FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2025/0827**
Property	**:**	**8 Artillery Low, London SW1P 1RZ**
Applicant	**:**	**Leaseholders of 8 Artillery Row (as per the application)**
Representative	**:**	**Mr David Satwell, counsel**
Respondent	**:**	**Avon Ground Rents Limited**
Representative	**:**	**Mr Simon Allison KC**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Tagliavini** **Ms J Rodericks** **Mr O Miller**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing **Date of decision**	**:**	**20 – 22 January 2026** **25 February 2026**

DECISION

Decisions of the tribunal

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

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 prohibiting the respondent from adding its costs of this application to the service charges.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the applicants in respect of the service charge years 2017 to 2024.

The background

2. The property which is the subject of this application is a mixed-use building close to Westminster Cathedral. It consists of 22 residential units, together with a small car park and a ground floor retail unit. The communal areas are relatively small, with an entrance lobby and a landing on each floor, each landing serving three apartments on seven floors. There is also a penthouse at the top of the Building. ('the Building').

3. The applicants each hold a long lease of their respective property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease(s) will be referred to below, where appropriate.

4. The respondent to the application is Avon Ground Rents Limited, the freeholder and landlord of the Building ('Avon') and the managing agent for the Building is Y&Y Management Limited ('Y&Y').

5. There is a recognised tenant's association, 8 Artillery Row Residents Association of which Mr Kevin Hastings (former tenant and non-leaseholder) is the chairperson.

The Hearing

6. The applicants were represented by Mr David Sawtell, counsel at the hearing and the respondent was represented by Mr Simon Allison KC.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary due to the nature of the issues in dispute and the comprehensive bundle of 5771 digital pages that was provided. This included a witness statement of Mr Kevin Hastings dated 19 December 2025 and Mr Raymond Gubbay CBE (leaseholder) dated 19 December 2025, who both gave oral evidence to the tribunal.

8. An additional witness statement of Mr Kevin Hastings dated 16 January 2026 was also provided to the tribunal. This late evidence was subject to an application for permission for its late admission. This was not objected to by the respondent, in so far as it the statement served only to update the tribunal and was not utilised to introduce 'new' issues or evidence. After consideration of this application, the tribunal determined it would be reasonable to allow the applicants to rely upon this further witness statement, to the extent it served as an update of the current situation between the parties.

9. The respondents sought to rely on the written and oral evidence of Oliver Ogus, Mechanical Director with the Heat Interface Team, dated 18 July 2025; Adam Azoulay, Director of Y&Y dated 19 December 2025; Joel Debson, Operations Director of Affiliated Utilities and Clever Energy Billing (undated) and Richard Simmons, Manager of Avon Estates London Limited (undated).

The issues

10. At the start of the hearing, the applicants identified the relevant issues for determination as set out in a table form in the witness statement of Mr Kevin Hastings in the table below, with the amounts claimed having been pro-rated to the applicant leaseholders.

Category	**Reason for deduction**	**Years contested**	**Amount claimed**
1.Heat and hot water - Clever Energy	Leaseholder invoiced more than fair cost of providing service	2017 to 2024	£48,894
2.Electricity communal	Overcharging	2017 to 2024	£413,200

3.Cooling charges -Clever Energy	Double charging	2017 to 2024	£36,549
4.CHP generator	Heating and electricity credits	2017 to 2024	£100,951
5.HIU / FCU maintenance	Demised to flats	2017 to 2024	£252,612
6.Roof repair costs	Not fully claimed on insurance	2017 to 2024	£51,825
7.Major leak 2021	Not fully claimed on insurance	2017 to 2024	£22,116
8.Terrorism & Insurance cover	Leaseholders not notified	2017 to 2024	£57,284
9.Engineering Insurance cover	Unfair and excessive	2017 to 2024	£6,159
10.Insurance commissions	Unfair and excessive	2023 to 2024	(No figure provided)
11.Building insurance	Credits from 10 AR and retail not evidenced, recalculation of share	2017 to 2024	£81,542
12.Waking watch	Unfair and calculation not transparent	2017 to 2024	£152,916
13.Interim professional charges	Excessive charge	2021£73,134	£73,134
14.Legal & Professional Fees	Not recoverable under BSA 2022	2022	£26,658

15.Management fees	Mismanagement	2017 to 2024	£76,475
16.General Maintenance costs	Excessive charges	2020 to 2022	£14,798

Heating and hot water - Clever Energy

11. The applicants informed the tribunal that leaseholders do not have individual gas boilers and are billed for heat and hot water by Clever Energy Limited on behalf of Avon. Clever Energy is the company the respondent has contracted with since 2023 to bill demands for payment. The applicants asserted that the Clever Energy tariffs for heating and hot water materially exceed Avon's underlying gas costs. At the same time, comfort-cooling standing charges had increased and electricity costs were fully paid through the service charges and therefore, there was 'double recovery' of these charges

12. The applicants told the tribunal that 'cooling' runs on electricity only, and the full cost of the building's electricity charges are paid through the service charges. However, there is nothing in the lease terms that allows Avon to take a proportion of the cost of utilities as an overhead. Instead, the leaseholders are required to pay for the costs of their utilities to Avon via the demands made by Clever Energy on its behalf. Further, Clever Energy should issue a report reconciling payments collected from the dwellings against the actual costs incurred in supplying heat and water But Avon has never disclosed any such reconciliation.

Communal electricity

13. The applicants asserted that the main landlord meter is recording more than the communal load and were readings for the whole of the building and not just the communal areas and therefore the applicants were being overcharged. The contract between the respondent and Clever Energy had not been disclosed to them but Y&Y played no part in the provision or billing of these charges

14. The applicants told the tribunal that there is a dedicated landlord-only metering arrangement. Due to their concerns about the high electricity charges, the applicants commissioned an electricity survey in December 2025. Paul from Stark Limited (the meter operator attended site on 23 December 2025 and met with Mr Gubbay and Mr Azoulay. His subsequent report confirmed that the meter used for the billing of the leaseholders as 'communal electricity' was in fact measuring the whole building's consumption including the apartments' own consumption

and therefore did not measure the genuine communal consumption of the leaseholders. Subsequently, a meter was found in the landlord's cupboard which appeared to only record the communal area consumption. The respondent has since confirmed that the communal meter was installed incorrectly at the time the development was built.

15. The applicants asserted the landlord should have known consumption was too high and did not accurately reflect the genuine communal electricity consumption. Therefore the applicants submitted that the landlord should re-credit to the applicants the difference between the amount billed to and paid by the landlord to Clever Energy and the actual cost incurred by the applicants. The applicants accepted they first noticed a discrepancy was occurring in 2024 when the cost of energy substantially increased but asserted the respondent should have noticed in 2019 that an abnormality was occurring, or at least from 2023 when it contracted with Clever Energy for the negotiation of an electricity supply and billing service.

16. The applicants also asserted that the cost of the electricity per unit and the standing charge were too high and were therefore unreasonable.

17. The respondent stated that it has sought over many years to explain the process of charging for the (metered) heating supply to the flats. Inevitably, something of a 'float' has to be maintained, as the landlord cannot change the unit price in 'real time,' it has to be adjusted from time to time so that, over the years, the costs of running the heating system and the costs of the billing/metering are recovered fairly from leaseholders in accordance with their use. In addition, the central costs of maintaining the heating plant itself are recovered via the service charge, not the unit price.

18. The respondent accepted the electricity meter for the communal areas had been incorrectly connected and asserted this was the 'fault' of the developer when the Building was constructed. This issue had been reported and the respondent was now waiting for the supplier to remedy the situation as the meter could not be' interfered' with by the respondent or its agents.

19. The respondent asserted that notwithstanding the incorrect connection the electricity charges had been reasonably incurred as the 'error' was neither obvious to the respondent, its agents and until 2024 it had not been obvious to the applicants. The respondent told the tribunal that a 'credit' would be sought from the supplier and if obtained, this would be re-credited to the leaseholders' accounts in the appropriate sums.

Cooling charges - Clever Energy

20. The applicants asserted they had been over (double) charged for this item because the CHP unit had been switched off by the respondent. Had the unit been functioning, it would have reduced the amount of the demands sent to the applicants.

21. Further, the applicants asserted that leaseholders are charged both for the operation and maintenance of this system and receive monthly bills from Clever Energy that include including a fixed standing charge. The applicants asserted that the cost of these Cooling standing charges are unjustified. The applicants asserted that in the period 2017 – 2024, the daily cooling standing charges ranged from 16p per day to £2.31 per day (in 2023). However, the respondent has provided no explanation as to why there are standing charges at all when the system runs on communal electricity that has already been paid for under the service charge.

22. Therefore, it was the applicants' case that leaseholders were being charged twice for the same electricity: (i) through the communal electricity line in the service charge, and (ii) through the Clever Energy Comfort Cooling standing charges without any corresponding credit back to the service charge account. Further, Cooling standing charges have been levied in periods when cooling was not available and the Building has experienced long periods where there not been any chilled water floor and no heating hot water. Notwithstanding these issues, the Clever Energy Limited invoices continued to include cooling standing charges.

23. The respondent told the tribunal that it has employed Clever Energy, a specialist company in utilities, to procure electricity contracts and monitor the market and that it has had to pay the electricity bills for the Building, based on its metered supply and using the figures from the meter installed at the time the Building was constructed in 2016.

24. The respondent also told the tribunal that it has adduced evidence justifying the rate at which electricity has been procured; the payment of the bills and evidence of having tested and the volatility of utility prices on the wholesale market. The respondent asserted that by contrast, the applicants have adduced no comparator evidence or addressed the fact the respondent had little option but to pay the electricity bills when rendered by the supplier. Consequently, it was difficult to see how either contractually or under s.19 Landlord and Tenant Act 1985, the tribunal has a proper basis on which to reduce the electricity costs. The respondent also asserted that in fact the electricity costs have not risen nearly as much as the applicants suggested.

25. The respondent accepted that what does appear now to be common ground between the parties, is the fact that the meter for the 'landlord supply' in the basement of the Building, has been set up incorrectly, and as such, it is in fact metering the entire supply to the building (i.e.

communal electricity costs and the individual flat consumption, notwithstanding that the individual flats are themselves metered. The respondent asserted that this will seemingly have resulted in much higher bills over the life of the Building than should have been the case. However, the respondent asserted that this would need to be resolved by UK Power Networks and the metering company. Thereafter, the respondent will seek to ensure that any credits for the excess billing made by the supplier are returned to leaseholders.

26. The respondent denied that either it or its agents 'ought to have known' that this issue with the communal meter existed, or that its handling of this affects the quality of the management service provided by Y&Y. The respondent asserted that Y&Y have cooperated with all investigations over the past couple of months but are at the mercy of the electricity companies and this is not something within Y&Y's control. Although, the respondent intends to pursue a recrediting of electricity costs, this is likely to take some time.

CHP generator

27. The applicants asserted the Building is required to have an operational gas-fired Combined Heat and Power ('CHP) unit as described in the Resident's Guide provided to leaseholders. The CHP is intended to deliver considerable savings in electricity costs and as a by-product of heat generation, it should also produce communal electricity so as to reduce the Building's running costs. The applicants also asserted that the CHP unit was intended to produce all of the space heating and domestic hot water to the dwellings and common parts, with a view to meeting 100% of domestic hot water demand (including, therefore, the heating, as the underfloor heating runs on hot water pipes), while at the same time producing almost 30% of the Building's electricity demand.

28. The applicants also asserted that the CHP generator appeared to have been kept switched off by the respondent, as the last maintenance record was recorded in an invoice dated 20 January 2017, shortly after Avon acquired the Building. In August 2025, the Building Management System screen in the plant room showed the CHP plant has turned off'. As a result, all communal electricity demand was met from the grid at commercial, higher, rates and the boilers and pumps worked harder than intended, thereby imposing an additional workload on them and potentially led to higher repair costs

29. The respondent submitted that the CHP and solar installations that (a) the solar installation is functioning as the applicants' own report states and (b) whilst the respondent has now taken steps toward commissioning the CHP plant (which was seemingly not done by the developer), this does not affect the s.19 question with respect to the electricity bills and in any event does not amount to a breach of some

obligation on the respondent's as there is no contractual requirement to provide a functioning CHP.

HIU / FCU maintenance

30. The applicants asserted the Heat Interface Unit ('HIU') comprise a boxed unit within each flat, which transfers heat from the communal primary circuit into the flat's own secondary heating and water pipework. A Fan Coil Unit ('FCU') is a small, fan-assisted heat-exchange unit and uses chilled water from the communal system to provide cooling to individual rooms. Both units are located entirely within the demised premises and are within the individual leaseholder's obligation to maintain as the Resident's Guide states:

> *'Each HIU does require annual maintenance and this should be undertaken by each apartment owner as part of the maintenance regime for their apartment.'*

31. This statement, the applicants submitted, is in accordance with the terms of the leases as the definition of Retained Part which refers to "the Service Media at the Building as parts which do not exclusively serve either the Property, the Flats or the Retail units. The HIU (while undoubtedly connected to the rest of the Building's system) only serves the individual flat that it is a part of.

32. The applicants asserted in the alternative that the HIU falls into the definition of the Property in Schedule 1 either because it falls within the floor plan edged red on plan 1, and / or because the HIU does not fall within the definition of 'Common Parts'.

33. Further, an email from Y&Y's building manager in May 2017 stated that leaseholders were expected to arrange their own maintenance, and recommended Acorn Engineering. However, on 27 November 2018, Y&Y sent a letter stating that HIU servicing would in future be organised collectively and recharged through the service charge. It is understood that it is Avon's case that this was agreed at an AGM in January 2018 although the letter at dated 15 January 2018 is simply in respect of a residents' meeting in the Building lobby to "get to meet your property manager" and does not refer specifically to the HIUs or the proposed change to their maintenance. It is unclear how many of the residents attended that meeting which took place in Mr Gubbay's flat rather than in the Building lobby .

34. The respondent told the tribunal that the Heat Interface Team are contracted to maintain the plantroom and thus maintain the heating, hot water and chilling services at the Building. The commercial unit on the ground floor was let as 'shell only' and is self-contained and therefore it does not take heating /hot water /cooling. All 22 flats are connected to

the communal heating system, which circulates hot and chilled water, with the flats interfacing with that system by way of 'heat interface units' (HIUs) and FCUs (chillers).

35. The respondent told the tribunal that there are sound practical reasons why the landlord should maintain the HIUs in a building as they form part of the central system and servicing by a plumber who was unfamiliar with the system could detrimentally affect the whole. The respondent asserted that a group of leaseholders agreed at the Resident's Meeting held on Tuesday 23rd January at 6.30pm that it made sense for the respondent to include the HIUs within the maintenance services supplied by Heat Interface Team and subsequently all leaseholders were informed this change would happen from 2019 onwards and have consequently been charged for the same for 7 years. Until this application, no leaseholders had objected to the 'new' arrangement and have paid the charge added to their service charge demands.

36. The respondent asserted that the terms of the lease actually provide that HIU maintenance is a landlord obligation as The Retained Parts is defined as including all parts of the Building other than the Property including 'the Service Media at the Building which do not exclusively serve either the Property, the Flats or the Retail. 'Service Media' is defined as 'all media for the supply or removal of heat… comfort cooling… and all other services and utilities and all structures machinery and equipment ancillary to those media.' The HIU is, accordingly, 'Service Media.' The definition of the demised parts at Schedule 1 includes 'all Service Media exclusively serving the Property'.

Roof repair costs

37. The applicants asserted that Avon has spent a considerable amount on roof works and leaks, despite the (young) age of the Building. Although Y&Y has asserted that some sums have been recovered from the developer, it has not been possible to identify where these have been credited. Further, the respondent has failed to provide clear evidence in respect of the insurance claims arising out of the same. Consequently, there is a risk of 'double recovery,' with the leaseholders paying for works through the service charge while Avon also receives insurance payments without accounting for them. Further, instead of implementing a comprehensive solution to the problems experienced with the roof, Avon has adopted a policy of 'patch repair' thereby incurring unreasonable costs.

38. The respondent asserted that insurance claims had been made and where paid had been credited to the service charge accounts.

Major leak (2021)

39. In the winter of 2021, there was a major flood at the Building and applicants asserted that the way in which the damage caused by this has been dealt by the respondent was unsatisfactory. In 2021, two potable water expansion vessels were replaced at a total cost of £10,400 (£3,672 installation plus the cost of the vessels at £6,187), without any notification to leaseholders or consultation under section 20 of the Landlord and Tenant Act 1985. However, it is likely that a permanent replacement would have cost c.£1,000,22 but the 'temporary' vessel remains installed and used. Following major leaks in 2022, Y&Y stated that an insurance payment of £5,500 would be used towards remedial works, however, there has been no corresponding credit.

40. The respondent asserted that this incident had been dealt with as swiftly and as cost effectively as had been possible. As the flood created an emergency situation it had not been possible to consult with the leaseholders.

Terrorism insurance cover; engineering insurance cover; insurance commissions and building insurance

41. The applicants' concerns with the insurance were itemised as:

(1) the level of the buildings insurance premiums;

(2) the late addition of terrorism and engineering cover without any clear notice to leaseholders;

(3) undisclosed commissions and the new "insurance administration" fee;

(4) new administration fees from 2023;

(5) the way the overall insurance cost is apportioned between 8 Artillery Row, 10 Artillery Row and the ground-floor café;

(6) premium discrepancies;

42. The applicants asserted that on a 'footprint' analysis, 8 Artillery Row is paying too much as a proportion and that Avon has not set out a rational basis for its charging, save for the argument this has been this historic allocation. The applicants also complained that there has been incomplete disclosure of broker and freeholder remuneration.

43. Mr Richard Simmons of Avon Estates London Limited for the respondent, told the tribunal and it accepted, that no commission is taken on the insurances at the Building although it did levy a management charge in connection with its work in placing the insurance

from the 2024 year. That charge (amounting to circa 10% of the building premium) is recoverable under the lease given the definition of 'Insurance Rent'.

44. The respondent informed the tribunal that the building insurance covers both 8 and 10 Artillery Row. Number 10 contributes as set out in the apportionment schedule provided and more or less matches the applicants' own figures. Terrorism insurance has been in place since the respondent first acquired the freehold and is not a recent addition as asserted by the applicants. Further, it is a specified insured risk under the Lease, which also permits the landlord to insure against 'any other risks which the Landlord reasonably decides to insure against from time to time.' Engineering insurance is very commonly placed by landlords including this respondent, so as to provide a measure of comfort against unexpected maintenance costs. In any event, the applicants provided no like for like insurance comparator evidence to support their assertions.

Waking watch

45. The applicants told the tribunal assessment of the Building's fire safety which led to the waking watch being put in place occurred on 23 December 2020 at a total cost to the leaseholders of £203,888.10 for the period January to December 2021. The applicants asserted that Y&Y mismanaged the process as a permanent fire detection upgrade cost £31,660,30 and could have been done urgently. Therefore, Avon's priority should have been to commission the fire alarm as soon as possible, even if that meant it was not possible to wait for government funding in advance. Even after funding was confirmed on 7 June 2021, the instruction to proceed was not placed until 12 October 2021.

46. Therefore, only 25% of the waking-watch cost (representing a period of approximately three months) should be treated as reasonably incurred.

47. The respondent told the tribunal that the waking watch was put in place at short notice and remained until a compliant fire alarm enabling simultaneous evacuation to take place was installed. The timing of the waking watch coincided with the height of the covid pandemic (in December 2020) and at a time when large numbers of buildings were seeking the installation of alarms and waking watches. Subsequently, the government's Waking Watch Relief Fund was announced just days after the waking watch was put in place at the Building, and funding was pursued and an application made applying on the first day possible with funding eventually obtained in June 2021.

48. As well as the delays arising from the government and GLA's departments, there was inevitable lead-in time for the contractor, and then the usual difficulties of gaining access to the leaseholders' flats. At a cost of just £11.50 per hour at all times, the waking watch was in fact

procured at an excellent rate albeit it was in place for a longer period than the leaseholders now consider to be unreasonable.

Interim professional charges

49. The applicants told the tribunal that on 22 June 2022, Y&Y wrote to the leaseholders in respect of fire safety professional fees which stated:

> *We have already received £110,111.00 of pre-tender support from the Building Safety Fund leaving over a total of £107.549.00. It is necessary to invoice this money now to enable the continued running of the building."*

50. As a result of the Court of Appeal decision in *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856, 221 ConLR 17, the applicants asserted that any unpaid sums, as of 28 June 2022, are not recoverable through the service charge.

Legal and professional fees

51. The applicants also disputed a number of charges applied under 'Legal and Professional Fees.' The applicants relied on paragraph 9 of Schedule 8 of the Building Safety Act 2022, which states:

> *"No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect."*

52. Consequently, the respondent's 'Sampas Reports' (May and July 2022) are irrecoverable costs and were criticised in the tribunal remediation order proceedings as being deeply flawed and not of a reasonable standard.

53. The applicants told the tribunal they understood that the Coleman Coyle fees arose in connection with building safety advice and are not recoverable. The applicants also asserted the BSR 'safety case' preparation fee and the Black Boots Technology software charges all relate to fire-safety and building-safety compliance or advice and also cannot be recovered due to the effect of the Building Safety Act 2022 (the 2022 Act').

54. The respondent informed the tribunal that it accepts that, as the law presently stands, any leaseholder holding a qualifying lease, has the benefit of paragraph 9 of Schedule 8 to the Building Safety Act 2022 and that no sums are payable by leaseholders with respect to legal or other professional services relating to the liability (or potential liability) of any

person incurred as a result of a relevant defect; *Adriatic Land 5 Limited v Leaseholders of Hippersley Point* [2025] HLR 43 at §203 although this case is currently the subject of an appeal to the Supreme Court.

55. The respondent accepted that whilst that appeal will not change the position with respect to costs incurred after 28 June 2022, it may affect the law with respect to costs incurred prior to that date but which were not in fact paid (or covered by payments) made prior to that date. The respondent accordingly reserved its position entirely on this point, albeit necessarily accepting that as the law stands, this tribunal is bound by the Court of Appeal's decision.

56. In this application, the respondent's costs in issue are those that are shown under 'Professional Fees.' The respondent submitted that only the applicants holding a qualifying lease are entitled to benefit from this protection afforded by the 2022 Act. A number of leaseholders had not returned their leaseholder deed of certificate despite efforts to collect the same in and are therefore presumed to not have a qualifying lease

57. The respondent told the tribunal that a number of the applicants had paid sufficient sums on account (or in response to an interim charge on 22/6/22) and as such that they would get no protection from paragraph 9 with respect to the challenged professional costs that had been incurred in the 2022 year in respect of relevant defects. Other leaseholders had partially paid such costs. Accordingly, the position is at the very least nuanced and will vary from leaseholder to leaseholder as to whether the protections of the 2022 Act apply.

58. The respondent asserted that the position is different for ongoing building safety management costs and in particular those costs that arise out of the need for the respondent to comply with its new duties under Part 4 of the Building Safety Act 2022 by virtue of the Building being a higher-risk building. As a result of those new duties, the respondent was required to prepare a safety case report and put in place numerous policies, processes and procedures tailored to the building and monitor matters on an ongoing basis.

59. In order to do so, the respondent incurred a number of costs which are not caught by paragraph 9 of Sch.8 (as they don't relate to relevant defects). These costs are recoverable both under the wide terms of the lease itself, but also by virtue of (new) section 30D Landlord and Tenant Act 1985, which implies into the Lease terms such that the cost of 'building safety measures' are recoverable by way of service charge.

Management fees

60. The applicant asserted that the day-to-day management of the Building, as well as its financial and overall administration, has been poor. This

has been coupled with a failure to respond to leaseholder concerns. There have also been serious concerns about the way in which Y&Y has handled the maintenance of the Building, as well as repairs. This has resulted in high and volatile service charges, while Avon has not been able to produce adequate service records. Further, the applicants asserted there is insufficient evidence that reserve and sinking funds are being held and managed in line with best practice.

61. The respondent took issue with the applicant's assertions and told the tribunal this complicated Building had been managed to a reasonable standard at all times by its managing agents.

General maintenance costs

62. The applicants told the tribunal that the following invoices which were supposed to be re-imbursed by insurers have not been accounted for in the service charge accounts: (1) The temporary expansion vessels (£6,188) as set out above); (2) The BMS Maintenance contract (£8,610) in 2020.

63. In addition, the applicants referred to a number of contracts/works that were not consulted upon with leaseholders by the respondent, pursuant to s.20 Landlord and Tenant Act 1985 thereby limited the recoverable costs to £250 per leaseholder. These were:

    (i) The HIU maintenance contracts;

    (ii) The replacement of the expansion vessel;

    (iii) The BMS costs in 2020;

    (iv) Waking watch costs;

    (v) Sampas report fees; and

    (vi) Simon Levy report fees

64. The respondent asserted that the applicants appear to misunderstand when statutory consultation is required in respect of a qualifying long-term agreement (OLTA) i.e. if the contract has to continue for a term in excess of 12 months in respect to 'qualifying works' – being works on a building or other premises, as distinct from services (such as a 'waking watch').

65. The respondent asserted that building repair works will be qualifying works, but services such as window cleaning, or the supply of water or electricity, or provision of staff, or the purchase of an insurance policy,

will not be. Even then, it is only engaged where the contribution of a leaseholder will exceed £250 (as it operates as a cap).

66. To the extent that the tribunal considers there may be issues of failure to comply with the consultation requirements, it is invited to adopt the approach of the Lands Tribunal in *Warrior Quay v Joaquim* LRX/42/2006 at §41, there being no evidence of prejudice *Daejan Investments v Benson & others* [2013] 1 WLR 854). The alternative is that R will have to make a formal application in due course, and it is unlikely to be in either side's interests for there to be further proceedings if the same could be pragmatically avoided.

67. The respondent submitted that the applicants have made reference to a large number of heads of cost falling foul of s20 consultation requirements. The respondent submitted the HIU maintenance agreements with Heat Interface Team Ltd are not QLTAs. It was asserted that they are 1 year term agreements, that can be terminated at any time on 30 days' written notice: onwards. The value of this challenge is put at £6,187.66, being the cost of 2 replacement potable water expansion vessels (at £544 each) and three Flamco Flexfiller pressurisation units. The respondent told the tribunal these were emergency works to address failing parts just prior to Christmas and consultation would not have been possible. The respondent accepted that some flats will have paid more than £250 for the cost of these parts.

68. The respondent also submitted that the disputed invoice is for the parts and not for 'works on a building.' Therefore, the cost is not the cost of 'qualifying works.' In the alternative to the extent the tribunal finds that s.20 consultation was required, it is invited to grant unconditional dispensation given the urgency of the works apparent from the report and lack of prejudice to those leaseholders who have to contribute more than £250. The low value of the amounts caught by any s.20 cap would render the costs of a separate application for dispensation uncommercial. In the circumstances, the applicants are invited to take a pragmatic view.

69. Further, in respect of BMS costs the respondent asserted that the invoice for these costs is a total of £8,610. It was also said that similar points apply as with the expansion vessel as it is no good spending 3 months following the dispensation process when residents reasonably expect heating and hot water to function. Because there are only 22 flats in the Building, and the penthouse flat (Mr Gubbay's) pays such a high percentage, the s.20 threshold is very low. It will significantly increase costs – ultimately paid by leaseholders – if dispensation in such circumstances has to be applied for every time something unexpected arises. Again, the applicants are invited to take a pragmatic view, but to the extent dispensation is required, the tribunal is invited to grant unconditional dispensation.

70. In respect of the HIU servicing and Waking Watch costs, the respondent asserted they were neither a QLTA (indeed, it is common ground that R did not contract for a period over a year) nor qualifying works and therefore no s.20 issues arise. Similarly in respect of the Sampas and Simon Levy reports the respondent asserted this is neither a QLTA nor qualifying works and no s.20 issues arise.

The tribunal's decisions and reasons

71. The tribunal finds that neither party had given any real consideration as to how to assist the tribunal in respect of the presentation of the presentation of the hearing bundle. The tribunal found much of the documentary evidence relied upon was duplicated, unnecessary or irrelevant. The tribunal would have found it helpful if the parties agreed it was necessary only to include a sample lease; sample bills and sample demands and only in the event these could not have been agreed, might it have proved necessary to include more extensive material.

72. Further, the tribunal found the Index to the Hearing Bundle to be of limited assistance, as it failed to identify each of the multiple reports/documents in the appendices to witness statements, although the former frequently ran to hundreds of pages.

73. Having considered all of the relevant documents and the oral evidence provided, the tribunal has made determinations on the various issues as follows having regard to the relevant clauses of the lease(s) and sections of the Landlord and Tenant Act 1985.

74. In a sample lease dated 26 June 2015 made between Victoria Property Holdings Limited and Nigel Harris and Sabine Ann Maguire in respect of Flat 301 in the subject Building provided the following terms;

> ***Insurance Rent***
>
> *(a) a fair and reasonable proportion determined by the Landlord of the cosy of any premiums (including any IPT) that the Landlord ..*
>
> ***Schedule 1 – The Property***
>
> ***...***
>
> *(g) all Service Media exclusively serving the Property*
>
> ***Schedule 2 – The Rights***
>
> ***Comfort Cooling Condensers***

The right to connected to the external condensers for the comfort cooling system for the Property and the Flats on the external plant deck.

Schedule 7 – Services and Service Costs and Part 2. Service costs

Service costs

*The **Service Costs** are the total of:*

(a) all the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:

(i) providing the Services;
(ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts;

…

(vi) putting aside such sum as shall reasonably considered necessary by the Landlord (whose decision shall be final as to questions of fact) to provide reserves or sinking fund for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services;

…

75. The tribunal finds there was very little dispute between the parties as to the terms of the lease except for (i) the responsibility to maintain the Heat Interface Units and (ii) any landlord's entitlement to create a fund from the cooling charges to off-set against future payments.

76. Section 19 Landlord and Tenant Act 1985 states:

(1)Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a)only to the extent that they are reasonably incurred, and

(b)where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

77. Although, the parties provided a large number of documents, the tribunal would have been better assisted, had they been able to agree to

confine themselves to a representative sample of bills/demands/documents on the disputed issues rather than including every single document that had been disclosed. Further, the tribunal were not assisted by the lack of a detailed index identifying each document attached to the witness statements as these frequently ran into hundreds of pages, thereby making it unnecessarily difficult to negotiate the documents.

Heating, hot water and cooling charges – Clever Energy

78. During the hearing, the respondent accepted that payments towards the standing charge for cooling (which are solely electricity charges) had not been credited to the leaseholders' account and the failure to do so was a mistake on the part of the respondent. Consequently, £61,958.80 together with payments made in December 2025 were going to appear as credits in the leaseholders' account.

79. The tribunal finds that this 'mistake' had been responsible, at least in part for the respondent creating a 'loan from heating fund and a 'loan from freeholder' for which interest at 4% above the base rate is charged to the leaseholders. Although the applicants did not specifically challenge the use of 'loans' the tribunal nevertheless invites the respondent to reconsider, whether in light of its 'mistake' whether the loans or part of them were in fact required and reconsider the imposition of interest payments on the leaseholders.

80. The tribunal accepts the respondents' evidence that Y&Y have no part in the sourcing, supply or billing of gas and electricity charges and that this has at all time during the period in issue, remained the responsibility of the landlord and has since 2023 has been outsourced to Clever Energy.

81. During the hearing, Mr Azoulay, for the respondent also accepted that the comfort cooling meters in the individual apartments were not producing any readings as they were not connected, although this was not realised until July 2025. The connection of these meters would be subject to a s.20 consultation procedure in due course.

82. However, the reconciliation of the accounts left a sum in the region of £10,000 not credited to the leaseholders. the tribunal finds the lease(s) as referred to in para. 74 above, provide the respondent with a discretion allowing the creation of a fund to offset against unexpected costs or unpaid utility charges.

83. The tribunal also heard and accepted the evidence of Mr Joel Debson in respect of the role of Clever Energy as the respondent's billing agent and his explanation of how Affiliated Utilities, of which he is also an operations director, secured electricity costs through a two-track process. In contrast the applicants provided no 'expert' or independent

evidence on this issue and again relied on the evidence of Mr Hastings on this issue who accepted he did not have the same access to the energy markets as the respondent or its agents.

Communal electricity

84. The tribunal finds that after receipt of a report commissioned by the applicants the respondent accepted in December 2025 that:

> *We have now been advised as follows by Affiliated Utilities (broker), based on Stark's site visit of 23 December 2025 and the supplier's internal review: Stark's engineer has produced a full technical report following the site visit. The supplier has confirmed that the communal meter was previously installed incorrectly. A physical change to the wiring configuration is required in order to correct the installation. Stark is currently consulting with UK Power Networks (the DNO) to determine whether the remedial works must be carried out by the DNO or whether Stark can undertake them directly. A determination on responsibility and method of repair is expected next week.*
>
> *In addition: Once the technical remediation route is confirmed and implemented, the supplier has confirmed that they will work with Stark to recalculate the historic supply and billing position. The broker has confirmed that all parties are now aligned that this is a historical installation error and that it is being progressed as a corrective technical matter.*
>
> *This position therefore confirms that: the December site visit did identify substantive technical issues; a detailed engineer's report exists; the installation has been deemed incorrect by the supplier; and remedial works are now being scoped with the DNO. As soon as we receive: 1. confirmation from UK Power Networks and Stark on who will carry out the remedial works; 2. the proposed scope and programme; and 3. the supplier's position on billing recalculation methodology, we will circulate a further update to the Residents' Association without delay…*

85. The tribunal finds the 'communal' meter did incorrectly record readings for the entirety of the Building and not only the communal areas, to which the applicants were required to contribute through the service charges.

86. In closing submissions to the tribunal in respect of these wrongly charged costs, Mr Allison for the respondent posed the question 'What does the tribunal do?' He submitted the respondent landlord had reasonably incurred these electricity costs, as there had been no warning sign that the 'communal' meter had been incorrectly wired and that it

had only been the increase in unit price, in about 2024, that first alerted anyone that there was something not quite right. Consequently, the charges had been 'reasonably incurred' and the remedy was a recalculation and recrediting of charges by the supplier. It was however accepted, that if the situation were not rectified these charges might arguably could not be said to be reasonably incurred if the incorrectly wired meter remained in situ.

87. The tribunal finds the communal electricity costs were unreasonably incurred. The tribunal finds these costs were wrongly incurred due to the incorrectly wired meter in the control of the landlord and that it is illogical to accept the respondent's submission that these costs were 'reasonably incurred,' particularly as the respondent will seek a refund/recredit of these charges from the supplier on the basis they were incorrectly charged.

However, in the absence of any expert evidence, the tribunal is not satisfied with the applicants' calculation of the overpaid charges said to be due to them. Therefore, in view of the substantial sum (£413,20) sought by the applicants in respect of this item of service charge, the tribunal directs:

(i) the respondent is to actively seek from its electricity supplier a recalculation and recredit of the overpaid charges;

(ii) In the event the sum due to be recredited cannot be determined or agreed between the parties by 31 May 2026, either party may seek a further determination from the tribunal as to the percentage or sum due to the applicants.

(iii) Such an application may be made within the current application and will be determined by the same tribunal on the documents provided unless a further oral hearing is requested.

(iv) Both parties have the tribunal's permission to rely upon expert evidence in respect of the above calculation of the electricity costs to be recredited to the applicants.

CHP Unit

88. The tribunal finds the combined heat and power plant (CHP energy unit) was not commissioned by the respondent and the applicants were not charged for its maintenance during the period in issue.

89. The tribunal finds this unit was initially connected to the system by the developers of the Building and that at some point in time it had been in use, as evidenced by the applicants' production of a screenshot/photograph of the meter. By the time of handover of the Building to the respondent, the tribunal finds the CHP Unit had been switched off by the developer (or someone on its behalf) and was not switched back on by the respondent during the period in dispute. The finds this is supported by the lack of any demands for payment for the servicing of this unit from the respondent.

90. The tribunal finds the respondent took a reasoned decision not to switch the CHP unit on after the handover of the Building. Further, in the absence of expert evidence, the tribunal is not persuaded on the balance of probabilities, that its operation would have saved the amount of costs claimed by the applicants. Although Mr Hastings made detailed calculations as to potential savings, he is not and did not hold himself out to be an expert on these matters. Further, Mr Hastings did not make any allowance for the likely degradation this unit experiences over time, thereby reducing its efficiency in saving energy costs (if any) or the maintenance costs over the period in question.

91. Further, the tribunal finds there is no contractual obligation on the part of the respondent in the lease (s) to switch on the CHP unit and that the Residential Guide produced by the former developer/managing agent Rendall & Ritner does not form part of the contractual terms between the parties. Consequently, the decision whether to switch on the CHP unit remained within the discretion of the respondent landlord. The tribunal notes however, that on 23/12/2025 the leaseholders were informed that:

> *'Further to our visit this morning, the Residents' Association acknowledges confirmation that the Combined Heat and Power (CHP) system has now been commissioned and is operational.*

92. In view of the findings about, the tribunal concludes that no 'refund' is due to the applicants in respect of the non-operational CHP unit.

HIU

93. Notwithstanding the evidence of Mr Ogus as to the reasonableness of the charges made in respect of the maintenance of these units, the tribunal finds these units form part of the demise to the respective leaseholders in whose flat they are located. Consequently, the tribunal finds the applicant leaseholders are required under the terms of their lease to maintain these units.

94. The tribunal finds there is no 'estoppel by acquiescence' as submitted by the respondent. The tribunal finds the letter of 15 January 2018

announcing a Residents Meeting on 23 January 2018 failed to expressly identify that at least one of the purposes of the meeting was to discuss changing the maintenance obligation to the landlord but was expressly said to be *'…a chance to get to meet your property manager for the building and ask any queries in relation to your development.'*. Further, it is unclear how many leaseholders attended this meeting but the tribunal finds on the balance of probabilities from the oral and written evidence of the parties, that it included less than a majority of leaseholders. The tribunal finds the respondent thereafter took it upon itself to assume responsibility for the servicing of the HIU and announced this in a letter dated 27 November 2018 '*as previously agreed'* although it was unable to inform the tribunal which leaseholders had expressly agreed to this arrangement.

95. The tribunal finds the lack of 'protest' at the respondent's subsequent decision that it was taking over the maintenance of these units, was phrased in such a manner as to indicate the leaseholders had little choice in this matter. However, Mr Gubbay CBE gave evidence that he had continued to have the unit maintained at his own expense despite being charged for its maintenance through the service charges.

96. Although the respondent sought to rely on the case of *Cain v London Borough of Islington* [2015] UKUT 542 (LC) to support its arguments, the tribunal finds on the facts that the leaseholders at no stage were fully informed of the respondent's intentions to take over the maintenance of these units and did not either expressly or implicitly agree to it. The tribunal does not accept the respondent's arguments that the landlord retained a wide discretion in respect of the provision of services as these units are and remain within the demise granted to each ([2015] UKUT 542 (LC)) leaseholder.

97. In conclusion, the tribunal finds the cost of the annual service of the HIU units has not been reasonably incurred in the period 2017 to 2024 and should be recredited in the appropriate percentages to the applicant leaseholders.

Waking watch

98. The tribunal finds the respondent could reasonably have carried out the works to install a fire alarm system by the end of July 2022. The cost of the fire alarm system at circa £36,000 was considerably less than the £100,000 budgeted costs of the waking watch and the actual cost incurred of £203,888.10.

99. The January 2021 guidance issued by the Ministry of Housing, Communities and Local Government said that *"the cost of employing one person/individual undertaking Waking Watch duties exceeds the average cost of installing an alarm system in 3 to 7 months"* By June 2022, the tribunal finds that (i) government funding from the Waking

Watch Relief Fund for the installation of a fire alarm system had been confirmed; (ii) the cost of a suitable fire alarm system was known and (iii) the respondents could have arranged for a contractor to start works and for leaseholders to provide access at an earlier date.

100. The tribunal finds the respondent failed to show a contractor was not available sooner or that access to flats was not available and finds the respondent unreasonably delayed the installation of a fire alarm system thereby removing the continued need for a 'waking watch' Therefore, the tribunal finds the cost of the 'waking watch' was unreasonably incurred and should be limited to £70,000 representing 70% (or 7 months) of the original estimated costs and which sum is payable by the applicants in their respective proportions.

Roof repair costs

101. The tribunal accepts the respondent's evidence on this issue and supported by a number of invoices. The tribunal finds that where appropriate, claims on the insurance were made by the respondent and have either been refused or credited to the leaseholders accounts or are due to be so credited.

102. The tribunal does not accept that the costs of patch repairs were unreasonable in contrast to the major works suggested by the applicants. Further, the tribunal finds the applicant did not seek to rely on evidence to substantiate its allegations that patch repairs should not have been carried out. As an expert tribunal, it finds that it is a common and reasonable practice for landlords to carry out patch repairs before embarking upon possibly unnecessary and costly works. The tribunal finds there is no evidence to suggest it was unreasonable for the respondent to have done the same in this instance.

Insurance – terrorist and engineering cover and commissions

103. The tribunal finds that the 'Insured Risks' in the lease terms include,

> *…heave, landslip, terrorism, accidental damage to underground services,…and any other risks which the Landlord reasonably decides to insure against from time to time…*

104. The tribunal find it is reasonable for the respondent to include both terrorism and engineering cover in its schedule of insurance in view of the complexity of Building and multiple communal utilities it provides as well as its Central London location. The tribunal accepts the respondent's evidence that both have been included in the insurance schedule from the outset and that consultation with the leaseholders was not required.

105. The tribunal also finds the respondent's longstanding use of square footage as a means to allocate the proportion each leaseholder is to contribute to the insurance, is both appropriate and reasonable. The tribunal accepts the respondent's evidence that no commission was paid to the respondent in respect of the insurance.

Interim professional charges

106. These relate to an interim demand dated 22/06/2022 in respect of fire safety costs. Therefore the question the tribunal had to consider, was whether the landlord had paid for any fire safety works that were excluded by schedule 8 para. 9 of the Building Safety Act 2022 which states:

> *(1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.*
>
> *(1A) Sub-paragraph (1) does not apply to the extent that the service charge is payable to a management company in respect of legal or other professional services provided to the company in connection with an application or possible application by the company for or relating to a remediation contribution order under section 124.*
>
> *(2) In this paragraph the reference to services includes services provided in connection with—*
>
> *(a) obtaining legal advice,*
>
> *(b) any proceedings before a court or tribunal,*
>
> *(c) arbitration, or*
>
> *(d) mediation ….”*
>
> **This case is current subject to an appeal to the UK Supreme* Court.

107. The respondent conceded the report of Coleman Coyle was caught by the operation of this statutory provision and was therefore not payable by the applicant qualifying leaseholders. The tribunal accepts the respondent's concession and finds there where proof of an applicant

being a qualifying leaseholder is provided this sum is not payable by them in their percentage share.

108. As this tribunal is bound by the Court of Appeal decision in *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* the tribunal finds that from 28 June 2022, no further service charges of the relevant type are payable, irrespective of whether the costs have been incurred or the service charges had been demanded and were payable before that date.

Legal and professional fees

109. In closing submissions, the respondent conceded that the costs of the SAMPAS reports were not recoverable from the leaseholders.

110. However, the cost of the Blackboots specialist software were not conceded by the respondent and the tribunal finds these costs have been reasonably incurred by the respondent. The tribunal finds the initial higher outlay is likely to lead to cost savings in the future in respect of the respondent being able to utilise it itself rather than employing an agent on its behalf.

Management fees

111. The tribunal finds that overall, the respondent's managing agents have been proactive and responsive in the management of this Building. The tribunal accepts that Y&Y have not been responsible for the billing of electricity as this does not accept the applicants' assertion of poor management to the extent alleged or at all during the period in dispute

112. The tribunal finds the evidence of Mr Adam Azoulay from Y&Y to be both credible and persuasive in how this complex Building was managed in light of the numerous issues that arose, many of which were outside of the managing agent's control. The tribunal finds the managing agents were responsive to the numerous requests for information from the applicants and that its duties increased due to fire safety issues without a commensurate increase in fees. Therefore, the tribunal declines to reduce the fixed management fees as proposed by the applicants or at all.

General maintenance costs

113. The tribunal finds the costs of (1) The temporary expansion vessels (£6,187.66) and (2) The BMS Maintenance contract (£8,610) in 2020 did require s.20 consultation as the costs exceeded £250 for some leaseholders. Although the tribunal accepts the respondents written and oral evidence on these issues and finds the works that were undertaken were carried out were both reasonable in their nature and extent and reasonable in cost, it nevertheless finds the costs of these works are

limited to £250 per leaseholder unless a successful application for dispensation is made.

Long-term qualifying agreements

114. The tribunal finds there is no evidence that the contracts referred to by the applicants as:

(i) The HIU maintenance contracts;

(ii) The replacement of the expansion vessel;

(iii) The BMS costs in 2020;

(iv) Waking watch costs;

(v) Sampas report fees; and

(vi) Simon Levy report fees

were long-term qualifying agreements pursuant to the 1985 Act. The tribunal accepts the respondent's evidence, as supported by the witness statements and documents, that it had not entered into any long-term qualifying agreements that required s.20 consultation with the applicants.

s.20c – dispensation

115. The tribunal does not consider or determine any (informal) application for dispensation from consultation made by the respondent. However, it is hoped the applicants can take a pragmatic view of whether any application, if required, is likely to be successful, in view of the nature of the works carried out particularly if they concerned issues of heating, lighting, water and safety.

Section 20C Landlord and Tenant Act 1985

116. In view of the above findings and determinations the tribunal considers it is just and equitable to make an order under s.20 Landlord and Tenant Act 1985, so that none of the respondent's costs of this application can be added to the service charges.

Name: Judge Tagliavini **Date:** 25 February 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).