FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BR/LSC/2023/0071** **MAN/00BN/LSC/2024/0217-0219**
Property	:	**The Works, Withy Grove, Manchester, M4 2BJ**
Applicants	:	**(1)Denise Gregory (2) The Estate of Derek Taylor (3) Townview Properties Limited (4) PSL Properties Limited (5) George Lampascu**
Representative		**Mr Rothwell (Counsel for the Applicants) Spector, Constant and Williams Solicitors**
Respondent	:	**(1) 33 Withy Grove RTM Company Limited (2) Danhamz Limited (3) Danhamz (Hyde Park) Limited**
Representative	:	**Ms Hurri (Counsel for the Respondents)**
Type of Application	:	**Application under s.27A Landlord and Tenant Act 1985** **S20C Landlord and Tenant Act 1985** **Rule 13 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal Members	:	**Tribunal Judge K. Falder, Tribunal Judge C. Wood and Tribunal Member I. James**
Dates of Hearing	:	**28th February 2025, 4th March 2025 and 2nd April 2025**
Date of Decision	:	**30th April 2025**

DECISION

Order

(1) The tribunal makes findings and orders as follows:

a. In respect of the company law point- The Tribunal construes s.27A Landlord and Tenant Act 1985- *"to whom is it payable"*- in the context of the lease. Any service charge that is determined to be reasonable and payable is payable to the Right to Manage company and that is as far as our jurisdiction goes. The other arguments we heard in respect of company law are outside our jurisdiction.

b. In respect of service charges:

i. Cleaning expenses incurred in the service charge years 2021/22, 2022/23, 2023/24 are reasonable and were reasonably incurred. No deductions are to be made.
ii. Fire safety costs incurred in the service charge years 2021/22, 2022/23, 2023/24 are reasonable and were reasonably incurred. No deductions are to be made.
iii. Insurance costs incurred in the service charge years 2021/22, 2022/23, 2023/24 are reasonable and were reasonably incurred. No deductions are to be made.
iv. Lift issues/costs arising in the service charge years 2021/22, 2022/23, 2023/24. These sums are reasonable and were reasonably incurred. No deductions are to be made.
v. CCTV/post-box installation dispute relating to 2021/22. In respect of the CCTV, the total sum awarded is reduced to £7250.00. In respect of the post-box installation, no charges are recoverable against the Third, Fourth and Fifth Applicants in respect of this head.
vi. Electricity costs for the service charge years 2021/22, 2022/23, 2023/24. These sums are reasonable and were reasonably incurred. No deductions are to be made.
vii. Administration/Management fees/anti-social behaviour arising in the service charge years 2021/22, 2022/23, 2023/24 (and generally as regards anti-social behaviour). In respect of these sums, we make no deductions in respect of legal fees, bank fees or accountancy fees. We reduce the management fees to £250.00 per apartment per annum.

c. Apportionment. The Tribunal makes no finding in respect of apportionment, the same having been agreed during the course of the hearing by the parties.

d. S.21 notice dated 30/3/2023. The Tribunal makes no decision in respect of this issue as the s.21 notice was complied with during the course of the proceedings.

e. S.20C application in respect of costs. The tribunal does not make any order under section 20C of the Landlord and Tenant Act 1985 against the Respondents nor does it make an unreasonable conduct costs order against the Applicants under Rule 13 of the Tribunal Procedure Rules.

The applications

1. By way of applications dated 29/8/2023 and 15/4/2024 the Applicants seek a determination of the liability to pay and reasonableness of service charges pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the service charge years 2021/22, 2022/23 and 2023/24.

2. The Applicants also rely on s.152 Commonhold and Leasehold Reform Act 2002 (which amended s.21 Landlord and Tenant Act 1985) in relation to the alleged failure by the Respondents to provide statements of account.

3. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

4. The Respondents seek an unreasonable conduct costs order against the Applicants under Rule 13 of the Tribunal Procedure Rules.

Relevant Law

5. Section 27A(1) of the Landlord and Tenant Act 1985 provides

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

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

6. The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

7. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means

… an amount payable by a tenant of a dwelling as part of or in addition to the rent–

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

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

8. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

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

9. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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

10. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

11. The Applicants also rely on s.152 Commonhold and Leasehold Reform Act 2002 (which amended s.21 Landlord and Tenant Act 1985) in relation to the alleged failure by the Respondents to provide statements of account. This section states

(1) A tenant may withhold payment of a service charge if—

(a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or

(b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or

substantially with the requirements prescribed by regulations under subsection (4) of that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a) the service charges paid by him in the accounting period to which the document concerned would or does relate, and

(b) so much of the aggregate amount required to be dealt with in the statement of account for that accounting period by section 21(1)(c)(i) as stood to his credit.

(3) An amount may not be withheld under this section—

(a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the requirements prescribed by regulations under section 21(4) has been supplied to the tenant by the landlord by way of replacement of the one previously supplied.

(4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it."

12. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

13. Rule 13(1)(b) of the Tribunal Procedure Rules sets out that the Tribunal may make an order in respect of costs only if a person has acted "unreasonably in bringing, defending or conducting proceedings."

The background and the lease

14. The Property which is the subject of these applications is a purpose-built block of flats located on Withy Grove in Central Manchester. The building is in a prime, central location. It consists of 9 storeys of residential properties with commercial space on the ground floor.

15. The First and Second Applicants are the proprietors of 10 apartments within the Property, namely apartments number 203, 302, 303, 402, 403, 502, 601, 602, 702 and 802.

16. The Third Applicant is the proprietor of 6 apartments within the Property, namely apartments number 102, 106, 205, 501, 603 and 902.

17. The Fourth Applicant is the proprietor of 4 apartments within the Property, namely apartments number 201, 701, 703, 803. The Fourth Applicant is also in the process of buying apartments number 404, 424, 503 and 801.

18. The Fifth Applicant is the joint proprietor of apartment 604.

19. The freehold interest of the building is owned by The Works Building Withy Grove Ltd. The Fifth Applicant is the sole director and a significant shareholder of the freehold company. The freehold interest was purchased on 23/2/2024.

20. The First Respondent is the Right to Manage Company ("RTM Co"), (of which the First and Second Applicants are directors). The RTM Co acquired the right to manage the Property within which the Applicants' apartments are situated in December 2021.

21. In respect of the leases, the Tribunal was provided with a specimen lease by the Applicants. It is their understanding that all of the leases are in substantially similar form and content.

22. Clause 2 of the lease sets out that leaseholders within the building are required to pay a service charge in accordance with the terms set out in the Sixth Schedule to the lease. Paragraph 6 of the Sixth Schedule sets out the specific services that are to be provided. The definition of the "Maintained Property" is set out in the Fifth Schedule.

The issues

23. Ahead of the hearing by way of a Scott Schedule and skeleton arguments the parties identified the relevant issues for determination as follows:

    a. the Applicants claim there is no liability to pay any service charges from3rd February 2024 onwards on the basis that all costs incurred

after that date were incurred by the Second and Third Respondents after their authority to act on behalf of the First Respondent had been terminated;

b. The payability and reasonableness of service charges demanded for the years 2021-2024. In particular,

    a. Cleaning expenses incurred in the service charge years 2021/22, 2022/23, 2023/24
    b. Fire safety costs incurred in the service charge years 2021/22, 2022/23, 2023/24
    c. Insurance incurred in the service charge years 2021/22, 2022/23, 2023/24
    d. Lift issues arising in the service charge years 2021/22, 2022/23, 2023/24
    e. CCTV/post-box installation dispute relating to 2021/22
    f. Electricity costs for the service charge years 2021/22, 2022/23, 2023/24
    g. Administration/Management fees/anti-social behaviour arising in the service charge years 2021/22, 2022/23, 2023/24 (and generally as regards anti-social behaviour)

c. Apportionment
d. S.21 notice dated 30/3/2023
e. S.20C application in respect of costs

The procedural history

24. The First and Second Applicant's application is dated 29/8/2023. The Tribunal received the application, acknowledged the same and then gave directions on 13/2/2024. The applications of the Third, Fourth and Fifth Applicants were all dated 15/4/2024.

25. The Tribunal held a video CMC on 20/5/2024 and on 28/5/2024 directions were issued including consolidating the various applications/cases so that they proceeded together under one lead case.

26. There have been various communications between the Tribunal and the parties in this case with extensions of time requested and granted, ultimately leading to the hearing before the Tribunal across three days on 28/2/2025, 4/3/2025 and 2/4/2025 followed by a separate day for consideration of the evidence and submissions (in the absence of the parties) on 4/4/2025.

27. The Applicants were represented at the hearing by Counsel, Mr Rothwell, and the Respondents were represented at the hearing by Ms Hurri. Ahead of the hearing the Tribunal was provided with 2 bundles of documents-

one running to 842 pages, the other to 3593 pages. We were also provided with skeleton arguments by both Counsel.

Day 1 - Preliminary issues

28. Two preliminary issues were raised before the Tribunal at the start of Day 1, namely:

    a. The issue as to whether or not Ms Hurri was entitled to represent the First Respondent in the proceedings before the Tribunal;

    b. Whether or not the Respondents could rely on a witness statement which was not before the Tribunal and had only been signed 1 day before.

29. In relation to issue (a) the Tribunal heard lengthy argument concerning whether or not the Second and Third Respondents were able to engage Ms Hurri to act on the First Respondent's behalf at the hearing. The arguments involved issues which the Tribunal felt were outside its jurisdiction. Ultimately, after taking instructions on the point, Counsel for the Applicants confirmed that the Applicants were prepared for the hearing to go ahead with Ms Hurri representing all of the Respondents without prejudice to the Applicants' position that the First Respondent's board of directors is not validly appointed/does not have authority to make such appointments.

30. In relation to issue (b) the Tribunal heard argument from the Respondents that they should be permitted to rely on the witness statement of Mr Mirza. Ms Hurri submitted that permitting the witness statement would lead to fairness between the parties. She conceded that the same was only signed the previous day and that the Applicants' Counsel hadn't seen a copy of the statement. She submitted that the statement did not say anything above that which is in the bundle. She submitted that there was no significant prejudice to the Applicants.

31. On behalf of the Applicants Mr Rothwell submitted that any party could reference documents that were already in the bundle. He submitted that the Respondents shouldn't be afforded the last minute indulgence of allowing late statements in. He pointed out that two extensions of time for witness statements had been granted for both parties.

32. After considering the arguments above the Tribunal determined that the witness statement would not be permitted on the basis that the statement had not been filed at the Tribunal, had not been served (and indeed had

not been seen at all by Mr Rothwell) and would cause prejudice to the Applicants at this late stage.

33. The Tribunal then commenced hearing the evidence. Mrs Denise Gregory was the first witness for the Applicants.

The evidence of Denise Gregory

34. Ms Gregory confirmed that her witness statement was true and accurate.

35. Under cross examination Ms Gregory explained that she owns 10 apartments in the Property and that Mr Mirza had acted as the letting agent for her apartments having been recommended to Ms Gregory by a colleague. She explained that she was made aware of the issues in the Property by other leaseholders. She visited the Property approximately 2 years ago and had a meeting with Mr Mirza and went through the issues she had as well as requesting documentation which, she stated, was not provided. She explained that this led to her stopping paying the service charges. She confirmed that she had not paid service charges for the years in dispute.

36. She confirmed that she did not know about the installation of the CCTV.

37. In relation to cleaning Ms Gregory's evidence was that the Property was in a very bad state with stained carpets, scuffed walls and a dirty lift. She did not believe that the invoices in the bundle reflected the cleaning undertaken at the Property and had come to the conclusion that they were not genuine.

38. In relation to the directors meeting in January 2024 Ms Gregory confirmed that she wanted to be at the meeting but was provided with a link that did not work.

39. In relation to anti-social behaviour Ms Gregory had no direct evidence and was relying on what she had seen in photographs and information from other leaseholders.

40. In relation to post-box installation Ms Gregory accepted that there was a cost to install post-boxes- *"Yes, there's a cost to everything. We just have an issue with what the cost is."*

41. In relation to management charges of approximately £290.00 per apartment, Ms Gregory's position was that she did not consider this sum was unreasonable if it was in fact the true cost, however she doubted the veracity of the information provided by the Respondents.

42. At the conclusion of Ms Gregory's evidence the Tribunal considered that it would be useful to undertake an inspection of the building, the same being only a 10 minute walk from the hearing venue.

Inspection

44. An inspection was undertaken with Counsel for both parties and other Applicants present.

45. The external inspection of the Property did not reveal any pointing or graffiti issues. The tribunal was shown that the main door to the block could potentially be forced open.

46. The communal areas across the 9 floors of the Property appeared to be clean and well maintained for a building of its type and age. The carpets were hoovered and did not show significant staining. The bin store area was relatively clean albeit there was a mattress that appeared to have been recently deposited there.

47. The lift was in working condition as was the fire alarm from the sensors that could be seen on it.

48. There was some scuffing to walls on various levels and ripped wallpaper on one level of the building.

49. Key boxes were observed outside some of the apartments within the building which indicated usage as AirBNB's/short term rentals.

Matters arising at the start of day 2 of the hearing

50. At the commencement of day 2 of the hearing the Tribunal was advised that the parties had reached agreement in relation to apportionment.

51. Ms Hurri then made an application for additional documents to be admitted in evidence to the Tribunal. She submitted that the thrust of an element of the Applicants evidence was that the cleaning and fire safety inspection invoices were inaccurate or fabricated or fraudulent. She submitted that additional documentary evidence (such as cleaning records) could assist the tribunal in making its decision.

52. Mr Rothwell opposed the application. He submitted that this was in effect just an attempt to get in to evidence the exhibits without the witness statement which had not been permitted on day 1 of the hearing.

53. The Tribunal determined that the additional documents would not be permitted in at this late stage but that the determination would not prevent

Ms Hurri from raising questions to the witnesses in cross examination and addressing the issue in submissions.

The evidence of Mr George Lampascu

54. Mr Lampascu confirmed his witness statement was true and was then cross examined in relation to its contents.

55. Mr Lupascu confirmed that he had not paid the service charges since the Second and Third Respondents took over the handling of the lease other than a period of 4 months. He explained that he is generally at the Property 5 out of 7 days per week. He has a 1 bedroom apartment at the Property which is rented out as an AirBNB suitable for 4 people.

56. In relation to cleaning, his evidence was that the cleaners were not coming regularly enough and when they did come they were not cleaning to a good standard. He cast doubt on the veracity of the invoices from ABC Home Services for cleaning and echoed Ms Gregory's evidence that no proof of payment of those invoices had been provided.

57. In relation to the issue of insurance Mr Lampascu's evidence was that he believed the insurance for the Property had lapsed resulting in him making a contribution of around £6000.00 to the previous freeholder.

58. In relation to the managing agent fees of £290.00 per flat per year, Mr Lampescu's evidence was that these were unreasonable. He conceded that the accountancy fees seemed reasonable.

59. In relation to electricity costs Mr Lampascu's evidence was that the cost was high and unreasonable compared with another building he has an apartment in (the Emmeline building).

60. As regards fire safety and invoices from ABC, Mr Lampescu cast doubt on the veracity of the ABC Homes invoices on the basis that their website did not list fire testing as a service offered. He also disputed that the visit cost of £70.00 was reasonable.

61. In relation to lifts, Mr Lampascu outlined that he believed that the contract between the Respondents and Sheridan Lifts had ended in January 2022.

62. In relation to CCTV Mr Lampascu's evidence was that consultation should have taken place and that the CCTV was a fire risk to the building.

63. In relation to post-boxes Mr Lampescu's evidence was that he had not been provided with this service by the Respondents.

The third day of the hearing

64. At the conclusion of Mr Lampascu's evidence on 4th March 2025 there was insufficient time for the parties to make submissions and both Counsel agreed that this was a case in which oral submissions (as opposed to written) would be preferable. The matter was therefore adjourned to2nd April 2025 to be held via videolink and Ms Hurri was given permission by the Tribunal to attend from a foreign jurisdiction to make her submissions.

65. On 2nd April 2025 the Tribunal heard closing submissions from Mr Rothwell and Ms Hurri.

Submissions

Company law issue

66. Mr Rothwell on behalf of the Applicants raised an issue of company law as the first point of his submissions. He submitted that the management functions in respect of the building had been pursued by the First Respondent as a Right To Manage (RTM) company since 4/6/21. He submitted that under s.74 Commonhold and Leasehold Reform Act 2002 provision is made as to what the articles of an RTM company should be. The articles are determined by the RTM Companies (Model Articles) (England) Regulations 2009/2767. Articles 12 and 13 set out the regulations for decision making amongst directors, namely that any decision must be majority or in accordance with Article 13- unanimous. Article 16 of the Regulations deals with the quorum requirement and Article 16(2) sets out that the quorum must never by less than 2.

67. Mr Rothwell submitted that on 27/7/23 a quorate meeting of the directors was held at which it was decided to terminate the Second and Third Respondent's appointment as managing agent. That was followed up on 1/11/23 giving notice to terminate the Second and Third Respondent's authority from 3/2/24 onwards.

68. Mr Rothwell submitted that on 22/1/24 there was a further 'purported' meeting said to have been called in accordance with Regulation 14 of the regulations for the purpose of adding 2 new directors to the board- Colin Brookes and Claire Broadbent. Mr Rothwell submitted that only 1 director was present so that meeting was an inquorate meeting and in accordance with Regulation 16 no valid decision could be taken other than to adjourn the meeting. He submitted that Mr Brookes and Ms Broadbent were never validly appointed as directors.

69. Mr Rothwell submitted that on 30/1/24 a further meeting was held and in reliance on the appointment of those directors, further decisions were made to remove Ms Gregory and Derek Taylor as directors and to retain the services of the Second and Third Respondents as Managing Agent.

70. Mr Rothwell submitted that from 3/2/24 the Applicants' position is that the Second and Third Respondents were not validly re-appointed by the First Respondent as managing agents for the Property. It is claimed that the consequence of that invalid appointment is that the Second and Third Respondents had no lawful authority to incur costs in respect of the management of the Property and that such costs are therefore not recoverable by the First Respondent from the Applicants as service charge.

71. On this point, Ms Hurri submitted in response that there is insufficient evidence to make the finding sought by the Applicants- that nothing could be determined as being payable from 3/2/24 onwards. She submitted that the ramifications of such a finding would be enormous and that the Tribunal is not the appropriate forum to determine this issue. She submitted that the Applicants are seeking to avoid taking the case to the Business and Property Courts.

Decision

72. The Tribunal carefully considered the submissions made by both Counsel as well as considering the documents contained within the bundles. The Tribunal also considered the contents of both parties' skeleton arguments as well as an extract from Palmers Company Law.

73. The Tribunal noted that the Applicants' first statement of case, paragraph 20, set out the following:

Para 20- "A directors meeting was called by one director and the managing director of the second and third Respondent on 30th January 2024 where without a proper quorum, the one director, unilaterally determined that
(a) Danhamz Limited/ Danhamz (Hyde Park) Limited were to continue to act as the managing agent.
(b) The Applicants were removed as directors.
(c) New directors were appointed.
This will be the subject of separate proceedings. [emphasis added]

74. At p334 of the main bundle the Tribunal considered a text message from Philip Grice relating to the disputed meeting:

"I'm not in a position to attend, or to make any decisions at the moment due to health issues. Sorry. I put my confidence in any consensus decisions made by the other directors in my absence."

75. We also considered the documents at p829-830 and p833 of the main bundle. These documents are a request by shareholders for an EGM containing a proposal to remove the Second and Third Respondents as managing agents and are dated 20/1/25. The documents were prepared by the Applicants' solicitors. If the Applicants believed that the Second and Third Respondents

were not validly appointed as managing agents and had no authority to act as managing agents then documents proposing to remove them as managing agents are surprising.

76. The Tribunal also noted that there was a lack of formal witness evidence from Clare Broadbent- simply an email purportedly from her. Similarly all the Tribunal had from Philip Grice was an email purportedly from him (not a witness statement) saying he did not agree to the actual appointment of new directors. However this is potentially contradicted by his text message on p334 where he *"puts his confidence in any consensus decisions made by the other directors in my absence."*

77. The Tribunal's jurisdiction is to consider the reasonableness and payability of service charges. The relevant document which acts as the starting point is the lease. The lease sets out what the contractual liabilities and rights of the parties are. We construe s.27A- *"to whom is it payable"*- in the context of the lease. In this case in the lease it is the lessor to whom the service charge is payable, but the lessor's obligations have been assumed by the RTM company. Any service charge that is determined by us to be reasonable and payable is payable to the RTM company and that is as far as our jurisdiction goes. The other arguments before us are outside our jurisdiction.

78. The Tribunal's overriding objective is to deal with cases fairly and justly. The tribunal does not consider it would be fair or just in the instant case to make a determination about a niche issue of company law as to whether or not a board meeting did or did not have a quorate majority when there is a significant dispute of fact about that meeting and a lack of clarity across documents and text messages. Further, the request of 20/1/25 for an EGM for the removal of the Second and Third Respondents as managing agents strikes the Tribunal as evidence of the fact that the Applicants themselves still believe and have acted as if the Second and Third Respondent are the Managing Agent for the building.

79. In our judgment, the company law point raised by the Applicants is not a matter within our jurisdiction. They are company-law issues relating to the internal governance of the RTM company, not service charge disputes. We therefore decline to determine this issue.

Submissions- Cleaning

80. In relation to cleaning, the relevant clauses of the lease are set out in the 6th Schedule- specifically paragraphs 6.2, 6.8 and 6.10.

81. Mr Rothwell submitted that the Applicants do not accept that the costs claimed have been incurred at all and/or say they have not been reasonably incurred nor provided to a reasonable standard.

82. Mr Rothwell submitted that the disclosed invoices were rudimentary invoices that could have been prepared by anybody in respect of purported cleaning services of £200 per week. He submitted that no evidence has been provided that these costs have been incurred and it was suspected that payments had not in fact been made. He relied upon a text message between the Fifth Applicant and a person called Mariana who is allegedly one of the cleaners for the building, submitting that if weekly cleaning has happened the cost is £77.00 per week or £97.00 per week. Mr Rothwell submitted that there is evidence of the communal refuse area being allowed to overflow with rubbish and vermin in that area. He submitted that there was ample evidence throughout the bundle of the building being in a "complete state" including photographs of excrement in the communal areas at p537-540. He submitted that the Tribunal should make significant reductions, allowing £2000.00-£2500.00 per annum.

83. Ms Hurri submitted that the Applicants case was unclear- at some points it was suggested more cleaning should have been done, at other points that the building does not require as much cleaning as has taken place. She submitted that on the site visit of which the parties had no prior notice the building was clean and the bin area was clean and tidy. In terms of whether or not the services provided were to a reasonable standard, Ms Hurri submitted that the photos relied on by the Applicants to evidence that cleaning was not of a reasonable standard span a period of approximately 12 days. She pointed out that it was difficult to say when these photos were taken- immediately after a clean or shortly after cleaning was due?

84. In relation to the text messages with the cleaner, Mariana, Ms Hurri submitted that there was no evidence from this lady before the court and that the text was not a reliable message that can be given weight to. She submitted that what is clear from the photos is that cleaning was going on. She pointed out that there are messages praising the standard of cleaning as it is done. Ms Hurri also pointed out that the Fifth Applicant rents out an apartment in the building on AirBNB with a 1 bedroom flat being advertised as suitable for 4 people. She submitted that with this usage there is going to be a higher level of cleaning required and more waste in the communal bin area. She submitted that the costs claimed for cleaning were reasonable and there should not be any reduction.

Decision- Cleaning

85. The Tribunal finds that the purported texts with Mariana are not determinative as to the level of the cost of the cleaning incurred by the Second and Third Respondents. The Tribunal also accept the invoices as being what they are on the face of them- namely cleaning invoices from a company that has provided the cleaning services and been paid for them. We have found no evidence of a fraud being perpetrated here and we do not find that there is any good reason for the Applicants to demand to see bank statements when

invoices for the work undertaken have been provided. The inspection which the Tribunal undertook of the building, without having given any notice to any party, indicated to us that cleaning is taking place regularly and is of a reasonable standard. There have been some extraordinary incidents in this building including excrement in the communal areas however these have been reported and dealt with promptly by the Respondents. The figures claimed by the Respondents are reasonable and there will be no adjustments or deductions in respect of cleaning.

Submissions- Fire Safety

86. The services which the First Respondent, as the RTM company, was required to provide are set out at paragraphs 6.6 and 6.18 of the Lease.

87. Mr Rothwell submitted that the Applicants queried the veracity of the invoices provided from ABC Home Services ("ABC"). He submitted that the Fifth Applicant's evidence was that ABC do not advertise fire safety services and are not qualified to provided them. He submitted that there was no evidence that weekly fire alarm testing took place. He highlighted 3 inspection reports from DD Fire Alarms (not ABC) and the faults that were present at those inspections. Mr Rothwell submitted that the regular fire alarm testing was either not happening or not happening competently. He also highlighted photos of damaged fire doors and fire exits being blocked by rubbish.

88. Mr Rothwell referred to GM Fire and Rescue being called in on 23/7/24 and submitted that their independent conclusion was that the interim measures had not been implemented and further action was required. He submitted that there were issues relating to the fire doors, CCTV cabling was inappropriately fire-stopped, there were issues with the appropriate fire signage and the dry riser inlet door. He submitted that the Applicants have derived no value from the purported fire safety measures taken by the Respondents and as such nothing should be payable in respect of fire safety.

89. On behalf of the Respondents, Ms Hurri submitted that the documentary evidence shows that the alarm was tested on a regular basis. She submitted that the Tribunal should find that the invoices are real and that there is nothing to suggest otherwise. She accepted that there were faults with the alarms but submitted that this is why servicing and checks were undertaken. She submitted that there should be no reduction made to the service charges in respect of fire safety.

Decision- Fire Safety

90. The Tribunal notes that there appears to have been engagement with GM Fire and Rescue services by the Respondents. We have no issues with the ABC invoices- it appears that they are a facilitation company. We take the invoices from ABC at face value and do not find there to be any fraud as alleged by the

Applicants. We have seen evidence of a "routine service" carried out annually for 2021, 2022 and 2023 and £70.00 per week seems reasonable to the Tribunal for weekly testing. No deductions are to be made in respect of this head. We find the sums claimed to be reasonable and reasonably incurred.

Submissions- Insurance

91. The Landlord's covenants to provide insurance is contained at clause 6.3 of the lease.

92. Mr Rothwell submitted that the Applicants say that in breach of the obligation to insure the building the Second and Third Respondents failed to pay the premiums and from 29/10/23 onwards the policy lapsed and the building was uninsured from that date. He submitted that if the building was uninsured the Applicants shouldn't have to contribute towards the cost of insurance of the building.

93. Ms Hurri in response made submissions relating to an insurance issue that arose in 2022. Mr Rothwell highlighted that no complaint was made in relation to 2022- simply 29th October 2023 going forward.

Decision - Insurance

94. The Tribunal found that the evidence in respect of the insurance issue was not definitive. There was clearly a problem with payment and some delay in making it but on balance, considering in particular the oral evidence of Mr Lupascu- namely that he made a payment to the freeholder and is now insuring with the same insurers- this pushes the Tribunal towards believing there was never an actual lapse in this policy (see paragraph 55(g) above in this respect). The evidence put forward by the Applicants is at best ambiguous evidence and we have seen nothing definitive regarding cancellation of the policy. We think that it is probable that the insurance policy did not in fact actually lapse (albeit it came close). As such no deduction will be made in respect of insurance, the same being reasonable and reasonably incurred.

Submissions- Lifts

95. Maintenance of the lifts is a service under paragraph 6.23 of the sixth schedule of the lease.

96. The Applicants complain that lift maintenance services have not been provided to a reasonable standard and the charges are not due in full.

97. Mr Rothwell submitted that the evidence that the Tribunal has is that the lift frequently breaks down, often does not work and has been poorly maintained. There has been graffiti, excrement and a cracked mirror in the lift. He submitted that the Fifth Applicant contacted the lift company after two instances of breakdown and was told over the phone that the general

maintenance contract had been terminated from January 2022 onwards because of non-payment.

98. On that basis the Applicants submit that £500+VAT (the basic maintenance charge) should be removed for the years 2022 onwards. Further, as a result of the lack of regular maintenance the Applicants submit that additional money has been unreasonably incurred on more expensive callouts and there should be a 50% reduction of the remaining sums.

99. Ms Hurri submitted that the lift the Tribunal saw and travelled in on the site inspection was operational and clean. She submitted that much had been made by the Fifth Applicant of there being no contract in place but she submitted that it was not clear what he was told on the phone that would lead to that conclusion. She further pointed out that the Fifth Applicant doesn't have authority to speak to the lift services company.

100. Ms Hurri submitted that to suggest sums claimed are falsified or have not been paid for is to suggest that the Respondents have placed fraudulent invoices before the Tribunal. She submitted that is not the case. She submitted that the maintenance contract charge invoice and invoices for call outs in respect of the lift are documented in the bundle and that the Tribunal should accept the documents as they are at face value.

Decision- Lifts

101. The Tribunal had regard to the documents in the bundle, in particular pages 3095 and 3338. We take the invoices at face value and find no evidence of fraud. We have seen the contract between the Respondents and Sheridan Lifts at p3395 onwards. The evidence we have is that the lift did breakdown and was repaired. When we undertook the site visit we travelled in the lift- it was working. There is no evidence to show that this lift breaks down any more frequently than any other lift. We find that the service has been provided to a reasonable standard, that regular servicing has been carried out and that the sums claimed for regular servicing and call out charges are reasonable and have been reasonably incurred. The Tribunal makes no deductions in respect of this head.

Submissions- CCTV

102. Clause 6.5 of the lease sets out the requirement for the Lessor to *"provide such security for the Building as the Lessor considers reasonably necessary and appropriate…."*

103. In relation to this head, Mr Rothwell referred the Tribunal to the accounts for the 2021-2022 service charge year which show that the amount spent on CCTV was £14,250.00 which equates to £395.83 per flat. He submitted that installing CCTV amounted to "qualifying works" for the

purpose of s.20ZA(2) Landlord and Tenant Act 1985 and that as such the statutory consultation requirements in s.20 of that Act apply. He submitted that the sum claimed by the Respondents is over the consultation threshold and no dispensation has been applied for.

104. Mr Rothwell further submitted that the CCTV was not fire safe and not fit for purpose with the result that Mr Lupascu felt the need to install a new safe system. He submitted that it was not reasonable for the Applicants to pay for a useless CCTV system and that nothing should be payable in respect of the CCTV system that the Respondents installed.

105. On behalf of the Respondents Ms Hurri submitted that there were two separate phases of CCTV work- one was for installation and one for maintenance. She urged the Tribunal to look at the documents in the bundle before disallowing the sums claimed. In terms of whether or not the Fifth Applicant has installed a different system entirely she submitted that there is nothing to show what was faulty with the system installed by the Respondents and/or why it was claimed to be inadequate.

Decision- CCTV

106. The Tribunal has considered the documents in the bundle. These show invoices for "CCTV Phase 1- £750.00" at p3134, "CCTV Phase 2- £3500.00" at p3139 and "CCTV Phase 3- £3000.00." There are no other invoices in respect of the CCTV. £14,250.00 is set out as being the CCTV cost in the accounts at p31 of the bundle and Ms Hurri's submission before the Tribunal was that £11,290.00 had been incurred. The Tribunal is satisfied that the sum of £7250.00 which we have seen invoices for are sums that are reasonable and were reasonably incurred. We are not satisfied that anything further was incurred- whether £11,290.00 as stated in the Tribunal proceedings or £14,250.00 as per the accounts as we have not seen evidence to support it. On that basis and being satisfied in any event that the consultation requirements were not followed, the Tribunal only allows £7250.00 in respect of this head.

Submissions- Post-boxes

107. This head only relates to the Third, Fourth and Fifth Applicants and does not relate to the First and Second Applicant's case. The background to this issue is that in July 2022 a decision was made to install post-boxes at the building for the benefit of the occupiers.

108. Mr Rothwell submitted that from July 2022 until September 2024 the Respondents refused to provide a key or a post-box to the Third, Fourth or Fifth Applicants. He submitted that the service – namely provision of a post-box- had been specifically denied and that as such no service charge can be determined as payable in respect of the post-boxes.

109. Ms Hurri submitted that the postboxes were a one off charge and that all the Applicants now have access to the post-boxes.

Decision- Post-boxes

110. The Tribunal finds that the charges for the post-boxes are reasonable and reasonably incurred. However we find that those charges cannot be recovered against the Third, Fourth and Fifth Applicants because they were not provided with post-boxes or the service. We find that the lack of payment by the Third, Fourth and Fifth Applicants of the service charge is not a good reason for the service not to have been provided to them.

111. We therefore make a deduction in respect of the Third, Fourth and Fifth Applicants service charges for their proportion of the cost of the post-boxes.

Submissions- Electricity costs

112. In respect of electricity costs, the Applicants submitted that the sums claimed are very high indeed. Mr Rothwell submitted that there could be two reasons for this- there may be undetected faults or the leaseholders are being charged on the basis of estimates only rather than actual consumption.

113. It was submitted that an appropriate comparator was the Emmeline building in Manchester which has a lift, includes a car park, needs outdoor lighting and has an electricity cost for the year of £7248.00. Mr Rothwell submitted that the Applicants have put forward an arguable case of unreasonableness in respect of this head and as such the burden shifts to the landlord to explain why the sums claimed for electricity costs are reasonable. He submitted that the Tribunal should find £7250.00 or so would be an appropriate amount for the most expensive year and that is the amount that should be determined as payable.

114. Ms Hurri on behalf of the Respondents submitted the bills relied on show balances brought forwards from previous years. She submitted that electricity prices have been particularly high of recent times. She submitted that there is a lift in this building and that the Emmeline building is not a fair comparator. She submitted that no deductions should be made in respect of this head of loss.

Decision- Electricity costs

115. Having considered the submissions made and reviewed the evidence the Tribunal did not consider that the Emmeline building comparator was of assistance when reaching its decision on the basis that it is a building of a different age and with different amenities and potentially energy requirements. The Tribunal has seen utility bill charges incurred for this

building evidenced by invoices and p3261 of the bundle details that the tariff for electricity was the "*Fixed for business online 3 year"* tariff ending on 1st December 2025. As such, we are satisfied that the prices billed were "in contract" prices. It appears that the account is significantly in arrears from the invoices however in light of the situation in this building, with 19 of 36 apartments not paying their service charges, this is not altogether surprising.

116. The Tribunal considers that the failure to do regular meter readings rather than relying on estimates, even if those estimates are (as set out in the Scott Schedule) *"similar to the actual reads"* amounts to poor management on behalf of the Respondents- a factor that will be considered by the Tribunal in respect of the reasonableness of the management fees below. The Tribunal considers that it would be a good idea for the Respondents to ensure that readings given to the utility companies in future are wholly accurate. That said, we are satisfied that the electricity readings were reasonable and reasonably incurred and as such no deductions are to be made.

Submissions- Management Fees

117. In respect of management fees, the Applicants submitted that the building has been poorly managed- highlighting some of the points already made above in respect of cleaning, etc. Mr Rothwell submitted that on inspection the communal parts looked shabby. He submitted that the Respondents have failed to carry out appropriate maintenance around the building as and when required. It was submitted that there were leaks in the common parts/structure of the building causing damage to the carpets and there have been several examples of homeless individuals gaining access to the building due to the Respondents failing to secure the doors of the building. Mr Rothwell submitted that the Fifth Applicant has undertaken various items of repair and maintenance himself to address some of these issues.

118. Additionally Mr Rothwell submitted that in their capacity as letting agents, flats managed by the Respondents been used for prostitution and/or over occupied. He submitted that Respondents are in charge of these apartments and are facilitating the use of them for unsavoury purposes. He submitted that there should be a deduction of 50% in respect of the management fee.

119. On behalf of the Respondents Ms Hurri submitted that much was made of the alleged prostitution photos and it was highly debatable how much blame could be attributed to poor management by the Respondents. She pointed out that the building is a block of city centre flats and that the Fifth Applicant's flats are also used as AirBNB's and have transient occupiers making it difficult to control who goes in and out of the building. She submitted that the management fees are eminently reasonable.

Decision- Management Fees

120. In respect of management fees the Tribunal considered the evidence and submissions from the parties, as well as our own observations on inspection of the building. We find that having regard to the financial constraints they are working in, the inspection suggested the Respondents are not doing a bad job. We find that the Respondents are working with limited funds- 19 out of 36 apartments are not paying their service charges- and hostile leaseholders. The prostitution/anti-social behaviour issues reflect in our judgment more on the leaseholders than the managing agents. That said, we refer to our comments in paragraph 106 above and consider that a deduction here is appropriate- we consider £250.00 per apartment to be reasonable.

121. In respect of the other costs claimed under this head the Tribunal considers that the legal costs and accountancy costs appear to be reasonable and reasonably incurred. The bank charges were not really challenged and we consider them to be reasonable and reasonably incurred.

s.152 Commonhold and Leasehold Reform Act 2002 (which amended s.21 Landlord and Tenant Act 1985) in relation to the alleged failure by the Respondents to provide regular statements of account.

122. In respect of this point, both the First and Second Applicants and Respondents accept that (albeit belatedly and in the course of these proceedings) the request made by the First and Second Applicants has been complied with and thus no further determination in relation to this point is required.

Apportionment

123. In respect of apportionment, this point was agreed between the parties during the course of the hearing and no determination by the Tribunal is necessary.

s.20C application

124. Under paragraph 6.22 of the sixth schedule of the lease the landlord can recover its legal costs by way of service charge. Mr Rothwell on behalf of the Applicants submitted that the tribunal should make an order preventing such a recovery. He submitted that it would be just and equitable to make the order in this case. He submitted that there has been widespread non-compliance over a long period of time and if the building had not been so poorly managed or if the Respondents had provided information when first requested these applications would not have been necessary. He submitted that the Respondents only have themselves to blame for the costs they have incurred.

125. Ms Hurri submitted that the Respondents should be entitled to their costs. She submitted that it would be unfair if the costs of defending these proceedings should fall at the door of the 17 other leaseholders who have paid their service charges. She submitted that the First and Second Applicants have a history of trying to avoid paying service charges. She submitted that the Fifth Applicant has a separate agenda and is seeking to manage the building himself and is therefore looking for reasons to find the managing agent defective so he can justify non-payment of his service charges. She submitted that the Respondents have done a remarkable job in keeping the building clean and in the condition it is in when they have been without funds for a long period of time from the vast majority of leaseholders.

126. In respect of costs, the Tribunal does not make any s.20C award in favour of the Applicants. Considering the judgment set out above we do not consider that it would be just or equitable to do so. We have found largely in favour of the Respondents position with some minor deductions across a few of the heads in dispute.

127. In respect of the Respondents request for an unreasonable conduct costs order (as set out in Ms Hurri's skeleton argument but not really expanded upon in submissions) we also decline to make such an award. The issues set out by the Applicants were numerous and complex. The fact that the Applicants did not succeed in the vast majority of their complaints does not mean that the high threshold of unreasonability has been met. There will always be a successful and an unsuccessful party in these disputes.

128. Under clause 6.22 of the sixth schedule to the lease, the Respondents can recover the costs they have incurred in defending these proceedings as part of the service charge from the leaseholders. That is what will happen in this matter.

Name: Judge Falder **Date** 30th April 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-forpermission-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).