



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

Case Reference : HAV/00ML/LSC/2025/0692

Property : Beves House, Dyke Road,
Brighton, BN1 3GS

Applicants : Mr Emile Ryan and others (lessees)

Representative : In person

Respondent : Clarion Housing Association (landlord)

Representative : Mr A Carter of counsel, instructed by
Trowers and Hamlins LLP

Type of Application : Liability to pay service charges under s.27A
Landlord and Tenant Act 1985

Tribunal Members : Tribunal Judge M Loveday
Mr A Crawford FRICS
Ms T Wong

**Date and venue of
Hearing** : 28 January 2026, Havant Justice Centre

Date of Decision : 2 February 2026

DETERMINATION

Introduction

1. This is an application under s.27A Landlord and Tenant Act 1985 (“LTA 1985”) for determination of liability to pay service charges.
2. The matter relates to Beves House, Dyke Road, Brighton, BN1 3GS, which comprises a purpose-built block of 14 flats.
3. The Applicants listed in Appx.A are shared ownership lessees of flats within the block. The Respondent housing association is the landlord.

The Lease

4. The bundle includes a sample lease of Flat 10 dated 22 May 2014 (“the Lease”) which demised the flat for a term of 125 years from 1 June 2014.
5. The material terms of the Lease appear in Appx.B. But in essence, the lessee is under three material obligations to pay sums to the Respondent:
 - (1) Under clause 3.3, the tenant must pay “outgoings”. These are defined in Sch.9 as “all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property”.
 - (2) There are conventional service charge provisions. Under clause 7.1, the tenant must pay a monthly “Service Charge” by equal payments in advance. The words “Service Charge” are defined in Sch.9 as “the Specified Proportion of the Service Provision”. Under the particulars to the Lease, the “Specified Proportion” is “A fair and reasonable proportion to be determined by the Landlord from time to time”. Under Sch.9, the “Service Provision” means “the sum calculated in accordance with Clause 7.3 (How calculated), Clause 7.4 (Service Provision)” and Clause 7.5 (Adjustment to actual expenditure)”. The relevant costs that may properly be included in the service charge appear in clause 7.4 and Sch.9 provides that the service charge Account Year runs to 31 March. Clause 7.5 includes a provision for certification

of actual expenditure at year end and for the lessee to pay or be allowed a credit of any excess or deficiency.

- (3) Under Clause 7.1, the tenant must pay an “Estate Charge”, again payable monthly in advance. Sch.9 defines the words “Estate Charge” as “all sums payable under the Landlord’s title including but not limited to the Transfer (so far as the same are attributable to the Premises).

The “Transfer” in Sch.9 is a reference to the Deed of Transfer mentioned below.

The application

6. The application was received by the Tribunal on 13 May 2025. It seeks a determination of liability to pay service charges of £23,779.75 said to be payable in the 2021-22, 2022-23 and 2023-24 service charge years. Directions were given on 1 August 2025. A CMC took place on 24 September 2025, when it was established the dispute related only to charges made in 2023-24 and 2024-25 estimated charges for 2025-26. Further Directions were given on 25 September 2025. The Applicants relied on a statement of case dated 11 November 2025 and a further (undated) Reply. The Respondent relied on a statement of case dated 4 December 2025.
7. The application was heard on 28 January 2026 at Havant Justice Centre. Mr Emile Ryan (Flat 10) represented the Applicants and confirmed he had written instructions to represent all of them. The Respondent was represented by Mr Andrew Carter of counsel, instructed by Trowers & Hamlins LLP. Counsel called Mr Haroon Bashir and Ms Victoria Batemen as witnesses, both of whom provided written statements. Mr Ryan and Mr Carter relied on skeleton arguments, albeit that the Respondent’s skeleton arrived on the morning of the hearing. The Tribunal is grateful to Mr Ryan and Mr Carter for their helpful submissions and for the witnesses for attending to give evidence.

Material facts

8. The issues concern charges for “personal heating and hot water” included in service charge certificates for the 2023-24 and 2024-25 service charge years and estimated service charges for the 2025-26 service charge year. The “personal heating and hot water” charges for each flat in each year are set out in a table in the hearing bundle, the material extracts from which are also set out in Appx.A. For example, Mr Ryan challenges for Flat 10 charges of £2,107.50 (2023-24) and £1,345.45 (2024-25) and interim charges of £3,387.60 (2024-25).

9. The background largely appears in a previous decision of the Tribunal on 11 November 2021 (CHI/00ML/LAM/2020/0017). Beves House forms one of six blocks on the Royal Alexandra Quarter, which is a small estate built by Taylor Wimpey on the site of a former children’s hospital. The blocks are served by a Combined Heat and Power plant (“CHP”) located in the underground car park directly below Cawthorne House. This supplies hot water and space heating to all flats via Heat Interface Units (“HIU”) in each flat. Each HIU measures the fuel consumption for the flat, and meter readings are taken remotely on a monthly basis. The energy supplier prepares bills for each flat and (in the case of Beves House) passes them onto the Respondent for payment.

10. The Respondent’s statement of case explains the freehold of Beves House was transferred to Affinity Sutton Homes by a Form AP1 Deed of Transfer dated 20 December 2021 (“the Transfer”). The Respondent is Affinity’s successor following society amalgamations. The freehold owner of the rest of the Estate is now RMB 102 Ltd. Counsel explained the obligation for Beves House to contribute to the costs of the CHP is contained in a covenant set out in panel 12 of Transfer Deed. The Deed provides for an estate management company, which was originally Chamonix Estates, but which is now RAQ Estates Management Ltd (“the Manco”). The covenant requires the Respondent to pay the Manco a Maintenance Charge, described as:

“a fair and reasonable proportion of the sum equal to the total amount spent or to be spent by the Managing Agent on the matters specified in Part II of the Fifth Schedule *so far as the same relate to the Property* as estimated or adjusted in accordance with Part I of the Fifth Schedule divided by the number of dwellings within the Estate benefiting or intended to benefit from the rights and covenants in relation to the Managed Facilities similar to those contained in this Transfer”

Clause 11 of Pt.II of Sch.4 to the Transfer includes an obligation by the Manco “to procure the production and supply of heat and hot water to the Property”. In short, the Transfer requires the Respondent to pay the Manco for heating and power provided by the CHP system. But the transfer gives the Respondent no direct control over the Manco’s choice of energy suppliers to operate the CHP.

11. The Respondent explained that before 2024-25, the Manco had employed SEFE Energy to operate the CHP. In 2024-25 and 2025-26, the Manco appointed SSE Energy as energy supplier. The re-tendering exercise was conducted by consultants Inenco, and there are tender appraisal documents in the hearing bundle. In accordance with the above scheme, the energy suppliers (or their agents) provided the Respondent with separate monthly invoices for energy consumed in each flat at Beves House, based on remote readings taken from the HIU meters. For example, the bundle includes monthly invoices for July 2024 to March 2025 sent by the agents Spot On Energy to the Respondent. The statements refer to a heating “standing charge” assessed at £0.23337 per unit + VAT, and a heating “usage charge” assessed at £1.1300 per unit + VAT.
12. Mr Bashir explained there was a misalignment of the service charge Accounting Year under the Lease (“a year ending on 31 March”) and the accounting period under the Transfer (which now runs from 1 January to 31 December). The Respondent therefore had to apportion the invoices rendered to it by the energy suppliers between two different service charge years. But in any event, Ms Bateman explained the Respondent’s managing agents used the monthly statements to calculate the personal heating and hot water charges for each flat. The charges were then

included as line items in estimated service charge figures and annual certificates of service charges. Unlike the other heads of cost shown in the service charge statements (which varied according to the costs incurred on the whole of Beves House) it is not disputed the personal heating and hot water charges varied according to energy consumed in each flat. But both the personal heating and hot water charges and the remaining Beves House costs were treated as service charges by the Respondent's managing agents. They demanded monthly payments in advance from each lessee for all these costs and at end of year there was a balancing service charge exercise for each flat.

Jurisdiction

13. At the start of the hearing, the Tribunal raised the issue of jurisdiction with the parties. Mr Ryan suggested the issue of jurisdiction had specifically been raised at the 24 September 2025 CMC, and Judge Dobson had allowed the matter to proceed to hearing. But there is no record of any formal decision about jurisdiction in the 25 September 2025 directions. Neither is it clear whether the judge formally found the Tribunal had jurisdiction or merely let the issue go to a final hearing.
14. The Tribunal's jurisdiction is conferred by s.27A LTA 1985 and is limited to determination of liability to pay a "service charge". The question is therefore whether the personal heating and hot water charges are service charges within the meaning of s.18(1) LTA 1985. This reads:

“18 Meaning of “service charge” and “relevant costs”.

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.”

15. The starting point here is what is “required by the tenancy agreement”: see the recent decision of the Upper Tribunal (Lands Chamber) in *Barton v Platform Housing Ltd* [2025] UKUT 369 (LC) §35. In interpreting the Lease provisions, the Tribunal applies the well-known principles of interpretation helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619 §15-23.
16. The Applicants were not legally represented, but the Tribunal explained the material Lease covenants and the statutory provisions above. Mr Ryan submitted the costs incurred by the Respondent and paid to the CHP energy supplier fall within clause 7.4(d) of the Lease. They are “(d) Outgoings assessed, charged, imposed or payable on or in respect of the whole of the Building or in the whole or any part of the Common Parts”. As to s.18 LTA 1985, the personal heating and hot water charges are “payable ... for services” under subsection (1)(a), since they are a payment for energy services. The charges also meet the requirements of subsection (1)(b), because they vary according to the relevant costs incurred by the Respondent for each flat. The Tribunal therefore has jurisdiction to determine liability to pay these charges under s.27A LTA 1987. The Applicants also pointed to the fact the Respondent has throughout treated the “personal heating and hot water charges” as service charges, has demanded payment for them under clause 7 of the Lease, and has included them in demands for payment described as service charges.
17. Mr Carter suggested a different contractual route. The Respondent’s obligation to pay sums to the Manco for heating and power arise (he submitted) under the covenant in the Transfer. It is therefore an “Estate Charge” under clause 7.1, which is subject to the same service charge machinery for payment of interim and balancing charges that appears in clauses 7.1 and 7.5 of the Lease. He also accepts the charges were “payable ... for services” under s.18(1)(a) LTA 1985. But he disagrees with the Applicants about s.18(1)(b) LTA 1985. The charges levied on the lessees does not “vary according to the relevant costs”. They vary according to the energy usage in each flat, as measured by the HIU relevant meter and shown in the Spot On Energy invoices.

The Tribunal's decision

18. The Tribunal does not agree with either party about the contractual route to liability.

(1) As to the suggestion the personal heating and hot water charges involve costs that are “Outgoings” under clause 7(4)(d), it is true the sums paid by the Respondent to the Manco (or its agents) fall within the Sch.9 definition of “Outgoings”. But the Respondent’s liability to pay the Manco is not “in respect of the whole of the Building”. It involves distinct and separate liabilities to pay sums in respect of parts of the Building, namely individual flats. So much is clear from the Spot On Energy demands. Neither do the “personal heating and hot water charges” relate to the Common Parts of Beves House. Communal electricity is paid for through the conventional service charge machinery, and not the personal heating and hot water charges: see for example Certificate of Actual Service charges dated 20 September 2023.

(2) As to the Respondent’s submission the “personal heating and hot water charges” are “Estate Charges” under clause 7.1, the argument is superficially attractive. Schedule 9 to the Lease defines the “Estate Charge” by reference to “sums payable under ... the Transfer”, and the Respondent’s liability to pay the Manco arises under the covenant in the Transfer. But grammatically, this interpretation does not work. Firstly, the Sch.9 “Estate Charge” definition involves a liability by the landlord under the Lease to pay something to a third party (such the Manco). But clause 7.1 involves a liability by the tenant under the Lease to pay something to the landlord. The tenant under the Lease cannot possibly assume liability to discharge the landlord’s liability to pay sums to the Manco under the Transfer. Secondly, Mr Carter’s suggestion that the Estate Charge is payable in the same way as the Service Charge under clauses 7.2 to 7.5 does not work. These clauses expressly apply only to the “Service Provision”, which is a component of the “Service Charge”: see Sch.9 definitions. Thirdly, neither can one imply words into clause 7.1 that clauses 7.2 to 7.5 apply to an Estate Charge. One essential

element of a service charge is the apportionment applied to the landlord's relevant costs to arrive at the service charge. The Lease does not explain the apportionment to be applied to the landlord's costs to arrive at the Estate Charge. It does not, for example, adopt the Specified Proportion as an apportionment mechanism. Indeed, the whole point of the charges in this case is that they do not follow the apportionment in the Lease, they are instead "personal heating and hot water charges" that depend on energy consumption in each flat. Finally, clause 7.4 plainly cannot apply to the Estate Charge. This deals entirely with the landlord's obligations under the Lease.

19. Ultimately, the Tribunal considers the better route to recovery of the "personal heating and hot water charges" is under clause 3.3.2 of the Lease. It agrees with the Applicants that the individual liability to pay for energy consumed in the flat is one of the "Outgoings", as defined by Sch.9. The obligation to refund the landlord its Outgoings in clause 3.3.2 includes an obligation to do so in relation to Outgoings that relate to "the Premises" (i.e., the flat). This approach overcomes the practical problems with the interpretation of both provisions relied on by the parties above.
20. This clears the way for a consideration of s.18(1) LTA 1985 itself. It is common ground the personal heating and hot water charges satisfy the test in s.18(1)(a). But does the "whole or part of" them "vary according to the relevant costs"? A not dissimilar issue arose (as a subsidiary point) in the *Barton* case, but the covenants there were not the same as in the Lease, and in any event, *Barton* was not referred to in argument. Ultimately, the Tribunal finds the personal heating and hot water charges do not "vary according to the relevant costs". Parliament clearly had in mind a conventional service charge machinery, where communal costs for a building or estate (defined by s.18(2) as the "relevant costs") are divided between lessees according to the apportionment or apportionments specified in their leases. The only 'variable' is therefore the overall quantum of the "relevant costs". By contrast, in this case the costs which are passed on to the lessees vary according to the HIU meter readings. There is no apportionment of these bills under the Lease. The lessees each pay 100% of the heating and hot water charges attributable to their flat

under clause 3.3.2 of the Lease, not an apportioned contribution of the landlord's relevant costs under clause 7.1 of the Lease.

21. The Tribunal therefore concludes the personal heating and hot water charge in each year is not a "service charge" within the meaning of s.18(1) LTA 1985. It has no jurisdiction to determine liability to pay under s.27A LTA 1985.
22. However, given the detailed submissions of the parties, and in case the matter proceeds further, the Tribunal sets out below its findings in relation to the substantive arguments in the application.

Payability and reasonableness of service charges

23. The Applicants' case is that the 2023-25 costs were not reasonably incurred under s.19(1)(a) LTA 1985 and that the interim charges for 2025-26 were not reasonable in amount under s.19(2). Although the test under these two statutory provisions is not the same, the parties only addressed the Tribunal in relation to s.19(1)(a).
24. Mr Ryan argued the costs were not reasonably incurred:
 - (1) For 2023-24, the Applicants paid an effective rate of 46p per heat unit (17p per kwh) for the provision of heating and hot water services. These figures had been derived for the Spot on Energy invoices. The average non-domestic rate they would have expected to pay was an effective per heat unit cost of 18p (6.5p per kwh). The average domestic rate under the Energy Bills Discount Scheme ("EBDS") for Heat Networks they would have expected to pay was an effective per heat unit cost of 18p (7p per kwh).
 - (2) For 2024-25, they paid an effective rate of 23p per unit (9p per kwh). The average non-domestic rate they would have expected to pay was 11p per heat unit (4p per kwh). The average domestic EBDS rate they would have expected to pay was an effective per heat unit cost of 16p (5.8p per kwh).

The Applicants were being asked to pay considerably more than the market rate, and the charges should be limited to what was reasonable. The Respondent had

failed to take an active role in providing the relevant services. For example, they failed to take up a position on the Manco's Board, or to scrutinise and challenge its costs before passing them on. Moreover, there was no evidence of any tender process before 2024.

25. In oral submissions, Mr Ryan explained the non-domestic unit rates were derived from quarterly prices for gas purchased by non-domestic consumers given in Table 3.4.1 of the government statistical publication: *Gas and electricity prices in the non-domestic sector* (www.gov.uk/government/statistical-data-sets/gas-and-electricity-prices-in-the-non-domestic-sector). The domestic rates were taken from Energy Price Guarantee regional rates for gas in the Southeast of England, again published by the government. The Applicants accepted they had no comparable figures for CHP systems. Mr Ryan submitted that under s.19 LTA 1985, the Respondent was under a duty of care to obtain the best possible rate available in the market. In closing, he explained the case was about reasonableness and transparency. The Respondent was simply passing on expenditure to the lessees without exercising any restraint on the costs.

26. For the Respondent, Counsel focussed on four main points:
 - (1) The s.19(1)(a) LTA 1985 test advanced by the Applicants was too strict. There was no duty of care to obtain the best possible price in the market – quite apart from the fact the Manco (not the Respondent) controlled the costs. The test was as set out in *LB Hounslow v Waaler*.
 - (2) The Applicants' case was essentially based on an analysis of government data. The difficulty was that there was no comparable data for commercial supplies, and more particularly no comparable data for CHP costs.
 - (3) There had in any event been a proper tender process supervised by an independent energy consultant. Counsel referred to the 2024 exercise which showed that SSE's unit day rate was £7.59. Three quotes were received during the tender, with day rates ranging from £5.10 to £5.90. This represented a 29.44% reduction. Although there no copies of previous tender exercises

in the papers, Ms Bateman's statement §18.2 suggested the Manco said it had tendered energy costs prior to 2024.

(4) In essence, the challenge was misconceived. There were other avenues to challenge energy costs, such as the Energy Ombudsman.

The Tribunal's decision

27. The leading authority under s.19(1)(a). is indeed *LB Hounslow v Waaler* [2017] EWCA Civ 45, a copy of which was before the Tribunal. But the principles in *Waaler* have very recently been affirmed and summarised by the Court of Appeal in *Spender v FIT Nominees* [2025] EWCA Civ 1578 at [21]:

“(1) The overall purpose of s.19 is to ensure that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, or (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard (§17, citing *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 , at §42).

(2) The landlord had a discretion to carry out improvements. Where a contract empowers one party to make discretionary decisions which affect the rights of both parties, the law recognises that the exercise of discretion gives rise to a potential conflict of interest and restricts the exercise of discretion to what is rational (§20).

(3) A test of rationality applies a minimum objective standard to the decision maker's thought processes, importing a requirement of good faith, a requirement of some logical connection between the evidence and the ostensible reasons for the decision, an absence of arbitrariness or of capriciousness or perversity. Reasonableness, on the other hand, is an external, objective standard applied to the outcome of the decision maker's thoughts or intentions (§21-22, citing *Hayes v Willoughby* [2013] 1 WLR 935 , per Lord Sumption at §14, *Socimer International Bank Ltd v Standard Bank London Ltd* [2008] Bus LR 1304 , per Rix LJ at §66 and *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661).

(4) The rationality test applied both to a landlord's discretion to effect improvements and to its choice as between different methods of repair (§23).

(5) If the landlord incurs costs that are not justified by applying the test of rationality, then they fall outside the scope of the contractually recoverable service charge altogether. The 1985 Act must have been intended to provide protection against costs which, but for its operation, would have been contractually recoverable. It follows that the statutory test in s.19 (whether the relevant costs are “reasonably incurred”) imposes more than a rationality test (§25).

(6) Part of the context for deciding whether costs have been reasonably incurred is the fact that, in principle, the cost is to be borne by the tenants, reinforced by the fact that no cost is a relevant cost unless it is part of an amount payable by a tenant (§26 and §27).

(7) The argument of the landlords that the focus of inquiry was solely on the landlord’s decision-making process was rejected (§28 to §33). Whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome (§37).

(8) The same legal test applies to all categories of works falling within the scope of ‘service charge’ in s.18 of the 1985 Act, but that does not mean that the legal and factual context applicable to one category of works rather than another can be ignored. In particular, there is a real difference between works which a landlord is obliged to carry out, and work which is an optional improvement (§42).”

Spender also involved a detailed consideration of the burden of proof in s.19 cases at [89]:

“Pulling the strands from these authorities together, it seems to me that the position is as follows:

(1) In a case where a landlord claims payment of service charges in court proceedings, it has the legal burden of proof.

(2) Irrespective of where the legal burden lies, however, the courts have developed a pragmatic approach that a landlord will not, without more, have to justify each and every element of service charge claimed from the tenant. In the first place, it is for the tenant to identify in its pleading those elements of

the costs claimed which it says were unreasonably incurred and, second, the landlord will only be required to prove that particular elements of costs claimed as service charge were reasonably incurred if the tenant is able to establish a *prima facie* case that they were not reasonably incurred.

(3) Given this pragmatic approach, it probably does not matter where the legal burden lies in the case of an application under s.27A. It is clear from *Yorkbrook* and *Enterprise* (as endorsed in *Gell*) that on such an application the critical questions are: (1) has the tenant properly put in issue whether a particular element of the cost claimed as service charge was reasonably incurred; and (2) has the tenant established a *prima facie* case that it was not reasonably incurred. If the answer to both questions is yes, then (as Mr Allison accepted) the burden lies on the landlord to establish that the cost was reasonably incurred.”

28. Starting with the test of rationality, the most obvious point is that the Respondent and the Manco’s scope for any discretion is extremely limited. This is a CHP system, and the energy, with the plant located on adjacent land. Beves House is both physically and legally locked into the CHP system. Mr Ryan candidly admitted that disconnection from the CHP was not a realistic option. In effect, the only options available are to choose between a limited range of energy suppliers. There is clear evidence in the papers that the Manco conducted a tender exercise in 2024, and some evidence it had done so in the past. And as the Respondent pointed out, this was not a paper exercise, since it was supervised by consultants and resulted in a change of supplier and a lower day rate. It is hard to see how the Respondent could have improved on the Manco’s tender exercise within the constraints of a CHP, even had it taken the more interventionist approach suggested by the Applicants. In any event, the Manco acted in good faith, and there was plainly a logical connection between the evidence and the ostensible reasons for the decision to select SSE Energy as energy supplier.
29. As to reasonableness, the Applicants have undertaken an impressive a sophisticated analysis of energy rates. Mr Ryan accepted that comparisons with domestic

energy rates not helpful, since the CP supply was treated as non-domestic. Ms Bate-man explained in her witness statement the Government's stated position that it was not possible to change the classification to domestic due to the complexity of energy supply and contractual arrangements. This left the table of non-domestic supply prices and the analysis carried out by the Respondents. Ultimately, the difficulty with this exercise was that it did not produce a like for like comparison of consumer charges for similar CHP schemes. Anything other than a clear like for like comparison would require specialist expert evidence to analyse the various energy costs, and there was no expert evidence of this nature before the Tribunal.

30. It follows there is no evidence the costs making up the personal heating and hot water charges were unreasonable. The second limb of the test in *Waler* is not therefore made out.
31. If it had jurisdiction the Tribunal would therefore have concluded the costs were reasonably incurred under s.19(1)(a) LTA 1985.

Costs

32. There is an application for limitation of costs under s.20C LTA 1985 and an application under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002 ("CALRA 2002"). The case law and principles are summarised in *Conway v Jam Factory* [2013] UKUT 0592 (LC) at [51] to [58]. In *Schilling v Canary Riverside Development PTE Limited* (2006) LRX/26/2005, HHJ Rich stated at [14] that:

"In service charge cases, the "outcome" cannot be measured merely by whether the Applicant has succeeded in obtaining a reduction. That would be to make an Order "follow the event". Weight should be given rather to the degree of success, that is the proportionality between the complaints and the Determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other hand."

Similar principles apply to para 5A of Sch.11 to the 2002 Act.

The Tribunal's decision

33. The application has not succeeded at all, and in terms of proportionality alone, this suggests no costs limitation order should be made. The Respondent argued the jurisdiction finding suggested the application was misconceived. But it is also true that the Respondent has itself always treated the personal heating and hot water charges as service charges. On the other hand, the Respondent did not take the jurisdiction point at an early stage. The Applicants also submitted that the Respondent had missed the time for filing its statement of case and had only applied for a time extension once the deadline had passed. And the skeleton argument for the hearing was late as well. But the Tribunal does not consider these considerations justify debarring the Respondent from its contractor rights to recover costs as service charges or administration charges.

Conclusions

34. The Tribunal has no jurisdiction to determine the Applicants' personal heating and hot water charges set out in Appx.A.
35. If it does have jurisdiction, the Tribunal finds the 2023-24 and 2024-25 relevant costs were reasonably incurred and payable under s.19(1)(a) LTA 1985 and that the 2025-26 charges were reasonable in amount under s.19(1)(b) LTA 1985.
36. No order is made under s.20C LTA 1985 or under para 5A of Sch.11 CALRA 2002.

APPX.A

List of Applicants and disputed charges

Flat	Lessee	2023-24	2024-25	2025-26 est
Flat 2	Catherine Ingram / David Marcuson	£1,666.78	£931.60	£1,475.88
Flat 4	Adam Macauley / Lianne Eva	£1,943.94	£867.26	£2,952.60
Flat 5	Michelle Mullen	£1,378.43	£842.95	£1,949.16
Flat 6	Sophie Brown / Neil Cantwell	£1,194.43	£831.77	£1,371.48
Flat 7	Jakub Tyrcha	£788.13	£497.97	£1,057.16
Flat 8	Jane Oakhill	£917.80	£715.72	£1,230
Flat 9	Robin Hodges	£898.92	£544.39	£895.92
Flat 10	Emile Ryan	£2,107.50	£1,345.45	£3,387.60
Flat 12	Gilda Pacitti	£782.33	£432.51	£927.24
Flat 13	Michael De Napoli	£838.28	£657.78	£1,311.24
Flat 14	Kellee Hosking / Mark Johnson	£1,091.88	£662.64	£1,452.72

APPX.B
MATERIAL LEASE TERMS

Particulars

Specified Proportion	A fair and reasonable proportion to be determined by the Landlord from time to time
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3. LEASEHOLDER’S COVENANTS

The Leaseholder covenants with the Landlord as follows.

3.1 Pay rent

To (by way of Direct Debit Mandate or such other means as the Landlord shall require) pay the Specified Rent and the Management Charge at the times and in the manner mentioned in Clause 2 (the Letting Terms) and all other monies due under this Lease without deduction.

...

3.3 Outgoings

3.3.1 To pay Outgoings.

3.3.2 To refund to the Landlord 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).

7. SERVICE CHARGE AND ESTATE CHARGE PROVISIONS

7.1 Covenant to pay

The leaseholder covenants with the Landlord to pay the Service Charge and the Estate Charge during the Term by equal payments in advance at the same time and in the same manner in which the Specified Rent is payable under this Lease.

...

7.3 How calculated

The Service Provision shall consist of a sum comprising the expenditure estimated by the Authorised Person as likely to be incurred in the Account Year by the Landlord for the matters specified in Clause 7.4 (Service Provision) together with:

- (a) an appropriate amount as a reserve for or towards the matters specified in Clause 7.4 (Service Provision) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without limitation) such matters as the decoration of the exterior of the Building (the said amount to be calculated in a manner which will ensure as far as is reasonably possible that the Service Provision shall not fluctuate unduly from year to year); but
- (b) reduced by any unexpended reserve already made pursuant to Clause 7.3(a).

7.4 Service Provision

The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing):

- (a) the costs of and incidental to the performance of the Landlord's covenants contained in Clause 5.2 (Insure) and Clause 5.3 (Repair redecorate renew structure) and Clause 5.4 (Lighting and cleaning of Common Parts);
- (b) the costs of and incidental to compliance by the Landlord with every notice, regulation or order of any competent local or other authority in respect of the Building (which shall include compliance with all relevant statutory requirements);
- (c) all reasonable fees, charges and expenses payable to the Authorised Person any solicitor, accountant, surveyor, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees, charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work;
- (d) any Outgoings assessed, charged, imposed or payable on or in respect of the whole of the Building or in the whole or any part of the Common Parts; and

...

7.5 Adjustment to actual expenditure

As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in Clause 7 (*How calculated*) shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy

of the certificate and the Leaseholder shall be allowed or (as the case may be) shall pay immediately following receipt of the certificate the Specified Proportion of the excess or the deficiency.

Schedule 9 Defined Terms

In this lease:

“Estate Charge” means all sums payable under the Landlord’s title including but not limited to the Transfer (so far as the same are attributable to the Premises).

...

“Outgoings” means (in relation to the Premises) all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property.

...

“Service Charge” means the Specified Proportion of the Service Provision.

“Service Provision” means the sum calculated in accordance with Clause 7.3 (How calculated), Clause 7.4 (Service Provision) and Clause 7.5 (Adjustment to actual expenditure)).

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.