FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LSC/2025/1101**
Property	**:**	**3a Somerfield Road, Finsbury Park, London N4 2JN**
Applicant	**:**	**Somerfield Road Residents Co Limited**
Representative	**:**	**William Kulke**
Respondent	**:**	**Kari Pilkington**
Representative	**:**	**Colman Coyle (Thomas Coyle)**
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	**:**	**Judge Joanna Stewart** **Sarah Phillips MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**22 April 2026**
Date of decision	**:**	**2 June 2026**

DECISION

Decisions of the tribunal

(1) The tribunal determines that from 2016 the leaseholders should each pay the proportion of service charges set out in their leases and that, therefore, the Respondent should pay one half of all insurance costs from 2016 onwards, together with a half of the costs relating to the handrail and the communal hall light.

(2) The tribunal determines that the amount payable by each of the leaseholders in respect of the roof replacement is currently £250, although should the Freehold Company receive dispensation for the s.20 process the amount payable will increase.

(3) The tribunal determines that the Respondent shall pay the Applicant £341 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. By means of an application dated 7 October 2025 the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the proportion of service charges payable by the Respondent in respect of the service charge years 2017-2025.

The hearing

2. The hearing took place on 22 April 2026 via video. Mr William Kalke appeared on behalf of the Applicant. The Respondent was represented by Mr Christopher Pask of counsel. The Tribunal is grateful to both Mr Kalke and Mr Pask for their conduct and assistance in the hearing, and to Mr Pask for his skeleton argument and Authorities Bundle.

3. References in square brackets in this decision are to the page in the general bundle.

The background

4. The property which is the subject of this application is a terraced Victorian house converted into three flats, each held on a long lease. The Applicant is the lessee-owned company, Somerfield Road Residents Co Ltd ("the Freehold Company") which owns the freehold and in which each leasehold owner has a share. Flat A is a three bedroom flat on the ground floor and part of the first floor. It has sole access to the garden. Under the terms of the lease dated 15 January 1991, Flat A is required to pay 50% of the service charges for the property. Flat B is a one bedroom flat on part of the first floor. Flat C is a one bedroom flat on the second floor. Flats B and C are each required under the terms of their leases to

pay 25% of the variable service charges for the property. There is no dispute between the parties that the leases contain these service charge apportionments.

5. In 1998 the leaseholders of each flat purchased the freehold of the property through the Freehold Company. At the time, Ms Pilkington owned Flat A, Mr Kulke co-owned Flat B with a Ms Kujanpaa, and a Mr Sean Murphy owned Flat C. It is common ground between the parties that they purchased the freehold equally, splitting all the costs of the purchase including legal costs three ways. Evidence for this was provided by Mr Pask in the form of an undated letter to all the leaseholders setting out the amounts paid and the refunds due where appropriate [204].

6. The flats are currently owned as follows:

   (a) Flat A by Ms Pilkington;

   (b) Flat B by Mr Kulke; and

   (c) Flat C by a Mr Spanswick-Smith who purchased it from Mr Murphy in or around 2005.

7. The crux of this case is that Ms Pilkington claims that the purchase of the freehold essentially re-set the service charge provisions in the leases and from having paid proportions of 50:25:25, they now each pay one-third and have done so since 1998. Mr Kulke argues that the agreement to split costs three ways solely relates to the freehold element of the property, including the costs of the purchase of the freehold, legal costs, and ongoing administration costs such as Companies House fees.

8. One matter that arose early in the proceedings related to Mr Kulke's standing as a director. Mr Pask pointed out that Mr Kulke and Mr Spanswick-Smith were appointed as a directors following an AGM on 29 October 2008 [137]. However he claims that Mr Kulke then resigned on 27 November 2008 [139]. When he was subsequently re-appointed on 6 October 2016 there was no properly constituted meeting of the company to reinstate him. Mr Kulke's argument was that he had been unilaterally removed as a director by Ms Pilkington when she was the director of the Freehold Company in 2008 and he had therefore attended Companies House in person where he had been told that the second appointment form [142] was valid provided the date of the re-appointment was after the original date of appointment. He was then reinstated as director by Companies House [274]. The Tribunal confirmed that it has no jurisdiction in relation to company law matters. However the Tribunal was persuaded by Mr Kulke that he was now a director of the Freehold Company having followed the advice of Companies House and could represent the Applicant. In the alternative, the Tribunal confirmed that under Rule 10 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") it would appoint Mr Kulke

as Applicant in his capacity as the leaseholder of Flat B. On that basis the hearing continued.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether the Respondent is required to contribute 50% of the costs of the service charges, or if they should contribute another percentage,

   (ii) Whether the Applicant is estopped from demanding 50% of the service charges from the Respondent,

   (iii) Whether £1,566 in relation to the roof replacement in 2022 [90] is payable by the leaseholders.

10. In relation to issues (i) and (ii), Mr Pask confirmed that the following costs were agreed as being payable and reasonable, and that the only question before the Tribunal was the proportion which the Respondent should pay:

    (i) Insurance payments from 2017 to 2025;

    (ii) A charge of £120 on 23 June 2025 for a handrail; and

    (iii) A charge of £169 on 10 March 2025 for a communal hallway light.

11. Both parties agreed that costs relating to Company House filings on behalf of the Freehold Company were not recoverable as service charges under the lease and were not therefore an issue before the Tribunal.

12. In Directions from the Tribunal dated 11 November 2025, Judge Tagliavini limited the case to years 2020 to 2025. In the hearing Mr Kulke confirmed that he wished the Tribunal to make a decision in relation to years 2017 to 2025. Under Tribunal Rule 6(2) which permits the Tribunal to amend an earlier direction, we will make a ruling in relation to the years 2017 to 2025. This is because the arguments that will apply in relation to the apportionment payable by the Respondent for 2020-2025 will also apply for the years 2017-2019.

13. The Applicant confirmed in his Application that for the service charge years 2017 to 2020 the Respondent paid a third of the insurance costs for the Property. From 2021 to 2025 they have not paid any of the insurance costs.

The Lease

14. The service charge provisions of the lease of Flat A are fairly sparse so I have set them out here in full.

Clause 2(8)(a) [110]

At all times during the said term to pay and contribute one half of the expense of making good, repairing, maintaining, supporting, rebuilding, lighting and cleansing all the parts described in paragraphs (1) to (5) inclusive of the common parts of the Building as defined in the Schedule hereto, the tenants, occupiers, or owners for the time being of the other flats in the Building contributing between them one half of such expenses.

Clause 2(8)(b) [110]

At all times during the said term to pay and contribute one half of the expense of insuring the Building as is incurred by the Lessor under his covenant to insure as is hereinafter contained.

Clause 5(iii) [120]

If any sum payable by the Lessee to the Lessor under this Lease shall not be paid on the day upon which it is due the same shall be payable with interest thereon at 4% above the base rate of Midland Bank plc calculated on a day to day basis from the said date upon which it is due down to the date of payment compounded with rests on the usual Quarter Days provided that this subclause shall not apply to rent until it is unpaid for fourteen days after becoming payable.

Apportionment of Service charges

Agreed matters

15. The parties agree that the Leases each state that Flat A should pay 50%, Flat B should pay 25% and Flat C should pay 25% of the service charges. It is also an agreed fact that there are no contemporaneous documents recording any agreements. When the freehold was purchased in 1998 the costs of the freehold purchase itself and all ancillary costs were split three ways.

Applicant's Case

16. The Applicant's argument is that the lease states that the Respondent should pay a 50% contribution to the service charges. When the leaseholders purchased the freehold they agreed to split the costs of that purchase three ways. However, that agreement was not in writing and

did not affect the ongoing liabilities under the lease. There has been no documentary proof, deed of variation or minute of resolution showing that the leaseholders entered into an informal agreement to each pay one-third of the service charges. The agreement to split the costs of the freehold equally between the leaseholders was oral and extended only to those specific costs and ongoing costs of the Freehold Company, such as Companies House costs for filing accounts.

Respondent's Case

17. The Respondent's case is that the primary dispute as to the respective proportions payable by the lessees arose from 2016 when Mr Kulke first wrote to challenge the apportionment of the costs relating to the building between the three flats [49] and [205]. Prior to that, for the proceeding 17 years, there is no documentary evidence to suggest there was any disagreement as to the Respondent's proportion.

18. Mr Pask argues in his skeleton argument that the documents produced by Mr Kulke after 2016 should be treated with caution and are of little probative value. The documents on which the Tribunal should rely are:

(i) The witness statement from Ms Kujanpaa [243] confirming that the purchase price of the freehold interest was split equally between the three leaseholders, supporting the Respondent's case that there was an agreement not to divide the cost according to the relative size of the flats (given the Flat A has three bedrooms and is on the ground and first floors, as opposed to Flats B and C which are each one bedroom flats on a single floor).

(ii) A document produced shortly after the purchase of the freehold [204] showing equal contributions by the leaseholders for the costs of insurance, legal fees, and the purchase price for that freehold purchase.

(iii) The email chain between Mr Kulke and Mr Spanswick-Smith in October 2016 [145] in which Mr Spanswick-Smith confirms "*Even though you suggest I have overpaid over the years, I don't think so. When work is needed on the general repair of the building, it goes three ways…the leasehold becomes a secondary influence*".

19. From these documents Mr Pask claims that there was an express, concluded agreement between the leaseholders of the Property, as shareholders of the Freehold Company, that both the purchase price and the subsequent management costs of the Property would be split equally between the three flats.

20. Mr Pask goes on to say that if the Tribunal is not satisfied that there is an express, concluded agreement, that we should find there was estoppel by

convention. He then goes through the five principles applicable to the assertion of an estoppel by convention as set out in the judgment of Briggs J in *Revenue and Customs Commissioners v Benchdollar Ltd* [2010] 1 All ER 174 at [52] to show how they are satisfied in this case. Mr Pask provided an Authorities Bundle although the authorities provided were examples from the tax tribunal, rather than in relation to property. The tribunal prefers to rely on the guidance and decisions as set out below.

<u>Estoppel by Convention – The Law</u>

21. The introduction to Chitty on Contracts 36th Ed states that:

"Estoppel by convention is notoriously difficult to pin down…It may arise where both parties to a transaction act on assumed state of facts or law, the assumption being either shared by both or made by one and acquiesced in by the other…. The parties are then precluded from denying the truth of that assumption, if it would be unjust or unconscionable (typically because the party claiming the benefit has been "materially influenced" by the common assumption) to allow them (or one of them) to go back on it."

It goes on to say that "*To give rise to an estoppel by convention, the mistaken assumption of the party claiming the benefit of the estoppel must have been shared or acquiesced in by the party alleged to be estopped; and both parties must have conducted themselves on the basis of such a shared assumption: the estoppel "requires communication to pass across the line between the parties. It is not enough that each of the two parties acts on an assumption not communicated to the other."*

22. In *Amalgamated Investment & Property Co. Ltd v Texas Commerce International Bank Ltd.* [1982] QB 84 at paragraph 122 Lord Denning said

"When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands."

23. In *Hiscox v Outhwaite* [1992] 1 A.C. 562 at paragraph 575 Lord Donaldson provides useful guidance on when an estoppel by convention might end:

"estoppel by convention is not confined to an agreed assumption as to fact, but may be as to law…the court will give effect to the agreed assumption only if it would be unconscionable not to do so and that, once a common assumption is revealed to be erroneous, the estoppel will not apply to future dealings."

24. A key case in the Upper Tribunal is *Admiralty Park Management Company Ltd v Ojo [2016] UKUT 421 (LC)* ("*Admiralty Park*") in which the Upper Tribunal considered whether the fact that a tenant had paid his service charges despite them being demanded in a manner inconsistent with the accounting provisions of the lease meant that he was 'estopped' or prevented from relying on the failure to implement the contractual scheme.

25. Judge Martin Rodgers, in his decision, quotes the legal principle of estoppel by convention set out by Lord Steyn in *Republic of India v India Steam Ship Company Limited [1998] AC 878*. It is worth setting it out here as well:

"*It is settled that an estoppel may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by both of them or made by one and acquiescing by the other. The effect of the estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on an assumption…it is not enough that each of the two parties acts on an assumption not communicated to the other. But it was rightly accepted by counsel for both parties that a concluded agreement is not required for an estoppel by convention."*

26. In *Admiralty Park* Judge Rodgers highlights at paragraph 39 that the method of apportionment was obvious to the leaseholders, and that no objection was taken by the tenant or by any other lessee to this method of accounting (paragraph 40). In addition, at paragraph 44, Judge Rodgers confirms that it is due to both the tenant's prolonged acquiescence and failure to dispute his liability to pay the service charges which were incorrectly accounted for that led to a conventional mode of dealing existing between the parties. It was therefore unfair for the tenant to now be able to dispute his liability on ground which he had chosen not to raise for many years.

The tribunal's decision

27. From 2016 the leaseholders should each pay the proportion of service charge set out in their leases and the Respondent should therefore pay one half of all insurance costs and the costs relating to the handrail and communal hall light.

Reasons for the tribunal's decision

28. The parties agree that there is no written agreement between the leaseholders establishing a change in the proportions to be paid for service charges following the purchase of the freehold. The Tribunal is therefore not persuaded by Mr Pask's suggestion that there is an express, concluded agreement as none has been produced. We find that the document which sets out the proportions to be paid for the freehold purchase at [204] only proves that the costs of the purchase of the freehold were split three ways and that is already agreed between the parties.

29. Until 2016 the Respondent, Applicant, and owner of Flat C split the costs of the building equally three ways. On 5 September 2007 Ms Pilkington, who at the time it appears was managing the insurance and repairs for the other leaseholders, wrote to Mr Kulke and Mr Spanswick-Smith stating "I see no point in meeting to discuss planning things the way things are at the moment. We already have 2 legal documents outlining our responsibilities" [45]. Both Mr Kulke and Mr Spanswick-Smith wrote back saying that they did not have the legal documents and asked for a copy [44]. On 25 September 2007, Ms Pilkington responded saying "Re the Freehold Agreement and the Leasehold Agreement; I am familiar with both documents and do not need to discuss the matter further" [44]. In the hearing Mr Kulke said that the reference to 'responsibilities' meant the respective apportionments under the lease. At this point no further action appears to have been taken by Mr Kulke or Mr Spanswick-Smith to find out the terms of their leases.

30. The lack of any substantial challenge suggests that the three-way split was the result of an agreed assumption that that this was how costs should be dealt with. However the assumption that costs should be split three-ways was brought to an end by Mr Kulke's unequivocal email of 10 July 2016 [49] in 2016. In that email, to use the words of Lord Donaldson in *Hiscox*, any common assumption was revealed to be erroneous. Mr Kulke writes

> *"...the time has come whereby we settle the business up to the date in order to move forward. Both myself and Mr Spanswick-Smith have requested this for many years, Miss Pilkington has steadfastly refused to communicate with the other shareholders on this matter. Therefore on behalf of the company I have obtained a copy of the leases from the Land Registry and the company is now in a position to resolve the issue by stating...the responsibilities of each leaseholder as laid out on the terms of the lease."*

31. Mr Kulke goes on to confirm that the leases obtained from the Land Registry for each property evidence that Flat A is responsible for half of all maintenance and house insurance, and Flats B and C are each responsible for a quarter. He ends with hoping that the position is now clarified and "*the necessary adjustments can be made in the financial outlay of the leaseholders*".

32. We find that from that moment, any convention that the service charges should be split three ways ended. All service charge costs from 2017 should have been split according to the terms of the lease, with the Respondent paying 50% and each of the other two leaseholders paying 25% each.

33. The Tribunal did not consider it necessary to consider the five principles applicable to the assertion of an estoppel as set out by Mr Pask because no estoppel can survive the 10 July 2016 email and this application is only concerned with costs payable for the service charge years 2017-2025. The key matter is what was the situation at the time of the insurance invoice in 2017, and then thereafter.

Service charge item & amount claimed

34. Roof replacement costs of £3,800, being 50% of the overall costs of £7,600.

Agreed matters

35. The Applicant and the Respondent agree that a consultation as required under s.20C of the 1985 Act was not carried out.

Applicant's Case

36. The Applicant's case, as set out in Mr Kulke's witness statement [41], is that the roof works were undertaken in response to water ingress reported by the Respondent and were necessary to protect the building. As it was causing a risk to the electrics in the hallway it needed to be done as quickly as possible. The Freehold Company obtained quotations [95-97] and invited the Respondent to obtain other quotes as well. As the Respondent was a director she could have either conducted a consultation in accordance with s.20C of the 1985 Act or could have applied for dispensation from a consultation herself. In any case, the Respondent was kept informed during the quotation stage, including by email and letters and she approved of the works (although it is admitted that there is no written confirmation that the Respondent's approval as all conversations were by telephone). The contractor was paid in full. [43]

Respondent's Case

37. The Respondent's case is that the demanded service charge related to works to the building and was within the scope of section 20 of the 1985 Act. There ought to have been a consultation process and in the absence thereof the Respondent is only due to pay £250.

The tribunal's decision

38. The tribunal determines that the amount payable by each of the leaseholders in respect of the roof replacement is currently £250 on the basis that the landlord did not carry out a consultation in accordance with section 20 of the 1985 Act.

Reasons for the tribunal's decision

39. The tribunal agrees with Mr Palk for the Respondent that the law on consultations is binary – either a consultation is required or it is not. Under Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Consultation Requirements) section 20 consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the relevant contribution of any tenant being more than £250. In this case, given the roof replacement costs were £7,600 to be split between 3 leaseholders, no matter which way they would be split - either three ways or according to their leases – a consultation was required.

40. The requisite requirements are set out in Schedule 4 of the Consultation Regulations and although the Freehold Company did comply with some of those requirements it did not comply with them completely.

41. Irrespective of this decision it remains open to the Freehold Company to apply to the Tribunal under section 20Za of the 1985 Act seeking retrospective dispensation from the statutory consultation requirements. If retrospective dispensation is granted it may result in the cap on leaseholders' contributions, reflected in this decision, being lifted or modified.

Name: Judge Joanna Stewart Date: 2 June 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).