FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSL/2024/0602** **LON/00BK/LSL/2025/0007**
Property	**:**	**Flat 2B, 14 & 16 Hampshire House, 12 Hyde Park Place, London W2 2LH**
Applicants	**:**	**(1) Front Square Securities Ltd (Flat 2B)** **(2) HRM Tuanku Hajah Haminah** **(3) HRH Tunku Soraya** **(4) HRH Tunku Intan Safinaz (Flat 14)** **(5) Kamal Kishore Midha (Flat 16)**
Representative	**:**	**Ashfords LLP for (1)** **Mishcon de Raya LLP for (2)-(5)**
Respondent	**:**	**Hampshire House Freehold Ltd**
Representative	**:**	**Boodle Hatfield**
Type of Application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Nicol** **Mr S Mason FRICS**
Date and Venue of Hearing	**:**	**8th-11th December 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**28th April 2026**

DECISION

<u>Decisions of the Tribunal</u>

(1) The costs of the major works programme at Hampshire House were not reasonably incurred, and resulting service charges are not payable, to the extent that those costs exceed a total of £360,979.04.

(2) The fees of Abbatt Dual Management Ltd were not reasonably incurred.

(3) The Respondent's legal costs, including the costs of this dispute and the Tribunal proceedings, are not recoverable under the Applicants' leases.

(4) The parties may seek any orders in respect of the costs of the current proceedings in accordance with the following directions:

(a) The Applicants shall, by **22nd May 2026**, email to the Tribunal and to the Respondent submissions in writing setting out why the Tribunal should make any orders sought;
(b) The Respondent shall, by **19th June 2026**, email to the Tribunal and to the Applicants any submissions in writing opposing any orders sought; and
(c) The Tribunal will thereafter determine any costs applications on the papers, without a hearing.

Relevant legislative provisions are set out in Appendix 1 to this decision.

The Tribunal's Reasons

1. The Applicants are the lessees of 3 of the 20 flats at Hampshire House. The Respondent acquired the freehold in 2022 by collective enfranchisement. The leases are tripartite – management was to be carried out by Hampshire House, 12 Hyde Park Place Management Ltd but, on 26th December 2023 the company was dissolved and the Respondent now manages the property itself, initially through Burlington Estates (Management) Ltd ("Burlington") and, from 2024, through First Port Property Services ("First Port") when they acquired Burlington.

2. The First Applicant and then the Second to Fifth Applicants separately applied under section 27A of the Landlord and Tenant Act 1985 ("the Act") challenging the reasonableness and payability of service charges for the years 2022 and 2023, and the budgeted expenditure for the year 2024. In particular, after completion of the collective enfranchisement, the Respondent carried out an extensive (and the Applicants say excessive) programme of major works at a cost of over £1,000,000.

3. The Tribunal inspected the property on the morning of 8th December 2025. The hearing then started on the same afternoon and continued to 11th December 2025. The Tribunal apologises for being unable to get this written decision out sooner.

4. The participants in the hearing were:

- Mr Carl Fain, counsel for the First Applicant, the lessee of Flat 2B;
- Ms Vanessa Kibble, Ashfords, solicitors for the First Applicant;
- Mr Alex Beck, a director of the First Applicant;
- The First Applicant's witness, Mr Paul Beck, a director of the First Applicant and of Segar Properties (Hyde Park) Ltd, the previous freeholder;
- Mr Philip Rainey, leading counsel for the Second to Fifth Applicants, the lessees of Flats 14 and 16;
- Mr Sam Madge-Wyld, junior counsel for the Second to Fifth Applicants;

- Ms Laura Odlind, Ms Sarah Heritage and Ms Vibuhti Parmar from Mishcon de Reya, solicitors for the Second to Fifth Applicants;
- Ms Pooja Modha, the Fifth Applicant's daughter;
- The Second to Fifth Applicants' witnesses:
  - The Fourth Applicant, HRH Tunku Safinaz;
  - Mrs Neelam Midha, the Fifth Applicant's wife;
- The expert witnesses, Sean Ellison BSc (Hons) MRICS for the Second to Fifth Applicants and Tom McKenny FRICS FCIArb LLB (Hons) MSc for the Respondent;
- Mr Michael Ranson, counsel for the Respondent;
- Ms Sophie Mellor, Mr Colin Young and Ms Aimee Canning, Boodle Hatfield, solicitors for the Respondent; and
- The Respondent's witnesses:
  - Dr Sam Malakouti, lessee of Flat 2 and director of the Respondent;
  - Mrs Mehrvash Khalil-Nadji, Dr Malakouti's mother and the lessee of Flats 3 and 4;
  - Mr Yousuf Zeid, the owner of Zeid Designs Ltd, project manager for the major works;
  - Mr Zeyad Baker, lessee of Flat 11 (his parents have Flat 17) and a director of the Respondent;
  - Mr Dino Ciancamerla, the former property manager for Hampshire House, an associate director of Burlington and then of First Port.

5. The documents before the Tribunal comprised:

(a) A bundle of 3,362 pages, supplemented by witness statements with updated page cross-references, some emails (labelled page 1527A) and copies of some leases;
(b) A Supplemental Bundle of 1,457 pages;
(c) A Supplementary Bundle of 75 pages from the Respondent containing further documents from Mr McKenny, effectively amending his report;
(d) A skeleton argument for the First Applicant;
(e) A skeleton argument for the Second to Fifth Applicants, accompanied by a cast list, a chronology and a list of/guide to the photographs in the main bundle, and supplemented by a Closing Note;
(f) A skeleton argument for the Respondent, also supplemented by a Closing Note;
(g) A joint bundle of authorities; and
(h) Respondent's Additional Authorities, containing 3 cases.

Inspection

6. The Tribunal were met at Hampshire House for the inspection by counsel for all parties and their solicitors (other than for the First Applicant). Mr Rainey had prepared a proposed walking route. All attendees accompanied the Tribunal on this route save that only the Tribunal members were allowed inside Flats 2 and 3. Mr Mason took photos which were shared with the parties and then included in the Supplementary Bundle.

7. Hampshire House is a substantial 19th-century 6-storey (plus basement) block on the north side of Hyde Park. It contains 20 flats, 6 in the basement and 2 per floor on the upper levels.

8. The entrance is up 5 stone steps through double doors, made of glass and augmented by a patterned grill, over a monogrammed doormat into a lobby area. The lobby floor is marble. One side wall is covered by a large mirror which faces an abstract artwork of similar size on the other wall. Lighting is provided by a number of square chandeliers and wall lights. There are two chairs and a couple of small tables. At the end of the lobby, up a further 3 steps, next to the stairwell is a porters' desk. This area was refurbished during the works to a high standard.

9. The Tribunal members then took the lift to the top floor – it would have been a tight squeeze to fit in a third person. The stairwell is substantial and has a new grey carpet from top to bottom, although there are already marks on it. The stairwell has clearly been re-painted in a colour to match the new carpet but the painting work appears to have been slipshod. All but one apartment door frame, including the ornate coving above, and nearly all the switches had wall paint on them. The switches clearly pre-dated the works.

10. There were windows to 3 sides of the stairwell between each floor but only one internal cill had been painted, apparently as part of recent works to address penetrating damp – the Tribunal observed significant water damage to one wall at the top of the stairwell which had yet to be addressed. Given the cost and scale of the works and the tired look of the cills (one had a crack in it), the Tribunal was surprised that they had not been included in the redecoration work.

11. There were a number of marks on the stair stringers, reducing in number going from the top floor to the lower floors. Either they had not been repainted or there had been significant recent impact damage.

12. The Tribunal's inspection continued down the stairwell and into the basement. The contrast with the upper floors was stark. Like the lobby, the areas of the basement which had been refurbished as part of the works had been done to the highest of standards and with the finest of materials and workmanship. In particular, there was a sizeable area outside Flats 3 and 4 which photos show had previously been left simply as a corridor, albeit an exceptionally wide one. Now it is a luxuriously appointed lounge area. Sitting on a large rug/carpet are a sofa and two armchairs around a low table. Another sofa sits around the corner. An expensive-looking table stands beneath a mirror. The floor is an immaculate wooden construction. There are abstract artworks on the walls, complemented by subtle wall-lighting.

13. Opposite the stairs is a toilet. It was referred to by the Respondent as a "Powder Room" which phrase the other parties then also used. While this might conjure images of elegant ladies in evening wear checking their make-up, it is in fact just a small toilet, clearly for the use of the porters and visiting contractors. It has been fitted out to a high standard matching the other basement refurbishment, including a marble floor, although there is evidence of ongoing damp damage.

14. There is also evidence of damp damage to the wall outside the First Applicant's Flat, 2B. This corridor is the only area of the basement where the standard of

work has slipped to the standard of the stairwell. The decoration has left clear marks delineating the wall panels. Flat 2B is the only flat, room or storage cupboard in the basement for which the door has not been replaced.

15. The small cupboard at the end of the corridor has been fitted with basic cupboards, plus a microwave oven and a small fridge, for use by the porters, apparently to replace the room which has now been converted into a gym. That room is large enough for two cycles, a treadmill, a punchbag and some free weights. There is evidence of damp to one wall and the window cill was covered in dust, suggesting a lack of any recent use or cleaning.

16. To the left coming from the stairs is a door out into a courtyard which clearly serves no purpose other than as a lightwell, the foot of an external metal fire escape and access to the remaining two basement flats, 2 and 2A. The exterior of the windows to the lower floors can be observed from here and it is clear that several are in poor condition, again a surprising omission from the works.

17. What has been included in the works is a new paved path between the door from the main part of the building to the door into the communal corridor for Flats 2 and 2A, bounded by uplighters and covered by a new metal and glass canopy. The canopy was either still being finished or in the process of repair as a glass panel was missing from the canopy but lying on the ground. Part of the Respondent's justification for the path and canopy is to prevent those passing through the courtyard picking up mud and dirt and bringing it into the building. However, the entire courtyard is paved so there is no source of such mud or dirt. The courtyard also appeared to be well-drained so there was virtually no standing water for visitors to tread in either, despite the fact that it was gently raining at the time.

18. The Tribunal were permitted to pass through Dr Malakouti's flat, number 2, to access the rear lightwell through his French windows. The lightwell was included in the works despite being accessible only from two flats, 1 and 2. It is bounded by three walls of Hampshire House and an external wall rising beyond ground floor level so it is not possible to see out of it while standing in this area. There is a number of downpipes attached to the walls, at least some of which, if not all, serve Hampshire House. Nevertheless, the lightwell has been refurbished to a high standard with wooden decking, some planting and stone seating. Dr Malakouti has taken advantage by placing outdoor furniture on the decking, presumably so he, his mother and other guests can sit outside with a fair degree of privacy when they wish.

19. In his flat, Dr Malakouti pointed out that the decorative wall beading was not identical to that used in the corridor/lounge area outside Flats 3 and 4, as the Applicants had alleged, although it was similar. The flat was refurbished by the same contractor as the main works, Hine, to the same standard as the main basement areas and the lobby.

20. The Tribunal was then permitted to view Mrs Khalil-Nadji's flat, number 3. The bathroom had been refurbished following an insurance claim for an incident of penetrating water. At one end of the flat was a room with its own bathroom, separated from the rest of the flat by a door with a mortice lock. The room also

had its own access into the same corridor as Flats 3 and 4, albeit it was blocked from the inside by a suitcase and some other belongings when the Tribunal inspected. Dr Malakouti had arranged for the outside of the door to have the number "3A" on it – he said this was to match other doors but it was the only door in the building which is not a door to a flat to be treated in this way.

The Lease

21. The leases of the Applicants' flats include the following terms (although not using the same numbering):

(a) By clause 4.4/4(4), the Applicants covenanted to "pay the interim charge and the Service Charge at the time and in the manner provided in Schedule 5/the Fifth Schedule hereto…".

(b) By clause 5.2.1/5(2)(a) the Respondent is obliged to maintain and keep in good and substantial repair and condition:

1 the main structure of the building;

2 gas and water mains and pipes, drains, waste water and sewage ducts and electric cables and wires;

3 the Common Parts;

6 all other parts of the Building not included in clauses 1 to 5 and not included in the flat or the demise of any other flat or part of the building.

(c) "Common Parts" are defined in clause 1/10 as "all entrances passages landing staircases (internal and external) (including any enclosures thereto) gardens gates access yards roads footpaths (if any) passenger lifts (if any) means of refuse disposal (if any) and other areas included in the Title … provided by the Lessors for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessors are entitled to the reversion"

(d) By clause 5.2.2/5(2)(b) the Respondent is obliged, as and when it deems necessary, to:

1 paint the whole of the outside wood iron and other work of the Building heretofore or usually painted and grain and varnish such external parts as have been heretofore or are usually grained and varnished; and

2 to paint paper varnish colour grain and emulsion such of the interior parts of the Building as have been emulsioned (other than those parts which are included in the Flat or in the demise of any other flat in the Building) …

(e) By clause 5.2.4/5(2)(d) the Respondent is obliged "to keep clean and where appropriate lighted and heated the Common Parts and to keep clean the windows in the Common Parts and where appropriate to furnish the Common Parts in such style and manner as the Lessors shall from time to time in their absolute discretion think fit"

(f) By clause 5.2.13/5(2)(n) the Respondent is obliged "without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors may be considered necessary or advisable for the proper maintenance safety amenity or administration of the Building".

(g) By paragraph 1 of Schedule 5/the Fifth Schedule: ""Total Expenditure" means the total expenditure incurred by the Lessors and/or the Managers in any Accounting Period in carrying out their obligations under clause 5.2 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing:

(i) the cost of employing Managing Agents;

(ii) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder;

(iii) an annual sum equivalent to the fair rent of any accommodation owned by the Lessors and provided by them rent free to any of the persons referred to in clause 5.2.6 of this Lease; and

(iv) interest on monies borrowed or advanced by the Lessors and/or the Managers in connection with the performance of the covenants and obligations herein and any costs incidental to such borrowing or advance".

(h) By paragraph 3 of Schedule 5/the Fifth Schedule, the interim charge shall be paid by equal payments in advance on 29 September and 25 December and 25 March and 24 June in each year.

(i) By paragraph 5 of Schedule 5/the Fifth Schedule, if the Service Charge exceeds the Interim Charge then the Tenant shall pay the excess to the Lessors within 28 days of service upon the Tenant of a certificate complying with the provisions of paragraph 6 of schedule 5/the Fifth Schedule.

The Issues

22. The Applicants challenge their service charges for the following:

(a) The reserve fund demands totalling £1m, being principally for the costs of the major works programme, levied in 2022, 2023 and 2024.

(b) The additional cost of using Abbatt Dual Management Ltd ("Abbatt") to employ the staff in 2023 and 2024.

(c) The legal costs incurred by the Respondent in responding to these applications and earlier complaints about the cost of the major works.

23. The First Applicant had raised another issue, namely that they had been charged according to the wrong apportionment. Flat 2B is 522ft^2 and was being charged 1.471% of the total service charges whereas Flat 2 is 737ft^2 and pays 0.772%. However, the Respondent accepted that this was because a 50% discount applied to the other basement flats had not been applied to the First Applicant's flat and that the correct apportionment is 0.5431%.

24. An issue also arose as to whether the Respondent had fallen foul of the 18-month rule under section 20B of the Act but the Applicants informed the Tribunal during the hearing that they were no longer pursuing this.

The Works

25. The Respondent acquired the freehold of Hampshire House in February 2022 following the completion of the collective enfranchisement. It is fair to say that Dr Malakouti was the prime mover behind the claim, at least in part because, unlike him, many of the other lessees are only resident for part of the year. He is a director of the Respondent, now alongside Mr Mohammed Sharbatly, the lessee of Flat 15, and Mr Baker.

26. Mr Sharbatly, also known as Sheikh Mohammed (as Mr Zeid referred to him), played a significant part in the enfranchisement as a "white knight", covering a shortfall in the funds for the purchase of the freehold in return for head leases of the non-participating flats. He directly employed Mr Zeid when appointing him as the project manager for the major works programme. Like Dr Malakouti, he had a prior relationship with both the main contractors employed to carry out the works, Hine Construction Ltd ("Hine") and Philip Dowse Ltd. As referred to below, the Respondent has also asserted that Mr Sharbatly paid for gym equipment, furnishings and artworks brought in as part of the major works programme. In those circumstances, the Tribunal finds it surprising that he has not provided a witness statement in order to give evidence about his role in the issues in dispute.

27. When the collective enfranchisement took place, it is understandable that the new owners would want to take stock. In particular, it would have been standard practice for a surveyor to have been brought in to advise on the condition of the property and to help develop a long-term capital expenditure ("CapEx") programme to ensure that repairing and other covenants were complied with, the condition of the building would be kept to the requisite standard and service charge payers would have a reasonable idea of their future liabilities. That CapEx programme would then involve drawing up a specification for the most urgent maintenance works, normally prioritising the exterior envelope and structure of the building on the basis that there is no point in repairing or decorating the interior if exterior factors, such as penetrating or rising damp or overflowing drains, could then damage the interior work at additional cost. That specification of works would then be put out to tender to several contractors, while the residents would be consulted or invited to comment.

28. Dr Malaklouti's evidence strongly supported the idea that this standard approach was the appropriate course of action for Hampshire House. According to him, the maintenance of the building had long been neglected, resulting in problems of:

- mouldy chandeliers;
- cracked and peeling plaster;
- threadbare carpets causing trip hazards;
- burst pipes;
- blocked and overflowing drains (the last two happening "often");
- extensive damp and consequent damage;
- broken and chipped doors;
- damaged and defective windows;

- loose wires and evidence of other electrical hazards;
- an inadequate fire system;
- brickwork “falling apart”; and
- rodent infestations.

29. In contrast, the Applicant’s witnesses, Mrs Midha and Ms Safinaz, were generally satisfied with the management in the years prior to the enfranchisement. Mr Paul Beck used to be responsible for managing the property as a director of the management company, although their agents, Berkshire Hathaway Home Services, conducted day-to-day management. As an example of his management, he said that, in the early 2000’s he arranged for the specialist restoration of the external stone front and west facing elevations, with original Hamstone from the quarry in Somerset. The Respondent’s witnesses neither denied nor acknowledged this.

30. There was also photographic evidence from 2019, 2022, 2023 and 2024 showing the lobby in good condition. In 2018 Dr Malakouti provided photos which supported his contention that areas of the basement were in poor condition but, at the same time, he provided photos of the stairwell in good condition, contending that the contrast supported his case for works to the basement.

31. It is strongly indicative that the picture he painted was inaccurate that Dr Malakouti did not at any time seek to implement the standard approach or even obtain any evidence of the supposedly appalling condition of the building. Instead, a surveyor was not appointed and, when Mr Ciancamerla belatedly advised Dr Malakouti to appoint one, he rejected the opportunity. At no time did Dr Malakouti seek to have the exterior envelope of the building comprehensively looked at, let alone repaired, even when there was rising damp in the basement and penetrating damp elsewhere, instead being content with isolated reactive repairs – the remedial works for the penetrating and rising damp were not within the original scope of the works but added later. There is no CapEx programme or any long-term vision with the entire focus having been on a single programme of works to put Dr Malakouti’s priority areas into the condition he wanted without any idea of what comes next.

32. In the Tribunal’s opinion, the biggest flaw in Dr Malakouti’s approach has been that he has not acknowledged the limits of his own knowledge. Although his principal job is as a doctor, he has some experience of building management and development and assumed that this was sufficient, together with input from Mr Sharbatly and Mr Zeid. He asserted in his witness statement that he delegated day-to-day management to agents because he is not a professional manager but the fact is that all significant decisions were subject to his wishes. When he rejected Mr Ciancamerla’s recommendation to appoint a surveyor, he freely admitted that it was because he could not see the point. This is the logical fallacy of the argument from ignorance. He was ignorant of the benefits of appointing a surveyor and therefore did not think there were any.

33. This approach was then repeated when Mr Zeid was belatedly appointed as the project manager. The Tribunal does not mean to diminish Mr Zeid’s experience of fitting out and refurbishing residential properties in other countries but he is

not a surveyor and clearly lacked relevant knowledge and experience. He also seemed blithely unaware of the limits of his knowledge. Mr Ciancamerla had to inform him of the statutory consultation requirements after he tried to appoint Philip Dowse Ltd without consulting first. He had been unaware that the lessees would be footing the bill.

34. Further, Mr Ciancamerla admitted he had been inexperienced when the works started and, since Mr Zeid seemed to him as if he knew what he was doing, he deferred to Mr Zeid.

35. In contrast, the Applicants' witnesses did acknowledge the limits of their knowledge, in particular due to the fact that they did not reside in the building all the time and were not initially active participants in the decisions on enfranchisement or the works. While this means that their evidence was limited on some matters, the Tribunal is satisfied that they were honest and genuinely trying to help the Tribunal.

36. The Tribunal has concerns about the Respondent's witness evidence and, where it conflicts, prefers that of the Applicants' witnesses. In his witness statement, Dr Malakouti continually referred to "the residents" having made decisions or being of a single mind as to what they wanted to have happen. In paragraph 59, he asserted that, "Numerous leaseholders have thanked me for my work as a director and have said they are sorry to hear that there remains a small number of leaseholders still raising complaints about the Respondent." However, at no point did he identify the individuals in question. Nor had any of them, other than Mr Baker, provided so much as a letter of support for him or the Respondent in these proceedings, let alone a witness statement or attending the hearing as a witness.

37. In relation to the condition of the building under the previous ownership, the only evidence for the Respondent comes from the bare assertions of Dr Malakouti and Mr Baker. Mr Ciancamerla said the property looked run-down but none of his inspection reports from the visits he said he made every fortnight or month were made available.

38. The Tribunal heard their evidence and that of the Applicants, which included Mr Paul Beck who had been responsible as a director of the management company for the management of the building until his removal. It is common ground that the building was overdue for cyclical maintenance and redecoration – Mr Beck conceded that internal decoration due in 2017 on the normal 4-5 year cycle had not been carried out by 2022. However, the Tribunal is satisfied that it was no more than that. As already discussed above, Dr Malakouti's evidence makes little sense in that he makes claims about the appalling state of various elements of the building but then spent all his focus on making the areas he inhabits look good while neglecting the exterior, the structure and the main services.

39. Mr Baker's evidence appears to cherry-pick the genuine criticisms which may be made of the state of the building when cyclical maintenance is overdue. He asserted that the residents did not need to discuss works to the building because it was so obvious "that the whole Building needed to be renovated." This begs

the question of why he accepted works being carried out which patently did not renovate the whole building but focused only on certain parts. The recent water penetration to the top floor and the ongoing damp issues in parts of the basement contradict his assertion that there are no ongoing issues.

40. Both Dr Malakouti and Mr Baker had a tendency to make serious but vague and unsupported allegations:

(a) In paragraph 55 of his witness statement, Dr Malakouti said, "The porters' room was the place where they would often hide or sleep instead of working." This is a serious allegation of misconduct in the workplace which should have a substantial paper trail of complaints and staff disciplinary proceedings. If true, it would be highly relevant to the Respondent's decision to change the arrangements for managing the porters. Instead, there is not a hint of it in any document or witness evidence, other than Dr Malakouti's off-hand remark.

(b) Similarly, in paragraph 56 Dr Malakouti alleged that the porters refused to comply with legitimate instructions to carry out tasks which would assist the works. Again, there is nothing elsewhere to support this allegation.

(c) Mr Baker strongly implied in his witness statement that a porter had been dismissed because he had been stealing from Mr Baker's flat. Again, this would leave a substantial paper trail which would be relevant to the dispute about changing the arrangements for managing the porters but there is nothing.

(d) Both Dr Malakouti and Mr Baker asserted, without providing any details or evidence, that Mr Paul Beck "tried to make the enfranchisement process as difficult as he could." They both speculated that he was seeking revenge after being removed as a director of the management company. Mr Beck not only denied this but expressed satisfaction at the prospect that he could pass on the management responsibility to someone else after so many years.

41. Before the Respondent acquired the building, the total service charge expenditure in 2021 was £382,889, including maintenance work of £52,327. After the Respondent's acquisition of the building, in 2022 the total service charge expenditure was £852,615.11, with £500,000 being allocated as a "reserve fund contribution" which was principally for the works.

42. In 2023, the total service charge expenditure was £740,000, with £250,000 being allocated as a "reserve fund contribution", again for the works. In 2024, the budgeted expenditure was £749.920.00, with another £250,000 for the reserve fund.

43. In June 2021 Mr Paul Beck and Mr Alex Beck were removed as directors of the management company, Hampshire House 12 Hyde Park Place Management Ltd, and replaced by Dr Malakouti and Mr Learer (another lessee who sold his lease and moved away in 2022). Mr Sharbatly joined them as a director shortly thereafter. He recommended Elicyon Ltd, a company he had previously worked with, to prepare a design for works to Hampshire House. On 8th November 2021 they invoiced the management company for £9,040.80 and on 24th February 2022 for £2,400, £9,040.80 and £1,440. (On 9th March 2023 they invoiced the Respondent for some apparently separate work costing £816.)

44. The management company informally circulated Elicyon's designs for the residents to comment on. Dr Malakouti said he recalled just under half the residents giving feedback and it was positive. He appeared to take the silence of the others as similarly positive. He said the matter was then handed over to Burlington to carry out formal consultation, although this must have been after the enfranchisement completed. Burlington intended to charge for carrying out the consultation and, based on nothing more than that, Dr Malakouti mistakenly assumed they would manage the works. Mr Ciancamerla's firm evidence was that, while Burlington sometimes took on management of major works programmes, they did not want to do so on this occasion, he said probably due to the fact that a surveyor was not involved.

45. Burlington issued a Notice of Intention pursuant to the statutory consultation requirements on 23rd March 2022 setting out the Respondent's plans "to carry out … works, so the Landlord may satisfy their repairing obligations as per the terms of the Lease." This was a prelude to works to the external entrance, lobby, stairway and basement.

46. The First Applicant claimed not to have received the Notice, although they learned of it from a neighbour. They say they did not receive a copy from the Respondent until Mr Ciancamerla provided a copy by email dated 25th January 2023. Mr Ciancamerla said in his email that the original Notice would not have been emailed because they "did not have your contact details" but would have been posted through the mailbox of Flat 2B (in his witness statement, he makes it clear that he meant it was sent by post, not hand-delivered). Mr Ciancamerla started working for Burlington in November 2022 so this information is what he gleaned from records and his understanding of the working practices used at the time. Unfortunately, those records are incomplete because the person responsible for serving the Notice has since left and First Port have no means of accessing his emails.

47. Following the Notice, Burlington began the process of looking for contractors. Dr Malakouti nominated Hine, with whom his mother had worked in 2019-2020. He persuaded some of the other lessees to join in his recommendation, although none of them appeared to have any knowledge of Hine other than what he told them. Burlington sought quotes from Danlaw (a contractor previously known to them), Hine and Elicyon. Elicyon declined to tender. Danlaw and Hine quoted £630,765.74 and £482,500 respectively, with a 10% contingency and VAT to be added.

48. However, Elicyon's design work had not included a specification of works on the basis of which tenders could be made and so the contractors quoted in their own separate ways. Their quotes were not directly comparable. There was a substantial overlap between Danlaw's works and those quoted by Philip Dowse Ltd in the second set of works consulted on later. Hine produced the quote with the lowest price for the first set of works but Mr Ellison concluded in paragraph 50 of his report that Danlaw could have produced a lower total price for the two sets of works together. Danlaw included provisional sums not in Hine's quote and also quoted for Basement Vault Tanking Works, to be carried out by a specialist sub-contractor, for which Hine did not quote – excluding that element, worth £101,821.20, would have made Danlaw cheaper than Hine.

49. There was no tender analysis and so the differences between the quotes and the possibility of achieving significant savings was never explored. It is not as if Hampshire House had not seen a tender analysis before as one was produced on 20th April 2020 when the then freeholder was considering works.

50. On 10th August 2022 Burlington sent out a Statement of Estimates notifying the lessees of the contractors' quotes. Although the Statement said the quotes could be inspected at Burlington's office, no copy of the original Hine quote has survived. It is telling that the original quote was sent by Hine not to Burlington but to Dr Malakouti. He says he passed it on to Burlington but there is no record of this.

51. The only quote included in the papers before the Tribunal is dated 14th October 2022, two months after the Statement, apparently produced by over-writing the original because Burlington had requested a more detailed breakdown of the work. According to Mr Ciancamerla, even that was not the end of the story as revisions were later made to the scope of the works in July and September 2023, including electrical works, smoke alarms, fire doors, the decking to the lightwell to Flats 1 and 2, and works to address damp in the basement. No explanation was proffered as to why none of these matters had been identified earlier and re-consultation was not considered, let alone carried out.

52. The Statement of Estimates also did not have the requisite summary of observations required by para 4(5)(b)(ii) of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). Mr Ciancamerla said he used a pro forma and he made a mistake due to his inexperience, even though the guidance notes included in the pro forma had given him a suitable prompt.

53. The Respondent appointed Hine to carry out the works. They did not insist on a proper or standard contract but simply acceded to Hine's terms, including payment of:

(a) a deposit of 25% of the original quote,
(b) another 25% on commencement of the works,
(c) another 25% after 10 weeks,
(d) another 15% after 20 weeks,
(e) the remaining 10% on completion, and
(f) sums for additional items upon order.

54. This meant that Hine was entitled to 50% of the original quote before achieving anything at all, 90% at 20 weeks irrespective of the progress or quality of the works, and full payment without any retention to cover snagging or incomplete works. This would be dubious on a relatively small works programme but is clearly inappropriate and highly disadvantageous to the Respondent given the size of the works and the involvement of a high-end property. Dr Malakouti, Mr Sharbatly and Mr Baker might be excused from not realising the nature of the contract due to their ignorance of such matters but it is extraordinary that neither Mr Zeid nor Mr Ciancamerla noticed it or sought to raise it given their purported expertise. In the Tribunal's opinion, it speaks to their ignorance of how major works programmes are supposed to be operated.

55. Despite Dr Malakouti's view of the state of the building, and due to the failure to have a proper survey carried out before commissioning works, damp was discovered in the basement after Hine had started work. A contractor called Preservation Treatments were brought in to carry out remedial works. The corridor to Flat 2B was originally included in their first quote dated 15th March 2023 but then specifically excluded in a second quote dated 6th April 2023. Dr Malakouti said that he was told these works could be put off because there was no damp then present in that location but there is no evidence of this – on the contrary, in an email dated 26th September 2023, Mr Alex Beck provided photos of existing damp and said Preservation Treatments had confirmed the presence of damp when they took readings on 1st March 2023. The result of the failure to do damp works in that area is that there were signs of damp there on the Tribunal's inspection.

56. According to Mr Ciancamerla, Preservation Treatments were overpaid and two of their invoices are missing – £27,532.80 was recently credited back to the Respondent and investigations are ongoing as to whether a further £5,000 should be repaid. It is not clear whether any of this was Mr Zeid's responsibility but it clearly implies poor management of the works.

57. At some point after Hine's appointment and the commencement of their work in early 2023, Dr Malakouti and Mr Sharbatly found themselves fielding questions from Hine about the works and thought it would be best to appoint a project manager as they did not have the relevant expertise and knowledge. If they had gone through a proper process and obtained expert advice from a suitable surveyor from the start, they could have avoided this.

58. Rather than the Respondent appointing their own manager, or using a surveyor, Mr Sharbatly directly employed Mr Zeid whom he had known for around 15 years in relation to projects in the Middle East. Dr Malakouti said he viewed this as an act of generosity by Mr Sharbatly but it is another indication that he did not know what he was doing. It was shortly after Mr Sharbatly had appointed Mr Zeid that Mr Ciancamerla asked whether a surveyor would be appointed. In his witness statement, Dr Malakouti said, "the directors did not believe that a further surveyor was required. We did not know what a surveyor could add at this stage, other than increased costs to the leaseholders."

59. Mr Zeid did not provide a CV but he is not a surveyor, contrary to Dr Malakouti's implication. He described himself at paragraph 5 of his witness statement,

> I have been in the construction and design field for nearly 25 years. Most of the projects that I work on are high-end residential projects. I work on projects involving design, renovation and construction and usually see a project through from start to finish. I work internationally in places such as the UK, Dubai, Saudi Arabia and Lebanon.

60. Mr Zeid was first asked by Mr Sharbatly to prepare a design proposal for works that could be carried out to Hampshire House as long ago as 2018. Also, in 2019 he attended a meeting between the then freeholder and Mr Sharbatly, Dr Malakouti and others to discuss the works the freeholder was considering at the time. However, he had no further involvement until appointed as project manager in 2022.

61. Mr Zeid said his contact initially included Dr Malakouti but most of the time he spoke to Mr Sharbatly, not least because his contract (verbal, not written) was with him, not with the Respondent or Burlington. Mr Sharbatly told Mr Zeid "to look after the project because he did not have the time that was required to supervise everything." He agreed with "Sheikh Mohammed" that his role would be delivering the design, managing and supervising the contractors and managing the quality of the works. He said this meant that he would tell the contractors if he was not happy with how they had done something and would get them to redo it. It is not clear why he should have such power or how he would exercise it as he and the contractors worked for different people and there was no specification against which to measure the contractors' work. He said he reviewed Hine's scope of works and costing, as well as Elicyon's original design proposal, but he does not appear to have reviewed the contract terms, including as to payment – he certainly never raised any concerns about them.

62. Mr Zeid initially took it upon himself to appoint Philip Dowse Ltd on 25th April 2023 as contractor for further works not covered by Hine. As referred to above, Mr Ciancamerla had to tell him about the need to comply with the statutory consultation requirements. A payment already made to Philip Dowse Ltd had to be credited back.

63. Accordingly, Burlington served a second Notice of Intention pursuant to the statutory consultation requirements on 3rd July 2023 for works "related to but … not included in the current Internal Decoration Project.

- Decorative lighting & electrical fittings
- Furniture & wall art
- Joinery & marble flooring"

64. The Notice again said that they considered it necessary to carry out the works so the Respondent may satisfy their repairing obligations as per the terms of the Lease. However, again, there was no specification.

65. At around this time, at Mrs Midha's request, Mr Ciancamerla visited her to discuss the works. Mr Ciancamerla stated at paragraph 56 of his witness statement, "I believe that Mrs Midha may have thought that the figure in the first section 20 correspondence was going to be the full cost of the project. It is a little naive considering the grandness of the Building and I do not think that anyone could ever think that it would realistically cost this little." This is an extraordinary statement. The cost depends on exactly what is being done, not the grandness of the building. It is also difficult to see why someone with no expertise in the subject should be able to predict the scope of works or the cost. None of Mr Zeid, Mr Ciancamerla, Dr Malakouti, Mr Sharbatly or Mr Baker managed to identify how to manage the works or what should be in scope in the 4 years from 2018 to 2022, instead essentially making it up as they went along.

66. Burlington obtained two quotes, for £638,800.76 from Philip Dowse Ltd and £652,662 from Butler's of Leicester. They sent out the Statement of Estimates on 4th August 2023. Again, due to the lack of a specification, the quotes were not directly comparable.

67. On this occasion, not only was there no proper contract, there was no written contract at all. According to Mr Ciancamerla, Philip Dowse Ltd regarded their quote as the contract, subject to a discussion with Mr Zeid about payment terms.

68. According to Mr Zeid, when he received invoices from the contractors, he would pass them to Burlington for payment. Until it reached the stage of using the contingency, Hine did not provide a breakdown of what they had done so far at each stage of payment. Mr Zeid claimed that he checked that the invoices lined up with what had been agreed as part of his management of the budget but, of course, he had no specification against which to measure the delivery of the works. When the contractors threatened to stop working due to non-payment, Mr Zeid saw his role as simply chasing Burlington to make payments.

69. Mr Zeid sought to justify the works and their cost based on his own experience. The first problem with this is that he was not proffered as one of the expert witnesses and the Respondent had no permission to use him as such. Further, his premises were faulty. He stated that, "when you carry out a full renovation to a building, you generally have to replace most things." The fact is that the works did not constitute a "full renovation". While such a description might have been fitting for the works to the lobby and parts of the basement, it is not appropriate in relation to the rest of the building.

70. The works took much longer than intended, from February 2023 to August 2025. The Respondent put forward a number of matters which they said explained the delay:

(a) It was asserted that the failure of the Applicants to pay their service charges in full left the Respondent with insufficient funds, resulting in delayed and part-payment of invoices and Mr Sharbatly having to tide the Respondent over with interest-free loans. However, the main problem here was always the form, or lack, of proper contracts. Proper contracts would have provided for staged payments, each dependent on the manager finding that the relevant stage of the works had been completed to their satisfaction, and for dispute resolution procedures. Instead, the arrangements were that the contractors should be paid on their terms and on demand, leaving the Respondent and Mr Zeid with no control. According to Mr Ciancamerla's email dated 28th November 2023, by that time Hine had already been paid around 75% and Philip Dowse Ltd around 40% of their respective contract sums. Due to the Respondent's failures of management, there is simply no measure by which it can be determined that the contractors' claims for payment or withdrawal of labour were justified at the time.

(b) Rising damp allegedly delayed works to the corridor to Flat 2B. However, the damp should already have been dealt with if works had been addressed in the right order. Moreover, this couldn't and wouldn't have prevented works being carried out anywhere else in the building – the same could be said about some drainage works mentioned by Mr Ellison (paragraph 97 of his report). As Mr Ellison said (at paragraph 100), "A competent project manager would be able to make these decisions to progress with the works and avoid delays."

(c) Similarly, damp on the stairwell could and should have been dealt with by considering works to the exterior envelope of the building before trying to decorate the interior.

(d) Mr Zeid said all the doors in the basement had to be replaced by fire-rated doors to comply with the law. He did not specify what law he was talking about. Any properly-run programme of works would have identified such a need and included it in the specification of works from the start.

(e) Another lessee, Mr Brown (who has since moved out), had been using the cupboard at the end of the corridor, which is now the porters' new room, to store wine and delayed in giving back possession to the Respondent but, like the rising damp to the same area, this should not have prevented work continuing to other parts of the building. Moreover Mr Hine's document "Timeline Key Dates" suggests he completed his work to this room on 2nd March 2023.

71. There are other matters which more realistically explain at least some of the delay:

(a) Again according to Mr Hine's document "Timeline Key Dates", Mr Hine himself did not think his work constituted a "renovation" until after Mr Zeid had requested that he "make all areas painted, smooth and not textured", contrary to previous instructions, on 28th April 2023, 2½ months after he had started work. This suggests a lack of alignment between the contractor on the one hand and both the client and the manager on the other, consistent with the lack of a proper works specification and the poor management of the project already considered.

(b) Mr Zeid's error in relation to consulting on the second set of works unnecessarily delayed progress.

(c) Colour schemes and samples were not agreed prior to the start on site.

(d) There were delays to decoration as Hine and Philip Dowse Ltd were working in the same space.

(e) In an email dated 26th July 2023, Mr Ciancamerla queried why work had not re-started since a meeting on 23rd June 2023.

(f) In February 2024 Hine had to suspend activity due to the intervention of the HSE requesting an asbestos survey.

(g) There were specification changes during the works, including with the Rako control system in the basement requiring new circuits and to the basement lounge.

72. Hine and Philip Dowse Ltd did not actually complete their work. Hine refused to construct the path and canopy for the courtyard access to Flats 2 and 2A on the grounds that Burlington wasn't paying them. Mr Zeid instructed London Glass and Glazing Ltd to complete the work and said he took the money off Hine's payments to pay for it.

73. Mr Philip Dowse, the principal of Philip Dowse Ltd, became ill so Mr Zeid appointed Britannia Building Construction and Services Ltd to complete his work. It is not clear whether Philip Dowse Ltd had already been paid for some

of the work he ended up not doing or whether the money can be recovered. It was alleged during the hearing that Philip Dowse Ltd is now in liquidation so that money could not be recovered in any event but the Respondent was unaware whether this was true or not.

Expert Evidence

74. The Second to Fifth Applicants and the Respondent each instructed quantity surveyors to assess:

(a) The pre-qualification and tender process;

(b) The form of contract for such works;

(c) The management of the contract;

(d) The reasonable cost for the works;

(e) How long such works should take;

(f) The condition of the building after the works that have taken place.

75. Mr Ellison for the Applicants and Mr McKenny for the Respondent provided a Joint Statement setting out the matters on which they agree:

(a) An insufficient tender process took place for both Hine and Philip Dowse Ltd, including a failure to undertake due diligence in the pre-tender stage or to conduct a tender analysis.

(b) The contracts for Hine and Philip Dowse Ltd were insufficient and lacking in proper detail for the works required. (In particular, Mr Ellison noted a lack of provision in Hine’s contract for a defects liability period, insurance, and dispute resolution.)

(c) The payment terms in each contract were irregular and not standard practice. (Mr McKenny stated that “The processes carried out after contract appear to be lacking with regards to payment and change control. This means that it is difficult to determine what has been paid for and if it should have been paid for.”)

(d) The size and complexity of the London Glass and Glazing Ltd and Britannia Building Construction and Services Ltd contracts would not lead to the requirement for a formal contract being in place but it would be expected that alternative quotes would have been obtained.

(e) The management of the works contracts and contractors was not carried out well, with limited documentation provided.

(f) Philip Dowse Ltd were paid £559,376.16 but £25,570 of that is unaccounted for.

(g) 8-12 months is a reasonable time for the duration of the project. (It took over 2 years and is arguably still not complete).

(h) Elements of the works have been designed and constructed to a very high standard, particularly in the entrance lobby and basement lounge, but other areas of the site have been constructed to a lesser quality.

(i) There are numerous areas of the building that require further works:

   a. Paint to stair stringers and decoration required.

b. Plaster repair and decoration not completed to staircase walls.
c. Plaster repair and decoration not completed to powder room.
d. Cracks to walls and ceilings not repaired.
e. Masking tape remaining on areas decorated and paint marks not cleaned to apartment doors.
f. Window boards unfinished.
g. The powder room mirror detailed in the specification has not been installed.

(j) The areas that require further works may be as a result of defective works by the contractors but the experts were unable to confirm this without further information that demonstrates the additional work is a direct responsibility of the contractors.

(k) Areas of the building have been constructed which do not align with the design.

(l) Neither expert was able to access the lightwell outside Flats 1 and 2 so they could not comment on it.

76. It is notable that Mr Hine, in an email dated 10th April 2025, stated that Hine's work had been completed, including all the snagging raised by Mr Zeid, and he wanted his final payment. Mr Zeid conceded that it may not be possible to get Hine back to address the matters identified by the experts in sub-paragraph (i) above.

77. Mr Ellison and Mr McKenny took differing approaches to the issue of the reasonable cost for the works which resulted in different answers. That issue is considered later in this decision. The Tribunal accepts the agreed matters in deference to the surveyors' expertise and because they are consistent with the Tribunal's own observations and findings.

78. Further, the Tribunal agrees with other findings of Mr Ellison not included in the Joint Statement:

26. This project has a value of over £1.1 million (exclusive of VAT) for internal fit-out works and the installation of loose furniture. While the works do not appear to be complex in nature, due to the standard of finish, value of materials and to the requirement to work in the common space of an occupied building, I would expect a Quantity Surveyor and Project Manager to be appointed as part of the Client's team to procure and manage the contracted works.

27/30 Elicyon and Mr Zeid would be expected to operate under a professional services contract setting out the scope of their work.

33. Mr Zeid, as the Project Manager, should have been employed by the Respondent rather than by a third party.

34/35 The Project Manager should have had experience in and qualifications for the delivery of similar project types.

42. At least 4 contractors should have been invited to tender for each of the two sets of works, rather than 2.

79. Mr Ranson accused Mr Ellison of straying from his role as an independent expert into acting as advocate for his clients. The Tribunal has no hesitation in

rejecting that. The Tribunal found him to be an honest and straightforward witness. His findings overwhelmingly accorded with the rest of the evidence, including that of Mr McKenny, and the Tribunal's own observations and knowledge as an expert tribunal. The nearest either expert came to exhibiting possible bias was when Mr McKenny made the leap from his strident and lengthy criticism of the management of the works to saying that, nevertheless, the total expenditure was fine due to its proximity to the original quotes.

Tribunal's findings

80. In summary, the Tribunal finds that:

(a) Before the Respondent took over management of the building, it was mostly in reasonable condition but in need of the usual cyclical exterior and interior maintenance and redecoration.

(b) From before the Respondent took over management of the building, Dr Malakouti, who has been the principal person behind the enfranchisement, the Respondent and the disputed works, has been consistent in his desire to see the areas of the building he uses, namely the main entrance and parts of the basement, brought up to an extremely high standard.

(c) Dr Malakouti has been successful in his objective while the Respondent has ignored the exterior, the structure and the main services, save where its state of repair directly impacted on the works Dr Malakouti wanted to have carried out, and failed to carry out works in interior parts outside Dr Malakouti's priority areas to anything like the same standard, if at all.

(d) Although it can be said that the consultation process complied with statutory requirements, the management of the works programme was otherwise distinctly amateurish which was totally inappropriate for the high-value property and works. No surveyor was appointed to manage the project. There was no specification of works. Tendering was defective. Contracts, where they existed, were non-standard, failing to include essential terms and including disadvantageous payment terms. The project manager who was appointed came in late and lacked essential knowledge. The works took more than twice as long to complete as they should have done.

(e) Further, the Respondent has carried out works which went beyond its obligations or powers and incurred expenditure for which it had no power to include within the service charges.

(f) Large parts of the expenditure which the Respondent has purported to meet from the reserve fund were not reasonable and cannot give rise to payable service charges.

Works to Flats 2 and 3

81. At the start of 2022, Dr Malakouti instructed Hine to refurbish his flat. The works started in March 2022 but were paused, apparently due to damp issues. The work was not completed until May 2024.

82. In July 2023, there was a leak in Mrs Khalil-Nadji's flat, number 3, and a claim was made on the buildings insurance. Hine won the tender and carried out the remedial works.

83. The Applicants had suspicions that Hine's staff were working on both the major works and the other two projects inside the flats at the same time, possibly leading to service charge funds subsidising the works to the flats. However, there is no evidence that service charge funds were misused in this way. Mr Tony Hine, the principal of Hine, stated in an email dated 15th April 2025 that he did not charge anything to the Respondent for works inside Flats 2 and 3 but also that, "It helped having another project there as when the communal work was delayed it meant that the labour on site could remain there until issues were resolved."

Validity of section 20 consultation notice

84. The First Applicant challenges the validity of the Respondent's consultation for the works programme. Paragraph 1 of Part 2 of Schedule 4 of the Consultation Regulations required the Respondent to give the First Applicant notice in writing of their intention to carry out the works. The First Applicant says they did not receive the Notice of Intention purportedly sent to the lessees on 23rd March 2022.

85. The Respondent does not have direct evidence of Burlington's attempt to give the Notice to the First Applicant because they have no access to the relevant employee's emails. They rely instead on:

(a) The fact that there was such a Notice.
(b) Burlington had a standard mail merge procedure for sending out such notices to all lessees.
(c) There was no reason to think that the standard procedure had failed in this instance.
(d) No other lessee complained to the Tribunal that they had not received the Notice.

86. Mr Paul Beck said that he did not receive the Notice. He did not seek to suggest that there were any problems with the delivery of post at Hampshire House or any other reason why he might not have received it.

87. Mr Fain submitted that the lack of direct evidence of service means that the Respondent has failed to establish it. However, the Tribunal must look at all the available evidence, not just one aspect. It is common that the Tribunal has less than perfect evidence to work with and inferences may be made from the available evidence to decide what is likely on the balance of probabilities.

88. In the circumstances, the Tribunal is satisfied that it is more likely than not that the Notice was given. Therefore, this submission is rejected.

89. The First Applicant also asserted that the Statement of Estimates was invalid due to the fact that Hine's original estimate no longer exists but there is no reason to think it wasn't available for inspection at the time.

Porters' Room/Gym

90. There is a room in the basement which was previously used by the porters as a room where they could rest or take refreshment. There was a kitchenette, a shower and a partitioned area with a mattress, allowing for overnight stays in the event of transport strikes or such like. There were lockers to store personal belongings. It was connected to the CCTV so that porters could continue to monitor the building when there. It is now a small gym, as described above in the Tribunal's observations on inspection. The new porter's room at the end of the corridor is substantially smaller, with far fewer facilities. Amongst other things, washing up has to be done in the powder room and the porters have nowhere to change clothes.

91. There is nothing in the leases about a gym, nor has the Respondent proposed any amendments to the leases to accommodate it. The room is part of the common parts, in the Respondent's ownership, and so it is arguable that the Respondent was entitled to change its use. However, there is nothing to justify putting the cost of converting it to a gym on the service charge. The lessees and residents have no right to use it, even assuming they are interested in doing so. Mr Ciancamerla said that the current property manager, Mr Charlie Howdle, is in the process of drawing up a policy for the use of the gym but such a policy would not be enforceable. There is no basis for a compulsory service charge for a facility the availability of which is entirely at the Respondent's discretion.

92. The Respondent asserted that Mr Sharbatly has paid for the gym equipment but that does not answer the Applicants' objections:

(a) Firstly, there is no evidence he has paid for them.

(b) Secondly, there is no evidence as to who now owns the gym equipment.

(c) Thirdly, there is no indication as to who would pay for the repair, maintenance or replacement of the equipment.

(d) Fourthly, there is no indication as to whether the equipment comes within the existing buildings insurance or is otherwise insured, either for damage to the equipment or injury to users.

(e) Fifthly, while the gym has clearly not been cleaned for a while, its use would require regular cleaning beyond what would be required for an ordinary communal space and there is no indication what cleaning service would be used, how much it would cost or who would pay for it.

93. The fact that Dr Malakouti, Mr Sharbatly, Mr Ciancamerla and Mr Zeid had not anticipated any of these rather obvious issues is another indication that they did not know what they were doing.

94. Mr Ciancamerla asserted that the old porters' room was in poor condition and would have required extensive renovation anyway. Again, there is no evidence of this and the Applicants' witnesses asserted otherwise. Further, the work was planned from the beginning not for the purposes of renovation but to convert the room to a gym. No basis has been presented for separating out items of supposed repair from the preparation for a gym. The Tribunal concludes that

any part of the costs of the works to the porters' room is neither reasonable nor payable.

Powder Room/Basement WC

95. The maintenance of the WC is clearly within the lease, even if the lessees and residents don't use it themselves. However, there is no evidence that it was in need of any significant repair, let alone refurbishment to a high standard. Nothing has been put forward to justify why it should have, for the first time, a marble floor. Mr Ellison estimated the cost of the works to the WC as £10,000 plus VAT and concluded that this was unreasonable.

96. Dr Malakouti asserted that the WC had been in a poor state but did not explain what this assertion was based on and the Tribunal is not satisfied that much weight can be placed on his descriptions of the condition of the building. There is currently disrepair in the form of signs of damp penetration but nothing appears to have been done or to be in train to address that.

97. Perhaps if the Respondent had arranged for a surveyor to carry out a proper assessment of the building and to draw up a proper specification of works, there might have been a justification for carrying out works to the basement WC. However, there is no such evidence. Instead, all the evidence points to the works being carried out to meet Dr Malakouti's requirements for the standard of the building which he wants to see, irrespective of what needs to be done to comply with the repairing covenants. In the circumstances, the Tribunal concludes that the expenditure on the basement WC was not reasonably incurred.

Basement corridor/lounge

98. The Applicants accepted that the corridor area outside Flats 3 and 4 needed re-decoration and a new carpet. Of course, the Respondent had a degree of discretion as to how this could be achieved but that discretion is limited in that it must be exercised in good faith and rationally (*Braganza v BP Shipping Ltd* [2015] UKSC 1; [2015] 1WLR 1661). The works have created an area of such high luxury that something different has been created, both before and after the provision of the furniture and art works is taken into account.

99. The standard of the new fittings in the basement lounge may be measured by the fact that the 4 chandeliers there cost £14,260, more than the total cost of £11,500 for the chandeliers and other lighting in the lobby.

100. The Respondent has created a communal lounge where there was none before. It is technically available to all lessees and residents but it is not remotely credible that any of them would want to go to a basement area outside someone else's flats, with no access to any food or water other than what they bring, to use it. Most of the lessees and residents have large, luxurious flats of their own and all of them have access to the nearby facilities of the restaurants, cafes, pubs and other meeting places of Connaught Village, the Edgware Road and central London.

101. Dr Malakouti and his sister have advertised on AirBnB with photos of the refurbished lobby and the basement WC and have hosted AirBnB guests in Flat

2 (when Dr Malakouti is out of the country) and in Flat 4. The area behind the door labelled 3A could also be used for AirBnB – the Respondent pointed out that the only clothes-washing facilities for Flat 3 are in that area but this doesn't seem to the Tribunal to be an insuperable obstacle. The Applicants accused the Respondent of creating the lounge area, refurbishing the basement WC and creating the gym specifically in order to enhance the potential for renting the flats through AirBnB. Dr Malakouti vigorously denied the allegation but the Tribunal shares the Applicants' puzzlement as to what possible motive there would otherwise have been for such well-appointed facilities in that location.

102. The Respondent defended itself by arguing that Mrs Khalil-Nadji was opposed to such a communal space outside her flats. It is puzzling that Dr Malakouti and Mr Ciancamerla said this but not Mrs Khalil-Nadji herself. In any event, it does not help the Respondent. Instead, it just increases the Tribunal's bafflement as to why the lounge was created unless it was for AirBnB guests. Even if other residents were to make use of the lounge, it would only take one occasion of Mrs Khalil-Nadji coming out and politely making clear her opposition to their use of the space for those residents to conclude that it is not worth the bother, given the plentiful alternative and more convenient places to go.

103. Again, the assertion that Mr Sharbatly has paid for the art and furnishings does not answer the Applicants' objections. Again, there is no evidence he has paid for them or as to who now owns them, and no indication as to who would pay for their repair, maintenance or replacement or whether they are insured.

104. The Tribunal concludes that the expenditure on the basement corridor/lounge beyond reasonable re-decoration and re-carpeting would not have been reasonably incurred and is, therefore, not payable.

Courtyard access to Flats 2 and 2A

105. As described in the Tribunal's inspection above, a path with uplighting and a canopy has been constructed by London Glass and Glazing Ltd for the short walk from the door out of the main part of the building, across a courtyard, to the door into the communal corridor for access to Flats 2 and 2A. It may well represent a slight increase in comfort on a rainy day or at night for residents of Flats 2 and 2A and their visitors but the building has managed without it from the date of its construction until the works. The Respondent sought to justify it on the grounds that it would prevent mud and damp entering the building but:

(a) There is no source of mud in the paved courtyard; and
(b) The canopy is not enclosed to the sides and so would have minimal impact in preventing water entering the building.

106. There is no justification within the leases why the service charge payers in the building should foot the bill. The construction of the path and canopy does not constitute maintenance and is not claimed to remediate any disrepair. Again, the expenditure has not been reasonably incurred for the purposes of the service charges.

107. The canopy had been included in Hine's contract. It is not clear if there has been a duplication of payment. Mr Ellison said that Hine's allowance of £12,000 is

more what he would have expected than London Glass and Glazing's £17,500 but, in any event, neither should be included in the service charges.

Lightwell outside Flats 1 and 2

108. As described above, there is a lightwell outside Flats 1 and 2. It is clearly a communal area, despite being accessible only from two flats, because it provides access to some communal downpipes. Therefore, it needs to be maintained sufficiently so that access is safe and available for inspection or maintenance. Photos indicate that the existing decking was in a poor state and works of repair were necessary to bring it up to a safe and usable standard.

109. However, there is no justification within the leases for turning the space into a high specification social area at the expense of the other lessees in the building through the service charge.

Lobby doors

110. The Applicants complained that the second set of doors to the lobby should not have been removed. They were not out of repair and the Applicants asserted that their removal has resulted in a noticeable reduction in insulation to the lobby. However, Mr Ellison concluded that there would be a minimal impact, particularly given the installation of underfloor heating. He also said the impact on the security of the building would be minimal. He did not make any reduction in the cost of the works to take account of this and neither does the Tribunal.

External steps

111. The previous red external steps were replaced by marble steps with in-built-lighting. It was alleged that the former had cracks in them but the photo provided to Mr Ellison did not reveal any disrepair. Again, the Tribunal is not satisfied, on the evidence, that the cost of this work was reasonably incurred.

Lift

112. Philip Dowse Ltd quoted £6,800 to fit the lift out in black American walnut and mirrors. The Applicants argued that the cost of the improvements to the lift were not to a reasonable standard nor reasonably incurred because they have resulted in a lift with narrower internal dimensions that mean it is no longer possible for access for those in a wheelchair. It was alleged that Mr Brown moved out in part because he could no longer use the lift to get in his wheelchair from his basement flat to the ground floor.

113. The problem again for the Respondent is that there is no evidence that the lift was in disrepair or needed any work done whereas there is plenty of evidence that much of the work was done to improve and upgrade the aesthetics. The Tribunal accepts that the inner dimensions of the lift are smaller than before. This requires justification but there has been none. Therefore, the cost of the works to the lift is disallowed.

Carpet

114. The Applicants argued that, although they accepted that a new carpet was needed, the cost of the carpet was not reasonable because (1) the cost in the Philip Dowse Ltd contract (£70,000 plus VAT) was provisional, (2) Mr Ellison assessed the actual cost to be £46,950 plus VAT, and (3) it is not suitable for use in communal areas and is already showing signs of wear and will need to be replaced.

115. The provenance and duration of the markings on the carpet are not clear. The Tribunal cannot be satisfied that they indicate by themselves that the carpet is inappropriate for its location. However, Mr Ellison's evidence is clearly preferable to a provisional sum and the Tribunal accepts it.

Cost of Works

116. Mr Ciancamerla summarised the Respondent's case when he stated at paragraph 30 of his witness statement, "The works project that was carried out at the Building was the renovation of the Building that needed to be done to bring the Building back into the condition it was once in." That is plainly not true. The building had never had a gym, a marbled WC, a basement lounge (whether high specification or not), or a courtyard canopy. The basement still has damp problems which include a corridor specifically excluded from planned damp remedial works. While removing one set of doors from the lobby might be justified, it was clearly not a matter of putting the building into the same condition it was once in.

117. The Applicants' expert, Mr Ellison, reported that the total cost of the whole project as per invoices incurred is £1,123,621.63, comprising the following payments to the following contractors (Mr McKenny omitted Elicyon):

- Elicyon – £18,948.00 +VAT
- Hine – £511,345.50 +VAT
- Philip Dowse Ltd – £559,376.13 +VAT
- London Glazing – £17,500.00 +VAT
- Britannia – £35,400.00 +VAT

118. It is noteworthy that the Hine sum is significantly higher than the original quote due to additions to scope after the consultation and contractor appointment.

119. At paragraph 87 of his report, Mr Ellison stated that the cost per m^2 for the Building at £3,684.01/m2 can be considered high against the upper quartiles of £3,178.00/m^2 for flats and £1,895.00/m^2 for hotels and assumes a complete and high standard of works, which is not visible in some areas of the buildings such as the upper floor, staircase wall, the staircase window boards, the stair soffit or the stair stringers.

120. The Respondent's expert, Mr McKenny, concluded in his original report that the Works Project costs were reasonable on the basis that the actual costs only varied from the estimates by £688 (see paragraph 34). In his supplementary report, he acknowledged that he needed to amend his original estimate. He added in sums for decoration of the walls from the first to sixth floors, rear lightwell paving and bike rack installation. He excluded the porter's room and

"the north block" on the grounds that there was no corresponding design information. These adjustments resulted in Mr McKenny's estimate of the value of the works being £40,288 higher than the actual cost incurred.

121. The Tribunal is not satisfied that Mr McKenny's reasoning is a sound basis for considering reasonableness which should take into account all relevant factors, including those considered by Mr Ellison. In particular, Mr McKenny's own criticisms of the process of tendering, contracting for and supervising the works establish that the estimates are unreliable as a point of comparison, quite apart from the fact that the estimates contained provisional sums and were subject to significant adjustments. Mr McKenny's adjustments just build error upon error and do not assist.

122. Mr McKenny's report is also more limited than Mr Ellison's (see paragraphs 19-22 of Mr McKenny's report), including the fact that he had an abbreviated period in which to work. His supplementary report, at best, only partially compensated.

123. Mr Ellison priced the Hine contract as being worth £413,377.40 plus VAT, using his own experience of the value of such works. He was criticised for not using BCIS rates but the Tribunal is satisfied that his methodology is adequate. He then made adjustments for works he observed to be incomplete or defective, removed duplicated items and took account of the items challenged by the Applicants, reducing the figure to £205,896 plus VAT. This is consistent with the Tribunal's findings except that something should be allowed for the repair of the decking outside Flats 1 and 2. The Tribunal has not been provided with a figure for this but, doing the best it can, the cost of the entire works to that area is reduced from £17,304 to £10,000.

124. In turn, this means that Mr Ellison's adjusted figure for Hine's work is increased to £215,896 plus VAT.

125. Mr Ellison found the pricing of the Philip Dowse Ltd contract to be more difficult as he did not regard himself as expert on the value of the high-end furnishings used. He valued the work done at £315,918.95 but with a substantial caveat in relation to most items. The Applicants claim that further deductions should be made for:

(a) Basement lounge panelling and floor	£69,462.20
(b) Lobby panelling	£45,956.25
(c) External stone steps	£8,750
(d) Basement WC/powder room	£6,120
(e) Lift	£6,800
(f) Basement lounge lighting	£2,265 and £5,290
(g) Basement WC/powder room lighting	£701.50
(h) External entrance lighting	£8,912.50
(i) Lobby and stairwell lighting	£2,314.37
(j) Artwork in lobby and basement lounge	£25,000
(k) Blinds for gym	£1,350
(l) Blinds for basement lounge	£1,350
(m) Furnishings other than in the lobby	£49,418

(n) Lobby chairs £6,300
(o) Porters' chair £450

126. The Applicants challenge these costs for a number of reasons:

(a) The basement lounge, gym, WC and lift works have already been considered above.
(b) There is no evidence that existing provision, e.g. wall panelling, mirrors, steps, lift interior, lighting, blinds, etc., was in disrepair.
(c) The specification for the work was unnecessarily and irrationally high, e.g. the wood flooring used in the basement lounge.
(d) The lighting is now dim and, therefore, of lower quality than what was present previously.
(e) The artwork does not come within the definition of furnishing in the lease.
(f) Blinds are not needed to the gym or, indeed, any basement communal windows.
(g) In relation to the porters' chair, the Applicants pointed out that it was not present when the Tribunal inspected.

127. Again, the Respondent lacks the evidence to counter these points. For reasons already given, the Tribunal is not satisfied it can rely on the description of the condition of the property given by the Respondent's witnesses. Therefore, the Tribunal accepts the Applicants' proposed deductions.

128. By the Applicants' calculation, they accept the total for Philip Dowse Ltd as £185,191.82, giving a total for the whole works of £401,087.82.

129. The Applicants also argued that this total should be reduced by further 10% due to the delay in the completion of the works. The delays could have resulted in increased costs due to a rise in the cost of materials due to inflation but there is no evidence that this happened in this instance. However, the general poor standard of the management of this project, of which the delay is just one reflection, leads the Tribunal to the conclusion that a reduction of 10% is justified.

130. The reduced figure is £360,979.04 (£401,087.82 x 90%). This is the sum which the Tribunal has concluded is the cost of those items which were reasonably incurred and within the terms of the lease.

Staff costs

131. The Respondent used to rely on Burlington to manage their staff but decided to retain Abbatt Dual Management Ltd ("Abbatt") to do so instead. They gave a number of reasons:

(a) Providing the Respondent with some protection from liability for HR matters, including dealing properly with grievances, complaints, Employment Tribunal matters and other potentially complex employment issues;

(b) Ensuring that proper contracts, handbooks and other materials were in place – which historically they had not been – thereby creating a more stable and efficient employment operation for staff at the building for the benefit of a range of people including the Respondent, its members and residents in the building;

(c) Obtaining access to Abbatt's dedicated account management, ongoing HR advice, rota planning, and operational support, thereby allowing for more efficient management of staff;

(d) Reducing staff recruitment costs on the basis that Abbatt offer cost-free recruitment; and

(e) Obtaining access to the 'Abbatt Academy' for professional development, well-being support through site visits, an employee assistance programme and management support.

132. The Applicants argued that Abbatt's fees were not reasonably incurred:

(a) The porters had previously been employed (without complaint) by the since dissolved management company with the assistance of the then managing agents.

(b) The Respondent has large and capable managing agents who are plainly familiar with the employment of staff in residential blocks of flats. By also employing Abbatt there is accordingly a duplication of cost.

(c) The major selling point of the Abbatt model (if it works, which it may not) is that the landlord can employ the staff thus (it is thought) avoiding VAT on the staff costs in the service charge but Abbatt do everything an employer would usually do. The downside is that Abbatt charge for the service.

(d) There is no point to Abbatt in the present case and the result is simply to put the staff costs up; the resultant increased cost is not reasonably incurred.

133. The fact that there is an additional cost arising from their fees means that using Abbatt has to be justified. The burden is on the Respondent to provide that justification. The Respondent's reasons set out above appear rational and provide a potential justification. However, there is no evidence that any of these benefits exist.

134. The Respondent's first point relies on contrasting itself, which has no resources of its own to carry out HR tasks, and Abbatt. However, what needs explaining is not why the Respondent needs help but why Burlington and First Port cannot do the job. Mr Ciancamerla said Burlington and First Port manage HR systems where they are simple. However, he did not explain what he means by "simple" or what it was about Hampshire House that supposedly took it out of that bracket. The Tribunal is unable to identify anything which would make staff management at Hampshire House particularly difficult or complex.

135. It is not clear whether he meant this as an example of the complexity but Mr Ciancamerla asserted that "some of the porters "were not doing their jobs properly or providing a good level of service". Again, if this were true, there would be a paper trail and Mr Ciancamerla would be able to provide details rather than make sweeping generalisations. As far as the Applicants are aware, the porters were doing a good job and there were no complaints. If the Respondent wanted to establish otherwise, they needed the evidence.

136. If Burlington or First Port were themselves doing a poor job of dealing with the porters' poor service, that should also have created a paper trail of complaints

and discussions between the Respondent and their agents about how to address it. Again, there was no evidence of this.

137. According to Mr Ciancamerla, Burlington recommended that Abbatt were brought in to manage the HR work at Hampshire House as part of a programme to employ more permanent staff and alter shift patterns. However, although Abbatt have been in place for some time, this programme has been put on hold. Mr Ciancamerla said this was because of the current Tribunal dispute. However, the Tribunal does not follow this reasoning. New shift patterns and permanent staff instead of temporary staff should not incur additional costs and, in any event, the Applicants are not challenging such matters.

138. The documents before the Tribunal did not include a contract between the Respondent and Abbatt or any other document showing what services Abbatt offer. The bundle did include two "joint employment agreements" for the Respondent and Abbatt to employ the staff jointly and letters written under the transfer of undertakings ("TUPE") regulations for the purpose of transferring staff. However, no justification was given as to why Abbatt should become a "joint employer". None of the Respondent's alleged reasons for using Abbatt require such an arrangement. The Respondent firmly denied the Applicants' suggestion that using Abbatt had any tax advantages.

139. All parties implied that there has been a turnover of staff during the period in dispute. However, there is no evidence of any recruitment activity by Abbatt. Further, there is no evidence of any staff training, well-being support, site visits, the employee assistance programme, or indeed of anything Abbatt supposedly provide.

140. It is not simply the change of staff management from Burlington and First Port to Abbatt which needs to be justified but the cost incurred. As far as the Respondent's evidence is concerned, the benefits which may offset Abbatt's fees are entirely theoretical. On that basis, the Tribunal is not satisfied that they have been reasonably incurred.

Legal costs

141. According to the accounts, the Respondent spent the following on legal and professional fees:

- 2022 £7,079.72
- 2023 £7,176.32
- 2024 £51,913

142. Mr Ciancamerla stated at paragraph 21 of his witness statement that he would charge any legal fees either to a lessee or, if the fees were not specific to a particular lessee, to the service charge. He justified this by saying no-one complained. He did not read the lease or take legal advice to find out if the Respondent was entitled to charge legal fees in this way.

143. The Respondent argued that legal fees are a recoverable service charge item:

(a) Under clause 5.2.13/5(2)(n) as costs both necessary and advisable for the proper administration of the Building; and/or
(b) Under paragraph 1 of Schedule 5/the Fifth Schedule as a cost or expense reasonably and properly incurred in connection with the Building.

144. The Respondent had also asserted that there was an estoppel by convention but this argument was eschewed ahead of filing the skeleton arguments.

145. In *Arnold v Britton* [2015] UKSC 36 Lord Neuberger stated [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", ... And it does so by focussing on the meaning of the relevant words ... 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.

146. In *Thanet Lodge (Mapesbury Road) RTM Co Ltd v Mirchandani* [2024] UKUT 205 (LC) Judge Cooke reviewed the authorities on the interpretation of clauses which were argued to cover legal costs and concluded (at paragraph 28) that a clause concerned with management, or with the provision of services, does not enable the landlord to recover through the service charge its legal costs in a dispute with any of its tenants. Both Clause 5.2.13/5(2)(n) and paragraph 1 of Schedule 5/the Fifth Schedule are very similar to those considered by Judge Cooke and properly categorised as such clauses so that they cannot justify the Respondent's claim for legal costs. There is no basis on which to distinguish Judge Cooke's reasoning.

147. Clause 3.9/3(9) allows the recovery of costs in contemplation of forfeiture but no evidence was presented that the Respondent is contemplating forfeiture or even yet chasing the Applicants for payment. Mr Ranson in his skeleton argument suggested that the Applicants did not appear to be contesting any sums charged under this provision but the Tribunal is not aware that there have been any such sums to date.

148. For these reasons, the Tribunal is satisfied that the Applicants are not liable for the Respondent's legal costs under their leases.

Calculation of sums owed

149. The Tribunal does not have the material on which to make a precise calculation of the Applicants' liabilities. If the parties cannot agree on the mathematics of the outcome of this decision, they are at liberty to make a further application.

Costs of proceedings

150. The Applicants sought orders under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to one or more of the Applicants.

151. Representations on costs issues are best made in the light of the Tribunal's substantive decision, now set out above. Therefore, the Tribunal has given directions for both parties to make representations in writing, following which a further determination will be made on the papers, without a hearing.

Name:	Judge Nicol	**Date:**	28th April 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).

Appendix 1 – Relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

(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.

Section 20C

(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 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.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 27A

(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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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