FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00MR/LSC/2025/0756
Property	:	Jacob House and Pound House, St James Street, Portsmouth, Hampshire, PO1 3FF
Applicant	:	As listed in the schedule on page 2
Representative	:	Malcolm Chamberlain
Respondent	:	Freehold Managers (Nominees) Limited
Representative	:	JB Leitch Solicitors
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Tribunal Judge C Skinner Mr C M Davies FRICS Ms S Johnson
Date of Hearing	:	20 October 2026
Date of Decision	:	24 November 2026

DECISION

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SCHEDULE OF APPLICANTS

Jacob House	**Flat No**
Maybelle Chin	3
Saranky Sundram	4
Stephen Church	6
Debi Garrod	7
Steven Kan	8
Michael Adu-Agyei	11
Malcolm Higgins	14
Alex Smith	16
Alex Smith	17
Sassan Halfizi	19
Lisa Benyon	21
Matt Dixon	23
Anthony Biagioni	24
Vincent Kan	27
Chritine Barker	31
Andy Bridger	32
Pound House	**Flat No**
Andy Bourne	1
Mark Wyatt	2
Mark Sassam	3
David Yau	5
Adam Hallam	10
David Shore	14
Jill Cohen	16
Bilgay Akhan	20
Sussex Student Living Limited	22
Zoe Polykarpou	23

SUMMARY OF DECISION

a. **The Tribunal finds that the service charge expenditure associated with the communal heating and hot water systems during the service charge years 2023/24, 2024/25 and 2025/26 was reasonable and reasonably incurred for the purposes of section 19 Landlord and Tenant Act 1985.**

b. **The Tribunal finds under Section 27(A) Landlord and Tenant Act 1985 that the service charge expenditure associated with the communal heating and hot water systems during the service charge years 2023/24, 2024/25 and 2025/26 are payable by the Applicants to the Respondent in the sums claimed.**

c. **The Tribunal grants partial relief under section 20C Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002. The Tribunal directs that 25% of the Respondent's relevant litigation costs shall be excluded from recovery from the Applicants through the service charge and/or administration charge provisions of the leases, with the remaining 75% remaining recoverable.**

Background

1. The application concerns service charges relating to the communal heating and hot water systems serving residential leasehold properties known as Jacob House and Pound House, St James Street, Portsmouth, Hampshire, PO1 3FF.

2. The Applicants comprise a group of leaseholders of flats within those buildings. During the course of the proceedings the constitution of the Applicant group was amended by the Tribunal and additional leaseholders were joined. The Applicants were represented throughout by Mr Malcolm Chamberlain.

3. The Respondent is Freehold Managers (Nominees) Limited, the freeholder of the development. The development is managed on the Respondent's behalf by Premier Estates Limited.

4. The substantive application was made pursuant to section 27A of the Landlord and Tenant Act 1985 and was received by the Tribunal on 25 August 2025. The Applicants seek determinations as to the payability and reasonableness of service charge expenditure associated with the communal heating and hot water systems during the service charge years 2023/24, 2024/25 and 2025/26. In addition, the Applicants seek orders pursuant to section 20C of the Landlord and Tenant Act 1985

and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

5. The development comprises six separate communal heating installations serving blocks within Jacob House and Pound House. The original heating infrastructure consisted of twenty-four boilers situated within six boiler rooms, with four boilers serving each installation.

6. There is no dispute that the communal heating and hot water systems experienced significant operational difficulties over a prolonged period. The evidence before the Tribunal records repeated breakdowns, servicing visits, repairs, call-outs and progressive reductions in operational capacity across the various installations. By 2025 and 2026 substantial concerns had arisen regarding the age, reliability and remaining service life of a number of the boilers.

7. In September 2023 the Respondent commenced a statutory consultation process under section 20 of the Landlord and Tenant Act 1985 concerning proposed replacement or upgrade works to the communal heating and hot water systems. Notices of Intention were served on leaseholders on 11 September 2023. The Respondent's stated position was that the systems had reached the end of their serviceable lives and required replacement. Leaseholders were invited to submit observations and nominate contractors.

8. During 2024 and 2025 further technical investigations were undertaken. The Respondent relied, amongst other matters, upon reports and surveys obtained from Fresh Heat Networks, together with operational information gathered by Premier Estates and contractors engaged in servicing and repair work.

9. Initial directions were issued by the Tribunal on 13 January 2026. A case management and dispute resolution hearing was listed for 6 February 2026. That hearing did not proceed as originally intended owing to uncertainty regarding attendance arrangements and was subsequently relisted.

10. The matter came before the Tribunal at Havant on 4 March 2026. At that hearing the Tribunal made various case management directions, amended the constitution of the Applicant group and stayed proceedings for a period of two months in order to facilitate discussions between the parties and mediation.

11. Mediation took place on 24 April 2026. Following that process the parties agreed that the Applicants' existing challenge to the earlier section 20 consultation process would not proceed on the basis that a fresh consultation exercise would be undertaken by the Respondent.

12. The matter returned to the Tribunal at a further case management hearing on 27 May 2026. Directions were subsequently issued and amended on 5 June 2026. The Tribunal recorded the parties'

agreement regarding the removal of the extant section 20 challenge from the proceedings. The Tribunal further determined that it had no jurisdiction to grant relief requiring an independent survey or engineering review and that aspect of the Applicants' case was struck out.

13. The amended directions established a timetable for disclosure, Scott Schedules, witness evidence, statements of case and the preparation of a hearing bundle. The Tribunal also permitted the Applicants to pursue challenges relating to the 2025/26 service charge year notwithstanding that period had not originally formed part of the application.

14. During the course of the proceedings disputes arose concerning compliance with directions, disclosure obligations, the scope of the issues to be determined and the progress of the anticipated fresh section 20 consultation exercise. The Applicants subsequently applied to restore the section 20 issue, asserting that the anticipated consultation process had not in fact recommenced.

15. On 17 September 2026 the Tribunal permitted the section 20 issue to be restored procedurally and directed the parties to exchange written submissions concerning that matter, whilst expressly reserving any view as to its substantive merits. Further directions were made varying certain case management deadlines with a view to preserving the final hearing date.

16. In advance of the final hearing the Applicants served, amongst other materials, witness statements, Scott Schedules and a detailed Statement of Case. The Respondent served its Statement of Case together with witness evidence and supporting documentation. Further replies and procedural applications followed.

17. By the time of the final hearing the principal issues remaining for determination were the reasonableness and payability of communal heating and hot water service charge expenditure for the years 2023/24, 2024/25 and 2025/26 and the Applicants' applications for relief under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The Hearing

18. The final hearing took place at Havant Justice Centre on 20 October 2026. The Applicants were represented by Mr Malcolm Chamberlain, one of the leaseholder Applicants, who conducted the case on behalf of the Applicant group. The Applicants were not professionally represented. The Respondent was represented by Counsel, Mr Allan.

19. The Tribunal had been provided with a hearing bundle by the Applicant, consisting of 1242 pages. The Tribunal had read the bundle

and all associated material and evidence in advance, although due to the volume of documentation therein, reiterated to the parties the need to direct the Tribunal to any document that was said to be of significant importance. References in this decision to page numbers in the bundle are indicated as [ ].

20. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Tribunal has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

21. At the start of the hearing, the Tribunal felt it necessary to take time to address with the Applicants the significant volume of witness statements submitted, case management applications made and expectations over the management of the application in general and the hearing itself, including what it was said (and ultimately agreed) the Tribunal was required to determine.

22. The Tribunal noted that the proceedings had generated a substantial volume of documentary material and numerous case management applications. Whilst the Tribunal noted the Applicants did not have legal representation, the Tribunal was clear over the need for proportionality in submitting witness statements and documentation, something that was incumbent on all users of the Tribunal. The Tribunal expressed concern regarding the proportionality of the volume of evidence and applications filed during the proceedings, which made it extremely difficult for the Tribunal, in advance of the hearing, to identify with precision the issues upon which the Applicant sought determinations and findings. The Tribunal was critical of the way the Applicants had conducted the proceedings, submitting multiple Case Management Applications, many of which were arguably an unreasonable use of Tribunal time and resource.

23. After discussion, the Applicant was clear that they only wished to call two witnesses (Mr Chamberlain subsequently indicating he would also be happy to give evidence given the Respondents request for the same) and all parties agreed that the Tribunal was only being asked to make findings and determinations over the reasonableness and liability to pay, the charges set out in the Scott Schedules that were linked to the issues set out above in respect of the communal heating and hot water and are the subject of this decision.

24. The parties to their credit were ultimately able to identify a number of matters which either were agreed or were no longer in dispute.

25. Most significantly, it was agreed that the Tribunal was not being asked to determine if the Section 20 consultation process commenced in 2023 had been compliant with the statutory requirements. No estimated or actual costs arising from that consultation process had yet been passed

to leaseholders for recovery and both parties accepted that the Tribunal was not required to make findings upon the original consultation challenge as a free-standing issue.

26. It was further accepted that the Tribunal was not being asked to determine what replacement system should be installed, whether a particular future scheme of works should be adopted, the detailed merits of future procurement decisions or broader policy questions concerning future management of the heating systems.

27. The Tribunal nevertheless noted that historical events, including the condition of the systems, information available to the Respondent and steps taken by the parties over time, remained potentially relevant insofar as they informed the question whether disputed expenditure had been reasonably incurred.

28. By the conclusion of the hearing, it was fully agreed that the Tribunal's principal task was to determine, pursuant to section 27A of the Landlord and Tenant Act 1985, whether the disputed communal heating and hot water expenditure for the service charge years 2023/24, 2024/25 and 2025/26 was payable and, if so, whether it had been reasonably incurred.

29. The Tribunal also needed to determine the Applicants' applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

30. The dispute therefore related to expenditure recorded within the Scott Schedules and included challenges to servicing costs, repair and call-out charges, gas-related expenditure, management costs and other costs associated with the operation of the communal heating and hot water systems.

31. Accordingly, the central issue before the Tribunal was whether in the circumstances prevailing at the time each disputed cost was incurred, the disputed cost had been reasonably incurred and was recoverable through the service charge provisions of the leases, together with the consequential costs applications made by the Applicants.

32. The Applicants contended that these items should be assessed against the actual condition and performance of the six installations, the quality of service delivered to residents and the practical outcomes achieved by the expenditure incurred. The Respondent contended that the expenditure represented reasonable management and maintenance of ageing systems and was recoverable under the lease provisions.

33. The Applicants' position was that the Tribunal must examine the reasonableness and recoverability of the disputed expenditure by reference not merely to the existence of invoices and accounting entries but by considering the operational condition of the heating systems, the work actually carried out, the outcomes achieved and the service

delivered to leaseholders. The Applicants contend that expenditure must be shown to have been reasonably incurred and reasonable in amount.

34. The Applicants did not contend that all expenditure incurred by the Respondent was necessarily unreasonable. Rather, their position is that each item of the disputed expenditure must be scrutinised against the factual circumstances prevailing at the time the costs were incurred. Subject to such scrutiny, they then requested reductions, disallowances, credits or accounting adjustments as the Tribunal considered appropriate.

35. The Applicants further contend that, as the condition of the communal systems deteriorated, the continued incurring of certain servicing, repair and management costs became increasingly difficult to justify. They relied upon evidence of prolonged service interruptions, reduced boiler capacity and the use by residents of alternative means of heating and hot water provision.

36. In relation to the section 20 consultation process, the Applicants initially alleged that the consultation was defective. Amongst other matters, they contended that insufficient technical information had been provided, that there had been inadequate consideration of alternatives, that contractor nominations had not been properly addressed, and that leaseholders had not been afforded meaningful engagement in the process. The Applicants maintained that they did not oppose necessary works in principle but sought greater transparency and proper consideration of alternative solutions.

37. The Respondent's position was that the disputed expenditure was reasonably incurred in fulfilment of its repairing and management obligations under the leases. It contended that the communal systems were ageing and deteriorating, but that it remained appropriate and necessary to continue servicing, repairing and maintaining the installations pending replacement.

38. The Respondent relied upon servicing records, repair works, specialist contractor attendance, technical surveys and management activity undertaken in response to system failures. Its case was that these measures represented reasonable responses to the circumstances confronting it at the relevant times.

39. The Respondent further contended that the Applicants had not produced any significant evidence (nor expert evidence) demonstrating that the Respondent's decisions were unreasonable or that materially preferable alternatives existed. It submitted that the communal heating arrangements are required by the leases and that the expenditure was both lease-authorised and reasonably incurred. Further, the Applicants had submitted no evidence to suggest the actual costs incurred were themselves unreasonable in amount when incurred.

40. The Respondent opposed the applications for relief pursuant to section 20C and paragraph 5A, maintaining that there has been no conduct justifying such orders and that it remained entitled to recover costs in accordance with the terms of the leases.

Witness Evidence

41. The Tribunal heard oral evidence on behalf of the Applicants from Mr Malcolm Higgins, Mr Andrew Bourne and Mr Malcolm Chamberlain.

42. The Applicants had previously served a substantial number of witness statements from leaseholders and residents. The witness evidence principally concerned the operation and reliability of the communal heating and hot water systems, periods during which heating and hot water services were unavailable, communications between residents and managing agents, residents' use of immersion heaters and alternative electric heating, the practical impact of system failures and the relationship between the service experienced by residents and the charges levied through the service charge accounts.

43. The Applicants' witnesses made clear that they did not purport to provide expert engineering evidence. Their evidence was directed to matters within their personal knowledge and experience, including the condition of services received, communications observed and the practical consequences of system failures.

44. Mr Higgins accepted that initial investigations and repair attempts may in principle have been reasonable but questioned whether continuing expenditure remained reasonable over time in light of the deteriorating condition of the systems and the level of service provided to residents.

45. Mr Bourne gave evidence regarding the level of service experienced by leaseholders, the information made available to residents and his concerns regarding the reasonableness of continuing expenditure. He accepted that he was neither an engineer nor a forensic accountant.

46. Mr Chamberlain explained that the Applicants' case was not that invoices had been fabricated or that every individual attendance by contractors was unnecessary. Rather, the Applicants' central contention was that the Tribunal should examine whether it remained reasonable for the Respondent to continue incurring particular categories of expenditure as the various boiler installations progressively deteriorated and, in some cases, ceased to provide the expected level of service. He confirmed that the Applicants had not instructed expert engineering evidence and were not advancing a preferred technical solution for replacement of the systems.

47. On behalf of the Respondent, the Tribunal heard evidence from Mr Sanjiv Nandan, Associate Director of Premier Estates. Mr Nandan had assumed responsibility for the development in or about summer 2025

and gave evidence concerning the management of the development, maintenance history, servicing arrangements, contractor attendance, technical investigations and the Respondent's decision-making process.

48. In summary, Mr Nandan's evidence was that the servicing, repair and management expenditure incurred by the Respondent represented reasonable responses to the operational difficulties experienced by the communal heating systems. He also explained the Respondent's position regarding ongoing technical reviews and consultation concerning replacement works.

The Relevant Law

49. Section 19 of the Landlord and Tenant Act 1985 reads as follows:

19 - Limitation of service charges: reasonableness.

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

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

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

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

50. Section 27A of the Landlord and Tenant Act 1985 reads as follows:

27A - Liability to pay service charges: jurisdiction

(3) An application may also be made to [the appropriate tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

51. Section 20C of the Landlord and Tenant Act 1985 reads as follows:

20C - Limitation of service charges: costs of proceedings.

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

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

52. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 reads as follows;

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

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

(3) In this paragraph—
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Decision

53. The Tribunal's jurisdiction arises under section 27A of the Landlord and Tenant Act 1985. The issue is not whether a different landlord might have acted differently, nor whether the Tribunal itself would have made precisely the same decisions. The question is whether the costs challenged by the Applicants were reasonably incurred, reasonable in amount and recoverable under the terms of the lease.

54. The Tribunal has considered the reasonableness of the expenditure by reference to the circumstances known to the Respondent at the time the

decisions were taken and the expenditure incurred. The Tribunal has avoided judging those decisions with the benefit of hindsight.

55. Once the Applicant has set out a valid prima facie challenge to those service charges, the burden then rests upon the Respondent to establish that the disputed expenditure was reasonably incurred and recoverable under the lease.

56. The Tribunal has considered the disputed service charge expenditure against the requirements of section 19 of the Landlord and Tenant Act 1985. Having reviewed the documentary evidence, the evidence given at the hearing and the parties' submissions, the Tribunal is satisfied that the Respondent has discharged the burden of demonstrating that the costs challenged by the Applicants were reasonably incurred.

57. A significant feature of the evidence before the Tribunal is that the Applicants did not contend that the works in question had not been undertaken, that the invoices represented fictitious expenditure, or that contractors were instructed unnecessarily. Indeed, the Applicants' own Statement of Case expressly acknowledged that expenditure had been incurred on the communal heating system, that contractors had attended the development on numerous occasions, that servicing and maintenance had taken place and that at least some of the expenditure was capable of being properly recoverable through the service charge.

58. The Applicants also do not challenge that the lease terms prevent recovery of the service charges or that the lease terms have not been complied with.

59. The Tribunal regards those concessions as important because they confirm that the dispute concerns the reasonableness of expenditure incurred in responding to genuine operational problems rather than any suggestion that the expenditure itself was fabricated or unrelated to the Respondent's repairing obligations.

60. The Tribunal also places weight upon the Applicants' acceptance, both in their written case and during the hearing, that communal boilers require routine servicing, maintenance and repair and that a landlord is entitled, and indeed obliged, to incur expenditure in carrying out those functions. The Applicants further accepted that an unsuccessful repair does not automatically become unreasonable simply because further defects later arise or because the system ultimately requires replacement. The Tribunal agrees with that proposition. The reasonableness of expenditure must be assessed at the time the relevant decision was taken and not with hindsight. The fact that the communal heating system subsequently continued to experience difficulties does not of itself establish that earlier repair expenditure was unreasonable.

61. The oral evidence provided further support for the Respondent's position. During the hearing Mr Higgins accepted that repair attempts may properly be recoverable through the service charge even where

they do not ultimately provide a permanent solution. He similarly accepted that boiler servicing costs, contractor attendance charges and management costs may properly be incurred in principle. Finally, Mr Higgins conceded he had no evidence to rely upon that the specific amounts challenged in the Scott Schedules were unreasonable in amount, with no evidence of any alternative costs that could be relied upon in the alternative.

62. Mr Chamberlain likewise accepted that investigation costs, safety-related works, attendance costs and expenditure incurred in diagnosing faults could all be legitimate charges where genuine issues existed within the communal heating system. Mr Chamberlain could not point to any evidence to rely upon that the specific amounts challenged in the Scott Schedules were unreasonable in amount, again with no evidence of any alternative costs that could be relied upon in the alternative.

63. In the Tribunal's judgment those concessions substantially undermine the Applicants' broader contention that the repair-related expenditure should be disallowed either in part or in its entirety.

64. The Tribunal also notes that none of the Applicants' witnesses possessed specialist engineering expertise and no expert evidence was produced challenging the technical decisions made by the Respondent or its contractors. Whilst the Applicants criticised the Respondent's management of the system, no professional evidence was adduced demonstrating that the repairs undertaken were unnecessary, that the works specified by contractors should not have been carried out, or that the engineering judgments made at the time fell outside the range of reasonable professional responses. In a dispute concerning a complex communal heating installation, the absence of such evidence is a matter to which the Tribunal attaches weight.

65. The contemporaneous documentary evidence strongly supports the Respondent's explanation that the expenditure arose from genuine and ongoing defects affecting an ageing heating system. The Tribunal notes in particular the quotation prepared by JB Hopkins dated 27 May 2025 [659]. That document records that the existing boilers were approaching the end of their operational life, that spare parts were increasingly unavailable and that the appliances were no longer commercially viable to repair. The Tribunal regards this as significant evidence because it demonstrates that the repeated repair and maintenance expenditure challenged by the Applicants was being incurred against a backdrop of ageing and deteriorating plant rather than in circumstances where no genuine issue existed.

66. The Tribunal also places weight upon the subsequent assessment undertaken by REAM [661]. Whilst recommending replacement works, REAM did not suggest that the historical repairs should never have been undertaken or that the previous expenditure had been unreasonable. Rather, the assessment reflected the reality that the communal heating infrastructure had reached a stage where

replacement had become preferable to continuing repair. In the Tribunal's view, that evidence is consistent with the Respondent's explanation that earlier expenditure represented legitimate attempts to maintain and repair the existing system before replacement ultimately became necessary.

67. Further support is provided by the Fresh Heat Networks report [641]. The survey identified a number of operational deficiencies within the wider heating network, including inefficiencies within the system, inactive metering arrangements, poor inhibitor levels, poor water quality and other plant-related concerns. Far from supporting the Applicants' assertion that expenditure was unnecessary, the Tribunal considers that these findings corroborate the Respondent's case that substantial engineering issues genuinely existed and required ongoing intervention, investigation and remedial works.

68. The Tribunal additionally notes the evidence relating to the procurement of replacement works. The documentary material shows that specialist contractors were approached, quotations were obtained and leaseholders were afforded an opportunity to nominate contractors as part of the process. The evidence further demonstrates that competitive quotations were received from suitably qualified contractors. This is indicative of a landlord and managing agent actively seeking to address the underlying difficulties affecting the communal heating system and obtaining market-tested costs rather than incurring expenditure arbitrarily.

69. Perhaps most significantly, the Tribunal finds that the Applicants' challenge was directed primarily towards the Respondent's strategic decision-making and the length of time taken before replacement was pursued rather than the actual amount charged by contractors for particular works. The Applicants did not identify specific invoices said to be excessive, did not challenge individual labour rates, did not produce evidence that contractor charges exceeded market levels and did not establish that particular attendances or repair visits were unnecessary when incurred. The Tribunal accepts that legitimate criticism may be made of aspects of the historical management of the heating system. However, criticism of management strategy does not necessarily establish that repair expenditure incurred in response to genuine defects was unreasonable for the purposes of section 19.

70. Looking at the evidence as a whole, the Tribunal is satisfied that the Respondent has demonstrated a consistent pattern of contractor attendance, fault investigation, servicing, maintenance and repair undertaken in response to an ageing communal heating installation suffering genuine operational difficulties.

71. The Applicants themselves accepted that many categories of expenditure were recoverable in principle and produced no expert evidence demonstrating that the works undertaken were technically unjustified or unreasonably priced. The documentary evidence from JB

Hopkins, REAM and Fresh Heat Networks is consistent with the Respondent's explanation that the system was deteriorating, increasingly problematic and ultimately approaching the end of its serviceable life.

72. The Tribunal has carefully considered the oral evidence given by the Applicants. Whilst the Tribunal accepts that the Applicants gave their evidence honestly and genuinely believed that the Respondent ought to have adopted a different long-term strategy for the management of the communal heating system, the Tribunal does not consider that their evidence established that the costs demanded through the service charge were unreasonable in amount or that the underlying expenditure was unreasonably incurred.

73. In particular, the Applicants accepted that the communal heating and hot water system was ageing, that faults regularly arose, and that contractor attendance was frequently required in order to restore service. The Applicants' evidence therefore confirmed the existence of the very circumstances relied upon by the Respondent as necessitating the challenged expenditure.

74. Whilst the Applicants were critical of the Respondent's management of the system over an extended period, their evidence nevertheless demonstrated that recurrent faults required investigation, attendance, maintenance and repair. The Tribunal considers that this evidence supports, rather than undermines, the Respondent's case that expenditure continued to be required in order to discharge the covenants contained within the leases and maintain essential services to residents.

75. The Tribunal further notes that the Applicants did not produce expert engineering evidence establishing that the works undertaken should not have been carried out or that the level of expenditure incurred was excessive when measured against prevailing market rates. Whilst concern was expressed regarding the cumulative level of expenditure over a number of years, no evidence was adduced demonstrating that individual items of work were unnecessary, improperly undertaken or charged at an unreasonable level. The Applicants' evidence was therefore directed principally towards criticism of the Respondent's strategic approach rather than the amount of the individual costs themselves.

76. The Tribunal is also satisfied that the Applicants' evidence implicitly accepted that, when failures occurred, some response from the Respondent was required. The evidence disclosed lengthy periods during which residents expected the Respondent to investigate faults, attend the premises, engage contractors and seek to maintain continuity of heating and hot water provision. The Tribunal does not consider that a reasonable landlord, faced with recurrent failures affecting multiple residential properties, could simply have declined to incur expenditure pending a future replacement scheme. The practical

reality described by the Applicants themselves demonstrates that expenditure on inspection, repair, servicing and reactive maintenance was inevitable whilst the system remained operational.

77. The Tribunal accepts the Respondent's submission that there is an important distinction between asserting that a different long-term decision might have been preferable and establishing that the expenditure actually incurred was unreasonable. The Applicants' evidence primarily addressed the former proposition. However, section 19 requires the Tribunal to determine whether the costs that were incurred were reasonably incurred, not whether, with the benefit of hindsight, a different management strategy might have produced a better overall outcome.

78. For those reasons, the Tribunal finds that the disputed expenditure items as set out in the Scott Schedules were reasonably incurred and are recoverable through the service charge in accordance with the terms of the lease.

79. The Tribunal accepts that the Applicants' concerns were genuinely held and arose from prolonged difficulties experienced by residents in relation to the communal heating and hot water systems. The evidence establishes that there were repeated failures of elements of the heating infrastructure, interruptions to service, resident dissatisfaction and ongoing concerns regarding the age and reliability of the boiler installations.

80. However, the Tribunal finds that much of the Applicants' case proceeded from dissatisfaction with the condition and performance of the systems rather than evidence demonstrating that the particular expenditure challenged was unreasonable.

81. The Applicants did not adduce expert engineering evidence criticising the Respondent's maintenance strategy, identifying an earlier point at which replacement necessarily ought to have occurred, or demonstrating that the works undertaken were technically inappropriate.

82. Nor did the Applicants produce evidence demonstrating that the various servicing, repair, diagnostic and attendance costs challenged within the Scott Schedules were unnecessary, excessive or improperly incurred.

83. The Tribunal accepts that residents experienced inconvenience and frustration. However, dissatisfaction with service outcomes does not itself establish that expenditure incurred in attempting to diagnose, maintain or repair the systems was unreasonable.

84. Therefore based on all the evidence and for the reasons already set out above the Tribunal makes the following findings.

The Respondent's Management of the Heating Systems

85. The Tribunal accepts the Respondent's evidence that the communal heating systems were ageing assets which experienced progressive deterioration over time. The documentary material demonstrates a pattern of repeated contractor attendances, inspections, servicing visits, repairs, diagnostics and investigations undertaken in response to operational failures as they occurred.

86. The Tribunal finds that these attendances were not contrived, unnecessary or undertaken for an improper purpose. To the contrary, the evidence demonstrates that the Respondent repeatedly sought specialist advice, instructed contractors when faults arose and attempted to maintain operational service for residents pending longer-term decisions regarding replacement.

87. The Tribunal accepts the Respondent's submission that the existence of repeated repairs is not itself evidence of unreasonableness. On the contrary, in circumstances where communal heating systems continued to supply residential accommodation, it was entirely foreseeable that a responsible landlord would continue to incur expenditure seeking to keep those systems operational.

88. The Tribunal therefore rejects the Applicants' contention that recurring expenditure became unreasonable merely because the systems remained problematic or because previous repairs had not permanently resolved all underlying faults.

Servicing and Maintenance Expenditure

89. The Tribunal has considered the servicing and maintenance charges challenged by the Applicants. The Tribunal accepts the Respondent's submission that regular servicing represented a necessary and prudent management function.

90. Even in circumstances where the systems were approaching the end of their economic life, the Respondent remained responsible for operating and maintaining communal heating installations serving a substantial number of dwellings.

91. The Tribunal finds that continued servicing was both reasonable and necessary. The Tribunal is not persuaded by the Applicants' suggestion that servicing expenditure became wholly unrecoverable once concerns arose regarding future replacement of the systems.

92. The Tribunal concludes that the servicing costs challenged were reasonably incurred.

Repairs and Call-Out Costs

93. The Tribunal likewise accepts the reasonableness of the repair and call-out expenditure challenged within the application. The evidence demonstrates that contractor attendances occurred in response to reported faults, breakdowns and operational concerns.

94. The Tribunal has seen no evidence establishing that significant categories of repair work were unnecessary, duplicated, fabricated or undertaken incompetently. Whilst some repairs provided only temporary solutions, that fact does not render the expenditure unreasonable.

95. The Tribunal accepts the Respondent's submission that short-term remedial works represented an appropriate response where complete replacement had not yet been implemented and where continuity of service remained necessary.

96. The Tribunal therefore finds that the challenged repair expenditure was reasonably incurred.

The Section 20 Consultation Issues

97. To the extent that historical matters concerning the section 20 process formed part of the factual background, the Tribunal accepts that those matters provide useful context.

98. However, the Tribunal agrees with the Respondent's submissions concerning the limited relevance of those issues to the present application. The principal issue before the Tribunal is the payability and reasonableness of the service charge expenditure challenged.

99. The Tribunal is not satisfied that criticisms directed at the consultation process establish that the servicing, repair and management costs under challenge were themselves unreasonably incurred.

Authorities

100. The Tribunal has carefully considered the authorities relied upon by the parties. In the Tribunal's judgment, those authorities support the Respondent's submission that the central question under section 19 of the Landlord and Tenant Act 1985 is whether the expenditure challenged by the Applicants was reasonably incurred at the time it was incurred, having regard to the circumstances then prevailing. The authorities do not support the proposition that expenditure which was otherwise reasonable automatically becomes irrecoverable because the asset concerned had experienced historic problems or because, with hindsight, alternative decisions might have been taken.

101. In *London Borough of Hounslow v Waaler (2017) EWCA CIV 45***,** the Court of Appeal confirmed that the question of reasonableness is an objective one and that the Tribunal must consider both the decision-making process and the outcome achieved. However, the authority also

recognises that there may be more than one reasonable course available to a landlord and that the Tribunal should be cautious before substituting its own preferred option merely because it would have acted differently. The Tribunal accepts the Respondent's submission that *Waaler* does not require a landlord to adopt the best possible solution, nor the cheapest possible solution, but rather a solution falling within the range of reasonable responses open to a landlord acting properly and responsibly.

102. The Tribunal further accepts the Respondent's reliance upon *De Havilland Studios Ltd v Peries and another (2017) UKHT (LC)***.** That authority makes clear that the Tribunal's role is not to conduct a retrospective exercise of selecting its own preferred engineering or management solution. The question is whether the course actually adopted was one that a reasonable landlord could properly have taken. The evidence before the Tribunal demonstrates that throughout the relevant years the Respondent remained subject to continuing lease obligations to maintain, repair and operate the communal heating system. The fact that replacement may eventually have become necessary does not of itself render earlier repairs, servicing or reactive attendances unreasonable. Nor does the existence of another possible course retrospectively invalidate expenditure that was reasonably incurred in attempting to maintain the existing installation.

103. The Tribunal considers, however, that the most significant authority for present purposes is *Continental Property Ventures Inc v White and another (2006) 1 EGLR 85***.** The Applicants' case places considerable emphasis upon the historic deterioration of the communal heating installation, the progressive loss of boilers over time and the length of time for which residents experienced difficulties with the heating and hot water service. Whilst the Tribunal accepts those matters as part of the factual background, *White* demonstrates that historic shortcomings do not, without more, determine the reasonableness of later expenditure.

104. In *White*, the court rejected the proposition that expenditure necessarily becomes unreasonable because an earlier intervention, if undertaken sooner, might have avoided later and more extensive costs. The oft-cited principle arising from the decision is that the fact that "one stitch in time" might previously have avoided "nine stitches" does not mean that the later nine stitches were themselves unreasonable. The correct focus remains the reasonableness of the expenditure that was actually incurred when it was incurred.

105. The Tribunal accepts the Respondent's submission that the Applicants' challenge seeks, in substance, to rely upon the historic deterioration of the installation as a basis for impugning later servicing, repair and maintenance expenditure. However, the Tribunal is satisfied that *White* establishes that such an approach is inconsistent with the statutory test. Even where there has been historic deterioration, delay or imperfect management, the Tribunal must still ask whether the subsequent

expenditure represented a reasonable response to the circumstances then confronting the landlord.

106. Applying that principle here, the Tribunal is satisfied that the Respondent was confronted with ageing communal plant, recurring mechanical failures and continuing obligations under the leases to provide and maintain a communal heating service. The evidence demonstrates that engineers attended, faults were investigated, repairs were undertaken and servicing continued. The Applicants have not produced evidence demonstrating that the works carried out were technically inappropriate, unnecessarily undertaken or charged at an unreasonable level. Nor have they identified specific invoices or items of expenditure that were shown to be excessive when compared with the work performed.

107. The Tribunal therefore accepts the Respondent's submission that the existence of historic failures does not itself establish that subsequent repair and maintenance costs were unreasonably incurred. To the contrary, once failures arose, the Respondent was required to take steps to investigate, maintain and repair the communal system. The Tribunal is satisfied that the expenditure challenged in these proceedings was directed towards fulfilling those continuing obligations.

108. The Tribunal also notes that *White* distinguishes between a challenge to the reasonableness of service charge expenditure and a separate claim for damages or equitable set-off arising from an alleged breach of covenant. The Applicants expressly disavowed any free-standing damages claim. Accordingly, this is not a case in which the Tribunal is required to consider compensation for historic breaches or to undertake an exercise of equitable set-off. The sole question is the recoverability of the disputed service charge expenditure. In the Tribunal's judgment, *White* confirms that those issues must not be conflated.

109. As a result of the above, the Tribunal concludes that the Respondent's approach is consistent with the authorities. The expenditure must be assessed according to whether it was reasonably incurred at the relevant time and not by reference to hindsight or by assuming that historic deterioration automatically renders subsequent expenditure irrecoverable. Applying the principles in *White***,** *Waaler* and *De Havilland Studios***,** the Tribunal is satisfied that the Respondent has established that the disputed servicing, maintenance, repair and associated management expenditure fell within the range of reasonable responses available to it in discharging its lease obligations. The Applicants' challenge to the recoverability of those costs therefore fails.

Overall Conclusion on Reasonableness

110. Having considered the evidence, the authorities and the submissions of the parties, the Tribunal concludes that the Respondent acted as a

reasonable landlord and manager confronting increasingly problematic communal heating systems.

111. The evidence demonstrates ongoing attempts to maintain service provision, investigate faults, obtain specialist advice and discharge management responsibilities owed under the leases.

112. The Tribunal accepts the Respondent's submission that decisions must be assessed in the context of information available at the material time and not by reference to hindsight.

113. The Applicants have identified genuine concerns regarding the condition of the heating infrastructure. However, they have not established that the expenditure challenged within the application was unreasonably incurred.

114. The Tribunal therefore finds that the disputed service charge expenditure was reasonably incurred and is payable in accordance with the lease terms.

115. Accordingly, the Respondent succeeds in relation to the substantive section 27A application.

Respondent's Application under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

116. The Applicants also applied for an order under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Those provisions are set out above and if an order is made under either provision the Respondent will not be able to pass on as service charges or administrative costs, the costs incurred in these proceedings against the persons specified in the Application.

117. The Tribunal has the discretion to make an order under either provision where it considers it just and equitable to do so. There is no presumption that an order should or should not be made depending on the outcome of the Decision. It is for the Tribunal to exercise its discretion as to what is just and equitable in all the circumstances.

118. The Tribunal has considered those applications having regard to all of the circumstances of the case. The Tribunal recognises that these provisions confer a broad discretion and that the outcome of the substantive proceedings is an important, but not determinative, factor.

119. The Tribunal has dismissed the Applicants' substantive challenge to the disputed service charge expenditure. For the reasons set out elsewhere in this decision, the Tribunal is satisfied that the expenditure in issue

was reasonably incurred and that the amounts charged were reasonable. The Respondent has therefore been successful on the principal issues before the Tribunal. The Tribunal accepts that this is a factor which weighs heavily against the grant of extensive costs protection.

120. Nevertheless, the Tribunal does not consider that the Applicants' application was speculative or entirely without reason. The evidence before the Tribunal demonstrated that, over a prolonged period, leaseholders experienced recurring difficulties associated with the communal heating and hot water system. The existence of those difficulties was not substantially disputed. The Tribunal accepts that residents experienced repeated interruptions, recurring faults and uncertainty concerning the longer-term reliability of the system. The Tribunal further accepts that concerns regarding the continuing condition of the installation existed over an extended period before the commencement of these proceedings.

121. Although the Tribunal has concluded that the challenged expenditure remained recoverable through the service charge, it is also satisfied that the history of the matter is relevant when considering whether leaseholders should bear the entirety of the Respondent's litigation costs through the service charge mechanism. The evidence demonstrates that the underlying problems affecting the communal heating system persisted for a considerable period. Whilst the Tribunal has found that the Respondent's expenditure on servicing, maintenance, repairs and associated works was reasonably incurred, the Tribunal is satisfied that the protracted nature of the difficulties and the time taken to achieve a more lasting solution materially contributed to the concerns held by leaseholders and, ultimately, to the commencement of these proceedings.

122. The Tribunal is particularly influenced by the fact that the Applicants did not create the circumstances giving rise to the dispute. Their concerns arose from genuine and longstanding issues affecting a service of fundamental importance to residential occupiers. Whilst those concerns have ultimately not resulted in success on the substantive issues, the Tribunal is satisfied that they were genuinely held and were founded upon matters which objectively existed. The Applicants were therefore not pursuing an artificial or manufactured challenge but seeking determination of issues arising from a real and ongoing problem experienced by residents.

123. The Tribunal has also taken account of the fact that the Respondent's success in these proceedings rests substantially upon the legal distinction between dissatisfaction with the overall management history of the heating system and the statutory question of whether the individual items of challenged expenditure were reasonably incurred. As the Tribunal has explained, it agrees with the Respondent that the latter question must be answered in the Respondent's favour. However, the Tribunal considers that a reasonable leaseholder could have viewed

the prolonged history of failures and recurring expenditure as necessitating independent scrutiny by the Tribunal, even if that scrutiny has ultimately resulted in findings favourable to the Respondent.

124. Considering all the circumstances, the Tribunal does not consider that either extreme outcome would be just. In the Tribunal's judgment, a complete refusal of relief would fail adequately to recognise the extent to which the prolonged difficulties affecting the communal heating system contributed to the emergence of the dispute. Conversely, a full section 20C and paragraph 5A order would fail to reflect the Respondent's clear success on the substantive issues and the Tribunal's findings that the challenged costs were recoverable.

125. The Tribunal therefore concludes that the just and equitable outcome lies between those positions. Having weighed the Respondent's substantial success against the history of the matter and the role played by the longstanding heating difficulties in generating the litigation, the Tribunal considers it appropriate to grant partial relief. The Tribunal accordingly directs that only 75% of the Respondent's relevant costs may be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants and that only 75% of the Respondent's litigation costs may be recovered through any administration charge mechanism. The remaining 25% shall be excluded pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

126. In reaching that conclusion, the Tribunal emphasises that the reduction is not based upon any finding that 25% of the disputed service charge expenditure was unreasonable or irrecoverable. Nor does it reflect any reduction in the Respondent's substantive success. Rather, it reflects the Tribunal's assessment of what is fair and equitable in circumstances where the Respondent has succeeded on the merits, but where the prolonged history of difficulties affecting the communal heating system and the delay in achieving a lasting resolution were significant factors giving rise to the proceedings.

127. The Tribunal has considered carefully the extent of any relief which should be granted under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal emphasises that the percentage adopted does not derive from a precise arithmetical exercise, nor does it represent a finding that any identifiable proportion of the Respondent's litigation costs were improperly incurred. The discretion conferred by these provisions is a broad one requiring the Tribunal to determine what is just and equitable in all the circumstances.

128. In determining the extent of relief, the Tribunal has attached substantial weight to the Respondent's success on the substantive

issues. The Respondent has successfully defended the principal service charge challenge and the Tribunal has found that the disputed expenditure was reasonably incurred and reasonable in amount. Those findings would ordinarily point strongly against significant costs protection.

129. However, the Tribunal has also attached weight to the history which gave rise to these proceedings. The evidence demonstrated longstanding difficulties affecting the communal heating and hot water system over a prolonged period. Although the Tribunal has concluded that the expenditure incurred in responding to those difficulties remained recoverable through the service charge, it is satisfied that the persistence of those issues, and the time taken to achieve a lasting resolution, materially contributed to the Applicants' concerns and to the commencement of the proceedings.

130. The Tribunal has therefore sought to strike a fair balance between, on the one hand, recognising the Respondent's clear success in the litigation and, on the other, acknowledging that the Respondent's management of the underlying problem forms part of the wider context in which the dispute arose. The Tribunal considers that neither a complete refusal of relief nor a complete grant of relief would properly reflect those competing considerations.

131. The Tribunal has concluded that a modest but meaningful level of protection is appropriate. The figure of 25% represents the Tribunal's assessment of the limited extent to which fairness requires the Applicants to be protected from the costs consequences of proceedings that arose against the background of longstanding and genuine concerns regarding the communal heating system, whilst ensuring that the Respondent retains the substantial benefit of its success on the substantive issues. The Tribunal considers that a reduction of 25% appropriately reflects the balance of those factors.

132. The Tribunal has also considered the manner in which these proceedings were conducted. Whilst the Applicants were entitled to pursue the application and to advance the arguments they considered appropriate, the Tribunal notes that the proceedings generated a substantial volume of documentary material and numerous case management issues. The Applicants filed extensive evidence and made a number of procedural and case management applications during the course of the proceedings. Inevitably, those steps required the Respondent to review the material provided, prepare responses, comply with directions and incur additional professional time and expense in defending the application.

133. The Tribunal does not criticise the Applicants for making use of the Tribunal process. However, the Tribunal is satisfied that a significant proportion of the costs incurred in connection with these proceedings arose not from any conduct on the part of the Respondent but from the manner in which the Applicants chose to advance their case. The

Respondent was required to engage with and respond to the material and applications placed before the Tribunal. It would therefore be inappropriate for the Respondent to be deprived of recovery of all, or the majority, of its litigation costs in circumstances where a significant element of those costs was generated by the Applicants' own conduct of the proceedings.

134. The Tribunal has therefore taken into account two competing considerations. On the one hand, the Tribunal accepts that the prolonged difficulties relating to the communal heating and hot water system, together with the delay in achieving a lasting solution, materially contributed to the Applicants' concerns and to the commencement of the proceedings. On the other hand, the Tribunal is satisfied that the substantial volume of evidence, correspondence and procedural applications advanced by the Applicants significantly increased the burden placed upon the Respondent in defending the claim and contributed to the level of costs incurred during the proceedings.

135. In the Tribunal's judgment, those latter considerations significantly reduce the extent of any costs protection that might otherwise have been appropriate. Had regard been had solely to the historical background giving rise to the dispute, the Tribunal may have been minded to grant a greater measure of protection. However, having regard to the Respondent's success on the substantive issues and to the additional costs generated through the Applicants' conduct of the proceedings, the Tribunal considers that only limited relief is justified.

136. The Tribunal concludes that a limited award of costs protection represents the just and equitable outcome. The Tribunal has sought to balance the Respondent's substantial success on the substantive issues, the Applicants' genuine concerns arising from the longstanding heating difficulties, and the extent to which the conduct of the proceedings themselves contributed to the costs incurred.

137. The Tribunal considers that those factors are most appropriately reflected by limiting the Applicants' protection to 25%. The Tribunal therefore directs that only 75% of the Respondent's relevant costs may be treated as relevant costs for the purposes of any service charge recovery and that only 75% of any litigation costs may be recoverable through an administration charge. The remaining 25% shall be excluded pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

RIGHTS OF APPEAL

138. A person wishing to appeal this decision to the Upper Tribunal (Lands 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 by email at rpsouthern@justice.gov.uk

139. 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.

140. 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.

141. 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.