



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

**Case Reference** : **BIR/00FY/LIS/2022/0032**

**Properties** : **Flats G04, 220, 305, 307, 317 and 318  
Avalon Court, Kent Street, Nottingham,  
NG1 3BW**

**Applicants** : **(1) Halcyon Management Services Ltd.  
(2) Colleen Joy Marsh  
(3) Debbie Hirst**

**Representative** : **Mr I Malcolm**

**Respondent** : **Avalon Court Limited**

**Representative** : **Counsel – Mr M Langston, instructed by  
Blacks Solicitors LLP**

**Type of Application** : **Applications under sections 27A and 20C  
of the Landlord and Tenant Act 1985 for a  
determination of liability to pay and  
reasonableness of service charges and  
limitation of costs and paragraph 5A of  
Schedule 11 to the Commonhold and  
Leasehold Reform Act 2002 for the  
liability to pay administration charges**

**Application for costs under Rule 13 of the  
Tribunal Procedure (First-tier Tribunal)  
(Property Chamber) Rules 2013**

**Tribunal Members** : **Judge M K Gandham  
Mr D Satchwell FRICS**

**Date of Hearing** : **20 and 21 November 2025**

**Date of Decision** : **23 February 2026**

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**DECISION**

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## **Introduction**

1. On 16 December 2022, the Tribunal received applications from Halcyon Management Services Limited ('the First Applicant'), Colleen Joy Marsh ('the Second Applicant') and Debbie Lisa Hirst ('the Third Applicant') under section 27A of the Landlord and Tenant Act 1985 ('the Act') to determine whether the service charges demanded for the service charge years 2017/18 to 2022/23 (inclusive) were payable, and the amounts which were reasonably payable, in respect of Flats G04, 220, 305, 307, 317 and 318 Avalon Court, Kent Street, Nottingham, NG1 3BW ('the Properties').
2. In addition, the Applicants made applications under section 20C of the Act in respect of costs and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2022 Act') in respect of administration charges.
3. The Properties are comprised within a building ('the Building') on a development known as Avalon Court ('the Estate'), which is situate between Rick Street and Kent Street as they abut Glasshouse Street, in the centre of Nottingham. The Building is a three-storey building on the Estate comprising one hundred self-contained apartments, primarily for the occupation of students.
4. Avalon Court Car Park ('the Car Park') occupies a small section of the ground floor of the Estate and the basement area beneath the Building.
5. The freehold title to the Estate (registered at the Land Registry under Title Number NT277262) is currently held by Tuscola (FC109) Limited, who granted a lease of the Estate to Tuscola (109) Limited for 252 years from and including 1 January 2015. A further sublease of the Estate is currently held by Avalon Court Management (Notts) Limited (registered at the Land Registry under Title Number NT520990) by way of a lease dated 20 April 2016 for 250 years commencing on and including 1 March 2015, made between (1) Fortis Developments Limited and (2) Fortis Management Company Limited.
6. The leases for each of the separate apartments in the Building and a lease of the Car Park (registered at the Land Registry under Title Number NT523687), are all demised from the sublease currently held by Avalon Court Management (Notts) limited.
7. The First Applicant is the leaseholder of Flat G04 Avalon Court under a sublease dated 25 March 2015 (registered at the Land Registry under Title Number NT511367), Flat 220 Avalon Court under a sublease dated 25 March 2015 (registered at the Land Registry under Title Number NT511366) and Flat 305 Avalon Court under a sublease dated 25 March 2015 (registered at the Land Registry under Title Number NT511368).
8. The Second Applicant is the leaseholder of Flat 307 Avalon Court under a sublease dated 6 March 2015 (registered at the Land Registry under Title Number NT510865).

9. The Third Applicant is the leaseholder of Flat 317 Avalon Court under a sublease dated 5 March 2015 (registered at the Land Registry under Title Number NT510682) and Flat 318 Avalon Court under a sublease dated 13 March 2015 (registered at the Land Registry under Title Number NT510913).
10. The subleases for the apartments, the Tribunal was informed, are identical in terms, with the proportion of service charge for each apartment being based on the floor areas of the same.
11. Following lengthy and protracted disclosure, bundles were received from both parties, and the matter was listed for a hearing to take place on 15 and 16 May 2025. The Respondent requested an adjournment on the day of the hearing, which the Tribunal allowed for the reasons stated below. A case management hearing was held on 21 August 2025, with directions issued thereafter to ready the matter for a final hearing which took place over two days, on 20 and 21 November 2025.
12. Further directions for disclosure of documents referred to at the hearing were issued on 24 November 2025, and the Tribunal reconvened on 8 January 2026 and 23 February 2026 to make its determination.

## **The Law**

13. The relevant provisions in respect of liability to pay, reasonableness and limitation of service charges are found in sections 19, 20, 20B and 27A of the Act (as amended), which are set out as follows:

### ***Section 19 Limitation of service charges: reasonableness***

- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
  - (a) *only to the extent that they are reasonably incurred, and*
  - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;**and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

### ***Section 20 Limitation of service charges: consultation requirements***

- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

- (a) *complied with in relation to the works or agreement, or*
  - (b) *except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*
- (2) *In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.*
- (3) *This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*
- (4) *The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—*
- (a) *if relevant costs incurred under the agreement exceed an appropriate amount, or*
  - (b) *if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

**Section 20B Limitation of service charges: time limit on making demands.**

- (1) *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2) ), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
- (2) *Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

**Section 27A Liability to pay service charges: jurisdiction**

- (1) *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –*
- (a) *the person by whom it is payable,*
  - (b) *the person to whom it is payable,*
  - (c) *the amount which is payable,*
  - (d) *the date at or by which it is payable, and*
  - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- ...

14. Section 20c of the Act (as amended) provides:

**Section 20c Limitation of service charges: costs of proceedings**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before...the First-tier Tribunal...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.

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

15. The relevant provisions in respect of limiting the liability to pay an administration charge in respect of litigation costs are found in paragraph 5A of Schedule 11 of the 2002 Act (as amended), which provides:

**Paragraph 5A Limitation of administration charges: costs of proceedings**

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

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

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<b>Proceedings to which costs relate</b>	<b>“The relevant court or tribunal”</b>
...	...
<i>First-tier Tribunal proceedings</i>	<i>The First-tier Tribunal</i>
...	...

16. The limited powers for a Tribunal to award costs are contained within **Rule 13 of the Rules**. The relevant parts of that Rule provide:

13.—(1) Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only—

...  
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings;

...

## **The Leases**

17. The Properties were all held under tri-partite leases in similar terms made between Fortis Developments Limited, Avalon Court Limited and the original leaseholders ('the Leases').
18. Clause 1 of the Leases set out the definition of the '*Building*' by reference to a description in Part 2 of the First Schedule, which description states as follows:

### **Part 2 - The Building**

All that land, together with the building or buildings from time to time on it or on any part of it, known as Avalon Court, Kent Street, Nottingham NG1 3LZ, shown for the purpose of identification only edged blue on the Plan and registered at the Land Registry under title number(s) NT277262.

19. Clause 3 details the Tenant's covenants, which include, under clauses 3.1.2, payment of the Service Charge and Insurance Rent.
20. The Service Charge provisions are detailed in the Fifth Schedule, in which the '*Service Costs*', '*Services*' and '*Service Charge*' are all defined.
21. Both parties agreed that the Accounting Period in the Leases had been altered to reflect the academic year and ran from 1 September to 31 August in each year.

## **The Hearings**

22. The final hearing was initially scheduled to take place over 15 and 16 May 2025, however, was adjourned on the first day. The hearing was rescheduled and took place on 20 and 21 November 2025.
23. Although the matter was adjourned on 15 May 2025, the Tribunal has briefly set out below the background to this adjournment as this was taken into account when making its determinations on costs.

## **The Adjourned Hearing**

24. Following directions listed on 8 April 2024, and receipt of bundles from both parties, this matter was listed for hearing to take place on 15 and 16 May 2025 remotely. Both parties had changed their representatives prior to the hearing taking place.
25. In readiness for the hearing, the Tribunal had received bundles, skeleton arguments from both parties and an Authorities Bundle from the Respondent's Representative.

26. Prior to the commencement of the hearing, the Tribunal received an email from Dr Priya Tromans of St Ives Chambers (counsel for the Respondent), requesting the Tribunal's permission for a short delay to the start of the hearing so that the parties could have an opportunity to discuss matters with an aim to narrowing the matters in dispute. The hearing was due to commence at 10.30am and was delayed until midday, to allow for the same.
27. At 11.52, just prior to the start of the hearing, the Tribunal received further documentation from the Respondent's instructing solicitors, Blacks Solicitors LLP.
28. The hearing was attended by Mr Malcolm, the Applicant's representative, and on behalf of the Respondent, Dr Tromans, Miss Farrah McWilliam (who was head of client services for Xenia Estates Limited) and Ms Daniella Lipszyc (solicitor for Xenia Estates Limited).
29. At the commencement of the hearing, Dr Tromans confirmed that she had received instructions from her client to request an adjournment of the hearing. She confirmed that Blacks Solicitors LLP had only recently been instructed to act on behalf of the Respondent and that they considered that the evidence was incomplete, in particular that various invoices appeared to be missing from previous disclosure.
30. Dr Tromans also confirmed that she had instructions that the year-end accounts for the service charge years ending 2022 and 2023 had been completed. She considered that, with time for further discussion, the parties might be able to settle certain issues. Mr Malcolm, on behalf of the Applicants, objected to the adjournment, although did not seem to disagree that further discussion might help narrow the issues.
31. The Tribunal noted that both sets of representatives had only recently been instructed but that neither had requested the Tribunal to postpone the hearing, despite having ample opportunity to request the same.
32. Although Mr Malcolm had been willing to proceed, the Tribunal did consider that, in the interests of dealing with the matter fairly and justly, the Respondent should be given an opportunity to disclose any missing documentation. In addition, as the Respondent had stated that the accounts for the years ending 31 August 2022 and 31 August 2023 had been produced, and considering that the parties appeared to be open to discuss (and potentially settle) certain issues, that the hearing should be adjourned.
33. Further directions were issued on 16 May 2025 to progress the matter.

### ***The Final Hearing***

34. The final hearing took place at the tribunal's hearing room at Centre City Tower in Birmingham. Mr Malcolm attended on behalf of the Applicants and Mr Martin Langston (counsel from St Ives Chambers) represented the Respondent. Miss

McWilliam (who was now a director of Xenia Estates Limited) and Ms Lipszyc were both in attendance on the first day, although Ms Lipszyc was unable to attend the second day of the hearing.

35. Following the hearing, the Tribunal issued a further directions order requesting documentation that had been referred to at the hearing ('the Additional Documentation').
36. The Tribunal also allowed the parties 14 days to make any written submissions in respect of the applications under section 20C of the Act and under paragraph 5A of Schedule 11 to the 2022 Act, as these had not been included within either parties' statements of case.

### **The Issues in Dispute**

37. At the case management hearing dated 22 August 2025, the Applicants confirmed the items of service charge in dispute and also referred to issues regarding when a guarantee period had ended, whether balancing charge demands were issued in time and whether the owners of the Car Park should have made payments towards the service charge under the terms of their lease.
38. At the hearing, Mr Malcolm confirmed that any submissions with regard to the guarantees were no longer being pursued. He also confirmed that a separate application had been made by the Applicants in respect of the service charge years from 1 September 2022 onwards. As such, the only service charge years which required determination in respect of the current application were the five service charge years beginning 1 September 2017 and ending 31 August 2022.
39. The disputed items of service charge in each service charge year were detailed in a Scott Schedule, in which both parties set out the amounts they considered payable for that item and their reasons for the same. The items in dispute related to the following costs:
  - Electricity
  - Gas
  - Water rates
  - General Repairs and Contractors
  - Cleaning
  - Security
  - Lift maintenance
  - Fire Safety
  - Wages and salaries
  - Management fees
40. The Tribunal has not appended the Scott Schedule to its decision instead, having considered all of the written and oral evidence submitted by both parties (briefly summarised below), has set out its determinations on the total amount payable for each of the items of expenditure which remained in dispute in paragraphs 46 to 129.

41. The parties both agreed at the hearing that the ‘*Due Proportion*’ payable by the Applicants under their respective leases of the total service charge each year was as follows:
- Flat G04 – 1.013514%
  - Flat 220 – 0.837653%
  - Flat 305 – 0.851536%
  - Flat 307 – 0.971862%
  - Flat 317 – 0.745094%
  - Flat 318 – 0.708071%
42. Following the Respondent’s provision of further disclosures in their Hearing Bundle and clarification of certain expenditure, Mr Malcolm also confirmed that certain items of expenditure were now accepted by the Applicants. These items are also set out below.
43. The Additional Documentation received from the Respondent following the hearing included Office Copy Entries and the lease for the Car Park, as well as fire risk reports for the years 2018 to 2022 and an undated Opus Energy Contract.
44. Although Mr Langston raised the issue as to whether service charge payments made by the Applicants had been in effect ‘admitted’ due to the time which had passed (he referred to “6-7 years” in his Skeleton Argument), this argument was not put forward in the Respondent’s Statement of Case nor was it raised at the hearing.
45. The Tribunal noted that the accounts for the service charge years in question were not produced until two years after the service charge had ended and the application had been made to the Tribunal in November 2022. For the avoidance of doubt, the Tribunal does not consider there to have been any protracted delay or any admission of charges by the Applicants for the service charge years in dispute.

## **Submissions and Tribunal’s Determinations on Service Charge Items**

### ***Electricity***

#### *Service Charge Year 2017/18 – 2020/21*

46. Although the Applicants had in their submissions referred to unreasonable electricity tariffs, the incorrect rate of VAT being applied, estimated rather actual readings being used for invoices and charges being duplicated due to the presence of an unwarranted second meter, at the hearing the Applicants noted that an invoice issued in 2018 referred to a contract with Opus for the supply of electricity ending on 8 January 2021.
47. The question of whether the Respondent had entered into Qualifying Long-Term Agreements (QLTAs) had been raised by the Applicants in their previous submissions and denied by the Respondent in the Scott Schedule supplied with their earlier statement of case dated 14 June 2024. The agreement with Opus had

not been disclosed despite the Tribunal's previous directions requesting specific disclosure of any QLTA's.

48. The Respondent confirmed that there had been no consultation in respect of the agreement and the failure to disclose the contract had been an oversight.
49. A copy of an undated contract with Opus for 36 months was provided with the Additional Documentation, which together with the invoices provided in the Hearing Bundle, indicated that the QLTA was for a period of 36 months beginning on 9 January 2018 and ending on 8 January 2021.

#### *Tribunal*

50. As the amounts the Respondent sought to recover were more than £100.00 per leaseholder the Service Charge Regulations 2003 were engaged, and the relevant contribution of **each leaseholder under the agreement** was limited to **£100.00** for each of the relevant accounting periods in these service charge years.
51. As such, for the service charge years 2018/19 and 2019/20 the relevant contribution of **each leaseholder** towards electricity was limited to **£100.00** per service charge year.
52. In relation to the service charge year 2017/18, in addition to the **£100.00** capped amount per leaseholder, based on the invoices, an additional amount of £18,257.65 was payable from 1 September 2017 to 31 December 2017 and £2,143.69 was payable to 7 January 2018 (13/36 x £5,936.37) for the Building, amounting to an additional sum of **£20,401.34**.
53. In relation to the service charge year 2020/21, in addition to the **£100.00** capped amount per leaseholder, an additional amount of £3,908.63 (23/31 x £5,268.15) was payable from 9 January 2021 to 31 January 2021 and £20,696.22 was payable from 1 February 2021 to 31 August 2021, amounting to an additional figure payable of **£24,604.85**.

#### *Service Charge Year 2021/22*

#### *Applicants*

54. The Applicants submitted that the tariffs were not competitive and that there should be a reduction of £3,700.97.

#### *Respondent*

55. The Respondent stated that they had used a broker to obtain the best available tariffs, which were competitive based on market factors, payment terms, supplier risk, volume and previous credit.

#### *Tribunal*

56. The Tribunal noted that the Respondent had used a broker and that the rates secured by the Respondent did not have to be the cheapest, so long as they were reasonable. The Tribunal found that there was insufficient evidence to suggest that the rates were not reasonable and that the full amount of **£60,234.00** was payable.

## **Gas**

### Service Charge Year 2017/18

#### *Applicants*

57. The Applicants submitted that the tariffs were not competitive; that VAT was charged at 20% rather than at the domestic rate of 5% and that GDK may have charged an uplift or commission on the amount of the sums charged by the provider.

#### *Respondent*

58. The Respondent stated that they had used a broker to obtain the best available tariffs and that, having checked the accounts, they could not see that GDK had charged any uplift. In relation to the VAT, the Respondent stated that this was set by the supplier and that, although they would have tried to argue that 5% was payable, the supplier would ultimately determine the rate they considered applicable to Building. The Respondent did accept that one invoice for £406.78 had been included in error as it related to electricity.

#### *Tribunal*

59. The Tribunal noted that the Respondent had used a broker and that the rates secured by the Respondent did not have to be the cheapest, so long as they were reasonable. The Tribunal considered that comparables for domestic supplies were insufficient to suggest that the rates obtained by the Respondent were not reasonable. In relation to the applicable VAT rate on the supply, the Tribunal observed that there was an unusual set-up at the Building, in that the apartments were not separately metered for utilities. As such, the question regarding the applicable VAT may not have been as straight forward as with other residential apartments. In addition, The Tribunal noted that, under the terms of the Leases, the Applicants were responsible for repayment of amounts charged, including any VAT imposed on the same.
60. The Tribunal found that the amount payable was **£9,424.22**.

### Service Charge Year 2018/19

#### *Applicants*

61. The Applicants submitted that the tariffs were not competitive; that VAT was charged at 20% rather than at the domestic rate of 5%; that GDK may have charged an uplift or commission and that certain documentation was missing.

*Respondent*

62. The Respondent gave the same reasons for the charges being reasonable and payable as for the previous accounting year and produced additional documentation to show that the accounts reconciled (which was accepted by Mr Malcolm at the hearing).

*Tribunal*

63. For the same reasons as set out in the previous accounting year, the Tribunal accepted that the amounts charged were reasonable. Accordingly, the Tribunal found that the full amount of **£9,145.00** was payable.

*Service Charge Year 2019/20*

*Applicants*

64. The Applicants gave the same reasons for the charges being unreasonable as for the previous accounting year. Although they also queried a charge of £746.63, Mr Malcolm accepted at the hearing that this had been included in error and was not detailed in the final accounts.

*Respondent*

65. The Respondent gave the same reasons for the charges being reasonable and payable as for the previous accounting year and referred to some items as not being included as they were accruals.

*Tribunal*

66. For the same reasons as set out in the previous accounting year, the Tribunal accepted that the amounts charged were reasonable. Accordingly, the Tribunal found that the full amount of **£7,416.00** was payable.

*Service Charge Year 2020/21*

*Applicants*

67. The Applicants gave the same reasons for the charges being unreasonable as for the previous accounting year. In addition, they submitted that a payment of £88.98 was not included in the disclosed bundle and queried what they considered to be a missing credit note for £696.05.

*Respondent*

68. The Respondent gave the same reasons for the charges being reasonable and payable as for the previous accounting year. They stated that a credit note was produced for a duplicate invoice, so a further credit was not due. They did accept that £88.98 should be deducted.

### *Tribunal*

69. For the same reasons as set out in the previous accounting year, the Tribunal accepted that the amounts charged were reasonable, other than the £88.98. Accordingly, the Tribunal found that the amount payable was **£4,356.02**.

### *Service Charge Year 2021/22*

#### *Applicants*

70. The Applicants gave the same reasons for the charges being unreasonable as for the previous accounting year.

#### *Respondent*

71. The Respondent gave the same reasons for the charges being reasonable and payable as for the previous accounting year.

### *Tribunal*

72. For the same reasons as set out in the previous accounting year, the Tribunal accepted that the amounts charged were reasonable. Accordingly, the Tribunal found that the full amount **£6,586.00** was payable.

## **Water**

### *Service Charge Year 2017/18*

#### *Applicants*

73. The Applicants stated that there had been an overcharge by GDK of £879.20 and a duplication of 73 days for a GDK invoice of £1,803.92, so the total amount charged should have been £8,509.88.

#### *Respondent*

74. The Respondent accepted that the water bills had been too high and that an amount of £2,683.12 should be deducted.

### *Tribunal*

75. The Tribunal found that the total amount payable should have been **£8,509.88**.

### *Service Charge Year 2018/19 – 2021/22*

76. At the hearing, Mr Malcolm confirmed that the Applicants now accepted the service charge for these years, so these items were no longer in dispute.

## **General Repairs**

### *Service Charge Year 2017/18*

*Applicants*

77. The Applicants disputed that a charge of £403.20 in relation to the installation of PIR lights in the Car Park should have been included in the service charge, as it did not benefit the occupiers of the Building. They also disputed the amount of £7,022.41 for In-Room maintenance charges. They stated that these should have been charged to individual leaseholders.
78. Although they disputed a further charge of £62.50, after reading the Respondent's comments in respect of the same, Mr Malcolm confirmed that the Applicants accepted that this was a service charge expense.

*Respondent*

79. The Respondent stated that the occupiers of the Building had access to the fire exits in the car park, and that this was an essential part of the fire strategy for the Building.
80. At the hearing, the Respondent accepted that any charges for In-Room maintenance should not have been charged as part of the service charge, although stated that they could have been separately charged as an administration charge to the individual leaseholders.

*Tribunal*

81. The Tribunal noted that the invoice for the PIR lights did not state whereabouts in the Car Park the lights were situated and that, in the absence of further evidence that they were required for the benefit of the occupiers of the Building, the costs of the same should not be included as part of the service charge.
82. Noting that the parties had agreed on the other items in dispute, the Tribunal found that the total amount payable should have been **£5,199.39**.

*Service Charge Year 2018/19 – 2021/22*

83. At the hearing, the Respondent accepted that the items of service charge disputed by the Applicants for these years for In-Room charges and documents for which there were no supporting invoices for works should have been charged to individual leaseholders and not included in the service charge.

*Tribunal*

84. Accordingly, the Tribunal found that the amounts payable for each service charge year are as follows:

Service Charge Year 2018/19	- <b>£22,303.97</b>
Service Charge Year 2019/20	- <b>£10,775.94</b>
Service Charge Year 2020/21	- <b>£3,962.51</b>
Service Charge Year 2021/22	- <b>£3,087.59</b>

## **Cleaning**

### Service Charge Year 2017/18

#### *Applicants*

85. The Applicants disputed that a sum of £1,838.40 for clearance of a storeroom in the Car Park could be included as part of the service charge, as the Applicants had no access over the same and it did not form part of the communal parts of the Building. They also queried the fact that two invoices for a summer clean were included within the service charge year and contended that one should have been invoiced during the guarantee period.

#### *Respondent*

86. The Respondent stated that the Car Park storeroom housed some maintenance equipment that was used for the Building, so the invoice was correctly included. In respect of the cleaning, they stated that the invoices were issued in September 2017 and August 2018, so related to different academic years and did not fall within the guarantee period.

#### *Tribunal*

87. The Tribunal noted that the Applicants accepted that the charges for cleaning were payable. The Tribunal agreed with the Respondent that the invoices were for separate academic years and found that there was insufficient evidence supplied that they should have fallen with the guarantee period.
88. The Tribunal noted that the Respondent had provided no evidence that the storeroom in the Car Park fell within areas of the Building that the Applicants were responsible to maintain. In the absence of such evidence, and as the Car Park was separately let, the Tribunal agreed that clearance of the storeroom should not have been included in the service charge and found that the total amount payable should have been **£22,385.60**.

### Service Charge Year 2018/19

89. At the hearing the Applicants no longer disputed the sums payable for the In-Room cleaning and the Respondent confirmed that Car Park charges of £467.00 had not been included in the accounts for the Building, which Mr Malcolm accepted.

#### *Tribunal*

90. Accordingly, the Tribunal found that the total amount payable should have been **£4,215.00**.

### Service Charge Year 2019/20 -2021/22

91. At the hearing, Mr Malcolm confirmed that the Applicants now accepted the service charge for these years, so these items were no longer in dispute.

### ***Security***

#### *Service Charge Year 2017/18*

92. Mr Malcolm confirmed at the hearing, that the Applicants no longer disputed the service charge for this year.

#### *Tribunal*

93. Accordingly, the Tribunal found that the total amount payable should have been **£4,875.00**.

#### *Service Charge Year 2018/19*

#### *Applicants*

94. The Applicants queried the sum of £17,115.30 paid to Magpie Security.

#### *Respondent*

95. The Respondent stated that this sum was payable as it related to the cost of implementation of a Waking Watch from June 2019 to July 2019, which was recommended following a Fire Risk Report.

#### *Tribunal*

96. The Tribunal was provided a copy of the fire risk reports for the Building as part of the Additional Documentation. The Fire Risk Assessment carried out in November 2018 referred to there being a risk of arson and the security of the perimeter wall or fence was required to be maintained. A Fire Protection Report carried out in June 2019 identified 22 issues relating to fire safety works. Firestopping works were carried out in 2019, with an invoice produced on 30 July 2019.

97. The Tribunal found that having a Waking Watch from the time the risks were identified to the works being carried out was a reasonable precaution and payable. Accordingly, the Tribunal found that the total amount payable was **£31,646.00**.

### ***Lift Maintenance***

#### *Service Charge Year 2019/20*

#### *Applicants*

98. The Applicants stated that there had been a duplication of £900.00, so the total amount charged should have been £230.00.

*Respondent*

99. The Respondent agreed.

*Tribunal*

100. The Tribunal found that the total amount payable should have been **£230.00**.

*Service Charge Year 2020/21*

101. The Applicants stated that there had been a duplication of £450.00, so the total amount payable should have been £2,529.00.

*Respondent*

102. The Respondent agreed.

*Tribunal*

103. The Tribunal found that the total amount payable should have been **£2,529.00**.

### ***Fire Safety***

*Service Charge Year 2017/18*

*Applicants*

104. The Applicants stated that the price charged for a loop card for the fire alarm had been too high and that they had been able to source the part for a much lower figure. They requested a deduction of £406.00.

*Respondent*

105. The Respondent confirmed that the part was required for an essential repair carried out by a specialist fire contractor.

*Tribunal*

106. The Tribunal noted that the Respondent was not required to obtain the cheapest price, so long as the price was reasonable, and that prices may have changed in the 7-year period since the product had been purchased. Accordingly, the Tribunal found that the total amount payable was **£3,340.00**.

*Service Charge Year 2018/19*

*Applicants*

107. The Applicants stated that the price charged for a strobe heat detector had been too high and requested a deduction of £30.00 as they had been able to source the part for a lower figure.
108. They disputed an invoice for £3,966.00 for the alteration to the positioning of a water pipe in the Car Park relating to the car park barrier, and £7,200.00 for firestopping works unless the Fire Reports showed that the works related to the whole Building.

*Respondent*

109. The Respondent stated that it was only the leaseholders in the Building that required the waterpipe, as it was used for the sprinklers so was payable. They also stated that the fire stopping works were for the safety of the occupiers in the Building.

*Tribunal*

110. As above, the Tribunal noted that the Respondent was not required to obtain the cheapest price for an item, so long as the price was reasonable, and that prices may have changed in the period since the product had been purchased.
111. The Tribunal noted that the invoice stated that the water pipe was required to be moved to allow the existing position of the barrier in the Car Park to be used to fit new caging. As the Respondent did not confirm what benefit the caging would have to the leaseholders of the Building, the Tribunal found that it was not reasonable for this cost to be added to the service charge.
112. With regard to the fire stopping works, the Tribunal noted that the Fire Protection Report identified 22 issues (some of which had been mentioned in the November 2018 Fire Risk Assessment Report). The Tribunal found that the fire safety issues related to the Building and that these costs were payable.
113. Accordingly, the Tribunal found that the total amount payable was **£9,666.00**.

*Service Charge Year 2019/20*

*Applicants*

114. The Applicants stated that the price charged for certain items had been too high and that they had been able to source the parts for lower figures. They requested a deduction of £80.00. No further items were disputed at the hearing.

*Respondent*

115. The Respondent confirmed that the parts were required for an essential repair carried out by a specialist fire contractor.

*Tribunal*

116. The Tribunal noted that the Respondent was not required to obtain the cheapest price, so long as the prices were reasonable, and that prices may have changed in the period since the products had been purchased. Accordingly, the Tribunal found that the total amount payable was **£3,069.00**.

*Service Charge Year 2021/22*

117. At the hearing, Mr Malcolm confirmed that the Applicants no longer disputed the service charge for this year.

*Tribunal*

118. Accordingly, the Tribunal found that the total amount payable should have been **£4,687.00**.

***Wages and Salaries***

*Service Charge Year 2020/21 – 2021/22*

*Applicants*

119. After hearing the Respondent's explanation of items charged, Mr Malcolm confirmed that the Applicants' dispute in relation to this item was in respect of all invoices from PropCall Limited during the service charge years 2020/21 to 2021/22. He referred to there being a potential conflict of interest between the managing agent and the concierge service and submitted that many of the services provided out-of-hours would have been for the benefit of the student occupiers, and payable by the individual leaseholders, rather than items of service charge. As such, he suggested that only 40% of PropCall's costs should be included within the service charge.

*Respondent*

120. The Respondent confirmed that some items included in the accounts as 'wages and salaries' may have been incorrectly defined, as they used contractors employed by Xenia who would charge based on time spent at the Building. The Respondent stated that this was far more economical than employing staff, as was allowed under the Leases.
121. The Respondent confirmed that PropCall was an out of hours off-site concierge service used by the managing agents, as Xenia's working hours were from 9am to 5pm. They confirmed that when any students called after 5pm, the call would go through to PropCall. They accepted that some calls may not have related to items which amounted to services under the Leases.

*Tribunal*

122. The Tribunal found that the use of an out-of-hours service was reasonable and would have been more cost effective than employing staff. The Tribunal, however, also accepted that, based on the type of occupiers, it was likely that many of the

services provided would not have related to the maintenance of the Building or items which could have been included within the service costs under the Leases, rather they should have been charged to individual leaseholders. The Tribunal agreed with the Applicants that the costs of these out-of-hours services should be reduced by 60%.

123. Accordingly, the Tribunal considered that the reasonable amounts payable for each service charge year should be reduced by £4,266.00 in 2020/2021 (60% of £2,370.00 x 3) and £3,318.00 in 2021/2022 (60% of £2,370.00 + £3,160.00). As such, the Tribunal found that the amounts payable are as follows:

Service Charge Year 2020/21	- <b>£40,466.00</b>
Service Charge Year 2021/22	- <b>£61,369.00</b>

## ***Management***

### *Service Charge Year 2017/18 – 2021/22*

#### *Applicants*

124. Mr Malcolm submitted that the managing agents, Xenia, provided an inadequate level of service and should only receive 60% of their costs. He referred to the maintenance of the Building as being poor and stated that Xenia had only held a single meeting with the leaseholders, in August 2021. He referred to their failure to carry out consultation before entering into a three-year agreement with Opus, the disorganisation of their invoices and the significant delays in them producing the end of year accounts, with accounts for the years 2022/23 onwards still being outstanding three years on.

#### *Respondent*

125. Miss McWilliam stated that the amount charged by Xenia was very reasonable based on the type of occupiers, amounting to circa £250 per apartment (excluding VAT). They stated that the costs of the services had not been disputed by most of the leaseholders. She stated that there had been internal changes in their accounts department and accepted this had led to disorganisation and issues with producing the accounts in a timely manner. She also agreed that there should be leaseholder meetings; she stated that many leaseholders would likely not attend but agreed that this was speculative as only one meeting had been called.

#### *Tribunal*

126. The Tribunal accepted that the Building was difficult to manage, based on its layout and the type of occupiers, and that, if the management had been carried out to a reasonable standard, the fee charged might have been considered reasonable. The Tribunal also found that there was insufficient evidence to indicate that the Building was not maintained to a reasonable level.
127. The Tribunal noted, however, that the accounting was very poor, and that there had been significant delays in producing accounts. The disorganisation with

invoices was obvious during the course of the tribunal proceedings and despite stating at the case management hearing that the accounts for 2022/2023 were available, these had not been produced by the time the final Hearing Bundle was provided to the Tribunal.

128. There had also been a lack of consultation for the QLTA; there was a failure to communicate regularly with the leaseholders; items of service charge wrongly defined in the accounts which had been produced and items charged as services that were outside of the service costs referred to in the Leases.
129. Taking into account all of the above, the Tribunal found that a reasonable amount payable for the standard of service was 70% of the costs charged, so the following sums are payable:

Service Charge Year 2017/18	- <b>£21,000.00</b>
Service Charge Year 2018/19	- <b>£21,000.00</b>
Service Charge Year 2019/20	- <b>£21,000.00</b>
Service Charge Year 2020/21	- <b>£21,000.00</b>
Service Charge Year 2021/22	- <b>£23,245.60</b>

## **Submissions and Tribunal's Determinations on Car Park**

### *Applicants*

130. Mr Malcolm stated that the leaseholder of the Car Park was required to pay under the terms of the Car Park lease the sum of £3000.00 plus VAT per annum up to 21 July 2021 towards the service charges, with adjustments in accordance with RPI thereafter. He stated that the accounts did not clearly set out the Car Park contributions and that, consequently, it was unclear as to whether the service charges demanded from the leaseholders of the Building were fair and reasonable.

### *Respondent*

131. Mr Langston stated that although the leaseholder of the Car Park may have been liable to pay a service charge, this was under a separate lease to which the Respondent was not a party. As such, he submitted it would be inappropriate to have included any service charges for the same in the service charge accounts produced for the leaseholders of apartments. He stated that the amount of the "Due Proportion" was not in contention and that the basis of the calculation of the service charge was fair and reasonable, being relative to the square footage of the apartments.
132. Miss McWilliam confirmed that some service charge demands had been issued to the leaseholder of the Car Park.

### *Tribunal*

133. Following the hearing, the Tribunal received a copy of the lease for the Car Park. The Lease defined the service charge payable thereunder in the Definitions clause at 1.1 as follows:

**Service Charge:** a Fair Proportion of the cost to the Landlord of complying with its obligation in Schedule 3 paragraph 3 **PROVIDED ALWAYS THAT** until [ 21<sup>st</sup> July 2021 ] the maximum amount of the annual Service Charge shall be limited to the Base Service Charge Amount. On [ 22<sup>nd</sup> July 2021 ] and each anniversary of that date the annual limit for the forthcoming year of the term shall be determined by multiplying the Base Service Charge Amount by the All Items index value of the RPI for the month prior to the month in which the revised annual limit is determined, then dividing the product by the All Items index value of the RPI for the Base RPI month.

The Base Service Charge Amount was defined as £3,000.00 (exclusive of VAT).

134. The Definitions clause also confirmed that the leaseholder was required to pay a fair proportion towards the insurance of the Building. The Building was defined in the same terms as the definition in the Leases as follows:

**Building:** the land and building comprising the residential and student accommodation known as Avalon Court, Kent Street, Nottingham registered with the Land Registry under title number NT277262.

135. Paragraph 3 of Schedule 3 set out the services, which under clause 20 of Schedule 2 to the lease were payable on demand. Although it was clear that the leaseholders of the Car Park should be paying towards the service costs of the Building under the terms of their lease, the Tribunal noted that they were only liable to pay a 'fair proportion' of certain services and towards the insurance of the Building, with the Base Service Charge amount being the *maximum* payable. Consequently, this was not necessarily the figure that would be due each year. There was also no reference to the contributions payable by the Car Park in the calculation of the service costs in the Leases of the Properties.
136. The Tribunal considered that it would clearly be unfair and unreasonable for payments to be made by both the leaseholders of the Car Park and by the leaseholders of the residential apartments for the same costs, however, there was insufficient evidence provided for the Tribunal to make any further determination on this issue for the purposes of this application.

### **Submissions and Tribunal's Determinations on Balancing Demands**

#### Service Charge Year 2017/18 – 2019/20

##### *Applicants*

137. Mr Malcolm submitted that the balancing charges demanded for the years 2017/18, 2018/19 and 2019/20 all arose 20 months after they were incurred, so should be refunded to the Applicants.

##### *Respondent*

138. The Respondents submitted that the Applicants had miscalculated and had considered the time that had passed between the balancing charges becoming due

and receipt of actual certified accounts, rather than the service of section 20B notices or demands issued before this time.

### *Tribunal*

139. The service charge under the Leases were paid on account in respect of costs that were to be incurred each service charge year. It was, therefore, only if balancing charge demands were issued in respect of the relevant accounting year, that limitation under section 20B might arise.
140. In the Hearing Bundle, the Respondent had provided copies of the Balancing Charge demands sent to the Applicants. For the service charge year 2017/18 balancing charge demands were sent on 14 May 2020; for the service charge year 2018/19 balancing charge demands were sent on 17 May 2021 and for the service charge year 2019/20 balancing charge demands were sent on 30 May 2022.
141. As the service charge years ended on 31 August, for the Applicants to be liable for any balancing service charge, the demands needed to have been sent by 28 February the following year. As they were sent over two months later, the Respondent would need to have shown that a cost for the relevant accounting period had not been incurred until a date within 18 months of the demand being issued. No such evidence was produced, and accordingly the Tribunal determines that the Applicants **are not liable** to pay for the balancing charges demanded in the service charge years 2017/18, 2018/19 and 2019/20.

## **Submissions and Tribunal's Determinations on Costs**

### ***Applications for under Paragraph 5A and Section 20C***

#### *Submissions*

142. The Applicants sought orders under section 20C of the Act for limitation of costs and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of liability to pay administration charges. Both parties provided written submissions in respect of the same following the hearing, which are briefly summarised below.
143. The Applicants stated that their statement of case provided compelling evidence that the Respondent's charges were unreasonable and that the Respondent's repeated failures to comply with directions had led to a three-year delay to the hearing being held. They referred to the accounts for the service charge year for 2022/23 still being incomplete, the final disclosure bundle only being provided in October 2025, invoices in existing accounts being allocated to the wrong items of expenditure and there still being uncertainty as to the accounting, which had now led to the Applicants making a further application.
144. Based on the time, effort and expense the Applicants stated that they had invested in pursuing the matter, they stated it would be unjust and unfair for them to have to bear the fees or any costs of the Respondent through the service charge or by way of an administration charge.

145. The Respondent referred to Schedule 5 of the Leases in which the definition of 'Service Costs' included the following provisions:
- *the cost of obtaining such professional advice as may from time to time be required in relation to the management of the Building and the provision of Services;*
  - *the cost of enforcing covenants against individual tenants of the building; and*
  - *all other costs, charges and expenses and outgoings properly incurred in or incidental to the provision of services.*
146. The Respondent stated that the costs were reasonably incurred in fulfilling the Respondent's obligations and statutory requirements and that the proceedings were required to resolve the dispute and ensure proper management, protecting the Building and leaseholders.
147. The Respondent stated that they had not been vexatious nor did they defend the proceedings as a form of harassment, although they accepted that there were some issues with disclosure. They stated that there had also been some issues with regard to the Applicants' documentation and that, should an order be granted, it should be strictly limited to the Applicants and not extended to the benefit of all leaseholders.

*Tribunal's determination*

148. In relation to making orders under both section 20C of the Act and paragraph 5A of the 2002 Act, the Tribunal must consider what is '*just and equitable*' in the circumstances of the case, taking into account matters such as the conduct and circumstances of the parties and the outcome of the proceedings.
149. In relation to the section 20C Order, the Tribunal noted the comments of Judge Behrens in *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC):
- 1. The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.*
  - 2. The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.*
  - 3. Where there is no power to award costs there is no automatic expectation of an order under s.20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.*
  - 4. The power to make an order under s.20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.*
  - 5. One of the circumstances that may be relevant is where the landlord is a*

*resident-owned management company with no resources apart from the service charge income.”*

150. The Tribunal was also mindful of the comments of Martin Rodger KC (Deputy President) in *Conway and others v Jam Factory Freehold Limited [2013] UKUT 592 (LC)*, in which he referred back to the decision of Judge Rich QC in *Schilling v Canary Riverside Property Limited LRX/65/2005* and his reflection upon his earlier decision in *The Tenants of Langford Court (Sherbani) v Doren Limited LRX/37/2000* ('Doren'). At paragraph 54, he stated:

*“In Schilling v Canary Riverside Development PTE Limited LRX/26/2005 Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. The observations he had made in his earlier decision were intended to be “illustrative, rather than exhaustive” of the matters which needed to be considered. He added at paragraph 13 that:*

*“The ratio of the decision [in Doren] is “there is no automatic expectation of an Order under s.20C in favour of a successful tenant.” So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour.””*

151. In this case, with regard to conduct, the Tribunal noted that there had been substantial delay and considered all of the submissions made by both parties in respect of the same. The Tribunal, in particular, noted that it was not until the Respondent had produced the Hearing Bundle that certain invoices were disclosed and that the QLTA was not provided until after the hearing. Had some of these documents been disclosed previously, the Tribunal does consider that certain issues might have been narrowed, as they were eventually at the hearing.
152. In relation to the outcome of the case, the Tribunal noted that the Applicants did succeed in part, if not all, of their arguments, and the Tribunal did find that some of the invoices should not have been payable as part of the service charge, that some costs were unreasonable, that some should have been capped and that some were not payable at all.
153. The Applicants' concerns had been heightened due to the very poor accounting procedures, which had been acknowledged as problematic by the Respondent at the hearing.
154. Although the Tribunal, having considered the provisions in the Leases, was uncertain that they would allow for recovery of the costs either as an administration charge or within the service costs provisions quoted by the Respondent, taking into account all the circumstances of the case, the Tribunal determined that making an order under both section 20C of the Act and paragraph 5A of Schedule 11 to the 2002 Act would be just and equitable.
155. Accordingly, the Tribunal orders that the costs incurred, or to be incurred by the Respondent in connection with these proceedings are not to be regarded as

relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. The Tribunal also orders that the Applicants' liability to pay any administration charges in respect of litigation costs relating to this application be extinguished.

### ***Application for an Order under Rule 13***

#### *Submissions*

156. The Applicants confirmed that they were making an application, pursuant to Rule 13(1)(b) of the Rules. Both parties, again, provided written submissions.
157. The Applicants, in their submissions, referred to the conduct of the Respondent—in particular their failure to narrow any issues down in ten months since the parties' original statement of cases had been submitted; their failure to request a postponement prior to the 15 May hearing despite being aware that certain documents were missing from their bundle; their late request for the postponement on the day of the hearing; their failure to comply with the Tribunal's directions in respect of the organisation of disclosure documents, resulting in three bundles being produced and causing unnecessary work for the Applicants, and the Hearing Bundle still containing duplicated and incorrect invoices which did not aggregate to the certified accounts.
158. The Applicants stated that they had made every effort to contain costs by employing the services of a retired accountant rather than a barrister. They confirmed that the Applicants' costs were based on the day rate of £800.00 (no VAT being payable on the same) of Mr Malcolm, with the total costs detailed in the below schedule, projected to be £51,120.00 up to (and including) the hearing.

<b>Description</b>	<b>Costs</b>
Costs incurred in preparing the 26 pages of analysis included in A's annexes and analysis of the Respondents Statement of Case 2 which have proven to be far from complete due to missing disclosures. See invoice IM0006	£6,000
Preparation for the hearing Invoice See invoice IM0008	£7,320
Handover and Support of Charlotte Collins (Jobsons Solicitors Limited). Provisional sum awaiting invoice.	£2,000
Analysis and preparation of material from Bundle 2 in advance of the CMC See invoice IM0009	£12,000
Analysis and preparation of Statement of Case and Scott Schedules, Appendices and Annexes (166 pages + 68 pages): Bundle labelled 'Trial Bundle' (Bundle 3) dated 22.9.25 and Schedules dated 22.9.25 (See Statement of Case Appendix 5) – Including communication with Respondents, FTT and Applicants. See invoice IM0010	£16,800

Projected charges for further analysis and responses to the Respondents Statement of Case and Scott Schedules	£6000
Projected cost of representing the Applicants at the hearing 21/22 November 2025 and follow up directions for the Applicants.	£3000
<b>Total</b>	<b>£51,120</b>

159. The Respondent, in their submissions, referred to the decision of the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC) (*Willow Court*), and that unreasonable behaviour under Rule 13(1)(b) included conduct which is “vexatious” and “designed to harass the other side”.
160. The Respondent confirmed that Blacks Solicitors LLP were instructed on 24 March 2025 and that bundles had previously been prepared by the Respondent’s previous solicitors in 2024. The Respondent stated that, at that time, they believed that the case had been settled and were chasing the Applicant’s previous solicitors regarding settlement.
161. The Respondent then set out events that took place between April 2025 and the first hearing on 15 May. These included: the delay in the provision of the electronic version of the Applicants’ bundle; that they had emailed the Applicants’ previous solicitors to see if the hearing was proceeding as they thought the matter had been settled; that they were unsure of who was representing the Applicants and had made an application objecting to Mr Malcolm’s appointment [which application was rejected by the Tribunal]; that Mr Malcolm had provided further documentation for the hearing [the inclusion of which was also rejected by the Tribunal] and that a review of the bundles indicated that there was documentation missing from the Respondent’s bundle which they had tried to submit at the start of the hearing.
162. The Respondent stated that the adjournment was not only requested due to the missing documentation, but also as the Applicants were required to recalculate the sums claimed. In addition, the Respondent stated that they had tried to settle the matter with the Applicants and that their actions were not vexatious or intended to harass the Applicants.
163. Following this, the Respondent stated that the second bundle was produced in accordance with directions but admitted that there were some duplications and that some documentation had been inserted at the end of this bundle for expedience. They stated that the third bundle – the Hearing Bundle (produced at the direction of the Tribunal following the August case management hearing) was compliant.
164. In relation to the schedule of costs, the Respondent submitted that the sum claimed of £51,120.00 was unreasonable and disproportionate to that claimed in the application; £6,000.00 was prior to Mr Malcolm’s instructions; that the invoice for the preparation for the May hearing, including costs regarding the handover and reviewing the Applicants’ statement of case, should have been limited to the costs of attendance; that costs for the second and third bundles and

preparing the Applicants' Statement of Case should not be included, and that the invoices included the cost of attending the August case management hearing twice.

165. The Respondent admitted that there had been some issues with disclosure but submitted these were not intentional and that the application should be dismissed, or any cost awarded be limited to those reasonable and correctly incurred.

*Tribunal's determination*

166. The Tribunal considered all of the submissions made by the parties and also bore in mind the three-stage process that should be adopted when dealing with such applications set out in *Willow Court*. Firstly, that the tribunal must assess whether the conduct was sufficient to meet the objective standard of conduct threshold; secondly, that the tribunal must consider whether, in exercising its discretion, it was appropriate to make an award and, finally, the form and quantum of the cost award.
167. In *Willow Court*, the Upper Tribunal discussed the assessment of unreasonable behaviour and considered that in deciding whether behaviour was reasonable required a "*value judgement*". At paragraph 24, the Upper Tribunal went on describe such conduct as follows:

*““Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome.”*

168. The Tribunal is generally a no costs jurisdiction, and it is clear from *Willow Court* that unintentional delay is insufficient to pass the first stage of the process, although conduct does not need to be vexatious or amount to harassment to constitute being unreasonable - these are simply examples of what could be included within the definition of the term.
169. The Tribunal does not consider that the preparation of the Applicants' statement of case or any of the work carried out in August 2024 was based on any 'unreasonable' conduct of the Respondent. The Applicants' statement does not refer to the same and the failure of the Respondent to include all documentation in the bundle does not reach that threshold.
170. With regard to the preparation for the first hearing, work relating to the handover from representatives, again, does not indicate any unreasonableness on the part of the Respondent.
171. Although the Respondent did refer to some failures on the part of the Applicants as being part of the reason for the adjournment of the first hearing in May 2025, the submissions failed to explain why the Respondent's representative did not request an adjournment prior to the hearing. The failure of the Applicants to have provided an electronic bundle, should not have stopped them being able to assess

any paper bundle or reviewing their own bundle to ensure that it enclosed all of the documentation required for the hearing.

172. Again, if they believed the matter had been settled or were encountering problems contacting the other parties representative, there is no explanation as to why they did not make a request for an adjournment earlier.
173. The Tribunal does find that *this* conduct did amount to unreasonable behaviour, especially when part of the reason that the adjournment was granted was that the Tribunal was informed that the accounts for 2022/23 had been prepared, which was later found to be incorrect. In addition, the failure of finding the contract with Opus, despite two sets of directions ordering disclosure of all QLTA's, although not shown to be deliberate, was much more than careless.
174. Having found that the Respondent's actions in respect of these reduced issues did cross the threshold of unreasonableness, the Tribunal had to then decide whether to use its discretion to make an order.
175. Taking into account that the Respondent's actions did lead to unnecessary work and costs to the Applicants, the Tribunal found that an order was appropriate.
176. The Tribunal then went on to consider the form and quantum of the award. The Tribunal considered the costs schedule produced by the Applicants and the invoices referred to.
177. Although the Applicants had stated in their submissions that they had tried to reduce the costs by not consulting a barrister or a solicitor specialising in such matters, the Tribunal considered that this would have had an impact on the time taken to review the bundles and to narrow the issues in dispute.
178. Bearing in mind a self-represented litigant is allowed £24.00 per hour in Practice Direction 46 of the Civil Procedure Rules (which although not binding on the tribunal, is considered a useful guide) and noting that Mr Malcolm is neither a legally qualified representative nor a law costs draftsman, his daily rate of £800.00 also appeared high.
179. The Tribunal considered that any initial preparation following receipt of the Respondent's first bundle would have been required in spite of any unreasonable conduct that took place thereafter, as would time spent in considering the Hearing Bundle (less any duplication) and preparation for the final hearing. As such, the Tribunal found that any costs should be limited to the preparation and attendance at the adjourned hearing, together with some costs towards the duplication of work in readiness for the final hearing.
180. The Tribunal considered that this should have amounted to approximately 15 days for a litigant in person or lay representative, focussed on those issues relevant to their application.

181. Accordingly, taking into account all of the above, the Tribunal orders the Respondent to pay to the Applicants an amount of £3,000.00 towards their costs under Rule 13 (1)(b).

**Appeal Provisions**

182. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of Rules).

M. K. GANDHAM  
.....  
Judge Gandham