified in Part Two of this Schedule

(e) the cost of insurance as specified in Part two of this Schedule

...

2. (a) the Company shall prepare as soon as practicable after the expiration of each Accounting Period (including the first Accounting Period) during and immediately following the expiration of the term:~

(i) a summarised account of the total income and expenditure incurred by the Company in respect of the Service, far the Estate for the Accounting Period

(ii) except in the first and last Accounting Period of the term an estimate of the anticipated expenditure in respect of the Services in respect of the immediately following Accounting period

(b) The Company shall submit to the Owner a copy of such account and statement (certified as fair by the Accountant for the time being of the Company acting as expert and not as arbitrator and whose certificate in writing shall be conclusive save in the case of manifest error) and shall notify the Owner of the Service Charge payable by the Owner in respect of the Accounting Period to which the account relates

(c) The Owner shall be entitled at his request to receive details of how such account has been calculated

(d) Pending the ascertainment of the Service Charge for such '-accounting Period the Owner shall pay to the Company without deduction by equal monthly payments in advance on the 1st day of each month in every year of the term (and proportionately for any part of a year) a provisional sum on account of the Service Charge which during the first Accounting period shall be the initial payment and thereafter shall be the Percentage of the aforesaid estimate for the relevant Accounting Period. The first of such payment that be made on the date of this lease for the period from such date to the 1st day of the following month ...

3. (a) ...

(b) In the event of the Company renewing any plant equipment and machinery in any year it need not charge the whole of the costs of renewal to the Owner in that year but may recover the cost in the Service Charge by instalments over such number of years as the Company may in all the circumstances deem appropriate...

<u>Page 13-15</u>

PART TWO

<u>Maintenance</u>

1. The inspection maintenance repair repointing decoration and servicing and where appropriate the replacement on a regular basis in keeping with good Estate management:-

- (a) The structure and all external parts of the Building including roof and foundations
- (b) The central heating system.
- (c) The Grounds including the costs of watering mowing and of the replacement of grass plants and trees
- (d) The Common Parts including the re-surfacing and relaying of all paths accessways and Garage areas

<u>Lighting</u>

2. The Lighting of all Common Parts and of all parts used for servicing the Estate including the maintenance running and renewal of all light fittings and equipment Plant and

Machinery

3. The maintenance repair running insurance and cleansing and the renewal as often as may be desirable of all plant and machinery| serving the Estate and all other plant and equipment used for the benefit of the Estate including the costs of such maintenance agreements as the Company shall deem expedient

Staff and Security

4. (a) The employment of the Warden and such maintenance and other staff as the Company may deem desirable for the efficient management and supervision of the Estate including such remuneration statutory contribution, and pension contributions and insurance as the Company may, deem appropriate and any redundancy payment, compensation for unfair dismissal and other lump sums payable by law to employees

(b) If at any time it is considered necessary by the Company the provision of accommodation for the Warden and his family whether or not within the Estate and all costs associated with any of the foregoing (including the cost of rates and other outgoing, of any kind whatsoever the cost of lighting and heating and of the provision of hot and cold water end all other running coats including the cost of repair decoration and furnishing) ,

(c) the employment of such independent contractors as the Company may deem expedient

(d) the provision of all equipment and any other items required to enable, the forgoing to carry out their duties in an efficient manner

Management

5. The employment of an Estate Manager:-

(a) For the management of the Estate including the collection of the service charge

(b) For the supervision and control of the Services

General

6. Costs and expenditure incurred by the Company in respect of:-

(a) All general and water rates and other outgoings charged on the Common Parts of the Estate

(b) All fuel electricity oil and water from time to time supplied in respect of the Services

(d) All cleaning equipment and materials and other items required for the provision of the Services including the cost of their provision maintenance and renewal

(e) The Maintenance repair and renewal of an emergency alarm system where fitted and of all firefighting and detection equipment in or on the Building

(f) All work required to ensure that the Estate complies with the requirements of the insurers of the Estate

(g) The collection of refuse from the Properties and the provision of areas and receptacles for the storage of refuse

(h) Works required to ensure that the Estate complies with all statutory and other requirements now and from time to time in force including compliance by the Company with every notice regulation order of any competent authority in relation to the Estate or any part and any work, required in connection with the prevention of fire and means of escape in case of emergency to the extent in any case that any lessee is not directly liable

(i) Costs incurred by the Company in enforcing covenant in other leases of properties for the general benefit of the Residents

(j) The periodic valuations of the Estate for insurance purposes

(k) The preparation of accounts relating to the Service Charge and the auditing thereof

(l) All other acts costs outgoings expenses and things done which in the opinion of the Company are for the efficient running of the Estate or for the benefit of the Residents (whether or not of a like nature to the foregoing) or for the purpose of carrying out the covenants or powers of the Company hereunder

Reserve fund

7. Such annual sum as the Company shall from time to time deem expedient for the creation and maintenance of a contingency reserve fund to cover:-

> (a) the replacement of the Common Parts the Building the Conduits and of all plant machinery and equipment including any central heating system
>
> (b) in respect of decoration or the Building
>
> (c) In respect of further items of expenditure which are not of an annually recurring nature

Insurance

8. The gross premium or premiums for insuring:-

> (i) the Estate (including the Building) and all the Company's fixtures and fittings including plant equipment and machinery (other than the Owners or the Occupiers contents and fittings and fixtures therein) for such sue as the Company shall consider to be the full reinstatement value thereof and against such risks the Company may from time to time consider expedient it being agreed for the avoidance of doubt that such insurance may include cover to take account of inflation and extraordinary expenses anticipated professional fees

and other incidental expenses the costs of demolition and shoring up ;and ·the removal of debris.

(ii) all third party property owners public and employers liability risks and risks arising under the Defective Premises Act 1972 in respect of the Estate

(iii) the Company's plant and machinery by way of engineering insurance policies including cover against breakdown and third party risks and such other risks the Company may deem appropriate

Tax

9. Any taxes (including Value Added Tax) at the rate from time to time prescribed by any legislation chargeable, in respect of. the supply of any of the goods services or items mentioned in this Schedule and the provisions or maintenance or the reserve fund