FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2022/0234**
Property	**:**	**Rennie Court, Kings Reach, Stamford Street, London, SE1**
Applicant	**:**	**SOF-11 SBC Propco SARL**
Representative	**:**	**Thomas Rothwell (Counsel) instructed by Paul Hastings (Europe) LLP**
First Respondent	**:**	**Guidewell Ltd**
Representative	**:**	**Niraj Modha (Counsel) instructed under the Licenced Access Scheme**
Second Respondent	**:**	**Kings Reach Flats Management Limited**
Representative	**:**	**Paul Letman (Counsel) instructed by Harper & Odell, Solicitors**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Robert Latham** **Duncan Jagger FRICS** **Mr N Miller**
Date and Venue of Hearing	**:**	**5, 6, 7 and 8 September 2023 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**2 November 2023**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds that the service charge for management fees is unreasonable. This includes both the CBRE management fee and the site management fee. The Tribunal is satisfied that the management fees should be fixed at 8% of the service charges payable by the First Respondent for the relevant service charge year.

(2) Subject to the Tribunal's specific findings and the Applicant's concessions as stated below, the Tribunal finds that the service charges levied by the Applicant to the First Respondent for the years 2016, 2018, 2019, 2020, and 2021 (an interim charge) are payable and reasonable.

(3) The Tribunal declines to make a costs order against the Second Respondent under rule 13(1(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in favour of either the Applicant or the First Respondent.

Introduction

1. On 8 July 2022, the Applicant issued this application seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of estate service charges payable by the First Respondent in respect of the service charge years 2015 to 2022 (except for 2017[1]). On 20 March 2023, the Second Respondent was joined as a party. The Tribunal has been provided with a Bundle of Documents of 1,292 pages to which reference is made in this decision, together with a Bundle of Authorities which extends to 526 pages.

2. The 1985 Act was enacted to protect long lessees (referred to in the 1985 Act as "tenants") from paying for inappropriate works or for paying more than is reasonable for works that have been provided. Although this application relates to Rennie Court, none of the 99 tenants are parties to this application. These tenants had been granted long leases ("**the underleases**") between June 1976 and October 1978. They are required to pay service charges in respect of both their "Building" (Rennie Court) and the "Estate" which was then known as **the Kings Reach Estate**.

3. This application relates to the estate charges payable in respect of Rennie Court ("**the Building**"). This dispute has arisen because the current estate, now known as **the South Bank Central Estate ("the Estate"),** bears little resemblance to the estate which was constructed

[1] The Applicant has conceded that no charges are payable for the calendar year 2017 as a result of non-compliance with section 20B of the 1985 Act.

in the 1970s. This dispute dates back to 2015, when the redevelopment of the estate was completed.

4. The current application is a dispute between the Applicant and two intermediary landlords. In his Skeleton Argument, Mr Rothwell summarises the web of legal interests:

(i) Since 13 February 2019, SOF-11 SBC Propco SARL, the Applicant, has been the freeholder and long lease proprietor of the South Bank Central Estate. The freehold interest is registered under Title Number SGL 99778 (at p.409) and the leasehold interest[2] under Title Number TGL 441922 (at p.425)[3]. The Land Registry describes the land as being "Milroy Walk, Rennie Court and Kings Reach Tower". The Applicant Company is incorporated in Luxembourg.

(ii) Guidewell Limited, the First Respondent, is the long leasehold proprietor of Rennie Court pursuant to a lease dated 14 November 2001, between the First Respondent (the Lessor) and Mislex (319) Limited and Mislex (320) Limited (the Lessee). The lease (at p.177-193), is for a term of 998 years commencing on 24 June 2001 and is registered under Title Number TGL 196769 (at p.439) ("**the Headlease**"). The Applicant's superior leasehold interest in the South Bank Central Estate takes effect subject to the Headlease. As such, the Applicant is the First Respondent's direct landlord. The Tribunal is required to determine the service charges payable by the First Respondent to the Applicant pursuant to the terms of this Headlease.

(iii) Kings Reach Flats Management Limited, the Second Respondent, is a management company which is owned and managed by the tenants of Rennie Court and River Court. River Court is a neighbouring block which looks out onto the Thames. It had been part of the Kings Reach Estate, but is not part of the South Bank Central Estate. The Headlease is subject to an underlease of Rennie Court and River Court, dated 28 September 1978, between Kings Reach Investment Limited (Lessor) and the Second Respondent (Lessee). The lease (at p.1061-1094), is for a term of 99 years and three days from 29 September 1975. The Tribunal will refer to this as "**the Management Company Lease**". The Second Respondent has responsibility for managing, repairing and insuring both Rennie Court and River Court, but not the wider Estate. The First Respondent is entitled to pass on any estate service charges levied by the Applicant down to the Second Respondent. The Second Respondent therefore has a direct interest in any estate service charges charged by the Applicant to the Second Respondent.

[2] The lease is dated 30 November 2015 and is for a term of 999 years plus 10 days from 31 December 2014. The original parties were South Bank Tower Limited (Lessor) and Hermes Central London GP Limited and Hermes Central London Nominee Limited (Lessee).
[3] As a result of a registered charge against the leasehold interest, the freehold and long leasehold interests have not merged.

5. The Applicant seeks a determination as the estate service charges payable by the First Respondent over the period 30 November 2015 and 31 December 2022. A total of £104,665.28 has been demanded. The First Respondent has made four payments of £34,723.69. There is therefore a shortfall of £69,941.59. The First Respondent has only paid such sums as it has considered to be reasonable and payable.

6. The First Respondent has passed its charges directly onto the Second Respondent pursuant to the terms of the Management Company Lease. The Second Respondent has only made one payment. Neither the First nor the Second Respondent has issued an application seeking a determination of the estate charge payable by the Second Respondent to the First Respondent. At the commencement of the hearing, the Tribunal had understood that any finding that we made would determine not only the sums payable by the First Respondent pursuant to the Headlease, but also by Second Respondent pursuant to the Management Company Lease. However, in the course of his submissions, Mr Letman sought to raise a new argument that the First Respondent was only able to pass on 41% of the estate charges imposed on it by the Applicant. Mr Modha, unsurprisingly, felt unable to deal with this point at this late stage. The consequence of this is that this Tribunal is unable to determine the service charges payable by the Second Respondent to the First Respondent. In the absence of agreement, this will require a further determination by this Tribunal. The role of the Second Respondent in these proceedings is therefore limited to that of an interested party, having a legitimate concern about the estate charge passed by the Applicant to the First Respondent because all, or part of it, will be passed down to it in due course. As a consequence, this Tribunal is only concerned with the terms of the Headlease and not those of the Management Company Lease

7. These estate charges could eventually be passed down to the bottom of the chain to the 99 tenants at Rennie Court pursuant to their underleases. The Tribunal was told that, to date, the Second Respondent has not passed down any of these charges. The Second Respondent has retained sufficient reserves to meet these charges. This Tribunal is therefore not required to consider what estate charges may eventually be payable by the tenants. This potentially raises a range of issues. First, the underleases do not mirror the terms of either the Management Company Lease or the Headlease. Secondly, any potential liability by the tenants at River Court is unclear; they are obliged to pay an estate charge, but are no longer part of the South Bank Central Estate. Thirdly, in so far as the Second Respondent is unable to pass on any estate charge through the service charge, the tenants may bear the ultimate liability as shareholders of the Second Respondent Company.

8. Whilst the estate charge claimed by the Applicant against the First Respondent in respect of Rennie Courtis is some £20,000 per annum, the sum potentially payable by each of the 99 tenants would be some £200. At the beginning of the hearing, we were told that the parties were

more concerned as to how the estate charge would apply for the future, rather than the problems that have arisen in the past. As a problem-solving tribunal, we welcomed this approach.

9. However, as the hearing progressed, it became apparent that we can do no more than determine the extent to which the sums demanded by the Applicant are payable by the First Respondent. This leaves unresolved the estate charges payable by the Second Respondent under the Management Company Lease and by the tenants at Rennie Court (and possibly River Court) under their underleases.

The Application

10. On 8 July 2022 (at p.1-18), the Applicant issued its application against the First Respondent seeking a determination of the service charges payable for the service charge years 2015, 2016, 2018, 2019, 2020, 2021 and 2022. The sum in dispute was stated to be £84,543.92.

11. On 27 October 2022 (at p.19-26), Judge Pittaway gave Directions at a video Case Management Hearing. Mr Thomas Rothwell, Counsel, instructed by Paul Hastings (Europe) LLP appeared for the Applicant and Mr Niraj Modha, Counsel, instructed under the Licenced Access Scheme, appeared for the First Respondent. The Tribunal set the matter down for a hearing on 20 March 2023 with a time estimate of two days.

12. The Tribunal noted that the Second Respondent was not a party to the application and directed that the Applicant should send it a copy of the application and of the directions. The Second Respondent waited until 15 March 2023 before applying to be joined as a party to the proceedings. It has been criticised for its delay in making this application. However, had the First Respondent sought a binding determination as to the estate service charges payable by the Second Respondent, it would have been open to the First Respondent to issue an application against the Second Respondent. It did not do so.

13. Pursuant to the Directions:

(i) On 24 November 2022 (at p.35-45), the Applicant filed its Statement of Case.

(ii) On 19 January 2023 (at p.39-54), the First Respondent filed its Statement of Case.

(iii) On 19 January 2023 (at p.55-68), the Applicant filed a Reply.

(iv) On 19 February 2023, the parties exchanged witness statements.

14. On 15 March 2023, the Second Respondent applied to be a party to the application. A Procedural Judge adjourned this application to the hearing which was fixed for 20 and 21 March 2023. It would have been open to the Second Respondent to issue an application to determine the estate charge payable by it to the First Respondent. The Second Respondent did not do so.

15. On 20 March 2023, this application was listed for hearing before Judge Nicol and Mr Oliver Dowty MRICS. Mr Rothwell again appeared for the Claimant and Mr Modha for the First Respondent. Mr Paul Letman, Counsel, instructed by Harper & Odell, Solicitors, appeared for the Second Respondent. A number of witnesses also attended. The Tribunal was critical of the late stage at which the Second Respondent had made its application and was satisfied that there was no justified reason for its delay. However, the Tribunal concluded that it had no option but to join the Second Respondent as a party and to adjourn the hearing. The Tribunal noted that the Second Respondent had a much greater interest in the outcome of the application, than the First Respondent who merely passed the service charge down the chain. Further, the Second Respondent was challenging the quality of the services provided by the Applicant. The Tribunal noted that had this been a court hearing, the Second Respondent would have been liable to pay the costs thrown away by its late application. The Tribunal reserved any costs application under the Tribunal Rules to this Tribunal.

16. The Tribunal gave further Directions, pursuant to which:

(i) On 14 April 2023 (at p.102-112), the Second Respondent filed its Statement of Case. Given the late stage at which it had decided to join the proceedings, the Tribunal would have expected the Statement of Case, drafted by Counsel, to have included all the issues that the Second Respondent sought to raise. However, this was not to prove the case.

(ii) On 26 May 2023 (at p.127-150), the Applicant filed its Reply.

(iii) On 25 May 2023 (at p.166-172), the First Respondent filed its response.

The Hearing

17. Mr Rothwell appeared for the Applicant. He adduced evidence from Ms Claire Fordham who is the Property Manager and a director of CBRE which has been appointed by the Applicant since June 2015 to manage the Estate. An issue which has been raised is the manner in which invoices have been allocated to the different expenditure heads. We are satisfied that Ms Fordham would have done this in a fair and transparent manner.

18. Mr Rothwell also adduced evidence, remotely, from Mr Leslie Davidson, a General Manager for CBRE. We were impressed by the evidence given by Mr Davidson. We were satisfied that he was a conscientious property manager and accept his evidence as to the steps that he took to address the items of disrepair about which the Second Respondent complains.

19. Mr Modha appeared for the First Respondent. He adduced evidence from Mr Mervyn Mandell, a surveyor engaged as a consultant by Inremco 26 Limited, the First Respondent's parent company. He gave evidence as to the manner in which the estate had developed. His evidence was not entirely reliable and he was not good on detail. For example, he was unaware that there was an external staircase to the Podium.

20. Mr Letman appeared for the Second Respondent. He adduced evidence from Mr Michael Keam who has been employed by the Second Respondent since April 2021 as property service manager to manage both Rennie Court and River Court. Mr Keam has an office at Rennie Court. He was unaware of the respective roles of the CBRE on-site and off-site teams. He stated that he had never seen any CBRE security patrol in the communal gardens. We find this surprising, as the times of the patrols are recorded.

21. Mr Letman also adduced evidence from Mr Michael Hollingsworth who has been a resident leaseholder of 84 Rennie Court since November 2009. He is also one of the lessees who serve as directors of the Second Respondent. In 2013, Mr Hollingsworth had been content with what was proposed when the estate was developed. Mr Rothwell referred to the "goodwill works" which were carried out at the time of the development. In reality, these works were necessary to enable the estate to be redeveloped. It is apparent that Mr Hollingsworth now considers that the development was not such a good deal for the tenants. It seems that there was no discussion as to the estate service charges for which Rennie Court would be liable after the development had been completed. The developers did not consider it necessary to vary the leases to reflect that both the extent and nature of the estate had fundamentally changed as a result of the development. Mr Hollingsworth stated that he was very happy with his flat at Rennie Court. Indeed, as was confirmed by our inspection, both the Building and the Estate are well maintained.

22. Mr Eric Brown, the leaseholder of 55 Rennie Court, and the chairman of the Second Respondent, also attended the hearing. He was not called to give evidence. The Second Respondent has not sought to pass on any of these charges to the tenants at Rennie Court and has provided no explanation as to how it intends to do so.

23. This Tribunal gives directions so that any application can be determined fairly and in a proportionate manner. During the course of the hearing, Mr Letman raised a number of issues which could, and should have been

raised in the Second Respondent's Statement of Case. This had been drafted by Counsel. Mr Letman made a late application to amend the Statement of Case which we discuss below. In his closing address, he took the Tribunal to a number of invoices which he contended were not payable. The Second Respondent had not prepared a Scott Schedule and these points had not been put to any of the witnesses. The Respondents have raised a large number of issues. The Tribunal focuses on those which had been raised in their Statements of Case.

24. All Counsel provided Skeleton Arguments and a Bundle of Authorities. The Tribunal is grateful to the assistance which they provided.

The Second Respondent's late application to amend

25. At the end of his closing submissions, Mr Letman sought to make the following amendment to the Second Respondent's Statement of Case:

> "Yet further, as between the First and Respondent and the Second Respondent, it is the Second Respondent's case that under the terms of the 1978 Headlease [the Management Company Lease] "the fair and reasonable apportionment of the Ninth Schedule services recoverable by the First Respondent is limited in accordance with the terms of the occupational leases [the underleases] referred to in the Fourth Schedule thereof to 41% of the total of any actual expenditure incurred in respect of the provision of those services".

26. It seems that the reference to 41% is to be derived from the underleases of the 99 tenants at Rennie Court and the 87 tenants at River Court. Mr Letman supplied the Tribunal with the underlease for 89 Rennie Court, dated 13 February 1978. None of the parties had considered it appropriate to include an underlease in the Bundle of Documents. The lease was granted by Kings Reach Investments Limited. It makes no reference to the Second Respondent which had not been incorporated at this date. The lease requires the tenant to pay 0.55% towards the building service charge and 0.231% towards the estate service charge. Mr Letman informed the Tribunal that the Rennie Court and River Court tenants contributed a total of 100% towards the building service charge, but only 41% to the estate service charge. The Estate is defined as "offices, shops, flats, a public house, and other buildings" registered at H M Land Registry under Title Numbers SGL 99778, SGL 125199 and SGL 135621". This was the original Kings Reach Estate. The Tribunal notes that the current South Bank Central Estate only includes Title Numbers SGL 99778, the freehold interest being held by the Applicant. Title Number SGL125199 relates to River Court and the freehold interest is now owned by the First Respondent. Title Number SGL 135621 seems to relate the freehold for the Doggetts Coat and Badger Public House. This underlease raises a number of interesting legal issues, not least why the underleases were not varied when the estate was broken down into three separate

units. No Counsel considered the underleases to be relevant in construing what estate charge is payable by the First Respondent under the Headlease. In such circumstances, it is difficult to see how they could be relevant to the estate charge payable by the Second Respondent to the First Respondent under the Management Company Lease.

27. Mr Modha objected to this point being raised at this late stage. He stated that he was unable to deal with it. Mr Rothwell was neutral; this point not affecting his client. The Tribunal refused to permit the Second Respondent to take this point for the reasons stated by Mr Modha. It is not a simple point. It is an issue which the Second Respondent should have pleaded in its Statement of Case. The Tribunal notes that the Applicant is seeking to pass on substantially less than 41% of the estate charge to Rennie Court. Mr Letman seeks to argue that this reduced sum should be reduced by a further 41%. The Tribunal notes that this point is irrelevant to the estate service charge payable by the First Respondent to the Applicant which is the issue which we are required to determine in this application.

Issues in Dispute

28. The Applicant has made a number of concessions:

(i) The Applicant is no longer claiming £679.52 for the estate charge over the period 30 November to 31 December 2015. This sum was demanded before the Applicant acquired the freehold interest. There had been an issue as whether this demand had complied with section 20B of the 1985 Act.

(ii) The First Respondent has argued that the original demands did not state the name and address of the landlord as required by section 47(1) of the Landlord and Tenant Act 1987. The Applicant concedes that some of the demands were defective. On 14 April 2022, the Applicant provided the relevant information. On 18 January 2013, as a "belt and braces measure", the Applicant reissued the demands. This argument has therefore fallen away. However, the sums would only have become payable when lawful demands were made.

(iii) The First Respondent has also argued that the original demands were not accompanied by the requisite Summary of Rights and Obligations required by section 21B of the 1985 Act. Further, when these demands were reissued on 3 May 2022, the information provided was out of date. The Applicant accepts these criticisms. Further demands were issued on 18 January 2023. The sums demanded therefore only became payable on this date.

(iv) Mr Rothwell has agreed that it is not open to the Applicant to charge a notional rent for the on-site management office (see *Retirement Lease*

Housing Association v Schellerup [2020] UKUT 232 (LC) per Martin Rodger KC at [32]). He therefore agreed that the management charges should be reduced by £1,041.42 (namely 5% of £19,909.05).

29. The First and Second Respondents had both made applications seeking orders under section 20C of the 1985 Act restricting the right of the landlord to pass on the cost of these proceedings through the service charge. However, Counsel accepted that it seemed unlikely that the respective leases would allow either landlord to do so. Counsel therefore agreed that it would be inappropriate for this Tribunal to make any determination. If either landlord were to seek to pass on their costs through the service charge, it would be open to the tenant to make a separate application to this tribunal.

30. Applicant seeks a determination that the following estate service charges are payable and reasonable: (i) 2016: £12,114.87; (ii) 2018: £19,052.95; (iii) 2019: £18,336.80; (iv) 2020: £16,710.72; (v) 2021: £17,749.06; and (vi) 2022: £20,021.36. The Applicant has provided accounts for all the years (at p.238-372), except for 2022. The accounts for this year were not available and we are therefore considering an interim service charge. When the accounts are available, the Applicant will need to consider the sum available in the light of our findings.

31. The Respondents have raised a large number of issues. £17,749.06 is claimed for 2021 (at p.10). There is a breakdown of this expenditure: £10,746.88 (60.5%) relates to security, whilst £3,172.90 (17.9%) relates to management charges. The Tribunal focuses on these larger items.

32. The Tribunal has identified the following issues to be determined:

(i) The Second Respondent argues that the tenants derive little or no benefit from the estate services for which the First Respondent has been charged. This is a consistent theme in the Second Respondent's case. The underlying complaint is the radical change in the estate charges which are now being made, the current South Bank Central Estate bearing little resemblance to the Kings Reach Estate which existed when the underleases were granted.

(ii) Both Respondents argue that the Headlease does not permit the landlord to collect a service charge in respect of "security personnel".

(iii) The reasonableness of the security services, both with regard to the cost and the quality of the service.

(iv) The apportionment of the service charges between the different residential and commercial users on the estate. This relates to both the formula adopted for the apportionment and the manner in which expenditure is charged to the different schedules of expenditure. Mr

Modha complained of "smoke and mirrors" and a lack of transparency in the manner in which expenditure is apportioned.

(v) The Respondents argue that there should be no estate service charge in respect of the carpark as Rennie Court has its own carpark.

(vi) The Respondents challenge the service charges which have been levied in respect of the Podium Garden.

(vii) The Second Respondent challenges the service charges which have been levied in respect of the loading bay.

(viii) The reasonableness of the management charges. The Respondents argue that there is unnecessary duplication between the on-site and off-site facilities.

(ix) The Second Respondent argues that the management charges should be reduced and that certain repair items should be disallowed because of three items of disrepair, namely a leak from the Podium into a stairway at Rennie Court; the ongoing defects to the automatic door into the garage; and the inadequate irrigation system for the Podium.

(x) The First Respondent argues that the Applicant agreed to waive the management charges for the years 2015 to 2017.

(xi) The First Respondent contends that three of the management agreements are qualifying long term agreements ("QLTAs") in respect of which the Applicant had been obliged to consult. The Applicant is therefore restricted to passing on only £100 to the First Respondent in respect of each of these contracts.

(xii) The Second Respondent challenges a number of small items of expenditure such as the accountancy charges.

(xiii) Both the Applicant and the First Respondent seek a penal costs order against the Second Respondent for the costs thrown away in respect of the hearing fixed for 20 March 2023, pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Applicant seeks costs in the sum of £15,012, whilst the Second Respondent seeks costs of £14,800.

The Estate

33. The original Kings Reach Estate was designed by Sir Richard Seifert and was constructed during the early 1970s. It included the renowned thirty-storey office block then known as Kings Reach Tower. The tower and the office accommodation were the headquarters of IPC Media up until

2007. Rennie Court was a residential block on the 1st to 10th floors, together with a number of carparking spaces located in the basement. There were shop premises on the ground floor, which did not form part of Rennie Court. The estate also included River Court, a separate residential block with 87 flats which looks out over the Thames.

34. The Kings Reach Estate no longer exists in its original form. A major redevelopment was undertaken between 2013 and 2015. The current estate is now smaller and has been rebranded as the South Bank Central Estate. The Estate is restricted to the land registered under Title Number SGL 99778. There are separate freehold owners for River Court and the land occupied by the Doggetts Coat and Badger Public House. A complex web of leases and underleases have been created which have changed hands on a number of occasions.

35. There is a photograph of the Estate at p.771. An additional 11 floors have been added to Kings Reach Tower (now known as South Bank Tower). Floors 1 to 9 are occupied by commercial units (the Alto Office Building), whilst floors 10-41 contain 194 luxury residential flats affording superb views across the Thames. The eight storey Podium Offices are refurbished and enlarged with two additional floors. Twelve new retail units have been built below Rennie Court. There is a new Podium Garden which is shared by the tenants at Rennie Court and the commercial users of the Podium Offices.

36. The redevelopment did not affect any of the 99 flats at Rennie Court. However, the redevelopment would not have been possible without a number of significant changes. These included a modified and extended reception area, a new passenger lift and staircase, works to the waste heat connection, modifications to the basement carpark and a new access door from Rennie Court to Stamford Street with access control. The Podium Garden landscaping was improved. A new ground floor loading bay area was created for the retail units which can also be used by the Rennie Court tenants and all occupiers on the Estate.

37. The Estate is situated to the west of Blackfriars Bridge. Over the past fifty years, this area has been transformed. Rennie Court has been aptly described as being "superbly situated on the vibrant South Bank, London's cultural centre"[4]. But whilst a high quality flat at Rennie Court would market for some £725k, a similar flat in the luxury South Bank Tower, with a swimming pool, gym, business lounge and roof terrace, would market for some £4m/£5m.

The Inspection

38. On the afternoon of the first day of the hearing, the Tribunal inspected the South Bank Central Estate. We were accompanied by Counsel. We

[4] Sale Particulars at p.1294-1296.

first visited Rennie Court and were shown the new entrance area and lift necessitated by the development in 2013. Rennie Court is well maintained. The building is served by lifts. There are three wings, Rennie Court West (Nos. 1-22), Rennie Court East (Nos.23-59) and Rennie Court South (Nos.60-99). There is a reception area which is staffed 24 hours a day. There is an extensive CCTV system with 30 cameras. Mr Keam has an office at Rennie Court. He also manages River Court, the block which looks over the Thames and which is no longer part of the Estate.

39. We were taken up to the Podium Garden via a staircase which is a means of escape. We saw the bucket which had been left out to collect water which had been leaking from the Podium. It is far from satisfactory to have a bucket obstructing the stairway which is a means of escape. We were shown the area of the Podium which is thought to be the source of the leak. It was apparent that various works had been executed to abate the leak, albeit that these had not been successful. The next step will be to dig up this area to identify the cause of the leak. This destructive work will be expensive.

40. The Podium is an attractive area with areas of grass and plants. It is shared by the residents of Rennie Court and the commercial users from the Podium Office. It remains unclear whether the residents at River Court retain a right of access. The Podium is in the possession of, and is managed by, the Applicant. It was apparent that there had been problems with the sprinkler system which did not extend to the far end of the Podium. We later heard evidence from Ms Fordham that the Applicant watered this area by hand at no additional cost to the service charge. The Podium is monitored by CCTV cameras, three of which have been installed by the Second Respondent and one by the Applicant. The residents and commercial users have direct access onto the Podium. There is a separate access from the roadway which is controlled by a security gate with a fob.

41. The Tribunal was taken down to the carpark. Rennie Court has always had its own carpark which now has 110 spaces. A diesel tank had been removed creating some six additional spaces. Some of the spaces are used by the neighbouring hotel. Initially, there was direct access from the external roadway down to the Rennie Court carpark. This is no longer possible. An additional underground area has been created with 21 carparking spaces for leaseholders at South Bank Tower. There is also a cycle area and a unit with showers for the commercial tenants. As a result of the 2015 changes, access can now only be gained to the Rennie Court carpark through the Applicant's new carpark. There are separate ramps for entering and leaving the carpark. The Rennie Court carpark has its own entry barrier and is managed by the Second Respondent. We were shown the automatic barrier into the carpark which has been defective. It is apparent that it has a design fault. It has a tendency to jump out of its runners. The height of the barrier is considerably greater than it needs to be. Those seeking to gain access into the garage are inconvenienced

when it has jumped out of its sockets, and they need to contact the security in order to gain access.

42. The Tribunal was shown the loading bay which was installed in 2013. This is primarily used for deliveries by the commercial units. However, it can also be used by the Rennie Court tenants. It was apparent to us that this is a significant amenity to them given the parking restrictions in the area.

43. The Tribunal was then taken to the Estate Security Room which is also staffed 24 hours a day. There is an extensive system of CCTV cameras which monitor the whole of the South Bank Central Estate. The number of cameras has recently been increased from 132 to 162. Security staff patrol the estate and are required to swipe a card on a number of monitoring points to record their patrols. We were also taken to the on-site office used by the CBRE staff. It was apparent to us that their primary duty is to manage the commercial and residential units which are under the direct management of the Applicant.

44. The Tribunal finally walked around the perimeter of the Estate. We were shown the twelve ground floor retail units, including a Waitrose. These units were substantially redesigned in 2015. They are constructed below the Podium and under Rennie Court. Both Rennie Court and the Estate are maintained to the highest standards.

The Headlease

45. The Headlease is dated 14 November 2001 is at p.177-193. The Lessor grants the Lessee a term of 998 years from 24 June 2001. By Clause 6, the First Respondent is obliged to pay the Applicant a service charge in respect of the maintenance and management of the Estate. The Headlease provides for quarterly payments on account with a balancing charge and/or credit following year end upon provision of a final statement.

46. The services in respect of which service charges are recoverable are set out in the Fifth Schedule of the Headlease:

"1. Maintaining repairing rebuilding and cleaning all structures supports party walls or fences sewer drains watercourses pipes conduits wires cables or conveniences which may belong to or be used for the Demised Property or the Development or any part thereof in common with other premises (whether or not forming part of the Development) near to or adjoining the Demised Property or the Development or for their common benefit including in particular (but without prejudice to the generality of the foregoing) the Service Road shown edged brown on the plan marked 'A' annexed to the Residents Company Lease and all parts thereof whether within or without the Development

2. Cleaning maintaining in good repair and lighting the Pedestrian Access Ways within the Southern Development

3. Cleaning maintaining in good repair and lighting any other pedestrian ways within the Development and all other parts used in common as aforesaid and not otherwise specifically referred to in this Schedule.

4. All charges assessments and other outgoings (if any) payable by the Lessor in respect of all common parts of the Development

5. Managing the Development and such further services as are in the opinion of the Lessor necessary or proper for maintaining and securing the facilities and amenities of the Development."

The Background

47. The original Kings Reach Estate included the thirty-storey office block then known as Kings Reach Tower, commercial and retail units, a public house and the two residential buildings at Rennie Court and River Court.

48. Between 7 June 1976 and 1 October 1978, Kings Reach Investments Limited granted leases of the 99 flats at Rennie Court for terms of 99 years from 29 September 1975 (the underleases). A number of these leases have now been extended by 90 years.

49. On 23 February 1978, Kings Reach Flats Management Limited (the Second Respondent) was incorporated as a management company to manage Rennie Court and River Court on behalf of the tenants. Clause 9 of the underleases had contemplated that this management company would be established to perform all or any of the Landlord's obligations under their underlease. The Second Respondent is now owned and managed by the 99 tenants at Rennie Court (Class B shareholders) and the 87 shareholders at River Court (Class A shareholders).

50. On 28 September 1978, Kings Reach Investments Limited granted an intermediary lease (the Management Company Lease) to the Second Respondent demising the "Demised Property" for a term of 99 years and three days from 29 September 1975. The "Demised Property" is described in Schedule 1 and comprises the residential buildings at Rennie Court and River Court. "The Development" is defined as "all those parts of the Lessor's development bounded by the River Thames on the north, by Blackfriars Bridge on the east, by Stamford Street on the south, and by Hatfields on the west". On 28 May 1980 (at p.1096-1102), there was a deed of variation.

51. At this stage, there was a simple structure for the management of the two residential blocks at Rennie Court and River Court and of the Kings

Reach Estate. The estate charges were modest and the tenants paid the sums demanded.

52. The current dispute has arisen from the changes that have occurred over the subsequent years. River Court and the Doggetts Coat and Badger Public House are no longer part of the Estate. A complex web of leases and underleases have been created which have changed hands on a number of occasions.

53. On 14 November 2001, the Headlease with which this Tribunal is concerned was granted by the First Respondent to Mislex (319) Limited and Mislex (320) Limited. Mr Mandell informed the Tribunal that the First Respondent had acquired the freehold interest in all or part of the Kings Reach Estate "in the early 1990s". Since "about 1998", Mr Mandell became involved in advising the First Respondent in respect of the management and development of the Kings Reach Estate. The First Respondent subsequently sold the freehold of the current Estate, retaining the freehold interest in River Court. At the same time, the First Respondent granted a 998-year leaseback of Rennie Court. In 2002, the First Respondent became the registered owner of the Headlease, and remains the Lessor under this lease.

54. In 2007, IPC Media vacated Kings Reach Tower. This created the opportunity to develop the Estate. We were told that the Estate was eventually developed by CIT between 2013 and 2015. On 26 November 2015, the First Respondent granted the Second Respondent a supplemental underlease (at p.1273-1287) in respect of the reception extension areas which had been part of the development. In 2015, Hermes Central London Partnership (Hermes) acquired the freehold of the Estate.

55. On 1 June 2015, Hermes appointed CBRE to manage the Estate. The Applicant claims service charges from 30 November 2015. The initial demand of £679.52 is for the period 30 November to 31 December 2015. Thereafter accounts have been maintained for the calendar year. However, there was a substantial delay before the demands were made. Thus, the initial demand for £679.52 was not made until 26 October 2018 and the 2016 demand of £12,114.87 was not made until 12 February 2019 (see p.32). The apparent reason for the delay seems to be that the Applicant was uncertain as to how to apportion the service charges between the different commercial and residential lessees on the Estate. There has been an issue as to whether the requisite Section 20B Notices were served as a result of which the Applicant has abandoned any claim for service charges for 2015.

56. On 31 May 2019, the Applicant was registered at the Land Registry as the freehold owner of the Estate (at p.409-423) having acquired this interest on 16 May 2019 for £1. Their freehold title is registered under title number SGL99778.

Issue 1: "Little or No Benefit"

57. A consistent theme in the Second Respondent's submissions has been that the Rennie Court tenants derive little or no benefit from the service for which they have been charged. The Estate security has only been provided since 2015. This was not required before the Estate was developed in 2013.

58. The Tribunal can deal with this argument shortly. The issue for this Tribunal is whether the Headlease permits the Applicant to provide the estate services which have been levied. If the landlord is entitled to provide the services, it is for the tenants to decide whether or not to make use of them.

59. The Podium Garden is a useful amenity for residents living in London. We are also satisfied that the loading bay is also a useful facility. Parking is restricted around the Estate. Rennie Court residents now need access to their garage through the Estate carpark. The redevelopment impinged upon their rights. However, the Second Respondent agreed to a supplemental lease to facilitate this. There were also a number of "goodwill works". The Estate carpark needs to be lit, cleaned and maintained if Rennie Court residents are now to access their carpark.

Issue 2: Does the Headlease permit the landlord to levy a service charge for "security"?

60. The Respondents argue that the Headlease does not permit the Applicant to charge for the extensive security which is now provided on the Estate. This is the most significant element of the estate service charge (60%). This charge relates to the security guards and the extensive network of CCTV on the Estate.

61. Paragraph 5 of the Fifth Schedule of the Headlease permits the Applicant to recover charges for the following services (emphasis added):

> "Managing the Development and such further services as are in the opinion of the Lessor necessary or proper for maintaining and securing the facilities and amenities of the Development"

62. Mr Rothwell argued that this provision entitles the Applicant to charge for appropriate security services provided that it considers them necessary or proper for "securing the facilities and amenities of the Development". The natural meaning of "to secure" is "to make or keep (a person, a person's life, oneself etc.) secure or safe from danger or harm"; "to guard or take precautions against danger"; "to protect"[5].

[5] See the Oxford Shorter English Dictionary.

63. Mr Letman argued that "securing" does not mean "security". Rather, the reference to "securing" is synonymous with "ensuring" the continuity of the facilities and amenities. It is not apt to cover security patrols. He referred the Tribunal to *Monkton v Pathe* [1914] 1KB 395, a copyright case in which Buckley LJ (at p.406) considered that the fair meaning of "securing" in the context of that case "includes the meaning of ensuring or rendering certain the payment of royalties". The context of the current case is quite different. Mr Modha also argues that in the context of this lease, "securing" means "ensuring or rendering certain provision". "Maintaining and securing" refer to keeping available and in existence the facilities and amenities.

64. Counsel agreed that our starting point is the Supreme Court decision in *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619. Lord Neuberger gave the following guidance:

> "15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

65. Lord Neuberger then went on to make seven points, the final of which was:

> "24. Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in *McHale v Earl Cadogan* [2010] HLR 412, para 17. What he was saying, quite correctly, was that the court should not "bring within the general words of a service charge clause anything which does not clearly belong there".

66. Counsel also referred the Tribunal to the Upper Tribunal decision of Judge Elizabeth Cooke in *Dell v 89 Holland Park (Management) Ltd*

[2022] UKUT 169 (LC) in which she considered (at [34] – [5]) the extent to which *Gilje v Charlgrove Securities Limited* [2003] EWHC Civ 1777 remained good law. In that case Mummery LJ (at 32]) had regarded the requirement of clarity as an example of the contra proferentem rule, which means that a lease drafted by the landlord is to be construed against the landlord in case of ambiguity. We understand that this decision is under appeal and it is not necessary for us to express any view on this issue.

67. Our starting point is to give the word "securing" its natural and ordinary meaning in the context of this clause. The clause contemplates such <u>further</u> services as the landlord considers necessary. It does not therefore look back to the services specified in the previous four paragraphs of the Schedule or the need to ensure the continuity of those services. The natural meaning of "securing" is "making or keeping secure or safe" or "guarding or taking precautions against danger". The purpose of the security guards and the CCTV cameras is to keep safe the residents and other users on the Estate and to keep secure and protect the facilities on the Estate. We are therefore satisfied that these services fall within the scope of the services contemplated by the lease.

68. We are required to have regard to the "facts and circumstances known or assumed by the parties at the time that the document was executed". No Counsel considered that the terms of the underleases were factors that we should consider. Mr Rothwell noted that the Headlease was granted in 2001 for a term of 998 years. At that time the parties would have known that security was an important factor in this area of London. The parties would also have recognised that the Estate would develop over time and that the management needs would change. These factors support the conclusion that we have reached. We also note that in *Re Latitude Court* (LON/00BB/LSC/2013/0326), a First-tier Tribunal held that a lease which referred to "security" extended to the cost of employing security staff.

<u>Issue 3: Reasonableness of the Charge for Security Services</u>

69. Rennie Court has been charged £10,746.88 for security in 2021. This is 60.5% of the service charge. It equates to some £100 per tenant.

70. The Tribunal has found that the Applicant is entitled to pass on the cost of the security staff, the Dockmaster, and the cost of maintaining the CCTV service. CBRE, on behalf of the Head Lessor, has seen security as an important service for the Estate. On 18 January 2018 (at p.795-800), Strategic Security made 29 "key recommendations" having conducted a security review. In July 2022 (at p.801-826), a further review was conducted by Ward Security Limited.

71. We accept that this service may be a greater priority for the residents in South Bank Tower and the retail and commercial units. However, the

service extends to the Podium Garden, the loading bay and the Estate carpark. It also extends to the perimeter of the Estate. The Applicant is entitled to conclude that these services are "necessary" and "proper" for the benefit of the Rennie Court residents. We note that they only pay a small proportion of the cost of the service, ranging from 0.8% to 5.02% depending upon the Schedule to which the cost is allocated.

72. The Second Respondent suggested that the security guards did not patrol the Podium Garden. This is simply wrong. The Applicant has provided a log (at p.476-509). The log also extends to the patrols in the Estate garage (at p.510-543). The First Respondent adduced evidence from Mr Mandell. He stated that there was no external access to the Podium Garden. Again, he is wrong on this. We saw the external door which is controlled by a fob. We accept that there is a potential risk of tailgating.

73. The fact that the Second Respondent also has CCTV cameras looking onto the Podium Garden is a matter for its directors. This area is in the possession of the Applicant. The garden is used by the commercial users from the Podium office. The Applicant has the primary responsibility for security in this area.

74. We accept that there is a risk of "urban explorers" keen to scale South Bank Tower. Mr Davidson has provided a number of incident reports (at p.1,218-1,253). Trespassers have sought to gain access through the Estate carpark. The on-site security staff have prevented these incidents from escalating.

75. We are satisfied that the Applicant has operated a well-run security system which benefits the whole Estate, including the Rennie Court residents. We are also satisfied that the costs incurred have been reasonable.

Issue 4: The Apportionment of the Service Charges

76. Clause 6(1) of the Headlease requires the Lessee to pay a proportion of any service charge "equal to such fair and reasonable proportion as the Lessor may reasonably determine". The manner in which such a term should be construed has recently been considered by the Supreme Court in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual

regime is likely to leave important decisions to the discretion of the landlord. In the current case, the Applicant has a discretion as to how the cost of these services is to be apportioned. The landlord is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord has acted reasonably (see [33]).

77. In 2016, CBRE carried out a detailed review of how the service charges should be apportioned. The Service Charge Guide (at p.453-474) is dated 26 May 2016. It has a foreword from Peter Forrester FRICS, Chairman of the RICS Service Charge Code of Practice Steering Group. Having carried out a rigorous review of the methodology, he was "delighted" to endorse it as being in accordance with industry best practice. Expenditure on specific services was to be allocated to various schedules. CBRE's management fee was to be set on a fixed-price basis and apportioned between these schedules. The cost was to be apportioned between the residential and the commercial units on the basis of the Gross Internal Area (GIA). However, an exception was made for Rennie Court which was rather to be based on the footprint of the Building. This was to reflect the fully repairing nature of the Rennie Court Headlease and the comparatively limited direct benefit that the tenants would receive from the estate services. Given that Rennie Court is constructed over ten floors, this constitutes a very substantial reduction on what would otherwise be payable. The effect of this is that only 5.02% of the residential expenditure is charged to Rennie Court. This percentage would have been substantially higher (some 30%) had it been allocated on the basis of GIA.

78. Mr Rothwell explained how the Applicant has operated a modified version of this scheme. Because the commercial lessees are charged VAT, separate schedules are maintained for the commercial and the residential users. There are nine schedules for the commercial lessees and six for the residential lessees (see p.1104). The purpose of these schedules is to ensure that individual occupiers do not pay for any of the services from which they do not benefit.

79. Three of the residential schedules relate solely to South Bank Tower. This Tribunal is concerned with the three which relate to Rennie Court. The manner in which the scheme operates is illustrated by the service charges for 2021. A total of £17,749.06 was charged to Rennie Court (see p.10). Spread across the three schedules, the most significant items for Rennie Court were "security" - £10,746.88 (60.5%) and management charges - £3,172.90 (17.9%). Of the management charges, £1,423.01 was the CBRE management fee (8.0%) and £1,74.89 (9.9%) related to CBRE site management.

80. The Summary of the Service Charge Expenditure for 2021 (at p.346-347) breaks down the expenditure over the six schedules. The three Schedules which relate to Rennie Court are:

(i) Schedule 1 – Estate: This relates to the security, repair and maintenance of the Estate. This includes the maintenance of the Podium Garden. 59.07% of this expenditure was charged to the commercial users and 40.3% to the residential units. Rennie Court paid 5.02% of the residential element, namely 2.14% of the total expenditure. In 2021, £259,385 was charged to the residential units, of which £13,488 was payable by Rennie Court. The largest items were security (£176,217); management fees: £20,666; and site management resources: £34,858. The sums relating to cleaning and sustainability (£15,530) and Landscaping and environment (£4,736) largely relate to the Podium Garden and are modest.

(ii) Schedule 3 – Estate Loading Bay: This relates to the provision of security, repair and maintenance of the Loading Bay. This includes the employment of a Dockmaster. This facility is accessed by all occupiers on the Estate. However, a weighting of six is applied to the retail units, reflecting the greater use that they will make of the facility. A further one third discount is applied for the residential units, compared with the other commercial units. 84.6% of this expenditure was charged to the commercial users and 15.4% to the residential units. Rennie Court paid 5.02% of the residential element, namely 0.8% of the total expenditure. In 2021, £40.251 was charged to the residential units, of which £2,093 was passed to Rennie Court. The largest items were security (£30,116); management fees (£3,213); and mechanical and electrical services (£3,035).

(i) Schedule 6 – The Estate Carpark: This relates to the repair, maintenance and security of the Estate Carpark. This is separate from the Rennie Court carpark which is maintained by the Second Respondent. However, Rennie Court residents need to access this carpark to gain access to their carpark. 100% of this expenditure is charged to the residential units, of which Rennie Court pay 5.02%. Whilst there are 110 parking spaces in the Rennie Court carpark, there are only 21 carparking spaces in the Estate Carpark which are used by residents at South Bank Tower. In 2021, £51,939 was charged to the residential units, of which £2,701 was passed to the Rennie Court. The largest items were electricity (£16,562), mechanical and electrical services (£15,817), cleaning and sustainability (£5,857) and management fees (£4,468).

81. Mr Modha contended that Rennie Court is now obliged to pay more than was contemplated under the Service Charge Guide. He refers to Appendix C (at p.473). which indicates that Rennie Court would pay 2.05% of the Schedule 1 Estate Costs, 2.09% of the Schedule 3 Estate Loading Bay Costs and 82.71% of the Schedule 10 Carpark costs. He suggests that Rennie Court is now paying 5.02% of the Schedule 1 costs. He is wrong on this. Whilst Rennie Court pays 5.02% of the residential element, it pays only 2.14% of the overall cost. Rennie Court contribute 0.8% of the Schedule 3 costs and 5.02% of the Schedule 6 costs. Whilst

Rennie Court pays marginally more of the Schedule 1 costs, it pays substantially less in respect of the Schedule 3 and Schedule 6 costs.

82. Both Mr Modha and Mr Letman complain of "smoke and mirrors" in the way that the charges have been allocated. Complaint is made of the arbitrary manner in which expenditure is allocated between the different schedules, for example the management fees and the sums charged for security.

83. The Tribunal is satisfied that the Applicant has adopted a rational and reasonable method for allocating service charges. This is based on the Service Charge Guide which is a thorough and careful piece of research. The Guide recognises that Rennie Court benefitted substantially less from the estate services than the other residential and commercial units. This is reflected by the decision to base the Rennie Court apportionment on the footprint of the Building, rather than the GIA of the individual flats. This reduces their overall contribution to the residential expenditure from some 30% to 5.02%. The Tribunal is satisfied that this is reasonable. However, we accept that we should also consider the effect of this apportionment on the individual services that have been provided.

84. We accept that CBRE has to exercise a discretionary management decision as to how various items of expenditure are allocated to the different schedules of expenditure. We were impressed by the evidence given by Ms Fordham. We are satisfied that she has sought to allocate this fairly. However, we must also consider the effect of this apportionment on the individual services that have been provided.

Issue 5: Service Charge for the Estate Carpark (Schedule 6)

85. In 2021, the total cost charged to the Estate Carpark was £51,939, in respect of which Rennie Court is charged 5.02% (£2,701). The most significant items are (i) electricity (£16,562); (ii) mechanical and electrical services (£15,817); (iii) security (£7,749); (iv) cleaning and sustainability (£5,857) and (v) off-site management fees (£4,468).

86. Mr Letman argues that Rennie Court should not be held liable or any of the service charge costs relating to the Estate Carpark as it has its own carpark. Originally, the tenants had direct access into their carpark. They now only have to access their carpark through the Estate Carpark because of the manner in which the Head Lessor redeveloped the Estate.

87. The Tribunal is satisfied that we must consider the current situation. The tenants can only obtain access to their carpark through the Estate Carpark. This needs to be secured, lit and maintained. The cost charged to Rennie Court is modest. We note that under the Service Charge Guide (at p.473), Rennie Court would have been charged 82.17% of the cost based on the number of carparking spaces that they have. The Applicant

has rather charged them 5.02% reflecting the fact that they only use the Estate Carpark for access. We are satisfied that this charge is reasonable.

88. Mr Letman also seeks to argue that this charge should be reduced because of the Applicants failure to keep the entrance barrier in a proper state of repair. We discuss this under Issue 9.

Issue 6: Service Charge for the Podium Garden

89. The Head Lessor does not breakdown the service charge that is payable in respect of the Podium Garden. It is rather included as part of the Schedule 1 Estate Costs. The sums included in the 2021 Expenditure Report (at p.346) are £15,530 for cleaning and sustainability and £4,736 for landscaping and environment.

90. Mr Letman complains that the Applicant has failed to adduce sufficient evidence relating to the cost of cleaning and maintaining the garden. It was suggested that the security staff have not patrolled the garden. We are satisfied that they have. It was also suggested that the CCTV camera provided by the Applicant duplicated the three CCTV cameras provided by the Second Respondent. However, the Podium Garden is in the possession of the Applicant. It therefore has the primary responsibility to ensure that it is secure. It is for the Second Respondent to decide whether any additional service is required.

91. We are satisfied that the Podium Garden is an important amenity for the Rennie Court tenants and that the service charges have been reasonable. Mr Letman also seeks to argue that this charge should be reduced because of two items of disrepair. We discuss this under Issue 9.

Issue 7: Service Charge for the Loading Bay (Schedule 3)

92. Only 15.40% of this expenditure is charged to the residential units. In computing this percentage, the Service Charge Guide (at p.465) applied a multiple of six for the retail units and a further discount of one third for the residential; the offices contribute on a floor area. In 2021, the total cost charged to the residential units was £40,251, in respect of which Rennie Court is charged 5.02% (£2,021), some £20 per tenant. The most significant items are (i) security (£30,116); (ii) off-site management fees (£3,213. 68) and (iii) mechanical and electrical services (£3,035). The security costs include the Dock Master.

93. Mr Letman suggested that the residential tenants make very infrequent use of this facility. The Applicant has produced a log (at p.1213-1216) which suggests that they use it some 10 times a month. We are satisfied that it is a significant amenity for the tenants when they are carrying out building works, for example the installation of new bathrooms or kitchens. When tenants have more basic deliveries of groceries or from

Amazon, the delivery company has a choice of parking (probably illegally) and delivering the item to the Rennie Court reception or using the loading bay.

94. Mr Letman complains that the Applicant has failed to review the apportionment in the light of the actual use made of the Loading Bay. He is correct to point out that this was contemplated in the Service Charge Guide which was published in May 2016. However, the Tribunal is satisfied that the modest charge made to the Rennie Court is reasonable, having regard to the use that they make of it.

Issue 8: The Reasonableness of the Management Charge

95. Both Respondents argue that the management charges are excessive. They contend that there is unnecessary duplication between the on-site and the off—site management charges.

96. In 2021, Rennie Court was charged charges offsite management fees of £1,423.01 and on-site fees of £1,749.89 (£3,172.90) out of a total of £17,749.06. This was 21.8% of the net expenditure of £14,576.16. We are satisfied that this is unreasonable.

97. The Tribunal is not finding that CBRE's overall management charges are unreasonable. We are rather satisfied that an excessive amount of their charges has been allocated to the three Schedules for which the Rennie Court tenants are liable. They are only liable to pay estate charges. CBRE will be spending a much larger proportion of their time in respect of the residential and commercial units which they directly manage. The most significant service for which Rennie Court is liable is security (£10,746.88). This does not require both on-site and off-site management services. We are satisfied that an appropriate management fee to levy in respect of Rennie Court is 8% of the net expenditure for which it is liable. Having capped the management fee at 8%, there is no need for the Applicant to make any further adjustment in respect of the notional rent (see [28(iv)] above).

Issue 9: Poor Management – Disrepair Items"

98. Mr Letman raises three items of disrepair:

(i) The automatic gate into the Estate Carpark which has a habit of jumping out of its sockets. It is apparent that this is a design fault and that the gate is considerable higher than is necessary for cars to access the Carpark. The gate is now only raised to the height sufficient to permit cars to enter. However, the problem subsists.

(ii) The water sprinkler for the Podium Garden is insufficient to water the whole of the garden. It does not reach the far end of the garden and

this has to be watered manually. Mr Rothwell stated that no charge is made for this service. The Applicant recognises that the irrigation system needs to be upgraded. Mr Rothwell stated that the Applicant intends to do this at no cost to the occupiers of the Estate.

(iii) Water leaks from the Podium into the stairwell which is used as a means of escape for Rennie Court. A bucket has been placed there to catch water. The Applicant has made attempts to address this problem. We observed the mastic that has been applied. Mr Rothwell explained that the Applicant had adopted a "tiered approach". It is accepted that further works are required, but this will involve cutting into concrete surface. Mr Rothwell assured the Tribunal that CBRE would continue to do what is necessary until the problem is resolved.

99. Mr Letman suggested that the management charges should be reduced by 10% to reflect an apparent failure of management. In his closing submissions, he referred to various charges that should be reduced or disallowed. These had not been raised in the Second Respondent's Statement of Case. Neither had these challenges been put to the Applicant's witnesses in cross-examination. As already noted, the Second Respondent applied to be made a party at a very late stage in these proceedings. It was therefore particularly important that it should have pleaded its case fully.

100. This is not an action for disrepair. We have heard no expert evidence. We were impressed by the evidence that we heard from both Ms Fordham and Mr Davidson. We are satisfied that CBRE are taking reasonable steps to address these defects. The Second Respondent has not satisfied us that we should reduce the management charge on the ground that an inadequate service has been provided. Neither are we satisfied that we should disallow any of the items to which Mr Letman referred us in his closing submissions.

Issue 10: Management Fees for 2015 to 2017

101. Mr Modha argued that the Applicant had agreed to waive the management charges for the years 2015 to 2017. The evidence on this point was very limited. Neither side called the witnesses who were said to be parties to this agreement. We were referred to the following:

(i) An attendance note (at p.1059) dated 7 January 2021 made by Mr Ivan Taylor, from My Leasehold, with Jacqueline Millar, of CBRE. There was a discussion about the arrears of service charges. Neither side wanted a "ftt". A sentence reads "Cbre first three years to be deleted".

(ii) On 17 January 2021 (at p.1058), Mr Taylor emailed Ms Millar. This states: "Where I am pleased we have made progress is as follows:

*CBRRE Management fees – agreed that the years 2015/2016/2017 are to be credited.
* S/C year end 2017 – agreed that the entire year is to be credited
* Cleaning – the 50% discount is rejected but do not believe that this is a start and we can negotiate a suitable figure to be paid.
Perhaps, you could again reconsider, with your Clients, the position relating to Security and Site Management and revert, but would stress that, my Clients are firm in their submission that the amounts are not recoverable".

(iii) No evidence was adduced of any response to this email or a chaser from Mr Taylor seeking a response.

(iv) On 9 September 2021 (at p.791), Mr Taylor sent an email to Ms Fordham which was copied to Ms Millar. This includes the statement: "At present, we are awaiting your Clients confirmation that: .... 2. The demand for CBRE Management fee is deleted from the years 2015-2018".

102. The Tribunal is not satisfied that there was any agreement to waive the management fees for the years 2015 to 2017. We accept that there was some discussion about the service charges in dispute. We are not satisfied that there was any concluded agreement to waive these charges. In September 2021, Mr Taylor was still awaiting confirmation that the Applicant had agreed to this. Mr Modha suggested that the Applicant should have called Ms Millar to give evidence. We do not accept this. It was for the First Respondent to satisfy us that there was a concluded agreement. It has failed to do so.

Issue 11: Qualifying Long Term Agreements

103. Mr Modha argues that there were three Qualifying Long Term Agreements ("QLTAs") upon which the Head Lessor was obliged, by section 20 of the 1985 Act, to consult. It failed to consult and is therefore restricted to recovering £100 per annum in respect of these services from the First Respondent.

104. Counsel agreed on the test for determining whether a contract is a QLTA. Section 20ZA(2) defines a QLTA as an agreement "for a term of more than twelve months". This turns on whether the agreement amounts to a commitment to twelve months or more. Thus an agreement for a fixed term of one year and then from year to year (but subject to a right to determine) would not be a QLTA. The deciding factor is the minimum length of the commitment, and not the maximum possible length of the relationship (see *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102; [2018] HLR 36 per McFarlane LJ at [35] – [41]).

105. The Applicant conceded that the CBRE management agreement, dated 1 June 2015 (at p.688-734) in respect of the off-site service is a QLTA. This applied between 2015 and 2018. However, the Applicant contends that

the charge is capped at £100 per annum for each Rennie Court tenant. The legislation is intended to protect the tenant under an underlease, rather than an intermediate lessee such as the First Respondent.

106. The First Respondent contends that two further agreements are QLTAs:

(i) The CBRE Management Agreement, dated 31 January 2019 (at p, 736-756). The commencement date of the agreement is 31 January 2019. The agreement is for no specified period. It is therefore determinable on reasonable notice. We are therefore satisfied that this is not a QLTA.

(ii) The Security Contract with Ward Security Ltd, dated 18 January 2021 (at p.827-834). The commencement date is 18 January 2021. The initial term is 364 days. Mr Modha points out that the agreement was signed on 7 September 2022, by Jacqueline Millar on behalf of the Head Lessor, and on 31 August 2022 by Paul Harvey, on behalf of Ward Security. Thus, when the agreement was signed, the agreement had been running for more than one year. The Tribunal does not accept that this was a QLTA. No explanation has been provided as to why it was not signed until 2022. However, it is apparent that the contract commenced on 18 January 2021 for an initial period of 364 days. Thereafter, the Head Lessor was willing to contract to continue to run. Thus, at no time did the contract commit the Head Lessor to a term of more than twelve months. It could have allowed it to lapse after 364 days. Thereafter, it could be determined by reasonable notice.

107. The Tribunal must deal with the consequences of the June 2015 CBRE management agreement being a QLTA. Mr Modha contends that the management charge payable by the First Respondent is capped at £100 per year for the period 2015-2018. Mr Rothwell responds that the statute is rather intended to protect the 99 tenants at Rennie Court. Their contribution would be capped, but their individual contributions would be substantially less than £100 per year.

108. The Tribunal agrees with Mr Rothwell. We have regard to the judgment given by HHJ Hazel Marshall KC at the Central London County Court in *Paddington Walk Management v Peabody Trust* [2010] L&TR 89. She noted (at [73]) that "relevant contribution" is defined in section 20(2) of the 1985 Act: "'relevant contribution' in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement" (emphasis added). The meaning in regulation 4 of the Service Charge (Consultation Requirements) Regulations 2003 cannot be different.

109. HHJ Marshall concluded (at [75]):

> "In my judgment it follows, therefore, that the "relevant contribution of a tenant" in reg.4 is what he is paying as a "service charge", which is (by definition) a charge in relation to a "separate dwelling". Consequently this rubric refers to the contribution payment of "a tenant of a dwelling", but looking at the payment he is making in relation to "a" dwelling which is a separate dwelling, i.e. an individual dwelling unit within his lease. This is so albeit the tenant may, at the same time, be a tenant of a several other "dwellings" under the lease in question (which is the route by which he and therefore his sub-tenant is able to invoke the protection of the 1985 Act). In other words the "relevant" contribution is that of a tenant of a dwelling (whether or not also a tenant of other dwellings) which is made for services in relation to "a", (i.e. "any"), individual dwelling in respect of which he is being charged, whether or not he is also being charged in respect of other dwellings."

110. She added (at [77]): "It also, in my judgment, keeps the consultation requirements at a sensible level, as must surely have been intended." As an expert tribunal, we agree with this conclusion.

Issue 12: Miscellaneous Service Charge Items

111. The Second Respondent raises some miscellaneous challenges relating to other, smaller costs which are claimed as part of this application. Ms Fordham has explained the nature of these charges in her witness statement. We are satisfied that these costs are all recoverable under the Fifth Schedule of the Headlease.

112. The Second Respondent argues that accountancy fees are not recoverable under the Headlease. We are satisfied that these costs are incidental to "managing the Development". It is important that properly audited accounts are produced. Indeed, it would be impossible to manage an estate of this nature without recourse to proper accountancy services.

113. The Second Respondent queries why costs have increased significantly from zero in 2015 to considerably more substantial allocations in 2021. Ms Fordham addresses these concerns in her statement. 2015 was the year the new development went live. However, the development works were only completed at the end of the year, thus explaining the small allocation for that year. Thereafter, the costs of providing services have risen with inflation. Mr Rothwell has assured us that all contracts are competitively tendered.

Issue 13: Rule 13(1)(b) Costs

114. Both the Applicant and the First Respondent seek a penal costs order against the Second Respondent for the costs thrown away in respect of the hearing fixed for 20 March 2023, pursuant to rule 13(1)(b) of the Tribunal Rules. The Applicant seeks costs in the sum of £15,012, whilst the Second Respondent seeks costs of £14,800.

115. At the hearing on 20 March 202, Judge Nicol was extremely critical of the late stage at which the Second Respondent had made its application to be joined as a party to these proceedings. He noted that had this been a court hearing, the Second Respondent would have been liable to pay the costs thrown away by its late application. The Tribunal reserved any costs application under the Tribunal Rules to this Tribunal.

116. Our starting point is rule 13(1)(b) of the Tribunal Rules. This is normally a no costs jurisdiction. However, this rule permits a Tribunal to make an order for costs "if a person has acted unreasonably in bringing, defending or conducting proceedings" (emphasis added). The exceptional circumstances in which it is appropriate to make a penal costs order was considered by the Upper Tribunal in *Willow Court Management v Alexander* [2016] UKUT 290 (LC); [2016] L&TR 34. At [28] – [30], the Upper Tribunal set out the three-stage process that should be adopted:

> "28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.
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> 29. Once the power to make an order for costs is engaged there is no equivalent of CPR r.44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in s.29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in r.3, which is to enable the tribunal to deal with cases fairly and justly.

> This includes dealing with the case "in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal." It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.
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> 30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

117. Having carefully considered the submissions from the parties, we are satisfied that this is not an appropriate case for a penal costs order to be made. First, Mr Letman raises a procedural point. Prior to the hearing on 20 March 2023, the Second Respondent was not a party to the proceedings. Thus, he could not be considered to have acted unreasonably in the conduct of the proceedings. We accept this argument.

118. At [95] of Willow Court, the Upper Tribunal emphasised that only behaviour related to the conduct of the proceedings themselves may be relied upon at the first stage. Once unreasonable conduct has been established and the threshold for making an order has been met, it may be appropriate to have regard to the wider conduct of the party. However, in the current case, we are not satisfied that the threshold has been met.

119. If we are wrong on this, there are two further reasons why we would exercise our "Stage 2" discretion against making such an order. Whilst the Second Respondent can rightly be criticised for making its application at a later stage, the other parties are also at fault. It would have been open to the Applicant to join the Second Respondent as an interested party. The First Respondent could, and arguably should, have issued a separate application against the Second Respondent to obtain a determination as to the service charges payable by the Second Respondent. As a result of its failure to do so, this Tribunal is left in the highly unsatisfactory position of only being able to determine the service charges payable by the First Respondent. It seems that further litigation may be inevitable.

120. Secondly, the Tribunal has had regard to the circumstances in which this dispute has arisen. It is most unlikely that there would have been a dispute about the "estate charges" that are payable, had the Estate not

been redeveloped in 2015. The current estate bears little resemblance to the Kings Reach Estate which existed in 1976 when the underleases at Rennie Court were granted. These tenants would not have contemplated that they would have to pay estate service charges for security, the loading bay and the new carpark. We are satisfied that those who developed the Estate had insufficient regard to the impact of these changes on these tenants. Indeed, the one issue which this Tribunal has not been required to determine is the service charges that will be payable by the 99 underlessees at Rennie Court. This is a further issue that this Tribunal may need to determine at a later date.

Judge Robert Latham
2 November 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).