FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2023/0460/0461 and 0462**
Property	:	**Flats 123, 142, 177, 178 and 179 Basin Approach, London E14**
Applicants	:	**(1) Simon Butler (Flat 123)** **(2) Limemanor Ltd (Flat 142)** **(3) E14 Ltd (Flats 177,178 & 179)**
Representative	:	**Mr Simon Butler (1st and 2nd applicants)** **Mr Jason Avraamides (3rd applicant)**
Respondent	:	**Limehouse East Management Ltd**
Representative	:	**Mr Carl Brewin, counsel**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge Tagliavini** **Mr D Jagger MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing **Date of decision**	:	**13 & 14 January 2025** **21 February 2025**

DECISION (corrected 28 March 2025)

Decisions of the tribunal

(1) The tribunal determines that:

A. The credits transferred by the respondent from the applicants' service charge accounts to the reserve fund and represent excess payments for Building and Estate charge in respect of all service charge years in dispute, are to be re-credited to the respective service charge accounts as soon as is reasonably possible.

B. The tribunal is unable to determine whether the amount of £739,833.43 said by the respondent to be in the reserve fund as the date of the hearing, is a true or inaccurate reflection of the amount that should be in the reserve fund account for all leaseholders of Limehouse Basin, as this is framed as an 'accounting exercise' rather than a service charge dispute and therefore it falls outside of the jurisdiction of the tribunal.

C. The cleaning charges are reasonable, rational and proportionate and are payable.

D. The electricity charge are reasonable, rational and proportionate and are payable.

E. The 92% recovery of costs of the maternity cover (cleaner) from HMRC is reasonable, as there is no small employee recovery available to it by which the respondent can increase this percentage.

F. The front entrance doors to the flats are demised to the applicants who are not liable to pay a service charge for an annual safety check.

G. It is reasonable for the respondent to carry out annual inspections and safety checks of the communal front doors with the help of a specialist and to have three monthly checks carried out by trained staff members.

H. The accountancy, audit are reasonable and payable.

I. The audit preparation fees are reasonable and payable.

J. The fees charged by BMAS – HAUS have been reasonably incurred and are reasonable in amount in view of the handover of this large complex Estate.

K. The High Rise Building Fee of £251 per block is reasonable. However, the £500 per block to complete a 'plan of action is unreasonable and is limited to £100 per block.

L. The staff costs have been reasonably incurred by the respondent and are payable.

M. The (revised) estimated Safety Case Works in the sum of £20,000 was agreed by the parties as reasonable.

N. No external decorations carried out and no cost was incurred.

O. No internal decorations carried out and no cost was incurred.

P. Landscaping costs were not incurred.

Q. Landscape maintenance estimated and actual costs reasonable and payable.

(2) The terms of the updated leases in respect of Building F require the third applicant to contribute to the costs of maintaining the whole Building, including all areas on, above and below ground level except where expressly excluded i.e. lifts.

(3) The tribunal limits the recovery of the respondent's costs of this application through the service charges to 75% pursuant to s.20C of the landlord and Tenant Act 1985 and/or para 5A of Sch. 11 of the commonhold and Leasehold Reform Act 2002.

(4) The tribunal makes no order in respect of the reimbursement of fees.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable to the respondent by each applicant in respect of:

> Simon Butler & Limemananor – reasonableness and payability of service charges for the service charge years 1 October 2021 to 30 September 2022; 2022/2023 and 2023/2024 (estimated).
>
> E14 Limited – reasonableness and payability of service charges for the service charge years 2020/21; 2021/22; 2022/23 and the 2023/2024 estimated charges.
>
> E14 Limited also seeks a determination of the relevant percentage payable for service charges under the leases of its three flats in Block F.

2. As there were three applications concerning different flats at the same property, the tribunal consolidated the applications and directed that the application be heard together.

Background

3. Basin Approach is a development of 180 units spread across 6 apartment blocks and 9 townhouses in Limehouse, London E14. It was constructed by Bellway Homes in 1999/2000 and is one of a number of developments that are situated on the Limehouse Basin next to the river. The apartment blocks are labelled as C Blocks (C1-4, Flats 1-126), D Block is Flats 127 to 157, including 127A, a commercial unit; the townhouses are Houses 158 to 166 (sometimes known as E Block) and F Block is Flats 167 to 179 which includes the third applicant's ground floor commercial units.

4. In his skeleton argument, Mr Brewin set out the history of this development which was not disputed by the applicants. Mr Brewin informed the tribunal that the respondent was incorporated in 2000, when Basin Approach was constructed. Every leaseholder at Basin Approach is a shareholder of the Respondent. Every leaseholder is entitled to apply to be a director of the respondent. Directors of the respondent are unpaid volunteers who fulfil their roles in their spare time. They outsource the day-to-day management of Basin Approach to a professional estate management company but maintain an oversight role and take active roles in certain matters, for example, cladding remediation, approving certain expenditure by the management company. Haus is the current management estate company, engaged since July 2022.

5. The service charges for the estate are divided into five specific areas:

   (i) Blocks C - 126 flats
   (ii) Block D - 31 flats and 1 commercial unit
   (iii) Blocks E - 9 houses
   (iv) Block F - 10 flats and 3 commercial units converted to residential use
   (v) Estate Charges

6. Flat 123 is situated in Block C, Flat 142 is situated in Block D, and 177, 178 and 179 are situated in Block F.

The hearing

7. The first and second applicants were represented by Mr Simon Butler (a former director of the respondent) and the third applicant was represented by Mr Avraamides who adopted the arguments and submissions made by Mr Butler, where they concerned common issues

and advanced his own submissions where they concerned Block F.. The respondent was represented by Mr Carl Brewin of counsel.

8. The parties relied on the following electronic bundles of documents:

Part A - 751 pages
Part B - 50 pages
Part C -375 pages
Part D – 20 pages
Part E – 169 pages

9. Included in the bundles were witness statements from Mr Butler (18/10/24); Lesley Balding (18/10/24 director of the second applicant company; Jason Avraamides (18/10/24), director of the third applicant; William Wilson (21/10/24) Chartered Accountant for the applicants and Bolanji Ranson (23/10/24) director of the respondent company and Stefan Hartman (23/10/24) for the respondents. In addition, the parties relied on bundles of authorities and provided a Skeleton Argument to assist the tribunal. Bundle E was a late additional bundle relied on by the ~~applicants~~ respondent but no objection was made by the ~~respondent.~~ applicants.

10. None of the parties requested an inspection and the tribunal did not consider that one was necessary, nor would it have been necessary or proportionate to the issues in dispute.

11. The applicants holds a respective long lease for each flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

The issues

12. At the hearing, the applicants identified the heads of service charge that remained in dispute concerned the reasonableness and payability of:

The first applicant and second applicants:

Service charge years - 2021/2022; 2022/2023

- Insurance
- Companies House Penalties
- Accounts/audit fees/preparation costs
- Reserve Funds
- EV Chargers
- Entrance doors
- Electricity charges
- Cleaning costs

- Safety Case work
- Water surface charge costs

And for second applicant:

- Arbitrary Block F costs (Commercial units)

AND the estimated costs for 2023/2024 in respect of:

- Insurance
- Companies House Penalties
- Accounts/audit fees/preparation costs
- Reserve Funds
- EV Chargers
- Entrance doors
- Electricity charges
- Cleaning costs
- Safety Case work
- Water surface charge costs
- Arbitrary Block D costs (commercial unit) – 2nd applicant only
- Reserve funds
- Communal doors
- BMAS management fees
- Staff costs
- Fire evacuation plan
- High Risk Building Fees
- Flat roof survey
- 24hr emergency line
- Jet washing
- Landscape maintenance
- Landscaping
- Internal decorations
- External decorations

The third applicant: Service charge years – 2019/2020; 2021/2022; 2022/2023 and 2023/2024 (estimated)

- Items disputed as above; AND
- Percentage of service charges for Block F

13. The parties were however able to agree on a number of these issues leaving only the following to be determined by the tribunal:

(*) items in dispute by third applicant

- Reserve funds & re-credits of excess sums collected

- Entrance doors
- Communal doors
- Communal electricity
- Cleaning costs
- Safety Case works
- Accountancy fees/audit fees
- Accountancy preparation
- BMAS management fees
- Staff costs
- Fire evacuation plan
- 24hr emergency line
- High Risk Building fees
- Flat roof survey
- High Risk Building fees
- Landscape maintenance
- Landscaping
- Internal decorations
- External decorations
- Commercial block/Building F charges (*)

14. The applicants also sought a reimbursement of the application and hearing costs and an order under s.20C of the Landlord and Tenant Act 1985.

The tribunal's determination

15. In reaching its determinations, the tribunal found the second and third applicants simply adopted the first applicant's submissions, without seeking to distinguish the items they disputed for a particular year that fell outside of the first applicant's application or seek to make separate submissions in respect of item, with the exception of part of the third applicant's case and the definition of 'commercial block.' In reaching its determinations, the tribunal had regard to s.19 of the Landlord and Tenant Act 1985 which states:

16. The tribunal accepts Mr Brewin's analysis of this legislation he set out in his Skeleton Argument;

> *Relevant costs may be taken into account in determining the amount of a service charge payable only to the extent to which they are "reasonably incurred": s.19(1)(a). This applies once costs have been incurred. There is a two-stage test. First, was the decision- making process reasonable? Secondly, is the sum to be charged reasonable in light of market evidence? The test is whether charges that were made were reasonable, not whether there are other*

possible ways of charging that might have been thought more reasonable. A tribunal should not simply impose its own decision if the course chosen by the landlord leads to a reasonable outcome; Havering LBC v MacDonald [2012] UKUT 154 (LC), Waaler v Hounslow LBC [2017] EWCA Civ 45).

Where relevant costs have been incurred on the provision of services or the carrying out of works, those services or works must be of a "reasonable standard": s.19(1)(b).

Where a service charge is payable before relevant costs are incurred, "no greater amount than is reasonable" is payable, s.19(2). This applies to interim service charge demands and sinking funds/reserve funds. A landlord needs to be able to point to some rational basis for an amount demanded as a contribution towards such funds…

Where a lease does not state a percentage but provides that the tenant shall pay a "fair" or "reasonable" proportion of the service charge and that that proportion shall be determined by the landlord, the tribunal can determine what the reasonable apportionment would be. In this case, the Applicants' issues include(d) apportionment, in that they challenge the way in which the Respondent has apportioned services based on block allocation or contribution.

17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Reserve Funds

18. Initially the applicants were primarily concerned with the alleged manner in which the respondent had dealt with the sums collected in respect of the reserve fund alleged to be in breach of its duties. The applicant submitted that the reserve fund accounts were initially opened with HSBC to hold the reserve funds on trust, and to ensure that the reserve funds were held in a separate bank account to the service charge monies.

19. In 2023 the Respondent decided to close the accounts and to transfer the funds held on trust for the leaseholders to Haus Management's general account. The funds were then mixed with hundreds of other developments being managed by Haus, including service charge monies. Following requests made by the applicants for the Respondent to disclose bank statements to establish the level of reserve funds, and to ensure that the funds were being held in a separate and ring-fenced account.

20. The applicants became aware this year that the Respondent has been using the reserve funds as expenditure for the estate rather than re-crediting excess sums paid by the leaseholders for estimated service charges where the actual sums were less. Although not clearly stated in the application that the applicants disputed the respondent's The applicants asserted the respondent was not entitled to do this under the terms of the leases. Mr Butler referred the tribunal to his lease dated 5/11/01 which granted a term of 200 years less three days commencing on 24 June 1998. The Sixth Schedule set out the parties obligations under Part "A" (Building Costs); Part "B" (Estate Costs) and Part C (Costs applicable to Parts A and/or B). The same provisions were also included in the leases for Blocks D.

21. Mr Butler accepted the lease made express provision for the collection of a reserve fund and submitted the estimated costs of this were included in the estimated service charge demands. He submitted that para 1(ii) and (vi) of the Fourth Schedule – Part I (Estate Service Charge) defined the service charge as:

> *"Service Charge" means the Relevant Percentage of the Expenditure on Estate Services*
>
> AND
>
> *"Service Charge Excess" means the amount by which any credits shown on a Service Charge Statement exceed the Service Charge shown thereon*

22. Para 7 of the Fourth Scheule -Part I states;

> *Within seven days of receipt of the final Service Charge Statement for Term (howsoever determined) the Estate shall pay to the Tenant any Service Charge Excess shown thereon*

23. The respondent rejected any allegations of misappropriation of the reserve funds and disputed whether the tribunal had the jurisdiction to carry out an 'accountancy' exercise or deal with allegations of misuse or misappropriation of reserve funds.

24. Mr Brewin referred the tribunal to para 14 of Part C of the Sixth Schedule which states;

> *Such sums as shall be considered necessary by the Landlord or the Estate Company (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Estate*

provided the respondent an absolute discretion to decide what sums were considered necessary for the reserve fund and to put any sums paid in excess of the service charges to be put in the reserve fund rather than being re-credited to a leaseholders' account. Mr Brewin submitted that it did not matter whether these had been budgeted or otherwise pre-allocated. In support of this argument Mr Brewin also relied on paras 8 and of Part A and Part B of the Sixth Schedule which state;

> *The Landlord or the Estate Company may alter or modify the services referred to in this Schedule and/or provide additional service if such alteration modification or additional service is or are in the opinion for the Landlord or the Estate Company reasonably necessary or desirable in the interest of good estate management or for the benefit of the tenants or occupiers of the Building and/or the Estate*

The tribunal's decision

25. The tribunal determines that the express terms of the leases for Buildings C and D require that:

    (i) Sums paid in excess of the percentage specified in the lease as of the Part A Building Charges are to be re-credited to the respective leaseholders.

    (i) Sums paid in excess sums of the percentage specified in the lease as Part B Estate Charges are to be re-credited to the leaseholders by the Estate Company.

    (ii) Excess sums paid to the Basin Company are to be repaid to the leaseholders.

Reasons for the tribunal's decision

26. The tribunal finds that the percentage of the Building and Estate charges are specified in the lease. The lease expressly provides that excess Estate Charges are to be re-credited to the leaseholder and excess Basin Costs are to be repaid to the leaseholder. The tribunal disagrees with Mr Brewin's interpretation of the Sixth Schedule of the lease and finds it does not provide a discretion to the respondent to divert excess Building or Estate costs to the reserve fund.

27. The tribunal finds that the lease does provide a mechanism for the Landlord or Estate Company to increase the services and/or amounts required in the reserve fund, but this fund does not and is not intended to operate as a mechanism for defraying the charges of defaulting leaseholders.

Entrance door works – issue conceded by respondent

28. The applicants submitted that the leases describes as being included in the demise in the first Schedule – Part I at para. B as;

> *The entrance door of the Demised Premises and any door leading to a balcony (but excluding the paintwork and decoration of the external surfaces of such windows and window frames)*

Communal door works

29. The applicants asserted that it is unreasonable and wrong for the respondent to incur significant additional costs for simple and basic visual checks to the doors. The doors have been risk assessed and have no history of damage or defects for the last 21 years.

30. The applicants also submitted that the tenants were required by clause 4 of the lease, to report any defects seen to the Landlord, the Estate Company and the Basin Company. Further, inspections of the communal doors could easily be allocated to the staff currently employed at the development at no or little extra cost. Specifically, the porters were trained to patrol and inspect the buildings when the claddings issues arose. The porters are required to perform routine checks of the buildings, including the doors, for any damage or defects. This is undertaken weekly by the porters who are a highly trained, competent and experienced team.

31. The respondent maintained its position as set out in it the statement of case and in Mr Hartman's written and oral evidence to the tribunal that as the Responsible Person, the respondent has a duty to consider instruction of specialists where it, (or staff it employs), has no such specialist knowledge or experience. Based on advice it has taken from specialists, the respondent does not agree that it would be reasonable to expect the Estate team to add these inspections to their duties and it would be disruptive to their duties, particularly if they were not trained and/or compensated accordingly.

32. The respondent also submitted that here is also the issue of vicarious liability if such checks are not carried out correctly and the advice given to Mr Hartman by the insurance brokers that insurers might use the respondent's failure to have carried out the checks professionally could lead to problems claiming on the insurance. The applicants offer no alternative other than non-trained people taking on additional roles where they assume no further cost (or potential liability) may be attached.

33. The respondent stated that a total of 6 reports were prepared, one for each of Buildings C1-4, D and F which involved154 doors being surveyed. The reports total 355 pages. 6 days were spent surveying the communal doors plus the time to produce the reports. Therefore, the costs incurred are reasonable and payable by the applicants.

The tribunal's decision

34. The tribunal finds it reasonable for the respondent to incur an annual cost from a specialist for checks to the communal doors.

The tribunal's reasons

35. The tribunal accepts the respondent's explanation for why it employs the services of specialists to carry out what the applicants perceive to be simple, basic checks rather than asking the porters to do so or relying on occupiers to report defects with the communal doors. The tribunal finds that the potential consequences of these communal doors not being properly inspected and remaining defective outweighs the reasonable cost of an annual inspection.

36. However, the tribunal considers it reasonable for porters to be trained and required to carry out three monthly checks of the communal doors as part of their duties.

Electricity charges

37. The applicants asserted that the Sixth Schedule, Part B 'Estate Costs' provides that LEM shall keep lighted the roads and pathways on the estate. The respondent also provides accommodation for the porters and the costs associated with the Porters' Lodge, and the lights on the roads and pathways is currently being charged to Buildings C, D and F. There has not been any allocation to the estate or Building E (the townhouses). This means that other leaseholders on the estate are not making any contribution towards certain Estate charges.

38. The applicants stated they have reviewed the electricity invoices and believe that £20,000.00 should be allocated to the estate for the electricity charges as this would be a reasonable apportionment.

39. The respondent accepted there was a historic anomaly as to how communal electricity charges are apportioned given there are no separate meters and never have been since the Development was built and no means of identifying separate costs without installing meters.

40. The respondent asserted that there is no currently identifiable separate cost for the Porters' Lodge that can be apportioned as an Estate cost. The

same applies to lighting across the Estate. Each Building powers and pays for the nearby lighting or Lodge (for which it receives a direct benefit by virtue of its vicinity in either case).The only long term way forward would be to install meters at leaseholders' cost although the respondent accepted it would be possible to get an electrical engineer to do an assessment of the energy used to power the Porters' Lodge/Estate Office and the street lights fed from each Building The respondent stated it will seek a quotation for the cost of this exercise as well as considering the cost of installing individual meters.

The tribunal's decision

41. The tribunal finds the respondent's historic and current allocation of these charges to be reasonable in the absence of individual meters for the Buildings and the Estate.

The tribunal's reasons

42. The tribunal accepts the respondent's explanation as to why it has historically allocated the electricity charges in the current format. The tribunal accepts that this was not previously an issue raised by leaseholders when energy prices were low and that it has become one since their increase. However, for future years, the tribunal would reasonably expect the respondent to investigate and have carried out an assessment of the energy used to power the Estate Office and the street lights on the Estate and/or alternatively explore the cost of installing individual meters.

Cleaning costs and recovery of maternity cover

43. The applicants asserted that the cleaner, who is employed for 40 hours a week, spends the majority of their time cleaning the Estate and very little time in Buildings C1 C2 C3 C4 D and F). The applicants asserted the respondent has failed to appropriately allocate the costs incurred. The applicants suggested that the cleaner should be required to complete a detailed rota, specifying the time spent on cleaning a particular Building or the Estate.

44. The applicants also asserted the respondent had failed to fully recover the costs of providing maternity cover for the cleaner from HMRC as they have been able to recover 99% of the costs of cover, rather than the 92% the respondent got back.

45. The respondent asserted that the sums for the suggested amendment to the cleaning costs are in reality very modest and do not justify the detailed approach suggested by the applicants, nor is the respondent required to do so by the terms of the leases. The respondent stated that there are no timesheets as such, but only a cleaning schedule, although

no schedule or hours are specifically allocated to separate elements, although the bulk of the time is spent on cleaning of the residential parts, but this may vary depending on the needs of the Buildings and the Estate. However, the respondent proposed it would consider making a change to the way it allocated these costs for future years, by

46. The Respondent submits that maternity cover pay has been recovered through HMRC and not incurred. This issue was not formally raised by the Applicants until witness evidence.

The tribunal's decisions

47. The tribunal finds the allocation of the costs of cleaning are reasonable and payable by the applicants.

48. The tribunal finds the respondent has recovered the maximum amount for statutory maternity cover from HMRC.

The tribunal's reasons

49. The tribunal finds the apportionment used by the respondent for these costs is reasonable, appropriate and proportionate in view of the uncertainty of the level and extent of cleaning any one Building may require at any particular time. The tribunal finds these relatively small sums are reasonably allocated to the leaseholders and that to carry out the exercise suggested by the applicants of keeping timesheets for each Building unreasonable and would only increase costs and not reduce them.

50. The tribunal was unclear how the applicants had reached their conclusion on how long the cleaner spent in any one Building or over what period the average of 4-6 hours covered.

51. The tribunal accepts the respondent's evidence that it has recovered as much of the statutory maternity cover costs of the cleaner from HMRC as is permitted.

Safety Case works

52. The applicants asserted the respondent has charged £38,000.00 for safety case works but has failed to produce invoices, safety case reports etc. and the applicants remain unclear as to how this sum was incurred. The government has expressed concern of "unacceptably high" fees for building safety reports although under the new system anyone responsible for a block of 18 metres or taller must submit a safety case report to the Building Safety Regulator.

53. The respondent's asserted that its approach, to outsource to professionals and obtain competitive quotes based on advice from experts/consultants, is a reasonable one and it relied on the witness statement of Stefan Hartman. The respondent asserted the Safety Case works were not limited to the installation of wall mounted secured boxes and alternative quotes were obtained from Firntec, Earl Kendrick and Pennington.

The tribunal's decision

54. The parties subsequently agreed that an estimate figure of £20,000 for this item was reasonable.54.

Accountancy and audit fees

55. The applicants asserted the respondent has unreasonably incurred two professional fees for the same work, as it had terminated Mr. William Wilson's appointment as the accountant without good reason and was due to the allegations raised by Mr Wilson raising serious concerns of financial mis-management. The applicants asserted there should have been no duplication of accountancy fees but this was made unreasonably necessary the respondent's actions.

56. The applicants asserted that as a result of Mr Wilson's termination of employment, the respondent incurred additional fees by instructing GCMAS Accountancy to carry out the same services and is not entitled to charge leaseholders for Mr. Wilson's fee of £1,800 which they incurred as an additional payment, due to terminating his services without any good reasons.

57. The tribunal was provided with a witness statement from Mr Wilson who also attended the hearing but was not cross-examined by the respondent.

58. The respondent asserted that its approach is to outsource xx professionals and obtain competitive quotes based on advice from experts and that it is reasonable to do so. As it had lost confidence in Mr Wilson to provide the accountancy service it required, it was within its rights to find an alternate and it was not unreasonable to do so.

The tribunal's decision

60. The tribunal finds these costs have been reasonably incurred by the respondent.

The tribunal's reasons

61. The tribunal accepted the respondent's evidence and reasons on why it had decided to terminate Mr Wilson's contract and seek alternative accountancy provision. The tribunal finds that a residual contractual obligation to pay Mr Wilson does not render costs payable for the new accountants as unreasonable in the circumstances.

62. The tribunal finds the terms of the leases provide the respondent with a wide discretion as to who it may employ and in respect of what services.

Accountancy preparation

63. The applicants stated that as the respondent has entered into a contract with Haus Management to provide accountancy services and receives payment in excess of £15,000.00 as a fixed contract price, it is unreasonable for Haus to charge an additional fee of £900.00 for accountancy preparation.

64. This respondent asserted that this item is for the provision of the information necessary to produce the company accounts, which is in addition to the day-to-day accountancy function provided by Haus for those fees and therefore, the sum claimed is reasonable in the circumstances.

The tribunal's decision

65. The tribunal finds this sum has been reasonably incurred.

The tribunal's reasons

66. The tribunal accepts that it is reasonable to require the management company to collect and provide information to the accountant for the production of the annual accounts. As this is not a part of the day to day management obligations of HAUS the tribunal does not consider it unreasonable for an additional fee to be incurred by the respondent.

BMAS – HAUS management fees

67. The applicants asserted that the respondent had unreasonably incurred costs in the sum of £6,238.28 for BMAS Management fees for the period August 2023 to January 2024, when management of the Buildings and Estate was transferred to Haus Management. In addition, Haus Management charged the same fees from May 2023 and therefore it was unreasonable and disproportionate for the respondent to incur two sets of fees for financial administration over much of the same period as the respondent had provided two months' notice to BMAS on 26 May 2023

(as required). Therefore there should have been no overlap of management services or duplicate payments.

68. The applicants also asserted that BMAS were also not entitled to charge a fee of £995.00 for the Building Safety Fund Grant

69. The Respondent relied on the witness statement of Bolaji Ranson's statement and asserted that in May 2023 the respondent's directors began discussing transferring the bookkeeping function to Haus, which was and is currently the estate manager for the Development, in order to bring multiple functions together to be carried out by one company. As the Directors were in favour of telling BMAS to start handing over to Haus, a letter was sent to BMAS on 26 May 2023. Formal notice was not served at that time but served in November 2023, because the respondent did not know how smooth the handover would be, how long might be needed and BMAS still had useful background knowledge of all the fire safety/cladding invoices and processes, plus their account was the one that was on file with the Building Safety Fund for all future payments.

70. To allow for as smooth a transition as possible of such a vital management function the Respondent decided that it needed an overlap between Haus and BMAS and would also need BMAS's assistance for the preparation of the end of year accounts. The administration charge for the Building Safety Fund Grant was paid by the Fund and is not therefore a cost to the respondent or the service charge.

The tribunal's decision

71. The tribunal finds the costs incurred during the transition from BMAS Management to Hause to have been reasonably incurred.

The tribunal's reasons

72. The tribunal accepts the respondent's evidence in respect of the need to have an orderly transition from one management company to another due to the complex requirements of this large Development. The tribunal accepts there was some duplication of fees but finds this was inevitable in the circumstances in order to ensure a smooth transition of the management of the Development.

Staff Costs

73. The applicant told the tribunal the respondent has three employees working as porters at a total cost of £191,346.99 .However the actual total staff cost (including holiday cover) had totalled £156,601.11 thereby leaving a difference of £34,744.89 which need to be returned to the leaseholders.

74. The Respondent asserted that as employees the staff have Employees National Insurance and Income Tax deducted from their salaries and the compensation they receive individually does not match the gross sums quoted by the applicants. The respondent also relied on the witness statement of Stefan Hartman. The respondent also asserted that the statements of costs where the actuals were shown, were lower than the estimated costs and queried how the applicants had derived their own figures.

The tribunal's decision

75. The tribunal finds the staff costs have been reasonably incurred.

The tribunal's reasons

76. The tribunal finds the staff costs are supported by documentation and are fully recorded. The tribunal is unclear how the applicants reach their conclusions on the excess sum that has been collected in respect of these costs.

Fire Evacuation Plan

77. The applicants told the tribunal that all blocks have in place fire evacuation plans. However, the respondent has incurred thousands of pounds developing these plans. The plans have not changed and therefore it is unreasonable for Respondent to incur additional costs of £2,779.25. 164 particularly when it has failed to disclose documents concerning this issue.

78. The respondent relied on its Statement of Case and the witness statement of Stefan Hartman. The respondent stated these are not fire evacuations as such, but plans required to show the layout of each floor, fire system related assets and compartmentalisation detail. They are needed by the Fire Brigade and were refreshed in accordance with updated legislation. The plans are not generally circulated as this is not required. However, they are available in the Premises Information Boxes on site and will be submitted to the Building Safety Regulator as part of the Building Safety Case requirement. The cost is of £13,500 is reasonably incurred.

The tribunal's decision

79. The tribunal finds these costs have been reasonably incurred by the respondents and are payable by the applicants.

The tribunal's reasons

80. The tribunal acknowledges the importance of this head of service charge for the safety of all leaseholders and that it was reasonable for the respondent to 'refresh' these plans in accordance with the updated legislation.

High Risk Building Fees

81. The applicants asserted that the respondent has unreasonably incurred costs of £13,500.00 concerning High Risk Building fees although this had not been notified to them as an Estate Charge. The fee per building is £251.00. and submission is by way of a straight forward form which requires the building's name, address and postcode, a building summary, including height in metres, number of floors and year of completion, the names and contact details of the principal accountable person and accountable person.

82. As there are only 5 high risk buildings on the estate the total cost for submitting the standard forms would be £1,004.00 and therefore, the respondent has therefore not reasonably incurred the sum of £13,500.00 and the excess £12,496.00 should not be charged to the leaseholders.

83. The respondent asserted that this item represents the cost of registering the buildings with the relevant authorities, following recent legislation relating to high rise building with inflammable cladding in situ. The Respondent's obligation is a statutory obligation and recoverable under the Sixth Schedule to the Lease. Therefore, the fees are reasonably incurred

The tribunal's decision

84. The tribunal finds it is reasonable for the respondent to incur costs in respect of this head of service charge. However, the reasonable costs are limited to £251 per Building and £100 per Building in respect of steps to 'complete the plan of action.'

The tribunal's reasons

85. The tribunal accepts the respondent is required to register the Buildings in the Development with the appropriate authorities. However, it finds the costs of £13,500 to do so is completely exaggerate and unreasonable having regard to the limited amount of work that is required.

Flat Roof survey

86. The applicants asserted the respondent has not incurred any costs instructing professionals to undertake a flat roof survey for Building C as the survey was specific to a property with water ingress problems for

which the insurance company has discharged the costs. Therefore, the payment of £474.00 has not therefore been reasonably incurred.

87. The respondent told the tribunal that Building C survey was carried out for a modest sum which it was reasonable to incur and reasonable in amount The issue appears to be whether but not recovered through the insurance.

The tribunal's decision

88. The tribunal finds the cost of these works have been reasonably incurred and are payable by the leaseholders.

The tribunal's reasons

89. The tribunal accepts the respondents submissions that this work was necessary and is payable by the leaseholders under the terms of the lease. The tribunal finds the applicants objection to this item of work to be unclear and unsubstantiated.

Landscaping

90. The respondent accepted there had been no landscaping and therefore no costs had been incurred. Therefore, the tribunal was not required to determine this issue.

Landscape maintenance

91. The applicants asserted that the invoices did not add up to the £12,000 estimated sum charged by the respondent for the service charge year 2023/2024.

92. The respondent submitted that works had been carried out by the contracted gardener and that in any event the estimated costs had not been demanded or would be subject to revision once the actual costs had been ascertained.

The tribunal's decision

93. The tribunal finds the estimate costs of this work to be reasonable and payable.

The tribunal's reasons

94. The tribunal accepts the respondent's submissions that the landscape maintenance was the subject of a contract (now ended as of October 2024). As these were estimated costs the tribunal accepts the respondent will make any necessary adjustments to reflect the actual charges incurred.

Building F – Costs to the former Commercial Units

95. The third applicant relied on the witness statement of Mr Avraamides. Units 177, 178, and 179 Basin Approach, referred to in their leases as Work Units 1, 2, and 3, are ground-floor units located in what is known as Block F, Basin Approach, LONDON, E14 7JS, a low-rise building (four floors) now containing 13 flats. These three units are now converted to residential use are held on 200-year leases (less 3 days) starting from 24 June 1998, with identical rent of £150, subject to review.

96. Mr Avraamides asserted that the original leases dated 31st July 2003 were subject to a Deed of Variation, dated 7th March 2016 which replaced the definition of 'Commercial Block.' The updated definition limits the 'Commercial Block' to the areas demised under the third applicant's three leases, and explicitly state they include only the 'ground floor work units.' Therefore, the defined 'Commercial Block' is limited to these former commercial units and does not include any shared or common areas of Block F nor any spaces used in common with other leaseholders. Therefore, the third applicant is therefore required to pay service charges in respect of the ground floor only and not to any other charges.

97. Mr Avraamides told the tribunal that Part A of the leases (Proportions' Service Charge Structure), that was applied pre-2019, established that the percentage service charge for Units 177, 178, and 179 were 20.78614%; 31.4457% and 47.76815%, respectively and represented 100% of the Building F Service Charge the third applicant was required to pay and which were predominantly confined to entry phone maintenance. Therefore, the Estate Company's Obligations Subject to Reimbursement PART "A" (Commercial Block Costs) relates to that entity as defined as the Commercial Block, and not to the 'Building' defined in the lease and shown on Plan 2, and otherwise known as Block F.

98. Mr Avraamides also asserted that the definition of the 'Commercial Block' cannot now include anything above the ground-floor level (such as roofs, balconies, terraces, or external features) or any parts below ground-floor level (such as foundations); any ground-floor spaces outside those demised in the three title plans or any common areas, garages, parking spaces, structural elements, service ducts, risers, utilities, external walls, or building envelope elements not demised and ground floor of Building F only and not for the rest of the Building.

99. Mr Avraamides told the tribunal that in 2019-2020, the Respondent incorrectly departed from these contractual percentages by merging the commercial units' budget with the Block F budget. This resulted in the units being wrongly charged at: - Unit 177: 2.69337% - Unit 178: 4.07459% - Unit 179: 6.18957% These incorrect figures collectively account for 12.95753% of this combined budget, with slight annual

variations - a clear breach of the percentages specified in the lease schedules. Mr Avraamides submitted that the third applicant was not required to contribute to window cleaning costs (conceded by the respondent); cleaning and maintain balconies (conceded by the respondent); cleaning costs; flat roof survey and insurance.

100. The Respondent rejected this interpretation and stated the updated (varied) lease makes it clear that the Commercial Block is part of the Building and is not a separate standalone entity. As varied in the lease, the definition of the Commercial Block is specifically to *mean 'any part of the Building comprising commercial units….'* The respondent asserted that the disputed charges under THE SIXTH SCHEDULE, PART "A" (Commercial Block Costs) came into effect in 2019 and continues through to the current 2023-24 budget. Mr Brewin also submitted that the updated definition is more expansive than as originally drafted, as it removes the reference to "that part of the Building comprising commercial units **only**" and by stating it means "**any part of the Building** comprising commercial units and **including** units…now converted into and used as residential units only" (emphasis added by respondent).

101. Mr Brewin also submitted that the converted residential premises share the same roof, exterior walls, foundations etc as the remainder of the Building. Further, the updated leases also state that the Commercial Block has a right of support, shelter etc from the remainder of the Building. The right cannot come without the obligation.

102. Further, The Sixth Schedule specifically refers to the Roof, Walls, Foundations etc of the Commercial Block, which would make no sense if the third applicant's position is correct, as it would not be liable for any costs arising from those elements. Further, as the lift is expressly excluded from the third applicant's obligations, it shows the intention was to include other expressly stated items.

103. Further, or alternatively, clause 16 of Part C applies, or there has been a clear mistake and it is clear what correction ought to be made (compare for instance the Eight Schedule, which uses Building rather than Commercial Block) There is a clear insurance obligation, whether premises are demised or not, so the third applicant cannot be right that there is no obligation to contribute towards insurance at all and this would have an adverse on the other leaseholders if the third applicant is not to contribute to service charges as the Respondent submits

The tribunal's decision

104. The tribunal finds the third applicant is required to contribute to the service charges in respect of all parts of Building F and not just the ground floor units.

The tribunal's reasons

105. The lease variation dated 7 March 2016 relating to Unit 1, Block F, Basin Approach, London E14 7JS and made between Canal & River Trust and Limehouse East Management Limited and Limehouse Basin Management Limited and Bellway Homes Limited and E14 Limited states:

> **2.** ***Replacement of Definitions***
>
> *The definitions of 'Apartments' and commercial Block' contained in clause 1 of the Lease shall be deleted and replaced with the following:*
>
> *'"Apartments" means the residential properties in the Building on the first floor and above of the Building and an Apartment means any one of them.'*
>
> *'"Commercial Block" means any part of the Building comprising commercial units and including units on the ground floor formerly used as commercial units (including those units registered under HMLR title numbers EGL462597, EGL451228 and EGL451230) but now converted into and used as residential units only and excluding the Apartments.'*

106. The tribunal accepts the respondent's interpretation and effect of the varied leases, to that put forward by the third applicant. The tribunal finds that the variations both intended to and do include the third applicants three units as part of Building F and do not amount to a separate standalone entity as submitted by Mr Avraamides. The tribunal finds therefore, the third applicant is required to contribute to the costs incurred in respect of Building F and the estate save where expressly excluded.

Application under s.20C and refund of fees

107. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing. In the application form the applicants applied for an order under section 20C of the 1985 Landlord and Tenant Act and/or para 5A of Sch 11 of the Commonhold and Leasehold Reform act 2002 in addition to the reimbursement of the application fee and hearing costs.

108. The applicants submitted that where an applicant has been partially successful, it is usual for the Tribunal to make an order that no part of the landlords' costs in connection with the proceedings are to be regarded as relevant costs in determining the amount of any service

charge, and the applicant's liability to pay administration charges in respect of litigation costs are extinguished

109. The respondent objected to these applications and asserted that the leases provide for the recovery of legal costs; in any event the application was premature as much of it was based on estimated service charges rather than the actual sums incurred, the applicants had failed to attempt any negotiations with the respondent before issuing the applications to the tribunal.

110. Having heard the submissions from the parties and taking into account the determinations above and the limited success of the applicants, the tribunal determines that it is just and equitable in the circumstances an order to be made under section 20C of the 1985 Act and/or para 5A of the 2002 Act so that the respondent may not pass more than 75% of any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

111. The tribunal makes no order in respect of the reimbursement of fees.

Name: Judge Tagliavini **Date:** 21 February 2025 (corrected on 28 March 2025 pursuant to rule 50 of The First-tier Tribunal) (Property Chamber) Rules 2013

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).