



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

**Case reference** : **LON/00BJ/LCS/2024/0756**

**Property** : **204 Smyth Building 89 Upper  
Richmond Road London SW15 2FU**

**Applicants** : **(1) Nicolas Wolfgang Etienne  
Esclapez  
(2) Geraldin Corredor Esclapez**

**Representative** : **n/a**

**Respondent** : **A2 Dominion Housing Options Ltd**

**Representative** : **Mr Sebastian Reid**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge N O'Brien, Ms J Rodericks MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of Hearing** : **2 July 2025**

**Date of decision** : **28 July 2025**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The name of the Respondent is amended to A2 Dominion Housing Options Ltd.
- (2) The tribunal determines that the sums demanded from the Applicants as a service charge for the years 2019/2020 to 2024/2025 in respect of the mobile warden service are payable and reasonable.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) The tribunal does not make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (5) The tribunal does not make an order for the refund of fees paid by the Applicants.

## **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicants in respect of the costs of a mobile warden service for the years 2019/2020 to 2023/2024. They also seek a determination in respect of the year 2024/2025, the costs of which have not yet been finalised.

## **The hearing**

2. The First Applicant appeared in person at the hearing, and the Respondent was represented by Mr Reid of counsel, instructed by the Respondent’s in-house legal department.
3. Immediately prior to the hearing the Respondent handed in further documents, namely a copy of the head lease between the Respondent and its immediate landlord. Both are companies within the A2 Dominion Group. Mr Reid alerted us to the fact that the correct name for the Respondent is A2 Dominion Housing Options Ltd and not A2 Dominion Developments Ltd and we amended the Respondent’s name with the consent of the First Applicant.
4. We had the benefit of a well organised indexed and paginated hearing bundle prepared by the First Applicant consisting of 288 pages. We heard oral evidence from Mr Esclapez and from Ms Naomi Thomas, a Customer and Communities Team Manager employed by the Respondent.

5. Photographs of the buildings and a plan were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary.

### **The Parties' Cases**

6. There are few factual issues in dispute. The property which is the subject of this application is a 2-bedroom apartment in a development consisting of two conjoined blocks, the Smyth Building consisting of 12 apartments in a 4-storey block and the Bowery Building consisting of 61 apartments in an 11-storey block. Mr Esclapez and his wife purchased a long lease of their apartment in the Smyth Building in 2019 on a 'shared ownership' basis. The Respondent is part of the A2 Dominion group of companies and this development was built by the A2 Dominion group. Some companies in the group are registered providers of social housing, although we do not know if the Respondent or its immediate landlord are so registered.
7. Since 2019 the Respondent has classified relevant costs as either estate costs or block costs for the purposes of calculating the service charges paid by the leaseholders in both blocks in the development. The proportion paid by leaseholders in both buildings is 1.15% of the total per flat in respect of the estate costs. In respect of the Smyth Building the Respondent charges the leaseholders of each flat 10.06% of the block costs, being the costs solely attributable to the Smyth Building.
8. The Smyth Building and the Bowery Building have separate entrances. The entrance to Smyth Building is on Upper Richmond Road and the entrance to Bowery Building is on Carlton Drive. The Respondent provides the Bowery Building with a 24-hour concierge service. The residents of the Smyth building are charged for the cost of this service from 7pm to 7am only as an estate cost. In these proceedings Mr and Mrs Esclapez challenge the cost of this service which appears on their service charge demands as 'mobile warden service'. The applicant's point is that the leaseholders in the Smyth Building pay the same as the residents of the Bowery Building for this service. However they consider that it is a more valuable service for the residents of the Bowery Building because the concierge desk is on the ground floor of that building and they receive additional benefits such as secure parcel delivery. By contrast the Applicants consider that the only benefit to their building are the security patrols which are undertaken in both buildings and the car park at the rear 4 to 6 times per night. The leaseholders of the Smyth Building do not have access to the Bowery Building.
9. The amount demanded by the Respondent in respect of Apartment 204 for the mobile warden service has varied from £519.20 in 2019/2020 to of £1127 in 2023/2024.

10. The Respondent's position is that the cost of the mobile warden service is reasonable for the service provided to the Smyth Building. They accept that the residents of the Smyth building do not have access to the Bowery Building and also accept that a significant proportion of the night concierge's time is spent at his or her desk. They accept that the cost of the night warden is charged as an estate cost meaning that the residents of both Smyth Building and Bowery Building are charged the same proportion of the costs being 1.15%. In her oral evidence Ms Thomas told us that in addition to accepting parcels for the residents of the Bowery Building and carrying out regular patrols of the development, the night concierge is also required to monitor the CCTV cameras covering the front entrances and common parts of both blocks and the rear car park. She told us that the residents of the Smyth Building have recently been given a mobile number for the night concierge should they need to contact him or her in the case of an emergency. Both she and Mr Esclapez agree that when sitting at his or her desk, the night concierge would be visible to anyone walking along Carlton Avenue.

### **The Lease**

11. By clause 3.3.2 of the lease the applicants covenanted;

*“to pay ... on demand (where outgoings relate to the whole or part of the building or other property including the premises) a fair and proper proportion attributable to the premises such proportion to be conclusively determined by the landlord...(who shall act reasonably)”*

### **The parties' submissions**

12. The Applicants' case is that they should pay a lower proportion of the overall cost of this service. Mr Esclapez suggests that only 25% of the activities of the night concierge are of any benefit to the Smyth Building and the common parts and seeks to have his contribution to this cost reduced from 1.15% to .2875% of the total. He has obtained a quotation from Pace Security Services dated 27 March 2025 for the provision of an on-site nighttime security guard/concierge for both blocks. Pace Security Services considered that 75% of the overall annual cost would be attributable to the Bowery Building and 20% to the Smyth Building with 5% attributable to the external common parts of the estate including the car park at the rear. The annual cost in the Pace quotation was £98,287.20 including VAT. This is quite similar to the actual cost of the mobile warden service for the year 2023/2024 which, according to the certified accounts prepared by the Respondent for that year, was £98,075.
13. Mr Reid for the Respondent referred us to the Supreme Court decision of *Aviva Ground Rent GP Ltd v Williams [2022] UKSC 3* in which the Supreme Court held that the First tier Tribunal's powers when

considering apportionment of residential service charges in cases where the lease permits the landlord to set or vary the apportionment, is limited to a review of the contractual legitimacy of the landlord's decision and does not permit the tribunal to determine for itself whether the apportionment is reasonable. He submits that the Respondent's decision to charge the leaseholders in Smyth Building the same percentage as the Bowery Building leaseholders was one that was open to it pursuant to clause 3.3.2 of the Applicants' lease.

### **The tribunal's decision**

14. The difficulty with the Applicants' submissions is that it is tantamount to saying that the cost of the night warden service should be calculated as if it were a block cost and not an estate cost. However if it were charged as a block cost the percentage payable by the leaseholders in Smyth Building would be 10.06% and not 1.15%. Thus, using the suggested annual fee and 20% apportionment contained in the quotation by Pace Security Services relied on by the Applicants, the residents of the Smyth Building would pay 10.06% of £19,657.50, or £2,083 per flat, as a block cost with an additional £56.52 payable as their 1.15% share of the cost attributable to the provision of security to the external areas and car park. This compares with the estimated cost of the mobile warden service of £1437 for the year 2024-2025 in respect of flat 204.
15. Had the Respondent attempted to calculate the benefit to each block and charged the leaseholders accordingly then the amount payable by the leaseholders in the Smyth building would be higher. When we made this point to Mr Esclapez, he suggested that the Respondent could reduce the costs further by engaging the services of an off-site security service who could monitor the CCTV feed remotely and carry out regular patrols throughout the night. In our view it is a matter for the Respondent, acting reasonably, to decide what level of night security to provide in the development, and the presence of 24-hour on-site security benefits all the residents of both the Bowery Building and the Smyth Building, notwithstanding the fact that the warden spends most of his or her time in the Bowery Building. We do not consider the decision to provide on-site nighttime security to both blocks is unreasonable. We consider that the Respondent's decision to treat this cost as an estate cost and to charge all leaseholders the same percentage irrespective of whether their apartments located in the Smyth Building or the Bowery Building was a reasonable method of apportionment, and one that was open to it under the terms of the lease
16. It follows that the service charges demanded by the Respondent for the mobile warden service for the years 2019/2020 to 2024/2025 were reasonable and payable.

### **Application under s.20C and refund of fees**

17. The Applicants applied for an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 limiting the right of the Respondent to recover its costs of responding to these proceedings as a service charge or administration charge. Although the landlord indicated that in its view those costs would not be recoverable as service charge or an administration charge under the lease in any event, for the avoidance of doubt, the tribunal nonetheless determines that it is not just and equitable in the circumstances for an order to be made under either Act.

**Name:** Judge N O'Brien

**Date:** 28 July 2025

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).