



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

Case Reference : HAV/00ML/LSC/2026/0018

Property : 13/14 Chichester Terrace, Brighton, East
Sussex, BN2 1FG

Mistralcrest Properties Limited

Flat 4, 14 Chichester Terrace BN2 1FG: Jeremy Browning.

Flat 5, 13 Chichester Terrace BN2 1FG: Peter Campbell

Flat 6, 14 Chichester Terrace BN2 1FG: Tony and Judith Waite.

Applicants : Flat 7, 13 Chichester Terrace BN2 1FG: Gus Watcham

Flat 8, 14 Chichester Terrace BN2 1FG: Jane Horrocks.

Flat 10, 14 Chichester Terrace BN2 1FG: Simon Fanshawe

Flat 11, 13 Chichester Terrace BN2 1FG: René Dee

Flat 12, 14 Chichester Terrace BN2 1FG: Farris and Sophie Ziyada

Representative :

Flat 1, 13 Chichester Terrace BN2 1FG: Peter and Rennie Buck-Bouchard.

Flat 2, 14 Chichester Terrace BN2 1FG: Jo Lewthwaite.

Respondents : Flat 3, 13 Chichester Terrace BN2 1FG: Peter and Rennie Buck-Bouchard.

Flat 9, 13 Chichester Terrace BN2 1FG: Amy Daroukakis

Flat 14, 14 Chichester Terrace BN2 1FG: Jason Thomas.

Representative :

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	:	Tribunal Judge Bowden
Venue	:	Paper Determination
Date of Decision	:	07 September 2026

DECISION

This is a formal order of the Tribunal which must be complied with by the parties.

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Summary of Decision

- (1) The service charge demands apportioned at 1/13th are payable under the 13 leases.**
- (2) The major works sum demands apportioned at 1/13th are payable under the 13 leases.**
- (3) The major works demand sent in April 2026 is not due from those leases varied by the 1983 deed of variation until 29 September 2026.**
- (4) The major works demand sent in April 2026 was due from those leases where there is no 1983 deed of variation, 21 days from the date of the demand.**

Introduction

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”). The Applicant is not seeking orders under Section 20C of the 1985 Act or Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”); the Applicant, on the application, sought a determination as to the amount of service charges and major work demands payable by the Respondents in respect of the service charge year 2025.
2. It was later clarified that the Applicant sought a determination of the proper apportionment of service charges payable by each lessee, in circumstances where historical informal arrangements have resulted in contributions that diverge from the terms of the lease.

The Hearing

3. On 17 June 2026, at a case management hearing (direction dated 26 June 2026), the Tribunal set the matter down for a proper

determination. It also determined that there would be no inspection of the Property and that no expert evidence was required.

4. On 31 July 2026, the Tribunal reviewed the case to assess its suitability for a paper determination and was satisfied that the bundle contained sufficient information from which the Tribunal could make a determination.
5. The matter proceeded to a paper determination on 26 August 2026.
6. The Tribunal had the benefit of a 339-page hearing bundle. The original application form was missing from the bundle. The Tribunal obtained the application form from the Tribunal file before making a determination.
7. The Tribunal read and considered all the documents in the bundle and gave attention to each witness statement. If something is not mentioned in this decision, it does not mean the Tribunal did not consider it.

The Background

8. The Property which is the subject of this application is two adjacent Grade One Listed properties on Brighton Seafront, Number 13 (comprising 6 flats- Flats 1,3,5,7,9 and 11) and Number 14 (comprising 7 flats - Flats 2,4,6,8,10,12 and 14). The houses were built in the 1820s as part of the grand design of the Thomas Read Kemp Town Estate.
9. The 13 self-contained flats are of varying size, number of bedrooms, outlook and facilities. Currently, 12 of the flats are owner-occupied, and one is rented. Flats 1 and 3 have been joined and currently form one dwelling, but they are still formally leased as two individual flats, with the owner having two shares in the Freehold Company.
10. The Applicant, Mistralcrest Properties Limited (“MPL” and “the Company”) is the freeholder, the other applicants are leaseholders.
 - a. MPL is run by a board of members. Board members are also leaseholders; the board members are:
 - Judith Waite

- Simon Fanshawe
- Jeremy Browning
- Jason Thomas
- Gus Watcham
- Peter Campbell
- Farris Ziyada

b. The leaseholder Applicants are:

- Flat 4, 14 Chichester Terrace BN2 1FG: Jeremy Browning.
- Flat 5, 13 Chichester Terrace BN2 1FG: Peter Campbell
- Flat 6, 14 Chichester Terrace BN2 1FG: Tony and Judith Waite.
- Flat 7, 13 Chichester Terrace BN2 1FG: Gus Watcham
- Flat 8, 14 Chichester Terrace BN2 1FG: Jane Horrocks.
- Flat 10, 14 Chichester Terrace BN2 1FG: Simon Fanshawe
- Flat 11, 13 Chichester Terrace BN2 1FG: René Dee
- Flat 12, 14 Chichester Terrace BN2 1FG: Farris and Sophie Ziyada.

11. The Respondents are also long leaseholders, but they oppose the application; they are:

- Flat 1, 13 Chichester Terrace BN2 1FG: Peter and Rennie Buck-Bouchard.
- Flat 2, 14 Chichester Terrace BN2 1FG: Jo Lewthwaite.
- Flat 3, 13 Chichester Terrace BN2 1FG: Peter and Rennie Buck-Bouchard.
- Flat 9, 13 Chichester Terrace BN2 1FG: Amy Daroukakis
- Flat 14, 14 Chichester Terrace BN2 1FG: Jason Thomas.

12. Each flat has a long leasehold interest in the Property. Under the leases, the landlord must provide services, and the tenant must contribute

towards the variable service charge. Each of the 13 flats has an equal share in the Company.

13. The specific lease provisions are referred to below, where appropriate.

The leases:

14. There are 13 leases (there is no Flat 13)
15. The leases are understood to be for 999 years. There are various start dates mentioned in the deeds of variation. The Tribunal has not seen the original lease, except for Flats 4 and 9. The Tribunal has the relevant deeds of variation for the other flats.
16. The MPL information manual says:

“... the original leases were drawn up at different times between February 1968 and May 1977. However, all are for a uniform 999-year term beginning 25 March 1966.”

“On 11 June 1983, Deeds Of Variation were drawn up for all 13 Leaseholders with the express aim of linking MPL, the new Freeholder, with the 13 individual Leaseholders via the original lease. This is now in effect.”

17. In 1983 a deed of variation replaced the original service charge covenant in 11 leases. The new service charge covenant required each leaseholder to pay a 1/13th share of the relevant costs demanded under the lease.
18. In the leases for Flat 4 and Flat 9, the service charge share was already 1/13th, albeit the wording in 20(a) and (b) differs and there is no (c) or (d). See the table below.
19. No deed of variation for Flats 4 and 9 was produced, and the Tribunal therefore proceeds on the evidence before it.

Relevant clauses

20. The relevant clause in the deed of variation and leases in the bundle have the following wording:

1983 deed of variation for Flats 1/2/3/5/6/7/8/10/11/12/14	Leases for flats 4 and 9
<i>2(20) To pay to the Company on demand in each year a sum equal to One-thirteenth part of all moneys expended by the Company in carrying out all or any of the works and providing the management and administration of the building specified in the schedule hereto. The liability of the Lessee hereunder shall be discharged in the following manner that is to say</i>	<i>2(20) To pay to the Company on demand in each year a sum equal to One-thirteenth part of all moneys expended by the Company in carrying out all or any of the works and providing the management and administration of the building specified in the schedule hereto The liability of the Lessee hereunder shall be discharged in the following manner that is to say:-</i>
(a) the Lessee shall on the 25th day of March and the 29th day of September in every year throughout the term pay in advance to the Lessor the sum of FIFTY POUNDS (£50.00) or such greater sum as the Lessor shall in the Lessor's absolute discretion deem appropriate on account of the Lessee's contribution as aforesaid	(a) by a yearly payment of Ten pounds (£10) on account of such sums to be paid on demand
(b) as soon as practical after the 25th day of March in every year the less all or the Lessor's agents shall serve on the Lessee an account (hereinafter called "the annual maintenance account") and shall certify the actual amount of the Lessees aforesaid liability for the previous year and the Lessee shall forthwith pay or be entitled to receive from the Lessor the balance (if any) by which the annual maintenance account shows that such amount falls short of or exceeds the sums already paid by the Lessee in respect of the period in question PROVIDED ALWAYS that any amount	(b) in the event of the moneys expended by the Company as aforesaid in any year exceeding the aforesaid payment on account the balance shall be paid by the Lessee within twenty one days after receiving a demand for the same but in the event of the said yearly payment on account exceeding the amount expended by the Company as hereinbefore provided in that year the excess shall be retained by the Company and may be applied towards the discharge of the Lessee's liability hereunder in the following or any succeeding year or may be held in reserve and applied in or

repayable to the Lessee under this sub clause may at the option of the Lessor be applied in or towards payment the sums due from the Lessee for the next or any other ensuing periods AND PROVIDED FURTHER that any sums repayable to the Lessee under this sub clause may at the option of the Lessor be retained as part of the reserve fund hereinafter referred to	towards the discharge of the Lessee's liability hereinunder in the following or any succeeding year as the Company may think fit The Certificate of the Company's Accountant shall be conclusive as to the amount expended by the Company in any year as hereinbefore provided
(c) if any of the sums which are required to be paid by the Lessee in accordance with this clause shall not be paid within seven days after the same shall have become due then without prejudice to any other right or remedy of the Lessor here under the same shall forthwith be recoverable by action and the same shall carry interest at 2% per annum above the base lending rate of national Westminster bank PLC or rate 10% per annum (whichever shall be the higher) until payment	
(d) there shall be included in the annual maintenance costs such sums as the Lessor or the Lessor's managing agents or surveyor shall reasonably consider desirable to be retained by the Lessor by way of a reserve fund as reasonable provision for the costs expenses outgoing and other matters mentioned or referred to in the schedule hereto.	

21. The wording of the deed and/or lease is not expressed as the proportion deemed reasonable by the landlord, nor is it expressed as the

proportion decided on at a meeting of the freehold company/leaseholders/shareholders.

Relevant Lease schedule

22. See Annex 1.

The service charge apportionment over time

23. The MPL manual provides a convenient summary of the service charge apportionment over time – the phrase ‘special resolution’ is not agreed by the Applicants, who say there was no ‘special resolution’:

The terms of the original Lease stipulate that “each Leaseholder pay a one-thirteenth share of the amount required to operate the Freehold Company and cover all its overheads”. However, this arrangement was changed on 5th May 1984 by a Special Resolution which was proposed, voted on, and passed unanimously at the Annual General Meeting. This stated that, in future, maintenance payments should be calculated and collected proportionately, based on the rateable value of each flat, as a means of sharing costs more equitably.

A subsequent further amendment was introduced by Special Resolution, following a majority decision at the Company meeting of November 1993, whereby “the proportion of future increases relating to building maintenance and insurance (approximately 60% of the total) should continue to be divided on rateable value ratios; other costs (e.g. cleaning and lighting of common ways, audit and accountancy, Directors’ remunerations etc - approximately 40% of the total) should be divided equally between 13 flats”. This system was in use for some time, despite the introduction of the Council Tax and the Community and Poll Taxes before that.

However, in 2004 the MPL Board of Directors decided that using rateable value as the basis for apportioning maintenance charges was no longer the most appropriate method, and as a

result commissioned a professional survey by Anthony Clare & Associates between July and September 2004 to measure and confirm the gross square meterage of each flat. The Directors felt that this would be a much fairer basis on which to proceed, especially in the light of the fact that considerable changes had been made to several flats (e.g. conversions, additions and omissions).

As of March 2021, the percentage charges per flat are:

<i>Flats 1 & 3 (combined) 7.49%</i>	<i>Flat 8 12.54%</i>
<i>Flat 2 4.43%</i>	<i>Flat 9 7.14%</i>
<i>Flat 4 4.75%</i>	<i>Flat 10 10.20%</i>
<i>Flat 5 9.06%</i>	<i>Flat 11 12.88%</i>
<i>Flat 6 8.14%</i>	<i>Flat 12 9.42%</i>
<i>Flat 7 7.14%</i>	<i>Flat 14 6.82%</i>

The Secretary must be informed if alterations to a Leaseholder's flat result in a change in the property's rateable value, since clearly this will affect the proportionate level of all maintenance charges as well as that of the individual flat. Company Members consider possible increases in maintenance and service charges at the

Annual General Meeting. If an increase is decided upon, a fully revised list of rateable values and proportional payments is made available to Leaseholders.

The Issues

24. Over the years, at various AGMs and EGMs, the service charge contribution has been informally (i.e. not by formal deed of variation)

altered. The leaseholders no longer unanimously agree on the informal service charge apportionment.

25. In 2025, the Applicant sought to resolve the issue but was unable to do so. Facing the cost of major works and no agreement as to the informal apportionment of service charges, the Applicant seeks a determination as to the proper apportionment of service charges payable by each lessee, in circumstances where historical informal arrangements have resulted in contributions that diverge from the terms of the lease.
26. Simply put, is the service charge demand, where each leaseholder is charged 1/13th in accordance with the lease, payable by the leaseholders?
27. The Respondents raised a further issue regarding the demand for major works; is this sum payable in advance under the terms of the lease?

The Law

Liability to pay service charges s.27A LTA 1985

28. The Tribunal has the power to determine service charges under s.27A of the LTA 1985. The Tribunal's jurisdiction is limited by s.27A(4).

7A 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Variation of a lease

29. A lease is a contract. To vary a contract, the parties to that contract must agree. Varying a lease has particular requirements, especially where there is a lender involved. It is always preferable to vary a lease via a deed of variation and gain the agreement of parties to the lease, including mortgage lenders and any other party whose rights will be affected. It is not impossible to vary a lease in other ways.

Surrender and re-grant and operation of law

30. A variation of a lease other than by deed can lead to a 'deemed surrender and regrant'. For the existing lease to be deemed to come to an end, the variation must change the legal estate in some way. In Friends Provident Life Office v British Railways Board [1996] 1 All ER 336, the Court of Appeal suggested that a deemed surrender and regrant would be limited to the following two categories of variation: i) the term of the lease being extended, or ii) additional property being added to the demise.

Estoppel by convention

31. In Hamel-Smith v Pycroft & Jetsave Ltd [unreported], which was cited with approval by the Court of Appeal in Norwegian American Cruises A/S v Paul Mundy Ltd [1988] 2 Lloyd's Rep 343 where at pages 351 to 352, the following passage of Peter Gibson J was endorsed by the Court of Appeal.

"I do not propose to essay a definition of estoppel by convention. It is sufficient for the purposes of this case to adopt the description given by the Court of Appeal in Keen v Holland supra at p261 of the essential nature of the Amalgamated case,

and to say that it applies where (1) parties have established by their construction of their agreement or their apprehension of its legal effect a conventional basis, (2) on that basis they have regulated their subsequent dealings, to which I would add (3) it would be unjust or unconscionable if one of the parties resiled from that convention."

The Applicant's evidence

32. The Applicants' case is a simple one. They say that the lease empowers them to collect a service charge at the rate specified within the lease; they simply don't have the authority to issue a demand at a different sum.
33. Regarding the informal arrangements made at various AGMs and EGMs over the years, these were informal and did not alter the terms of each lease. Where there is now no unanimous informal agreement they have no option but to rely on the terms of the Leases.
34. In 2026, the managing agent sent out service charge demands and major work demands using the 1/13th apportionment. The total service charge demand for the year was for £3,217.54
35. On 10 June 2026, the managing agent confirmed it had sent the service charge demand to all flats, and all flats had paid the demand, save for Flats 1 and 3. The unpaid invoices are:
 - a. Service Charge | Period 31/03/26-28/09/26 | Sum £1608.77 | Due 14/04/26
 - b. Major Works | Front Redecoration and Hallway | Sum £18,160.16 | Due 07/07/26
36. The applicant says that no leaseholder has been recorded as paying "under protest". An email in the bundle from a managing agent confirms this.

The Respondent's evidence

37. The Respondents' case is a little less simple, perhaps because of the historic nature of some of the issues, or perhaps because of AI, which the Respondents have acknowledged assisted their research. This is not a criticism, but it does mean the Tribunal has to address the creative arguments relied on.
38. The Respondent raised an argument that the apportionment clause in the 1966 lease no longer governs because a new lease arose by 'Operation of Law' and they also say the lease has already been superseded by 'Operation of Law' through 40 years of conduct. They say that this is an evidential finding the Tribunal can make and they are not seeking a 'Variation Order'.
39. The Respondent says that, regarding the 'Surrender and Regrant', the contractual enforceability of the 1966 apportionment clause is not a stand-alone declaration. They say they are asking the Tribunal to resolve it incidentally under its s.27A jurisdiction.
40. In its revised reply, the Respondents say:

*Only since 2025 and the origins of this Case and with the onset of AI and further researches (sic), have I been convinced that a 'Surrender and Regrant' of the lease has actually occurred by the action of the parties under 'Operation of Law.' e.g. -the Company has administered these (RV) apportionment changes since 1984 through it's (sic) various documentation and communications, including it's (sic) formal **Company Meeting minutes, more than 1000 invoices, some 30 Conveyances of Flats and 4 iterations of MPL Members and Leaseholders Information Manual; (See Attach 2).** Both existing Leaseholders and new purchasers had to sign this document to confirm they had regard to the apportionment and other changes, particularly for new purchasers before receiving their Share Certificate and becoming a Company Shareholder.*

41. The Tribunal notes that the MPL Members and Leaseholders Information Manual has not been created by a legal professional. It is

informative; it is not signed by the leaseholders, and it is not a side letter to any lease.

42. The Respondents rely on various arrangements made at AGMs and EGMs, to establish surrender and regrant and/or estoppel by convention; these are set out below:

Date	Meeting	Notes
01 May 1984	EGM Apologies 4/5/6/7/9/10/14	Minutes: This subject had also been discussed, following agreement to a secretarial fee, at the annual general meeting. An annual sum of £2,600 should be raised from all leaseholders, individual payments to be based on rateable value of flats. Leaseholders would be informed of their new biannual payments in due course.
05 May 1984	AGM	Agenda 2. Rateable value assessments on future works/ maintenance.
14 May 1988	AGM Apologies Flats 4/6/14 (proxy held by Mr Voss)	
11 November 1989	EGM No attendee list	Minutes: (g) Deeds of Variation: The chair had managed to persuade David Tisdale to complete the

		long overdue deeds of variation requested by various leaseholders. She had obtained all those relating to additional clauses new drawings were required for flats 8 and 10 showing their additional rooms before the deeds could be completed. Mr buck agreed to put together those drawings on behalf of Mr Voss and miss Pargeter. Mr Osborne stated that because of the delay he had incurred an additional Land Registry fee of £25 but Mr Tinsdall had offered to pay any extra fees incurred Revised maintenance charges were attached to the minutes, payable from September 1990. There was also attached a back dated revised maintenance charge schedule, backdated to September 1989.
27 November 1993	EGM Apologies Flat 10 and Flat 14	Minutes: 3. Proposals received Mr Dee proposed that all future increases in maintenance charges should be divided equally between the 13 flats. Mr Voss proposed that the proportion of future increases

		relating to building maintenance and insurance (approximately 60% of the total) should continue to be divided on rateable value ratios; other costs open brackets e.g. cleaning and lighting of common ways, audit and accountancy, directors' remunerations, etc. - approximately 40% of the total) should be divided equally between the 13 flats. Mr Dee Withdrew his proposal. There was a discussion. - Some charges were not equitable: basement flats do not enjoy cleaning and lighting of common ways. It was agreed that Mr Hockham be asked to clean all front patios and the dustbin cupboards - In order to achieve the new calculations some charges would have to be estimated and regulated later. When flats were sold, solicitors would have to note where adjustments in charges still had to be made. Mr Voss, seconded by Captain Rhodes, propose that the charges
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		for directors remuneration, maintenance officer, lighting, printing, postage and stationery, cleaning, audit and accountancy, bank charges, general administration (last year totalling £2,874) should be split by 13 between all lessees. All other outgoings, other than the water rates, should be divided by the original rateable value based percentage, i.e. insurance repairs and expenditure on the property (last year £3.221 pounds sterling). The agreed cost of redecoration of the exterior of the property should still be addressed on the rateable value-based proportions currently in use. The proposal was carried by 7 votes to 2 with 1 abstention.
13 November 2004	EGM Apologies Flats 7/8/8	Minutes: The chair then set out some of the deficiencies and variances which in the director's view needed to be addressed: deeds of variation, including those regarding mutual enforceability, had been drawn up by some but not all lessees: not all extensions to flats were included within the confines of the building: the basis of payment of service and maintenance charges needed to be decided unanimously and included in the lease: buildings insurance needed to cover a

		complete rebuild of both houses. Many members felt that company affairs had been agreed and acted on successfully over the years and challenged the need to make such expensive and formal changes to the lease. The director's view was that the deficiencies could be challenged at any time by an existing or prospective leaseholder the changes that had been made collectively by members of the Company over the years could not be legally imposed on individual leaseholders. That was the expert advice received from legal professionals with many years experience in the field. The secretary explained that there was changing legislation and on several occasions solicitors acting for new leaseholders had challenged the lease. ... Members reaffirmed their wish to retain the current proportionality of the
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		maintenance charge subject to a further report at the next meeting of the Company.
03 June 2006	AGM Apologies Flats 2/7/9/10	Minutes: The new maintenance charges had been issued and all but flat 11 had paid the full amount requested. Rene and Eileen have paid £445.52 instead of the requested amount of £552.13 leaving a deficit of £106.61. The amount paid equates to a 13th share of the total amount requested from all leaseholders. Judith asked why Rene and Eileen had taken the decision to pay only a 113th share of the total amount requested and was this a legal move? Eileen explained that while Rene had been reading the lease he had discovered that the internal agreement between us was not legally binding and that anyone could challenge the agreement we had made in 1993. The chair confirmed the statement adding that he thought that Rene was just

		making a point trying to point out the problems that we could face in the future. ... the chair told the meeting that we need to enable a legally binding agreement that would protect us all in the future. Judas suggested that we could put in the lease the proposal that we agreed during the meeting of the 27th of November 1993 (please see attached sheet)*. The chair said that this could be done on an individual basis by a deed of variation to the leases. This proposal caused concern to some members in the meeting. ... the chair suggested that he have a meeting with every individual leaseholder to discuss the idea raised by Judith the chair offered to get an estimate of cost involved in such a deed of variation from a company where he had a friend who specialised in this field. He could then report back to the next meeting with the findings.
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		This was agreed by most members at the meeting. *the sheet was not attached in the bundle
14 July 2007	AGM Apologies Flats 2/3/5/7/9/12	The chair reported that he had written to all members regarding the small amendment needed to our leases. He had not received a very positive response from some of the leaseholders The treasurer was concerned that there was still a shortfall in the maintenance payments regarding one flat. They then followed a discussion between members present regarding the shortfall. It was felt that the situation between the Company and Mr and Mrs Dee had gone on long enough and it would be beneficial to all concerned if the situation was resolved.
02 April 2025	Meeting No apologies	Minutes Issue invoices in May - 1/13th as per lease

43. It is agreed by everyone that over the years the basis for collecting the service charge and money for capital works has changed. The bundle contains a summary table as set out below:

5 TABLE OF the DIFFERENT BASES FOR COLLECTING SERVICE CHARGES AND MONEY FOR CAPITAL WORKS SINCE 1984

FLAT	"RATEABLE 1/13TH VALUE"		Invoiced from March 1990 (agreed Nov 1989 EGM)	Payable from Sept 1990	APPROXIMATE 60:40 ADJUSTMENT - 60% at 1991 RV: 40% at 1/13th (7.69%)	1/13th (7.69%)	DATE OF FLAT PURCHASE OF CURRENT LEASEHOLDERS
	PRE- 1984	1984 see EGM note below	1989	1989 EGM)	1993	2025	
1	7.69%		3.70%	3.49%	3.41% + 7.69%	7.69%	1991
2	7.69%		3.85%	3.62%	4.43% + 7.69%	7.69%	2023
3	7.69%		4.43%	4.17%	4.08% + 7.69%	7.69%	1983
4	7.69%		5.16%	4.86%	4.75% + 7.69%	7.69%	2021
5	7.69%		9.85%	9.28%	9.07% + 7.69%	7.69%	2017
6	7.69%		7.41%	6.97%	8.15% + 7.69%	7.69%	1984
7	7.69%		7.76%	7.30%	7.14% + 7.69%	7.69%	2003
8	7.69%		13.62%	12.82%	12.54% + 7.69%	7.69%	2020
9	7.69%		7.76%	7.30%	7.14% + 7.69%	7.69%	2021
10	7.69%		11.08%	10.43%	10.2% + 7.69%	7.69%	1992
11	7.69%		7.76%	13.17%	12.88% + 7.69%	7.69%	1981
12	7.69%		10.23%	9.63%	9.42% + 7.69%	7.69%	2022
14	7.69%		7.41%	6.97%	6.8% + 7.69%	7.69%	2022

44. The Respondents also state that the Applicants have misinterpreted the lease covenants under Clause 20, which in essence provides that the freeholder may seek payment only after actual expenditure, not in advance. The Tribunal has treated this as a challenge to the Major Works demand.

Reasons and findings

45. The Tribunal reminds itself that this is an application to determine whether service charges are payable and, if so, in what amount and on what basis. The Respondents' case is very close to actually being an application to vary the lease.
46. In order to determine the reasonableness of the service charges demanded, the Tribunal must consider whether the terms of the Leases have been varied.
47. There is no evidence of a special resolution in the minutes. The applicant says the Company has not passed a special resolution. The Respondent does not produce evidence of a special resolution. There is evidence of discussions about the apportionment of service charges and

changes to the apportionment of service charges. If a special resolution had been passed, it would have to be registered on Companies House. The Respondent does not produce any evidence from Companies House.

Surrender and regrant and operation of law

48. 'Surrender and Regrant' of the lease has not occurred by the action of the parties under 'Operation of Law.'
49. The alleged variation of service charge proportions affects neither the extent of the demise nor the term granted; these are the only two categories the Court of Appeal in Friends Provident Life Office v British Railways Board [1996] 1 All ER 336 suggested for a deemed surrender and regrant. It is correct to say that the Court of Appeal did not completely rule out that a variation could operate as a deemed surrender and regrant in other scenarios but expressed doubt that it could.

Decision

50. In this case, the changes relate to the apportionment of the service charge. Service charge apportionment does not go to the heart of the lease in the way that an increase in property or the length of the term could. The Tribunal is not persuaded that changes to service charge apportionment would be the type of change that would result in the deemed surrender and regrant.
51. Any individual leaseholder seeking to argue 'surrender and regrant' on the basis that their lease now includes additional property will need to address this themselves before the appropriate court.

Estoppel by convention

52. Estoppel by convention occurs where (1) parties have established by their construction of their agreement or their apprehension of its legal effect a conventional basis, (2) on that basis they have regulated their subsequent dealings, and (3) it would be unjust or unconscionable if one of the parties resiled from that convention.

53. The Tribunal is satisfied that there is a lease between the freeholder and each individual leaseholder and the lease states that the leaseholder will pay 1/13th.
54. The Tribunal acknowledges that a convention existed where an informal arrangement was reached on apportionment at a meeting; the leaseholders paid according to that informal arrangement.
55. The Tribunal finds that members knew the informal arrangement could change, as it had in the past. The MPL information booklet also sets out the possibility of a change to the informal apportionment arrangement.
56. The Tribunal finds that there were informal arrangements in: 1984-1989, Nov 1989-1990, 1990-1993, and 1993-2025.
57. Having analysed the 1993 minutes, the Tribunal finds:
 - a. No notice of a special resolution was given as required by company law.
 - b. There was no special resolution within the meaning of company law as no special resolution was registered at Companies House.
 - c. Not all leaseholders were present, including Mr Fanshawe for Flat 10. In his witness statement, he supports the Applicants' application to determine the reasonableness of the 1/13th service charges.
 - d. The proposal at the 1993 meeting was not to vary the lease.
 - e. The proposal at the 1993 meeting was not to permanently change the apportionment.
 - f. The proposal at the 1993 meeting was not to prevent any further changes.
 - g. The proposal at the 1993 meeting was not to bind future leaseholders to the 1993 apportionment decision.
 - h. Mr Dee's proposal was that the division be 1/13th – indicative that the lease division was known and supported by at least one leaseholder.

- i. The eventual proposal was carried by 7 votes to 2 with 1 abstention; it was not unanimous, and not all leaseholders were present.
 - j. No one had legal advice.
58. The Tribunal finds that it would have been known that if any leaseholder disagreed and paid 1/13 in accordance with their lease, there was no legal challenge to that. This is shown by the communications in the minutes, the documents, the letters, and emails sent to the leaseholders. The Tribunal notes in particular the 13 November 2004 minutes, where the Chair reiterates the contents of communications previously sent to members, stating that the informal service charge arrangement needed to be formalised to be enforceable.

Decision

59. The Respondents ask the Tribunal to consider whether the lease has been altered by estoppel by convention. Based on the evidence before it, the Tribunal can only conclude that an informal arrangement was entered into on the basis that it could be changed later.
60. The Tribunal considers these issues only insofar as necessary to determine whether the charges demanded under the existing leases are payable pursuant to s.27A
61. The Tribunal finds that the apportionment must be done in accordance with the Lease. This decision does not prevent an application to vary the lease.

Major works demand in advance

62. The Respondent's revised reply includes a suggestion that there is a concern about the power to demand sums in advance, i.e. for the major works. The two versions of the relevant provision in the leases provide for different obligations.
63. In the deed of variation under Clauses 2(20)(b) and 2(20)(d), which applies to all the flats save for Flats 4 and 9 (based on the Leases in the bundle), it says (**emphasis added**)

2(20) To pay to the Company on demand in each year a sum equal to One-thirteenth part of all moneys expended by the Company in carrying out all or any of the works and providing the management and administration of the building specified in the schedule hereto. The liability of the Lessee hereunder shall be discharged in the following manner that is to say

*(a) the Lessee shall on the 25th day of March and the 29th day of September in every year throughout the term pay in advance to the Lessor the sum of FIFTY POUNDS (£50.00) **or such greater sum as the Lessor shall in the Lessor's absolute discretion deem appropriate on account of the Lessee's contribution as aforesaid***

(b) as soon as practical after the 25th day of March in every year the less all or the Lessor's agents shall serve on the Lessee an account (hereinafter called "the annual maintenance account") and shall certify the actual amount of the Lessee's aforesaid liability for the previous year and the Lessee shall forthwith pay or be entitled to receive from the Lessor the balance (if any) by which the annual maintenance account shows that such amount falls short of or exceeds the sums already paid by the Lessee in respect of the period in question PROVIDED ALWAYS that any amount repayable to the Lessee under this sub clause may at the option of the Lessor be applied in or towards payment the sums due from the Lessee for the next or any other ensuing periods AND PROVIDED FURTHER that any sums repayable to the Lessee under this sub clause may at the option of the Lessor be retained as part of the reserve fund hereinafter referred to

*(d) **there shall be included in the annual maintenance costs such sums as the Lessor or the Lessor's managing agents or surveyor shall reasonably consider desirable to be retained by the Lessor by way of a reserve fund** as reasonable provision for the costs expenses*

outgoing and other matters mentioned or referred to in the schedule hereto.

64. The Tribunal finds that the clause inserted by the deed of variation does allow the Company to demand sums in advance as part of the annual maintenance costs.
65. The Tribunal is satisfied that the Lessor reasonably considered that a sum was desirable to be retained by the Lessor for the provision of a reserve fund to meet costs, expenses and outgoings of the buildings, namely the major works.
66. The major works demand specified that the demand is for 'Front redecoration & repairs' and 'Hallway works'. There is no suggestion from the Respondents that the work itself does not fall within the terms of the relevant Leases. The Tribunal accepts the applicant's evidence that the 'Front redecoration & repairs' and 'Hallway works' fall within the relevant Leases.
67. Flats 4 and 9, based on the leases in the bundle, have different terms in their lease; these are as follows:

2(20) To pay to the Company on demand in each year a sum equal to One-thirteenth part of all moneys expended by the Company in carrying out all or any of the works and providing the management and administration of the building specified in the schedule hereto. The liability of the Lessee hereunder shall be discharged in the following manner that is to say

(c) by a yearly payment of Ten pounds (£10) on account of such sums to be paid on demand

(d) in the event of the moneys expended by the Company as aforesaid in any year exceeding the aforesaid payment on account the balance shall be paid by the Lessee within twenty one days after receiving a demand for the same but in the event of the said yearly payment on account exceeding the amount expended by the Company as hereinbefore provided in that year

the excess shall be retained by the Company and may be applied towards the discharge of the Lessee's liability hereunder in the following or any succeeding year or may be held in reserve and applied in or towards the discharge of the Lessee's liability hereinunder in the following or any succeeding year as the Company may think fit The Certificate of the Company's Accountant shall be conclusive as to the amount expended by the Company in any year as herein before provided

68. The leaseholder is to pay £10 on account each year, date not specified. If the Company expends more than £10 carrying out all or any of the works and providing the management and administration of the building specified in the schedule, then the Company can demand the leaseholder's 1/13 share, and the Lessee must pay it within 21 days.

Timing of the demands

69. The Respondents have not challenged the timing of the demand.
70. The Applicants say that the Company demanded the half-yearly service charge in March 2025, September 2025 and March 2026 at the 1/13th rate. It also issued demands for the capital works in April 2026. The Tribunal accepts the Applicants' evidence.
71. There is an email from Ellie Loveden of Albert Cooper (managing agent), dated 07 April 2026, with the subject 'Note from the Board'. Attached to that email were, amongst others, the service charge demand, major works contribution demand and a budget.
72. The Tribunal accepts the evidence of the Applicant and is satisfied that the service charge demands under the deed of variation were demanded at the correct times of year, being on a date to allow payment on 25 March and 29 September.
73. The Tribunal accepts the evidence of the Applicant and is satisfied that the major works demand was demanded in April 2026 and that it was included in the annual maintenance costs.
74. There is no evidence that supports the major works demand in April 2026 being made at a time to allow payment by 25 March 2026. The

demand is valid but not yet due. It is due on 29 September 2026, as this is the next lease payment date after the demand.

75. The Tribunal notes that the only leaseholders who have not paid the full amount for the major works demand are the leaseholders for Flats 1 and 3. The major works demand sum is due on 29 September 2026; interest cannot accrue between the demand and the lease payment date of 29 September 2026.
76. Flats 4 and 9's payment obligations differ, as set out above. However, this is not relevant as both have paid.

Reasonableness of the service charge sum

77. The Respondents have not challenged the specific sums behind the service charge sum demanded. The Tribunal accepts the evidence of the applicant and finds the sums to be reasonable.

Reasonableness of the major works sum

78. The Respondents have not challenged the amount demanded for the major works. The Tribunal's determination is confined to liability, apportionment and timing of payment. No determination is made regarding the reasonableness of the underlying cost of the major works.

Reasonableness of late payment interest

79. The Respondents have not challenged the reasonableness of the interest that appears on the demands in the bundle. However, for the reasons set out above, interest would not accrue on the major works demand.

Determination

80. The Tribunal makes the following determinations:
 - a. The service charge demands apportioned at 1/13th are payable under the 13 leases.
 - b. The major works sum demands apportioned at 1/13th are payable under the 13 leases. The Tribunal's determination is confined to liability, apportionment and timing of payment. No determination

is made regarding the reasonableness of the underlying cost of the major works.

- c. The major works demand sent in April 2026 is not due from those leases varied by the 1983 deed of variation until 29 September 2026.
- d. The major works demand sent in April 2026 was due from those leases where there is no 1983 deed of variation, 21 days from the date of the demand.

Application under s.20C and refund of fees

The Law

81. 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.

82. 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.

Application

83. The parties were directed in the 26 June 2026 directions to include in their documents their position relating to s20C and Paragraph 5A of Schedule 11.

84. The Applicant invited the Tribunal to make no order, stating:

a. the proceedings were properly brought to obtain clarity/authority needed for management

b. the landlord's conduct has been reasonable throughout

c. the outcome benefits the building/leaseholders generally (certainty, consistent charging, avoiding future disputes)

d. the costs are proportionate to what was at stake and were not unnecessarily incurred

e. Benefit to all leaseholders / building-wide management rationale

f. it determines how the lease/service charge regime operates going forward

g. it reduces future administration and dispute costs

85. The Respondents did not respond in their Tribunal documents.

86. Mr Thomas in his witness statement stated:

46. I ask the Tribunal, so far as applicable, to consider whether any costs incurred in advancing the Applicant's position should be recoverable from me through the service charge or as administration charges.

47. Given that I am a named Respondent and do not support the Applicant's position that service charges should be apportioned on a strict 1/13th basis, I respectfully ask the Tribunal to consider making an order under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

48. I make this request simply to protect my position as a Respondent.

87. Mr Buck-Bouchard in an email to Bate Albon Solicitors on 02 July 2026:

4. Costs protection is reserved

For the avoidance of doubt, I reserve my right to apply under section 20C of the Landlord and Tenant Act 1985 for an order that none of the Company's costs in connection with these proceedings, or this correspondence, be added to the service charge, and under paragraph 5A of Schedule 11 to the Commonhold and leasehold Reform Act 2002 in respect of any administration charge. I also reserve all other rights and remedies available to me, including as to costs of this correspondence.

88. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal declines to make an order under s.20C LTA 1985 or paragraph 5A Schedule 11 CLRA 2002.

89. The Tribunal finds that in the circumstances the only option available to the Company was to take steps to obtain clarity on the issue of apportionment. The Respondents could have made an application to vary the Lease, but chose not to.
90. It would not be just and equitable in the circumstances for an order so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Miscellaneous

91. The parties may wish to consider formally varying the Leases to address the issues relating to:
- a. Apportionment of the service charge; and
 - b. Having two versions of the service charge covenant in place

Name: Tribunal Judge Bowden

Date: 07 September 2026

RIGHTS OF APPEAL

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

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

Annex 1 – Lease schedule

- (a) The insurance maintenance repair and renewal of the building (other than the interior of the demised premises as defined in Clause 2 (5) hereof) including the roof main walls main drains structural Timbers foundations and boundary walls.
- (b) The painting and decoration of the exterior of the building
- (c) the insurance cleaning lighting maintenance decoration repair and renewal of all parts of the building used in common by the Lessees tenants or occupiers for the time being of the flats comprised therein
- (d) The provision of gas water and electricity services to all the flats in the building and the maintenance repair and renewal thereof but not the maintenance repair and renewal of any such services or installations of any pipes wires cables or mains inside the demised premises
- (e) the general management and administration of the building including the remuneration or Commission of any agent employee workman or other person or persons