



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

Case reference : HAV/21UH/LSC/2025/0703

Property : Flat 14 Risingholme Court, High Street,
Heathfield, East Sussex, TN21 8GB

Applicant : Random Analysis Limited (tenant)

Representative : Mr J Cruikshank, Director

Respondent : Fairhold Homes (No.19) Limited (landlord)

Representative : Ms R Ackerley of counsel, instructed by
JB Leitch, solicitors

Type of application : Determination of liability to pay service
charges s.27A Landlord and Tenant Act 1985

Tribunal Members : Tribunal Judge M Loveday
Mr A Crawford MRICS
Ms J Dalal

Venue : Brighton Tribunal Centre

Date of Hearing : 18 May 2026

Date of decision : 16 June 2026

DECISION

Introduction

1. This is an application to determine liability to pay service charges under s.27A Landlord and Tenant Act 1985 (“LTA 1985”). The matter relates to a leasehold flat at Flat 14 Risingholme Court, High Street, Heathfield, East Sussex TN21 8GB. The Applicant is lessee of the flat and the Respondent is landlord.

Background

2. Risingholme Court is a purpose-built assisted living and retirement development specifically designed for individuals over the age of 60. It was originally developed by McCarthy & Stone and completed in 2007. The Applicant acquired the freehold in February 2008.
3. Flat 14 is a 1-bedroom flat on the 2nd floor. The Respondent acquired the leasehold interest in the Flat on 4 August 2021, and its sole Director is Mr Joseph Cruikshank.
4. At all material times, the Respondent has retained FirstPort Retirement Property Services as managing agent. FirstPort operates an accounting year ending on 31 August in each year.
5. On 25 March 2025, the Applicant applied for a determination of liability to pay service charges for the 2020-21, 2021-22, 2022-23 and 2023-24 service charge years and the interim service charges for the 2024-25 service charge year. Directions were given by the Tribunal on 25 November 2025 and 16 January 2026.
6. A hearing was listed for 18 May 2026 at Brighton Tribunal Centre. Both parties provided skeleton arguments. The Applicant was represented by Mr Cruikshank, and the Respondent was represented by Mr R Ackerley of counsel. The Tribunal is grateful to both for their written and oral submissions.

The Lease

7. By a Lease dated 29 April 2008, the flat was demised for a term of 125 from 1 June 2007. The Lease contained ordinary service charge obligations. By para 1 of Sch.5 to the Lease, the lessee was obliged to pay service charges in accordance with Sch.4 to the Lease. By paras 4.1 and 5.2 of Sch.4, this obligation was to pay advanced payments and balancing service charges (if any) at year end. The service charge costs were defined by para 1.2 of Sch.4, largely by reference to the landlord's costs of complying with its obligations in Sch.6 to the lease. Most provisions in Sch.6 required the landlord to provide "Ordinary Services" such as repairs, maintenance and insurance. But paras 8 and 9 required it to deliver additional specialist "Assisted Services". The Applicant's apportioned share of these costs varied. In particular, the "Schedule 1" Estate Charges were specified as 2/103 of the cost of the Ordinary Services" costs and the "Schedule 2" Assisted Service Charges were specified as 1/47 of the "Assisted Services" costs.
8. The other material terms of the Lease appear in Appx.A to this decision.

The issues

9. Neither the application nor the statements of case specifically identify the service charges which are in dispute. However, the annual service charge statements suggest the following total costs were incurred in relation to Risingholme Court:

Service charge year	S1 Estate Services costs (1.9417%)	S2 Assisted Services costs (2.1277%)
1 Sept 20–31 Aug 21	£310,648.57	£147,017.82
1 Sept 21–31 Aug 22	£306,945.24	£150,564.27
1 Sept 22–31 Aug 23	£358,862.44	£131,839.93
1 Sept 23–31 Aug 24	£366,250.80	£158,803.00

Regrettably, the Tribunal has been unable to reconcile these figures with the figures given in the Respondent’s service charge demands.

10. At the start of the hearing, Mr Cruikshank confirmed the only issues were payability of service charges during the completed 2020-21, 2021-22, 2022-23 and 2023-24 service charge years. There was no need to deal with the 2024-25 interim service charge demands. The Applicant also sought permission to rely on 3 additional documents which had not been included in the hearing bundle. The Respondent objected, but the Tribunal agreed to consider these additional documents as evidence.

The Evidence

11. The Tribunal heard evidence from Mr Edward Cooper, an Operations manager with FirstPort Retirement Property Services. Mr Cooper provided a witness statement dated 16 March 2026 and was cross-examined on its contents by Mr Cruikshank.
12. Mr Cooper’s evidence focussed on the provision of catering services, and this is dealt with below. In cross-examination, he was taken to a demand for payment of service charges dated 16 April 2024 (Invoice no.7435315) which sought payment of charges for four service charge years:

Service charge year	amount
1 September 2020 – 31 August 2021	£3,370.41
1 September 2021 – 31 August 2022	£9,276.88
1 September 2022 – 31 August 2023	£10,203.92
1 September 2023 – 31 August 2024 (interim)	£11,184.93

13. Mr Cooper accepted this was the first time these service charges had been demanded for payment. The confusion arose at the time the Respondent acquired the freehold. The pre-2020 arrears accrued from the time McCarthy & Stone Housing managed the premises. In response to questions from the Tribunal, Mr Cooper further explained the “individualised” service charge demands and statements were posted to the Applicant’s registered office.

Issue 1: s.20B LTA 1985

14. The Applicant's case was that the service charges for the 2020-24 service charge years were first demanded for payment on 16 April 2024. His customer record statement showed they had not previously been demanded. Since no earlier demands for payment were recorded, any relevant costs incurred before 16 April 2022 were irrecoverable under s.20B LTA 1985.

15. In response, counsel conceded that s.20B LTA 1985 prohibited the recovery of service charges in relation to costs incurred before 16 October 2022. The concession applied to the pre-2021 balance shown on the statement (£23,443.94) and the 2020-21 service charges (£3,370.41). As to the 2021-22 service charge year, s.20B LTA 1985 only 'bit' on so much the costs incurred by the landlord which were incurred before 16 October 2022. According to paras 13-14 of the Respondent's statement of case, this permitted recovery of £8,550.31 of costs, but precluded recovery of £1,172.00 of costs. Unfortunately, the Respondent did not explain how these concessions affect the Applicant's liability to pay a service charges in the 2021-22 service charge year.

16. The Tribunal therefore finds that the Applicant is not liable to pay service charges in respect of relevant costs incurred before 16 October 2022. But it will give directions for the parties to provide the relevant service charge figures.

Issue 2: Consolidated demands

17. The Applicant argued that the 16 April 2024 demand was procedurally defective and incapable of proper scrutiny. The argument was that consolidation of the demands did not comply with paras 5.1 to 5.4 of Sch.4 to the Lease.

18. The Respondent argued paras 5.1 to 5.5 of Sch.4 to the Lease contain no condition precedent requiring the figures for each year to be separated out. Moreover, the demands referred leaseholders to the online management portal for the premises, which contained details of the costs incurred in each service charge year.

The Tribunal's decision

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

“[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of

- (i) the natural and ordinary meaning of the clause,
- (ii) any other relevant provisions of the lease,
- (iii) the overall purpose of the clause and the lease,
- (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and
- (v) commercial common sense, but
- (vi) disregarding subjective evidence of any party's intentions.”

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

“120. In the courts below there was some discussion of the “restrictive” approach said to be appropriate to service charge provisions (*McHale v Earl Cadogan* [2010] 1 EGLR 51, para 17 per

Rix LJ). I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.”

21. Applying these principles, the Tribunal considers the words of Sch.4 do not mean there should be a separate demand for each service charge year. Paras 5.2 and 5.4 of Sch.4 do of course use the words “on demand” and “demanded”. But nothing in either provision deals with the timing of the demand. That can be contrasted with para 5.1, which requires an account and summary of expenses to be served “as soon as practicable after the 31st August in each Year”. The purpose of para 5.2 is to cover how long the lessee has to pay after the demand is served on him (“on demand”). It does not deal with the timing of the demand, let alone the form of the demand. Neither would the use of consolidated multi-year demands offend commercial common sense. This is not really an issue whether there is or is not any condition or qualification of the right to give a demand (as suggested by the Respondent). The simple question is whether the words of the schedule mean the landlord may serve ‘consolidated’ demands for service charges. And the Tribunal finds that they clearly do.

Issue 3: Surpluses

22. The Applicant argued the Respondent failed to explain how annual surpluses were applied. The Applicant’s statement dated 12 March 2026 showed a surplus of £481.61 at the end of the 2022-23 service charge year. There was a further end adjustment of £717.39 at the end of the 2024-25 service charge year. But nothing was shown at the end of the 2021-22 service charge year. The Applicant considered there should have been, and pointed to a letter from FirstPort to the leaseholders which accompanied the 2021-22 service charge accounts. This stated that “there is a surplus on the income and expenditure account of £19,324.63”.

23. The Respondent referred to the 2021-21 service charge accounts, which showed costs of £457,509.51 against a budget of £476,834. The Respondent suggested the reason this did not appear on the Applicants service charge statements was that it had been applied to the account of his predecessor in title as lessee of the Flat. But in any event, it was covered by the concession above. All the Applicant’s service charge liability for periods before April 2022 had been written off.

The Tribunal’s decision

24. The Tribunal has considerable doubts whether this objection falls within its jurisdiction to determine the amount of service charges payable under s.27A LTA 1985. Whether ‘surpluses’ have properly been applied to the correct account does not strictly involve a question about payability of the relevant service charges. But in any event, as explained by the Respondent, any such issue is subsumed within the concession that service charges for costs incurred before 16 April 2022 are not payable.

Issue 4: Assisted Services

25. A significant issue relates to the provision of on-site catering. The accounts show the following costs incurred in each service charge year:

2021-22	Catering Contract	£78,036.21
2021-22	Serving staff salaries	£19,470.90
2022-23	Catering Contract	£87,711.82
2022-23	Serving staff salaries	£20,970.00
2023-24	Catering Contract	£85,977.08
2023-24	Serving staff salaries	£21,575.00 ¹

Background

26. The background was explained in the Respondent’s statement of case and by Mr Cooper in evidence.

¹ This is the figure suggested by the Respondent in its statement of case. But in the 2023-24 service charge accounts, the figure of £21,575 relates to budgeted “Other site staff”. The accounts show costs of £23,433.66 actually incurred in 2023-24 for “Other site staff”, which appears to be the correct figure.

27. There is an on-site catering service located on the first floor of the Development. The catering contract for the provision of the food itself was held by Churchill Food Services Group (Trading as Radish). A copy of the catering specification was included in the hearing bundle. The catering contract was regularly retendered across FirstPort's assisted living portfolio (to ensure maximum value was achieved), and the additional documents included a summary of tender returns apparently undertaken in 2022. Prices were set by the contractor based on the specification set by FirstPort.
28. The serving staff who attended residents were all directly employed, and each of them had a dual role of housekeeper/serving staff. The catering element of their salaries was then shown in the annual service charge accounts under "other site staff".
29. Use of the catering service was discretionary to residents, and the users paid a subsidised cost to the caterer directly.
30. In 2024, the Respondent explored alternative catering provisions which may have reduced expenses for the catering services. The majority vote by the leaseholders was for the catering service to remain the same. A copy of the letter sent to the Applicant confirming the outcome of the ballot was produced to the Tribunal.
31. In order to ensure best value FirstPort explored alternative catering provisions for the Premises in 2024, by looking at alternative options for the provision of daily meals. The largest element of cost was staff pay, particularly the on-site chef. FirstPort therefore explored whether having the food prepared off site and reheated on site by the estate management staff (effectively a frozen meal) would be achievable and agreeable to leaseholders. On 29 November 2024, a presentation and resident food taster session was given by a possible provider, Apetito. The presentations explained the possible savings which could be achieved.

32. This was followed up with a letter (with a ballot form) sent to leaseholders on 20 December 2024 which was to be returned by post. The bundle included a letter to residents dated 14 January 2025 which referred to the 2016 Code of Practice published by the Association of Retirement Housing Managers (“ARHM”). The letter stated that 47 leaseholders had been entitled to vote on the catering service. And of the 27 leaseholders who voted, 23 voted against the proposal to cook food off site.
33. In cross-examination, Mr Cooper explained that meals were arranged in advance and freshly prepared on-site. Radish prepared breakfast, three course cooked lunch and lighter evening meals (usually sandwiches). Tea, coffee and biscuits were available during the day in the lounge. It was put to Mr Cooper that the restaurant was usually closed. He said that it was open between 12:00 and 2:00pm, but that if residents wanted food outside these hours, they were served in their rooms by the in-house staff. It was suggested the letter of 14 January 2025 was misleading, in that it suggested there was a legal requirement to provide catering facilities. But Mr Cooper answered that the proposal put to the vote was a move to frozen meals heated up on site. Meals had always been provided on site, and in that sense the proposal was a move to vary existing ‘custom and practice’.

The case for the parties

34. Para 9 of Sch.6 to the Lease is set out in Appx.A to this decision. Mr Cruikshank did not dispute this allowed for the provision of meals in principle. However, he argued the costs were not:
- (1) “Necessary or desirable” under para 9 of Sch.6 to the Lease; or
 - (2) Reasonably incurred under s.19(1)(a) LTA 1985.
35. In its statement of case, the Applicant contended that “the scale, structure and cost of the catering operation [went] beyond what is reasonably required for the proper management of the building”. It highlighted the following specific points:

- (1) Residents were capable of independent living, and the lease did not impose any obligation on tenants to use catering facilities.
- (2) The development is located in a town centre with numerous cafes and restaurants within easy reach. Against that background, the Applicant questions whether the maintenance of a full on-site restaurant, together with associated staffing, catering and operational overheads, was objectively necessary or proportionate.
- (3) The Applicant's concern was not with the availability of meals as an optional amenity, but with the apparent scale of the catering operation and its impact on service charge liability. Where an amenity was discretionary and not essential to occupation, the Landlord must be able to demonstrate why the level of expenditure incurred is reasonable and why the cost burden imposed on leaseholders is justified.
- (4) The Respondent had not provided evidence addressing whether alternative, less costly arrangements were considered, whether the catering service reflects actual demand among residents, or whether the costs have been controlled in a manner consistent with good estate management. In the absence of such evidence, it was not possible to conclude that the expenditure associated with the on-site restaurant satisfied the statutory test of reasonableness under s.19(1) LTA 1985.

In his oral submissions, Mr Cruikshank further argued:

- (1) The cost was excessive compared to the number of residents who used the service. He argued fewer than 30% of residents were users of the restaurant.
- (2) The restaurant was only open 12:30 to 2:00pm.
- (3) The consultation was flawed. Residents were not given the option to dispense with meal provision completely. And the fact there had been a consultation was recognition that the provision of the service was discretionary.

36. In reply, counsel argued that the Lease conferred a broad discretion to

provide catering. It does not require demonstration that meals are essential to occupation or that residents cannot access alternative local services. The self-contained nature of the flats or the proximity of local cafés was therefore irrelevant.

The Tribunal's decision

37. The starting point is that it appears to be common ground that the provision or procuring of meals by the Respondent is discretionary. Indeed, the words “considers necessary or desirable” cannot realistically be read in any other way. In these circumstances, recent caselaw (notably *Aviva Ground Rent Investors GP Ltd v Williams* [2023] UKSC 6, [2023] AC 855 and *Abacus Land 4 Ltd v Bradley* [2025] EWCA Civ 1308) has confirmed the scope of the Tribunal’s function under s.27A LTA in relation to the exercise of such discretion. Broadly speaking, where section 19(1) LTA 1985 is not engaged, the Tribunal’s function is limited to deciding whether the landlord acted in breach of contract. The obligation on a landlord under a lease to act reasonably does not require objective reasonableness. Such a decision will be unreasonable only if it is one that no reasonable landlord would make: *Abacus* at [79].
38. Applying this test, it is clear the continued provision of meals meets the terms of para 9 of Sch.6 to the Lease. It is objectively reasonable to provide meals on the premises:
- (1) Although many residents may be capable of independent living, and there may be numerous cafes and restaurants within easy reach, that may not always be the case for all of them, or indeed for all of them in future. This is retirement housing, and the Respondent is entitled to have regard to the extra requirements of vulnerable elderly residents.
 - (2) On-site catering is a common feature of the support package for elderly residents.
 - (3) There are users of the meal service at Risingholme Court, even if not all residents take advantage of it.

- (4) The Respondent consulted on changes to the existing catering scheme in 2024. The Respondent was entitled to have regard to the views of the majority of respondents to the ballot – which broadly supported retention of the current scheme (see below).
39. As to section 19(1) LTA 1985, the principles were set out in *Hounslow v Waaler* [2017] EWCA Civ 45; [2017] 1 WLR 2817, as further explained and approved in *Spender v FIT Nominee Ltd* [2025] EWCA Civ 1578; [2026] HLR 14.
40. The first element of the s.19(1) test requires consideration of the Respondent’s decision-making process.
41. The Applicant contends that the “scale, structure and cost of the catering operation” goes “beyond what is reasonably required for the proper management of the building”. The cost of catering in para 25 above varied between £97,507.11 and £108,681.82 and Mr Cruikshank points to the limited hours of operation of the restaurant, and the number of users. The hours of operation of the restaurant are agreed, although the Respondent points out that the catering service includes the provision of meals to residents in their rooms at other times, as well as breakfast and evening meals being available. There is no firm evidence of the number of users, although the additional material produced for the hearing includes a note of a visit on 25 April 2024, suggesting “numbers slowly increasing but remain low”.
42. It is nevertheless clear enough that the Respondent has from time to time considered the “scale, structure and cost of the catering operation” when reaching its decision to incur the costs for the catering scheme. Most obviously, it did so as part of the 2024 consultation exercise. The Tribunal does not agree with the Applicant’s criticism of that consultation exercise:

- (1) It met the guidance in para 7.1 of the AMRH Code of Practice, that managers “should not vary custom and practice without ... achieving a result in favour of the proposal of at least 66% of those voting (where at least 51% of those eligible to vote did so), and the number of votes counted against the motion are not more than 25% of those leaseholders eligible to vote.”
- (2) It was perfectly reasonable for the managing agents not to include complete abolition of catering services as a ballot option. As explained, under the Lease, the decision whether to provide meals at all was a matter for the landlord’s discretion.
- (3) In any event, an overwhelming majority of consultees opposed even a reduction in service provision. It was a reasonable assumption they would also have overwhelmingly rejected any substantial changes to the existing service.

It follows the Tribunal finds the decision-making process was entirely reasonable.

43. The second stage of the s.19(1) LTA 1985 test is to consider whether the outcome was reasonable. But as explained in *Waalder* at [37]:

“If the landlord has chosen a course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable.”

As to outcome, the Respondent tendered the service and there is no suggestion the catering service specified by the Respondent could have been provided at a lower cost by some other supplier. Neither is there any suggestion the standard of services did not meet the standard required by the catering contract or the Lease terms.

44. For these reasons, the Tribunal finds the Applicant is liable to contribute by way of service charges to the relevant costs of catering in para 25 above. They were payable under the lease and reasonably incurred for the purposes of s.19(1) LTA 1985.

Issue 5: Apportionment

45. The Applicant's apportionments for the "Ordinary Services" and the "Assisted Services" are set out above.
46. The Applicant's statement of case argued the Respondent had failed to demonstrate that costs were apportioned using the correct fractions. No apportionment schedules or calculations were provided.

The Tribunal's decision

47. The Applicant has not at this stage shown any error in the apportionment or calculation of the service charges. But the Respondent has not explained how it applied the two different apportionments to arrive at the service charge figures. The Tribunal cannot therefore resolve whether the correct apportionments have been applied. Given that some re-calculation will in any event be needed to reflect the other parts of the Tribunal's decision, any issue will be resolved by way of the directions given below.

Issue 6: Audit fees

48. The 2023-24 service charge accounts were audited by TC Group who expressed the following qualified opinion:

"There are costs included in Prior Year Items for the year ended 31st August 2024 which relate to duplicated charges totalling £1,875.34 for which no evidence could be provided to support the validity of the costs as valid service charge costs in accordance with the lease and relevant frameworks."
49. It was common ground that the "duplicated" costs were in fact two sets of auditors' fees. The Applicant argued they were either not recoverable under the Lease, or they were not reasonably incurred under s.19 LTA 1985.
50. In his evidence, Mr Cooper explained that until 2024, the accounts were audited by BDO Southampton. The managing agents became concerned

about a noticeable shift in the quality and standards of the audits being delivered. The auditors also introduced a substantial fee increase. As a result, in 2024 the agents appointed TC Group as new auditors at a lower fee of £1,181.00. It appears that BDO Southampton had already been paid for auditing the 2023-24 accounts. They declined to issue a refund on the basis that work had already commenced on several of the accounts allocated to them. As a result, no refund was provided. The agents then appointed TC Group to complete and audit the accounts, which led to two sets of fees. The papers did not include any receipt for the disputed £1,875.34, although the 2023/24 service charge accounts show the cost as “Prior Year Items”, as indicated in the qualified opinion.

The Tribunal’s decision

51. It is difficult to see how it can be said to be reasonable to incur the cost of two sets of audit fees in one year. There were several options available to a landlord when faced with a possible decision to dis-instruct auditors. Most obviously, the Respondent could instead have allowed BDO Southampton to conclude their 2023-24 audit work and instructed TC Group at the end of the service charge year. It is also unclear why the agents paid the audit fees in advance, when there were already concerns about the substantial fee increase. But the decision to appoint a second set of auditors mid-year, and then pass the additional costs onto the leaseholders, was unreasonable. The Tribunal finds the Applicant’s service charge contribution to the first set of auditors’ fees was not reasonably incurred under s.19(1)(a) LTA 1985.
52. The £1,875.34 prior year items appear in the 2023-24 accounts under the heading “Expenditure S1 Estate”. The Applicant’s service charge apportionment is 1.9417%. The Tribunal therefore finds that the Applicant is not liable to pay service charges of £36.41 in respect of ‘prior year items’ audit fees for the 2023-24 service charge year.

Issue 7: Invalid demands

53. The bundle includes various service charge and administration charge demands. These include the ‘consolidated’ demand dated 16 April 2024, which is referred to above. There are further demands dated 30 June 2024, 28 August 2024, 29 August 2024, 22 November 2024, 31 July 2025 and 12 March 2026, as well as credit notes for surpluses applied at year end.
54. The Applicant’s case is that the Respondent has failed to prove that valid demands were served on the Applicant in accordance with statute and lease. The correspondence showed uncertainty over ownership of the flat and any forwarding addresses. The Applicant referred in particular to an email dated 19 January 2002 which requested that post be forwarded to a business address in Bracknell. Moreover, no certificates of posting were produced for earlier years and no evidence that demands complied with s.47-48 LTA 1987.
55. The Respondent referred to the various demands and argued they were properly demanded. The demands were accompanied by a summary of tenant’s rights and obligations and contained the information required by s.47-48 LTA 1987. On their face, the demands were addressed to ‘118-120 London Road, Mitcham, Surrey, CR4 3LB which is the registered office of the company recorded at Companies House.

The Tribunal’s decision

56. The first point to make is that the email of 19 January 2022 does not affect the proper address for service of service charge demands. Sections 1139 and 1140 Compliance of the Companies Act 2006 permit documents of any kind to be delivered to a company at its registered office. Whether or not the Applicant asked for post to be forwarded to a different address made no difference to this.
57. As to posting, the common law position is that where a letter containing a document has been properly addressed, pre-paid and posted, a

rebuttable presumption arises at common law that the document has been properly served. There is no relevant distinction between this common law presumption and the statutory presumption under section 7 of the Interpretation Act 1978: *Khan v D'Aubigny* [2025] EWCA Civ 11; [2025] Ch 169. Moreover, clause 2.2 of the Lease specifically incorporates s.196 Law of Property Act 1925. Section 196(3) LPA 1925 states that service is effective “if left” at the recipient’s “last known place of ... business”. ‘Leaving’ a notice, for the purposes of s.196(3) LPA 1925, includes posting it to the relevant premises by ordinary post: per Neuberger J in *Kinch v Bullard* [1999] 1 WLR 423 at p.426-H to 427A.

58. In this instance, Mr Cooper’s uncontradicted evidence was that the “individualised” service charge demands and statements were posted to the Applicant’s registered office. This is supported by the copies of the demands in the bundle, each of which includes the address of the Applicant’s registered office. Moreover, there is no evidence from the Applicant that the demands were not received at that address to rebut the common law presumption. The Tribunal therefore finds that the demands for payment were served on the Applicant company.

59. As to the suggestion the demands did not include the information required by s.20B LTA 1985, the relevant demands in the bundle included a summary of rights and obligations in proper form. They also included the following notifications under s.47-48 LTA 1987

“Notices

Please note your Landlord is Fairhold Homes Ltd, Berkeley House,
304 Regents Park Road, London, N3 2JX

If you need to serve any notices on the Landlord, including notices in relation to proceedings, these may be served at:- Fairhold Homes (No.19) Ltd, FirstPort Retirement Property Services, Queensway House, 11 Queensway, New Milton, Hampshire, BH25 5NR.”

These comply with the requirements of s.47-48 LTA 1987.

60. It follows this argument is rejected.

Costs: s.20C LTA 1985 and para 5A of Sch.11 to CALRA 2002

61. There is an application for limitation of costs under s.20C LTA 1985 and an application under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002 (“CALRA 2002”).

62. The case law and principles are summarised in *Conway v Jam Factory* [2013] UKUT 0592 (LC) at [51] to [58]. In *Schilling v Canary Riverside Development PTE Limited* (2006) LRX/26/2005, HHJ Rich stated at [14] that:

“In service charge cases, the “outcome” cannot be measured merely by whether the Applicant has succeeded in obtaining a reduction. That would be to make an Order “follow the event”. Weight should be given rather to the degree of success, that is the proportionality between the complaints and the Determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other hand.”

Similar principles apply to para 5A of Sch.11 to the 2002 Act.

63. In this instance, the Applicant has succeeded in achieving a significant reduction in its service charge liability, albeit much of this was by way of a concession made in the Respondent’s statement of case. On other issues, it has failed. Based on the circumstances of the “outcome” alone, the Tribunal considers it would be just and equitable to make an order that 50% of the Respondent’s costs incurred in connection with proceedings before the Tribunal should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. The Tribunal did not consider there were any other features of the application which made it just and equitable to depart from this assessment. It therefore makes a s.20C LTA 1985 order limiting the Respondent’s recoverable Tribunal costs to 50%. And for similar reasons an order is made under para 5A of Sch.11 to CALRA 2002 reducing any administration charges in respect of litigation costs to 50%.

Conclusions

64. Under s.20B LTA 1985, no service charge is payable in respect of relevant costs incurred by the Respondent prior to 16 October 2022. This applies to the whole of the 2020-21 service charges and part of the 2021-22 service charges.
65. The Applicant is not liable to pay service charges of £36.41 in respect of 'prior year item' audit fees for the 2023-24 service charge year.
66. Save as above, the Applicant's substantive service charge arguments are rejected.
67. It is open to the Tribunal to make findings in principle on each item only and to give directions to enable the final figures to be assessed. This was the procedure suggested in *Jarowicki v Freehold Managers (Nominees) Ltd* [2016] UKUT 0345 (LC) at [11]. The Tribunal therefore directs that:
 - (1) The Respondent shall recalculate the service charges payable for the 2021-22, 2022-23 and 2023-24 service charge years in the light of the above decision and submit these figures to the Applicant for agreement within 14 days of this decision. The workings shall include the apportionments applied).
 - (2) Liberty to apply to this Tribunal in the event that agreement cannot be reached.
68. The Tribunal orders under s.20C LTA 1985, that 50% of the Respondent's costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
69. The Tribunal further orders under para 5A of Sch.11 to CALRA 2002, that any administration charge in respect of litigation costs in connection with the Tribunal shall be limited by 50%.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

APPENDIX A: Lease Covenants

THE FOURTH SCHEDULE

Service Charge Calculation and Collection

...

5.1 As soon as practicable after the 31st August in each Year during the Term the Landlord or its agent will serve upon the Tenant an account containing a summary of the Landlord's expenses and outgoings during the preceding Year. The said account shall (save in respect of any arithmetical error) be conclusive evidence for the purposes hereof of the matters set out therein

5.2 The Tenant shall on demand pay to the Landlord or to whom the Landlord may specify the Service Charge (or in the case of any period of less than a year a due proportion thereof) **SUBJECT** however to a deduction therefrom of the Advance Payment for the relevant Year (or part thereof if appropriate)

5.3 If the Advance Payment made in any year exceeds the Service Charge for that Year the excess may at the option of the Landlord be applied in or towards the payment of the Service Charge or any Advance Payment for the following Year

5.4 If any of the sums which are required to be paid by the Tenant in accordance with this Schedule are not paid within 14 days after they have been demanded or become due (if later) then without prejudice to any other right or remedy of the Landlord hereunder such unpaid sums shall carry interest at the Prescribed Rate or at the rate of 12% per annum (whichever rate shall be higher) until payment

5.5 The Landlord will keep an account of all expenditure to be included in the Annual Service Cost and will ensure that the account thereof is audited by a firm of qualified accountants

THE SIXTH SCHEDULE

The Landlord Covenants with the Tenant as follows:

...

9. To provide or procure the provision of such contractors as it considers necessary or desirable

(i) to provide meals upon such terms and conditions it shall consider reasonable

...