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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: **LVT/0005/06/22, LVT/0006/06/22, LVT/0007/06/22, 0009/06/22**

In the Matter of Premises at Cardiff Pointe, Empire Way, Cardiff

And in the matter of Applications under Section 27A of the Landlord and Tenant Act 1985, Schedule 11 to the Commonhold and Leasehold Reform Act 2002, Section 20C of the Landlord and Tenant Act 1985, and Section 24 of the Landlord and Tenant Act 1987

Applicants:	**(1)**	**John Harris (Block D)**
	(2)	**Andrew Bucknall (Block B)**
	(3)	**Vivienne Cooper-Thorne (Block C)**
	(4)	**David and Pamela Perry (Block C)**
	(5)	**Dr. Ali Alalaiwi (Block A)**

Representation: **John Harris and Andrew Bucknall**

Respondent: **Cardiff Pointe Management Company Limited**

Representation: **Dan Dyson of Counsel, instructed by Acuity Law**

Tribunal: **Colin Green (Chairman)**
Johanne Coupe FRICS (Valuer Member)
Siân Westby (Lay Member)

Date of hearing: **14, 15, 18 – 22 December 2023, 17 May 2024**

DECISION

(1) **The Tribunal did not determine the VAT point raised by the First Applicant.**

(2) **The Tribunal did not determine the issues raised by the First and Third Applicants concerning administration charges.**

(3) **The Tribunal did not determine any issues arising under section 20B of the Landlord and Tenant Act 1985 ("the 1985 Act"), which were subject to a compromise agreement between the parties.**

(4) **The Tribunal determined that there would be no reduction in the electricity charges in respect of the Respondent's failure to register in the electricity Feed-in-Tariff Scheme.**

(5) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the Tribunal grants dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (Wales) Regulations 2004 in respect of the following Qualifying Long Term Agreements:

(a) The contract with BT;

(b) The contract with Orona in respect of lift maintenance;

(c) The management agreement between the Respondent and Warwick;

(d) The contract with Data Energy Management Services Limited.

(6) No adjustments are required in respect of incorrect VAT charges and Climate Levy Charges.

(7) No adjustments are required in respect of electricity (Block B) overcharges for the service charge periods 2016 to 2020.

(8) In respect of the service charge year 2016, the insurance block charge should be £8,413.00.

(9) There was no overlap of insurance policies for Block A during the service charge year 2018.

(10) The premiums for engineering insurance for the service charge years 2017 to 2020 are considered reasonable.

(11) In respect of boiler maintenance, no adjustment is required in respect of the payment of the invoice of 16 February 2018 from Source Site Services Limited.

(12) In respect of the service charge years 2015 to 2020, costs associated with a lightning conductor, TV aerial, satellite dish, and faraday cage were Estate Service costs.

(13) For the service charge years 2015 to 2020, £100.00 per annum should be credited to Block B's Building Services in respect of the electricity consumption of the items referred to in paragraph (12) above.

(14) In respect of the Estate's external lighting that has been provided by Block B's circuit, Block B's electricity charge should be assigned to Estate Services for the following service charge years and in the following amounts: £686.00 for 2015 and £800.00 for each of 2016 to 2020.

(15) For the service charge years 2015 to 2020, the insurance charges for directors and officers should be treated as an Estate Service costs and not a charge against blocks.

(16) No adjustment is required for the service charge year 2019 in respect of the gas security deposit for Blocks C and D. Those deposits and accumulated interest should be credited for the service charge year 2023.

(17) The cost of lift guards in 2016 was reasonable.

(18) The lamp replacement costs for the service charge years 2015 to 2019 were reasonable.

(19) In respect of water damage caused to Block B in 2017, the Tribunal is unable to make any determination of the credit to be applied as a final statement remains to be determined.

(20) **In respect of the charges for gas for the service charge years 2017 to 2020, the updated communal gas costs set out in the spreadsheet that form an appendix to this decision shall apply.**

(21) **Concerning the issues raised under the heading "HIU maintenance" the Tribunal makes no adjustments.**

(22) **No adjustments are made in respect of reconciliation overcharges.**

(23) **No adjustments are made in respect of certification by Onshore Leasehold Accountancy of the service charge accounts.**

REASONS FOR DECISION

Background

1. Cardiff Pointe is a development of leasehold and freehold properties comprising 98 units. 43 of these consist of leasehold apartments split into Blocks A (18 apartments), B (8 Apartments), C (7 Apartments), and D (10 Apartments). The Applicants have apartments in each of those blocks – Mr. Harris (Block D), Mr. Bucknall (Block B), Mrs. Cooper-Thorne and David and Pamela Perry (Block C), and Dr. Alalaiwi (Block A). The remaining 55 units are freehold properties. All 98 units are subject to payment of a service charge but in this decision the Tribunal is only concerned with the leasehold Apartments in Blocks A to D and the relevant lease provisions.

2. The applications that gave rise to these proceedings were issued in June 2022, consisting of applications under s. 27A of the 1985 Act in respect of service charges; Schedule 11 to the Commonhold and Leasehold Reform Act 2002, in respect of administration charges; s. 20C of the 1985 Act, in respect of the recovery of costs by way of service charge; and s. 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"), concerning the appointment of a manager.

3. There have been several case management conferences ("CMCs") and a Pre-Trial Review. At the first CMC, on 28 October 2022, the three applications other than that under s. 24 of the 1987 Act were consolidated and subject to directions for their further progress. The Tribunal decided that since the application for the appointment of a manager relied on many of the issues raised in the other applications to justify such an appointment, it would be best to determine those applications first before moving on the question of whether a manager should be appointed. Therefore, that application has been stayed pending the outcome of the other issues.

4. It was also determined that the appropriate Applicants were the first to third Applicants listed above, who had made the applications, together with the fourth and fifth Applicants, who had subsequently indicated that they wished to support the applications. Cardiff Pointe Management Company Limited ("the Management Company") was made the sole Respondent since, as will be seen when considering the lease provisions below, in the events which have

happened it is the Management Company alone, not the Landlord, to whom a tenant is liable for payment of the service charge. For this reason, the Respondent falls within the meaning of "landlord" in the 1985 Act, defined by s. 30 as including "any person who has a right to enforce payment of a service charge".

5. Throughout the proceedings, most, if not all the work for the Applicants has been carried out by Mr. Harris and Mr. Bucknall. They were present at the various CMCs and throughout the final hearing and were responsible for drafting the Applicants' Statement of Case, the Applicants' contributions to the Scott Schedule, the Applicants' Reply to the Respondent's Statement of Case, a response to the Respondent's experts' report, the Applicants' skeleton argument, and the presentation of the Applicants' case during the hearing. Mrs. Cooper-Thorne has been present on occasions though she has left matters to Mr. Harris and Mr. Bucknall. So far as the Tribunal is aware, the fourth and fifth Applicants have played no active role in the case.

6. The Management Company has been represented by Acuity Law and Dan Dyson of counsel throughout the proceedings.

7. Some mention should be made of the voluminous paperwork that has been generated in this matter. The Tribunal made directions for the exchange of Statements of Case and supporting evidence but unfortunately the Applicants did not understand what constituted a Statement of Case and supplied in electronic format a vast amount of material. For the purpose of identifying to what documents the Respondent should respond in its own Statement of Case, by paragraph (4) of the directions of 21 June 2023 it was ordered that the Applicants' Statement of Case should be regarded as consisting of Documents 1 and 2 and the General Summary of Statement of Case. Even then such documents exceeded 550 pages. The Respondent's Statement of Case is 11 pages, the Applicants' Reply 21 pages.

8. When it came to the final hearing, the hearing bundle consisted of four PDF documents, amounting in total to over 10,000 pages, and the final version of the Scott Schedule comprised 543 rows. By any standard this is an extraordinary amount of material to deal with disputes concerning six service charge years, and inevitably led to difficulties in cross-referencing documents. The final hearing lasted 7 full days. In addition, there was a further hearing on 17 May 2024, the circumstances of which will be explained below.

9. Several aspects of the Applicants' case were difficult if not impossible to understand, a problem that faced both the Respondent's solicitors and counsel, the expert, and the Tribunal itself. With due respect to Mr. Bucknall and Mr. Harris, some of the points they wished to convey in their documents were

expressed in impenetrably dense terms or opaque, extended sentences whose train of thought became increasingly unclear as the sentence progressed. Along with the immense amount of paperwork this made the Tribunal's task in identifying issues and the relevant material in support even more difficult.

10. Mr. Dyson's skeleton argument requested that the Tribunal strike out the Applicants' documents headed "General Summary of Statement of Case" and "Brief Supplemental Reply of the Applicants to the Respondent's Statement of Case" on the footing that they contained allegations of fraud, blackmail, attacks on the police and court system, and insulting allegations concerning the Respondent and its legal representatives. The Tribunal decided not to strike out all or part of such documents as dealing with this would have shortened the time available for addressing more substantive issues. The Tribunal has disregarded such comments however, in assessing the evidence and making its determinations.

The Lease

11. During the hearing the Tribunal and parties referred to the terms of Mr. Harris' lease, as it is the first lease listed in the bundle, but in all material respects the leases of each of the apartments in Blocks A to D are the same.

12. The Lease is made between Figurehead Homes Limited ("Figurehead"), the freehold owner of the site, the Respondent management company, and the Tenant. Under clause 2, in consideration of the Tenant paying to the Landlord the Premium and covenanting to pay the Landlord, inter alia, the Service Charge, the Apartment is demised to the Tenant for a term of 999 years from 3 July 2015.

13. Under clause 3 the Tenant covenants with the Landlord and by way of a separate covenant with the Respondent to observe and perform the Tenant's obligations to the Landlord contained in Schedule 5. Paragraph 6 (Costs of services consumed) is relevant.

> *"The Tenant must pay to the suppliers all charges for electricity, water, gas, telecommunications and other services consumed or used at or in relation to the Apartment and the Car parking Space, including meter rents and standing charges, except any such charges that form part of the Expenses of the Services and of Insurance to which the Tenant contributes through the Service Charge, and must comply with the lawful requirements and regulations of the respective suppliers"*

14. By clause 4 the Landlord covenants with the Tenant and the Respondent to observe and perform the requirements of Schedule 6. Under paragraph 2 of Schedule 6, provision is made in the event of the Respondent going into liquidation or consistently and continuously failing to carry out or comply with its

obligations, then the Landlord, at the request of the Tenant, will perform or otherwise procure the performance of the obligations on the part of the Respondent contained in the Lease. That obligation has not been invoked so that it is the obligations between the Tenant and the Respondent that govern the service charge years in dispute.

15. By clause 5 the Respondent covenants with the Landlord and the Tenant to observe and perform the obligations of the Respondent set out in Schedule 4. (There is a proviso concerning the discontinuance of certain obligations in clause 5.1 which is not relevant for current purposes.) Under paragraph 1 of Schedule 4, subject to the Tenant having paid the Service Charge, the Respondent is obliged to carry out the Services and do the acts and things set out in Schedule 7.

16. Schedule 7 (The Service Charge and Services) contains the substantive provisions in respect of the Services to be provided by the Respondent and which fall within the scope of the Service Charge. It is not necessary to set out those provisions in full, but they can be summarised, and quoted where appropriate, as follows.

17. Under paragraph 1, the financial year is 1 January to 31 December. Paragraph 2.1 provides:

> *"As soon as reasonably practicable after each financial year the Management Company must ensure that the Accountant issues a certificate containing a summary of the total Expenses of the Services and of Insurance for that financial year, and a summary of any expenditure that formed part of the total Expenses of the Services and of Insurance in respect of a previous financial year but has not been taken into account in the certificate for any previous financial year. A copy of the certificate must be supplied by the management Company to the Tenant."*

18. The Tenant must make payment of the Service Charge to the Respondent (paragraph 2.5) and paragraph 2.6 provides for payments on account, payable by equal instalments on 1 January and 1 July each year, and which may be revised to take account of actual or an expected increase in expenditure (paragraph 2.6.2). Under paragraph 2.8, as soon as reasonably practicable after the end of each financial year the Respondent must furnish the Tenant with an account of the Service Charge payable by him for that financial year, credit being given for payments on account. Any amount overpaid is to be allowed against future payments of the Service Charge, whether on account or not.

19. Schedule 7 distinguishes between two sets of Services: the Building Services – the common parts of whichever of Blocks A to D the Apartment is located – and Estate Services, which concern the rest of the Estate. Provision is made in

respect of the Building Services at paragraph 2.9, which includes at paragraph 2.9.12:

> *"discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Retained Parts, including without prejudice to the generality of the above, those for water, electricity, gas and telecommunications."*

"The Retained Parts" is defined by clause 1.1.24:

> *"means those parts of the Estate other than:*
>
> *1.1.24.1 the Apartment and*
>
> *1.1.24.2 the other Apartments included in the leases of the Other Apartments, but includes without prejudice to the generality of the forgoing, the Access Road, the roofs and roof space, the foundations, and all external, structural or load bearing walls, columns, beams, joists, floor slabs and supports of the Building the structure of the balconies (including any balcony railings or walls) and such other parts of the Building as are not included in the Apartment and are not and would not be included in premises demised by leases of Other Apartments if let on the same terms as this Lease."*

20. The Estate Services are set out at paragraph 2.10. Under paragraph 2.10.8 power is given to the Respondent to appoint a managing agent. At all material times Warwick Estates Property Management Limited ("Warwick") has been the managing agent.

21. "The Service Charge Percentage" is defined at clause 1.1.30 as meaning, in Mr. Harris' case, 7.09 per cent of the cost of the Expenses of the Building Services and a fair and reasonable proportion of the cost of the Expenses of the Estate Services as determined by the Landlord acting reasonably. The proportion in respect of Estate Services has remained at a one-ninety eighth share (the total units at Cardiff Pointe) for all leasehold apartments from the outset. As mentioned above, it is understood that the 55 freehold units at Cardiff Pointe contain covenants to contribute towards the Expenses of the Estate Services, each also paying a one-ninety eighth share, although no copy of such freehold covenants were supplied.

22. "The Service Charge" is defined by clause 1.1.28 as meaning the Service Charge Percentage of the Expenses of the Services and of Insurance. There is power to alter the percentage, but this has never been exercised.

23. Provision is also made under the Lease for the Landlord and Tenant to be members of the Respondent, and it is understood that the owners of each of the freehold units are also members.

24. The service charge years in which disputes have arisen are 2015 to 2020.

Statutory provisions

25. Under s. 27A of the 1985 Act, the Tribunal has jurisdiction to determine whether a service charge is payable and the amount of the service charge. This will involve consideration of the Lease terms and the items which it is claimed do, or do not, fall within the scope of the service charge provisions. Where a service charge is payable for work that has been done or services performed, then it is only payable to the extent that they were reasonably incurred (s. 19(1)(a) of the 1985 Act) and to the extent that the work or services were to a reasonable standard (s. 19(1)(b)).

26. It should be noted that in determining such matters the Tribunal's function is declaratory. It has no jurisdiction to order payment, reimbursement, or damages, and no power to award interest. The Tribunal will not determine the state of account between a particular tenant and the person or body to whom payment is to be made which is a matter to be resolved between the parties in the light of the Tribunal's determinations.

Scott Schedule

27. In the initial directions of 28 October 2022, standard directions were given for the completion of a Scott Schedule by the parties with the following column headings.

Item No	Description	Amount	Applicants Comments	Respondents Comments

At the CMC on 21 June 2023, a direction was made that the Applicants provide a revised Scott Schedule with the following column headings, in order that the differences between the parties would be clearer.

Item No.	Description	Disputed amount	Applicants' Comments	Applicants' Amount	Respondent's comments	Respondent's Amount

The manner in which it was expected that this version of the Scott Schedule would be completed was as follows, using a fictional example to make the point clearer. Assume a disputed item, lamp replacement, charged at £150.00, which the Applicants contend should have cost £100.00 and the Respondent's case is that £125.00 is the preferred figure. When completed, the relevant row in the Scott Schedule would look like this (Applicants' entries in italics, Respondent's in bold):

Item No.	Description	Disputed amount	Applicants' Comments	Applicants' Amount	Respondent's comments	Respondent's Amount
1	*Lamp Replacement*	*£150.00*	*Cheaper cost was available*	*£100.00*	**There should be a lower reduction**	**£125.00**

When it came to completion of the revised Scott Schedule by the Applicants however, the order of the columns was altered, and the interpretation placed on "Disputed Amount" was not the cost of the item in dispute but the difference between the Applicants' figure and the service charge amount (as calculated by the Applicants). Accordingly, on completion of the Scott Scheule by the Applicants, using the above example, it would appear as follows:

Item No.	Description	Respondent's Amount	Applicants' Amount	Disputed Amount	Applicants' comments	Respondent's Comments
1	*Lamp Replacement*	*£150.00*	*£100.00*	*£50.00*	*Cheaper cost was available*	

The upshot of this is that the "Respondent's Amount" column was completed by the Applicants, not the Respondent, and the only column that remained for completion by the Respondent was "Respondent's Comments".

28. When this became apparent during the hearing, it was clear that the figures in the "Respondent's Amount" column in the Scott Schedule were not necessarily an accurate guide to the figure on which the Respondent relied, particularly in the case of more complex items than used in the above illustration, and no alternative figures had been provided by the Respondent, which might, or might not, correspond with the figures provided by the Applicants. For example: in respect of the issue of VAT on certain invoices (dealt with below) and whether it should have been at 5% or 20%, the Applicants have completed the Respondent's amount based on 20%, whereas the Respondent's case is that it agrees that 5% is the appropriate rate so there is no difference in amount between the parties, only whether the correct rate was passed on as part of the service charge.

29. This presented the Tribunal with a problem. Initially it was proposed that the Tribunal would produce an additional column in the Scott Schedule to show the appropriate figure for each item based on its findings, very often a choice between the parties' two competing figures. Although this remained possible with some items, it could not reliably be achieved in respect of them all.

30. As a result, the Tribunal indicated that it felt unable to carry out such an exercise as part of its decision-making process. Although there are specific matters referred to by both parties in the Scott Schedule which assist and to which reference will be made in this decision, and the Tribunal will be making appropriate findings, it will not produce a version of the Scott Schedule with an additional column for the figure determined for each item. This was communicated to both parties during the hearing.

31. During the hearing the Tribunal indicated that it might make provision for permission to apply in case of any remaining disputes as to the figures that should appear in an additional column in the Scott schedule based on the Tribunal's findings. Having reflected on this however, the Tribunal has decided that such an exercise would be disproportionate and only add further, unnecessary litigation to what has already been a protracted dispute.

Witnesses

32. A witness statement was provided by Lily Morgan-Knight on behalf of the Respondent. She gave oral evidence at various points during the hearing and was cross-examined by Mr. Bucknall and Mr. Harris, but was not present throughout.

33. Ms. Morgan-Knight is the regional manager of Warwick and for part of the period under consideration was directly responsible for Cardiff Pointe. This was not the case in respect of all the matters in dispute – for example, insurance was dealt with by a separate department at Warwick – and there were several matters where her testimony was based on her analysis of documentation and/or information supplied by other employees at Warwick.

34. Paragraph 3 of the directions of 22 September 2023 made provision for expert evidence in the form of an accountant's report, which had been requested by the Respondent. A report dated 6 October 2023 was provided by Matthew Haddow, a chartered accountant and partner at the accountancy firm Menzies LLP. The directions gave the Applicants the opportunity to provide an expert's report in reply, alternatively a document in response to the Respondent's expert's report setting out those issues which were disputed. The Applicants chose the latter option and served a 27-page Reply to Mr. Haddow's report. In the light of that document, Mr. Haddow made some alterations to his original report and an updated version was provided during the hearing, dated 15 December 2023.

35. Mr. Haddow provided evidence on the second day of the hearing and was cross-examined at length, primarily by Mr. Bucknall.

36. Although the Applicants did not provide expert evidence, it became apparent in correspondence prior to the resumed hearing on 17 May 2024, and at that hearing, that an unnamed accountant had provided Mr. Bucknall with assistance in the preparation of the Applicants' case. According to Mr. Bucknall, who has worked as a data analyst, the accountant has acted as a consultant, confirming his analysis and figures. The Applicants are entitled to make use of such input, but this did not convert any of their evidence or analysis into expert evidence.

37. For the additional hearing date on 17 May 2024, Ms. Morgan-Knight did not provide any evidence and Jason Payne, the current service charge accounts manager at Warwick, provided a witness statement and was cross-examined by Mr. Bucknall.

38. The Applicants did not provide any witness statements although they relied on versions of events that were sometimes in their Statement of Case and the Scott Schedule (but not always), primarily by way of putting such matters to Ms. Morgan-Knight and Mr. Payne during their cross-examination.

Site Inspection

39. The Tribunal did not conduct a site inspection prior to the hearing and deferred a final decision on the point until the end of the seven-day hearing. It was felt that images of the site using Google Earth were sufficient for understanding and deciding the issues in dispute and that a physical inspection was not necessary. There was no objection to this.

Issues not determined

40. For the following reasons, there were two matters that were not determined by the Tribunal.

41. First, during the final hearing, Mr. Harris raised an issue concerning VAT, and that somehow this rendered VAT not chargeable, the reasoning behind which was far from clear. Indeed, Mr. Harris gave the impression that he had still not worked through the full implications of the point and was awaiting further information from Cardiff Council. The issue had not been raised in the Applicants' Statement of Case and did not appear in the Scott Schedule or skeleton argument. Therefore, the Tribunal considered that it would be unfair for the Respondent to be expected to address the argument, such that it was, and for any determination to be made on the point. Mr. Harris indicated that he might wish to pursue his argument in respect of the service charge years 2021 and following in subsequent proceedings, but also include 2015 to 2020 on the point in those

proceedings. That is a matter for him, but the Tribunal can make no determination in advance of his doing so.

42. Second, both Mr. Harris and Mrs. Cooper-Thorne had made applications under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of administration charges, using Form LVT2. Such charges are defined as including an amount payable directly or indirectly in respect of a failure by the tenant to make payment by the due date to the landlord or a person who is party to the lease other than as landlord or tenant, or in connection with a breach (or alleged breach) of a covenant or condition in his lease (paragraphs 1(1)(c) and (d) of Schedule 11). The administration charges contested were legal costs incurred by the Respondent in respect of legal proceedings for the recovery of unpaid service charges for which it was considered Mr. Harris and Mrs. Cooper-Thorne were liable. They disputed any liability for such costs.

43. Although paragraph (1)b. of the initial directions of 28 October 2022 identified administration charges as an issue to be determined, aside from the initial application form no case was raised in the Applicants' Statement of Case concerning such matters and they did not feature in the Scott Schedule or the Applicants' skeleton argument. The absence of any reference to administration charges was raised in paragraph 9 of the Respondent's skeleton argument, and on the morning of the first day of the hearing the Tribunal sought clarification. Neither Mr. Harris nor Mr. Bucknall disputed that administration charges were not being pursued.

44. During the afternoon of the sixth day however, Mr. Harris queried when he and Mrs. Cooper-Thorne's dispute over the claimed legal costs would be argued. It then became apparent that he still considered this a live issue. The difficulty, however, was that it would be procedurally unfair for the Respondent to have to deal with the issue when it had not been pursued in the Statement of Case and subsequent documents, and therefore it had not had an opportunity to address issues as to whether the charges were payable under the terms of the Lease and if they were reasonable. After consideration, the Tribunal suggested that it might be possible to include directions in its decision to allow the administration charge issues to be pursued at a further hearing on the footing that they were not abandoned but simply overlooked by Mr. Harris and Mr. Bucknall. Mr. Dyson objected to this and submitted that adequate directions and a suitable timetable had already been provided for pursuing the issues in the present proceedings, and there was no justification for remaking them because they had not been followed. The Tribunal agrees, and therefore will not determine the administration charges application in the current proceedings. Mr. Harris and Mrs. Cooper-Thorne will have to make a fresh application if they wish to have such matters determined.

Issues to be determined

45. The parties agreed that the issues be addressed under the various headings that appeared in paragraphs 15 to 24 of the Respondent's Statement of Case. The Tribunal will adopt the same approach in this decision, though it will not necessarily deal with the issues in the same order as they are presented in the Respondent's Statement of Case.

Section 20B of the 1985 Act – costs demanded more than 18 months after they were incurred.

46. During the seven-day hearing the parties reached an agreement, the terms of which were confidential, as a result of which no point was being taken in respect of s. 20B. This means that any item that is challenged in the Scott Schedule on this ground – for example, reserve fund charges – does not fall to be decided by the Tribunal.

47. The scope of the compromise agreement regarding s. 20B did arise subsequently however, at the resumed hearing on 17 May 2024, and will be addressed below.

Electricity Feed-in-Tariff Scheme

48. One of the issues raised by the Applicants concerns the supply of electricity to the common parts of Blocks A to D. When built, each block had solar panels installed on the roof which generate electricity consumed by each Block, either directly or passed back by the national grid, including the common parts such as the power for lifts and lighting the hallways and staircases. Power that is not consumed by Blocks A to D is passed on to, or remains with, the national grid. Not all the power used by blocks A to D is derived from the solar panels, for example: during the hours of darkness. On those occasions, the power is supplied by the national grid for which a charge is made by the electrical supplier.

49. Under the government backed Feed-in-Tariff ("FIT") Scheme, if registered under the Scheme credit would be provided in respect of electricity charges based on the power generated by the panels, and it was not disputed that such credits would have reduced the electricity charges for the common parts of Blocks A to D. Obviously, it is only charges in respect of the common parts that are relevant, not the charges for power to individual Apartments within each block which fall outside the service charge provisions.

50. It is accepted that Warwick did not register the Respondent under the FIT Scheme during the years 2015 to 2020. No reason has been provided for this. The Applicants stated that they had been told by Warwick that registration had taken place, and suggested registration when they learnt it had not, but no action was then taken by Warwick to register. The opportunity to do so has now passed.

51. Understandably, the Applicants feel aggrieved that the advantage of registration was lost and that there was no reduction in the charges for electricity as a result, particularly at a time when it is said loans were being taken out to cover other service charge expenditure. Therefore, they have sought to have the electrical charges to the common parts reduced by the amount of credit that would have been available had registration occurred, for the years 2016 to 2020.

52. The Applicants have also sought to recover future losses for the years 2021 to 2035, presumably when the Scheme would have ended if the Respondent had been registered, but the Tribunal does not consider that it can entertain this further claim. It relates to service charge years that are not the subject of the current proceedings and fails to recognise that each of the Applicants might cease to own their respective Apartments before 2035.

53. Mr. Dyson raised as a preliminary point a number of reasons why the Tribunal was not able to entertain the reductions for the years 2016 to 2020 in respect of Blocks A to D. it was considered appropriate to deal with his submissions as a preliminary issue during the hearing.

54. First, Mr. Dyson submitted that there is no obligation under the terms of the Lease for the Respondent to register under the Scheme. The Applicants were unable to identify any provision that created such an obligation, and the Tribunal concludes that the Lease creates no legal obligation to do so.

55. Second, a purported prior omission by the Respondent does not fall within the scope of s. 19 of the 1985 Act in considering whether costs were reasonably incurred. The Applicants contend that the costs were not reasonably incurred or were unreasonable in amount because there was a failure to register under the Scheme, but Mr. Dyson submitted that an earlier omission will not be sufficient to challenge whether costs later incurred were unreasonable. He relied on the decision of *Daejan Properties Ltd v. Mathew* [2014] UKUT 206 (LC), a s. 27A application, in which it was held that the fact that repair works were only necessary because of prior neglect or breach of the landlord's repairing covenant did not prevent the cost of such works being reasonably incurred.

56. The Tribunal agrees that similar reasoning would apply here: the only basis on which the charges for electricity can be challenged as unreasonable is by considering the rates of alternative suppliers, not by reference to the failure to register prior to those charges being incurred. There is no evidence concerning the charging rates of alterative suppliers.

57. If the Applicants have a remedy for the omission, whether under the terms of the Lease or on some other basis, that is something that they would have to pursue in a claim in the County Court. The Tribunal does have jurisdiction to

determine a cross-claim by way of set-off, but only in so far as it constitutes a defence to the service charge. Even then, there is a discretion whether it is a claim suitable for determination under the s. 27A jurisdiction. For those reasons The Tribunal considers that it cannot, or should not, deal with that claim, particularly bearing in mind that it extends beyond 2020, and the wealth of other issues it must determine.

58. Therefore, the Tribunal determined that it would not reduce the electricity charges by taking account of what the position would have been had registration under the FIT Scheme taken place.

Qualifying Long Term Agreements ("QLTAs")

59. Section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 contain provisions that require a consultation process to be followed in respect of, amongst other things, QLTAs, that is, an agreement entered into, by or on behalf of the landlord (which will include the Respondent in this case) for a term of more than 12 months in respect of which more than £100.00 is to be recovered from any tenant in any accounting period by way of service charge. In a case such as the present the details concerning, and timetable for, the relevant consultation process prior to entering into a QLTA are contained in Schedule 1 to the 2004 Regulations. Failure to observe the consultation requirements will limit each tenant's liability to contribute to the cost of the qualifying works to the sum of £100.00, but under section 20ZA of the 1985 Act the Tribunal is empowered to dispense with all or any of the consultation requirements, either before or after the QLTA is entered into, so that such limitation on the recovery of costs will be removed. In the Respondent's Statement of Case, dispensation is sought in respect of any QLTA as it was accepted that the consultation process had not been followed. Accordingly, in respect of the agreements that fall to be addressed in the present case there are two issues: was there a QLTA within the statutory definition, and if so, should dispensation be granted?

60. Ms. Morgan-Knight's evidence was that Warwick's Estate System does not allow for any contractor to be issued more than 12 x purchase orders for a monthly recurring contract per year in order to prevent a QLTA arising. The purchase orders have Warwick's terms and conditions printed on the reverse which contain a 28-day termination at any point.

61. Eventually, it was accepted by the parties that the following constituted QLTAs, each of which is a written agreement:

61.1. The contract with BT;
61.2. The contract with Orona in respect of lift maintenance;
61.3. The management agreement between the Respondent and Warwick.

62. There was a dispute concerning the contract with Data Energy Management Services Ltd. ("Data Energy"). The Respondent admitted that under the terms of a draft agreement between Data Energy and the Respondent it would qualify as a QLTA. Ms. Morgan-Knight's evidence, however, was that she had been informed that the written contract had never actually been signed, so that the agreement was never more than one based on purchase orders, as outlined above, and therefore not a QLTA.

63. Nevertheless, there is a letter dated 4 February 2021 from Acuity Law, the Respondent's solicitors, to Hutton's Law, who at that time were acting for some of the Applicants, which covers several matters which had been raised. Under the heading "Transparency of Accounts" there is the following:

> *"The purpose of the Utility Supply Agreement between the client and Data Energy is for them to bill the usage of the units. As requested, please find attached a copy of the Heat Metering and Billing Agreement between Data Energy Management Services Limited and our client."*

The supplied copy was of the unsigned document in the bundle.

64. In the light of such a clear statement by the Respondent's solicitor, the Tribunal concludes that even if the draft document was never signed, it formed the basis of dealings with Data Energy and its terms will have applied. On that footing, it is a QLTA.

65. As regards dispensation from the consultation requirements, the leading decision concerning dispensation is that of the Supreme Court in *Daejan Investments v. Benson* [2013] UKSC 14. According to the guidelines in that case concerning how to approach the issue of dispensation, in the first instance it is for the tenants to identify how they were prejudiced by a failure to follow the consultation requirements and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate. The prejudice that has to be established is more than the failure to consult: that failure must have resulted in prejudice. In respect of QLTAs, any prejudice would be in respect of more favourable terms available from other suppliers of the relevant services.

66. In respect of the BT contract, no alternative contracts were provided by the Applicants for the purpose of comparison and therefore no prejudice has been shown.

67. Concerning the lift maintenance contract with Orona (there are lifts in each of Blocks A to D), in paragraph 7.1 of the Applicants' Reply to the Respondents' Statement of Case, they contend that Orona is a service provider that charges above market rates for maintenance, and rely on two matters in support of this.

67.1. A £5,513.46 quote from Orona for major works, being 141% of a £3,900.00 quote for the same work from its competitor, Classic Lifts. In the Tribunal's view, this is a comparison between competing quotes for certain work and are not related to the maintenance contract as such. It is not possible to infer from this that a contract with Classic Lifts would be better priced or otherwise on more favourable terms.

67.2. £1,186.32 charged by Orona for four elevator guards, being 226% of alternative costs that were available for the same items. The Tribunal will also deal with this point under "Alternative suppliers" below, but for present purposes this is an instance of Warwick acting on the advice of an insurer's lift inspector as to what lift guards would be suitable and does not reflect the terms of the contract itself, and one cannot conclude from this evidence that a contract with a different supplier would have been on better terms.

68. Therefore, the Tribunal does not consider that prejudice has been established in respect of the Orona contract.

69. As regards the management contract between the Respondent and Warwick, a number of criticisms were made by the Applicants concerning Warwick and the standard of service provided. It was also contended that management fees were not increased in accordance with the formula in clause 6.4 of the contract, although no claim is made in the Scott Schedule in respect of this. The Applicants rely on the alleged incorrect calculations solely as evidence of prejudice (though it was not pleaded as such).

70. Even assuming that the Applicants' contentions are correct however, these are issues concerning Warwick's performance, not the terms of the management contract itself, which is the only relevant consideration when determining prejudice under s. 20ZA. It is not possible to say whether hypothetically, performance of a contract by an alternative managing agent would have been better, worse, or about the same.

71. Therefore, the Tribunal does not consider that prejudice has been established in respect of the management contract.

72. The prejudice relied on by the Applicants in respect of the Data Energy contract is set out in paragraph 3.5 of the Applicants' Reply and raises issues concerning double-charging and the way Data Energy dealt with billing. The Tribunal will deal with such matters below, but so far as the issue of prejudice is concerned, again, these are criticisms of Data Energy's performance of its contract and do not address its terms. No potential contract from an alternative provider of services has been produced to enable a comparison. Accordingly, the above observations apply and the Tribunal must also conclude that no prejudice has been established due to failure to consult in respect of the Data Energy contract.

73. In the light of the above, in the absence of prejudice, the Tribunal considers it appropriate to dispense with the consultation requirements in respect of the above four contracts. As a result, and since the failure to consult has not given rise to any additional service charge costs, there will be no change to the service charge items that relate to payment for those services. Although as a term of dispensation the Tribunal sometimes orders the landlord to pay the tenant's reasonable costs in connection with the application for dispensation, the Applicants were not legally represented in the proceedings and will not have incurred any such costs.

Incorrect VAT Charges and Climate Levy Charge

74. Issues over VAT fall into two categories. First, double charging of VAT. There are seven invoices, listed at paragraph 16.3 of Mr. Haddow's report, where the calculation of VAT is shown twice.

75. An example of this is invoice 25897 from October 2016 in respect of electrical repairs. At the top of the invoice details of the charge are given as £316.40 net, VAT of £79.10, and a gross figure of £395.50. At the foot of the invoice the net figure is given as £395.50, VAT of £79.10 and the invoice total of £474.60. Clearly, the figures at the top of the invoice make little sense as VAT on £316.40 at 20 per cent is £63.28, not £79.10, and £395.00 net of VAT is £329.58, not £316.40. As a matter of arithmetic, the figures shown at the foot of the invoice are correct. This confusion is mirrored in the other six invoices.

76. Ms. Morgan-Knight's explanation was that due to human error the wrong net figure and incorrect rate of VAT was used at the top of the invoice, but the correct net figure and rate of 20 per cent was applied at the foot of the invoice. There was no double-charging of VAT and she confirmed in her testimony that it was the amount shown as the invoice total, correctly calculated, which was paid. The Tribunal accepts that evidence so that no adjustments are required.

77. The second issue concerning VAT is that there are gas and electrical supply invoices which show it charged at 20 per cent rather than 5 per cent (the domestic rate) and also a charge for a Climate Charge Levy ("CCL") which does not apply to a domestic supply. There are 11 invoices, listed at paragraph 6.6 of Mr. Haddow's report. It was not disputed that the correct rate of VAT was 5 per cent and that there should have been no CCL.

78. The Respondent's case is that in respect of these invoices, a balancing figure of 15 per cent VAT and the CCL were credited back by the utility broker so that only 5 per cent VAT and no CCL were passed on as part of the service charge. Ms. Morgan-Knight expanded on this in her evidence. The contract for the supply of gas and electricity is in Warwick's name, which is a business, but either Warwick or the utility broker would complete a VAT declaration form with the option for

domestic supply completed, resulting in a 5 per cent charge, not 20 per cent, and no CCL. In respect of any invoices at 20 per cent, a credit note for the 15 per cent difference and the CCL would be provided so that the invoice would be superseded. However, a credit note would not be credited on the invoice system, which does not hold credit notes and which as a general rule are not kept, only supply invoices that have been paid. Nevertheless, a reconciliation would be carried out that would include a credit brought forward. For Block B both invoices and credit notes had been provided to the Applicants for some of the years in issue but for other Blocks and years, only invoices had been supplied. Therefore, the Applicants have not had a full set of information for all four Blocks for all years.

79. The Tribunal considers that not keeping records of credits on an account is potentially problematic, as amounts invoiced and paid will not match unless credits are accounted for. Nevertheless, it accepts Ms. Morgan-Knight's explanation and finds that it is more likely than not that no charges for VAT at 20 per cent nor a CCL were incorporated in the service charge accounts in respect of the eleven invoices that have been queried.

Electricity (Block B) overcharges

80. It is not disputed that during the period 2016 to 2020 there was an electricity overcharge by SSE, the supplier, due to faulty meter readings caused by water penetration to the meter. The precise amount of the correct charges for each of the years 2016 to 2020 is not known, but it is accepted that an overcharge figure of £22,570.01 (inclusive of VAT at 5 per cent) was agreed by Warwick with SSE in 2021. This is shown in SSE's bill of 11 August 2021 as having been applied to the existing balance for Block B of £10,406.76, leaving a credit balance of £12,163.25 to be carried over to the next bill.

81. The bill of 2 September 2021 applies such credit to Block B's usage of £394.18, reducing the credit balance to £11,769.07. According to Ms. Morgan-Knight's evidence, SSE cleared the remaining credit by a cheque to Warwick for that sum, which was deposited in the Cardiff Pointe account and was credited to the relevant service charge item for Block B, so that the whole of the agreed overcharge has been credited to Block B.

82. Mr. Bucknall accepted that full credit has been given, but takes the view that there should be a properly apportioned adjustment to the electricity charge for Block B for the years 2016 to 2020, based on the agreed overcharge figure of £22,570.01, see for example, item B.1209.9 of the Scott Schedule. The Tribunal does not consider that it is necessary to adjust the accounts for the relevant years, however. In this respect, subject to any other adjustments that need to be made, they accurately record the charges actually made for electricity, even though the charges were inaccurate. An overcharge figure was agreed to correct

the error and was subsequently applied to Block B's liability (outside the service charge years currently in issue) so that no further adjustments are required.

Insurance (Block) Charges

83. In considering insurance much time was spent exploring whether Warwick received commission in respect of insurance taken out. According to Ms. Morgan-Knight's statement, any commission covered an administrative charge for handling claims by Warwick, although in her oral evidence she stated that she was unaware of any commission payments, and that insurance was dealt with by a different department of Warwick. The question of commission is not an issue the Tribunal is required to determine however, as it does not affect the service charge save and to the extent that it might affect the reasonableness of the cost of insurance. Otherwise, any issue concerning commission is a question of whether Warwick was entitled to retain it under the terms of the management agreement or should account to the Respondent for the commission.

84. The issue the Tribunal must decide is whether the block insurance figure for 2016 was of a reasonable amount, which has been challenged by the Applicants. Details of block insurance for years preceding and following 2016 are as follows:

2015	£9,238.00
2016	£14,797.00
2017	11,160.00
2018	8,413.00
2019	9,083.00
2020	8,814.00

As is common, the year covered by insurance does not coincide with the service charge year.

85. Although Ms. Morgan-Knight's evidence was that insurance was placed after Warwick's broker has carried out an extensive tender exercise to obtain the best available price for the relevant level of cover in line with standard industry practice, no explanation was provided by the Respondent as to why the insurance paid in 2016 was significantly higher than that paid in the preceding and following years. In the light of this, the Tribunal was satisfied that the cost of insurance was not a reasonable sum in 2016. In determining an alternative figure, the Tribunal has had regard to the overlapping of the service charge and insurance years and takes the 2018 figure of £8,413.00, consistent with alternative quotes for 2017, as a replacement figure for 2016.

Insurance (Block A) charge

86. The Applicants have queried insurance as shown in invoice 52698361 for the period 01.06.2018 to 31.05.19 which appears to overlap with insurance on invoice 27364422 from the previous year for the period 06.07.17 to 05.07.18. Ms. Morgan-Knight's evidence was that she had consulted a colleague and that

this was an error on the invoice, not in the policy itself, so that there was no overlap of the actual policies. The Tribunal accepts that explanation.

Insurance (Engineering) charge

87. This is separate insurance that covers plant, lift, and boilers and is shown in the accounts as a separate item from Block building insurance. The years which the Applicants challenge (covering Blocks A to D) are as follows:

2017	£2,024.00
2018	£1,988.00
2019	2,172.00
2020	5,748.00

For the years 2017 to 2019, not every piece of plant was covered and in 2020 additional cover was provided to include plant on the roof.

88. The Applicants' case is that such insurance could have been obtained at a cheaper cost, and relied on quotes provided by Flats Direct and Abaco in 2017. Mr. Bucknall contended that the availability of lower quotes should be projected forward for future years. As a matter of law, in considering alternative prices there is no requirement that the landlord (here, the Respondent acting by Warwick) should obtain the lowest price in the market, and there may be a range of reasonable decisions which could be reached. So long as the decision falls within that reasonable range the cost will be reasonably incurred.

89. The Tribunal has had some difficulty in following matters, however. In an email of 21 June 2017 from Mr. Bucknall to Sarah Williams at Warwick, he set out the most competitive combination of quotes, with Abaco the cheapest for engineering insurance in respect of each Block. In a subsequent email of 9 July 2017, Sarah Williams set out a table of comparative quotes from Abaco and Flats Direct concerning a range of insurance cover, with Abaco as the cheapest overall, but the table does not appear to include engineering insurance. Below the table she confirms that insurance has been taken out with Abaco, but it is unclear if engineering insurance was also taken out with Abaco. Based on the figures in Mr. Bucknall's email of 21 June 2017, Abaco quoted £361.07 engineering insurance for each block, a total of £1,444.28, compared with the figure of £2,024.00 paid for that year.

90. In any event, the Tribunal is not satisfied that it would be carrying out like-for-like comparisons without knowing the full details of the policies being compared. There are also other potentially relevant factors – an insurer may offer a discount for new business, not repeated in subsequent years, and/or a discount for including insurance cover under a number of heads, rather than just one.

91. Accordingly, the Tribunal is not satisfied that the engineering insurance for 2017 fell outside the reasonable range of market rates. Nor does it consider that comparative differences in 2017 can reliably be projected forward for the years 2018 to 2020.

Boiler maintenance

92. There is an invoice dated 16 February 2018 from Source Site Services Limited to the Respondent c/o Warwick for a total of £785.46 inclusive of VAT in respect of plant room inspections at Prospect Place. The Applicants claim that the invoice related to other premises and should not have been paid. Ms. Morgan-Knight's evidence was that the work was carried out in respect of Cardiff Pointe – as shown in the corresponding purchase order – and that the reference to Prospect Place was an error as she had just moved to managing that property, and which has no boilers. The Tribunal accepts that explanation so that no adjustment is required.

Charges applied to Building rather than Estate Services

93. There are a number of items where the Applicants contend that charges have been passed on as part of the service charge for one or more Blocks whereas they should properly be treated as Estate Services and therefore subject to a one-ninety eighth share per apartment rather than the relevant Service Charge Percentage for each Apartment. The items fall into the following categories.

    93.1. Located on the roof of one or more Blocks is a lightning conductor, and on the roof of Block B a TV aerial, satellite dish and faraday cage. It was accepted by Mr. Dyson that these items provided services for, or were for the benefit of, all 98 units and not just Blocks A to D to whom costs associated with their testing, maintenance, and repair have been charged during 2015 to 2020 on the footing that they were Building Services. Such costs qualify as Estate Service costs for service charge purposes so that appropriate adjustments will have to be made in respect of such costs.

    93.2. As regards the electricity costs for powering those of the above items that consume electricity, all powered by Block B's circuit, in the absence of separate metering there is no precise means of apportionment. The Applicants have provided Table 14.4 in their Statement of Case which seeks to calculate figures for each year based on a 100w load and an average price per kWh, but in the absence of expert evidence on consumption and calculation the Tribunal is sceptical of the extent to which such detailed calculations can be relied on. Instead, the Tribunal has roughly averaged out such figures and finds that a figure of £100.00 per annum should be credited to Block B's Building Services in respect of electricity consumption for 2015 to 2020, and that there will have to be a corresponding debit for Estate Services during those years.

    93.3. It is only recently that Estate lighting, external to any Blocks or other units on the Estate, has been monitored by a separate meter. Prior to this the

cost of such lighting formed part of the charge to one or more Blocks. The Applicants contended Blocks B and C, but according to Ms. Morgan-Knight there had been an investigation by the electricity company and it was only Block B which was powering Estate lighting, which the Tribunal accepts. It was not disputed that the cost of such lighting is an Estate Service cost, but in the absence of separate metering for the years 2015 to 2020 it is impossible to carry out a precise apportionment. Ms. Morgan-Knight said she had been told consumption by Estate lighting was virtually nil.

93.4. The Applicants have provided at table 14.3 figures for external lighting taken from the advance service charge accounts for each of the years 2015 to 2020. In the Tribunal's view, and in the absence of any other means of calculation, these are appropriate figures for part of Block B's electricity charge being assigned to Estate services, namely: £686.00 for 2015 and £800.00 for each of 2016 to 2020.

93.5. Insurance for directors and officers of the Respondent: Mr. Dyson accepted that this was not a charge against the Blocks but an Estate Service cost.

Gas deposit

94. The gas supply contracts were moved from SSE in 2019, which remained the supplier for electricity. The Applicants have raised a query as to what happened to security deposits and accumulated interest in respect of Blocks C and D.

95. Ms. Morgan-Knight's initial written evidence was that she had been informed that the deposits had been applied to the electricity accounts, but on making further enquiries her evidence was that on 14 November 2023 two cheques were received in respect of the deposits for those blocks, together with interest, for the sums of £1,408.31 and £1,088.50, which have been paid into the service charge account. At the time she gave her evidence it was the intention of Warwick to have them applied for the 2023 service charge year.

96. In cross-examination, Mr. Bucknall took Ms. Morgan-Knight through statements in respect of the electricity account after closure of the gas account to show that there was no evidence of the deposits having been applied as credit. Her explanation was that the security deposits would not be shown in such statements, as distinct from the deposits account, as they remained deposits rather than credits until the relevant sums were paid in November 2023.

97. Mr. Bucknall questioned the reliability of Ms. Morgan-Knight's evidence but in the absence of any evidence to the contrary the Tribunal accepts what she said concerning the payment of the deposits in November 2023. Mr. Bucknall also submitted that the deposits should be shown as credits to the electricity account for the 2019 service charge year but the Tribunal considers that absent the

specific application of the deposits until 2023 no adjustment is required for 2019. The sums should be shown as credited for 2023.

Alternative suppliers

98. There are two matters challenged on the basis that the item or service in question could have been obtained more cheaply. The above observations concerning whether cheaper prices are automatically unreasonable apply here.

99. First, lift guards for each of the four Blocks which were purchased in 2016 on the recommendation of the insurer's lift inspector at £296.58 each. The Applicants relied on two comparables from 2023, at £129.00 and £139.00 each, together with postage and packing. The implication is that in 2016 the prices would have been no higher, and probably lower.

100. In the Tribunal's view, given the health and safety concerns, in 2016 it was appropriate that Warwick acted on the recommendation of the lift inspector, so that notwithstanding the alternative figures from 2023 the cost was reasonably incurred.

101. The second set of items challenged are charges for electrical repairs, being lamp replacement costs, for the years 2015 to 2019. The point of comparison is three invoices for similar work to various Blocks in 2020, carried out by Regans Electrical Services, which charged separately for bulbs and labour.

102. Superficially, the price "per item" might seem higher for some of the invoices in the 2015 to 2019 period, but some of those items include labour, which is not billed as a separate item, and cover varying work per unit prices. For example, invoice 95414 of 21 July 2015 from United Property Maintenance Ltd is a single charge of £50.00 net of VAT for replacing 2 lamps, and invoice 97742 of 1 September 2015 is £43.75 net of VAT to "rectify lights on the ground and first floor". Other invoices contain a more detailed breakdown, for example, invoice 10035 of 6 January 2019 from Source Site Services Limited has a call out charge of £55.00, labour of £30.00 and materials at £25.72, all net of VAT.

103. This means that it is not possible to carry out a proper side-by-side comparison where the work, labour and materials, and the calculation of costs differ. For example, invoice 3874 of 6 October 2020, one of the comparables relied on by the Applicants, charges labour of £45.00 for the replacement of a defective lamp in each of Blocks A, C, and D (the hourly rate and how long the work took are not specified) whereas invoice 340008 of 11 April 2018, one of the invoices challenged by the Applicants, charges labour at £25.00 per hour, separately for three items of work, each of which took an hour or less.

104. Therefore, the Tribunal does not consider it can reliably extrapolate and compare from the three 2020 invoices and is unable to find that the various invoices for 2015 to 2019 do not represent costs within the range of market rates available during that period.

Water Damage at Block B

105. This relates to the costs of clean-up after a flood caused by the Kier Group (the site builder) when retro-fitting valves in hot water pipes at Block B in 2017. The Respondent was liable to arrange for such repair works under the terms of the Lease, which have been passed on to the apartment owners at Block B by way of service charge. There is also the issue of the unauthorised consumption of water from Block B during the flood. The Applicants contend in paragraphs 2.2 and 2.7 of their skeleton argument that compensation has been paid by Kier to the Respondent in respect of these matters so that there must be some adjustment in respect of the cleaning of communal areas, fire equipment maintenance, and the water account, details of which appear in the Scott Schedule.

106. Ms. Morgan-Knight's evidence was that although Kier has accepted liability it is still subject to a final account in terms of its overall liability in respect of the site and its development, and further adjustments are to be made. Kier has agreed that compensation is to be paid but the final figure has not yet been determined. Once that takes place an appropriate sum will be credited to the service charge account.

107. The Tribunal accepts that the amount of compensation to be paid has not been finally resolved, and no payment has been made, so that it is unable to take the matter further at present. There would appear to be no dispute however, that credit will be provided in respect of the compensation payment.

Gas/Heat charges

108. The issues that arose under this head concerned the individual billing of lease owners for heat consumed in their apartments, for which separate meters operate, and the heating of the radiators in the common parts of each Block. In both cases, heat is provided by gas boilers in the basement of each Block. The dispute concerns the service charge years 2017 to 2020 since initially, Kier paid the entirety of gas charges, for both Apartments and common parts.

109. The Applicants' first contention, as it appears in paragraph 2.5.7 of their skeleton argument, is that gas costs should be recharged in their entirety in accordance with paragraph 2.9.12 of Schedule 7 to the Lease, set out in paragraph 20 above. That is to say, the entirety of gas charges for each block are a Building Service, recoverable by way of service charge in each leaseholder's Service Charge Percentage and there is no liability for gas resulting from each Apartments' separate meter.

110. For convenience, paragraph 2.9.12 is repeated again, being one of the items listed as constituting Building Services:

> *"discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Retained Parts, including without prejudice to the generality of the above, those for water, electricity, gas and telecommunications."*

111. "The Retained Parts" is defined by clause 1.1.24 of the Lease as follows:

> *"means those parts of the Estate other than:*
>
> *1.1.24.1 the Apartment and*
>
> *1.1.24.2 the other Apartments included in the leases of the Other Apartments, but includes without prejudice to the generality of the forgoing, the Access Road, the roofs and roof space, the foundations, and all external structural or load-bearing walls, columns, beams, joists, floor slabs and supports of the Building the structure of the balconies (including any balcony railings or walls) and such other parts of the Building as are not included in the Apartment and are not and would not be included in premises demised by leases of the Other Apartments if let on the same terms as this Lease"*

112. Accordingly, the Apartments are not included as part of the Retained Parts and costs in respect of gas to the Apartments do not fall within the scope of paragraph 2.9.12 and do not constitute Building Services recoverable by way of service charge.

113. Schedule 5 to the Lease contains the Tenant's Covenants, paragraph 6 of which (costs of Services consumed) provides:

> *"The Tenant must pay to the suppliers all charges for electricity, water, gas, telecommunications and other services consumed or used at or in relation to the Apartment and the Car Parking Space, including meter rents and standing charges, except any such charges that form part of the Expenses of the Services and of insurance to which the Tenant contributes through the Service Charge, and must comply with the lawful requirements and regulations of the respective suppliers."*

114. There is a clear distinction in the Lease therefore, between the liability of a lease owner to pay for gas consumed or used at the Apartment, and all associated charges, and the liability to pay for charges for gas in respect of the Retained Parts, which exclude the Apartments, by way of service charge. Indeed, such a

division of liability is what one would expect. Given the inevitable disparity of gas consumption between individual Apartments it would make little sense for such costs to form part of a service charge.

115. Therefore, the Tribunal does not accept that all gas charges form part of the service charge, payable in the amount of each lease owner's Service Charge Percentage. The gas charges attributable to each Apartment are the responsibility of the lease owner.

116. There is then the question of how the cost of gas for each Block, excluding the Apartments, is calculated. This was labelled the "X minus Y" issue. The calculation has been carried out by taking the total cost of gas consumption for each Block for a service charge year (the X figure) and deducting from that the sum total of the cost of gas consumed by the Apartments in that Block, with the heat units having been converted into gas units by Data Energy for billing purposes (The Y figure). The result after such deduction should produce the cost of gas for heating the common parts and attributable to heat loss through pipes, and will be the service charge cost under paragraph 2.9.12 of Schedule 7. One would have thought this was a relatively straightforward matter, but this has not proven to be the case.

117. The issue was dealt with initially at the seven-day hearing by Ms. Morgan-Knight, who relied on information and data that had been provided to her by colleagues at Warwick. For the seventh day of the hearing she produced a spreadsheet that purported to show the Y figure but did not include all the Apartments for the relevant years, and during cross-examination by Mr. Bucknall it was put to her that the Y figure for 2017 to 2020 was significantly higher than the X figure, getting on for double. Ms. Morgan-Knight was unable to deal with such matters and her evidence was cut short by family commitments.

118. During the Tribunal's subsequent deliberations in January 2024 it was felt that on the material available at that point, no reliable conclusions could be come to and that a further hearing would be required to address the X minus Y issue. Therefore, directions were made for the exchange of Statements of Case on this issue, with the Respondent going first, together with any supporting witness statements and documents relied on. Unfortunately, it was not until 17 May 2024 that a hearing could be arranged due to the time the parties requested for complying with the timetable and finding a date that suited all those involved.

119. On 17 May, in addition to the hearing bundle and documents available for the seven-day hearing, the Tribunal had a Statement of Case from the Respondent and a witness statement and exhibit (JP1) from Mr. Payne. The Applicants provided a Statement of Case in reply, with a substantial spreadsheet and commentary in support (A1) together with various heat bills from Data Energy,

but no witness statements. As mentioned above, Mr. Payne was cross-examined by Mr. Bucknall.

120. Starting with exhibit JP1, this is a spreadsheet compiled by Mr. Payne with tabs for 2017 to 2020 and a summary tab. For each year he has set out the total gas expenditure for each block (X) and the Data Energy Billing in respect of each Apartment (Y). There are some potential issues with this, however.

120.1. Mr. Payne accepted that the for each Block in each year, the value of X minus Y differed from the amounts shown in the service charge accounts, so that the Tribunal would be providing fresh figures.

120.2. In her evidence in December 2023, Ms. Morgan-Knight stated that it may have been the case that the total gas cost included admin fees that had wholly or partly been included in the billing for the Apartments, which would amount to double-charging, and that adjustments might have to be made for this. In paragraph 6.4 of his statement of 15 March 2024, Mr. Payne states:

> *"These costs may include the admin fee, which would need to be deducted to come to the correct figure. It is our intention to reverse the duplicated admin fee by reissuing the accounts."*

In his oral evidence, Mr. Payne said that he was still unsure if and to the extent that such an exercise would have to be carried out, but in the Tribunal's view there had been sufficient time for him to properly investigate the point and reach a conclusion. It was unsatisfactory for any revised figures determined by the Tribunal to be subject to this outstanding issue.

121. In responding to JP1, the Applicants have undertaken a complex three-stage analysis, the details of which are set out on separate tabs in the spreadsheet A1.

122. *Analysis 1* – Table 7 extracts the X and Y figures from JP1 and shows the value of X minus Y for each year, compares those values with the amounts declared in the corresponding service charge accounts, and states the amount of any overcharge.

123. Mr. Payne checked the figures for 2017 and 2018 but due to pressure of work did not have time to check any other years. In the absence of any specific challenge, the Tribunal was prepared to accept the figures set out by the Applicants. Mr. Payne did challenge the 2018 accounts figures shown in the tables on the basis that they differed from those shown in a revised set of accounts that had been prepared for 2018. In the Tribunal's view, the amounts shown in the accounts have no direct bearing on it reaching corrected figures and therefore makes no determination whether it was the first or second set of 2018 accounts with which the comparison should be made. It appears from Mr.

Haddow's report that there were also two sets of accounts for 2020 (see paragraph 160.2 below) but the same observations apply: in considering the correct X minus Y figures the Tribunal is making no comparison with the figures that appear in any version of the service charge accounts.

124. *Analysis 2* – This consists of Tables 8 to 12, each of which set out adjustments that the Applicants contend should be made to the figures extracted from JP1 and shown in Table 7.

125. Tables 8 and 9 contain adjustments to reflect 'double-recharging' in the entries in JP1 (Table 8) and the inclusion of both revoked and reissued invoices (Table 9). Although Mr. Payne had not checked that the adjustments in tables 8 and 9 were correct, he accepted that there was some double-charging and inclusion of revoked invoices. He argued however, that although such matters would affect the final service charge figure for the year, such overpayments would eventually balance out in terms of payments made, almost certainly by 2020. That may be so, but the Tribunal considers it best to include the correct service charge figures in respect of gas – or at least as close as it can get – and is prepared to make the adjustments set out in Tables 8 and 9.

126. Table 10 is headed "Identification Of Gas Costs (X) Recharged For A Period Before The Declared Gas/Heat Charging Start Date". Both the Tribunal members, Mr. Payne, and the Respondent's legal representatives did not understand what this meant and what Table 10 purported to show. At the hearing on 17 May, Mr. Bucknall provided an explanation: the start date in question was 1 November 2018 in respect of Block A, which he claimed was after Kier ceased paying all gas charges in respect of Block A and the date from when the X minus Y calculation could properly be calculated. It is accepted that Table 10 states that the data is extracted from Tables 1 to 4 of A1 and the "2018 Gas" tab, and that the column heading "Reason for Disputed Cost" contains entries which state "Charging tenants of Block A for gas and heat commenced on 1 November 2018" and the column "Category Of Disputed Cost" contains entries which state "Recharging For A Period Before The Declared Gas/Heat Charging Start Date". Nevertheless, without Mr. Bucknall's narrative – which joined the dots as it were – it was by no means clear precisely what was being alleged. Mr. Bucknall complained that having only been allowed 2 pages for the Applicants' Statement of Case in respect of the X minus Y issue, there was insufficient space to provide a clearer explanation, but it could have been included in a witness statement or commentary within A1.

127. Mr. Dyson objected to Table 10 on the basis that the Applicants' reasoning was insufficiently clear and as a result the Respondent had not had the opportunity to check the factual basis for the start date claimed in respect of Block and if necessary, adduce evidence on the point. The Tribunal agrees. Although the

issue and chain of reasoning was no doubt clear in Mr. Bucknall's mind, without a fuller explanation as to how the various points and tables are linked it is not clear to others. Therefore, the Tribunal will disregard Table 10.

128. Table 11 concerns gas costs that were recharged later than 18 months after they were incurred, in other words, the application of s. 20B of the 1985 Act. As noted at paragraph 46 above however, during the seven-day hearing the Tribunal was informed that the parties had reached a compromise in respect of s. 20B issues, the terms of which were confidential. Mr. Dyson argued that as result of that agreement, the Applicants could not raise s. 20B matters in respect of the gas costs. Mr. Bucknall contended that JP1 was fresh evidence that post-dated the agreement and the compromise did not apply.

129. The Tribunal was provided with the following extract from the compromise agreement:

> *"Upon the parties agreement in full and final settlement of all matters touching upon or arising out of the Applicants' claim under or relating to section 20B of the Landlord and Tenant Act 1985*
> *And upon the Applicant Mr. Andrew Bucknall confirming that he has authority to act on behalf of David and Pamela Perry and Dr. Ali Alalaiwi who are also bound by the terms of this agreement"*

130. In the Tribunal's view, such words are sufficiently wide in scope to cover any s. 20B point raised in the proceedings. The issue of gas costs was raised at the outset and the fact that JP1 is evidence produced after the compromise agreement does not change that. Therefore, the Tribunal will disregard Table 11.

131. Table 12 involves a two-stage process. First, it sets out heat costs (Y) underdeclared in JP1 in respect of the Applicants, who have access to their own heat bills but not that of other Apartments. This is based on an accruals basis comparison between individual bills to the Applicants and the Y figures that appear in JP1 (according to Mr. Payne, also on an accruals basis), as set out in Table 6, the "Applicants Heat" tab of A1. As to whether those figures should be preferred to the figures provided to Warwick by Data Energy in JP1, on balance the Tribunal considers that the actual bills should be preferred.

132. The second stage of Table 12 is a projection of these figures to cover all the Apartments of all four Blocks. In the Tribunal's view, this is an unwarranted inference and a matter of speculation. Absent invoices for all the Apartments one cannot know whether they were also in error and if so, the extent.

133. Therefore, the Tribunal accepts the Applicants' adjusted Y figures but will not adopt the projection.

134. *Analysis 3* – This is an application of Tables 8 to 12 to the figures in Table 7 and shown in Tables 13 to 16 in respect of Blocks A to D, and combined in Table 17. As set out above, the Tribunal has not accepted all the adjustments in respect of Tables 8 to 12, only Tables 8, 9, and part of 12. The spreadsheet provided as an appendix to this decision sets out the results.

135. It should be noted however, that there are some instances of the final X minus Y values being negative figures: Block A for 2020, Block B for 2020, and Block C for 2019. This should not be the case since in principle the value of the function X minus Y should be greater than or equal to zero. The Tribunal is unable to determine why this is so, but it can do no more than work with the data provided. The result for those years however, will be that the service charge liability will not be a negative figure, but zero.

136. There were some additional points raised by the Applicants that should be addressed. First, there is reference to the absence of Heat Supply Agreements, that is, agreements between each Apartment owner and the Respondent, which is named as the billing agent in the lessee charging statements. The Tribunal has the following observations.

136.1. Even though there may have been no signed agreements, it seems likely that a contract will have arisen as a result of the provision of gas to each Apartment, the rendering of charging statements (gas bills) and their payment.

136.2. Even if there were no liability for Apartment owners to pay for the heat consumed by their Apartments, a Y figure would still have to be used to calculate the value of X minus Y. Otherwise, if X alone was used the entirety of the gas consumption, including that of the Apartments, would be a service charge expense. That would be contrary to the terms of the Lease considered above.

137. Second, the Applicants contended that the Respondent was in breach of the Heat Network (Metering and Billing) Regulations 2014 by failing to notify the Secretary of State of the heat networks operated by the Respondent before 22 March 2019. The Tribunal makes no findings in respect of such matters as this issue has no bearing on the calculation of the service charge for gas.

HIU maintenance

138. Data Energy was appointed as an agent by Warwick to provide a service for billing leaseholders for each Apartment's usage of hot water via a Heat Interface Unit (HIU). The Blocks were set up with HIUs and submeters to apportion the relevant costs, which has been according to the X minus Y formula.

139. The Applicants case in respect of what they have labelled – somewhat misleadingly – "HIU maintenance" is difficult to follow. There is a summary provided in the Applicants' comments at A.2017.12 of the Scott Schedule in the following terms:

> *"HIU Maintenance (Actually Telecoms for Remotely Reading Heat Meters in Principle) recharges are disputed while paragraph 2.9.12 of the lease agreement specifically defines that gas costs to the Retained Parts are to be recharged through Service Charges, and while gas costs are recharged in full through Service Charges attributed to the Gas Service Charge category, and while the same energy is double-charged by additional charges in the form of heat charges issued directly to Demised Premises. Costs attributed to the Heat (Demised Premises), Heat (Retained Parts), Heat Administration and HIU Maintenance (actually Telecommunications for remotely reading heat meters in principle) Service Charge categories are irrelevant due to the lease agreement defining that gas costs are to be recharged through Service Charges according to each lessee's Service Charge Percentage with no special processing, and due to the gas costs already being recharged in full through Service Charges. Furthermore, the internal system was not configured to transfer heat meter readings remotely.*

140. The dispute appears to be therefore, over fees or charges made in respect of Data Energy's services and possibly other costs incurred and where the liability for them ultimately rests. As regards the inclusion of the costs of this service in gas charges for each Apartment, this could qualify as a cost of services consumed under paragraph 6 of Schedule 5 to the Lease. This is an issue concerning the charging for heat to the Apartments and is not a service charge issue however, other and to the extent that it affects the Y figure in calculating the service charge for gas under the X minus Y formula.

141. The costs of the service in respect of Building Services would qualify as a charge under paragraph 2.8.12 of Schedule 7 to the Lease, and to the extent that the costs related to actual maintenance and repair of the Communal Heating System, they would fall within paragraph 2.8.13.

142. Therefore, in principle, Data Energy's charges, and any other charges other than the gas consumed, can be divided between Apartments and communal areas.

143. The Applicants have expressed concern that there may be a duplication or overlap in relation to such charges, so that they could be paying more than once for the same service.

143.1. As part of the management fee to Warwick which according to the services listed in Schedule 1 to the management agreement includes "Issuing gas demands to leaseholders once the building management system is live".

143.2. The admin fee in gas invoices for each Apartment.

143.3. Possibly, an admin fee in calculation of the X figure (discussed above).

143.4. Charges in the service charge accounts under different costs centres: "Gas Costs – Admin Charges" and "Communal Heating Admin Charge".

144. The Tribunal appreciates such concerns, but it does not consider it is able to make any specific findings or adjustments on the material it has before it.

145. There is what appears to be an additional point concerning the cost of the remote reading of meters, which the Applicants contend was an unreasonable charge as the system was not configured to do so, and for a period manual readings were used. It is said that this was confirmed by the company that came to fix the system. Ms. Morgan-Knight's evidence was that there had been problems with the system and that the BT Broadband meter had been disconnected for meter reading in 2017/18 but it had still been used for monitoring purposes.

146. Mr. Bucknall submitted that the system was not properly reconnected until 2020, and relied on an invoice of 17 June 2020 from Pure Facilities Management in support of this, "To supply IP addresses and connectivity to the remote system from the Plant Rooms". However, this document was not put to Ms. Morgan-Knight in cross-examination as she had left the hearing at this point, only the comment from A.2017.12 quoted above, which does not detail this point.

147. In the light of the incomplete and equivocal evidence on this issue the Tribunal does not feel it can make reliable findings that would lead to any adjustments.

Reconciliation overcharges

148. A considerable number of service charge items have been challenged by the Applicants as not recoverable in the amount stated in the service charge accounts or at all by reason of the figures identified in the Scott Schedule, extracted from the accounts, not reconciling with invoices or there being no supporting invoice that has been disclosed. In the final column of the Scott Schedule – "Group Category" – these items have been identified as Reconciliation Overcharges. A word search for "Reconciliation Overcharges " in the Scott Schedule produces the result of 408 cells, though many of these items are repeated and apportioned across Blocks A to D. According to the Summary Responses tab in the Scott Schedule, reconciliation overcharges amount to £54,602.26 over the period 2015 to 2020.

149. There has never been an audit of the service charge accounts, and paragraph 2.1 of Schedule 7 to the Lease does not require that the accounts be audited. The view taken by the RICS and the accountancy profession is that no audit is required unless expressly provided for in the lease, see: paragraph 7.10 of the RICS Service Charge Residential Management Code, 3rd Edition and paragraph 3.1 of TECH 03/11 Residential Service Charge Accounts, the relevant guidance for accountants.

150. Confirmation that there has been no audit can be found in the notes to the accounts prepared by Warwick and the certification provided by Santry Davis, chartered accountants. Nor has there been an audit by Mr. Bucknall or Mr. Haddow, as neither would have access to all the information required, such as all the underlying data and explanations provided or bank statements.

151. It is clear from Mr. Haddow's report and his testimony at the hearing that the task which he had been instructed to undertake, and felt able to carry out, was in a number of respects different from the analysis provided by the Applicants (principally, by Mr. Bucknall),. He said that in carrying out the reconciliation exercise the financial cost involved and time required had not allowed him to go into the same detail as the Applicants had done: it was not possible to reconcile and verify every item but he considered caution should be applied in relying on the Applicants' figures. His general observation in paragraph 2.3 of his report was that:

> *"It has not been possible to follow or review all of the amounts claimed in the Applicants' Statement of Case and Scott Schedules and therefore I cannot provide an alternative figure in all instances nor provide a corrected calculation. Therefore, the best I can do to assist the Tribunal is provide an overall analysis of each of the claim categories and the work that has been undertaken to provide the comments summarised above plus provide an alternative figure for each loss category, where it is possible to do so."*

152. Mr. Haddow carried out sample checks of the Applicants' calculations and found apparent errors and/or inconsistencies. One of these formed the basis of what was the Respondent's standard reply to reconciliation overcharges in the Scott Schedule, whatever the alleged overcharge might relate to:

> *"Some invoices appear to have been attributed to the wrong Block by the Applicants and, in some cases have been double counted in the Applicants' calculation of loss e.g. Block A and Block D includes the same cleaning invoice (invoice no. 1538) in 2016 for the full amount of £78 when this invoice appears to relate only to Block D.*

The Applicants say Warwick did not disclose invoices for certain charges. The bundle of documents include some of the invoices said not to have been disclosed."

153. Mr. Bucknall accepted there was a double calculation in the item identified, but one cannot conclude from that single instance that all or even a significant number of the Applicants' figures are incorrect. In his testimony Mr. Haddow provided a few more examples, and stated that when checked "very often" the item in the Scott Schedule was not supported. It is difficult to understand however, why he or his staff did not compile a list of mistaken items as they went through sample checks and include them in a schedule to his report. The list would not purport to be complete but it would have given some indication as to how extensive these errors were. Mr. Bucknall was justified in submitting that if the errors were not identified, how could he respond?

154. Of more significance is Part 7 of Mr. Haddow's report that deals with the reconciliation of the signed accounts with invoices. The table at paragraph 7.3 compares the total figures for each year in the signed accounts with the expenses shown in Warwick's BOSS schedule, a schedule of invoices for 2015 to 2020 that had been incurred by the Respondent for each of those years. None of the figures are identical, with a greater sum in the BOSS Schedule for 2015, 2016, 2018 and 2020, and a higher sum in the signed accounts for 2017 and 2019.

155. In respect of the years 2015 and 2016, a further set of comparisons were carried out, using the additional information provided by Warwick. For 2015 this was a Signed Accounts Workbook in Excel format with following tabs: Paid Report, Spend Report and Invoice Bundle. For 2016, there was also a signed accounts workbook with the same items. In his analysis Mr. Haddow excluded from the reconciliations invoices that are dated or relate to costs outside the financial year, and where there are invoices that cover two financial periods he has made the appropriate apportionment. He did not analyse figures on a Block basis but only sought to reconcile the total figures.

156. Although Mr. Haddow notes certain discrepancies, he concludes his comparisons for 2015 and 2016 with the observation that the charges in the signed accounts, "broadly reflect the underlying records including the total invoices received in the period".

157. In respect of the years 2017 to 2020 no similar additional supporting information was supplied by Warwick, nor apparently requested by Mr. Haddow, and Ms. Morgan-Knight was unable to provide an explanation for this when asked during her testimony. Nevertheless, Mr. Haddow states in paragraph 2.4 of his report that,

"I have also checked the total costs per the invoices for each period and compared them to the costs recorded in the signed accounts and note that they broadly reconcile."

158. There was some debate as to what "broadly" meant in this context and Mr. Haddow said that one would not expect service charge accounts to be prepared to the same standard as the audited accounts of a PLC. It would seem however, that some years are broader than others.

159. The position therefore, is that according to the Applicants' reconciliation exercise, over the period 2015 to 2020 there has been a total overcharge of £54,602.26, but according to Mr. Haddow's analysis, approaching matters in a different, more broad-brush way, any overcharging was substantially lower than this.

160. The Tribunal has also had regard to the following matters which might have affected the reconciliation exercise.

160.1. There have been two sets of accounts for 2018, original and revised (see above), but it would appear that Mr. Bucknall used the original figures as those were used for the purpose of determining the 2018 service charge. Given that those figures have been revised however, and no account has been taken of this, there is doubt as to the extent to which the Tribunal would be making out-of-date adjustments by relying on the Applicants' analysis for that year. Presumably, service charge liability will be adjusted for 2018 to reflect the revised accounts if this has not already taken place.

160.2. Although original and revised accounts for 2020 are referred to in Mr. Haddow's report he makes no mention of two sets of accounts for 2018 – presumably, he was unaware of this. Nevertheless, the same observations apply.

160.3. Under the relevant RICS and accountancy guides, the accounts should have been prepared on an accruals basis, that is, an item of expenditure is shown in accounts when it is incurred, not when it is paid, with appropriate apportionments in respect of invoices that span accounting periods. Although Ms. Morgan-Knight stated that she believed that the signed accounts were prepared on an accruals basis, it was clear from her evidence that a number of items were accounted for on a cash basis, for the period in which they were paid even if the invoice related in whole or part to a previous accounting period. Given that Mr. Bucknall, and Mr. Haddow, adopted a strict accruals basis in calculating their figures, some of the differences when attempting to reconcile payments against invoices might conceivably be due to this, and not comparing like with like.

160.4. As Mr. Haddow observed, it is possible that discrepancies between the signed accounts and BOSS Schedules might have resulted from year-end adjustments. Paragraph 2.2 of Schedule 7 to the Lease allows expenditure in one year not to be declared until the following year.

160.5. Items have been included in a different costs centre categories in different years, which could lead to difficulties in identifying items.

160.6. As mentioned at paragraphs 78 and 79 above, credit notes were not included on Warwick's invoice system.

160.7. As regards missing invoices, inevitably invoices or receipts can be lost or misplaced. Mr. Bucknall said that where they had been replaced by a handwritten note or the like, he had included the item, and Ms. Morgan-Knight stated in cross-examination that she had provided missing invoices when she could. It is unclear whether there remain any items which have been discounted due to lack of any paper record.

160.8. Significantly, the service charge accounts were certified by chartered accountants, who also had access to bank statements. Although it is unlikely that Santry Davis assessed the adequacy of Warwick's accounts with the forensic detail of Mr. Bucknall and Mr. Haddow, the Tribunal must give some weight to the certification.

160.9. The Applicants were provided with an opportunity to instruct their own expert in response to Mr. Haddow's report but did not do so. Mr. Bucknall is not a qualified accountant, albeit that he says his analysis and figures were confirmed by an accountant who assisted him.

160.10. In support of the reconciliation overcharges issue and generally concerning Warwick's handing of matters, Mr. Harris relied on a report of 13 March 2023 by the RICS Disciplinary Panel arising out of complaints concerning Warwick's dealings in the retention of commission, the management of client accounts, and other property management issues. Mr. Harris drew attention to references in the report to a lack of integrity, "chaotic administration" and other criticisms of Warwick's performance as managing agents. The report does not deal with any of the complaints raised in respect of Cardiff Pointe however, which were disputed by Warwick, as the Panel considered it disproportionate to pursue them in the light of Warwick's admissions in respect of other complaints which did not concern Cardiff Pointe. In the Tribunal's view, in considering Cardiff Pointe, it would not be appropriate to apply or rely on observations and conclusions in the report concerning other properties.

161. In the light of the above, the Tribunal feels that there are sufficient doubts to prevent it from adopting the reconciliation overcharges contended for by the Applicants. It is not persuaded that the service charge accounts for the years in issue should be adjusted to reflect the figure claimed.

Accounts certification

162. The Applicants contend that in the light of the many errors that were not corrected, particularly in respect of reconciliation overcharges, the service provided by Santry Davis in certifying Warwick's service charge accounts must have been so inadequate as to render any payment unreasonable, and the charges for this service should be assessed at zero.

163. For the reasons set out above, the Tribunal has not adopted the reconciliation overcharges claimed by the Applicants, and it is not satisfied that the certification, which expressly did not amount to an audit, was of no value. There was no expert evidence in respect of the quality of Santry Davis' services, other than possibly Mr. Haddow's answer to Mr. Harris' question of how he would rate those services on a scale of 1 to 10. His reply was that he felt unable to answer the question.

Section 20C

164. Under s. 20C of the 1985 Act, where the lease permits the recovery of costs as a service charge the Tribunal may order that some or all the costs incurred by the landlord in connection with the Tribunal proceedings are not to be included in the service charge payable by the tenant. The Tribunal may make such order as it considers equitable and regard will be had to what extent the tenant has been successful and the proportionality of any reductions, together with any other relevant factors. In making an order under s. 20C the Tribunal makes no determination as to the amount of costs that are actually recoverable under the terms of the Lease, or whether such costs were reasonably incurred or reasonable in amount. Any challenges on those grounds would have to be dealt with on an application under s. 27A.

165. Without deciding the point, it is arguable that the Respondents' costs of these proceedings might fall within one or more of the provisions of Schedule 7 to the Lease. The Applicants seek an order under s. 20C in respect of such costs being recovered by way of their service charge. In respect of that application the following directions should apply.

165.1. The Applicants should serve written submissions (of no more than 3 pages) by email to the Tribunal and the Respondent's solicitors by 5.00 pm on 18th June 2024.

165.2. The Respondent is entitled to reply by written submissions (of no more than 3 pages) to be served by email on the Tribunal and the Applicants by 5.00 pm on 2nd July 2024.

165.3. The Applicants are entitled to respond by written submissions (of no more than 2 pages) to be served by email on the Tribunal and the Respondent's solicitors by 5.00 pm on 16th July 2024.

166. There will then be a paper determination by the Tribunal on the issue.

Dated this 4th day of June 2024.
Colin Green
Tribunal Judge

APPENDIX

Cost	2017	2018	2019	2020	Total
BLOCK A					
Gas Costs (X) Declared In Exhibit JP1	£0.00	£4,797.73	£7,957.08	£6,668.36	£19,423.17
Heat Costs (Y) Declared In Exhibit JP1	£0.00	£817.57	£4,216.52	£6,385.87	£11,419.96
Communal Gas Costs (X - Y) From Declarations Of (X) and (Y) In Exhibit JP1	£0.00	£3,980.16	£3,740.56	£282.49	£8,003.21
Less Gas Costs (X) that have been double charged (Table 8)	£0.00	£0.00	£0.00	£917.69	£917.69
Less Revoked Gas Costs (X) for same billing period (Table 9)	£0.00	£0.00	£412.13	£0.00	£412.13
New X Costs	£0.00	£4,797.73	£7,544.95	£5,750.67	£18,093.35
Increase in Y costs (Table 12)	£0.00	£192.11	£0.00	£0.00	£192.11
New Y costs	£0.00	£1,009.68	£4,216.52	£6,385.87	£11,612.07
Updated Communal Gas Costs (new X costs - new Y costs)	£0.00	£3,788.05	£3,328.43	-£635.20	£6,481.28
BLOCK B					
Gas Costs (X) Declared In Exhibit JP1	£198.64	£2,619.36	£4,005.45	£3,017.44	£9,840.89
Heat Costs (Y) Declared In Exhibit JP1	£1,869.67	£1,229.27	-£121.57	£3,161.48	£6,138.85
Communal Gas Costs (X - Y) From Declarations Of (X) and (Y) In Exhibit JP1	- £1,671.03	£1,390.09	£4,127.02	-£144.04	£3,702.04
Less Gas Costs (X) that have been double charged (Table 8)	£0.00	£0.00	£512.21	£234.08	£746.29
Less Revoked Gas Costs (X) for same billing period (Table 9)	£0.00	£0.00	£184.94	£0.00	£184.94
New X costs	£198.64	£2,619.36	£3,308.30	£2,783.36	£8,909.66
Increase in Y costs (Table 12)	£0.00	£33.20	£535.80	£0.00	£569.00
New Y costs	£1,869.67	£1,262.47	£414.23	£3,161.48	£6,707.85
Updated Communal Gas Costs (new X costs - new Y costs)	- £1,671.03	£1,356.89	£2,894.07	-£378.12	£2,201.81
BLOCK C					
Gas Costs (X) Declared In Exhibit JP1	£2,748.89	£3,859.01	£3,629.12	£4,381.97	£14,618.99
Heat Costs (Y) Declared In Exhibit JP1	£1,552.49	£1,902.61	£2,420.63	£2,864.97	£8,740.70

Communal Gas Costs (X - Y) From Declarations Of (X) and (Y) In Exhibit JP1	£1,196.40	£1,956.40	£1,208.49	£1,517.00	£5,878.29
Less Gas Costs (X) that have been double charged (Table 8)	£0.00	£387.28	£591.12	£275.54	£1,253.94
Less Revoked Gas Costs (X) for same billing period (Table 9)	£0.00	£641.85	£648.40	£0.00	£1,290.25
New X costs	£2,748.89	£2,829.88	£2,389.60	£4,106.43	£12,074.80
Increase in Y costs (Table 12)	£78.62	£368.17	£0.00	£0.00	£446.79
New Y costs	£1,631.11	£2,270.78	£2,420.63	£2,864.97	£9,187.49
Updated Communal Gas Costs (new X costs - new Y costs)	£1,117.78	£559.10	-£31.03	£1,241.46	£2,887.31
BLOCK D					
Gas Costs (X) Declared In Exhibit JP1	£3,660.91	£5,875.53	£4,200.66	£4,533.12	£18,270.22
Heat Costs (Y) Declared In Exhibit JP1	£2,140.28	£2,333.02	£2,736.60	£3,132.70	£10,342.60
Communal Gas Costs (X - Y) From Declarations Of (X) and (Y) In Exhibit JP1	£1,520.63	£3,542.51	£1,464.06	£1,400.42	£7,927.62
Less Gas Costs (X) that have been double charged (Table 8)	£446.85	£327.12	£719.34	£280.51	£1,773.82
Less Revoked Gas Costs (X) for same billing period (Table 9)	£0.00	£659.56	£0.00	£0.00	£659.56
New X costs	£3,214.06	£4,888.85	£3,481.32	£4,252.61	£15,836.84
Increase in Y costs (Table 12)	£5.14	£126.12	£16.72	£0.00	£147.98
New Y costs	£2,145.42	£2,459.14	£2,753.32	£3,132.70	£10,490.58
Updated Communal Gas Costs (new X costs - new Y costs)	£1,068.64	£2,429.71	£728.00	£1,119.91	£5,346.26
TOTAL					
Gas Costs (X) Declared In Exhibit JP1	£6,608.44	£17,151.63	£19,792.31	£18,600.89	£62,153.27
Heat Costs (Y) Declared In Exhibit JP1	£5,562.44	£6,282.47	£9,252.18	£15,545.02	£36,642.11
Communal Gas Costs (X - Y) From Declarations Of (X) and (Y) In Exhibit JP1	£1,046.00	£10,869.16	£10,540.13	£3,055.87	£25,511.16
Less Gas Costs (X) that have been double charged (Table 8)	£446.85	£714.40	£1,822.67	£1,707.82	£4,691.74
Less Revoked Gas Costs (X) for same billing period (Table 9)	£0.00	£1,301.41	£1,245.47	£0.00	£2,546.88
New X costs	£6,161.59	£15,135.8	£16,724.1	£16,893.0	£54,914.65

		2	7	7	
Increase in Y costs (Table 12)	£83.76	£719.60	£552.52	£0.00	£1,355.88
New Y costs	£5,646.20	£7,002.07	£9,804.70	£15,545.0 2	£37,997.99
Updated Communal Gas Costs (new X costs - new Y costs)	£515.39	£8,133.75	£6,919.47	£1,348.05	£16,916.66