FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	CHI/ 43UL/ LSC/ 2024/ 0036
Property	:	Elmbridge Retirement Village, Essex Drive, Cranleigh, GU6 8TR ("the Property")
Applicants	:	John Ayshford and 172 other lessees
Representative	:	John Ayshford and Jane Briggs
Respondent	:	Elmbridge Village Management Limited
Representative	:	Simon Allison, Counsel instructed by Jemma Castell of Pinsent Masons LLP solicitors
Type of Application	:	Application to determine whether certain service charges are payable and if so are reasonable in amount Section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Judge H Lederman Bruce Bourne MRICS MCIArb, Ms T Wong
Date of Hearing	:	22nd January 2025
Date of decision:	:	7th April 2025

Decision and reasons

DECISION

1. £48,840.00 (inclusive of VAT) was reasonably incurred and is payable by the Applicants in the proportions of their respective Leases and Deeds of Management as the cost of emergency repair work to the drains in Furniss Court at Elmbridge Retirement Village completed by ASL Limited Drainage Services for the service charge year 2022-2023;

2. £16,000.00 was reasonably incurred and is payable by the Applicants in the proportions of their respective Leases and Deeds of Management as the cost of services provided by Your Quality Care Ltd ("YQC") for the service charge year 2022-2023;

3. For the service charge year 2024/2025, the following costs were payable by the Applicants in advance before the actual costs were incurred, (subject to adjustment for costs actually incurred in the service charge year 2024/2025):

    3.1. Reserve Fund of £200,000.00 (inclusive of costs of loan for works specified in the 2024/2025 budget);

    3.2. £93,347.52 included as a projected cost of new Tunstall care alarm system ("TCAS") in the reserve fund allocation of £200,000.00 above;

    3.3. £19,401.60 for Tunstall Call Centre Response (in addition to the TCAS);

    3.4. £4060 for staff uniforms;

    3.5. £10,397.00 for telephone costs;

    3.6. £23,261.34 for IT and network costs;

4. For the service charge year 2022-2023, the management fee payable and reasonably incurred by the Respondent is £133,457.15 (being 92.5% of the £144,278.00 cost of management charged).

5. The Tribunal will issue a decision upon reimbursement of hearing and application fees and the application under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") when further representations have been made in accordance with the following directions:

    5.1. Within 14 days of receipt of this Decision, if the making of an order under section 20C of the 1985 Act in respect of the management and legal costs of these Tribunal proceedings is opposed or reimbursement of fees to the Applicants is opposed, the Respondent is to:

    5.2. Send by email to the Tribunal and to the Lead Applicant John Ayshford and to Jane Briggs as representative (a) full details of the cost claimed or to be claimed as service charge (b) the legal provision in the Deeds of Management Leases or any other contracts or documents relied upon to make such a charge (c) the grounds relied upon to oppose the making of such an order.

5.3. Within 21 days of receipt of the same the Lead Applicant John Ayshford and Jane Briggs as representative should send a written response copying the same to the Tribunal and the Respondent's solicitors.

5.4. The Tribunal will make a decision upon the papers (without a further hearing) unless either the Applicants or the Respondents can provide good reason why a further hearing on that issue should take place.

REASONS

Introduction and Participants

1. Following earlier Tribunal case management hearings John Ayshford and Jane Briggs were appointed to represent 172 Applicants as leaseholders of Elmbridge Retirement Village ("the Village") listed separately at pages 23-25 of the hearing bundle. John Ayshford is a leaseholder and an Applicant.

2. The hearing took place at the Civil Justice Centre in Havant.

3. John Ayshford and Jane Briggs attended the hearing in person. There was also a video connection to part of the accommodation at the Village for those residents or leaseholders who wished to attend remotely. Unfortunately the quality of the sound reproduction was not always good. The Tribunal was informed there were intermittent failures of the video feed so that not at all parts of the hearing could be heard by those at the Village. In view of the costs at stake and the earlier procedural hearings, the Tribunal took the decision to continue with the hearing, rather than adjourn until the video feed could be improved or fixed. That approach was not objected to by any of the parties or their representatives, present at the Civil Justice Centre in Havant.

4. For the Respondent the following persons were in attendance: Alexandra Barry solicitor, Jemma Castell solicitor (attending by video), Poppy Kemp Pupil Barrister, Rob Pyatt General Manager of the Village, Nicholas Jones and Emma Earle (both of whom gave evidence).

Documents before the Tribunal

5. The Tribunal and the parties had the following documents : hearing bundle of 495 pages; skeleton argument prepared by the Respondent's Counsel; Association of Retirement House Managers Code of Practice (sent to the parties before the hearing). References to page numbers are to that hearing Bundle, unless stated otherwise. The Scott Schedule referred to at page 7 had been magnified. Better copies of pages 95, 96 and 97 were made available. The Tribunal checked all parties had the same documents. All parties appeared to accept the specimen Lease and Deed of Management was typical of that which applied to all the Applicants. The apportionment of service charges between

different categories of accommodation at the Village was explained in the evidence but did not impact upon the issues which the Tribunal had to decide.

Background

6. The Respondent's statement of case contains the following description (with one insertion) which was broadly uncontroversial:

> "The Village was constructed by Retirement Villages Group and formally opened in 1984 and remains part of the Retirement Villages Group portfolio. Retirement Villages Group Limited ["RVG"] was acquired by AXA Investment Managers - Real Assets in 2017 bringing the company's portfolio of 14 retirement villages under AXA's ownership."
>
> "The Village is in the area of Cranleigh, eight miles southeast of Guildford and consists of 276 properties consisting of 1 and 2 bedroom apartments, 1 and 2 bedroom bungalows and 2 bedroom chalet bungalows.
>
> The Village consists of two blocks, being Elmbridge Manor and Arun House and 11 courts being Abbey Close, Clarke Place, Day Court, Fairlop Walk, Forest Walk, Furniss Court, Ilford Court, Jackson Close, Loxford Court, Roding Close and Theydon Court. Each block/court contains between 7 and 29 individual properties."

7. The Respondent's statement of case confirms it employs the services of R.V. Services Limited ("RVS") as managing agent for the Village (218), for which a management fee is paid. RVS is the employer of Emma Earle. RVS employed the previous general managers of the Village referred to in her witness statement at page 380. RVS and the Respondent are part of the same RVG group of companies ultimately owed by Axa Alts/the Axa Group of companies. The Respondent did not seek to distinguish between the two entities. RVS has responsibilities as a managing agent to the Respondent and to the Applicants under the approved Code of Practice of the Association of Residential Home Managers.

8. The Applicants' statement of case contains the following introduction which appeared to be largely agreed:

> "the residents are all over the age of 60, average age in Elmbridge is 85, and many on a fixed income. The village was established in 1981, and the service charge year runs from 1 April to the following 31 March."

> "Village managers in Elmbridge have been Keith Hennessy to August 2020 and Chetan Charma until End of October 2021, followed by the appointment of Kelvin Glen from February 2022 to June 2024 and recently the appointment of Rob Pyatt in June"

9. Emma Earle's witness statement (02 12 2024) included the following passages at page 389:

> "The Village has over 320 of what would be considered aging and vulnerable residents some with more complex needs than others. The services currently provided by the Wellbeing Centre at the Village fall into both the 'Personal Care' and 'Treatment of disease, disorder or injury' categories of the CQC registration."

10. Nicholas Jones on behalf of the Respondent explained that of the 276 properties in the Village, some 30 were currently unoccupied and some 22 were let on short term rental. This means the Respondent or RVG may have a liability for the costs of maintenance, upkeep and repair of flats at the Village which would otherwise have been met from the service charge fund from its "customers" if they had been let on long leasehold terms.

11. RVG is described by Mr Jones as one of the largest providers of integrated retirement communities in the UK (page 435). The Respondent was represented by a large and well-resourced firm of solicitors and by experienced Counsel. Jane Briggs and John Ayshford are intelligent and articulate individuals. Jane Briggs has professional expertise in the field of accounting and bookkeeping. Neither appeared to have any experience of Tribunal hearings aside from this case or any relevant legal expertise. They appear to have been provided with a relatively short period of remote support from an individual or entity described as "SAY", funded by the Respondent at one stage to enable them to understand their position.

12. There was a significant imbalance in knowledge and understanding of the relevant statutory provisions between the Applicants (who may not have fully appreciated the nature of the Tribunal's powers under the relevant legislation) and the Respondent. The Applicants' statement of case and evidence had been prepared by Jane Briggs and John Ayshford as lay persons with knowledge of the factual background and direct knowledge of exchanges about budgets and costs. They were also acting on behalf of a large number of elderly individuals with the protected characteristics referred to in the Equality Act 2010 associated with age including ill health.

13. The evidence of Nicholas Jones in paragraphs 32-37 of his witness statement reflects the potential health needs of many of the cohort of Applicants, as might be expected in any retirement community.

14. **Inspection of the premises**. None of the parties requested the Tribunal to visit or inspect the premises. The Tribunal decides this was not necessary to determine the case fairly and justly.

The issues as understood by the Applicant

15. To understand the issues from the Applicants' perspective it is helpful to explain the historical background to management of service charges at the Village. The Applicants' updated statement of case (pages 468-469) contains the following narrative:

> "3.1 Some 40 years ago, residents appointed a small committee (FMG_ Financial Monitoring Group) to work with the management to establish budgets each year to agree how the service charge funds is spent in the village, monitor expenditure quarterly, and review the draft accounts and ask questions……
>
> 3.2 Historically, the FMG (Financial Monitoring Group) met regularly with the local management and were provided with quarterly variance reports to review expenditure specially to include the reserve account. This account was primarily to `save' for large expenses expected in future years, but used, where necessary on urgent and planned refurbishments of properties (i.e. new windows and doors).
>
> 3.3 [the Respondent] taking over in 2017, carried on this tradition in all of the 17 RV villages.
>
> 3.4 The FMG have never considered themselves anything other than a monitoring group but with the constant delay, errors and lack of effective communications, the residents have never felt the accounts can be trusted as accurate. On at least three occasions in the last three years, local traders have declined to provide us with goods and services, because they are often not paid by R for months on end.
>
> 3.5 Having inherited the situation, where the practice had been for [the Respondent] to provide the basic initial budget and for the VM and FMG to discuss, plan, consider and then for [the Respondent] to confirm or impose"

16. Emma Earle of RVS provided the Respondent's perspective of this account in her witness statement at pages 383- 384 as follows (amended for ease of reading):

> "18.1 Each of RVG's villages has a Residents Association Committee ("RAC"). These are not recognised residents

associations but rather a group of residents (at the Village, this is around 12-14 people) who are nominated to represent the views, opinions, needs and wants of the wider resident group.

18.2. The FMG is a subsidiary of the RAC and focuses specifically on the budgetary side of the maintenance charge. At the Village the FMG is made up of around 4 - 5 people. The current chair of the FMG is John Ayshford, the lead Applicant of the Application and Mrs Jane Briggs is the current chair of RAC and also a member of the FMG.

18.3. The inception of the RAC and FMG at the Village precedes my joining of RVG, however, I understand that the RAC and FMG are something which RVG has historically always had at its villages. To my knowledge whilst most retirement village operators have a version of an RAC, it is not the industry norm to have a FMG. I have worked for three separate retirement villages operators, and I have never seen these groups previously.

18.4. My understanding is that the idea of the RAC and FMG was to foster a positive relationship with the residents at each village, allowing the residents a better understanding of the requirements of the village and the management team a better understanding of the lessees' wants, needs and requirements as a resident group. The RAC and FMG are intended to allow the residents to work in partnership with village management to foster a better understanding for everyone involved (particularly in respect of financial matters such as the maintenance charge budget).

18.6. I have first-hand knowledge of dealing with the FMG at the Village, particularly over the past few years. It became quite apparent to me that Kelvin Glenn was struggling with the pressure of the expectations the FMG had of him in respect of a number of issues. As Kelvin's line manager I would therefore try and assist him by attending some of the FMG meetings with him to offer support.

18.7. The members of the FMG at the Village have often taken a "management style" approach to their roles. Some examples of this would be to telling the general managers that they wish to "pre-approve" any expenditure decisions, particularly those relating to staffing and maintenance, regardless of their value.

18.8. One of the roles of the FMG is to review the estimated maintenance charge budget. Once an initial draft of the budget for the upcoming financial year has been put together this is sent to the FMG for their review with an explanation from the general manager as to any increase and the reasoning for this, requesting their feedback and suggestions. A copy of the email from Kelvin Glenn to the members of the FMG, to which I was copied, dated 5

December 2023 and timed at 10:03 with the first draft of the 2024 - 2025 budget is at .....

18.10. It was also arranged for Ben Andrews, one of RVG's service charge accountants to attend some of the FMG meetings to help the FMG understand the maintenance charges at the Village a little more as it became apparent there were a number of things happening with the maintenance charge expenditure causing upset to the FMG.

18.11. In my view, it has become very clear that the FMG want and expect a lot more control than they can be given. Village management aim to be good custodians of the Village and the residents maintenance charge contributions and ensure that everything is kept up to date, safe and compliant. The level of pushback received where the maintenance charge costs are to be increased by works that are believed are necessary and required is significant and makes the management of the Village very challenging for those involved.

18.12. [The Applicants' statement of case] states that staff at the village do not work for RVG instead "they work for us, and we pay their wages". I understand that the residents' contributions to the maintenance charge expenditure will in fact pay for staff salaries at the Village, however, this has become a very difficult narrative to work within and to be able to manage.

18.13. I do believe that the intent of the FMG is a good one, it is borne out of a want to keep the maintenance charge costs down for the wider Village group, but I believe they see themselves as a financial management group rather than a financial monitoring group.

18.14. For example, the FMG have previously requested, by way of an email of 3 May 2023 timed at 20:46 to which I was copied, to take over the accounting function the Village instead of this being handled by RVG head office. The members of the FMG did not appear to be understand why this was not appropriate in a Village of this scale with an annual maintenance charge turnover of in excess of £1.5million."

17. Leaving aside the disagreement as to the role of the FMG, this illustrates the historical background to consultation about service charges and what in colloquial terms might be regarded as "custom and practice" in relation to setting of budgets and provision of information to the FMG by RVS. It is consistent with what the Applicants say is the promise in the leaseholders' handbook that RV will give proper consultation and communication in respect of major changes proper works and financial matters excerpted at page 142 of the bundle.

18. This history of consultation and provision of information to the FMG is at the heart of some of the challenges made by the Applicants and underlies much of the correspondence about the disputed items in the hearing bundle. It also explains why the Applicants feel they had legitimate concerns about each of the heads of cost challenged in these proceedings, as they feel, with some justification that the information that has been provided to them, has been incomplete, inaccurate or delayed so as to impede the effectiveness of collaboration between the FMG and RVS and the Village managers.

19. Examples of correspondence and notes of meetings in the period 2022-2024 explaining and elucidating the Applicants' concerns are found at pages 105-149 of the hearing bundle.

The Tribunal's jurisdiction and powers

20. The Tribunal's role is governed by sections 27A and 19 of the Landlord and Tenant Act 1985 (as amended). In very broad terms these provisions require the Tribunal to decide several questions. Firstly whether a particular service charge cost is authorised by the terms of a Lease and this case the Deed of Management. Secondly where a service charge cost has been incurred or paid, whether that cost was reasonably incurred. Thirdly the Tribunal can decide whether works or services charged to service charge have been provided to a reasonable standard. There are also separate statutory requirements for consultation for certain types of "qualifying" works that are charged to service charge which lead to each lessee being charged £250.00 or more for particular works, which if not complied with, limit the cost of those works or services recoverable as service charge.

21. These statutory provisions have been considered by higher Tribunals and Courts. Guidance has been provided in case law (some of which is mentioned in the Respondent's statement of case at pages 226-227 of the bundle), which this Tribunal is required to follow, where it is relevant. Initially, where works have been carried out, and charged a service charge the Tribunal is required to consider whether RVS/the landlord's decision to carry out works was objectively rational taking into account the interest of the lessees who would be paying for the works.

22. There is a different statutory regime, where the Tribunal is asked to consider the reasonableness of service charge costs invoiced in advance of the services and works being carried out. This sometimes arises in the context of a budget for estimated service charges to be paid for the following service charge year or years. The Tribunal is required to consider whether the sums asked to be paid in advance are authorised by the lease, and then to consider whether the amounts demanded in advance are reasonable.. The Tribunal is required to take into account all relevant circumstances as they existed at the date of the hearing, giving such weight to the various factors as it considers just and reasonable. That said, the Tribunal will not usually substitute its views for estimated service

charges unless there is particular reason for believing that the amount requested in advance is not reasonable.

23. The above summary is intended as a general outline for those who may read this decision who may not be familiar with legal concepts or terminology. The Respondents' statement of case at pages 226 to 228, provides a similar explanation.

Setting the agenda: The issues as defined by the Respondent

24. The Respondent's statement of case (pages 229-231) identified the following issues for the Tribunal to consider:

I. Challenges to the costs incurred in the 2022 – 2023 financial year, specifically:

a. £55,000 of drainage works to Furniss Court
(i) The Applicants' challenge in this respect is not the reasonableness of the cost of the works, but rather the Applicants contest they were advised the cost of the works would be borne by the Landlord and subsequently, the costs did not form part of the 2022 - 2023 budget provided to Applicants but formed part of the end of year accounts.

b. £16,000 for employment of a temporary nurse at the wellbeing centre

(The Applicants challenge in this respect is that the nurse that was supplied provided no services beyond those an 'ordinary' (non-Care Quality Commission regulated) nurse could have supplied, and that such 'ordinary' nurse could have been sourced at a lesser cost).

II Challenges to the costs contained in the budget for the 2024/2025 financial year, specifically:

i. interest for a loan provided to the Village for major works projects
ii. £79,000 for a new Tunstall care alarm system
iii. £19,401 for a call centre service cost associated with the Tunstall care alarm system
iv. £3,050 increase in costs for staff uniforms
v. £4,821 increase in costs for telephone system
vi. £23,261 of IT and network costs.

25. One reading of the Applicants' statement of case of 31st October 2024 and witness statement of Jane Briggs of 23rd October 2024 at pages 76-92 and the amended versions at pages 467-489, is that each head of complaint was solely a challenge to whether the sums incurred as cost or to be incurred were reasonably

incurred or payable under the terms of the lease, or payable as service charge payable on account of costs being incurred. It is plain however from the italicised parts of the following passages, that *in addition* the complaint was of substandard management, administration and failures of communication. (It is an entirely separate issue whether that challenge succeeds).

> "Drains (Page 76)
>
> ……RV are supposed to present draft accounts for the FMG (Financial monitoring groups) to review and ask questions, before the final accounts are audited and then presented to each village and every resident accompanied by a letter of explanation from RV usually penned by the village manager.
>
> ……
>
> Years ago, residents appointed a small committee to work with the management to establish budgets each year to agree how their money is spent in the village, monitor expenditure quarterly, and review the draft accounts and ask questions……
>
> In August 2021, the village manager advised the FMG there was to be significant expenditure incurred on drainage works at the back of one of the set of properties (known as courts), mainly due to the incursion of tree roots because they had been planted 40 years previously
>
> There followed protracted communication, as evidenced in documents attached, to ask if this was an RV cost, *why was it not included in the service charge budget for 22/23, who had decided to change its allocation*, why had no one notified the manager or the FMG, and had it been dealt with accurately.
>
> Our concern is this whole exercise has been protracted as the FMG found *multiple evidence of wrong allocation of all sorts of expenses by the accounts department at RV* HO and experienced multiple and extensive delays in actually getting to the bottom of the situation. *We feel RV have been unreasonable in expecting the residents to fund expenditure initially agreed as a landlord cost by 2 managers before reallocation by RV HO and not telling anyone about it".*

The YQC Invoices challenge Page 77 -78

26. The relevant parts of the Applicants' challenge to this cost which relate to the quality of the service provide by RVS as managing agents in the original statement of case are italicised as follows below:

> "In early 2022, we were notified of a massive change to the management and organisation of the local staff to include a

change in our wellness centre. For years, we had been served by day staff, including a qualified nurse as head of Wellbeing supported by carers and staff with adequate qualifications. As Care Quality Commission rules had changed in a previous year, the service had been downgraded so we didn't fall foul of CQC requirements. We kept our nurse, but her duties were restricted so she didn't breach the CQC requirements. RV advocate[d] the introduction of the YQC company which would reinstate a state registered nurse and support carers who would be subject to CQC. (complied with by YQC) Because RV delayed the introduction of YQC, the existing nurse retired on 31 July and the new service, supplied by YQC, wasn't to be started until 1 November 2022. The Village Manager had asked for YQC to be appointed as early as possible to try and have a hand over between the nurse in charge to YQC..... However, unbeknownst to the village manager, RV HO decided to appoint the state registered nurse from YQC, as the interim manager, at an inflated cost of £500 per day. The invoices for this service were never sent to the village manager but signed off at HO only. *When the expenditure was finally uncovered, during a check of the allocation of salaries between gardeners and health care staff (by the FMG at a quarterly variance report meeting) due to a misallocation by the HO finance accountant on redundancies, which we uncovered separately*, the manager admitted he could have got a replacement nurse at half the cost, and he had never been consulted about the appointment of Jade Hill.

The RV finance accountant (Ben Andrews) admitted he found the YQC invoices confusing as they were sent every 28 days, not monthly, and he just allocated them as he had been told to do by HO staff. RV have advocated they appointed her as the interim replacement to continue to provide the same service the previous incumbent had provided but we contend this was not necessary, as the service she provided was no more than what an ordinary nurse (outside of CQC) would have provided. We are looking for reimbursement of half the cost of this service."

The Budget 2024/ 2025 loan challenge (pp. 78-79)

27. The relevant parts of the Applicants' challenge to this head of the cost demanded in the budget which relate to the quality of the service provide by RVS as managers in the original statement of case are italicised in the passage below:

"In preparing and negotiating the budget for 24/25, in early December 2023, the Village manager Kelvin Glenn asked RV for a loan (circa l m), to be repaid through the service charge over five

years to bring forward and undertake certain works considered by him to be urgent or necessary in the medium future. When the FMG were approached, we were unsure as to whether RV could lend us the money, what it would cost, and we considered that some of the proposed expense could be met out of ordinary and budgeted for service charge funds in the coming 5 years. Consequently, the FMG agreed in principle to a loan for 300k to cover the expense of removing moss from the rooves of properties, replacing all the outside lighting and replacing all the care alarms systems in each property.

.....

It would appear that despite assurances throughout December 2023 right up until September 2024, the village manager had been waiting for the loan agreement to come through so he could progress the outside lighting work to be started we had already gone through the Section 20 process some considerable time before this in anticipation of the loan RV said they were preparing. The contractor had been allocated and was waiting for a start date. It is now evident that this was not the case at all and in fact RV had curtailed any loan preparation once the FTT application by the FMG had been submitted in February 2024"

The Call centre usage challenge pages 80-81– management aspect

28. The relevant parts of the Applicants' challenge to this head of the cost to be demanded in the budget which relate to the quality of the service provide by RVS as managers in the original statement of case are italicised in the passage below:

> "The imposition of the Tunstall alarm system carries an ongoing cost of over £19,000 per year. We challenged this part of the facility being used straightaway when we have our own onsite emergency response team. RV contend that the Tunstall call centre triage the emergency and then contact the wellbeing centre to go out to the residents to progress whatever the 'emergency' is. Apparently, there are times in the day/night, when there is more than one alarm pressed and the staff are then unable to attend both properties simultaneously. There are now at least 2 day time staff so we don't see why that couldn't be done. The staff are also supplied with walkie talkies for ease of contact. At no time, have any statistics or evidence been provided to prove that the emergency call system is triggered more than once at the same time as another call. Apparently, there are no records of the timing and reason for alarm calls which defies understanding, especially how the wellbeing centre has operated in the two years YQC have been operating. The FMG cannot see why the wellbeing centre AND a remote call centre are required
>
> RV have again gone ahead with this contract because, recently, in the last 12 months, as the Chubb alarms have failed or if new

> residents come into the village, those properties are being supplied with the Tunstall alarm equipment and access to the Tunstall call centre when they trigger the alarm. *In all this time, it appears to us RV have delayed in providing the information throughout the time available for discussion and have been unreasonable in their handling of this matter."*

Accounting information page 82

29. The Applicants' challenge was framed as follows:

> "RV accounts department advised us back in 2022 that a new system was coming and would be more effect, visible to the village managers, and would be quicker to provide much needed information for the good of the village. We were advised of decent timescales for the delivery of reports and accounts. Recently, September 2024, in a zoom meeting with Chairs of RAs, and FMG chairs, of some of the 16 RV villages, the Finance Director advocated the new system was still bedding in (since inception on 1 January 2024) and the timescales for delivery of reports, visibility and accounts is worse than it was 2 years ago. This is a demonstration of the difficulty we have faced over the last 3 year in our dealings with RV HO."

30. Similar challenges were made in the first witness statement of Jane Briggs.

Approach to setting the agenda for the hearing: defining the issues in the proceedings

31. At the outset the Tribunal looked at the Applicants' Statement of Case and the Respondent's statement of case and skeleton argument. The Tribunal and expressed a provisional view that one of the key complaints made on behalf of the Applicants about the quality of the management service provided by RVS in relation to the 8 challenges had not been specified as a separate issue by the RVS/ the Respondent.

32. That challenge to the quality of the management service provided by the Respondent been clearly articulated in the evidence (and in effect addressed by the Respondent) but had not been articulated as a separate legal head of challenge in the Respondent's statement of case.

33. Before the hearing commenced the Tribunal put to the Respondent's Counsel it was considering that a key part of the Applicants' case was a challenge to the cost of management service for the year in question on the ground that the quality of the service provided was not of a reasonable standard. The Tribunal gave the Respondent the opportunity of a short adjournment to consider and take instructions on that issue. The Respondent and its advisers returned after the adjournment and opposed the introduction of that challenge on the ground that further evidence would be required as to the proper management fee and the extent of the challenge was unclear. The Tribunal indicated its provisional view that if a determination was going to be made further evidence about the proper management fee would not be regarded as relevant and, if such a challenge

succeeded, consideration would be given to making an award based upon an impressionistic or broad percentage basis.

34. The Tribunal took into account the fact that Emma Earle had identified that some of the core duties of RVS and the Respondent for which they were paid a management fee included preparing and distributing service charge estimates, accounting for service charges and liaising with and supporting the residents association: see her email to the Applicants and Kelvin Glenn of 21st April 2023 at page 136.

The Tribunal Procedure Rules – approach to issues not identified in Respondent's statement of Case.

35. Relevant parts of those Rules provide as follows

> "Overriding objective and parties' obligation to co-operate with the Tribunal
>
> 3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. (2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; (b) *avoiding unnecessary formality and seeking flexibility in the proceedings*; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; and (e) avoiding delay, so far as compatible with proper consideration of the issues."
>
> (emphasis added)

36. The Tribunal concluded the substance of the Applicants' challenge to the standard of management (including communication and administration by RVS on behalf of the Respondent) had been addressed either directly or indirectly in the witness statement of Emma Earle in paragraphs 18.4-18.20, 19, 20 , 21, 22.8 – 22.12, 23.3 and in the statement of Nicholas Jones in paragraphs 17-19, 30-31, 47-55 and 62-65.

37. In addition, paragraphs 19 – 20 and 25-27 of the Respondent's Counsel's skeleton argument addressed the complaint of incorrect communication and accounting treatment of the Furniss drains costs head of challenge.

38. On pages 209-210 of the Bundle, notes of meeting with Emma Earle and various leaseholders including the Lead Applicants at the Village the following is recorded :

> "Furniss drains- A paper had been prepared by Emma Earle and John gave the background to this complaint in that 9 months' after the expense, we received a Variance Report which showed where the cost was to be charged, and Kelvin Glenn went back to RVG to get it changed, and as a result of this, the complaint arose.

Emma Earle said the FTT can only decide if the action is legal or not. Leases are clear that all expenses are service charge costs. She admitted that Chetan and Kelvin had been incorrect in their assumption that it was an RV cost, but she contended that this wasn't a budget overspend. JAB commented that budget overspend was due to Furniss and RV refurbishments. JM stated she felt this was mismanagement by RV inefficiency of the head office team, and she moved for RV to accept the charge.

EE accepted that there had been miscommunication and an element of mismanagement, but it doesn't change the charge in any way.

JM quoted that she had a 25-year-old lease that said 'service media' were service charge and that drains etc were not mentioned, and therefore, the individual lease, in its silence, showed that this was an RV cost. EE stated that individual leases are exactly that, but that all common variable costs are subject to the service charge and 'service media' included the drains."

39. The Tribunal concluded from those (and other) materials that Emma Earle and the Respondent's advisers had in effect responded to the challenge the Applicants' made to the quality of management and administration of service charge accounts, without drawing attention to it as a separate head of challenge.

40. The Tribunal noted the limited access to appropriate professional advice and representation which had been available to Jane Byng and John Ayshford before preparing their statement of case. The Tribunal formed the view that flexibility and the need to deal with the case without undue formality required that the challenge to the quality of the management was not ignored because of an omission to list the item separately in the application or the statement of case. Separately the Tribunal took into account the need to make reasonable adjustments for those Applicants whose faculties were adversely affected by protected characteristics who may not have been able to understand the significance of what was an omission or infelicity in the drafting of the Applicants' statement of case. The Tribunal noted the sophistication of the Respondents' legal team and was satisfied that they were able to address the issue without any difficulty.

41. In deciding to deal with the complaint of substandard management and miscommunication of accounting information at the hearing without inviting further evidence, the Tribunal took into account its estimate of the costs incurred in the hearing listed for one day and the Respondent's attitude to the legal costs at stake.

42. The Tribunal enquired of the Respondent's Counsel the amount of legal costs which had been incurred, whether the Respondent intended to seek to recover those costs from the Applicant by way of service charge and if so what provision in the Deed of Management or Lease would entitle to the Respondent so to do. The Respondent's Counsel indicated he did not have knowledge of the amount of

legal costs incurred and did not assist the Tribunal as to the provision in the Lease or Deed of Management which might be relied upon. That information was not provided by the Respondent at any stage in hearing despite the reference to the claim to cost as part of maintenance charge in paragraph 9.2 of the Respondent's Statement of Case (page 241). This left the Tribunal with the impression that the additional legal costs of determining the question of the standard of the management and accounting services provided by RVG/RVS at stake could well be entirely disproportionate to the determination of that issue and disadvantage the Tribunal in its ability to make case management decisions in accordance with the overriding objective. It is very common for legally represented parties to be asked about the level of their legal costs expended in service charge cases particularly where, as here, an application for an order that the legal costs of the proceedings should not form service charge cost under section 20C of the Landlord and Tenant Act 1985 was being made. The Tribunal's directions made on 11 September 2024 at page 63 informed the parties that application in respect of costs would be dealt with at the conclusion of the case.

43. The Respondent RVS, and the RVG group would have been aware of the following provisions of the ARHM approved Code of Practice:

> "Chapter 01 managers must: Be accountable and transparent in all dealings with landlords and leaseholders
>
> Chapter 04:
> 4.3 Managers must be able to justify that service charges are reasonable, and should not purposely underestimate or overestimate costs or provide misleading information.
>
> 4.4 Managers should consult leaseholders and residents' associations on budgets and the long-term maintenance programme, normally once a year, and prior to any review of, or increase or decrease in the service charge.
>
> 4.5 Managers should provide sufficient detail of the charges being levied to justify the level of expenditure, and present budgets in a standard format compatible with the format of annual accounts to allow ease of comparison by leaseholders.
>
> .....
>
> 5.12 Managers should be transparent in the way that service charge monies are spent. These monies do not belong to the manager or landlord and are paid by leaseholders. The annual account and an examination of it by an independent external accountant offer some assurance to leaseholders. However managers should offer greater opportunity for scrutiny, and leaseholders should be given the opportunity to establish how the service charge money has been spent where they wish to do so.
> .....

> 5.14 Leaseholders should be offered access to view supporting receipts, invoices and bank statements relating to the annual service charge accounts. Managers should be pro-active by offering greater opportunities for scrutiny of supporting documentation and not simply require leaseholders to use their statutory right to inspect."

None of this could have come as a surprise to RVS or the Respondent. It also appears to have reflected what was in the Leaseholders' handbook referred to on page 142 in an email from Mr Ayshford. The Respondent had access to high level legal advice before and after the commencement of these proceedings. Accordingly the Tribunal proceeded to consider the quality of management alongside other challenges at the hearing on the basis that the overarching question was whether the sums claimed for the specific services in issue was reasonable.

Overview - challenges to service charge on the ground that the sums were not reasonably incurred

44. The principles set out in paragraphs 6.2.2 to 6.2.5 of the Respondent's statement of case are accurate as far they go. The question is how they apply to the facts of this case. As the Tribunal indicated at the hearing, at a high level of generality, in most cases:

    a. In relation to costs actually incurred by the Respondent the Tribunal cannot simply substitute its view of the correct cost of services or the correct way in which a service to be provided where the lease provides for such a service to be provided unless there is something in the outcome or process which is objectively unreasonable.

    b. In relation to estimated costs in advance of costs which have not yet been incurred, there is an evidential burden for a leaseholders to show that the cost incurred in advance were not reasonable where they are projected by reference to previous budgets and reasonably estimated future costs falling within service charge provisions such as those contained in the Deed of Management.

The Applicants' challenge to the cost of work to Furniss drains

45. The invoices for these works were at pages 356-358 of the bundle and a letter of explanation is at page 447. RVG have given the total cost of these works as £48,850.00.

46. It was not disputed that the drainage works had been recognised as required in August 2021 as the Applicants said in paragraph 12 of their Statement of Case at page 85. The initial invoices was dated 21 June 2022 at page 356. No mention of the works appeared in the budget for the service charge year March 2022 - 2023 - for example at pages 99-104. Jane Briggs recorded her understanding from RVS staff at a meeting in November 2022 that this would be a landlord/RVG cost: see page 108. This understanding was also obtained from the RVS manager

at the time (Chetan Sharma) as confirmed in John Ayshford's email of 4th September 2023 at page 157. This appeared to be confirmed in discussions between Kevlin Glenn and John Ayshford reflected in John Ayshford's email of 6 March 2023 at page 124. It was common ground the initial allocation of these costs was on the basis that the cost would be a landlord cost but they were subsequently re-allocated to the reserve fund part of service charge in or around 31 01 2023 – see the coding at page 133. This reallocation was carried out without consultation with RVG – see for example the notes of the FMG meeting with Kelvin Glenn at and in advance of the meeting on 22 08 2023 at pages 143-145. and the Applicants' notes taken in 2023 at page 148.

47. Emma Earle's evidence about this did not challenge the substance of this account in paragraph 20 of her witness statement at pages 387-388. Both she and Alix Nicholson of RVG in considering the Applicants' complaint offered an apology for "any miscommunication in connection with this matter". Clear evidence of the change of allocation of this cost is given in the email from Kelvin Glenn of 5th September 2023 at page 158. No evidence was tendered by Chetan Sharma or Kelvin Glenn. The Tribunal has no hesitation in finding that the Applicants' account of events relating to allocation of drainage costs was accurate and reliable.

48. The Tribunal finds the cost of these works put at £48,840 is payable as service charge within paragraph 2 of the Second Schedule to the Deed of Management. The drains within the Village development were common "service media" within paragraph 2 of the Second Schedule to the Deed of Management. The cost was reasonably incurred in the sense that the works needed to be done urgently and sewage was leaking. The initial miscommunication from about the liability being that of the Respondent does not affect the ultimate liability for the cost of these works. The Tribunal finds these works were largely unexpected so the failure to budget for the same is not a good ground for finding these sums were not reasonably incurred.

49. The initial allocation of these costs, the failure to be open or transparent about the reallocation of these costs was not simply what is described euphemistically as a "miscommunication". It reflected poor management of accounting systems and substandard communications to the Applicants. This had a real life impact upon the Applicants as it prevented them from effectively participating in the budgeting decision for 2022-2023 as the information they had been given was inaccurate. Although the total cost of these works fell below the requirement for statutory consultation under section 20 of the 1985 Act, the Applicants were entitled to rely upon the information given to them about this cost by RVS and expect that an organisation of the size of RVG would inform them promptly if that information changed rather than have the matter discovered in due course. The Tribunal disagrees with the finding about the standard of service provided on this issue by RVG/RVS by Alix Nicholson at page 167. RVG and RVS did not act appropriately or in accordance with its contractual obligations to take reasonable care in the provision of management and accounting services.

Your Quality Care Limited costs in service charge year 2022

50. The principal evidence about the decision to appoint YQC is found in the witness statement of Nicholas Jones at paragraphs 32- 45 (pages 437-440). The substance of this account was not challenged. It did not emerge clearly from Mr Jones' written evidence that the role of Jade Hill appointed by YQC, was not simply as a temporary or registered nurse to perform nursing services previously performed by Sister Anne who was retiring from her role at the Wellbeing Centre. Jade Hill's role was in effect as interim manager to oversee the Wellbeing Centre and prepare systems and management should YQC be appointed following consultation later in the year.

51. As Emma Earle explained in paragraph 21.7 of her witness statement at page 389, Jane Hill's daily rate of £500.00 for 32 days' work over a 12 week period in the summer of 2022 was not as a "day nurse" but as a management fee for running the Wellbeing Centre. This was explained although not as clearly as could be hoped in an email from Sally Maguire of 27th November 2024 to Emma Earle at page 415. The Tribunal did not have the benefit of hearing evidence from Sally Maguire. Confusingly that email was sent from an email address of "Yourqualitycare.com" but the invoices for Jade Hill were from Responsive Consultants Limited ("RCL"). Copies of those invoices are at pages 152-155. It was said that these companies were connected.

52. The Tribunal finds that Jane Hill's services provided by YQC (or their connected company) were not simply those of a replacement nurse but were of a different order of service that RVS required being that of interim Wellbeing centre manager. On considering the invoices that description of Jane Hill's services is not apparent. Kelvin Glenn's email to the FMG of 23rd August 2023 at page 15 does not give that explanation. RVS and the Respondent were unable to produce or refer any contemporaneous communications or documents which evidence Nicholas Jones' understanding and that of Emma Earle. The only confirmation of this arrangement is in the email from Sally Maguire of 27th November 2024. The Respondent's omission to inform the Tribunal that the author of that email was a close family relative of Jade Hill is extremely unfortunate.

53. The Respondent did not challenge the Applicants' assertion that these costs only came to light much later in 2023 and that the invoices had initially been misallocated by the Respondents' accounting staff. This complaint was made in paragraph 19 of Jane Briggs' statement at page 87 and in the Applicants' statement of case at page 78. The Respondent's statement of case (paragraph 8 pages 232-233) did not address this issue and the witness statements of Emma Earle and Nicholas Jones which had been prepared with legal assistance made no comment upon this. Emma Earle and Nicholas Jones were both sophisticated and intelligent witnesses quite capable of holding their own whilst giving evidence and were not surprised by the nature or width of the complaints made by the Applicants.

54. It was pointed out by the Applicants that there was a close family relationship between Sally Maguire and Jane Hill so the email description of the services provided needed to be evaluated in that light. Both of them are listed as directors of Responsive Consultants Limited ("RCS") the company through which Jane Hill's services were provided.

55. The YQC costs incurred were payable under paragraph 8 of the Deed of Management ("Provision of ….a medical centre with appropriately qualified staff"). The Tribunal finds that the costs incurred for the YQC services were reasonably incurred in view of the need to ensure continuity of management of the Wellbeing centre from an experienced and trusted supplier such as Jade Hill.

56. The accounting and management aspects of the service provided by RVS and the Respondent were below the standard to be expected of a manager exercising reasonable diligence. The nature of the appointment was unclear, the invoices themselves were unclear and from a different company (RCS) and Kelvin Glenn misunderstood and miscommunicated the nature of the services provided. Some of this is referred to indirectly by Alix Nicholson in the response to the Applicants' complaint at page 167. Again, this had real life consequences for the Applicants as it undermined their ability to understand and comment on expenditure and budgets. This is highlighted in the notes to the meeting on 21st May 2024 at page 210 between some of the Respondent's Manager and John Ayshford which complained of unbudgeted costs. The impact of the incorrect allocation of the YQC invoices is illustrated in John Ashford's email to Kelvin Glenn and others of 23rd August 2023 at page 156. It was clarified that invoices had initially been described as gardening and maintenance producing an overspend in that category or service, only for it to be discovered later that the entirety of the overspend was in healthcare.

57. The Respondent's services fell down in their communication about the costs of YQC and basic procurement protocols of obtaining a contract of engagement itemising services provided and invoices which described the services provided. There was misallocation of the invoices and miscommunication of the nature of the services provided to the Applicants.

The Applicants' Budget 2024/ 2025 loan challenge

58. Reasonable Reserves against future expenditure for services is authorised by clause 1.1 of the First Schedule of the Deed of Management at page 47. This is slightly different from other forms of reserve funds which are sometimes restricted to particular types of project. An explanation of types of reserve fund is fund in paragraphs 15.9 - 15.17 of the ARHM Code of Practice.

59. Emma Earle's statement confirms the issue of a loan arose because of high value project costs envisaged in the 2024/2025 budget. These included replacement of the emergency call bell system and discontinuation of copper phone lines: see

paragraph 22 at page 390. The amount of the reserve fund proposed in the Budget at page 301 was £200,000.

60. The Respondent's statement of case accepts that RVS proposed a landlord loan and to debit interest as payment on that loan to the service charge fund: see paragraph 8.3 on page 235 and the evidence of Nicholas Jones in paragraphs 2 of his witness statement at pages 390 -392. The first issue for consideration is whether this falls within paragraph 18 of the Second Schedule to the Deed of Management which enables the Respondent to charge the cost of "any service or amenities from time to time in the interest of good estate management and wellbeing of the residents of the Village".

61. The Tribunal did not hear detailed argument about whether that provision enabled a charge to interest or other finance cost to be made to service charge. This Decision should not be taken to determine that issue. The Tribunal did not find it necessary to consider that issue as the Applicants only sought re-allocation of the loan sum to the maintenance element of service charge: see paragraph 6.4 of the Updated Statement of Case at page 474. Accordingly the key issue is whether it was reasonable of the Respondent to demand the overall sum of £200,000 for reserve fund in advance of expenditure.

62. The entry for the reserve fund in the Budget itself at pages 301 refers to items such as Noss removal, Tunstall and refurbishments as well as paying back a loan for lighting. The Applicants do not dispute the need for much of this anticipated work.

63. It should be emphasised that the Tribunal is only asked to determine whether it was reasonable to require payment for cost to be paid *in advance of expenditure*. If any of the items of expenditure or costs incurred were not reasonably incurred or not within the terms of the Leases or the Deed of Management, those items can still be the subject of adjustment under clauses 4, 5 and 6 of the first schedule to Deed of Management and if necessary by way of separate challenge to the costs actually incurred under sections 18, 19 and 27A of the 1985 Act subsequently if agreement cannot be reached.

64. The Applicants have not shown it was unreasonable to charge sums based upon a reserve fund allocation of £200,000 for future expenditure, even though that sum was initially allocated on the basis that it would include interest upon repayments of any loan.

The challenge to the anticipated expenditure upon the Tunstall care alarm system

65. The Applicants' challenge to this head of anticipated cost is set out at paragraph 28 above. Part of the challenge appears to be made on the basis that it was unreasonable for the Respondent to incur the expenditure on the new Tunstall system. That is not the issue which the Tribunal has to consider in the context of considering whether the charge for costs was unreasonable in advance of the cost

being incurred. If it transpires in dure course that the costs on the Tunstall system have been unreasonably incurred either by reason of the process adopted, the product selected, the outcome, the overall cost or the standard of works, the costs can still be the subject of challenge once the costs have been incurred, if agreement cannot be reached. At this stage however the Applicants have the evidential burden of showing that a cost of this kind cannot reasonably be charged for in advance.

66. This challenge is answered in paragraphs 41- 46 of the Respondent's skeleton argument (with insertions) as follows:

> 41. The Respondent has an obligation under paragraph 7 of the Second Schedule of the [Deed of Management] to provide an emergency call system in each property at the Village.
> 42. Part of the above loan was to be used to finance the purchase of a new care alarm system for each property since the existing system was becoming obsolete and replacement parts could not be sourced. It does not appear to be in dispute that the alarm requires replacement – see, for example, [Jane Briggs'] letter at [126].
> 43. RVG undertook a portfolio-wide tender with several providers of emergency call systems to identify a system which could be implemented across the portfolio (paragraph 58 of the witness statement of -Nicholas Jones [441] & [462-463]). Tunstall Alarm Systems was the successful bidder. The cost for this new alarm system was to be £93.347.52 and it was included within the 2024 – 2025 budget in the "Reserve Fund" section. A pilot scheme was implemented but the full scheme has not been brought out across the Village yet.
> 44. [The Applicants argue] that because these costs at the time of the budget exceeded the section 20 consultation threshold, a consultation should have taken place [paragraph 7.2/Updated Statement of Case [475]). However, as these costs were just an estimate and had not been incurred (since the system had not been fully rolled out), there was no obligation to carry out the section 20 consultation process (*12 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 36 (LC) [365]).
> 45. In any case, the cost of installing the Tunstall Care Alarm System is not expected to exceed the section 20 threshold due to RVG having secured a bulk purchasing discount (paragraph 63 of the statement of Nichoals Jones[442]). Thus, consultation will not be required prior to the cost of the wider project being incurred.
> 46. The [Applicants] suggested that the whole process regarding the Care Alarm System was "imposed" on them "without consultation or consideration for the residents" (paragraph 7.3 Updated Statement of Case [475]). However, the replacement of the Care Alarm system was extensively discussed with the FMG who suggested that Alexa speakers may be preferable. This proposal was thoroughly considered by RVG but dismissed due to reliability issues (paragraphs 23.2-6/

witness statement of -Emma Earle [393]). Furthermore, all residents were informed as to the quotes received and the functionality of each system in March 2024 (paragraph 64 Nicholas Jones statement [442] & [464]).”

67. The requirement for statutory consultation under section 20 of the 1985 Act will only apply if the costs for these works incurred leads to a cost of £250.00 or more for each lessee if the relevant costs are incurred. If that occurs it remains open to the Applicants to challenge the recovery of costs for this head of expenditure. By rejecting this head of challenge at this stage the Tribunal should not be taken as determining what the cost of these works is, or whether it is or will be within the requirements of section 20 consultation. The Tribunal could not determine whether at the time of the budget or on account demand for payment the contract had been entered into. The Tribunal declines to make any determination upon whether section 20 consultation requirements have been complied with at this stage as it has not seen all of the relevant contractual documents.

76. The Applicants were unable to undermine the factual assertions in paragraphs 42-43 of the Respondent’s skeleton argument above for the purpose of this hearing. It is not necessary for the Tribunal to reach findings on those issues for the purposes of determining whether these cost are payable in advance of the cost being incurred. It does not do so.

68. The Applicants have not shown that it was unreasonable to charge for this head of costs in advance. If it transpires that the Respondent’s account of the investigations and procedure adopted was not as set out above, if the outcome of the expenditure was below that to be reasonably expected or the Tunstall costs were for some other reason unreasonably incurred this can be the subject of a separate challenge at some later stage once the costs have been incurred, if agreement cannot be reached.

The Tunstall call centre response challenge

69. This is set out by the Applicants as follows at paragraphs 8.1-8.3 pages 475-476 (the updated statement of case):

> “8.1 The imposition of the Tunstall alarm system carries an ongoing cost of over £19,000 per year. We challenged this part of the facility being used straightaway when we have our own onsite emergency response team. RV contend that the Tunstall call centre triage the emergency and then contact the wellbeing centre to go out to the residents to progress whatever the ‘emergency’ is. Apparently, there are times in the day/night, when there is more than one alarm pressed and the staff are then unable to attend both properties simultaneously. There are now at least 2-day time staff so we don’t see why that couldn’t be done. The staff are also supplied with walkie talkies for ease of contact. At no time, have any

statistics or evidence been provided to prove that the emergency call system is triggered more than once at the same time as another call. See R's SoC 16 24.4- the system is current not previous and there are no statistics or records to prove the assertion that more than one call comes in at the same time or any occurrences have happened as indicated by EE 17 24.8.
Apparently, there are no records of the timing and reason for alarm calls which defies understanding, especially how the wellbeing centre has operated in the two-years YQC have been operating. The FMG cannot see why the wellbeing centre AND a remote call centre are required.

8.2 RV have again gone ahead with this contract because, recently, in the last 12 months, as the Chubb alarms have failed or if new residents come into the village, those properties are being supplied with the Tunstall alarm equipment and access to the Tunstall call centre when they trigger the alarm. In response to EE 17 4.9, the Tunstall systems supplied do not include the motion sensor so we are still using the Chubb system for that aspect of this service. Yet another example of no joined up thinking and another reason for not having this service.
8.3 In all this time, it appears to us RV have delayed in providing the information throughout the time available for discussion and have ben unreasonable in their handling of this matter."

70. The Respondent's skeleton argument (as modified) summarises its response to this challenge as follows:

> 49. " Tunstall Care Centre Response is an add-on feature to the Tunstall Care Alarm system which means that when a resident uses their care alarm, their call is routed to an external centre where it is picked up and triaged. It has recently been provided to all residents in the Village regardless of whether they have an upgraded Tunstall Care Alarm System (§24.9/WS-EE [395]). The Respondent is entitled under paragraph 7 and/or paragraph 18, Second Schedule of the DoM to charge the residents this cost via their service charge.
>
> 50. The [Applicants allege] that because there are at least two-day time staff and staff also have walkie talkies, there is no need for this system (§8.1-2/AUSC [475]). That is misplaced, and as explained in §24.3/WS-EE [394], there is generally only one staff member at a time. The staff at the wellbeing centre have repeatedly expressed concern that they are receiving multiple calls at once or in close succession and that some calls do not represent emergencies, rather more trivial issues (such as TV remote batteries needing to be replaced). Where there are emergencies, wellbeing staff may find it difficult to know which calls to prioritise. Residents have also expressed frustration that they are unable to get through to the centre due to engaged lines. (§24.4-8/WS-EE [394]). As such, it was felt that it would reduce risk to residents if calls could be

triaged and prioritised externally by Tunstall so that residents can receive a prompt response and that members of staff know who they need to urgently attend to.

51. The cost challenged is £19,400. As can be seen on [465] the recurring cost has 2 components – a cost for the 'alarm receiving centre' (£8121pa) and a cost for the SIM card / line rental (£11,280). "

77. The Applicants were unable to undermine the factual assertions in paragraph 50 of the Respondent's skeleton argument or show that this was not a view which the Respondent could reasonably come to. It is not necessary for the Tribunal to reach findings on those issues for the purposes of determining whether these costs are payable in advance of the costs being incurred. It does not do so.

71. The Applicants have not shown that it was unreasonable to charge for this head of cost in advance of the cost being incurred. If it transpires that the Respondent's account of the investigations and procedure adopted was not as set out above, if the outcome of the expenditure was below that to be reasonably expected or the Tunstall costs were for some other reason unreasonably incurred, this can be the subject of a separate challenge at some later stage once the costs have been incurred, if agreement cannot be reached.

The Staff Uniform challenge

72. The Applicants' challenge to this head of anticipated costs at page 476 was:

> "The Deed of Management states Schedule 1 part 2 clauses 1.1 about the maintenance charge includes the cost of providing staff "where appropriate with uniforms, equipment and necessary materials" Our staff are all recognisable by the colour of their tee shirts/uniforms, except for office staff who wear their own clothing. All staff also now wear an RV branded badge to show their name and position in the company. The new uniforms were sourced by RV head office but paid for by the service charge and branded with the RV logo. There is no need for the logo other than this is an RV 'requirement', especially as the badge also informs the resident who they are and what they do. The uniforms for housekeeping and groundsmen had only been replaced in the last year but were disposed of in favour of the new ones, because of the perceived necessity of the logo. This is another example of a lack of duty of care and unreasonableness. We don't need to know the staff work for RV, they don't, they work for us, and we pay their wages. It is unreasonable for us to pay for the branding of RV uniforms. This increases the cost by more than 300%. Whilst we accept the increase is not 300%, and we agree it is in accordance with R's SoC 16 8.6.3, and it is immaterial if the cost is only .25% of the overall budget, R's SoC 16 8.6.2, all costs are relevant.

9.2 Referring to EE 17.25.2, the staff are already recognisable by the colour of the don't need to know the staff work for RV, they don't, they work for us, and we pay serves no actual function for the village residents. Indeed, where we are to assume our ageing and vulnerable residents are sight poor, then the colour of something is of more importance than a logo or badge.

9.3 The uniforms were replaced, wholesale and completely, not in accordance with EE 17.25.8, because R changed their logo and branding and insisted the old ones had to be withdrawn- this is in accordance with statement at EE 17. "

75. The Respondent's skeleton argument at paragraph 54 summarises their case as follows:

"54. The budgeted expenditure for staff uniforms and protective clothing in 2024 – 2025 is £4,600. While this cost does represent an increase on the 2023 – 2024 budget, it is modest in the context of the overall budget. The reason the budgeted cost provision is higher is because

a. First, RVG had a branded uniform which was in place for over a decade. RVG began discontinuing this uniform as it sought to rebrand. During this period, uniforms in the Village have only been replaced exceptionally; for instance, when new staff needed something to wear (§25.4-6/WS-EE [395]). The minimal amount spent on uniforms from 2021-2023 can be found at [424]. Now a new logo has been created, the budget represents a "catching up" to properly equip RVG staff at the Village.

b. Second, these uniforms have been procured for the entire Retire Villages Group portfolio in bulk. As such, while they do include an embroidered logo, there have been overall reductions in costs compared to if each individual Village purchased their own unbranded uniforms. The Applicant has adduced no evidence to suggest that unbranded uniforms would have cost any less."

73. The Applicants were unable to undermine the factual assertions in paragraphs 54(a) or 54(b) of the Respondent's skeleton argument or show that this was not a view which the Respondent could reasonably come to at the stage of reaching a budget. It is not necessary for the Tribunal to reach findings on those issues for the purposes of determining whether these costs are payable in advance of the cost being incurred. The Tribunal makes no findings about those factual assertions.

78. It is not sufficient to show that the Applicants or FMG would have reached a different view had they been in the place of RVS or the Respondent. Arguments about whether the Respondent should give credit for the benefit to the

Respondent's business of branding or betterment of their business remain open to the Applicants at a later stage if there is a challenge.

79. The Applicants have not shown that it was unreasonable to charge for this head of *cost in advance of the cost being incurred*. If it transpires that the Respondent's account of events and procedure adopted was not as set out above, if the outcome of the expenditure was below that to be reasonably expected or the uniform costs were for some other reason unreasonably incurred this can be the subject of a separate challenge at some later stage once the costs have been incurred, if agreement cannot be reached.

80. It remains open to the Applicants to argue that they are not being charged a fair and reasonable proportion of the total costs expended by the Respondent on this item at some later stage under the opening words of paragraph 1 of part 2 of the First Schedule to the Deed of Management. The Tribunal did not hear argument on this issue and makes no determination about this issue.

The Applicants' challenge to the anticipated cost of telephone systems costs

81. These were found at page 477 in the Updated Statement of Case:

> "10.1 As far back as 2022, FMG advocated changing the telephone system in the manor to fibre and to VOIP. At many times over the intervening years and right up to the presentation of the 2024/2025 budget, the FMG advocated VOIP to save considerable funds. Many times, as evidenced by documentation provided herewith, we asked for an update and many times we were told this was under investigation. At the last minute when the 2024/2025 budget was finalised, we were told that as RVG had entered a new traditional contract with a telephone provided for all 16 RVG villages, the conversion to VOIP had not been possible.
>
> 10.2 The fact that RVG had spent an unprecedented amount of £7600 in the previous service charge year on upgrading the Wi-Fi system in the manor, (at OUR Cost) which would have accommodated the VOIP and was primarily instigated to support the use of EPOS (a system of credit/debit card terminals for the payment of all bills in the manor for all residents for RVG expenses only- for which we received 12 days' notice to go completely cash less on 12 January 2022) appears to have been overlooked.
>
> 10.3 We feel this charge is unreasonable and RV could have saved considerable amounts of our funds by sourcing a VOIP system. They had already got fibre into the manor for their own benefit, for which we had paid, and this would have required a small outlay for new telephony equipment but otherwise would have saved over £9k per annum. EVML

have wilfully chosen not to use a more economical VOIP System. (As evidenced in the email from EE 103-104)"

82. The Respondent's case on this issue is summarised in paragraphs 57-59 of its skeleton argument

> "57. The [Applicants allege] that RVG entered into a new contract with a telephone provider for all 16 RVG villages and that this is the source of the increase in costs. They allege that a switch to a VOIP system would save £9,000 per annum and that this should have been done (§10.3/AUSC [477]).
>
> 58. No new contract has been entered into; rather The Village is on a 30-day rolling term with Cranbourne Tech ([427]). The increase in price merely reflects the cost of phone lines for the Village's communal and staff areas for the entire year
>
> 59. (§26.1/WS-EE [396]). The cost of this system is £42.00 a year for Mr Ayshford and £38.05 a year for Mrs Briggs' properties (§8.7.3/RSC [240]). The [Applicants have] provided no evidence to suggest that a switch to VOIP would have saved £9,000 (particularly in the short term). While FMG appears to be in discussion with "Box Broadband" for a quote for the installation of fibre to them Village; it is unclear whether this quote would have included the introduction of a VOIP system ([429]). These conversations stalled when there was a request for funds to be paid upfront toward implementing the required infrastructure (§26.7/EE-WS [397]).
>
> 60. The Respondent intends to do exactly as the Applicant seeks – finding a less expensive solution such as VOIP. However, at the point when the budget was set it was considered unlikely this would be achieved within the current accounts year given the work to be done to enable the change to take place (still underway). The budget was set accordingly, but taking into account the increases that had already been noted during the (then) current year [400]."

83. The Applicants were unable to undermine the factual assertions in paragraphs 58 and 59 of the Respondent's skeleton argument or show that this was not a view which the Respondent could reasonably come to at the date at which the budget was set. It is not sufficient to show that the Applicants or FMG would have reached a different view had they been in the place of RVS or the Respondent.

84. It is not necessary for the Tribunal to reach findings on the assertions made in paragraphs 58-59 of the skeleton argument for the purposes of determining whether these costs are payable in advance of the costs being incurred. It does not do so.

85. The Applicants have not shown that it was unreasonable to charge for this head of cost in advance of the cost being incurred. If it transpires that the Respondent's account of events and procedure adopted was not as set out above, if the outcome of the expenditure was below that to be reasonably expected or the telephone costs were for some other reason unreasonably incurred, this can be the subject of a separate challenge at some later stage once the costs have been incurred, if agreement cannot be reached. Arguments about whether the Respondents have acted reasonably in incurring costs in the events which have occurred remain open to the Applicants.

86. It remains open to the Applicants to argue that they are not being charged a fair and reasonable proportion of the total costs expended by the Respondent on this item at some later stage under the opening words of paragraph 1 of part 2 of the First Schedule to the Deed of Management. The Tribunal did not hear argument on this issue and makes no determination about this issue.

The Applicants' challenge to anticipated cost of IT support costs

87. These are found in paragraph 11 of the updated statement of Case at pages 477 - 478 as follows:

> "11.1 RVG told us via the first presentation of the 2024/2025 budget that they were imposing on us the costs of licences, software packages, IT platforms and IT support costs -via their own internal IT department, as part of the ongoing service charge costs and that they had never done this before but are doing so from now on. We ask as to why this new cost is proposed — given that it appears the staff were able to undertake their functions previously without this. Presumably there was some kind of an IT network in place previously. Why if this was the case, were residents not charged for IT licences and support? We argued that this cost must be included in the management fee RV charge us for their management of systems etc.,.
> We were advised this had been overlooked in previous years and should always have been charged to us and so we had already got a bonus by not having paid it previously! We asked RV to reconsider, especially as some of the systems supported and costed to us, are RV computers and benefit only RV for the services they provide directly to the residents. Bar, restaurant, shop, hairdressing- all these outlets are run, financed and profited by RV, not the residents who are now expected to pay for these extra services. We understand that some of the platforms used by the office are for monitoring situations for residents, property maintenance etc., but why should we pay for the IT support of RV owned and managed services? This proposed cost does not relate to services provided TO residents.

> 11.2 We asked if they would allow us to pay 50% this next year and then the full 100% in the next year, we were refused any leeway. We notice from the Section 20B notice on the 2023/2024 accounts, received in late September 2024, that the IT support costs have been retrospectively imposed on us for the previous year, about which we knew nothing, nor had we been prepared for this eventuality. This feels grossly unreasonable as well."

88. A summary of the response to this is found in paragraphs 63-64 of its skeleton argument is as follows:

> "63. These costs represent the cost of site staff members' Microsoft license to access Outlook, Teams, compliance training, e-learning and other systems necessary for them to work both safely and legally in their roles. The cost also supports two "floating" laptops for staff that do not have a day-to-day computer, to allow them to complete any necessary tasks when needed. These costs are therefore integral to the running of the Village (§27.3/WS-EE [397]).
>
> 64. The Respondent accepts that some of these charges had previously, and mistakenly, been borne by the Respondent in previous years. However, the Respondent is entitled to recover these costs under paragraph 1.1, Part 2, First Schedule of the DoM which includes the provision of equipment and necessary materials and/or paragraph 17, Second Schedule of the DoM and/or as any such other service or amenities as the Respondent may deem reasonably appropriate, practicable, or necessary under paragraph 18, Second Schedule of the DoM."

89. The Applicants have not shown that it was unreasonable to charge for this head of cost *in advance of the cost being incurred*. If it transpires that the Respondent's account of events and procedure adopted was not as set out above, if the outcome of the expenditure was below that to be reasonably expected or the IT support costs were for some other reason unreasonably incurred this can be the subject of a separate challenge at some later stage once the costs have been incurred, if agreement cannot be reached.

90. The Tribunal makes no determination about the reasons why costs were not charged for this head of service in earlier service charge years or whether it was reasonable to start charging for these costs. Those issues were not for determination in this hearing.

91. It remains open to the Applicants to argue that they are not being charged a fair and reasonable proportion of the total costs expended by the Respondent on this item at some later stage under the opening parts of paragraph 1 of part 2 of the First Schedule to the Deed of Management. The Tribunal did not hear argument on this issue and makes no determination about this issue.

The challenge to the quality of management provided by RVS on behalf of the Respondent

92. The Applicants explicitly and implicitly challenged the quality of management provided by RVS and in particular communications and provision of account information in their dealings with the FMG representing the Applicants.

93. The Tribunal finds that the following were below the standard reasonably to be to be expected of a manager of a retirement community:

A. The communications by Chetan Sharma or other managers to the effect that the Furniss House drainage cost were a landlord cost;
B. The incorrect allocation of the drain costs as landlord costs;
C. the omission to draw the error in allocation to the attention of the FMG or the Applicants;
D. The omission to obtain adequate contractual documentation when engaging YQC;
E. The omission to ensure the invoices from YQC or its associated company explained the nature of the services provided or the invoices were adequately allocated
F. The failure to clearly communicate the service provide by YQC to the FMG or the Applicants;
G. The failures to design or implement an accounting system which enabled the Applicants to consult upon estimated cost used in budgets. The incorrect allocation of cost and the (alleged) omission to charge IT support costs previously have meant that budgeting and estimating have been undertaken on false assumptions.
H. The failure to produce the promised loan agreement to Kelvin Glenn when requested or to investigate whether loan was lawful or authorise under the term of the Lease of Deed of Management

94. The value of the management services provided by RVS on behalf of the Respondent is calculated as percentage of the total sums collected under paragraph 1.4 of the Part 2 of the First Schedule to the Deed of Management. It is clear that the RVS were not charging the full contractual entitlement of 12% of the value of the costs collected but nearer 10%: see the letters from RVG at pages 136 and 150 and the budget discussion document at page 305 (9.7% of service charge).

95. Given that RVS and the Respondent chose to calculate management charge in that way, it is inevitable that any challenge to the value of those services will be measured in a similar way by way of proportions of the service charge costs. It is very rare that the Tribunal will be in a position to estimate a precise value of any substandard service. Taking a broad view of the size of the budget and the importance asserted by the Respondent through Emma Earle of the RVS making management decisions which FMG are required to adhere to, the Tribunal

assesses that a reduction of 7.5% of the management fee charged for the year ended 31 March 2023 is appropriate to reflect the reduce value of the service provided. The figure for that year is £144,278.00 as contained in the service charge accounts at page 293 – which comes to nearly 10.52% of service charge costs. 92.5% of that sum is £133,457.15 .

The Applicants' request for an order that none of the costs of these proceedings should be charged to service charge and reimbursement and for reimbursement of fees

96. The Tribunal's directions indicated this issue would be determined at the conclusion of the case. The Respondent sought an adjournment to make representations on the understanding that the measure of success would be relevant to whether an order should be made under section 20C of the 1985 Act preventing the Respondent's costs of the proceedings to be charged to service charge and on the basis that the Respondent's Counsel was unaware of the amount of legal costs incurred and had not come prepared to address the Tribunal about the terms of the Lease of Deed of Management relied upon to charge such costs to service charge. The intention to charge such cost to service charge was an issue which had been addressed in paragraph 9.2 of the Respondent's statement of case at page 241.

97. The Tribunal enquired about the reason for refusal of mediation by Emma Earle on behalf of the Respondent. The reason given was that it was felt that there had been number of discussions with the FMG and the Applicants and that a decision of the Tribunal was required. This refusal and explanation which is reflected in the Tribunal's correspondence reveals a significant lack of understanding of the role of mediation in dispute resolution and its effectiveness in a large number of cases in the Southern region of this Tribunal where mediation is conducted free of charge to the parties by experienced Judges and Mediators. If anything, the conduct of these proceedings and way in which the issues have been presented and responded to have shown the real potential benefit of mediation where one set of parties does not have the benefit of a extensive and well-resourced legal team and the other does and both parties have a continuing long term relationship to preserve and advance.

98. The Tribunal's provisional view is that the Respondent has obtained a short term tactical measure of success in these proceedings but have not obtained any long term resolution of the concerns and difficulties arising from the issues and complaints, most of which have not been finally resolved. At this stage subject to further representations, the Tribunal's provisional view is that the Respondent's refusal to engage in mediation was unreasonable and should be taken into account in deciding what orders should be made under section 20C of the 1985 Act.

99. The Tribunal is very concerned about the potential cost of another set of representations about the legal costs of these proceedings and will need to be

persuaded that the cost of those representations should be payable by any of the Applicants by way of service charge, given that with more co-operation, some of the issues about costs could have been resolved at the end of the hearing.

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.