FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/2024/0512**
Property	:	**Flats 1 and 2 37 Bolton Gardens London SW5 0AQ**
Applicants	:	**Flat 1: Mr Chien Chen** **Flat 2: Ms Tsun Chen**
Representative	:	**In person**
Respondent	:	**37 Bolton Gardens (Freehold) Limited**
Representative	:	**Gaby Hardwicke solicitors**
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 Pittaway** **Judge Vodanovic** **Ms S Coughlin**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Dates of hearing	:	**6 March 2025 and 10 July 2025**
Date Tribunal reconvened to reach decision	:	**2 October 2025**
Date of decision	:	**18 November 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 makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal orders the tenants' liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (the '2002 Act') be extinguished.

Background

1. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 (the '**Act'**) as to the payability and reasonableness of items of service charge for the service charge years ending September 2019 to September 2024.

2. The Applicants also seek an order for the limitation of the landlord's costs in proceedings under s20C of the 1985 Act and an order to reduce or extinguish the tenants' liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (the '**2002 Act'**)

3. By Directions dated 7 October 2024 the Applicants were directed to provide their case to the Respondent by 9 December 2024, which should include a schedule setting out the items in dispute, why they are disputed and the amount the applicants would pay for each item. The Respondent was directed to provide its case to the Applicants by 6 January 2025, including a response to the items set out in the Applicants' schedule, with the Applicants having a right of reply by 20 January 2025. The parties produced the relevant schedules for the service charge years from the year ending September 2019 to the year ending September 2023.

4. The Directions provided for the Applicants to prepare a digital bundle. They provided a digital bundle of 1,232 pages. The Respondent provided a separate bundle of 474 pages of documents not included in the Applicants' bundle. The Applicants had also provided a further reply to the Respondent's statement of case of 31 January 2025 and a joint supplemental statement of 10 February 2025.

5. The Directions invited the parties to provide skeleton arguments before the Hearing.

6. The Directions contemplated that the hearing would last for one day and the parties were invited to advise the Tribunal at least two weeks before the hearing if this was an unrealistic estimate. Neither did so.

7. It was not possible to hear all the evidence and the parties' submissions in one day. It was also agreed that the Tribunal required further information in relation to the service charge year 2019. The Respondent indicated that it wished to reserve the right to make an application for costs under Rule 3 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**')

8. At the hearing on 6 March the Respondent objected to the Applicants' reply to the Respondent's statement of case of 31 January 2025 and to their Joint Supplemental Statement of 10 February 2025 as being outside that which was contemplated by the Directions.

9. By Further Directions of 18 March 2025, amended on 11 April 2025, the Respondent was directed to provide further information to the Applicants as to the apportionment of the service charge levied for the period March 2018 to September 2019, and how any sums for the service charge year to September 2018 had been credited to the Applicants' service charge accounts. These also provided for the parties to make further statements of case in relation to the Applicants' statement of case of 31 January 2025 and their Joint Supplemental Statement of 10 February 2025 (the **'February Statement')**.

10. The Further Directions invited the parties to provide skeleton arguments in advance of the reconvened hearing, which they did.

11. The hearing reconvened on 10 July 2025.

<u>The hearing</u>

12. The initial hearing took place on 6 March 2025 attended by the applicants, who represented themselves, and Ms Chen's husband Lip Choon Jin. The respondent was represented by Ms Everson of counsel. Ms Blatchly of Gaby Hardwicke solicitors attended. Mr Hepburn, of TLC Real Estate Services Limited attended as a witness for the Respondent.

13. The reconvened hearing took place on 10 July attended by the same people, except that Mr Garlick of Gaby Hardwicke attended instead of Ms Blatchly.

14. At the start of the hearing on 6 March the Tribunal had before it the Applicants' bundle of 1,232 pages and a Respondent's bundle (of documents omitted from the Applicants' bundle) of 474 pages. It also had before it the Applicants' statement of case of 31 January 2025, the February Statement and a skeleton argument from the Respondent.

15. By the Hearing on 10 July the Tribunal also had before it a supplemental bundle of 104 pages and skeleton arguments from both parties.

16. The Tribunal heard evidence from the Applicants and Mr Hepburn and submissions from both parties.

17. There was insufficient time on 10 July for the Tribunal to deliberate on its decision. It therefore reconvened on 2 October in the absence of the parties to make its determinations.

<u>The Property</u>

18. The property in which Flats 1 and 2 are located, 37 Bolton Gardens, is described in the application as a Victorian house converted into 6 flats over five floors. It states that four of the six flats are shareholders in the freehold company which owns the property.

19. The Respondent's skeleton argument refers to 37 Bolton Gardens being converted into five flats, each subject to a long lease, with the leaseholders of Flats 3,4 and 5 being shareholders in the Respondent. In fact there are six flats, the sixth being Flat 37A.

20. The Applicants hold long leases of their flats which require their landlord to provide services and the tenants to contribute towards the costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

21. Under the terms of their respective leases the tenant of Flat 1 pays the freeholder 16.98% of sums recoverable by way of service charge and the tenant of Flat 2 pays 18.75%, excluding items relating to the lift and external staircase.

22. 37 Bolton Gardens has been managed by TLC Real Estate Services Limited since 30 September 2020, when it took over from the previous managing agents HLM Property Management.

23. No party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

<u>The issues</u>

24. In their statement of case the Applicants submitted that a number of the items included in the service charge accounts are not payable by the Applicants as they are not chargeable under the terms of the leases, were demanded more than 18 months after the costs were incurred or involve major works in respect of which there had not been consultation. The Applicants submit that if some of the sums challenged are recoverable the sums demanded are unreasonable.

25. The Tribunal did not address the year to September 2024 as there was no schedule for 2024 before it, service charge can only be demanded in arrears, and the application was made before the end of the year to September 2024. The Respondent conceded that the demand which they had served on the Applicants was not due from them.

26. The Tribunal has not considered the Applicants' requests, in their statement of case, that the Tribunal make certain orders that are outside the jurisdiction

of the first-tier property Tribunal, or outside the jurisdiction of this Tribunal given that the application before it is under s27A of the Act.

The Tribunal's decisions

27. The Tribunal reached its decision after considering the parties' oral and written evidence, the documents including the Scott Schedule referred to in that evidence, taking into account its assessment of the evidence and having regard to the submissions made to it.

28. The Scott Schedule refers to a number of items stated to have been resolved, conceded or credited back to the Applicants. The Tribunal has not considered these, or any items not specifically referred to at the Hearings as still outstanding. At the hearing the following items on the Scott Schedule were also conceded by the Respondent.

    - That the demand for 2024 was not due at the time demanded.
    - Insurance claims in 2021 in sum of £999.60.
    - Charge for communal door £10,946 in 2022
    - Charge of £180 (Gibbs) for maintenance in 2023

    The Applicants conceded that Fire and Safety measures in the sum of £636 incurred in 2023 were due.

29. This determination does not refer to every matter raised by the parties, in particular it does not refer to those issues raised which are outside the jurisdiction of this Tribunal or were raised following the Further Directions, raising issues that the parties were not asked by those Further Directions to address.

30. The determination does not refer to every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised, or documents not specifically mentioned, were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

31. The Tribunal has not considered any challenge by the Applicants to costs in the years to September 2021 and September 2023 where the Applicants' only challenge to the specific service charge cost is under s20B of the Act.

32. The Applicants made submissions as to the lack of transparency in the service charge demands or that sums were not sufficiently evidenced. The Tribunal has dealt with each challenged charge in turn and considered these submissions against each charge. Where an initial lack of transparency or lack of evidence has been subsequently addressed the Tribunal has based its decision on a basis of an analysis of the information before it.

33. The Tribunal has made determinations on the various issues as follows.

s20B of the Act

Years challenged

34. Mr Chen challenged the recoverability of costs in various years by reason of non-compliance with s20B of the Act.

35. The original Scott Schedule limited this challenge to the charges for the 18 months to September 2019. The February Statement then challenged recoverability for the year to 29 September 2022. In their statement of 12 May 2025 (the '**May Statement**') the Applicants then challenged recoverability for the years to September 2021 and September 2023. The Respondent invited the Tribunal to refuse permission for the Applicants to raise this issue for the first time in the May Statement.

The Tribunal's decision

36. The Tribunal limits its determination in relation to s20B to the period to September 2019 and to the challenge raised by the Applicants in its February Statement in respect of the year to September 2022. The Tribunal does not accept the further submissions challenging the costs in the year to September 2022 raised after the February Statement.

Reasons for the Tribunal's decision

37. At the initial hearing the Tribunal made it clear that the parties should not raise further issues other than those identified by the Tribunal in its Further Directions.

38. The Tribunal finds that the Applicants had sufficient information to raise any s20B issues that they wished to raise at the time they prepared the original Scott Schedule. The Tribunal have only permitted the challenge in relation to the costs in the year to September 2022 raised in the February Statement because the Respondent addressed this in their Reply of 9 June 2025.

39. It is not open to the Applicants to continually add issues to their application.

Need for accounts to be audited

The Tribunal's decision

40. The Tribunal finds that the Respondent did not have to serve audited accounts with the demands for service charge costs in order to comply with s20B of the Act.

Reasons for the Tribunal's decision

41. In the Applicants' skeleton argument of 7 July, the Applicants submitted that the landlord must issue a demand within 18 months of incurring the costs, or a valid s20B notice must be served during the 18-month period stating that the costs have been incurred during the financial period and that the tenant

will be required to contribute to them. Mr Chen submitted that the reference to written notification in s20(B)(2) of the Act meant notification by way of audited accounts and that the Respondent had not provided any audited year end account demands within 18 months of incurring the costs, and had therefore not served any valid s20B demand.

42. The Respondent referred the Tribunal to *Ground Rents (Regisport) Ltd v Dowlen* [2014] UKUT 144 (LC) ('the ***Ground Rents Case'***) as authority for the proposition that the date on which relevant costs are incurred for the purposes of s20B of the Act is the date on which the landlord received the demand from the supplier, or the landlord pays for the cost, whichever is the earlier. Ms Everson submitted that Mr Chen was incorrect that time runs until an audited statement of account has been prepared.

43. Ms Everson submitted that the correct interpretation is that in order to comply with s20B a valid demand accompanied by the wording required by s21B must be provided within 18 months. She referred the Tribunal to clause 2(b)(ii) of the leases, which require the tenants to pay '*within one month after receipt of written notification from the Lessor of the sum due from the Lessees under this clause…'* The leases do not require the provision of a certified account.

44. Ms Everson then referred the Tribunal to clause 7A of the leases which requires the lessor to keep an account of sums received and expended. She submitted that the requirement to provide accounts is not a condition precedent to the payment and that they may be provided after the service charge demand.

45. S20B(1) of the Act provides , *"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 <u>demand</u> for payment of the service charge is served on the tenant, then (subject to sub-section (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred."*

46. S20B(1) does not require the landlord to provide audited accounts, nor does clause 2(b)(ii) of the leases.

<u>Recoverability of the service charge demanded for the 18 months to September 2019</u>

<u>The Tribunal's decision</u>

47. The Tribunal determines on the evidence before it that there is no outstanding service charge for the period to September 2018.

48. In relation to the year to September 2019 the Tribunal finds that the Applicants may rely upon s27A (4)(a) of the Act and challenge the service charge paid.

49. The Respondent cannot recover relevant costs incurred before 29 March 2019.

50. In the demand served on 29 September 2020 any item for which the date in the Expense column of the Expense Details is before 29 March 2019 is irrecoverable, as are any items marked 'accrual'.

Reasons for the Tribunal's decision

51. At the hearing on 6 March there was no clear evidence before the Tribunal as to how the service charge for the period from March 2018 to March 2019 had been calculated and/or apportioned between the two service charge years to which it related. By the Further Directions of 18 March 2025, the Respondent was directed to provide further information to the Applicants as to the apportionment of the service charge levied for the period March 2018 to September 2019, and how any sums for the service charge year to September 2018 had been credited to the Applicants' service charge accounts.

52. Mr Hepburn gave evidence that when the Applicants disputed the inclusion of certain items in the service charge account which related to the service charge year to September 2018 the Respondent took the view that there was no merit in contesting the issue and credited Flat 1 with £827.44 and Flat 2 the sum of £913.70 and that this is evidenced in the Statements of Account for both flats. The Respondent conceded that the sums had been demanded more than 18 months after incurred.

53. In their statement of 12 May 2025 ("the **May Statement**") the Applicants stated that they received the service charge demand for the period 20 March 2018 to 29 September 2019 on 9 April 2020. In the May Statement the Applicants submit that the demand is not compliant with the terms of the lease because no year-end accounts were enclosed with it, and that the demand was based on budgets rather than expenditure. They submit that the first compliant service charge demand they received was received on 16 June 2021 and that consequently costs incurred prior to 26 December 2019 are not recoverable under s20B of the 1985 Act.

54. They reject the Respondent's claim that there was a formal demand enclosed in the letter of 29 September 2020.

55. In its statement of case of 9 June 2025, the Respondent conceded that the initial service charge demands issued by HLM Property Management ('HLM') were not compliant with the terms of the leases as they demanded service charge on account and the leases only contemplate recovery of costs already incurred, a mistake which they subsequently corrected. The Respondent accepts that the demand of 9 April 2020 was not compliant with the terms of the leases.

56. The Respondent submits that the costs incurred prior to 26 December 2019 are recoverable by reason of the Applicants having agreed or admitted that they were payable in their letter of 12 August 2021, so that by reason of section 27A (4)(a) of the Act the Applicants may not make an application in respect of the same. The Applicants challenged the payability of the costs incurred in the service charge year to September 2018 for being demanded

more than 18 months after the costs were incurred in a letter of 12 August 2021. They did not then challenge any of the costs incurred in the year to September 2019 on that ground.

57. The Respondent accepts that the Applicants' letter of 12 August 2021 requested further clarification on individual items of expenditure and reserved the right to further challenge service charges demanded for the period from 20 September 2018 to 29 March 2019. The Respondent submits that the reservation of rights, without further reference to S20B of the Act should be taken as referring to substantive costs only and not a challenge under s20B of the Act.

58. In the alternative the Respondent accepts that the HLM accounts were only served on the Applicants by a letter on 29 September 2020, which letter contained the necessary statutory wording, so that the Respondent could recover costs incurred after 29 March 2019 but not those incurred before.

59. The Respondent referred the Tribunal to *Ground Rents (Regisport) Ltd v Dowlen* [2014] UKUT 144 (LC) as authority for the proposition that the date on which relevant costs are incurred for the purposes of s20B of the Act is the date on which the landlord received the demand from the supplier. As these invoices are not available to the Respondent (being submitted to the previous managing agent) the Respondent invited the Tribunal to rely on the HLM service charge accounts for the period March 2018 to September 2019 in the bundle before the Tribunal believing that the date column in these refers to the date of the invoice in question.

60. In relation to the year to September 2019 the Tribunal finds that the Applicants may rely upon s27A (4)(a) of the Act. The Tribunal finds that the Applicants were not prevented from challenging the service charge by reason of their having paid the same or by their letter of 12 August, which expressly stated that the payments were made under protest, that the service charges were not admitted or agreed, that the payments they were then making should not be regarded as an admission or agreement, and that they reserved the right to challenge the charges in court or at a tribunal.

61. The Respondent conceded that the HLM accounts were served on the Applicants on 29 September 2020 so that the Respondent cannot recover relevant costs incurred before 29 March 2019, in the absence of any evidence that they had been notified to the Applicants previously, and no such evidence has been provided.

62. Paragraph 33 of the *Ground Rents Case* confirms that costs are 'incurred' within the meaning of s20B of the Act when the landlord becomes liable to pay them, and that that is normally when the bill in question is first presented for payment.

63. On the evidence before it the Tribunal finds that the demand of 9 April 2020 was an on-account demand and did not evidence that the landlord had been invoiced for the costs in question or paid them.

64. In absence of evidence to contrary the Tribunal accepts that the date in the column of the Expense Details for the period 20 March 2018 to 29 September 2019 in the demand served on 29 September 2020 refers to the date of the invoice and that that is the relevant date for the purposes of s20B. Accordingly any item the date of which is before 29 March 2019 is irrecoverable, as are any items marked as 'accrual' in the absence of any evidence that they had been demanded previously.

Recoverability of the service charge demanded for the year to 29 September 2022

65. The basis upon which the Applicants challenged the service charge costs under s20B in their February Statement was on the basis that they had received an invalid s20B notice dated 20 March 2023. They submitted that it was invalid because it did not include a figure for the costs incurred, the total of the landlord's costs, that the costs had been incurred during the specified relevant period and that the tenants would be required to contribute to such costs under the terms of their leases.

66. In response the Respondent submitted that the Respondent served the s20B notice because the service charge accounts for the year ending 29 September were not ready to be served by 20 March 2023 and it mistakenly believed that a s20B notice was necessary.

The Tribunal's decision

67. It was not necessary for the Tribunal to consider the validity of the s20B notice served on 20 March 2023.

Reasons for the Tribunal's decision

68. The Tribunal finds that the Applicants, in their May Statement, accept that a service charge demand was served on them on 21 September 2023. This is in the documents before the Tribunal and clearly sets out the costs for which the Applicants are liable, separated from those costs which are not recoverable from them, described as company costs or costs for which only Flats 3, 4 and 5 are responsible.

69. The Tribunal therefore finds that there was no need for the Respondent to have served a s20B notice on 20 March 2023.

Accountancy fees (excluding the year to 2019 which are resolved)

70. The Applicants challenged the following accountancy fees
    - Year to September 2020 £800
    - Year to September 2021 £720
    - Year to September 2022 £720
    - Year to September 2023 £780

71. The Applicants submitted that these fees were incurred in producing the freeholder's company accounts and that they are therefore not costs chargeable by way of service charge.

72. During the cross examination of Mr Chen, the Tribunal were directed to the invoices from HLH Accountants Limited in the bundle which referred to their services being provided in connection with the service charge accounts.

73. Mr Hepburn gave evidence that historically year end accounts were not split between costs chargeable to the freeholder and costs recoverable by way of service charge as the accountants would charge an additional fee if they were so split. It had been proposed in 2023 that in future the accounts would be split to avoid any suggestion that the applicants were incorrectly contributing to company costs.

74. Ms Everson submitted that the freeholder's company costs could be recovered under the leases, referring the Tribunal to clause 8(a) of both leases, which is as follows;

'IT IS HEREBY AGREED AND DECLARED that :- (A) The Maintenance Fund shall be expended by the Lessor at any time or times during the term hereof for the management maintenance upkeep and occupation of the Mansion and the amenities thereof in which connection the expression "maintenance management upkeep and occupation" shall include all such work things services amenities activities in relation either directly or indirectly to the Mansion as the Lessor may reasonably think fit to undertake or provide or cause to be undertaken or provided and shall include but not in any way be limited to the observance and performance on the part of the Lessor of its covenants or obligations hereinbefore contained and including the payment to any Surveyor or Surveyors Agent or Agents for the supervision and management of the Mansion and for the supervision and inspection on behalf of the Lessor of any repairs printing or other works of maintenance or repair which may from time to time be required to be done by or on behalf of the Lessor on or about the Mansion and also the payment of any wages or other remuneration which shall be paid by the Lessor to any servant who shall be employed from time to time by the Lessor on or about the Mansion either for the purposes of performing any of the duties and obligations of the Lessor hereinbefore referred to or any of them or otherwise for the upkeep and management or maintenance of the Mansion and also payment to the auditors or accountants of the Lessor in connection with the audit of the said costs or the preparation of the accounts A certificate in writing obtained by the Lessor from the auditors of the Lessor for the time being or any other chartered or certified accountants employed by the Lessor for this purpose as to the total amount of any sums hereinbefore mentioned which have been expended by the Lessor during any calendar year or other period therefore shall for the purpose of this clause be conclusive evidence that any amount or amounts so certified have been expended.'

Ms Everson submitted that this clause was sufficiently widely drafted to permit the recovery of the company costs. She submitted that the Respondent was under a duty to maintain the service costs at the lowest figure possible and that splitting the accounts would result in an increased fee.

75. Mr Chen submitted that the fee should relate to the matters referred to in the leases and that these did not refer to the recovery of the fees of the freehold company. He submitted that a reasonable fee for auditing the service charge account, based on previous charges (including the charge for the 18 month period to September 2019 of £500) would be in the region of £400-£500.

76. In her closing submissions Ms Everson cited *Chiswick Village Residents Limited v Southey* [2019] UKUT 148 (LC) (the '***Chiswick case'***) as authority for the proposition that where a company only existed for the purpose of administering, managing or running a building on behalf of its members the cost of doing so could be recoverable by way of service charge as being integral to the management of the building.

Tribunal's decision

77. The Tribunal finds that some element of the fees charged related to the freehold company's fees and that these are not recoverable by way of service charge under the leases.

78. A reasonable deduction from the accountancy fee in each year would be 20% of the fee charged to reflect the charges that are not part of the service charge.

Reasons for the tribunal's decision

79. The Tribunal finds that the facts here differ from those in the *Chiswick Case*. In that case all the tenants were members of the freehold company which is not the case here.

80. There was no evidence before the Tribunal as to the fee that would have been incurred exclusive of the freehold company fees. The charge incurred in the year to September 2019 (which was not before the Tribunal to determine) was set out in the Scott Schedule as £500. Allowing for inflation the Tribunal determines on a pragmatic basis that a deduction of 20% is appropriate for each of the ears challenged by the Applicants.

Management fees

81. The Applicants challenged the following management fees
    - Year to September 2019 £1,470
    - Year to September 2020 £2,513.61
    - Year to September 2021 £3,564
    - Year to September 2022 £3,792.95
    - Year to September 2023 £4,224

82. The Applicants challenged these sums in the Scott Schedule on the basis that they were unsubstantiated. Ms Chen gave evidence that it was only in October 2024 that they had received details of how the fees were calculated. They had

only received information for the years from 2022 onwards and had not received full details of the agreements with the managing agents. The Respondent responded that these were the fees agreed between the freehold directors and the respective management companies.

83. Mr Hepburn gave evidence that in 2022 the basis of charge had been £630 per flat, rising to through the years to £704, £780 and £803 and representing a 27% increase. He stated that the attraction of his company to the Respondent was its proximity to 37 Bolton Garden and the suitability of its staff's qualifications. They made quarterly visits and were available by e mail or by mobile. In his witness statement Mr Hepburn stated that the agreement with his company is renewed every year with the approval of the directors of the Respondent.

84. In support of a submission of poor management Ms Chen referred to a flood that had occurred in 2022 when there had been a poor level of response by the managing agent. Mr Hepburn stated that this was before his firm was the managing agent, as were the issues she raised about a broken door and badly fitted closer. Ms Chen also queried the management decision to replace temporary railings with more expensive ones.

85. Ms Everson submitted that the liability to pay the managing agents under the terms of the lease was not in dispute. She submitted that the current managing agents were the most appropriate to 37 Bolton Gardens, that the Respondent was not under an obligation to find the agent charging the least, and that charging for additional items outside the basic fee, as contemplated by the agreements entered into with TLC, was rare. Ms Chen also challenged the ability of the agents to charge extra fees.

<u>The Tribunal's decision</u>

86. The Tribunal determines that with the exception of one sum of £210 charged in 2019 the fees are recoverable.

87. The Tribunal finds that the fees charged are reasonable.

<u>Reasons for the Tribunal's decision</u>

88. The one account from 2019 is irrecoverable because it was demanded before 29 March 2019.

89. The basis of the Applicants' challenge of these sums was that they had not been substantiated. The Applicants have now seen the management agreements and the relevant accounts.

90. The Applicants have provided no alternative costs for the management charges, the majority of which are borne by the shareholders of the Respondent who therefore have an interest in ensuring that they are reasonable.

Bank Charges

91. The Applicants challenged the following bank charges
    - Year to September 2021 £66.24
    - Year to September 2022 £50.40
    - Year to September 2023 £214.13

92. The Applicants submitted that the Respondent was not entitled to make this charge under the terms of their leases. Mr Chen submitted that clause 8 is not a 'sweeper' clause. Under its terms a charge must relate to management. For costs to be recoverable by way of the service charge it must be explicitly referred to in the leases, with sweeping up clauses restrictively construed. In the absence of clear terms the *contra proferentem* rule applies. Mr Chan referred the Tribunal to the following cases
    Gilje v Charlegrove Securities Limited [2001] EWCA 1777
    Boldmark Limited v Cohen [1986] 1 EGLR 47
    Jacob Isbicki & Co Ltd v Goulding & Bird Ltd [1989] 1EGLR 236
    Cadogan & Anor v 27/29 Sloane Gardens Ltd & Anor [200] 2 EGLR 89

93. Mr Chen submitted that there should be no bank charge as other banks would not make such a charge.

94. Ms Everson submitted that clause 8(A) of the leases was sufficiently widely drawn to permit this charge, referring to the wording, *'the expression "maintenance management upkeep and occupation" shall include all such work things services amenities activities in relation <u>either directly or indirectly</u> to the Mansion as the Lessor may reasonably think fit….."*

<u>The Tribunal's decision</u>

95. The Applicants are liable for these charges.

96. The charges are reasonable.

<u>Reasons for the tribunal's decision</u>

97. The Tribunal finds that the wording of clause 8A can include bank charges which relate directly or indirectly to the management of the service charge, which is the position here.

98. There was no evidence before the Tribunal to substantiate Mr Chen's statement that other banks would not make such charges, or that they are unreasonable.

Cleaning of common parts

99. The Applicants challenged the following communal cleaning charges
    - Year to September 2020 702
    - Year to September 2021 596
    - Year to September 2022 702

- Year to September 2023 1,117.80

100. Ms Chen challenged the amount of time the cleaners claim to spend at 37 Bolton Gardens, saying that they generally spent no more than 15-30 minutes, once every two weeks, during which time they clean the communal areas including the external staircase adjacent to the ground floor flat roof. The Applicants referred the Tribunal to an alternative quote they had obtained online that showed that property management cleaning prices in London on average are £25 to £30 per hour per cleaner, including materials, cleaning team transport, labour, insurance and equipment. The Applicants submitted that the Respondent was charging an hourly rate approaching £50.

101. Mr Hepburn gave evidence that the cleaners are professionals who attend fortnightly at a cost of £54.83 per visit, which is a figure calculated according to an agreed specification of work, which included items other than those referred to by Ms Chen (eg light bulb changing and cleaning the steps leading to 37 Bolton Gardens) and was not based on an hourly rate. The cleaners provide photographic evidence of what they have done.

102. Mr Hepburn stated that the Applicants had not complained previously about the standard of cleaning, and Ms Everson submitted that the Applicants had provided no contemporaneous evidence of poor level of cleaning.

103. Mr Hepburn gave evidence that in the year to September 2023 the communal cleaning costs had been adjusted and split differently so that a greater percentage was charged to the internal cleaning (effectively 70:30) as against the items of cleaning for which the Applicants are not responsible. Previously this was 50:50. This had been done on instructions from the freeholder without reviewing how the work is split. The specification had not changed.

<u>The Tribunal's decision</u>

104. The total cost of the charge for cleaning the common parts is reasonable but should be apportioned, between that element to which the Applicants contribute and that to which they do not, 50:50 as it had been before the year to September 2023.

<u>Reasons for the Tribunal's decision</u>

105. The Respondent is entitled to place a contract where the charge is based on a job specification, not an hourly rate. No comparable evidence of a charge based on a job specification had been provided by the Applicants.

106. No evidence of the time Ms Chen claimed the cleaners spent at the Property was provided to the Tribunal, which notes that the Applicants had not previously complained to the Respondent's managing agents about the quality of the cleaning.

107. The Respondent had provided no justification of the change in the percentage charged to the internal cleaning recoverable, and there was no suggestion that the time spent on the respective elements of cleaning had changed.

General Repairs and Maintenance in year to September 2020

108. The applicants challenged the charge of £1814.00. Ms Everson referred to the accounts in the Respondent's bundle for 2021 which showed that the Applicants' share of these costs had been credited back to them except for their share of the charge of £153.60 charged by Matrix which related to the repair of a communal lobby door.

109. Mr Chen questioned the accuracy of the accounts.

The Tribunal's Decision

110. The Charge of 153.60 by Matrix is payable and reasonable.

Reasons for the Tribunal's decision

111. The Applicants provided no evidence to substantiate their challenge of this sum, which is the only element of the total sum of £1,814.00 before the Tribunal to determine.

Insurance

112. The applicants challenged the following insurance charges

• Year to September 2020	£3,760.23
• Year to September 2021	£4,098.33
• Year to September 2022	£3,892.95
• Year to September 2023	£6,332.72
A claims excess	£206.00
Williams Blackmore Insurance	£529.80
Barrett Corp & Harrington Ltd	£480

113. In the Applicants' Joint Witness Statement Mr Chen referred to an alternative quote for building insurance which he obtained priced according to the risks set out in the leases. In February 2022 this quoted a premium of £3,030.55 rising to £3,681.99 if one of the flats was used for AirBnB.

114. Mr Hepburn said in his witness statement that after the leaseholders of flats 3, 4 and 5 enfranchised they considered allowing short lets of their flats, which is permitted under their leases. They therefore placed insurance which covered this activity at an increase in the insurance premium of approximately £200 (10% of the premium). They subsequently decided not to have short lets and removed this risk from the policy.

115. Mr Chen stated that the 'holiday lets' risk had been insured for from 2018 to 2022 for the benefit of one flat and that flats 1 and 2 should not be obliged to contribute to this.

116. Mr Chen challenged that the insurance cover effected by the Respondent covered the following risks, machinery breakdown, officers' liability and legal expenses. He stated that the only machinery in the building is the lift, for which Flats 1 and 2 are not responsible. He submitted that the Applicants were being asked to pay a premium for risks not contemplated by the leases, and that TLC had been unable to clarify how the premium might be apportioned.

117. Ms Everson submitted that clause 6(1) of the leases permits the landlord to insure against other perils within the usual policy of the insurers.

118. Ms Everson directed the Tribunal to the Income and Expenditure Account for the year to September 2023 which showed that 'Insurance- Directors-Officers' was only charged to flats 37A and flats 3,4 and 5. However that is inconsistent with the actual policy which states that the premium of £6332 includes the insurance of Director's liability.

119. The premium of £6332.72 in the Scott Schedule for the year to September 2023 includes the Williams Blackmore Insurance charge of £529.80, being a revised policy cost following a rebuild cost assessment. The charge by Barrett Corp of £480 was for that assessment.

<u>The Tribunal's decision</u>

120. The wording of the leases entitles the freeholder to insure against short term lets, but not loss of rent from such lettings.

121. The Applicants have not been charged for Directors' insurance.

122. The Applicants should not be liable for any premium attributed to employer's liability or legal expenses relating to business aspect enquiries, jury service allowances witness attendance allowances or other legal claims against the insured.

123. The insurance premiums for the three years to September 2022 are reasonable.

124. The Insurance premium for the year to September 2023 is not reasonable. A more reasonable premium would have been in the region of £4,900.

125. The revaluation charge of Barrett Corp & Harrington of £480 is reasonable.

126. The Applicants are liable to contribute to any excess following a claim under the insurance policy.

Reasons for the Tribunal's decision

127. Clause 6(1) of the leases, as amended by their respective deeds of variation, contain a covenant by the landlord to insure, *against loss or damage by fire………. and other peril time within the usual comprehensive policy of the insurers…'*

128. The leases permit the tenants to underlet so that it is not unreasonable for the freeholder to insure against that possibility. However, insurance against loss of rent from such sublettings should be a risk covered by the individual tenant so subletting. It is not within the risks contemplated by the leases.

129. The Tribunal notes from the service charge accounts in the bundle for the years to September 2019, 2021 and 2022 that Directors' insurance was not charged to flats 1 and 2**.** There is no evidence before it as to the year to September 2020 but it has no reason to presume that this risk was treated differently in that year. There was a separate head of charge for Director's insurance in the Income and Expenditure Account for the year to September 2023, which was not charged to the Applicants, and this is not one of the risks covered by the 2023 policy.

130. Having regard to the unchallenged insurance premium of £3,892.20 for the year to September 2019 and taking into account inflation the Tribunal finds that the premiums charged for the three years to September 2022 are reasonable.

131. Taking by way of example the insurance policy for the year to 28 March 2021 (£4,058.33) this did not cover employer's liability or machinery breakdown. An element of the premium for that and the previous two years may have been attributable to property owners' liability and/or legal expenses but there is no evidence before the Tribunal as to how much might be so attributed and the premium does not seem to have been inflated unreasonably to cover these risks.

132. The insurance charged in the year to September 2023 included insurance for contents of common parts for £33,750, three years loss of rent at £1,716,000, employer's liability of £10,000,000 (while not giving any details of employees) and legal expenses of 1,000,000. The Tribunal finds that the value attributed to the landlord's contents (which had doubled) and insurance of these risks inflated the premium charged unreasonably. The premium should have been more in line with the premiums for the previous three years. With an allowance for inflation and before taking into account the revaluation undertaken that year (which increased the premium by £529.80) the Tribunal find a reasonable premium for that year to be £4,400 to which should be added the additional premium by reason of the revaluation, giving a total of £4,929.80.

133. In the absence of any specific challenge of the same the Tribunal find the cost of the revaluation by Corp & Harrington Limited to be reasonable.

General repairs and maintenance in year to September 2021

134. The applicants challenged a charge of £217 in the year to September 2021 on the grounds that it was expenditure which only benefitted Flats 3 and 5.

135. Mr Hepburn gave evidence that this cost was for work to the communal water tank to which access is obtained through Flat 5

The Tribunal's decision

136. The cost of work to the communal water tank is a cost recoverable by way of service charge.

Reasons for the Tribunal's decision

137. Mr Chen did not challenge Mr Hepburn's explanation. The Tribunal finds the cost is recoverable under clause 8(A) of the leases.

Land registry charge of £27 in year to September 2021

138. The Tribunal accepts the Respondent's explanation that this cost was required to correct leaseholders' names at the Land Registry.

Charge by Proxima UK Ltd in year to September 2022 for £258

139. The Applicants challenged the reasonableness of this charge for replacing an electrical time delay switch on the basis that a fault remains. Mr Hepburn gave evidence that the current fault is a different issue, which was not challenged.

140. The Tribunal accepts Mr Hepburn's explanation, and on the evidence before it finds the cost of £258 to be reasonable.

Drains and gutter cleaning in year to September 2023

141. Of the total costs of £2258.80 the Applicants did not challenge the invoice of A.B.Draintech of £260. Mr Hepburn confirmed that Invoices GL 96, 89 and 95 related to Flat A, should not have been included as a service charge cost and should have been recredited to the Applicants.

142. Ms Chen challenged the invoice of Vertical Bright Rope Access Ltd of £924 on the ground that it was not necessary to use abseiling to clear the drains and gutter, and that it could have been possible to use an extension pole. Mr Hepburn stated that the work could only be carried out using an abseiler or scaffolding. The Tribunal was referred to an aerial photograph of 37 Bolton Gardens in support of Mr Hepburn's statement.

143. Ms Everson submitted that Ms Chen was not an expert.

The Tribunal's decision

144. The Tribunal limits its decision to the reasonableness of the costs incurred by Vertical Bright Rope Access Ltd and finds these costs to have been reasonable.

Reasons for the Tribunal's decision

145. The Applicants did not challenge the cost of employing an abseiler. They challenged the need for an abseiler.

146. Neither person giving evidence to the Tribunal was an expert, but Mr Hepburn is a professional managing agent and the Tribunal is prepared, on the photographic evidence before it, to accept that scaffolding or an abseiler was required.

Electricity to the common parts in year to September 2023

147. The Applicants challenged the reasonableness of the charge of £1255.97. The amount was initially challenged by the Applicants because they had not seen any supporting invoices. Having seen the invoices they submitted that the charges were much higher than previous bills. Mr Chen said that he considered that a reasonable charge would be in the region of £40 per month.

148. Mr Hepburn stated that the invoices, which are in the bundle, evidence the actual charges levied by the electricity company for the electricity used for the lights in the communal areas, the external lights and the intercom. He stated that there was a separate invoice for the electricity used in connection with the lift. The Scott Schedule states that any 'overspend' would be reflected in future credits.

149. Ms Everson submitted that Mr Chen's suggestion was not supported by comparables. Ms Everson rejected Mr Chen's suggestion that the invoices might include sums carried forward from previous years as there was no evidence to support this.

The Tribunal's decision

150. Based on the limited number of legible invoices provided, the Tribunal considers that a reasonable annual charge for the year to September 2023 is £530.

Reasons for the Tribunal's decision

151. The Tribunal accepts Mr Hepburn's evidence that there is a separate invoice for the lift.

152. The Tribunal finds that the invoices are evidence of the actual amount of electricity used in the common parts, but they include charges carried forward for under payment.

153. The income and expenditure accounts show that the sum charged in the year to September 2021 was £348, and in the year to September 2022 £527. The actual charge for the year to September 2023 evidenced by the invoices is similar to the level of charge in 2022, and it is on this that the Tribunal has based what it finds to be a reasonable charge.

154. In the absence of evidence as to when the underpayments occurred the Tribunal finds that it is possible that they are undercharges in respect of a period more than 18 months before the sum was included in the service charge and that there has been no s20B notice given as to the possibility of the sums being charged.

<u>General repairs and maintenance in year to September 2023</u>

155. The Applicants challenged the totality of £3467.76 on the basis that the demand was served more than 18 months after the costs had been incurred. The Applicants only challenged the reasonableness of the O'Shea and Proxima invoices.

156. In respect of the invoices for a total of £475 (£295 + £90 + £90) from S O'Shea Glazing & Locks, Ms Chen stated that the work (reglazing a front panel with toughened glass) was necessitated by actions of the occupier of Flat 4 and it should be that flat's responsibility.

157. The Applicants submitted that the invoice from Proxima £641 was a high cost for lights. Mr Hepburn gave evidence that this was for their replacement.

<u>Tribunal's decision</u>

158. The Tribunal finds the charges incurred by S O'Shea Glazing and Locks and Proxima to be reasonable.

<u>Reasons for the Tribunal's decision</u>

159. The Tribunal is not having regard to any submission in relation to s20B in respect of this year, but in passing notes that the service charge requests in respect of this year are dated 8 December 2023.

160. There was no evidence before the Tribunal that the work undertaken by O'Shea Glazing & Locks was necessitated by Flat 4; this is conjecture by Ms Chen. The Applicants provided no alternative to the estimate for the lights.

161. On the basis of the evidence before it the Tribunal finds these charges to be reasonable.

Health & Safety in the year to September 2023

162. The Applicants challenged the charge of £468 for a Health & Safety Fire Risk Assessment on the ground that they were not liable to pay for this under the terms of their leases. The amount was not challenged.

Tribunal's decision

163. The Tribunal finds that the Applicants are liable to pay this charge and that it is reasonable.

Reasons for the Tribunal's decision

164. The Tribunal finds that this cost falls within clause 8(A) of the leases, namely *"maintenance management upkeep and occupation" shall include all such work things services amenities activities in relation either directly or indirectly to the Mansion as the Lessor may reasonably think fit to undertake or provide or cause to be undertaken or provided.'* The Tribunal finds that it is reasonable for the landlord to undertake a Health and Safety Fire Risk Assessment.

Fire alarm installation in the sum of £8,696.16

165. Mr Chen submitted that this was not a service charge item being an upgrading of the freehold asset, that the demand had been made more than 18 months after the cost was incurred and that the cost was not reasonable.

166. Mr Hepburn gave evidence that the alarm was installed following the fire risk assessment, the previous system having been inadequate. He denied that the system was unduly sophisticated, it was the standard system which his company used in all the blocks they manage. He confirmed that consultation under S20 of the Act had been undertaken before the system was installed. He stated that the system was for the benefit of the leaseholders.

The Tribunal's decision

167. The Tribunal finds that the Applicants are liable to pay for the fire alarm installation under the terms of their leases, and that the cost is reasonable.

Reasons for the Tribunal's decision.

168. The Tribunal does not find this to be an 'upgrade of the freehold asset' as submitted by the Applicants. It falls within the amenities for the building contemplated by clause 8A of the leases. Further the landlord is under an obligation to insure and the installation of a modern fire alarm will be a recommendation of the insurers.

169. In the absence of any evidence to the contrary the Tribunal finds that the system is not unduly sophisticated nor its cost unreasonable.

Railing installation in the year to September 2023 at a cost of £3,180

170. Mr Chen submitted that the temporary railings charged to the service charge in 2022 were sufficient and had satisfied the insurers. The installation of heritage railings was neither repair nor maintenance but an upgrade of the freehold asset.

171. Mr Hepburn said the temporary railings were not a long-term solution in a conservation area.

172. Ms Everson submitted that the Applicants had been given notice under S20 of the Act of the intention to supply and install two fixed heritage railings on both sides of the main entrance portico and the Applicants had not objected following the notice. The Tribunal were referred to an e mail of 11/04/2023 as evidence that the replacement of the temporary railings was a requirement of the insurers.

The Tribunal's decision

173. The installation of the heritage railings was not necessary and the cost of installing them is unreasonable.

Reasons for the Tribunal's decision

174. From the photographs in the bundle the Tribunal finds that the temporary railings fulfilled the requirement of the insurers to prevent a fall into the basement area. There was no need to replace the temporary railings with the heritage railings.

TLC claim for £269.28

175. This was a charge by TLC for repairing a blocked pipe which was causing water ingress, not an insurance claim fee as stated in the Scott Schedule.

176. Mr Chen submitted that the Respondents were not entitled to claim this under the terms of the lease.

The Tribunal's Decision

177. A charge for unblocking a pipe is a charge recoverable by way of service charge under the terms of clause 8A of the Leases and the charge is reasonable.

Reasons for the Tribunal's Decision

178. The Applicants did not challenge the amount of this invoice but submitted that it was not a charge covered by clause 8A of the Leases. The Tribunal

finds on the basis of the description of the work carried out on the invoice that it is for work which is recoverable under the terms of the leases. It is odd that it appears to be a self-invoice issued by the Applicant's managing agent but that does not make it irrecoverable.

179. In the absence of any challenge as to the reasonableness of the amount the Tribunal finds the sum to be reasonable.

Applications under s.20C and paragraph 5A

180. In the application the Applicants applied for an order under section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 of the 2002 Act.

181. In the circumstances the Tribunal determines that it is just and equitable for an order to be made under s20C of the 1985 Act, so that none of the costs of the proceedings incurred by the Respondent in connection with the proceedings be added to the service charge. Failure by the Respondent to provide information/ invoices necessitated this application.

182. The Tribunal also determines, for the same reasons, that it is just and equitable for an order to be made under paragraph 5A of Schedule 11 of the 2002 Act that none of the costs incurred by the Respondent in connection with the proceedings be charged to the Applicants as an administration charge under the leases.

Name: Judge Pittaway Date: 18 November 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).