In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case References	**:**	**LON/00BJ/LSC/2024/0347, 0348 0349, 0664, 0764**
Properties	**:**	**Altissima House, 340 Queenstown Road, London SW11 8BY**
Applicants	**:**	**The lessees listed by Tribunal order dated 11th February 2025**
Representative	**:**	**Mr Roger Southam**
Respondent	**:**	**Harland (PC) Ltd**
Representative	**:**	**Residential Management Group**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	**:**	**18th and 19th June 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**23rd June 2025**

DECISION

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(1) The application challenging service and administration charges is dismissed.

(2) In relation to the following county court cases referred to the Tribunal, the following Applicants owe the following sums to the Respondent:

Service charges

- K65YX562 £656.41 Apt 51 BSR Estates Ltd
- K39YX615 £700.03 Apt 51 BSR Estates Ltd

- K42YX592 £364.88 Apt 54 BSR Estates Ltd
- K79YX266 £1,354.49 Apt 57 Brooke Brooke Mackay

Administration charges

- K65YX562 £586 Apt 51 BSR Estates Ltd
- K39YX615 £870 Apt 51 BSR Estates Ltd
- K42YX592 £490 Apt 54 BSR Estates Ltd
- K79YX266 £1,037 Apt 57 Brooke Brooke Mackay

(3) **There is no order as to costs in the Tribunal. Any costs in the county court proceedings are for the court to determine and the cases referred to the Tribunal are referred back for the determination of that issue.**

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Respondent is the freeholder of Altissima House, one block on a high-end development in Battersea called Vista containing 451 residential units and 4 commercial units. Their managing agents for the property are Residential Management Group ("RMG") and they have separate agents, Landmark Collections, for ground rents. The Applicants are the lessees of flats on the development.

2. The Respondent issued the following claims against two of the Applicants in the county court:

(i) K79YX266- Harland v Brooke Brooke Mackay (57 Altissima House)
(ii) K65YX562- Harland v Bsr Estates (51 Altissima House)
(iii) K42YX592- Harland v Bsr Estates (54 Altissima House)
(iv) K39YX615- Harland v Bsr Estates (51 Altissima House)
(v) K68YX941- Harland v Brooke Brooke Mackay (57 Altissima House)
(vi) L22YX699- Harland v Bsr Estates (54 Altissima House)
(vii) K79YX278- Harland v Bsr Estates (54 Altissima House)
(viii) K30YX390- Harland v Brooke Brooke Mackay (57 Altissima House)
(ix) L04YY753 - Harland v Brooke Brooke Mackay (55 Altissima House)

3. On 15th August 2024, DJ Ahmed transferred the first 3 cases in the above list (266, 562 and 592) to the Tribunal. On 18th November 2024, Deputy DJ Pickering also transferred the fourth case in the above list (615) to the Tribunal.

4. On 16th October 2024, the same two Applicants issued their own application in the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness and payability of certain service and administration charges.

5. A case management hearing was held on 28th January 2025. The Tribunal ordered that the cases so far transferred from the county court and the Applicants' Tribunal application shall be managed and heard together.

6. On 11th February 2025 the lessees of a further 59 flats were joined as Applicants.

7. On 16th April 2025 the directions of 28th January 2025 were amended to extend the time limits for various steps.

8. The Tribunal heard the case on 18th and 19th June 2025 (the hearing had been listed for a third day but the parties' representatives were admirably concise in their submissions). The attendees were:

- Mr Roger Southam, representing the Applicants
- The Applicant's witnesses:
  - Ms Elizabeth Mackay
  - Ms Charlotte Edney (on the first day only)
- Mr Marcelo Amodeo of RMG, representing the Respondent
- Mr Adam Norwood, the Respondent's witness.

9. The documents before the Tribunal consisted of:

(a) a bundle of 693 pages;
(b) a Scott Schedule in MS Excel format; and
(c) a skeleton argument from Mr Southam.

10. Mr Southam had also sent in a large number of electronic folders consisting principally of invoices which he understandably thought more expedient than to try integrating over 3,000 pages into the main bundle. Unfortunately, some of the folders had arrived empty. Mr Southam re-sent the folders in the evening after the first day of the hearing. Some further folders had to be re-sent on the morning of the second day as well. The Tribunal was able to view them on their computers. The parties had had all the documents in their possession for some time – it was only the Tribunal that did not see them until the hearing.

Matters outside the Tribunal's remit

11. The Applicants sought some remedies, as set out in Mr Southam's skeleton argument, which the Tribunal has no power to provide:

(a) Order refunds. The Tribunal only determines what service and administration charges are payable. It may be that the consequence of a Tribunal decision is that a lessee has paid too much, but the Tribunal has no role in the enforcement of its decisions and has no power to determine how any money owing is paid, e.g. by separate payment, credit against later charges or some other means.
(b) Direction for improved transparency, accounting, and allocation for future periods. The Tribunal has no power to give any such directions.

(c) Prohibition on future double recovery for heating/cooling and plant charges. The Tribunal has no power to make such prohibitory orders.
(d) Direction to disclose all energy contracts, commissions, and billing structures. The Tribunal has the power to order the disclosure of documents which are relevant to the determination of the payability of service and administration charges as part of the procedure prior to the final hearing. There is no power to make any order which goes beyond that. In particular, there is no power to make such a direction as final relief.
(e) Full compliance with s.22 LTA and billing regulations going forward. The Tribunal has no role in enforcing compliance with section 22 of the Landlord and Tenant Act 1985 or the Heat Network (Metering and Billing) Regulations 2014.

The issues

12. Although the issues were listed in a Scott Schedule, the Tribunal found it easier to consider them in turn as set out below.

Section 20B Notices

13. The Respondent took the assignment of the reversion from Berkley Homes in 2021. They replaced the managing agents, Rendall & Rittner, with RMG. Mr Southam claimed in his closing submissions that Rendall & Rittner had advised against the change due to the complexity of managing this development and that this should be added to his litany of charges of poor management against the Respondent and RMG. There was no evidence of any such advice but, in any event, RMG found the handover and subsequent management to be as difficult as such advice would have implied.

14. One of the consequences of these difficulties is that the subsequent service charge accounts for each calendar year have been late. On 28th July 2023, RMG sent to all lessees a notice in accordance with section 20B(2) of the 1985 Act that costs had been incurred for the year 2022 and that they would subsequently be required under the terms of their leases to contribute to them by the payment of a service charge. A similar notice was served on 9th July 2024 for the 2023 accounts.

15. Mr Southam argued that, measuring 18 months back from the section 20B notices, costs incurred between 1st and 28th January 2022 and 1st and 9th January 2023 were not recoverable. However, that is not the correct analysis. Etherton J said in *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch):

> 20. ... s 20B of the 1985 Act has no application where (a) payments on account are made to the lessor in respect of service charges, (b) the actual expenditure of the lessor does not exceed the payments on account and (c) no request by the lessor for any further payment by the tenant needs to be or is in fact made.

> 22. … The quarterly payments on account were payable in respect of such matters, and were, therefore, undoubtedly payments of 'a[ny] service charge' within s 20B.

16. Mr Southam pointed out that the actual expenses for 2022 substantially exceeded the estimated charges in the budget (termed "the Provisional Service Charge" in the lease) which meant that there was a substantial balancing charge to be paid. He said the same applied to the 2023 accounts but they had only recently been produced and were not before the Tribunal. Of course, this meant that the conditions in (b) and (c) of paragraph 20 in *Gilje* did not apply but that does not mean that the demand for and payment of the Provisional Service Charge become irrelevant.

17. In line with the reasoning in *Gilje*, the Provisional Service Charge pays for at least some of the relevant costs and so they can never later be demanded. It is only later in the year that it may become apparent that a balancing charge will be required. The Respondent purported to calculate precisely when the advance service charges ran out but it is not necessary to determine that. The Tribunal is satisfied that any costs incurred which were not covered by the Provisional Service Charge would have been incurred well after Mr Southam's dates of 28th January 2022 and 9th January 2023 in the respective years.

18. Mr Southam's reasoning would reduce the effective period in section 20B to 6 months after the end of the service charge year in any case where there was a balancing charge. There is no reason to think that this was the intention of section 20B or that it should be interpreted in such an unrealistic way.

19. The Tribunal is satisfied that the Respondent did not fall foul of section 20B and no service charges have ceased to be payable by the operation of that section in this case.

Reserve Fund

20. Paragraph 3.1 of Schedule 8 of the lease requires the Respondent to produce a statement of annual expenditure, i.e. the service charge accounts. Paragraph 3.2 says the Respondent may include "such proper provision calculated in accordance with the principles of normal accounting practice and good estate management for expenditure in any subsequent year as the [Respondent] acting reasonably shall from time to time consider appropriate".

21. The parties have interpreted paragraph 3.2 to mean that the Respondent may include a reserve fund in the accounts. The Applicants have further interpreted it to mean that the Respondent may not meet ordinary expenditure within the year from the reserve fund as this depletes the reserve fund while hiding the impact of failing to budget for or collect sufficient advance service charges.

22. The Applicants identified a number of costs which were met from the reserve fund which did not fit their understanding of the type of cost which should be met from the reserve fund. They did not challenge that these costs were properly met through the service charge but argued that the operation of the reserve fund in this way was one of a number of examples of poor management by RMG which impacted on whether their management fees were reasonable in amount (see further below).

23. Mr Norwood said the reserve fund was for non-cyclical costs and he was not aware of other costs being met from it. However, Mr Southam was able to point to a number of invoices which were for reactive repairs or planned maintenance which, on their face, were not long-term matters such as would normally be expected in relation to a reserve fund and the Respondent did not provide an explanation.

24. Instead, Mr Amodeo argued that the parties were faced with a choice. If expenditure were not met from the reserve fund, it would have to be paid for with a larger balancing charge – since the Applicants did not argue that the sums were not payable, they had to be paid from somewhere. The Respondent's strategy was to use the reserve fund to minimise the amount of the balancing charge.

25. Mr Amodeo relied on the Upper Tribunal's judgment in *Caribax Ltd v Hinde House Management Co Ltd* [2015] UKUT 0234 (LC) but that turned on the interpretation of the particular lease provisions in that case and did not contain the alleged principle that landlords were encouraged to use reserve funds in the way the Respondent did here.

26. Mr Southam, amongst other serious allegations of deliberate misconduct, alleged that the Respondent's actions were intended to "obfuscate" and hide from the lessees their poor management. There was absolutely no evidence on the basis of which such allegations could be made. The Applicants' inability to think of an alternative explanation says more about them than it does about the Respondent and is not evidence of wrongdoing.

27. Reading the lease carefully, it simply says that provision must be made in the accounts for a fund for long-term expenditure. This does not limit the type of costs which may be met from the reserve fund during the year. Further, the definition of "Provisional Service Charge" in Schedule 8 of the lease permits the Respondent to adjust it during the year, should it appear necessary or appropriate, which would include adjusting the amounts of the reserve fund or maintenance charges.

28. The question put by the Applicants to the Tribunal is whether a part of RMG's management fee should be regarded as unreasonably incurred because they used the reserve fund for annual instead of long-term costs. In the Tribunal's opinion, the lease permitted RMG to do this and the objective of reducing the annual balancing charge was a reasonable justification for doing so.

Staff & Cleaners

29. Rendall & Rittner used to employ 3 cleaners. One of those cleaners did not transfer over to RMG. Therefore, RMG had to make alternative provision. At the same time, they were aware of complaints from a number of lessees across the development about the standard of cleaning. Therefore, instead of continuing with the in-house arrangement, they decided to out-source the cleaning to a third party. At first they tried a company called Reef but, when the complaints did not abate, they changed to Think FM who are still the cleaning contractors.

30. According to the accounts, Rendall & Rittner spent up to £110,500 on cleaners' wages and up to £11,132 on cleaning materials in a single year whereas the cleaning contract placed by RMG cost £179,534 in 2022 and was estimated to cost £203,975 in 2023 (the Applicants' Statement of Case puts the latter figure at £2**8**3,975 but that appears to be one of a number of misreadings of figures in poorly-scanned documents with small writing which were highlighted during the hearing).

31. The Tribunal accepts that this is a large increase which demands an explanation but the Applicants went further and asserted that the entire difference should be refunded to them. They did not provide a rationale but simply assumed that the difference spoke for itself. Again, they alleged that this was a "wilful unnecessary overspend" with nothing more than their own suspicions in support.

32. The Applicants asserted that RMG's letter of 24th August 2023 constituting one of the section 20B notices contained an admission that they had made a mistake in out-sourcing the cleaning but this was not the Tribunal's reading nor the Respondent's approach in these proceedings. Mr Amodeo explained that one of the principal reasons for the change was to improve the standard of cleaning and bring it up to the level which could be expected for a prestigious development of this nature. This was at least a partial explanation for the increase in costs but the Applicants did not challenge it in submissions or evidence.

33. Further, Mr Amodeo pointed out that using an outside contractor meant that various costs which would otherwise appear in the service charges would be included within the price, including but not limited to recruitment, training, sickness and holiday cover and cleaning materials and equipment.

34. An increase in price is not, by itself, evidence of mismanagement. It is a constant refrain in Tribunal proceedings that lessees assume the lower figure must be the right one. It never seems to occur to lessees to question whether the lower figure might be an under-charge for some reason, for example due to a poor quality of service. Without evidence going one way or the other, the explanation for an increase is as likely to be that it is a corrective to a poor situation as it is to be an unjustifiable expense. It is also trite law that a landlord is not obliged to seek or use the cheapest option.

35. While the Tribunal understands the Applicants' concern at the increase in costs for cleaning, it is not satisfied that the costs have been unreasonably incurred.

Heating & Cooling

36. The development has its own system for hot water, heating and cooling. The Energy Supplier is a gas company which bills the Respondent who in turn re-charge the lessees. InSite have been the Respondent's billing agents (changed to Data Energy on 1st May 2024). Each lessee has a meter measuring the consumption in their property.

37. InSite were not responsible for chasing those who did not pay their bills. The debt would be passed to RMG whose District Heating department would chase non-payers. If they still didn't pay, PDC were employed to take legal action.

38. The Applicants have had two principal problems with the heating and cooling charges. Firstly, they have found it difficult to understand how the payment system works. Right up to the end of the hearing, as Mr Amodeo was taking the Tribunal through the invoices and statements of account relevant to the four county court claims, Mr Southam was still asking questions as if he had never seen them before – for example, the InSite Statements of Account had the most recent entries at the top so that they went back in time, not forwards, as one reads down the page but Mr Southam did not notice this until it was pointed out during the hearing.

39. The Applicants' submissions give the strong impression that they believe that the Respondent is under some obligation to use a payment system that the lessees find easy to understand. However, a service charge is not unreasonably incurred simply because a lessee does not understand it. It took Mr Amodeo only a few minutes (after he had taken some time to identify the location of the relevant documents amongst those before the Tribunal) to explain the invoices and statements of case to the Tribunal's satisfaction. It could be easier to understand but it is far from incomprehensible.

40. Secondly, during Rendall & Rittner's time, the payment system was different. Many, possibly all, of the Applicants let their flats to sub-tenants. Since those sub-tenants are the consumers of the heating and cooling, the Applicants have chosen to make their tenants liable for the charges. Rendall & Rittner put the bills in the sub-tenants' names. When the sub-tenants moved in or out, the Applicants used agents to take meter readings as part of their check-in and check-out procedure. They used to send these readings to Rendall & Rittner who would then produce an updated bill showing the charges to the date of the reading, enabling the Applicants to charge their tenants accurately.

41. Ms Mackay and Ms Edney were under the clear impression that the sub-tenants should be liable for the heating and cooling charges. Landlords are fully entitled to pass on such utility costs by agreement with their

tenants but it is the Applicants who remain liable to the Respondent for such charges. Although Rendall & Rittner accommodated the needs of the Applicants and their sub-tenants, neither they nor their successors had any obligation to do so.

42. When RMG took over, they wrote to all lessees explaining that they could not continue the arrangement. All existing accounts in the names of sub-tenants would be merged into a single account for each property in the names of the relevant lessees. There were a number of balances left over from past sub-tenants, resulting in some of the Applicants being landed with unexpected historic debts.

43. The Applicants' reaction to this has become somewhat extreme. Ms Edney broke down in tears when she sought to express her frustration with RMG. She and Ms Mackay told how they asked RMG to produce bills which matched their sub-tenants moving in and out and which took into account their agents' meter readings but InSite failed to do so, sometimes sending bills which continued to use estimated readings. The Applicants were unable to give their sub-tenants accurate bills for their heating and cooling consumption, resulting in some sums remaining unpaid and leaving the Applicants out-of-pocket.

44. Beyond this, the Tribunal had difficulty accepting the evidence of Ms Mackay and Ms Edney. They were clearly not lying or trying to mislead – indeed, they both came across as very genuine people. However, their evidence was not convincing, to say the least.

45. Both Ms Mackay and Ms Edney stated in very emphatic terms that they had "never" received to date a single bill from InSite with actual meter readings and when they had asked for one, they did not receive "any" and had still not received "any". This was immediately shown not to be true as the documents disclosed by the Respondent during these proceedings included a number of bills, correctly addressed, which did have actual meter readings.

46. Both Ms Mackay and Ms Edney stared at the disclosed bills carefully, as if the hearing were the first time they had seen them, despite Mr Southam making clear they had been produced on time in accordance with the extended time limits in the Tribunal's directions. They then claimed "never" to have received them. The Tribunal pointed out that they had now received them and asked them if they had carried out any kind of analysis to see whether or to what extent they still disagreed with the sums the Respondent claims are outstanding. They were both somewhat non-plussed by this. Ms Edney vacillated between saying she had looked at the bills and analysed them and saying she had not.

47. Eventually, Ms Edney settled on saying that her analysis had shown the actual meter readings to be inaccurate. When pressed, she said that this was because the readings in the bills did not match her agents' readings. The Tribunal pointed out that, on the Applicants' own case, the readings in the bills were not taken on the same days as their agents' readings,

since they did not match the days when sub-tenants moved in or out. Again, Ms Edney seemed non-plussed by this and did not seem to understand that readings taken on different days would usually be different.

48. Mr Southam, Ms Mackay and Ms Edney all sought to rely on a particular example which, on their understanding, showed a difference between their reading and InSite's reading which would constitute an outrageously unlikely amount of consumption. It turned out that they had simply misread one of the digits on the poorly-scanned document with small writing.

49. In the circumstances, the Tribunal is satisfied that the Respondent was entitled to conduct the heating and cooling payment system in the way that they did and that they did not deliberately use a system designed to confuse lessees. There is no evidence that the Respondent's agents mis-stated the liability of any Applicant in relation to heating or cooling charges.

50. In relation to the four county court claims, Mr Amodeo took the Tribunal through the InSite Statements of Account and RMG invoices for one of the relevant properties and the Tribunal took itself through the equivalent documents for the other properties. The Tribunal is satisfied that the Respondent is entitled to the following sums in respect of the following properties and Applicants:

- K65YX562 £656.41 Apt 51 BSR Estates Ltd
- K39YX615 £700.03 Apt 51 BSR Estates Ltd
- K42YX592 £364.88 Apt 54 BSR Estates Ltd
- K79YX266 £1,354.49 Apt 57 Brooke Brooke Mackay

Electricity/Electricity Maintenance & Repairs/Boiler Charges/General Maintenance/Plumbing & Heating

51. In his closing submissions, Mr Southam clarified that the headings of Electricity, Electricity Maintenance & Repairs, Boiler Charges, General Maintenance and Plumbing & Heating could be grouped together because the Applicants' principal point was the same, namely that these charges should all, or at least in part, be included in the aforementioned charges for Heating and Cooling.

52. In relation to Electricity, there was an additional point that the costs had gone up significantly in recent years. The Respondent replied that prices have risen in the market substantially over that time due to global events and they use a broker to get the best possible prices, although they also had to use out-of-contract rates for part of the time due to the difficulty of obtaining a contract. The Applicants led no evidence to cast any doubt on the Respondent's reasoning or the prices they obtained. As throughout this case, the Applicants provided no comparative quotes for alternative pricing.

53. The Applicants pointed to the letter of 24th August 2023 constituting one of the section 20B notices. In the letter, Mr Norwood stated,

> **Electricity**
>
> Whilst the figure here does represent the total expenditure of electricity usage at Vista it should not have all been paid for using service charge funds and therefore this figure is wrong. We are currently investigating to what extent this figure is wrong and once we are aware we will notify all leaseholders. To put into context the electricity which is used for the plant equipment which supplies heating, hot water and air cooling to the apartments should be a district heating charge and not go through these accounts. Once this is rectified this figure will go down.

54. Of course, the Tribunal expects the Respondent to do what Mr Norwood has stated. If costs were wrongly included in the service charge, credit should be given to the lessees. However, neither party led any evidence as to what has happened since this letter in relation to this issue. The only material the Tribunal has is an unchallenged assertion in the Respondent's statement of case that the issue has been addressed. The Tribunal does not know what the Respondent has actually done. The latest accounts for 2023 which have recently been served may shed some light on this but, as mentioned above, the Tribunal has not seen them. In these circumstances, the Tribunal can give no determination on whether or, if so, in what amount the service charges for electricity should be reduced on this basis.

55. In relation to General Maintenance, the Applicants alleged that there were duplicate invoices and invoices relating to works inside individual flats but the Tribunal were neither taken to nor spotted any such invoices other than at paragraph 68 of the Applicant's Statement of Case which listed various invoices with minimal details of what was allegedly wrong with them. Some of them referenced particular flats but that does not necessarily mean that the work in question was the lessee's responsibility or outside the service charge. Invoices 409450 and 409452 appeared to be identical but there was no indication whether both invoices had found their way into the annual accounts.

56. The Applicants relied on the following points to support their case that the various costs should be included in the heating and cooling charges:

(a) Rendall & Rittner did not include boiler charges in the service charges. The Respondent argued that this was a mistake and they were entitled to include them. This depends on an analysis of the lease which is set out below. When the Respondent took over, a number of the boilers were out of service and the charges included work for bringing them back online.
(b) A development in Canary Wharf both has lower charges for a similar system and covers such maintenance costs from those charges. While the Tribunal understands why this would raise concerns in the minds of the Applicants, it does not begin to establish that there is any overcharge. There may be any number of reasons as to why the charges differ

between the two developments but the Tribunal has no idea what they may be. Mr Southam accused the Respondent of "wilful profiteering" but, again, he had no evidence to support such an extreme allegation.

(c) Mr Southam claims to have obtained very recently confirmation that the Respondent is not registered as a heating supplier with the OPSS (Office for Product Safety and Standards) in accordance with Heat Network Regulations. He pointed out that the Applicants had only recently learned that the Respondent could be regarded as the heating supplier but he has not made any application to admit this evidence, nor shown it to the Respondent. He made vague allegations that it would result in fines but otherwise did not make any suggestion that the service charges had been affected in any way. The Tribunal is not helped by this allegation and has not taken it into consideration.

57. Schedule 8 of the lease, which is in the same form for each flat across the development, makes provision for the services to the development and the resulting service charges payable by the lessees. The services and the resulting charges are split into:

- Apartments Services specified in part 2 of Schedule 8
- Block Services specified in part 3
- Estate Services specified in part 4
- Car Park Services specified in part 5

58. The Apartments Services include:

Hot water

3. (Where appropriate) Providing hot water (but only if at any time there is no supply agreement or arrangement between the Landlord and an Energy Supplier) in the private residential parts of the Block.

Plant

4. Operating inspecting maintaining altering cleaning repairing and (where beyond economic repair or obsolete) renewing or replacing all plant and machinery serving the private residential parts of the Block including … all plant for the provision of heat and comfort cooling and the costs of all maintenance contracts entered into by the Landlord in relation thereto

Equipment

20. Equipping and inspecting maintaining repairing and (where beyond economic repair or obsolete) renewing or replacing the equipment in any of the Apartments Common Parts

Energy Provision

29. The cost incurred in connection with the provision repair maintenance replacement renewal renting insurance and servicing or otherwise of the Energy Equipment and the cost of supply (at the option of the Landlord from time to time) of any one or more of the hot water and also heating and cooling (during such periods hours

and to such temperatures as the Landlord shall reasonably determine) from the Energy Centre Equipment or from the district heating network referred to in the Section 106 Agreement (so long as the same is operative or in the reasonable opinion of the Landlord required or desirable) to the Property

59. The Estate Services also include:

Energy Provision

25. The cost incurred in connection with the provision repair maintenance replacement renewal renting and insurance and servicing or otherwise of the Energy Equipment and the cost of supply (at the option of the Landlord from time to time) of any one or more of hot water and also heating and cooling (during such periods hours and to such temperatures as the Landlord shall reasonably determine) from the Energy Centre Equipment or from the district heating network referred to in the Section 106 Agreement (so long as the same is operative or in the reasonable opinion of the Landlord required or desirable) to the Common Parts and all other parts of the Maintained Property

26. The cost of providing (including but not limited to purchase supply and delivery of and all associated costs) fuel for use by the Energy Equipment to include a standing tariff charge a reasonable levy for the benefit of the Landlord and/or its nominee by way of a handling charge and/or profit for the running and operation of the Energy Equipment and also the cost of connection charges meter charges equipment rental meter reading and billing

60. "Energy Equipment" is defined in clause 1.1 of the lease as including all equipment for the hot water, heating and cooling system up to and including the Heat Interface Unit in each flat.

61. The charges for the supply of hot water, heating and cooling and for the equipment used to provide that supply are separately provided for and all of them count as service charges. There is nothing in the lease which suggests that the equipment costs must be wrapped up in the supply charges. It is notable that only the provision of hot water is excluded in the event of there being an agreement for the supply with an Energy Supplier.

62. It would seem more transparent to separate the costs out so that it is clear what the cost is for each element of the provision of hot water, heating and cooling. Therefore, the Tribunal is satisfied that the separate provision in the service charge accounts is reasonable and the charges are payable.

Building Insurance

63. The Respondent arranges the buildings insurance through their broker, St Giles. St Giles produced a document purportedly to comply with new requirements of the Financial Conduct Authority disclosing to lessees

that they were paid gross commission of £77,569.79 and other remuneration of £9,180.84 out of the buildings insurance premium of £868,781.67. The commission was said to be "for arranging and ongoing management of your insurance policy." The document shown to the Tribunal was undated but it was said to be for the insurance in 2024.

64. The Applicants did not challenge the payment to St Giles but pointed out that the document also indicated that St Giles shared £19,898.71 with "Landmark Collections". The document did not explain what this was for. RMG are not involved with placing the insurance or the payment of commission so neither Mr Amodeo nor Mr Norwood could shed any light. The Applicants asserted that it was likely that similar commissions had been paid to Landmark in earlier years but, despite requests for information about those years, they had not received anything.

65. The Applicants had carried out online enquiries with Companies House and found out that Landmark and the Respondent share a person with significant control, Mr Mark Hawthornthwaite. The Applicants are under the impression that this information is significant and suggested Mr Hawthornthwaite was using "the corporate veil" to boost his profits but the Tribunal honestly has no idea what they think should be done with this information. In and of itself, it means nothing.

66. The Applicants also complained that, unlike their predecessor-in-title, the Respondent had not taken out insurance covering their entire portfolio. Such portfolio insurance is often justified on the basis that average premiums for each property in the portfolio may be less as a result. The Applicants asserted that they have been denied that possible advantage. However, the Respondent is under no obligation to insure in that way while portfolio insurance does not always result in lower premiums for any particular property.

67. As Mr Amodeo pointed out, the question for the Tribunal is whether the insurance premium is reasonable in amount. If the premium were in line with the market, it would still be reasonable even if part of it was dispensed in commission. The determination of this issue may be assisted by the comparing quotes from alternative suppliers but the Applicants did not provide any. The Tribunal has no grounds for thinking that the insurance premium is higher than it should be nor that it is not reasonable in amount. It is understandable why the Applicants should want to query the payment to Landmark but the question does not provide the answer.

Other Professional Fees/Administration Fees/Late Charges/Legal Fees

68. The service charges included Other Professional Fees of £26,607 in 2022 and a budget of £37,114 in 2023. The Applicants submitted that some of them should be wrapped up with the Heating and Cooling charges for the same reasons as the Electricity, Electricity Maintenance & Repairs, Boiler Charges, General Maintenance and Plumbing & Heating. However, again, Schedule 8 makes separate provision for service charges

for professional fees in collecting the service charges at paragraph 23 of part 2, paragraph 20 of part 3, paragraph 19 of part 4 and paragraph 18 of part 5. There is no basis for requiring them to be covered by other charges.

69. Otherwise, the Applicants have been charged professional fees through the service charge and individual reminder fees (£34 or £40), administration fees (£90 or £175) and legal fees (£160, £240 or £360, plus VAT) for RMG and PDC's work in chasing those lessees who have not paid their service charges. In particular, the debts were normally for the Heating and Cooling charges, as in the county court referrals.

70. The Applicants did not challenge the amount of the charges but whether they should be imposed at all. The Tribunal has already commented on the validity of the Heating and Cooling charges above. It is inevitable that, if a lessee does not pay their service charges, they will be chased for them at further cost.

71. Many parties before the Tribunal profess the belief that, if they are querying or challenging a charge, a kind of stay automatically applies, putting the debt on hold until their query or challenge has been resolved. That is not the case. If they do not pay and their query or challenge is upheld, then they will get away with not having paid. However, if their query or challenge is not upheld, then the debt will always have been owed and they will be subject to possible legal action. It is the lessee's choice – they can always pay and continue with the query or challenge in the meantime. If they do not pay, they run the risk that additional charges are incurred which they may have no grounds to oppose.

72. The Applicants accused the Respondent of being over-hasty in pursuing non-payers. As an example, Mr Southam pointed to an email chain between Brooke Mackay and RMG between 16th February and 14th July 2022. Mr Mackay queried an alleged debt and did not get a full answer until the email of 14th July 2022 when the matter had already been referred to PDC, incurring charges. However, what Mr Southam ignored is the correspondence outside the email chain. Fortunately, it was attached to the email of 14th July 2022 and showed letters in April from RMG setting out the debt and demanding payment. This suggests that RMG followed their usual procedure which gives the lessee several opportunities to pay before a referral to PDC and then before court action is started.

73. Mr Southam particularly protested that proceedings had been issued in the courts against some Applicants while the Tribunal application had been in progress and then stayed pending the Tribunal's determination. However, there is nothing to prevent the Respondent doing this. If the Tribunal's determination undermined those court claims in any way, then the court may reflect that in their decisions on costs but, if the Tribunal determination goes in the Respondent's favour, they are some way down the line and might save costs as a result. As with the lessees, it

is up to the Respondent whether they risk the costs consequences. In any event, it will be for the court to determine those costs consequences.

74. In relation to the aforementioned county court claims which were transferred, the Tribunal is satisfied that the Respondent is entitled to the following administration charges in respect of the following properties and Applicants:

- K65YX562 £586 Apt 51 BSR Estates Ltd
- K39YX615 £870 Apt 51 BSR Estates Ltd
- K42YX592 £490 Apt 54 BSR Estates Ltd
- K79YX266 £1,037 Apt 57 Brooke Brooke Mackay

75. The costs of those proceedings are for the county court and so that issue is referred back to the court.

Management Fees

76. RMG have charged management fees equivalent to around £400 per unit which, in the Tribunal's expert opinion, is within the range of such fees in the market for this size and quality of property. However, the Applicants asserted that RMG's management of the property was so poor that their fees should be substantially reduced.

77. Mr Southam used some choice words such as "chaotic" and said the management was the worst he had experienced (although he did not establish his credentials so the Tribunal has no idea how extensive that experience is). Ms Mackay said expenditure has been out of control and fees had been "extortionate". She accused RMG of being "cavalier". Ms Edney echoed these criticisms and talked of a "broader pattern of mismanagement".

78. The problem is that generalisations like this are not evidence of wrongdoing. The evidence which has been provided either shows that the Applicants' allegations are wrong or that they are irrelevant to whether service charges are payable or not. The Applicants clearly believe what they are saying but genuine belief does not trump an absence of proof.

79. The Applicants also pointed out that there is a substantial on-site staff team consisting of an estate manager, a facilities manager, a head concierge and 8 concierges (2 on shift at any one time). They suggested that some of the work which would normally come within the management fee was paid for by the charges for the costs of this staff. However, they were unable to identify any duties that this applied to. In his evidence, Mr Norwood briefly ran through the tasks carried out by RMG's central team rather than the on-site team, including budgeting, accounts, service charge collection, insurance claims, managing the heating/cooling system, and paying contractors.

80. The Applicants objected to the increases in the management fees from £169,213 in 2021 to £175,965 in 2022 with further budgeted increases to

£196,001 in 2023 and £219,515 in 2024. The Respondent relied on the explanation given in RMG's letter of 19th December 2023 accompanying the 2024 budget which detailed the increased regulatory requirements under the Building Safety Act 2022. The Applicants did not challenge this explanation.

81. As was said above, management of the property has been difficult due to the complex nature of the property, the nature of the handover from the previous agents and the time it has taken RMG to become familiar with the property. Such "errors" as there have been, such as under-budgeting or producing the accounts late, appear to reflect those difficulties rather than being a symptom of poor management. The Tribunal is not satisfied that the management fees were unreasonably incurred to any extent.

Costs

82. The Applicants applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent should not be permitted to recover any of their costs of these proceedings through the service charge or by means of an administration charge. Given the determinations above, the Tribunal is not satisfied that there are any grounds for such orders. This does not affect the ability of the Applicants to challenge the reasonableness or payability of any charges which arise from such costs in due course.

Name: Judge Nicol **Date:** 23rd June 2025

Appendix A – relevant legislation

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings

before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
  (a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
  (b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.