FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/ 00BK/LSC/2021/ 0431**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Aviary House, 23 Wilfred Street, London, SW1E 6PR**
Applicant	**:**	**Louai Nahas and Nawal Mahmoud A Almaimani (Flat 3)** **Trident Trust (Flat 10)** **Osama Alsabeg and Noura Almana (Flat 16)** **Pima Properties Ltd (Flats 26, 27, 28,29 30 & 31)** **Kehdi Kehdi (Flats 2 and 5)** **Franck Houdin (Flats 1 and 6)** **Nada Hakim (Flat 4)** **Nikesh Daryani and Viukes Daryani (Flat 20)** **Besma Alnafisi (Flat 23),** **Mario Saradar (Flat 25)** **Solution One Ltd (Flat 7)** **Feiyun Zhang (Flat 12)** **Yanyan Xu (Flats 18 and 22)** **Anastasia Lavreniuk and Maria Lavreniuk (Flat 24)** **Solution Two Ltd (Flat 8)** **Petty Lee (Flat 15)** **Anisa Choi (Townhouse 9)** **Siny Maliekkai (Flat 19)** **Yifei Gao (Flat 17)**
Representative	**:**	**Mr Colin Astin of St Andrews Bureau Limited, Managing Agent prior to 1 July 2020 and from 22 July 2021 onwards**
Respondent	**:**	**LPG No 2 Ltd**
Representative	**:**	**Residential Management Group (as Managing Agent from 1 July 2020 until 21 July 2021)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members	**:**	**Judge Carr** **Judge Foskett** **Ms Flynn FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**17th October 2022, reviewed and amended on 16th January 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle of 912 pages, the contents of which the tribunal has noted. The tribunal also received further documents:

- on behalf of the Applicants on 5 and 8 August 2022 (the first being a document headed "Reconciliation of Disputed Service Charges" and the second being two schedules summarising the disputed service charges for each of the years ended 31 December 2020 and 2021) and 1 September 2022; and
- from the Respondent on 7 September 2022.

The tribunal noted the contents of those further documents.

The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the Applicants in respect of the service charges for the years ended 31 December 2020 and 2021.

a. Insurance 2020 - £32,908.94

b. Insurance 2021 - £29,026.36

c. Major works 2020 - £5,616

d. Major works 2021 - £14,457.78

e. Electricity 2021 - £2,123.78

f. Gas 2020 - £1,567.63

g. Gas 2021 - £2,755.49

h. Concierge services for the two years in dispute - £107,572.34.

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

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years ending 31.12.2020 and 31.12.2021.

The hearing

2. The Applicants were represented by Mr Astin of St Andrews Bureau Limited (current Managing Agents) at the hearing. The tribunal had been provided with authorities from the Applicants for Mr Astin to represent them by all but one of the Applicants. There was no authority on file for Besma Alnafisi. The tribunal considered this an oversight and asked Mr Astin to provide it at the earliest opportunity but at the date of issue of the decision it had not been received. No Applicants attended the hearing.

3. The Respondent was represented by Mr Jamal Khan a Property Services Analyst with the Respondent. Ms Archi Minas, Assistant Director of the Respondent, and Mr Anoda, Senior Property Services Analyst with the Respondent, were also in attendance and gave evidence as required by the tribunal.

The background

4. The property which is the subject of this application is a development comprising a bock of 28 residential flats and 3 abutting townhouses of recent construction. Following the completion of the development and the sale of the leases the freehold was sold to the Respondent in July 2020. The Respondent appointed Residential Management Group Ltd as its managing agents.

5. The leaseholders of the property obtained the Right to Manage the property on 22nd July 2021. The Right to Manage Company appointed St Andrews Bureau Limited (SAB) as its managing agent. SAB had been the managing agent of the property prior to the transfer of the freehold to the Respondent.

6. The dispute between the parties arises from the handover of financial information from the Respondent's managing agents and subsequent consideration of the service charge demands for the period of its management of the property.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for each of the years in dispute relating to

      a. Insurance

      b. Major works

      c. Electricity

      d. Gas

      e. Payments from Vital Energi

      f. Concierge services

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Insurance

11. The Applicants challenge three aspects of the service charge demands for insurance in the years in dispute; (i) cancellation charges of £6,555.43 incurred in 2020 (ii) the additional charges of £3,216.66 for the new insurance policy arranged for 2020 by the Respondent on 1 July 2020 and (iii) the additional £12,559.51 that the insurance cost in 2021.

Cancellation charges

12. The Applicants argue that on completion of the purchase of the freehold the Respondent immediately and unreasonably cancelled the insurance for the building and its terrorism cover despite the fact that the existing policy was only 4 months into its 12-month fixed term. The Applicants argue that the Respondent could simply have updated the policy to include its name as freeholder and postponed obtaining a new policy until the current one expired.

13. Although credits were provided for the unexpired period of the cancelled policy they were insufficient and there was an additional cancellation charge of £6,555.43. The Applicants argue that the lease does not provide for cancellation costs relating to a decision by a new leaseholder to change insurance policies with the same insurer. Their argument is that as the cover was fundamentally unchanged (see below) there was no reason for the cancellation of the policy and therefore the cancellation charge should be borne by the Respondent.

Additional costs for insurance for the year ended December 31st 2020

14. The Respondent arranged for alternative insurance to replace the cover it had cancelled. This cover was provided at an increased cost despite the fact, as the Applicants argue, the cover was substantially the same.

15. The building and terrorism insurance organised by the previous holder was for a premium of £32,908.94 provided by an AXA policy with a declared value of £21,507,200. The policy included terrorism cover. It was for a period of 366 days from 26 February 2020.

16. The replacement insurance arranged by the Respondent was for the period from 1 July 2020 to 24 June 2021 (359 days). The premium was £26,523.78, It was provided by an AXA policy with an identical declared value to the policy that was cancelled, ie £21,507,200. Terrorism was arranged as separate policy at a cost of £9,007.97. The total cost was £35,531.75, which for a 365-day period would be £36,125.60.

17. The Applicants argue that the cover provided by the Respondent was with the same insurer and provided broadly the same cover. The additional charges of £3,216.66 incurred as a result of the cancellation and new policy were therefore unreasonable.

Insurance costs for year ending December 31st 2021

18. The Applicants argue that the insurance costs for the year ending 31.12.2021 were unreasonable. The Applicants point out that the

renewal of the policy for that year increased the costs by 17.8% on the preceding year. The terrorism costs alone increased by around 40%.

19. The Applicants obtained an alternative quotation on 7 October 2021 which proposed a premium of £29,026.36 which is £12,559.51 less than the actual charge. The Applicants argue that the Respondent should have sought competitive quotes and the excess is therefore unreasonable.

The Respondent's arguments – cancellation costs

20. The Respondent argues that it had a responsibility to ensure that after completion of the handover all processes and all ownership names were correct. The Respondent says that it cancelled the policy appropriately and arranged a new policy in the name of the freeholder which was its right. As it had the right to cancel it follows that the costs of cancellation should be borne by the lessees.

21. In response to questions from the tribunal, the Respondent's representative said that it (i.e. Residential Management Group, the managing agents) did not receive commission on the insurance policy but it was not able to confirm or deny whether the landlord received commission.

The Respondent's arguments - Additional costs for insurance for the year ended December 31st 2020

22. The Respondent argues that the new policy it arranged for the year ending December 31st 2020 was not like for like for the cover it cancelled. The original policy had 20% cover for loss of rent rather than 30%. The cover was also more expensive because of a claim for water damage which it argued the Applicants had failed to reveal when discussing comparables.

23. The Applicants asked when the claim for water damage had been made and suggested that the claim had already been factored into the costs of the original policy. They also argued that the increase in cover for the loss of rent would make a minimal difference to the insurance costs. What was important was the amount it was insured for.

24. The Respondent further argued that it has acted in the best interest of the building. The Respondent notes that the landlord does not have to accept the cheapest quotation but rather the landlord must insure with a responsible company and this is what it did. The Respondent does not accept that Covea is an acceptable broker.

25. The Respondent placed the terrorism cover separately on the grounds that not many insurers offer terrorism cover. The cover provided was

recommended by the broker who argued that the risk of terrorism remained high. The Respondent was entitled to rely on such a recommendation.

26. The Respondent said that the new policy provided the opportunity for the landlord to insert special clauses into the policy. When asked by the Applicants for details of the special clauses, the Respondent was not able to say whether any special clauses had been inserted. In its closing speech the Respondent referred the tribunal to the policy and the special clauses.

The Respondent's arguments - Insurance costs for year ending December 31st 2021

27. The Respondent says that there was market testing of the policy ending that its broker St Giles approached several reputable insurance companies. It therefore argues that it tested the market when it considered an insurance quote. It should also be noted that only AXA provided a quote.

28. The Respondent rejects the alternative quotation provided by the Applicants. It argues that Covea, which provided the quotation is not sufficiently reputable and it is entitled to prefer AXA as a highly reputable company.

29. The Applicants rejected the Respondent's assessment of Covea.

The tribunal's decision

30. In respect of the service charge year ended 31st December 2020 the tribunal determines that the cancellation charge is not payable by the Applicants. It determines that the additional costs of insurance for the period are not payable. It therefore determines that the reasonable costs for insurance for that year is £32,908.94.

31. It determines that the reasonable cost of insurance for the year ended 31st December 2021 is £29,026.36.

32. Therefore the tribunal determines that the amount payable in respect of insurance for the year ending 31 December 2020 is £32,908.94and for the year ending 31 December 2021 is £ 29,026.36.

Reasons for the tribunal's decision

Cancellation charges and additional insurance costs for the year ending December 31st 2020

33. Whilst the tribunal agrees with the Respondent that the landlord is entitled to cancel a policy arranged by a previous landlord, and that the insurance clauses in the lease do not prevent it from doing so, it considers that the reasonableness test must apply to any service charges arising from that decision. In the circumstances of this application, the Respondent has provided no evidence to justify its decision to cancel the policy and incur additional costs and to demonstrate its reasonableness.

34. Whilst the Respondent argued that the possibility of adding special clauses was relevant to the reasonableness of its decision, the tribunal was not referred to the specific special clauses until the Respondent's closing speech. The tribunal heard no argument and saw no evidence about the need for these specific clauses nor the impact that those clauses would have on the costs of the policy. Without material substance the argument that the need for special clauses justifies the cancellation of the policy cannot succeed.

35. The Respondent also has an obligation to be transparent about any commission received. This information was necessary to the tribunal to help it understand why the policy was cancelled and additional costs incurred, but no confirmation was provided by the Respondent as to whether commission was received.

36. It follows from the tribunal's decision that it was not reasonable to cancel the policy resulting in increased costs, that the additional costs for insurance for the year ending 31st December 2020 were not reasonably incurred.

The additional insurance costs for the year ending December 31st 2021

37. In connection with the Respondent's claims that the broker market tested the insurance, it did not provide any evidence of this. The Respondent said that it had spoken to the broker on the telephone about this and asked him to provide the necessary evidence. This was done during the course of preparations for this hearing. Unfortunately the broker failed to provide the evidence the Respondent says that it promised.

38. The tribunal is surprised that the Respondent is unable to provide evidence of market testing. The standard commercial form of communication is email rather than telephone and the tribunal would have expected to see email communications in connection with evidence of market testing. In any event, the Respondent was not able to tell the tribunal who it was who had spoken to the broker about this, nor the date on which it happened, nor provide any note or other record of any call made. In the light of the absence of evidence the tribunal concludes on the balance of probability that there was no market testing of the insurance.

39. The tribunal notes the concerns that the Respondent has about the comparable quote provided by the Applicants. It argues that Covea is not a reputable firm and that the quotation provided by the Applicants did not take into account the impact on costs of the claim for water damage.

40. The tribunal prefers the evidence of the Applicants and accepts that Covea is a reputable company and that the impact of the claim for water damage has been taken into account in the quotation. It also accepts that the differences between the two policies are not sufficient to justify the difference in costs. The tribunal may have been more sympathetic to the position of the Respondent had it market tested the insurance provision. However, in the light of the failure to market test, the tribunal determines to accept the figures of the Applicants as evidence of reasonable insurance charges.

Charges for major works of £5,616 (2020) and £14,457.78 (2021)

41. The Applicants argue that the Respondent arranged for surveyors to identify external wall construction details on the property and report on whether an adequate standard was achieved for compliance with the Regulatory Reform Fire Safety Order 2005 and whether any remediation or interim works would be required. This involved carrying out an intrusive inspection of the exterior walls at the property.

42. Costs of £5,616 were charged for access equipment to carry out the inspection. The Applicants were also charged for the surveying of the property by Thomason Partnership Ltd who produced a report on the external walls dated 10 December 2020. The charge was £14,457.78.

43. The Applicants accept that the report identified a prima facie case of latent building defects but note that the building was less than 3 years old.

44. The Applicants argue that given the lack of funds, the age and size of the building and the overall fire safety features of the design the Respondent should have given greater care and consideration to the terms of engagement for the surveyors and the reasoning and scope of the appointment.

45. They argue that the Respondent should have communicated and consulted with the Applicants setting out the reasons for the work. The argue that the surveying work should be for the Respondent to pay as it should have been identified as part of its due diligence in identifying latent building defects after buying the freehold.

46. They further argue that even if the costs are chargeable to the leaseholders there should have been consultation under s.20 of the 1985 Act as the works were qualifying works.

47. The Applicants also argue that the leaseholders have the right to expect that the building is fit for purpose when they purchased from the freeholder and if not then the freeholder is in breach of its obligations under the purchase contract.

48. The Respondent argues that following the tragedy at Grenfell Tower the Respondent was obligated to ensure that the property complied with the Regulatory Reform Fire Safety Order. The height of Aviary House is greater than 18 m being approximately 19.2 m.

49. The Respondent agrees that the inspection was an intrusive inspection of the exterior walls system but considers the intrusive nature to be appropriate. It also notes that the Applicants accept that the report is a legitimate and professionally competent report. The Applicants also accept that the building is not in compliance with Building Regulations.

50. The Respondent argues that it has behaved responsibly throughout. It obtained the services of a surveyor a few months after the handover of the site. It therefore argues that the costs are legitimate

51. It argues that the surveyors works fall outside of the scope of s.20 because they are expenses seeking knowledge from a professional in respect of a relevant matter forming part of a professional fee.

52. In respect of the scaffolding, the Respondent argues that this was not for works but to enable the inspection. Moreover it points out that the charges for the scaffolding fall below the consultation threshold.

The tribunal's decision

53. The tribunal determines that the amount payable in respect of the major works is £5,616 for the year ended 31st December 2020 and £14,457.78 for the service charge year ended 31st December 2021.

Reasons for the tribunal's decision

54. The tribunal considers that the decision to instruct professional services to inspect the property was a reasonable decision in the context of the Grenfell Tower tragedy and the consequent need to inspect residential tower blocks for building defects and that the costs were therefore reasonably incurred.

55. The Applicants provided no evidence that the costs incurred were not reasonable. Whilst they complain that the survey was intrusive this appears to the tribunal to be appropriate to the problem of latent building defects. It is difficult to see how the building could be inspected for latent defects without an intrusive inspection. Further the Applicants provide no evidence of comparable charges.

56. It does not consider the arguments of the Applicants in connection with due diligence etc to be relevant to the determination of the reasonableness of service charges.

57. With regards to consultation, it has considered the argument of the Respondent carefully, that such an inspection does not constitute works for the purpose of the statutory consultation requirements.

58. The relevant law is contained in the Landlord and Tenant Act 1985 s.20 and s.20ZA. Section 20ZA(2) defines qualifying works as works on a building or any other premises. HH Judge Marshall QC in *Paddington Walk Management Ltd v Peabody Trust*, Case No: CHY08440, suggested that this is not a very illuminating definition. Nor is 'works' defined elsewhere in s.20, s.20ZA or in the Consultation Regulations. Tanfield notes in Chapter 11 paragraph 11.06 that Landlord and Tenant Act 1985 s.18 refers separately to 'works' and 'services', which the author argues indicates that a distinction is to be drawn for the purposes of Landlord and Tenant Act 1985 ss.18-30 as between "works" and the provision of "services". Other than this the case law and statute is of limited help.

59. The matter comes down to a question of fact. The *Paddington Walk Management* case concerned the issue of whether window cleaning was works on a building. The judge concluded, at paragraph 92 of the decision, that, 'Window cleaning may be 'work' and even 'work on a building' but it is not, in my judgment, 'works on a building' . Works on a building comprise matters that one would naturally regard as being 'building works' and it does not seem to me that window cleaning naturally falls within that concept'.

60. In this case, the tribunal determines that the surveyor was not carrying out works on a building but work to determine the condition of that building. The scaffolding costs were incidental to carrying out the work to determine the condition. Therefore the works fall outside the statutory consultation requirements.

61. This is not to say that surveyors' charges always fall outside the consultation requirements. There will be instances where surveyors' charges may well be integral to works on a building. However, in this case the tribunal considers the surveyors' charges were for professional services not linked to works on a building and therefore the question of a statutory cap on expenditure does not arise.

62. For these reasons the tribunal determines that the charges for the survey and the scaffolding are payable and reasonable.

Service charges of £4,677.55 for electricity for service charge year ending December 31st 2021

63. The Applicants argue that £2,553.77 of the electricity charges for the service charge year ending 2021 were unreasonable because they were incurred as a result of the careless behaviour of the Respondent. In the Applicants' submission, the Respondent failed to take the steps required by a reasonable landlord to protect the interests of the Applicants.

64. The Applicants say that the electricity for the communal areas is provided to the property under a British Gas account. The practice at the property prior to the handover was to arrange 12 months contracts to ensure that premium rates were not charged. This is standard practice.

65. At the date of the purchase of the freehold by the Respondent there was a contract with British Gas in place. During that contract charges for late payment and previsit disconnection charges were incurred. The renewal date for the fixed term was then ignored by the Respondent which meant that the account following the expiry of the fixed term ran at the variable rate of 30.069p per Kwh as compared to the fixed term rate of 14.89p per Kwh. Although the account was closed on 20th May 2021 by that time 15,556 units had been consumed at an excess rate of 15.179p per Kwh (i.e. 30.069p less 14.89p) costing the leaseholders an additional £2,479.31.

66. The behaviour of the Respondent and its failure to manage the account led to an additional standing charge of £16.46 and penalty charges of £58.

67. The Respondent argues that it acted in a fair and reasonable manner, that the additional charges were out of its control and that it used its best efforts to avoid the additional charges.

68. At the time of the handover the Respondent approached British Gas to make changes and update the billing address. British Gas declined to speak to the Respondent because the Respondent was not the designated account holder.

69. An email received from SAB dated 30th August 2020 confirmed that the Applicants made contact with British Gas and provided them with the Respondent's details so that access could be granted to the account.

70. During 2020 the Respondent continued to contact British Gas for the finalisation of changes in account details.

71. On 24th November 2020 an email from British Gas confirmed the completion of changes to the billing address. Nonetheless the invoices continued to be sent to the previous agent SAB. British Gas also denied that the 30 day termination notice had been sent which was later discovered to be incorrect.

72. The Respondent understands the impact that this has had on the Applicants. British Gas charged at an emergency rate. The Respondent had no option about this or control over this and is therefore not responsible for the debt that was accumulating. The Respondent cannot pay for an invoice if it contains wrongful information and the invoices were still in the name of the previous agent.

73. The Respondent has acted in a reasonable manner throughout and carried out due diligence. Therefore the costs demanded are payable and reasonable.

74. The Respondent told the tribunal that it did not pay the relevant bills until 4th April 2021.

75. The tribunal asked for further details of communications between it and British Gas but it declined to comment further and did not address the matter in its final submissions.

The tribunal's decision

76. The tribunal determines that the amount payable in respect electricity charges for the service charge year is £2,123.78. This is the amount charged (namely £4,677.55) reduced by the additional charges of £2,553.77.

Reasons for the tribunal's decision

77. The tribunal does not accept the Respondent's argument that there was nothing it could do about the accumulating additional charges. It would not have been reasonable for these additional charges to be incurred if there had been no sale of the freehold. The tribunal does not accept that there is anything very different about the circumstances that the Respondent was in. The tribunal might have understood a short delay in sorting out the account and reinstating a fixed term contract. But here there was not a short delay. The Respondent appears to have been passive and allowed a detrimental financial situation to arise. The tribunal agrees with the Applicants that the Respondent was careless about the accrual of additional charges

and therefore determines that the charges have not been reasonably incurred.

Charges for gas £5,966.47 (sc year ended 2020) and gas recovery £3,779.27 and £7,450.93 (sc year ended 2021) and gas recovery charges £5,418.04

78. The Applicants make similar points in relation to charges for gas supplies. The Applicants say that the gas for the centralised supply was provided by British Gas on the same principles as electricity, i.e., a 12 month fixed price contract.

79. Due to the lack of attention from the Respondent the Applicants say the account ran from 1 August 2020 without a fixed term contract at a variable rate price through to 30 September 2020 of 5.37p per Kwh and from1 October 2020 at 4.89p per Kwh through to 28 April 2021. In addition both periods attracting standing charges at 580.66p per day, climate change levy at 0.406p per Kwh and VAT at 20%.

80. This compares with the fixed term charge of the previous contract which was 3.052p per Kwh fixed to 31 July 2020 without standing charges and with VAT charged at 5%.

81. The account was then closed and switched to another supplier, Crown Gas & Power at a rate of 2.373p plus standing charges and climate change levy and vat at 20%. By the time the account was closed, the leaseholders had been charged with excessive gas charges (based on a competitive quote) of 2.02p to 28 November 2020 and 1.54p to 28 April 2021 on 388,436 Kwh.

82. The charges for the gas are complicated by the role played by Vital Energi Recovery. The Applicants explained that the supply of gas fired hot water to flats is metered through smart meters supplied and controlled by an independent company, Vital Energi. In effect residents pay Vital Energi for calculated usage the amounts of which are passed back to the estate account, less Vital Energi's charges. The income is in effect set against the total gas cost and is an integral part of the service charge system.

83. The Applicants say that no income has been recorded in the accounts of Aviary House during the period of the Respondent's management.

84. The Applicants learned from Vital Energi that the amount of the recovery transferred to the Respondent was £9,197.14 split on the basis of gas charges as follows (which, when added together, total £9.197.21, i.e. a minimal difference of 7p):

(i) For the year ended 31.12.2020 - £3,779.17

(ii) For the year ended 31.12 2021 - £5,418.04

85. The Applicants argue that if the Respondent had properly accounted for the recovery of the income this would have reduced the gas charge expenditure included in the service charge account.

86. The Respondent repeats its arguments that it made in connection with the electricity charges.

87. In addition, in respect of the additional VAT charges the Respondent says that it did not benefit from this. The Respondent says that the Applicants must request the refund from the supplier on the basis that the VAT was wrongfully set out on the account.

88. The Respondent disputes that the tribunal has jurisdiction to determine the issue of the monies from Vital Energi. It argues that as the Applicants are not disputing the reasonableness of costs but rather missing monies, the Vital Energi charges fall outside of the application.

89. The Respondent argues that it cannot transfer monies without any legitimate information. The Applicants must obtain proof of such sum made to the Respondent from Vital Energi along with the correct banking details. The Respondent will then be able to trace the monies accordingly and return where required. The Respondent cannot be forced into making a transaction if there is no transparency of information.

90. The Respondent says that it has made efforts to communicate with the Applicants on this matter. On 4 December 2021, the Respondent emailed the Applicants explaining that 2 receipts one of £4,077 and one of £835 were returned to Vital's bank account in August 2021 as they did not specify a property and could not be allocated. On 10 March 2022, the Respondent returned three separate payments to Vital Energi totalling £4,285.

91. The Respondent says that it is the responsibility of the Applicants to collect the funds from Vital Energi.

The tribunal's decision

92. The tribunal determines that the amount payable in respect of gas charges for the year ending 2020 is £1,567.63. This is the amount charged (£11,313.37) less the additional charges of £5,966.47 and less the sums received from Vital Energi for the year ended 31.12.2020 of £3,779.17.

93. The tribunal determines that the amount payable in respect of service charges for gas for the year ending 2021 is £2,755.49. This is the amount charged (£15,624.47) less the additional charges of £7,450.94 and less the sums from Vital Energi for the year ended 31.12.2021 of £5,418.04.

Reasons for the tribunal's decision

94. The tribunal applies its reasoning set out in paragraph 75 above to the issue of additional charges for gas.

95. It also considers that the income from Vital Energi needed to be properly accounted for by the Respondent as it was a significant element of the service charges for gas. The Respondent has returned leaseholder money incorrectly to Vital Energi and it needs to take responsibility for reclaiming the monies. A reasonable service charge for gas in the determination of the tribunal includes the deduction of the Vital Energi income.

Charges for concierge services: alleged excess charges of £8,244.82 (sc year ended 2020) and £25,043.65 (sc year ended 2021)

96. The Applicants consider that the charges for the 24/7 concierge costs are unreasonable.

97. They told the tribunal that the property had 24/7 concierge services on a three-shift basis during the Respondent's period of management. The Office Concierge Company Limited ("Office Concierge") had a 3-year contract signed 15 September 2017 by the developers to the site to provide two 8-hour day shifts. The cost of the Office Concierge provision was £11,310.19 per month for the two 8-hour shifts.

98. Accolade UK Limited provided the night shift at a cost of £4,076.80 per month for one 8-hour shift. The total cost of 24-hour coverage of £15,386.99 per month and the annual cost under the Office Concierge/Accolade combination for 24 hours was £184,777.

99. The original freeholder considered the charges of Office Concierge to be too high and they were given notice of termination was on 1 June 2020 with a termination date of 15 September 2020.

100. Office Concierge was advised that concierge services would continue and that they should quote on a competitive basis for a new contract. Accolade were also to quote for the provision of the day time shifts.

101. Following transfer of the property to the Respondent on 1 July 2020, the Respondent was advised by SAB, by an email dated 24th July 2020, that notice of termination had been given to the Office Concierge and that Accolade had indicated that it could extend its service to 24 hours. Accolade's projected costs were approximately £147,160 per annum (around £12,263.33 per month). Therefore the Applicants argue that switching to 24/7 services provided by Accolade would have saved approximately £37,617 per annum.

102. The Applicants argue that given the saving potential and Termination Notice given to the Office Concierge, the Respondent should have continued the previous freeholder's approach and asked Office Concierge to quote for the work, or gone out to competitive tender or accepted the lower Accolade quote.

103. Instead, the Respondent signed up for the Office Concierge/ Accolade combination for another 12 months to September 2021. The Office Concierge/ Accolade combination continued from 1 July 2020 through to 31 August 2021.

104. The RTM company switched to Accolade once they gained control of the management on 22 July 2021, and saved a considerable amount of cost. The contract agreed in September 2021 was £150,936 for the annual provision of 24/7 concierge services.

105. The Applicants say that the Respondent's failure to be proactive on the concierge costs meant that the Applicants incurred unreasonable costs for 11 months and 15 days at a cost of £33,288.47 being split as to:

    (i) In relation to the year ended 31.12.2020 (80 days): £8,244.82 (although after the hearing, on 8 August 2022, the Applicants' representative provided a schedule which indicated that in fact they were challenging alleged excess charges for 107 days, i.e. totalling £11,027.03);

    (ii) In relation to the year ended 31.12.2021 (243 days): £25,043.65

106. The charges for concierge services are therefore considered excessive and unreasonable.

107. The Respondent argues that it was unaware that there were concerns about the concierge services. It had assumed, and there was nothing communicated between the parties to the contrary, that the termination of the contract was a normal procedure at the time of transfer of the freehold.

108. It was satisfied with provision by Office Concierge. It had checked the website of Accolade and understood that its services were normally nighttime only services.

The tribunal's decision

109. The tribunal determines that the amount payable in respect of daytime concierge services provided by Office Concierge across the service charge years ended 31 December 2020 and 2021 is £107,572.34, limited to costs for 16 September 2020 to 31 December 2020 in 2020 and to 1 January to 21 July 2021 for 2021

Reasons for the tribunal's decision

110. The tribunal considered the communication between the parties about the termination of the Office Concierge contract of 24th July 2020. There was nothing there that indicated that lessees had problems with the service and it was not made clear why the contract had been terminated.

111. Whilst it understands that the Applicants feel frustrated that as a result of the transfer of ownership and management its plans for a more affordable concierge service was delayed, it does not consider that the Respondent behaved unreasonably in continuing with the service as it had been previously provided. It determines that the decision to continue with the existing arrangements was within a spectrum of reasonableness, particularly considering it was unaware of any complaints and had only just taken over the property.

Prejudice to the Respondent

112. Following the hearing and whilst the tribunal was considering its decision, the tribunal made several enquiries of the Applicants' representative, Mr Astin, asking him to clarify the figures that he was disputing.

113. The Respondent, who was copied into the correspondence, raised its concern that it had been prejudiced by the failure of the Applicants to be clear about the sums in dispute.

114. The tribunal gave the Respondent an opportunity to make written representations about its reasons for considering it had been prejudiced by the lack of clarity of the figures provided.

115. The Respondent raised a number of concerns.

116. The first concern was that the application as originally made incorrectly identified the Applicants. The Respondent raised the issue and following the tribunal communicating with the Applicants, the Applicants amended the application.

117. The second issue was in connection with the Applicants seeking to rely upon Mr Astin as an expert witness. The Respondent suggests that this indicates that the Applicants do not understand its own dispute and this raised a difficulty for the Respondent and prejudiced it.

118. The third issue relates to the Applicants' Scott Schedule. The Applicants had not completed the Scott Schedule and this meant that the Respondent was unable to provide a detailed comment. The Respondent says that this was due to the inaccuracies of the Applicants' comments and figures.

119. The Respondent notes that the tribunal requested further clarity on 4th August 2022. In response the Applicants provided a lengthy statement with additional information. The Respondent says that the statement is clear prejudice to the Respondent.

120. The Respondent argues that even after the hearing was complete the judge was unclear in respect of the Applicant's disputed item. The Respondent says that this is indicative of the difficulties suffered by the Respondent.

121. The Respondent states that Judge Carr suggested that the recovery of Vital Energi monies did not fall within the s.27A reasonableness claim.

122. In summary the Respondent says that it has been prejudiced by the Applicant's conduct. It is also prejudiced by the Applicants providing further clarity after the hearing.

The decision of the tribunal

123. The tribunal does not consider that the Respondent was prejudiced by the clarification of the figures provided after the hearing by the Applicants.

The reasons for the decision of the tribunal

124. The Respondent has made allegations of prejudice but has not provided any substantive evidence of prejudice.

125. The matters of the correct applicants and the status of the evidence of Mr Astin were resolved prior to the hearing and it is difficult to understand what prejudice the Respondent is alleging it suffered as a result. The Respondent did not raise issues of prejudice arising from these matters in the course of the hearing.

126. In respect of the clarification of figures sought by the tribunal the Respondent has not provided any evidence that the figures provided resulted in prejudice to itself. The tribunal did not receive any information that was not in the original bundle. It simply sought clarity on the figures that the Applicants were claiming so that it could identify the service charges that were payable and reasonable.

127. It notes that the Applicant's representative is not a lawyer. It would have been preferable if the Scott Schedule had been properly completed but the Respondent itself did not complete its column of the Scott Schedule.

128. For the avoidance of doubt the judge did suggest that the Vital Energi matter fell outside s.27A, voicing an argument set out by the Respondent. In the end however it was persuaded that the matter fell within s.27A as the sums received from Vital Energi were critical to the calculation of the reasonableness and payability of service charges.

Application under s.20C and refund of fees

129. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, and noting that although the Applicants have not succeeded on all of their application, they have succeeded on most of their claims and noting that very limited explanation of charges was given prior to the hearing, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge H Carr **Date:** 16th January 2023

Rights of appeal

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

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

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

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

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

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