



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

**Case Reference** : **MAN/00BY/LSC/2022/0092; 0110 & 0121**

**Property** : **Plato House, 7-21, Greek Street,  
Liverpool LS 5QJ**

**Applicants** : **Various Leaseholders as listed on the  
attached Appendix**

**Represented by** : **Mr Anthony Verduyn, Counsel**

**Respondent** : **Tuscola (109) Limited**

**Represented by** : **Ms Fiona Todd, Counsel**

**Type of Application** : **Landlord and Tenant Act 1985 - section 27A  
Landlord and Tenant Act 1985 - section 20C  
Commonhold and Leasehold Reform Act 2002  
– paragraph 5A of Schedule 11**

**Tribunal members** : **Judge C Wood  
Mr J Elliott**

**Date of Decision** : **30 May 2025**

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**DECISION**

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## **Order**

1. The Tribunal orders as follows:

- (1) The following costs are allowed in full:
  - (a) Accountancy Fees – service charge years 2018 -2021
  - (b) Boiler Maintenance – service charge years 2018 (invoice no. 36611) and 2019 (invoice nos. 37773, 43689, 37476 and 37495)
  - (c) Building Manager – service charge years 2018 (September – December 2018) and 2019 (May 2019)
  - (d) Cleaning costs – service charge year 2019 (April – December 2019)
  - (e) Cold Water Booster Pumps – service charge year 2020
  - (f) Computer Equipment – service charge 2018
  - (g) Door Entry System – service charge year 2019: costs under invoice nos. 36231, 38086 and 37367
  - (h) Electrical repairs (EICR) – service charge year 2018
  - (i) Electricity – service charge year 2019
  - (j) Fire Prevention – service charge year 2019: AOV repairs
  - (k) Fire and Smoke Equipment – service charge year 2021
  - (l) Fire Risk assessment – service charge year 2018
  - (m) Gas – service charge year 2019
  - (n) Insurance – service charge years 2018 – 2021
  - (o) Internet – service charge years 2018 and 2019
  - (p) Legionella Testing – service charge year 2018
  - (q) Lift Contract – service charge year 2019
  - (r) Out of Hours Support – service charge years 2020 and 2021
  - (s) Refuse Removal – service charge years 2018 and 2019: costs under invoices nos. 31819, 32501, 32598, 33268, 33753 and 39092
  - (t) Repairs and Maintenance – service charge years 2018 – 2021: costs under invoices nos. 31416, 29376, 41675, 42840, 44660, 44178, 44774
  - (u) Security – service charge years 2018 and 2021
  - (v) Student Ambassadors – service charge year 2019
  - (w) Management Fees – service charge years 2018 – 2021: standard management fee of £175 per apartment per annum.

- (2) The following costs are allowed in part:
- (a) Boiler Maintenance – service charge year 2019: costs under invoice nos. 38863 reduced by £1425.89
  - (b) Building Manager service charge year 2020: disallowed to extent of the Applicants’ challenge ie £5280
  - (c) Cleaning materials/equipment - service charge year 2019: reduced by £591.40 for the average purchase costs of 7 vacuum cleaners
  - (d) Dry Riser – service charge year 2018: disallowed to extent of the Applicants’ challenge ie £235.37
  - (e) Fire Alarm:  
service charge year 2018: invoice no. 31415 reduced by £425 plus VAT  
service charge year 2019: disallowed to extent of the Applicants’ challenge ie £1221.50
  - (f) Fire Prevention – service charge year 2019: remedial works to communal doors: invoice no. 43054 reduced by £1000 plus VAT
  - (g) Management Fees – service charge year 2018: set-up fees of £5000 plus VAT reduced to £2500 plus VAT
- (3) The following costs are disallowed in full:
- (a) Air Conditioning – service charge year 2020
  - (b) Bank Charges – service charge year 2020
  - (c) Boiler Maintenance – service charge years 2018 (invoice nos. 36612 and 36608) and 2019 (invoice nos. 37692 and 37921)
  - (d) Cold Water Booster Pumps – service charge 2021: all costs relating to the maintenance and/or servicing of the pumps on Invoice no. 37476
  - (e) Electrical Repairs – service charge years 2019 and 2020 (invoice nos. 39634 and 46492)
  - (f) Emergency Lighting - service charge year 2021
  - (g) Fire Prevention – service charge year 2019: flat doors’ inspection
  - (h) Lift Consultancy – service charge year 2019
  - (i) Lift Maintenance – service charge year 2019
  - (j) Office Running Costs – service charge year 2021
  - (k) Professional Fees – service charge years 2020 and 2021
  - (l) Reserve Fund – service charge year 2020
  - (m) Refuse Removal – bin store works (£948)

- (n) Repairs and Maintenance:
    - service charge year 2019: costs under invoice nos. 42182 and 38170;
    - service charge year 2020: costs under invoice no. 45683;
    - charge year 2021: costs of £278.26 (installation of notice boards)
  - (o) Security – service charge year 2020
  - (p) Additional Management Fees – service charge years 2020 and 2021: costs under invoice nos. 45927, 49880, 50319, 49304 and 50048.
2. Having regard to all of the circumstances, the Tribunal determines that it is fair and equitable to allow the Applicants’ applications under s20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
  3. In accordance with Rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, (“the Rules”), the Tribunal consents to the withdrawal of the Applicants’ s27A application in respect of the service charge year ended 31 December 2022, which application was made orally at the hearing on 5 September 2024 and with the Respondent’s agreement. No determinations were made by the Tribunal under s20C and/or paragraph 5A of Schedule 11 as it would not be just and equitable to do so. It is recorded that both parties further agreed that no applications were to be made under Rule 13 of the Rules in respect of this application or otherwise in respect of any costs incurred.

#### **Concessions made by the parties**

4. For the sake of completeness, the Tribunal lists below the concessions made by the parties as confirmed at the hearing. They do not form part of the Tribunal’s determination.
5. The Applicants made the following concessions:
  - (1) **2018 Service Charge Year**
    - (a) Insurance Engineering
    - (b) Lift Maintenance
  - (2) **2019 Service Charge Year**
    - (a) Internet
  - (3) **2021 Service Charge Year**
    - (a) Cleaning general – costs totalling £3702
6. The Respondent made the following concessions:
  - (1) **2018 Service Charge Year**
    - (a) Fire, Health and Safety

- (b) Gas
  - (c) Repairs and Maintenance – Invoices nos. 35639 and 35640, totalling £192
- (2) **2020 Service Charge Year**
- (a) Electrical Repairs – Invoices nos. 47807 and 46667, totalling £1538.40
  - (b) Laundry Facilities – costs of £587

### **Background**

- 7. By an application dated 16 April 2021, (“the Application”), the Applicants made an application under s27A of the Landlord and Tenant Act 1985, (“the 1985 Act”), in respect of the 2018, 2019 and 2020 service charge years. The Application also contained applications under s20C of the 1985 Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002, (“CLARA”).
- 8. Two further applications, the first dated 31 October 2022 in respect of the 2022 service charge year, (“the 2022 Application”), and the second dated 19 December 2022 in respect of the 2021 service charge year, (“the 2021 Application”), were made by the Applicants.
- 9. At the hearing on 5 September 2024, the Applicants, with the Respondent’s agreement, sought the Tribunal’s consent to the withdrawal of the 2022 Application. Confirmation of the Tribunal’s consent is set out in paragraph 3 of this Decision.
- 10. In this Decision, the Application and the 2021 Application are together referred to as “the Applications”.
- 11. A copy of the lease for Apartment 7 was provided to the Tribunal as being in substantially similar form and content to the leases held by each of the Applicants and is referred to as “the Lease” in this Decision.

### **The Law**

- 12. Section 18 of the 1985 Act provides:
  - (1) in the following provisions of this Act “service charge” means “an amount payable by a tenant of a dwelling as part of or in addition to the rent –
    - (a) which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
    - (b) the whole or part of which varies or may vary according to the relevant costs.
  - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

- (3) For this purpose –
  - (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
- 13. Section 19 of the 1985 Act provides that –
  - (1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
    - (a) only to the extent that they are reasonably incurred, and
    - (b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- 14. Section 27A of the 1985 Act provides that:
  - (1) an application may be made to a leasehold valuation 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 date at or by which it is payable, and
    - (d) the manner in which it is payable.
  - (2) Subsection (1) applies whether or not any payment has been made.
  - (3) .....
  - (4) No application under subsection (1)...may be made in respect of a matter which –
    - (a) has been agreed by the tenant.....
  - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- 15. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].
- 16. Section 20C of the 1985 Act provides as follows:
  - (1) a tenant may make an application to a tribunal for an order preventing, in whole or in part, the inclusion of costs incurred by the landlord in

connection with proceedings before the tribunal as relevant costs in determining the amount of any service charge payable by the tenant;

- (2) the tribunal may make such order as it considers just and equitable in the circumstances.

17. Paragraph 5A of Part 1 of Schedule 11 to CLARA provides as follows:

- (1) a tenant may make an application to a tribunal for an order reducing or extinguishing their liability to pay an administration charge in respect of litigation costs;
- (2) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings before the tribunal;
- (3) the tribunal may make whatever order on the application it considers to be just and equitable.

### **Description of the Property**

18. The Property is a 7-storey building comprising of 87 studio apartments. It was built as and comprises student accommodation.
19. The plan attached to the Lease shows communal areas including a communal lounge with kitchen facilities, laundry room, storage areas, and a bin store.
20. The Property has a lift, a door entry system, CCTV, and a WiFi system available to all of the apartments.
21. The Tribunal did not inspect the Property.

### **Hearing**

22. The hearing of the Applications extended over two dates, (5 September 2024 and 23 January 2025). As it was part-heard on 23 January 2025, it was agreed between the parties that the remaining submissions would be made in writing by Counsel to the Tribunal. These submissions were received on 31 January 2025.
23. The members of the Tribunal were unable to reconvene to determine the Applications until April 2025. Their deliberations extended over 2 days, the later being in May 2025.
24. Mr Philip Smith, and Mr Basil Smith, witnesses for the Applicants, and Mr Clifford Simons, witness for the Respondent attended the hearings and gave oral evidence. Mr Michael Gubbay did not attend either of the hearings.

### **The Applicant’s Submissions**

25. The Applicants’ submissions cover a wide range of service charge items in respect of each of the service charge years 2018 – 2021.
26. The grounds of their objections are summarised as follows:
  - (1) the quantum of costs charged;

- (2) the nature of the works: specifically, where the works comprise remedial works in respect of structural defects in the Property as a result of its defective construction and/or a failure to properly complete the building works, these works do not constitute repair and/or maintenance works within the landlord's repair and maintenance covenants and the costs of such works are not recoverable as service charge expenditure;
- (3) failures in the management of the Property including, without limitation, to provide full disclosure of relevant information relating to the management of the Property.

### **The Respondent's Submissions**

27. The Respondent's submissions are summarised as a robust defence of the Applicants' claims as follows:
  - (1) the breadth of the Applicants' challenges to the service charges is indicative of a general unwillingness on their part to accept reasonable service charge expenditure explained in part by the Applicants' difficult history with the developer/previous managing agent prior to the Respondent's involvement with the Property;
  - (2) the apparent failure of the Applicants to undertake the necessary due diligence prior to their acquisition of apartments within the Property which it is reasonable to assume would have alerted them to many of the issues which have since confronted the head leaseholder/its managing agents.

### **Tribunal's Determination**

#### **Compliance with Directions**

28. The Tribunal notes as follows:
  - (1) the Respondent has failed to produce financial information in compliance with the Directions and no adequate explanation for this has been provided;
  - (2) the Tribunal is largely unpersuaded by the Respondent's argument that, where such financial information has not been made available, it is appropriate to rely on amounts included in the service charge accounts on the basis that the accountants are independent of the Respondent and are required (even where the accounts are not audited) to verify the information against invoices, transaction reports etc. If the information was made available to the accountants by the Respondent then it appears to the Tribunal that there is no reason why they could not have produced the same information to the Tribunal (and to the Applicants) in compliance with the Directions;
29. In this Decision, where the Tribunal considers that the circumstances are appropriate for it to rely on its own knowledge and experience in the making of its determinations, even in the absence of supporting financial information, it has done so. An element of arbitrariness is inevitable in such determinations. Where such circumstances do not pertain and the Tribunal has been unable to make such a determination, the costs have been disallowed. The Tribunal considers



these to be the consequences of the Respondent's failure of compliance with Directions of which they should have been aware.

### **Mr Gubbay's Evidence**

30. The Tribunal considers that it is unfortunate that Mr Gubbay did not take the opportunity afforded to him to attend either of the hearings. As noted by Mr Verduyn, there were questions which he would have wanted to ask Mr Gubbay as the "alter ego" of the Respondent. The Tribunal considers that it too would have benefited from hearing Mr Gubbay's responses to such questions and also having an opportunity to ask questions of him. As a result of his absence from the hearings, the Tribunal considers that the evidence as set out in his witness statement should be treated with circumspection.

### **Whether the expenditure has actually been incurred**

31. The Tribunal notes that the Applicants have repeatedly raised a question as to whether monies have actually been expended by the Respondent. The Tribunal is satisfied that this is not a matter for its determination under s27A of the 1985 Act.
32. It appears that there are contractual and statutory obligations relating to the production of service charge documentation which it may be possible for the Applicants to invoke outside of the Applications in order to seek that further evidence as to payment.

### **Determinations**

33. For the avoidance of doubt, in the following paragraphs, where reference is made to a Schedule, it refers to a Schedule of the Lease; and where reference is made to a paragraph, it is to a paragraph within that Schedule, save where the context requires otherwise.
34. In making the following determinations, the Tribunal considered the following matters:
- (1) **Accounts – service charge years 2018 – 2021**
- (a) The requirements for the keeping of service charge accounts and the preparation and delivery to each leaseholder of an annual service charge statement are set out in paragraphs (a) and (b) of Schedule 4.
- (b) The right to charge as service charge the costs of keeping such accounts, preparing and delivering service charge statements and paying accountants to certify the statements is contained in paragraph 12 of Schedule 5.
- (c) The Tribunal notes as follows:
- (i) there is no requirement under the Lease to provide audited service charge accounts but the accounts produced are certified;

- (ii) the email statements from the 2 Cloud representatives are unsupported regarding the payment of £275 plus VAT for “financial statements” in 2019 and lack any explanation of what was comprised within such statements. The statement that the current charge of £1000 plus VAT for audited accounts is discounted appears to be consistent with the reference to a fee of £1800 “to cover pulling the accounts together and them [sic] getting them certified”.
- (iv) there are only 2 invoices relating to the preparation of the service charge accounts, namely, for the years ended 31 December 2018 and 31 December 2019, (invoices nos. 40721 and 47691). The accounts for the 2020 and 2021 service charge years record accountancy fees of £1600;
- (v) the Tribunal accepts that it is reasonable that more work may be involved on or following the takeover of management of a building, as was the Respondent’s position in 2018.
- (d) The Tribunal determines that the costs of £2200 for the 2018 service charge year and £1600 for the 2019 service charge year are reasonable.
- (e) On the basis that the costs for the 2020 and 2021 service charge years are the same as those for the 2019 service charge year, the Tribunal allows the costs in full.

**(2) Air Conditioning – service charge year 2020**

- (a) No invoices have been produced by the Respondent to the Tribunal in respect of this expenditure and the only information relating to the costs is contained in their comments in the Scott Schedule. From this, it is apparent that the information is available to the Respondent but, for whatever reason, they have chosen not to provide it to the Tribunal. Without any independent information as to what the costs relate, the Tribunal is unable to make a determination that the costs have been reasonably incurred. The costs are disallowed in full.

**(3) Bank Charges – service charge year 2020**

- (a) The amounts in dispute are £162.90 in respect of interest and £168.90 in respect of bank charges.
- (b) The Tribunal notes as follows:
  - (i) the RICS Code of Practice, (3<sup>rd</sup> Edition), makes it clear that a client account should never be overdrawn. It is therefore unclear to the Tribunal how interest could be charged (rather than credited) to the account which the Respondent confirms is a trust account;

- (ii) there is no specific provision in the Lease permitting the recovery of bank charges from a leaseholder, whether as service charge or otherwise.
- (c) The Tribunal disallows the costs in full.
- (4) **Building Manager – service charge years 2018 – 2021**
  - (a) The right to charge as service charge the costs of a caretaker and other staff is contained in paragraph 13 of Schedule 5.
  - (b) The Tribunal notes as follows:
    - (i) the Applicants are not disputing £7458.86 of the total costs of £17917.65 in respect of the 2018 service charge year and £2817.50 of the total costs of £8097.50 in respect of the 2020 service charge year;
    - (ii) the Respondent has produced 4 invoices for the 2018 service charge year (September – December 2018) totalling £11011.09 relating to caretaker services; 1 invoice for May 2019 in respect of the 2019 service charge year in the sum of £892.45; no invoices for the 2020 service charge year and 8 invoices in respect of the 2021 service charge year (January – August 2021), each for £387 and totalling £3096.
    - (iii) the 2021 invoices refer to “Cleaning and Building Manager Cover” but the Respondent has failed to provide any apportionment between these different elements;
    - (iv) the Respondent has not provided any explanation for the absence of invoices for each month of the respective service charge years;
    - (v) the Respondent has provided in the Scott Schedule some explanation of the work undertaken by the Building Manager and the hours of work.
  - (c) 2018 service charge year: based on the Respondent’s explanation which the Tribunal understands to be c20 hours per week, the Tribunal determines that the costs of £11011.09 in respect of the months September – December 2018 (which equates to c£30 per hour) in the 2018 service charge year have been reasonably incurred but not further or otherwise. These costs are allowed in full.
  - (d) 2019 service charge year: no explanation is provided for what appears to be a significant reduction in the monthly costs as evidenced by the invoice for May 2019 for £892.45 save the reference to the role being provided in-house. The Tribunal determines that the costs of £892.45 but not further or otherwise have been reasonably incurred. These costs are allowed in full.

- (e) 2020 service charge year: in the absence of any information as to what the costs relate, the Tribunal is unable to make a determination that the costs have been reasonably incurred. However, it appears that only £5280 of the total costs of £8097.50 is challenged by the Applicants. This amount is disallowed by the Tribunal.
- (f) 2021 service charge year: no explanation is provided for what appears to be a further significant reduction in the monthly costs as compared to the evidence provided in respect of both the 2018 and 2019 service charge years and, as noted above, no evidence as to the apportionment between building manager and cleaning. In view of the uncertainty as to what the invoices relate, the Tribunal is unable to make a determination that the costs have been reasonably incurred. The invoiced costs are disallowed in full.

**(5) Cleaning – service charge years 2019 and 2021**

- (a) The right to charge as service charge the costs of cleaning the communal areas is contained in paragraphs 4 and 5 of Schedule 5. This appears to be a duplication without any distinction between the rights in both paragraphs.
- (b) The Tribunal notes as follows:
  - (i) in respect of the 2019 service charge year, the Respondent has produced 2 invoices which relate to the purchase of cleaning materials/equipment (Invoice 38579 for £422.28 and Invoice 49000 for £577.92) in respect of which the Applicants are challenging, in particular, the purchase of 7 vacuum cleaners;
  - (ii) also in respect of the 2019 service charge year, the Respondent has produced 9 invoices covering the period from April – December 2019, for varying amounts between £229.99 and £408.33, which total £2942.08;
  - (iii) in respect of the 2021 service charge year, the Tribunal refers to the 8 invoices referred to in paragraph (4)(b)(iii) above which appear to relate, at least in part, to cleaning services but in respect of which the Respondent has provided no apportionment;
  - (iv) the Respondent has not provided any explanation for the failure to provide invoices for each month of the respective service charge years.
- (c) With respect to the invoices for cleaning materials/equipment, the Tribunal is satisfied that the costs have been reasonably incurred save in respect of the purchase of vacuum cleaners. The purchase of vacuum cleaners for use by occupants of the apartments within their apartments (which the Tribunal assumes is the purpose) does not constitute expenditure permitted within paragraphs 4 and 5 which is limited to the cleaning of the Common Parts (as defined in the Lease).

The Tribunal therefore disallows the average costs related to the purchase of 5 vacuum cleaners, a total of £591.40.

- (d) The Tribunal determines that the cleaning costs of £2942.08 for the 9 months April – December 2019, as evidenced by the invoices listed in paragraph (b)(ii) above, have been reasonably incurred. In particular, but without limitation, it has calculated that the costs equate to services of c 10 hours per month which it considers reasonable for a building of the size and layout of the Property (as derived from the plans attached to the Lease) at an average rate of c £30 per hour. These invoiced costs are allowed in full.
- (e) 2021 service charge year: for the reason set out in paragraph 4(f) above, the invoiced costs are disallowed in full.

**(6) Cold Water Booster Pumps – service charge years 2020 and 2021**

- (a) The right to charge as service charge the costs of repair and replacement of equipment in the Common Parts is contained in paragraph 14 of Schedule 5.
- (b) The Tribunal determines as follows:
  - (i) 2020 service charge year: the two invoices nos. 47940 and 48131 specifically refer to the replacement of plant/equipment. The costs of £835.67 (invoice no. 47940) and £350.88 (Invoice no. 48131) are allowed in full.
  - (ii) 2021 service charge year: the Invoice no. 37476 relates to maintenance which does not fall within the repair and replace covenant in Schedule 5. the costs apportioned to maintenance/servicing of the cold-water booster pumps in invoice no. 37476 are disallowed in full.

**(7) Computer Equipment – service charge 2018**

- (a) The Tribunal is satisfied that there is an implied right to charge for the cost of equipment to enable the staff employed under paragraph 13 of Schedule 5 to perform their duties or, alternatively, as part of their management duties (as acknowledged by the Applicants) in the same way as cleaning materials are a legitimate cost in connection with the performance of cleaning services.
- (b) The Tribunal determines that the costs of £552.30 for the computer equipment detailed on invoice no. 30303 have been reasonably incurred and are allowed in full.

**(8) Door Entry System – service charge years 2018 and 2019**

- (a) The right to charge as service charge the costs of repair and replacement of equipment in the Common Parts is contained in paragraph 14 of Schedule 5.

(b) The Tribunal notes as follows:

- (i) the Applicants challenge to the costs is a failure by the Respondent to address a recurring problem, rather than to the reasonableness of the costs per se and appears to be limited to £2000 of the total of £3189.10;
  - (ii) the Respondent has provided only 3 invoices (invoices nos. 36231 for £132, 38086 for £294 and 37367 for £104.40) for works carried out in the 2019 service charge year with total costs of £530.40.
- (c) The Tribunal determines that the works described on the 3 invoices fall within the repairing covenant in paragraph 14 and have been reasonably incurred. These costs are allowed in full but not further or otherwise.

**(9) Dry Riser – service charge year 2018**

- (a) The right to charge as service charge the costs of repairing and maintaining the dry riser is contained in paragraph 2 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) the actual costs in the 2018 service charge accounts for this item are £685.37;
  - (ii) the Respondent has provided 3 invoices (Invoices nos. 2400, 35251 and 29711) which evidence aggregate costs for works to the dry riser of £450;
  - (iii) these costs are not challenged by the Applicants but the balance of £223.37 (sic) for which no invoices have been provided by the Respondent.
- (c) In the absence of any evidence from the Respondent relating to these additional costs of £235.37, they are disallowed in full.

**(10) Electrical Repairs – service charge year 2018**

- (a) The Tribunal is satisfied that, as part of their general management duties, the Respondent has the right to commission an EICR using such contractors, consultants etc as reasonably considered necessary in accordance with clause 5.1.1 of the Lease and to charge the costs of such report as service charge. The costs are allowed in full.

**(11) Electricity – service charge year 2019**

- (a) The right to charge as service charge the costs of the Utilities (which are defined in the Lease as including all gas, electricity, water, telephone and internet services used or supplied to the Property) is contained in paragraph 16 of Schedule 5.

- (b) The Tribunal notes that the Respondent has again failed to produce evidence of the expenditure in accordance with the Directions.
- (c) Notwithstanding the absence of any invoices evidencing the expenditure, the Tribunal is satisfied both that expenditure on electricity must have been incurred and, relying on its own knowledge and experience, that an annual cost of £10517.75 for the Property is reasonable having regard to its size and its facilities including the lift, door entry system, CCTV, internet, building manager/caretaker's IT equipment, fire alarm system, and the lighting and heating of the Common Parts including a laundry, common room and bin store. The costs are allowed in full.

**(12) Emergency Lighting – service charge year 2021**

- (a) The right to charge as service charge the costs of repair of equipment in the Common Parts is contained in paragraph 14 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) invoice no. 50620 for £1493.40 refers to remedial works to the emergency lighting;
  - (ii) the invoice refers to a quotation and relates to 50% of the total costs;
  - (iii) the Respondent has not provided a copy of the quotation or the list dated 27 May 2021 of emergency light failures referred to in the Scott Schedule.
- (c) In the absence of any information regarding the works undertaken, the Tribunal is unable to make a determination as to whether the costs have been reasonably incurred. The costs are disallowed in full.

**(13) Fire Alarm – service charge years 2018 and 2019**

- (a) The right to charge as service charge costs relating to the fire alarm system arises, to the extent that works relate to the wiring/cabling, under the repair and maintenance covenant in paragraph 2 of Schedule 5 and also under the repair and replacement covenant of plant and equipment in paragraph 14 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) 2 invoices have been provided by the Respondent: Invoice no. 31415 for £1710 and Invoice no. 39840 for £1572 together with a Fire Alarm Quotation by Aarhus Fire Protection Ltd ;
  - (ii) the Applicants are disputing the entirety of the costs under invoice no. 31415 but only £1221.50 of the costs of £1572 under invoice no. 39840;

- (iii) there is little detail of the works undertaken on either of the invoices.
- (c) Having regard to the information contained in the Fire Alarm Quotation, the Tribunal determines that the works undertaken to the fire detectors in each of the studios can be considered to fall within the covenant in paragraph 14 as constituting replacement of existing plant and equipment. The Tribunal understands that the purpose of these works is to reduce the number of false alarms which they are satisfied can be regarded as a necessary replacement.
- (d) The Tribunal considers that the balance of the works which, from the limited information available, appears to relate to the installation of new interfaces, does not fall within the covenants in paragraphs 2 and/or 14 as they constitute neither a repair, maintenance nor a replacement.
- (e) The Tribunal therefore disallows costs of £1221.50 in respect of invoice no. 39840.
- (f) To the extent that some of the costs under invoice no. 31415 relate to the installation of call points and interfaces, the Tribunal disallows them. In the absence of any breakdown of the costs by the Respondent, the Tribunal apportions these costs and disallows £425 plus VAT of these costs.

**(14) Fire Prevention – service charge year 2019**

- (a) The relevant covenants are in paragraphs 2 and 14 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) the Applicants' challenges relate to 3 separate sets of works, namely, the flat doors' inspection; AOV repairs; and remedial works to communal doors;
  - (ii) the Respondent has provided relevant invoices relating to each set of works.

Flat doors' inspection

- (c) The Tribunal notes as follows:
  - (i) the Respondent's admission that the flat door is the leaseholder's responsibility;
  - (ii) there is no evidence that the Respondent followed the procedure in clause 4.11 of the Lease entitling it to undertake works required to be done by a leaseholder;
- (d) even had it done so, the Respondent would not have been permitted to recover such costs as service charge but would have had to seek recovery from each leaseholder, as required;



- (e) whatever the circumstances which gave rise to the Respondent undertaking these works, (and the Tribunal acknowledges that there may have been a genuine concern on the Respondent's part regarding the existence of a significant fire risk at the Property), this did not entitle them to treat the costs incurred "as a one-off service charge expense", however expedient this may have appeared at the time/in the circumstances.
- (f) The costs of £984 are disallowed in full. This determination does not prevent the Respondent from seeking recovery of the costs from each leaseholder if appropriate.

#### AOV Repairs

- (g) The Tribunal is satisfied that the costs of £2480.40 incurred under invoice no. 44280 and of £264 incurred under invoice no. 45181 fall within the repair and replacement covenant in paragraph 14. They are allowed in full.

#### Remedial Works to Communal Doors

- (h) The Tribunal accepts the Applicants' claim that the provision of something for the first time cannot constitute a repair.
- (i) Whilst the information regarding the works on invoice no. 43054 is limited, the repeated references to "missing" items or items being required eg in the case of signage, suggests to the Tribunal that such items of equipment had never been installed, and as such, cannot be the subject of a repair or a replacement.
- (j) Save for these items, the Tribunal considers that all other items appear to constitute repairs and/or replacements and therefore fall within the covenant in paragraph 14.
- (k) In the absence of any information as to the relevant costings, the Tribunal apportions these costs and disallows £1000 plus VAT of the costs charged under invoice no. 43054.

#### **(15) Fire and Smoke Equipment – service charge year 2021**

- (a) The relevant covenants are in paragraphs 2 and 14 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) whilst it appears that both of the parties have had sight of a series of invoices relating to these costs, the Respondent has only produced 1 invoice to the Tribunal for a fire alarm service for £216 (including VAT);
  - (ii) the Respondent states that the invoices relate to fire alarm and fire extinguisher servicing, call-outs and smoke vents;

- (iii) no challenge has been raised by the Applicants as to the reasonableness of any of the costs but rather have raised issues regarding apportionment and an apparent discrepancy between the total of the costs as invoiced and the amount which appears in the 2021 accounts.
- (c) In the absence of any challenge to the reasonableness of the costs, the Tribunal allows them in full.

**(16) Fire Risk Assessment – service charge year 2018**

- (a) The Tribunal notes that as part of their duty of management, managing agents should satisfy themselves that all buildings/estates under their management meet the relevant standards under the health and safety statute and regulations. This will include undertaking a fire risk assessment (“FRA”), at regular intervals/as considered appropriate.
- (b) Clause 5.1.1 entitles the Respondent to engage the services of consultants and advisers.
- (c) The Tribunal notes that the Applicants believe that there was a failure in previous years to obtain such an FRA and/or, on assuming the management of the Property, the Respondent was slow to arrange for an FRA to be undertaken. These are management issue which may have an impact on the reasonableness of management fees charged in those years but do not necessarily lead to a conclusion that the Respondent has acted unreasonably in arranging for the FRA to be done.
- (d) The Tribunal is satisfied that the costs of £1170 for the FRA have been reasonably incurred and are chargeable as service charge. The costs are allowed in full.

**(17) Gas – service charge year 2019**

- (a) The relevant covenant is in paragraph 16 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) the Respondent has again failed to provide invoices evidencing the expenditure;
  - (ii) the amount disputed by the Applicants appears to be £608.19 out of overall expenditure of £15227.12;
  - (iii) the Respondent’s explanation for the difference between what is said to be the aggregated invoiced amounts and the amount which appears in the 2019 service charge accounts is due to the preparation of the accounts on an accrual basis;
  - (iv) the Applicants do not challenge the expenditure on the basis that it is has been unreasonably incurred.

- (c) The Tribunal accepts as reasonable the Respondent's explanation for the difference between what is said to be the aggregated invoiced amounts and the amount which appears in the 2019 service charge accounts.
- (d) In the absence of any challenge to the reasonableness of the incurring of this expenditure and again relying on its own knowledge and experience, the Tribunal considers that an annual cost of £15227.12 for gas for the Property is reasonable.

**(18) Insurance – service charge years 2018 – 2021**

- (a) The right to charge as service charge the costs of insuring the Estate (as defined in the Lease) is contained in paragraph 8 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) the Applicants' 2022 review of what are said to be comparable student properties lacks the detailed analysis necessary for it to provide a meaningful comparison. For example, the Tribunal considers that a comparison based on the number of rooms alone is of limited value. It also notes that it was undertaken some 3/4 years after the first service charge year in dispute;
  - (ii) the Tribunal accepts the Respondent's evidence that it has put the insurance out to tender annually which it considers is likely to result in the receipt of competitive market quotes. Further, it considers that it is not unreasonable to insure the Property under a block policy, particularly if there are issues of concern/a poor claims' history. In this case, the Tribunal is aware that there are/were unresolved cladding issues at some of the relevant dates which may have affected the availability of standalone insurance cover. No evidence was produced to the Tribunal regarding the claims' history of the Property although the Tribunal considers that it is reasonable to conclude that the nature of the accommodation carries a higher risk of claims than a "standard" residential block.
- (c) Having regard to the above and in the absence of any compelling evidence from the Applicants as to the unreasonableness of the costs, the Tribunal determines that the insurance premium costs in respect of each of the service charge years 2018 -2021 have been reasonably incurred. The costs are allowed in full.

**(19) Internet – service charge years 2018 and 2019**

- (a) The right to charge as service charge the costs of repairing and maintaining WiFi and/or hard wired internet conducting media serving the Property is contained in paragraph 6 of Schedule 5.

(b) The Tribunal notes as follows:

- (i) the Respondent refers to 4 invoices received by them in the 2018 service charge year which related to internet services under a contract entered into before their appointment for the period from 1 September 2017 – 31 August 2019. The Respondent states that payment had to be made in that year in order to secure the continuation of the supply;
- (ii) the Applicants' challenge appears to relate to the accountancy treatment of the payment rather than a challenge as to the reasonableness of the costs charged for an internet service.

(c) The Tribunal considers it was reasonable for the Respondent to make the payment demanded in order to secure continuation of the internet service, which it recognises is of particular importance in student accommodation. The Tribunal recognises that the Applicants may have an argument that the payment should have been treated differently for accounting purposes eg by apportionment between the 2017, 2018 and 2019 service charge years but that this does not constitute a challenge to the reasonableness of the costs incurred.

(d) The Tribunal allows the costs of £18711.81 in full.

**(20) Legionella Testing - service charge year 2018**

(a) As with the obtaining of a FRA, the commissioning of legionella testing forms part of the Respondent's duty of management to satisfy themselves that all buildings/estates under their management meet the relevant standards under the health and safety statute and regulations.

(b) Clause 5.1.1 entitles the Respondent to engage the services of consultants and advisers.

(c) As with the FRA, the Tribunal notes that the Applicants believe that there was a failure in previous years to undertake such testing and/or, on assuming the management of the Property, that the Respondent was slow to arrange it. Again these are management issues which may have an impact on the reasonableness of management fees charged in those years but do not necessarily lead to a conclusion that the Respondent has acted unreasonably in arranging for the testing to be done.

(d) The Tribunal is satisfied that the costs of £1560 for the Water Hygiene Risk Assessment have been reasonably incurred. The costs are allowed in full.

**(21) Lift Contract/Lift Maintenance/Lift Consultancy – service charge year 2019**

(a) The right to charge as service charge the costs of insuring and maintaining the lift is contained in paragraph 17 of Schedule 5.

(b) The Tribunal notes as follows:

- (i) the ANSA Contract dated 1 April 2019 is for a term ending on 31 March 2020 at an annual cost of £1176 (inc VAT);
  - (ii) as the term of the Contract extends over 2 service charge years, it supports the Respondent's claim that an apportionment of the costs as between the 2019 and 2020 service charge years may have been required;
  - (iii) the Respondent has again failed to produce to the Tribunal invoices relating to expenditure on Lift Consultancy (£344.99) (although the Tribunal notes that, in the Scott Schedule, the Respondent refers to an invoice from ILECS Lift Consultants) and on Lift Maintenance (£2941.50). In noting this, the Tribunal has assumed that the expenditure of £982 under the separate heading Lift Contract relates to the agreed costs under the ANSA Contract, and that relating to Lift Maintenance must relate to other expenditure.
- (c) Lift Contract: notwithstanding the absence of invoices, the Tribunal is satisfied that, under the terms of the ANSA Contract, the Respondent has reasonably incurred expenditure on lift maintenance. Its' calculation of the apportioned cost of that contract for the period from 1 April -31 December 2019 is greater than the £982 stated by the Respondent but the Tribunal acknowledges that there may be reasons why a lower amount was incurred which is not apparent from the evidence presented. It therefore determines that the amount of £982 as stated by the Respondent has been reasonably incurred. The costs of £982 are allowed in full.
- (d) In the absence of any evidence as to what the expenditure under the headings Lift Consultancy and Lift Maintenance relates, the Tribunal disallows the sums of £344.99 and £2941.50 respectively.

**(22) Office Running Costs – service charge year 2021**

- (a) The Tribunal accepts the Applicants' claim that the provision of new mailboxes does not fall within the repair and replacement covenant in paragraph 14. The costs are disallowed in full.

**(23) Out of Hours Support – service charge years 2020 and 2021**

- (a) The right to charge as service charge the costs of the out of hours support is contained in paragraph 13 of Schedule 5.
- (b) The Tribunal notes as follows;
- (i) the Applicants' claim appears to be that the costs have not been reasonably incurred as they consider that such service should be provided within the Respondent's annual management fee. No challenge is made to the reasonableness of the quantum of the costs;

- (ii) the Respondent states that the costs are reasonable at an annual cost of £10 plus VAT per flat.
- (c) Whether such costs are included within a managing agent's management fee is a matter of contract. That it is included within the Property's current managing agent's fee, as claimed by the Applicants, does not make its exclusion from the Respondent's fee inherently unreasonable.
- (d) The Tribunal is satisfied that the costs are reasonable and they are allowed in full.

**(24) Professional Fees – service charge years 2020 and 2021**

- (a) 2020 service charge year
- (b) Clause 5.1.1 of the Lease entitles the Respondent to engage the services of consultants and advisers in order to provide the services set out in Schedule 5 of the Lease.
- (c) The Tribunal understands that the subject of the investigations/reports commissioned by the Respondent were in respect of remedial cladding works. The Tribunal notes the following costs:
  - (i) £919.50: there is no invoice and no information as to what these costs relate;
  - (ii) £17570.16: Thomasons Invoice no. 48866: stated to be "investigatory professional fees incurred in 2020" in respect of possible remedial cladding works;
  - (iii) £6800: Epworth PM: there is no information on the invoice regarding the nature of the works undertaken.
- (d) To the extent that such remedial cladding works would be remedying a structural defect at the Property, they do not come within the repair covenants in paragraphs 1 and 2 of Schedule 5.
- (e) The above costs are disallowed in full.

**(25) Reserve Fund – service charge year 2020**

- (a) The Tribunal understands that the costs set out in paragraphs (i) and (ii) above were met from the Reserve Fund.
- (b) The provisions relating to the establishment of and uses of the Reserve Fund are set out in paragraph 1 of Schedule 6 of the Lease. These uses include "...major repairs to the...exterior decoration...."
- (c) As above, the Tribunal is satisfied that, to the extent that the remedial cladding works do not constitute a repair but the remedying of a

structural defect, the Respondent was not entitled to use the Reserve Fund to meet the costs in paragraphs (i) and (ii) above.

2021 service charge year

- (a) There is no provision in the Lease which permits the Respondent to seek recovery of the tribunal application fee of £100 as service charge. The costs are disallowed in full.

**(26) Refuse removal – service charge years 2018 and 2019**

- (a) The right to charge as service charge the costs of providing reasonable facilities and arrangements for rubbish disposal is contained in paragraph 7 of Schedule 5.
- (b) The Tribunal notes as follows:
  - (i) there is no evidence to support the Applicants' claims that the Respondent has used unlicensed contractors to dispose of rubbish from the Estate;
  - (ii) even if this was the case, the Tribunal does not accept that by paying the service charge in respect thereof the Applicants would become criminally liable.
- (c) The Tribunal accepts that the works to the bin store do not constitute a repair but are works to address a structural defect. The costs of £948 are disallowed in full.
- (d) The Tribunal accepts that it would take some time to do the necessary works and that it was reasonably necessary for the Respondent to arrange for the disposal of the accumulations of rubbish (as identified in photographs produced to the Tribunal). The Tribunal therefore allows in full the costs under invoices nos. 31819 for £93, 32501 for £120, 32598 for £120, 33268 for £90, and 33753 for £132 in respect of the 2018 service charge year and under invoice no. 39092 for £1026.

**(27) Repairs and Maintenance – service charge years 2018 – 2021**

- (a) The relevant repair and maintenance and repair and replacement covenants are contained in paragraphs 2 and 14 of Schedule 5.

2018 service charge year

- (i) The Tribunal notes that, in respect of the costs under invoice no. 31416, there is no evidence to support the Applicants' claim regarding the date when defects arose.
- (ii) The Tribunal is satisfied that the costs charged under invoice no. 31416 relate to the replacement of plant and equipment and are properly charged as service charge under paragraph 14.
- (iii) The costs are allowed in full.

- (iv) The Tribunal notes that, in respect of the costs under invoice no. 29376, there is no evidence to support the Applicants' claim regarding the cause of the leak.
- (v) The Tribunal is satisfied that the costs charged under invoice no. 29376 relate to the repair to the structure of the Property and are properly charged as service charge under paragraph 2.
- (vi) The costs are allowed in full.

#### 2019 service charge year

- (vii) The Tribunal is satisfied that the costs of £690 under invoice no. 41675 for removal of rubbish from the storage room are properly charged as service charge under the cleaning covenants in paragraphs 2 and/or 4 of Schedule 5. The costs are allowed in full.
- (viii) The Tribunal is satisfied that the costs of £369.60 under invoice no. 42182 for works relating to the installation of a sub-meter in the laundry are not properly chargeable as service charge as they do not constitute a repair or replacement of plant and equipment within the covenant in paragraph 14. The costs are disallowed in full.
- (ix) With regard to invoices nos. 42840 and 44660, the Applicants have not produced any evidence that the works relate to the remediation of structural defects. The Tribunal is satisfied that the works constitute repairs which come within the repair covenant in paragraph 2. The costs are allowed in full.
- (x) Likewise, with regard to the costs under invoices nos. 44178 and 44774, the Applicants have not produced any evidence to support their claim that the works were required because the floorcoverings were poorly laid in the first instance.
- (xi) The Tribunal is satisfied that the costs are properly charged as service charge under the carpeting covenant contained in paragraph 4 of Schedule 5. The costs are allowed in full.
- (xii) The Tribunal accepts that the narrative of the works contained in invoice no. 38170 supports the Applicants' claim that the BMS system was not properly installed/commissioned on original construction/installation. The Tribunal is satisfied that the works do not constitute repairs and/or replacements to the plant and equipment within the covenant in paragraph 14. The costs are disallowed in full.

#### 2020 service charge year

- (xiii) There is limited information regarding the works undertaken under invoice no. 45683 but to the extent that this appears to be a new installation, it cannot constitute either a repair or a



replacement under paragraph 14 of Schedule 5. The costs of £363.30 are disallowed in full.

2021 service charge year

- (xiv) The Tribunal agrees with the Applicants that the provision/installation of notice boards where there were none previously does not fall within the covenant relating to the repair or replacement of equipment within paragraph 14 (assuming that notice boards are properly classified as “equipment”). The costs of £278.26 are disallowed in full.

**(28) Security – service charge years 2018, 2019 and 2021**

- (a) The right to charge as service charge the costs of providing reasonable facilities and arrangements for security is contained in paragraph 7 of Schedule 5.

2018 service charge year:

- (b) The Tribunal notes as follows:
  - (i) the Respondent has again failed to produce any invoices in relation to this expenditure;
  - (ii) the Applicants’ challenge appears to be primarily focused on the time taken by the Respondent to review the security provision after its appointment, although they do appear to conclude that the Respondent’s decision to terminate the arrangement as indicative of its inadequacy. The Tribunal considers that the first issue is one of management and is more appropriately dealt with as part of the Tribunal’s consideration of the reasonableness of the management fees as a whole;
  - (iii) whilst the Respondent has not produced invoices relating to this expenditure, it does state in the Scott Schedule that it consisted of c3 random security patrols per night at a weekly cost of £125 plus VAT per week. The Tribunal is unable to reconcile its calculation based on this information (£6300) with the stated expenditure of £4950 in the accounts;
- (c) The Tribunal does not accept the Applicants’ conclusion that the Respondent’s decision to end the existing service means that the service was not delivered to a reasonable standard or that the expenditure was not reasonably incurred. The Lease requires the Respondent to provide a security service. Relying on both the information provided by the Respondent and its own knowledge and experience, the Tribunal considers that the weekly cost of the service as stated by the Respondent is reasonable. The costs are allowed in full.

2019 service charge year:

- (d) The Tribunal notes as follows:
- (i) an invoice has been produced evidencing the expenditure of £4423.13;
  - (ii) the Applicants' challenge appears to relate to the reason for the incurring of the expenditure ie was it reasonably incurred?;
  - (iii) the Respondent has provided little information as to why it considered the introduction of 24-hour security over this period was required other than to say that it is a "prudent precaution". Whilst the Tribunal accepts that there may be a need for additional security during holiday periods when the Property may have been unoccupied/occupied by only a few students, the Tribunal notes that there is no evidence before it that similar security provision was considered " a prudent precaution" by the Respondent in December/January 2020 and/or 2021 (or indeed over any other holiday periods);
  - (iv) it is also unclear to the Tribunal why security was required for 24 hours each day as presumably the Building Manager continued to be employed during this period and would have been present during the working day.
- (e) In the absence of compelling evidence as to the need for 24-hour security provision, the Tribunal determines that the expenditure has not been reasonably incurred and disallows the amount in full

2021 service charge year:

- (f) The Tribunal notes as follows;
- (i) the Respondent has produced an invoice for the expenditure and an explanation that it arose by reason of the unavailability of student ambassadors to provide the security provision on the 2 dates as specified;
  - (ii) the Applicants appear to be challenging on the basis that they need sight of the purchase order in order to determine the need for the expenditure. They state that the current manager, Cloud, would arrange security provision in the event of the unavailability of student ambassadors.
- (g) The Tribunal is not persuaded that the Applicants require sight of the purchase order in order to determine if the expenditure has been reasonably incurred in the face of a reasonable explanation from the Respondent as to why the need arose. Further, the Applicants' reference to what Cloud would do in an identical situation appears to the Tribunal to support the reasonableness of the Respondent's action.

- (h) Although the Applicants have not articulated any challenge to the quantum of the costs, the Tribunal is satisfied that an hourly rate of £15 per hour is reasonable. The Tribunal allows the amount of £864 in full.

**(29) Student Ambassadors – service charge year 2019**

- (a) The right to charge as service charge the costs of providing arrangements for security is contained in paragraph 7 of Schedule 5 together with the right to charge costs as service charge for employing “other staff” is contained in paragraph 13 of Schedule 5.
  - (b) The Tribunal notes as follows:
    - (i) the Respondent has again failed to provide supporting evidence to support this expenditure although it has stated in the Scott Schedule that the pay rates are based on the National Living Wage and a night rate of £25 per hour for a 16 hour shift; and,
    - (ii) the Applicants do not challenge the use of Student Ambassadors, nor does it dispute the expenditure on Student Ambassadors in the 2020 and 2021 service charge years which, in each year, is at a similar level to that in the 2019 service charge year.
  - (e) The Tribunal is hampered in its determination by the lack of information provided by the Respondent and the absence of any satisfactory explanation for the failure to provide it. However, in the absence of any challenge to the incurring of the expenditure, the Tribunal relies on its own knowledge and experience to determine the reasonableness of the amount of the expenditure incurred.
  - (f) In this respect, the Tribunal notes that the National Living Wage rates in 2019 was £7.70 per hour for those aged 21 to 24 and £6.15 per hour for those aged 18 to 20, into which age bands the Tribunal considers that most of the Student Ambassadors would fall. In that context, a rate of £25 per hour for a night rate appears to be unreasonably high.
  - (g) However, even at the lower rates and based on 40 weeks per annum, the costs incurred equate to between 7 and 8 hours per day which does not appear unreasonable to the Tribunal. The costs are allowed in full.
35. In making the following determinations, the Tribunal had regard to the Upper Tribunal decision in *The London Borough of Tower Hamlets v Lessees of Brewster House and Malting House* [2024] UKUT 193. Without limitation, the Tribunal notes the comments of Upper Tribunal Judge Cooke at paragraph 16 where she says:
- “The consistent approach of the authorities is that whilst “maintain” does mean something different from “repair” – it is not otiose and can denote something preventive rather than remedial – **neither a covenant to repair nor a covenant to maintain is a covenant to remedy structural defects, nor to make safe a building that was not safe when it was built**”. (emphasis added);

and to Blackburne J in Fluor Daniel Properties Ltd & Others v Shortlands Investments Ltd [2001] EGLR 103 at paragraph 10 where he says in relation to a covenant to maintain that, although the covenant:

“...extends to the doing of works which go beyond repair strictly so called...” nevertheless the obligations “...presuppose that the item in question suffers from some defect (ie some physical damage or deterioration or, in the case of plant, some malfunctioning) such that repair, amendment or renewal is reasonably necessary”.

**(1) Boiler Maintenance – service charge years 2018, 2019 and 2020**

- (a) The relevant covenant is the repair and replacement of plant and equipment covenant contained in paragraph 14 of Schedule 5.

2018 service charge year

- (i) The Applicants’ challenge is in respect of 3 invoices for works relating to the installation of hatches, new ductwork and fans, the costs of which are £2374.98 (invoice no. 36612) and £3999.14 (invoice no. 36608), and for the removal of debris from the boiler room left from the original installation, the cost of which is £172.22 (invoice no. 36611).
- (ii) The installation works referred to in paragraph (a) above do not fall within the covenant in paragraph 14 as they do not relate to repair or replacement of plant and/or equipment. The costs are disallowed in full.
- (iii) Regardless of when/why the debris was left in the boiler room, it does not constitute a structural defect and its removal is not to be regarded as remediation of a structural defect. The Tribunal is satisfied that its removal falls within the cleaning covenants in paragraphs 4 and 5 of the Lease. The costs of £172.22 are allowed in full.

2019 service charge year:

- (iv) The Applicants’ challenge is in respect of 2 invoices from Kimptons relating to works to pipework, (Invoices nos. 37692 for £2812.50 and 37921 for £900.62), an invoice relating to the re-installation of a pump, (Invoice no. 37773 for £1483.20), the installation of a new BMS system, (Invoice no. 38863 for £12990) and 3 further invoices for repair works to the BMS system, (Invoices nos. 43689 for £109.20, 37476 for £1076.69 and 37495 for £240).
- (v) The Tribunal is satisfied that the pipe works do not fall within the repair, maintenance and/or cleaning covenant in paragraph 2 as they appear to relate to the installation of new pipework where there was none previously and the costs of Invoices nos. 37692 and 37921 are disallowed in full.

- (vi) The Tribunal is satisfied that the re-installation of an existing pump falls within the repairing covenant in paragraph 14 and the costs of Invoice no. 37773 are allowed in full.
- (vii) The Tribunal is further satisfied that the installation of a new BMS system to the extent that it was a replacement of an existing system does fall within the covenant in paragraph 14.
- (viii) The Tribunal accepts the Respondent's evidence that the heating system was not functioning properly throughout the Property and that repairs were required in order for it to do so. To that extent, the Tribunal is satisfied that the repairs fall within the repair and replacement covenant in paragraph 14.
- (ix) However, it also believes that there is some evidence from the narrative on invoices 43689, 37476 and 37495 that the original installation works may not have been performed to a reasonable standard. The Tribunal notes that, whilst reference is made by the Applicants to a report on the BMS system commissioned by Cloud, the current managers of the Property, this has not been produced in evidence to the Tribunal which presumably would have assisted it in determining the extent to which the causes of the problems were attributable to that first installation.
- (x) In the absence of such evidence, the Tribunal relies on its own knowledge and experience and deducts from the costs of £12990 (invoice no. 38863) the sum of £1425.89 (being the sum of the invoices referred to in paragraph (h) below).
- (xi) The Tribunal is satisfied that the costs incurred in respect of invoices nos.43689, (£109.20), 37476 (£1076.69) and 37495 (£240) fall within the repairing covenant in paragraph 14. The costs are allowed in full.

**(2) Electrical repairs – service charge year 2019 and 2020**

- (a) The Respondent has provided 2 invoices (invoices nos. 39634 for £3916.62 and 46492 for £1062) which relate to “EICR rectification works”.
- (b) To the extent that these are works to address safety defects which arose from the original construction of the Property, the costs incurred are disallowed in full.

37. In making its determination regarding management fees, the Tribunal had regard to the following:

**(1) Management Fees – service charge years 2018 – 2021**

- (a) The Tribunal notes that many of the Applicants' challenges were not as to the reasonableness per se of expenditure on individual items but rather as indicative of the Respondent's poor management of the Property.

- (b) The Tribunal is satisfied that the evidence does show inadequacies in management on the Respondent's part including, without limitation, a failure to understand the extent of its rights to charge service charge under the Lease, most apparent where issues have arisen as a result of structural defects, and a failure to exercise adequate due diligence on its appointment in its review of risk and compliance arrangements.
- (c) Nonetheless, the Tribunal's determinations also reflect that the Respondent has properly exercised its management powers in accordance with the Lease.
- (d) As a result of the above, the Tribunal determines as follows:
  - (i) the set-up costs are reduced by 50% to £2500 plus VAT;
  - (ii) the management fees of £175 plus VAT per flat are reasonable in respect of each of the service charge years. The costs are allowed in full.
- (e) The Tribunal accepts that the Respondent has faced issues in managing the Property by a significant number of leaseholders withholding payment of service charge because of the apparent breakdown in relations between it and some of the leaseholders, the roots of which appear to lie in historic difficulties between leaseholders and the developer/previous managing agents. The Tribunal notes that it appears likely that the Applicants would have asked questions of Mr. Gubbay in order to try to clarify the connections (if any) between previous managing agents and the Respondent.
- (f) The Tribunal also notes that, whilst it has disallowed certain expenditure as not chargeable as service charge within the terms of the Lease, it nonetheless acknowledges that, in some cases, it appears that works were undertaken with the intention of improving the position for the leaseholders generally, including the Applicants/the occupants of their flats. The Tribunal cites the separate metering of the laundry facility, the provision of notice boards and mailboxes as examples.

**(2) Additional Management Fees – service charge year 2020**

- (a) The costs charged in the 2020 service charge year under invoices nos. 45927 (£400) and 49880 (£1920) are disallowed on the basis that there is no information provided as to what works were done or why recognition of and/or dealing with the PHTA should involve management fees outside the standard management fee. It appears that a further £1200 may have been charged in the 2021 service charge year although no invoice has been provided. These costs are also disallowed.
- (b) There is no provision in the Lease entitling the Respondent to recover costs incurred in respect of the Tribunal proceedings. The costs charged under Invoices nos. 50319, 49304 and 50048 are disallowed in full.

### **Determination in paragraph 2**

38. The Tribunal is satisfied, having regard to its determinations in paragraph 1, that it is just and equitable in all of the circumstances to grant the Applicants' applications under s20C of the 1985 Act, preventing the Respondent from charging as service charge under any provision in the Applicants' leases any of its costs incurred in the proceedings before the Tribunal, and under paragraph 5A of Schedule 11 of CLARA, preventing the Respondent from recovering as an administration charge under any provision in the Applicants' leases any of its legal costs incurred in the proceedings before the Tribunal. For the avoidance of doubt, the Tribunal notes that there are no such provisions in the Lease.

**Applicant Leaseholders**

Abdulla Mohd A M Al-Emadi  
Jamal Abdulla A J Al-Jamal  
Mohammed Ahmed I S Al-Emadi  
Jassim Ibrahim M S Alemadi  
Kaltham Ismail M A Alemadi  
Abdulla Ibrahim M S Al-Emadi  
Ibrahim Abdulla I M Al-Emadi  
Abdulrahman A Jaleel A N Al-Abdulghani  
John Eccles  
NMun Hau Chun  
David Morel  
Ahmed Abdulkarim M Alsiddiqi  
Yousef Ahmed A Al-Siddigi  
Ao Siu Pan  
Mohd A. Raheem M Al-Emadi  
Abdulla Mohd A M Al-Emadi  
Chan Hong Tou  
Julie Karen Simpson  
Leung Shun Lin Annie  
Amit Gupta  
Cecil Thomas Basil Smith  
Ip Marina Ka Lai  
LAI Yat Hin Adrian  
David Reynolds  
Susan Reynolds  
Linda Micaela de Senna Fernandes  
Chin Ming Bernard Au  
Haresh Patel  
Kin Choi Chan  
Philip Smith  
Kay Marian Lewis