FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**HAV/00MW/LSC/2025/0774**
Property	**:**	**Princess Court, 41 Castle Street, East Cowes, Isle of Wight PO32 6GG**
Applicants	**:**	**The leaseholders as in the attached schedule**
Representative	**:**	**Alan Goddard**
Respondent 1	**:**	**Captiva Homes Limited**
Representative	**:**	**James Pink**
Respondent 2	**:**	**ERMC Limited**
Representative	**:**	**Glen McGuinness**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges (Section 27A Landlord and Tenant Act 1985),**
Tribunal	**:**	**Judge Tessa Hingston** **Jane Herrington (Lay member)**
Date Decision finalised	**:**	**6th July 2026**

DECISION OF THE TRIBUNAL

The Tribunal determines that the fire door remediation costs of £18,705.83 arose from a 'relevant defect' in accordance with Section 120 and Schedule 8 of the Building Safety Act 2022, and therefore no service charges are payable by the Applicants in respect of those works.

In the light of this decision, no determination is required as to reasonableness of service charges in 2025.

Orders are made under Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for limitation of the landlord's costs and administration charges.

No Order for costs is made under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

INDEX TO DECISION DOCUMENT:

BACKGROUND

1. The property in question is a purpose-built 5-storey building containing 39 residential apartments under a sheltered scheme for residents over 55 years of age. The units are either one-bedroom or two-bedroom apartments held on long leases.

2. The building was created by the First Respondent company, developers Captiva Homes Limited, which remains the freeholder to date. The building contractors were DN Associates and the first leaseholders moved in in 2018.

3. On the 1st of January 2024 the Second Respondents ERMC Limited were appointed as managers of the building.

4. On the 25th of January 2024 a 'Project Report' was produced by Wight Fire Doors Limited (Exhibit MH4, Page 82-120 of the bundle), as to remedial measures required to make the building compliant with fire regulations.

5. In the light of the report's recommendations, ERMC conducted the correct statutory consultation procedure with a competitive tender exercise under Section 20 of the Landlord and Tenant Act 1985. In due course A.E.W. Carpentry and Building Limited (A.E.W.) were engaged to carry out the work.

6. On the 7th of April 2025 a new 'Contractor's Report - Technical findings from the site remediation at Princess Court' was submitted by A.E.W. (This report is found at Pages 38 – 79 of the bundle.) In the course of the project, it had been discovered that there were more extensive issues with the fire doors (and their frames and installation) than originally thought, and further remedial works were required.

7. ERMC instructed the contractors to go ahead with the additional work, but there was no further consultation with leaseholders nor any application for dispensation from the statutory requirements.

8. On the 19th of July 2025 the RTM company formally took on responsibility for financial matters and administration at Princess Court.

9. The original cost of the works to fire doors, as per the quotation of £10,697.30, was paid by direct service charge contributions. The additional £8,008.53 was paid by the RTM Company out of service charge funds.

10. The Applicants made an application for determination of liability to pay and reasonableness of these particular service charges for the year 2025.

11. The application was received by the Tribunal on 16 September 2025. It refers to an '*£8,008.53 overspend on communal fire door works*', and argues that these costs were incurred without proper Section 20 consultation.

12. The Applicants further seek orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

13. Directions were issued on 18 February 2026, and the parties then attended for a case management (CMH) and dispute resolution hearing on 30 March 2026.

14. At the CMH it was confirmed that the Applicant should be amended from 'PC (PO32) RTM Company Limited' to the leaseholders as listed. Mr Goddard was confirmed as the Applicants' representative.

15. In their Position Statement for the CMH the Applicants raised a question concerning the Building Safety Act 2022 (BSA 2022), and they sought a determination as to whether the costs incurred arose because of **'relevant defects'** under the BSA 2022, thereby rendering all demands in regard to such irrecoverable.

16. Further Directions were issued, and the case was listed for hearing on the 9th of June 2026.

17. A bundle of relevant documents, (including, statements, submissions, correspondence, reports, photographs and other exhibits) numbering 714 pages was produced by the Applicants and sent electronically to the Respondents and to the Tribunal.

[Hereafter all page references are as per the hearing bundle unless stated otherwise.]

RELEVANT LAW

18. See Appendix.

THE LEASES – Relevant provisions

19. A sample Lease (for Apartment 34) was contained in the hearing bundle.

20. The Landlord covenants to provide the services as set out in Clause 6 'Service covenants' (Page 270). Among other things, it is obliged to : -
'clean, repair, decorate and maintain in good and substantial repair and condition and where necessary renew, rebuild, reinstate or replace the 'Retained parts' (as defined in the Lease at Page 261) the 'Structural parts' (Page 262) and the 'Communal areas' (Page 257).

21. At Clause 7 it is provided that: -

'*The Landlord may at its reasonable discretion do any of the following acts or things in relation to Princess Court…'* including: -

'*To employ at the Landlord's discretion the Landlord's Agent to manage Princess Court and discharge all proper fees salaries, charges and expenses payable to such agents and/or such other persons (Including the Landlord) who may be managjng Princess Court including the cost of computing, auditing and collecting the service charges in respect of Princess Court'.*

22. Under Clause 8 (Page 273) the 'Owner' (leaseholder) covenants to pay service charges to the landlord, in accordance with the provisions of that clause. Payments are made in advance in two equal instalments on 1st January and 1st July each year.

23. Under Schedule 1 Part 1 of the Lease, at Page 279, it is stated that 'The Property' includes: -
*'The internal doors, **including the entrance door(s) to the Property** and their frames but not any external door leading on to the courtyard (if any) and its door frame.'*

HEARING

24. The Hearing took place at Havant Justice Centre on the 9th of June 2026. Mr. Goddard appeared as representative of the Applicants, assisted by Mr. Mark Hopson. Mr. Pink appeared as Director of the company on behalf of the First Respondent Captiva, and Mr. McGuinness (property manager and asset surveyor from ERMC Limited) appeared on behalf of the Second Respondent.

25. Mr. Robert Peace attended as a professional witness for the Applicants.

26. Ms. Stephanie Minshull, Ms. Sarah Chapman and Mrs. G Goddard attended as observers.

PRELIMINARY ISSUES

27. The Applicants had raised the point that the 1st Respondent's statement was filed some hours after the deadline on the evening of 6th of May 2026, but at the hearing they conceded that the delay was not significant or detrimental to their case. Nevertheless, they asked the Tribunal to note the Respondents' attitude to the rules and their lack of compliance with the Directions, both as to timing and as to their initial failure to include a 'Statement of Truth' in witness evidence.

28. The Applicants had also objected to the admission of the Respondent's witness statement from Mr. Dean Orchard, at Page 645, on the grounds that he was apparently being introduced as an 'expert witness' without the permission of the Tribunal.

29. In return, the Respondents submitted that they had not been given an opportunity to agree the contents of the hearing bundle, and in particular they objected to the inclusion of 'Without prejudice' correspondence.

30. The Tribunal duly noted the comments from both sides, but were satisfied that none of these matters gave rise to any prejudice to either party, and the case could proceed effectively in spite of them.

31. In respect of the 'Without prejudice' correspondence the Tribunal ruled that all such items in the bundle would be disregarded unless they became relevant to the question of Rule 13 costs.

32. In respect of the introduction of expert witness evidence without permission, it was noted that both the Applicants and Respondents had introduced a witness (Mr. Peace and Mr. Orchard respectively) as to the structural problems with the fire doors, but neither of them had sought permission from the Tribunal.

33. Each party had had an equal opportunity to consider the 'expert' evidence well in advance of the hearing, and both parties had the option to call their witness if they wished.

34. In the case of the Applicant's witness Mr. Peace, the First Respondent Mr. Pink was able to cross-examine him as to his opinion and conclusions. In the case of Mr. Orchard, he was not called to give oral evidence and accordingly his statement was not subject to further challenge or examination.

35. The Tribunal ruled that it was in accordance with the Tribunal's overriding objective, to deal with cases justly and fairly, for the hearing to proceed and for the evidence of both 'experts' to be taken into account.

APPLICANTS' CASE

36. The Applicants' case was set out in their original application forms, in their 'Covering letter' of 06.09.25, in their Statement of Case' (undated, at Page 204), in the 'Amended Position Statement' of 11.03.26 (Page 20), in their 'Introductory Narrative' (dated 6th April - Page 5), in the 'Reply' to the Respondent's statements (dated 12th May - Pages 6 - 16), in their 'Supplemental Statement' as to conduct, Rule 13 Costs etc. (undated, at Page 17) and in their 35–page 'Skeleton Argument' submitted to the Tribunal on the 3rd of June 2026.

37. There were also witness statements from Mr. Goddard (Page 123) and professional witness Mr. Peace (Page 80). Oral submissions were made during the hearing and Mr. Peace gave evidence to the Tribunal in person.

38. Essentially the Applicant's case was based upon a number of separate arguments.

<u>A. Building Safety Act 2022</u>

39. Firstly, the Applicants submitted that the works to doors in the communal areas of Princess Court (including 'riser' doors, store-room doors and laundry doors as well as main fire doors) carried out during 2025 fell into the category of remediation works for 'relevant defects', as defined in Section 120 of the Building Safety Act 2022.

40. It was submitted that the works to these doors were necessitated by flaws in the construction process which created a building safety risk, i.e. a risk to the safety of people in or about the building arising from the spread of fire.

41. Accordingly, if there had been a 'relevant defect' in the construction process, and if the requirements under the Building Safety Act were satisfied (as per Schedule 8), then the following provision was said to apply: -
'No service charge is payable under the lease in respect of a relevant measure relating to a relevant defect if a relevant landlord—is responsible for the relevant defect...'

42. The Applicants argued that the cost of the remediation works (£18,705.83 in total) should not have been paid by the leaseholders in service charges, because of the pre-existing 'relevant defect'.

43. In support of this contention the Applicants referred to a number of documents, notably the exhibit MH4 'Project Report' from Wight Fire Doors of 25th January 2024, and Exhibit MH2, the A.E.W. 'Contractor's Report' of 7th April 2025, which outlined remedial works to 44 internal communal doors in total.

44. The Applicant's witness Mr. Robert Peace also gave evidence that, although he had been unable to inspect personally the underlying structures of the fire doors because the works were complete at the time of his involvement, he was able to provide a technical analysis of the A.E.W. report from an experienced surveyor's point of view.

45. In his written statement Mr. Peace had noted that this report clearly states that the majority of the doors and frames in the common parts of the building required similar remedial works for them to comply with the BS (British Standard). He stated as follows: -

'The most common issue (was) the door sets having excessive shut line gaps between the door and frame, as well as thresholds. When works commenced to alter the frames, the frames were found to be poorly packed, with 45mm of foam fill in some instances. It is essential that Fire door sets remain dimensionally stable to provide the smoke protection to occupants, but the report states 'excessive gaps to all edges' which implies poor installation.
Prior to the remedial works carried out by the contractor in 2025, the doors clearly were not in full working order from a fire safety point of view.'

46. In conclusion, Mr. Peace stated:

'It is my professional opinion that the units were poorly fitted when originally installed, with evidence of systemic faults. The number of doors requiring similar remediation to become compliant cannot be settlement or 'wear and tear', as the excessive gaps were to all edges. The frames being poorly fitted and inadequate door closers added to the scope of the remedial work.'

'The integrity of fire doors prior to remediation is a clear historical safety issue; these are "Relevant Defects" under the BSA 2022. On inspection, there appears no evidence of building settlement or movement apart from flexing to the floors.'

47. The Tribunal was informed that Mr. Peace had an OND in building studies and an HND and Bachelor's degree in building surveying, with over 27 years experience of building construction and fire prevention both in London and elsewhere.

48. In his oral evidence to the Tribunal Mr. Peace confirmed that timber-framed buildings are often subject to some 'shrinkage' and/or 'settlement', but he had seen no site-specific evidence of the same (such as cracking of walls) at Princess Court. He also commented that 'shrinkage' would have led to timbers becoming shorter over time, whereas in this case many of the 'heads' of the doors were found to be too long and had to be shortened.

49. Mr. Peace accepted that fire doors would usually require some routine maintenance and minor repairs over a period of years, but he stated that having to open up the architraves and frames and repack them with different materials was another thing altogether.

50. In terms of the specific kinds of remedial works which were required to make the building compliant with Fire Safety Regulations, Mr. Peace commented as follows:

- **Packing and excess foaming**
  i) Mr. Peace explained that in many (10, as confirmed by Mr. Goddard) instances the contractors found that incorrect materials had been used, or inadequate packing installed, between the outer frames of the doors and the structure of the building. In some cases there had been 'over-foaming' to fill gaps wider than the correct 20mm.

  ii) In 10 instances the 'packing' had crumbled or deteriorated, and examples of the contractor's descriptions of these inherent problems were as noted below: -

  > *Insufficient fixings and packing to all sides of lining*
  > *Plasterboard behind lining incorrectly installed and crumbling*
  > *Excessive foaming of gaps around lining with gaps showing through*
  > *Minimal packing and fixings to both sides of lining* and
  > *Packing of lining to hinge side crumbling under door weight, causing door to drop unevenly which caused the doors to drop and thus affected the gaps on all sides.*

  Corrective works were required, as below: -

  Pack and realign door lining to correct gaps', and
  Re fit door lining to correct widths and plumb'.

  iii) Mr. Peace stressed the importance of effective compartmentation in preventing the spread of fire, and explained that these faults in the packing around the door frames – which were not visible until intrusive investigations began and which therefore had not been picked up in previous Fire Risk Assessments and regular fire door checks – could lead to fire spreading through the gaps. As a result there were compartmentation issues throughout the building, which was particularly relevant in the light of the 'Stay put' policy requiring residents not to leave their apartments in the event of fire.

  iv) In terms of materials used as packing, Mr. Peace told the Tribunal that certain types of foam were approved, and plaster-board or Rockall filling could be adequate if broken down and packed correctly, then sealed with mastic and intumescent strips. The packing at Princess Court was not adequate or appropriate in many cases, and he expressed concern that there was no detailed evidence before the Tribunal of certification of the original doors as fitted, nor any independent documentation certifying the remedial works completed in 2025. The ERMC assessment of July 2025 was a 'Type 1' visual inspection only, and the works to the top floor were still ongoing at the time of inspection.

  v) Mr. Peace stated that the best way of confirming that the fire door construction and fitting was compliant would be for the contractors to have taken photographs showing the packing before frames and architraves were affixed. This had not been done, to his knowledge.

- **Head width of doors**
  i) Mr Goddard confirmed that 15 of the doors had to have the 'head width' at the top of the frame reduced in order to make them fit better, with smaller gaps around them.

  ii) Mr. Peace commented that the heads must have been too wide in the first instance, when installed. In the worst case the total gap was 90mm, with a 45mm gap on each side. Alterations had to be made to ensure compliance with Regulation 8214 of the British Standard for fire doors.

- **Incorrect signage and door closers**
  Both reports referred to a number of doors in the building which had incorrect or missing signage or inadequate door closers. Mr Peace did not make any comment on these additional issues.

51. In conclusion, Mr. Peace expressed the view that the nature and extent of the faults at Princess Court were more consistent with inherent defects than with normal changes and routine maintenance.

52. When Mr. Peace was cross-examined he agreed that fire safety certification had changed considerably in recent years, but his expert opinion was that these structural defects (which could only be revealed by intrusive works) were more serious than the 'normal' adjustments which would be required as a result of reasonable wear and tear.

53. <u>Causation -</u>
There was no evidence to suggest that any third party had, or could have, intervened and changed the packing and the materials around the doors since the original construction, therefore the Applicants submitted that these faults must be defects which arose '*as a result of something done (or not done), and materials used (or not used)*' in the original building process. Mr. Peace stated that they should be categorised as 'relevant defects' under Section 120 of the BSA 2022.

54. <u>Alleged Admissions/wording used by Respondents -</u>
In addition, the Applicants submitted that the Second Respondent managers (ERMC) had effectively admitted that there were 'relevant' defects in the fire door system at Princess Court because, in their Section 20 Notice at Page 215 it was said that: -
'We consider it necessary to carry out the works because:-

- *Fire doors that do not meet the specified design requirements may fail to perform as intended, potentially allowing smoke and fire to spread through rooms and compartments. This compromises the effectiveness of fire-fighting efforts and evacuation procedures during a fire event.*'

Mr. Goddard stated that this was an admission that there were concerns about compartmentation.

55. It was further suggested that the First Respondent Mr. Pink, of Captiva, had admitted (in his Position Statement) that the door structures were non-compliant with fire regulations as follows: -

- *'During the course of the works additional matters requiring compliance works were identified once intrusive works commenced'* (Page 490) and
- *'...the works were necessary to ensure compliance with fire safety requirements...'* (Page 492).

56. At Page 552, Mr. Pink had endorsed ERMC's evidence that: -

- *concealed issues were identified following removal of door sets, architraves, and linings;*
- *further non-compliant conditions became apparent during the progression of the works; and*
- *additional compliance works were therefore required which had not been reasonably foreseeable during the original visual inspection process.*

57. The Applicants commented that: '*A non-compliant condition hidden inside a sealed structural cavity at the point of construction is an original build defect under Section 120'* (Skeleton Argument Paragraph 154).

58. They go on to state that:
'If a timber frame is designed and constructed such that normal, predictable structural settling causes building-wide fire doors to become non-compliant and create an urgent risk to safety, then that could be a 'relevant defect' in itself.'

59. In conclusion the Applicants argue that:

'If it were true that standard, predictable environmental settling could destroy a building's fundamental fire compartmentation system within a few years, this would establish that the block was designed and constructed without an adequate safety margin to remain legally compliant. Such a failure constitutes a classic original defect in design and workmanship under Section 120 of the BSA 2022.'
The Tribunal was urged to find that there was indeed a 'relevant defect' in the building.

60. Landlord's certificate -
The Applicants raised an issue about the landlord's failure to provide a 'Landlord's Certificate' (under Paragraph 14 of Schedule 8 to the BSA 2022) upon request. They argued that the statutory presumption should then apply, to the effect that the landlord must meet the 'Contribution Condition' in Paragraph 3 of the Schedule.

B. Reasonableness under the Landlord & Tenant Act 1985

61. In the alternative, if the Tribunal found that there was no 'relevant defect' in the building, the Applicants sought a determination that the fire door costs were not 'reasonably incurred' under Section 19 of the Landlord and Tenant Act 1985.

62. Although there was no dispute that the contractors with the most competitive quote had been employed to carry out the works, and although it was agreed that the work had apparently been done to a reasonable standard, the Applicants argued that the total cost of the works was not 'reasonably incurred' because of the failures in communication and consultation.

C. Lack of consultation under the Landlord & Tenant Act 1985/ Dispensation

63. The Applicants submitted that they were not consulted at all, as required by Section 20 of the 1985 Act, in respect of the extra, unexpected works to the doors which increased the cost by £8,008.53. The need for these additional works only became apparent once the door frames were opened up and structural investigation revealed underlying issues.

64. It was argued by the Applicants that the 'second tranche' of works were separate from the original contract, and there should have been a fresh consultation before proceeding. They submitted that they had suffered prejudice (in accordance with the ruling in the case of *Daejan Investments Ltd v Benson [2013] UKSC 14)* as a result of the failure to consult them, because if consulted properly they would have had the opportunity to:

- source competitive, alternative market quotes, potentially securing a significantly lower rate per door than the cost billed by the on-site contractor, and
- see if BSA 2022 applied to the works.

65. It was said that Leaseholders were denied the chance to:

- comment on the true scope and cost of the works.
- challenge the expanded specification and associated costs.
- make an assessment of whether or not it was in their best interests to support ERMC in a submission for a dispensation or to ask for a new section 20 proposal to be prepared.

66. In the light of the alleged failure to follow the proper consultation process, and in the absence of any timely application from the Respondents for dispensation (under Section 20ZA), the Applicants had argued in their Position statement that their contribution should be limited to £250 per apartment under the statutory cap. They opposed the late application for retrospective dispensation.

D. Management Fee

67. The Applicants also challenged the £1,056 management or agency fee paid to ERMC Ltd in July 2025 for their conduct of the Section 20 process. The Applicants argued that this was a 'hidden' transaction, carried out without consultation or communication with leaseholders, and that it constituted a 'financial breach of trust.'

68. As the Applicants contended that the Section 20 process was incorrect and/or incomplete, and they considered that there had been 'systemic mismanagement' (for example in the separation of costs of works to individual apartment doors from the costs of works to communal doors) it was submitted that this cost was not 'reasonably incurred.'

*[**Note: Apartment doors**: the Applicants also advanced an argument in respect of liability to pay and invoicing for similar remedial works to individual apartment doors. See below under 'Findings and Determination'.]*

E. Limitation of Costs (Section 20C and Para 5A) and Rule 13 costs

69. The Applicants asked the Tribunal to make an order to the effect that the costs of the proceedings and administration charges could not be recovered from them by way of service charges. It was submitted that it would be punitive to the leaseholders if they were required to pay costs.

70. The Applicants also sought an order for wasted costs under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, on the grounds that the Respondents had acted unreasonably and 'vexatiously' in failing to respond to requests for documents and/or information, in failing to reply to offers of settlement, in sending cost warning letters to the Applicants, and in not complying with the Tribunal's directions.
71. The Applicants submitted that the Tribunal should take account of the power imbalance between the Respondent, a commercial developer, and the Applicants, a volunteer-led company.

FIRST RESPONDENT'S CASE (CAPTIVA.)

72. The First Respondent's case was set out in their Position Statement dated 11th March 2026 (Page 490), in the Statement of Mr. Pink (Director of Captiva) dated 6th May 2026 (Page 537), and in the 'Joint Skeleton Argument' of 3rd June 2026. These documents were supported by relevant exhibits and attachments.

73. Mr. Pink also gave oral evidence to the Tribunal at the hearing and made submissions in support of the First Respondent's case, dealing with the Applicant's arguments in the same order as above. He told the Tribunal that he did not have any building or surveying qualifications, but he started Captiva 25 years ago and they are now the largest residential developer on the Isle of Wight, having dealt with over 55 sites.

A. Building Safety Act 2022.

74. At Page 537 the First Respondent states that: -

'*...the works relied upon by the Applicants...*' (as evidence of a 'relevant defect') '*...are properly characterised as inspection-led compliance, maintenance, adjustment, and fire safety management works undertaken over time in response* *to evolving inspections, assessments, operational considerations, and regulatory review'* rather than being proof of underlying flaws in the methods and materials used in the original construction.

75. It was submitted that no systemic fire door or compartmentation defect was identified at completion of the building, nor were there any significant concerns at earlier Fire Risk Assessments prior to 2025.

76. The Position Statement argues that the burden rests upon the Applicants to establish, on the balance of probabilities, that: -

- *a defect existed;*
- *the defect arose as a result of the design, construction, or materials used in the construction or refurbishment of the Building (rather than subsequent movement, maintenance, operational configuration, evolving inspection standards, or compliance review); and*
- *that it satisfies the statutory definition of a "relevant defect" under section 120 BSA.*

77. It was argued that the Applicants have failed to establish those elements.

78. On behalf of the First Respondent it was pointed out that the building had been the subject of regular Fire Risk Assessments and Fire Safety Reviews between its first occupation in 2018 and the works in 2025.

79. Mr. Pink told the Tribunal that there was full Building Control oversight and frequent staged inspections during the construction process, as well as a Premier Guarantee warranty review and certification upon completion as exhibited.

80. Whilst the Respondent did not suggest that certification is determinative of the absence of defects, it was said that the existence of such independent oversight, coupled with the absence of identified systemic defects within regular FRA documentation, is inconsistent with the existence of an obvious or widespread construction defect.

81. Mr. Pink referred to the FRA of July 2020 (Page 575), which identified only limited and isolated fire door issues (with the 'hold-open' closers to the laundry doors, the refuse/bin store doors, and one lobby door which did not fully close to completion) rather than widespread construction defects. No excessive gapping was noted at that time.

82. However, the Respondent conceded that the 2020 assessment *did* identify a fire-stopping issue in relation to risers and management stores. At Question 45 (Page 590), under the heading: 'Inspection – Compartmentation' it is recorded that: -

'in all risers and management stores...PU expanding foam has been used which there is no certification for.'

83. The recommendation arising from the assessment was: -

"Arrange for a 3rd party accredited passive fire protection company to attend site and resolve all issues by fire stopping correctly to a minimum of 60 minutes."

84. Mr. Pink stated that the Respondent duly arranged for appropriate fire-stopping works to be undertaken at the Respondent's expense as part of the Building's ongoing fire safety compliance and management.

85. He submitted that this demonstrated a responsible and proactive response to matters raised through the FRA process.

86. Whilst it was accepted that the fire door issues discovered in 2025 did amount to a fire safety risk, it was argued that such a risk, as identified through later inspection, does not, without more, establish:

- that the condition existed at the point of construction;
- that it arose from defective workmanship or design; or
- that it constitutes a "relevant defect" under section 120 BSA 2022.

87. The Respondent further relied upon the contemporaneous management records and action log maintained by Freemont Property Managers (as exhibited at CAP2), the previous managing agent of the Building. It was submitted these records demonstrated that the Building was subject to an ongoing programme of inspection, review, monitoring, and maintenance, and that the fire doors were routinely checked.

88. <u>Causation -</u>
Mr. Pink referred the Tribunal to the 'Expert Witness Statement' of Mr. Dean Orchard, Managing Director of Sydenhams Timber Engineering (at Page 645). Mr. Orchard does not state that he has any qualifications as a surveyor, but he confirms that he has over 35 years in the timber frame construction industry and that his company was responsible for the design and manufacture of the timber frame structure at Princess Court.

89. Mr. Orchard states that in a multi-storey timber frame building, vertical shrinkage is cumulative, and each storey contributes incremental movement through:

- shrinkage of timber studs;
- compression of sole plates and head binders;
- bedding-in of connections and fixings.

90. He expresses the view that:
'In a building of approximately five storeys, it is typical to see measurable cumulative vertical movement over time. This movement is not indicative of defect. It is a known and anticipated characteristic of timber frame construction.'

91. As to the impact of structural settlement and shrinkage, Mr Orchard suggests that the movement is transferred to door openings, linings and finishes. He says that the practical effects can include:

- *changes in gap tolerances around doors;*
- *doors becoming misaligned;*

- *linings moving out of plumb or level;*
- *uneven clearances;*
- *reduced closing performance.*

92. He concludes that: *'It is standard industry practice that door-sets in timber frame buildings require adjustment, realignment and, in some cases, localised modification. Such works may include:*
   - *re-packing or adjusting linings;*
   - *re-aligning door leaves;*
   - *adjusting door closers;*
   - *modifying gaps (including lipping);*
   - *localised making good.*

93. Mr. Pink submitted that the issues found in 2025 could have arisen from:
   - subsequent adjustment works;
   - re-alignment works and maintenance interventions, or
   - ongoing building settlement and movement associated with timber frames.

94. Mr. Pink reminded the Tribunal that a few of the doors (namely 3 laundry and bin store doors) had been adjusted in 2020, between the completion of the building and the remediation report in 2025. Accordingly, when phrases were used such as: - *"Fitted too low in lining at time of installation" (*in relation to the laundry door) caution should be exercised before attributing such conditions to the original construction works.

95. However, Mr. Pink did not produce any evidence to suggest that any other works at all – let alone intrusive works - had been carried out to the fire doors between 2020 and 2025.

96. When questioned by the Applicants, Mr. Pink conceded that he '*did not doubt'* that there was '*some bad workmanship*' in the development, and he agreed that he could not exclude the possibility that deficiencies in the fire doors arose from the original installation and construction.

97. <u>Alleged Admissions/wording used by Respondents –</u>
The Applicants had argued that references to 'compliance' and 'remedial works' acknowledged that there were fire safety issues to be resolved, but it was denied that such phrases implied an acceptance that the issues resulted from any 'relevant defect'.

98. <u>Landlord's Certificate -</u>
Mr. Pink submitted that the statutory scheme does not provide for:
   - the provision of general building-wide certificates in the abstract; or
   - a free-standing certification exercise divorced from any relevant leaseholder transaction or liability assessment.

99. It was argued that the purpose of the statutory regime is to determine the application of leaseholder protections in relation to specific qualifying leases and individual leaseholder liabilities.

100. The First Respondent's case was that the RTM's request for a certificate was not made in connection with any identified leaseholder transaction, did not relate to any identified qualifying leaseholder liability assessment, and did not constitute a valid statutory notice for the purposes of the 2022 Regulations.

101. Accordingly, the Respondent submitted that no statutory obligation to provide a Landlord's Certificate arose.

B. Reasonableness under the Landlord and Tenant Act 1985.

102. The First Respondent submitted that the works were undertaken following professional fire safety advice, Fire Risk Assessments, inspections, and recommendations, and that it was reasonable for the Respondent and/or the Second Respondent to progress such works in the interests of resident safety and ongoing compliance. All costs were reasonably incurred and the work was done to a reasonable standard.

C. Lack of consultation under the Landlord and Tenant Act 1985/Dispensation

103. In determining whether there had been a lack of appropriate consultation, the First Respondent submitted that the Tribunal should have regard to:

- the evolving nature of the inspections and recommendations;
- the progression of the works over time;
- the safety-critical context in which decisions were being taken; and
- the absence of material prejudice to the leaseholders.

104. It was further argued that the works were urgently required in the interest of resident safety, and it was extremely unlikely that the leaseholders would have been able to source competitive, alternative market quotes at a '*significantly lower rate*' at short notice. It was denied that the Applicants had suffered any prejudice as a result of the failure to consult.

105. Interruption of the works would have: -

- prolonged known fire safety non-compliance;
- delayed necessary compliance works;
- increased contractor and project costs;
- extended disruption to residents; and
- increased overall risk exposure associated with the Building.

106. Overall it was submitted by both Respondents that the works were effectively all one project, that it was neither necessary nor practical to consult leaseholders in the middle of the process, and dispensation should be granted. They applied to the Tribunal for a retrospective Order to that effect.

D. Management Fee

107. On behalf of both Respondents it was submitted that the Management Agreement between Captiva and ERMC expressly excluded Section 20 project work.

108. The £1,056 payment to ERMC in July 2025 was a separate agreed fee for tender preparation and administration of the statutory consultation process. No construction-phase project management or technical supervision fee was charged.

109. This was not a 'hidden transaction': the accounting entries were recorded and transferred to the RTM when they took over. The service charge monies, from which the fee was paid, were held in a designated trust fund in accordance with the Landlord and Tenant Act 1987. There was no 'breach of trust', and it was submitted that the Tribunal should find that this was a cost 'reasonably incurred'.

*[**Note**: **Apartment doors**: the Respondents argued that the individual apartment entrance doors were the responsibility of the leaseholders as per the demise. Any arrangement between the landlord and the occupants for remediation works to these doors was a separate agreement not subject to the service charge legislation, and such works were correctly invoiced and paid for separately]*

E. Limitation of Costs and Rule 13 Costs

110. The Respondents jointly submitted that no order should be made as to limitation of costs or administration charges because the issues were substantial and legally complex and the proceedings concerned fire safety, BSA provisions, questions of reasonableness and consultation, and technical building evidence.

111. It was argued that the Respondents had acted reasonably throughout, in the face of serious allegations made by the Applicants against them, and they were entitled to resist the application as they had done.

112. In respect of Rule 13 costs the First Respondent denied that they had failed to provide documents properly and legitimately as requested, and also denied that they had acted unreasonably or 'vexatiously' at any time.

SECOND RESPONDENT'S CASE (ERMC)

113. The Second Respondent's case is set out in their Position Statement of 11th March 2026 (Page 493) in the 'Initial Statement' of April (?) 2026 (Page 496), in the '2nd Respondent's Statement of Truth' in accordance with the Directions of 30th March 2026 (at Page 661), in the 'Joint Skeleton Argument' of 3rd June 2026, and in their further Position Statement of 8th June 2026 (not in the bundle).

114. Mr. McGuinness also gave oral evidence and made submissions to the Tribunal during the hearing. He stated that he had no qualifications but that he had experience in estate agency and he had been a property manager for 16 years.

A. Building Safety Act 2022

115. In respect of the BSA argument, Mr. McGuinness confirmed that ERMC only became managers of Princess Court on 1st January 2024, and they handed over to the RTM on the 19th of July 2025. They were not really involved in the dispute about whether or not there was a ‘relevant defect’.

116. However, Mr. McGuiness confirmed that he was the contract administrator for the remedial works in 2025, and he expressed the view that the issues with the fire doors could have been caused by ‘settlement’. When questioned as to whether there was any visible evidence of settlement in the building, such as cracks to plaster on the walls, he replied that he had not seen any cracks, but re-decoration of the common parts could have covered it up.

117. Alleged Admissions/wording used by Respondents -
As to the background to the fire door issues, at Page 511 under the heading: - ‘Estates Section 20 Fee Proposal -Fire Door Works Princess Court page number 5– APPENDIX 6 - ERMC Performance – Fire Safety’, it is recorded that:-

‘It is likely that door defects had existed for several years, predating ERMC’s appointment and not addressed by the previous agent.’

B. Reasonableness under the Landlord and Tenant Act 1985.

118. Mr. McGuinness argued, on behalf of ERMC, that all the costs of the remedial works to fire doors in 2025 were reasonably incurred.

119. It was submitted that the Section 20 consultation process had been correctly followed from the outset, and essential works were commenced accordingly.

120. Upon removal of door sets, architraves and linings, previously-concealed defects were identified, and certain additional doors were also found to be non-compliant despite not being captured in the initial visual inspection.

121. The additional costs arose only once intrusive works commenced, and these matters were not reasonably foreseeable at the time of consultation.

122. It was said that the Second Respondents’ primary position is that the additional works formed part of the same compliance of communal fire doors project and were intrinsically linked to the originally consulted works: i.e. it was all one project.

123. Mr. McGuinness also pointed out that all parties agreed that the works were done to a good standard. The FRA of July 2025 referred (Page 512) to the: -
‘*...very high standard of apartment door installation and excellent maintenance arrangements...*’.

C. Lack of consultation under the Landlord and Tenant Act 1985/Dispensation

124. In terms of consultation with residents /leaseholders prior to works commencing, Mr. McGuinness stated that the full Section 20 process of Notices and tendering had been complied with, as set out in the exhibits in the bundle. There was also a meeting with residents on the 16th of October 2024.

125. When questioned as to why there had been no communication with leaseholders after that date, even when the need for extra works was discovered, Mr. McGuinness stated that the development manager was responsible for liaising with residents. He said that stopping the project to undertake a fresh consultation would have:

- Prolonged known fire safety non-compliance,
- Increased contractor costs,
- Extended disruption to residents, and risked regulatory non-compliance.

126. In conclusion it was submitted that ERMC took the decision that it was reasonable and necessary to continue with the works, because safety was paramount. The works had been done in good faith, at the best price.

127. The Second Respondents conceded that they could have applied for dispensation from the consultation requirements at the time of the AEW report in April 2025, but they endorsed Mr. Pink's arguments (as above) to the effect that the Applicants had suffered no prejudice as a result of that failure.

128. The Tribunal was invited to find that it was reasonable to dispense with the consultation requirements retrospectively and make an order under Section 20ZA.

D. Management Fee

129. It was submitted that ERMC's annual management fee excluded Section 20 project work, in line with its terms of appointment and standard industry practice.

130. Only the tendering and consultation activity was charged, as notified to the Freeholder on 24 October 2024. No charges were applied for construction phase project management or technical oversight: that work was undertaken as part of the management contract by Stephanie Minshull with back-office support and technical administration.

131. The fee of £1,056 was not taken from the reserve fund: it was invoiced to the service charge fund in the normal way.

*[**Note**: **Apartment doors**: as above, the Respondents argued that the individual apartment entrance doors were the responsibility of the leaseholders as per the demise. Any arrangement between the landlord and the occupants for remediation works to these doors was a separate agreement not subject to the service charge legislation, and any such works were correctly invoiced and paid for separately]*

E. Limitation of Costs and Rule 13 Costs

132. As above (Para.s 112 - 114), the Respondents jointly submitted that there were good reasons for the Tribunal to exercise their discretion and make no orders under Section 20C, Paragraph 5, or Rule 13.

FINDINGS AND DETERMINATION

133. The Tribunal considered all the available evidence, exhibits and submissions and proceeded to make findings as follows.

BUILDING SAFETY ACT 2022('The Act')

134. The Tribunal was asked to rule that none of the fire door remediation costs were recoverable from the Applicant leaseholders because those costs arose from 'relevant defects' in the original construction of the building.

135. In determining whether Section 120 and Schedule 8 of the Act applies, the Tribunal has to be satisfied that:

- a defect existed
- the defect arose as a result of anything done (or not done), or anything used (or not used), in connection with works relating to the construction or conversion of the building, and
- the defect created a building safety risk within the meaning of the Act.

136. Firstly, the Tribunal took account of the fact that certain matters were not in dispute.

137. It was accepted by the parties that Princess Court is a 'relevant building' (as defined in the Act) because of the number of storeys, and it was also accepted that the leases in question are 'qualifying leases'.

138. The freeholders Captiva Homes Limited accepted that they were the developers responsible for the building's construction.

Was there a defect?

139. It is generally accepted by all parties that there were a number of issues with the fire doors at Princess Court, as discovered by intrusive investigation in 2025.

140. The Tribunal found that these issues were correctly categorised as a 'defect' or 'defects'.

Was it a 'Relevant defect':
(i.e. Did the defect arise as a result of anything done (or not done), or anything used (or not used), in connection with works relating to the construction or conversion of the building?)

141. The Tribunal considered in particular two crucial and detailed pieces of evidence: -

- the first 'Wight Fire Doors Project Report' of January 2024 (which is illustrated by photographs of the doors requiring work, and which gives details of the remedial measures required), and

- the second A.E.W. 'Contractor's Report', dated April 2025 (also illustrated with photographs and noting what works were undertaken).

142. In the 2024 Wightfire report, although there was only a visual inspection, it was notable that some 35 of the doors were found to have issues which required remediation. These issues generally consisted of 'gaps' (in 28 cases), with comments to the effect that: -

'The door will need re-lipping or the frame adjusting to achieve compliant gaps')
There were also some doors which had incorrect signage.

143. The Tribunal accepted that it was arguable that minor works such as described in this report could be regarded as arising from normal issues of settlement in timber-framed buildings, and the recommended remedial works could have been seen as 'routine' maintenance and adjustment (as referred to by Mr. Orchard) to ensure compliance with Fire Safety regulations. However, it later became clear that the 'gapping' was indicative of more serious underlying problems in the construction.

144. The Tribunal found that the most significant and compelling piece of evidence was the latter, much more comprehensive A.E.W. 'Contractor's Report' (as analysed and explained by Mr. Peace) because it was prepared by the contractors who actually opened up the door structures and dealt with the fundamental issues.

145. It was noted that, after the intrusive investigation, no less than 44 communal fire doors in the building were identified for remediation in order to make them compliant with the regulations. Of those, the original 28 with 'gapping' required more extensive work than originally anticipated.

146. All parties agreed that the inherent problems with these doors were only discovered once the works began, and it then became apparent that the issues had a number of different causes. As to when, how and why the defects arose, the Tribunal considered the different issues as follows.

<u>Packing and over-foaming</u>.
147. The Tribunal considered the evidence of problematic packing in a large number of the doors, as outlined in the Contractor's report and as dealt with in Mr. Peace's evidence above.

148. The Respondents had argued that this type of problem was caused by settlement and/or normal shrinkage of timber-framed buildings, and they suggested that the packing could not have been flawed from the outset because it had not been picked up by any of the assessments since completion in 2017.

149. The Tribunal took account of the fact that, in respect of the Building Inspector's oversight and sign-off when the development was completed, there was no detailed evidence as to whether or not the doors and frames were inspected in the course of construction and installation, or whether they were fully compliant in every respect.

150. At the time of the first Fire Risk Assessment (FRA) conducted by Wight Fire Co. Ltd. in February 2018, when the construction was nearing completion, there was also no note of any faults or deficiencies with the doors. The Tribunal considered that this was because it was a 'Type 1' assessment by way of a '*visual inspection only*' (of the communal areas) and '*...no destructive tests were made to any part of the fabric of the building*' (Pages 562 and 566). The report at that time consisted mainly of recommendations and requirements rather than in-depth examination.

151. The Tribunal considered that it was not surprising that the issues were again not picked up by the Pyramid Risk Management Systems report of July 2020, just 2 years after the building was completed, because this was another non-intrusive Type 3 visual Fire Risk Assessment of common parts and flats. Any 'gapping' around the doors was apparently not yet obvious, and the problems in the door frames were not visible, so there was no reason to suspect that there were underlying issues.

152. As to the Fire Safety (England) Regulations 2022, which require regular fire door inspections by a competent person, there was evidence that the Princess Court doors were regularly checked by the development manager, but it was common ground between the parties that issues with door 'packing' could not be seen or discovered in the course of a visual inspection.

153. By the time of the Wightfire inspection in 2024, the gapping had become widespread: it just was not clear what was the cause.

154. The full extent of the flaws in the packing was finally discovered when A.E.W. Contractors began dismantling the architraves in 2025. The Tribunal had regard to the phrases and wording used such as:

- *'Insufficient'*
- *'incorrectly installed',* and
- *'Minimal'.*

155. The Tribunal also took note of the fact that many of the remedial works were described as 'correcting' the packing in some way, therefore it was found that the packing had not simply deteriorated over time in the normal way: it was defective from the beginning.

156. Problems with the 'foaming' were also detailed, as it was said to be 'Excessive' in some cases, and it had to be corrected.

157. The Tribunal considered that it was highly relevant that (as conceded by Mr. Pink, above) the Pyramid report in 2020 had found (Page 590) '***Incorrect***' fire-stopping material (i.e. non-certified *'PU expanding foam'*) in all risers and

management stores, which had to be 'corrected' by a 3rd party accredited passive fire protection company.

158. The Tribunal found that this evidence tended to show: -

- that the original construction of fire safety systems was clearly flawed in some respects, by products used or not used correctly, and by the methods employed, and that
- such flaws had not been picked up by the building inspectors or the initial FRA in 2018.

Head width reductions

159. The report referred in many cases to the '*structural opening*' of the doorways being '*too large***...***excessive gaps to all edges*' being the most common complaint.

160. Fifteen of the doors required reduction of the 'head' of the frame, or modification as follows: -

- *Cut bottom of door lining on closing side to reduce gaps*
- *Remove door lining fixings and wedges.*
- *Reduce width of door lining head to reduce gap.*

161. The Tribunal found that these issues were not the result of 'shrinkage' or 'vertical movement' as described by Mr. Orchard: they constituted a pre-existing condition caused by poor workmanship at the time of installation which had become more problematic over time.

Door closers

162. As to the issues with door closure mechanisms: the contractors reported that in many cases the door closers had to be changed, as follows: -
'Existing closers not powerful enough to close doors fully...'
'Recommend replacement with new size 6 closers'.

163. There was no evidence that any of the door closers had been replaced since the building was first occupied, with one exception (Page 67) where the mechanism appeared to have caused problems in the past and someone had attempted to correct it: -
'Door closer incorrectly fitted and fouling on top of door P.67 – main lobby entrance.
Original door closer has been over adjusted and incorrectly fitted so proper adjustment not possible. Closer has evidence of oil leakage. Recommend replacement'.

164. It is not clear why earlier risk assessments did not identify that the closers were not sufficiently powerful: they had been mostly found to be 'compliant' in 2020 and in the Project Report of 2024.

165. On the balance of probabilities the Tribunal found that this problem must have been long-term. There was no information as to whether the specification as to the appropriate type of closer had changed in recent years.

Signage and hinges
166. There were also a small number of other issues such as: -

'Hinge recesses inconsistent causing door to bind on lining' which required correction as follows:: -

'Re cut hinge recesses to correct depths'.

167. The Tribunal found that, on the balance of probabilities, these issues may have arisen as a result of poor workmanship in the original construction.

Door handles.
168. The Tribunal found that tightening or replacement of handles would be correctly categorised as 'routine maintenance', to be expected in a block constructed eight years ago.

Causation
169. The Tribunal did not find that Mr. Orchard's statement as to the effects of 'shrinkage' and 'settlement' in timber-framed buildings was persuasive or convincing in the particular circumstances of this case. The Tribunal also took into account the facts that:-

i) Mr. Orchard was not an independent expert but was the designer and manufacturer of the timber frame used in the construction of Princess Court, and

ii) his evidence had not been tested in cross-examination.

170. In conclusion the Tribunal was satisfied that the multiplicity and extent of the issues with the non-compliant fire doors was far more than could be attributed to 'settlement' or 'shrinkage' and/or to ordinary 'wear and tear'. The Tribunal found that faults in the installation of the door frames and 'packing' were an inherent (but hidden) 'relevant defect' which was caused by poor workmanship at the time of construction.

A (3) Was there a Building Safety risk?

171. The doors requiring significant remediation were key internal doors, which either divided different areas of the corridors or opened onto stairwells or risers. Fire doors situated in these areas are vital for maintaining compartmentation in the event of fire, which is especially important in a building with a 'Stay Put' policy such as this.

172. The uncertified foam used in 'all risers and management stores', as identified in the 2020 FRA, clearly represented a further risk to effective vertical compartmentation in the building.

173. The Tribunal noted that ERMC, as managers of the building, conceded that the fire door works were essential (although the cost per door was relatively modest, as argued by both Respondents), and they needed to be completed urgently because of a risk to the safety of people in the building.

174. The Tribunal found that there was a building safety risk arising from the spread of fire. It is not a matter of degree: if there is any ‘risk to life’ then the BSA provisions apply.

DETERMINATION:

175. As the fire door remediation costs of £18,705.83 arose from a ‘relevant defect’ in accordance with Section 120 and Schedule 8 of the Act, no service charges are payable by the Applicants in respect of those works.

176. Any financial adjustment arising from this decision should be dealt with according to the terms of the Lease(s).

177. No Remediation Order is necessary in the circumstances, as the work has already been completed.

OTHER MATTERS:

<u>Reasonableness under the Landlord and Tenant Act 1985.</u>

178. In the light of the determination under the Building Safety Act, the Tribunal was not required to make a determination as to whether or not the service charges in respect of fire door works in 2025 were ‘Reasonably incurred.’

179. However, if a relevant defect had not been found, the Tribunal considered that the costs would have been determined as ‘reasonably incurred’ in accordance with Section 19 of the 1985 Act.

<u>Lack of consultation under the Landlord and Tenant Act 1985/Dispensation</u>

180. If a relevant defect had not been found, the Tribunal considered that it would have been reasonable to make a retrospective order dispensing with the consultation requirements under Section 20C of the 1985 Act.

181. It was arguable that the more extensive works discovered by the A.E.W. investigation were a separate set of works, which required either a new consultation process or some communication with the leaseholders and an urgent application for dispensation. However, the Tribunal was satisfied that the Respondents had acted promptly and in good faith in the interests of all concerned, and that the leaseholders were not prejudiced as a result. There was no evidence that the work could have been done more cheaply or in a sufficiently timely fashion if a fresh consultation had been initiated, therefore dispensation would have been appropriate.

<u>Management fee of £1,065.</u>

182. The Tribunal found that the freeholder was entitled to appoint managers and pay them for their services in accordance with the terms of the Lease.

It was also clear that administration of the Section 20 consultation process was outside the terms of the contract between Captiva and ERMC.

183. It was therefore reasonable for Captiva to instruct ERMC to carry out this additional work and there was no requirement for them to inform or consult the leaseholders about either the arrangement or the fee, which represented a cost of just over £27 per apartment. The Tribunal did not find that there was any 'hidden transaction' or 'breach of trust' as alleged, and the amount charged was reasonable.

184. However, as the Tribunal found that the leaseholders were not obliged to pay any of the costs associated with the defective fire doors, this extra cost was associated with the cost of remedying the defect(s), and it therefore is not payable by way of service charge.

<u>Individual apartment doors.</u>

185. The evidence from the Applicants was that many of the apartment doors required the same type of remedial works as the communal doors, in order to make them compliant with fire safety standards.

186. The Tribunal observed that under the demise(s) the leaseholders are responsible for their own front doors, and therefore any cost associated with them, and/or any question of liability for defects in them, is not within the Tribunal's jurisdiction.

187. It was entirely appropriate for costs of remedial works to individual flat doors to be kept separate from the costs of remediation to communal doors, in accordance with the different obligations of Landlord and Tenant under the Lease(s). If the landlord arranged for the apartment doors to be dealt with by the same contractors, with the agreement of and on behalf of the leaseholders, then that is a separate matter and should be paid for outside the service charge system.

188. However, the evidence of similar problems with all different doors tended to support the contention that there were systemic flaws in the original construction of the whole building.

<u>Landlord's Certificate</u>

189. No issue has been raised by the First Respondent as to whether or not they, as landlords, satisfy the 'qualifying contribution' criteria in Schedule 8, Paragraph 3 of the Act. The question of whether the landlord should have provided a 'Landlord's certificate' is therefore not relevant to the determination.

<u>**Limitation of Costs and Rule 13 Costs**</u>

190. The Tribunal found in favour of the Applicants in respect of the Building Safety Act issue, and therefore it is determined in accordance with Section 20C of the 1985 Act that it is just and equitable that the costs in these proceedings are not to be regarded as relevant costs to be taken

into account in determining the amount of service charge payable by the leaseholders.

191. The same determination is made in respect of the application under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, for the same reasons.

192. The Tribunal does not find that the Respondents have acted unreasonably or 'vexatiously' in this case: no order is made under Rule 13.

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Right to Appeal

A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.