Neutral Citation Number: [2026] UKUT 309 (LC)

Case No: LC-2025-629

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER PROPERTY CHAMBER
Ref: CH1/00HN/LSC/2023/0081

Royal Courts of Justice, Strand, London WC2A 2LL
30 June 2026

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges – house converted into six flats – five remaining – the correct construction of service charge obligation – extent to which an earlier decision of the Lands Chamber involving other leases in the estate of which all the flats formed part was binding on FTT

BETWEEN:

VINCENT CHENT-WEI TEO

Appellant

-and-

ROCKSTEAD HOLDING COMPANY LIMITED

Respondent

Flat 1 Rockstead,
18 West Overcliff Drive,
Bournemouth,
BH4 8AA

His Honour Judge Hanbury
30 June 2026

For the appellant: Nicholas Grundy KC, instructed by Birketts LLP
For the respondent: Mr Brown and Mr Hood, directors of the Respondent company

The following cases are referred to in this decision:

Lardy v Van Gytenbeek [2010] UKUT 347 (LC) (*Lardy*)
Arnold v Britton [2015] UKSC 36

DECISION

Introduction

1. References to numbers in parenthesis below are to page numbers in the appeal bundle unless otherwise indicated.

2. The appeal concerns Flat 1, Rockstead, 18 West Overcliff Drive, Bournemouth (Flat 1) and is against the First-tier Tribunal's (FTT's) decision dated 11 July 2025 to uphold the Respondent's claim for service and other charges originally made in May 2022 in the county court.

3. Permission to appeal that decision was given by Martin Rodger KC, Deputy President, on 3 December 2025, in essence identifying that the decision of *Lardy* (above) had reached a different construction of lease provisions similar to those in this case and involving the same property. It was arguably wrong for the FTT to reach a different conclusion in this case. Secondly, as a matter of construction, it was arguable that some of the provisions relied upon by the Respondent did not permit payments on account to be taken.

4. The Appellant was the Respondent below and the Respondent the Applicant.

The Lease

5. The Appellant holds a sub-lease (at 684) dated 25th May 2000 of Flat 1 for the remainder of a term of 99 years, less three days. The Lease was granted to Ms Van Gytenbeek from 25 May 2000 (the Lease). The Appellant became the registered proprietor of Flat 1 on 26 September 2002. The headlease was granted to Mr Rene Van Gytenbeek (RVG), who granted the sub-leases, including the Lease of Flat 1. The Particulars in the Lease (at 684) refer to Flat 1 as "the Demised Property" (see page 684) and the Building of which Flat 1 is contained as "the Premises" but for the purposes of this appeal before the Lands Chamber (the Tribunal) it was considered appropriate to refer to them as "Flat 1" and "the Building" respectively. The curtilage of the land in which the Building is situated, i.e. its grounds, to which various lessees in the Building have certain rights, may be referred to as "the Estate".

6. The Lease includes an obligation on the part of the lessor to repair maintain and decorate the Building. There were certain "included rights" which are referred to in the Third Schedule. They included the following:

    > " 1. The right for the Lessee and all persons authorised by him in common with others enjoying the like right at all times for all purposes incidental to the occupation and enjoyment of the Demised Property to use the front driveway and pass and repass on foot and with vehicles over the front driveway giving access to the Demised Property and any of the common external paths driveways staircases or forecourts leading from the public highway the Demised Property or any refuse area used in connection therewith PROVIDED ALWAYS that the Lessor shall have the right in the interests of good estate management temporarily to close or divert such parts of the Premises specified above PROVIDED THAT such closure or diversion shall not prevent the Lessee from having access to or egress from the Demised Property at all reasonable times"

7. The lessor's excepted rights are contained within the Fourth Schedule.

8. The lessee's covenants in the Lease are set out in the Fifth Schedule including, at paragraph 3 of Part I:

> "To pay one-sixth [as it then was] of any other cost to the Lessor (whether on account of the cost to be incurred or incurred directly or by payment to the Superior Lessor) of the maintenance repair upkeep renewal decoration and services of the Premises shared by the Demised Property and the rest of the Premises to include (but without prejudice to the generality of the foregoing) the maintenance and repair of the roof and foundations of the Premises".

9. The Fifth Schedule, Part II refers to the lessee's further covenants. By paragraph 3 the lessee covenanted:

> "To pay on demand to the Lessor one-sixth [as it then was] as referred to in Clause 2 of Part I of the Fifth Schedule [which refers to the cost of insuring] of the cost incurred by the Lessor for the work procured in repairing cleansing maintaining and renewing any part or parts of the Premises the support shelter protection or use of which is common to the Demised Property and the Other Units and in particular those matters set out in Clause 5 [It seems to be accepted that this should be a reference to Clause 6 which deals with the landlord's repair and maintenance obligation] of the Sixth Schedule thereto".

10. The Sixth Schedule contains the lessor's covenants which include:

    1) In paragraph 1 (on 702) an obligation to insure and keep insured "the Premises" [i.e. the Building] against loss or damage;

    2) In paragraph 3 (a) an obligation on the part of the lessor to ensure that any other long-term leases of other units granted by the lessor shall contain covenants to be observed and performed by the lessee similar to those contained in the Lease;

    3) In paragraph 3 (b) an obligation on the part of the lessor to enforce by all means available covenants entered into by lessees of other units;

    4) In paragraph 6 an obligation on the part of the lessor to maintain or procure the maintenance repair redecoration and renewing in a good and substantial manner of (a) the structure of the Premises and in particular the foundations main walls roof drain the drains gutter rainwater pipes of the Premises;

    5) Paragraph 7 states that except in so far as they are to be performed and observed by the lessee the lessor is to observe the covenants on the part of the lessee contained in the Head Lease.

Description of the premises

11. The Building, referred to in the Lease as "the Premises" (see page 684), is described as a Victorian or Edwardian villa which has been converted into 5 flats. A sixth flat was in the Coach House which no longer forms part of the present leasehold estate but, according to paragraph 9 of the FTT's decision, has been sold off and registered under a separate title. As a result of that, the service charge liability had to be adjusted to reflect

the fact that there were five flats rather than six. This came about through a deed of variation dated 11 December 2017 approved in earlier FTT proceedings.

12. Flat 1 is described as a "Ground Floor Flat". It is described by the FTT (at paragraph 8 on page 27) as having "an area of roof and other elements exclusive to it but other parts within the remainder of the residential building". The Building is described in the earlier Upper Tribunal appeal of *Lardy* involving Flat 2 and the former Coach House known as Flat 6, as "standing, together with an adjacent building (Flat 6), in grounds of perhaps three quarters of an acre" (page 253). I was taken to some floor plans in the course of Mr Grundy's opening submissions which included a plan on page 717, which shows the Building. The highlighted area is the ground floor plan of the Building. Page 852 shows Flat 3 occupying the part of the ground floor of the Building edged in red, the other part to the right of the entrance hall being Flat 1. Also on the ground floor is a shed which is also edged in red and forms part of Flat 3. The photograph at page 863 shows the former Flat 6 being physically contiguous to the remainder of the Building but with its own access and shared party wall. The Velux window in the roof space to the left of the photograph consists of a penthouse and comprises the whole roof space. The windows on the first floor of the Building itself, seen on that photograph, are said to belong to Flat 2. I was informed in the course of oral submissions that one gains access to Flat 1 via the internal hallway shown on the plans referred to above at 852. The Flat 1 Lease plan itself appears at page 710. Further particulars appear in the Lease in the Second Schedule. It is described as including a garden area (see above).

The FTT's decision

13. The proceedings before the FTT came about as a result of a claim in 2022 for unpaid service charges in the county court. In October 2023 the Respondent was granted judgment by a Deputy District Judge on all of its claims. The Appellant's appeal to the Circuit Judge was successful. On 19.7.2024 HHJ Mitchell ordered the transfer of the issues relating to service charges to the FTT. This is an interpretative question. The key procedural history of the case before the FTT is set out in paragraph 11 of the decision of the FTT.

14. Having considered the Lease provisions in detail (at paragraphs 21 *et seq* at page 29) the FTT (at paragraph 36 *et seq* at page 32) set out the principles of construction as they apply to leases. The FTT referred to the Supreme Court's decision in *Arnold v Britton* [2015] UKSC 36. Those principles included the requirement that in interpreting a written instrument the court is concerned to identify the intention of the parties by what a reasonable person having the background knowledge of those parties would have understood the instrument to mean. Interpretation involves considering the natural and ordinary meaning of the clause, any other provisions of the lease, the overall purpose of the clause, the facts and circumstances perceived by the parties at the time and commercial common sense, disregarding subjective evidence of the parties intentions and evidence of negotiations.

15. The FTT went on to consider earlier decisions relating to "the Estate", by which they meant the Building and the Estate (see paragraph 8 at page 27).

16. The first set of proceedings considered by the FTT was an application in 2017 by the Respondent seeking a variation of the Lease and the other leases within the Building. Both advocates before the Tribunal agreed that the application to vary was not relevant for the purposes of this appeal. However, they considered the decision of the Lands

Chamber in 2010 in *Lardy* was relevant for different reasons. The FTT was criticised by Mr Grundy for its characterisation of the earlier decision of the Lands Chamber. Particularly, the FTT was criticised at paragraph 49 of its decision (page 79) for stating that "Flat 6 was not contained in the Building". It was pointed out, that this was not the case. It was physically separate but it retained a party wall with the Building which to some extent it must rely on support from. Secondly, the words "to include" in paragraph 3 of Part 1 of the Fifth Schedule had the effect of making Flat 6 liable for the costs of maintenance of the roof and foundations of the Building by using the words "to include" but the Lands Chamber in *Lardy* had not found that the use of the words "and in particular" towards the end of paragraph 3 of Part 2 of the Fifth Schedule (on page 7) had the effect of extending liability. Nevertheless, the FTT was criticised for using the words "extending what has gone before" as a characterisation of what the Lands Chamber had decided in the 2010 appeal.

17. This appeal to the Tribunal challenges the FTT's interpretation of the service charge liability in Schedule 5 of the Lease and specifically those provisions in Part I, paragraph 3 of the Fifth Schedule (see page 693 – which contains "the Lessees Covenants") and Part II, paragraph 3 in the same schedule of the Lease (which contains the "Lessees Further Covenants").

18. The Deputy President in granting permission to appeal on 3rd December 2025 noted that the FTT had attempted to apply the terms of the leases of different premises within the building (Flat 2) and outside the Building (Flat 6) to Flat 1. It was arguable that the appeal before the Lands Chamber in 2010 had been concerned with the different circumstances which pertained there. But it was at least arguable that the different interpretation by the FTT here was unjustified.

Discussion

19. The appellant says that the FTT misinterpreted *Lardy* and, in so far as it departed from it, erred. The decision in *Lardy*, being of the same or equivalent tribunal in relation to the same or very similar leases and relating to the same building, is binding on this Tribunal or at least highly persuasive. As Mr Grundy points out in paragraph 66 of his skeleton argument and as the FTT accepted (at paragraph 88 at page 42), the earlier Lands Chamber decision was binding on the FTT in this case. The appellant also says that there is no principle of law that all service charges incurred by a landlord or management company will be recoverable and that if the correct principles of construction are applied to Flat 1's lease the service charges in dispute are irrecoverable.

20. The respondent's case is that the FTT reached a decision it was entitled to come to – there being considerable logic to dividing these costs between the flats equally- subject to minor adjustments. Overall, the decision was a fair one which the Tribunal should uphold, therefore. *Lardy* was concerned with different leases, albeit within the same Estate and could therefore be distinguished.

The issues

21. The grounds of appeal are of undue complexity and length but Mr Grundy was able to distil them to, essentially, four interpretative questions:

    1) Whether the FTT was justified in applying the Lands Chamber's extended construction of the Fifth Schedule, Part I, paragraph 3 where the Tribunal had

interpreted the words “to include” as meaning “and in addition” to the different wording of the Fifth Schedule, Part II, paragraph 3?

2) Whether the FTT had correctly applied the Land Chamber’s interpretation of the words “shared by” in the Fifth Schedule, Part I, paragraph 3 in the *Lardy* case to this clause which was also found in the Lease?

3) Whether the FTT correctly applied the Lands Chamber’s interpretation of the words “is common” in the Fifth Schedule, Part II, paragraph 3?

4) Whether overall the FTT had erred in concluding the lessor was entitled to recover on-account service charges as opposed to charges for services which had been provided having regard to the absence of the words “to be incurred” from the Fifth Schedule, Part II, paragraph 3?

Consideration of the issues

Approach to construction

22. The principles of construction as explained by the Supreme Court in *Arnold v Britton* [2015] UKSC 36, [2015] A.C. 1619 apply. These are well established and frequently adopted in service charge disputes (see for example *Kris Seo Bee Tay v Holding & Management (Solitaire) Limited* [2019] UKUT 373). The Supreme Court’s principles of construction are summarised in the headnote as follows:

> “the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be ***1620** gleaned from the language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate a departure from the natural meaning; that commercial common sense was relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date on which the contract had been made; and that, moreover, since the purpose of contractual interpretation was to identify what the parties had agreed, not what the court thought that they should have agreed, it was not the function of a court to relieve a party from the consequences of imprudence or poor advice (post, paras 15-20, 23, 66, 76-77).”

23. The second principle that is relevant is that referred to in paragraph 66 of Mr Grundy’s skeleton argument. There is no presumption that the service charge provisions in a lease will enable the landlord to recover 100% of expenditure through those charges. *Rapid Results College v Angell* [1986]1 EGLR 53 (CA) is cited in support of this principle. That case is considered in “Service Charges and Management”, 5th Edition at 1-06, where the authors point out that it was concerned with a residential lease, where “…any lack of clarity is likely to be resolved in favour of the paying party”. The authors of that work go on to discuss the principles as enunciated by Lord Hoffmann in *Investors Compensation Scheme v West Bromwich Building Society* [1997] UKHL 28. The effect of the case law, as explained there, is that in a commercial context “… the court may be slow to accept that the parties did not mean what they said with the words they chose to use”. Generally, the court or tribunal will give effect to the objective meaning of the words they chose to use even if it appears that the language has “gone wrong”.

24. Thus, although a court or tribunal construing a service charge provision may take into account the relevant background facts and the commercial context in which the provision was entered into, it will not rewrite the agreement. This is important in the context of this Lease. The Lease, and the similar leases considered by the Lands Chamber in *Lardy*, were clearly poorly drafted, as the President explained.

25. In my view, the starting position is the Lands Chamber decision in *Lardy*, as it concerned the same building and identical or almost identical lease terms. The FTT in this case ought to have construed the Lease of Flat 1 consistently with that decision unless there were any differences in the lease terms. As the FTT itself said (at paragraph 90):

> "…there is no identifiable proper basis for the Tribunal adopting a different construction in the Lease to the same words in the Lease of Flat 6 granted by the same lessor, much as there were different lessees on the evidence and that the lessee of Flat 1 was Monaliesa Van Gytenbeek in particular. The Tribunal does not consider that where the contracting parties, particularly the landlord, in respect of Flat 6 used same words as those in the (original version of the) Lease of the Property, those same words could be constructed to make different provision between one lease and the next."

26. This Tribunal should be slow to interfere with a decision of the FTT, a specialist tribunal, particularly one which dealt so thoroughly and carefully with the issues as the one in this case did. It will only do so where it is found to have erred in law. As the FTT itself said (at paragraph 35) this is not the simplest lease to follow and has been made more complicated by the changes that have taken place within the Estate. Nevertheless, if its interpretation is legally incorrect, for example, by departing from well-established principles of construction in order to place a more commercially sensible construction on the Lease, the Tribunal should not hesitate to interfere with the FTT's decision.

The Lease terms here

27. Part I, Schedule 5, paragraph 3 sets out the lessee's covenants with the lessor. Part II, schedule 5, paragraph 3 sets out the lessee's further covenants with the lessor and with other units.

28. The former provision (Part I, Schedule 5, paragraph 3 at page 693) requires the tenant:

> "To pay one sixth of any other cost of the lessor (whether on account of the cost <u>to be incurred</u> or incurred directly or by payment to the Superior Lessor) of the maintenance repair upkeep renewal decoration and services of the Premises <u>shared by</u> the Demised Property and the rest of the Premises <u>to include</u> (but without prejudice to the generality of the foregoing) the maintenance and repair of the roof and foundations of the premises".

29. This form of words is identical to that adopted in relation to Flats 2 and 6, save that in the case of Flat 2 the following words were added:

> "… and as referred to in clause 6 of the sixth schedule".

30. In relation to Part II, Schedule 5, paragraph 3 the lease of Flat 1 is identical to that contained in Flats 2 and 6. Part II, schedule 5, paragraph 3 of the Lease adopts the

following form of words, whereby the lessee was to observe the further covenants therein:

> "To pay on demand to the lessor one-sixth as referred to in Clause 2 of Part 1 of the Fifth Schedule of the cost incurred by the lessor of the work procured in repairing cleansing maintaining and renewing any part or parts of the Premises the support shelter or protection or use of which is common to the demised property and in particular those matters set out in Clause 6 of the Sixth Schedule hereto".

31. It is not disputed that the word "clause 5" in the Fifth Schedule, Part II (see page 700) was an error and it should have been a reference to clause 6 as per the above quotation.

First issue-the meaning of "to include"?

32. In relation to the Fifth Schedule, Part I, paragraph 3, the Lands Chamber in *Lardy* said that the words "to include" in Part 1, schedule 5, paragraph 3 in relation to this paragraph did not intend to refer to an example of that which had gone before but meant "and in addition", i.e. it added an additional item to be included within the lessee's liability to pay that would not otherwise have been included in what had gone before. This is dealt with at paragraph 29 of *Lardy* (referred to in Mr Grundy's skeleton argument at paragraph 56).

33. The reference to words "in particular" in Part II, schedule 5 paragraph 3 was found by the President in *Lardy* to be used in the dictionary sense of those words. What follows those words are intended to be particular examples of that which had gone before. The Appellant says that the FTT in this case misrepresented what the President had said in *Lardy* and, at paragraph 50 *et seq* on page 79-80, attempted to find an extended class of items was included within paragraph 3 of Part II, which was not justified by the words used in the Lease. It is submitted that the words "in particular" did not have the effect of extending what had gone before, as had been found to be the case in relation to the words "to include" in the Fifth Schedule, Part I, paragraph 3. Furthermore, the Fifth Schedule, Part II, Schedule 5, paragraph 3 only refers to the costs incurred by the lessor and not the costs "to be incurred" but this topic will be more fully considered below.

34. There would be perfectly logical reasons for applying an extended definition of the words "in particular" in Part I, Schedule 5, paragraph 3 to Part II, Schedule 5, paragraph 3 of the Lease but this would be contrary to the decision of the President in *Lardy*. Ordinarily, the FTT would be free to arrive at any interpretation of the service charge obligations which was consistent with the approach to construction discussed above. However, the FTT's interpretation appears unwarranted here due to the earlier decision in *Lardy*. As Mr Grundy submits, the FTT may have misunderstood and/or applied a creative interpretation with a view to achieving consistency between two inconsistent clauses. Further or alternatively, it misinterpreted this clause in an attempt to make greater commercial sense of the Lease. The clauses in Part I and II of the Fifth Schedule are inconsistent because of poor drafting and in the Tribunal's view it was not open to the FTT to interpret the Fifth Schedule, Part II, paragraph 3 in the manner that it did.

The second issue-meaning of the words "shared by"

35. These words are contained in the Fifth Schedule, Part I, Paragraph 3. They are intended to produce an equal liability for those parts of the Building the use and benefit of which

are shared by the lessees as well as the roof and foundations of that building (described by the Lands Chamber as "the main building").

36. Mr Grundy's argument (see paragraph 40 *et seq*) is that the effect of the Lands Chamber's finding in *Lardy* is that the liability of the lessees to contribute to service charges was connected with the rights the lessee enjoys over the Premises (i.e. the Building). He says that here the error was that the FTT misconstrued *Lardy* by failing to consider whether the lease of Flat 1 in fact granted rights over the relevant parts of the Building. It was asserted that Flat 1 had a separate entrance from the other flats within the Building. It was only in respect of those items of repair etc to the building over which Flat 1 enjoyed rights that service charges could be recovered. Mr Grundy asserts at paragraph 73 of his skeleton argument that since Flat 1's Lease does not include rights to use communal parts it would not be right to say that service charges are recoverable and these items needed to be stripped out.

37. Here I think Mr Grundy's real point is that the President in *Lardy* achieved parity of construction between the leases of Flat 2 under both the Fifth Schedule, Part I and Part II by virtue of the words of extension at the end of Part I paragraph 3 "and as referred to in clause 6 of the Sixth Schedule". His point seems to be that those words are not included in Flat 1's Lease. Therefore, the argument goes, in the absence of those words from the Fifth Schedule, Part I, paragraph 3 in Flat 1's Lease, there can be no liability for items under the clause 6 of the Sixth Schedule.

38. His submission is strengthened by the words used by the President in paragraph 32 of the *Lardy* decision, where he says:

> "I would add that I was provided with copies of the leases of Flat 1… (In addition to those of Flats 2 and 6). These leases were not before the LVT. They differ in that there is no Sixth Schedule extension (by which I mean no reference to the Sixth Schedule at the end of the paragraph) in either paragraph 3 of Part I or paragraph 3 of Part 2 of the Fifth Schedule to the lease of Flat 4. The leases of Flats 1 and 3 include the extension in paragraph 3 of Part 1. The lease of Flat 5, like that of Flat 2, contains the extension in both paragraphs. <u>On the basis of the reasoning that I have set out above my conclusions in relation to the Flat 2 lease would hold good in relation to Flat 5. All 5 flats, including Flats 1, 3 and 4, would be liable to one sixth of the cost of maintaining and repairing the roof of the Premises (both the main building and Flat 6). The LVT's conclusion, based as it was on the Sixth Schedule extension, would not have applied to Flat 4. To the extent that paragraph 6 of the Sixth Schedule includes matters (other than the roof and foundations) that are not shared by other flats, Flat 4 would not be liable for any part of the cost of these, and the same is arguably the case for flats 1 and 3</u>".

39. I see no reason why the President's reasoning is incorrect and the FTT itself considered itself bound by the conclusions in *Lardy* provided any necessary changes to reflect differences in the lease terms were taken into account. I therefore agree with the Appellant that any service charges that relate to costs associated with the matters which are not shared by Flat 1, other than the roof and foundations, are not costs that would fall within the service charge obligation.

Third issue-meaning of the words "is common" in the Fifth Schedule, Part II, paragraph 3

40. The FTT considered these words in their context at, for example, paragraph 27, and decided to give a different "gloss" on the interpretation the Lands Chamber had given in *Lardy* by distinguishing this appeal from the earlier one.

41. The suggestion by the FTT in *Lardy* that the basic scheme was that the costs of services were to be divided equally between the six (now five) flats could not be accepted without qualification, the Lands Chamber said (see paragraph 28). The President did not consider this assisted in construing the disputed provisions in relation to the lease of Flat 2 or the different provisions that applied to the lease of Flat 6, which contained the Lodge.

42. The President, although he was not considering the Lease of Flat 1, expressed the opinion at the end of paragraph 32 that the appropriate way to construe Flat 1's lease would be to require that flat to pay one sixth of the cost of maintaining and repairing the roof of the Premises (i.e. the Building), which would have included part of Flat 6. However, otherwise, in absence of words of extension, Flat 1 would only be responsible for contributing to those elements over which Flat 1 had express rights. Given the absence of the extension in the wording of Flat 2's lease, which expressly referred to the Sixth Schedule, clause 6 extension in Schedule 5, Part I, paragraph 3, from Flat1's Lease, the President's conclusion was logical. I see no reason to reach a different conclusion here.

Fourth issue: Whether the judge took account of the absence of the words "to be incurred" from the Fifth Schedule, Part II, paragraph 3?

43. The Fifth Schedule, Part II, paragraph 3 limited service charges recoverable under that paragraph to costs "<u>incurred</u>" whereas the equivalent provision under the Fifth Schedule, Part I, paragraph 3 did not. The latter provided that the lessee's one-sixth share of the costs were to be paid whether the service cost had been incurred or was <u>to be incurred</u>. There is no reason for this other than a drafting error but, to apply the principles of interpretation above, it is necessary to give effect to the words used. This distinction was recognised by the Lands Chamber in *Lardy* and there is no good reason for reaching a different conclusion in this appeal.

44. According to paragraph 81 of Mr Grundy's skeleton argument at page 21, "almost 95% of service charges demanded are in respect of costs to be incurred by the company i.e. for <u>on account</u> service charges". Accordingly, those service charges incurred in accordance with Schedule 5, Part II, paragraph 3 may be recovered on account and only where the lessor is able to rely on Part I, paragraph 3 may those charges be recovered before they are incurred.

Conclusions

45. For these reasons, the Tribunal considers it has no alternative but to find that the Lands Chamber in *Lardy* was correct and the FTT in this case was incorrect. An order setting aside the decision of the FTT and setting out the correct interpretation of the above provisions will need to be made. According to Mr Grundy, that results in the appellant's liability for 20% of the respondent's costs relating to the Building except those relating to agents fees being irrecoverable. It is also said that 95% service charge demanded in any event relate to costs "to be incurred" and for the reasons given those cannot be recovered under the provision concerned.

46. For the above reasons, the appeal is allowed.

His Honour Judge Hanbury

19 August 2026

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.