In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00BE/LSC/2023/0219**
Property	**:**	**The Printworks, 22 Amelia Street, London SE17 3BY**
Applicants	**:**	**Rami Cheblak (Flat 122)** **Elizabeth Wash (Flat 211)** **Tiffany Shum (Flat 105)** **Ellie Shum (Flat 205)**
Representative	**:**	**Mr Rami Cheblak**
Respondent	**:**	**22 Amelia Street Ltd**
Representative	**:**	**Brethertons**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mr DI Jagger MRICS** **Mr ON Miller**
Date and venue of Hearing	**:**	**7th-9th October 2024** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**4th November 2024**

DECISION

---

(1) No determination is made in relation to the costs and service charges in relation to building safety matters which have now been paid for from government funds (items 1, 2, 4 and 6-9 in the Schedule of Disputes).

(2) Subject to paragraph (1), the costs taken into account in determining the amount of the service charges for 2020-21, 2021-22 and 2022-23 and challenged in these proceedings were reasonably incurred and so the service charges are payable.

(3) The costs estimated in determining the amount of the advance service charges for 2023-24 are reasonable and so the service charges are payable.

(4) The Applicants shall, by **29th November 2024**, notify the Tribunal and the Respondent whether they wish to withdraw or continue with their applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the costs applications").

(5) If the Applicants wish to continue with the costs applications, they must, by **13th December 2024**, send to the Tribunal and to the Respondent, their written submissions in support.

(6) The Respondent shall, by **10th January 2025**, send to the Tribunal and to the Applicants, their written submissions in reply.

(7) The Tribunal will determine the costs applications on the papers, without a hearing, on or as soon as possible after **20th January 2025**.

(8) If either party requests a hearing for the costs applications, the Tribunal will issue amended directions, including for the hearing.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicants are the lessees of 4 of 164 flats at The Printworks, a block with 8 storeys of residential units above commercial units on the ground floor. The Respondent holds a lease of the block and is the Applicants' landlord. The Respondent's managing agents are Rendall & Rittner.

2. The Applicants have applied under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of the payability and reasonableness of certain actual service charges for the years 2020-21, 2021-22 and 2022-23 and estimated service charges for 2023-24.

3. The Applicants have also applied for costs orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 but, in its directions dated 19th October 2023, the Tribunal directed (at paragraph 17) that they will not be dealt with at the hearing, but will be left to written submissions after the Tribunal has issued its substantive decision.

4. The Tribunal was due to hear the case over 3 days, 11th-13th June 2024, but decided to adjourn to allow further disclosure of invoices.

5. Instead, the hearing took place on 7th-9th October 2024. The attendees were:

   - The 4 Applicants, each of whom gave evidence and were represented by Mr Cheblak (Ms T Shum and Ms E Shum attended only on the first day)

- Ms Catherine Taskis KC, counsel for the Respondent
- Ms Emma Bush, Brethertons
- Ms Nicola Marks, Head of Asset Management
- The Respondent's witnesses (the latter two attended on the second day):
    - Ms Svetlana Ziznevska, Senior Property Manager at Rendall & Rittner
    - Mr Mike Poshteh, Utilities Team Manager at Rendall & Rittner
    - Mr Dave Wren, an account executive at the Respondent's insurance broker, Marsh McLennan.

6. Mr Daniel Skipp, another witness for the Respondent from Rendall & Rittner, could not attend due to an urgent heart problem, as confirmed by a letter dated 7th October 2024 from Dr Anna Harrington at the Mile Oak Medical Centre. The Tribunal considered his witness statement as hearsay evidence.

7. The Applicants also had 3 hearsay witness statements, two from Mr Peter Lyon of Flat 710 and one from Mr Thomas Damek of Flat 810, although no explanation was proffered as to why neither attended the hearing.

8. The documents before the Tribunal consisted of:

- A Core Bundle of 1,826 pages;
- A Supplemental Bundle of 2,188 pages;
- An Additional Bundle of 864 pages; and
- A skeleton argument and bundle of authorities from Ms Taskis.

9. The Core Bundle contained a Schedule of Disputes numbered up to 68 (there was no number 24). This decision considers them in turn. Witnesses were heard on an issue-by-issue basis in a version of the practice known as "hot-tubbing".

General points

10. Mr Cheblak started his case by making some general points. He said that the service charges payable by the lessees had gone up an average of 125%. His own service charges had increased by 150%. He asserted that the Respondent's response was dismissive or non-existent, even when the lessees channelled their complaints through solicitors. He ascribed the increase to mismanagement and fraud. He pointed out that the increase had caused real and serious problems for lessees, severely limiting what they could afford and requiring them to find ways to cut down on their expenditure. Since the property was built with the express purpose of providing affordable homes, the lessees would have limited funds to begin with.

11. The Tribunal has no doubt that unanticipated increases in service charges will have the kind of adverse effects described by Mr Cheblak. The Tribunal has sympathy for lessees in this situation and entirely understands that they seek to identify whether any of the increase is the result of unreasonable or excessive expenditure or mismanagement.

However, an increase is not in or of itself unreasonable. Prices do not only increase with inflation but, in some cases and on some occasions, will exceed inflation. In all cases, the Tribunal follows the evidence, whatever the size of any increase.

12. Unfortunately, as further described below, the Applicants frequently relied on the increase in charges and other circumstances from which they reached conclusions based on theoretical deduction (*a priori* reasoning) rather than evidence. They elided their assertion that significant increases in charges may be questioned with an assertion that they were unreasonable – the fact that it is legitimate to ask questions about increases does not itself provide an answer to those questions. At times it was clear that the only process that would satisfy the Applicants would be their own personal and full audit of the accounts, as if they had not already been compiled by professionals, who were themselves supervised and regulated by other professionals, and audited by further professionals.

13. The Applicants' arguments were at their most egregious when they asserted fraud. Fraud is a serious charge and the Respondent understandably objected to being accused of it. The Applicants' evidence of fraud never got beyond their deductions based on their own inability to think how else the events they were referring to could have happened. The alleged fraud involved what for such a large organisation would be relatively tiny sum of money and was supposedly carried out by members of staff who would not personally benefit and in respect of whom there was no evidence that they had been instructed to act illegally – the inherent lack of likelihood for such circumstances never seemed to have occurred to the Applicants. For the sake of clarity, the Tribunal states that it found no evidence whatsoever of fraud.

14. The Tribunal has not considered the Applicants' witness evidence in any detail because it deals almost entirely with alleged service failures, possibly arising from breaches of the lease covenants, not with the reasonableness or payability of service charges. If the complaints made in the witness statements were established in a court, it may well be that the lessees would be entitled to damages but that is not an issue for this Tribunal.

15. What is clear from the Applicants' witness evidence is that the witnesses all feel considerable distress due to the substantial rises in their service charges and what they see as poor service from both the Respondent and Rendall & Rittner. This is entirely understandable and the Tribunal is acutely aware of how important these issues are to the lessees. However, it is worth repeating that it is the evidence which counts.

Items 1, 2, 4, 6-9

16. The Printworks were constructed in 2010. The developers were FBLP Ltd, a subsidiary of the Respondent. The principal contractor was Laing O'Rourke. Following the Grenfell fire disaster, it was suspected that The

Printworks also had fire safety issues. The Applicants said that a number of their fellow lessees were unable to sell their properties due to a lack of an appropriate EWS1 certificate for the building. Cognition Architecture were commissioned to survey the block and concluded that the cladding and windows were not compliant with relevant fire safety standards.

17. As well as the cost of the survey, the Respondent incurred costs for a Façade Investigation Management Fee, Fire Consultancy Services, Flame testing, an inspection for cladding remedial work, consultants who managed applications to the Building Safety Fund and for planning permission, and cladding remediation works. The Applicants asserted that service charges arising from these costs were both not payable within the terms of the Building Safety Act 2022 ("the 2022 Act") and unreasonable within the meaning of section 19 of the 1985 Act.

18. In the event, the Respondent's application to the Building Safety Fund was successful and the service charge account will be credited with the money received, covering items 1, 2, 4 and 6-9 in the Schedule. Therefore, there was no need for the Tribunal to make any ruling on these items.

19. Mr Cheblak sought to question how he could be sure that the credit will be given but he had no basis on which to do so. He had no evidence that the Respondent had ever withheld any credits due to the lessees or had any motive to do so in future. He did not seem to understand that refusing to acknowledge circumstances where the evidence clearly pointed one way not only wasted everyone's time but also undermined his credibility when making points in support of the rest of the Applicants' case.

Item 3: O&M Manuals

20. The Applicants maintained that Items 3 and 10 in the Schedule were also building safety matters, the costs of which should be refunded for the same reasons as items 1, 2, 4 and 6-9, as referred to above. Item 3 concerned a payment of £1,037 for continued access for Rendall & Rittner to data known as the O&M Manuals which constitute the full operating manuals for the running and upkeep of the building. They were compiled by the original developers and passed to Quantum UK. The data used to be freely available but Quantum decided they were going to charge for it. Rather than an annual fee, the Respondent chose to make a one-off payment for continued access.

21. The Applicants pointed out that the data was compiled and held by companies related to the Respondent. They seemed to think that there was something wrong with one company charging another for a service if they were within the same group. However, the companies are separate legal entities and there is nothing automatically unreasonable in such a charge.

22. The Manuals included information essential to the building safety works. The Applicants asserted that, therefore, the charge also came within the

Building Safety Act. However, Ms Ziznevska made it clear that the Manuals had been used for many years and were continuing to be used for information on other issues relating to the building as well. The Respondent would have had to pay the access charge whether there had been a problem with building safety after Grenfell or not.

23. The Tribunal is satisfied that the charge for access to the O&M Manuals is reasonable and payable.

Item 10: Smoke detectors

24. The Respondent fitted smoke detectors at a cost of £14,332 on the recommendation of the aforementioned Cognition report. The Applicants have paid the resulting service charges but claim they should be refunded for the same reasons as the other building safety matters at items 1, 2, 4 and 6-9 in the Schedule.

25. The Respondent's defence to this item is that the cost was incurred and the service charges paid prior to the 2022 Act coming into force on 28th June 2022. They would have used the same argument in relation to the other building safety matters but for the award from the Building Safety Fund – that award did not apply to the installation of the smoke detectors.

26. The Applicants accept the chronology but nevertheless assert that the 2022 Act should apply. The Court of Appeal is due to hear a case which will consider the extent to which the Act has retrospective effect but the Tribunal has to apply the law as it is currently understood to be according to decisions of superior courts and tribunals.

27. In *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2023] UKUT 271 (LC); [2024] L&TR 1, the Tribunal considered whether costs falling within paragraph 9 of Schedule 8 remained payable by lessees after the coming into force of the 2022 Act, even if these costs had been incurred prior to that date. The lessees had yet to pay their service charges and the Upper Tribunal held that they were no longer recoverable. The Tribunal also said that, if the lessees had already paid, they would not be entitled to recover that payment. The Tribunal acknowledged that this appeared to reward non-payers while punishing prompt payers but asserted that this was the result of their interpretation of the 2022 Act.

28. The current case involves paragraph 2 of Schedule 8, rather than paragraph 9, but nothing turns on that. The Tribunal was tempted to set out a full legal analysis but this is a long enough decision and the Tribunal is bound by the decision in the *Hippersley Point* case. The Applicants having paid their service charges are not entitled to recover them. They were payable at the time they were paid.

29. The Applicants argued in the alternative that the service charge for the smoke detectors was unreasonably incurred but the Tribunal cannot see

how this argument can be maintained. The installation was required on expert advice and clearly constituted reasonable expenditure.

Items 5, 36 and 48: Buildings insurance

30. The Respondent paid buildings insurance premiums of £149,989 in the service charge year 2021-22 and £271,140 in 2022-23. Mr Cheblak calculated that these represented increases of 84.45% and 72.21% respectively. The amount budgeted for 2023-24 was £369,310. The Applicants asserted that the increases resulted from building safety issues so that they were not payable under the 2022 Act and, alternatively, they were not reasonably incurred or reasonable in amount within the meaning of the 1985 Act.

31. In order to come within the 2022 Act, the insurance has to be a "relevant measure". The Respondent accepts that the property is a "relevant building" under section 117 of the 2022 Act and that it itself is a "relevant landlord" under paragraph 2(4) of Schedule 8. Under paragraph 2(2) of Schedule 8, no service charge is payable in respect of a "relevant measure" relating to a "relevant defect", as defined in section 120, which includes defective cladding which it is common ground exists at The Printworks.

32. Paragraph 1(1) of Schedule 8 of the 2022 Act provides that:

> "relevant measure', in relation to a relevant defect, means a measure taken –
>
> (a) to remedy the relevant defect, or
>
> (b) for the purpose of –
>
> (i) preventing the relevant risk from materialising, or
>
> (ii) reducing the severity of any incident resulting from a relevant risk materialising.

33. The Applicants accept that the buildings insurance is not a measure taken to remedy a relevant defect under sub-paragraph (a) or for the purpose of preventing the relevant risk from materialising under sub-paragraph (b)(i) but assert that it is a measure taken for the purpose of reducing the severity of any incident resulting from a relevant risk materialising under sub-paragraph (b)(ii). Essentially, they argue that the financial consequences of, for example, cladding catching fire are at least mitigated by the payout recoverable under the insurance policy.

34. The Respondent argues that the insurance is not a relevant measure for a number of reasons:

(a) The provision of building insurance is a lessor's obligation under the terms of the Applicants' leases. It has been provided each year since the commencement of the leases and was in place before any relevant defects were identified. It was not a measure taken in response or in relation to a relevant defect, but in the ordinary performance by the

Respondent of the terms of the leases. The Applicants' argument, however, only relates to the increase in the insurance premium resulting from relevant defects, not the whole of the premium.

(b) The insurance in place in the years after the cladding defects were identified was, and is, the same in application and effect as that obtained before these defects were identified. The cover provided is not different, or wider, as a result of the identification or presence of the cladding defects. The taking of the building insurance was not connected to or for any purpose relating to the cladding defects. Again, however, this misses the point that it is only the increase in the premium resulting from relevant defects which is in dispute.

(c) Taking insurance out does not have any effect on the severity of any incident of fire or collapse. It does not impact on the consequences of any risk which materialises: it does not make severe consequences more or less likely.

(d) The 2022 Act is directed at ensuring the physical safety of the occupiers of relevant residential dwellings and allocating the costs of measures taken to ensure this safety. This appears from the provisions of the Act including, for example, the definition of building safety risk in section 62 and the duty imposed on building owners by section 84. "Relevant measure" is properly construed, consistently with this, as a measure directed at the physical safety of a building. For the purpose of paragraph 1(1)(b), this is by either (i) preventing or (ii) reducing the severity *of the incident itself* (fire or collapse). The installation of a sprinkler system, for example, would constitute a relevant measure within paragraph 1(1)(b)(ii). Putting in place insurance, by contrast, has no effect at all by way of preventing or reducing the seriousness of the incident itself. It may impact on the *financial* position of affected parties in the event that such an incident occurs but it does not affect the physical safety of the building and is therefore not a relevant measure.

35. The Tribunal is persuaded by the Respondent's last argument. Both parties sought to make analogies with situations outside the 2022 Act, such as car insurance, but the Tribunal did not find them useful. It is the Act itself which must be construed in its own context. It alters the respective rights of lessors and lessees from what they would otherwise be if the Act did not exist and what those alterations are must be found solely within the Act.

36. However, the Respondent's other arguments are relevant to whether the increase in the insurance premium was reasonably incurred and is reasonable in amount under the 1985 Act. Essentially, the Respondent argued that they went through a procurement process for insurance across their whole portfolio which was rigorous and produced the best premium they could obtain, in the same way as for every year. Mr Wren detailed that process in his evidence. It is not necessary to set out the full details here as the Applicants were unable to gainsay them in any event. The Respondent was obliged to insure the property and had no choice but to do so.

37. The Applicants have complained about the Respondent's alleged defaults, particularly in relation to the installation and replacement of the defective cladding, and the fact that the Applicants have suffered loss as a result. They have struggled to understand the difference between a claim for damages for such losses, which must normally be pursued through the courts, and a challenge to the reasonableness of service charges in this Tribunal. The distinction was considered by the Upper Tribunal in *Continental Property Ventures Inc v White* [2007] L&TR 4. The reasonableness of the service charges, in accordance with the natural meaning of the words in section 18 of the 1985 Act, is judged as at the date when the charges are incurred rather than by historic matters.

38. As at the date of insuring the building, the Respondent obtained the best price available. If their past defaults meant that the premium was higher than it otherwise would have been, the Applicants have their remedy in the courts. The Upper Tribunal in *Continental Property Ventures Inc v White* raised the possibility that the Tribunal could consider an equitable set-off arising from a counterclaim but the Applicants have not pursued a counterclaim here, not least because they have never attempted to quantify the alleged loss – there was no evidence from which any calculation could be made as to how much of the increase in the premium might have resulted from any possible default by the Respondent.

39. Therefore, the building insurance premiums are reasonable and payable. The sum budgeted for 2023-24 was based on a worst-case scenario, which was reasonable given the increases in previous years. In the event, the premium was less and the lessees will receive due credit in any balancing charge when the accounts are finalised.

Items 11, 27 and 49: Electricity

40. According to the service charge accounts, the Respondent spent £42,881 on the communal electricity supply for 2021-22 and £82,205 in 2022-23 and budgeted to spend £161,270 in 2023-24. Mr Cheblak calculated that the first figure represented an increase of 74.92%, let alone the subsequent increases. He did some research and found that these increases were substantially higher than the average amounts paid for large commercial electricity supply contracts according to across the years in question.

41. There is a basic problem with Mr Cheblak's approach. The figures he gave are not for contracts accessible to anyone and everyone who wanted to contract for the supply of electricity at any time in those years. The price obtainable by the Respondent, just as for any customer, depends on precisely when they seek a contract and which suppliers are willing to offer a contract at that time. Mr Cheblak commended his approach on the basis that the figures he produced took into account multiple providers over significant periods of time for buildings with varying properties but that is exactly why his figures are not reliable or effective as comparators for the contract obtained by the Respondent. The one comparator which the Respondent's witness, Mr Poshteh, used and

which suggested that the contract for The Printworks was in line with the market, was far more useful as it was a similar building where the contract was obtained at a similar time. Quantity does not necessarily equate to quality.

42. The Applicants had deduced from the costs incurred by the Respondent and their comparative information that the Respondent had acted carelessly and recklessly when placing the electricity supply contract. In fact, Mr Poshteh's evidence made clear that Rendall & Rittner's dedicated utilities team, including himself, had a careful and thorough process to test the market and find the best price for the continued supply of electricity on the expiry of their existing contract.

43. Rendall & Rittner have been obtaining contracts on annual fixed tariffs for its entire portfolio in October of each year. In normal times, any shorter term or more variable rates would lose the advantages of stability and predictability within the service charge year while longer term contracts risked losing out if prices should drop. Also, contracts longer than one year would have been subject to the statutory consultation process under section 20 of the 1985 Act as Long Term Qualifying Agreements.

44. In hindsight, the lessees at The Printworks could have benefited from lower prices if the contract taken out at relatively low prices in 2021 had been for a longer period, mitigating the effect of the well-known large price increases arising from international instability in 2022. However, Mr Poshteh pointed out that contracts often have break clauses for "force majeure", allowing suppliers to address this kind of extreme volatility so as not to put their business in danger, i.e. a longer-term contract would probably not have survived the energy price crisis, even assuming that Rendall & Rittner had had the unique ability to predict what would happen at a time when no-one else did.

45. In any event, Rendall & Rittner took action to mitigate the effect of the increase in energy prices. Each year, they sought quotes from a wide range of those suppliers able to fulfil a contract of this size. It so happened that in 2023 only one supplier out of the 19 approached tendered for the contract.

46. The Applicants claimed that the Respondent had failed to credit the lessees with the Government's financial support. In fact, this was credited by the supplier, effectively lowering the tariff, and would not appear as a credit on anyone's service charge bill. Mr Poshteh calculated that the lessees at The Printworks saved £16,000 from this arrangement for the period from 1st October 2022 to 31st March 2023.

47. Also, Rendall & Rittner used a "Blend and Extend" arrangement whereby, in return for renewing the supply contract, the existing one was ended early and a lower tariff used for the new contract which incorporated the last period of the old one. This allowed Rendall &

Rittner to take advantage of decreasing prices early for the period from 1st August to 30th September 2023.

48. The Applicants criticised Rendall & Rittner for allowing estimates of consumption to be used rather than providing more meter readings. Mr Poshteh responded that annual readings are sufficient. With fixed annual charges, it makes no difference to the amount the lessees have to pay since any inaccurate estimate will be corrected on the next actual meter reading.

49. Again, the budget for 2023-24 was based on a worst-case scenario. It was hoped and expected that prices would come back down but there was no guarantee that this would happen. Also again, the service charge account would be credited with any excess payment in the event that the actual figure is lower than the budget.

50. The Applicants alleged that the electricity bills were higher than they should have been due to the Respondent's failure to maintain properly the communal lighting, the boiler and in preventing leaks which required the use of dehumidifiers to address the resulting damp. However, this argument had many problems:

(a) The Tribunal was not dealing with a claim for damages arising from breaches of covenant. Any remedy for these complaints lies in the courts.
(b) The Applicants' evidence of alleged poor maintenance fell well short of establishing their case. The allegation that communal lighting stayed on at night due to defective sensors was based on a few still photos of the stairwell from outside the building and the personal observations of one lessee, Mr Peter Lyon, who did not attend the Tribunal. The existence of leaks in the building was said to be evidence, without more, of a lack of maintenance by the Respondent, despite the fact that the communal system is now 14 years old and many of the leaks originated from within the demise of some lessees where the responsibility for repair lay with those lessees.
(c) The Applicants did not even attempt to obtain, introduce or rely on any evidence from their own expert on such matters. (They sought to rely on a report dated 23rd November 2022 commissioned by Rendall & Rittner from BMCG in relation to the leaks which is discussed further below under the heading of Boiler Maintenance.)
(d) Moreover, the Applicants had no idea how much the electricity bills allegedly increased as a result of these problems.

51. The Applicants also queried why the electricity bills showed no credit from electricity generated by the solar panels fitted to the building. In fact, that electricity was not passed on to the grid but used within the site. The benefit would come from using less electricity from the grid, lowering bills from what they otherwise would be, and would not be set out in the bills from the electricity supplier.

52. The Tribunal is satisfied that the expenditure on electricity is reasonable and the resulting service charges payable.

Items 12, 13 and 47: Balancing Charge/Deficit

53. The Applicants objected to the balancing charge payable at the end of each year to cover the amount by which actual expenditure exceeded the estimates for which they had already paid advance service charges. Mr Cheblak accepted the Tribunal's point that it would be double-counting to challenge the balancing charge as well as the specific categories of expenditure. To the extent that the Applicants were successful in challenging the expenditure on, say, boiler maintenance, the balancing charge would come down accordingly. Therefore, there was no need for any separate ruling on these items.

Items 14, 21, 22, 29 and 53: Boiler maintenance and water escape

54. The Respondent spent £13,127 and a further sum of £19,625 on Boiler Maintenance in 2021-22 and £22,677 in 2022-23 and budgeted for £18,000 in 2023-24. They also spent £17,035 on costs relating to the escape of water in 2020.

55. The Applicants started on this issue by complaining that the increase in charges was accompanied by more heating and hot water interruptions. They clearly thought that there was something wrong with this in and of itself when, in fact, that is how service charges work. When something goes wrong which the Respondent is obliged to fix, there is a charge for doing so. By definition, a service which is performing sub-optimally is going to be more expensive than one that isn't. Although the boiler at The Printworks is subject to the usual annual maintenance contract, not all maintenance can be preventative and perfect. The system is now 14 years old and would be expected to require reactive repair from time to time.

56. The Applicants alleged that the sheer number of the leaks demonstrated a poor maintenance service but it does not. Insufficient preventative maintenance is only one amongst many possible causes of such problems. The Applicants simply had no evidence as to the causes, let alone that this particular one was relevant.

57. The Applicants also suggested that the Respondent could have pursued their legal remedies against the contractor responsible for the original installation of the boiler and pipework, namely Laing O'Rourke. However,

(a) The Applicants had no evidence that Laing O'Rourke were at fault for the condition of the boiler or pipework.
(b) Even if a third party can be required to pay for or contribute to a remedial cost, to the relief of service charge payers, this does not happen immediately. The work is required in the present while the recovery of third party contributions may take time. In the meantime, the work has to be paid for and that is done through the service charges. Any monies recovered later may be credited against those costs at that time. The possibility of this happening does not and cannot relieve service charge payers of their payment obligations pending any payment.

58. The Applicants relied on a report from BCMG which the Respondent commissioned when there was a spate of pipes leaking following some repair works to the boiler plant. The report listed a number of defects and problems which the Respondent needed to address. Mr Cheblak thought it so obvious that it barely warranted any comment that the report was criticising the original installation work by Laing O'Rourke and the standard of the Respondent's maintenance of the boiler plant and pipework. In fact, it just listed defects and problems without analysing the cause of any of them and recommended a schedule of works. This is normal management of a building: a concern is identified, a specialist contractor inspects, reports and makes recommendations, the managing agent follows those recommendations and the lessees pay the resulting service charges.

59. The Applicants pointed out that the report was modified on 2nd August 2023. The report itself records that it was amended following comments received. The Applicants have immediately jumped to the conclusion that the modifications, combined with a failure to disclose the original report, demonstrates that the Respondent was trying to make the report "less damaging". This is part of the fraud they alleged. However, the fact that there were amendments proves nothing of the sort. The report is not "less damaging" because it is not damaging to the Respondent in the first place, contrary to the Applicants' understanding.

60. The Applicants also relied on the reasons initially given by the insurance company for repudiating a claim the Respondent made but that repudiation was successfully challenged.

61. The Tribunal is satisfied that there is no reason to think these charges are unreasonable.

Items 16, 25, 26, 58, 59 and 60: Concierge

62. The Printworks benefits from a concierge service during the day, except at the weekend. The Respondent incurred £45,768 on wages (including training and uniform) in 2021-22 and £45,938 in 2022-23, save that training, at a cost of £1,002, was separated out in the latter year. For 2023-24 they budgeted separately £46,118 for wages, £1,338 for training and £900 for uniform. While these figures are consistent, the Applicants pointed out that the first one constituted a 26.8% increase over the previous year, 2020-21, from which they concluded that all the later figures required justification.

63. The Applicants pointed out that there had been a relatively high turnover of staff, both permanent and temporary, with a consequent disruption of service. They asserted that there had been 8 concierges in approximately 2 years:

    (1) Kevin Gumbo (permanent – left without prior notice in the second half of 2021). According to Ms Ziznevska, he went on holiday and just never came back;

(2) Justyna Irzyk (permanent, started on 2nd March 2022 and resigned just 3 days later, although she then stayed to work out her notice);
(3) Jamel Miah (permanent, started on 9th August 2022, resignation announced by Rendall & Rittner on 16th June 2023);
(4) Temporary staff: Alex, George, John and Victor; and
(5) Jane Dube (permanent, started 31st August 2023).

64. The Applicants said they asked Rendall & Rittner for an explanation for the high turnover but did not get one. In their comments in the Schedule, they speculated,

> Perhaps the multitude of latent design/construction defects and chronic maintenance issues which the concierge is pulled into fielding (such as recurring leaks), and unethical aspects of R&R and the Respondent's management of Printworks are making the job off-putting for most.

65. This speculation had hardened into an assertion of fact by the time of the hearing despite the Applicants not having come into possession of any more evidence in the meantime. Mr Cheblak pointed to the fact that temporary staff were recruited, for a fee, through Rendall & Rittner's own recruitment arm, Temporary Staffing Solutions, and built on that fact an entire conspiracy that Rendall & Rittner were disincentivised to work to retain permanent staff so that they could earn extra fees from supplying temporary cover.

66. In fact, the feedback from departing staff was that they were leaving in large part due to the challenging behaviour of lessees. Ms Ziznevska herself asked to be moved from her role with The Printworks because the sheer volume of correspondence took more than 75% of her time, away from the other properties she was also tasked to manage.

67. Further, Rendall & Rittner discussed the situation with the Residents' Association on more than one occasion. As a result, it was decided to offer a higher salary and Ms Dube was recruited on that basis. However, she left earlier this year, giving the same feedback. Ms Ziznevska was asked whether it would be possible to employ an additional concierge to share the burden of the work but she pointed out that this would result in additional expense to the service charge account.

68. Ms Ziznevska asserted, and the Tribunal accepts, that The Printworks was an unpopular site so that it was difficult to recruit and retain staff. It was not in Rendall & Rittner's interests to be burdened with the additional management involved in such staff issues. Temporary staff have to be recruited to fill in between permanent appointments. If Rendall & Rittner's recruitment arm did not manage this process, a fee would be payable at a similar level to any other such agency. In relation to one early departure, 30% of the fee was refunded.

69. The Applicants' analysis of the invoices disclosed by the Respondent suggested that the expenditure in the service charge account was higher than could be accounted for by the invoices. However, as already

mentioned, the Tribunal is not carrying out an audit. As also already mentioned, the account is managed by professional agents and audited by accountants. The Tribunal needs some reason, supported by evidence, to believe that they got it wrong. An apparently missing invoice is not enough by itself.

70. The Applicants argued that, unless the Respondent could explain the increase in charges, they should be disallowed. However, the Tribunal has no doubt that the expenditure was incurred and had to be paid from the service charge account. It is unfortunate that it is so difficult to recruit and retain staff, giving rise to additional costs, but the Tribunal is satisfied that there is no basis on which to hold that such costs are unreasonable.

Items 17 and 32: Fire Protection System

71. In the Schedule of Disputes, the Applicants' sole objection was that the expenditure of £6,695 in 2021-22 and £10,263 in 2022-23 on the Fire Protection System constituted increases of 155.5% and 53.29% respectively over the preceding year. The Respondent's comments, with which the Tribunal agrees, were:

> These costs represent actual expenditure incurred in relation to the fire protection system in the relevant service charge year. The sum includes a fixed annual contract cost, and any additional sums incurred in dealing with maintenance or other issues arising. This is not an item which will be or can reasonably be expected to be linked to or limited by inflation.
>
> An increase in costs in a particular year does not, without more, constitute nor is it indicative of unreasonableness for the purpose of s.19 of the 1985 Act.

72. Mr Cheblak examined the invoices disclosed by the Respondent and raised the following points at the hearing:

(a) The index to the disclosed documents indicated there was an invoice from Astral Fire but the document itself turned out to be a certificate which did not mention the relevant figure of expenditure. The Tribunal accepts that this raises a legitimate question which would properly be addressed in a full audit but a question is only the start of the process. As already mentioned, the mere fact that a question may legitimately be asked is not enough to render the relevant expenditure unreasonable. In this instance, it is far more likely that there was an error in compiling the voluminous documents than that there is not a legitimate item of expenditure.

(b) Some invoices appeared to have been included in the accounts for a year different from that implied by the date on them. Mr Cheblak seemed convinced that this constituted poor accounting, mismanagement or even nefarious behaviour. In fact, it is not uncommon for costs to be included in the year in which the relevant invoice is received or paid rather than by reference to the date it bears. There is nothing wrong with

doing so. The only consequence is that service charge payers are required to pay the resulting service charge a year later than would otherwise be the case, which is more likely to be a benefit than a detriment.

(c) The total of the disclosed invoices for 2022-23 was less than the amount in the service charge accounts. However, Mr Cheblak accepted that the audited figure matched that used to calculate the service charges. Again, the Tribunal is not carrying out an audit. The accounts are managed by professional agents and audited by accountants. The Tribunal needs some reason, supported by evidence, to believe that they got it wrong. An apparently missing invoice is not enough by itself.

Items 15, 18-20, 38-39 and 44: General Repairs and Maintenance; Lift Telephone; and Lift Insurance

73. Having now seen the invoices, Mr Cheblak accepted on behalf of the Applicants that this expenditure had been incurred. The Applicants again objected to increases which were higher than inflation but, also again, had no evidence beyond that mere fact to suggest that they were unreasonable. Despite the prompting of the Tribunal's directions, the Applicants did not provide alternative quotes on these or any other items.

Item 23: Accounts general comments

74. Item 23 in the Schedule of Disputes was not a separate head of challenge to a particular item of expenditure but contained general comments about the accounts. In particular, the Applicants pointed out that much of the actual expenditure in 2023 substantially exceeded the amount budgeted for. They suggested, without prejudice to their other points in relation to each of the other items listed in the Schedule of Disputes, that this represented poor financial management.

75. Yet again, the only evidence the Applicants had was the mere fact of the increase. The obvious point is that estimates are just that: educated guesses which may turn out to be wrong. Again, the Tribunal accepts that the increase raises a legitimate question but reiterates that the question by itself does not imply an answer, let alone that the answer should be that any service charges are unreasonable or not payable. The point made by the Applicants in Item 23 does not, in itself, add to their case in relation to the other Items.

Item 28: Cleaning

76. Having seen the invoices disclosed by the Respondent, Mr Cheblak dropped the challenge to the cleaning charges on behalf of the Applicants.

Item 30: Drainage

77. The sum of £6,288 was included in the service charge accounts for 2022-23 for Drainage contract. The Applicants calculated that this was 83.85%

higher than budgeted and 24.63% higher than the previous year's expenditure. Again, having seen the invoices, Mr Cheblak accepted that the expenditure had been incurred but queried the following matters:

(a) There appeared to be a charge for the drainage contract which was listed twice. However, Ms Ziznevska explained that it was the two items were coded differently because one of them was a note by the accountant about expenditure moved from elsewhere. She said there was no double charge to the lessees.

(b) Mr Cheblak again raised the issue of whether the charges were higher due to historic failures in relation to pipework repairs but the same comments given above apply equally here – the expenditure was reasonable at the time it was occurred and any claim for losses arising from breaches of repairing covenants should be addressed in court proceedings.

Item 31: Door Entry System Maintenance

78. The Respondent spent £3,357 on Door Entry System Maintenance in 2022-23. Again, the Applicants' objection is that this was 24.3% over budget, compared to CPR at April 2022 of 1.1%. Again, the Respondent pointed out that this was the actual amount spent, on things like an entrance door not reading fobs, CCTV training for the concierge and an order for spare fobs.

79. Mr Cheblak said that one-quarter of the expenditure related to invoices dated earlier than the service charge year in which it was placed. Ms Ziznevska explained that this is the result of the invoice being presented and paid later than the date it bears. The comments above on this issue apply equally here.

80. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 33: Landscape Maintenance

81. The Respondent spent £6,268 on Landscape Maintenance in 2022-23. Again, the Applicants objected to the size of the increases compared to the budget and the previous year. Rendall & Rittner sought to explain this to lessees in their covering letter for the accounts as being, "Due to contract costs increase in mid-year also call out for a tree removal damaging the roof membrane."

82. The Applicants again appeared to think that it was for the Respondent to justify the increase in costs rather than for them to supply some reason, supported by evidence, for thinking the expenditure was unreasonable. Again, Mr Cheblak could not make the invoices add up to the figure charged but Ms Ziznevska pointed out that the total matches the accounts and expressed confidence that the software used by Rendall & Rittner would be mathematically correct.

83. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 34: Vermin Control

84. The Respondent spent £624 on Vermin Control in 2022-23. Again, the Applicants objected to the fact that this was 6.6% higher than the budget and above the rate of inflation. Mr Cheblak also thought the expenditure should be apportioned across service charge years as the invoices did not precisely align with the Respondent's service charge year but, on being questioned by the Tribunal, he reluctantly accepted that this made no difference to the amount the lessees ultimately had to pay.

85. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 35: Sundries

86. The Respondent spent £3,643 on Sundries in 2022-23. Again, the Applicants objected to the size of the increases compared to the budget and the previous year without providing any further grounds or evidence to think that the figure may be unreasonable, other than an apparent small shortfall in the invoice total.

87. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 37: Health and Safety Statutory Inspections

88. The Respondent spent £1,880 on Health and Safety inspections in 2022-23. Again, the Applicants objected to the size of the increases compared to the budget and the previous year without providing any further grounds or evidence to think that the figure may be unreasonable. Ms Ziznevska explained that the additional expenditure related to two sets of remedial works to the playground area which was outside the scope of the maintenance contract.

89. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 40: Mechanical & Electrical Plant Maintenance

90. The Respondent spent £12,300 on Mechanical & Electrical Plant Maintenance in 2022-23. Rendall & Rittner sought to explain this to lessees in their covering letter for the accounts as being, "To address faulty light fittings, repair emergency lights and sensors. Monthly/quarterly lamps/bulbs replacement in various locations."

91. Again, the Applicants objected to the size of the increases compared to the budget and the previous year without providing any further grounds or evidence to think that the figure may be unreasonable. The Schedule of Disputes asks a series of detailed questions which the Respondent

replied to by saying the costs represent the actual expenditure and the estimates are the best estimates which could be made at the time. The Applicants' further reply is that these are not answers and they repeat their questions. In the absence of any reason to doubt the need for or size of the expenditure, it is difficult to see what further response the Respondent can give.

92. An example of questions which do not help or progress the dispute is when the Applicants ask, "Why were the light fittings and emergency lights and sensors faulty? Was a survey conducted and, if so, can R&R please share a copy of the survey report?" The Applicants have no evidence that there was any systematic problem – lights and sensors just stop working optimally or at all from time to time and light bulbs need changing. It would be disproportionate, and an additional cost to the lessees, to survey the lights to try to find a systematic issue which, in all likelihood, doesn't exist.

93. At all times, the Respondent has to balance the quantity of services with the cost. It would be possible for them to conduct expert surveys or employ additional staff in order to try to improve the standard of service but the Applicants' main complaint is the amount of money they have to pay for the services and higher standards cost more.

94. Again, the Tribunal is satisfied that there is no reason to think that this expenditure is unreasonable.

Item 41: Refuse Removal and Bin Hire

95. Having seen the invoices disclosed by the Respondent, Mr Cheblak dropped the challenge to the Refuse Removal and Bin Hire charges on behalf of the Applicants.

Item 42: Water Charges

96. The Respondent paid water supply charges of £400 in 2022-23. Half of this was allocated to the concierge's office as an approximate contribution. Mr Cheblak withdrew the Applicants' challenge to this charge.

Item 43: Gate Maintenance

97. The Respondent spent £1,824 on Gate Maintenance in 2022-23. Mr Cheblak also withdrew the Applicants' challenge to this charge.

Item 45: Bank – reserve

98. The Applicants queried why the reserve fund held at the bank appeared to have reduced from £389,702 in 2022 to £229,754 in 2023. Ms Ziznevska explained that reserve funds had to be used to cover current expenditure if insufficient funds were received from the lessees due to non-payment of service charges. Moreover, the figure in the accounts

was a snapshot in time – when funds which were due and payable came in, the reserve fund would be at the level it is planned to be.

Item 46: Additional expenditure

99. The Applicants demanded an explanation for various additional expenditures (pump motor replacement, a dosing inhibitor, a plant survey, AAVs and a burner bar and gasket) and queried whether they related to matters in respect of which the Applicants had blamed the Respondent for poor maintenance, such as the water leaks. The Respondent explained that the expenditure was met from the reserve fund and did not relate to the leaks.

100. The Applicants repeated the objections they had made in relation to Boiler Maintenance, in particular the assertion that the fact that maintenance expenditure was required was indicative of a systematic problem which the Respondent had failed to address. The Tribunal has already dealt with these objections above.

Items 48-67: Budgeted items

101. The remaining items were all estimates of future expenditure for 2023-24. These must be judged at the time when they were made, rather than by comparison with actual expenditure later. The Applicants had no basis for challenging the Respondent's forecasting and their objections in relation to particular items did not go beyond those already addressed above.

102. The Tribunal is satisfied that the estimates are reasonable and payable as estimates. The Applicants retain the right to challenge the actual expenditure when they receive the relevant figures which will be set out in the service charge accounts.

Conclusion

103. It has not been possible to deal with every single point raised, and certainly not in the detail that the Applicants have used, because there is simply too much material to be able to do so. The Tribunal has concluded from the material available that the service charges challenged by the Applicants are reasonable and payable. Directions have been given for the separate determination of the Applicants' further applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Name: Judge Nicol **Date:** 4th November 2024

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

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

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

(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Building Safety Act 2022

Section 117 Meaning of "relevant building"

(1) This section applies for the purposes of sections 119 to 125 and Schedule 8.

(2) "Relevant building" means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—
(a) is at least 11 metres high, or
(b) has at least 5 storeys.
This is subject to subsection (3).

(3) "Relevant building" does not include a self-contained building or self-contained part of a building—
(a) in relation to which a right under Part 1 of the Landlord and Tenant Act 1987 (tenants' right of first refusal) or Part 3 of that Act (compulsory acquisition by tenants of landlord's interest) has been exercised,
(b) in relation to which the right to collective enfranchisement (within the meaning of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993) has been exercised,
(c) if the freehold estate in the building or part of the building is leaseholder owned (within the meaning of regulations made by the Secretary of State), or
(d) which is on commonhold land.

(4) For the purposes of this section a building is "self-contained" if it is structurally detached.

(5) For the purposes of this section a part of a building is "self-contained" if—
(a) the part constitutes a vertical division of the building,
(b) the structure of the building is such that the part could be redeveloped
(c) independently of the remainder of the building, and
(d) the relevant services provided for occupiers of that part—
(i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or
(ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building.

(6) In subsection (5) "relevant services" means services provided by means of pipes, cables or other fixed installations.

Section 120 **Meaning of "relevant defect"**

(1) This section applies for the purposes of sections 122 to 125 and Schedule 8.

(2) "Relevant defect", in relation to a building, means a defect as regards the building that—
  (a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and
  (b) causes a building safety risk.

(3) In subsection (2) "relevant works" means any of the following—
  (a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
  (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
  (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

"The relevant period" here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

(5) For the purposes of this section—

"building safety risk", in relation to a building, means a risk to the safety of people in or about the building arising from—
(a) the spread of fire, or
(b) the collapse of the building or any part of it;

"conversion" means the conversion of the building for use (wholly or partly) for residential purposes;

"relevant landlord or management company" means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant.

Section 62 **Meaning of "building safety risk"**

(1) In this Part "building safety risk" means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—
  (a) the spread of fire;
  (b) structural failure;
  (c) any other prescribed matter.

(2) Before making regulations under subsection (1)(c), the Secretary of State must consult—
  (a) the regulator, and
  (b) such other persons as the Secretary of State considers appropriate.

(3) But the regulator need not be consulted if—
  (a) the regulations give effect to a recommendation made by the regulator under section 63, or
  (b) the Secretary of State has under section 64 asked the regulator for its advice in relation to a proposal to make the regulations.

SCHEDULE 8

REMEDIATION COSTS UNDER QUALIFYING LEASES ETC

Interpretation

1 (1) In this Schedule—

"associated": see section 121;

"building safety risk" has the meaning given by section 120;

"joint venture" includes a partnership (as defined by section 121);

"prescribed" means prescribed by regulations made by the Secretary of State;

"qualifying lease": see section 119;

"the qualifying time" has the same meaning as in section 119;

"relevant building": see section 117;

"relevant defect": see section 120;

"relevant measure", in relation to a relevant defect, means a measure taken—

(a) to remedy the relevant defect, or

(b) for the purpose of—

(i) preventing a relevant risk from materialising, or

(ii) reducing the severity of any incident resulting from a relevant risk materialising;

"relevant risk" here means a building safety risk that arises as a result of the relevant defect;

"service charge" has the meaning given by section 18 of the Landlord and Tenant Act 1985.

(2) The definition of "service charge" applies in relation to a lease of premises that do not include a dwelling as it applies in relation to a lease of a dwelling.

No service charge payable for defect for which landlord or associate responsible

2 (1) This paragraph applies in relation to a lease of any premises in a relevant building.

(2) No service charge is payable under the lease in respect of a relevant measure relating to a relevant defect if a relevant landlord—

(a) is responsible for the relevant defect, or

(b) is associated with a person responsible for a relevant defect.

(3) For the purposes of this paragraph a person is "responsible for" a relevant defect if—

(a) in the case of an initial defect, the person was, or was in a joint venture with, the developer or undertook or commissioned works relating to the defect;

(b) in any other case, the person undertook or commissioned works relating to the defect.

(4) In this paragraph—

"developer" means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;

"initial defect" means a defect which is a relevant defect by virtue of section 120(3)(a);

"relevant landlord" means the landlord under the lease at the qualifying time or any superior landlord at that time.

No service charge payable for cladding remediation

8 (1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In this paragraph "cladding remediation" means the removal or replacement of any part of a cladding system that—

(a) forms the outer wall of an external wall system, and

(b) is unsafe.