FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/OO MR/LSC/2024/0092**
Property	**:**	**1-69 Vista, Fratton Way, Southsea, Hampshire PO4 8FD**
Applicant	**:**	**Stuart Martin & Others as set out on the attached Schedule**
Representative	**:**	**Mr Martin**
Respondents	**:**	**Aviva Investors Ground Rent GP Ltd** **Aviva Investors Ground Rent Holdco Ltd**
Representative	**:**	**Mr Peter Sibley, Counsel**
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	**:**	**Mr Charles Norman FRICS** **Valuer Chairman** **Mr Michael J F Donaldson FRICS** **Ms J Dalal**
Venue	**:**	**Havant Justice Centre**
Date of Hearing	**:**	**20 June 2025**
Date of decision	**:**	**19 September 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) The Tribunal gives the applicant consent to withdraw its application in respect of years 2019-2023 inclusive.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") so that none of the landlord's costs of the Tribunal proceedings may be passed to the applicants through any service charge.

(4) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that none of the landlord's costs may be recovered as an administration charge for legal costs.

(5) The Tribunal orders that the Respondent shall reimburse the applicants their application and hearing fees within 28 days.

(6) The Tribunal makes no finding of payability in relation to balancing payments as demands have not yet been issued.

The application

1. The Applicant made an application for the determination of the reasonableness and payability of service charges for the years 2018, 2019, 2020, 2021, 2022, and 2023 pursuant to s.27A of the Landlord and Tenant Act 1985.

2. However, the substance of the application was for an order from the Tribunal directing the respondent to deliver accounts for those years.

3. The applicant also sought orders under section 20C of the 1985 Act and Paragraph 5A Schedule 11 of The Commonhold Leasehold Reform Act 2002 ("the 2002 Act").

The hearing

4. The Applicants were represented by Mr Stuart Martin and in part by Mr Tim Robinson, who are also co-applicants. The Respondent was represented by Mr Peter Sibley, counsel. Mr Martin is a leaseholder in Vista and Secretary to the Vista Leaseholders' Association (VLA), a recognised tenants' association. Mr Monkhouse of Innovus, Asset Manager to Aviva also attended.

The background

5. The property which is the subject of this application was described in a previous determination of this Tribunal promulgated on 19 July 2019 *Mr Stuart Martin and Others v Aviva Ground Rent GP Limited* (CHI/OMR/LSC/2018/0112) as follows:

6. "Vista is a mixed use block containing one commercial unit on the ground floor and 69 residential units situated in a busy location close to the centre of Southsea on a busy main road with several large retail units and a hotel in the immediate vicinity. There is a car park area under the flats. The property was constructed in or about mid-2009. Vista is part of a larger development comprising three blocks of flats and commercial units, the other two blocks being known as Horizon and Outlook. Horizon comprises 51 units and Outlook 47. Somewhat bizarrely, the heating and hot water systems for both Vista and Horizon are run from boilers in the Vista block, albeit that Vista and Horizon are now in different freehold ownership." Reference is also made to the "podium" which is described as "an open area of ground covered in artificial grass and bounded by raised flower beds." The residents of Vista and Horizon have access to this as a leisure area.

7. The basis for the application was that the Respondent had persistently failed to provide certified service charge accounts for the years 2018 to 2023. The Applicants also claimed that certified accounts for 2018 (which had been re-stated) were inaccurate. The re-stated accounts were signed by Ency SCA Chartered Certified Accountants on 24 June 2024. The accounts for the subsequent years had not been approved by Knight Accountants until June 2025.

8. Neither party requested an inspection, and the Tribunal did not consider that one was necessary.

9. The FTT decision in 2019 was the subject of an appeal to the Supreme Court in connection with apportionment of service charges as *Aviva Investors Ground Rent GP and Another v Williams and Others* [2023] UKSC 6.

Procedural Issues

10. As the accounts for 2019-2023 had only been delivered shortly before the hearing date, the Tribunal did not consider that those years could properly be addressed. It invited Mr Martin to withdraw the applications for those years, which he did with the consent of the Tribunal. Those years will, if necessary, have to be the subject of a further application.

The Tribunal indicated that it would grant orders under section 20C and Paragraph 5A.

11. The Applicant had permission to call an accountancy expert and called Mr Kevin Brown. Mr Brown is a co-applicant. Mr Brown had provided a witness statement dated 22 May 2025. It was an informal document not verified by a statement of truth and not in compliance with rule 19, which governs the form and contents of experts' reports. Mr Brown did not state his qualifications. After questioning from the Tribunal it emerged that Mr Brown does not have accountancy qualifications, nor a degree in accountancy but works as an accountant in a private equity firm. The Tribunal was not provided with Mr Brown's CV.

12. The Tribunal found that any accountancy challenge to accounts signed by a qualified accountant required an expert who is professionally qualified as an accountant. The Tribunal therefore found that Mr Brown was not qualified to act as an expert witness, but allowed him to give factual evidence, as a co-applicant. However, it has placed no weight on any accountancy opinions he expressed. It also disregards matters not raised in the Applicants' or Respondent's respective statements of case.

The issues

13. Mr Stuart Martin, VLA secretary, prepared the Applicants' statement of case which may be summarised as follows. The application was in connection with the non-publication of certified service charge accounts since 2018. Certified accounts for subsequent years had also not been provided contrary to the terms of the leasebook. Previous draft sets of accounts issued were totally inaccurate and had not been approved by an independent qualified accountant as required by clause 12.12 of the leasebook.

14. During 2018, Warwick Estates were removed as managing agents on 30th August and Cosgroves took over. A year later they resigned and were replaced by Rendell & Rittner. The landlord has repeatedly promised to provide the 2018 accounts but nothing materialised. Draft accounts for 2018 have been supplied on many occasions but the Applicants disputed such accounts. Certification has been carried out by Innovus which is not permissible, being contrary to section 28 of the Landlord and Tenant Act 1985. The Vista Leasehold Association have repeatedly requested to inspect the service charge accounts and invoices. The non-publication of certified accounts has caused a huge rise in annual service charges and problems to leaseholders selling their properties. The landlord relies only on an annual statement which omits historical records relating to the previous year's accounting period. Without accounts it is impossible for a leaseholder to ascertain his or her position as to whether their account is in credit or debit.

15. The previous decision of the FTT in July 2019 held that a refund should be made to the Vista service charge account by the landlord in relation to the 2018 demand for payment. However, as no accounts have been issued since 2017 it is not possible to determine if that determination has been implemented.

16. In 2022 the leaseholders received highly inaccurate 2018 accounts in draft. Consequently, it was impossible to challenge costs that could fall into a section 20 requirement. Other challenges were made to the original 2018 on account demands but these could never take place as the final 2018 service charge accounts had never been published.

17. In 2023/2024 two section 20 notices were issued in connection with repairs to the central boiler system and replacement of car park lighting. Neither works have been carried out. It is not clear where the monies collected now sit. In 2009 the service charge was £800 per annum whereas now each property is being charged between £3,200 and £4,000 annually. This is not acceptable, and the charges should be less. The VLA intends to bring a right to manage application but until the outstanding accountancy issues are resolved an RTM will not be possible. The landlord issued his 2025 service charge demand without any certified 2024 accounts being provided contrary to the lease.

18. Mr Martin submitted that lessees were entitled to a summary of the service charge costs under section 21 of the 1985 Act. Pursuant to section 21A, as section 21 was breached the lessee could withhold payment of service charge. Under section 22 the lessees have the right to inspect supporting accounts. Under section 28, a qualified accountant is defined, and certain accountants are disqualified if they have a connection with the landlord. Innovus were not qualified to certify the accounts.

19. The 2018 accounts will need to be audited. Mr Martin expressed concern in connection with invoices which he feared would be omitted. He submitted that lessees should not be responsible for covering the cost of any missing invoices. Mr Martin also confirmed that there were no issues regarding apportionment.

20. The Tribunal noted that the statement of case does not raise issues as to individual items of service charge costs and whether those costs had been reasonably incurred.

The Applicant's Witness, Mr Kevin Brown

21. Insofar as relevant to the 2018 accounts Mr Brown's evidence may be summarised as follows. The final accounts for 2018 have not been provided. Several versions of the 2018 financials had been produced previously with different results. In mid-2021 the majority of

leaseholders signed an agreement with Aviva to specify that there was no liability from leaseholders in relation to specified major works. That agreement was conditional on the leaseholders' service charge being paid in full to 30 June 2021.

22. The VLA has not accepted the 2018 accounts. The current managing agent Rendall & Rittner advised that it was virtually impossible to produce correct financial statements because their records were incomplete as they only took over as managing agent from 1 November 2019. For those who signed the major works agreement, there should be a nil deficit for 2018. The Vista financial statement is a relatively simple set of accounts.

23. Mr Brown then raised a number of questions about expenses and the balance sheet.

The Respondent's Case

24. The Respondent's statement of case may be summarised as follows. This was dated May 2025 prior to the issuing of the accounts for 2019-2023. The Respondents are the freeholders of the estate in which Vista forms part. Innovus Group Limited are the respondent's asset manager. They in turn appointed Warwick Estates in 2018-2019, Cosgroves in 2019 and Rendall & Rittner in 2019 as property managers.

25. Each residential flat is let on a 125-year lease from 19 December 2008 and are in materially the same form. Each lease comprises a short form lease deed, which sets out the lessees' percentage share of insurance, building service costs and estate service costs and incorporates an accompanying "lease book" which contains the detailed terms.

26. By clause 4.3 (d) the lessee covenants to pay service charge in accordance with Chapter 12. Chapter 12 provides a service charge mechanism. The lessee pays proportion of both building services costs and estate service costs as defined in clause is 12.2, 12.3 and 12.5. The service charge is defined as the calendar year 1 January to 31 December, under clause 12.7.

27. By clause 12.12 the landlord covenants as follows "within six months of the service charge we are to send you a service charge statement setting out the service costs for that period and the service charge from you. The service charge statement must be certified by an independent qualified accountant. In addition to any other legal right you may have to obtain information, for a period of two months after the issue of the service charge statement you and your adviser may look at the invoices and other papers supporting it at a convenient address. After those two months if there is no obvious mistake in the service charge statement you must pay us the balance within 14 days of us sending you the service charge statement."

28. The certified service charge accounts in relation to years 2018 to 2020 will be issued by 6 June 2025. These will accurately reflect (i) the findings of decision of the FTT dated 19 July 2019 [see above] (ii) the findings in the decision of the Supreme Court dated 8 February 2023 [2023] UKSC 6 (iii) the funds collected for the repair work to the central boiler system and the undercroft car parks legacy lighting and (iv) the terms of the settlement agreement dated 17 August 2021 that the Respondents would be responsible and bear certain costs relating to cladding works to Vista. Production of the accounts was delayed for a variety of reasons including the Supreme Court litigation.

29. Although not required to do so, the Respondents have sought to engage with the Applicant and the VLA and/or lessees in providing draft accounts for review comments and agreement. Draft accounts for 2018 were provided on 15 July 2022, revised accounts on 27 October 2023, further revised draft accounts on 20 February 2024 and certified accounts on 1 July 2024.

30. Publication of certified accounts is an obligation of the Respondent alone and is not subject to approval of any lessee or the VLA. The appropriate mechanism for challenge is by making an application under section 27A of the 1985 Act. Furthermore, section 21A of the 1985 Act is not in force and not relevant.

31. As the Applicants had not set out a detailed case challenging service charge amounts, the Respondent chose to address the points that had been raised by the Applicants in prior correspondence. As these points did not form part of the Applicants' statement of case there was no obligation for the Respondent to address them in this way. However, as the Respondent has done so the Tribunal will consider those points.

Insurance

32. The Applicant complained that 2018 budget for insurance was £13,125 against an actual spend £4,209.

33. The Respondent's case was that the accrual in 2017 had overstated the building insurance and on reversal this created a lower total cost for 2018.

Boiler

34. The Applicant complained that under "income" there was no reference to gas/heat invoices issued to leaseholders, although monies collected under "water invoicing" were included. Secondly water charges were included under the boiler heading. The Applicants also challenged why there were two water meters for the property. The Applicant questioned why £12,255 was included under expenses in relation to reversal of

heating costs. The amount charged for the boiler system maintenance exceeded the amount that could be passed on to leaseholders in the absence of a section 20B notice, which was not served within the statutory time limit. Accordingly, the sum recoverable is capped.

35. The Respondent's case was that the income demanded within the cost heading heat/gas is included in "service charges raised". Water charge revenue and expenditure will be ringfenced in deficit/surplus calculations. The second water meter provides a backup. The amount charged for boiler system maintenance was £59,969.40 being less than the amount stated in the s20B(2) notice dated 26 June 2019.

Block

36. The Applicant raised questions about invoices provided where work took place in 2017 and should have been included in the 2017 accounts. Costs relating to the cladding work had been improperly included. A payment had been made for PowerTeq which was only partially due in 2018. Payments had been made for work in individual flats which should have been either insurance claims or the responsibility of flat owners.

37. The respondent's position was that there was insufficient particularity to enable a response to the 2017 invoices and the claim that expenditure related to individual flats. Cladding invoices had been removed. The PowerTeq invoice cost related in part to 2019, but it did not justify amending the 2018 accounts.

Estate

38. The Applicants' case was that invoices were included in the pack provided under statutory inspection rights that related to 2017. Costs relating to external cladding are included. An invoice for Pompey Store Signs was incorrectly included.

39. The Respondent's position was that reference to invoices was unparticularised, that cladding costs had been removed as had the invoice relating to Pompey Store Signs.

General Comments

40. The Applicants' case was that several amounts [in the 2018 accounts] under various charging heads exceeded the amounts in the s20B(2) notice. The accountants fee of £1,500 should be refunded. Any costs for major works should be removed. Costs for RJW services for door lock repairs are excessive.

41. The Respondent's reply was that the s 20B(2) issue was not an accounting error but that the legal implications on amounts recoverable will be reflected by way of credit in the 2019 accounts. There was no identified problem with the accounts themselves. There were no major costs included. The cost for RJW lock services was not an accounting issue.

Queries 16 November 2023

42. The Applicant raised further queries on 16 November 2023. These were that there were two totals in excess of the s20B advice received 30 June 2019, £4,518 for boiler and £10,550 for block. RLW invoices were fraudulent and should all be removed.

43. Mr Monkhouse for the respondent replied on 20 February 2024. His position was that although some costs had been moved between schedules on the s20B notice, no additional costs had been accrued and as having been previously notified were recoverable. As to RJW services, costs removed related to bin movements forming part of cladding works. They were not removed owing to nefarious activities. The remaining invoices should not be removed.

44. In relation to section 20B(2), this position was superseded by Mr Sibley's submission as set out at Paragraphs 40-41 above.

Queries raised on 3 September 2024

45. Mr Brown wrote to Mr Robinson raising further questions on the accounts. These questions relate to the presentation of accounts not the reasonableness and payability of service charges. However the respondent replied to the effect that a reversal of a heating cost charge for £12,255 would be reflected in the 2019 accounts; in respect of a charge for £22,980 for water on 5 March 2024, Mr Monkhouse stated in an email to Mr Robinson this had not previously been charged. He also stated that some leaseholders were disputing whether deficits are recoverable as a result of the Settlement Agreement.

Discussion

46. The Tribunal recognises the great inconvenience and practical problems caused by the very late delivery of accounts. It also acknowledges the explanations put forward by the Respondent.

47. However, the present application was largely misconceived, being an application for the Tribunal to instruct the landlord to produce accounts. The Tribunal has no power to order a landlord to produce accounts that do not exist, which is a matter for the courts.

48. Furthermore, the 2018 accounts had been served on 1 July 2024. However, in the statement of case, there was no direct challenge to individual items in the 2018 accounts. Consequently, the Respondent considered itself constrained to address points raised in correspondence by the VLA. It is the responsibility of the Applicants to set out their whole case in the statement of case.

49. The Tribunal accepts Mr Sibley's submission that the accounts are not subject to negotiation and are entirely a matter for the landlord. The correct challenge to service charges is by a s.27A application. It also accepts his submission in relation to section 21A of the 1985 Act. The Tribunal also rejects the submission that there has been a huge rise in service charges as a result of delayed accounts, which was not particularised.

50. The 2018 accounts have been certified by Ency SAC Chartered Certified Accountants & Tax Advisors, Portsmouth. If any accountancy challenge was to be brought by the VLA it would have to relate to the payability of specified service charge expenditure and would have to be supported by expert evidence from a professionally qualified accountant. No such evidence was adduced in this case. Furthermore, reasonable explanations have been given by the landlord in relation to queries raised by the VLA.

51. Save for section 20B, the accounting charge and lock repairs, the challenges in fact relate to the accounting treatment of expenditure. This is a matter for the professional judgment of Ensy SCA. The Tribunal notes the section 20B concession made, as set out above and that a credit will be applied in the 2019 accounts. The Tribunal finds that an accountancy fee of £1,500 is reasonable. Door entry and lock repairs are shown in the 2018 accounts as £448 which it also finds reasonable.

52. Therefore, to the extent that there are challenges to the accounts relating to the reasonableness and payability of particularised service charges, the Tribunal finds in favour of the Respondent on the basis that the s 20B adjustments referred to above will be addressed in the 2019 accounts.

53. The Tribunal was told at the hearing that demands for balancing payments for 2018 have not yet been served. The Tribunal therefore finds that no such charges will be payable until proper demands have been served on the applicants.

Application under s.20C and refund of fees

54. Given the long delay in producing accounts which resulted in the application being made, notwithstanding the above findings, the Tribunal orders the Respondent to refund the application and hearing fees paid by the Applicant within 28 days of the date of this decision.

55. In the application form the Applicant applied for orders under section 20C of the 1985 Act and Para 5A of the Commonhold and Leasehold Reform Act 2002. Having regard to the long delay in preparation of accounts which resulted in the application, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge against the applicants. For the same reason it makes an order under Paragraph 5A precluding the Respondent from recovering its costs of proceedings as an administration charge for legal costs against the applicants.

19 September 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).

Schedule of Applicants

Vista Number	Leaseholder
1)	Adam Lambert
2)	Suzie Turner
5)	Suzie Turner
7)	Adrian Ostace
12)	Nigel Phillips & Julia Narantez-Price
13)	Claire Hiskey
14)	Rose Symon
15)	Steve Dunk
16)	John Liddell
17)	Cliff Funnell
19)	Andrew Blades
22)	Keeley Crispin
23)	Estella De Souza
24)	Eleftherios Panayiotou
25)	Vicki Edgar
28)	Greg Johnston
30)	Sameer Ahmed Bootwala
31)	Rebecca Waller
32)	Gavin Thomas
34)	David Moore
35)	Kiran Panue
36)	Stuart Martin
37)	Joan Bryan
40)	Nadia Muhammad Aslam
41)	Andre-Paul Michel Bernaix & Yuqing Zhao

43)	Josh Turner & Sophie Walters
44)	Martin Anderson & Elena Anderson
45)	Tianfei Wang
48)	Dave Tidd
51)	Maguid Mamoud
52)	Hoi Shi Cheung & Kam Leung Lee
54)	Kevin Brown
55)	Mark Stainton* & Gill Stainton *Deceased 10/09/2025
57)	Ka Man Lee & Man Ho Lee
59)	Tim Robinson
61)	Rob Shaffery
62)	Steve Hillier & Anne Hillier
63)	Nicole Tofte
64)	Phil Williams
66)	Pauline Anderson