



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

Case Reference : HAV/00MR/LSC/2025/0778

Property : Flat 112, No 1 Gunwharf Quays, Portsmouth,
Hampshire, PO1 3FS

Applicant : Peter John Marchant Cawson

Representative : Mr Cawson represented himself

Respondent : Gunwharf Quays (Eastside Plaza)
Management Company Limited

Representative : Andrew Martin, of counsel

Longmores Solicitors

Type of Application : Determination of liability to pay and
reasonableness of service charges
Section 27A Landlord and Tenant Act 1985

Tribunal Member : Judge Pattni-Evans
Mr S Mason BSc FRICS

Date of Hearing and Venue : 8 June 2026 at Havant Justice Centre

Date of Decision : **19 June 2026**

DECISION

Summary of Decision

The Tribunal Determines that:

- (a) The steps taken to replace defective components and reinstate the Air Cooling System (“ACS”) were necessary and fell within the scope of the Respondent’s contractual obligations under the terms of the Lease.
- (b) There was no entitlement to opt out of the ACS under the terms of the Lease.
- (c) Absent a variation (or application to vary) the Lease, the Tribunal has no power to substitute metered charging for use of the ACS, which on the evidence was not a viable proposition anyway.
- (d) The Tribunal has no jurisdiction to limit the availability of the ACS, that the Respondent is contractually obliged to provide under the terms of the Lease.
- (e) The proportion applied to the Applicant for the purposes of the service charge demand dated 31 July 2025 is 6.67%.
- (f) The Tribunal does not infer from the length of the warranty alone that the works are defective or unreasonable.
- (g) The Respondent’s decision to proceed with the chosen works fell within the range of reasonable responses open to it and that the resulting costs were reasonably incurred.

The Tribunal gives reasons for the Decision below.

Introduction

1. This is an application by a leaseholder for a determination as to liability to pay, and the reasonableness of, a service charge demand for the year 2025, and an application under Landlord and Tenant Act 1985, section 20C and / or Paragraph 5A of Schedule 1 to the Commonhold and Leasehold Reform Act 2002.
2. The Applicant is the leaseholder of Flat 112, No 1 Gunwharf Quays, Portsmouth, Hampshire, PO1 3FS ('the Property') under a tripartite lease dated 27 November 2009 made between (1) Berkeley Homes plc as landlord (2) the Respondent as 'the Manager' and (3) the Applicant as tenant for a term of 199 years less 3 days from 29 November 2003 ("the Lease").
3. The application concerns one item from the 2025 service charge year, set out in a demand dated 31 July 2025 in the sum of £17,427.93, relating to repairs of an air-cooling system ("ACS").

Background

4. The Property is situated on the 19th floor of No. 1 Gunwharf Quays ('the Building'), which forms part of the estate known as Gunwharf Quays, Eastside Plaza. The Respondent is a resident-owned management company.
5. The Property forms part of a building of 20 flats which are served by a centralised ACS. The system includes chiller units located in a rooftop plant

room. It is common ground that over a number of years the chillers have been unreliable, frequently breaking down and requiring repair.

6. In 2021, works were carried out to extend the life of the chillers and allow time for funds to be built up for their replacement. However, the level of reserves has historically been insufficient to meet major expenditure of this kind. After Encore became the managing agent, an annual contribution of £3,000 towards a comfort cooling reserve fund was introduced, but this proved to be inadequate.
7. In 2022, one of the two chillers failed. The compressors and control boards were affected. The other chiller continued to operate but was nearing the end of its life and struggled to meet demand. It required ongoing intervention by contractors to remain operational but ultimately, repair of the failed chiller was not viable and replacement was required.
8. A Notice of Intention dated 15 September 2022 was served in respect of proposed replacement works. In December 2022, a consultation exercise was undertaken to gauge leaseholder opinion. Sixteen of the twenty leaseholders responded. Of those, ten supported repair and retention of the system, five supported decommissioning, and one indicated that they would follow the majority view. Four leaseholders did not respond.
9. The scope of the proposed works then evolved. During the tender process, contractors raised concerns about the specification which had been prepared by RM Design. In light of those concerns, which were principally

that the system had been over-engineered, and following limited and unsatisfactory responses from RM Design, a decision was taken to seek further advice.

10. On 28 June 2023, ASTER Building Services Limited, a specialist mechanical and electrical consultant, was instructed to review the existing specification. That review identified deficiencies in the original design. In particular, concerns were raised about the capacity of the existing pump and the suitability of certain components, which were considered to have contributed to the repeated failures. ASTER developed a revised specification which included changes to the system design and the introduction of balancing valves to improve the distribution of cooling.

11. Given the significance of those changes, the revised specification was subject to independent review. Martin Arnold Surveyors were instructed for that purpose. They confirmed that the revised design was appropriate and advised that there were no viable alternative solutions given the constraints of the system. In those circumstances, and in light of the change in scope, a further Notice of Intention was issued on 21 June 2024 to recommence the statutory consultation process.

12. The tender process which followed proved challenging. A number of contractors were approached, but only a small number submitted tenders. Those tenders were analysed and one was discounted on professional advice. Negotiations then took place with the remaining contractors. One

withdrew during that process, meaning that further tenders were required in order to comply with the consultation requirements.

13. A leaseholder meeting took place on 13 August 2024. A further consultation exercise was carried out in July 2025. Twelve leaseholders responded, with six in favour of repair and six in favour of decommissioning. Eight leaseholders did not respond. The Respondent also obtained legal advice in relation to decommissioning and proceeded with the repairs project. By 1 October 2025, nineteen leaseholders had paid their contributions in full. The works commenced the following month.

Lease

14. The “Air Cooling System” is defined in the Second Schedule, Part 2 as

“The air-cooling plant and equipment serving one or more of the Apartments”.

The ‘Manager’s Covenants’ provide that:

“The Manager hereby covenants with the Tenant and the Landlord that it will observe and perform... the covenants requirements and stipulations relating to the Air Cooling Service Charge in Part 3 of the Fourth Schedule hereto”.

15. In Part 3 of the Fourth Schedule, the Manager covenants to:

“Keep in good and substantial repair and condition and wherever necessary to renew replace or reinstate the Air Cooling System serving the Premises”.

16. The following provisions explain the contractual operation for the ACS framework:

The “Air Cooling Service Charge” is defined in Clause 1.1 as: *“The total of the expenses incurred in accordance with or otherwise referred to in clause 11.3 hereof”.*

Clause 11.3.1: *“The expression “Air Cooling Service Charge” shall consist of all expenses incurred by the Manager of and incidental to observing and performing the provisions of the Fourth Schedule Part 3 hereto”.*

Clause 11.3.2: sets out expressly a number of matters that the Air Cooling Service Charge *“shall include”.*

Clause 11.3.3: provides that the Manager can add items of expenditure for replacement of any installation, equipment, plant or apparatus and include such items in the calculation of the Air Cooling Service Charge and it shall be deemed to be included in the heads of expenditure or charge.

Clause 11.3.4 sets out the parties’ agreement in respect of the costs of the ACS:

“It is expressly agreed that the intention of the Landlord the Manager and the Tenant in relation to the Air Cooling Service Charge provisions is that all costs

expenses and other liabilities which are incurred by the Manager shall be the subject of reimbursement recoupment or indemnity by the tenants of the Apartments so that no residual liability for any such costs expenses or liabilities shall fall upon the Manager”.

Clause 11.3.5 provides the Respondent with a power to vary the percentage of the ACS Charge:

“If in the opinion of the Landlord or the Manager it should at any time become necessary or equitable to do so by reason of any part of the Air Cooling System ceasing to exist or for any other reason the Landlord the Manager or their surveyor shall recalculate the proportion of the relevant head or heads of the Air Cooling Service Charge payable by the Tenant either as appropriate to the remaining Apartments as benefit from use of the Air Cooling System and notify the Tenant and tenants of other Apartments accordingly and in such case as from the date of such event the new proportion notified to the Tenant in respect of the Premises shall be substituted for that referred to herein and all reference to the Air Cooling Service Charge Proportion payable by the Tenant shall be construed as reference to the new Air Cooling Service Charge Proportion as recalculated”.

17. As originally drafted, the proportion of the ACS payable by the Applicant, as set out in the Sixth Schedule was 6%.

Issues:

18. The application was made on 19 September 2025. Following a case management and dispute resolution hearing on 25 March 2026, Regional Surveyor Coupe gave directions dated 27 March 2026 which recorded as follows:

“The Applicant informed the Tribunal that the only matters remaining for determination were the reasonableness of the costs of repairing the ‘comfort cooling system’, and a decision as to whether the Applicant was entitled to opt out of using the cooling system and his subsequent liability to pay for its use, and/or the method of apportionment of the relevant costs associated with the system”.

19. Whilst the original application also included a challenge to the Surveyor’s fees of £4,320.00 plus VAT, the Applicant confirmed he no longer pursued this issue and thereby agreed that the surveyor’s costs were recoverable and reasonable under the terms of the Lease.

20. At the hearing, the Applicant advanced a new contention, namely that the works went beyond repair and amounted instead to an improvement. That issue had not been raised in his statement of case. The Tribunal nevertheless permitted the point to be argued because it arose directly from the wording used in the Respondent’s own documentary evidence, the Respondent had a fair opportunity to address it in evidence and submissions, no application for an adjournment was made, and the Tribunal was satisfied that no

procedural unfairness would result from determining it as part of this application.

21. The hearing took place at Havant Justice Centre, as directed. The Tribunal heard evidence from Mr Cawson who represented himself. The Tribunal heard evidence from Mr Richardson on behalf of the Respondent.

22. The Tribunal is grateful to the parties for attending the hearing, preparing written arguments, giving evidence and making submissions. The absence of reference to a particular document or submission should not be taken to indicate that it has not been considered. The Tribunal has focused on the issues requiring determination. In preparing these reasons, the Tribunal has had regard to the Senior President of Tribunals' Practice Direction, Reasons for Decisions, dated 4 June 2024.

Law

Approach

23. The relevant law is contained in the Landlord and Tenant Act 1985 ("LTA 1985"). Under section 27A(1), an application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if so, as to the person by whom it is payable, the person to whom it is payable, the amount payable, the date by or at which it is payable, and the manner in which it is payable.

24. In an application under section 27A, the Tribunal's task is to determine, on the evidence before it, whether the relevant service charge is payable and, if so, whether the costs were reasonably incurred. Where a tenant raises a reasonableness challenge, the nature and cogency of the evidence adduced by each party will inform that evaluative exercise. The Tribunal has approached this application on that basis.
25. Under section 19 of the LTA 1985, a tenant is liable to pay a service charge only to the extent that the costs are reasonable. The Tribunal must therefore decide whether the costs were reasonably incurred and, where they relate to works or services, whether those works or services were carried out to a reasonable standard. Where charges are demanded in advance, the sums sought must represent a reasonable estimate of the likely costs.
26. For the interpretation of a lease agreement, the Tribunal starts with the principles for interpretation of contracts generally, which were helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] UKSC 36; [2015] A.C. 1619 at [15].

[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant

words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of

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

27. No special rules of interpretation apply to leases: *Arnold v Britton* at [23].

But Lord Neuberger did state that leases needed to be "clear" about the costs which are covered by service charges provisions:

"120. In the courts below there was some discussion of the "restrictive" approach said to be appropriate to service charge provisions (McHale v Earl Cadogan [2010] 1 EGLR 51, para 17 per Rix LJ). I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.

28. A covenant to provide services imposed a wider and potentially more onerous obligation than a covenant to repair. In *Baharier v Southwark LBC* [2019] UKUT 73 (LC), concerning the cost of a replacement heating system which the FTT had disallowed as constituting an improvement, Martin Rodger QC observed in the decision:

"30 As a matter of contract, it is for the Landlord to decide how to supply the central heating/hot water service. That principle is firmly established in the case of covenants to repair (Lewison LJ included it as one of the uncontroversial propositions in paragraph 14 of his judgment in Hounslow v Waaler citing Plough Investments Ltd v Manchester CC [1989] 1 EGLR 244 in support). It applies equally to covenant to provide a service. ...

31 Because a covenant to provide a service of heating and hot water imposes an obligation to take whatever steps are required to achieve an outcome it is not relevant to consider in any detail what those steps are. The distinction between repairs and improvements, and the question of whether a particular programme or item of work goes beyond repair, is therefore irrelevant."

Discussion and Findings

Distinction between Repairs and Improvement

29. The Applicant submitted that the works exceed the repair covenant in the Lease agreement. He referred to the works being extensive and pointed to the fact that a 'new pump' was being installed. In his view this amounted to an enhancement or improvement. However, he accepted that he had not produced an alternative technical report, rather, he pursued this submission

on the basis of his understanding of the Reports produced by the Respondent.

30. The Tribunal does not consider that this challenge can succeed for the following reasons.

31. Firstly, the Applicant's submissions were not supported by any evidence. In particular, the Applicant did not identify, with any precision, which elements of the works were said to exceed the scope of the 'repairing covenant' (which he also did not identify), nor was any expert or technical evidence adduced to support that argument.

32. Secondly, the Tribunal preferred the unchallenged professional evidence relied upon by the Respondent. On the evidence the works comprised the replacement of key components, including compressors, pumps and control systems, the report produced by Aster was of a high quality and set out in some detail the complexity of this project. Whilst elements of the works may result in an improved system, that does not mean that they fall outside the repairing obligation in Part 3 of the Fourth Schedule. The works arose because the system had failed and could no longer operate effectively.

33. Thirdly, the Tribunal is satisfied that the scope of the works falls within the Respondent's obligations under the Lease. The covenant in Part 3 of the Fourth Schedule requires the Respondent to keep the ACS "in good and substantial repair and condition and wherever necessary to renew, replace

or reinstate” it. Those words permit more than a strict like-for-like substitution.

34. On the evidence, the existing system had suffered repeated failures, one chiller had failed beyond viable repair, and the remaining plant was nearing the end of its useful life. The replacement of defective or obsolete components with current equivalents, together with such associated design changes as were necessary to make the system function effectively as a centralised ACS, was therefore capable of falling within renewal, replacement or reinstatement under the Lease. The Tribunal does not find on the evidence that the works constituted a separate improvement project outside that contractual framework.

35. In conclusion, the steps taken to replace defective components and reinstate the system were necessary and fell within the scope of the Respondent’s contractual obligations under the terms of the Lease for the reasons set out above. Finally, whilst we do not determine the point in these proceedings, the Tribunal considers it arguable the contractual framework in this Lease was more akin to a covenant to provide a service, and therefore, the obligations imposed on the Respondent were wider than a simple covenant to repair. (*Baharier v Southwark LBC [2019] UKUT 73 (LC)*).

“Opt-Out”

36. The Applicant wished to disconnect his flat from the ACS on the basis that he made little or no use of it and objected to the cost of both its repair and

operation. He relied on clause 11.3.5 of the Lease as implicitly permitting departure from the ACS scheme and contended that others before him had “opted out”, thereby demonstrating that such an arrangement was possible. Alternatively, he suggested that the breakdown of the system in 2022 was an opportunity to revisit ACS provision across the 20 participating properties. This would allow a smaller and more manageable system to be installed for the remaining leaseholders.

37. The Respondent submitted that there was no provision in the Lease permitting a leaseholder to opt out and noted that, in his written submissions, the Applicant accepted that there was no unilateral right to do so under the terms of the Lease.

38. In the Tribunal’s view, Clause 11.3.5, properly construed, conferred a limited discretion to vary proportions of the service charge but did not permit a leaseholder to contribute nothing. Absent a variation of the lease, the Respondent remained bound by its contractual obligations.

39. The contractual issue is whether the Lease permits a participating leaseholder to cease contributing to the ACS while the system continues to serve the building. In the Tribunal’s judgment it does not. Clause 11.3.5 addresses recalculation of proportions where it becomes necessary or equitable to do so, including where part of the ACS ceases to exist; it does not confer a unilateral right (as was accepted by the Applicant) on an individual leaseholder to withdraw from the scheme or require the Respondent to reconfigure the ACS on that basis. Questions of leaseholder

preference or the absence of consensus about decommissioning do not alter that interpretation.

40. As to the suggestion that there had been historical “opt-outs”, the evidence does not establish any relevant precedent. The written material before the Tribunal indicates that the penthouse position relied upon by the Applicant was different because that unit was not connected to the ACS from the outset. It does not show that any leaseholder who was otherwise bound by the Lease had been permitted to opt out of contributing to the ACS.

41. Accordingly, the Tribunal finds that the Lease does not provide any right for a leaseholder to opt out of the ACS. Clause 11.3.5 does not confer such a right, and there is no basis upon which the Respondent could lawfully permit a departure from the agreed apportionment of costs. Absent a formal variation of the Lease, the Respondent remained bound to comply with its obligations to maintain and repair the system for the benefit of all participating leaseholders.

42. The Tribunal is satisfied that, in the absence of any consensus and absent any power under the Lease to do otherwise, the Respondent was entitled, and indeed required, to act in accordance with the Lease.

43. Accordingly, the Tribunal determines that there was no entitlement to opt out of the ACS.

ACS – costs of use (metered charging)

44. The Applicant considers that the ACS should be charged by reference to individual consumption rather than by apportionment. He submitted that the existing approach was unfair, particularly as he made little use of the system. He relied on marketing material and operational documents which, he said, suggested that charges would be based on consumption as measured by a flow meter. He contended that leaseholders were therefore misled and that a metered system was a fairer method of charging.
45. The Respondent submitted that the method of apportionment was governed by the Lease which required the Applicant to contribute a defined proportion of the costs of the ACS, and absent a variation of the lease that position could not be altered. The Respondent further submitted that metering was not a viable alternative in any event. It relied on professional evidence from Aster and Martin Arnold to the effect that the system was designed in such a way that individual usage could not be accurately measured. In particular, the system involved the continuous circulation of chilled water, meaning that flow measurements do not equate to individual consumption. It was said that a different form of metering would be required, and that this was not practicable.
46. The Tribunal accepts the Respondent's submissions and evidence on this point. The starting point is the Lease, which provides for the costs of the ACS to be apportioned between participating leaseholders. That is the contractual basis upon which the charges are levied, and it is not displaced by marketing material or operational documents. In the absence of a

variation of the Lease, the Tribunal has no power to substitute a different method of charging.

47. In any event, the professional evidence demonstrates that the existing system does not allow for accurate measurement of individual energy use. The Applicant did not produce any expert evidence to challenge that position or to demonstrate that a workable metering solution could be implemented. The suggestion that costs could be recovered by reference to usage therefore remains hypothetical.

48. For the reasons set out above, the Tribunal determines that the costs of the ACS are properly recoverable by apportionment in accordance with the Lease. There is no basis to require or permit charging by reference to individual consumption, and the sums are not rendered unreasonable on that basis.

Availability of ACS – in the year

49. The Applicant submitted that the operation of the ACS should be limited to part of the year. In his written statement of case, he suggested that the system should operate between ‘June and September’. In his oral evidence, he referred to a slightly wider period to include May. The Applicant’s position was that restricting the availability of the system in this way would reduce costs.

50. The issues for determination under section 27A of the Landlord and Tenant Act 1985 are whether service charges are payable and reasonable. The

Tribunal has no jurisdiction to limit the availability of a service that the Respondent is contractually obliged to provide under the terms of the Lease. The question of whether the ACS should operate only during certain months of the year is not relevant to that issue - it concerns the management and operation of the system rather than the recoverability of the repair costs.

Air Cooling Service Charge Proportion

51. The Applicant challenged the increase in his service charge proportion from 6% to 6.67% in respect of the ACS. He relied on the percentage stated in his Lease and submitted that the higher proportion applied in service charge demands was not payable.

52. The Respondent submitted that the change arose from the terms of the Lease itself in that, the Lease confers a power on the landlord or manager to recalculate the service charge proportions. The Respondent's evidence was that the revised apportionment had been in since before 2018, predating the current managing agent, and had been consistently applied since that time. The Applicant accepted in evidence that the figure of 6.67% had been used in successive budgets and demands and the Tribunal was not taken to any documents which showed a demand at 6%. The Respondent further submitted that the revised apportionment reflects the need to ensure that the total contributions equal 100% of the relevant costs, and that the manager is required under the Lease to recover those costs from the leaseholders.

53. The Tribunal accepts that, on the proper construction of clause 11.3.5, the Lease permits a recalculation of the Applicant's ACS proportion where it has become necessary or equitable to do so for a reason falling within that clause. The evidence before the Tribunal does not identify in detail the original occasion on which the 6.67% proportion was first adopted, nor the precise arithmetic then undertaken. However, the evidence does establish that the revised proportion has been applied consistently for a number of years in budgets and demands, that the Applicant was aware of that position, and that the present demand was issued on that basis.

54. In determining the present application, the Tribunal must decide whether the current demand is payable under the Lease. The Applicant has not identified any evidential basis on which the Tribunal could find that the longstanding recalculation was outside the contractual power in clause 11.3.5 or that the present demand was calculated on some basis other than the proportion notified and consistently used. The clause expressly contemplates substitution of a newly notified proportion for the original percentage, and clause 11.3.4 makes clear that the ACS costs are to be recouped from the participating leaseholders so that no residual liability falls on the Respondent.

55. On the evidence available, the Tribunal is satisfied that the current ACS demand is payable by reference to the 6.67% proportion rather than the original 6% stated in the Sixth Schedule. That conclusion is based on the contractual power of recalculation in clause 11.3.5, the longstanding and consistent application of the revised proportion, and the absence of evidence

showing that the present demand is contrary to the Lease. The Tribunal therefore determines that the proportion applied to the Applicant for the purposes of the present demand is 6.67%.

Future liability for a breakdown

56. The Applicant considers that the proposed works were unreasonable by reference to the warranty offered. He relied on what he described as the system's history of inefficiency and failure and suggested that the relatively short warranty of one year offered by Aster demonstrated that the system was likely to fail again in the near future. On that basis, he raised concerns about the value and reliability of the proposed works.

57. The Tribunal considers that, whilst understandable, the challenge was not supported by evidence. The Applicant did not produce any expert or technical evidence to support the assertion that the system is likely to fail or that the warranty offered is inadequate by reference to industry standards. The Tribunal does not infer from the length of the warranty alone that the works are defective or unreasonable.

58. Further, the Tribunal has no jurisdiction to make prospective orders in relation to the future operation of the system or to provide for opt-out arrangements in the event of future failure. The issue for determination is confined to the reasonableness and payability of the charges as they arise.

59. The Tribunal's present task is confined to determining the payability and reasonableness of the service charge in issue. The Applicant's challenge based on the warranty does not affect that determination and is unsupported by evidence. The Tribunal therefore rejects it.

Reasonableness of the cost of repairing the ACS

60. The Applicant advanced a general challenge to the reasonableness of the service charge demand and suggested that alternative schemes, including evaporative cooling, should have been adopted. He submitted that such alternatives would have avoided the need for the proposed works or reduced the overall cost.

61. The Respondent submitted that the Applicant had not established any prima facie case that the works were unreasonable. The Respondent submitted that the alternatives advanced by the Applicant were inconsistent with the contractual framework described in the Lease. In particular, the proposed use of individual systems for each flat would represent a fundamentally different arrangement. The Respondent further relied on professional advice, including the reports of its consultants and surveyors, which considered alternative options and concluded that they were not viable.

62. Having considered all the evidence, the Tribunal is not satisfied that the works or their cost were shown to be unreasonable. The Lease contemplates a centralised ACS serving the participating flats, and the Tribunal accepts that it was not open to the Respondent, without a lease variation, to

substitute a materially different arrangement such as individual units for each flat. That conclusion does not by itself answer the section 19 question, but it is part of the contractual context in which the reasonableness of the chosen works falls to be assessed.

63. The Tribunal is further satisfied, on the professional evidence before it, that alternative schemes were given proper and careful consideration. The evidence shows that proposals including evaporative cooling were reviewed and that significant practical and regulatory concerns were identified, including potable water use and the level of consumption that would arise. The Tribunal accepts that those concerns were real and that the alternatives advanced by the Applicant were not shown to be viable solutions to the failure of the existing ACS.

64. The Applicant did not produce expert or other evidence capable of displacing that professional assessment or showing that a different system could realistically be implemented in a way consistent with the Lease and the physical characteristics of the building. In those circumstances, the Tribunal concludes that the Respondent's decision to proceed with the chosen works fell within the range of reasonable responses open to it and that the resulting costs were reasonably incurred.

Conclusion and Costs

Conclusion

65. The sums challenged are payable in full.

66. For the reasons set out above, the Tribunal determines under section 27A of the Landlord and Tenant Act 1985 that the service charge demanded from the Applicant in respect of the ACS works in the 2025 service charge year is payable. The Tribunal further determines that the relevant costs were reasonably incurred and that the works fell within the Respondent's obligations under the Lease. For the purposes of the present demand, the Applicant's applicable ACS proportion is 6.67%.

Costs

67. The Tribunal has considered the applications under s.20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 10 to the Commonhold and Leasehold Reform Act 2002.

68. In *Re SCMLLA (Freehold) Ltd [2014]UKUT 58 (LC)* Martin Roger QC sitting in the Upper tribunal observed:

An order under section 20C interferes with the parties' contractual rights and obligations and for that reason or not to be made lightly or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances.

69. The importance of considering the consequences of the order was reinforced in *Conway v Jam Factory Freehold Limited [2013] UKUT592 (LC)* where it was emphasised that in any application for section 20C it is essential to

consider what will be the practical and financial consequences for all of those who will be affected by the order and to bear those consequences in mind when deciding on the just and equitable order to make.

70. The Tribunal has therefore considered: i) the nature and merits of the Applicant's case, ii) the conduct of the proceeding and iii) the practical and financial consequences of making or refusing the orders sought – both for the Applicant and for the body of leaseholders.

71. As to the nature and merits, the Applicant's challenges based on alleged improvement, opt-out, metered charging, seasonal availability and future liability have not succeeded and largely fell outside the Tribunal's jurisdiction in an application of this nature. The Applicant explained that the thought these points fell within the Tribunal's broad remit of "reasonableness" so there is no suggestion that he pursued them improperly however, the Tribunal finds that these contentions were not entirely coherent or supported by sufficient evidence to establish any basis for reducing or disallowing the relevant charges. That is a significant and relevant factor.

72. As to consequences, the Respondent is a resident management company whose costs are, in practice, recoverable from leaseholders through the service charge or administration charge. An order under section 20C or paragraph 5A would prevent recovery through those usual mechanisms and, on the evidence, leave no realistic alternative means of funding the costs of the proceedings. The Respondent's submission, which the Tribunal accepts, is that there is no viable mechanism by which those costs could otherwise be

met. The effect of granting the applications would therefore be to distribute the costs of unsuccessful and insufficiently evidenced claims across the wider body of leaseholders, who had their say on this matter through the opinion polls, which the Tribunal considers carries little justification in the circumstances.

73. In all the circumstances, the Tribunal is not satisfied that it is just and equitable to make an order under section 20C. For the same reasons, and considering the distinct statutory basis, the Tribunal also declines to make an order under paragraph 5A.

74. Likewise, no order is made for the reimbursement of the Applicant's fees.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.

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

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension

of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.