FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2022/0058**
Property	**:**	**Central Tower, 300 Vauxhall Bridge Road, London Sw1V 1AA**
Applicant	**:**	**Vega Holdco 1 Limited**
Representative	**:**	**Mr Tom Morris (Counsel) Instructed by JB Leitch Limited**
Respondents	**:**	**The leaseholders at the Property**
Representative	**:**	**Mr Ian Plummer (Chair of the Residents' Association)** (Assisted by Mr Mike Tonnison)
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	**:**	**Deputy Regional Judge Nikki Carr** **Mr Anthony Harris (LLM FRICS FCIArb)** **Mrs Diane Martin (TD MRICS FAAV)**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**15 August 2023**
Date of decision	**:**	**24 October 2023**

DECISION AND REASONS

Decisions of the Tribunal

(1) The sums demanded by the landlord for the year 2022 in respect of the works of repair/improvement to the 9th storey airspace extension are unreasonably incurred to the service charge and are not payable.

(2) The Tribunal will give directions to deal with any costs application made, if not agreed between the parties.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge year 2022 in respect of works carried out to the balconies and un-demised areas at the new ninth storey of the building, created by the development of the airspace at Central Tower, 300 Vauxhall Bridge Road ('Central Tower').

2. The application was made in early February 2022, and directions were initially given by Judge Dutton to bring this matter to a hearing on 20 June 2022. However, the Applicant made a series of applications to stay, while it says it endeavoured to assist the leaseholders of the two new penthouses to progress a claim on newbuild insurances held with Checkmate.uk.com ('Checkmate'). This is addressed further below.

3. By March 2023, the leaseholders were no longer in agreement with a further stay (a further application having been made by the Applicant) due to what they said was a lack of communication by the landlord or its agents or Solicitors, and Checkmate having once again indicated a refusal to accept it had obligations under the policy (for reasons that counsel at that case management hearing was unable then to provide). I refused to stay the proceedings further and issued further directions bringing the application to a final hearing.

4. Mr Tom Morris of counsel represented the Applicant, and was attended by a paralegal from JB Leitch, Ms Jodie Michael. Ms Gabrielle Albon of FirstPort Group Limited (managing agent for the landlord) ('FirstPort'), who had herself managed the property between January 2022 – April 2023, attended to give evidence for the Applicant.

5. Mr Ian Plummer, the chair of the Residents Association, appeared to represent the leaseholders. He was assisted by Mr Mike Tonnison (in a non-speaking capacity). Dr Rob Edwards, the leaseholder of Flat 385 since 2011 (situated immediately under the new development), and a key participant and driving force in the negotiations between leaseholders, the landlords and the developer, attended to give evidence on behalf of the leaseholders.

6. In advance of the hearing, we were provided with a bundle of 1135 pages, in addition to a skeleton argument from the Applicant's representative. We have read those documents, and absence from below of reference to a particular document reflects only its relevance to the issues we must determine. References to pages in the bundle appear in bold square brackets **[…]**.

7. On the Friday 11 August 2023, in apparent response to the Applicant's skeleton argument we received an email from Mr G S Sikoki (a leaseholder) notifying that the leaseholders had received a demand for a further £70,000 in respect of the works. On Monday 14 August 2023, the day before the hearing, at 2.51pm the Applicant's solicitors replied that "*The increase in costs was due to various unavoidable factors including issues with the local authority, an uplift in costs owing to the tender exercise being undertaken in 2021 and some additional works needing to be undertaken resulting in the timeframe for the works being extended by eight weeks*". The Applicant maintained the position that the additional costs of or in connection with the same works with which we are concerned were irrelevant to the application, which concerned only the 2022 service charge.

8. Also on Monday 14 August 2023, we sent to the parties a table in which we had set out the ownership structures of Central Tower that we had derived from information publicly available at Companies House, it having been put into issue by the Respondents' statement of case **[278** paragraph 1**]** and **[455-456]**. We also directed the parties to consider *Prest v Petrodel* [2013] 3 WLR 1 (SC) and *DHN Food Distributors Ltd v Tower Hamlets* [1976] 1 WLR 852 (CA), copies of which we provided, as we considered it likely we would wish to hear submissions on them in light of the foregoing. The schedule of ownership is set out at the end of the decision.

9. This resulted in an authorities bundle provided by the Applicant's counsel at 4.30pm on Monday 15 August 2023. In it were some (but not all) of the authorities already referred to in the Applicant's skeleton of the previous Friday, and additional documents potentially arising out of the authorities we had referred the parties to. We have considered those that were in fact brought to our attention and relied on (in the event, much of the authorities bundle was not).

10. At 6.28pm on Monday 15 August 2023, a licence to assign and deed of variation made between Backfold Limited ('Backfold'), Belltone Limited ('Belltone') and 300 Vauxhall Bridge Road LLP ('300VB') dated 8 May 2015 was provided (context will appear below). It is surprising that this was omitted both from the Applicant's statement of case (where it was mentioned in paragraph 6 **[17]**) and from the bundle. However, the parties agreeing, we admitted it and have considered it.

11. At the commencement of the hearing, we raised with the Applicant our concern arising from the letter at the last page of the bundle **[1134 – 1135]** dated 31 July 2023 and written by an unidentified fee-earner at JB Leitch to Checkmate. In it, the fee earner sets out as follows:

"*… We are informed that, as it stands, Checkmate have maintained their position and have rejected the claims [made by the penthouse leaseholder(s)] on the basis that poor detailing, causing damage to a flat below the Penthouses, does not meet the criteria of "major physical damage".*

…

Our client's surveyor has confirmed that, when constructing the Penthouses, the developer has failed to cut through the original roof covering down to the solid concrete deck to install the brickwork, causing the bricks to crack and the windows to drop. The developer also did not waterproof the glass balustrade adequately and fixed the stainless steel balustrade bottoms into unprotected steel sections.

The surveyor has confirmed that the present defects and issues are due to the developer's initial works when installing the structure of the Penthouses and the handrail.

It is anticipated that, if/when further investigations are carried out, there are likely to be further issues identified as a result of the developer's poor design and workmanship when constructing the Penthouses.

…

The Penthouses were built with the benefit of a Newbuild Warranty and it is clear from the evidence previously provided that the construction works were inadequate and have resulted in issues which are abundant in nature and of serious consequence…"

12. As we made the Applicant aware, this letter rang alarm bells, particularly in the context that this is a Higher Risk Building for the purpose of the Building Safety Act 2022, and the apparent reference to a risk of (or ongoing) collapse of the structure might well amount to a relevant defect presenting a risk to the safety of the residents, particularly as regards the failure to cut through the original roof covering before installing the brickwork to properly anchor the rooftop development to the rest of the building. As we expressed, our view was that in the context of the evidence we had seen, this matter seemed to have been be known to the Applicant at the date of the application, and on the date of the coming into force of the Building Safety Act 2022,

such that the matters subject of the application before us might more properly be dealt with under that legislation, in particular Schedule 8.

13. Ms Albon stated she wasn't sure when the surveyor's report was, or whether there was a report at all – it might have been email correspondence - but agreed to send to us a copy of it after the hearing so that we could consider the position more and ask the parties for submissions as necessary.

14. In the event, after two more requests for the report and the Checkmate policy (which was also not among the papers, and which Ms Albon also agreed to provide), the latter of which (on 29 August 2023) provided that unless the documents were forthcoming the Tribunal would "*draw such inferences as it considers appropriate for the refusal to disclose those documents*", Ms Orr (Trainee Solicitor) wrote to the Tribunal, enclosing the Checkmate policy for one of the penthouses, and refusing to disclose the surveyors report/emails thus:

"*As to the letter… of 31 July 2023, the comments within the penultimate paragraph were based upon emails from a Surveying Manager at Mainstay, the contents of which are protected by legal privilege. On this basis, the Applicant is not in a position to provide a copy of the correspondence.*"

15. On 31 August 2023 we wrote back to Ms Orr in the following terms:

… As to Ms Orr's last paragraph:

1. *The report is relied on in a document included in the bundle by the Applicant;*
2. *The letter discloses the nature of the findings of the report;*
3. *The Tribunal raised with the Applicant at the hearing* [the reasons] *why it considers the report is material to the decision before it;*
4. *The Applicant agreed to disclose it. It must be assumed that Ms Albon had the authority to waive privilege as she was appearing in the proceedings for and on behalf of the Applicant with their authority.*
5. *It is not sufficient to merely assert "legal privilege", the precise nature of which is not identified.*
6. *Ms Orr does not in any way identify how Mainstay are or were giving legal advice.*
7. *There is no indication that the report is or was prepared for or in contemplation of the dominant purpose of legal proceedings.*

In the circumstances, the unless order has bitten, and the Tribunal will go on to draw such inferences from the refusal to disclose the document as it considers appropriate.

16. There was no response.

Relevant documents

17. The first relevant document is a memorandum of understanding dated 18 October 2012 made between Belltone ('the first Belltone MOU'), the original intended developer of the airspace at Central Tower, and the Leaseholders, in which Belltone promised (per page 1) that certain undertakings would be reflected in the agreement between it and OP Land (the freeholder at that time). Amongst those promises were as follows **[325 and following]**:

> "*Collateral Warranties*
> *In addition to the contractual relationship between the Developer and the Contractor and the obligations placed through the contract, the appropriate design professionals will be required to provide collateral warranties for the design of the development. The Freeholder will have the benefit of these warranties and the Leaseholders will be able to secure any necessary rectification of defects through their relationship with the Freeholder…*
> *The existing building has to be established as adequate in terms of existing structure and foundations in order to support the additional stories. This assessment and eventually detailed design, is carried out by the Structural Engineer. The Engineer will then provide a collateral warranty to the Freeholder. Hence, if there are problems, it is the structural engineer's design insurance that will pay.*
> *Likewise the Architect, Mechanical and Electrical Designer, Trade Contractors with design responsibility and the principal contractor will also provide industry recognised collateral warranties, as necessary.*
> *Premier Guarantee*
> *In addition to this the developer and the contractor will be required to have a "new build" insurance policy in place to protect the owners of the new apartments and the freeholder. The insurance company preferred for this development is Premier Guarantee … They will also review the plans, inspect the works throughout the development process and the completed work. If they are not satisfied then the development would not achieve the cover required and it would make it incredibly difficult for the new apartments to be sold. Once the building works have been completed the new structure making up the three new apartments, is wrapped up into the envelope of the existing freehold. The structural warranties/insurances for the new units transfer to the freeholder and are folded into the existing insurance policies that are in place. The new development is then the freeholder's asset.*
> *Therefore, the leaseholders of 300 VBR will have the insurance cover they need in the event of defects due to poor workmanship or deficient design.*"

18. The second relevant document is an agreement for an airspace lease ('the agreement for lease') made on 22 October 2012 between OP Land (no 1) Limited ('OP Land') and Belltone Limited. The material clauses are as follows:

Method Statement and Specification **[288]***: the Memorandum of Understanding annexed to this agreement at Schedule 3* [the first Belltone MOU] *and as may be required by the Planning Authority under the terms of any Satisfactory Planning Permission.*

Project **[289]**:

(a) The obtaining of Planning Permission;
(b) The acquisition of the Airspace Lease;
(c) The carrying out of the Works;
(d) The sale of the New Flats through the grant of new leases by the Landlord

…

Works **[290]***: shall mean all those works involved in:*

- *Setting up and preparing a site compound within the block*
- *Constructing new flats above the existing roof of the Block within the area demised by the Airspace Lease in accordance with the Planning Permission*
- *Clearing the site at the conclusion of the construction work*
- *The Communal Works*

1.9 ***Landlord*** **[291]** [i.e. OP Land] *includes the landlord's successors in title and any other person who is or becomes entitled to the reversion (whether immediate or not) expectant on the term to be created by the lease*

1.10 ***Tenant*** [i.e. Belltone] *does include the Tenant's successors in title*

…

8. TENANT'S DEVELOPMENT OBLIGATIONS **[296]**

8.1 The Tenant shall commence the Works …in accordance with the following:

(a) In a good and workmanlike manner
(b) Using suitably qualified tradesmen and good quality materials

(c) To the reasonable satisfaction of a qualified building surveyor employed by the landlord, the reasonable fees of such surveyor to be paid by Belltone

…

(g) in accordance with the Method Statement and Specification, and the Communal Works Specification as applicable

…

(i) Making good on completion of the Works any damage caused to the Block or its grounds.

…

8.4 The Tenant shall procure **[297]***:-*

(a) in respect of the new Flats, a structural new home warranty by a provider recognised by the Committee of Mortgage Lenders and acceptable for mortgage lending purposes…

1. The third relevant document is an airspace agreement between Backfold (by then the freeholder) and Belltone made on 30 January 2014 ('the Airspace Agreement'). The Airspace Agreement provides as follows **[446-448]**:

1.1 ***"The Agreement"*** *means the agreement (inter alia) in respect of this lease dated 22 October 2012 and made between the Lessor (1) and the Lessee (2)*

…

6.1 The lessee shall upon completion of the sale of a the [sic] *New Flat surrender out of this Lease that part of the Demised Premises that the relevant New Flat comprises such surrender to be in substantially the same form attached to the Agreement and in the case of the final New Flat to be sold the form of surrender shall be adjusted to include all residual parts of the Demised Premises not previously surrendered with effect that this Lease shall then cease and determine but without prejudice to the antecedent rights and liabilities of the parties.*

2. The fourth relevant document is the form of lease enclosed with the agreement for lease to which the Airspace Agreement makes reference, to be used on completion and sale **[563 et seq]**:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall bear the following meanings:

"Building"	*The Building known as 300 Vauxhall Bridge Road London SW1 erected on the Development*

…

"Development"	*The land shown edged red on Plan 2* [no plan is exhibited in the bundle]
"Insured Risks"	*the following risks so long as they are commonly insurable in respect of property in the United Kingdom insurance market namely fire (including subterranean fire) explosion impact storm flood tempest including lightning earthquake aircraft (except hostile aircraft) and other aerial devices and articles dropped or falling therefrom missiles and projectiles bursting or overflowing of water pipes tanks and apparatus landslip subsidence and heave and such other risks as the Landlord shall from time to time reasonably require to have insured*

…

3. TENANT'S COVENANTS **[566]**

3.1 ***TO PAY RENT AND SERVICE CHARGE***

(a) to pay the rent herby reserved to the Landlord throughout the term

(b) To pay the Service Charge and other sums payable in accordance with the terms of the Fifth Schedule…

…

4 LANDLORD'S COVENANTS **[571]**

4.6 INSURANCE **[572]**

(a) To insure and keep insured the Building and the landlord's fixtures and fittings therein including the lifts within the Building and all apparatus and equipment relating to the same against loss or damage by Insured Risks up to at least the full reinstatement value for the time being thereof (including Value Added Tax thereon if applicable) with architects' and surveyors' and other professional fees (including Value Added Tax thereon) and expenses incidental thereto and the cost of shoring up demolition and site clearance and similar expenses and such other insurances as it [sic] *or the Landlord may from time to time reasonably require*

THE FOURTH SCHEDULE **[579]**

The Services

1. For the purposes of this Schedule and the Fifth Schedule the expression "Service Cost" means the total fees charges costs expenses disbursements or outgoings of whatever nature (together with Value Added Tax on any of the same) paid discharged or incurred by the Landlord or on the Landlord's behalf in respect of the Services.

2. The Services shall include the following:-

(a) Repairing rebuilding reinstating maintaining replacing repointing inspecting renewing and cleansing the structure of the Building and in particular the roofs foundations external woodwork brickwork ironwork chimney stacks and window frames (excluding the internal faces thereof) the joists and beams of the floors and ceilings external and structural parts of balconies not demised to any tenant within the Building and the Conducting Media (not exclusively serving the Demised Premises) and the Landlord's fixtures and fittings used in common by the Tenant and other occupiers of the Building including the lift and lift equipment and the electrical installations so far as any such are not the sole liability of any particular lessee in the Building or at the Landlord's discretion improving any of the items referred to in this paragraph

…

THE FIFTH SCHEDULE

Calculation of the Service Charge

…

2. Service Charge shall comprise [ ] per cent of the Service Cost PROVIDED THAT the Landlord may make such adjustment as it thinks fit in the proportion of Service Charge payable by the Tenant from time to time in order to ensure that the cost of Services is apportioned fairly between the Landlord (in respect of any flats within the Building not demised on similar terms) the other tenants of the flats and the tenants of the Shop Units in the Building from time to time.

3. The leases of the two new penthouses, to Yuan Gao of Flat 395, entered into on 24 January 2017 at a premium of £3,550,000.00 and to Victor Jacques Douce of Flat 396 (aka the Buckingham Penthouse), entered into on 21 March 2018 at a premium of £2,800,000.00, reflect these clauses. Lease plans are provided with both **[997 and 1025]**, which show (at least on the digital pages) that each is a single story with a stairway leading up to a roof garden on the

top (10th) level, and that the demise does not include the balcony or curtilage on the lower (9th) floor, nor anything but the stairway accesses to the roof terraces above, although there is a part of each plan delineated green that does not appear to be separately identified in either lease. Although we understand that the penthouse lessees have exclusive use of those 10th floor roof-terraces and 9th floor balconies (which may well be what is indicated by the green delineation, noting that these are the original drawings from the plans), they and the further area delineated blue on the plans (which appears to be the remaining curtilage on the 9th floor created by the penthouse additions) remain 'common parts' for the purpose of the lease obligations.

4. The fifth relevant document is the existing lease of the lessees whose interests were entered into prior to the development. A sample is exhibited **[34 et seq]**, for Flat 386 which is, as we understand it, immediately beneath the penthouse development and immediately adjacent to the Flat owned by Dr Edwards. Dr Edwards also exhibited his own lease of Flat 385 **[589 et seq]**. The two leases are in identical terms, as to be expected.

5. Comparing the penthouse lease with the leases for both Flat 386 and 385, the earlier ones include additional insured risks contained in their definitions, being "*riot strike civil commotion and malicious damage*" **[39]**. The material definitions are otherwise the same, as are the material Tenant's Covenants (clause 5 **[43]**) and Landlord's Covenants (clause 6 **58]**). Services are also set out in the Fourth Schedule, and cover the same heads (albeit inexplicably the later lease takes them in a different order) **[69]**. The relevant part of the Fifth Schedule is identical to the later lease **[77-78]**.

6. The sixth relevant document is the new build insurance policy, placed with Checkmate on an unidentified date. We have only been provided with the document relating to Flat 395 (Mr Gao), apparently because Mr Douce is not a party to these proceedings. From the document provided, it is clear that Mr Gao's policy was effective from the date of his purchase of Flat 395 on 24 January 2017.

7. The following are the material terms and policy conditions appearing on the certificate and accompanying booklet:

Expiry date: 17/01/2027

…

Plot Number: 1
Development Name: 300 Vauxhall Bridge Road
….
Insured value: £3,550,000.00

…

<u>Endorsements</u>
The following endorsements apply and must be read in conjunction with your Castle 10 policy booklet:
…
The following is excluded:-
Damage that occurs in or to;

- *Any part of the structure that is not the new home but that contains or supports the new home*
- *The new home that is caused by anything in any other part of the structure that is not the new home but that contains or supports the new home.*

Introduction

…

*… subject to the conditions and any endorsements printed on the **certificates**, the policy protects **you** if **your developer** goes into **liquidation** or is made bankrupt against the loss of contract exchange deposit and the repair of certain types of **physical damage** caused by a failure of the **developer** to meet the **requirements** in respect of the **new home** in the first two years. If the **developer** is not in **liquidation** or has not been made bankrupt, but nonetheless unreasonably refuses to meet its repair obligations within a reasonable period, **we** will help to resolve a dispute between **you** and the **developer** by giving advice about the extent of cover available under the policy and the **developer's** responsibility to rectify damage caused by defects. If **we** advise that repairs are covered by the policy but the **developer** unreasonably refuses to carry out the work within a reasonable period, **we** will pay for the work to be completed. After the first two years and until ten years after the **effective date** on the **insurance certificate**, **we** will cover the repair of **major physical damage** caused by a failure by the **developer** to meet the **requirements** in respect of the **new home**.*

8. The definition of the 'new home' in the policy document is as follows: "*The property described in the **building period certificate** and/or the **insurance certificate**. The new home is: the new property or conversion described in the **building period certificate** and/or the **insurance certificate**, including any: a) **common parts**, and …d) retaining or boundary wall but only where they form part of or provide support to the structure of the dwelling, and e) newly constructed underground drainage systems installed by the developer including: newly constructed pipes, channels, gullies and*

*inspection chambers within the property described in the **insurance certificate** for which the **buyer** is responsible, and… g) in a conversion, the existing structure of the home forming the foundations, walls, floors and roof. Note: …retaining or boundary walls not forming part of or providing support to the structure of the dwelling are only part of the new home where they have been included by **us** by an appropriate endorsement on the **insurance certificate***".

9. 'Physical damage' is defined as: "*a material change in the physical condition of the **new home** from its intended physical condition. For the avoidance of doubt, physical damage includes **major physical damage***." 'Major physical damage' is defined as: "*a material change in the physical condition of a load bearing element of the new home from its intended physical condition which adversely affects its structural stability or resistance to damp and water penetration*."

10. 'Buyer' is defined as "[t]*he person having a freehold, commonhold leasehold or tenancy interest in the **new home** for the time being for the duration of the policy or any mortgagee in possession excluding the **developer**, builder, directors, partners, and their relatives and associated companies, and all those involved with or having an interest in the construction or sale of the **new home***."

11. 'Common parts' are defined as "[t]*hose parts of a multi-ownership building (of which the **new home** is part), for a common or general use, for which the **buyer** has joint responsibility together with other buyers or lessors*".

12. The final relevant document is the Licence to Assign and Deed of variation dated 8 May 2015 ('the assignment') between Backfold, Belltone and 300 Vauxhall Bridge Road LLP ('300VB'). 300VB took assignment of the Airspace Agreement. The deed was signed on behalf of Backfold by someone named 'Paul'. The surname is not ascertainable from the signature. At this time, Paul Richard Dennis-Jones was an officer of both Backfold and of the Applicant (under its former name) **[schedule to decision]**. Clause 3 paragraph 3.2 of the assignment obliged 300VB to '*observe and perform the covenants of the Agreement for Lease and the Lease* [by definition the agreement for lease and the Airspace Agreement]… *from completion of the assignment*'.

Background

13. For reasons that will become clear, we set out the background to this application in full.

14. It should be noted that while most of the following background is available from primary evidence or publicly available information at Companies House, some of it is available only from secondary evidence. Ms Gabrielle Albon, property manager between February 2022 – April 2023, put together a 'Timeline of Events – Resident Communications' ('the timeline') **[937 - 947]**. She informed us she did so, rather than disclosing the emails passing between the individual's concerned, on the instruction of the Applicant's solicitor. She informed us that she had not looked for any earlier emails, or any documents referred to within emails in that timeline, e.g. the minutes of the AGM referred to in the 24 October 2018 entry **[937]**. Within the timeline there are also further omissions, for example the entry on **[939]** in which Ms Albon sets out at the top of the page an email response to Mr Thomas Griffin, one of the previous managing agents, from a leaseholder, in which it is said that the leaseholder states the penthouse is very dangerous and asks that the Applicant please act now, attaching videos of the condition, of which Ms Albon says "*please note, this is part of an email chain I was able to locate and do not have a copy of the original email with attachments*". Ms Albon largely summarised (though sometimes also copied and pasted into the timeline) what she says was set out in the correspondence with the leaseholders. She confirmed that she did not summarise anything regarding the events that was not in correspondence with the leaseholders directly or indirectly. She had not been able to go back further than 22 October 2018. Additionally, a large swathe of one of the previous managing agent's, Mr Griffin's, emails (between 24 February 2020 – 3 August 2020) was missing, due to an 'IT' issue that she had not checked the progress of but she thought remained unresolved by the date of the hearing. We set out what appear to us to be the relevant passages reliably showing something that happened. Mr Griffin is referred to as TG.

15. In or around 2012 OP Land, a company in the ultimate ownership of the Tchenguiz Family Trust, were the freehold owners of Central Tower.

16. On 22 October 2012, OP Land entered into the agreement for lease **[285]**. At the time it appears that the plan was to add two additional floors onto the existing eight storey building at Central Tower, and to construct a total of four duplex apartments in consideration of a premium (payable on completion of the lease) calculated at between £300 - £400 per square foot of net internal area granted planning permission, subject to a minimum of £1 million.

17. In addition to the first Belltone MOU, OP Land also entered into a Memorandum of Understanding with the leaseholders ('the OP Land MOU'), dated 18 October 2012 and signed by James Seifert of Estates and Management Ltd ('E&M'), asserting himself (and presumably with the actual authority to act as) an officer of OP Land. In it, OP Land promised the leaseholders that **[375]** "*The freeholder will*

ensure the contractual obligations of the developer are enforced. The freeholder undertakes to ensure that the development is completed regardless of the performance of the developer. In the event the development is abandoned for any reason, the freeholder undertakes to ensure that the building is returned to a state which is the same, or better than the original state before the development commenced."

18. On 15 April 2013, the freehold was transferred to Backfold Limited ('Backfold'), another company within the Tchenguiz Family Trust stable. On 30 September 2013, Mr Seifert (again asserting himself, and presumably with the actual authority to act, as an officer of Backfold) signed an MOU in the same terms as the one dated 18 October 2012, this time for Backfold ('the Backfold MOU' **[649]**). On 10 June 2013 Belltone signed a revised MOU in terms unchanged from the first Belltone MOU, save to replace the landlord's name with that of Backfold ('the second Belltone MOU') **[671]**. We are told that this was because the Residents Association pushed for the revised documents.

19. On 30 January 2014, Backfold and Belltone entered into the Airspace Agreement.

20. A manuscript clause 4.3 was inserted, in which Backfold contracted to "*observe and perform the covenants with regard to insurance contained in clause 4. of the New Flat Lease and keep* **[final words omitted on copy provided in the bundle]**…" **[448]**. We deduce that Clause 4 of the New Lease, annexed to the agreement for lease (as shown and reflected in the lease for Mr Victor Douce **[92]**) provides as follows:

4.6 Insurance
(a) To insure and keep insured the Building and the landlord's fixtures and fittings therein including the lifts within the Building and all apparatus and equipment relating to the same against loss or damage by the Insured Risks up to at least the full reinstatement cost for the time being thereof (including Value Added Tax thereon if applicable) with architects' and surveyors' and other professional fees (including Value Added Tax thereon) and expenses incidental thereto and the cost of shoring up demolition and site clearance and similar expenses and such other insurances as it or the Landlord may from time to time reasonably require…

21. On 21 July 2014, the Applicant (under its former name, JLPPT Holdco 1 Limited), another of the Tchenguiz Family Trust group's companies, became the holding company of Backfold, acquiring 100% of its shares as shown at Companies House. At the time Backfold and the Applicant had the same officers. Backfold had no employees.

22. It is unclear what (if any) progress was made in respect of planning permissions etc. It appears no works were carried out by

Belltone. It certainly appears that at least one of the original contractors, who were consulting engineers, had gone into some form of administration. Some of what had been taking place is set out in an email from someone named Andrew Lock of Imperial Limited (who we must assume is the contractor who was appointed by Belltone) to some of the residents, dated 9 January 2015:

"*… I have been waiting for information about timings from Belltone. Essentially 2014 was a year of sorting out problems for the development of the roof space. We had to wait 6 months for the fire brigade to agree the final fire strategy for the new units. Also the council did not have all the drawings in a clear format of the existing structure for the engineers and building control. As the original engineers had disbanded it took til mid Dec 14 for the plans to be found and those calculations are now being finalised. In addition to this we had issues almost every week to sort out. Due to these delays the development lending from the bank was withdrawn and we lost the contractor to another contract.*

I have been advised that the contract should be kicking off before May and if all goes well my company Imperial might buy the site and become the developer. The MOU between the developer and the residents will stay in place…

23. On 5 March 2015, presumably on the basis of some progress having been made, Mr Sanjay Thakrar of Pembertons (FirstPort's previous guise) stated in terms **[688]** "*As previously advised, I believe it would be prudent for an independent building surveyor to be appointed to represent the landlord. They have a better technical knowledge of the proposed works and requirements and can carry out periodic inspections before and during the commencement of the works* [sic], *report the findings, in order to determine if the works are being carried out in accordance with the agreement*."

24. This precipitated a response from the leaseholders. On 13 March 2015, Ms Alia Campbell-Crawford responded that she agreed that "[t]*he landlord should be represented in this project to ensure that it is carried out correctly and to set terms*" **[496]**. On the same day Mr Thakrar responded: "*I cannot see why the freeholder will object. Obviously, by having an independent surveyor appointed, the cost of the services will have to be met from the service charge. However, the costs for the surveyor in comparison to the overall scope and cost of the development would appear to me to be a prudent move. If residents want to put forward their own preferred surveyor then please forward me the details so we can set the surveyor up on our suppliers list. Otherwise I can nominate a surveyor whereby a representative from the residents can meet, discuss terms, scope etc.*. [sic]" **[495].**

25. In response to Mr Thakrar's clear misunderstanding of who had the contractual obligations, Dr Edwards wrote to Mr Thakrar to remind him that the development was being done for the benefit of the freeholder, whose responsibility it was to ensure that was carried out competently and in accordance with regulations. It was for the freeholder to pay, not the residents through the service charge. Mr Thakrar's response was this:

"*Yes, the freeholder has to main* [sic] *the fabric of the building as obligated within the lease. However, this is carried out via the service charge. A similar situation is when the internal or external major repairs and redecorations take place. The cost of the works are met by the service charge. Obviously, in this particular case the works to the common parts are being carried out by the developer. However, additional cost to oversee the project by employing a surveyor would be met by the service charge*" **[494]**.

26. Dr Edwards pushed back in very clear terms:

"*Maintenance costs incurred by the Freeholder are indeed rightly recovered from the Leaseholders through the Service charge. However the employment of a surveyor to monitor the Development is NOT maintenance. Maintenance is required as a consequence of the Leaseholders using the building and the Leaseholders are direct beneficiaries therefore, of the maintenance.*

The monitoring costs are incurred solely as a consequence of the Development which is being done at the behest of, and to benefit, the Freeholder. The Leaseholders are not the beneficiaries of the Development and will in fact be receiving some compensation from the Freeholder through the Development MoUs.. [sic]

The Freeholder has done this solely for the purpose of making money: the aforementioned £1m, and not to benefit the Leaseholders.

I am unwilling to pay for the Freeholder for the Development: quite the contrary, I expect the Freeholder to recompense the Leaseholders for the significant disruption which will occur when the Development finally gets underway.

You said it yourself in the title of your email "Appointment of independent Surveyor to protect the interests of the Freeholder". **[493]**

27. On 9 April 2015, Dr Edwards wrote to the leaseholders as follows **[483]**:

"*Belltone have sold the development rights and exchanged contracts with a new Developer.*

The MOU has transferred and will be honoured by the new Developer.

The new project manager, Keith Ewart, is "drinking from a fire hose" to get up to speed

He will communicate with us all by email shortly"

28. Someone named Keith, and who we therefore assume to be Mr Ewart, responded on 14 April 2015 to introduce himself. In that email he reassured the recipients, amongst other things, that the works would be carried out in accordance with "*the MOU*".

29. On 8 May 2015, the assignment was entered into between Backfold, Belltone and 300VB.

30. The Applicant (by its solicitor, Ms Waszek) asserts in paragraph 7 of its reply to the Respondents' statement of case that "*it's understanding*" is that 300VB contracted with Prime Development Contracting Limited ('Prime Development') in 2015 for the construction of the penthouses **[460]**. No agreements have been disclosed, nor is the source of Ms Waszek's belief or understanding identified.

31. In her witness statement of 21 June 2023, Ms Gabrielle Albon refers to a contract between 300VB and Buxton Associates (Consulting Engineers) Limited for the structural design and calculations for the two penthouses. No copy of this agreement is exhibited, and neither are their drawings/calculations, or the drawings referred to by Ms Albon as prepared by Ellis and Moore. Ms Albon told us she thought she had given these to the Applicant's solicitors so could not explain their absence from her exhibits.

32. In or around September 2016, Prime Development downed tools on site and left the job. The Applicant has provided no evidence to show who was appointed, or by whom, to complete the development, although it is the Respondent's evidence that some of the same workmen continued to attend. Companies House records show that a voluntary winding up resolution was passed in respect of Prime Development at an AGM on 3 November 2016, which accords with the observations in the witness statement of Dr Edwards **[472]**.

33. A Completion Certificate was issued by the City of Westminster on 1 November 2016 **[914]**.

34. According to the Belltone MOU, incorporated as a term into the Airspace Agreement specifically by clause 8, it is at that point that the new build insurance policy should have complied with the following **[326]**:

In addition to this the developer and the contractor will be required to have a "new build" insurance policy in place to protect the owners of the new apartments and the freeholder. The insurance company preferred for this development is Premier Guarantee … They will also review the plans, inspect the works throughout the development process and the completed work. If they are not satisfied then the development would not achieve the cover required and it would make it incredibly difficult for the new apartments to be sold. Once the building works have been completed the new structure making up the three new apartments, is wrapped up into the envelope of the existing freehold. The structural warranties/insurances for the new units transfer to the freeholder and are folded into the existing insurance policies that are in place. The new development is then the freeholder's asset.
Therefore, the leaseholders of 300 VBR will have the insurance cover they need in the event of defects due to poor workmanship or deficient design.

35. No evidence is provided of any inspection by Checkmate for the purpose of the newbuild insurance. No evidence is provided of any steps taken by Backfold to satisfy itself that the Airspace Agreement had been complied with in any or all respects, whether in connection with the newbuild insurance, or more generally. No interim inspections by the City of Westminster have been provided. No evidence is provided of the steps that anyone acting for Backfold took on completion of the development. We are told that there should be a file containing all of this information held by FirstPort, but it does not exist or cannot be found.

36. On 24 January 2017 the first Penthouse (Flat 395) was purchased (registered on 11 January 2018) **[33]**.

37. In its accounts filed at Companies House, Backfold notified that it intended to stop trading on 31 March 2017, and that the net total assets of the company were being transferred to its immediate parent and sole shareholder, the Applicant (under its former name) by 'dividend in specie'. They also show that all expenses incurred by and income due to Backfold after 31 March 2017 were settled or received by the Applicant (under its former name). The building was transferred on 7 April 2017 (recorded on the register by HM Land Registry on 16 May 2017) **[29]**.

38. No evidence has been provided of any steps taken by the Applicant (in its former name) to satisfy itself of the nature of its asset,

any ongoing obligations or rights arising out of the development, any checks or inspections it made of that asset, or of the documents accompanying the transfer in which were to be found rights and obligations under various different contracts.

39. It is the Respondents' evidence that Mr Seifert of E&M continued to exercise purported actual authority as agent for the landlord (by now the Applicant) until 2018, when a new person had taken his place **[471 - para 2 and oral evidence]**. It is evident that the leaseholders had a great deal of ongoing contact, both with Mr Seifert of E&M, and with FirstPort (under all its guises). The Applicant has disclosed none of it, and absence of almost all of that correspondence is dealt with below.

40. On 21 March 2018, the second Penthouse (Flat 396 – that belonging to Mr Douce) was purchased (registered on 9 April 2018) **[33]**. That was a tripartite agreement between Mr Douce, 300VBR and the Applicant in its former name.

41. No evidence is provided of what if anything the Applicant did in pursuit of clause 6.1 of the Airspace Agreement, and in furtherance of securing its own rights under the newbuild insurance, in accordance with the following:

6.1 The lessee shall upon completion of the sale of a the [sic] *New Flat surrender out of this Lease that part of the Demised Premises that the relevant New Flat comprises such surrender to be in substantially the same form attached to the Agreement and in the case of the final New Flat to be sold the form of surrender shall be adjusted to include all residual parts of the Demised Premises not previously surrendered with effect that this Lease shall then cease and determine but without prejudice to the antecedent rights and liabilities of the parties.*

42. The total sums on the sales of the penthouses by the developer, 300VB, were in the region of £6.4 million.

43. It was on that second sale that the Airspace Agreement was completely surrendered (clause 9.1 of the agreement for lease **[297]**).

44. For the period between 21 March 2018 (the purchase of the second penthouse) and May 2021, apart from the expert reports, there is no primary evidence from the Applicant in the bundle and all information is taken from the timeline or the public information available on Companies House. It is not clear when, if ever, clause 6.1 of the Airspace Agreement was put into effect to ensure that the whole airspace reverted to Backfold or the Applicant, though factually that could not have been earlier than the sale of the second penthouse.

45. It is clear from the timeline that by 22 October 2018, leaseholders had already been reporting problems with water ingress. We cannot tell which leaseholders, as apparently the Applicant's solicitors have (without permission, and with no explanation) redacted flat numbers and names, including contractors'/experts' names. It is therefore impossible to follow through on the timeline which events relate to which reported issues, or even which relate to leaseholders who are participating in this action. One resident (who must, in context, be a leaseholder of one of the flats directly below the new penthouses) reports (entry 27 May 2019):

"*Before the 9th floor development started in 2015, I had not received any report from tenants about leaks. The Party Wall Surveyor also had not identified leaks in my unit.* ***We have made uncountable reports to FirstPort/Pemberton and the developer since December 2015*** *about water leaks. Every time some workers were sent to site but remedial work was meagre. Workers only did the touch up and the work couldn't resist rain that lasted for a day, The 9th Floor development work came to an end in 2017 but the leaks problem still remains… [my] last tenant left in November 2018 only after moving in for 8 weeks. She said she lived there with great ongoing inconvenience, her remark was the unit was 'uninhabitable' as she had to put a bucket next to her bed to hold water from ceiling at rainy times and her study was accompanied by rhythm of dripping water. Insurance company has put on hold my claim for rent loss because they need confirmation that remedial work has been properly done with no recurrence of water leaks*" **[938]** [emphasis added].

46. On 20 November 2018 Backfold's directors filed at Companies House a Striking Off application. It bears the same signature of the 'Paul' who signed the deed of assignment with 300VB. In this document it is clear that was indeed Paul Richard Dennis-Jones. It was also signed by Charles George William Crowe, who was also at the time a director of the Applicant.

47. On 27 December 2018, that notice of voluntary striking off was withdrawn by the directors. Termination of both of Mr Dennis-Jones and Mr Crowe as directors of Backfold was made on 12 August 2019. On 15 October 2019, Companies House records show that the Applicant ceased to be a person with significant control of Backfold. Lightyear Estates Holdings Limited (Lightyear Estates) took its place. As can be seen from the schedule of ownership, the directors of Lightyear Estates, Backfold and of the Applicant were at the time the same individuals. As can be seen from the accounts, and as was conceded by the Applicant at the hearing, Backfold is a dormant company, and has been declaring net assets of £1 for all years since 2018.

48. Interestingly, there does not appear to be a company named 300 Vauxhall Bridge **Road** LLP. There is a company named 300 Vauxhall Bridge LLP. Mr Keith Ewart, with whom the leaseholders were corresponding, was one of the directors. On 13 August 2019, 300VB was struck off via compulsory action and so was dissolved. It filed total exemption accounts in March 2018, in which net assets were said to be £1,660,588. There is also a company called Cogress 300 Vauxhall Bridge LLP, of which Mr Keith Ewart was also a director from 29 April 2015. Its accounts filed at Companies House also bear the name 300 Vauxhall Bridge LLP. The last accounts filed at Companies House show a pre-tax profit to the company of £155,915, which was allocated as a dividend to members. The total value of members' interests was shown as the same as those in the former accounts. That company was also compulsorily struck off on 13 August 2019. Mr Ewart is also a director of four other active companies on companies house, whose nature of business is building development projects, three of which identify his occupation as a chartered construction manager.

49. On **[938]** of the timeline, Mr Griffin's outgoing email is copied:

23 February 2019

- "*... I contacted the warranty provider and was told the issue should be dealt with by the developer, I arranged a visit by the developer and they agreed to install drainage to the balconies of the penthouses which has been done and we are negotiating further works to the area where the balustrades meet the bottom of the balcony to fully resolve the issue. They are also repainting the leaks into the penthouses themselves and will be redecorating the lobby to the penthouses which has been damaged by the leaks*"

50. On 8 March 2019, FirstPort prepared a report it called 'Remediation Issues' **[116 – 117]**. In it, it identified a number of issues requiring remedy, including a lack of edge protection to the roof, which had been removed during construction.

51. On 13 June 2019, Michael Lee of Michael R Lee (Surveyors) Limited provided a report for the Applicant (under its former name) and the leaseholders in respect of water ingress into Flats 387 and 386 (those on the original top, eighth, floor). He inspected those flats internally, and conducted an external inspection of the balcony to the penthouse Flat 396. It appears he was joined on his inspection by Mr Griffin, the penthouse owner's property manager, and "a representative of the builder" **[119]**.

52. In it, he identified that the penthouse flats have effectively been constructed on top of the original concrete flat roof **[122]** and that

"*the new construction has been built over the original roof covering (which is now concealed) and concrete floor with a suspended floor although the supporting block and brick work to the front elevation is built directly off the original roof*". He identified a void between the terrace covering and the original slab beneath it, and that there was "*no specific rainwater collection and discharge provided and the design relies on the cascade of rainwater from the terrace, down the parapet and onto the terraces serving the eighth floor 386 and 387 and the original rainwater drainage*" **[124]**.

53. The design had facilitated the collection of rainwater into a cavity, which was supposed to discharge through weepholes over a lead apron. These weep holes had been filled with sand and cement fillet in part, and roughly applied mastic to the remainder **[125]**, which blocked water from escaping the cavity **[126]**.

54. The glazed balcony screens were found to be supported off metal supports beneath the penthouse balcony tiles. "*The balcony is understood to be covered with fibre-glass form of covering with a fibre glass form of covering beneath the tiles*" – though no source of this belief is attributed – and "*the tiles are raised to allow rainwater run-off between the covering and tiles. The feet of the screen supports are concealed and a potential weak spot*" **[126].**

55. After making his findings about the water ingress to Flats 386 and 387, Mr Lee made the following recommendations **[128 – 129]**:

6.1 The junction between the lead apron/tray and brickwork to the brick panel should be reopened with the removal of the sand and cement fillet and the mastic including where this has been applied to the perpend weep joints., to allow the free flow of water from the cavity tray.

6.1.1 The water ingress is understood to have occurred before the mastic was applied and therefore there may be localised sections of defective trays. Isolated bricks should be removed at the points corresponding with the internal staining so that the tray detail can be checked. It may be that the penthouse works have either blocked sections or dislodged them.

6.2 The sections of water stained plaster board should be removed in order to identify the tracking of the incoming water.

6.3 The condition of the terrace covering may well be a cause particularly the detail to the glass screen supports however this will be disruptive as the terrace tiles would need to be lifted to expose the support feet.

6.4 Since the ninth floor has been built above the original eighth floor roof slab and covering the ingress is more likely be entering at a point adjacent to or below the position of the slab as opposed to above the slab.

6.4.1 However, structural support has been taken directly off the original roof slab to support the front elevation of the ninth floor in the proximity of the ceiling damage. This is a potential but less likely cause.

56. As can be seen, Mr Lee did not do any opening up work. Mr Lee conducted a further water ingress report on 2 July 2019, after the ceiling in Flat 387 was exposed. He makes it clear that his report is not a building survey **[131]**. In it, he found:

3.2 The exposed ceiling shows the underside of the original concrete flat roof slab. This include RSJs that run front to back with infill sections of concrete between the joists and the slab. The water is entering though the section of the infill which is the discoloured section on the photograph produced below as Fig 2 below.
…

3.4.1 There are two potential causes. The plan shows the position of a bathroom above the bedroom in 387 and therefore there may be a plumbing defect. However, I am advised that the water ingress occurs when it is raining and therefore it is consider to me (sic) more likely that rainwater is entering the void between the new floor and original roof slab. The construction of the rear elevation is taken off the original slab and it is likely that the original roof covering has been removed or cut away with the water seeping through joints in the infill concrete sections. **[132]**

57. He made the following further recommendations:

4.1 Plumbing tests should be carried out to the bathroom in the penthouse to rule out plumbing issues.

4.2 The detail of the junction between the external balcony slabs and rear windows/door and structure of the Penthouse should be examined closely to identity any defective seals and joints.

4.3 If there are any obvious entry points then these should be sealed and when they have dried these should be water tested to see if the water enters the flat below.

4.4 If this cannot be identified as a cause then the balcony tiles should lifted in the location marked on Fig 3 to expose the void to identify the source. When exposed this area is going to be prone to more extensive water ingress into the flat below in the event of rain, until the source is identified, repaired, re-tiled and sealed.

4.5 This should then be water tested. **[132]**

58. By a report dated 30 September 2019 undertaken for Mr Douce, after inspections carried out on 26 September 2019 and 28

September 2019 and what appears to have been a catastrophic failure of the roof above Mr Douce's penthouse, Mr Ian Wylie of Ian Wylie Architects described the condition in which he found the penthouse roof on the tenth (roof terrace) floor. In it, he recounted that Mr Douce (the owner) had purchased the property about eighteen months previously, and had been reporting recurring water ingress for around 6 – 8 months. He acknowledged in that report that on his first inspection, nothing outside of the 'roof terrace demise' had been touched or lifted. On reattending he inspected after Mr Douce's own contractor (UK Central Building and Roofing Ltd), engaged because of what Mr Douce had considered to be an emergency situation with the ongoing leaks, had done opening up works to Mr Douce's roof.

59. Mr Wylie made the following observations about the roof design/materials/workmanship **[387 – 388]**:

7. Materials used :

1. The materials used were, in the opinion of IW, woefully inappropriate and underspecified for use on a roof Terrace.

2. IW took away samples of the rotten softwood joists, the laminate board and the Oriented Strand Board (sometimes referred to as Sterling board). All were in a semi-rotted, or fully-rotted state. All were fully saturated.

3. In terms of inappropriate use of material, it is one of the most shocking installations that IW has observed in 34 years practicing as an architect.

4. It is worth noting that this degraded condition was achieved in only 18 months of completion of the property.

5. The following are the immediate observations on the particulars :

a) The Oriented Strand Board used would be more suitable for internal use - such as Loft boarding. Not the rigors of external Terrace Construction.

b) The Ply Board used was delaminating to an extent it was completely useless. It literally fell apart in my hands.

c) IW suspects that, once again, it was actually a board more suited to dry, internal conditions.

d) The layer of adhesive and bonding on the decking was fairly standard, with 'Ditra matting' - (the orange waffle-grid tiling base, on which the stone flags were laid). So far, so good. However, it was not apparent, nor visible, (due to the degradation of the substrates), whether or not a fully waterproof layer had been applied above the deck

e) Even if this had been done as a 'first-tier defence, it was rendered completely ineffective due to the movement of the boards and the joists.

f) The joists used to support the Terrace decking surface, were standard treated softwood.

*g) Again, it is hard to imagine that any **less** appropriate material could have been used in this situation. The combination of trapped water, no ventilation, and constant changes in temperature, would cause this timber to rot within a year. So it has been. The lack of adequate drainage and lack of ventilation are the critical things here.*

h) The use of long woodscrews to secure these joists, penetrating right through the fibreglass deck to some (unknown) structure below, is one of the most mystifying of all the materials and techniques used. The screws were standard metal screws suitable for internal use. All the screws I observed were in an advanced state of rust. (See Photos)

i. Aside from the critically damaging penetration of many screws through the fibreglass deck, the use of screws should be carefully used and carefully selected in any such external situation.

ii. If screws were to be used, stainless steel screws would undoubtedly have been an obvious choice.

iii. If screws were used to secure the board - (should have been Marine Ply), they should absolutely NOT have penetrated the fibreglass waterproofing layer.

8. Key Observations:

*6. The most shocking aspect of the design observed, was the central drainage channel, which had **only one small 40 mm outlet** to drain the entire Terrace roof. No other outlets were visible.*

*a) Not only does IW consider the size to be woefully inadequate for the area of Terrace roof that it is draining, it was suggested by one of the Operatives (but not yet proven to be true) that he suspected that the adjacent Penthouse flat, **also** drained to this very same outlet position. If this is found to be the case, it would potentially double the problem.*

b) In a downpour, there is absolutely no way that the outlet size of only 40mm could cope with the volume of water.

c) Even just taking the single Terrace into consideration, such an area would have required at the very least two, possibly three large drainage outlets.

d) IW considers that each outlet should have a minimum of 100 - 120mm diameter.

e) Regardless of the size, this outlet was not positioned correctly and there was plenty of standing water in the shallow channel on either side of the outlet.

7. The second most shocking observation was the vast number of long screws that had been used to secure the non-structural purlins, supporting the deck

*a. These were secured directly into **and through** the fiberglass deck.*

b. There were possibly more than one hundred such basic breaches of the key waterproof layer.

c. The waterproof fibreglass layer was thus rendered completely useless.

8. The third most shocking observation was that all the laminate and fibre board visible was either completely wet, or completely rotten. This is only 18 months after the completion of the Penthouse apartment.

9. There were several instances where the decking supporting the stone had no bearing ability, as the substrate was rendered ineffective.

10. Therefore, it was not at all surprising that there was plenty of evidence of cracked Terrace stone tiles on the surface. IW also observed cracked tiles on the neighbour's Terrace.

11. This was in IW's opinion, inevitable, due to two principal reasons :

a. Movement of the softwood timbers supporting the stone decking - ie. drying out to some degree and then becoming saturated, time after time with every successive rainfall. In other words, this situation was virtually guaranteed to fail.

b. Failure of the supporting deck in multiple locations. Again, virtually guaranteed to fail.

12. A key point to make is that the main waterproofing layer of the roof is fibreglass.

a. This might not necessarily intrinsically have been such a bad solution, ***provided*** *there was adequate provision for accommodating differential movement and specially, prevention of tearing of the fibreglass membrane.*

b. IW would like to make the point that such a rigid material should not have specified for this situation, as it is in practical reality far too rigid and brittle for a very exposed rooftop situation, (with extremes of temperature and hence a high degree of thermal movement to accommodate).

c. Fibreglass, being prone to tearing in these tight and inflexible situations, could be disastrous.

d. There appears to have been no attempt whatever to design or construct the roof with an understanding of the materials selected.

13. It appears that there was a very complicated arrangement of fitted (or even retrofitted) joisted super-structure, also using fibreglass.

a. The laps, positioning, flashing design and arbitrary wrapping' of the joists was completely baffling and without logic.

b. The thinking behind both this design ***and*** *execution, was completely inadequate.*

c. It cannot be stated with certainty, but this appeared to be an afterthought, or a combination of a change of mind mid-construction, as to the techniques used.

d. It may simply have been part of an attempt to make good past leaks.

e. Water was effectively trapped between the softwood joists with nowhere to go.

f. The standing water and lack of breathability, basic drainage and lack of adequate outlet, was truly shocking.

g. It is therefore no surprise that the roof has completely failed.

14. The arrangement of the joists that support the decking was apparently set out to lead the rainwater towards the central channel. Yet, there was so much obstruction and complexity on the deck levels, the upstands and the (continuous fibreglass) flashings, that it rendered the design incomprehensible.

15. The facts need to be established. However, the foregoing has all the hallmarks of unsupervised construction

Speculative matters as to responsibility

16. These all-pervading problems described above, lead IW to consider that this ***could*** *be a (some might say classic) case of a Developer cutting corners on specification and design, regardless of whether or not this was done deliberately.*

17. In such a scenario, a Contractor could have been allowed to 'do his own thing', ie. building and delivering a roof to such low standards, that complete failure was always inevitable. It seems that there may have been a lack of professional supervision.

18. In IW's opinion, (but this is stated completely ***without*** *knowledge of the pertinent contractual facts), it would be very unlikely that a roof and Terrace design, prepared by a competent architect, would have included or allowed such basic errors, as have been described above.*

19. It must be clearly stated that the nature of the Contractual relationships in the construction of the Penthouses is not known.

20. IW, in his assessment within this Report, has made visual observations, drawn his own conclusions and discussed the observations and findings with the Roofer and the Owner.

21. It is not known what role the Architect performed in the design and also the monitoring of the construction of the roof.

22. It is quite possible, (indeed it is frequently the case in developments such as this), that the construction of the top two floors was done under the provisions of a Design and Build Contract, in which the Contractor takes responsibility for the design and construction of the roof.

23. The unpicking of the Contractual relationships in this situation are key in assessing culpability for this very serious situation.

9. SUMMARY and CONCLUSIONS:

1. The first inspection was very revealing about the quality and design of the roof.

2. Prior to the visit and based on verbal descriptions given, IW had assessed that there must surely be a way to remedy the roof leak without too much opening-up and intervention.
3. The truth was more troubling. The site visit and initial inspection caused IW to completely review that any such easy solution was possible.
4. This more pessimistic assessment was very strongly reinforced at the second inspection, when more opening up had been done.
5. IW concluded that the existing roof is completely inadequate as a design, choice and use of materials and in its construction.
6. Videos plus photos were taken at both meetings and are appended to this Report.
7. Key points :

- *Glassfibre is in all likelihood too rigid and brittle a material for a roof such as this.*
- *There is insufficient slope in the channel.*
- *A Single Outlet is expected to drain the entire terrace. This is provided as being only 40 mm, woefully inadequate for a large expanse roofscape such as this.*
- *The relationship with the adjacent Terrace above the owner's neighbour is yet to be investigated, but this must be taken into account in any permanent solution offered.*
- *There is insufficient flow to dispose of the rainwater, once the water has percolated below the stone deck.*
- *There are no AGO type drains to manage and control the flow of the drainage.*
- *The base tier waterproofing fibreglass layer was compromised by the original Contractor having terminally compromised the roof by drilling multiple screws through the surface. Over 100 screw incursions were observed.*
- *There were insufficient flashings/upstands and no counter flashings apparent.*

It does appear that both the Developer / Managing Agent were hard to reach and not responsive. It was reported to IW that despite numerous attempts to get these parties to deal with the problem (this was very clearly reported to IW by the owner), turned out to be completely unwilling to assist. Either that, or unable / unwilling to remedy the problem.

IW believes that in such a situation and for the high price paid for the property, the Developer should have attended with speed, efficiency and acted in the best interest of the Owner.

All this said and in the circumstances described above, IWA (represented by IW on this occasion) firmly believes that Victor Douce, ***was left with no other choice than to responsibly act in his own interests.***

This followed the enormous water incursion into his flat. He had sought external advice from a reputable roofing company, UK Central

Building Roofing Ltd. The Director and Operatives attended immediately. Both the Director, Antonio and IW, concluded that the roof, as constructed, was entirely unfit for purpose.

Moreover, it is IWAs opinion that the roof was so poorly designed and constructed (if indeed it was constructed according to the designs), that failure was inevitable. It was absolutely right for the owner, Mr Douce to instruct the Roofer to take up the unsuitable areas for further investigation. The area under consideration was all of the area within the Owner's demise - no other part of the roof was touched.

Further assessments are and will be necessary, as the site is cleared of the substandard materials.

There are wider implications than the section of stone removed to further investigate the problem. UK Central Building Roofing Ltd., undertook to make all necessary temporary roof coverings available, so that not only was the Owner's flat not compromised, but the adjacent areas (Common Parts and Freeholder areas) were also not touched or compromised.

IWA was approached to give this independent assessment.
This Report contains the PRELIMINARY FINDINGS.

There are undoubtedly significant legal implications to the construction of the Terrace and the culpability for the failure. The failure of the roof above the Penthouse Flat belonging to Mr Douce, will in all likelihood, have implications for the neighbour's roof and the freeholder's roof.

Contractual relationships are key. That is not known at the time of writing and is therefore beyond the scope of this Report.

60. We are told that in consequence, Checkmate at some point reimbursed the sums expended.

61. It appears that same resident as in para 47 above was the one responsible for the communications in the timeline on 17 December 2019 saying she'd still had no update **[938]**. It is not possible to say whether she is also the origin of later correspondence because of the unauthorised redactions, though it appears the email dated 17 February 2020 may well be from her **[940]**.

62. Further entries in the timeline show as follows:

[939]

14 January 2020

- … "*my line of communication is going through Checkmate as it appears the contractor wants it this way, I contact them directly but they forward it all to Checkmate for response which is slowing things up.*

  The insurer has approved the quote they obtained from Stent Projects for a polyroof with a 25 year insurance backed guarantee was [sic] approved which is good news however, it isn't a contractor I am familiar with and as I mentioned I am having to go through Checkmate.

  The responses I received from Checkmate regarding the items I sent is below:
  - *Who gave the scaffolders permission to drill in to the 8th and 9th floor walls? This was a health and safety requirement to allow the works to proceed*
  - *Will full repairs (and replacement panels) be done on the terraces and by when? Full repairs will be completed once the scaffolding has been removed towards the end of the project.*
  - *How long will the project take (up to and including the removal of the scaffolding following the roof and roof garden installation)? The project is programmed over a duration of 3 to 4 months.*

  I understand the scaffold is pretty much complete and the hoist is in place. I have requested a programme of works but this has yet to be sent to me.

  I am currently obtaining quotes for the damage to the common parts so that can be sorted quickly, if anyone at the top has been effected please me know if you need any help with quotes etc"

[940]

(31 January 2020 continued)

- *Reply from TG … is doing everything he can to get issue resolved through the warranty, but provider has said they won't cover all of it, so he is seeking legal advice as he believes it should be.*
- *… asking TG to confirm what impact current works to penthouses will have on their apartment and do they need to wait for completion of these works before remedial works to address leak in their flat can begin.*
- *Reply from TG confirming not in a position to confirm yet, but as soon as a firm contractor, scope and method of work he will. Doesn't want to say yes/no now only for the warranty provider*

to appoint someone else. Once repaired, downpipe and additional guttering shouldn't be necessary.

3 February 2020

- *… latest update from Checkmate would mean residents have to cover the cost of remedial works to the penthouse terraces running into tens of thousands of pounds… Has asked for legal advice as it doesn't make sense…*
- *… clear that clauses referenced are intended to exclude pre-existing structure damage. 9th floor deck is part of 9th floor apartments and was constructed as part of new development. Failure is all new construction above existing parapet.*

[941]

[19 February 2020 continued]

- *Reply from TG… "… Fundamentally* [redacted] *has said that the fall can't be altered so that it falls all the way to the outlet in the middle, it would mean that the furthest point would be higher than the threshold of the door…* [redacted] *is going to amend his quote and also create a drawing for the drainage detail above so the water won't cascade over…*"

24 February 2020

- [to TG from redacted] *"… am I to understand that the drainage of the water from the roof is, in your opinion, the sole reason for the water ingress into Apartment* [redacted]*?"*
- *Reply from* [redacted] *of LR Services – "To confirm the water currently drains from the terrace above the outside perimeter capping detail. The detail is unfortunately higher than the waterproofing level that meets this from out under the slabs and under the glass balustrade rail therefore the water runs into the capping and mastic seals and also joints to the capping which are not sealed.*

  We are proposing to completely remove the existing terrace slabs, waterproofing, deck, external capping and guttering. [A description of the works to be done to permit better and more appropriately directed drainage from the penthouse balconies is given]. *…This should not only reduce the amount of ponding water exacerbated by the drainage from the roof above but also alleviate the issues of ice in the winter and stagnant water in the summer and a much better aesthetic generally…"*

[Missing emails February 2020 – August 2020]

[942]

4th August 2020

- *Reply from TG* [to new managing agent Ms Samantha Sandford, and leaseholders] *"…Remedial works to the capping have never been done and at no point has it been said that they have. We only realised the extent of the issue when the scaffolding was erected and before that had done minor repairs to the obvious issues on the terrace above.*

  The warranty provider for the last year has been saying it is not a warranty developer issue and that the service charge should stump up the money, I have continually said to them it is a developer defect and when I took the pictures from the scaffold [not attached in bundle] *they agreed to have a meeting with myself, checkmate and the developer to sort this out and formalise liability. This is the meeting delayed by the pandemic and subsequently bereavement.*"

- *Reply from* [redacted] *to TG and SS… "…Please can I refer you in particular to your email dated 16 October 2019* [not provided in bundle] *where you quite clearly state the remedial works to repair the areas which were the cause of the water ingress into flat* [redacted] *would be carried out by the end of that week…*
- *… Email from TG to* [redacted] "*In* [redacted] *initial email he mentions two phases we did the first then found extensive issues all the way along the front which is the second phase and requiring the input of the developer and warranty provider*."

[943]

12 August 2020

- *Email from* [redacted] *to SS*: "[redacted] *and I were pleased to meet you today together with* [redacted] *and the representatives from Urbanwise and Checkmate.*

  As discussed I attach the email from [redacted] *who carried out a survey on the roof above Apartment* [redacted]. *You will see photographs, a video and a report that were sent to* [redacted, redacted] *and myself by* [redacted] *on 8 January 2020* [not enclosed or attached to the bundle]. *I would welcome any comments from you or those copied into this email, on the content in order to achieve an urgent conclusion to the essential roofworks required to our client's apartment.*

  At risk of repeating myself our client has not received any rental income for her apartment for over 18 months…

- *Reply sent from TG to* [redacted]: *The quote from* [redacted] *is considerable, I mentioned the works are far more in depth than anyone first realised and the quote reflects that, and as such I have contacted Checkmate who provide the warranty for all items pertaining to the penthouses for review and it has been passed back to the developer who in all likelihood leave it for the warranty provider to deal with it as they did the main roof.*

  As you know the developer and warranty provider have been in contact by myself previously on this previously and that's when they installed the guttering which didn't work. Given that the issue has now escalated considerably I'm sure the developer will ask for it to be dealt with by the warranty.

  If I don't receive a response very shortly I will advise them that I will continue to have the issue resolved by [redacted] *and we will look to recover the costs. It has turned into a large cost and I need to give them the opportunity to resolve it…*

63. In November 2020 (following an inspection on 12 November 2020), Mr Brack, provided a further report for FirstPort. In it his conclusions were that "*the water ingress to the 8th floor apartments is a result of failure to the terrace floor waterproofing system. We suspect water ingress is occurring around the balustrade supports which are part concealed. We suspect that failure of the waterproofing system has been compounded by the fixing of the mineral board capping and drips rather than curing the issue. In summary we would conclude a combination of poor design for the disposal of water from the 9th floor terrace and a failure of the existing waterproofing system caused by inappropriate remedial works*" **[157]**.

64. Mr Brack's recommendations were as follows **[158]**:

We suggest remedial work to alleviate the above water ingress issues will be required to the 9th floor terrace and to the 8th floor balconies.

We would recommend that the terrace floor to the 9th floor is re waterproofed using a propriety liquid waterproofing system rather than patch repaired.

We would recommend that the detail over the parapet is changed to incorporate an upstand and channel to direct water to new sump outlets. This will involve removal of the existing timber decking and joists positioned over the parapet and the construction of a new timber deck detail.

The sump outlets should discharge the water from the new 9th Floor terrace detail into rainwater pipes.

We would recommend that the balcony floor to 836 & 837 is replaced and relayed to provide falls to the existing outlets. We would suggest that a channel to aid drainage be installed to the parapet edge.

We would recommend that a propriety composite decking system is installed on 100x50mm treated timbers on support feet. This would allow the new installed rain water pipes to continue under the composite floor into the new installed drain channels.

65. From that point on in the timeline the entries become more cursory. On 16th December 2020, in apparent response to the letter from E&M, a leaseholder raised the concern about the failure of the freeholder to check that construction was sound from a load-bearing point of view and that it was waterproof **[944]**. Complaints around further delays were made in February 2021.

66. On 12 February 2021 **[945]** Ms Sandford apparently emailed the leaseholders to tell them they should fund the works until the liability issue was resolved. In response a further leaseholder raised a problem with new leaks in their flat (also redacted) since November 2020. Ms Sandford replied, to objections that the leaseholders should fund the works, that she was meeting with E&M and 'legal representatives' (presumably JB Leitch) to see whether temporary works might be an interim option. It appears that some temporary works were done to the roof above flat 387 **[952]**, we are told at an approximate cost of £12,000, and in April 2021 an application for dispensation from temporary perimeter capping works was delivered to leaseholders **[949]**, who we are told did not object as some work needed to be done urgently given the delay and ongoing damage.

67. On 28 May 2021, the Applicant gave to leaseholders Notice of Intention pursuant to section 20 and 20ZA of the Landlord and Tenant Act 1985 **[432]**. Mr Des Brack, surveyor at FirstPort Survey Services provided a Description of Works **[239]**.

68. By letter dated 28 May 2021, E&M confirmed that no surveyor had been appointed by the freeholder for the duration of the penthouse works or for the purpose of sign off **[381]**. They suggested that it was far from clear the appointment of a surveyor would have made any difference. Their head of litigation denied that the landlord should bear the cost of a permanent solution (though provided no reasons).

69. In September 2021, FirstPort instructed LRS testing Limited (Mr Daniel Lock) ('LRS') to investigate the leaks further. LRS's subsequent report of 4 October 2021 was not exhibited by the Applicant in its statement of case, though the specification provided by LRS for the tender documents was exhibited. The Respondents exhibited it in their response. The LRS findings in respect of the penthouse terrace (situated directly above the pre-existing building) were these **[413 on]**:

1. Holes, various, across the roof in the flat area
2. Hole to corner wall and end of terrace abutment, filled with foam
3. Splits in flat area most likely though [sic] *movement where deck is rotting/going soft underneath and has failed through water ingress*
4. No/insufficient detailing to balustrade feet abutments. GRP [glass reinforced plastic] *butted to them and then Mastic applied.*
5. No proper detailing or termination to the right-hand side parapet and glass channel abutment. GRP stopped in a line across the detail and again sealed with Mastic and foam.
6. The front entire edge parallel to the glass balustrade has a step in it and through movement has split in various places.
7. The GRP reinforcing can be seen through lack of final topcoat. GRP also seems to be very thinly applied.

On lifting the tiles from the roof, it became apparent that there was an additional layer before the roof waterproofing. There is an orange layer of plastic type matting which had been laid on some sort of adhesive liquid compound to the waterproofing.

The tiles were then laid on a tile/grout adhesive which appears to be different products across the roof area. Some of which has gone to mush so not likely waterproof and other sections where it has stayed hard.

As the matting and adhesive were cleared, we could then see the waterproofing which appears to be the same GRP that the main roof has. Once an areas was cleared to start inspecting the GRP, we could immediately see issues with the reinforcing fibre clearly visible and splits holes and lots of movement of the deck underneath. The various defects mentioned above were then found.

[list of advisories:] *A. Some adhesives used for both matting and tiles gone to mush. Clearly not suitable for external use.*
B. Plywood rotten and soft under foot in several locations.
C. Mastic used to seal GRP to the abutments across the entire outside perimeter.
D. GRP Delaminating/Top Coat peeling.

70. As may be observed, a number of these findings accord with Mr Wylie's investigations of the roof/terrace above the penthouses.

71. There is further correspondence in the bundle between Mr Brack and Ms Sandford of FirstPort (the managing agent who took over from Mr Griffin) on 5 October 2021, exhibited by the Respondents, which makes for interesting reading. In it **[430]** he states as follows, appearing to agree with Mr Lee's shock regarding the construction (emphasis added):

Having read through the report from LRS following the destructive investigations carried out, it is quite clear that the water ingress eminating [sic] *from the balcony to the Penthouse terrace into the property below is a direct result of poor detailing and workmanship around the various upstands, poor detailing and workmanship in the construction of the terrace decking and of the waterproofing system in general.*

I am slightly at a loss to grasp exactly how this work was signed off by the roofing contractor, developer or Checkmate *given the amount of issues brought to light and detailed in the report.*

My main cause for concern going forward is how much damage has occurred to the structural timber beneath the terrace. The report highlights potential issues around the plywood deck, we ned [sic] *to know what the condition of the supporting timbers is.*

From the sheer amount of defects uncovered, it is quite difficult to suggest that any temporary repairs would completely halt the ingress.

72. There is included by the Respondents in the bundle an email from Checkmate to Mr Douce, dated 27 October 2021. It is not clear in what connection this email was sent, and whether they had seen the LRS report (further below). The email is revealing about Checkmate's attitude regarding the limitation of the cover for the property **[431]** (emphasis added):

In order for a claim be to successful under part 3 of the policy there has to [be] both a failure of our requirements and Major Physical Damage has to have occurred to your property which is insured under the policy.
Major Physical Damage is defined as a material change in the physical condition of a load bearing element ***of the new home*** *from its intended physical condition which adversely affects its structural stability or resistance to damp and water penetration.*

We have reviewed the report and this is the same issue regarding the poor detailing which is causing damage to the flat below.

The detailing is not load bearing and would therefore not meet the criteria of Major Physical Damage. Their [sic] ***is also an endorsement on your policy which removes any cover to the flat below.***
The endorsement states that we will not cover: Damage of any type that occurs in or to;
-any part of the new structure that is not the new home but that contains or supports the new home? [sic]

As the damage is not affecting the structural stability of your specific property which is covered under the policy and is not causing water ingress to your property your claim would not meet the criteria of Major Physical Damage which has to have occurred in order for a claim to be successful under part 3 of the policy.

73. On 23 November 2021, FirstPort sent to the leaseholders a Second Notice in accordance with section 20 and 20ZA of the Landlord and Tenant Act 1985 **[434]**. It is clear that notice was in connection with works specified by FirstPort in a document dated May 2021 **[238 and on]**, specified by Mr Brack before the LRS report was provided and Mr Brack had notified his concerns in the email of 5 October 2021. In it, the sum estimated by LADTRACT Limited was said to be £168,155.00. No detail was given of the additional fees taking that cost to £234,179.76 as set out in Mr Brack's tender analysis report of (unknown date in) November 2021 **[191]**.

74. The Residents Association replied on behalf of its lessee members, by letter dated 13 December 2021 **[1040]**. It is not clear whether any response was made to the various questions raised in that letter.

75. In February 2022 Mr Brack produced what is assumed to be an updated description of the works **[214]**. There is no explanation for how this document came about. It is, up to page 11, identical to the 2021 description. However, the Applicant has omitted from the bundle pages 12 and 13 of the 2021 description **[see 247 – 248]**.

76. From the timeline, in a newsletter apparently dated 22 February 2022, Ms Albon informed the leaseholders that "*I am aware many residents have been disputing the cost of the works being covered by the residents and, having discussed the matter with the freeholders, we are making an application to the First Tier Tribunal to determine the reasonableness and payability of these costs. I'd like to confirm that prior to these works being instructed, we have attempted to resolve the matter directly with Checkmate who provide the warranty for the penthouse apartments. However, as the warranty is not in the name of FirstPort or E&M, we cannot pursue the matter further*" **[946]**. Of course, by that date the application had in fact already been made (almost two weeks previously).

77. On 4 October 2022 the contract for the works was awarded to LADTRACT with a provisional start date of 17 October 2022 **[946]**. That proved not possible because arrangements had not been made with Westminster for the correct licences for scaffolding and relocation of a bus stop. Scaffolding works therefore did not begin until 7 January 2023. It was further delayed again by the bus stop not having been relocated, and therefore did not start until around 23 January 2023 **[947]**.

The Dispute

78. The short issue to be decided is whether the sums are payable, whether because they were not reasonably incurred, or because there arises by way of equitable set off a defence to the sums claimed due to the landlord's breach of the lease. It is agreed by all that the works needed doing, and there is no challenge to the cost of them *per se*.

79. The Respondents say that it is the Applicant who should pay for the works. They say the Applicant is just another incarnation of the same organisation who directed the works throughout, and it was negligent in failing to carry out its responsibilities under the Airspace Agreement to ensure that the works were carried out with reasonable care and skill etc, particularly by failing to appoint a surveyor in accordance with the Airspace Agreement to supervise and inspect the works (admitted – **[380 – 381]**), or to otherwise properly supervise the works. They also rely on the Applicant's failure to ensure that, as per the Airspace Agreement, the new build warranty inured for the benefit of the whole building and was callable-on by the freeholder as stipulated by a memorandum of agreement made between the leaseholders and the first, and subsequently second, developer and specifically incorporated into the Airspace Agreement between the landlord and the developer as the method statement to which the contract was to be executed. They further suggest that the Applicant is therefore in breach of the terms of their leases for failing to insure the building as a whole.

80. Alternatively, the landlord should pursue alternative sources of funding for the works by pursuing the companies with the responsibility for developing the penthouses and who did so negligently, whether under the separate contractual warranties given by individual contractors or on the new build insurance.

81. It is the Applicant's position that it was not party to the agreement for lease or Airspace Agreement, and relies on the principles of separate incorporation. In any event even if a surveyor had been appointed the leaseholders cannot prove it would have made any difference. The leaseholders' remedy is against third parties. There is no breach of the insurance covenant. The various MoUs do not survive the completion of the contract (in reliance on the principles of separate incorporation, and the particular promissory contracts no longer being executory).

82. As may be ascertained from the above Background, while the question is a simple one, there is much we must consider in coming to an answer.

<u>Evidence</u>

83. We should first set out that we consider both witnesses did their best to help us, and answered questions honestly.

84. We first heard from Ms Gabrielle Albon. She had managed Central Tower between sometime in late January 2022 – April 2023. She confirmed that FirstPort had been the managing agents of 300VBR throughout the whole period, including in its former guises as Peverels and Pembertons. She confirmed Estates and Management has at all times acted (and continues to act) as the agent for the landlord in giving instructions for the management, though there was not a particular person with whom she now liaises. She confirmed that during her time as the appointed managing agent, she had engaged in monthly meetings with the residents most of which were regarding the balconies.

85. She did not know off the top of her head what the total sum in respect of the balcony works would be. She agreed that there were additional sums incurred because there were some issues about scaffolding and there were the costs of a structural engineer because of structural collapse concerns. She confirmed that the 2022 amount charged was £220k approximately, but that this did not include surveyor or admin fees. She could agree that there were additional costs to be added. She was unaware that £307,000 had already been demanded, and said she was not in a position to know whether the Respondents' estimate of the total cost to them of ~£400,000 once the temporary repairs, the additional £70,000 just demanded, legal, administrative and surveyors' costs and VAT had been added was correct or not. She thought it possible. She was no longer the property manager.

86. Ms Albon confirmed that she had been unable to find any site meeting notes between the developer, FirstPort, the landlord or at all. She had not asked the previous managing agents; she had looked through their email boxes but only those of Mr Griffin and Ms Sandford. She did not know why there were no documents pre-dating October 2018. There ought to have been a paper file. She had just contacted IT to gain access to Mr Griffin's and Ms Sandford's accounts. She had actively looked for stage certificates from the building inspector but had not been able to find them or any documents regarding the handover for the development. She did not know who had signed the condition document on behalf of the freeholder or who was the freeholder at the time, as she had not seen the document and had been unable to locate it. Only the two archived email accounts existed. There should have been an independent hard-copy file, and from 2020 there ought to have been a digital file on the shared drive for each development and managed major project, but there wasn't for this property. It should have included all of the documents. She was unsure what the system was prior to the digital file, but there certainly should have been one and her check for a hard-copy file had come up with nothing.

87. In terms of the works, she confirmed that the surveyors' fees of approx. £24,000 that the leaseholders had been charged were for regular site visits and liaising with contractors on findings made on those visits, finding additional contractors to remove the glass balustrades from the terrace, locating a structural engineer to assess the structural integrity of the terraces, and sign off and evaluations. Reports were made every three weeks or so. She couldn't comment on why a surveyor had not been appointed in respect of the development itself. She confirmed that she would have expected a surveyor to have been appointed to oversee the construction works of the original development, particularly since the works would have exceeded a certain amount of money.

88. In terms of insurance, she confirmed that the balconies ought to be covered in the risk insurance, but that Zurich had said that they weren't covered because they were specifically covered by the newbuild warranty. The Penthouses ought to be covered by Checkmate, and it followed that the works should be covered by them. She did not know whether the Checkmate warranty was scrutinised by the landlord or its agents prior to accepting it, to ensure that the balcony waterproofing and drainage system were covered.

89. She accepted that the timeline showed that the problems in the building had been so significant by October 2018 that tenants of the 8th floor flat had to vacate the premises. She explained that the five-year delay in obtaining a permanent solution, in the context of what she had seen when she took over, was that there had been significant investigation works and that contractors had attended on many occasions to no avail. It looked like it had taken time to pursue Checkmate, to try to avoid incurring the leaseholders money, so that all avenues were explored to get the works done under some sort of cover. She stated that had taken too long, and when she had taken over in January 2022 it had been further delayed by trying to recover funds from the leaseholders in order to proceed, then the contractors had not been available to start the project.

90. When asked why it had taken from October 2018 to 2020 to make the first claim with Checkmate, Ms Albon stated she could not comment, all she could say was that her predecessors had been chasing Checkmate. It was only when JB Leitch had started to communicate with Checkmate it had said that it would not communicate with the freeholder, only the leaseholders of the two penthouses. JB Leitch had tried to get them to make claims.

91. Under questioning from us, Ms Albon stated that she had no knowledge of the transaction between OP Land, Backfold and the Applicant. She continued to receive her instructions from E&M. She had no knowledge of the practices of the freeholder (in any guise) for development of airspaces. FirstPort (in its various guises) had been

instructed in the management of this building since it was built in 1997. She knew nothing about the corporate structure of the Applicant or Backfold.

92. She had put together the timeline as instructed by solicitors. She accepted she had no personal knowledge of the matters set out in it before she started in January 2022. It had not been produced to suit the Applicant's case, she had just done as instructed by summarising the main correspondence between the leaseholders and the previous managers. Under re-examination, she said she had been instructed to put together a document showing how often FirstPort had been in contact and how often updates were being issued to leaseholders.

93. She accepted there was a separate category of correspondence that was not with leaseholders and not disclosed. She said she could look for anything with the developers. She thought she had exhibited the agreement between 300VB and Buxton, and the other documents at paragraphs 16 and 17 of her witness statement. She had no idea why they were not in the bundle. In the context of paragraph 24 of her witness statement, she had not in fact asked anyone anywhere for copies of any collateral warranties or independently checked for them, and accepted that was why she was unaware of them. She had not been asked to do so. She had not followed up to resolve the IT issue with the missing emails in the archive.

94. Ms Albon told us she was aware how collateral warranties worked, and that they should follow through from the contract. She would have expected them to be in place for the purpose of the development. They would have been standard.

95. She stated that it was her belief that JB Leitch had asked Zurich whether the damage was covered under the building policy, and that is how they came to the conclusion that it wasn't because of the Checkmate policy. She said that flat 387 was covered for escape of water, but the outside of the building was not covered. She wasn't personally aware whether Zurich would cover the works. She confirmed that the developer had gone into liquidation, but she did not know whether there had been any consideration of collateral contracts regarding e.g. Buxton. She had not discussed it.

96. She stated that repairs were raised by purchase order, which should be on the purchase order system. It was her understanding that the reason that the drainage holes came to be mastic-ed in was that the developer had been back and done those works – she could not find a purchase order.

97. She did not know why the newbuild insurance had not folded back into the freehold as per the Method Statement. She accepted it should have. Checkmate had refused the claim for various reasons,

firstly because they said the damage was to the original structure, then because the penthouse owners had to submit the claim. She didn't know what had happened next. She agreed that the Applicant should have ensured that the insurance was as contractually required when they became the freeholder in 2019.

98. She did not know about the decision-making process or whether the Applicant had considered other enforcement avenues.

99. In re-examination, Ms Albon was asked to clarify who it was she had understood the question to be referring to, when she had accepted that the developer ought to have done certain things that it did or did not do. Ms Albon said in her mind the 'developer' was both the construction company and the entity directing it, 300VB. She was asked who she believed that collateral warranties ought to be given to. She said they ought to be given to the leaseholders affected by the works. She was asked to clarify what she meant when she accepted that the newbuild insurance should have folded back for the benefit of the freeholders. She stated that the policy and rights ought to be passed through, as the freeholders became entitled to the benefit of it.

100. Dr Edwards gave evidence. He confirmed that the basis of his understanding of the binding nature of the first Belltone MoU on 300VB was that Keith Ewart had told him that he was aware of it and would honour it. It had been passed to him as it was embedded in the agreement for lease, and Mr Ewart had acknowledged it was to be honoured. He confirmed that throughout the changes in freehold ownership he had been in contact with James Seifert at E&M. Each time there was a change there was a letter to leaseholders. It was so regular that by the time 300 VB came along Dr Edwards' concerns about the MoU were settled, on the basis that the property was being treated in a way to optimise tax positions or the like. He had himself instigated the OP Land new MoU when Backfold had taken over. As it was the first change in freeholder he had not understood the ramifications. He was dealing with Mr Seifert again and he was treating it like it wasn't a big deal. Mr Seifert was still honouring the MoU and they still talked about aspects of it. He talked to Mr Seifert if any issues came up. In none of those discussions had Mr Seifert ever said that the new landlord would not be covered by the MoU. They had always referred back to the MoU. Discussions had taken place by both telephone and email. He had no evidence that any such discussion had taken place with Mr Seifert after the transfer to the Applicant, as it had not occurred to him that it would be in issue.

101. Dr Edwards confirmed he had not taken legal advice on the drafting of the MoU. The leaseholders had relied on their own expertise as leaseholders. The leaseholders were only aware of the change in freeholder to the Applicant after the event. Dr Edwards did not think to put anything in the MoU to bind successors in title. He still held the

expectation that the promises made by the MoU flowed through the change of ownership, on the principle of basic fairness and natural justice. Mr Seifert was clearly more than just someone working for E&M. Also, the MoU had been picked up from the Consensus building on Park Lane, the office of the Tchenguiz brothers.

102. Dr Edwards confirmed that the leaseholders had not contacted Backfold regarding enforcement of the developers obligations in the MoU. He did not think it still existed. It was no longer the freeholder. It didn't appear to be relevant, and it hadn't occurred to him as a layman it could be. As far as he was concerned the promises had moved on to the new freeholder, and in talking to Mr Seifert he was talking to the representative of that new freeholder. The leaseholders had never explored any remedies against Belltone, or 300 VB, and had not checked whether they remained in existence.

103. In respect of the various emails exchanged about Backfold appointing a surveyor for the development, Mr Morris asked Dr Edwards whether he had ever reminded the freeholder of the developer's obligation to pay (as contained in the agreement for lease/Airspace Agreement). Dr Edwards said he had not done so formally. He had made his point clear to Mr Thakrar it was not the leaseholders' responsibility. He had expressly said so in **[493]**. Dr Edwards had seen the agreement for lease by that point, but did not know whether Mr Thakrar had.

104. Mr Morris put to Dr Edwards his understanding of the MoU meaning that the obligation that the developer take out an insurance policy 'follow through' to the new developer was wrong. At this point it became clear that Mr Morris had not in fact appreciated that the Method Statement to the agreement for lease had in fact *been* the OP Land MoU, such that it was specifically a term of the performance of the contract in clause 8(g).

The Law

105. Section 19 of the Act places a statutory limitation on recoverability of service charges. Though the Applicant has not said so, it seems to us that we are considering estimated advance charges, so that 19(2) is engaged:

> **19 Limitation of service charges: reasonableness**
>
> *(45)* 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.

106. The approach the Tribunal is to take to the question of the reasonableness (regardless of whether under 19(1) or (2)) is set out in *Waaler v Hounslow LBC* [2017] EWCA Civ 45), and to be approached in two stages, i.e.:

(i) has the landlord acted 'rationally' (in the sense that the contract sustains its course of action); and

(ii) even if the course taken is a rational one, is the sum being charged a reasonable charge in all of the circumstances? This has two elements. It must be reasonable both in:

(a) process, and

(b) outcome.

107. That case was concerned with what the standard of "reasonableness" to be applied to works (that consisted of part repair and part improvement) was:

24. … is the question whether costs are reasonably incurred within the meaning of section 19 to be answered by reference to an objective standard of reasonableness, or by the lower standard of rationality?

25. If the landlord incurs costs that are not justified by applying the test of rationality, then the costs in question will fall outside of the scope of the contractually recoverable service charge. The Landlord and Tenant Act 1985 must have been intended to provide protection against costs which, but for its operation, would have been contractually recoverable. It follows in my judgment that merely applying a rationality test would not give effect to the purposes of the legislation. The statutory test whether the cost of the works is reasonably incurred…

28. Mr Beglan argued that the focus of the inquiry must be on the landlord's decision-making process. What mattered was whether the landlord had acted reasonably in reaching his decision to carry out the works… The views of the tenants were equally immaterial where the works in question contained elements of improvement if their overall purpose was to deal with an underlying defect in the property itself. What was critical was the landlord's decision-making process…

29. I cannot accept this argument. Consider a case in which the issue is whether the work in question has been carried out to a reasonable standard. The landlord may have acted entirely properly and rationally by entrusting the work to a reputable contractor with a good track record. But if, as things turn out, the work is carried out badly then the work will not have been carried out to a reasonable standard, and the leaseholders should not have to pay for it. Whether the costs themselves were reasonable for the works in fact carried out must also, it seems to me, be decided by reference to an objective test

just as that test would be applied to deciding whether a price was a reasonable price… Section 19 must have been intended to protect the leaseholder against charges that were contractually recoverable otherwise it would serve little useful purpose.

…[*Forcelux v Sweetman* [2001] 2 EGLR 173 (CA) is considered]

34. Thus, although the Landlord's decision-making process was not criticised, what mattered was the outcome.

35. In the Garside *case [2011] UKUT 367 (LC) the UT listed a number of potentially relevant factors and said, at para 19:*

"These are only examples of the factors that may or may not be relevant and there may be others to take into account. All are factual issues and matters of judgment for the LVT to weigh up against the hardship of substantial increased costs when deciding on the evidence before it whether the service charge costs are reasonably incurred."

36. This does not suggest that the function of a tribunal is simply to review the landlord's decision-making process. The interests of the tenants are to be taken into account in "weighing up" the relevant factors.

37. In my judgment, therefore, whether costs have been reasonably incurred is not a simple question of process: it is a question of outcome. That said it must always be borne in mind that where a landlord is faced with a choice between different methods of dealing with a problem in the physical fabric of the building (whether the problem arises out of a design defect or not) there may be many outcomes each of which is reasonable. I agree with Mr Beglan that the tribunal should not simply impose its own decision. If the landlord has chosen a reasonable course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if another cheaper outcome was also reasonable."

108. Mr Morris had omitted this case from his authorities bundle, but agreed *Waaler* is applicable. He accepted that that although the test is objective, it has a subjective element: what was objectively reasonable needs to be ascertained from the subjective facts and circumstances of the particular case. What would a reasonable landlord, in possession of the particular background facts and knowledge of the particular situation in which the need to carry out the works has arisen, have decided to do?

109. Mr Morris relied on *Assethold Limited v Alexandra Adam and 14 other leaseholders of Corben Mews* [2022] UKUT 282 (LC) in

which the Upper Tribunal (Judge Elizabeth Cooke) considered the test above in paragraph 44:

"*So a landlord in deciding what to do must follow a reasonable process and must then adopt a reasonable course of action. There may be more than one such course of action; the court or Tribunal is not to impose its own decision as to what should have been done. But even if the landlord followed a rational decision-making process, if the outcome of that process is not reasonable then the cost will not have been reasonably incurred.*

45. …As we have seen, in order for expenditure to have been reasonably incurred under section 19(1) the landlord must have acted not just rationally but also reasonably in deciding what action to take as well as in deciding which contractor to use and how much to spend."

110. In that case, Judge Cooke found that, in taking action to put in place a waking watch in reliance on a professional report that the building was at high risk in the event of fire, on the facts *"only a supremely confident landlord would have done anything else*", particularly in circumstances where the authors of the report stood by it at the time. We consider that Judge Cooke was applying the test in *Waaler*: in light of the landlord's knowledge and the background of that particular case, it was reasonable for the landlord to engage a waking watch and recharge the costs to the leaseholders.

111. The point to be taken is that there was no question of hindsight having obtained a later document demonstrating that the professional fire risk advisers were, in terms, wrong; the nexus of the decision must be in relation to the facts and matters known to the landlord at the time the decision is made to incur the cost.

112. In the course of his skeleton argument, Mr Morris also referred to *Avon Ground Rents v Cowley & ors* [2019] EWCA Civ 1827 (a case involving on account demands engaging section 19(2) of the Act), though only to seek to distinguish it on grounds that in his submission there is no "*immediate prospect of payment being received*" from Checkmate. The decision was again absent from his authorities bundle.

113. Mr Morris also relied on *Continental Property Ventures Inc v White* [2006] 1 E.G.L.R. 85, confined to the passage in which Judge Rich KC said that "*the question of what the costs of repairs is does not depend on whether the repairs ought to have been allowed to accrue.*"

114. We asked the parties to consider two authorities in respect of the question of lifting, or piercing, the corporate veil, *Prest v Petrodel*

[2013] 3 WLR 1 (SC), and *D.H.N. Food Distribution Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852 (CA).

115. The key passage in *Prest* is at paragraph 28 (Lord Sumption JSC), in which the difference between lifting the corporate veil and piercing it is set out:

> *It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the facade, but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. Many cases will fall into both categories, but in some circumstances the difference between them may be critical.*

Decision and reasons

(i) Pleadings points

116. First, we must deal with the submission made by Mr Morris that the Applicant has not had the opportunity to present evidence in this case, on two fronts: first, he says it has never been made clear that the Respondents were suggesting that the Applicant should pay the costs, i.e. that section 19 was engaged; and secondly, he submits that the Respondents have never made clear that the question of lifting or piercing the corporate veil is engaged such that evidence should be taken from the Applicant and/or its directors.

117. We do not agree. On the first point, this was a surprising stance for Mr Morris to take, given his own skeleton argument (paragraph 14).

118. This is the Applicant's own application. It bears the burden of demonstrating that the costs are reasonably incurred in accordance with the test.

119. We cannot in any event agree with Mr Morris. Even were we to ignore paragraph 2 of the Respondents' statement of case **[278]**

which says in terms "*It is not reasonable for the leaseholders to shoulder the financial burden. This is because the freeholder failed to protect the risk to the leaseholders from the botched development and failed both in its general duty to protect the integrity of the building and in contract commitments agreed beforehand*".

120. In the paragraph called "statement of case" in the Respondents' statement of case, in introducing the various sub-reasons that the leaseholders say they should not have to pay for the works at **[280]** specifically says "the freeholder should pay for the problems left by the developer". In Dr Edwards' witness statement paragraph 9 **[474]**, he says "*In all practical respects, the Leaseholders have faced the same Freeholder throughout the 9th Floor development. The Leaseholders have an expectation that undertakings given by the Freeholder will be upheld in law… It is unreasonable for the costs of [the Freeholder's] failures to be charged to the Leaseholders, not least in view of the sustained efforts they made with the Freeholder to ensure that the Development was properly carried out. The Leaseholders should not pay for the remediation of the 9th floor Development building failures.*"

121. On the second issue: the corporate structure, and controlling parties behind the separate corporations, were put into issue immediately in the Respondents' Statement of Case at paragraph 1 **[278]**. Ms Waszek, solicitor at J B Leitch replying on behalf of the Applicant, took immediate and deliberate steps to maintain that the companies are, and must be treated as, separate entities **[460 – 461]**, to which the Respondents replied twice calling into question those corporate relationships **[467] and 732]**.

122. In that statement of case she set out, in error (conceded at the hearing) that the Applicant did not become 'the immediate parent of' Backfold until 31 March 2017. In fact, Companies House records show (on Counsel for the Applicant's own research) that Backfold was acquired by the Applicant on 21 July 2014. It was conceded at the hearing that Backfold was 100% owned by the Applicant, had no employees, and had the same officers. In fact, the March 2017 date is the one on which Backfold gave its notice to Companies House that it sought to be struck off, for the purposes of which it made a dividend *in specie* to the Applicant, its sole shareholder, of all its assets (including Central Tower). Companies House records also show that all expenses incurred by and income due to Backfold after 31 March 2017 were settled or received by JLPPT Holdco. Companies House records show that Backfold decided to withdraw its strike off request later, and is now (and has been since) a dormant company, in the control of Lightyear Estates since 12 August 2019. In their 'Supplementary Information to the Respondents' Statement of Case' seemingly prepared and sent after Ms Waszek's Reply, the Respondents set out their further research about the group structure, and Dr Edwards further reiterated the point in the final page of his witness statement **[732]** of 21 June 2023.

123. Paragraphs 120-121 above apply equally to this issue.

124. We do not consider, when read objectively, the Applicant could reasonably have come to the conclusion that the Respondents were asserting anything other than that the Applicant should pay for the works or fund them by alternative means, and that if necessary the corporate veil should be lifted or pierced if that is the only way that can be achieved. In their preparation, each of the three panel members independently concluded that the Respondents have at all times been saying it is unreasonable for the leaseholders to pay, and the Applicant ought to pay (if they cannot get Checkmate to pay) for the works and/or pursue the costs elsewhere.

125. The Applicant or its agent, E&M did not themselves provide any witness evidence. All evidence was left to FirstPort. Mr Morris submitted that they ought to have the opportunity to do so, were the Tribunal to determine that the corporate veil requires to be pierced. Mr Morris did not make any applications for an adjournment or for permission to obtain further witness statements in respect of the issue. In any event, we consider that any such further evidence does not arise.

(1) Are any of the MoUs binding on the Applicant?

126. The Applicant's case on whether the first or second Belltone MoUs, which are an exact replica of the OP Land MoU, are binding on it rests on those MoUs being a personal promise that is no longer executory.

127. We can dispose of that question quickly. As can be seen, the first Belltone MOU with the leaseholders was, by the agreement for lease, given contractual status between the freeholder and the developer (clause 8(g) and definitions of Method Statement). Whether there were further MoUs, or who with, is irrelevant.

128. Both the freeholder and the developer (and each of their successors in title) were therefore bound to abide by its terms, including such terms which contained a particular description of outcome.

(2) Must we pierce the corporate veil?

129. Given what is now conceded about the Applicant's acquisition of the 100% controlling interest in Backfold in July 2014, and the transfer to the Applicant (in its former name) of the freehold on 31 March 2017 by dividend *in specie*, we consider we do not need to pierce the corporate veil.

130. We are satisfied on the balance of probability that the insertion of the various different development companies, all related companies in the Tchenguiz Family Trust group, was no different from many cases in which we see that specific vehicles are created for airspace developments. We are sure Dr Edwards is right when he says that there must be tax advantages to doing so. We are satisfied this is not a case of evasion.

131. We are satisfied that, when in the reply Ms Waszek relies on the separate corporate entities absolving the Applicant from anything that has gone wrong in this development prior to the Applicant becoming the freeholder in 2017, the Applicant is using that structure to conceal the reality of the Applicant's involvement from at least July 2014, due in part at least to her error in recounting the date when the Backfold was put in the Applicant's portfolio.

132. As per paragraph 28 of *Prest*, "*The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the façade, but only looking behind it to discover the facts which the corporate structure is concealing".*

(3) Are the costs incurred reasonable?

133. Is the Applicant's decision to pass the costs of the repair/reconstruction of the balconies and common parts of the new development (for the avoidance of doubt, excluding those parts recovered by the new penthouse owners through Checkmate), built in consequence of the airspace lease for the benefit of the Applicant through its wholly owned subsidiary, reasonable?

134. Mr Morris places reliance on *Avon v Cowley*, but has not drawn attention to any particular paragraph. The key part of that decision seems to us to be:

"*33. As to what is "reasonable", that is for the relevant tribunal to determine… It is an exercise which the tribunal is well-equipped to perform, assessing the relevant facts in each individual case and arriving at a determination based on the evidence. The question as to whether the possibility of third party payments can be taken into account in deciding what might be reasonably demanded on account will depend on the facts of an individual case. If certainty were to be required this would constrain the discretion of the tribunal when in reality what is required is a test which allows account to be taken of all relevant matters and to those matters will be attributed the*

appropriate weight. This is particularly so when the purpose of the statutory provision is to protect tenants from unreasonable demands.

34. The appellant's submission that in construing section 19(2) and determining what represents a reasonable amount, no account should be taken of likely payment, ignores the reality of many situations. It would result in unnecessary expenditure, by leaseholders having to embark upon what could be lengthy proceedings in order to recoup money which had been overcharged.

35. The imposition of rigid rules by this court, the practical effect of which would be to constrain the discretion of the tribunal in its determination of what is reasonable, is neither helpful or cost effective."

135. Mr Morris's submission in regards *Continental v White* was that the only way in which the leaseholders could succeed in this case, in light of *Continental* and of *Daejan Properties Ltd v Griffin* [2014] UKUT 0206 (LC), is by identifying the factual allegations that would amount to the landlord's breach of its obligations (and therefore an equitable set off amounting to a defence), and by identifying the amount by which any reduction should be made. On the Applicant's case, that is impossible in these proceedings, on the basis that all actions that might have caused damage are those of third parties. Mr Morris asserts that the leaseholders have no cause of action against the Applicant.

136. We note that the above is a case about historic neglect. Firstly, this case is very different: the requirement for repair/rebuild or redesign in question comes from a commercial agreement in which the landlord's predecessor in title and related company has required or permitted a third-party contractor to create a 'new' part of the building. To confine that question to one of 'historic neglect' in circumstances where there has been a new development over which a landlord has had control by dint of its contractual relationship with third parties does not seem to us to be appropriate, and risks endorsing a position in which leaseholders are liable for a landlord's general failure to make use of its own contracts or seek alternative remedy within their control. That would seem to us to now be the clear point made in by the Court of Appeal in *Waaler*, decided after *Continental* and *Griffin*.

137. In any event, as the Upper Tribunal has now said in *Radcliffe Investment Properties Ltd v Meeson & Ors* [2023] UKUT 209 (LC) (Judge Martin Rodger KC, Deputy President) in paragraph 28, a case in which Mr Morris made the same argument:

"*The paradoxical proposition that the reason why a cost has been incurred is irrelevant to the reasonableness of incurring that cost may be an appropriate analysis in some cases, but it is not a rule of general*

application. In considering questions of reasonableness, it is rarely appropriate to begin with an inflexible rule. In Avon Ground Rents Ltd v Cowley [2019] EWCA Civ 1827*, to which Mr Morris also referred, Nicola Davies LJ approved, at [31], this Tribunal's conclusion in the same case that "whether an amount is reasonable as a payment in advance is not generally to be determined by the application of rigid rules but must be assessed in the light of the specific facts of the case". That was said in the context of a payment of service charges in advance, which is regulated by section 19(2), 1985 Act, but it is equally applicable to a determination under section 19(1) whether a cost was reasonably incurred, or under a determination of the same question under the provisions of a contract*."

138. In this case, we find that the reason why the issues in the building have arisen, leading to the cost being incurred, is a highly relevant factor.

139. In short, it is our decision that no reasonable landlord, against the lengthy background and history of this rooftop development as set out above, in the circumstances as set out, would have passed on to the leaseholders the costs involved in repairing and/or rebuilding/redesigning the areas of development above the existing 8th storey flats to stop and prevent the ingress of water into the existing structure.

140. The Applicant has made money from the airspace lease – it benefitted from the dividend *in specie* made to it by Backfold transferring to the Applicant its assets, of which it had 100% of the benefit. The developer has made money from the new flats from their sales, in hard cash.

141. The leaseholders have suffered substantial and ongoing interference with their use of the property during the course of those works and subsequently. The works have only just been completed, five years on. It appears that sadly that situation is not over, in light of the letter of 31 July 2023. They have sustained interference with their quiet enjoyment of the building by virtue not just of the works, but of the ongoing flaws with the construction since before it was even finished.

142. No evidence has been given by anyone as to how the decision to pass these works on to the leaseholders was come to, or when. No evidence has been provided that alternatives to calling on the service charge were considered at any stage. We are left having to construct the Applicant's narrative for it from the 'timeline'. That is unacceptable. It is its application, and for it to prove that the outcome of the decision to pass the costs of the works on to the leaseholders is reasonable, the Respondents having clearly said throughout that the Applicant should pay for them.

143. As reflected in the timeline, we find on the balance of probabilities that the Applicant knew from the very outset of the 'completion' of these works, and in any event by 31 March 2017, that there was water penetrating the ceilings of the previous top-floor flats, which had not been present before the airspace was developed. At least by 8 March 2019, it had confirmation that there was no edge protection to the roof. By that stage it appears the developer had attended 3 or 4 times. In June 2019, Mr Wylie's report ought to have caused some serious concern – we consider that given the gravity of what was revealed in Mr Wylie's investigations regarding the defective construction of the roof above the penthouses, a reasonable landlord would, in light of the ongoing reports of significant water ingress below the penthouses, have taken steps to thoroughly survey the work done, having failed to take that step at any point throughout the construction, given the likelihood that the standard of the work below would not be at wild variance from that of the work above.

144. It appears to us that the terms of the newbuild warranty are not as narrow as Checkmate purport, since they agreed to and funded the installation of additional, cheaper, but ineffective new drainage options under the policy, and attended at the property (whether by themselves or in the company of Mr Ewart) on various occasions at FirstPort's arrangement, on at least 19 November 2018 **[937]**, probably sometime in February/March 2019 **[938]**, possibly sometime in March 2020 **[940]**, and on 12 August 2020 **[942]**.

145. No explanation is given why a claim on the Checkmate policy was not pursued in respect of these failures within the 2 year period of the full warranty, that did not require that the additional definition of 'major physical damage' be met, despite it being clear from the timeline that FirstPort had throughout that period been in contact with Checkmate and Checkmate had been cooperating with FirstPort in furtherance of the newbuild policy. There are numerous references to FirstPort dealing directly with Checkmate and/or the developer in connection with the issues with the balconies **[1st entry 937, 1st and 3rd entry 938, 2nd and 4th entry 939, 1st and 2nd entry 940, all entries 942, 2nd entry 943, 1st and 9th entry 944]**. It is not clear at what point it is said that Checkmate began to suggest that it could not deal with FirstPort as only the lessees of the new penthouses had rights in connection with the newbuild insurance. We can only say with certainty it had happened by 22 February 2022, after the application was issued in the Tribunal **[946]**. It appears Checkmate were still dealing directly with FirstPort at least on 14 September 2020 **[944]**.

146. We have no evidence demonstrating any properly argued attempt to persuade Checkmate that they were wrong, or to assert what ought to have been the landlord's rights in the newbuild policy in respect of the common areas.

147. If the warranty does not cover the Applicant, that too is in breach of the agreement for lease. There are parts of the development that are not demised, and therefore the landlord is the entity meeting the definition of 'buyer' for the purpose of the policy. It does appear that avenue has not been pursued because the Applicant simply hasn't sought to.

148. We are told that Zurich was approached regarding these works (though no evidence is in the bundle), and will not cover them because they are 'separately insured' by the newbuild warranty, though Ms Albon said that they would be covered were that not to be case. The Applicant's position throughout this case has been that they have been informed by Checkmate they are not so covered. It is clear that what Checkmate is suggesting primarily is that there is an exclusion on the policy regarding those parts affected (save the balconies), and in the alternative that they are not within the definition of major physical damage because the damage caused is not to a load bearing element of the (as far as we can ascertain, the argument runs, *demised* part of the) new home covered by the policy, affecting its resistance to damp or water penetration, or damage to that new home.

149. If that is the case, the newbuild policy obtained by the developer appears to us to be in breach of the agreement for lease/airspace agreement, as set out in clause 8(g), as it does not "*[wrap] up into the envelope of the existing freehold*" and the structural warranties/insurances have not *"transfer[red] to the freeholder and … folded into the existing insurance policies that are in place"* so to recognise that the "*new development is then the freeholder's asset*". We have been provided with no evidence that the Applicant has done other than passively accept it is not entitled to call on the newbuild warranties. We have been provided with no evidence of any thought given to other avenues of enforcement, including declaratory relief or other action on the contract.

150. If the Applicant accepts that the parts concerned are excluded from the policy and/or it is not covered regarding the un-demised parts, we have been provided with no evidence explaining why Zurich is not being pursued to cover the works. Again, the Applicant appears passively to have accepted Zurich's apparent decision that the works are covered by the Checkmate policy, even though the Applicant says it has no call on the Checkmate policy, and that the parts concerned, beyond the balconies that appear meet the definition of 'common parts' in the Checkmate policy, appear not to be covered.

151. We have no evidence other than what is contained in the 'timeline' for the reasons Checkmate suddenly appears to have decided it cannot communicate with the Applicant. Indeed, the timeline only says that Checkmate cannot communicate with "*FirstPort or E&M*", it makes no mention of the Applicant, though we acknowledge that E&M

appears to be the landlord's agent. We have no evidence that shows that Checkmate has in fact said the newbuild policies do not cover the Applicant.

152. We have no evidence of any consideration of enforcement action against Checkmate, or the developer in respect of the newbuild insurance obligations given contractual force by the agreement for lease/Airspace Agreement, or on the collateral warranties given by the other subcontractors, design specialists etc that Ms Albon agrees must exist if this development was conducted in the normal way according to her experience.

153. If the areas are included on the Zurich policy, reasonably the Applicant should claim on that policy. If Zurich is saying that the areas are covered on the Checkmate policy, and the Applicant is not persuaded by that finding, reasonably the Applicant should challenge Zurich. If the Applicant is persuaded by that finding, reasonably the Applicant should pursue Checkmate and/or the developer under the contractual rights arising from the agreement for lease, on condition of which the Airspace Agreement was granted.

154. If clause 6.1 of the Airspace Agreement has not in fact been given effect, then reasonably the developer or Backfold should be pursued, if it was their obligation/right to enforce the covenant. Failure to have done so would seem to indicate to us that the areas are not (yet) covered by the leases by reference to the definition of the Building, since those areas would still be demised by the Airspace Lease.

155. If it is Backfold's fault as they were the ones who signed off their agreement to the policy documents, the Applicant's position being that they are a different and separate company (even if in the Tchenguiz Family Trust stable), reasonably the Applicant should pursue a claim against Backfold.

156. We further have no evidence of any consideration of enforcement action against Backfold, for their failure to appoint a surveyor to supervise the works or to otherwise ensure that the works were completed in accordance with the contract, despite even the Applicant's own surveyor finding it remarkable that the development was signed off at all.

157. We heard from Ms Albon, who had not been involved in the management until after the decision to charge the leaseholders for the works had been made, and (it appears) after this application was made to the Tribunal. She confirmed she could not identify any documents at all beyond the emails in colleagues' email boxes in connection with this property. She did not know anything about the decision making and could not assist us. She had not sought to obtain information from E&M or otherwise.

158. Ms Albon's witness statement reads, to a lawyer's eye, like a pleading. That may provide some explanation for assertions like "*I am not aware of any applicable collateral warranties that could be relied upon to claim for the costs of the Works*". Casting a different light on that evidence, Ms Albon freely told us that she has not asked the Applicant for any of its records related to the period. She has not searched for collateral warranties. She believes they should exist. She had not searched beyond the emails of her former colleagues Thomas Griffin and Samantha Sandford. Thomas Griffin had not been the managing agent with responsibility for the property before October 2018.

159. With no disrespect to Ms Albon - whose position we have every sympathy for – she was not the appropriate witness. All the matters arising, from the decision to undertake the works, consultation, specification, and so on, pre-dated her management. She told us, and we find, that there was neither a physical or digital file on which she could rely to try to help us in what happened in or during the construction, or at any time afterwards. E&M remained the Applicant's appointed agent. They did not provide her with information. She was put in the position of giving evidence with a hand tied behind her back.

160. She told us, and we find, that she did as she was instructed in putting together the timeline. She told us, and we find, that she included documents with her witness statement returned to the solicitors that were not then exhibited. That approach concurs with the Applicant's later refusal to disclose, despite Ms Albon's agreement to do so, the report on which the letter of 31 July 2023 relies, and failure to make any proper argument regarding why legal privilege attaches. If it is said that legal privilege attaches, it seems we might properly infer that there are investigations afoot regarding (at least) the developer's liability, whether under the Building Safety Act 2022 or otherwise, or indeed that one of the leaseholders is bringing independent legal action against the Applicant.

161. This lack of full disclosure, and failure to put forward a witness with the relevant knowledge on the issues called into question by the leaseholders' statement of case, particularly in an application in which the Applicant seeks a finding that it has reasonably incurred the costs of the works, appears to us again to have been a deliberate choice made by the Applicant in the conduct of this application to conceal what has in fact happened within the period and the extent of the Applicant's involvement in the decisions relating to the premises.

162. In the hearing, Mr Morris submitted that even if we have no evidence that the Applicant had considered taking legal action (against anyone), we ought to take judicial notice that the process and costs involved would be long and arduous, with no guaranteed outcome and so it would have been reasonable for the landlord to decide not to

pursue such a route. He pointed out that 330VB had now been struck off.

163. In almost the same sentence, he maintained it was for the leaseholders to pursue their legal remedies against third parties (including, he maintained, Backfold and 300VB), despite their being party neither to the agreement for lease or Airspace Agreement, nor the contractual warranties that must have been provided to the landlord by the other contractors, nor to the Checkmate policy (even if it has been strictly provided in accordance with the provisions of the Airspace Agreement clause 8).

164. If it is or would have been so difficult for the Applicant to pursue its legal rights under the contract, for the leaseholders it would be virtually impossible, not being parties to it in any capacity (and the rights of third parties being specifically excluded). Mr Morris's submission would leave leaseholders, who have done nothing but try to cooperate in the chain of freeholders' desire to develop the airspace, for profit, and which has caused the leaseholders' property interests significant harm, in the pernicious position of paying for the privilege and then having to pursue some kind of negligence action. In our view, that cannot on any assessment be a reasonable outcome, even though the relevant contractual clauses in the leases permit it.

165. A more obvious case for the Applicant to pursue remedies against the various actors in the execution of the airspace development we cannot envisage, whether via the new build warranty or against 300VB by seeking its reinstatement on the register, or Mr Urban individually, or against Backfold itself (since the Applicant maintains it is a separate company), or against any or all of the sub-contractors from whom the agreement for lease required individual warranties to be given. The one set of people in this sorry scenario who are not at fault are the leaseholders, and it would be an unreasonable outcome for them to bear the burden of all others' apparent wholesale ineptitude.

166. We therefore find that the sums demanded by the Applicant in respect of the works, for the year 2022, are not reasonably incurred nor payable.

(4) Alternative defence by way of set off/cross-claim

167. In light of the above, we do not consider that we need to ascertain that there is a set-off that amounts to a defence.

168. Had we to decide, however, we would be satisfied that the Applicant has failed to ensure that the building is insured in accordance with the requirements of the lease. From what we were told, Zurich

stated no claim could be made on its policy as there is another policy in place in respect of the penthouses.

169. It is clear that, if Checkmate are right in the interpretation of what amounts to the 'new home' for the purposes of the newbuild policy, the areas outside of the balconies on the 9th floor are not covered by the policy. We are told it is also excluded by the Zurich policy 'because there is another policy of insurance in place'. It appears that is a decision made by Zurich on the basis of misinformation provided by the Applicant to Zurich.

170. The position is that therefore either the Applicant has provided incorrect information to Zurich, Zurich has made a wrong decision, or the area in question is not insured.

171. At the date of the sale of the second penthouse, the Airspace Agreement 6.1 applied, obliging the developer to ensure that *"in the case of the final New Flat to be sold the form of surrender shall be adjusted to include all residual parts of the Demised Premises not previously surrendered with effect that this Lease shall then cease and determine but without prejudice to the antecedent rights and liabilities of the parties"*. We have not been provided with any form of surrender meeting the above requirements.

172. At the date of the sale of the second penthouse, the following provisions of the method statement specifically applied to the agreement for lease, which specifically inured for the benefit of Backfold's successors in title: "*Once the building works have been completed the new structure making up the three new apartments, is wrapped up into the envelope of the existing freehold. The structural warranties/insurances for the new units transfer to the freeholder and are folded into the existing insurance policies that are in place. The new development is then the freeholder's asset.*

Therefore, the leaseholders of 300 VBR will have the insurance cover they need in the event of defects due to poor workmanship or deficient design."

173. If the newbuild warranty does not cover the Applicant as contractually provided for in the agreement for lease, there is no explanation of what Backfold or the Applicant did, at the time that the insurance was supposed to 'fold back' in to protect the landlord's asset, to ensure that the property was insured or to enforce the agreement for lease or Airspace Agreement. We find that it is not credible that, as the Applicant argues, as Backfold was the landlord at the time (the time being unspecified, but which must have to be in accordance with the date clause 6.1 of the Airspace Agreement was given effect, as it was only at that point that the landlord was entitled to the reversion), they could not have done anything. Mr James Seifert was, we find, the

person giving instructions from E&M throughout the period until around October 2018, and had actual authority to act as the agent for all of the freeholders throughout that period without interruption. The accounts filed at Companies House show that Backfold had by the time of the sale of the second penthouse already notified in its company accounts that it intended to stop trading on 31 March 2017, and that the net total assets of the company were being transferred to its immediate parent and sole shareholder, the Applicant (under its former name) by dividend *in specie*. They also show that all expenses incurred by and income due to Backfold after 31 March 2017 were settled or received by the Applicant. Backfold's directors were also directors of the Applicant at that date, and Backfold had no employees. These are decisions that cannot have been taken without the agreement of the sole shareholder and controlling entity, the Applicant, or without Mr Seifert. At the date of the sale of the second penthouse, alternatively by the end of March 2017, Backfold, or thereafter the Applicant, or throughout Mr Seifert ought to have taken steps to ensure all was signed off properly and the contract fully executed. There is no evidence any of them did so.

174. If we are wrong in that, it cannot be right that the Applicant's position in the proceedings is that the building is insured, and therefore that these works are insured one way or another, and yet the works are still being charged to the leaseholders, given that Ms Albon confirmed that it is her understanding that they would have been covered under the Zurich policy but for the Checkmate policies.

175. There is no evidence to demonstrate that the Applicant took any steps to satisfy itself of the insurance position when the premises was transferred to them (perhaps because of its reliance on advice from its own directors, who were Backfold's directors, or Mr Seifert).

176. If the dividend *in specie* has in fact transferred the part of the freehold in question to the Applicant uninsured, it does not matter whether this is because of the way in which Backfold agreed the Checkmate policy on completion of the construction. What matters is that the Applicant has an ongoing obligation per the lease to insure the building as a whole, and an ongoing right to enforce any breach by the developer of the agreement for lease/Airspace Agreement.

177. By failing to insure the property excluded by the Checkmate policy on the Zurich policy it would be in breach of covenant. If the areas are included on the Zurich policy, it is unreasonable not to claim on that policy.

178. That breach would be sufficient to establish the tenants' defence to the service charges demanded, as would the interference with their quiet enjoyment. The monetary consequence to them is having to pay for works that should (and in the ordinary course of the Zurich insurance would) have been, on Ms Albon's evidence, covered

save for the existence of the Checkmate policy. That would, in our view, offset their liability in full, save for any increased premium that might have been charged to the insurance, of which we have been provided no evidence.

CONCLUSION

179. In light of our findings, it is our decision that the costs of the works to the roof terraces are not reasonably incurred.

180. The Applicant's solicitor takes the position that before us are only the sums demanded to the service charge in 2022. Given those sums have increased by at least £70,000 (and been demanded), it is the leaseholders' view that the costs could in fact be as high as £400,000.

181. It would be artificial to suggest that only the service charges in 2022 are not payable, when the subsequent sum for this year arises from the self-same remedial/improvement works.

182. However, Mr Morris did not concede we could deal with the later demand, and therefore we cannot in this decision make a finding that the 2023 demand is also not payable. The parties are notified that were such an application to be made, and provided it was appropriate to do so, the same panel would consider the application and, saving any additional arguments being made outside of those already before us in this application, would be inclined to the same decision.

COSTS

183. No section 20C application has been made. If the parties are unable to agree what should happen regarding the costs of this application as a consequence of its outcome, we will consider any section 20C application made in due course.

Name: Judge Nikki Carr **Date:** 24 October 2023

Rights of appeal

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

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

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

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

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

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

Ownership of building	Directors (appointment and resignation)	Shareholders	The Shareholders' directors	The Shareholders' shareholders	The Shareholders' Shareholders' directors	Shareholders' shareholders' shareholders	Shareholders' shareholders' shareholders' directors	Shareholders' shareholders' shareholders' shareholders	Parent
Until 2015 (date?) OP Land (no 1) Limited	Michael David Watson (22 February 2021) Daniel Lau (10 July 2019)(Secretary) Paul Hallam (10 July 2019) (and Secretary 1 March 2012 – 10 July 2019) Christopher Charles McGill (29 March 2011) William Kenneth Procter (20 December 2005)	No registrable person Full accounts last made up to 31 December 2013 showing loss of £176,176 (due to cross funding of related companies, Fairhold Holdings Limited and Fairhold Holdings (2003) Limited.							Identified in full accounts for year end 31 December 2013 Immediate Holding co: Moorhead Property Holdings Limited (untraceable on Companies House – registered in Bahamas) Ultimate Holding Co: Euro Investments

		Total exemptions up to 31 December 2016. Dormant company since.							Overseas Inc (registered in the BVI) Ultimate controlling party: The Tchenguiz family trust. Common control and common directors with Estates and Managemen t Limited
2015 – 7 April 2017 Backfold Limited	Michael David Watson (22 February 2021) Daniel Lau (12 August 2019) (Secretary) Paul Hallam (12 August 2019) (Secretary 1 March 2012 –	(1) Lightyear Estates Holdings Limited (from 12 August 2019)	(1) Michael David Watson (22 February 2021) Daniel Lau (Secretary 10 July 2019) Paul Hallam (10 July 2019)(Secretar	(1) No registrable person. Full accounts last made up to December 2015, showing a balance of £1,544,912.					Backfold Limited accounts year end 31 December 2017 show that it ceased activity on 31 March 2017, and that net total assets

	21 July 2014) Christopher Charles McGill (12 August 2019) William Kenneth Procter (12 August 2019) Charles George William Crowe (21 July 2014 – 12 August 2019) Paul Richard Dennis-Jones (21 July 2014 – 12 August 2019) Christopher Charles McGill (29 March 2011 – 21 July 2014) William Kenneth		y 11 October 2012 – 10 July 2019) Christopher Charles McGill (11 October 2012) William Kenneth Procter (11 October 2012)	Principal Creditors are declared as related companies, Fairhold Umbra Limited and Fairhold Services Limited. Fairhold Umbra is named as a wholly owned subsidiary of Lightyear Estates (one of 23 wholly owned subsidiaries) By year end 2018, small company accounts showed net profit (in PLA) of					of the company were transferred to its immediate parent JLPPT Holdco 1 Limited by 'dividend in specie'. They also show that all expenses incurred by and income due to Backfold after 31 March 2017 were settled or received by JLPPT Holdco. Immediate parent co: JLPPT Holdco 1 Limited.

	Procter (16 March 2010 – 21 July 2014)			£148,717,927 and 41 wholly owned subsidiaries By year end 2019, small company accounts showed net pal £209,187,537 and 67 wholly owned subsidiaries, including Backfold Limited Vega GR was also sold in the year 2018 – 2019 to 'related companies' 'by virtue of common control'. Clear from					Ultimate controlling company PGIM Limited (by majority voting rights in JLPPT before 12 August 2019) John Lewis Partnership Pension Trust ultimate beneficial owner by virtue of majority ownership of economic rights in JLPPT Holdco. (1) Lightyear December

				CH records from Vega GR it was sold to Lightyear Estates Holdings Limited					2015 accounts show immediate parent Company is Moormead Property Holdings Limited (registered in the Bahamas) Ultimate parent company is Euro Investments Overseas Incorporated (BVI)
		(2) JLPPT Holdco 1 Limited (6 April 2016 – 12 August 2019) Renamed	(2) Michael David Watson (22 February 2021) Daniel Lau (Secretary 12	(2) (a) Vega GR Limited (3 November 2017) (b) PGIM	(2)(a) Michael David Watson (22 February 2021) Daniel Lau (Secretary	(2)(a) (i)Turing GR Limited (29 January 2019) (ii) Lightyear	(2)(a)(i) Michael David Watson (22 February 2021) Daniel Lau (Secretary 10 July	(2)(a)(i) No registrable person	Ultimate controlling party is the Tchenguiz Family Trust (2) JLPPT Holdco 1

		Vega Holdco 1 Limited 23 August 2019	August 2019) Paul Hallam (12 August 2019) Christopher Charles McGill (12 August 2019) William Kenneth Procter (12 August 2019) Charles George William Crowe (16 July 2014 – 12 August 2019) Paul Richard Dennis-Jones (16 July 2014 – 12 August 2019)	Limited (16 July 2016 – 2 August 2019)	10 July 2019) Paul Hallam (10 July 2019) (Secretary 4 August 2016 – 10 July 2019) Christopher Charles McGill 4 August 2016 William Kenneth Procter 4 August 2016) (2)(b) Unrelated Directors	Estates Holdings Limited (4 August 2016 – 29 January 2019)	2019) Paul Hallam (10 July 2019) (Secretary 27 April 2017 – 10 July 2019) Christopher Charles McGill (27 April 2017) William Kenneth Procter (27 April 2017) 2(a)(ii) as above		(declaring a net overall profit of £23,080,366 and capital reserves of £865,928) year-end December 2021 accounts show Vega Holdco (formerly JLPPT Holdco 1 Limited) is a wholly owned subsidiary of Turing GR. Also shown is that there were no employees other than the directors. Immediate

									parent: Turing GR. Ultimate holding company: Euro Investments Overseas Incorporate d (BVI) Ultimate controlling party: Tchenguiz Family Trust. **(2)(a) Vega GR** Group accounts year end December 2019 show Immediate parent co: Turing GR Ltd

									Ultimate holding co: Euro Investments Overseas Inc (BVI) Ultimate controlling party: Tchenguiz Family Trust (**2)(a)(i) Turing GR** Year end accounts December 2021 show that Vega GR is a wholly owned subsidiary. Royrose Limited is the immediate parent company

									(BVI). Ultimate holding co is Euro Investments Overseas inc (BVI). Ultimate controlling party is the Tchenguiz Family Trust.
7 April 2017 – now JLPPT HOLDCO 1 Limited (Renamed VEGA HOLDCO 1 Limited on 23 August 2019)	As Above								