



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AE/LSC/2024/0258**

Property : **Tabriz Court, Block C, and Shams Court,
Block E, 5 Olympic Way, Wembley,
Middlesex HA9 0NS**

Applicant : **Sovereign Network Homes**

Representative : **Winckworth Sherwood LLP**

Respondent : **HEB Assets Limited**

Representative : **DWF Law LLP**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985**

Tribunal : **Judge Vance
Mr Andrew Thomas, RBI FRICS MBA
MIFireE**

Date of hearing : **30 January 2025**

Date of decision : **17 March 2025**

DECISION

NB: Pages in square brackets and in bold below refer to pages in the hearing bundle (1097 pages).

Decisions

1. The Tribunal determines that by virtue of Sch.8,para.2, Building Safety Act 2022, no service charges are payable by the Applicant in respect of works to remedy the relevant defects identified in para. 8 of the Applicant’s statement of case dated 26 June 2024.
2. Insurance costs incurred by the Respondent in the 2022, 2023, and 2024 service charge years were reasonably incurred and are payable in full by the Applicant as follows:

<i>Year</i>	<i>Amount</i>
2022	£113,938.67 comprising: £79,406.61 (Tabriz) £34,532.06 (Shams)
2023	£115,697.99 comprising £82,022.62 (Tabriz) £33,675.37 (Shams)
2024	£77,816.66 comprising £56,115.37 (Tabriz) £21,701.29 (Shams)

Background

3. The Applicant, Sovereign Network Homes (“SNH”) is a housing association that holds 18 flats at Tabriz Court (“Tabriz”) under a single lease dated 21 June 2013 (title: AGL287858) and 9 at Shams Court (“Shams”) under a single lease dated 21 June 2013 (title: AGL287859). Both of those buildings (“the Buildings”) are located at 5 Olympic Way, Wembley, Middlesex HA9 0NS (“the Estate”). The Estate also includes the Novotel London Wembley hotel (“the Hotel”) and Pinnacle Tower (“the Tower”) which comprises 131 private apartments let on short term lets. The Respondent, HEB Assets Limited (“HEB”), is the freeholder of both buildings and the wider Estate and it has engaged Wembley Properties Ltd (“WPL”) to manage its property portfolio.
4. SNH’s leases are in substantially the same form **[36,82]** and oblige it to contribute towards the costs of services incurred by the Respondent by way of service charge (Schedule 4, para.2). This includes, at para.3.1 of Schedule 4, an obligation to pay “Insurance Rent demanded by the Landlord under paragraph 2 of Schedule 6 by the date specified in the Landlord’s notice”**[68]**. The definition of Insurance Rent **[40]** includes

an obligation on SNH to pay a “fair and reasonable proportion determined by the Landlord of the costs of any premiums...that the Landlord expends...in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of Schedule 6.....”.

5. In this application **[14]**, the Applicant seeks determinations under section 27A of the Landlord and Tenant Act 1985 that:
 - (a) the effect of Sch.8, para.2, Building Safety Act 2022, is that no service charges are due, nor could ever be due, from the Applicant to the Respondent in respect of the remedial works which form the subject of a separate, ongoing, application brought by SNH for a Remediation Order under s.123 Building Safety Act 2022, LON/00AE/HYI/2023/0018 (the “Remediation Order application”); and
 - (b) that insurance costs for the 2022, 2023, and 2024 service charge years 2022 to, at least were unreasonable within the meaning of s.19, 1985 Act. SNH asserts that the increase in insurance premiums is the result of failure by the Respondent to progress remedial works promptly.
6. SNH also seeks an order for the limitation of the Respondent’s costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish its liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
7. In its initial statement of case, para.2, SNH states that it “has issued this application now because it requires certainty as to its financial position, both for its own benefit, and to enable it provide similar certainty (or as much certainty as possible) to its occupational tenants”.
8. It is common ground between the parties that there are significant fire safety defects present at both Buildings. At a CMH that took place in the Remediation Order application on 7 November 2024, and as recorded in para. 5 of Judge Vance’s directions issued that day, counsel for HEB agreed that the seven headline defects identified by the Applicants in the grounds in support of that application were present, namely defects concerning:
 - (a) Transfer Beam Cladding;
 - (b) ACM Rainscreen Cladding;
 - (c) Balconies;
 - (d) Terracotta Rainscreen Cladding;

- (e) Insulated Render;
 - (f) Modular Pod External Walls; and
 - (g) Curtain Wall/Spandrel Panels,
9. At para 6 of the 7 November 2023 directions in the Remediation Order application I recorded that counsel for HEB confirmed that his client accepted and agreed that both Buildings are “relevant buildings” for the purposes of the 2022 Act, that SNH is an “interested person” and that HEB is a “relevant landlord” within the meaning of the Act.
10. At para. 7 of those directions I recorded that HEB had made clear that it intended to commence works to remediate the defects to Tabriz and Shams in January 2024. Delay in doing so has occurred. It appears that works to Shams commenced in March 2024 and in the latest update provided by Hycgan, HEB’s Main Contractor responsible for undertaking the external wall remediation, it was said that remedial works on Shams were now likely be completed by the end of March 2025. As for Tabriz, Hycgan stated that commencement of works had been delayed because of the need for HEB to go through the new Gateway 2 process which requires building control approval to be obtained from the Building Safety Regulator before relevant building work can commence. Hycgan stated that it submitted its building control application to the Regulator on 30 August 2024 but because the Regulator is experiencing very high demand, a decision was not expected until the end of January 2025.

The Hearing

11. The hearing of this application took place on 30 January 2025. SNH was represented by Mr Bates KC and HEB by Mr Pratt of counsel. We heard witness evidence from:
- (a) Mr Paul Francis, Head of Insurance and Operational Risk at Sovereign Network Group, of which SNG is part;
 - (b) Mr Graham Manley, Head of Building Safety at Sovereign Network Group;
 - (c) Mr Khoshhal Azeemi, a chartered civil engineer employed by HEB; and
 - (d) Mr Fetrat Naser, a Facilities Compliance Manager, employed by WPL

Issue 1: the effect of Sch. 8, para.2, Building Safety Act 2022

12. Schedule 8, para 2 provides as follows:
- “(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."

13. As recorded in my directions in the Remediation Order application, it is common ground that both Buildings are relevant buildings and that HEB is a relevant landlord. It is also common ground that the Buildings suffer from the seven headline defects identified at para.7 above. It is SNH's case is that the developer of the Buildings was Pinnacle Developments Ltd ("Pinnacle") and that Mr Hasibullah Akbary is (and has been at all material times):

(a) the sole director of Pinnacle [143];

(b) the sole director of HEB; and

(c) the controller of the ultimate parent company in the HEB group [141].

14. As such, HEB is said to be "associated with" Pinnacle, meaning that Sch.8, para.2 protection applies, prohibiting any service charge from being levied on SNH in respect of any relevant measure that relates to any relevant defect. This too appears to be common ground (HEB

accepting having admitted the relevant parts of SNH’s statement of case at SNH [157], para.10).

15. In Mr Pratt’s submission, the Applicant’s pursuit of this application was unnecessary and unwarranted. It amounts to a request for a determination that HEB would comply with the law because no service charges are due, nor could they ever be due in respect of remedial works subject to those exclusions set out in the 2022 Act. He referred to correspondence between the parties’ respective solicitors which he said contained HEB’s confirmation that it would comply with these legislative provisions.
16. In a letter dated 7 March 2024 [131] DWF, HEB’s solicitors said as follows:

“ Our client has not made any attempt or demand to raise or recover the remediation costs from Network or the residents of the Premises by way of the service charge. Furthermore, it is HEB's current understanding that there is no available legal recourse for HEB to recover the remediation costs from Network under the Building Safety Act 2022. At present therefore, HEB does not have any intention to recover the remediation costs from Network or the residents of the Premises.” (emphasis added)
17. In Mr Bates’ submission this did not amount to an agreement or admission that no charges are due and was no more than a statement of present intent.
18. Mr Pratt disagreed, referring to HEB’s statement of case [157] in which it was said that in the 7 March 2024 letter HB confirmed that no service charge demand has been levied for the ongoing remedial works, and nor could a demand be levied for remedial works that are subject to Schedule 8 protection. It was also said at para. 11 c. of HEB’s statement of case that words “At present” amounted to a reservation in respect of works that might be discovered during the course of the remediation works which may not be captured by Schedule 8 protection. According to Mr Pratt, given these confirmations, there was no need for this part of the application to be pursued and it should be dismissed.

Decision on Issue 1

19. In our assessment, what was said in DWF’s letter of 7 March 2024 did not amount to unequivocal confirmation that Schedule 8 protection applied to all remedial works relating to relevant defects at the Buildings. Firstly, its contents are said to reflect HEB’s “current understanding”, leaving open the possibility for it to later assert that such understanding was incorrect. The uncertainty as to HEB’s position was then compounded by the reference to HEB not “at present” having any intention to recover the costs of remediation. We find that the contents

of that paragraph of the letter amounted to no more than a statement of present understanding and intent.

20. We also agree with Mr Bates' submission that once a s.27A application is made, this Tribunal is required to determine the application. It would have no jurisdiction to do so, by reason of s.27A(4)(a) if a tenant applicant had agreed or admitted sums in issue, but an admission by a landlord does not deprive the Tribunal of jurisdiction. By way of an example, and as Mr Bates pointed out in his skeleton argument, it is not uncommon for a party to apply to the Tribunal for a determination as to whether, if costs were incurred in future for services, a landlord would be entitled to recover that expenditure through the service charge mechanism in a lease. Similarly, a landlord can apply to the Tribunal for a determination that it has complied with its consultation obligations imposed under s.20 of the 1985 Act. There can be no doubt that the Applicants in this case were entitled to apply to the Tribunal for a determination on payability, irrespective of the fact that both parties agree on the effect of Sch.8, para.2 of the 2022 Act.
21. Further, if HEB considered this part of the application to be without merit, as suggested by Mr Pratt, it could have made an application to strike it out under rule 9(3) of the Tribunal's 2013 Rules. No such application was pursued.
22. We also disagree with Mr Pratt's submission that there was no benefit to the Applicant in making the application. SNH and its occupational tenants will now have the benefit of our determination, rather than being left in the uncertain position resulting from the responses provided by DWF in correspondence.
23. Finally, if despite what we say above, HEB remains of the view that this was an unmeritorious application from the outset then it is open to it to apply for a Rule 13 costs order against the Applicants. That, in our view, is the appropriate manner in which the Tribunal should address an unmeritorious application. It is not to refuse to determine a valid application which falls within its jurisdiction.
24. We therefore determine that by virtue of Sch.8,para.2, Building Safety Act 2022, no service charges are payable by the Applicant in respect of works to remedy the relevant defects identified in para. 8 of the Applicant's statement of case dated 26 June 2024 **[27-30]**. These mirror the defects listed in the Applicant's statement of case in the Remediation Order application, which counsel for the Respondent conceded were present at the CMH in that case on 7 November 2023 (as reflected in para. 5 of my directions of that date).

Issue 2: Insurance service charge costs

25. At all material times the Tower, the Hotel, Tabriz and Shams, have all been insured together under one block policy. Between 2017 – 2020 the insurance cost for the Estate was about £93,000 per annum, rising to £140,666 in 2021. In April 2022, it then rose dramatically to £997,052.45 [226].
26. The costs in issue in this application are the sums incurred in the 2022, 2023, and 2024 service charge years. These are as follows:

<i>Year</i>	<i>Total premium</i>	<i>Amount charged to Applicant</i>	<i>Service Charge Demands</i>
2022	£997,052.45	£113,938.67 comprising: £79,406.61 (Tabriz) £34,532.06 (Shams)	[208-212]
2023	£655,229.80	£115,697.99 comprising £82,022.62 (Tabriz) £33,675.37 (Shams)	[213-217]
2024	£301,655.02	£77,816.66 comprising £56,115.37 (Tabriz) £21,701.29 (Shams)	[219- 221]

27. The Applicants’ case is that it is HEB’s delay in addressing fire safety issues promptly that has caused the increase in costs, despite it being aware of those issues since December 2020. The result of that delay, it says, is that unreasonably high insurance costs have been incurred which it should not have to contribute towards. The factual background that follows is drawn, in part, from the helpful insurance chronology prepared by the Applicant for the hearing.
28. On 19 April 2018, a Building Control Officer at Brent LBC wrote to Pinnacle chasing an urgent response to requests for information previously made about ACM cladding that had been identified at Tabriz and Pinnacle [296]. A questionnaire accompanied that form and which Pinnacle was asked to complete it, providing as much information as possible. Mr Naser replied to the Council on 1 May 2018 [301] stating that WPL was Pinnacle’s managing agent and that this was the first it had heard about a request for information about the type of cladding used in the development. Mr Naser stated that WPL would need more

time to gather the requested information which would be forwarded as soon as possible. Mr Naser said in cross-examination that the questionnaire was subsequently returned to the Council, although we were not taken to any documents in the hearing bundle that confirms this.

29. By email dated 6 August 2020 **[304]**, WPL obtained a quote for a survey of the cladding present at the development from a company called ORSA. ORSA were duly instructed and provided a report on 4 December 2020 **[310]** in which it commented on the likely combustibility rating of the materials used in the construction of the façade and balconies. ORSA made clear that the investigations it had undertaken were limited in nature but adequate to determine that combustible materials were present. It also identified the presence of Alucobond aluminium (“ACM”) panels on the Tower and the Hotel and that the materials used for the façade and cladding systems of Tabriz and Shams did not meet required fire classification ratings.
30. WPL were not happy with the quality of the ORSA report and on 10 December 2020, Mr Shafiq Sharifi at WPL emailed Mr Bucknall at ORSA **[309]** stating that WPL wanted a more comprehensive report from ORSA, addressing each building separately, to include the results of ACM testing. Mr Bucknall replied on 13 December 2020 **[308]**, in which he said that he believed the next matter for HEB to address was the preparation of a set of tender documents to delineate the works and to obtain a specification of works.
31. On 21 December 2020, WPL approached BuroHappold (“BH”), a façade diagnostic, inspection & remediation company with a view to obtaining a more detailed façade fire safety report for the Development **[329]**. BH produced a first version of its report on 10 June 2021, and a second version on 1 July 2021 **[331]**. It identified the presence of ACM panels to the façade of the Tower and the Hotel, and that the rainscreen cladding systems of the Buildings contained combustible material that did not comply with Building Regulations (section 8.2.5 **[502]**). BH also identified the presence of defective cavity and fire barriers (8.2.3, 8.3.3) and that there was potential for fire to spread via gaps in sheathing board joints. Problems with compartmentation were also identified (8.4.4). At para. 9.3, BH recommended further investigations, including into the fire performance of modular wall boards, and the construction of the facades and balcony decking **[507]**. It said, however, that those investigations could be carried out during the removal of the cladding.
32. When it came to the 2022 insurance renewal, Travellers were initially willing to continue to provide cover at a premium of £117,854 **[775]**, but at that point in time it had not seen the BH report. In an email dated 15 February 2022 **[784]**, HEB’s broker informed Mr Naser that after having “recently” received a copy of the July BH report, Travellers were no longer willing to provide cover. The broker said that Travellers’ initial stance was to cease all cover with immediate effect, but that they had agreed to provide maintain insurance up to 14 April 2022.

33. In March 2022 [786], the brokers reported that they had managed to source insurance by utilising the reinsurance market, with cover spread across 13 different insurers and at a total premium of £890,225 plus IPT. The broker said that once remedial works had been completed there would be wider market appetite to insure the Development, that there would no longer be a need for the reinsurance market to be involved, and that premium spend was likely to be back to a similar level to that achieved in the years preceding the BH report.
34. The broker's report for the 2023 insurance renewal [801] once again identified that a multiple insurers were unwilling to quote because of the cladding status of the Development. As in the previous year, insurance cover was spread across several insurers through the reinsurance market. In an email dated 4 April 2023 to Mr Azeemi and Mr Naser [813], the broker said that the premium had reduced to £587,973 (plus IPT) and that once all works had been completed, including in respect of Tabriz and Shams, the rating was likely to revert to that of a traditional risk.
35. Following further reports from the brokers dated 5 December 2023 [823] and 19 December 2023 [834] insurance was secured for 2024, split between Aspen and Aviva, at total cost of £301,655.02.
36. The Respondent accepts that there has been a substantial increase in insurance premiums but argues that this was not through any fault on its part. It's position is that it did not fail to act promptly in undertaking the necessary remedial works. Mr Pratt also asserts at para, 34 of his skeleton argument that HEB was "not responsible" for the Buildings until the coming into effect of the Building Safety Act in April 2023.
37. Mr Azeemi's evidence [278], in so far as is relevant, is that:
 - (a) following the Grenfell tragedy in June 2017, he acted quickly to identify what type of cladding was present on the façade of Tabriz and Shams. Exhibited to his witness statement is a copy of an email he sent on 6 July 2017 to an architect at HTA Design LLP, Mr Simon Bayliss [293]. In that email, Mr Azeemi asked whether the materials used in the façade and external envelope of the Tower and the Hotel were similar to that of Grenfell Tower. After Mr Bayliss suggested that he contact the contractor for the requested information, Mr Azeemi emailed Mr Bayliss again, on 7 July 2017, stating that the same facade contractor that installed the cladding used at Grenfell Tower had installed the facade used at the Estate and that "lives could be at risk" if "we don't get to the bottom of this";
 - (b) the contractor, Tide Construction ("Tide"), told him that it would need to revert to the design team. After several months, Tide then told him that the building and facades were safe and that although there was some combustible insulation within the facade build-up, it was concealed, and therefore deemed safe. This, says Mr Azeemi, is

why HEB did not consider it necessary to report anything to the Council at that time;

- (c) on seeing the letter of 19 April 2018, from the Building Control Officer at Brent LBC asking for an urgent response to requests for information about ACM cladding, he responded saying that initial investigations had been carried out with the architect and original contractor, that the facades were considered to be safe, and that no further investigations were planned.
- (d) At para. 21 of his witness statement, Mr Azeemi states that nothing further was received from the Council until October 2021 “when they reached out to us by email/letter, essentially instructing that further investigations will be required due to the height of the buildings”. It was this, he says, that prompted HEB to instruct ORSA to carry out investigations. Mr Azeemi was clearly mistaken on this point because, as he points out in the following paragraph of his statement, ORSA had been instructed in August 2020.
- (e) it was dissatisfaction with the quality of the ORSA report and the Respondent’s view that the level of investigations and opening up were inadequate that led to Buro Happold’s instruction in January 2021. Its revised report was received in July 2021, with a further report provided on 17 May 2022 [577] the purpose of which was to report on the removal of facade and balcony elements to the Tower and the Hotel and to provide an addendum letter to its earlier report.
- (f) at paragraph 31 of his statement, Mr Azeemi states that between 2021 – 2022 it was made clear to the Applicant that whilst HEB accepted that it was responsible for remediating the Tower and the Hotel, it was SNH’s responsibility to remediate Tabriz and Shams. Mr Azeemi’s evidence at para. 32 is that it was once the Building Safety Act 2022 came into force in April 2023 that HEB acknowledged that Tabriz and Shams should be included as part of its remediation programme for the Estate;
- (g) Mr Azeemi addresses SNH’s assertion that HEB failed to seek funding from the Building Safety Fund for remediation works at paras. 37-42 of his statement. He states that no application was made because HEB, as a commercial landlord, was not entitled to support from the Building Safety Fund in relation to Tabriz and Shams because “these were not our blocks – they were SNH’s affordable housing blocks”.

38. Mr Naser’s evidence [278] was, in summary, that:

- (a) his duties at WPL included agreeing contracts for various services including building insurance;
- (b) after Travelers notified WPL that they would be withdrawing cover, from 14 April 2022, following receipt of the July BH report, WPL

“shopped around” to try and secure insurance cover at the best price but was met with very high quotes. It changed its broker, Jelf, to Marsh Commercial in 2020, but this did not improve the cost of the quotes received. For the 2022 renewal, HEB engaged Innovation Broking who secured the complex reinsurance arrangement involving 13 different insurers. Their current broker, Miller, then managed to obtain the reduced premiums for 2023 and 2024. He does consider either he or HEB could have done anything more to reduce the insurance costs incurred.

(c) prior to 2024, HEB procured insurance based on the square meterage of each building, with the total risk shared between all buildings on the Estate, based on the same formula. In 2024, a different approach was adopted to try and reduce the cost of the premiums. This involved HEB’s insurance brokers sourcing quotes reflecting each building’s individual risk Mr Naser says that “the quotations obtained took into consideration the remedial works already carried out on the buildings as well as the remaining risks associated with each building within the development. As a result of procuring insurance in this way, he said that HEB had “managed to save a total of £352,683.40 in comparison to the previous year”;

39. Mr Francis and Mr Manley both provided short witness statements on behalf of the Applicant in which:

(a) Mr Francis stated that SNH currently has a number of buildings with defects and that based on his experience he would expect to see an increase of 60-170% on premiums to insure a defective building. He accepts, however, that HEB has a smaller portfolio and cannot spread risk and realise efficiencies in the same way. When asked in cross-examination what a likely increase in cost would be for an organisation with a portfolio of a size similar to HEB, he said that he did not have experience in placing that type of cover but that when he has taken a building outside a block portfolio in the past the increase can be about 300% to 400% higher than under a block portfolio. He also said that SNH has been able to limit building safety related premium increases by being clear with its insurer about its plans for remediation, and its engagement with third parties including the government to rectify defects. He considered that it made sense that the amount of a premium would reduce following progress in remediation works and that he expected the premium for the Development to return to normal levels once all buildings on the Estate were remediated; and

(b) Mr Manley said that SNH’s residents are frustrated about living in unsafe buildings, their consequential inability to sell their properties, the high insurance costs, and the slow progress of remedial work. He also pointed out that it was HEB’s refusal to acknowledge that it was responsible for the external walls of the Buildings that led to leaseholders applying for a Remediation Order to obtain a determination as to their liability.

Decision on Insurance Costs

The reason for the rise in insurance costs

40. We find that the reasons for the dramatic increase in the costs of insuring the Development in 2022 were: (a) identification to the insurers of the presence of ACM panels used in the construction of the façades of the Tower and the Hotel, and the presence of combustible materials used in the cladding systems and the facades of Tabriz and Shams; and (b) a change in the risk appetite of insurers regarding multiple-occupancy high rise residential buildings following the Grenfell tragedy.
41. HEB's broker, Mr Marlow at Innovation Broking, made it clear in his email of 15 February 2022 [784], that it was Traveler's receipt of the intrusive July BH report that led to it cancelling the policy it had originally agreed to put in place for 2022. That it was the identification to the insurers of the problems regarding the facades and the cladding systems that was responsible for the sharp increase in insurance costs in 2022 is also evidenced in the brokers' March 2022 report [786], in which it confirmed that the reason for Travellers' cancellation was its concerns over fire risk. The brokers also stressed that following the Grenfell disaster the insurance market had largely withdrawn from insuring high rise clad buildings and that capacity in the market was extremely limited. It was because of these issues that when insurance cover was eventually obtained, it was at a much higher premium than in previous years, with risk spread across 13 different insurers.

The commencement of remediation

42. We find that it was entirely reasonable for HEB to prioritise works to the Tower and the Hotel, given that between 90-100% of the cladding on the Tower and 10-15% of the cladding on the Hotel, consisted of highly flammable ACM. The need to remove the ACM cladding from the Tower as a matter of priority was emphasised in a letter from Mr Watters in MHCLG's Building Remediation and Grenfell team to WPL dated 19 May 2021 [605]. That the Tower was the Department's "main concern" was also highlighted in an email from Mr Modeste at MHCLG to WPL dated 10 November 2021 [596].
43. We also accept that it was reasonable for HEB to seek the additional report from BH before commencing remediation work given the obvious limitations of the ORSA report, and the need for intrusive investigations to identify specifically where the dangerous material was located.
44. We acknowledge that HEB could have taken some steps towards remediation following receipt of the ORSA report in December 2020. As was stated in a letter dated 18 June 2021, from Mr Watters in MHCLG's Building Remediation and Grenfell team to WPL [607] the fact that HEB was waiting for a second investigation report on the façade of the Buildings should not have prevented it from putting together plans for remediating the Hotel. HEB could, for example, have identified potential

contractors to remove the unsafe cladding and combustible materials once the BH report was available. However, the ORSA report is written in very general terms and until the BH report was obtained, and the results of intrusive investigations known, HEB would not, in our assessment, have been able to take substantial steps to identify where precisely all the offending material was located. Nor would it have been able to fully scope and cost the works required to remediate the buildings. For example, although ORSA stated at para. 4.0 of its report [323] that some cavity barriers and fire stopping were missing or dislodged it did not identify which of the buildings in the Development it was referring to, or where the defects it was referring to were located.

45. The BH report was commissioned on 21 December 2020, very shortly after receipt of the ORSA report, so there was no delay by HEB in requesting it. Nor is there anything in the evidence before us to suggest that there was unreasonable delay in production of the report by BH, or that HEB was in any way responsible for the fact that BH's final report was not produced until July 2021.

The progress of remediation

46. Despite provision of the BH report in July 2021, works to remediate the Tower did not start until December 2022. However, it would be wrong, in our assessment, to suggest that HEB were not seeking to progress matters during this period. WPL stated in an email dated 8 September 2021 to Faithful & Gould, a project and programme management consultancy working with MHCLG [592] that it was proceeding to scope and cost the works. It commissioned further investigations from BH on 4 February 2022 who, in an email dated 12 March 2022 [570] advised that additional enquiries should be directed to fire consultants. HEB made those enquiries, and Marshall Fire Ltd responded on 21 April 2023 [568]. Their answers were then fed back to BH who provided further advice in a letter dated 17 May 2022 [578] by way of an addendum to its July 2021 report.
47. In that 17 May 2022 letter, BH referred to it having observed the removal of facade and balcony elements to the Tower and the Hotel, following the receipt of additional design information which had necessitated deeper invasive investigations. One of the conclusions reached by BH in its 17 May 2022 letter was that the balconies on the Tower were likely to contribute to the spread of fire externally given the presence of ACM cladding and therefore required remediation. HEB also obtained a report from Sandberg Consulting Engineers dated 8 April 2022 [571] which identified that the materials used in the construction of some of the balconies and were combustible.
48. We find that given these substantial efforts to investigate the extent and nature of works needed to fully remediate the buildings in the Development, we do not consider there was an unreasonable delay in progressing works between receipt of the BH report in July 2021 and the commencement of works to the Tower commencing in December 2022.

49. Once works to the Tower and the Hotel commenced, progress appears to have been good. All ACM cladding had been removed from the Tower by 31 March 2023 [1049] and all ACM cladding was due to have been removed from the Hotel by May that year. We were not told when the Hotel was remediated but if, as it appears, it was completed by May 2023, then for all ACM cladding to have been removed from both buildings within five months is not an unreasonable timeframe.
50. We also accept, as elicited by Mr Pratt in his re-examination of Mr Azeemi, that the layout of the Estate is such that after scaffolding had been erected outside the Tower it was not practicably possible to start work on either Tabriz or Shams until the works to the Tower had been completed. As can be seen from the plan of the Development at [52], Tabriz is located immediately next to the Tower and Shams is located opposite the Tower, across a fairly narrow courtyard which provides access to SNH's residents. We accept Mr Azeemi's evidence that in order to maintain residential access to Tabriz and Shams, the remediation of the buildings comprising the Development had to be carried out sequentially. Some of the problems that resulted from the close proximity of the Tower to Tabriz and Shams after works to the Tower had commenced is evidenced in an email dated 31 January 2023 sent from Mr Manley to WPL [1040] in which Mr Manley raised concerns regarding: a hoist that was operating directly outside SNH's residents' flats; blocked access to a cycle store; and concerns about how access to the courtyard was going to be maintained whilst works to the Tower were underway.
51. Nor do we accept the Applicant's contention that HEB unreasonably failed to seek funding from the Building Safety Fund to carry out remediation works. It appears that WPL contacted MHCLG about obtaining remediation funding as early as July 2020. In an email dated 18 December 2020 from Mr Edward Beardsley at MHCLG to Mr Sharifi [599] Mr Beardsley apologised for the lack of a response to WPL's July 2020 enquiry, saying that although the Building Safety Fund for Non-ACM cladding had closed earlier that year and was no longer accepting applications, it was still possible for an application to be made to the Private Sector ACM fund, although one of the essential criteria for such funding was to know the category of ACM present.
52. Subsequently, in a letter dated 18 June 2021 [607] Mr Watters at MHCLG told HEB that it was not entitled to BSF funding in respect of either the Tower or the Hotel as neither building is occupied by residential long leaseholders. Due to the lack of BSF funding, HEB sought funding elsewhere and used its own resources to remediate the Tower and the Hotel. It continues to use its own resources to remediate Shams and Tabriz and. In our view, HEB appears to have properly

investigated the possibility of BSF funding and was told that it was unavailable.

53. Further and alternatively, even if, as SNH suggests, HEB had been entitled to BSF funding to remediate Tabriz, such work could not have started until after the Hotel was remediated in May 2023, by which date HEB was in a position to fund the remediation itself. As such, we do not accept that any delay in applying for funding has affected the remediation timetable for Tabriz. All remediation starting with the works to the Tower in December 2022 has been funded by HEB and there is no evidence before us to suggest that it lacks the resources to complete the process.
54. Following completion of the remediation of the Hotel in May 2023, HEB turned to Tabriz and Shams. It's original intention was to commence the remediation of Tabriz in January 2024, but as was stated in an April 2024 progress report from Hycgan, the legislative changes that took effect in October 2023 meant that approval from the newly formed Building Safety Regulator was required before works could commence. HEB therefore shifted its attention to Shams whilst that approval was being secured. The remediation of Shams commenced in March 2024 and is due to be completed by the end of March 2025. As stated above, we were told that a building control application regarding Tabriz was submitted to the Regulator on 30 August 2024, and a decision was expected by the end of January 2025.
55. The Applicant argues at para 4.10 of its statement of case [197] that if works to remediate Tabriz had commenced promptly following the ORSA report in December 2020, that the need to pass through the Gateway regime would have been avoided and the works would instead would have been governed by the transitional provisions of The Building (Higher Risk Building Procedures) (England) Regulations 2023. We do not consider this was realistically possible. Firstly, as determined above, no works could have commenced until after the production of the BH report. Secondly, HEB were entitled to prioritise works to the Hotel and the Tower. Thirdly, and for the reasons given above, remediation had to take place sequentially. No works to remediate either Tabriz or Shams could have commenced until after the Hotel had been remediated in May 2023.
56. For the transitional arrangements to have applied to Tabriz, an initial notice would need to have been given to the local authority (and not be rejected) or full plans deposited with the local authority before 1 October 2023. In addition, to continue to benefit from those transitional arrangements building work needed to have been "sufficiently progressed" before on and after 6 April 2024. In our assessment, whilst HEB might arguably have been able to submit an initial notice based

solely on the ORSA report by 1 October 2023, we do not consider it unreasonable for it to have waited until the outcome of BH’s intrusive investigations were available before deciding what steps to take in order to remediate Tabriz and to then seek regulatory approval. In addition, even if an initial notice had been submitted to the local authority by 1 October 2023, given that the Hotel had only been remediated in May 2023, four months prior to that deadline, there was clearly a risk that that works to remediate Tabriz would not have been “sufficiently progressed” by 6 April 2024, meaning that transitional protection would then have been lost. This is because after the works to the Hotel had been completed in May 2023, HEB would have needed to erect scaffolding, scope and cost the works, and engage contractors before commencing remediation.

57. We also accept, from our own expert knowledge, and as advanced at para. 18 of HEB’s statement of case **[159]** that delay, outside of its control, has occurred because of the “seismic changes” in the industry following the implementation of the 2022 Act, leading to “overwhelming industry demand and the consequential shortage of specialist consultants and contractors”. SNH agreed that the Act has had a significant impact on works to higher risk buildings in para 4.8 of its Statement of Case **[196]** but maintained that HEB had nevertheless not acted timeously in dealing with Tabriz. We do not accept that. No works to remediate either Tabriz or Shams could commence until after the Hotel had been remediated in May 2023, and given the legislative changes introduced in October 2023 HEB had no option but to turn its attention away from Tabriz and to Shams. Whilst the gap between works to the Hotel being completed in May 2023 and work commencing to Shams in March 2024 is a significant one, we do not consider it unreasonable given; (a) the time needed to scope and cost the works; (b) the time required to identify and instruct contractors; and (c) the delays caused by the introduction of the new requirements regarding higher-risk buildings that came into force on 1 October 2023.
58. SNH also contend that there was a significant period of time, prior to the coming into force of the 2022 Act, when works were delayed because HEB was arguing that remediation of Tabriz and Shams was not its responsibility. That this was HEB’s position is seen in a letter from its solicitor dated 10 March 2021 to SNH’s solicitor **[968]** in which it was contended that the rainscreed cladding present at Tabriz and Shams was not a structural part of the building retained by HEB and that it fell within SNH’s demise. This was disputed by SNH’s solicitors who contended that the external facades of the Buildings (including the cladding) formed part of the structure of the Buildings for which HEB were responsible (by reason of clause 2 of Schedule 1 and the definition of Retained Parts).

59. The fact that HEB initially contested its obligation to remediate Shams and Tabriz is, in our view, not relevant to our determination because HEB accepts that since the 2022 Act came into force the obligation rests with it. Its delay in accepting that position has not, in our assessment, delayed the remediation of Tabriz or Shams because remediation works to neither building could have started before May 2023 which is after the relevant provisions of the 2022 Act came into force.

60. HEB nevertheless maintains that it had no responsibility to remediate Tabriz or Shams prior to the 2022 Act coming into force. Mr Bates contends, however, that SNH conceded that, as a matter of contractual interpretation of their leases, it was its responsibility to remediate both Buildings. That concession, he says was given by HEB's counsel (who was not Mr Pratt) at the CMH in the Remediation Order application on 7 November 2024. At that hearing, and as referred to in paragraph 9 above, HEB's counsel conceded that both Buildings are "relevant buildings" and that HEB is a "relevant landlord" for the purposes of section 123(3) of the 2022 Act, which provides as follows:

"(3) In this section "relevant landlord", in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect."

61. As there is no enactment that imposes a duty to repair or maintain anything relating to the relevant defect, it follows, says Mr Bates, that HEB has conceded that it is required to do so under the contractual terms of their leases. Although it is not part of the reasoning of our decision, it appears to us that Mr Bates is correct and this is the consequence of the concession made by HEB's counsel at the 7 November 2024 hearing.

62. In summary, we do not consider there was unreasonable delay in progressing remediation to the buildings comprising the Development. Further, and alternatively, even if we are wrong in that conclusion, we are not persuaded that any delay that did in fact occur, caused unreasonable insurance costs to be incurred. We address that next.

Did delay cause insurance costs to be unreasonably incurred?

63. The dramatic rise in insurance costs occurred in connection with the April 2022 renewal. As stated above, it was the identification of cladding and other fire safety issues that required remediation and the risk appetite of insurers post-Grenfell that caused that increase. The 2022 increase was not, in our determination, caused by any delay in commencing remediation. Nowhere in the documentation provided by

the insurance brokers is it suggested that insurance was refused, or that high premiums were set because of delay in commencing works.

64. We are not satisfied, on the balance of probabilities, that if remediation work had been commenced earlier, say in 2021, that the 2022 premium would have been lower than sum that was actually incurred. It appears to us highly likely that if Travelers had been provided with the ORSA report in December 2020, it would have reacted in the same way that it did when it received the BH report in February 2022. In other words, if Travelers had received a report identifying the presence of cladding and the need for its remediation in 2020, or early 2021, it is likely that the insurance premium for 2021/22 would have risen as dramatically as it did in 2022/23. It would just have brought forward the dramatic increase in cost that occurred in April 2023. It is, of course, possible that such an increase in 2021/22 might have been proportionally lower than the 2022/23 increase that actually occurred, but it is also possible that it could have been higher, 2020 being closer in time to the Grenfell tragedy. There is no evidence before us that would enable us to answer that question and it is most likely a question that would need to be addressed in expert insurance evidence.
65. As His Honour Michael Rich QC said in *Continental Property Ventures Inc v White* [2007] L&TR 4 when examining whether service charge costs had been “reasonably incurred” it is the circumstances in existence at the time the costs are in fact incurred that is relevant, not historic matters. There is no evidence to suggest that as at the date of insuring the Buildings in April 2022, HEB failed to secure the best price available.
66. When it came to the 2023 insurance renewal, the brokers’ report [804] specified that it was the cladding status of the buildings on the Estate that was the reason given by seven insurers as to why they were unwilling to provide cover. It is that true the primary insurers who provided cover for that year requested an indicative timescale for the commencement and completion of works to Tabriz and Shams, together with copies of fire risk assessments and details of interim measures taken to ensure the immediate safety of residents and/or loss or damage to the properties [807]. However, there is nothing to suggest that delay in progressing remediation prior to the 2023 renewal was a relevant factor in the cost of insurance obtained.
67. The premium for 2023 was about 35% lower than the 2022 premium. By this date, work to remediate the Tower had commenced in December 2022, with the brokers stating that 87% of the ACM had been removed, and with all of it to expected to have been removed by March 2023, before the April renewal. All of the ACM to the Hotel was expected to have been removed by May 2023. As with the 2022 renewal, there is no evidence to suggest that as at the date of insuring the Buildings in April

2023, delay was a relevant factor impacting on the cost incurred, or that HEB failed to secure the best price available. The 35% reduction in the premium realised is more likely than not to be due to the progress made with remediating the Tower and the Hotel.

68. As to the 2024 renewal, the cost of the premium was roughly 45% lower than that for 2023, and about 70% lower than the figure for 2022. Again, we find that the reduced cost was as a result of progress being made with remediation and find no evidence to suggest that delay in progressing remediation was a relevant to the costs incurred, nor that HEB failed to secure the best price available. On the contrary, the brokers confirmed in emails dated 31 March 2024 that they had managed to persuade insurers to rebate part of the premium paid once all cladding had been removed [866]. For the primary layer of insurance they agreed to a 25% return and for the excess layer, a 50% minimum return.
69. In summary, therefore, even if we are wrong to conclude that there was no unreasonable delay in commencing or progressing remediation, we do not consider any delay that might have occurred caused the rise in insurance costs. We therefore reject the Applicant's contention that these costs were unreasonably incurred.
70. As stated above, the insurance costs incurred in 2023 was 35% lower than in that incurred in 2022, and the 2024 renewal was 45% lower than that incurred in 2023. These are substantial reductions which, on the balance of probabilities, and in the absence of any other explanation, we consider to be the result of progress made in remediation. If SNH wanted to contend that the reductions should have been in greater amounts than this, because remediation was too slow then it should have produced evidence to show what reductions could have been realised in the insurance market if, for example, works to remediate Tabriz had commenced in 2023. No such evidence is before us.
71. We accept, as was identified in the 2022 brokers report [667] that once all remediation is complete, there will be wider market appetite to insure the Estate, with no need to resort to the reinsurance market, and with likely reduced premium spend. However, for the reasons stated above we do not consider unreasonable delay in remediation has occurred and nor do we consider the insurance costs in issue in this application have been unreasonably incurred.

Section 20C and paragraph 5A Applications

72. The parties may make written representations on these applications, having now had the benefit of this decision. Such representations should

be received by **11 April 2025** and the Tribunal will determine them on the papers, without a hearing, by way of an addendum decision.

Amran Vance
17 March 2025

Appendix - 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).