FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UF/LIS/2025/0016**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**Kingfisher Lodge, The Dell, Great Baddow, Chelmsford, Essex CM2 7JZ**
Applicant	**:**	**Retirement Lease Housing Association**
Representative	**:**	**Cripps LLP**
Respondents	**:**	**The leaseholders of the Property**
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 C. Morgan**
Date of decision	**:**	**12 June 2026**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the cost of refitting the bathroom to the flat for the residential warden is not payable by the Respondents as part of their service charge.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

© CROWN COPYRIGHT 2026

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the cost of refitting the bathroom to the flat for the residential warden is payable by the Respondents as part of their service charge. The total cost is estimated at £9,000 inclusive of VAT, which would amount to a contribution of £209.30 per leaseholder.

2. The tribunal's jurisdiction under section 27A of the 1985 Act is to make a determination as to whether service charges are payable under the lease and reasonable in amount.

The background

3. The Property which is the subject of this application is described in the application form and the Applicant's statement of case as a purpose built block built c. 1986 which comprises 43 flats let on long leases and one flat for use of a resident warden. The flats are a mixture of 1 and 2 bedroom across 2 storeys.

4. The Respondents each hold a long lease of the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

Procedural history and the issues

5. On 10 March 2026, the tribunal gave case management directions. The directions included a reply form for any Respondent leaseholder who opposed the application to send it to the tribunal and the Applicant by email together with a copy of their statement in response to the applicant's statement of case and any other documents they wish to rely on by 30 April 2026. The tribunal also directed that the Applicant send each of the Respondents by 1 April 2026 the application form and attached documents and the tribunal's directions and to confirm to the tribunal by email the date this was done. The Applicant sent an email to the tribunal on 16 March 2026 confirming it had complied with this direction on 16 March 2026. The tribunal also directed that any application in respect of the reimbursement of fees or under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be made by the Applicant or relevant leaseholders prior to the determine date and that an email was sufficient provided it was clearly marked "Application under section 20C etc".

6. The Respondents' responded on 21 April 2026 opposing the application, providing the reply form together with a statement and accompanying documents.

7. The directions provided that this matter would be determined on or after 5 May 2026 based on the documents, without a hearing, unless any party requested one by 30 April 2026.

8. No party has requested an oral hearing. No party has requested an inspection. On reviewing these documents, I considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

9. Accordingly, this determination is based on the documents produced by the Applicant being their application form and documents provided by the Applicant with their application form and the Respondents' response and the documentation provided by the Respondents' with their response.

10. The tribunal sent its decision to the Applicant and the Respondents in draft format to give the parties an opportunity to make representations (should they so wish) on the caselaw quoted by the tribunal. The tribunal directed that any representations on the caselaw must be sent to the tribunal by 10 June 2026. The Applicant emailed the tribunal on 9 June 2026 confirming that the Applicant would not make representations. No representations on the caselaw have been received by the tribunal.

11. Both the Applicant and the Respondents each provided to the tribunal a different specimen lease. For the purposes of this determination, I have used the specimen lease for Flat 2 provided by the Applicant as one of the documents that accompanied their application form. The Applicant confirmed in its statement of case that the leases of the Property are in materially identical terms.

12. The relevant issues for determination are whether the cost of refitting the bathroom to the flat for the residential warden is payable by the Respondents as part of their service charge. The total cost is estimated at £9,000 inclusive of VAT, which would amount to a contribution of £209.30 per leaseholder.

13. Having considered and reviewed all of the documents provided, the tribunal has made determinations on the various issues as follows.

<u>The Applicant's case</u>

14. The Applicant wishes to refit the bathroom to the flat for the residential warden.

15. The grounds of the application are set out in the statement of case, provided with the application form.

16. The Applicant concedes that the warden's flat does not fall within the definition of "Reserved Property" in the Lease. The Applicant acknowledges that repairs or updating works to the warden's flat do not fall within any of the listed obligations under the Seventh Schedule to the Lease.

17. The Applicant argues that whilst parties and their solicitors will strive to consider upon the first grants of lease what obligations the landlord might have to undertake over time, and what costs it might need to incur in managing an estate and keeping it in good order, it is impossible to ensure that every possibility is considered at the outset and listed out and that it would never be in the contemplation of either party to a lease transaction that the landlord would end up having to foot the bill for an unforeseen cost or obligation many years later.

18. The Applicant argues that the works form part of the general provision of services to the leaseholders. The Applicant refers to paragraph 16 of the Sixth Schedule to the Lease and states that it deals with various ways in which the Applicant might incur costs, and includes the costs and expenses incurred by the Applicant in doing works for the improvement of the estate, in providing services to the Respondents, and in employing servants. The Applicant argues that the works are works which constitute an improvement to the estate, as they go to the integrity of the building as a whole and because a well-presented and maintained warden's flat will assist the Applicant in recruiting and retaining a high calibre of resident wardens, who will, in turn, perform an essential service for the benefit of the Respondents. The Applicant further argues that the repair and maintenance of the warden's flat forms part of the general provision of services to Respondents and the employment of servants. The Applicant states that one of the listed obligations of the Applicant is to employ and engage such servants, agents and contractors as it considers necessary or desirable, including a residential warden. The Applicant then goes on to state that it notes that none of the Respondents dispute their obligation to bear 1/43rd of the cost of the resident warden's salary. The Applicant argues that a non-resident warden would undoubtedly seek a higher salary than one who had the benefit of accommodation.

<u>The Respondents' position</u>

19. The Respondents' position is set out in the statement and documents that accompanied the reply form.

20. The Respondents state that there has always been a residential manager on the Property and payments for upgrading the residential manager's flat has never been paid for by the leaseholders. The Respondents state

that they have not paid anything towards the refurbishment of the flat since the grant of the leases in 1987.

21. The Respondents refers to previous works to the warden's/manager's flat undertaken by the then landlord of the Property in 2020 which were not charged to the leaseholders. The then landlord of the Property was the named second party to the Lease. The Respondents explain that in 2020 there had been communication from the then landlord informing the leaseholders that they were liable for the cost of these works. The Respondents state they took legal advice at the time and communicated the advice they received to the then landlord and its managing company, which was that the leaseholders were not liable for any costs, repairs or refurbishment to the warden's/manager's flat. The Respondents state that the then landlord and its managing company accepted this decision as the warden's/manager's flat is not part of the communal areas, for which leaseholders are liable. The Respondents state that works were carried out without any costs taken from the leaseholders and supply a chain of emails in respect of those works which includes a copy email dated 28 November 2020 from the then managing company stating "*to the best of my knowledge no costs in relation to the works carried out on the Manager's flat have been passed to us or paid from the Kingfisher Lodge account*".

22. The Respondents, in response to the Applicant's argument summarised in paragraph 17, state that updating works to the manager's flat does not really constitute an improvement to the estate, only to the Applicant and that any refurbishment to the manager's flat increases in value for the benefit only of the Applicant and that the Applicant has omitted to state that having a non-resident manager would allow the Applicant to rent the flat with the proceeds going to them.

23. The Respondents set out that they have been advised that the manager's flat would not normally fall under communal areas unless the Lease clearly stated this or specifically lists it as part of the service charge cost. The Respondents state that there has been no indication of this within their previous budgets since 1987 regarding expenses to the manager's flat.

24. The Respondents set out that regardless of who lives in the manager's flat, the interior is not a communal area and has never been included when the communal areas are cleaned twice a week.

25. The Respondents state that the manager's hours are 9-5 and they are responsible only for the maintenance of the development and not the care of the leaseholders.

The Lease

26. The following are the material terms of the Lease for Flat 2:

    (i) The lease term is 125 years from 1 January 1987.

    (ii) Estate is defined in Recital (1)(e) as "*the property described in the First Schedule hereto*" and is further defined in the First Schedule as: "*all that piece or parcel of land situate in and off The Dell Great Baddow Essex TOGETHER WITH the buildings erected or to be erected thereon being flats and buildings ALL WHICH said property is delineated on the plan annexed hereto and forms part of the land registered at H.M. Land Registry under Absolute Title Number EX 312446*".

    (iii) Premises is defined in Recital (1)(f) as "*the property hereby demised as described in the Third Schedule hereto*". The Premises are further described in the Third Schedule.

    (iv) "the Other Flats" are defined in Recital (1)(g) as "*the remainder of the Flats other than "the Premises" forming part of the Estate*".

    (v) The "Reserved Property" is defined in defined in Recital (1)(h) as "*that part of the Estate not included in the premises or the other Flats and being the property more particularly described in the Second Schedule hereto*" and is further defined in the Second Schedule as "*FIRSTLY ALL THOSE gardens grounds drives car parking areas paths and all other parts of the buildings forming part of the Estate and which are used in common by the owners or occupiers of the Premises and the other flats (including all roofs and foundations and main structural walls and columns and which are not included in the demise of any individual flats to the owners thereof) SECONDLY ALL THOSE sewers drains pipes wires ducts or conduits not used solely for the purpose of the Premises or any of the Other Flats*".

    (vi) In clause 2 the Tenant covenants to observe and perform the obligations on the part of the Tenant set out in the Sixth Schedule to the Lease.

(vii) In clause 3 the Landlord covenants subject to the provisions of paragraphs 19 and 20 of the Sixth Schedule, to observe and perform the obligations on the part of the Landlord set out in the Seventh Schedule to the Lease.

(viii) Paragraph 19 of the Sixth Schedule sets out the Tenant shall "*contribute and keep the Lessor indemnified from and against 1/43rd of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions of the Seventh Schedule hereto including Clauses 10 to 13 inclusive of that Schedule after deducting interest (if any) received by the Lessor on cash in hand*".

(ix) Paragraph 20 of the Sixth Schedule sets out that the Tenant: "*shall on execution pay to the Lessor the sum of £53.80 and thereafter monthly sums of such amount (hereinafter called "the Service Charge") as determined by the Lessor from time to time on the first day of each month hereafter so that when payments fall to be taken into account at the end of the Lessor's financial year the Lessee shall be given credit for such initial and all such monthly sums paid in advance and not previously taken into account PROVIDED ALWAYS that such monthly sums shall not exceed such amount as shall be reasonably required for the purposes as aforesaid during the current year*".

(x) The Landlord's obligation to repair and maintain the Reserved Property is set out in paragraph 4 of the Seventh Schedule: "*The Lessor shall keep the Reserved Property (including the foundation exterior walls load bearing walls roofs and roof timbers of every Flat) and all fixtures and fittings furnishings and appliances therein and additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts and the decoration as necessary of the external surfaces of the Premises and the Other Flats PROVIDED THAT nothing herein contained shall prejudice the Lessor's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor or the Reserved Property by the negligence or other wrongful act or default of the Lessee or such other person"*.

(xi) The Landlord's obligation to keep "*proper books of account of all costs and expenses incurred by it in carrying out the obligations under [the Seventh] Schedule*" is contained in paragraph 11 of the Seventh Schedule. This sets out that the service charge year is as follows: "*an account shall be taken on the 31st December next and on the 31st day of December in every subsequent year*".

(xii) As the Applicant has correctly acknowledged repairs or updating works to the warden's flat do not fall within any of the Landlord's listed obligations set out in the Seventh Schedule to the Lease.

(xiii) Paragraph 16 of the Sixth Schedule sets out that: "*The Lessee shall comply with and observe any reasonable regulations which the Lessor may consistently with the provisions of this Lease make to govern the use of the Premises and the Reserved Property Provided That such regulations may be restrictive of acts done on the Estate detrimental to its character or amenities And any costs or expenses incurred by the Lessor in preparing such regulations or in supplying copies of the same or in doing work for the improvement of the Estate or in providing services to the Lessee and the owners of the Other Flats or employing servants shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the Seventh Schedule notwithstanding the absence of any specific covenant by the Lessor to incur them and the Lessee shall keep the Lessor indemnified from and against his due proportion thereof under Clause 19 of this Schedule accordingly*".

(xiv) The Lease includes the following references to a warden/manager:

(a) Paragraph 16 of the Sixth Schedule, as set out above: "*employing servants*".

(b) Paragraph 17(c) of the Sixth Schedule, which sets out: "*the Premises shall not be occupied otherwise than by persons over 60 years of age if female and over 65 years if male, unless otherwise agreed in writing by the Local Planning Authority PROVIDED THAT this covenant shall not prevent . . . . (iv) one Flat or the Bungalow being occupied by a person* *under such age if that person is for the time being Warden of the Estate*".

(c) Paragraph 8 of the Seventh Schedule: "*The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule including a residential Warden and pay their wages commissions fees and charges*".

The Law

27. The 1985 Act provides a statutory framework for the management of service charges imposed by a landlord on a tenant. Section 18 provides a broad definition of "*service charge*" and "*relevant costs*". Section 30 defines "*landlord*" as "*includes any person who has a right to enforce payment of a service charge*", such as the Applicant in this case.

28. Section 19 limits the amount of "*relevant costs*" that can be recovered through a service charge, as follows:

"***19. Limitation of service charges: reasonableness***

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly".

29. In relation to "on account" service charges, section 19(2) provides as follows:

"*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise*".

30. Section 27A explains how service charge disputes are to be resolved. It provides as follows, so far as is relevant:

"***27A. Liability to pay services charges: jurisdiction***

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made".

31. Section 20C of the 1985 Act provides that a landlord's costs in connection with legal proceedings, such as the application before this tribunal, can be excluded from a service charge:

"***20C. Limitation of service charges: costs of proceedings***

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

...

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances".

32. General contractual law principles apply to the payment of service charges. To the extent that a lease does not require a leaseholder to pay for services, they are not obliged to do so.

33. The principles for construing a lease were considered by the Supreme Court in *Arnold v Britton* [2015] UKSC 36. Lord Neuberger, giving the leading judgment, stated at [15] that: "*When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi)*

disregarding subjective evidence of any party's intentions." In paragraphs [16] to [23], Lord Neuberger set out seven factors to be considered:

(i) At [17]: "*First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.*"

(ii) At [18]: *".... the worse their drafting, the more ready the court can properly be to depart from their natural meaning. . . However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning . . .*"

(iii) At [19]: " . . . *commercial common sense is not to be invoked retrospectively. . .*"

(iv) At [20]: "*Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice.*

Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party."

(v) At [21]: *". . . one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. . ."*

(vi) At [22]: *"Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. . ."*

(vii) At [23]: *"Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. . ."*

34. In *Wood v Capita Insurance Services Ltd [2017] UKSC 24,* Lord Hodge, with whom the rest of the Supreme Court agreed:

(i) at [10] stated: *"The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. . ."*

(ii) at [13] stated: "*Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. . .*"

35. In *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd* [2023] UKSC 2, Lord Hamblen at [29] stated: "*The relevant general principles are authoritatively explained by Lord Hodge in his judgment in Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 at paras 10 to 15. So far as relevant to the present case, they may be summarised as follows:*

> *(1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.*
> *(2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.*
> *(3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated."*

36. In *Gilje v Charlgrove Securities Ltd* [2001] EWCA Civ 1777 (which pre-dates *Arnold v Britton* and so care must be taken with its dicta), the Court of Appeal held that in the absence of a clear provision in the relevant underleases, the lessor was not entitled to recover by way of service charges notional rent forgone by him in respect of accommodation provided to a resident caretaker. Laws LJ stated at [27] - [28]:

". . . . The landlord seeks to recover money from the tenant. On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so. The lease, moreover, was drafted or proffered by the landlord. It falls to be construed contra proferentem. It is to be noted, as was put to counsel in the course of argument, that there are no provisions for the calculation or revision of the notional rent. As it happens — though in fairness perhaps this is no more than background — there was no attempt in this case to pass on the notional rent to the tenants until 1993 or 1994 albeit, as I understand it, the underleases were originally entered into in the 1970s.

28. At the end of the day, I do not consider that a reasonable tenant or prospective tenant, reading the underlease which was proffered to him, would perceive that paragraph 4 (2) (1) obliged him to contribute to the notional cost to the landlord of providing the caretaker's flat. Such a construction has to emerge clearly and plainly from the words *that are used. It does not do so. On that short ground I would uphold the judge below and dismiss the appeal."*

37. In respect of sweeper clauses, in *89 Holland Park (Management) Ltd v Dell* [2023] EWCA Civ 1460, Falk LJ stated at [34]: "*As the judge observed, the wording of paragraphs (g)(ii) and (l) is general in nature, rather than ambiguous. The task of the tribunal or court is to determine whether the expenditure in question falls within or outside it. Given the general nature of the words, factors enumerated by Lord Neuberger other than the natural meaning of the words, in particular the context in which the words appear, the purpose of the clause and the lease and any relevant factual matrix, will be of particular importance in determining what the parties must be taken to have intended the words to cover. Commercial common sense will, at the least, provide a useful cross-check.*"

38. In *Braganza v BP Shipping Ltd* [2015] UKSC 17, Lady Hale stated at [30]: "*It is clear, however, that unless the court can imply a term that the outcome be objectively reasonable – for example, a reasonable price or a reasonable term – the court will only imply a term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose. . .*"

39. In *Waaler v Hounslow London Borough Council* [2017] EWCA Civ 45 Lewison LJ at [20] stated that: *". . . where a contract, in this case a lease, empowers one party to it to make discretionary decisions which affect the rights of both parties, the law recognises that the exercise of that discretion gives rise to a potential conflict of interest. That is all the more so where the discretionary decision of one party to the contract imposes a financial liability on the other. The solution which the law has devised in those circumstances is to restrict the exercise of the discretion to what is rational. The Supreme Court gave extensive consideration to this question in Braganza v BP Shipping Ltd [2015] UKSC 17, [2015] 1 WLR 1661. It was, I believe, agreed by all members of the court that the exercise of a contractual discretion is constrained by an implied term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose; and that the result is not so outrageous that no reasonable decision-maker could have reached it: [30] (Baroness Hale); [53] (Lord Hodge) and [103] (Lord Neuberger). However, as Lord Hodge pointed out this is a rationality review, not the application of an objective test of reasonableness."*

<u>Service Charge</u>

40. The issue for determination is whether the cost of refitting the bathroom to the flat for the residential warden is payable by the Respondents as part of their service charge. The total cost is estimated at £9,000

inclusive of VAT, which would amount to a contribution of £209.30 per leaseholder.

The tribunal's decision

41. Having reviewed the submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

42. The tribunal determines that the cost of refitting the bathroom to the flat for the residential warden are not payable by the Respondents as part of their service charge.

Reasons for the tribunal's decision

43. Applying the principles and factors set out in the case law summarised above:

    (i) The Applicant has correctly conceded that the Reserved Property does not include a warden's flat. The warden's flat is not "*used in common by the owners or occupiers of the Premises and the other flats*". Repair and refurbishment of the warden's flat is not included within the Landlord's obligation to repair the Reserved Property set out in paragraph 4 of the Seventh Schedule.

    (ii) The original parties to the Lease were aware of the possibility of a residential warden occupying a flat / accommodation on the Estate, in particular:

        (a) paragraph 8 of the Seventh Schedule sets out that: "*The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule including a residential Warden and pay their wages commissions fees and charges*"; and

        (b) in paragraph 17(c) of the Sixth Schedule, one of the provisos to the minimum age for occupation covenant is that the covenant shall not prevent: "*one Flat or the Bungalow being occupied by a person under such age if that person is for the time being Warden of the Estate*".

(iii) This is a long leasehold situation (125 year lease term). Over 125 years a warden's flat / accommodation would need to be repaired and refurbished. It is not something that could not be anticipated and yet whilst the Lease makes specific reference to a residential warden, that their wages, commission, fees and charges are recoverable as part of the service charge and to a residential warden occupying a flat / other accommodation on the Estate as the Applicant has correctly acknowledged repairs or updating works to the warden's flat do not fall within any of the Landlord's listed obligations set out in the Seventh Schedule of the Lease.

(iv) Commercial common sense does not override the language used per *Arnold v Britton*.

(v) Considering the whole of the Lease and applying a natural meaning of the words of the Lease in accordance with the principles / factors laid down in leading case law summarised above, the cost of refitting the bathroom to the flat for the residential warden is not included within "*improvement of the Estate*" or "*in providing services to the Lessee and the owners of the Other Flats"* sweeper provisions in paragraph 16 of the Sixth Schedule to the Lease. A contractual discretion has to be exercised rationally per *Braganza v BP Shipping Ltd*.

(vi) The natural meaning is that the parties to the Lease did not intend for the Landlord to recover the cost of repairs or refurbishment to the warden's flat through the service charge otherwise it would have been set out expressly in the Seventh Schedule to the Lease, just like the Seventh Schedule to the Lease sets out that a residential warden's "*wages commissions fees and charges"* is expressly recoverable or alternatively set out expressly in paragraph 16 of the Sixth Schedule to the Lease.

(vii) This interpretation is reflected in the Respondents' statements that they have not paid anything towards the refurbishment of the warden's / manager's flat since the grant of the leases in 1987, that there has always been a residential manager on the Property, that payments for upgrading the residential manager's flat has never been paid for by the leaseholders and that with previous works to the warden's / manager's flat in 2020 by the previous landlord (who was the second party to the Lease), the then landlord did not recover the costs of those works from the leaseholders through the service charge after the Respondents' took legal advice and communicated that advice to the then landlord and its managing company.

44. The tribunal determines that the cost of refitting the bathroom to the flat for the residential warden are not payable by the Respondents as part of their service charge under the Lease.

45. As the tribunal has determined that the cost of refitting the bathroom to the flat for the residential warden are not payable by the Respondents as part of their service charge under the Lease, no determination has been made as to whether the cost is reasonable in amount.

Application under s.20C and paragraph 5A

46. There was no application to the tribunal for an order under section 20C of the 1985 Act (limiting the ability of the landlord to seek their costs of the application as part of the service charge).

47. There was no application to the tribunal for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (extinguishing the Applicant's liability to pay administration charges in respect of litigation costs of these proceedings).

48. There was no application to the tribunal for a refund of the fees that the Applicant had paid in respect of the application.

Name: Judge C. Morgan Date: 12 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).