FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LSC/2023/0323**
Property	**:**	**57 Yvon House, Alexandra Avenue, London SW11 4GA**
Applicant	**:**	**Mr Robert Juxon and other leaseholders as per the application**
Representative	**:**	**Ms Katie Helmore, counsel**
Respondent	**:**	**(1) Battersea Park Investments (freeholder)** **(2) SO Apartments (No. 1) Limited (management company)**
Representative	**:**	**(1) Ms Kikuyu Thompson, counsel** **(2) Ms Karen Millie-James, director**
Type of application	**:**	**Determination of the liability to pay and the reasonableness of service charges, s27A Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Mark Jones** **Mr Richard Waterhouse MA LLM FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**30-31 January and (reconvened) 21 February 2025**
Date of decision	**:**	**23 February 2025**

DECISION

Decisions of the tribunal

(1) In interpreting the provisions of the residential leaseholders' leases of their demises at Yvon House, Alexandra Avenue, London SW11 4GA (*"**the Property**"*), in respect of service charge expenditure that is incurred for the benefit of residential and non-residential leaseholders, the Tribunal determines that the application of the Primary Method derived from clause 2.1 of Schedule 9 to such leases results in the residential lessees being, collectively, responsible for 60.29% of the total sums incurred.

(2) This *may* be altered in the case of specific items of expenditure that do not exclusively benefit the residential tenants by application of the Secondary Method derived from clause 2.1 of Schedule 9 to such leases, where appropriate, resulting in the residential tenants paying a proportion of the Annual Building Expenditure as defined therein that is fair and proper in the circumstances and as indicated in the Tribunal's determinations below. The Tribunal however declines to speculate as to future circumstances where the same might apply.

(3) The Tribunal determines that the following specific services fall to be apportioned between residential and commercial leaseholders, with the residential leaseholders' proportion being determined by the method identified in clause (1), above, so that the residential lessees are, collectively, responsible for 60.29% of the total sums incurred:

i. Accountancy;

ii. Audit;

iii. Bank Charges;

iv. Property Management;

v. Security Equipment Hire and Maintenance, as a service that benefits all occupiers.

vi. Caretaker Services; and

vii. Concierge and Security.

(4) The Tribunal determines that the element of service charges for telephone charges relating solely to the emergency telephones in the lifts that serve the residential flats alone, should be apportioned to the residential flats alone.

(5) The Tribunal determines that as to expenses of lighting and heating of common parts, the expenses incurred in lighting the courtyard within the Property and in lighting and heating the common parts serving the residential flats alone should be apportioned to those residential flats alone, while expenses of lighting and/or heating incurred in relation to the car park should be borne proportionately to the use of the car park, so that the residential flats bear 62% of such expenses.

(6) The Tribunal determines that the expenses of cleaning the courtyard within the Property and in cleaning the common parts serving the residential flats alone should be apportioned to those residential flats alone, while expenses of cleaning incurred in relation to the car park should be borne proportionately to the use of the car park, so that the residential flats bear 62% of such expenses.

(7) As to expenses incurred by way of legal fees, the Tribunal determines:

i. that legal fees relating to issues solely concerning residential tenants, should be apportioned 100% to the residential tenants;

ii. that legal fees relating to issues concerning the Property as a whole, including both residential and commercial leaseholders shall be apportioned between the residential and commercial tenants on the application of the Primary Method as identified by paragraph (1) above, so that the residential tenants shall be, collectively, responsible for 60.29% of the total sums incurred.

(8) As to expenses incurred by way of repairs and maintenance, the Tribunal determines:

i. That repairs and maintenance for the sole benefit of the residential units within the Property shall be apportioned 100% to the residential tenants;

ii. That repairs and maintenance for the sole benefit of commercial tenants shall not be borne in any way by the residential leaseholders;

iii. That other repairs and maintenance, being for the avoidance of doubt not solely for the benefit of residential or commercial tenants, shall be apportioned between the residential and commercial tenants on the application of the Primary Method as identified by paragraph (1) above, so that the residential tenants shall be, collectively, responsible for 60.29% of the total sums incurred.

(9) The Tribunal determines that in respect of the service charges claimed by the Second Respondent in relation to the specific items of Caretaker

Services and Property Management, for the years ending 31 December 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023, the following sums are payable:

Year to 31/12	**Caretaker Services £**	**Property Management £**
2016	18,533	17,762.67
2017	19,871	18,502
2018	22,136	18,691.33
2019	19,698.50	18,962
2020	18,897	17,074.67
2021	21,766.50	20,959.33
2022	31,000	18,942
2023 (est.)	45,000	19,000

(10) The Tribunal determines that in respect of the service charges claimed by the Second Respondent in relation to the specific items of security equipment hire and maintenance, for the years ending 31 December 2016, 2017, 2018, 2019, and 2020, the sums set out in the following table are payable; for the succeeding years the sums claimed by the Second Respondent are payable in full:

Year to 31/12	**£**
2016	14,686.50
2017	14,498.50
2018	16,250.00

2019	16,877.50
2020	18,770.00

(11) The Tribunal determines that the sum of £37,645 charged by the Second Respondent in respect of charges incurred in the provision of hotel accommodation of concierge and security staff during the Covid-19 pandemic of 2020 is payable.

(12) The Tribunal makes a s.20C Order under the provisions of the Landlord and Tenant Act 1985 ("***the 1985 Act***") that prevents the recovery from the tenants of costs incurred by the First Respondent in these proceedings.

The Tribunal's Reasons

The application

1. By application dated 22 August 2023 the Applicant tenants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("***the 1985 Act***") as to liability to pay and reasonableness of service charges, and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("***the 2002 Act***") in respect of the service charge years 2016 to 2023.

2. The Applicants also seek an order pursuant to s.20C of the 1985 Act that legal costs incurred by the Respondents are not to be included in the amount of any service charge payable by them.

The Hearing

3. Pursuant to directions given on 6 September 2023 and amended on a number of occasions thereafter, the application proceeded as a face-to-face hearing over 2 days, on 30 and 31 January 2025. The Tribunal then reconvened to consider its decision on 21 February 2025.

4. The Applicants were represented by Ms Katie Helmore of counsel. The First Respondent freeholder was represented by Ms Kikuyu Thompson of counsel. The Second Respondent management company was represented by Ms Karen Millie-James, director, who also gave evidence as a witness.

5. Also in attendance at the hearing was Ms Neha Tripathi, general counsel for Garnet UK 2 New Limited and GCP Investment Management (UK) Limited, occupiers of the commercial hotel unit in the Yvon House

development. Permission to those entities to be joined as parties to the proceedings was refused by Judge Cowen on 8 October 2024, so that Ms Tripathi's role was observational only.

6. The parties' respective cases were set out in a series of Statements of Case and accompanying schedules, spreadsheets and statements, which had been revised throughout the evolution of the case. The relevant documents had been collated into a helpful bundle filed by the Applicants' solicitors, which numbered some 859 pages. These were augmented by several further documents as the hearing progressed, and after it concluded, at the Tribunal's request to confirm the number of Applicants, against an issue that arose as to the status of several of them, addressed in more detail below.

7. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

8. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the Applicants presented, as clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

Background

9. The building at Yvon House, 140 Battersea Park Road, London SW11 4NY (*"**the Development**"*) which is the subject of this application is a substantial mixed-use development, comprising:

   9.1. 75 residential flats;

   9.2. 2 ground floor commercial units, one of which is currently vacant and the other being occupied by a children's gym and crèche;

   9.3. Axiom Park Hotel (*"**the Hotel**"*); and

   9.4. A substantial underground car park, used variously by the residential flats, each of which has a defined parking space, the Hotel, the commercial units and Sir James Ratcliffe, a private individual who

has rented a section for use as a private car park by an underlease dated 29 September 2016.

10. The freehold of the Development has been since 30 December 2005 registered in the name of the First Respondent at HM Land Registry under title number LN52585.

11. There are three headleases granted out of the freehold, being:

11.1. A headlease of parts of the Development dated 13/11/2008, made between (1) Battersea Park Investments Limited (the First Respondent) (2) Paddington Churches Housing Association Limited (3) 140 Battersea Park Road Limited for a term of 999 years (less 5 days) from 29/09/2008, registered at HM Land Registry under title number TGL316465 (the "***Residential Headlease***"). The registered proprietor of the Residential Headlease is, now, Notting Hill Genesis, a Housing Association.

11.2. A headlease of the Hotel dated 28/05/2012 made between (1) the First Respondent (landlord) (2) Cranborne International limited (Tenant) (3) SO Apartments (No.1) Limited (Manager) (the Second Respondent) for a term of 999 years from 28/05/2012, registered at HM Land Registry under title number TGL364104 (the "***Cranbourne Headlease***"). The current registered proprietor of the Cranbourne Headlease is Garnet 2 UK New Limited.

11.3. A headlease of the Basement and Ground Floor dated 20.07.2017 made between (1) the First Respondent (2) Springmount Investments Limited (3) the Second Respondent, for a term of 999 years from 21/12/2012, registered at HM Land Registry under title number TGL515632 (the "***Springmount Headlease***"). The registered proprietor of the Springmount Headlease is Springmount Investments Limited.

12. The 75 residential flats within the Development are demised thus:

12.1. 54 of the private residential flats (along with their allocated car parking spaces) are let on 125-year leases directly out of the freehold. The Tribunal was provided with a sample lease for flat 71 dated 23/09/2011 made between (1) the First Respondent (Landlord) (2) a Mr Hollan (Tenant) (3) the Second Respondent (Management Company) for a term of 125 years from 23/09/2011 (the "***Flat 71 Lease***"). So far as the evidence demonstrated, the remaining 53 flats within this category were let on the same, or substantially the same terms as the Flat 71 Lease.

12.2. 3 flats, nos. 73, 74 and 75 (and their associated car parking spaces) are let on underleases granted out of the Springmount Headlease:

these seem to have been constructed at a later date than the remaining flats. The Tribunal has been provided with a sample lease for flat 74.

12.3. 18 flats are let on shared ownership underleases granted out of the Residential Headlease, ownership being shared by their leaseholders with Notting Hill Genesis.

13. The following commercial underleases have been granted out of the Springmount Headlease:

13.1. Part of the basement carpark (the private car park) dated 29.06.2016 made between (1) Springmount Investments Limited and (2) the private individual referred to above, for a term from 01/01/2016 to 31/12/2141, registered at HM Land Registry under title number TGL481532 (the "***Private Car Park Underlease***");

13.2. Units A and B 140 Battersea Park Road (Ground floor) dated 04/07/2018 for a term from 04/07/2018 to 04/07/2033, registered at HM Land Registry under title number TGL509945 (the "***Commercial Units Underlease***").

14. The Applicants are all long lessees of flats and car park spaces within the Development. As the proceedings went on, it became apparent that one applicant, Ms Emma Mercer of Flat 69 was not herself the leaseholder, but was in fact the daughter of the director of the company that holds the lease, Yvon House Limited. Following the hearing, the Tribunal was provided with written authorisation from the company for Ms Mercer to stand as its agent in respect of the application.

15. During the hearing it became apparent that a complication had arisen in respect of the status of 13 of the Applicants, who held under shared ownership underleases jointly with Notting Hill Genesis, in circumstances where it appeared that the latter entity had historically been invoiced for service charges by the Second Respondent, and then passed those onto its tenants by invoicing them directly. Pragmatically, Ms Helmore obtained instructions during the course of proceedings that those persons each wished to withdraw their applications under s.27A of the 1985 Act (but not their applications under s.20C).

16. The First Respondent is the registered freehold proprietor of the Development and has not taken an active part in the proceedings, albeit that it was represented at the hearing, as stated above.

17. The Second Respondent is the Manager under the leases of the 57 residential flats, including both the 54 granted out of the freehold, and the 3 granted out of the Springmount Headlease. It is also the Manager under the Cranbourne and Springmount Headleases.

18. The Tribunal inspected the Development on the morning of 30 January 2025, prior to the hearing commencing. We are grateful to the parties for facilitating the inspection.

The Lease Provisions

19. The service charge provisions are contained in Schedule 9 of the Flat 71 Lease, and stipulate, first, that the lessee is to pay the Manager, being the Second Respondent, half of the Estimated Service Charge on 1 January and 1 July in each year, where:

    19.1. Estimated Service Charge "*means the amount which in the option of the Manager's surveyor or their managing agent or accountants (acting reasonably) shall from time to time represent a fair estimate of the Service Charge for the Service Year…"*

    19.2. Service Charge means "*the Building Service Charge and for the avoidance of doubt will not also not include those matters at part 4 of this schedule*"

    19.3. Service Year means "*a calendar year expiring on 31 December or such other annual period as the Manager may in its reasonable discretion decide*"

    19.4. Building Service Charge means "*that part of the Annual Building Expenditure as shall be apportioned to the Premises by the Manager in accordance with the principles set out hereafter*"

    19.5. Annual Building Expenditure means "*the aggregate expenditure incurred or to be incurred by the Manager during a Service Year in or incidental to providing or in respect of all or any of the Building Services all or any of the Car Park Services*"

    19.6. Building Services means "*the service facilities amenities and items of expenditure specified in part 2 of this Schedule*"

    19.7. Car Park Service means "*the services facilities amenities and items of expenditure specified in part 3 of this Schedule*"

20. A Statement of Annual Expenditure is to be provided by the Manager to the Tenant within 3 months after the end of any Service Year (paragraph 4) following which:

    20.1. Any balancing charges are to be paid to the Manager (paragraph 5.3.1); and

    20.2. Any surplus is credited against the following year (paragraph 5.3.2)

21. Other definitions employed in the Flat 71 Lease are set out in clause 1.1 and include:

21.1. Tenants Car Parking Area means "*the car parking motorcycle or bicycle spaces within the Car Park forming part of the Premises and as shown edged in red on Plan 2*"

21.2. Building means "*the Building of which the Premises form part to be known as Yvon House, Alexandra Avenue, London SW11 4GA*"

21.3. Car Park means "*the parking area for cars, motorcycle and bicycles situate on the basement floor(s) of the Building and for the avoidance of doubt the Car Park shall exclude such areas of the basement level(s) as shall be subject to a lease or licence to a public utility or supply company*"

21.4. Development means "*the Landlord's estate as edged red being the land registered at the Land Registry with absolute title under Title Number LN52585 at the date hereof but excluding any part thereof which shall be adopted as a public highway or footpath under the Planning Documents subject to any rights or obligations over adjoining land entered into by the Landlord at any time during this Term provided that both the extent and the boundaries of the Development may be varied from time to time at the absolute discretion of the Landlord who shall five notice to the Tenant of such variation*"

22. Of no little significance in the dispute between the parties is the method of calculation of service charges, contained within clause 2.1 of Schedule 9 of the Flat 71 Lease, and mirrored in clause 2.1 of Schedule 9 of the Flat 74 Lease:

"In respect of the Building Services and the Car Park Services the Manger is to apportion a fair proportion of the Annual Building Expenditure to the Premises calculated primarily by reference to the gross internal area of the Premises excluding the Tenants Car Parking Area as a percentage of the aggregate gross internal areas of all lettable areas within the Building but if this method of calculation is inappropriate having regard to the nature of the item of expenditure incurred the Manager may exercise its reasonable discretion and adopt an alternative method of calculation which is fair and proper in the circumstances."

23. The correct interpretation of this clause is central to the application.

<u>The Scope of the Tribunal's Jurisdiction on the Application</u>

24. The Tribunal is asked to determine the reasonableness under s.19 of the 1985 Act, and liability to pay under section 27A of the 1985 Act of service charges for the years 1 January 2016 to 31 December 2022, and the estimated service charges for the calendar year to 31 December 2023.

25. The Tribunal has considered whether individual service charge costs were reasonably incurred, or services provided to a reasonable standard under section 19 of the 1985 Act. It also has power to determine whether sums are payable under section 27A of the 1985 Act, whether under the terms of the lease or by another law.

The Law

26. The text of the 1985 Act may be viewed at:

https://www.legislation.gov.uk/ukpga/1985/70/contents

27. Section 18 of the 1985 Act defines *"service charges"* and *"relevant costs"*:

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose—

(a) "costs" includes overheads, and

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

28. S.19 of the 1985 Act deals with limitation of service charges:

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

29. S.27A of the 1985 Act addresses questions of liability to pay service charges:

(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.

Agreed Issues

30. Through a series of directions culminating in the Tribunal's Order dated 8 October 2024, it can be discerned that the issues between the parties have narrowed in the evolution of the dispute.

31. First, and significantly, the areas of the relevant parts of the Development and the corresponding percentages of the total area thereof were agreed as set out in the following table.

140 Battersea Park Road Development (above ground)	**m²**	**% of Total**
Yvon House (residential)	6,224	71.34%
Hotel	2,052	23.52%
Creche	308	3.53%
Commercial Other	140	1.60%
Total Area (Development- above ground)	8,724	100%
Car Park Division	**m2**	**% of Total**
Yvon House (residential)	2,260	62%
Hotel	202	6%
Creche	23	1%
Private Car Park	1,088	30%
BPIL	49	1%
Total Area (Car Park)	3,662	100%
Grand Total Area of 140 Battersea Park Road Development	12,346	
Proportion of Development that excludes Car Park	71%	
Proportion of Development that is Car Park	29%	

32. The other issues that the parties have now agreed include:

32.1. The apportionment in respect of building insurance as per the Reinstatement Schedule.

32.2. 100% of the reasonable costs of i) lift maintenance ii) refuse removal for residential flats iii) water rates are to be apportioned to the Building Services element relating to Yvon House; and

32.3. The reasonableness of the amount of service charges for the relevant years save for those specifically identified below.

The Outstanding Issues

33. As identified in the 8 October 2024 directions, the following issues remain in dispute:

33.1. The question of principle whether for the purposes of calculating the apportionment of service charges for the residential flats any percentage should be notionally allocated to the development as a whole;

33.2. The appropriate apportionment of the service charges in relation to the following categories of expenditure:

33.2.1. Accountancy;

33.2.2. Audit;

33.2.3. Bank Charges;

33.2.4. Caretaker Services;

33.2.5. Cleaning;

33.2.6. Concierge and Security;

33.2.7. Legal Fees;

33.2.8. Lighting and heating of common parts;

33.2.9. Property Management;

33.2.10. Repairs and Maintenance;

33.2.11. Security Equipment Hire and Maintenance; and

33.2.12. Telephone

33.3. The reasonableness of the following service charges (the "***Disputed Charges***"):

33.3.1. Property Management and Caretaker Services;

33.3.2. Security Services; and

33.3.3. Caretaker service (for hotel accommodation in 2020)

Evidence – Overview

34. Besides the significant quantity of documentary evidence, the Tribunal heard the oral evidence of six witnesses. These included, for the Applicants:

34.1. Mr Robert Juxon, leaseholder and occupier of Flat 57 since December 2010.

34.2. Mr Edward Birkett, leaseholder of Flat 71 since November 2020.

34.3. Mr Jaime Uribe Arango, leaseholder of Flat 29 since September 2011, and of another flat purchased for occupation by his adult children.

35. The First Respondent called no oral evidence. The following witnesses gave evidence on behalf of the Second Respondent:

35.1. Mr (or Dr) Ahilleas Rokni, director of RAR Consultancy and Management Limited, which was engaged to provide onsite, day-to-day maintenance and management services to Yvon House, pursuant to a written contract dated 1 March 2022.

35.2. Mr Mark Felstein, former junior business partner of Ms Millie-James at Novus Partnership, and other previous businesses, who was involved with the management of the Property since 2009.

35.3. Ms Karen Millie-James, director of the Second Respondent.

36. We are grateful to all witnesses for their evidence.

Management of the Development - Overview

37. The Development has a management structure divided between Property Management, on the one hand, and 'Caretaker' Services, on the other.

38. As explained by Ms Millie-James, the property management office deals with issuing service charge demands and collecting the service charges from the leaseholders. This also includes chasing payment and, in the rare event of non-payment, instructing solicitors for the collection of the payment. In addition, the property management deals with managing the service charge bank account including making payments out of the bank account. They will liaise with the Caretaker on some specific issues within Yvon House and, should it be required, deal with the process of Section 20 Notices and collection of funds for the required works.

39. The day-to-day administration of property management was delegated to Mr Mark Felstein of Novus Partnership, on specific instructions given by the ultimate beneficial owner, Mr Kamran aka Alex Rokni.

40. Caretaker services, by contrast, involve matters concerning on-site maintenance. The caretaker is in communication with the residents, the concierge team, the cleaning staff, the handyman, and third-party contractors. The caretaker has the task of listening to concerns or issues raised by the residents and finding ways to deal with them, and to keep them informed of any developments. The caretaker has the task of appointing or removing members of the concierge, training them, and liaising with them on a daily basis. The caretaker has the task of making sure that the cleaning staff have the requisite cleaning material on site and making sure that they continue to clean to a high standard. The caretaker has the task of organising the work of the on-site handyman. Finally, in the event there is an issue with something that cannot be resolved with the handyman, the caretaker has the task of finding a third-party contractor to deal with the issue, whether this is a small job or a larger job that would require a section 20 consultation, gathering at least 3 quotes from different contractors and making the decision that is best for the building.

<u>The Applicants' Evidence</u>

41. The evidence for the Applicants, in summary, was to the effect that the provision of services at the Property had been poor – so poor, as Mr Juxon explained, that he knew of a number of leaseholders who had sold their property as a direct result of their dissatisfaction with the building's management. He stated that he had hundreds of emails of complaints in his possession dating from around 2015, that had not been adduced in evidence simply because that would overwhelm the proceedings with information. A number of leaseholders had withheld payments in protest in 2015, but had capitulated upon receipt of solicitors' letters on behalf of the Respondents.

42. A particular problem at the Property was security: despite there being a substantial number of video cameras, by 2019 around half of them were not functional. Mr Juxon had personally lost 2 motorcycles to theft from

the car park, and 2 bicycles, and knew of theft of at least 4 more bicycles and 5 further motorcycles.

43. In relation to the security contract, where equipment was hired from Stanley Security Solutions, Mr Uribe-Arrango had made enquiries and, the week before he hearing had obtained a contract between that firm and the Second Respondent dated 18 June 2014. For all that Ms Millie-James expressed mystification as to the existence of that agreement, the Tribunal finds that it was a genuine contract, entered into on the date specified in it, not least because it bears what was accepted to be (or strongly to resemble) Ms Millie-James' signature.

44. It became apparent at an early stage in the evidence that the role of 'caretaker' for Yvon House was in fact a form of property manager, exercising management functions from offsite. Mr Juxon's and Mr Birkett's evidence confirmed that of Ms Millie-James that Property Management, conducted by Ms Millie-James and Mr Felstein of Novus, retained by the Second Respondent, included issuing service charge demands and preparing accounts, and dealing with strategic issues such as scheduling major works. 'Caretaker services', by contrast, involved being the principal contact for residents regarding maintenance and cleaning issues. This was contracted to RAR, Mr Ahilleas Rokni's company, which oversees maintenance and provides direction to concierge and security staff. A Mr Robert Romanski exercised onsite handyman functions, with third party contractors being brought in by the 'caretaker' for functions that were beyond Mr Romanski's expertise.

45. While previous appointed Caretakers had been frustratingly unresponsive to issues raised by leaseholders, Mr Birkett explained that in his view Mr Ahilleas Rokni was responsive to queries from residents, but would then on occasions fail to 'deliver', citing examples such as replacement of the failing intercom system, failing to replace worn carpets in internal common parts, and undertaking remedial works to the roof terrace, which Mr Uribe-Arrango complained to have been overrun with rodents in 2020.

46. A surprising feature of the evidence was that Mr Juxon and Mr Birkett both explained that they had never seen Mr Felstein or Ms Millie-James of the Second Respondent at the Property, and had never met them, despite offering to attend their offices in north London. All communications with management had to be effected by email, usually to Mr Felstein: requests to be able to correspond by other means including WhatsApp and Zoom had been refused by the Second Respondent.

47. Mr Juxon complained of a lack of transparency regarding accounts, going so far as to recount, in his witness statement and in cross-examination, false invoices provided by a former caretaker, Mr Bafghi, which on examination caused the Second Respondent to refund the sums

represented in them. Mr Bafghi and his father before him had provided a poor service, being generally unresponsive to reports of needed maintenance and repair, and going missing for an entire year.

48. A subsequent replacement caretaker, Ms Pavenah Parvin was said to have been employed as a replacement for Mr Bafghi, albeit she was seen at the Property but once, when she attended Mr Uribe-Arrango's flat in September 2020. Mr Birkett had never seen her, and while she was asserted to be employed as caretaker, her existence was seldom mentioned by Mr Felstein, who instead dealt with day-to-day queries. Nobody saw or communicated with her again.

49. A want of maintenance was demonstrated, on the Applicants' case, by the fact that in 2022 Mr Juxon's flat was flooded by an ingress of rainwater, that transpired to be attributable to a lack of maintenance of the gutters.

50. In consequence of all these matters, and more, Mr Juxon and Mr Birkett had become active members of the Residents' Association.

51. The Applicants also relied upon the witness statement of Mr Stephen Eggins, another lessee, albeit that in the absence of the gentleman's oral evidence we afford the statement a little less weight than might have been the case had he answered questions in cross examination.

52. The principal contention for the Applicants was that the Second Respondent, in calculating service charges, had unfairly, and contrary to the terms of the residential leases, charged to the residential tenants a disproportionate share of communal expenses forming the Annual Building Expenditure, so that they had between 2016 and 2023 been unfairly subsidising the commercial tenants of the Development.

The First Respondent

53. As summarised above, the First Respondent took no active part in the proceedings, and called no evidence. Notably, Ms Thompson, the First Respondent's counsel, asked no questions of any witness.

The Second Respondent's Evidence

54. Mr Ahilleas Rokni confirmed that he had, through his company RAR Consultancy and Management Limited, been engaged to provide onsite, day-to-day maintenance and management services to Yvon House, pursuant to the written contract dated 1 March 2022. His background in property maintenance stemmed from having been retained in January 2021 to work as an assistant to a project manager on a construction site in London, whilst also completing a PhD in Philosophy, which concluded in December 2021. He explained that the role involved interacting with

architects, contractors and engineers, providing relevant experience, albeit that he conceded in cross-examination that he had had no block management experience previously.

55. Mr Ahilleas Rokni explained that his role as caretaker included providing direction to Mr Romanski, the building handyman, who would undertake repairs and maintenance. He would employ 3rd party contractors when necessary, including roofers and electricians. He managed the concierge and security staff, communicating in the main by text message: there were 6 staff in total, and would be one on site at all times save when changeover occurred. He organised cleaning staff: prior to 2023 there had been complaints, but a new lady had been retained from then and there had been no issues thereafter. Mr Rokni also dealt with new fobs, garage remote controls, defects in the communal courtyard, litter, leaking in the car park (which is, apparently, ongoing, and prohibitively expensive to rectify). Larger issues, involving consultation under s.20 of the 1985 Act would be referred to the Second Respondent as management matters, as would issues regarding a reserve or sinking fund, questions about specific contracts, apportionment of service charges.

56. Mr Rokni explained that he attended the site once each week, for an average of one hour. He managed other projects, up to 8 in number, but Yvon was the largest. So far as Yvon House was concerned, he would liaise with the concierge for between 30 minutes and an hour each day, with the cleaner for perhaps half an hour each week, with the handyman for 2-3 hours per week, and was on call 7 days a week save when on holiday.

57. In cross-examination Mr Rokni conceded that the ultimate beneficial owner of the freehold of the Development, Mr Kamran Rokni, was his father. He had been retained after no formal interview process, albeit that he stated that he had an informal interview with a person he could not recall. He had provided no CV. There was no written job specification. The Tribunal notes that the contract by which RAR Consultancy and Management Limited was retained by the Second Respondent is limited to just one page, itself providing no detail of the services to be provided for an annual fee of £45,000, rising by 4% per annum.

58. On 25 April 2023, against the background of the growing dispute between leaseholders and the Second Respondent as to apportionment of service charge expenses, Mr Rokni emailed Mr Birkett, cc'ing a number of other people, and stated that he had applied, as an interim method, a basis of apportionment of expenses based upon the number of car parking spaces held by various entities interested in the Development. In cross-examination he explained that he had adopted a role of *"almost mediator'*, trying to help the disputing parties to find a solution to their differences. He said that he had attended a meeting on

26/10/22 at the request of the residents, heard their grievances, and passed them on to the Second Respondent, in the hope that he could, again, assist the parties to resolve their differences and find common ground. From 2023, he had ceased trying to assist in relation to the question of apportionment, having no detailed knowledge of the service charge provisions in the leases, albeit that he had read Schedule 9.

59. It became apparent to the Tribunal during the course of Mr Rokni's evidence that the reality of the situation was that the ultimate beneficial owner, his father, had effectively imposed his retention upon the Second Respondent, notwithstanding his lack of experience in block maintenance and the fact that by the one-page contract of 1 March 2022 the Second Respondent was RAR's employer.

60. Mr Felstein gave evidence of his background and experience, conceding that he had no qualifications in property management, and having worked for KHCS consultants from 2008, then McAlvins accountants from 2020, and then as junior partner to Ms Millie-James in Novus Partnership from 1 August 2022, until December 2024. He had been involved with management of Yvon House throughout that time, his role including administration, dealing with service charges, emailing lessees, managing the bank accounts and payment of expenses. On occasions he would act as go-between, between leaseholders and he caretaker. Since Mr Rokni had been retained in that role he had been far more hands-on than his predecessors in dealing with leaseholders' issues. Mr Felstein explained that he took his instructions from Ms Millie-James, as director of the Second Respondent, and from his father as ultimate beneficial owner, who had an interest in the Development running smoothly and successfully.

61. Mr Felstein stated that his work in relation to Yvon House amounted to around 2 hours per week on average, with considerably more duties when service charge accounts and demands had to be prepared. He however stated that he had never been directly involved in the calculation of apportionment of service charges, which had been throughout his involvement with the Development based upon a method devised by the original architect and ultimate beneficial owner, based upon comparative square footage figures known to the architect. This had been reduced to a spreadsheet provided, he thought, by the solicitors who drafted the original leases.

62. Mr Felstein stated that the formula had not been changed through his involvement with the Property, and was effectively based on a flat rate per square foot multiplied by the gross internal area of each flat. If expenses exceeded the initial calculation, the service charges would be raised, but he did not know the method by which such raises would be calculated.

63. Mr Felstein was not directly involved in the appointment of the caretaker, and while he had seen the RAR contract, was not involved in its preparation, or in negotiating the fee payable to Mr Rokni's company. Upon being shown correspondence regarding the elusive figure of Ms Parvin, he conceded that in May 2021 he had emailed leaseholders to the effect that him, and not her, was the first port of call for complaints, which he would then pass them onto her.

64. Questioned as to the role of Stanley Security Solutions Ltd, formerly responsible for the provision of security cameras and equipment, Mr Felstein stated that he first saw the 2014 contract the week before the hearing, when it was disclosed by the Applicants. Cross-examined as to the circumstances of renewal of the Stanley contract in 2019, he agreed that the Second Respondent had sought to terminate the contract shortly after its inception, which had led to litigation instigated by Stanley seeking damages for wrongful termination. Having initially sought to deny that he was aware of *"serious"* issues with the security equipment, Mr Felstein was taken to the signature of Ms Millie-James to a statement of truth dated 25 June 2021 to the Second Respondent's Defence and Counterclaim in those proceedings, which asserted amongst other particulars that as at 16 September 2019 half of the security cameras installed had never worked, and intercom systems in Blocks A, B and C had never worked properly. The Defence alleged an oral agreement between Mr Felstein and an employee of Stanley that new equipment would be provided at no charge to the Second Respondent, which Stanley was alleged then promptly to have breached.

65. Against what seems to have been a poor service from the security contractor, Mr Felstein explained that the decision to retain that company was not his, but rather that of the Second Respondent and the ultimate beneficial owner. This was echoed in the evidence of Ms Millie-James, who accepted all that was alleged in the Defence, and stated clearly that the decision to renew the Stanley contract was that of Mr Alex Rokni, the ultimate beneficial owner.

66. The final issue on which Mr Felstein was questioned concerned the accommodation of the Property's security/concierge personnel in the Hotel during the first 4 months of the Covid-19 pandemic. He explained that it was not his approach to the hotel, he did not know who had done so, he had not sought to negotiate the fee of £150 per room per night, and it was not his remit to seek alternative quotes. Ms Millie-James denied that she had personally arranged the accommodation either, and confirmed that she had at no time sought alternative quotes.

67. Ms Millie-James, director of the Second Respondent was the final witness who gave evidence. She explained that she provided instructions to an accounting team, in the form of invoices and other information, to enable that team to calculate the service charge bills. The calculation was based on square footage, echoing Mr Felstein's evidence, based upon a

formula initially provided by the architect of the Development. This led to an apportionment between the flats based upon the square footage of each.

68. Questioned by the Tribunal, Ms Millie-James agreed that the square footage was a constant, while expenses would vary. When asked how the share of expenses to be borne by the commercial units would be factored in, her answer was:

"The service charges defined in the leases of the commercial units are quite strict and had parameters we had to adhere to, as we were not a party to negotiations with the commercial premises."

69. This led to further questions from the Tribunal, seeking to establish whether, if the service charges received from the commercial units were deducted from the total expenditure incurred, the remaining balance expended would be divided between the residential flats, irrespective of the precise terms of the lease. The Tribunal found Ms Millie-James' responses to these questions to amount to prevarication, but she ultimately accepted the proposition that the sums in question were divided between the residential flats based upon the formula derived from the square footage of each flat, that had originally been provided by the solicitors in conjunction with the architect and ultimate beneficial owner.

70. Questioned as to the 'primary method' contained in clause 2.1 of the 9th Schedule to the leases (examined in more detail below), Ms Millie-James accepted that she had never applied it. She had never herself undertaken an apportionment calculation, rather she had carried on doing what had been decided by *"other parties"*, as instructed by those parties. She later confirmed that while she reviewed service charge accounts, the decisions as to apportionment were not hers, rather the ultimate decision of the ultimate beneficial owner was applied to the apportionment to each flat.

71. Ms Millie-James confirmed that the Second Respondent's retention of RAR was at the command of Mr Kamran Rokni, aka Alex Rokni, the ultimate beneficial owner of the Development, confirming the Tribunal's impression of Mr Rokni's evidence. She had had no involvement in the selection. This led to her evidence of a longstanding and, it appeared, once close business relationship between Ms Millie-James and the elder Mr Rokni, lasting some 28 or 29 years, in which she had assisted him with a number of projects. In 2009, when the Development began to be occupied, she had been asked by Mr Rokni to set up a company to manage it, and had done as asked, notwithstanding that she had no qualifications or experience in property management. Tellingly, when asked why she had been asked to do so, she explained that Mr Rokni knew her, and knew that she would undertake matters on his behalf. She said that he trusted her, and *"I trusted him ... I used to."*

72. Ms Millie-James candidly conceded that she had at the outset no experience in the regulatory framework of residential service charges, and had done as directed by Mr Rokni. He decided that there should be a separate manager and caretaker

73. The overall tenor of Ms Millie-James' evidence was that the substantial majority of key decisions affecting management of the Property was taken by the elder Mr Rokni, and she effectively did his bidding. The fee for her company's services was fixed by him, and had never increased for inflation. The provision of the Second Respondent's services, compared to the work involved, was essentially loss-making. Remarkably, the first time she had *ever* visited the Development was at the time of the Tribunal's inspection on 30 January 2025.

74. Albeit that he did not attend to give evidence, and we therefore afford his statement somewhat less weight than would have been the case of a witnesses who attended to give evidence in person, we also have regard to the witness statement of Mr Mark Hegarty, on behalf of Garnet UK 2 New Limited, which holds the lease of the Hotel. Insofar as that statement purports to give expert opinion evidence, however, we ignore those parts.

Analysis

Whether for the purposes of calculating the apportionment of service charges for the residential flats any percentage should be notionally allocated to the development as a whole?

75. The Applicants submit that, properly interpreted, clause 2.1 of Schedule 9 to the Flat 71 Lease requires the apportionment of a fair proportion of the Annual Building Expenditure as follows:

    75.1. Primarily, "*by reference to the gross internal area of the Premises excluding the Tenants Car Parking Area as a percentage of the aggregate gross internal areas of all lettable areas within the Building*" (the "***Primary Method***");

    75.2. Alternatively, if the Primary Method "*is inappropriate having regard to the nature of the item of expenditure incurred*" then the Second Respondent may "*exercise its reasonable discretion and adopt an alternative method of calculation which is fair and proper in the circumstances*" ("***the Secondary Method***").

76. The general approach to the construction of documents, including leases, is well settled. We have directed ourselves in accordance with the observations of Lord Neuberger in ***Arnold v. Britton* [2015] AC 1619 at [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] A.C. 1101, para 14. And it does so by focusing 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."

77. The Tribunal has also considered, in particular, paragraphs [16] to [23] of ***Arnold v Britton***, ***Wood v. Capita Insurance Services* [2017] UKSC 24 at [10]to [13]** and ***Rainy Sky SA v. Kookmin Bank* [2011] 1 WLR 2900**.

78. It is apparent from the evidence of Ms Millie-James in particular, augmented by the documentary evidence we have considered, that the Second Respondent has never employed the Primary Method of apportionment. Ms Millie-James' submissions were to the effect that she had always understood that the Secondary Method was a perfectly adequate alternative, and that she (or, rather, the Second Respondent) had the choice of which method to employ.

79. The difficulties with that submission are, first, that the terms of the lease are in fact clear: the Secondary Method can only be used if the Primary Method is inappropriate, and second, it is far from apparent that the formula apparently imposed upon (or employed by) the Second Respondent from the commencement of its management of the Property is fair and proper in the circumstances, or indeed a reasonable exercise of discretion.

80. The effect, as set out in the Applicants' Statement of Case, is to have left them paying around 96% of the Annual Building Expenditure for the Development for the years 2016 to 2022, and in the projected 2023 budget, even though elements of the services provided clearly provided benefit to the commercial tenants. The Applicants submit that the residential tenants were for that period unfairly subsidising he commercial tenants, in sums that were not properly chargeable to the residential leaseholders under the terms of their leases.

81. The Second Respondent takes the point that the method of apportioning service charges was not challenged by tenants until around 2022, so that it, through its director, believed that there was no issue with the method

of calculation employed for the preceding 13 years, since the Development was completed and flats were purchased and occupied.

82. The Second Respondent disputes the claim that the proportional liabilities have not been calculated on a fair proportion basis. It asserts that the contributions that were paid by the creche, the hotel leaseholders: Cranborne International Limited (Cranborne) from 2016 to December 2020 for the Hotel, Garnet UK 2 New Limited (Garnet) from December 2020 when it purchased the lease of the hotel from Cranborne, to present, and the private individual leasing a part of the car park from September 2016 were all calculated as a fair representation of the indirect benefit conferred to them by their use of the car park by the building's car park services.

83. The Second Respondent has nevertheless accepted that there must be some alternative method of apportionment, as shown by its observations on the revised Scott Schedule, and as set out in detail in Ms Millie-James' skeleton argument. However, it appears to the Tribunal that the Second Respondent's proposed method of apportionment as set out in that response does not correspond to the terms of clause 2.1.

Decision

84. Pragmatically, the Applicants accept that the residential leaseholders should pay for 100% of services which exclusively benefit the residential areas. That seems to the Tribunal to be both fair, and a contractually permissible application of the Secondary Method, where appropriate.

85. As for the provision of services that benefit both Yvon House and the commercial tenants, the Tribunal determines that the application of the Primary Method must prevail, unless it "*is inappropriate having regard to the nature of the item of expenditure incurred.*"

86. Excluding the car park, the gross internal area of the Yvon House flats is 6,224 m^2.

87. The total lettable area of the Development (excluding the Hotel[1]) but including the car park (which is a lettable part of the Building), is 10,334 m^2.

88. The gross internal area of the flats as a percentage of the aggregate gross internal area of all lettable areas within the Building is, accordingly, 6,224 / 10,334 x 100 = 60.29%.

89. In respect of service charge expenditure that is incurred for the benefit of residential and non-residential leaseholders, therefore, the

[1] Which all parties agree must be excluded from the calculation for these purposes.

application of the Primary Method results in the lessees of Yvon House being, collectively, responsible for 60.29% of the total.

90. This *may* be altered in the case of specific items of expenditure that do not exclusively benefit the residential tenants by application of the Secondary Method, where appropriate. The Tribunal however declines to speculate as to circumstances where the same might apply, noting only that the Secondary Method must, if employed, result in the residential tenants paying a proportion of the Annual Building Expenditure that is *fair and proper in the circumstances*.

The Appropriate Apportionment of Particular Service Charges

91. The Applicants' position is that each of the items identified in §33.2, above, properly fall to be apportioned between the residential and commercial tenants.

Decision

92. We consider that the following categories of expenditure do indeed clearly fall to be apportioned between residential and commercial tenants, applying the Primary Method (subject of course to questions of reasonableness, to which we shall return, where relevant):

    92.1. Accountancy, as a function of management that is of application to all units in the Development, residential and commercial;

    92.2. Audit, as a function of accountancy;

    92.3. Bank Charges, ditto;

    92.4. Property Management, as a necessary service provided for the benefit of all occupiers, residential and commercial; and

    92.5. Security Equipment Hire and Maintenance, as a service that benefits all occupiers.

93. Telephone charges, we were told in the hearing, are not levied in respect of calls between the caretaker, concierge and/or security staff, but rather relate solely to the emergency telephones in the lifts that serve the residential flats alone, and thus are properly attributable to those flats, based upon the concession summarised in §84, above.

94. As to lighting and heating of common parts, the majority of such charges will relate to the internal common parts serving the flats, and the courtyard in between those blocks, while a proportion will be incurred in lighting the car park and the access points to it, of partial benefit to the

commercial tenants. This, it seems to the Tribunal, forms an expense, or series of expenses where the Secondary Method of apportionment is appropriate. Doing the best we can on the available evidence, the Tribunal determines that such expenses should be split, so far as possible, so that the expenses incurred in lighting the courtyard and in lighting and heating the common parts serving the flats are borne by the flats alone, while those incurred in relation to the car park should be borne proportionately to the use of the car park, as set out in the agreed table above, so that the flats bear 62%.

95. We make a similar determination in relation to cleaning: the majority (or indeed all) is likely to be to the common parts serving the flats and the courtyard, and should be borne by the flats alone, but if any is undertaken to the car park and its entry ramp, those costs should be split using the Secondary Method, so that the flats bear 62%.

96. So far as legal fees are concerned, the Applicants submit that legal fees relating solely to residential tenants, for example taking action in respect of non-payment of service charges, should be apportioned 100% to the residential tenants. Where the collection of service charges is a function of management as a whole, this seems to the Tribunal a most generous concession, but we endorse this approach on the application of the Secondary Method. Other legal fees, for example those incurred in the litigation between the Second Respondent and Stanley Security Solutions Ltd., appear to the Tribunal properly to be apportioned between the residential and commercial tenants on the application of the Primary Method, as a function of management and relating to the provision of a shared service, viz. the security apparatus at the Development.

97. As to repairs and maintenance, the Applicants contend that these should be apportioned between residential and commercial tenants, employing the Primary Method, unless (i) they solely benefit the residential units, in which case they should be borne by the residential tenants, or (ii) they solely benefit commercial units, in which case they should be borne by the commercial tenants. Once more, as a pragmatic application of the Secondary Method, we agree.

98. That leaves the issues of Caretaker Services, Concierge and Security. The Applicants' position is that all 3 elements should be apportioned using the Primary Method. Albeit that the Second Respondent submits that an alternative formula for apportionment should be employed, which the Tribunal has rejected in determining that the Primary Method should be applied in most cases of shared expenditure, the Tribunal does not understand Ms Millie-James' submissions to be to the effect that Caretaker Services should *not* be apportioned between the residential and commercial units: rather, she disputed the formula for apportionment. The Tribunal in any event finds that Caretaker Services are a management function, and we see no reason that they should not

each be apportioned in accordance with the Primary method, as with other functions of management and services that are jointly beneficial. Accordingly, therefore, the Tribunal determines that the Primary Method of apportionment must apply to Caretaker Services.

99. Ms Millie-James however submits that in relation to the discrete provision of Concierge expenditure, which overlaps with Security as the same individuals perform both functions, a more elaborate formula of apportioning 75% of such expense should be applied, based upon a summary of the concierge's working patterns, where more concierge-like functions take up much of the day, while the nighttime is primarily devoted to security.

100. While the concierge element of the service will naturally almost entirely be for the benefit of residential flats, save perhaps the occasional taking in of mail or deliveries, Security in particular is self-evidently a service that benefits *all* occupiers of the Development, including scrutiny of the security camera systems covering the car park. The Tribunal finds it impossible to separate the two aspects, where security services are provided 24 hours of the day and night. The Tribunal, accordingly, determines that Concierge and Security Services must be apportioned between residential and commercial units by employing the Primary Method.

<u>Reasonableness of the Disputed Charges</u>

101. As identified in the directions, there are 3 elements of the Service Charges where the reasonableness is challenged. These include:

    101.1. Property Management and Caretaker Services;

    101.2. Security Services; and

    101.3. Caretaker service (for hotel accommodation in 2020)

102. The Disputed Charges are payable:

    102.1. Only to the extent that they are reasonably incurred, and

    102.2. Where they are incurred in the provision of services or the carrying out of works, only if the service or the works are of a reasonable standard, by s.19(1) of the 1985 Act.

103. There are many reported cases providing relevant authority for the purposes of this Decision. A helpful resumé of the main points to be gleaned from the authorities is contained in the judgment of the Court of

Appeal in ***Waaler v Hounslow LBC*** [2017] EWCA Civ 45, [2017] 1 WLR 2817.

104. As summarised in ***Waaler***, in the earlier case of ***Forcelux v Sweetman*** [2001] 2 EGLR 173 it was held that there are two elements to the answer to the question of whether the cost of any given service charge item is reasonably incurred, namely:

i. Was the decision-making process reasonable; and

ii. Is the sum to be charged reasonable in light of the evidence?

105. In ***Waaler*** the Court of Appeal held that whether costs were reasonably incurred within the meaning of section 19(1)(a) of the 1985 Act was to be determined by reference to an objective standard of reasonableness, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable. The Tribunal, in deciding whether that final decision was reasonable, would accord a landlord a margin of discretion.

106. It follows that in respect of how a landlord addresses required works, the question is whether the method adopted was a reasonable one in all the circumstances. That is to say, one of what may be a number of reasonable courses, even if other reasonable decisions could also have been made. The correct answer to the question of works being reasonable is fact sensitive and can only be answered by considering all the relevant evidence in light of the surrounding circumstances.

Property Management and Caretaker Services

107. The Applicants contend that this charge is unreasonable in both amount and quality in respect of all service charge years under consideration.

108. The sums charged for these services in the years in issue are as follows:

Year to 31/12	**Caretaker Services £**	**Property Management £**	**Total £**
2016	37,066	26,644	63,710

2017	39,742	27,753	67,495
2018	44,272	28,037	72,309
2019	39,397	28,443	67,840
2020	37,794	25,612	63,406
2021	43,533	31,439	74,972
2022	33,937	28,413	62,350
2023 (est.)	45,000	28,500	73,500

109. Property management is contracted to Novus Partnership by the Second Respondent, while, as summarised above, Caretaking is now contracted to R.A.R Consultancy & Management Ltd by the contract dated 1 March 2022. The Applicants submit that this is wholly inadequate and lacking in detail or any breakdown of the annual fee of £45,000 with an annual 4% increase.

110. The Applicants then contend, that there appears to be clear duplication and overlap of roles and work between the Property Manager and the Caretaker. They point to what they characterise as an unusual level of connection between the Property Manager, the Second Respondent and the various caretakers, making it particularly important for services to be benchmarked and tested against the open market and not against a closed marked of connected parties. None of the individuals employed as caretaker over the years in question appear to have relevant professional experience or qualifications or to have provided services or a reasonable standard or quality.

111. The Applicants also submit that there is no evidence of proper open market tendering in respect of either the property manager or the caretaker, the benefits to the residential tenants from an 'off-site' caretaker are unclear and somewhat doubtful.

112. Furthermore, the Applicants submit that there is clear evidence of an inability on the part of the property manager to understand and to comply with the service charge provisions within the residential leases including, in particular, a prolonged and ongoing failure fairly to apportion service charges resulting in significant overcharging to residential lessees.

113. The Second Respondent, in answer, points to what Ms Millie-James characterises as a clear separation of functions between Property Manager and Caretaker, summarised in §§37-40 above. The two roles, she contends, are fundamentally different, but complimentary.

114. The caretaker role now undertaken by RAR was previously (at least purportedly) undertaken by Ms Parvenah Parvin, and prior to her, Mr Daniel Bafghi, and prior to him, Mr Arnold Harris. Against the Applicants' queries with regard to their abilities to perform this role, and in the case of Ms Parvin, her employment by the Second Respondent, Ms Mille-James states that all of these persons, and now RAR were recommended by the ultimate beneficial owner Mr Kamran Rokni, and retained based on his knowledge and recommendation.

115. In the specific case of Ms Parvin, it is said that her ability to carry out her work was regrettably severely curtailed in consequence of the Covid 19 pandemic. In consequence of her medical condition she was a vulnerable person and unable to attend the Development. It is then said that Ms Parvin was receiving furlough payments during the period, suggesting that she was not working at all.

116. Ms Millie-James specifically refers to Schedule 9 Clause 3.4 of the Flat 71 lease and asserts that that provides that no person employed by the Manager shall be under any obligation to furnish attendance at the Development. The Tribunal disagrees with that interpretation, where the entire clause in fact relates to there being no obligation on the part of any person employed by the Manager *"...to furnish attendance on or make available their services to the Tenant..."* This, therefore, specifies that service providers retained by the Manager are not obliged to offer their services to tenants; it does not mean that there is a contractual right not to attend the Property.

117. As to the allegation of poor service, Ms Millie-James asserts that notwithstanding the very substantial amount of documentation generated by the proceedings, there is a paucity of evidence provided by the Applicants, limited to 4 witness statements out of the 53 flats that were part of the original application, pointing to the absence of emails, photos, videos, etc, demonstrating poor service.

Decision

118. Having carefully considered the evidence on this issue, the Tribunal finds that it prefers the evidence of Messrs. Juxon, Birkett and Uribe-Arango. We find that there were serious deficiencies in maintenance and repair services, that Mr Bafghi was unresponsive to complaints and went so far as to produce a series of false invoices that, when challenged, led to refunds being given to leaseholders. Ms Parvin attended the Development but once, was impossible to contact and, it seems from the fact that she was furloughed, did little or no work whatsoever in her role

as Caretaker. Elision of the services provided can be seen from the fact that in May 2021 Mr Felstein had emailed leaseholders to the effect that he, and not Ms Parvin, was the contact point for their complaints and other issues.

119. There is no evidence that the Second Respondent had sought alternative quotes in the marketplace for the provision of Caretaker Services, and there was positive evidence to the effect that the successive individuals and corporate entities retained to that end were in essence imposed upon the Second Respondent by Mr Rokni senior. While we appreciate that placed Ms Millie-James in a difficult position, the Tribunal is concerned with the contractual efficacy of the service charges demanded, read against the statutory requirements of s.19 of the 1985 Act.

120. The Tribunal also notes, however, that despite his lack of experience in property management, and lack of qualifications, the general tenor of the Applicants' evidence is that matters are much improved following the appointment of RAR, through the person of Mr Ahilleas Rokni.

121. As to the specific function of management leading to the generation of service charge demands, the Tribunal particularly notes the fact that these have *never* been apportioned in accordance with the contractual mechanism, leading to demands made of the residential leaseholders in excess of the sums that they should have been paying for services shared by residential and commercial tenants. While we understand Ms Millie-James' evidence as to the formula that had been employed for more than a decade, at the behest of the senior Mr Rokni, the stark reality is that such formula did not accord with the contractual provisions in Schedule 9 of the Flat 71 and Flat 74 leases.

122. Against all these factors, in our view the Second Respondent has failed to persuade us that the contributions demanded for Caretaker Services and Property Management for the years 2016 to 2021 are reasonable. While they were reasonably incurred in the broad sense of providing management and maintenance, the division between the two appears objectively unnecessary, and will inevitably have led to duplication of work, and superfluous levels of communication.

123. We are driven to the conclusion that the services themselves were not provided to a reasonable standard, for the reasons we have adumbrated.

124. Thereafter, from March 2022 we find that the Caretaker Services were much improved, notwithstanding the effective imposition of RAR upon the Second Respondent by the elder Mr Rokni. While the contract dated 1 March 2022 is lamentably short on detail, Mr Ahilleas Rokni has marked a significant improvement in the service provided to leaseholders. The difficulties in apportionment however prevailed in 2022; thereafter the 2023 accounts have yet to be audited, pending determination of the present application.

125. The Tribunal has experience and knowledge of these matters, and doing the best we can on the information before us, we determine that the reasonable charges for Property Management and Caretaker Services, payable by the Applicants for the years in issue are as follows:

Year to 31/12	**Caretaker Services £**	**Property Management £**
2016	18,533	17,762.67
2017	19,871	18,502
2018	22,136	18,691.33
2019	19,698.50	18,962
2020	18,897	17,074.67
2021	21,766.50	20,959.33
2022	31,000	18,942
2023 (est.)	45,000	19,000

126. The figures for Caretaker Services are based upon a 50% reduction for the years 2016 to 2021 to reflect what we find to have been a poor service, a small reduction in 2022 prior to the retention of RAR, and thereafter allowing the sums claimed against the marked improvement that we find has occurred.

127. As to Management Services, the Tribunal has applied a 1/3rd reduction in each year to reflect the deficiencies we have identified. In so doing, we understand that Ms Millie-James may consider herself to have been in an impossible position, and that the consequences of this Decision may have profound implications for the ongoing viability of the Second Respondent; nevertheless, the Tribunal is concerned with the statutory questions of whether the service charges in issue were reasonably incurred and, where they relate to the provision of management services, whether those services were provided to a reasonable standard. In relation, *inter alia*, to the retention of Caretakers prior to 2022 and the calculation of apportionment of service charges, we have found that they were not.

Security Services

128. This disputed charge relates to sums paid to Stanley Security Solutions Ltd in respect of hire and service agreements for security cameras/CCTV.

129. It initially appeared that a 10-year contract was entered into between the Second Respondent and Stanley Security Solutions Ltd in 2009 for the period 2009 to 2019 and that a copy of this contract was no longer available.

130. Whether or not the original contract was indeed for a term of 10 years cannot now be ascertained, but the copy contract dated 18 June 2014 obtained by Mr Uribe-Arrango is, we find, a genuine document. While it is now impossible to be certain as to the status of the initial agreement, it is clear that Stanley Security Solutions Ltd continued to hire security apparatus to the Second Respondent pursuant to the 2014 agreement.

131. The Second Respondent entered into a further 10-year contract with Stanley Security Solutions Ltd on 16 September 2019. This, Ms Millie-James affirmed, was at the direction of Mr Rokni snr.

132. We find that it is evident from the *Hubb Construction Ltd: Yvon House CCTV Report* dated 30 June 2020 that just under half of the cameras were not working and that *"overall the quality of the installation is extremely poor"*. This dovetails with the Defence in the subsequent proceedings: all available evidence demonstrates that the CCTV installations were indeed of poor quality, and had been for a considerable period. This, in turn, was corroborated by the evidence for the Applicants, summarised as *'half of the security cameras did not work'*.

133. Thereafter, the Second Respondent terminated the 2019 contract and became involved in litigation with Stanley Security Solutions Ltd, which was ultimately settled on opaque terms by Consent Order dated 12 April 2022, which from Ms Millie-James' evidence appears to have been a 'drop hands' agreement, with no liability for damages or costs either way, which of course led to the Second Respondent having to bear its own costs, passed to leaseholders through the service charges.

134. Again, while Ms Millie-James may have perceived herself to be in an impossible position, against the defective security apparatus and the apparently consequential spate of criminality related by Mr Juxon, the renewal of the Stanley contract in 2019 is, put mildly, surprising. Mr Felstein suggests that he was provided with verbal assurances that an overhaul of the system would be effected: if so, it is again surprising that no written record of the collateral agreement, or indeed a confirmatory email or similar note exists. In any event, it is apparent that Stanley Security Solutions Ltd did not rectify matters, demonstrated by the Hubb Construction report and the pleadings in the ensuing litigation.

Decision

135. The Tribunal finds that that the costs claimed in respect of the Security Provision (referred to in the annual service charge accounts as *"security equipment hire and maintenance"*) were unreasonable in circumstances where it was clear that there were serious deficiencies with the security cameras and the service (or absence of the same) provided by Stanley Security Solutions Ltd. Against that background, but for the intervention of Mr Rokni snr., the Second Respondent's execution of the 2019 Contract would be mystifying.

136. Again, doing the best we can on the available information, where we find that approximately 50% of the security system was operational during the years in issue, the Tribunal determines that the reasonable sums payable by the Applicant tenants in respect of Security Services should be calculated as 50% of the invoiced sums claimed, viz:

Year to 31/12	**£**
2016	14,686.50
2017	14,498.50
2018	16,250.00
2019	16,877.50
2020	18,770.00

137. Thereafter, a suitable replacement system was installed, the expense of which we determine to have been reasonable, notwithstanding disputes between the parties as to the storage capacity of the hard drive upon which security footage is stored. We note that the costs of the superior replacement system were approximately half of the hire from Stanley in the first year.

Caretaker Service (in relation to hotel accommodation in 2020)

138. In early spring of 2020, the world changed, against the rapid spread of the Covid 19 pandemic. On 23 March 2020 the Prime Minister announced an unprecedented raft of restrictive measures to seek to arrest the spread of the disease, colloquially referred to as a '*lockdown*'.

139. In response, seeking to ensure the ongoing provision of security at the Property, the Second Respondent (in summary) put up 2 members of security staff and their families in one room each, at the Hotel, for approximately 125 days.

140. This was at a rate of £150 per room, per night, ultimately totalling £37,645, as appearing in the service charge accounts.

141. It seems to be this item being included in service charge accounts that acted as the catalyst for the Applicants' wider challenge to their service charges. The Applicants accept the principle of security staff being provided accommodation to the Development for a short period during Covid, but challenge the sums claimed as unreasonable, making the following points:

141.1. The Second Respondent is the Manager under both the residential leases and the Cranbourne Headlease;

141.2. During Covid hotels were largely vacant;

141.3. There is no evidence of the Second Respondent negotiating the daily rate either at the start or when it became clear that they stay would extend to 4 months;

141.4. There is no evidence of the Second Respondent exploring alternative accommodation either at the start or when it became clear that they stay would extend to 4 months.

142. The Applicants' position is that a figure of £12,548 is reasonable which would equate to £50 per room per night for 125 days.

143. The Second Respondent contends that against an unprecedented and frightening situation, to ensure that the Development remained staffed, it immediately arranged for the staff members to be accommodated at the hotel. It had the advantage of being adjacent, and thus avoiding the need to ask staff members to travel – if they were lawfully permitted to do so. The rates were specified by the hotel: neither the Second Respondent nor Novus, nor indeed Ms Millie-James nor Mr Felstein had any involvement in negotiating the same.

144. The Second Respondent submits that during this extraordinary time, it would have been impossible to obtain a hotel room at £50 per night in the Battersea area and in view of that fact that the security staff would have had to travel.

145. The Tribunal accepts that this was also at the request of the two staff members. They were permitted to bring their family members that were

part of their 'bubble'. Due to the urgency of the situation, there was no time to issue notices to leaseholders or start speaking to letting agents to look at alternative accommodation as the main priority was for the security staff to be able to work and provide continuing services to the development. This was against a background where it was far from certain whether staff members would have been able to commute from their homes, and indeed whether they would have been prepared to do so, against a demonstrably lethal pandemic of unknown transmission risks.

146. The Hotel stay lasted four months, at which point the staff members returned to their homes and felt safe enough to commute. This was an extraordinary time in everybody's lives, and it was imperative that the building remained under 24/7 security with the concierge staff.

147. In addition, the increase of deliveries as people were confined to their homes and took far more to ordering goods and supplies using online methods meant that 24/7 staffing was desirable, indeed necessary.

148. As Ms Millie-James submits, the fee charged was the standard room fee at the time and it was the staff's request that they stayed in the hotel because of its location being on the same site and limiting the chance of contact with the general public during a time when little was known about the virus publicly; any delay in finding them alternative accommodation would have been at a detriment to the continued security at the development.

Decision

149. The Tribunal finds that the Applicants' submission that the rate should be compared with one provided to a leaseholder of Yvon House in the summer of 2021 does not assist. The leaseholders of the Hotel in 2020 and 2021 were different entities. Hotel rates fluctuate. Perhaps more significantly, by 2021 commercial life was resuming a more 'normal' status, as society evolved means of living alongside the pandemic. The Tribunal has no evidence of alternate hotel accommodation being available at the time close to the Development, in Battersea, or its environs, or of the applicable room rates for any such hypothetical comparator.

150. These were extraordinary times. They demanded extraordinary measures. The alternatives presented to the Second Respondent were, either, to make arrangements for security/concierge staff to be available, or not to do so, in potential breach of contract, and as we find, at considerable inconvenience to leaseholders and residents of Yvon House.

151. The Applicants themselves concede the principle of security staff being provided accommodation close to the Development for 125 days at the commencement of the 'lock down' period. Their dispute is as to the rate charged, and they propose an alternate figure of £50 per room per night, being just one third of what the Second Respondent in fact paid.

152. We conclude that while the evidence demonstrates (and both Ms Millie-Johnson and Mr Felstein freely admit) that the Second Respondent did not seek alternative, cheaper provision, it is far from clear to the Tribunal that such provision was available, or if it could have been found, would have been any cheaper.

153. Where the costs charged had clearly been incurred by the Respondent, we cannot conclude that they were unreasonably incurred or in sums falling far outside a reasonable range of charges for provision of hotel accommodation for 2 members of security staff and their families. Accordingly, we conclude that the charge of £37,645 is reasonable, and is accordingly payable.

Application under s.20C

154. The Applicants have applied for orders under section 20C of the 1985 Act, but not under paragraph 5A of Schedule 11 to the 2002 Act.

155. A Section 20C application is for an order that the whole or part of the costs incurred by a Respondent in connection with these proceedings cannot be added to the service charge of the Applicants. For completeness' sake, a paragraph 5A application is for an order that the whole or part of the costs incurred by a Respondent in connection with these proceedings cannot be charged to the Applicants as an administration charge under their respective leases.

156. In this case the Applicants have been successful in relation to a number of, in particular, the larger substantive issues, in relation questions of apportionment of shared expenses between residential and commercial leaseholders, and the reasonableness of management and caretaker charges.

157. In her evidence, Ms Millie-James informed the Tribunal that the Second Respondent had not incurred legal fees in connection with the proceedings. Novus Partnership had incurred legal costs, but she stated that she, and by extension Novus did not propose to pass them on to the Second Respondent, so that they would not be charged to residential leaseholders of Yvon House as service charges. In consequence of that concession, Ms Helmore for the Applicants submitted, and we agree, that the s.20C application as against the Second Respondent was now otiose.

158. As for the First Respondent, while it was not immediately obvious how recovery of legal fees might be contractually possible, Ms Thompson was unable to confirm whether her corporate client did or did not intend to seek costs from the Applicants by way of service charges. This was somewhat unhelpful.

159. Against that background, and taking into account our determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The Tribunal therefore makes an order in favour of the Applicants that none of the costs incurred by the First Respondent in connection with these proceedings shall be added to their service charge.

Name: Judge Mark Jones **Date:** 23 February 2025

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).