



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

Case Reference(s) : **BIR/OOCN/LIS/2024/0014**

Property : **The Cube, 196 Wharfside Street, Birmingham,
B1 1RN**

Applicants : **Cube East & Cube West Residents Association
& Leaseholders as set out in the Schedule below**

Representative : **Stan Gallagher Counsel, instructed by Jobsons
Solicitors Limited**

Respondent : **Cube LH Co Limited**

Representative : **Lina Mattsson Counsel, instructed by DBA
Law**

Type of Application : **Service Charges**

Tribunal : **Judge D Barlow
Ms J Rossiter MBA MFRICS**

Date of Hearing : **9-12 December 2025**

Date of Decision : **30 March 2026**

DECISION

Summary of decisions made by the Tribunal

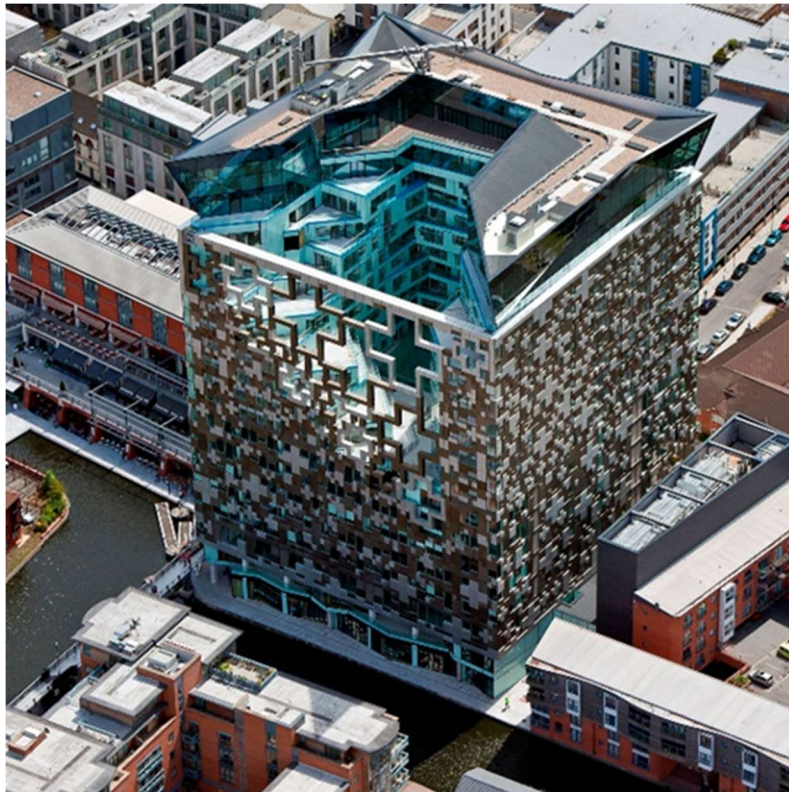
- (1) Insurance premiums (excluding commissions), for the years 2018 to 2023 are reasonably incurred (b) commissions for the same years are not reasonably incurred (c) premiums and commissions reasonably incurred for the same years

are not apportioned in accordance with the Lease. The effect of these decisions is set out in paragraphs 110 and 134 of the decision. The budget charge for 2024 is a reasonable estimate.

- (2) Security costs for the years 2021 to 2024 are (a) reasonably incurred (b) not apportioned in accordance with the Lease. The budget charge for 2024 is not a reasonable estimate. The effect of these decisions is set out in paragraph 162 of the decision.
- (3) External cleaning costs for the years 2018 to 2023 are reasonably incurred but the service is not of a reasonable standard in the years 2019 to 2023. The effect of this decision is set out in paragraph 193 of the decision. The budget charge for 2024 is a reasonable estimate.
- (4) Management costs for the years 2018 to 2023 are reasonably incurred but the service is not of a reasonable standard. The effect of these decisions is set out in paragraph 240 of the decision. The budget charge for 2024 is a reasonable estimate
- (5) Common parts electricity charges for the years 2018-2023 are (a) reasonably incurred (b) not apportioned in accordance with the Lease. The effect of this decision is set out in paragraph 251 of the decision. The budget charge for 2024 is a reasonable estimate.
- (6) Car Park costs for the years 2021 to 2023, are not apportioned in accordance with the Lease. The budget charge for 2024 is not a reasonable estimate. The effect of these decisions is set out in paragraphs 265, 266 and 267 of the decision.

Background

1. The Cube is a 24-storey mixed-use building within Birmingham's high profile canal side re-generation quarter. It has a geometric design which contains three floors of shops and restaurants, arranged around a central courtyard. Above are 7 floors of offices and 17 floors of residential apartments arranged within the central cube. A hotel and restaurant occupy the top two floors. Below ground there is a three storey fully automated robotic car parking vault. The commercial areas comprise over 50% of the Building.
2. The Applicants are the residential tenants' associations of Cube East and Cube West. The lessees set out in the Schedule are leaseholders of Cube East and Cube West and members of the tenants' associations (together the "Leaseholders"). All hold under a lease granted for a term of 125 years from 25 December 2005.
3. The Respondent ("Landlord") holds a 250-year headlease of The Cube under a lease dated 15 June 2018 between (1) two joint trustee companies of Cube FH LP and (2) Cube LH Co. Limited, all Jersey registered companies.
4. Fidum Property Management Ltd ("Fidum") is the Landlord's managing agent with an on-site office within The Cube.



The Apartments

5. The Apartments are on floors 15 to 23 of the Building, arranged in blocks known as “Cube East” and “Cube West”. Cube East houses 93 residential apartments intended to be “owner-occupied”. Cube West houses 151 residential apartments intended as “investment apartments” for subletting. All apartments are let on long residential leases that are substantially similar. 53 leaseholders additionally hold separate licences to use the car parking vault.

The Leases

6. Although substantially the same, Cube East and Cube West leases are not identical. Cube West leases were drafted in anticipation of the Landlord entering into an intermediate ‘Management Lease’ pursuant to an agreement dated 27 March 2006, with Cube West Management Company Limited, (a management company intended to be owned by the Cube West leaseholders). The Cube West lease intended that ‘Building Services’ would be the responsibility of the management company. The Landlord’s covenant to carry out services in clause 6.1.1.4 of the Cube West lease is accordingly restricted to paying its share of a Building Service Charge (as defined in the Management Lease).
7. As it happens the Management Lease was never completed and ‘Building Services’ for the whole Building have been provided and charged for by the Landlord. The Cube West Leaseholders have not raised as an issue missing and redundant

drafting and its potential effect on their liability to pay. They only seek to challenge the reasonableness of certain charges and certain apportionments. This decision does not therefore consider or make any determination concerning the effect of missing and redundant provisions in the Cube West leases.

8. The clauses in the Cube East Lease relevant to the issues in dispute are:

Particulars Part 2:

“Building” - The Cube, Wharfside Street, The Mailbox, Birmingham 81 1XL being the whole of the land registered under the Title Number including (where the context so admits) all buildings upon it the Car Park and the Communal Areas and each and every other part thereof together with such larger area in the vicinity of the Building or such smaller area which the Landlord shall from time to time desire to be included within this definition.”

1.1 Defined terms:

“the Additional Service costs” the service costs set out in Schedule 5

“the Building Services” the services described in Schedule 6

“the Building Service Costs” has the meaning given to it in Schedule 6.

“the Car Park” means the areas within the Building designated by the Landlord from time to time for the parking of motor vehicles.

“the Car Parking Licence” means the licence to park a car in the Car Park dated the same date as this Lease and made between.....”

“the Insured Risks” Means such of the following risks against which the Landlord can effect insurance on reasonable terms in the UK insurance market:-

(a) fire explosion storm tempest lightning flood burst pipes escape of water. or oil impact aircraft and articles dropped therefrom aerial devices earthquake theft civil commotion and malicious damage and such other risks as the Landlord shall think fit and

(b) liability of the Landlord arising out of or in connection with any matter involving or relating to the Building including without prejudice to the generality of the foregoing property owners employers and public liability and

(c) the loss of Annual Rent and Service Charge payable under this Lease from time to time for three years or such longer period as the Landlord may from time to time reasonably deem to be necessary for the purposes of planning and carrying out rebuilding or reinstatement

“the Service Charge” means the fair proportion of the Service Costs attributable to the Property (together with any right to use a space in the Car Park) in accordance with the provisions of Clause 6.2

"the Service Costs" the proper and reasonable expenditure incurred by the Landlord in providing the Services and any proper and reasonable Additional Service Costs which amongst other costs and for the avoidance of doubt includes the Building Service Costs (as defined in Schedule 6)

"the Services" means the services set out in Clause 6."

3 Tenant's Covenants

3.8 To pay Service Charge

Pay to the Landlord the Service Charge at the times and in the manner provided in clause 6.2"

6. The Landlords Further Covenants

6.1 Services

6.1.1 The Landlord is throughout the Term and for the benefit of the Building:

6.1.1.1 to maintain, clean and repair the Communal Areas and landlord's fixtures and conduits serving the Building

6.1.1.2 to use all reasonable endeavours to light the Communal Areas during such hours as the Landlord deems necessary an

6.1.1.3 to use all reasonable endeavours to provide heating and air conditioning where it is installed to the Communal Areas during such hours as the Landlord deems necessary

6.1.1.4 to provide (or where relevant use best endeavours to procure the provision by any superior landlord of) the Building Services."

6.2 Service Charge

6.2.1 In each Service Charge Year the Tenant is to pay a fair proportion of the Service Costs

...

6.2.2 As soon as reasonably practicable after the end of each Service Charge Year, the Landlord is to prepare and to provide the Tenant with a copy of a statement showing in respect of that Service Charge Year the total Service Costs, the proportion of them payable by the Tenant, the sums paid in advance by the Tenant and any balance due from or to the Tenant....

.....

6.2.9 The Landlord is to apportion the Building Service Costs fairly between the Tenant and any other tenants and occupiers of the Building. In making that apportionment the Landlord:

6.2.9.1 may allocate to the Tenant or to any other person the whole or any reasonable proportion of the Service Costs where it is reasonable to do so or operate different service charge percentages in respect of particular Services or Additional Service Costs and.

6.2.9.2 ...

6.3 Insurance

To insure and keep insured (unless such insurance shall be vitiated by any act or default of the Tenant or any person claiming through the Tenant or his or their servants agents licensees or invitees) the Building against loss or damage by the Insured Risks in some insurance office of repute in an amount which represents the Landlord's reasonable estimate of the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof and to insure the fixtures and fittings plant and machinery of the Landlord against such risks as are usually covered by a flat owners comprehensive policy”

9. Schedules 5 and 6 are not set out in in this decision. Where relevant to the issues under discussion, specific reference is made to those Schedules.
10. As mentioned above the Cube West lease differs, not all the definitions above are included and some clauses differ.

The Carpark Licences.

11. A sample carpark Licence was provided dated 27 November 2013 granted to the proposed leaseholder of apartment 1501 Cube East by EPISO3 S.A.R.L. the former freehold owner of the Cube. The Licence grants the non-exclusive right to park a single car in ‘Car Space 24’ without conferring any exclusive right to use any space. The licence term runs from 27 November 2013 until termination of the apartment lease. It is unclear whether the licences were assigned to the Landlord or the freeholder following its acquisition in June 2018
12. The Licence was granted for a premium of £15,000.00 and is subject to payment of a Service Charge which is defined as a fair proportion of the annual Building Service Costs (as defined) attributable to the “Car Space” as determined by the Licensor or a duly qualified surveyor/accountant (acting reasonably). The Licensee is to pay the Service Charge (as defined) in accordance with clause 6.2 of the apartment lease.
13. Maintenance of the carpark is brought within the Landlord’s obligations under the apartment Leases, as is the Leaseholder’s liability to contribute to maintenance and insurance costs through the service charge mechanism in the Lease. The service charge rights and liabilities of a carpark licensee overlap with the service charge rights and liabilities in their apartment Lease.
14. The drafting of the apartment Lease and car parking Licence is consistent with an intention to collect from the carpark users a fair proportion of the Building Services Costs as they are defined in the apartment Lease and the Licence.

Application and Directions

15. By application filed on 7 July 2024, the Leaseholders sought a determination under section 27A of the Landlord and Tenant Act 1985 as to whether certain charges for the service charge years 2018 to 2023 (inclusive) are payable and reasonable and whether the interim charges demanded for 2024 for the same items are reasonable.

16. On 10 December 2024, the Applicants' representative filed a statement of case supported by witness statements from two representative Leaseholders: David Black (leaseholder of 2 apartments in Cube West) and David Francis (leaseholder of an apartment in Cube East). At the same time a Scott schedule was provided supported by a statement from Amarjeet Kundi, a director of a property management company based in Birmingham. Mr Kundi was responsible for the suggested figures in the Scott Schedule that the Leaseholders deemed reasonable.
17. A Case Management Hearing (CMH) was arranged on 19 February 2025 to consider what could be determined on this application and what directions were necessary to enable the parties to better identify and address the issues.
18. Directions issued following the CMH confirm the parties' agreement that certain issues raised in the statement of case could not be determined on this application and that that the issues in dispute that could be determined were:
 - The payability and reasonableness of service charges for the years 2018 to 2023 (inclusive) which will include a determination as to whether the service charge proportions applied to the Service Costs are a fair proportion, as required by the Lease.
 - The reasonableness on the interim demand in respect of 2024.
 - Whether an order under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be made.
 - Whether an order for reimbursement of application/ hearing fees should be made.
19. The Respondent was directed to provide documents and an explanation of how various aspects of the service charge operated, including:
 - copies of the interim demands and balancing charges (reconciliation statements) for each of the years in dispute,
 - a schedule of the current apportionments in respect of each of the services charged under separate schedules, showing the apportionments for the apartments, the commercial units and the car parking spaces, together with an explanation of how these have been calculated before and after a 2021 re-measurement survey of the car park [actually carried out in 2022].
 - A copy of the insurance schedules for each year showing the total amount of the premiums and other charges paid for insuring the Building.
 - A statement from Reich insurance brokers setting out a detailed breakdown, by annual insurance period, of the amount of any fees, commission, or remuneration which either:
 - it has received; or
 - it has paid, or which has been paid through it, to the Respondents, or the managing agents; and/or to any third party,
 - In either case, in relation to the insurance of the Building for the insurance periods 2018 to 2024 inclusive.
20. The Respondent provided disclosure and filed a statement of case on 31 March 2025, together with witness statements from Nigel Todd (on behalf of the

insurance broker, Reich), Simon Marshall, Doug Wattleworth and Sarah Taylor (all of Fidum), and Max Archer Joy (an energy consultant) concerning electricity charges.

21. The Applicant filed witness statements in response from David Black and Deborah Murphy (a Block Management consultant) on 25 April 2025.
22. Both parties then filed supplemental witness statements. David Black on behalf of the Applicant on 27 June 2025, and Doug Wattleworth, Simon Marshall and Sarah Taylor on behalf of the Respondent on 4 September 2025.

Hearing and inspection

23. The case was listed for a 4-day face to face hearing commencing on 9 December 2025 with an inspection on the morning of the 9 December. The Applicants were represented by Stan Gallagher of counsel. Lina Mattsson of counsel represented the Respondent.
24. In readiness for the hearing, the Tribunal received a consolidated 2404-page Bundle, skeleton arguments from both parties and a Joint Authorities Bundle. References in this decision to relevant pages of the consolidated Bundle are in square brackets.
25. The Tribunal's inspection included access from the central atrium to level 8 from which they inspected level 4 (carpark) level 5 (goods lifts, back of house and commercial spa area which was vacant), level 6 (security, CCTV room and carpark access, Cube West access lifts from atrium and bowling alley), level 7 (concierge entrance to Cube East lifts) level 8 (commercial reception for offices) level 9 (plant for communal heating), level 14 (vacant offices) level 16 (service lift to Cube East refuse area and corridors), and level 23 (rooftop restaurant and bar).
26. The Tribunal also inspected the exterior of the Cube, part of the roof housing the building maintenance unit ("BMU") and the interior of a large Cube East duplex apartment on level 19, which is a north facing corner apartment. They noted that the entrances to Cube East and Cube West are separate floors (6 and 7). Access is by lifts controlled by a security card access system. Cube East additionally has a small reception area on level 7 with a concierge.

Issues

27. The Applicants' statement of case identifies ten principal issues. These were whittled down to six following the CMH and subsequent disclosure, including the statements provided by the Respondent.
28. The disputed items are almost identical for each year. The issues on the disputed items will therefore be considered first and then applied to findings specific to one or more of the years in dispute.
29. Counsel provided a list of agreed issues for the hearing. The Tribunal questioned why the apportionment issue appeared to have been dropped (or conceded) other than in relation to the carpark charges. The Tribunal's directions of 17 February

2025 referred to above, and Mr Gallagher's skeleton argument identify apportionments as a general issue that require explanation. The issue had it seems not been conceded. Mr Gallagher had been instructed very late in the day (shortly before the hearing). He acknowledged that he may have inadvertently caused Ms Mattsson to believe apportionments would only be an issue in relation to the carpark charges.

30. The Tribunal offered to give Ms Mattsson additional time to prepare if needed but determined that it would consider apportionments where it appeared to be relevant to determining the issues that were in dispute.

31. With that in mind and adopting the same order, the issues for determination are:

- a. Buildings Insurance: whether premiums reasonably incurred, reasonable in amount and apportioned fairly.
- b. Security: whether charges reasonably incurred, reasonable in amount and apportioned fairly.
- c. Cleaning of external windows and façade: whether costs reasonably incurred, reasonable in amount and the service of a reasonable standard.
- d. Management: whether costs reasonably incurred, reasonable in amount and the service of a reasonable standard.
- e. Common parts electricity: whether charges reasonably incurred, reasonable in amount and apportioned fairly.
- f. Car Park: whether the costs were apportioned fairly before and after the 2022 remeasurement,

32. From the undisputed evidence provided by the parties the Tribunal was able to determine the following facts:

- The Cube was constructed between 2007 and 2010. The apartments were sold on and from completion in 2010. It was a prestige development within Birmingham's canal side regeneration quarter providing stylish city living in which the original lessees took enormous pride.
- The freeholder is a property investment company. It acquired The Cube in 2018 and at the same time granted a headlease of the Building to the Landlord. The Landlord retains no staff for management of the Cube. All affairs are arranged through agents. The Landlord appointed Edgerley Simpson Howe LLP (ESH) to manage the Building as from 15 June 2018, save for buildings insurance for which the Landlord appointed Reich to act as broker. Simon Marshall, a designated member of ESH, was directly responsible for the management of the Building, apart from arranging insurance.
- Pre-2018 The Cube was managed by CBRE Asset Management ("CBRE"), the agents appointed by the previous owner. ESH took over management from

CBRE part way through the 2018 service charge year and to avoid the expense of a mid-year re-assessment adopted the budget figures used by CBRE for 2018.

- In 2019 Simon Marshall formed Fidum which took over management of The Cube from ESH, with Simon Marshall continuing to oversee management.
- In 2021 adjustments were made to the apportionment of security and carpark costs. In 2022 two further significant changes were made. First to the allocation of management staff costs, previously shared across all occupiers. Secondly, to the carpark area of 101,225 sq ft, which was (desktop) re-measured by Fidum at 44,000 sq ft. This figure was then used to calculate insurance apportionments and some service charge apportionments for the 2022 reconciliation account and has been applied to the service charges since 2022.

Parties' argument and evidence

33. The Respondent's primary case is that the Leaseholders have failed to put forward any positive case. They have merely asked questions about the services which have been answered in full. Therefore, the Tribunal should, following ***Yorkbrook Investments Ltd v Batten (1986) 18 H.L.R. 25; and Schilling v Canary Riverside unreported 2005 LRX/26/2005 Lands Tribunal***, dismiss the application and find that the charges are payable in full.
34. I will deal with that argument briefly. The following paragraphs of this decision set out what the Leaseholders case appears to be from the statements and evidence. It is true they were hampered by a lack of meaningful comparables for most of the charges in dispute, however; where charges have increased significantly, where there has been an absence of recent tendering or benchmarking of substantial contracts, where insurance premiums include significant undisclosed premiums, and the explanations put forward by the Landlord are not accepted by the Leaseholders, a prima facie case is raised that charges have been unreasonably incurred. Furthermore, their case on window cleaning and management fees include specific allegations of shoddy service for which a positive case for limitation under section 19(1)(b) of the 1985 Act has been put forward.
35. The Applicants' statement of case identifies issues in dispute and expressly relies on the further particulars contained in the witness statements filed with it. David Black's statement provides a more detailed explanation of the items challenged, supported by attached documents. The Scott schedule is a basic list of the heads of challenge in the Applicants' statement of case. The suggested figures in the Scott Schedule were put forward by Mr Amarjit Kundi. Unfortunately, his witness statement is not supported with evidence of relevant management (other than a bare assertion), or any meaningful comparisons. The statement of Deborah Murphy filed on 25 April 2025, provides some comparables of security charges and management fees on what she states are comparable (but unidentified) buildings. There is insufficient evidence of the comparables being 'like for like' to afford them much weight, particularly as neither witness attended the hearing to clarify their evidence. However, this goes to credibility and weight, it does not mean the issues were insufficiently raised or particularised for the Tribunal to consider and determine them.

36. Ms Mattsson also submitted that (other than the effect of the 2022 carpark remeasurement on insurance and carpark costs) apportionments were not an issue properly before the Tribunal because the issue had not been raised by the Applicants in their statement of case or Scott schedule. That argument was not accepted at the hearing. The Applicants' statement of case and Scott schedule were filed before the CMH and before the Respondent provided the disclosure and statements directed at the CMH. The issue was however specifically raised in the Applicant's statement of case with reference to paragraph 6.2.9 of the Lease [209] and in the witness statement filed with it. Furthermore, a detailed explanation of apportionments generally and specifically in relation to car park, insurance and security charges was put forward in the Respondent's witness statements, indicating the Respondent knew precisely what apportionments were disputed and why.
37. As the vexed issue of apportionments affects most of the disputed charges, we will first consider apportionments generally and then take each of the six issues in turn.

Apportionments

38. Clause 6.2.9 of the Lease requires the Landlord is to apportion the Building Service Costs fairly between the Tenant and any other tenants and occupiers of the Building. The Landlord has discretion under clause 6.2.9.1 to allocate different percentages for particular services where reasonable to do so.
39. The service charge (apart from insurance costs which are treated differently) is currently based on a whole Building charge with costs apportioned on a net internal sq ft basis and adjusted through service charge schedules to reflect the amount to which each category of occupier (commercial and residential) does or does not benefit. There are currently 10 service charge schedules for the Building. The variations to the commercial areas are in Schedules 3, 4, 7, 8, and 10 (respectively retail, offices, hotel & restaurant, commercial car park and commercial electricity). The residential variations are in Schedules 5 (Cube East) and Schedule 6 (Cube West). Schedules 1B and 9 show the allocations for the residential car park Licensees.
40. Simon Marshall states that he followed the apportionment methodology used by the previous owner's managing agents CBRE [2283] which he believes was a whole building charge apportioned on a net internal sq ft basis, adjusted within costs schedules where a service disproportionately benefitted or did not benefit certain categories of occupier. He exhibited copies of the 2019 ESH budget apportionment schedules showing the whole Building apportionments for 2019 [894 and 934] which he says are based on the original CBRE apportionments.
41. In subsequent years, Fidum have further adjusted the apportionment schedules where fair and reasonable to reflect the use/benefit of a particular service. The costs allocated to Schedule 5 (Cube East) and Schedule 6 (Cube West) are apportioned between the Leaseholders based on the floor area of their respective apartments, (about which there is no dispute).
42. The Tribunal is not convinced the documentary evidence for the 2018/19 budget supports a whole building charge allocated on a sq ft basis and adjusted through

schedules. That explanation appears correct for the commercial tenants but not the residential. The ESH whole building apportionment schedule for the 2019 budget [894 and 934] suggests that only the commercial tenants' shares were adjusted through schedules, there is no adjustment to the residential schedules.

43. The schedules at [894 and 934] show the commercial leaseholders listed in the first column with their respective sq ft. The adjustments to their contributions are listed under (un-headed) schedules 1,2,3,4 and 7, which we assume are for the main categories of service. There are no adjustments to the residential schedules, instead a fixed proportion of the total service costs was allocated.
44. The CBRE 2018 budget summary for Cube East appears to confirm this [874-885]. The total charge is divided between the Cube East lessees on a straight sq ft basis. Under '*apportionment*' the notes to the budget summary state that the service charge is operated under one schedule and calculated on the relative size of the apartments with no weighting [879]. This is consistent with a fixed allocation of a proportion of the whole building charge to the residential blocks.
45. The whole building apportionments schedule for the 2019 reconciliation [1344] appears to be based on a different methodology. The significant change is the removal of a fixed allocation of the whole building charge to the residential schedules with no adjustments. The changed methodology has been applied to the whole building apportionments for 2020-2024 [1345- 1349]. In practical terms it may not have materially affected the amount charged to the Leaseholders. It was not communicated to the Leaseholders, but that does not mean the new methodology is unfair. The apportionment issues in this case (apart from insurance) concern the adjustments to the base sq ft allocation made in the relevant service charge schedules.
46. The Tribunal has found it quite difficult to reconcile Simon Marshalls statements with the accounts. The apportionments are shown but not explained on the schedules or in the accounts. It would have been well-nigh impossible for the Leaseholders to assess year on year whether the basis had changed or if they were being charged a fair proportion of the whole Building costs.
47. In relation to the current methodology Simon Marshall's evidence confirms:
 - a. The base share of the costs allocated to Schedule 5 and Schedule 6, calculated on the aggregate net internal sq ft of Cube East and Cube West is 12.40% and 15.40% respectively. He says, these proportions applied to most of the management costs. (The apportionment of management costs is not in dispute).
 - b. Security for Cube East and Cube West is charged at 12% and 4% respectively. This reflects the 12-hour concierge service provided to Cube East which Cube West doesn't have. (Apportionment of Security costs is considered below).
 - c. Insurance costs are not shown on the service charge apportionment schedules or accounts because insurance is placed and charged separately by the Landlord's broker. The costs have been apportioned on an unadjusted

internal sq ft basis across all occupiers of the Building following adoption of the previous owner's insurance schedule.

- d. The whole Building apportionments were varied following the desk-top survey of the carpark carried in 2022. The desktop survey concluded that the net internal floor area of the car parking bays was about 44,000 sq ft and that figure was then used to allocate insurance costs. (Apportionment of building insurance costs, before and after the carpark remeasurement, is considered below).
- e. Fidum then weighted the carpark survey measurement down by 50% to 22,000 sq ft. to reflect the lower provision of some building services provided to the carpark. At the same time a new Schedule 1B was introduced to allocate new additional service costs just to the residential car park users. (Apportionment of carpark costs is considered below).
- f. The base service charge apportionments for Cube East and Cube West have not been changed for other services.

48. In oral evidence Simon Marshall deferred to Doug Wattleworth in relation to specific adjustments to the schedules, which he said were dealt with by the site managers. However, while Doug Wattleworth said he was aware of some adjustments, such as the lift contracts being adjusted because the leaseholders were paying too much, he was not responsible for adjusting the apportionment schedules and could not assist.

49. The floors areas have not been re-measured generally by Fidum. It has largely based apportionments on the CBRE measurements which are not disputed. Apportionment of the Schedule 5 and 6 costs between the Leaseholders is also not disputed.

50. Although not directly relevant, a further survey of the carpark was commissioned by Fidum from Murphy Geospatial in July 2023. That survey calculates the total net internal area of car parking bays to be 53645 sq ft. It is unclear if Fidum intend using that figure going forward.

51. Determining how costs reasonably incurred are apportioned depends on the terms of the Lease. As stated, Clause 6.2.9 of the Lease requires the Landlord to apportion costs fairly. The question for the Tribunal is whether, in relation to apportionment of insurance, security and carpark charges the Landlord has acted in breach of Clause 6.2.9 of the Lease.

Building Insurance

52. Fidum is not involved with procuring insurance. Its management functions are limited to providing updated occupier, rent and service charge details to the broker, sending out the broker's certificates and demands and referring property damage claims to the broker for action. It also acts as a post box for relaying complaints and queries from Leaseholders to the broker and responses back. Occupiers' details are held on a spread sheet which shows the sq footage of each unit. It also shows the premiums apportioned to each occupier and the total amount payable ("the

Insurance Schedule”). The Insurance Schedule is updated annually. Copies for 2021 and 2022 were provided showing the effect of the 2022 carpark survey.

53. The Landlord engaged Reich Insurance Brokers Limited (Reich) to place insurance for the Building from 2019. Prior to that building insurance was procured by Marsh Limited (the previous owner’s broker). Reich procured insurance for the years 2019 to 2024. During 2024 Reich merged its business with Howden Group who will place insurance on behalf of the Landlord going forward.

Applicants’ case

54. The Applicants’ statement of case makes a generalised complaint about huge rises in insurance charges since 2018 which have not been explained. An example of a Cube East apartment with a car park licence shows an increase in charges from £153.85 in 2018 to £727.95 in 2024. The Applicants say that until these proceedings it had proved impossible to obtain information about the premiums, the broker’s fees and commissions, to allow them to understand the charges or reasons for the steep increases.

55. Furthermore, the reapportionment following the 2022 carpark survey significantly decreased the premium payable by the Landlord at the expense of the residential apartments. This, they say is not fair and reasonable as required by clause 6.2.9 of the Lease.

56. David Black filed two witness statements in support of the Applicants’ case. He identifies the key areas of concern as:

- a. Annual increases since 2018
- b. The re-apportionment exercise in 2022 following the desktop survey.
- c. Excessive claims for water escape (and the decision not to investigate a ‘leak-safe’ system).
- d. The continuous appointment of Reich as broker, without tendering.

57. David Black states that attempts to contact the Landlord were unsuccessful. All correspondence concerning their complaints and queries is passed through Fidum despite insurance being arranged by Reich and charged separately from the service charge. Copies of email correspondence from September 2021 to November 2024 is attached to his 1st statement [305-408]. The correspondence shows requests made for an explanation of the high levels of premiums, concerns about how water leaks are dealt with, queries about why they are paying premiums of £1.5 million for loss of commercial rents [328 and 331], requests for an explanation of the effect of the 2022 carpark remeasurement on apportionments and frustration at having to address these issues through Fidum. A virtual meeting was arranged with the Landlord’s solicitor at which he raised these and other points but there was no follow up.

58. Regarding the explanations relayed by Fidum from the broker, David Black says that he is aware of the impact of the Grenfell disaster on the insurance market. However, the Cube has A1 EWS1 rating and is consequently less affected. Grenfell cannot therefore of itself account for the large increases. He appreciates that the Landlord does not have the previous owner’s competitive block policy edge.

However, the premium for property damage and business interruption has increased four-fold which he did not think could be justified by the Landlord's less competitive position and the water escape claims. He questions Reichs competence, wonders if the broker's fees and commission may be driving Reichs recommendations and seeks justification for the continued appointment of Reich.

59. David Black refers to comments relayed from Reich confirming that most insurers required as a condition of their quote the installation of a Leaksafe prevention system but that the costs for a property of this size would be substantial and likely re-charged to the tenants under the service charge. He complains that no costs benefit analysis of an installation was carried out to establish if the reduction in premiums and excesses would have more than offset the cost.
60. In relation to the 2022 carpark survey, David Black argues that poor, inconsistent responses from Fidum made it impossible for the leaseholders to understand the basis of the re-measurement or reconcile it with the apportionment of the charges. The changes were not communicated to leaseholders until after the exercise was completed and applied to the 2022 balancing charges. He exhibits copies of correspondence in 2023 between Jawad Hassan and Sarah Marshall (concerning the 2022 reconciliation accounts) to illustrate the lack of transparency and confusion arising from the failure to consult the leaseholders or communicate the effect of the remeasurement exercise on apportionment of the service charge and insurance charges.
61. David Black disagrees with using the net sq footage of the carpark bays as the correct basis for the re-apportionment of charges. In oral evidence he said that the plant areas, and car lift shafts in the car park levels, should all have been included in the sq ft calculation.
62. The effect of the carpark survey is shown on the 2022 Insurance Schedule. However, copies of the Insurance Schedules were not provided to Leaseholders until disclosure was ordered in these proceedings.

Respondent's case

63. The Landlord's case on insurance is set out in three paragraphs of the Respondent's statement of case filed on 31 March 2025.
64. Paragraph 21 states that the Landlord is liable to insure the Building under clause 6.1 and 6.3 of the Lease.
65. Paragraph 22 states that the obligation has been discharged by the appointment of a Reich, a reputable insurance broker.
66. Paragraph 23 explains that:
 - a. The costs of insurance are left to the broker to explain in the witness statement of Nigel Todd of Howdens.
 - b. The broker's fees/commission form part of the total premium and no commission or other fees have been paid to or received by the Landlord or Fidum.

- c. The apportionments for the carpark before and after the 2022 survey are explained in Simon Marshall's witness statement.
67. Nigel Todd did not attend the hearing, so his evidence has not been tested in cross examination. He is head of Real Estate at Howden Group which acquired Reich Insurance Group in March 2023, with the business of Reich being formally merged and re-branded on 5 November 2024.
68. Nigel Todd prefaces his statement by stating he has no personal knowledge of matters relating to insurance of the Building. He liaised with the senior account manager for the Reich accounts who has only worked on this account since January 2024. All the facts stated have been taken from the records of Howdens RE Manchester, a former business unit of Reich. No employees at Howdens have any personal knowledge of the account, all personnel who worked on the account prior to January 2024 having resigned.
69. He explains that Howden's role is to procure insurance on an annual basis following receipt of an update from Fidum about any tenancy changes. The insurance year runs from 15 June. Reich/Howdens approach relevant insurers to provide pricing quotes. These are summarised in a report sent to the Landlord each year with their recommendations. They also deal with all claims against the insurance.
70. He explains that the costs of rebuilding the Cube exceed the maximum any one insurer will cover, so in line with common practice it is co-insured. This complicates the renewal process. For the 2024/25 renewal Howdens approached ten alternative insurers and the three current insurers. None could provide a more competitive lead quote than the current lead insurer, Travellers. Based on their insurance market analysis Howdens have concluded that Travellers offered comprehensive cover at the best rate currently available and this reflects their 2024/5 renewal recommendation.
71. No witness statement was provided by the Landlord and no one from Reich with personal knowledge of insurance arrangement for 2018 – 2023 was available to provide a statement. The following paragraphs are therefore drawn from the Reich annual reports attached to Nigel Todd's witness statement.
72. In 2018 Reich placed insurance with Zurich on a single insurer basis for a total premium of £222,760.18 [1564].
73. The 2019 Report details a high level of claims in the preceding period which had concerned insurers. The report states that a schedule showing the total premium splits based on the previous year would be sent to the Landlord to review and advise if there were any specific tenants which would benefit from a lower premium percentage, to avoid disputes [1586]. If there was a response it has not been provided.
74. The 2020 Report states that no single insurer was prepared to cover the entire risk and that the high level of claims in 2019 (totalling £177,281.69) had led to rate increases and higher excesses.

75. The renewal terms offered in 2020 included:

- a. Loss of 3 years annual rent of just over £10.27 million.
- b. Loss of 3 years annual service charge of just over £10.33 million.

76. The total premium of £350,310.22 was split between the various insurers as follows:

- Property risks (i.e. buildings, business interruption) was covered 50:50 by Zurich and Travellers insurers with the premium of £215,406.41 split 50:50.
- Public liability (POL) was placed with Zurich at a premium of £31,605.55 with excess cover provided by AIG for an additional premium of £2,250.00.
- Engineering insurance was placed with Zurich for a premium of £52,100.85.
- Terrorism was placed with Convex at a premium of 29,792.00 with an excess layer covered by Howdens for £18,885.00 - total premium of £48,677.00.

Reichs offered a 15% discount on the Premium bringing the total premium for 2020 down to £335,310.22. The report states that despite the sizeable increase in premiums these terms were the best available in the market. They had not been able to source any alternative quotes due to a hardening of the market.

77. The 2021 Report is similar, confirms that three major insurers had exited the UK market further reducing capacity and choice, and repeats comments about claims in 2019 being a major cause of large premium increases. However, the Report also states that competitive premiums were available for good quality managed risks [1615]. The total Premium of £376,246.58 was again discounted by £15,000.00 giving a net premium of £361,246.58.

78. The 2022 Report follows a similar pattern [1621]. Still relying on high claims in 2019 and contraction in the market to justify the high level of premiums, which for 2022 totalled £407,120.07 (after applying a £15,000.00 discount).

79. The 2023 Report repeats the same justification for high levels of premium as in three previous years reports. Loss of rent is reduced (presumably due to higher vacancy rates). The premium increased to £444,805.75.

80. The Howden/Reichs proposal for 2024 [1636] shows a further reduction in the loss of rent and a drop in the loss of service charge. The report states Reich approached 9 property insurers in addition to the three existing and provides brief reasons why all those approached did not wish to quote. The total premium requested was £406,860.08. The proposal states that in terms of pricing all prospective insurers thought the current prices were competitive. Of note, under "Current Insurer comments" the report states:

"As you will be aware, we are overdue on the risk improvement requirements and it has been very difficult to manage the insurers and avoid special terms being applied. There are also some other points I need to make you aware of."

81. Those 'other points' are a list of ongoing, unresolved deficiencies, some sufficiently serious to threaten reduced cover if not remedied prior to renewal [1639/40].

82. Notably none of the annual recommendation reports disclose the broker's commission. The notes just confirm "*You are entitled, at any time, to request information regarding any commission which we may have received as a result of placing your insurance business.*" There is no evidence the Landlord requested information on commissions.
83. Copies of renewal letters sent to 'Tenants of The Cube' by Reich in 2019, 2022 and 2023 are exhibited to Simon Marshall's witness statement [1649-1662]. The letters explain the renewal premium and provide reasons for changes in the level and type of cover. Market difficulties and the impact of high level of claims in preceding years featuring on most. The letter sent on 11 August 2021 explains that leaseholder insurance costs are based on the square footage of their unit, plus the insurance cost of a car parking space, should they have one. There is no explanation of the rationale for this, either before or after the 2022 desktop survey. The Leaseholders' letters do not contain anything approaching the level of detail set out in the annual Reports provided to the Landlord. There is insufficient information or explanation of the risks, the categories of indemnity or the justification for apportioning the costs on a sq ft basis across the Building to allow for a sensible challenge.
84. A detailed schedule showing the premiums and commissions paid for the years 2018-2024 was exhibited to Nigel Todd's statement allowing the Leaseholders to see (for the first time) how much commission/remuneration was paid to the broker for the years in question [1647/8]. Nigel Todd states that basis of the remuneration is in line with industry standards.
85. The schedule shows the premiums charged for the various categories of risk and the commission on each. The commission rates vary. Buildings premium commissions vary from 5% to 30% of the premium. The highest rate of commission (37%) was paid on the Convex terrorism cover. Commission for Plant protection is a consistent 30%.
86. The table below is based on that schedule but shows the total aggregate premiums (i.e not broken down between the various categories of risk), the aggregate commissions retained by Reich/Howden and the overall percentage that bears to the total aggregate premium before and after applying any discount. All figures are net of tax.

Year	Premium net of IPT	Commission rate (aggregate)	Commission before discount	Discount	Commission after discount	Commission rate (aggregate) after discount
2018	198,968.88	30%	59,553.95		59,553.95	30%
2019	224,047.78	29%	66,367.46		66,367.46	29%
2020	310,686.19	27%	84,428.68	15,000.	69,428.68	22%
2021	333,760.01	27%	89,989.21	15,000.	74,989.21	22%
2022	374,631.51	24%	88,980.21	15,000.	73,980.21	20%
2023	394,773.51	20%	79,292.10		79,292.10	20%
2024	359,441.53	8%	29,879.67	217.81	29,661.86	8%

Note: the total premiums shown on Nigel Todd's schedule vary slightly, although not significantly, from that shown on some of the annual renewal letters.

Deliberation and decision on Insurance

87. The Tribunal hoped to obtain clarification of Nigel Todd's evidence at the hearing particularly as no witness statement was provided by the Landlord or Reich. Fidum is not involved with the procurement or analysis of premium allocation. Fidum could not assist other than with the mechanics of updating the broker and issuing invoices, although Simon Marshall did express an opinion on how insurance costs should be apportioned.

88. The issues for the Tribunal are:

- a. Whether insurance premiums (including commissions) payable by the Leaseholders are reasonably incurred.
- b. Whether the apportionment methodology used to allocate the insurance costs to the Leaseholders was in accordance with clause 6.2.9 of the Lease before and after the desktop survey remeasurement exercise.

89. We first consider the relevant insurance provisions in the Lease to see what potential liabilities are to be insured against and whether the risks covered reflect these. We then consider the steps taken to assess policy selection, including market conditions, to assess whether the premiums including commissions were reasonably incurred. Finally, we will consider the fairness of the premium allocations before and after the 2022 desktop survey.

Lease provisions

90. Clause 6.3 sets out the Landlord's obligation to insure the Building against loss or damage by the Insured Risks. The 'Insured Risks' are defined to include "*the loss of Annual Rent and Service Charge payable under this Lease from time to time for three years or such longer period...*"

91. There is no separate covenant to pay the insurance charges (either as insurance rent or otherwise). Instead, under Clause 6.2.1, insurance is rolled into the service charge by the requirement for the tenant to pay a fair proportion of the *Service Costs*, which include by reference the Schedule 5 costs.

92. Paragraph 5 of Schedule 5 (Additional Service Costs) includes the costs of the Landlord insuring the Building in accordance with clause 6.3.

93. To summarise the Leaseholders are obliged to pay a fair proportion of the proper and reasonable expenditure incurred by the Landlord in complying with its covenant in clause 6.3. i.e. to insure against the 'Insured Risks'.

94. 'Insured Risks' specify cover for three years loss of rent and service charge payable by the tenant under the lease (i.e. not a proportion of the aggregate rents receivable for the entire Building).
95. Clause 6.2.9 is a general requirement that the Landlord apportions the Service Costs fairly between the tenant and any other tenants and occupiers of the Building. All insurance costs are apportioned on a comparative internal sq ft basis between all occupiers of Building and (unlike other Service Costs), without any adjustment.

Do the premiums reflect the Lease covenants?

96. The renewal proposal for 2020 shows a limit of indemnity for loss of rent for 36 months of over £10 million. Three years loss of rent for the 244 leaseholders of Cube East and West totals no more than £256,200.00. This is just 2.54% of the level of indemnity insured under the policy, which include the commercial market rents. There is a gross disparity between the commercial and residential rents. Although contractual liability to pay is not an issue in this case, an apportionment of the premium should have been considered to reflect the much lower limit of indemnity required in the residential Leases.
97. The same applies to indemnity for loss of the anchor tenant, up to £2.5 million and loss of attraction up to £5 million, and cover for terrorism, which in 2023 incurred a total premium of just over £44,000.00. A major part of these protections is for commercial business interruption which does not benefit the Leaseholders.
98. Analysing what risks properly reflect the Insured Risks, to ensure the costs are payable and/or apportioned fairly, is an exercise that should have been undertaken by the Landlord in conjunction with Reich (and the insurers) on each renewal. Instead, the easy option has been taken to simply allocate the total building insurance costs between the commercial and residential occupiers of the Building on a net internal square foot basis. The effect of this is considered further below under apportionments before and after the 2022 carpark survey.

Were the premiums payable under the Lease, including commissions reasonably incurred?

99. The cost of insurance is part of the Service Costs which include the proper and reasonable expenditure incurred by the Landlord in providing insurance. The Landlord engaged Reich to place the insurance. The premiums, including commissions paid to Reich, are part of the costs incurred in connection with the supply of services to the Landlord. The starting point therefore is that they are payable by the Leaseholders through the service charge mechanism if they have been reasonably incurred.
100. The 2021 Report confirms that competitive premiums were available for good quality managed risks in terms which imply that the Cube did not fall within that category of risk [1615]. Howdens 2024 Report states that the Landlord was aware of the ongoing maintenance issues [1639/1640]. Reich acknowledges that offers are "out of step with what they would expect for a risk of this size and type". It seems likely therefore that the lack of choice of insurer and lack of competitiveness

in the premiums offered, was due in part to some serious ongoing maintenance issues that the Landlord has failed to address. The Leak-safe option has not been investigated, which might have resulted in a net cost saving. However, these are contractual issues concerning the Landlord's maintenance of the Building. They do not affect the question of whether the insurance costs were reasonably incurred. The Building had to be insured whatever its state of repair.

101. The Applicants contend that Reich's recommendations were influenced by the commission and fees they received. Their case is primarily focussed on lack of transparency regarding commissions. They did not receive details of the commissions until disclosure was ordered by the Tribunal in this case which made it difficult for them to put forward a positive challenge with relevant comparables. The Leaseholders had no idea that some 30% of the Building premiums were in some years accounted for by commission.
102. In our view, the complete lack of transparency with Leaseholders regarding the commission payments between 2018 and 2023, has been lamentable. The sums constitute a substantial percentage of the premiums the Leaseholders were asked to contribute to, without any explanation of the nature and amount of the commissions involved. The full extent of these commissions only became apparent through these proceedings.
103. The Respondents case is that the policies were placed on the best terms reasonably obtainable for a complex Building in difficult market conditions, and that the premiums and commissions were in line with industry standards. Reich's reports state that it went out to the market on each renewal since 2018, but no evidence has been provided, other than generalised statements in the annual reports.
104. The only substantive evidence of comparative quotes is on the 2024 renewal letter as confirmed in Nigel Todd's witness statement. The Landlord's market evidence of reasonability of insurance costs is thin. Unsurprisingly there are no market comparisons from the Applicants. It would be difficult to obtain relevant comparables without a valuation for reinstatement, full details of rental incomes, risk profiles of occupiers and a detailed claims history. There are also serious maintenance issues which would need investigating to obtain a meaningful comparable. The absence of any 'like for like' comparisons, although understandable, makes it impossible for the Tribunal to determine that insurance could have been obtained for substantially lower net premiums (i.e. the premiums net of commissions). We find therefore that the premiums for the years 2018 to 2023 (net of commissions), to have been reasonably incurred.
105. Nigel Todd states the commissions/remuneration retained by Reich are in line with industry standards but does not explain what those standards are, or how those standards account for the wide variation in the amounts of commission received by Reich. Neither does he explain why Howden's commission for the 2024 renewal is so much less than the commissions Reich was receiving for the preceding years. Had Nigel Todd attended the hearing he could have been asked.
106. The commission represents Reich's fee for liaising with and negotiating the terms of the policies with the insurers, administering claims and for dealing with

other insurance related issues. If the commissions are in line with industry standards for the work carried out by Reich they are probably reasonably incurred. The only evidence we have on this point is Nigel Todd's witness statement. He is not an expert witness although clearly has relevant experience. He has no personal knowledge of the insurance arrangements during the relevant years, and he does not confirm what work actually undertaken by Reich in return for the commissions. We give weight to his evidence but do not find it conclusive. Had the amounts of commission been consistent, his evidence might have been more persuasive. However, the amounts vary year on year without explanation. There is a striking difference in 2024 when Howdens took over. The 2024 proposal includes details of all comparative market approaches, the premium negotiated is some £40,000.00 less than the previous year due to a reduction in commission of some £50,000.00 from the 2023 level.

107. We are not satisfied that the total commissions paid to Reich for the years 2018 – 2023 were reasonably incurred. There is no independent evidence of industry standard commissions for these years or what work was undertaken by Reich in return for the commissions. The commission percentage varies for each risk. The percentages for POL excess and terrorism range from 12.5% to 37.5% but are consistent year on year, and consistent with Howdens 2024 proposal. By contrast the commission for Building cover varies for no obvious reason between 30% and 17.5%. It is markedly higher than the commission negotiated by Howdens in 2024 of just 5%. Plant protection (Engineering) commission of 30% was applied year on year by Reich. For 2024 Howdens propose 15%. Nigel Todd does not suggest that the 2024 commissions are other than industry standard.

108. We accept that over the course of time standard rates may vary but in the absence of any persuasive evidence justifying the large sums paid to Reich each year we have made a broad-brush determination that the commission for building cover should be reduced to [22%] for the years 2018 and 2019 which is reasonably consistent with the discounted premiums in years 2020-2022. Plant protection (Engineering) commission should be reduced to 15% for the years 2018-2023 in line with Howdens 2024 proposal. We have not made any reduction to the commissions for POL excess or terrorism because although high they are reasonably consistent year on year and consistent with Howdens 2024 proposal. Had the Landlord's witness attended the hearing it would have been possible to seek clarification of the commission variations. As it is we have had to draw inferences from the scant evidence provided.

109. We have no reason to find that the estimated costs for insurance set out in Howdens 2024 proposal is unreasonable.

110. Based on the schedule provided by Nigel Todd these determinations result in a reduction in the amount of commission reasonably incurred for the relevant years as follows:

year	Building Premium before tax	Commission paid to Reich	Commission at 22%	Credit amount to be apportioned
2018	118,142.84	35,442.85	25,991.42	£9,451.43
2019	137,520.68	41,256.20	30,254.54	£11,001.66

year	Engineering Premium before tax	Commission paid to Reich	Commission at 15%	Credit amount to be apportioned
2018	41,076.04	12,322.81	6,161.40	£6,161.40
2019	42,719.07	12,815.72	6,407.86	£6,407.86
2020	44,427.82	13,328.25	6,664.12	£6,664.12
2021	46,204.92	13,861.49	6,930.74	£6,930.74
2022	48,053.11	14,415.91	7,207.95	£7,207.95
2023	49,636.11	14,890.94	7,445.47	£7,445.47

The premium apportionments

111. The above paragraphs deal with whether the insurance costs correctly reflect the Lease and whether the premiums (including commissions) were reasonably incurred. This section considers whether allocation of insurance costs on an unadjusted sq ft basis, before and after the 2022 remeasurement of the carpark is in accordance with clause 6.2.9 of the Lease.
112. Insurance is necessarily procured on a whole building basis to cover all the risks the Landlord is required or advised to insure against. Not all risks will necessarily be the Insured Risks the Leaseholders are required to contribute to, as identified above. The carpark is within the definition 'Building' and must be covered for the Insured Risks.
113. The Respondent's case on apportionment of insurance costs on a net internal sq ft basis appears to rely on consistency of charging, so we will consider that decision first and then consider the reasons for the 2022 re-measurement of the carpark and whether either decision is a breach of clause 6.2.9.
114. Simon Marshall was put forward by the Respondent to comment on apportionment of insurance costs which was surprising given Fidum's lack of involvement with procurement. He comments on service charge apportionments generally at paragraphs 4-10 of his first witness statement and at paragraphs 11 to 17, about the effect of the 2022 desktop survey on the carpark apportionments.
115. Fidum's involvement is limited to updating the Insurance Schedule with any occupier changes before passing it back to the broker. He said the Insurance Schedule was inherited from the previous owner's managing agent. The premiums are allocated building wide on the comparative sq ft each unit bears to the overall lettable areas as shown on the Schedule. The decision to apportion costs in this way does not appear to have been Fidum's, who it seems just continued what was assumed to be the previous owner's methodology.
116. Which brings us to the issue of fairness in the allocation of insurance costs. Under clause 6.2.1 the tenant is required to pay a fair proportion of the Service Costs which include the costs of the Landlord insuring the Building in accordance with clause 6.3. Clause 6.2.9 requires the Landlord to apportion the Service Costs fairly between the tenant and any other tenant and occupier of the Building. Under 6.2.9.1 the Landlord may allocate to any other person the whole or any reasonable

proportion of the Service Costs where it is reasonable to do so or operate different service charge percentages in respect of particular services.

117. Recent caselaw has considered how the Tribunal should approach the question of apportionments. ***Bradley & Anor V Abacus Land 4 Ltd*** [2025] EWCA Civ 1308 confirms that the FTT is limited to deciding whether the Landlord has acted in breach of contract. The Landlord will have acted in breach of contract if it can be said to have acted unreasonably, or to have not exercised a reasonable discretion. The fact that the Landlord is given a discretion indicates that where there is a range of possible views, it is the Landlord who is entitled to choose between them. It is not therefore a question of how the FTT would have chosen had the decision been for them, but of whether the Landlord's choice was outside the range of reasonable decisions it could make. If it was, the Landlord would have acted in breach of contract such as to entitle the FTT to decide that the service charge is not payable in whole or in part.
118. Apportionment of insurance premiums on a large mixed-use building with substantial residential and commercial M&E, a range occupier risks and differing lease terms, would generally receive considerable thought by the managing agents (if they are responsible for placing insurance) or the landlord. There is no evidence in this case that any thought has been given by the Landlord or Reich to the basis of apportioning the premiums. We have expressed concerns above that the apportionments (with regards to loss of rent and business interruption) may not reflect the terms of the Lease. This is not an issue we can determine because the Applicants' claim does not rest on contractual liability. However, to the extent the premiums are payable they must be apportioned in accordance with clause 6.2.9.
119. Simon Marshall expresses an opinion, while at the same time explaining that Fidum is not responsible for placing insurance and has only limited input in the mechanics of updating the broker with occupier changes. When clarification of the insurance costs was sought, the correspondence was passed between Reich and the Leaseholders, the only meeting arranged on insurance was not with Fidum, but with the Landlord's lawyers.
120. Apportionment of insurance costs is a decision for the Landlord to make pursuant to the clause 6.3 and 6.2.9 of the Lease. How the Landlord approached the decision is unexplained. A reasonable landlord would make the decision in conjunction with its broker and the insurers, who are best able to evaluate comparative risks. There is no evidence the decision to apportion on an unadjusted sq ft basis was ever considered by the Landlord. It is extraordinary if the decision to apportion in this way was left to Fidum. Yet that appears to be the case. The only justification put forward by Simon Marshall is consistency. He stated that using the previous owner's Schedule was consistent, and a sq ft apportionment is consistent with how other services costs are charged.
121. The difficulty with this is first, we have no evidence of how the previous owner apportioned and charged insurance costs. Secondly, the other service charge costs are not allocated on a straight sq ft basis. Although some service charge costs are, most costs have been adjusted through the service charge schedules according to the category of tenants that receive the benefit or use of the service. A common and reasonable approach on mixed use developments.

122. Insurance premiums are based on reinstatement costs adjusted to take account of various risk factors including location, condition and maintenance of the building, security, occupier risk and claims history. The allocation to the occupiers on a comparative sq ft basis is reasonable if it is then adjusted to reflect contractual limitations, gross disparities between commercial and residential rents and the varying occupier risks and benefits of a mixed-use building. That is the process followed by Fidum in relation to the service charge costs. No explanation has been put forward for not similarly adjusting the insurance costs. Fidum appear to have been left to administer the Insurance Schedule without any discussion with the Landlord, the broker or insurers about how the costs should be apportioned before or after the remeasurement in 2022.
123. The lack of evidence concerning how the decision was made and the absence of any reasonable explanation from the Landlord of the methodology adopted, make it impossible for the Tribunal to find that the original decision (if indeed there was one) to apportion on an unadjusted sq ft basis was within the range of reasonable decisions the Landlord could have made. So, in considering the effect of the 2022 desktop survey, we start from the position that the apportionments before 2022 were unfair and in breach of Clause 6.2.9.
124. In oral evidence Simon Marshall confirmed the desktop survey came about when he was considering floor plans and thought the area used for the car parking levels could not be correct.
125. He said that for consistency with the service charge apportionments, insurance costs for the carpark should be on a net internal sq ft basis. He fairly acknowledged that he hadn't considered whether the sq ft figure for the carpark inherited from CBRE might have been calculated on the gross area or weighted to reflect the reinstatement costs of a robotic mechanical carpark. He confirmed that he had no experience of managing a building with automated robotic parking and had not made any enquiry about how apportionments might be treated in buildings that did.
126. It is unclear if this was discussed with the Landlord or the broker. Copies of the renewal letters for years 2019, 2022 and 2023 are exhibited to Simon Marshall's statement. The 2022 letter comments as a footnote that Reich had been advised of changes to the square footage apportionment and "*consequently the premiums split has changed for each element of the building*". That appears to be the extent of information provided to Leaseholders about the effect of the 2022 re-measurement.
127. In his second witness statement Simon Marshall confirms the charging methodology following the 2022 remeasurement. The proportion of the total premium allocated to the car park (after the remeasurement) is divided by 315 to represent the total number of spaces (useable and unusable). This provides a flat rate of 1/315th of the premium per car park user.
128. The effect of the change is clear on the 2021 and 2022 Insurance Schedules. In 2021, based on the historic sq ft, the car park allocation was 23.3417% of the gross aggregate premiums totalling £84,321.08. This sum was divided between the car

park licensees at a flat rate of £267.69 per space (1/315th share). The residual sum of £59,961.66 was charged to the Landlord.

129. In 2022, based on the reduced sq ft, the car park allocation dropped to 11.6202% of the gross premium, totalling £47,308.29. The car park licensee's share dropped to £150.19 per space (1/315th share) and the residual sum charged to the Landlord was £33,641.45.
130. The Landlord pays about 70% of the car park insurance costs. In 2022 it benefitted from the re-measurement by a reduction of about £33,828.00 on what it would have paid without the re-measurement. The car park licensees also benefitted by a reduction of about £151.00 per space. Obviously, this was partially offset for licensees who are also Leaseholders by an increase in their apartment Lease premium of about 12.6%. The big winner is the Landlord. The biggest losers are the non-carpark using Leaseholders who saw an increase of about 12.6% in their apartment Lease premium.
131. The decision to re-measure the carpark assumes the previous measurement was incorrect. There is no evidence to support that assumption. Calculating rent and costs on a price per net sq ft is common for retail, office and other commercial premises. Car park rents/fees and costs are always calculated on a per unit basis, not on the size of the parking space or the carpark.
132. Furthermore, the Cube carpark cannot be compared to a standard parking garage. Sarah Taylor confirms in her first witness statement it is "*a unique fully automated parking system, which is the UK's largest*" using "*robotic technology*" [2277]. The fully automated system is accessed over circular drive leading to 4 car lifts. The licensee parks in one of 4 the lifts and leaves. From there the cars are moved through a system of unmanned robotic platforms onto an available parking space. That system operates in reverse when the licensee wants to leave. The accessway, car lifts and robotic platforms together occupy a substantial part of the three car parking levels and the floor above, all of which are left out on the 2022 remeasurement. For these reasons we find it more likely that CBRE's measurement of 101,225 sq ft was not a mistake but reflects either a weighted area or is based on the gross internal area of the car parking areas including the substantial access, lift and plant areas left out of the 2022 remeasurement.
133. For the above reasons we have been unable to conclude the decision to reapportion the whole building costs based on the reduced sq ft from 2022, was a decision a landlord acting reasonably could have made. It is therefore unfair and does not comply with clause 6.2.9 of the Lease
134. Apportionment of insurance premiums for the Building before and after the 2022 remeasurement of the car park levels will need to be reconsidered by the Landlord and its broker. They will need to provide a reconciliation account for service charge years 2018 to 2023 (and if appropriate a revised budget figure for 2024) which:
 - a. Recalculates the apportionments from 2018, including changed the car park allocation from 2022 on, in accordance with the findings in paragraph 123 and 134,

- b. Applies appropriate debits/credits for the years in question,
- c. Deducts the commissions found to be unreasonably incurred, as identified in paragraph 110 above, having correctly apportioned such sums to Cube East and Cube West.

135. It is hoped this can be achieved by meaningful engagement with the residents' associations and without further recourse to litigation.

Security Charges

136. Building Security is contracted to Attalus Protection Services (Attalus), who provide 24-hour security 365 days per year using a total of 19 staff directly employed by Attalus. Attalus successfully tendered for the contract in 2021. A copy of the contract was not provided but Doug Wattleworth confirmed in evidence that it was granted for an initial term of 3 years. It was due to be re-tendered/renewed in 2024 but postponed.

Applicants' case

137. The Applicants state that security costs account for the largest component of the service charge. The building wide costs have risen dramatically since 2018 with no explanation. Complaints about the unauthorised letting of apartments on Airbnb were not followed up efficiently leaving the residents vulnerable to noise, disturbance and anti-social behaviour. From 2021 on, substantial charges were allocated to Cube West for security which they say were not properly explained and are unjustified. The Cube East leaseholders say they have no idea what they are paying for the concierge service and repeated requests for a breakdown of the security charges have not been provided. They do not understand how security costs increased in 2020 when due to lock down almost no security services were provided.

138. I pause here to mention that the format of budget and reconciliation accounts provided to Leaseholders are difficult to understand, and it's unlikely they could easily comprehend the steep increases in security charges or understand changes in the allocation of costs between the schedules, from those documents alone.

139. The budget and reconciliation accounts allocate the charges for security under two heads. Guarding (i.e. the staffing and other costs of maintaining on-site security personnel) and Systems (i.e. CCTV, security gates, doors and card operated entry systems).

140. The Cube West leaseholders were charged a small sum for security Guarding in 2018, and nothing for security in 2019 and 2020.

141. So far as is ascertainable from the accounts provided, security costs charged for the years in question appear to be:

Year	Whole Building Budget	Commercial	Schedule 5 East Budget	East Actual charge	Schedule 6 West Budget	West Actual charge
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	Charges					
2018	Not available	Not available	£64,199	£62,963 guarding £1,597 systems	Not available	Nil guarding £1,789 systems
2019	£495,000 guarding £21,000 systems	88.9% 100%	£65,934 (11.1%) nil	£67,524 nil	nil nil	nil nil
2020	£503,000 guarding £9,600 systems	88.9% 100%	£66,999 (11.1%) nil	£67,534 nil	nil nil	nil nil
2021	£534,000 guarding £19,000 systems	84% 60.4%	£76,896 (12.0%) £4,309.20 (18.9%)	£71,115 £4,740	£25,632 (4.0%) £4,719 (20.7%)	£24,338 £5,104
2022	£543,000 guarding £37,000 systems	80% 60.4%	£78,120 (12.0%) £8,391.60 (18.9%)	£78,231 £9,330	26,040 (4.0%) 9,190 (20.7%)	£26,077 £10,326
2023	£616,500 guarding £12,000 systems	83% 60.4%	£88,776 (12%) £2,721 (18.9%)	£88,768 £2,340	£29,592 (4.0%) £2,980 (20.7%)	£29,589 £2,563
2024	£690,500 guarding £12,000 systems	83% 60.4%	£99,432 (bgt) (12%) £2,721 (bgt) (18.9%)		£33,144 (bgt) (4.0%) £2,980 (bgt) (20.7%)	

Note:

- (1) Whole building budget charges are net of vat; the other columns include vat.
(2) The budget allocations [2404-2408] show that in 2019 and 2020, 18.9% of Systems costs was allocated to Schedule 3 (retail catering and leisure) and 20.7% to Schedule 4 (offices). However, from 2021 on there was no budget allocation of Systems costs to Schedule 3 or Schedule 4 – but identical percentage allocations were instead allocated to the residential Schedules 5 and 6.

Respondent's case

142. Doug Wattleworth was put forward to deal with security costs. He provided two witness statements and gave oral evidence. His first statement included a table summarising the security charges for Cube East and Cube West for the years 2018-2024. He does not comment on the rationale for the allocation of the security costs to the schedules

143. Security services are contracted to Attalus who were reappointed following a tendering exercise in 2020. A copy of the Attalus contract was not provided and only scant details of the charging basis. He did not explain the contract terms. He confirmed the contract was for an initial term of 3 years, did not know if it provided

for an RPI increase but said each year Attalus submit a budget of costs for the next year. There was no clarity as whether Attalus were contractually entitled to substantially increase their costs annually. From his witness statement and oral evidence, the position appears to be:

- a. Attalus were awarded a 3-year contract based on the cost's projections put forward in the 2020 tender. The only information provided is an internal note showing a summary of the annual heads of costs quoted by Attalus and one other tenderer [2084]. It shows overall projected costs of £518,551.45 per annum. The largest cost is staff salary totalling £339,607.32 plus holiday cover of £49,633.25. The next highest is employers NIC of £26,773.97. The remaining costs are not individually significant in terms of the overall costs.
 - b. The only information concerning Fidum's stated requirements for the 2020 tender is a single page file note of key factors. There is nothing to confirm the detailed contract requirements, the level of security required, or how that could best be provided at a reasonable cost [2083].
 - c. At paragraph 41 Doug Wattleworth lists the services provided by Attalus. In brief they include 19 staff to cover all shifts, 365 days, by three personnel: a team leader, a controller (for CCTV) and a customer service officer for guarding and patrols. A manager for ten hours Monday–Friday; Reception manned for 9 hours Monday–Friday; the Concierge desk for Cube East manned 7.00am-7.00pm 365 days a year. The control room and CCTV monitoring of 90 cameras is 24/7 for 365 days.
 - d. A list of the detailed duties of the team leader and controller was provided and that of customer service, reception and concierge staff. Although useful in allowing the Leaseholders to see what they can expect for their money, it doesn't assist in identifying what were the basic security requirements of the Building and its mixed users when the contract was tendered, or explain the basis of Fidum's contract with Attalus, including how each of the guarding and systems services would be charged [2079/82].
 - e. The contract has not been re-tendered since 2020 for various reasons; following covid the profile of the commercial occupiers changed, there are now substantial vacant areas including several floors of office suites making it difficult to assess the likely level of security required in the next few years. Fidum is proposing to re-tender the security work in 2026.
144. Simon Marshall's evidence deals with the allocation of security costs to the service charge schedules. He states that Cube West did not pay anything for security until 2021. The 12% apportionment to Cube East reflects the 365-day 12 hours provision of a concierge and the 4% allocation to Cube West from 2021 is for dealing with leaseholder call out and queries. He says during covid (when the commercial areas were empty) it was noticed that Cube West residents utilised the security services, particularly out of hours. It was therefore decided that Cube West leaseholders should contribute a small proportion of 4% toward security.

145. Simon Marshall doesn't specifically address security Systems costs or explain why in 2019, 2020 and 2021 only a small proportion was allocated to Cube East and West. Neither does he explain why this changed in 2021, when a substantial allocation of Systems costs appears to have been transferred from the commercial schedules to Cube East and Cube West.

Discussion and decision on Security costs

146. The issues the Tribunal needs to determine is whether security costs are reasonably incurred (i.e. was the decision making reasonable and the costs reasonable in the light of any market evidence) and apportioned in accordance with clause 6.2.9 of the Lease.

147. There is no dispute that Fidum can contract out the security services specified in the Lease, or that the Leaseholders are obliged to meet the costs reasonably incurred by Fidum contracting out those services.

148. Fidum have explained why the contract has not been re-tendered but have not provided evidence of any formal benchmarking or other comparison exercise. The substantial annual increases appear to have been accepted by Fidum without challenge.

149. Doug Wattleworth explained the doubling of security costs since 2018 as being due to inflation, increases in the national minimum wage and national insurance contributions, increased costs of security training and uniform and equipment costs. It is unclear why he put forward generalised sector-wide statistics (unsourced) to justify the increases, rather than provide details of the actual costs and the annual increases passed on to Fidum, which were presumably agreed. There is a list of the security team's duties but no evidence showing how the staff costs were allocated or how annual increases were calculated under the contract and approved.

150. Apart from inflation, changes to NIC and increased compliance costs, common to all security businesses there is nothing to explain why Attalus was entitled to increase their costs from the £516,000 charged in 2019 to the projected £702,000 for 2024, because no contract details were provided, or any breakdown of the actual heads of charge.

151. We are not satisfied with the explanations for the steep increases in the overall security costs. Changes to NICS and minimum wage would account for some increases but no details of the age profile of the staff was provided showing this. Inflation was high during 2022 but dropped sharply in 2023 and again no examples specific to the contract were provided. There was no evidence of any scrutiny of the annual budget figures put forward by Attalus. That said, faced with the absence of any reliable 'like for like' evidence it is not possible for the Tribunal to find that more effective benchmarking and contract management would have resulted in materially lower security costs.

152. Regarding apportionment of the costs, there are no details of the Building wide security costs for 2018. It is not therefore possible to calculate the % share

originally allocated to the residential apartments. For Guarding, Cube East was charged 11% in 2019 and 2020 and 12% in years 2022 and 2023.

153. No Systems costs were shown as allocated to Cube East or West in 2019 or 2020. From 2021 on the apportionment schedules show a new allocation of 18.7% to Cube East and 20.9% to Cube West [1344-1349]. That allocation of significant Security costs from 2021 on is not explained in the accounts or in the Respondent's witness statements.
154. For the period 2019 to 2024 the overall increase in Building wide security costs was about 36% However, the increase for the residential apartments over the same period was about 105%. Apart from the 4% shift of Guarding costs to Cube West, this is unexplained by the Respondent. David Black comments in paragraph 16 of his 2nd witness statement that despite Simon Marshall stating that the 4% allocation to Cube West resulted in a reduction to Cube East, their costs had in fact increased by 62% in 2021 [2308]. The inescapable conclusion is that the substantial reallocation of about 40% of Systems costs from the commercial schedules to the residential Schedules from 2021 on, accounts in part for this. (see note to table at paragraph [149] above).
155. Simon Marshalls evidence on apportionments is inconsistent with Doug Wattleworths schedule summary at paragraph 39 of his first witness statement [2301]. This shows that Cube West did pay a small proportion of security costs in 2018. Simon Marshall appears not to have understood this. Furthermore, Doug Wattleworth said in oral evidence the 4% allocation of security costs to Cube West was for CCTV monitoring, responding to false fire alarms and three guarding patrols a day, which is inconsistent with Simon Marshall's evidence that it largely related to increased calls to security.
156. Having inspected, we were not convinced that three patrols per day for each of the residential floors was reasonable given there is no public access, and all floors are monitored by CCTV 24/7. The corridors may have some blind corner spots but as any unauthorised intruder would need an access card and be seen at all other points covered by CCTV. It would be hugely wasteful for each residential floor to be patrolled three times a day in case someone was lurking in the corner of a corridor.
157. The original basis for allocating about 12% of security Guarding costs to the Cube East has been explained as being for the provision of Cube East's concierge service. We find this to be a reasonable decision.
158. The transfer of 4% of the Guarding costs to Cube West was not explained until the Leaseholders complained about the steep increases. There is no evidence of how the 4% figure was estimated, just inconsistent evidence of what it is intended to cover. What is lacking is any evidence from Attalus, who could have explained precisely how much time and resource was spent on each of the residential apartment blocks as compared to the commercial areas.
159. We are unable to find the allocation of 4% of Guarding costs to Cube West a decision that a landlord acting reasonable could have made. David Black was accused of plucking a figure from the air when he suggested 2%. The Respondent's

figure of 4% based on unquantified call outs during covid is no more scientific. The main benefit to Cube West is the CCTV monitoring which they should contribute to. A notional sum may also be appropriate for occasional calls to security. Three patrols a day does not appear necessary or reasonable to address a remote risk presented by blind spots in corridors that are not open to the public and should be reviewed. Adopting a necessarily broad-brush approach we find that a reasonable allocation based on 3% of total Guarding costs, to be an appropriate apportionment for Cube West.

160. The effect of this decision will need to be calculated by Fidum for the years 2021 to 2024, because the whole Building actual charges are not broken down in the reconciliation accounts between guarding and systems.

161. There is incomplete disclosure of whole building security costs for 2018 and an unexplained transfer of just under 40% of Systems costs to Schedules 5 and 6 in 2021. The Tribunal is unable to find the decision to allocate the costs in this way to be within the range of reasonable decisions a landlord could make because the rationale for the decision has simply not been explained. For this reason, we find the apportionment of Systems costs to Cube East and Cube West in years 2021 to 2023, not to be fair as required by clause 6.9.2 of the Lease.

162. That said, the residential apartments clearly benefit from the CCTV coverage and security door entry systems and should therefore contribute to the costs of maintenance and repair. However, no justification has been put forward for the 40% allocation. We therefore propose substituting Simon Marshalls basic sq ft apportionments of 12.4% (East) and 15.4% (West) [2284] for Systems costs, for the years 2021 to 2023 and for the budget estimate for 2024. The effect of this decision using the figures in the reconciliation accounts (and budget account for 2024) is as follows:

Year	Whole building	East actual	@12.4%	West actual	@15.4%	Total credit
2021	£19,000	4,740	2,356	5,104	2,926	£4,562
2022	£37,000	9,330	4,588	10,326	5,698	£9,370
2023	£12,000	2,268	1,488	2,484	1,848	£1,418
2024 (budget)	£12,000		£1,488 (budget)		£1,848 (budget)	

External Cleaning

163. External cleaning is currently contracted to DOC Cleaning Limited (DOC) as part of a contract for cleaning all internal and external common parts of the Building. The contract was awarded in 2023 following a tendering exercise in December 2022. From 2018-2022 there was a hybrid system under which the cleaners were employed by Granite Facilities Management Systems (Granite) who invoiced the Landlord direct for the staff salary costs. A separate company, Incentive QAS, carried out the cleaning services (including all staff training) using staff employed by Granite. The invoicing is therefore confusing in that QAS raised

invoices for all the cleaning services except staff salaries which were separately invoiced by Granite.

Applicants' case

164. Cleaning accounts for a significant part of the service charge costs. The Leaseholders' challenge is essentially that the cleaning service, particularly of external windows has not been of a reasonable standard and the costs should be reduced to reflect the actual service provided.
165. They have been unhappy with the irregularity of the window and façade cleaning for many years only discovering through these proceedings that external cleaning of windows should take place quarterly and the façade, annually. For this they pay a substantial service charge. Cleaning is carried out manually at lower levels, by high reach jet wash up to a certain height and above that by abseilers or use of the Building Maintenance Unit (BMU) situated on the roof.
166. The north facing and corner apartments can only be cleaned using the BMU which operates much like a crane. It overhangs the building and when operational, facilitates cleaning and maintenance from a platform which is lowered floor by floor allowing progressive cleaning of the windows and façade in vertical strips. The BMU cannot be used in high winds. Parts of the Cube are less dependent on the BMU because the windows can be cleaned by abseilers or high reached jet washing. The north facing and corner apartments cannot be cleaned by abseilers due to an overhang on parts of the roof.
167. The Leaseholders made repeated requests for a copy of the cleaning rota to monitor what work was carried out. They were not provided with anything useful. They asked why the cleaning costs had substantially increased while the service had deteriorated and why, given that Fidum did not dispute the BMU had been out of action for substantial periods, there had been no reduction in costs to reflect that.
168. There have been persistent issues with the maintenance and repair of the BMU. It was out of action for a continuous period in 2019 despite bills totalling £25,375.68 being invoiced to Fidum for repairs. Leaseholders most affected by this have made numerous complaints about the service. David Francis owns a north facing corner apartment and has been resident at the Cube since 2010. He filed a witness statement and gave oral evidence detailing the lack of cleaning over a prolonged period. He said that his statement had been put forward on behalf of all the leaseholders frustrated by poor management of the cleaning service. His apartment is a large duplex on the 19th floor of the northeastern corner. The external walls are almost entirely glazed and provide an outstanding view of the city. He said that a significant part of the value of these apartments was the view, and regular cleaning of windows is integral to that.
169. David Francis' evidence is that the BMU has never been fully functional. The situation has worsened since Fidum took over management due to lack of communication and failure to offer solutions rather than excuses. He exhibited extracts of emails between December 2022, and September 2024 exchanged with Fidum concerning complaints about the window cleaning services. In oral evidence he confirmed that the external windows of his corner apartment had been

cleaned once in 2020 just before lockdown. No cleaning had taken place in 2021. In 2023 both corners were cleaned in June. In 2024 one corner was cleaned in July, the other in September. The fretwork façade was cleaned once pre-covid. Since then, it has only been cleaned once and that was in 2025, the week before the Tribunal's visit. David Francis said the window cleaning of the external windows inside the atrium was also irregular. It is done by abseilers whose appearances are so rare they appear on the Leaseholders group WhatsApp.

170. In his second witness statement David Black complained that the Respondent's witness statements and disclosure were disappointingly unhelpful and did not allow the Leaseholders to properly interrogate what they had been charged. In his third witness statement, he raises issues concerning the sub-contracted cleaning services in 2018 and 2019, the invoices which are unclear, the inadequate disclosure of window cleaning documentation and its poor presentation.

171. He said that it was only in these proceedings that they had been told external window cleaning should take place quarterly and façade cleaning annually despite repeated requests for confirmation of the rota.

172. In evidence he stated that the sums credited by the cleaning contractors for failing to clean totalled approximately £6000 over a six-year period which amounted to a rebate of about £1.80 per apartment.

Respondent's case

173. External cleaning was dealt with by Doug Wattleworth and Sarah Taylor both of whom filed two witness statements and gave oral evidence. Doug Wattleworth points out that glass is a significant component of the external design of the Cube. It is clad in glass and gold-coloured anodised aluminium panels. The atrium is clad with double glazed units and the hotel and restaurant on the top two floors are extensively glazed.

174. Costs for external cleaning include, in addition to the external façade, all the windows, doors and balustrades of the central atrium and maintenance of the BMU. The cost is inevitably high given the architecture and materials used.

175. The window cleaning service is currently contracted to DOC following a tendering process in 2022 which includes all cleaning services (i.e. not just the external glazing and façade). Evidence of the tendering exercise comprises a single page file note [2086]. It is basically a list of bullet points of the process, with no details of the services required, how and by who they would be provided and at what cost. A two-page summary of the scoring of three tenders (including DOC) was provided [2087/8]. The scoring refers extensively to 'Leamington' in the scores of the unsuccessful bidders who appear to be quoting for a different or additional property. This is unclear and unexplained.

176. In relation to external glass and façade cleaning Doug Whittleworth states DOC are contracted to clean all glazing on the exterior of the Cube quarterly and all external cladding annually using the BMU and/or abseilers. The glazed atrium area above the canopy should be cleaned six monthly using abseilers. The underside of the canopy is cleaned quarterly using a reach wash system. He does not dispute

the BMU had been inoperable for extended periods. He disputes the suggestion no cleaning took place some years or that no reimbursements were made.

177. In practice, on each of the quarterly external window cleans the cladding on one elevation is also cleaned so that by the end of the year the cladding on all 4 sides has been cleaned. When the BMU is inoperable abseilers are used, save for the north elevation and corners which can only be reached from the BMU. He states that when that has happened credit notes have been issued by DOC.

178. DOCs projected annual costs are shown in a separate schedule [2090] totalling £273,797.01 (or £22,816.42 per month). How the sum was calculated, what it covers and how the various cleaning services would be invoiced is unclear. Also unclear is whether it was a fixed price contract or costs plus. The period of the contract is not stated neither is any mechanism for annual/periodic extensions or reviews of the costs. No copy of the contract was provided which might have provided answers to these important points. In evidence Doug Wattleworth said the budget costs were based on the annual charge for the entire cleaning contract and invoiced to Fidum over 12 monthly periods.

179. There was no other written evidence of the terms of the DOC cleaning contract, and nothing was provided in respect of the QAS contract. 75 pages of invoices were produced for window cleaning and repairs to the BMU in 2020, 2021, 2023 and 2024, including some credit invoices (during furlough in 2020 and other occasions) [1979-2054]. They are impossible to reconcile with the annual accounts.

180. A schedule of invoices and credits for 2023 was attached to Doug Waterworth's statement [2055] which needs to be cross referred to DOC invoices, in no obvious order, to make sense of. A further schedule of QAS Ltd invoices for 2019 was attached to Sarah Taylors second witness statement. The entries again needed to be cross referenced to the actual invoices (only partially provided) to make sense of. However, without any information on how the various cleaning services were costed and charged under the cleaning contracts (none of which were provided), it is impossible to work out what the invoices or credits relate to, or whether they reflect the contractual basis of the item being charged for or credited. Very few invoices specify whether they relate to external cleaning and none mention cladding.

181. The Respondent does not dispute that the BMU was inoperable for substantial periods but argues that notwithstanding the poor service, no refund or reduction in costs is due to the Leaseholders because credit notes were issued for all occasions cleaning did not take place. They point to credit notes disclosed with the invoices and say the reason the Leaseholders didn't appreciate the reduction in costs is because the credits were more than offset by increased charges for BMU repairs over the same period.

Discussion and decision on external cleaning

182. The issues for the Tribunal are whether the external cleaning costs are reasonably incurred (i.e. was the decision making reasonable and the costs

reasonable in the light of market evidence) and the service of a reasonable standard.

183. There is no dispute that the Fidum can contract out the cleaning services specified in the Lease, or that the Leaseholders are obliged to meet the costs reasonably incurred in appointing contractors to carry out those services. There is no serious allegation that the cleaning costs were unreasonably incurred, or any comparable evidence to show that the costs are unreasonably high.
184. The principal issue for the Tribunal is whether the external cleaning is of a reasonable standard, and if there are significant defects, what costs are reasonably recoverable for a service of the standard provided.
185. There is no dispute that the BMU was inoperable for substantial periods which in several years led to very little external cleaning being carried out to the north facing and corner apartments, in fact almost no cleaning took place in 2019.
186. The contractors were responsible for ensuring the BMU was kept in repair. They failed to do so for prolonged periods leading to complaints about the service. Excuses concerning the lack of available spares were accepted for a period by Fidum, who eventually lost patience and took back responsibility for the BMU in 2024. Since then, it has according to Doug Wattleworth, operated with reasonable reliability. Whatever the reason it is clear on the evidence that the Leaseholders were charged for a regular external cleaning service which, for many apartments on the north facing and corner apartments, did not happen for prolonged periods during 2019–2023. Furthermore, despite paying substantial sums for maintenance of the BMU it was out of action for prolonged periods. That has hopefully been resolved by Fidum eventually taking back responsibility for maintenance. The fact that this appears to have largely resolved the protracted BMU issues, leads us to find it likely the issue was one of poor performance by the cleaning contractors combined with lack of effective contract monitoring.
187. We found the Applicants' witnesses to be credible and reliable and that their evidence supports the Leaseholders complaints about a sub-standard service for prolonged periods during 2019-2023. We therefore find that the external cleaning services were not of a reasonable standard during those periods.
188. Assessing what is an appropriate reduction on a 'whole building' service is difficult because occupiers can be more or less affected by service deficiencies. However, external cleaning is a whole building charge that is apportioned on the basic sq ft allocation without adjustment for the amount of glazing or difficulty of access. Any adjustment would therefore have to be calculated on the same basis, which means those most affected will not receive a greater share than those less affected.
189. In assessing what reduction is appropriate to reflect the substandard service we have attempted to take account of the credits to Fidum for missing cleans. Unfortunately, there is no clarity about how the annual costs have been assessed, whether based on the number of cleans per week/month/quarter, or a global sum for cleaning services that are not calculated on a per clean basis. It is therefore impossible to assess whether the credits reflect the contractual basis of the charges.

190. The pattern of the invoices is broadly consistent with an annual sum being invoiced at about £10,000.00 per month per Cube, but the figures are not always consistent, the disclosure is partial and chaotically presented with no cogent explanation that allows for easy analysis. The same applies to the credits.

191. A professional managing agent should have been able to explain the basic terms of the cleaning contracts, what the leaseholders could expect, and how each element of the service was costed and charged to the leaseholders. A comprehensive schedule could have been provided showing the cleaning costs and repairs invoiced year on year, and the credits applied. That would allow for an easy exercise to reconcile the Respondent's claim that the Leaseholders have been adequately compensated for any loss of service. Instead, the Applicants have been left to plough through years' worth of invoices to try work it out for themselves.

192. David Black estimates the credits total £6,000 over the six-year period. That figure has not been challenged but without any detail of the contract prices it is impossible to assess whether this represents adequate compensation. Sarah Taylor couldn't assist with the contract terms or the costs per clean, but suggested Doug Wattleworth could assist. Doug Wattleworth said the contract price was 'output based'. Fidum told the contractor what level of cleaning it required, and the contractor structured the service to achieve those aims. Without sight of the contracts, or even a precis, this is unhelpful. We are therefore unable to find that the credits adequately compensate Leaseholders for what was a very substandard service. This is a glazed building; the view is part of the value, the Leaseholders paid substantial sums for clean windows, and some were left unclean for prolonged periods.

193. We have of necessity adopted a broad-brush approach to determine that the external cleaning costs should be reduced by 20% in 2019, 2022 and 2023, by 10% in 2020, and by 15% in 2021. The lower reductions in 2020 and 2021 reflect the reduced charges for those years which we assume relate to periods of lock down when staff were furloughed and cleaning not possible. The reductions are therefore as follows:

Year	Cube E Actual Charge	Cube E Total credit	Cube W Actual Charge	Cube W Total credit
2019	£37952.24	£7,590.44	£42500.33	£8,500.06
2020	£31784.89	£3,178.48	£35986.29	£3,598.62
2021	£35354.33	£5,303.14	£40027.44	£6,004.11
2022	£45032.89	£9,006.57	£46085.58	£9,216.91
2023	£45499.39	£9,099.87	£57038.89	£10,407.77

194. If the issues with the BMU have been resolved, we have no reason to make any adjustment to the budget estimate for 2024 but that does not prevent the Leaseholders challenging the actual costs if this does not prove to be the case.

Management Costs

195. Fidum has an office suite within the Building, with 5 on-site members of staff who provide management services, supported by a team of facilities managers at Fidum's offices in Epsom. The services include management of the Services and Service Charge in accordance with the Leases. In 2022 a decision was made to dedicate 100% of two on-site team members to the residential apartments, the other three concentrating on the commercial areas.

Applicants' case

196. The Applicants believe the staff costs and management fees are excessively high for a very poor service. They are being charged 100% of the costs of the property manager Sarah Taylor who they say spends significant time working at Fidum's Wembley site. The other complaints are lack of visibility, lack of transparency about charges, poor communication, poor contract placement and control, inaccurate budgeting and deliberately placing contracts for 12 months less one day to avoid the statutory consultation procedures.

197. Escalating service charges coupled with poor management has rendered many apartments unsaleable. David Black provided examples of mortgages and sales falling through, apartments being sold for well below their purchase price in 2018 and copy reports from agents placing the reasons for this squarely on the high level of service charges.

198. In his first witness statement David Black states that since 2018 when Fidum took over, the service charge had increased by 78% and there has been a marked deterioration in management of the building. Consequently, he and a core group of leaseholders began to challenge Fidum on costs, inaccurate error strewn budgets and poor management. The responses were so poor and unsympathetic they eventually formed the two leaseholder associations that were formally recognised in February 2023.

199. During this process, meetings were arranged with Fidum on 15 February 2023 and 3 March 2023 with a follow up meeting on 29 March 2023. The associations' concern about the service charge being the highest in Birmingham was, they say, met with a shrug of the shoulders. Concern about Fidum's response led to a formal complaint being sent to Fidum on 20 July 2023. Dissatisfied with Simon Marshall's response the Leaseholders then considered their statutory remedies.

200. In his second witness statement David Black laments the lack of any proper response to the examples of poor management and poor communication detailed in Fidum's statements.

201. Lack of engagement with serious heating/hot water issues detailed in David Black's first statement is an example. Poor and misleading information concerning works possibly required to apartment doors following a fire review is another example detailed in David Francis statement.

202. Allegations of poor communication of scheduled works and their impact is often denied without explanation. Noise and disturbance from unauthorised sub-letting on Airbnb is addressed, but Fidum deny any failure to adequately monitor and address breaches of lease. Incidents of incorrect budget accounts and misinformation concerning apportionments are largely acknowledged and apologised for, but it is not the Leaseholders job to audit and raise these inaccuracies.
203. In his second witness statement David Black comments on disclosure saying that the evidence of monitoring contracts amounts to no more than providing sample copies of selected internal KPI scoring which consistently score 100% despite all the complaints. The sign in records only record attendance not what is done.
204. Most of the management information is incomprehensible, the job specs and rotas provided do not address the Leaseholders' complaints about poor management of the security and cleaning contractors. There is no overview of what the contractors' staff actually do or how it is verified by Fidum.
205. The tendering of contracts should take place every three years. Attalus have been in place for 5 years, the maintenance contracts have been in place for 5 years and although cleaning services were placed with DOC following the 2023 tender, all the window cleaning is sub-contracted to another company, and there is no transparency concerning DOCs mark-up. Fidum have not investigated the costs savings of using separate contractors for the external cleaning. There has been no benchmarking or tendering of Fidums own management contract.
206. Meetings with residents' associations in 2023 to consider service charges have not been followed up.

Respondent's case

207. Simon Marshall deals with Management Costs in his first statement. The management fee is for managing the services 24/7, 365 days a year. It includes an office suite in the Building, Fidum's 'back-office' management team and the cost of 5 on-site personnel, who he states are highly experienced and fully trained for what is a unique and highly prestigious building. The management fees for Cube East and Cube West are he states apportioned on the basic unadjusted sq ft. He does not address the contractual basis of Fidum's management fees, or the overhead costs re-charged to the Leaseholders in his statements.
208. There are separate heads of charge in the accounts for all the management overheads, i.e. staff costs, site accommodation (rent and rates) office costs, and professional fees. Some adjustments have been made to the service charge schedules for management overheads. The management fee line just represents Fidum's fee, to which the basic proportions apply.
209. Simon Marshall acknowledged that the service charge for the Cube was very high, but he put that down entirely to inflation, the costs of utilities, wages and the Birmingham Ulez charge. When asked about the unsalability of the apartments, he said Fidum had nothing to do with marketing. When asked to provide a

comparison with the 100 other properties he managed, he said he didn't have that detail in his head. When asked if he had looked at possible savings, he said that he had, because he was under pressure from the Landlord on the 2026 budget due to the large void spaces the Landlord was paying for. Levels 5 and 6 are empty, parts of level 7 and 8 are empty, and all of levels 9, 10, 11 and 14 are empty.

210. The management contract for the Cube was placed with ESH in 2018 and novated to Fidum when it took over 11 months later. It is for a fixed sum uplifted annually in line with RPI plus overheads (i.e. staff, office and professional costs etc). He said the fee was based on the previous managing agent's fee, but he thought management fees range between 10% and 15% of the total service costs, depending on the structure and tenant mix but could not provide comparables for this building. He also could not say without a calculator whether the management fees had been uplifted annually in line with RPI. The contract has not been tendered since Fidum was appointed because the Landlord is happy with its performance.
211. In relation to the security contract Simon Marshall was unable to compare security with any of his other sites, which are mainly retail without this level of security, but he thought the costs were comparable with the 10 other security companies he uses. He is considering reducing security patrols and reception provision due to the low occupancy of the commercial areas. On external cleaning his approach is that DOC don't get paid when they don't clean.
212. In relation to communication of annual budgets and changes such as the allocation all of Sarah Taylor's time to residential, he couldn't comment and suggested the question was one for Sarah.
213. Sarah Taylor deals with day-to-day management in her statement. She is the Senior Estates Manager for the Cube, responsible for ensuring all systems and facilities function efficiently. She is the main point of contact for the Leaseholders, and deals with compliance issues. She disputes there is a lack of visibility. She receives about 35 emails and 10 phone calls a day and is supported by a team of 4 other highly qualified personnel.
214. Evidence of the level of service is detailed in documents attached to her statement. They include a schedule of standard property management services, a schedule of facilities management services, a schedule of the management tasks allotted to the team members, a list of the team members and their basic job description and qualifications [1322-1341]. There are no details of how management charges for standard services are assessed or those that are not standard.
215. She also attaches 23 pages of assorted internal KPI sheets, all undated, some for management in which Fidum score 'contractors', on various expected performances. Some are specific to QAS cleaning, also undated, on which Fidum score the contractor's performance. There is nothing in her statement to explain the approach taken to managing and monitoring the contracts.
216. Sarah Taylor confirms spending time on other developments along with her colleague Sinead Butler. She says that each month she estimates the amount of time they have spent on non-Cube work and report that to Fidum. She believes a

refund is then calculated and applied. Her oral evidence was slightly different. She said that she discusses with Simon Marshall how much time she has spent on other developments. He then makes a credit to the Cube East and West accounts, but she could not say how much was allocated. She attached a schedule to her statement showing credits in years 2020-2023 which total £11,275.35 for Sarah Taylor and £93.20 for Sinead Butler [1342/1343].

217. In oral evidence Sarah Taylor agreed there had been an issue with Airbnb lettings in 2018-2020. They were investigated once Fidum was alerted to the problem and most dealt with by a letter to the apartment owner. She did start to monitor websites where they were advertised and maintained a log of incidents for a period. There were two incidents this year, but it has largely ceased to be an issue, and the log is no longer maintained.
218. With regards to heating issues she confirmed they receive a lot of calls on this, but as maintenance of the heat interface units (HIUs) is the responsibility of the leaseholder, she can only suggest contractors they could contact.
219. With regard to communicating the budgets Sarah Taylor said these were sent to the Landlord to approve. She said they had in the past arranged meetings with leaseholders, but in cross examination confirmed the two meetings in 2023 were in relation to the email complaints. She knew they should take place annually which would happen going forward. However, if they received queries by email, they always provide an explanation.
220. Complaints were held in a folder on the shared drive as and when they came in. There was no log or spreadsheet of complaints by category or urgency, for ease of analysis. All complaints about window cleaning are in the complaints folder on the shared drive. When challenged to explain why her evidence didn't tally with the Leaseholders' evidence on lack of cleaning, she said she knew 100% the cleaners were there because she had the job sheets and sign in details. However, she also acknowledged there was little in the way of checking the quality of the work, but contractors were invited to monthly performance meetings
221. Doug Wattleworth dealt with allegations of poor contract placing and management in his second statement. In relation to security, he states it is Attalus's security managers job to oversee staff training, the staff rota and attendance, and to ensure that all protocols are followed. Fidum regularly monitors this and has no concerns. Leaseholder feedback is raised at their monthly meetings. Contractors sign in and out giving Fidum a record of who is doing the required hours. He said the reason for deferring the security re-tendering until 2026 had been explained.
222. Building maintenance costs are not disputed. The work was tendered in 2020. Of the two companies that tendered they went with HFL, the more expensive option, because it scored higher on the tender process.
223. The cleaning contract was awarded to DOC because it is a large company with better buying power for the subcontracted window cleaning.

Discussion and decision on Management Costs and fees

224. The issues the Tribunal need to determine are whether the management costs are reasonably incurred, reasonable in amount and the service of a reasonable standard.
225. There is no dispute that the Landlord can appoint managing agents to carry out on its behalf the services specified in the Lease, or that the Leaseholders are obliged to meet the costs reasonably incurred in appointing Fidum to perform the management services.
226. The 2019 reconciliation account indicates the management fee is far higher than that charged by CBRE, but we do not know what CBRE's fee covered and there is no comparable 'like for like' evidence of management fees that show Fidums management fees to be unreasonably high.
227. There is also no comparable evidence of staff costs, site accommodation costs or professional fees. The salaries disclosed do not seem unreasonably high. The allocation of Sarah Marshall's time is poorly dealt with, but we have no evidence that it is inaccurate. We therefore have no evidence on which to find the management overhead costs have been unreasonably incurred or are unreasonably high.
228. The principal issue is whether management of the Building is of a reasonable standard, and if there are significant defects, what costs are reasonably recoverable for a service of the standard provided.
229. The Building is managed by the on-site team with seemingly little day to day input from Simon Marshall. He adopted CBRE's budget figures, apportionments, cleaning contractors, electricity and insurance schedules without apparent scrutiny. He bases those decisions on consistency and the absence of any disputes disclosed during the due diligence procedures.
230. Decisions to re-allocate the costs of the on-site team and security guarding and systems costs were not communicated to Leaseholders until they complained or enquired. The decision to re-measure the carpark was not communicated beforehand, and the material effect it had on insurance and carpark apportionments was not explained until the Leaseholders enquired or complained following receipt of the 2022 reconciliation accounts. This is evidence of poor management.
231. Budget accounts are sent to the Landlord annually to approve, but there has been no consultation with Leaseholders. The few meetings that took place in 2023 were in the context of their formal complaint.
232. The evidence concerning the allocation of Sarah Taylor's off-site time was poor. She appears to just estimate her time which is then ratified by Simon Marshall. Her time should be recorded and verified.
233. The evidence concerning contract placement is scant. Good management requires expensive contracts to be regularly tendered or benchmarked. This should have been done more regularly. There is no evidence this failing has caused quantifiable loss to the Leaseholders, but it is evidence of poor management. No

copies of the contracts (or even a precis of terms) have been provided to allow Leaseholders to see what the contractors should be doing, and at what cost. The evidence of effective contract monitoring is little more than the on-site staff stating that they have monthly meetings. There is no evidence of what happens at those meetings in terms of contract management, other than a bundle of undated KPI scoring sheets which, without time frame or context, are difficult to reconcile with the Leaseholders' complaints about poor service.

234. We did not find any intention on Fidum's part to avoid the statutory consultation procedures by granting contracts of 12 months less a day. On the contrary, it appears from the oral evidence of the Respondent's witnesses that the cleaning and security contracts were granted for an initial period of three years. If (and only if) that is correct, the statutory cap in section 20 of the 1985 Act, to recovery of charges under Qualifying Long Term Agreements, may apply to those contracts. This is not an issue raised in these proceedings because the Leaseholders believed the contracts were for less than a year. It is not therefore an issue that can be determined on this application.

235. We found the Applicants' witnesses to be credible and reliable and have no reason to doubt their evidence concerning issues with management of cleaning and security, poor communication, lack of visibility or support with issues such as identifying the source of the hot water problem. Many (although not all) email responses from Fidum range from partial and unhelpful to unintentionally misleading, particularly in relation to the effect of the car park re-measurement. A decision which materially varied the whole building apportionment and should have been consulted on or at least communicated to Leaseholders before it was applied.

236. We found no reason to doubt the integrity of the Fidum witnesses, but their evidence was sometimes inconsistent and uninformed, and at times, unsympathetic to many of the issues causing real anguish to Leaseholders. Sarah Taylor's evidence concerning complaints did not inspire confidence they were handled effectively. They are all held in a single folder, there was no evidence that the complaints and actions taken in response were recorded in an accessible format. There was no evidence of any analysis of trends or concerns taken forward. There was no evidence that leaseholder complaints were formally recognised or meaningfully discussed at the monthly meetings. In fact, the KPIs indicate that everything is pretty much fine, which is consistent with the bulk of the Respondent's evidence, but wholly inconsistent with the numerous Leaseholder complaints.

237. The Tribunal did not find everything to be fine. We were satisfied from the witness evidence that there have been significant issues with poor communication and complaints about services that have often been met with a surprising lack of sympathy or concern. Responses have been unhelpful, and sometimes misleading. Certainly not the standard expected of staff "*highly experienced and fully trained for what is a unique and highly prestigious building*".

238. We found contract management to be patchy. There was scant evidence of the on-site staff checking the quality of the contractors' work. They appear to rely on job sheets and self-monitoring by the contract managers. Sarah Taylor's evidence

was that if she spotted something she would raise it. Tendering (or at least benchmarking) of the security contract and the management contract is well overdue.

239. We also found some of Simon Marshall’s evidence to be inconsistent and inaccurate, such as the basis for adopting (or applying) the CBRE apportionments. We identify in the specific issues sections above and below, this and other inconsistencies in his evidence, which we won’t repeat here. They indicate a lack of attention to detail on important issues that we find surprising. This has been compounded by the complete absence of consultation with Leaseholders on budgets, the basis for apportionment of significant costs, and variations to those apportionments such as the carpark remeasurement.

240. For these reasons we find that management of the Cube in the years 2018 to 2023 was not of a reasonable standard. Furthermore, proper communication concerning the contracted services, proposed changes to the services and apportionment of service costs would have materially reduced the time needed to be spent on queries and complaints. We have therefore determined that a reduction in the management fee of 5% should be made, for those years, as follows:

Year	Management fee Cube East	Cube E Total credit	Management fee Cube West	Cube W Total credit
2018	17,568.18	£878.40	48,398.86	£2,419.94
2019	29,413.00	£1,470.65	46,320.00	£2,316.00
2020	30,175.20	£1,508.75	47,520.00	£2,376.00
2021	30,206.40	£1,510.32	37,514.40	£1,875.72
2022	31,694.40	£1,584.72	39,362.40	£1,968.12
2023	34,224.00	£1,711.20	42,504.00	£2,125.20

Assuming the poor management practices will be addressed, we have no reason to find the budget management charges for 2024 to be unreasonably high. This does not prevent the Leaseholders challenging the actual 2024 costs if that proves not to be the case.

Electricity charges for common areas

241. Energy contracts for the Cube have been procured and managed by Clifford Talbot Partnership (CTP) since before 2018. The energy contracts are placed on an annual basis by CTP. Fidum maintains a schedule of the common parts meters and provide monthly meter readings to CTP who in turn provide Fidum with details of how the charges should be split between the occupier schedules. Fidum adopted the methodology used by CBRE for the apportionments which has not been updated. CTP has no input on how energy charges for the common parts of the Building are apportioned.

Applicants’ case

242. The Applicants’ basic complaint is that the common parts electricity costs have increased far beyond the increases in energy charges. The allegation is not

supported by any detailed analysis of energy price rises or comparables. A secondary complaint concerns the lack of transparency concerning the energy providers approached by CTP and their commission or charges. They also complain that the residual electricity costs are apportioned arbitrarily because there is an even split between Cube East and Cube West despite Cube West having a larger sq footage.

Respondent's case

243. Max Archer-Joy explained in his witness statement that CTP approach various suppliers to provide pricing on an annual basis. They collate the offers and recommend what they assess is the best. Typically, this will be the cheapest. He provided Fidum with an analysis of market trends since 2018 which confirms prices were relatively stable until late 2021 when war in Ukraine looked likely. Following the invasion in 2022, anticipated gas supplies from Nord Stream 2 did not come onstream which caused prices to rocket. They remained high well into 2023 before subsiding late that year. He confirmed in evidence that CTP have a written contract with Fidum which covers the Cube and about 40 other buildings for which CTP receive a set fee of about £21,000.00 per year.
244. The common parts energy charges are explained in his witness statement. The charging process as explained by Max Archer-Joy, is that Fidum take monthly meter readings and provide these to CTP who hold a meters' schedule showing how the common parts energy usage is split between the service charge schedules. Some metered costs are allocated 100% to the commercial schedules, some 100% to the residential schedules and some 100% to the carpark schedules. These are shaded blue, yellow and pale blue respectively on the meters' schedule. The remaining meters (unshaded) relate to whole building common parts electricity that is shared across the occupiers of the whole Building. These are referred to by CTP and the parties as the 'residual' electricity charges. Once the monthly meter readings are received, CTP allocate the charges according to the meters' schedule.
245. The residual costs are allocated: 19.272% to levels 5-8, 38.864% to levels 9-14, and 12.671% to the Hotel, Spa and Restaurant. Cube East and Cube West are each allocated 14.59%.
246. The total common parts electricity charges are therefore a combination of those allocated on a 100% basis (shaded blue, yellow and pale blue) plus a share of the whole building residual charges (unshaded).
247. Max Archer-Joy said that he understood Cube East and West together represent about 1/3rd of the total building area which is reflected in the 14.597% residual allocation to each block. He also confirmed that the percentage splits did not come from CTP, they were the percentages given to them by the previous building owner and their agents.
248. In his second witness statement Doug Wattleworth confirmed his understanding of how residual common parts electricity charges were split, which is consistent with Max Archer-Joy's statement. He confirms that electricity costs are a straightforward re-charge with no mark-up.

249. When questioned about some apparent anomalies in the meters' schedule which showed the supply for commercial waste compactors allocated to residual charges, he fairly acknowledged that they probably should have been allocated to commercial, and that the meters' schedule had never been reviewed by Fidum. He said that he inherited the schedule in 2018 and had just followed it. He accepted that it needed review. He also accepted that Cube West had an additional floor which meant the overall sq ft was higher than Cube East.

Discussion and decision on common parts electricity charges

250. There was no persuasive evidence to challenge whether the electricity charges were reasonably incurred for the years in question. The reason for the huge spike in energy costs during 2022 and 2023 was helpfully detailed in Max Archer-Joy's statement, with which we take no issue. There is no evidence that electricity could have been procured for materially less than from the suppliers recommended by CTP. We find therefore that common parts electricity costs were reasonably incurred for the years 2018-2023 and reasonably estimated in the 2024 budget accounts.

251. The decision to allocate residual charges to the service charge schedules on a comparative sq ft basis is a reasonable decision but does not appear to have been consistently followed. Fidum have followed the previous owners schedule without making any independent assessment of whether all the meters shown should be classified as residuals. Some meters such as commercial waste compactors were acknowledged by Doug Wattleworth to be questionable and the proportions do not appear to accurately reflect the sq ft of the stated schedules. Fidum need to review the metered supplies to ensure that all those designated as residual are correctly allocated, check the sq ft allocations are accurate and make any appropriate retrospective adjustments. That is not an exercise the Tribunal can undertake.

Car Park charges

252. The Leaseholders are predominantly concerned with the effect of the 2022 car park re-measurement on apportionment of insurance, carpark and other service charge costs. Leaseholders are required to contribute to the whole Building service costs which include the carpark. The costs allocated to the carpark are recoverable from the licenced users under the terms of their carpark Licences. However, they are also recoverable from a tenant with a car park Licence under the clause 3.8 of the Lease as part of the Service Charge, in accordance with clause 6.2. of the Lease.

253. The facts, evidence and submissions concerning the 2022 re-measurement exercise are set out under insurance costs above, together with the Tribunal's findings (paragraphs 124-133 of this decision), which I will not repeat here.

254. Simon Marshall states that he used the 2018 CBRE apportionments for car park charges until 2021 when he decided that the car park was bearing a disproportionate share of service costs for an underground car park. He also noticed that some 54 residential users were not being charged at all and so created a separate Schedule 9 to recover a share of the building services costs from them. This meant the 54 residential users were first charged for services relating to the

car park in 2022, based on a weighted area of 22,000 sq ft following the 2022 re-measuring exercise.

255. It is difficult to reconcile Simon Marshall's statements with the accounts.
256. CBRE appear to have allocated 6.9195% of the total Building Services costs to the car park in 2018. No adjustments to that allocation appear in the service costs schedules for that year [934]. The total cost is divided between Schedule 8 (commercial) £198,903 and Schedule 9 (residential) £22,222.
257. In the 2019 apportionments schedule Fidum adopt a different approach [1344]. Some of the categories of service costs listed in the first three columns are allocated to Schedule 8 and 9 in varying proportions, presumably to reflect the degree to which they benefit from those services. For instance, promotions costs are not allocated to the residential schedule. It is unclear how the costs have been allocated between Schedules 8 and 9, but carpark costs were clearly being allocated to residential users under Schedule 9 in the budget accounts from 2018 on. Schedule 9 expenditure also appears in the reconciliation accounts from 2019 on. If the costs were not invoiced to the residential users in any of these years that points to lack of competence by Fidum's management team.
258. The allocations for Schedule 9 remain static in the whole building apportionment schedules for 2020–2023 [1345-1348]. However, the 2021 reconciliation account for Schedule 9 [819] includes significant new costs allocations under management charges, utilities, security, non-carpark M&E and R&M, and external fabric (the 'additional service costs'), which were not in the 2019 budget. The same additional costs are allocated to Schedule 9 in 2020 and 2021 before being allocated to a new Schedule 1B as from the 2022 reconciliation accounts [865].
259. The new Schedule 1B is however not shown on the whole building apportionments schedules until 2024 [1349] despite being included in the reconciliation accounts from 2021 on. There is no explanation as to why these 'additional service costs' were allocated from 2021, why Schedule 1B was not included in the whole building apportionment schedules for 2022 or 2023.
260. What seems inexplicable, is that having apparently weighted the carpark area to 22,000 sq ft for the purposes of more fairly calculating the allocation of Building Service Costs, the residential users' costs have since risen substantially, not decreased.
261. Of course, what is missing after 2018, is any detail of the costs allocated to the non-residential spaces (payable by the Landlord). Schedule 8 does not appear to have been allocated the significant 'additional service costs' levied on Schedule 9 in 2021 without explanation [819] and subsequently charged under Schedule 1B from 2022 on. These are substantial new allocations that are unexplained and appear to only effect the residential users.
262. We have already found the basis of the 2022 car park remeasurement not to be reasonable. However, that is not the same as finding it unreasonable for the Landlord to decide to adjust the costs allocated to the carpark for services such as

window cleaning, internal and external decorating, security and some management services, for which there would clearly be little requirement. That would clearly be a reasonable basis for an adjustment. There is no necessity to weight the sq ft to do this because the service charge schedules already provide a mechanism for such allocations, but a fair weighting approach would not be wrong.

263. The problem here is that there is no explanation of how, or if, the 22,000 sq ft weighting has been applied. If applied the effect has been so muddled by the introduction of the ‘additional service costs’ in 2021 and 2022 it is not possible to assess it without further explanation.

264. It is however clearly unfair to allocate substantial ‘additional service costs’ to the residential spaces, without any consultation or explanation. The commercial and residential users have no direct access the carpark levels, they benefit equally from the services (save for promotions). It is unclear how the residential users could possibly derive any greater benefit from the ‘additional service costs’. The decision to allocate these costs just to the residential schedules without any explanation or justification cannot be a decision a landlord acting reasonably would make.

265. For these reasons we do not find the following decisions to be decisions any reasonable landlord could make:

- a. To apply a weighting based on 22,000sq ft (if in fact applied) from 2022.
- b. To allocate the ‘additional service costs’ identified in paragraph 267 to Schedule 9 in 2021 [819].
- c. To allocate the ‘additional service costs’ to the new Schedule 1B in 2022 and 2023 [828 and 835],

266. The effect of these decisions in so far as they can be calculated from the accounts provided is as follows:

Year	Sched 9 actual	Sched 9 amount determined reasonable	Sched 1B actual	Sched1B amount determined reasonable	Total credits
2021	43,692	£26,930	-	-	£16,762.00
2022	26,223	£26,223	16,896.80	£nil	£16,896.90
2023	25,975	£25,975	18,015.70	£nil	£18,015.70

267. The 2024 budget [926 and 927] provides a combined estimate for Schedule 9 and Schedule 1B of £55,713.54, which is no longer broken down between the schedules. The car park and non-carpark M&E R&M is combined making it even more difficult to understand the basis of the allocation. For this reason, based on the previous year’s actual charges that we have found reasonable, we find a reasonable estimate for 2024 in respect of Schedule 9 to be £25,975.00 and for Schedule 1B to be £nil.

Costs Applications

268. If the parties wish to make representations in relation to the Applicants' applications under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, for limitation of costs and under Rule 13 for reimbursement of the application and hearing fees the must comply with the following directions:

- a. No later than **4 May 2026**, the Applicant must file a statement with reasons why the tribunal should make orders limiting costs under s20C and/or paragraph 5A and under Rule 13 for reimbursement of fees.
- b. No later than 14 days after receipt of a copy of the statement the Respondent must file a response setting out reasons for opposing the applications.
- c. The tribunal proposes determining the costs applications on the papers unless either party requests a hearing.

D Barlow
Deputy Regional Judge

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

SCHEDULE OF LEASEHOLDER APPLICANTS

	Leaseholder	Apartment No
1	Nick Shergill	1501 East
2	Armin Khatibi	1503 East
3	Robert Parkins	1505 East
4	Simon Bill	1506 East
5	Peipei Yu	1507 East
6	Jenny Birdi	1508 East
7	Charlotte Hempel	1512 East
8	Aaron Ng	1515 East
9	Suki Lotay 1522 West	1522 West
10	Gulshan Baryah	1523 West
11	BaljitSoomal	1527 West
12	Sophia Level	1601 East
13	Denny Payton	1602 East
14	David Roper	1603 East
15	Jonathan Hudson	1604 East
16	Alex To	1606 East
17	Kirsty Hicks	1608 East
18	Opdush Singh	1614 West
19	Charnjit Dhaliwal	1618 West
20	Inderjit Singh	1623 West
21	Harrison Smith	1624 West
22	ShahramSabzevari	1625 West
23	Carol Robertson	1626 West
24	Xinnan Lyu	1702 East
25	Mark & Julie Bellm	1703 East
26	Andy Street	1704 East
27	Kayleigh Burton	1708 East
28	Stu Logan	1709 East
29	Eugene Cheng	1712 East
30	HalevoorVidyasagar	1715 West
31	Sunil DhariwaL	1721 West
32	H Zheng	1803 East
33	Jacqui & Jonathan Driffil	1809 East
34	AbigailCross	1810 East
35	Sue Nelson	1816 West
36	Inderjit Matharu	1817 West
37	Shida Mohammadi	1823 West

38	Fatemeh Rabiee-Khan	1824 West
39	Charan Gupta	1826 West
40	Gemma Kemp	1827 West
41	Vicki Francis	1903 East
42	LiqiongCao	1904 East
43	Robin Passmore	1905 East
44	Michal Banczer	1906 East
45	Pamela Wood	1909 East
46	Mark Moore	1920 West
47	Thomas Dickson	1921 West
48	Abhisek, Rita & Dinendra Das	1922 West
49	Mushtaq Khanan	1923 West
50	Masoud Minhas	1927 West
51	Chase SER AP LTD {Guneet Luther)	1930 West
52	Caitlin and Laurence Kelly	2002 East
53	Ian & Victoria Muirhead	2003 East
54	Richard Howie	2004 East
55	Dr John Peterson	2005 East
56	Anne Watson	2008 East
57	James Castleman	2009 East
58	QuanbinSun	2016 West
59	Karen Mann	2015 West
60	Andrew & Frances Gannon	2018 West
61	James Beeston	2020 West
62	Moghill Brown	2023 West
63	Jawad Hassan	2028 West
64	Justin & Mark Varney-Bennett	2102 East
65	Annette Bishop/Ricky Mullis	2104 East
66	Darran Worrall	2108 East
67	C Roch	2110 East
68	Sanjeev Summan	2109 East
69	Daniel Saund	2112 West
70	RachaelJessop	2124 West
71	Ian Clark	2126 West
72	Toni Kostanic	2201 East
73	Chris Michael Millas	2202 East
74	Gavin Rees	2204 East
75	Joanna Lowe	2206 East
76	Leah Mapara	2207 East
77	Tarandeep Malhi	2212 West
78	Robin & Susan Smith	2214 West
79	David Lee	2218 West
80	Dr Malekniazi & Dr Kaushal	2226 West
81	Darren Coleman	2301 West
82	Sarju Ladwa	2302 West

83	Lesley Rowland-Roberts	2303 West
84	Rajwant Narpuri	2312 West
85	Ali Esfahbodi	1731 & 1530 West
86	Philippa Zaccaroli	1520 & 1825 West
87	Stephen Sandhu	1616 & 1821 West
88	Jerry & Louise Fowden	1829 & 1830 West
89	Martyn & Sofia Laycock	1901/1902 East
90	Lynne Archer	1914/1724 West
91	Jagveen & Manjinder Bagary	2017/2117 West
92	David & Mitra Black	2115 & 2127 West
93	Gerard O'Regan	2309/2310/2311 West

