FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	HAV/00HG/LSC/2025/0795
Property	:	Ocean Crescent, 24 and 26 The Crescent, Plymouth, PL1 3FH
Applicants	:	Michal Patulski – Flat 60 (26) Julie Weston – Flat 71 (26) Rodion Dmitrijev – Flat 72 (26) Neil Stanbury – Flat 34 (24) Charlie Hamon – Flat 108 (26) Christopher Roberts – Flat 121 (26)
Respondents	:	1) Ocean Crescent Limited 2) The Crescent (Plymouth) Management Company Limited
Representative	:	Mr Gibbs-Ripley, Counsel
Type of application	:	For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985
Tribunal members	:	Judge Taylor (Chair) Mr M Ayres FRICS
Date and Venue of hearing	:	30 July 2026, Plymouth Tribunal Hearing Centre
Date of decision	:	1 September 2026

DECISION

Decisions of the tribunal

1. For the service charge year ending 31 March 2023 the Tribunal determines that the following service charges are all payable by the Applicants: Maintenance charge re Flat 110 window call out £150; maintenance charge for a lift handrail £180; maintenance charge for painting generator room floor £582.

2. For the service charge year ending 31 March 2024 the Tribunal determines that the service charges for :(1) gutter investigation £65; (2) Lift maintenance charges £5,801; and (3) Window cleaning £4,000, are payable by the Applicants. The service charges for

making good works inside apartment 37 £1,150 are not payable by the Applicants.

3. For the service charge year ending 31 March 2025 the Tribunal determines that the service charges for replacement of glass panel £1,014 are payable by the Applicants. The service charges for lift maintenance that are contained in the invoice from OTIS dated 6 February 2023 in the sum of £13,513.82 are not payable by the Applicants. The remaining service charges for lift maintenance are payable by the Applicants. While we made no determination in respect of the service charges relating to the Bailey Partnership fees, we record that the Respondent confirmed to the Tribunal that these fees are not payable by the Applicants and they will be reimbursed to the lessees in the service charge account for the year ending 2026.

4. The Tribunal refuses the applications for orders under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.

5. The Tribunal's reasons are set out below.

<u>The Application</u>

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of their liability to pay and reasonableness of service charges for the years 2022/2023, 2023/2024 and 2024/2025. By the Application, the Applicants raised challenges to a large number of items of charges claimed over those years, including challenges to buildings insurance, managing agent's fees and building manager's salary. Prior to the hearing, the issues had been narrowed to 11 items which are helpfully summarised in the Applicant's Corrected Scott Schedule ("the Scott Schedule"). The total value of the charges challenged was £50,342.47. In their skeleton argument for the hearing, the Applicants confirmed that one of the items in the Scott Schedule was no longer pursued, leaving ten items in issue with a total value of £49,712.97, across the three service charge years. The Applicants also seek orders pursuant to section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

2. The Tribunal is grateful to the parties for their clarity at the hearing and for their helpful statements and skeleton arguments.

<u>The hearing</u>

3. The Applicants appeared in person and Mr Patulski presented the case on behalf of them all. The Second Respondent was represented by Mr Gibbs-Ripley of Counsel. Gary Rendle, of Residential Block Management Group Ltd ("RBM"), the managing agents appointed by the Second Respondent, was present and gave evidence. Mr Scantlebury and Mr Marsham attended on behalf of the First Respondent and confirmed that they agreed with the Second Respondent's position and Mr Gibbs-Ripley's submissions. As the First Respondent took no active part in the Application, and for ease of reference, we refer to the Second Respondents as "the Respondent".

4. The Applicant's evidence was contained in its Statement of Case, its Reply to the Second Respondent's statement, its Supporting Evidence Notes (all of which referred to the documents in the bundle) and the evidence Mr Patulski gave to the Tribunal in answers during cross examination and to questions raised by the Tribunal.

5. The Respondent's evidence was contained in two witness statements from Mr Rendle and their exhibits, and the evidence he gave to the Tribunal in answers during cross examination and to questions raised by the Tribunal.

6. The Tribunal read the bundle of documents provided, which contained 969 pages; references to page numbers in the bundle below are shown as numbers in square brackets.

<u>The background</u>

7. The property known as Ocean Crescent is a purpose-built building constructed in the early 2000's and split across two addresses, 24 The Crescent and 26 The Crescent. It is a mixed-use building, with 15 commercial units being located to the ground floor, and 122 residential apartments located above. In 24 The Crescent, there are 47 apartments, and in 26 The Crescent there are a further 75 apartments. It is a high-rise building. It comprises 10 storeys, including the commercial units located to the ground floor. It is 31.58 metres in height. Each of the residential sides of the building benefits from a lift, so there are two lifts within Ocean Crescent.

8. The Applicants are the leaseholders of the respective flat numbers at the property that are set out above.

9. The First Respondent is the registered freehold proprietor of the property. The Second Respondent is the management company for Ocean Crescent.

10. The Tribunal was told that the leases of all the flats at Ocean View are in identical terms for the purposes of the Application. The Lease of Mr Patulski's property, apartment 60, was provided in the bundle ("the Lease"). It is a tri- partite lease and contains the following terms relating to payment of service charges by the lessors, and the provision of services by the landlord:

(i) the Respondent is defined as *"the Estate Manager"*;

(ii) "Service Charge" is the expenditure incurred by the Second Respondent or the First Respondent in (1) providing the services which are set out in the Sixth Schedule, (2)in the performance and observance of all obligations entered into by the Second Respondent (and/or the First Respondent) for the benefit of the tenants of all apartments, and (3)any managing agents or other fees whatsoever incurred in accordance with clause 6 relating to the items included in the service charge including those incurred by the appointees (as defined by clause 6(a));

(iii) By clause 5 (a) the Second Respondent covenanted to perform the covenants in the Sixth Schedule*;*

(iv) The Sixth Schedule sets out the Second Respondent's obligations to carry out the services as there set out. We will refer to such of those as are relevant below.

The issues

11. The Scott Schedule and the parties' statements of cases and skeleton arguments identified the following issues for determination:

(1) Service Charge year ending 31 March 2023:

Maintenance charge re Flat 110 window call out £150; maintenance charge for a lift handrail £180; maintenance charge for painting generator room floor £582.

(2) Service charge year ending 31 March 2024:

Maintenance charge making good works inside apartment 37 £1,150; maintenance charge for gutter investigation £65; Lift maintenance charges £5,801; Window cleaning £4,000.

(3) Service charge year ending 31 March 2025:

Maintenance charge for replacement of glass panel £1,014; Lift maintenance charges £21,115.39; project manager Bailey Partnership charges £15,655.90.

12. The Applicants seek a determination under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the above service charges are payable by them and, if so, the amount that is payable. When reaching our decision, we must apply section 19 of the 1985 Act, which provides as follows:

"19 Limitation of service charges: reasonableness

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

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

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

And the amount payable shall be limited accordingly."

Year ending 31 March 2023

(1)Maintenance charge re Flat 110 window call out £150.

13. The Applicants' evidence was that the Invoice for the work [166] records that DP Developments received a call out from RBM on Sunday 25 September 2022 in respect of a *"report of a window falling out"*. The invoice further records that *"the tilt and turn mechanism on the bedroom window had jammed: Eased it and were then able to shut it"*.

14. The Applicants referred to the First Schedule of the Lease which defined the Premises demised by the Lease. Sub – paragraph (a) states that the demised apartment includes *"the internal plastered coverings and plaster work of the walls bounding the Apartment and the doors and door frames* ***and window frames and the glass fitted therein"***

(emphasis added). The Applicants also referred to the Fourth Schedule of the Lease [79], by which the Lessee covenanted to repair and maintain all the Premises demised in the First Schedule, including the window frames. The Applicants said that the Respondent had not identified any provision in the Lease which allowed maintenance costs on windows to be charged as a service charge item, rather than the cost being borne by the individual property owner.

15. Mr Rendle's evidence for the Respondent was that this cost was included as a service charge cost because the work had been required to address a health and safety concern. He said that calls to RBM's team that raise such concerns are always treated seriously and because of the report, RBM had arranged for the emergency call out on a Sunday, as recorded in the invoice. He referred to the Sixth Schedule, paragraph 10 of the Lease, which contains a covenant by the Respondent to *"…to do or cause to be done all things as in the absolute discretion of the Estate Manager may be necessary or advisable … for the benefit or safety … of the Building… or… the Tenant"*. He said that the first person to assess the safety of the situation with the window would have been the contractor when he attended following the emergency call out.

16. The Respondent submitted that the amount claimed is recoverable under the Sixth Schedule as a service charge cost and was reasonably incurred in the circumstances of a report received on a Sunday that gave reason to believe a window might fall out and cause injury. The Applicant accepted that there had been a potential health and safety issue and the situation did justify an emergency call out.

Decision

17. We are satisfied that this charge is recoverable as a service charge item as a cost reasonably incurred by the Respondent under its obligations under paragraph 10 of the Sixth Schedule. We are also satisfied that the amount charged is reasonable. We find that the Respondent reasonably responded to a report which raised health and safety concerns by arranging for the reported window to be inspected and in those circumstances the resulting charges are within the scope of paragraph 10 of the Sixth Schedule.

(2) Maintenance charge for a lift handrail £180

18. The Applicants' challenge a service charge of £180, which is the amount paid by the Respondent for work to a handrail in a lift in September 2022. The invoice for the work [629] is from NDF Civils and Property Services Limited and describes the work done as *"For the fitting of lift rail. Please note this had to be taken away to be machined."*

19. At the hearing the Applicants confirmed that their challenge was that the work had not been completed and so the cost was not reasonably incurred. They relied on a photograph taken in 2025 [169], which shows a lift which has a missing handrail. They submitted that the Respondent had not proved that the work charged had been completed because the invoice did not identify which rail had been worked on and the photograph showed a rail was missing.

20. Mr Rendle's evidence for the Respondent was that the lift rail required repair in the way shown on the invoice and the red "Approved" stamp on it was evidence that RBM's building manager had been satisfied at the time the work was done in September 2022 that it had been completed as shown on the invoice. The Respondent submitted that a photograph in 2025, three years after the work was done, does not prove that the work was not done at the time and the Tribunal should accept the invoice proves the work was completed and paid for in 2022.

Decision

21. We are satisfied that this charge is recoverable as a service charge item as a cost reasonably incurred by the Respondent and that the amount charged is reasonable. We find that the Respondent satisfied itself that the work detailed on the invoice was required and completed before payment was made by placing the "Approved" stamp on the invoice. The photograph relied on by the Applicants is not in our view of any evidential value because it was taken in 2025, three years after the work was done,and therefore it does not show what had (or had not) been done in 2022.

(3) maintenance charge for painting generator room floor £582.

22. At the hearing the Applicants confirmed that they challenged this charge because it was not reasonably incurred. They said that Ocean View suffered from large scale general disrepair and the Respondents had not justified why this work was done, rather than spending the money on other repairs that were needed.

*23.*The invoice for this work [174] is dated 26 January 2023; it describes the work as *"For the paining of floor of store with floor paint"*.

24. The Applicants' evidence included their "Supporting evidence notes" which contained details of various disrepair in parts of Ocean View. In particular, this evidence showed areas of water ingress to various flats and balconies. The Applicants questioned why the Respondent had chosen to spend money on painting the storeroom floor, while there were other repairs that were not being addressed.

25. During cross examination, Mr Patulski agreed that these works were service charge items under the Lease provisions but said that the Applicants' challenge was that the money should have been spent on other repairs. Mr Patulski said that the Applicants did not know what the Respondent's strategy was in respect of prioritising work.

26. Mr Rendle's evidence for the Respondent was that the storeroom in question was the generator room, to which the residents do not have access. He agreed that there are unresolved water ingress issues at Ocean Crescent, particularly for those flats that are located in the vicinity of the rainscreen cladding. However, the Ocean View Building has fire safety issues caused by that cladding and the render. Works are required to the external wall system that are estimated to cost £10-12 million. Some grant funding has been received and the Respondents are awaiting final costings before the works will be commenced. Mr Rendle said that as part of the major works, the cause of the leaks will be identified and the scaffold for the major works will be used to carry out the repairs needed to address the source of the leaks. The Respondent does address leaks when they are reported but it is a "never ending battle" until the major works can be done to address the long-term problem.

27. Mr Rendle said the storeroom painting was not an urgent repair but the building manager had directed that it needed to be done. He thought it was reasonable to spend money on this repair because the service charge

had to be used for multiple purposes, not just for dealing with leaks. There was a healthy balance in the service charge account when the work was done, which allowed both these works and leak repairs to be done.

Decision

28. We are satisfied that this charge is recoverable as a service charge item as a cost reasonably incurred by the Respondent and that the amount charged is reasonable. We accept Mr Rendle's evidence and find that the painting work was reasonably required following RBM's building manager deciding the work was needed. The Respondent's repairing and maintenance obligations in the Sixth Schedule are wide ranging. We are satisfied it was reasonable for the Respondent to decide to allocate funds to a repair that was identified as required by its building manager. The fact that there were other competing calls for money to be spent do not detract from the reasonableness of incurring the cost for this repair

Year ending 31 March 2024

(1) Maintenance charge making good works inside apartment 37 £1,150

28. The Applicants say that this is not a service charge item because it relates to work done inside an individual apartment. The invoice for the work [137] describes work done to redecorate apartment 37 *"Following a leak from a communal soil stack"*. The Applicants also submitted that an insurance claim should have been made for the work.

29. It was put to Mr Patulski in cross examination that clause 10 of the Sixth Schedule to the Lease (summarised in paragraph 15 above) gave the Respondent the right to recover these costs from the service charge because the works were required as a result of damage caused by a defect in a communal soil stack. Mr Patulski was not sure that was right and thought internal works to individual apartments were the individual lessee's responsibility.

30. Mr Rendle's evidence was that RBM had repaired a communal soil stack that had been leaking. The leak had damaged apartment 37 and

RBM instructed the repair work to that flat because it was required as a result of damage to a communal repair item. No insurance claim had been made because there was a £500 excess on the policy which made it uneconomic to make a claim; a claim of this value would result in a larger premium the next year, given the problems insuring the Building with its safety issues.

Decision

31. In our view this item is not recoverable by the Respondent. The charges are for works that were done wholly inside apartment 37. The responsibility for repairs within individual apartments falls on the lessees of the individual apartment, pursuant to the covenants in the Fourth Schedule to the Lease, at paragraph 3 (a): *"[to] repair maintain renew uphold and keep the Apartment comprised in the Premises … in good and substantial repair and condition save as to damage in respect of which the Landlord is entitled to claim under any policy of insurance maintained by the Landlord…".*

32. Clause 10 of the Sixth Schedule ,which is relied on by the Respondent, is a "sweeping up" clause. In our view, a sweeping up clause of this nature does not have effect where the lease deals expressly with a particular matter.

33. The Lease in this case makes express provision in the Fourth Schedule, paragraph 3 as to the responsibility for works of repair inside an Apartment that has been demised in the Building, namely the lessee is responsible unless an insurance claim may be made. In this case the Respondent decided not to make an insurance claim. However, in our view the proper interpretation of the Lease is that the failure to make an insurance claim does not then create an obligation for the Respondent to undertake the necessary repair works, nor a right to charge the cost to the service charge account. Construing the Lease as a whole, we are satisfied that the parties to it did not intend that the costs of works of repair undertaken wholly within a demised apartment would be met by all other owners of apartments in the Building through their proportions of the service charge. The lessee's covenant to repair makes clear that such costs should be borne by the individual owner, save where an insurance claim can be made. The "sweeping up" provisions in clause 10 are properly interpreted as provisions that might deal with circumstances not

otherwise covered by express provisions in the Lease. In our judgment, those provisions accordingly have no effect in respect of the cost of these works because those works are expressly covered by the Fourth Schedule and so the costs incurred are not properly charged to the service charge account.

(2) Maintenance charge for gutter investigation £65

34. The invoice for the charge challenged [115] is dated 23 January 2024 and describes the work done as *"called out to investigate a leak from gutter in flat 121 and checked downpipe"*. The Applicants challenge this charge on the basis that it is not reasonably incurred or reasonable in amount because there is no evidence of the outcome of the investigation, in other words there is no evidence of any defect found or work done/recommended.

35. Mr Rendle's evidence was that RBM received a report of a leak and instructed the contractor to attend to investigate. In his experience, £65 was a very reasonable charge for a call out of this nature

Decision

36. We are satisfied that this charge is recoverable as a service charge item as a cost reasonably incurred by the Respondent and that the amount charged is reasonable. We accept Mr Rendle's evidence and find that the charges were incurred following a report of a leak. In those circumstances it was reasonable to incur the cost of a call out by a contractor to investigate. We find that £65 is a reasonable charge for such a call out. The fact that there is no report or information concerning the outcome of the investigation does not in our view detract in any way from the reasonableness of the decision to instruct the work or the charge incurred.

(3) Lift maintenance charges- (a) £5,801 (YE 2024) and (b)£21,115.39 (YE 2025)

37. We deal with the challenges to lift charges incurred in both of these service charge years in this section.

38. In relation to the charges for year ending 2024, the Applicants refer to the invoice for the work in question. This had not been included in the Respondent's evidence and so was not in the bundle but was produced by the Respondent on the day of the hearing. The invoice is from OTIS Limited and is for £5453.16. The description of the work done is *"Repair car and landing doors following Ex trapping/misuse"*.

39. The Applicants challenged this charge, and a further charge by OTIS of £347.92, which is detailed in the service charge accounts for the year [945]. At the hearing the Applicants said that they had originally challenged the main charge because they had not been shown the invoice. Now this had been provided, albeit on the morning of the hearing, they continued to dispute it on the basis that they did not believe it was recoverable under the Lease provisions. They referred to the Fourth Schedule, paragraphs 17 and 19, which respectively provide (1) that the Lessee shall pay the cost of making good damage done by them to any part of the Building, and (2) that the Lessee shall use the Common Parts in a responsible and careful manner. The Applicants submitted that the Respondent should have done more to ascertain which lessee had caused the damage and pursued them for the costs of repair, rather than putting the cost into the service charge.

40. Mr Rendle said that the main cost had been incurred as shown on the invoice following a report of a lift fault. The lift door had been forcibly held open which had caused the sensor to "trip" and a fault code was generated to this effect. The cost of the works was not within the scope of the maintenance contract and so the additional charge was payable. He was asked in cross examination whether an insurance claim could have been made. He said the policy did not cover deliberate damage and so no claim could be made. He said there was no CCTV coverage and the lessee who caused the damage could not be identified, so the cost had to be put through the service charge. The smaller invoice for £347.92 was a call out charge for a lift fault, again not covered by the maintenance contract.

Decision on YE 2024 lift charges

41. We are satisfied that these charges are recoverable as service charge items as costs reasonably incurred by the Respondent and that the amounts

charged are reasonable. In closing submissions, the Applicants accepted that these costs fell outside the scope of the maintenance contract with OTIS and were not recoverable under the insurance policy. We are satisfied that, while it may well have been possible for a claim to have been brought against the lessee who caused the damage (for the major invoice), the Respondent acted reasonably in not taking further action to try to identify the relevant person and bring such a claim. Under paragraph 11 (i) of the Sixth Schedule to the Lease, the Respondent is not liable for: *"…any malfunctioning of the lift caused by any act or neglect or default of any person using the lift…"*. We accept Mr Rendle's evidence that the identity of the person responsible was not known. We also find on Mr Rendle's evidence that the work covered by both invoices was reasonably instructed because it was necessary following reports of faults. There was no challenge to the reasonableness of the costs actually incurred and we find that they were reasonable.

42. The charges challenged in the year ending 2025 are contained in the service charge accounts [964] as follows:

(a) £373.20
(b) £1,723.97
(c) £1723.97
(d) £13,513.82
(e) £255.60
(f) £1723.97
(g) £1602.14
(h) £198.72
Total £21,115.39

43. The invoices for these charges were not disclosed by the Respondent and so were not in the bundle. During cross examination, Mr Rendle sought permission from the Tribunal to check his laptop, to see if he could find the invoices on the Respondent's "system". Permission was given and he was able to produce invoices for the charges listed in sub-paragraphs (b),(c),(d),(f) and (g) above.

44. The Applicants referred to the budget for the service charge year produced by RBM, which included: "*Lift Maintenance Contract Annual Lift Maintenance Contract Cost for 2 Lifts. £3,500.00 Lift Repairs Lift Repair Costs for non-contracted wear and tear items. £3,544.45*" . They said that the large discrepancy between these budgeted sums and the

£21,115.39 charged in the accounts gave reason for the Respondent to have to show that the charges were reasonable. They said that the Respondent had not done so.

45. Mr Rendle's evidence was as follows:

(a) In respect of the charges for £13,513.82 in sub- paragraph (d), he referred to the invoice produced on the day of the hearing. The description on the invoice said: *"Please find your Involce in respect of works carried out as per the approved quotatlon. Attached Is your Service Vislt Report detailing activities carried out on site"*. He could not produce either the quotation or the report referred to. In his witness statement he said the invoices challenged fell outside of the maintenance contract He was asked in cross examination if he could provide any background information on the work done and he said he could not assist as he had no details other than what was on the invoices. He said that he did not have the report referred to in the invoice to assist.

(b) In respect of the charges at sub-paragraphs (b), (c) and (g), he referred to the invoices he had found on PBM's system. These all described the costs as: *"Contractual Maintenance carried out as per contract."*

(c) In respect of the charges at sub-paragraph (f), he said that he could not find the invoice but believed the charge must have been for contractual maintenance as per the contract, as the sum was the same as for the invoices at (b) and (c).

(d) He did not have invoices for the more minor charges at (a), (e) and(h). He said there were lots of lift breakdowns and he believed these charges were for call out charges outside of the maintenance contract.

Decision on year end 2025 charges

46. The Applicants challenge these substantial charges on the basis that the charges made to the service charge were three times higher than the costs budgeted for the lifts and that no explanation has been given by the Respondent to explain the work and charges. We have considered the guidance given by the Upper Tribunal in *Rana and Vishnuram v Assethold Limited: "When the FTT's jurisdiction under section 27A is invoked by leaseholders, they must make out a prima facie case that indicates that a cost was not reasonably incurred, or that an estimated charge was not reasonable. Once they have done so, the evidential burden shifts to the landlord to show the expenditure, or the charge (as the case might be), was reasonable"*.

47. We are satisfied that the Applicant has made out a prima facie case in relation to the lift expenses because of the substantial discrepancy between the budgeted costs and the charges incurred. Therefore, the burden of proof shifts to the Respondent to show reasonableness.

48. The Respondent's evidence on these items was unsatisfactory. They failed prior to the day of the hearing to disclose the invoices in question. Even then, some of the invoices were missing and, importantly, the invoice for the major cost item (sub- paragraph (d)) was incomplete because it did not include the report detailing the work. This was despite the Applicants explicitly asking for them in the Scott Schedule and it being clear from the outset that they were required. Further, Mr Rendle's evidence in cross examination contradicted his witness statement. In the latter he said the charges claimed were outside of the maintenance contract, in the former he acknowledged when he had sight of the invoices that some of them were the maintenance contract charges. Mr Rendle was unable to provide any detail at all as to reason for and the calculation of the cost of the work in the major cost invoice. The Respondents did not provide evidence from anyone who might have been involved in arranging for that work.

49. In our view, the charges of £13,513.82 contained in the OTIS invoice dated 6 February 2023 are not recoverable as service charge items. We find that the Respondent has failed to prove that those costs were reasonably incurred or that the amounts charged are reasonable. The Respondent simply did not produce any reliable evidence on those issues. Mr Rendle's explanation of the costs in his witness statement was contradicted, and in effect withdrawn, in cross examination. He confirmed frankly in cross examination that he had no information about the costs, in the absence of the report which was referred to in the invoice but not produced by the Respondent.

50. As to the invoices at 42, (b), (c), (f) and (g), we find that these are all invoices for contractual maintenance charges. The costs in those invoices are consistent with the budgeted costs and the invoices provided describe the work as such. While one of invoices is missing, we find on balance that it is for contractual maintenance given the amount is identical to two of the other invoices so described. These charges are accordingly recoverable.

51. We also find that the invoices at 42, (a), (e) and (h) are all recoverable. On this issue we accept Mr Rendle's evidence that these are for call out charges outside of the maintenance contract. We find them reasonably incurred and reasonable in amount.

(4) Window cleaning £4,000.

52. The invoice challenged was again produced by the Respondent only on the day of the hearing. It is dated 11 April 2023 and the description is: *"Ocean Crescent – Window Cleaning All exterior glass cleaned"*

53. The Applicants accepted that £4,000 was a reasonable cost for this window cleaning but challenged the reasonableness of incurring the cost in the service charge for two reasons: (1) whether the windows in the commercial units had been cleaned and, if so whether the cost had been properly apportioned between the commercial and residential units; and (2) whether all the windows had been cleaned and if so to a reasonable standard. It was only when the Applicants were presenting their case on this issue that Mr Rendle found and produced the invoice mentioned above.

54. Mr Rendle's evidence was that the invoice recorded that all the windows had been cleaned and he knew of no contrary evidence they had not been. RBM are not instructed for the maintenance of the commercial units and so their order for the window cleaning can only have been for the residential units. No apportionment was necessary as the work was only for the residential units.

Decision

55. We are satisfied that these charges are recoverable as service charge items as costs reasonably incurred by the Respondent and that the amounts charged are reasonable. We accept Mr Rendle's evidence and find that all of the exterior windows of the residential units were cleaned and that no apportionment of the cost is required in respect of the commercial units. We find that the cost charged are reasonable.

Service charge year ending 31 March 2025:

1) Maintenance charge for replacement of glass panel £1,014

56. The invoice challenged is from Novex Facilities Management , dated 23 August 2024, in the sum of £1,014. The description of work is: *"Remove existing ad broken glass panel. Supply and fit new glass panel…"*.

57. The Applicants challenged the reasonableness of the cost of this work. They referred to a photograph taken in 2025 [169] which shows a cracked mirror in a lift and queried whether the work had been done if this mirror was still cracked. They also suggested the cost incurred was too high but had no alternative costing evidence.

58. Mr Rendle confirmed the work was to repair a cracked mirror in a lift. The invoice described the work done and he thought the cost was reasonable.

Decision

59. We are satisfied that these charges are recoverable as service charge items as costs reasonably incurred by the Respondent and that the amounts charged are reasonable. We accept Mr Rendle's evidence and find that the work instructed was reasonably required to repair a cracked mirror in a lift. There is no evidence produced by the Applicant to suggest that the work was not done; the photograph they rely on was taken well after the work was completed and does not in our view challenge the evidence that the work was indeed completed.

60. No further decisions are required in respect of the year ending 2025. We have dealt above with the lift maintenance charges for that year. The remaining issue in the Scott Schedule is the Bailey Partnership internal works project costs. However, the Applicants accepted the explanation given by the Respondent in the Scott Schedule response, namely that grant funding has been received for the costs included in the service charge accounts and the accounts for the year 2025/26 will show a reimbursement.

Costs

61. In the Application form and at the hearing, the Applicants applied for an order under section 20C of the Landlord and Tenant Act 1985 Act. That is an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be

added to the service charge of the Applicants. Additionally, an application was made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Such an application may reduce or extinguish the tenant's liability to pay an administration charge.

62. The first question we have to decide on these applications is whether the Lease permits the Respondent to include the costs it has incurred in this Application as recoverable costs in the service charge. If, on a proper construction of the Lease, it does not, the Applicant has no need of an order under these provisions because there would no contractual right to recovery in the first place.

63. The Respondent relied on the following provisions in the Lease:

(a) Sixth Schedule, paragraph 16: *"The Estate Manager shall be entitled to employ and engage or to delegate any of its obligations and or powers to such Appointees or such managing agents servants managers contractors solicitors surveyors and accountants as it considers necessary or desirable from time to time for the performance of its obligations under this Schedule or for the exercise of any of its powers contained in the leases of the Apartments…";*

*(b)*Clause 7(a)(ii) which defines the "Service Charge" including: "*the performance of all obligations entered into by the Estate Manager and/or the* Landlord *for the benefit of the tenants of all the Apartments";*

*(*c) Clause 6 (a) (4): *" To perform its duties the Estate Manager shall employ engage and delegate at all times throughout the Term the following ("the Appointees"): (4) such other accountants or professionals as are required to enable the Estate Manager to comply with its statutory obligations from time to time concerning the levying of service charges".*

64. The Respondent submitted the proper construction of these provisions is that the Lease permits the inclusion of the Respondent's costs of the Tribunal proceedings in the service charge.

65. The Applicants argued that the Lease provisions relied on by the Respondent were not specific enough to provide for recovery of the costs of Tribunal proceedings. These provisions should be construed as allowing costs only where they relate to the Respondent carrying out its service charge obligations, not for legal costs of Tribunal proceedings.

66. In interpreting the Lease we follow the principles set out by the Supreme Court in *Arnold v Britton [2015] UKSC 36*. Lord Neuberger gave the leading judgment and he set out seven factors to be considered. Of paramount importance is the language of the provision which is to be construed. He said that the exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provisions.

67. In our judgment the Lease provisions set out above do extend to permit the Respondent to include the cost of its Tribunal proceedings in the service charge for the reasons that follow.

68. Paragraph 16 of the Sixth Schedule expressly provides for the engagement of solicitors. It was accordingly in the contemplation of the parties to the Lease that solicitors and other agents could be engaged and their costs recovered through the service charge in some circumstances.

69. In our view that provision must be construed together with Clause 6 (a) (4). This clause gives power to engage "professionals" for the purpose of complying with the statutory obligations concerning service charges. While this does not specifically name solicitors and barristers , we are satsified that the parties to the Lease contemplated that they were part of the class of "professionals" within this clause.

70. By the use of the words (1) "*...for the performance of its obligations under this Schedule"* in the Sixth Schedule, paragraph 16, and (2) *"...as are required to enable the Estate Manager to comply with its statutory obligations from time to time concerning the levying of service charges...",* the parties to the Lease meant to provide for the recovery through the service charge of costs incurred in proceedings of this type in the Tribunal. In responding to the Application, the Respondent is in our view, performing its obligations under the Lease to seek recovery of service charge and complying with its obligations concerning the levying of service charges by responding to the challenge to the charges raised by this Application which is made under statutory provisions.

71. Having found there is a contractual right to recovery, we turn to the applications.

72. The test we must apply was set out in *Tenants of Langford Court v Doren Ltd (LRX/37/2000),* in which HHJ Rich said as follows*:" In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the*

circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise............In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes it use unjust."

73. In the Upper Tribunal case of *SCMMLA (Freehold) Limited, re Cleveland Mansions, and Southwold Mansions [2014] UKUT 58(LC),* Martin Rodger QC stated that *"an order under section 20C interferes with the parties' contractual rights and obligations and for that reason ought not to be made lightly or as a matter of course.*

74. We are satisfied that it is not just and equitable to make an order in this case. The Applicants have succeeded in one important aspect, namely the level of recoverability of the lift charges in the year ending 2025. However, the Applicants have not succeeded on most of the items they challenged. In the corrected Scott Schedule that set out the items in dispute at the beginning of the hearing, there were 11 disputed items. The Applicants have succeeded in two of those items, with one other being effectively agreed between the parties. We also take into account that the Application when commenced included a large number of other challenges, some of which were of high value. The Respondents had to respond to all the wider issues in their initial evidence, and further evidence was needed when the issues were narrowed as the claim progressed.

75. The Applicants said that the Respondent's conduct should be taken into account because it had failed to give proper disclosure to enable the Applicants to fully understand the charges. However, having considered all the substantial evidence and seen the parties at the hearing, we are satisfied that there is no basis for concluding that the Respondent has conducted these proceedings in an improper or unreasonable manner.

76. Accordingly, we consider it just and equitable in all the circumstances to refuse to make a Section 20C Order in this case. We also refuse to make a Paragraph 5A Schedule 11 Order.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).