

FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: HAV/29UE/LSC/2026/0046
Property	: 1 & 3, The Old Flour Mill, The Timber Section, 113 London Road, Dover, CT17 0TX
Applicant	: Malcolm Walling
Representative	:
Respondent	: The Old Flour Mill Freehold Company Limited
Representative	: Mr Roberts of Urang Property Management Limited
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 Tribunal Member Ms Barton MRICS
Venue	: Havant Justice Centre
Date of Hearing	: 02 November 2026
Date of Decision	: 09 November 2026

DECISION

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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 Tribunal finds that the re-apportionment based solely on internal floor area apportionment was not made in accordance with the lease and, in any event, did not produce a fair apportionment. The 2025 and 2026 service charges for Flats 1 and 3 must therefore be recalculated using the historic apportionment.

(2) The Applicant's application for an order under s20C of the 1985 Act and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 was allowed.

Background

1. The Applicant has made an application for determination of liability to pay and reasonableness of service charges for the service charge years 2025 and 2026, pursuant to s.27A of the Landlord and Tenant Act 1985 ("LTA 1985"). The application was received on 21 January 2026.

2. The Applicant further seeks orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

3. The Tribunal had a 437- page hearing bundle. The Tribunal was greatly assisted by Mr Walling and Mr Roberts and thanks them for their assistance. The Tribunal has carefully considered the hearing bundle, and the additional documents provide on the day as well as the evidence of Mr Roberts and Mr Walling and their oral submissions. If something is not mentioned in this decision it does not mean it was not considered.

The hearing

4. At the hearing on 02 November 2026, the Applicant appeared in person, and the Respondent was represented by Mr Roberts who also appeared in person. No one attended as witness for the landlord.

5. On the morning of the hearing the parties handed in further documents, namely:

   a. From the Applicant:

      i. Emails between the Applicant and Urang regarding the FRAW

      ii. Invoices that Urang provided to the Applicant.

   b. From the Respondent:

6. Flat 1 Application for Payment Jan 26 – Jun 26 dated 04 February 2026 - £2,247.16

7. Flat 1 Application for Payment Jul 26 – Dec 26 dated 08 June 2026 - £2,366.24

8. Flat 3 Application for Payment Jan 26 – Jun 26 dated 04 February 2026 - £1,207.09

9. Flat 3 Application for Payment Jul 26 – Dec 26 dated 08 June 2026 - £1,272.45

The background

10. The properties which are the subject of this application are Flats 1 and 3 within the Timber Section of The Old Flour Mill, 113 London Road, Dover, a Grade II listed former flour mill dating from the nineteenth century and converted into residential accommodation in around 2004. There is also the Brick Section and Cawsey Cottages.

11. The Timber Section, where Flats 1 and 3 are located, is a distinctive five-storey timber-clad building containing nine self-contained flats of mainly one and two bedrooms. It occupies a riverside setting close to Dover town centre and retains many historic features associated with the former mill.

12. The Brick Section forms the principal masonry element of The Old Flour Mill development. The Brick Section contains a number of leasehold flats (numbered 4-20) served by internal communal areas and shared estate facilities. The Brick Section is physically distinct from the Timber Section and has separate internal communal areas, although certain estate costs and external maintenance obligations are shared across the wider development.

13. Cawsey Cottages comprise a small terrace of residential cottages forming part of the wider Old Flour Mill estate (these are numbered 1/2/3/3A). They are physically separate from the former mill buildings known as the Timber and Brick Sections but share certain estate facilities and services.

14. The lease in the bundle is a copy of a 99 year lease for Flat 1 dated 04 January 2013 between FBN Bank (UK) limited (freeholder/landlord) and Malcolm Walling and Michael Wickens (leaseholder/tenant).

15. Photographs were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

16. Both parties agreed:

    a. The Applicant is the relevant leaseholder,

    b. The Respondent is the relevant freeholder,

    c. Urang Property Management Limited are the relevant managing agent, and

    d. The lease terms for Flats 1 and 3 are as per the lease in the bundle.

17. The Applicant holds a long lease for Flats 1 and 3 respectively, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

18. The Applicant provided a list of issues for determination:

> *1. Revised apportionment of Flat 1 - whether the new proportions, including 19.3% for Timber internal expenditure, represent the fair proportion required by the lease.*
>
> *2. Klevio door-entry system - whether the expenditure was properly recoverable and reasonably incurred, and whether reasonable alternatives were considered.*
>
> *3. River and riverbank - what land and responsibility the expenditure relates to, whether the relevant provision/reserve is recoverable, and the evidential basis for proposed dredging/weir expenditure.*
>
> *4. 2025/26 provisions, reserves and deferred maintenance - whether estimates and reserve collection were reasonably calculated, including treatment of opening/transferred funds and externally funded works.*
>
> *5. Management charges - whether management charges are properly recoverable, reasonable and fairly apportioned.*
>
> *6. Resident Engagement / fire-safety provisions - whether the sums and legal basis relied upon are properly identified, recoverable and reasonable.*
>
> *7. Pooling of Timber, Brick and Estate expenditure - whether section-specific and genuinely shared expenditure has been correctly allocated.*
>
> *8. Fire-alarm system and associated expenditure - whether investigation, specification, tendering, professional and management expenditure was reasonably incurred or estimated in the sequence shown by the evidence.*

19. At the hearing issues 2 and 3 were agreed between the parties, leaving issue 1, 4-8 to be determined.

Agreed issues

20. On Issue 2 it was agreed that as Flat 1 did not use and gained no benefit from the Klevio door-entry system as it has its own separate entrance for which the Klevio door-entry system was not installed Flat 1 could not be required to contribute to the costs of or associated with the Klevio door-entry system.

21. On issue 2 it was agreed and accepted by the Respondent that the riverbank was not part of the estate therefore the CAPEX budget of £90,000 for the river/riverbank would be removed from the service charge budget

The Law

Service charge s18 LTA 1985

22. LTA 1985 defines service charge in s18.

> *"18 Meaning of "service charge" and "relevant costs"*
>
> *(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
>
> > *(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
> >
> > *(b) the whole or part of which varies or may vary according to the relevant costs.*
>
> *(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
>
> *(3) For this purpose –*
>
> > *(a) "costs" includes overheads, and*

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period."

Reasonableness

23. LTA 1985 s19 deals with reasonableness.

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 or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Liability to pay service charges s.27A LTA 1985

24. 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).

27ALiability 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 in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The Evidence

25. In light of there not being a separate witness for the landlord, and the landlord's case being contained within the respondent's statement of case, which was signed by Mr Joe Roberts, Head of Property Management at Urang Property Management, on behalf of the Old Flour Mill Freehold Company Limited the Tribunal heard from Mr Roberts.

26. The Applicant would have had some questions for the landlord but was not able to ask those questions of the landlord as there was no witness on behalf of the freehold company.

27. It was agreed by the Parties and the Tribunal that Mr Roberts would be available for the Applicant's questions, and then if needs be Mr Walling would be available to answer questions for Mr. Roberts as the landlord's representative. Mr Robert's evidence was limited to that of a witness for the managing agent.

28. It was acknowledged by all that it may be that the way the evidence came out that the Tribunal would need to treat the questions and answers between Mr. Roberts and Mr Walling as evidence. The

Tribunal indicated it would actively manage the process so that what was evidence was clear, however in the circumstances where the Applicant was a litigant in person and the Respondent's representative was giving evidence everyone would need to be pragmatic. The parties agreed to this approach.

1. Revised apportionment of Flat 1 - whether the new proportions, including 19.3% for Timber internal expenditure, represent the fair proportion required by the lease.

Background

29. The Applicant accepts that the Flats 1 and 3 are obliged under the lease to contribute to the service charge.

30. The Applicant has paid his service charge for the two flats in the past based on what has been called the 'historic apportionment'.

31. When Urang became the managing agent the basis of apportionment changed.

32. The Applicant says the new apportionment is unfair. The terms of the lease require him to pay a fair apportionment attributable to the Demised premises; see Tenant's covenants 4.2.1 (Ground Rent) and Sch 4, part 111, clause 1. He says that the new apportionment is not fair.

The Applicant case was:

33. The historic apportionment had existed for 13 years without complaint. It was a fair apportionment because it recognised the unique qualities of the Old Flour Mill Timber Section, and the fact that the Timber Section had a lot less outside amenity compared with the other buildings. With regards to Flat 1 the historic apportionment also recognised its unique features including but not limited to a large internal unusable and inaccessible void, and an entrance and lobby that it was responsible for maintaining but was in effect communal as it housed the electricity meters for all the other flats in the Timber Section. Some of the meters were pay-as-you-go meters therefore

occupants of the other flats accessed the entrance and lobby regularly, and at all hours. This impacted the occupants of Flat 1.

34. The Landlord has not consulted the leaseholders before undertaking a re-apportionment exercise.

35. The survey being used to calculate the internal floor area only measured 55% of the flats; therefore, it was no more accurate than the estimate used for the 2025 charges. The survey's results were questionable as the % attributed to Flat 1 was exactly the same as the estimate (to two decimal places). This was unlikely. This made the survey results doubtful, and in any event only 55% of the flats were measured, so it was not a worthwhile exercise.

36. The surveyor has been instructed to apportion based on floor area and has not considered any other fair apportionment.

The Respondent's case and evidence was:

37. When Urang took over as managing agent, it proposed to the landlord that the apportionment may not comply with the lease. Urang proposed that under the lease the landlord could alter the apportionment. Urang was concerned that, in its view, the apportionment was not 'fair' as it was not based on internal floor area, and it could be challenged at the Tribunal.

38. It recommended that the Landlord have a survey and apportion the service charge according to internal floor area.

39. Mr Roberts agreed this would lead to Urang using and charging for its own internal surveyor, and that the freeholder/landlord was originally a director of Urang, although this was no longer the case.

40. In 2025, Urang estimated the internal area of each flat and then made the 2025 service charge demands based on the % of estimated internal area.

41. Mr Roberts accepted that the Landlord used Urang's surveyor, and Urang instructed the surveyor, set out in the survey:

To carry out a measured survey to determine a fair percentage contribution to be made by the Lessees toward Service Charges relative to floor areas within their demises.

42. Mr Roberts accepted this set the tone that service charges would be relative to floor area.

43. Mr Roberts accepted that the surveyor Mr Theakston produced a mathematical calculation based on the measuring of only 55% of the flats.

44. Mr Roberts accepted that the surveyor Mr Theakston did not consider any other way to apportion the service charge even though the lease stated that apportionment would be a fair proportion attributable to the Demised Premises.

45. Mr Roberts said mathematical methodology was a reasonable approach.

4. 2025/26 provisions, reserves and deferred maintenance - whether estimates and reserve collection were reasonably calculated, including treatment of opening/transferred funds and externally funded works.

The Applicant's case

46. The Applicant says it is unreasonable to budget substantial sums for surveyors' fees, repairs and reserve fund contributions, because actual expenditure was significantly lower than budgeted amounts. The Applicant further argued that years of inadequate cyclical maintenance led to deterioration of the building, thereby increasing current repair costs. He submits that leaseholders should not automatically bear additional costs caused by historic management failures or deferred maintenance and seeks a determination of the reasonable amounts properly payable.

47. The applicant accepted that many line items were underspent, including the surveyor's fees.

48. The Applicant accepted that Issue 4 related to items in the 2025 budget that had not been spent and that the 2025 unspent sums had gone to the reserve fund.

The Respondent's case

49. The sums in the budgets were estimates and a reasonable sum for a managing agent to estimate, Urang had taken over after the previous agent had not been carrying out maintenance and had little/no information about the estate on takeover i.e. it was starting from scratch.

50. Any unspent budget sums from the 2025 demands were transferred to the Reserve Account in accordance with the lease Sch 4 Part III clause 6.

51. Urang had identified some funding sources to address work on the cladding and the fire alarm. The cladding was now funded; the fire alarm funding was awaiting confirmation. The fire alarm remedial work budgeted for may not need to be paid for by leaseholders.

52. The freeholder was pursuing the previous managing agent in relation to sums paid over to them that should be in the reserve fund, and other issues that had arisen. Mr Roberts was not in a position to say more with any certainty.

5. Management charges - whether management charges are properly recoverable, reasonable and fairly apportioned.

The Applicant's case

53. The Applicant said it was unreasonable, where Urang charges the landlord its management fees per unit (£250 plus VAT), for those fees to then be paid for by leaseholders under the Urang apportionment method. It was unfair because it resulted in Flat 1 in particular paying significantly more management fees, Flat 1 did not need a greater amount of management just because it was larger.

The Respondent's case

54. In its statement of case the Respondent set out that:

    a. Urang Property Management charges a management fee of £250 plus VAT per unit. This sum was in keeping with industry standard and it was a reasonable sum for the work carried out.

    b. The lease defines fees relating to the employment of a managing agent as an Estate Charge. Specifically, Clause 1 of Part II of the Fourth Schedule which includes *'The reasonable costs incurred in…employing or retaining Managing Agents"*.

55. Mr Roberts agreed that on the face of it Flat 1 would not need more management than any other flat. He sensibly conceded that per-flat management fees were a fairer way to apportion management fees where this was what was charged to the landlord, and where larger flats did not use more management time.

56. Mr Roberts told the tribunal there was no reason, as far as he knew, why leaseholders could not be charged on a flat-by-flat basis for the management fee.

6. Resident Engagement / fire-safety provisions - whether the sums and legal basis relied upon are properly identified, recoverable and reasonable.

The Applicant's case

57. The Applicant's primary case was that the engagement work was not necessary as the building was not over 18 meters in height and the statutory requirements were not triggered. Further, the Brick Section, was lesser in height than the Timber Section as were the cottages.

The Respondent's case

58. As the new agent Urang did not know any of the occupants or the needs of the occupants, therefore it was reasonable and sensible for the fire safety resident engagement project to be carried out.

59. This was a per flat cost, and again Mr. Roberts sensibly acknowledged that it could not be said that simply because a flat had a larger internal

area it required more engagement time. He accepted that charging these costs on a flat-by-flat basis would be a fairer approach.

60. Mr Roberts also conceded that there appeared to be a miscalculation in the service charge demands as to how these costs had been calculated in any event. The costs appeared in Schedule 2 (Buildings) and Schedule 3 (Timber Section).

7. Pooling of Timber, Brick and Estate expenditure - whether section-specific and genuinely shared expenditure has been correctly allocated.

The Applicant's case

61. The applicant had no questions of Mr. Roberts relating to issue 7 and Mr. Roberts had no questions for the applicant. It was agreed that issue 7 would be addressed via submissions alone.

62. The Applicant's submission on this issue was that it would very much turn on the question of apportionment. If there was a different apportionment or a return to the historic apportionment, then his arguments in relation to Issue 7 would to a large degree fall away.

63. The Applicant maintained that the historic separate treatment of the Brick Section and the Timber Section was fair because it reflected the fact that each building had very individual requirements in terms of repair and maintenance. The historic separate treatment should continue.

The Respondent's case

64. The Respondent's case was in essence that apportioning these costs in the way that it had done (internal floor area apportionment) was reasonable. In its statement of case the Respondent stated that the lease did not support the applicant's position that the Brick Section and the Timber Section should be considered as two separate buildings.

8. Fire-alarm system and associated expenditure - whether investigation, specification, tendering, professional and management expenditure was reasonably incurred or estimated in the sequence shown by the evidence.

The Applicant's case

65. The Applicant's case was that there was no evidence, not even within the Respondent's own fire safety report that an L5 system was recommended. Therefore, spending money on a system that was not recommended would be unreasonable.

The Respondent's case

66. The Respondent's case was that, within the 2025 service charge demands, no money had been spent on the L5 system. Urang had identified a source of possible funding to have an L5 system installed, with the costs covered in full by the funding. The funding also covered Urang's management fees for managing the project.

67. Mr. Roberts believed that a funding decision was due shortly and he was confident that funding would be provided.

Closing Submissions

68. Mr Roberts relied on the statement of case in the bundle.

69. Mr Walling relied on the statement of case and emphasised the following at the hearing:

    a. The Respondent had not demonstrated that the changes to apportionment had resulted in fair apportionment for the demised premises.

    b. In relation to flat 1 in particular; the other flats in the Timber Section had 15x the internal shared space yet Flat 1 had to pay the lion's share of the upkeep of space that it could not and did not use.

    c. Mr. Roberts had confirmed that the surveyor had not applied fairness as a factor when carrying out the measurement survey. Apportionment had been done on a purely mathematical basis.

d. The historic apportionment had existed without complaint for 13 years.

70. Dealing with issue 7 Mr Walling emphasised that the Brick Section was totally separate from the Timber Section as could be seen in the overview photographs. The proportion of outside space whether that be parking or recreation space available to the Timber section was virtually nothing when compared to the Brick Section. The Timber Section and the Brick Section had very different maintenance requirements, it was fair that each building paid for its own maintenance.

Consideration

Unspent Sums

71. Save for the specific considerations of management fees and fire safety engagement, the Applicant was less concerned about individual items and more concerned about the level of funds then placed in the reserve fund, the demand for the reserve fund itself and the 2026 budget. This was because the 2025 certificate of accounts showed an underspend across most budget lines.

72. The lease does permit the unspent sums to be moved to the reserve fund; Sch 4 Part III clause 6. However, this was not mandatory. The wording of the lease is "Landlord shall be at liberty to credit such surplus to a sinking fund for anticipated expenditure in respect of any of the services or items covered by the Estate Maintenance Charge".

73. The estimated sum on the 2026 budget is £10,000. The Tribunal acknowledges that the Freeholder is trying to recover missing reserve fund sums, and that Urang had £0 reserve fund when they took over.

74. The level of the sinking fund is dictated by the level of anticipated costs. There will be a reduction in anticipated spend by £90,000, as it is accepted that the riverbanks/river works are not the responsibility of the freeholder. It would seem likely that the level of the sinking

fund will reduce by at least £90,000, and that would have a knock-on effect on any reserve fund provision.

Findings:

a. The landlord has a discretion to credit the surplus to the sinking fund.

b. Discretion must be exercised fairly.

c. The freeholder has the power under the lease to make provision for a sinking fund; the lease Schedule 4 Part II, to cover the cost of Part I services.

d. On the evidence before the Tribunal, a reserve fund contribution of £10,000 in the 2025 and 2026 budgets was not shown to be unreasonable. However, the £90,000 reduction needed for future works is likely to reduce the level of reserve fund contribution.

Apportionment

75. The wording of Sch4 4 part III clause 1 for the payment of the Estate Maintenance Charge is:

> *1. The due proportion of the Estate Maintenance Charge payable by the Tenant shall be a fair proportion attributable to the Demised Premises as conclusively determined by the Landlord's surveyors save that the Landlord shall have the right at any time to vary the proportion of the Estate Maintenance Charge payable by the Tenant where applying principles of good estate management it considers in its absolute discretion it equitable to do so*

76. There was an apportionment in existence; therefore, to vary the apportionment there have to be two factors at play: the principles of good estate management; and it being equitable to do so.

77. Where there is a mechanism within the lease for reapportionment, that lease process must be followed.

78. The Court of Appeal in Oliver v Sheffield City Council [2017] EWCA Civ 225; [2017] 1 W.L.R. 4473. and Aviva Investors Ground Rent GP Ltd v Williams *[2021] EWCA Civ 27; [2021] 1 W.L.R. 2061* decided that where a residential tenant subject to the protection of the Landlord and Tenant Act 1985 does not agree the apportionment, however reasonably arrived at, a tribunal is able to revisit and/or determine the same under s.27A of the Act.

Varying the apportionment: the principles of good estate management; and it had to be equitable to do so

79. There was no evidence from the Landlord itself that it had applied the principles of estate management; there was evidence that the Landlord relied on the views of its agent.

80. Urang says:

> *3. 'The Estate Maintenance Charge' is defined in the lease as being 'the costs and outgoings incurred by or on behalf of the Landlord in providing all or any of the services specified in Part 1 and Part 2 of the Fourth Schedule'.*
>
> *4. The services specified in Part 1 and 2 of the Fourth Schedule refer to repair and maintenance of 'The Buildings'.*
>
> *5. 'The Buildings' is defined in the lease as meaning 'the buildings collectively known as The Old Flour Mill erected on the Estate and any other buildings at any time erected thereon and all additions and alterations from time to time during the term and all Landlord's fixtures and fittings from time to time therein or thereon'.*
>
> *6. When Urang took over the management from the previous manager it became apparent that the previous manager had treated the two sections of The Old Flour Mill as different buildings, with entirely separate budgets for each part to which leaseholders were contributing based on their location.*

7. Given that the lease defines the external parts of The Old Flour Mill as one building for the purpose of calculating the estate maintenance charge, it was appropriate for the apportionments to be recalculated in accordance with the aforementioned provisions in the lease.

…

13. It is the position of the Respondent that apportioning service charge contributions in proportion with the internal floor space of the flats was a reasonable approach.

81. The evidence is that the historic apportionment was accepted by the leaseholders, and there is no evidence that it was causing issues. Is it applying the principles of good estate management to unilaterally force a variation when none of the leaseholders had an issue with the existing apportionment? Is it applying good estate management to unilaterally vary the apportionment using a rigid mathematical formula where you i) only measure 55% of the properties, ii) do not consider how the space is used e.g. inaccessible void or communal lobby or iii) do not consider the access to outside amenity.

82. Equity is a test of fairness, and fairness is applied to all interested parties, in this case the freeholder and all the leaseholders. The leaseholders were not consulted about the change. Only the freeholder's needs were considered. The re-apportionment was a pre-emptive move to protect the freeholder from possible future challenge.

The Survey

83. Mr Theakston did a measuring survey and applied a mathematical formula.

84. It was accepted by Mr Roberts that the Estate Maintenance Charge could be apportioned another way and was not required to be by internal floor area.

85. Mr Theakston's report (section 3) says he measured habitable space but the plans in Appendix 3 for Flat 1 include the void and the communal lobby.

86. Mr Theakston has included in Schedule 1 "all external areas to which everyone has access over, including car parking area, grounds and foundations which pass beneath designated parking spaces, courtyard, freestanding walls and boundary walls, hardstanding areas excluding private gardens, riverbanks, external drainage and lighting. To be contributed to by all flats 1 -9 Timber Section & 4 -20 Brick Section, and 1, 2, 3A, & 3 Cawsey Cottages".

87. It was accepted that those leaseholders in the Timber Section do not have access to and have no use of the external areas of the Brick Section and Cawsey Cottages.

88. It was accepted that the mathematical methodology produced a result whereby flat-by-flat costs were disproportionally charged to larger flats. It was accepted that charging flat-by-flat costs per flat would be fairer.

Findings:

89. The internal survey cannot be accurate when only 55% of the flats were measured.

90. Save for Urang's concern that failing to apportion the service charge relative to internal floor area could lead to a s27A challenge, there is no evidence that the landlord applied the principles of good estate management.

91. The freeholder failed to properly instruct the surveyor to establish a fair apportionment. The freeholder was wrong to assume that internal floor area was the only way to establish a fair proportion.

92. There is no evidence that the leaseholders sought a change to the apportionment, or that any leaseholder said the historic apportionment was unfair or that any leaseholder complained about

the historic apportionment. It is more likely than not that the historic apportionment was accepted by the leaseholders as fair.

93. The freeholder did not properly apply the equity test; the freeholder made a self-serving protective decision. It did not consider the leaseholders. The freeholder failed to establish whether it was equitable to vary the apportionment.

Determination

94. The re-apportionment by the Freeholder did not follow the lease mechanism, as there was no application of the principles of good estate management, and no application of the equitable test.

95. Where the re-apportionment fails to follow the lease, it cannot be relied upon for the purposes of calculating the 2025 and 2026 service charges.

96. Even if the re-apportionment did follow the lease, the outcome is patently unfair. Using the fire engagement fees as an example, it cannot be fair that a larger flat pays more when the cost of the work done is exactly the same for each flat.

97. For the purposes of the 2025 and 2026 service charge demands for Flats 1 and 3, the demands challenged in this application, the historic apportionment should be used.

98. The Tribunal does not have the historic apportionment breakdown, so it cannot provide figures for the service charge years 2025 and 2026.

99. The historic apportionment may not provide for flat-by-flat costs to be allocated to each flat's service charge demand, e.g. management fees and fire safety engagement. The Tribunal reminds the Freeholder that it was acknowledged that it may be fairer to charge leaseholders flat-by-flat costs on a flat-by-flat basis.

Applications under s.20C, schedule 11 para 5A and refund of fees

<u>The law</u>

100. 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.*

101. 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

102. The 21 July 2026 directions required both parties to send to the other their representations on the Applicant's application for orders under s20C/para 5A Sch11 in their documents.

103. The Applicant submitted that the proceedings had been reasonably brought to challenge the recoverability and reasonableness of service charge demands and that it would be unjust for the Respondent's costs of defending the application to be recovered through the service charge. He asked the Tribunal to direct that the costs incurred in connection with the proceedings should not be regarded as relevant costs for service charge purposes.

104. Although the Tribunal's directions required the Respondent (represented by a professional managing agent) to provide representations on those applications, the Respondent's Statement of Case contained no substantive response and concluded after addressing the eight substantive issues in dispute.

105. The directions indicated that at the hearing the Tribunal would hear representations on any applications in respect of reimbursement of Tribunal fees, the section 20C application and/or Para 5A Schedule 11 application preventing the landlord from recovering litigation costs from a tenant. At the end of the hearing, the Tribunal asked the parties if there was anything else that they needed to address, and the answer was no.

Determination

106. The Tribunal found that the revised apportionment was not made in accordance with the lease and, in any event, did not produce a fair apportionment. The Applicant was substantially successful in the proceedings. In those circumstances it is just and equitable for an order to be made under section 20C of the 1985 Act and Paragraph 5A

of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: Tribunal Judge Bowden **Date:** 09 November 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 – the Lease (emphasis added)

THE LEASE
1. In this Lease:
1.1 The following expressions shall have unless the context otherwise requires the following meanings

"the Buildings" means the buildings collectively known as The Old Flour Mill erected on the Estate and any other buildings at any time erected thereon and all additions and alterations from time to time during the term and all Landlord's fixtures and fittings from time to time therein or thereon
"the Demised Premises" means the premises known as Unit 1, The Timber Section forming part of the Buildings and for the purpose of identification only and not further or otherwise and edged red on Plan B and more particularly defined in the First Schedule
"the Estate" means the property shown edged red on Plan A being part of the property now registered at H M Land Registry under Title Number K585971 and KS67513
"the Estate Maintenance Charge" means the costs expenses and outgoings incurred by or on behalf of the Landlord in providing all or any of the services specified in Part 1 and Part II of the Fourth Schedule
"the Ground Rent" means the sum of one hundred pounds (£100) per annum

4. THE TENANT HEREBY COVENANTS with the landlord as follows:
4.1 to pay the Ground Rent at the times and in the manner aforesaid without any deduction whatsoever
4.2

4. 2.1 to pay all rates taxes duties charges assessments impositions and outgoings which may now or at any time during the Term be assessed charged or imposed upon the Demised Premises or any part thereof or the owner or occupier thereof and in the event of any rates taxes duties assessments charges impositions and outgoings being assessed charged or imposed in respect of any premises of which the Demised Premises form part to pay a fair proportion thereof
4.2.2 to pay Value Added Tax and any other tax chargeable in respect of payments due from the Tenant or where the Tenant is bound to reimburse or provide indemnity under or in connection with this Lease

THE FOURTH SCHEDULE
hereinbefore referred to
(Services in connection with the Estate)
PART III
(Payment of the Estate Maintenance Charge)
1. The due proportion of the Estate Maintenance Charge payable by the Tenant shall be a fair proportion attributable to the Demised Premises as conclusively determined by the Landlord's surveyors save that the Landlord shall have the right at any time to vary the proportion of the Estate Maintenance Charge payable by the Tenant where applying principles of good estate management it considers in its absolute discretion it equitable to do so
6. If the due proportion of the Estate Maintenance Charge payable by the Tenant for the relevant current yearly period shall be less than the aggregate of the payments

made by the Tenant for that current yearly period in accordance with the provisions of paragraphs (2) and (3) hereof the Landlord shall be at liberty to credit such surplus to a sinking fund for anticipated expenditure in respect of any of the services or items covered by the Estate Maintenance Charge