FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HB/LSC/2025/0658
Property	:	The Panoramic, 30 Park Row, Bristol, BS1 5LS
Applicant	:	The Panoramic Management Board Limited
Representative	:	Brady Solicitors
Respondent	:	Grays Inn Capital Limited (1) The Leaseholders (2)
Representative	:	Irwin Mitchell LLP (1)
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Tribunal Judge C Skinner Mr M Ayres FRICS Mr M Williams MRICS
Date of Hearing	:	27 March 2026
Date of Decision	:	26 May 2026

DECISION

SUMMARY OF DECISION

a. **The Tribunal finds that the costs of the Balcony Works are not payable under the Lease as service charges.**

b. **The Tribunal finds under Section 27(A) Landlord and Tenant Act 1985 that the costs of the Balcony Works are not payable as service charges.**

c. **The Tribunal dismisses the Second Respondent's application under Section 20C Landlord and Tenant Act 1985 and Paragraph 5, Schedule 11 Commonhold and Leasehold reform Act 2002.**

Background

1. The Applicant has carried out major works to the Panoramic, 30 Park Row, Bristol, BS1 5LS ("the Block"). The Block is a high-rise residential property comprising of 53 flats and was constructed in the early 2000's. Those works were part of a larger project undertaken after various fire safety reports identified a range of works required at the Block that included replacement of the wooden decking on the balconies at the Block (the "Balcony Works"). The Balcony Works were completed on 14 June 2024.

2. This application has been made to determine under Section 27A Landlord and Tenant Act 1985 if the charges incurred by the Applicant in conducting the Balcony Works are service charges under the terms of a specimen lease ("the Lease") granted to occupiers of flats within the Block. If the Lease permits the recovery of those charges as service charges, the Applicant requests further determinations over whether those service charges are caught by the provisions of Schedule 8 of the Building Safety Act 2022 because they are "relevant measures" relating to a "relevant defect".

3. The Balcony Works in dispute relate only to the costs incurred of the removal and the replacement of the timber decking that was present on all balconies at the Block except for Flat 15 which did not have timber decking on its balcony and is a concrete balcony.

4. The balconies are steel framed and prior to the completion of the Balcony Works had timber decking slats that were affixed by screws to the steel beams that form the frames of the balconies. The balconies contained approximately 8 to 10 timber decking slats per balcony (the Tribunal was not provided with an exact number) and when in place those slats form the flooring to the balcony.

5. The Tribunal issued Directions on 10 July 2025 setting down a case management hearing on 30 July 2025 which resulted in further Directions being made on 1 August 2025. Pursuant to those Directions

the parties were required to take various steps to prepare for a final hearing of the matter.

6. The Tribunal through its case management identified the following issues for possible determination:

- Whether the cost of the Balcony Works are (in principle) chargeable as a service charge under the leases.
- If they are, whether the Balcony Works constitute *"relevant measures"* relating to a "*relevant defect*" per s. 120 and Schedule 8 of the Building Safety Act 2022 (the "BSA 2022").
- If so, whether the cost of the Balcony Works cannot be recovered through the service charge by virtue of Schedule 8 BSA 2022.
- If the FTT determines that the defect in the balconies is not a "*relevant defect*" whether the cost of the works should be met by those leaseholders with balconies or be shared among all leaseholders through the service charge.

7. Following disputes over the extent of the Applicants disclosure, On 20 November 2025 the First Respondent made a Case Management Application raising concerns that the Applicant had not disclosed all relevant documentation to the Respondents. The application was made following concerns also being raised around the extent of the disclosure by the Leaseholders of Flat 6 and Flat 53 and the details provided by the Applicant within a disclosure schedule dated 7 November 2025.

8. In accordance with further directions from the Tribunal, the Applicant subsequently prepared and submitted a written explanation to the Respondents confirming why any disputed disclosure of documentation was not possible including the extent of the efforts made to obtain the requested documentation.

The Hearing

9. The hearing took place at Bristol Magistrates Court on 27 March 2026. The Applicant was represented at the hearing by Mr Granby of Counsel. The First Respondent was represented by Mr Morris of Counsel. Mr Gosling (Flat 6) represented himself as a Respondent Leaseholder and also had been provided with written authority to make submissions on behalf of Dr Amin (Flat 53) a further Respondent Leaseholder at the Block. For ease of reference within this decision, Mr Gosling and Dr Amin are referred to as the "Second Respondents".

10. The Tribunal did not hear any live evidence during the course of the hearing and the hearing proceeded on the basis of submissions only from the parties to supplement the statements of case and evidence submitted in the course of the application.

11. The Tribunal had been provided with a determination bundle by the Applicant, consisting of 1620 pages. The Applicant has also provided an

Index to the determination bundle. A further 2 additional pages were added to the bundle in advance of the hearing. The Tribunal had read the bundle and all associated material and evidence in advance. References in this decision to page numbers in the bundle are indicated as [ ].

12. In advance of the hearing the parties all submitted Skeleton Arguments and the Applicant submitted a bundle of authorities consisting of 292 pages.

13. By way of email timed at 16:57pm on 26 March 2026, the Applicant disclosed to the parties 3 additional documents for inclusion in the material before the Tribunal. These were a letter dated 14 April 2023 addressed to the Applicant purporting to have been sent via email from the Department for Levelling Up, Housing and Communities in relation to an approval of full costs and works from the Building Safety Fund, a chain of emails 27 January 2023 to 2 February 2023 between the Applicants managing agent and Homes England and an email from 4 January 2023 from Homes England to the Applicant's managing agent setting out within a table reductions made to the amount awarded from the Building Safety Fund against amounts that had been applied for.

14. Both Respondents and the Tribunal were somewhat surprised at this very late disclosure given the previous case management requirements around the issue of disclosure. The Tribunal challenged the Applicant on why these documents had only just come to light given the circumstances and given that these were documents that plainly would have been available and in possession of the Applicant or their managing agent prior to 26 March 2026.

15. The Applicant was unable to provide any real reason as to why the disclosure was so late but argued the documentation would ultimately assist the Tribunal and the parties to understand how the amount claimed as costs incurred for the Balcony Works had been arrived at and would also help clarify where a discrepancy of around £47,000 in costs claimed within the total amount had been included.

16. The Tribunal carefully considered the prejudice to the Respondents and submissions made about the late disclosure. The Tribunal felt the late disclosure was plainly unsatisfactory. On balance however, the documents were not substantial (8 pages in total) and in light of the purported assistance they would offer the Tribunal, it was decided they were to be admitted before the Tribunal.

17. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Tribunal has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

The Law

18. Section 27A of the Landlord and Tenant Act 1985 reads as follows:

27A - Liability to pay service charges: jurisdiction

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

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(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.

19. Section 20C of the Landlord and Tenant Act 1985 reads as follows:

20C - Limitation of service charges: costs of proceedings.

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

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

20. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 reads as follows;

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

The Relevant Specimen Lease Terms ("the Lease") [210-233]

21. *1. Definitions*

"Premises" means the apartment on the sixth floor of the building on the Development as shown edged red and numbered 50 on Plan No 1 and the car parking spaces numbered 6 and 18 shown edged red on Plan No 2 INCLUDING:

the internal coverings of the load bearing walls of the Premises and all doors and windows in such walls with their frames glass furniture and locks (but not the external decorative parts thereof)

any internal non-load bearing walls or partitions and doors windows frames glass furniture and locks

the coverings of the ceilings below the joists or structural ceiling supports and the floorboards or floor surfaces above the joists or structural floor supports

all Service Media exclusively serving the Premises (and not being owned by statutory or other utility authorities etc)

all fixtures and fittings in the Premises (except the Lessees fixtures and fittings)

the flooring material of the balcony (if any) and the railing surrounding the balcony

the Roof Terrace (if any) including the materials which form any Roof Terrance flooring and the railing surrounding the Roof Terrace

the garden (if any)

but EXCLUDING:

all structural parts of the Development (which shall include the structural parts of the Roof Terrance and the balcony) the load bearing walls roofs foundations and any Service Media which do not exclusively serve the Premises.

22. *"Service Charge" means the Company's or Lessor's costs throughout the Term for the services described in Schedule 5*

23. Schedule 3 (The Lessee's Obligations)

5. To keep the Company and the Lessor indemnified in respect of charges for other services payable in respect of the Premises which the lessor or the Company shall from time to tome during the Term be called upon to pay such sums to be repaid to the Lessor or the Company on demand.

6. To keep the Premises in good repair and condition at all times including the renewal and replacement forthwith of all worn or damaged parts but so that the Lessee shall not be liable for any damage which may be caused by any of the risks covered by the insurance referred to in Schedule 5 hereto (unless such insurance shall be wholly or partly vitiated by any act or default of the Lessee or any member of the family or employee or visitor of the Lessee or such other occupiers) or for any work for which the Company may be expressly liable under the covenants on the part of the Company herein contained.

12. To permit the Lessor or the Company or their respective agents with or without workman to inspect the Premises for the purpose of ensuring that the Lessee's covenants herein are being observed and performed at reasonable times and upon giving the Lessee notice of any defects or breaches of the Lessee's covenants within twenty eight days (or forthwith in an emergency) to remedy any such breach of the covenants for which the Lessee is liable to the reasonable satisfaction of the Lessor or Company or their respective agents with ot without workman may enter the Premises and remedy any breach and the proper costs and expenses thereof shall be a debt due from the Lessee to either the Lessor or the Company payable by the Lessee on demand and be forthwith recoverable by action for monies paid by the Lessor or Company.

24. Schedule 5 (The Company's Management Duties)

1. To manage maintain and repair the Development (but excluding the Premises and other dwellings in the Development in respect of which Leases have been granted)

31. To repair renew maintain and paint as often as is reasonably required any balcony structure in the Development.

The Parties' Submissions and Evidence

25. The parties had all helpfully prepared and submitted skeleton arguments in advance of the hearing. In summary the parties all advanced the positions adopted within those skeleton arguments in submissions to the Tribunal. The Tribunal does not repeat every submission made within this decision but is grateful to the parties for the clear presentation of their respective arguments.

26. The Applicant's submissions on the construction of the Lease focused on an argument that the Lease operated in a way that entitled the Applicant to recover the cost of the Balcony Works as a service charge under either paragraph 1 or paragraph 31 of Schedule 5. This was on the basis that the timber decking that formed the balcony was caught as part of the balcony structure and not demised to the leaseholders for the purposes of paragraph 1 of Schedule 5 to the Lease.

27. In the alternative, the Balcony Works were caught by paragraph 31 and that on construction that provision must have been meant to provide a wider basis for recovery of service charges for any works to balconies at the Block and that "balcony structure" was not limited to only structural parts of the balcony (ie. those parts not demised). The Applicant arguing that even where something had been demised to a lessee, that of itself did not preclude a Landlord from having obligations under a lease to a demised part.

28. The Applicant submitted that there was clear authority that did not limit the Tribunal when determining what amounted to structure. The Tribunal was referred to *Irving v Moran (1991 1 E.G.L.R 261)* where findings had been made that structure was not limited to loadbearing aspects of a property and *Pearlman v Keepers and Governors of Harrow School (1979 QB 56)* where windows were held to be part of the structure to a building. *Grand v Gill (2011 EWCA Civ 554)* found structure could include plasterwork.

29. It was submitted that that a Landlord would be expected to take responsibility for the balconies as it would impact on the appearance of the block and in this case link to issues of fire safety which a landlord would intend to be responsible for.

30. The Tribunal enquired if there was any evidence to support the Applicant taking responsibility for the maintenance or repair of timber decking on the balconies or passing on such costs as service charges historically. The Applicant suggested the reason no such evidence had been presented was that such works were likely to be considered long term cyclical works or similar.

31. The Applicant went on to argue that in the alternative, if the Balcony Works were determined as not recoverable as a service charge pursuant to paragraphs 1 or 31 of Schedule 5, the leaseholders with balconies would still be liable to pay the costs as a service charge on the basis the cost met with the statutory definition of a service charge under section 18 landlord and Tenant Act 1985 and would be recoverable under paragraphs 5, 6, or 12 of Schedule 3 to the Lease.

32. In response to questions from the Tribunal the Applicant confirmed the timber decking amounted to approximately 8 to 10 individual slats per balcony. The flooring material referred to in the Demise was not the timber decking and would be something on top of the decking. This was based on the submission that if you took the decking away, there would not be a lot left to the balcony and a person would simply fall through the space left behind.

33. In respect of submissions made in covering letters and emails from the Applicant to the Leaseholders during the Section 20 consultation process, whereby the Applicant openly stated it as their view the timber decking was demised to the Leaseholders and therefore would not be form part of the wider project works, the Applicant acknowledged this was not helpful but ultimately was not determinative and further did not invalidate the Section 20 consultation process or affect the content of the relevant notices which were clear and did include direct reference to the replacement of the timber decking.

34. The Applicant contended that if required, the Applicant would seek dispensation for the requirements of Section 20 under Section 20ZA and that the Tribunal should grant such dispensation as it was plainly sensible for the Applicant to conduct the works in light of professional advice and multiple fire safety reports. There had been little to no relevant prejudice on the leaseholders given the volume of correspondence on the works to be undertaken and engagement over the same.

35. In respect of issues falling under the Building Safety Act 2022, the Applicant argued the Upper Tribunal had been clear on what “building safety risk” amounted to and that the requirement was to find a “risk”. In light of the various fire safety reports and the conclusions of Mr Butterworth (the First Respondent’s expert) there could be no argument that a risk had been identified.

36. As a result, the replacement of the timber decking was a “relevant measure” relating to a “relevant defect” and therefore the provision of Schedule 8 Building Safety Act 2022 would apply and no service charge would be recoverable from the leaseholders but may as a result then be potentially recoverable from the First Respondent.

37. If the Tribunal were to determine that the defect in the balconies was not a "*relevant defect*" the cost of the works should be met by those

leaseholders with balconies and the apportionment for those costs was clear under the Lease as a fixed apportionment cost [212].

38. In response, the First Respondent submitted that the application before the Tribunal turned on a short point of contractual interpretation. The authorities set out by the Applicant provided were not strictly relevant as they were in relation to disputes under obligations to repair under Section 11 Landlord and Tenant Act 1985 and a contested ratings matter. The most relevant authority was *Arnold v Brittain (2015 2 WLR)* and that provides the guidance the Tribunal required when it came to matters of lease construction and interpretation.

39. The First Respondent submitted when looking at the natural language of the Lease and the Demise, "flooring material" was clearly the timber decking. The timber decking as the only flooring material that constituted the same for the purpose of the demise and the layout of the balconies.

40. The railing to the balcony had also been demised so it was clear that the contracting parties had deliberately intended to demise to the leaseholders with balconies parts of the balcony for those leaseholders to then maintain.

41. The First Respondent submitting that the timber decking was not structural and distinctly separate to the "structural parts" of the balcony when considering the demise under the Lease. The Lease being drafted and granted in 2003 where a conscious decision was taken to separate out these distinct parts of the balcony from the retained balcony structure.

42. The appropriate principle for the Tribunal was that general words should give way to specific wording and "flooring material" is a specific term not general. On that basis it was clear that the Lease was constructed in a way that clearly placed the obligation to repair and maintain the timber decking on the leaseholders. This meant it fell outside the provisions of paragraph 1 of Schedule 5. This was supported by paragraph 4 of Schedule 1 which gives leaseholders a right of access to other parts of the Development and other flats to ensure the proper performance of the lessee's obligations under the Lease in respect of repair, decoration, maintenance or inspection of their demised Premises.

43. This interpretation was further supported by other elements under the demise such as floorboards and floor surfaces which distinguish the structure that supports the flooring from the flooring itself. This allows for a consistent interpretation of the Lease.

44. Further support for this interpretation is found by the wording "(if any)" and its placement within the terms of the demise and in other parts of the Lease such as in reference to the roof terrace and garden.

45. Further paragraph 31 of schedule 5 would not capture the Balcony Works either on the basis that the paragraph should be interpreted to additionally capture the communal AOV balconies (Open Air Vent) on the Development and communal areas with reference to "balcony structure" which had not been demised.

46. In respect of the Applicant's submission that the charges could be passed on as a service charge relying on provisions in Schedule 3, the First Respondent argued the operational effect and conditions required under those terms had simply not been met on the evidence presented. Therefore, the Tribunal should find these were not service charges for the purposes of Section 18 Landlord and Tenant Act 1985. The application under section 27A(1) related to costs demanded and the costs demanded were not in pursuance of those terms of the Lease. Section 27A(3) was equally of no effect as the costs had already been incurred.

47. The First Respondent was clear that issues under the Building Safety Act only became of relevance if the Tribunal found the costs of the Balcony Works were recoverable as service charges under the Lease. The primary position being that they were not, so the Tribunal did not need to consider matters beyond that finding.

48. However, if the Tribunal did find the costs recoverable as a service charge under the Lease, the First Respondent argued that it was open to the Tribunal to find that for the purposes of a "building safety risk", the Tribunal should rely on the report of Mr Neal Butterworth which concluded the timber decking was not a relevant defect because it would not result in a risk to safety arising from the spread of fire.

49. Further it was denied in any event the First Respondent would be liable under the Building Safety Act 2022 as whilst it was conceded the First Respondent was a "relevant landlord", it was not responsible for the construction of the balconies or associated with a person responsible for the same.

50. The Second Respondents in the main agreed with the submissions put forward by the First Respondent on the Lease construction and how the Tribunal should interpret the same. It was submitted that when purchasing their respective leasehold interest in 2002, both leaseholders believed they knew exactly what the Lease set out in its demise and the flooring and flooring material was clearly the timber decking and they were responsible for it under the Lease.

51. There was no conflict in the wording of the Lease and it was very simple to interpret with the definitions being clear. Other terms within the Lease clearly supported the interpretation that the timber decking was the flooring material referred to such as the Lease making floorboards and covering materials above joists the responsibility of the leaseholder.

52. The understanding held by the Second Respondents was then supported by various communications with the Applicant including the correspondence evidenced at the time of the Section 20 consultation process whereby the Applicant appeared to accept the timber decking was demised to the leaseholders and no responsibility for it sat with the Applicant under the Lease.

53. The Second Respondents acknowledged that the major project and the fire safety works were "a wonderful thing" to have been done at the Block. It was fully appreciated that works to make the Block safer and reduce the risk of fire were a good thing. However, that did not change the fact that the Applicant was incorrectly interpreting the Lease, shifting its position on responsibility for the timber decking and further had not properly engaged in the required consultation process under Section 20 landlord and Tenant Act 1985.

54. During that consultation process the correspondence from the Applicant was clear that the Balcony Works should not have been included in the statutory notice and an express commitment was set out in correspondence that the Balcony Works did not form part of the notice and would require separate contracts for works in relation to the same.

55. The subsequent demands were then confusing and lacked clarity over how the total costs attributed to the Balcony Works had been arrived at and that a sum of around £47,000 appeared to have been added to the final costs without any clarity or explanation.

56. In respect of the timber decking amounting to a "building safety risk" it was clear from the various reports (Ashtons and Tri-Fire) the Applicants had obtained, that the timber decking had been constantly seen as a negative risk factor when assessing the building as a whole. The report of Mr Butterworth attempted to view the timber decking in isolation and that was not appropriate when assessing its risk.

<u>Are the cost of the Balcony Works chargeable as a service charge under the lease.</u>

57. The Tribunal has carefully considered and applied the guidance from The Supreme Court in Arnold v Britton (2015 UKSC 36) and in particular the comments of Lord Neuberger which states;

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

3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30".

58. The Tribunal has also considered the authorities referred to by the Applicant in respect of how the Tribunal should approach the issue of "structure". Those authorities, whilst helpful, are not in the Tribunal's view determinative of the issue. The authorities in general confirm a court or Tribunal can take a wide range of factors into account when determining what is "structure" and are not confined to specified limits. Each matter turns on its facts and as pointed out by the First Respondent, these cases related to disputes in quite different contexts to this application.

59. In this matter, no party is suggesting the Tribunal cannot adopt a wide approach to considering what should be defined as structure in that sense. The arguments here focus moreover on the interpretation of the Lease and the obligations it sets out. The first issue the Tribunal identified for determination turns entirely on how the Lease is constructed.

60. As set out above, *Arnold v Britton (2015 UKSC 36)* is the crucial authority that sets out the considerations the Tribunal must have mind to.

61. Having carefully considered the respective arguments, the Tribunal prefers the submissions of the First and Second Respondents on how the Lease is constructed and should be interpreted.

62. The Tribunal finds on balance that the "flooring material" referred to in the Demise is the wooden timber decking that formed the Balcony Works. This is based on multiple reasons. The timber decking is made up of 8 to 10 removeable slats on each demised balcony. The Lease is also clear that the balcony rail is demised to the leaseholder. The natural language used shows that the parties wanted to differentiate between the balcony structure and other elements that were to be maintained by the lessee.

63. The timber decking is removable and held in place by screws that affix the slats to the supporting joists, by laying them on top of those joists.

They can be laid independently of each other and there is no requirement or reason why all would have to necessarily be removed and replaced at the same time.

64. Timber as a material may degrade at different rates and by its nature will have a certain optimum lifespan. As in this case, it is possible to replace it with a different type of material. This adds weight to the intention of the parties to the Lease making a conscious decision to demise the timber decking to the leaseholders.

65. The flooring material referred to in the Lease at the time of grant would on balance have been the timber decking. The Tribunal has been provided with no evidence of any other flooring material that could have been intended to have been part of the demise. Given the specific reference to "flooring material" in the Lease, the Tribunal finds that must have meant the timber decking.

66. This interpretation is supported by other provisions within the Lease and the demise. The demise including the floorboards or floor surfaces above any joists or structural floor supports. There is a flow to what the parties were aiming to achieve under the Lease.

67. The Tribunal also finds this is supported by the words "(if any)" when interpretating the construction of the Lease. Those words are present after "the flooring material of the balcony". In the same way they are present after "the Roof Terrace" and "the garden". This indicates the Lease would be used across the Development and anticipated use for flats which would not have the benefit of a Roof Terrace, garden or balcony. It may also have been for use where a balcony may not have flooring material such as flat 15. In this regard inference can be drawn from the fact the words "(if any)" are not then repeated after "and the railing surrounding the balcony".

68. On the basis that the Tribunal has found that the timber decking was demised to the leaseholders as "flooring material" as part of the "Premises" it is necessary to then determine if the costs of the Balcony Works can be passed on as a service charge.

69. "Service Charge" is defined under the Lease as the Company's or Lessor's costs throughout the Term for the services described in Schedule 5. There is a covenant at clause 4.1 for the lessee to observe and perform the obligations set out in Schedule 4 which includes an obligation to pay a relevant proportion of the Service Charge.

70. Within Schedule 4 there is also an obligation on the Lessee to keep the demised premises in good repair and condition but that the Lesse shall not be liable for any work which the Company or Lessor may be expressly liable under the covenants of the Lease.

71. In light of the above finding, the Tribunal has to consider if the Balcony Works are therefore caught by any of the provisions within Schedule 5

of the Lease so they would then qualify as a service charge under the Lease.

72. It is not in contention that the Balcony works under this application related to the removal and replacement of the timber decking. Where the Tribunal has found the timber decking was the flooring material demised to the lessee, the Tribunal also finds that those Balcony Works cannot be caught by paragraph 1 of Schedule 5.

73. Paragraph 1 of Schedule 5 is clear that the obligation on the Lessor is to maintain and repair the Development (but excluding the Premises and other dwellings in the Development in respect of which Leases have been granted).

74. The wording of paragraph 1 is clear that the obligation to maintain and repair did not extend to anything demised as Premises. As a result, the Balcony Works simply cannot fall within this obligation given the clarity of the wording.

75. The Applicant contends that if paragraph 1 does not cover the obligation to conduct the Balcony Works, then paragraph 31 would enable recovery of the costs incurred as a service charge under Schedule 5.

76. The Tribunal disagrees and prefers the submission of the First Respondent and Second Respondents.

77. Paragraph 31 is placed within the Lease at a point where obligations around maintenance and repair of the Common Parts and the Development are being set out. The flow of the Lease at this point supports an interpretation that the parties were contracting to ensure that balconies that formed the communal parts of the Block were covered in additional to the balcony structures of the flats. These would include the AOV balconies and their structure.

78. The Applicant contends that paragraph 31 must have a further purpose to paragraph 1 and on this the Tribunal agrees with the Applicant but as indicated above this is based on paragraph 31 specifically ensuring an obligation is placed on the Lessor to ensure all balcony structures in the Development are not just maintained and repaired but also renewed and painted.

79. Paragraph 31 by its own wording goes further in its obligations on the Lessor than paragraph 1 by ensuring in addition to maintaining and repairing the balcony structures on the Development, there is also a requirement to renew and paint as often as is reasonably required. These extended obligations when looking at the Lease as a whole and the natural meaning of the language used, in the Tribunal's view add weight to the argument that paragraph 31 is ensuring the Lessor's obligations to balcony structures on the Development includes renewing them when required and painting them to ensure a general

upkeep to those parts of the Development. Inference can also be drawn from the absence of reference to "flooring material". This would also be consistent with the Lessor wanting to retain an obligation for the general appearance of the exterior of the Block.

80. The Tribunal finds, based on the submissions and evidence of the parties, at the time of drafting the Lease it would be reasonable to interpret the intention of the parties in this way. The construction of the Lease is consistent for Leaseholders to be responsible for the flooring material and railing surrounding the balconies demised to them whilst the landlord retained an obligation to not just repair and maintain the balcony structures but also renew and paint them when required.

81. At the time of drafting, it is arguable this would have seemed to make commercial sense where the landlord is seeking to reduce its obligations where possible and as such enable potential savings to service charge costs that would be passed onto Lessees.

82. The Applicant also argued that in the alternative, the costs of the Balcony Works could be recovered as service charges under provisions within Schedule 3 of the Lease, setting out possible reliance on the 3 terms set out above at paragraph 23.

83. The Tribunal does not agree and finds that none of those provisions would currently allow recovery of the costs incurred for the Balcony Works to be passed on as service charges.

84. In respect of paragraph 5 of Schedule 3, the provision relates to provision of services. The Tribunal agrees with the First Respondent that this clause is one of indemnity and arises only where charges for other services outside the scope of the Lease arise which the landlord is called upon to pay. It is effectively a savings provision or sweep up clause that attempts to ensure the Landlord is able to pass on charges not anticipated for services that are provided to the Premises. There is simply no evidence to suggest the Balcony Works and their delivery were framed as a "service" for this purpose. The Balcony Works were not a service to the Premises and were works the Applicant made a conscious decision to undertake.

85. Paragraph 6 of Schedule 3 places an obligation on the Lessee to keep the Premises in good repair and condition. On the basis the Tribunal has found the Premises include the timber decking, the Applicant argues the leaseholders would be in breach of this repairing obligation.

86. Paragraph 12 of Schedule 3 was referred to by the Applicant and the First Respondent as a "Jervis v Harris" clause as a result of the well known case authority around such provision. It is in general summary a provision in a Lease that allows for a landlord to inspect Premises, to ensure covenants are being observed and performed by a Lessee, and where it appears there is a breach of such an obligation or a defect

present, reasonable notice to remedy that breach can be given and after a reasonable period of time (28 days in this case) a right for the Landlord to enter the Premises arises to conduct the works required to remedy that breach and pass on the costs of those works to the Lessee.

87. The Tribunal again finds on the submissions and evidence that neither of these clauses have been engaged and operated as is suggested and therefore cannot be relied upon to pass the cost of the Balcony Works on as a service charge, The Tribunal preferring and accepting the First Respondents submissions on this point.

88. The Tribunal has received no evidence that any notice of breach or defect was given to any leaseholder nor what breach of covenant it is said was applicable and why. The timber decking was not said to be in disrepair, in poor condition, worn or damaged nor was any requirement set out to leaseholders requesting they replace the timber decking with a different material. No demands for payment were made to leaseholders that suggested either clause was being relied upon and that its conditions precedent had been met.

89. On that basis the Tribunal prefers the submissions of the First Respondents and finds the clauses within Schedule 3 do not entitle the Applicant to recover the cost of the Balcony Works as a service charge.

Decision

90. The Tribunal in considering all the above factors and applying the guidance of *Arnold v Britton* finds that the flooring material is the timber decking for the purposes of interpreting the Lease and does not form part of the balcony structure for the purposes of the Demise or the definitions within Schedule 5 of the Lease.

91. As a result of that finding, the Balcony Works to replace the timber decking does not qualify as a service charge for the purposes of Schedule 5 nor is it caught by operation of the terms relied upon by the Applicant within Schedule 3. As a result, the obligations in the Lease to pay the service charge do not cover the Balcony Works as set out in the Applicant's application.

92. The Tribunal feels it incumbent at this stage to set out the Applicants position on the amount claimed as the costs of the Balcony Works. Until moments before the start of the hearing, it was accepted by all the parties and had been the Applicant position that the total costs claimed in the Application related to the Balcony Works.

93. This had led to the Second Respondents challenging how the total costs had been arrived at, and in trying to understand and determine how that figure had been arrived at, they made Case management Applications for disclosure of information and documentation in particular around a sum of just short of £47,000 that the Second Respondents could not identify as being connected to the Balcony

Works. However, the Applicant's position always had been the total costs under this Application were all related to just the Balcony Works.

94. This position changed the afternoon before the final hearing. As set out above, the Tribunal allowed late further disclosure to be placed before the panel on the basis it would help clarify the breakdown of the costs being claimed under the application.

95. The original costs were set out in the application as £188,315.22 [25]. That sum was said to be the total sum of the Balcony Works. The Applicant took the Tribunal through various documents within the bundle that set out how the Applicant had determined that sum. An email of 21 April 2023 [1090] set out in general terms how the shortfall in funding from the total project costs and the amount of award from the Building Safety fund had arisen.

96. The Applicant took the Tribunal to the contract for the Balcony Works at [1105], identifying the scope of all works under that contract and the cost [1112] being £118,043.08.

97. The Tribunal was then taken to a summary table at [1079] which set out the "unfunded" costs which it was said related to the Balcony Works and how the total of £188,315.41 had been arrived at. At [1081] was the Applicant's Building Safety Fund Full Works and Costs Template which sets out a detailed explanation of how the "unfunded" costs had been arrived at and showed the difference between amounts claimed by the Applicant for the entire works project and the amounts awarded by the Building Safety fund.

98. The Tribunal was then directed to a reconciliation note at [1539] setting out final costs incurred on the Balcony Works which showed a discrepancy figure of £149.61 between the total expenditure and the claimed amount of £188.315.41.

99. The additional documentation produced shortly before the hearing was then referred to by the Applicant and submissions made on how they helped clarify deductions to the sums applied for against the award ultimately made.

100. Counsel for the Applicant then rightly pointed out that on careful analysis, the "unfunded costs" that had been said to be only the costs of the Balcony Works in the application could not be said to only be costs of the Balcony Works. £47,662.36 within the "unfunded costs" was made up of some element of unfunded costs for the Balcony Works but equally was also made up of shortfall costs in the wider project, likely relating to a shortfall in the design costs award.

101. The Tribunal is extremely grateful to Counsel for the Applicant in setting out as clearly a possible how the figures were arrived at and rightly confirming as far as possible how the breakdown of the total amount of £188,315.41 was arrived at. In light of the evidence

presented to the Tribunal it is not surprising that leaseholders may have been confused around how sums demanded from them had been arrived at.

102. The Tribunal also agreed entirely with the Applicant that if there was any suggestion of something sinister or some kind of attempt to conceal costs through this application, there is no basis in evidence for anything close to that kind of conduct. The evidence on the sums involved, whilst difficult to follow, does not evidence the kind of deliberate concealment the Applicant felt they may have been accused of. The Tribunal refers to the letter to the Second Respondent [767] dated 18 December 2023 from the Applicant's managing agent that tries to set out information around the funding as an example of the Applicant trying to be transparent over the costs involved.

103. However, despite significant questioning from the Tribunal and attempts to obtain an exact amount that was not part of the Balcony Works, the Applicant was unable to provide the same and it is not possible on the evidence before the Tribunal to make any findings on the exact amount of those total project costs that should be removed from the Balcony Works total figure.

104. Therefore, the scope of the Tribunal's findings in this matter in respect of the Applicants pleaded case and the application it has asked the Tribunal to determine can only extend to the Tribunal finding that the costs of the Balcony Works are not recoverable as service charges under the Lease.

Scope of Determination

105. Having made the above finding that the Balcony Costs are not recoverable as service charges, the Tribunal has considered carefully if there is an obligation or a practical purpose to continue and make findings on the remaining areas for determination identified by the Tribunal.

106. At the hearing, the Tribunal took brief submissions from the parties on what they would prefer if the Tribunal concluded on the first issue that the Balcony Works were not recoverable as a service charge.

107. The Applicant and the Second Respondents preferred the Tribunal to make extended findings on all issues requiring determination. The First Respondent submitted that the Tribunal should stop if it determined the Balcony Works were not recoverable because that is the extent of the decision required under this application. Making findings on the further issues was unnecessary and would be unhelpful to the parties.

108. The Tribunal has considered carefully the extent of this decision and the benefit to the parties of making findings in the alternative if the Tribunal were found to be wrong on the first issue it has determined.

109. On balance, the Tribunal is of the view that having determined the first issue that the Balcony Works are not payable as service charges under the Lease, it has fully determined the Applicants application under Section 27A Landlord and Tenant Act 1985 and any subsequent findings on the other issues identified by the Tribunal were only required "if" the Tribunal had found the Balcony Works were recoverable as service charges.

110. The previous case management directions had always been clear that the subsequent issues were only relevant "if" a finding was made that those costs were in principle service charges recoverable under the Lease. For the purposes of an application under Section 27A the Tribunal would clearly need to go on and determine those issues in order to properly make a decision on the application.

111. However as the Tribunal has made its finding on the first issue against the Applicant, on balance the Tribunal sees no purpose to making subsequent findings on the remaining issues and if it did, it would likely lead to an unnecessarily lengthy decision but also a convoluted one that simply does not flow or offer any practical assistance to the parties.

112. For example, the Tribunal in its deliberations was minded to find for the purposes of arguments around s19 Landlord and Tenant Act 1985 that the Balcony Works were reasonably incurred given the Applicant had received 4 separate reports that set out clear recommendations for fire safety works at the Block and that those costs were reasonable given the evidence of how the works were scoped, quoted for and a sensible process followed to procure the same. There was no real challenge to the quality of the works delivered.

113. Likewise, the Tribunal felt on balance the Section 20 consultation process had been a compliant process based on the evidence of the process undertaken by Quantum. However, if the Tribunal made such findings (and to be clear it is not making those findings in this decision) it would then lead to the unsatisfactory position of finding no requirement to make a decision on the Applicant's application to seek dispensation under Section 20ZA Landlord and Tenant Act 1985. That in turn may lead to the Tribunal again needing to make a finding in the alternative to the alternative. This is not an attractive position to the Tribunal and on balance the Tribunal believes it may only lead to confusion and an unhelpful decision to the parties.

114. Further, where the Tribunal has found the Balcony Costs are not a payable service charge, the provisions of Schedule 8 of the Building Safety Act 2022 are of no relevance to the leaseholders and this application. Arguments over its statutory terms and meaning are likely only of relevance to the Applicant and the First Respondent but in a totally different context which is not the focus of an application under Section 27A Landlord and tenant Act 1985. Any findings on this could only serve to unnecessarily complicate possible future applications those parties may make.

115. On balance therefore, the Tribunal declines to make findings on those issues that would only require findings had the Tribunal found that the Balcony Works were service charges that were in principle recoverable under the Lease.

Second Respondent's Application under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

116. By way of Application within their statement of case the Second Respondent (Flat 6 only) made a request that the Tribunal make an order under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Those provisions are set out above at paragraphs 19 and 20 and if an order is made under either provision the Applicant will not be able to pass on as service charges or administrative costs, the costs incurred in these proceedings against the persons specified in the Application, namely the Leaseholder of Flat 6.

117. The Tribunal has the discretion to make an order under either provision where it considers it just and equitable to do so. There is no presumption that an order should or should not be made depending on the outcome of the Decision. It is for the Tribunal to exercise its discretion as to what is just and equitable in all the circumstances.

118. The Second Respondent submitted that the matter could have been resolved years ago and that the Applicant had been unreasonable in bringing the application. This was based on the Applicant appearing to change its position on the demise of the timber decking without proper explanation, that position ultimately being incorrect for the purposes of this decision.

119. The Second Respondent also criticised the Applicant's disclosure of information around the Balcony Works and the costs breakdown, again suggesting had disclosure been adequate, the Tribunal's determination may not have been required.

120. However, the difficulty with the Second Respondent's submission is that it depended entirely on the Applicant accepting the Second Respondent's interpretation of Lease and therefore conceding the application. Other leaseholders did not interpret the Lease in same way and the Applicant was faced with a difficult situation given the costs incurred on the major works project and the shortfall in funding.

121. Whilst the Tribunal acknowledges the Applicant appears to have been inconsistent in its communications with the leaseholders over the interpretation of the Lease and the timber decking, the major works as a whole were undoubtedly a very positive step to take and driven by the

purpose of trying to make the Block safer. That included the Balcony Works.

122. Once the Applicant was faced with differing views on the obligations and interpretations set out in the Lease, seeking a determination on the issue was a reasonable step to take to try and get a resolution to the dispute. The Applicant had already conducted the works and therefore there would be no delay to those works in making the application and the prejudice to any other party was minimal. The Applicant reasonably needed a determination of the issue given the conflicting positions of the parties and has not acted unreasonably in bringing the application.

123. The Tribunal does not believe it would now be just and equitable for the Second Respondent to benefit from the costs associated with these proceedings not being passed onto them, if such an order was made, when they have benefitted from having the Tribunal make this determination arguably in the same way all leaseholders will. The outcome of the decision being one that the Second Respondent argued for is not a determining factor on its own when making this decision.

124. Also, given the position of the First Respondent, the Tribunal would likely have been required to make a determination on the application in any event. In such circumstances it is not just and equitable that one leaseholder would benefit from the protection of an order under this application and the remaining leaseholders would not.

125. On balance therefore, the Tribunal declines to make an order under either statutory provision as it is not just and equitable to do so in all circumstances.

RIGHTS OF APPEAL

126. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

127. 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.

128. 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.

129. 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.