**Y TRIBIWNLYS EIDDO PRESWYL (CYMRU)**
**THE RESIDENTIAL PROPERTY TRIBUNAL (WALES)**
**LEASEHOLD VALUATION TRIBUNAL**

**Reference:** LVT/0023/07/24

**Tribunal:** Dr Christopher McNall (Lawyer – Chairperson)
Mr Kerry Watkins (Surveyor Member)
Mrs Carole Calvin-Thomas (Lay Member)

**Applicants:** Meridian Quay Management Company Limited
(represented by Philip Rainey KC and Hugh Rowan, both of Counsel, instructed by Brethertons LLP)

**Additional Applicants:** Philip David Blackler
Christopher Ian Hope
Mohinder Mattu
Arun Daniel Midia
Nageb Farhat Dahan

**Respondent:** Meridian Quay Limited
(represented by John Sharples, of Counsel, instructed by Milners Solicitors)

**Hearing venue:** Oak House, Cleppa Park, Celtic Springs, Newport NP10 8BD

**Hearing dates:** 9-12 September 2025

**Property:** Meridian Quay, Trawler Road, Maritime Quarter, Swansea SA1

**Applications:** Applications under section 27A, section 19, and section 20C of the Landlord and Tenant Act 1985.

## DECISION

1. The Respondent is liable to pay the Void Proportion.
2. The Respondent's purported exercise of the Step-In Clause was invalid (and, consequently, purported extensions of time were without effect).
3. We direct further submissions on the Section 20C application and any submissions as to costs.

4. The detailed terms of our Order are set out at the end of this document.

## REASONS

### Introduction and Background

1. This is our unanimous decision concerning a dispute over (i) service charge liability and (ii) the exercise of management rights in respect of a development known as Meridian Quay, Swansea (**'Meridian Quay'**).

2. Meridian Quay is a well-known and prominently situated development on the Swansea seafront. It is a mixed-use development made up of 291 flats/residential units, 7 commercial units and a restaurant (now known as "Altitude28"). These are mainly in three blocks: Meridian Tower (which is the tallest residential building in Wales); Meridian Wharf; and Meridian Bay. There is also associated parking (on two floors of a multi-storey car park).

3. The lead Applicant is the leaseholder-run management company ('**ManCo**'). The Additional Applicants are several individual long leaseholders.

4. Swansea City Council is the freeholder and has not played any part in the proceedings before us. It does not have a share in ManCo. We were not asked to undertake a site inspection, and so have not done so.

5. The Respondent ('**MQL**') is the head-lessee of the development and the landlord of the residential leases. Mr David Lake is the managing director of MQL and (until the events in December 2022 set out below) had been a director of ManCo. He and his daughter Bethan Lake-Healey own MQL. Mr Lake accepts that he is its governing mind.

6. The key issues in dispute are, in summary:

   6.1 Whether MQL is liable to pay a proportion of service charges attributable to its interest in those residential units which it has acquired but which have not yet been disposed of by way of long lease (**'the Void Proportion Issue")**; and

   6.2 Whether MQL validly exercised a contractual right to take over management functions from the Applicants (**"the Step-In Clause Issue**").

7. As apparent, these are principally issues of a legal character. However, neither the character which this dispute has come to assume, nor the very considerable legal resources which have been given to it, should be allowed to obscure the fact that, for many years, there have been, and continue to be, serious real-world problems with this development. Those problems affect real occupants, in the real-world, and the overall quality of their use and enjoyment of the development, on a daily basis.

8. We say this because the application hearing was attended by a number of persons who live in the development; and many others who did not attend the hearing may come to read this decision. We want them to be clear that we are aware of the ongoing problems with this development; but the shape of the dispute, and what we can and cannot decide upon, is determined by the parties, and not by us. It is a matter of disappointment and frustration that we are not able

to take more pro-active steps in helping the outstanding practical issues to be resolved. Nothing in this decision is going to accelerate the remedial works being undertaken or yet to be undertaken.

9. In light of those remarks, we give our strongest encouragement to all involved to reflect on this decision, and the drawn-out and expensive litigation which have led to it, and to reflect whether litigation of the kind which has come before us is the best or most proportionate means of resolving, as quickly and cheaply as possible, the disagreements which (perhaps, inevitably) arise in the management of any development of this kind.

10. In anticipation that disagreement might arise in the future between ManCo and MQL (and the Tribunal has yet to deal with an application, stayed behind this one, between Mr Lake and ManCo as to the payment of service charges) the Courts have repeatedly emphasised that litigation should be viewed as a last resort; and that Alternative Dispute Resolution ('ADR') such as mediation should always be considered. There is no good reason why the same approach should not apply, wherever practicable, in this Tribunal.

11. ADR can be ordered in civil claims even against the will of the parties: see the decision of the Court of Appeal in Churchill v Merthyr Tydfil BC [2023] EWCA Civ 1416. It is disappointing that this dispute - which was originally ventilated in a claim brought in the Business and Property Court ('**BPC**') - came to this Tribunal from the BPC (on the basis, agreed by the parties, that this Tribunal was the appropriate forum for deciding whether a service charge is payable and by whom) without the parties ever even having apparently considered applying to use the BPC's well-established judicial Early Neutral Evaluation (ENE) or FDR procedures: see Chancery Guide 2025 §10.18-40 and Appendixes K and L.

**The Burdens and Standard of Proof**

12. In relation to the Void Proportion Issue, the burden of proof lies on the Applicants to show the existence of some route (an express or implied contractual obligation, collateral contract, or estoppel) sufficient to impose liability, as a matter of law, on MQL.

13. In relation to the Step-In Clause Issue, the burden lies on the Respondent to establish that it validly exercised the Step-In Clause.

14. The standard of proof throughout is the civil standard; that is to say, on the balance of probabilities, or (expressed differently) whether something is likelier than not.

15. When it comes to disputed facts, we adopt the following approach to the operation of the standard of proof

> *"If a legal rule requires a fact to be proved (a 'fact in issue') a judge or jury must decide whether or not it happened. There is no room for a finding that it might not have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the*

*other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened"*

see *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at [2] per Lord Hoffmann.

**The Evidence**

16. The Tribunal considered witness statements from:

For the Applicants:

Philip Blackler (witness statement dated 7 March 2025)

Anne-Marie O'Leary (6 March 2025)

For the Respondent:

Philip Lake (30 January 2025)

Mike Woods (31 January 2025)

17. The Tribunal also heard oral evidence from all the above; and the witnesses were each cross-examined. The longest cross-examinations were those of Mr Blackler and Mr Lake who were each cross-examined over the course of two days, meaning that they were 'embargoed' from discussing their evidence during the overnight adjournment.

18. There was a core bundle of 500 pages. Alongside this, we had a 5081 page bundle of documentary evidence.

**Some observations on the evidence**

19. Without unduly sidelining the evidence of Ms O'Leary and Mr Woods, it cannot sensibly be disputed that Mr Blackler and Mr Lake are the two key actors in this dispute.

20. Given that Mr Blacker and Mr Lake were each cross-examined at significant length, we had an excellent opportunity to assess their credibility and the overall cogency of their evidence.

21. Although the evidence of contracting parties as to their subjective understanding of the contracts is not normally admissible (or, if admissible, is of little weight) our assessment of the cogency of evidence - and especially our assessment of Mr Lake - is of real relevance if the Applicants are right (as a matter of law) that resolution of the Step-In Clause Issue involves an assessment of (amongst other matters, and put broadly) rationality on the part of the party exercising it: here, MQL (a legal person), but acting through a natural person, Mr Lake.

***Mr Blackler***

22. Whilst reminding ourselves that a witness' demeanour is not necessarily determinative, it is appropriate to record our impression of Mr Blacker as an individual with strong, trenchantly-expressed, views on certain matters, and as an

individual who, once he formed a view on something, was apt to adhere to it stubbornly.

23. Although a slightly prickly and defensive tendency sometimes emerged in his cross-examination, overall we regarded Mr Blacker as giving his evidence in a way which was honest and straightforward, seeking to answer the questions he was asked, and reflected our impression of him as a conscientious person doing his best to advance the interests of ManCo in fixing the problems with this development.

***Mr Lake***

24. By contrast, and overall, Mr Lake made a poor impression in his oral evidence:

    (i) He was variously argumentative, bombastic, and combative (for instance, his response to whether he had been discussing his evidence overnight, despite the usual warning from the Tribunal chair - a matter on which, absent evidence, we are not invited to make any findings; and his evidence as to why he had not taken any legal steps after the 2022 EGM);

    (ii) The substance of his evidence (for example, in relation to the decision to no longer pay the Void Proportion) was sometimes very confused and haphazard. We did not assess this as a deliberate attempt by him to deceive or mislead us, but rather it served to demonstrate that he had not really thought through with clarity or rigour some of the things he was saying;

    (iii) He also seemed to be not wholly conversant with the purpose of the hearing, or his role as a witness in it: on two occasions (his connection with a national agency; and the means whereby he had allegedly extracted a confession from someone that completion certificates had been signed off fraudulently) saying that he wanted to tell the Tribunal things in private which were not in his witness statement (which is where, if he wanted to rely on them, they should have been);

    (iv) He was apt to elaborate significantly on his evidence, either in the sense of going off at a tangent, usually to try and demonstrate how badly he had been treated; or in the sense of demonstrating how he was a person who knew people in positions of influence and power, and by association therefore is also a person of influence and power;

    (vi) When pressed about documents to which he had agreed (for instance, the board minute of March 2021) and which were adverse to his position, he improvised, seeming to suggest that he had not in fact agreed them, or that he may have made a mistake in agreeing them. These attempts were unconvincing;

    (vii) He definitely has a strong sense - but without being able to explain clearly why - that he has been done wrong at almost every turn by ManCo and that he is the victim. We consider this to be a false narrative;

    (viii) He was of the view - not in his witness statement, but elaborated on in oral evidence - that there existed a conspiracy between EWIC and Zurich, the

existence of which Mr Lake could use to pressurise EWIC to 'pay up' ("I believe the big boys behind this are Zurich, and I do know that a Zurich director ... was planted into EWIC to arrange this scam - I have recently discovered - to take the hit - and the BBC know about it"). Mr Lake believed that he was the person who could meet with the FSCS "and tell them to get after Zurich". We assessed this evidence as part of a narrative, framed by Mr Lake, whereby Mr Lake had come to believe that he, and only he, could somehow (perhaps by the same sort of pressure he said he had used to persuade someone to accept - apparently in a witness statement which we were not shown - that the Zurich certificates had not been properly signed off) force EWIC and/or Zurich (who he said he had "beat again and again to help the people of this country") to pay up millions of pounds. We assessed this as unrealistic.

25. For the above reasons, and except in instances where we flag up that we accept his evidence, we generally do not treat his evidence as reliable, and we place no weight on it except where corroborated by contemporary documentation.

26. Mr Lake is the directing mind of MQL. He is a man of some commercial acumen. This conclusion inevitably flows from the way that he had managed to acquire, through MQL, a valuable stake in this development - the headlease (bringing in ground rent, which Mr Lake estimated at £93m over 150 years) and 45 residential units - for a sum (£1.9m) which Mr Lake agreed was 'a hell of a deal'.

27. It is clear that Mr Lake has very strong views - forcibly put in his oral evidence - as to fire safety, and as to the need for buildings - especially high-rise buildings - to be safe, especially after the Grenfell tragedy. No Tribunal would not disagree with him about that.

28. It is also clear that Mr Lake is also an individual who is determined to get things his own way. That determination on the part of Mr Lake is palpably operative in this dispute. It leaps out of the papers and was even clearer in his oral evidence.

29. He has a powerful physical presence, and we are sure - from our own assessment of him and our acceptance of the weight of the evidence - that he is prepared to bully and threaten others to get his own way; and has indeed done so in the past, including at the EGM on 31 October 2024. We were not satisfied with his explanation that his prominent reference to himself as a 'former marksman' in his letter to leaseholders (a part of his CV omitted from his witness statement) was something said simply because he wanted to show what a trustworthy person he was. But neither do we think it was meant as a threat. That is because we do not think that Mr Lake's thinking was quite so organised; rather, it was more of the sort of bluster with which Mr Lake is apt to confront those who seek to challenge him.

30. Overall, it is clear that Mr Lake wants control: in the sense, if MQL is found to have validly exercised the Step-In Clause, then Mr Lake wants to be personally in command of all the works and all the decisions. And it is clear that he is prepared to pursue that ambition relentlessly. Whilst a relentless determination is perhaps not itself inherently objectionable (indeed, it could be said that determination is an attribute which anyone managing this development needs) this approach is one which has blinded Mr Lake to the objective truth of certain matters. He

convinces himself that he is right; and once he has arrived at that view, it is almost impossible to shake him from it.

31. One telling example was his continuing insistence that MQL was justified in exercising the Step-In Clause because of his belief that CRM, when it came to the Building Claim works, wanted and was entitled to a commission of 5% on the cost of those works. However, that belief - held very firmly by Mr Lake, and one of the six reasons advanced by him for the exercise of the Step-In Clause - was never, objectively, correct, because this clause in CRM's contract was always expressly subject, and was intended to be subject, to a side letter disavowing such a commission on Building Claim Works. Despite being confronted with the facts, Mr Lake appeared simply unable to depart from the view which he had already formed but kept on saying - contrary both to the evidence and to the law of contract - that CRM could change its mind. In our view, his evidence on this particular matter was obstinately adhered-to nonsense.

32. Another aspect of the desire for personal control was his evidence (which we considered to have been given truthfully and which we accept on this point) that if he (for which, we read MQL) and not ManCo were in charge, then works as already agreed by ManCo would not actually be put in motion, but would have to be subject to some sort of review by him. Although Mr Lake was clear that ManCo's solicitor responsible for negotiating the works (a Mr Hargreaves of Walker Morris) 'had done a great deal', he was nonetheless insistent that a single contract administrator was not appropriate, and that any contract administrator would - regardless of their identity or experience - have to be subject to supervision and control either by Mr Lake, or by Mr Lake's nominee Mr Mehmet. This determination was unshakeable despite exploration both in cross-examination and by the Tribunal. His view was that the contract administrator, as a form of policeman over the contract, would him or herself have to be policed by a second person; probably Mr Lake. That is neither workable, nor genuinely promotive of good conduct. Nor is that the stance which a person, acting rationally, and actuated by genuine concern that the outstanding remedial works be done as efficiently and quickly as possible, would take.

***Ms O'Leary***

33. Ms O'Leary is a professional who has been personally involved with this development since 2007/8. She is a director of CRM Students Ltd who are the managing agents for this development. We are confident that she has a good knowledge of the history of this development; its past and present problems; and the steps which have and are being taken. She gave her evidence in a brisk and businesslike way. She was able to answer the questions put to her, in detail; and it was not substantially challenged or undermined in cross-examination.

34. We accept her evidence generally; and in particular her evidence that:

    (i) in her view, savings in the service charge of in the order of 20%-40% as suggested by Mr Lake were simply unachievable without reduction in staffing which was "infeasible given the inherent and on-going fire safety defects";

(ii) a notice period of 14 days for Step-In would have been impossible to accomplish, and demonstrates a lack of understanding of the complexities of managing a development of this size;

(iii) Mr Lake told solicitors advising ManCo at the EGM on 31 October 2024 that he would sue them "and you don't know who you are dealing with".

***Mr Woods***

35. Mr Woods' is a leaseholder. Mr Woods is also a participant in the underlying dispute because he is the leader of a fairly sizeable group of leaseholders who are pursuing legal action against Zurich to remedy the fire defects.

36. In our view, he is not really independent:

(i) Despite his refusal to accept the same, and his assertion that he and Mr Lake were "business associates", he is a friend and supporter of Mr Lake. They are on first name terms.

(ii) Mr Woods was one of the 'slate' of three persons supported by Mr Lake when it came to ManCo's election in December 2022;

(iii) He made common cause with Mr Lake, in that he sought, in his evidence before us, to complain about the 2022 meeting (almost 3 years after the event) and how he believed the vote had been manipulated so that his favoured side lost. He made similar criticisms of the October 2024 meeting;

(iv) In one part of his cross-examination, concerning whether he had discussed Mr Lake's evidence with Mr Lake during the overnight adjournment, Mr Woods was strikingly evasive. As we have already remarked, we are not making any remarks as to whether what was alleged to have happened did in fact happen; but we are entitled to take into account that, when put under pressure in cross-examination, and asked questions where his answers were potentially adverse to Mr Lake (where Mr Woods knew this, having been present in the courtroom when Mr Lake was cross-examined on the same thing) took refuge in obfuscation.

36. Otherwise, his evidence was sometimes vague and unrealistic. For example, he did not seem to be aware of the potential impact of the Step-In Clause and that Mr Lake, if its exercise was effective, could take full personal control of Meridian Quay, without a management committee and meetings. It seemed to dawn on him in his answers that if (for example) the design team were instructed by ManCo "if you take the committee away, who are they working for?".

37. Therefore, and insofar as his evidence goes to matters in dispute, we are minded to give it little weight.

**<u>Problems with the Development</u>**

38. We now move on to make some initial findings of fact. It is common ground that the development has, for various reasons, been problematic right from the very beginning. There were various defects with the construction - including but not limited to internal and external fire proofing defects, water ingress, defective balconies, and sheet piling in the car parks. The original developer (Ferrara Quay

Limited; 'FQL') and the design and build contractor (Carillion Construction Ltd) were in dispute about these for years; until Carillion collapsed into insolvency in January 2018.

39. As a matter of linear time, it is true that some of these defects (eg water ingress) have been known about since the beginning, and so are still extant 20 or so years later. But criticism of ManCo for this is unfair, because water ingress is inextricably linked to fire safety defects, which in turn has a bearing on who is liable to pay for the remedial works; thereby requiring the adoption of a comprehensive and unified - rather than piecemeal - approach to remediation. This plan presently goes through to 2030; and it is not yet known how much more money will need to be spent. But that does not mean that the plan is flawed; simply that there are 'known unknowns'. It is not unreasonable for the present programme of works to go through to 2030.

40. New Home Build Warranties had been given. The original insurer, Zurich Insurance plc, transferred its build warranty book to East West Insurance Company Ltd ('**EWIC**'). Litigation (known as 'the Build Warranty Claims') was brought by ManCo, and in January 2020 EWIC eventually accepted liability for fire proofing and water ingress defects at the development. A £2.5m on account payment was made. Unfortunately, in December 2020, EWIC also went into administration, leaving EWIC's liability in the hands of administrators and the Financial Services Compensation Scheme. But, after much wrangling, EWIC, through its administrators, accepted liability in December 2023 regarding defective window casements in the Bay and Wharf blocks.

**The Management Committee**

41. This background is set out in relatively brief terms, but is sufficient to show that the task for the Management Committee - made up of volunteers, including Mr Blackler and (until he left the Committee, Mr Lake) - has, for many years, been a daunting one of very considerable complexity, and calling for great dedication and resolve.

42. In our view, the scale and complexity of the Management Committee's task cannot readily be under-estimated. We express admiration for ManCo and what it has achieved over the years. It has been a journey into the unknown for them, having to deal with the twin challenges (each formidable): (i) trying to resolve the serious and manifold defects with this development alongside (ii) having to deal with a shifting backdrop of counterparties - all complicated by Carillion's disappearance, EWIC's entry into administration (with its liabilities now backed, to some extent, by FSCS) and a revolving cast of administrators, lawyers, and experts. Over the years, through determination and organisation, ManCo has, in the face of determined opposition, secured substantial funding and progressed remedial works, although these have not yet been completed.

43. It is common ground that considerable challenges remain ahead; but ManCo is making progress with these:

    (i) 'Orphan building status' has been agreed with Wales Government;

    (ii) Waking watch costs are being funded by Wales Government;

(iii) Remedial works have been awarded to Fireright and are substantially completed.

(iv) The consultation process in relation to the sheet piling had concluded just before our hearing, and EWIC had agreed to cover their share of costs;

(v) As to water ingress, a consultant consortium had completed its proposed scope of work in April 2025, which had been submitted to EWIC for review;

(vi) In mid August, EWIC had agreed to fund design and tender works; contracts had been awarded and work had started. Mr Blackler commented that there had been delays, but that these were outside the control of ManCo, in that ManCo was dealing with EWIC, which was backed by FSCS (as a funder of last resort), which in turn was taking advice from its consultant claim managers.

44. It is our view that the Management Committee may, at times, and over the years, have made decisions which were unpopular, or controversial. Things could from time to time perhaps have been done more quickly, or differently, or better. Whilst there were disagreements - sometimes forcefully expressed - we do not consider that there is any evidence that the Management Committee's conduct or decisions were ever made in anything other than good faith.

45. This is important because much of the hearing before us, and the evidence which we have been called upon to consider, amounts - in reality - to an attack by Mr Lake, through MQL - on the merits of the decisions taken by the Management Committee going back over several years.

46. We have no hesitation in rejecting that line of attack. A fundamental flaw which undermines much of Mr Lake/MQL's challenge along this avenue is that Mr Lake was, for much of the last 15 years, a member first of the so-called Steering Committee (from about 2009) and then latterly a director of ManCo. In short, Mr Lake was an active participant in the discussions and decisions which he now seeks to attack and use as a justification (at the very least) for MQL's exercise of the Step-In Clause.

47. ManCo was preceded by a so-called Steering Committee. Mr Lake subscribed to the Steering Committee's overall collective view; this much flows from his continued participation in the Steering Committee. Any decisions taken by the Steering Committee are now too long ago to be usefully scrutinised.

45. In his capacity as a director of ManCo - a limited company - Mr Lake was possessed of directorial rights of the usual kind, and subject to directorial duties - statutory and at common law - owed not only to the company but also its shareholders and, for that matter, to his co-directors.

46. It is correct that criticisms can be made, and (as Mr Blacker accepted in cross-examination), were made, by leaseholders, at the time, of certain decisions being taken by ManCo. The evidence is that those criticisms were sometimes sharp, and that Mr Lake was sometimes a dissenting voice in ManCo. But, whilst he was still on the board of ManCo, Mr Lake was in a position to try and do something about it by way of critique and persuasion of his fellow directors.

47. By way of an example, the Minutes of ManCo from 18 March 2021 - a meeting at which Mr Lake was present - recorded that the previous minutes (26 January 2021) were approved without amendment; and in relation to the remediation works (section 3 of the Minute) all the directors - including Mr Lake - were agreed:

    (i) A review of the expert team, with other stakeholders, was required in respect of the external works on the Wharf and the Bay;

    (ii) An independent review of the Bay/Wharf internal compartmentalisation work should take place, led by Mr Salisbury who (the board accepted, on Mr Lake's suggestion) should bring in an expert team in order for the design and investigations to get underway;

    (iii) Limited investigations were required in relation to the agreed replacement of the External Wall System, and structural balcony defects which were to be addressed under the EWIC warranty claim;

    (iv) Subject to the agreement of the insurer/other stakeholders, ASW's services were to be retained, on the basis that they were already established on site, and who had quoted for some works, so as to minimise future delays and contribute to compliance with the Improvement Notices which had been issued;

    (v) Further investigations were needed for the external works on the Tower;

    (vi) There were no concerns over the credentials and experience of the Diales team;

    (vii) It was agreed that Walker Morris and their clients were not committed to Diales, but that Walker Morris should be involved and all work together.

48. Significant criticism was levied by Mr Lake as to the absence of an 'audit' as to the several million pounds which had been spent on repairs. We consider this criticism misconceived and we reject it:

    (i) ManCo has professionally produced and certified accounts;

    (ii) There is no formal requirement for audit;

    (ii) A detailed breakdown as to about £2.5m was sent directly to leaseholders;

    (iii) It was subsequently agreed that EWIC were to pay consultants and contractors directly.

49. We also reject criticism by Mr Lake that CRM were somehow unsuitable for the management of this development;

    (i) CRM has been involved in the development for almost 20 years;

    (ii) There is an annual review of its contract;

    (iii) Although CRM have never been asked to competitively re-tender, we accept Mr Blacker's evidence that the review was not a foregone conclusion, but that ManCo had done some benchmarking (on information supplied to it by leaseholders) so as to assess whether CRM's charges were reasonable;

(iv) There is inherent - but difficult to quantify - value in continuity of management; and, conversely, inevitable transaction risk and cost in moving from a long-standing manager to a new manager. These were relevant features which ManCo took properly into account;

(v) Mr Lake's own evidence - such as it was - about comparative cost, being the document from CLC - was in any event an insufficient evidential foundation to support such an argument: see below.

50. We reject criticisms of ManCo that certain works had taken too long. For example, in terms of the presence of scaffolding for 2-3 years. Mr Blacker's explanation of this was detailed and impressive, and exemplified many of the difficulties with which ManCo has had to contend: the scaffolding was originally up for investigative works done by ManCo; then a deal was done with EWIC for external works; Government guidance then changed so that the initially proposed solution was no longer appropriate; further investigations were needed; there was then a dispute with EWIC as to the cost of the scaffolding, with EWIC refusing to pay approximately £20,000. On the basis that this cost, if not paid by EWIC, would have to be borne by ManCo (and hence the leaseholders), ManCo (it seems to us wholly reasonably and understandably) "dug its heels is", and eventually got EWIC "over the line".

51. There are instances of ManCo taking sensible commercial decisions, saving the leaseholders money, which were nonetheless the subject of (in our view, misconceived) criticism by Mr Lake: for example, deciding to adopt reports commissioned by Carillion instead of commissioning its own reports.

**The December 2022 EGM**

52. There came to be a tussle for control of ManCo. There was a fundamental disagreement between two groups - the "ManCo group" and the "Walker Morris group" - as to the way forward in managing the remedial works at the development and in particular whether EWIC was being held properly to account. Each side regarded the other as wrong. All the then-directors stood down. Some stood for re-election (including Mr Blackler). Mr Lake did not, although he supported the candidature of three persons who did (including Mr Woods).

53. Mr Lake has accused ManCo, Mr Blackler, his other directors, its managing agent (CRM), and its external legal advisers of having cheated and fixed the results. Particular criticism is made that 6 people were not allowed in, as non-shareholders; and 16 in the room were not allowed to vote. We accept Ms O'Leary's evidence that the meeting was almost a riot, and at the end of it Mr Lake was "very agitated". For present purposes, it is sufficient to say:

(i) That Mr Lake had been the company secretary, and therefore the person responsible (whether or not he knew it) for issuing share certificates (and therefore was the person responsible for the situation of those persons not permitted to vote because not in possession of a share certificate); and

(ii) That a large majority of ManCo's members voted to retain all directors with the exception of Mr Lake.

54. The fact that a significant majority of the leaseholders who voted, when given the opportunity, voted to reappoint Mr Blacker, but did not vote to appoint the candidates supported by Mr Lake (one of whom was Mr Woods), speaks directly to their collective view as to the course of action which they wished to adopt; their preference as to who should be on the Management Committee; and their view of its activities up to that point; and their preference for whose 'faction' (for want of a better word) was to be in charge.

55. We cannot disregard that, although Mr Lake was clearly very exercised by the events of 6 December 2022, and regarded the meeting as having been influenced by underhand tactics by Mr Blackler, he nonetheless did not bring any legal challenge to that vote (whether as a former director or a member/shareholder) in the appropriate venue (for example, the Companies Court) and/or by applying the appropriate law (namely, the Companies Acts). Nor can we disregard that, if there genuinely were concerns with management, there was no application by MQL and/or Mr Lake to this Tribunal at the time to consider whether ManCo should be removed and another (recommended by him and/or involving him) be put in its place.

56. That is to say, there were available avenues of legal challenge to Mr Lake and/or MQL in or shortly after December 2022, which he and it did not take. This is a feature from which we may draw such inferences as we consider appropriate.

**Chronology**

57. It is helpful at this point to set out a Chronology. We find as follows:

**17 August 2005**: Swansea City Council (SCC) becomes registered freehold proprietor of Meridian Quay.

**30 April 2008**: SCC grants 150-year headlease to Ferrara Quay Ltd (FQL).

**2009–2010**: Development completed by Carillion Construction Ltd (Carillion/CCL).

**2011**: Mr Blackler acquired a flat in the development.

**2012**: The Management Company made a Zurich warranty claim for water ingress.

**2014–2015**: Leaseholder Action Group (LAG) formed; legal advice obtained; standstill agreements entered with Carillion and FQL.

**January 2016**: Zurich admitted liability for water ingress.

**June 2017**: Grenfell fire prompts change in fire safety policy at the development.

**January 2018**: Carillion enters administration; FQL puts headlease up for sale.

**March 2018**: Zurich transfers build warranty book to EWIC.

**November 2018**: Mr Lake waives privilege on advice that MQL is liable for Void Proportion.

**March 2019**: Leaseholder directors, including Mr Lake and Mr Blackler, take control of the Management Company.

**6 March 2019**: FQL transfers its headlease to Meridian Quay Ltd (MQL) for £1.9m.

**18 April 2019**: MQL becomes the registered leasehold proprietor and begins paying the Void Proportion.

**13 June 2019**: General leaseholders meeting

**26 July 2019**: Swansea CC issues Improvement Notices for fireproofing defects.

**October 2019**: The Management Company awards contract for internal compartmentation works.

**January 2020**: EWIC accepts full liability for fireproofing and water ingress; £2.5m paid on account.

**June 2020**: EWIC admits liability for balcony defects.

**12 October 2020**: EWIC enters administration; FSCS increases protection to 100%.

**December 2020**: Management agreement signed between ManCo and CRM Students.

**February 2021**: EWIC confirms liability for water ingress, fireproofing, and balconies.

**November 2021**: Practical completion certificates issued for Bay and Wharf blocks.

**2 December 2021**: Swansea CC withdraws Improvement Notices.

**24 February 2022**: ManCo invoices MQL for 2022 Void Proportion.

**September/October 2022**: MQL makes final payment of Void Proportion (paid January 2023).

**6 December 2022**: EGM removes Mr Lake from ManCo board.

**6 February 2023**: ManCo invoices MQL for 2023 Void Proportion.

**6 April 2023**: MQL purports to exercise Step-In Clause via notice.

**18 April 2023**: MQL extends notice period to 9 May 2023.

**16 May 2023**: EWIC agrees to refund fire safety-related costs incurred by ManCo.

**29 August 2023**: EWIC waives indemnity cap for Bay and Wharf blocks.

**2 November 2023**: Mediation between parties is unsuccessful.

**11 December 2023**: MQL states it will pay service charges once queries are answered.

**18 December 2023**: ManCo provides access to SharePoint with financial documents.

**24 December 2023**: MQL grants ManCo a further 3-month handover period.

**11 January 2024**: ManCo invoices MQL for 2024 Void Proportion.

**14 March 2024**: ManCo issues High Court claim for unpaid service charges.

**24 July 2024**: Claim transferred to Leasehold Valuation Tribunal.

**August–December 2024**: Experts conduct further investigations into defects.

**31 October 2024**: ManCo EGM

**25 November 2024**: New management agreement signed between ManCo and CRM Students.

**24 December 2024**: MQL issues second Step-In Notice, demanding handover within 3 months.

## Issue 1 - The Void Proportion

58. There are 291 residential units/flats. Of these, 251 are let out on long leases (usually 150 years minus 3 days). 40 are not let out on long residential leases. These are referred to as 'the Voids'. MQL is the head-lessee. For the avoidance of doubt, the Void Proportion, being "an amount payable by a tenant of a dwelling as part of or in addition to the rent ... which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management", is within the jurisdiction of this Tribunal.

59. For some time, the service charge obligations attaching to those flats have not been met. This Void Proportion now amounts (at the very least) to several hundred thousand pounds. ManCo's evidence, which we accept, is that without payment

of the Void Proportion, it is only able to recover approximately 85% of its expenditure; and a number of proposed capital projects (such as a new door entry system) have therefore had to have been placed on hold.

60. It has to be borne in mind that ManCo's income (which it uses to pay to fulfil its covenants, and also - as it is entitled to do - to pay its own administrative expenses and company running costs) comes only through service charges; and it has no real ability to borrow money, even if it wanted to. ManCo is a private company limited by shares. Its only asset is the value of its share capital (limited to 300 £1 shares) and so any borrowing would have to be unsecured. The prospects of finding a lender prepared to lend millions to ManCo to fund remedial works on an unsecured basis are vanishingly remote. No evidence has been provided to indicate that ManCo could borrow money.

61. It also has to be borne in mind that, although ManCo has the ability to build up a reserve fund (and has done so, to a limited extent), in the real world it is going to be unable to increase annual service charges to a level sufficient to cover millions of pounds worth of anticipated expenditure.

62. When the Void Proportion is paid, it is not a sum paid for the benefit of ManCo, but is a sum held by ManCo on trust to directly apply to carrying out its obligations on behalf of all the parties, including MQL. For the period 2008 to September 2022, MQL (doing the same as its predecessors-in-title) paid the Void Proportion. During that entire period, budgets were being drawn up, and sums calculated (including credits at the year-end) on the footing that the Void Proportion was payable. The total payments made by MQL came to approximately £558,000. MQL paid the annual Void Proportion from the time of its acquisition of the headlease (18 April 2019) with payments (the last of which was made in January 2023) covering the period up to September 2022. Invoices for the Void Proportions in relation to MQL's interest in its Residential Units dated 24 February 2022 (for the period October 2022 to December 2022 inclusive); 6 February 2023; and 11 January 2024 were not complied with.

63. After Mr Lake was no longer involved in ManCo, MQL/Mr Lake continued to engage in correspondence with ManCo. They were entitled to do so. But the correspondence from MQL's side was in antagonistic, even hostile, terms. For example, on 10 January 2023, Mr Lake sought to claim £1000 a week from CRM for its use of the common parts of the development, backdated to March 2019. Mr Lake personally conducted the correspondence, which contained bold, unsubstantiated, and legally suspect assertions such as "My legal Advisors have stated that CRM are basically trespassing". It was subsequently pointed out to Mr Lake (who should have known all along) that ManCo (including through its agents) had an express right to enter the common parts. Mr Lake, through MQL, has continued to try to oust ManCo from the common parts by giving notices purporting to revoke its "permission to occupy or use the Communal Areas". This is a misconceived approach; pursued relentlessly, and in defiance of the express wording of the leases. It is a further example of Mr Lake's bullying tendency, which we have referred to above.

64. On 11 December 2023, MQL sent an email in the following terms:

"[MQL] requested answers to 50 Transactions from The Leaseholders Bank Account, over a month ago. We first requested Bank Statements over a year ago. Whatever your position is surely you want to know where the £6.5m has gone over the past 4 years. **MQL WILL PAY SERVICE CHARGES WHEN WE HAVE THE ANSWERS TO THESE TRANSACTIONS** [...]" (Emphasis in the original).

65. ManCo responded to MQL on 18 December 2023, by providing access to a SharePoint site containing a list of the queried transactions and documents. On 21 December 2023, MQL confirmed it had access to the SharePoint site. Mr Lake's criticisms that he had been deprived of access to these documents is therefore wrong.

66. On 14 March 2024, ManCo brought a claim in the High Court of Justice, Business and Property Courts in Cardiff, against MQL seeking about £364,000 (excluding interest) said to be owed by way of unpaid service charge arrears for the Voids for (in relation to some of the Voids) 2021/22 (£41,852) and (in relation to all but one of the Voids) 2023 (£158,902) and 2024 (£163,627). That claim was formally defended; and the Defence attracted a Reply. By way of an order made on 24 July 2024, that claim was transferred from the High Court to this Tribunal.

67. By the time of the hearing, the sum owed in respect of the Void Proportion was said on behalf of the Applicant to have increased to about £880,000.

68. We reject Mr Lake's evidence, given in cross-examination, that he had not looked at the figures, and was unable to say how much, if MQL was liable to pay the Void Proportion, would now be owed by MQL. That evidence was inherently implausible. Mr Lake showed himself to be well aware of the detailed figures in many other respects. We are quite sure that he had a decent idea of the amount now owed; and that it was significantly more than £360,000. We do accept Mr Lake's evidence that he could get hold of £800,000 or so, if called upon to do so, 'in about 5 minutes'.

69. If the Void Proportion is payable by MQL, then MQL is going to have to pay the Void Proportion to ManCo. If MQL is not liable, then ManCo is impoverished to the extent of the unpaid Void Proportion, and ManCo will in all likelihood be unable to borrow money or to raise money by way of an increase to service charges.

70. In cross-examination Mr Lake accepted that he (by which we took to mean MQL, under his direction), if liable to pay the Void Proportion, would have to pay it, although he qualified this with the significant comment that he would pay "as long as I can take over" - that is to say, an express coupling of the Void Proportion to managerial rights.

71. The above answer, if nothing else, makes it obvious that Mr Lake perceives declining to pay the Void Proportion and the exercise of the Step-In Clause as two parts of the same scheme. All roads lead back to him: he is the person who is doing two things in tandem - declining to pay the Void Proportion in relation to MQL's 40 flats, and purporting to exercise the Step-In Clause.

72. Mr Lake also recognises that the withheld Void Proportion is standing in the way of ManCo being able to undertake certain works. ManCo is having to use reserve funds to meet ongoing commitments including staff wages. Consultation on the sheet piling works has concluded, but it is unlikely that any contract can be placed unless MQL pays the arrears. We are entirely confident that he is well aware that the non-payment of the Void Proportion is exerting a slow but steady stranglehold on ManCo's ability to do certain works which now need to be done. In contractual language, MQL is putting ManCo's ability to fully perform its obligations - both now and in the future - out of ManCo's power.

**Was MQL right to have done so?**

73. Of course, if MQL is not liable to pay the Void Proportion, then its/Mr Lake's motivation for non-payment is irrelevant.

74. In relation to the Void Proportion Issue, the Applicants bear the burden of establishing that the Respondent is liable to pay the Void Proportion by a legally recognisable route: either an express term of the leases; an implied term; a collateral contract; or by dint of some estoppel by representation or convention.

75. The Residential Leases relevantly provide:

> *"If the Lessor does not so elect [to discharge and perform all or any of the obligations of the Management Company] it shall procure that the Management Company performs its covenants in this Lease until the Commencement Date."*

76. This clause appears within a broader provision:

> *"The Lessor may until the Commencement Date elect to discharge or perform all or any of the obligations or functions of the Management Company in this Lease and (to the extent that the Lessor does actually discharge or perform such obligations or functions) it shall be entitled to be paid the Lessee's Proportion but this shall in no way detract from or prejudice the Lessor's obligations under its covenant in Paragraph 3 of Schedule 8. If the Lessor does not so elect it shall procure that the Management Company performs its covenants in this Lease until the Commencement Date."*

**Commencement Date**

77. "The Commencement Date" "*means the twentieth day after the grant of a lease of the last Apartment and Commercial Unit forming part of the Development to be sold*."

78. On a strict, literal, reading, the Commencement Date has not yet arrived.

**Discussion**

79. The Applicants argue that MQL is obliged to ensure that ManCo can perform its obligations (including repair, maintenance, cleaning, insurance, and general management of the development), which includes MQL funding any shortfall in service charge income arising from the void units (which also benefit from these

services). The Applicants' position is that these obligations are binary and must be fully performed; funding must be sufficient to enable this. The lease structure assumes full recovery of costs, including from void units.

80. In summary, the Respondent's position is that to "procure" means to cause or ensure performance, not to fund it. Hence, liability only arises if ManCo fails to perform and the Lessee suffers loss. The Respondent also argues that ManCo's obligations are defined by what it can recover under Schedule 5 (which lists the specific services for which ManCo may recover costs from leaseholders, including estate-wide and block-specific services); but that performance is not contingent on MQL's funding; and ManCo cannot recover costs for services not listed or not benefiting the leaseholder.

***Express obligation***

81. The starting point must be the contractual provisions. There is no real dispute that the correct interpretative principles are those set out in Arnold v Britton [2015] UKSC 36 and Sara v Hussein Asset Holdings [2023] UKSC 2. In summary, contracts must be interpreted objectively, considering the natural and ordinary meaning of the words used, the contract as a whole, and the relevant commercial context.

82. The leases require the Management Company to provide services and recover costs via service charges. MQL covenants to "procure" ManCo's performance until the Commencement Date. The Tribunal must determine the meaning and effect of that covenant, and whether it gives rise to a financial obligation.

83. The word 'procure' is important. It is put in unqualified terms. We agree that its normal meaning is to "see to it" (see Nearfield Ltd v Lincoln Nominees Ltd [2001] 1 AER (Comm) 441 at [37] *per* Peter Smith J) or to "bring about". Lloyds TSB v Lloyds Bank Group [2004] 1 CLC 116 confirms that a duty to "ensure" or "procure" performance is not merely aspirational but enforceable.

84. In the immediate context of this dispute, and these leases, there seems no good reason why this normal meaning should not apply.

85. The obligation to 'procure' - treated as 'see to it' - may require the spending of money by the party being called upon to 'see to it': see (for example) the old case of Re Shell Transport (1904) 20 TLR 517; and Moschi v Lep Air Services Ltd [1973] AC 331 (which distinguishes between primary and secondary obligations and supports the view that a covenant to procure may entail financial liability).

86. The Tribunal therefore accepts the Applicants' construction that "procure" includes financial contributions necessary to enable performance.

87. Not only is this reading consistent with the wording of the leases, it is consistent with the purpose of the leases. As a matter of ordinary practice, the leases are drafted so as to allocate between the respective three parties' their rights and obligations/liabilities. In our view, the obvious contemplation of the draftsperson was that ManCo should be entitled to recover all the costs of carrying out its obligations; otherwise, there is a funding shortfall.

88. We agree that this is also consistent with the other provision of the Leases; and especially the fact that the total (ie, 100%) of the service charge is calculated as 92.29% for the Residential Units (all 291 of them; ie, including the voids) with the remainder coming from the commercial units.

89. The Tribunal is not simply persuaded by the Respondent's submission that the obligation is contingent or limited to damages. This submission misunderstands the commercial context and the structure of the leases, which, in our view, are designed to ensure that the Management Company can recover 100% of its costs.

90. That conclusion, in and of itself, is sufficient to dispose of this Issue.

91. However, in deference to the argument which we have heard, and lest our conclusion on this point should fall for reconsideration, we consider it appropriate to deal with the Applicants' remaining arguments on the issue.

***Implied obligation***

92. The Applicants argue that, if, contrary to their argument, there is no express obligation, that there is nonetheless an implied one, arising as one necessary to give "business efficacy" to the contract; meaning that, without it, the contract would lack commercial or practical coherence, or in order to make the contract work as the parties must have intended: see The Moorcock (1889) 14 PD 64 and Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2015] UKSC 72.

93. We are mindful that Courts and Tribunals should be reluctant to imply terms into professionally drafted contracts (such as these leases) especially where the subject matter is already addressed expressly. We are also mindful that the threshold for implication into commercial contracts of the kind which we are considering is high, and a term should not be implied simply because it is "reasonable" or happens to improve the contract: see Yoo Design Services Ltd v Iliv Realty PTE Ltd [2021] EWCA Civ 560 and Marks & Spencer.

94. But, and consistently with the principles in those cases, the Tribunal nonetheless finds that, absent an express term, that a term should be implied to require payment of the Void Proportion. Without such a term, the leases lack commercial coherence (because there is an obvious contractual gap, and the lease structure is thereby obviously defective) and/or there is a want of business efficacy (for the same reason). ManCo is exhaustively tasked with fulfilment of onerous and costly obligations. It has no other income than that derived from service charges, but cannot actually fully perform its obligations without full funding. We are satisfied that the implied term is more than reasonable or desirable, or an improvement of the contract, and that the implication of such a term (approaching the issue of implication on the footing that there were no express term) does not contradict any express provision: Ali v Petroleum Co of Trinidad and Tobago [2017] UKPC 2

***Collateral contract***

95. The Appellants argue that, if there were found to be no express or implied term, that nonetheless a collateral contract existed imposing an enforceable contractual duty on the Respondent to pay the Void Proportion.

96. The Respondent argues that no collateral contract exists or ever existed; that historic payments were either voluntary or mistaken; and in any event there was no consideration or intention to create legal relations such as found any contract.

97. Conduct may give rise to contractual obligations even where parties are already in a legal relationship: Clark v Grant [1950] 1 KB 104.

98. In our view, if, contrary to the above, there were neither an express nor an implied term, then we would nonetheless have been of the view that a collateral contract arose from the Respondent's conduct - namely its historic payments and its representations.

99. The precise terms of that collateral contract do not have to be pegged-out, except that such collateral contracts need not be once-and-for-all; in our view, any collateral contract endured until at least the date of purported exercise of the Step-In Clause.

***Estoppel***

100. ManCo argues that if there were no contractual term, or a collateral contract, then nonetheless the Respondent would be estopped from denying that it was liable to pay the Void Proportion due to its representations and common assumptions - that is to say, would be prevented from resiling from the alleged common assumptions. It is argued that there is either an estoppel by representation (arising where one party makes a clear representation, and the other reasonably relies on it to their detriment) or an estoppel by convention (arising where both parties act on a shared assumption, and it would be unconscionable for one to resile): see the decision of the Supreme Court in Tinkler v Revenue and Customs Commissioners [2021] UKSC 39.

101. The Respondent argues that estoppel is incapable of founding a cause of action (ie, being 'a sword' as opposed to a shield); but, regardless of that, no estoppel has arisen, because some of the requisite elements - namely, reliance or detriment - are present.

102. If, contrary to our conclusions above, there were no contractual term or collateral contract, we would nonetheless have found that an estoppel had arisen with the effect of barring the Respondent from denying liability for payment of the Void Proportion for the relevant years. Between 2019 and 2022, MQL paid over £1/2m. It is impossible to argue that these payments were gratuitous (ie, unsupported by any consideration) because MQL was receiving the benefit of ManCo's services. We reject any suggestion that these payments were 'a mistake' (sic); there is no good evidence that they were. The argument that MQL and/or Mr Lake ever believed that the service charge on the residential voids was not genuinely payable because of a passing comment in an email (copied to Mr Lake) in March 2016 (that NAMA were covering those, 'but may not continue to do so') is specious and artificial - the 2016 letter does not say anything as to the contractual liability

for the service charges on the voids; merely that NAMA was paying them, but might decide not to.

103. There were clear representations by conduct, which were intended to be relied on and which were in fact relied on, reasonably, by ManCo, which has suffered detriment thereby by entering into commitments which it now cannot properly fund. Moreover, and as a final element, it would now be inequitable or unconscionable for the Respondent to resile from its representations.

**Issue 2 - The Step-In Clause Issue**

104. Here, the key issue is whether the Respondent validly exercised the Step-In Clause. This entails consideration of whether the clause confers a discretionary power subject to implied limitations; whether the exercise was rational and in good faith; whether a reasonable notice period was needed (and, if so, given); and whether the Respondent was under some obligation to market and sell the void units (and, if so, whether it had done so).

105. On the Step-In Clause, the Applicants argue, in summary:

(i) That the clause confers a discretionary power;

(ii) This discretion is subject to *Braganza*-style limitations;

(iii) The Respondent acted contrary to those limitations, and was irrational and/or actuated by spite after dispute with the ManCo;

(iv) The Respondent failed to give reasonable notice;

(v) The Respondent did not market or sell the Void units, rendering the Step-In Clause inapplicable in any event.

106. On the Step-In Clause, the Respondent argues, in summary:

(i) The clause confers an absolute contractual right, not a discretion;

(ii) The exercise was valid and rational, motivated by concerns over mismanagement;

(iii) The notice given was sufficient and effective;

(iv) No obligation exists whereby the Respondent is obliged to market or sell the void units .

**Discussion**

***Nature of the clause***

107. The Step-In Clause:

(i) Exists in the Residential Leases;

(ii) Does not exist in most (6 of 8) of the Commercial Leases

(ii) Is not a binary - 'all or nothing' - clause, because MQL may discharge or perform "any or all" of ManCo's obligations;

(iv) Accordingly, its potential capture ranges from a comprehensive 'take-over' of all ManCo's functions (which is the way in which MQL has sought to exercise it here) all the way down to a single one of its functions;

(v) Accordingly, if validly exercised it exposes MQL - entirely of its own volition - to direct liability (from which MQL is otherwise insulated by ManCo) to every lessee for the scope of the obligations 'stepped-in' upon.

108. We consider that the power under the Step-In Clause is discretionary:

(i) The repeated use of the word 'elect' connotes a choice to exercise or not exercise - ie, a discretion;

(ii) The clause is a purposive power, in the sense that it is intended to be exercised in the context where there is a clear intention (i) that the development would be completed; (ii) thereafter that the Residential Units would all be let on long leases; and (iii) that ManCo would acquire a headlease of the common parts.

(iii) MQL is given the sole right to make a decision on a matter which affects not only MQL but also ManCo, whose interests are not identical. This scenario is one which tends towards a discretionary power rather than an absolute one.

***Whether the Respondent acted in accordance with those limits?***

109. Where a contract gives one party to a contract the power to exercise a discretion or form an opinion as to relevant facts, the court can ensure that power is not abused by implying a term in appropriate cases that the power should be exercised not only in good faith but also without being arbitrary, capricious, perverse or irrational in the sense in which that term is used when reviewing the decisions of public authorities (Wednesbury) and which is consistent with the contractual purpose: Braganza v BP Shipping Ltd [2015] UKSC 17, esp at Paras 18, and 22-23, 29 (Baroness Hale JSC) and 102 (Lord Neuberger PSC).

110. A test of rationality (as opposed to reasonableness) applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, or capriciousness or of reasoning so outrageous in its defiance of logic to be perverse (Hayes v Willoughby [2013] 1 WLR 935 at [14] *per* Lord Sumption JSC, cited with approval in Braganza at Para [23]).

111. That is a cautionary note; as is the guidance (also approved in Braganza) that a court should not expect of a lay person the same expert, professional "and almost microscopic investigation of the problems, both factual and legal, that is demanded of a suit in a court of law": The Vainqueur Jose [1979] 1 Ll Rep 337 at 377 *per* Mocatta J; see Braganza at [31].

112. In Waaler v Hounslow LBC [2017] EWCA Civ 45, the Court of Appeal (Lewison LJ, with whom Patten and Burnett LJJ agreed) applied *Braganza* principles to a leasehold management decision concerning Hounslow's contractual ability to

undertake improvements whose cost was to be passed on to lessees; and applied the test not only to the choice between different methods of repair, but also to the decision whether to carry out optional improvements.

***The reasons for the exercise of the Step-In Clause***

113. We happen to know the precise and detailed reasons why the notice was given. Mr Lake set them out in a lengthy email (page 4655 of the main bundle) to all leaseholders, dated 16 May 2023, signed by him on behalf of MQL. That email is a very important document in resolution of this part of the case. It was written at the time, and comes directly from Mr Lake. It has to be treated as a reliable and comprehensive account of his thinking.

114. It sets out six reasons; in summary:

(i) "Poor management of CRM/ManCo 'over the past years'

(ii) Irregularities at the 2022 EGM

(iii) New terms of agreement signed in 2020 with CRM providing that CRM was to receive 5% of any remediation contract over £10,000

(iv) He had been provided with a budget that would reduce Service Charges by 30% initially

(v) CRM/ManCo's refusal to directly contact all leaseholders informing them of an action against Zurich for fraud

(vi) Receipt of legal advice that he could take over management at Meridian Quay.

***As to (i) (criticism of ManCo)***

115. We do not accept the criticisms of ManCo, for the reasons already set out; but we accept that the test is whether Mr Lake held a rational belief that ManCo was acting in the way described.

116. We reject that challenge. We simply do not believe that Mr Lake had legitimate concerns as to ManCo's management of the development and approach to defects. That has been presented as cover for the exercise of the Step-In Clause. We agree with the Applicants that, on this analysis, the notice is in reality a sort of sham - that is to say, not an instrument which was genuinely intended to have the effect contended for. We consider it was given hastily, without thought, and simply to try and frighten ManCo into doing what Mr Lake wanted.

117. Insofar as the criticisms of ManCo antedate Mr Lake's acquisition of the headlease in March 2019, they are irrelevant. Insofar as they relate to a period he was one of ManCo's directors (until December 2022), they are unsustainable.

***As to (ii) (irregularities at the 2022 EGM)***

118. This reason is simply capricious. If Mr Lake had genuine concerns about the conduct of that meeting, the Step-In Clause was not the rational way to ventilate them.

***As to (iii) (CRM's 5%)***

119. For the reasons already set out, this argument is hopelessly misconceived. We have dealt with it, and Mr Lake's inability to engage with the true facts, above. We agree that it is a paradigm example of irrationality.

***As to (iv) (achievable service charge savings)***

120. We simply do not accept that such savings were achievable. We have accepted Ms O'Leary's evidence on the point.

121. The (undated) CLC Estate Management 'proposal' is not a satisfactory management proposal for these purposes. It is more in the nature of a brochure or marketing proposal advising of the services which CLC can offer, but without a properly detailed breakdown capable of interrogation. There was no evidence from anyone at CLC.

122. CLC's approach is not satisfactory. We are not criticising CLC, because we assume that CLC was only doing what it had been asked by Mr Lake to do (in circumstances where we have not seen the instructions). Mr Lake himself seemed to accept that the CLC report was "about getting the ball rolling" and "sort of testing the market".

123. It is surprising that Mr Lake, if a competent businessman, should ever have commissioned CLC to do anything less than a fully-costed out budget, or should have failed to give it information which he had (for example, as to the staffing levels); or, overall, should have regarded CLC's report as a reliable platform for MQL's attempt to take over all the management functions. It is manifestly inadequate for that purpose.

124. CLC did not have an existing budget to work from, and so the exact budget categories were unknown. It referred to 'working on similar sites in the locality', but there is nothing which obviously engages with the nature and scope of the ongoing works - at least partly to be funded through the service charge - at Meridian Quay, or the scope of services at Meridian Quay. It estimated site staff costs, because it was not aware of the actual staff numbers or hours. It seems to assume only (up to) 4 staff where there are presently 8. In any event, its breakdown (such as it is) of site staff is not replacing like-with-like: there is no security presence between 5am and 9pm; and no presence of a caretaker between 5am and 7.30am and 7.30pm and 9pm. There is no obvious worked-out answer to what arrangements were supposed to pertain if anything was to happen requiring attention on this development for those 4hrs a day (or 1/6th of a day; 16.66%) except perhaps an extra (unstipulated) fee for an 'out-of-hours emergency service'. A so-called 'concierge fee' of 15% was added to staff costs, but the staff costs themselves are unreliable, for the reasons already set out. Save for physical proximity to the development, there does not seem to be much to commend CLC. Mr Lake's evidence that he could get CLC to agree to terms which were better than those on offer and in place from CRM was no more than wishful-thinking. There was no solid evidence behind this.

125. Otherwise, we do not accept Mr Lake's evidence, given in cross-examination (but not in his witness statement) that he could personally secure enormous efficiencies through (for example) installing solar panels and heat pumps, even (he claimed) on a no-profit basis ("I have a view as doing as much as I can for the people"). We consider this evidence no more than aspirational. But, even if Mr Lake considered it to be true, it was not part of the CLC proposal, or (it seems to us) his thinking before the hearing before us.

126. The improvisatory approach to the entire matter was exposed by Mr Lake in his evidence that, "as soon as the Step-in Clause was active", he would "sit down". But this - although he did not seem to realise it - would all be far too late.

***As to (v) (conduct of the insurance claims)***

127. Insofar as this relates to the handling of the building warranty claim insurance claim, this is actually not even a right which would fall to MQL under a step-in, because this is not a contractual right of ManCo (as ManCo had recognised in June 2020 - 'outside the remit of ManCo') but is something which ManCo could, but only by consent, co-ordinate on behalf of leaseholders. ManCo could never have made leaseholders allow ManCo to run any claims on their behalfs if the leaseholders did not want to. Therefore, reliance on ManCo's conduct of or in relation to the EWIC claims is either plainly irrational, or a still further instance of Mr Lake having failed to apply his mind properly to the right he was purporting to exercise. Even if we we wrong about that, this seems to us to amount - at its very highest - to no more than a complaint that ManCo, despite Mr Lake's urging at 'heated board meetings', did not pursue a course of action he proposed. But that is a matter of disagreement at a board meeting, where Mr Lake had the opportunity to persuade and convince. His failure in that regard is not, in the real world, even remotely a rational basis for seeking to exercise the Step-In Clause.

***As to (vi) (legal advice)***

128. We have not seen that legal advice. We find it odd that Mr Lake was asserting this in an email to leaseholders, rather than this communication coming from a law firm to leaseholders. In our view, it is simply the sort of bluster and threat which Mr Lake is apt to use. Indeed, there is the fairly naked threat that, if he did not get his own way, then ManCo would end up having to pay him/MQL costs.

***Other features***

129. In general terms, a landlord acting rationally in relation to the Step-In Clause would only have done so having considered and prepared a management proposal. After all, the landlord - if, as here, purporting to step in in relation to all ManCo's multifarious functions - would be the one, immediately on expiry of the notice, responsible for managing all those functions. It is relevant that ManCo was not a casual or trivial enterprise; it has contracts in place with multiple contractors and service providers; and it directly employs 8 staff members.

130. But no reasonable management proposal was provided. This is inexplicable. Beyond a vague aspiration that Mr Lake would do things better than ManCo, there was no clear plan as to how various functions (for example, but not limited to, cleaning) were to be effected.

131. Mr Lake's concept of what would happen next if his exercise of the Step-In Clause were upheld was sketchy in the extreme. His assertion that he knew people managing other developments (but from whom no evidence was called) who could be called upon to help is no more than aspirational and improvisatory. It is not really a plan at all. That failure - in and of itself - shows the exercise to have been affected by a want of rationality. This persisted through to the hearing; thereby must have been his state of mind when purporting to exercise the Step-In Clause in 2024.

132. A further lack of rationality is conclusively demonstrated by Mr Lake's own evidence. His evidence was that, if he (for which, we read MQL) and not ManCo were in charge, the works as already agreed by ManCo would not actually be put in motion, but would have to be subject to some sort of review by him. Although Mr Lake was clear that ManCo's solicitor responsible for negotiating the works (a Mr Hargreaves of Walker Morris) 'had done a great deal', he was nonetheless insistent that a single contract administrator was not appropriate, and that any contract administrator would - regardless of their identity or experience - have to be subject to supervision and control either by Mr Lake, or by Mr Lake's nominee Mr Mehmet. This determination was unshakeable despite exploration both in cross-examination and by the Tribunal. His view was that the contract administrator, as a form of policeman over the contract, would him or herself have to be policed by a second person; probably Mr Lake. That is neither workable, nor genuinely promotive of good conduct. This is not the stance of a person, acting rationally, and actuated by genuine concern that the outstanding remedial works be done as efficiently and quickly as possible, would take.

133. Moreover, Mr Lake had no even remotely sensible answer at all as to how - if MQL were to take over all the management functions across the entirety of the development - it would be able to do so despite the absence of a Step-In Clause in 6 of the commercial leases. We do not accept his evidence, given in cross-examination - that the owners of all those units were "happy for [him] to take over - it is already agreed - they are not going to renege because they are personal friends of mine". This is uncorroborated. But, even if truthful, is obviously no more than aspirational. This short passage of evidence exposed - for Mr Lake, catastrophically - the improvisatory - even slapdash - approach which shone through his decision to invoke the Step-In Clause.

134. We have also considered the evidence that, at a meeting of ManCo in October 2024, Mr Lake said that he did not want to take over management of the development, but that his main objective was to remove ManCo's then directors and CRM. This accentuates the personal nature of this dispute, already identified: Mr Lake wanted Mr Blackler and the development's long-standing managers gone.

This was against the background that he had already purported to exercise the Step-In Clause. We accept Ms O'Leary's evidence that Mr Lake said that, if the board was removed, he would then pay the service charges. This was both some recognition that the Void Proportion should have been paid, and was not being paid due to the presence of Mr Blackler and/or CRM. It was - in effect - an undisguised attempt by Mr Lake to hold ManCo to ransom. The members voted 130:23 against his proposal.

**Conclusions on this Issue**

135. Applying these principles, which are binding on us, subject to the cautionary limits and (for want of a better expression) giving Mr Lake the benefit of the doubt, we simply do not consider that the Respondent, through Mr Lake, even arguably acted in accordance with those limits.

136. Contrary to Mr Lake's evidence, we do not consider that his intent in using the Step-In Clause was framed in good faith or altruistically. In our view, the argument that ManCo's actions and/or omissions were so incompetent, misconceived, and/or dilatory, that it was only rational for the landlord to 'step-in' was specious, contrived and unsustainable. It was advanced really only to justify exercise of the Step-In clause. We have made comments as to the absence of rationality in relation to the other stated factors. The ostensible detailed basis for exercise of the Step-In Clause, on enquiry, melts away.

137. It is obvious and the inference - which we make - is that Mr Lake was so incensed by his removal from ManCo that he came (perhaps not in one fell swoop, but step-by-step) to frame a scheme, complete by early 2023 - the withholding of further payments of the Void Proportion (thereby starving ManCo of hundreds of thousands of pounds), put into effect after the final payment made in January 2023, and the exercise of the Step-In Clause on 6 April 2023 - of which the overall aim was to bring ManCo (put colloquially) to its knees and to allow Mr Lake to seize managerial control of this development.

138. Even without subjecting Mr Lake's purported exercise of the Step-In Clause to a microscopic analysis, we find and conclude:

(i) Mr Lake, through MQL, purported to exercise the Step-In Clause because he was actuated by animus and spite towards ManCo (and especially Mr Blackler) and not by legitimate commercial aims;

(ii) The Step-In Clause was being exercised irrationally - either in the sense of capriciously and/or vindictively and/or arbitrarily;

(iii) It was being exercised irrationally in the public law sense in the sense of relevant factors not being taken into account and/or irrelevant factors being taken into account;

(iv) There was not a sufficient logical connection between the evidence and the ostensible reasons for the decision;

(v) Its consequences simply were not thought through by Mr Lake.

139. We can go so far as to say that we consider, on the evidence and material before us, that it would be little short of disastrous for this development had Mr Lake been able to exercise the Step-In Clause.

***Was there a sufficient Notice Period?***

140. We agree that this is a case in which the Step-In Clause is, in effect, an usurpation of rights granted under deed (ie, under the various leases). As such, the implication of a notice period is, in the circumstances of this case, proper because the notice potentially affects existing third-party rights and operational continuity. As such, the stated notice period (14 days) was manifestly insufficient; and we are quite satisfied that Mr Lake knew it was. It was not only contrary to industry standards (3 months) but also to the implied requirement for a reasonable notice period so as to allow an orderly handover.

141. We unhesitatingly reject Mr Lake's evidence that he was "not aware that this would cause any difficulty with any of ManCo or CRM's suppliers or contractors": this evidence, coming from a businessman, is inherently implausible, and we do not accept that Mr Lake can ever have genuinely believed this to have been true.

142. Moreover, the very fact that such short - virtually, peremptory - notice was initially given is a further factor which supports our conclusion and findings as to the lack of rationality and good faith in the purported exercise of the Step-In Clause.

143. The giving of only 14 days notice, when a longer period was obviously needed, looks as if Mr Lake was seeking to spring an ambush on ManCo, without any real reflection on, or concern for, the consequences: except that, if ManCo did not capitulate, and as we are confident Mr Lake knew, he was effectively forcing ManCo to commit time, energy, money, and managerial resource which otherwise could have been put to use in managing the development, into fighting him and MQL off.

144. This conclusion is unaffected by the fact that MQL subsequently - on 18 April 2023 and in December 2024 - sought to give (respectively) 1 month and 3 months for handover: this all serves simply to highlight the inadequacy of the original period of notice. We have already commented on what we regard to have been pervasive irrationality on Mr Lake's part, not only in April 2023 but also in December 2024, and up to and including the hearing.

***Could the Step-In Clause be exercised at all?***

145. The Appellant argues that where a party is under an obligation to bring about a contractual state of affairs, it may be required to take reasonable steps to do so; meaning in this case that there was an implied duty to market and sell residential voids before exercising the Step-In Clause (and that, if the Respondent was not discharging this implied obligation, then the Step-In Clause was not capable of being exercised anyway): see Renewal Leeds v Lowery Properties [2010] EWHC 2902 (Ch).

146. The Respondent argues that no such obligation exists.

147. Given our findings above, it is not, strictly speaking, necessary for us to decide the point. However, having heard submissions, it seems to us appropriate to make

the following comments on the validity of the exercise of the Step-In Clause lest our conclusions should fall for reconsideration.

148. We accept that an implied term of the kind contended for by the Applicants exists.

149. In our view, it was obviously in the contemplation of those who drafted the suite of lease documents - now 20 years ago or so - that all the units would be marketed efficiently, and sold, so that the Commencement Date would be met within a reasonable period of completion. But that has not happened.

150. On the evidence, we do find that MQL is now in breach of this term so implied. It acquired its relevant interest in March 2019. There have been a trickle of sales (13 in the 58 months between September 2019 and June 2024: see the table at Page 5081 of the bundle; equating to about one every 4 months). Of those, 5 were made by Mr Lake, from his stock of 40 flats; meaning he has sold 1/8th (12.5%) of his flats in 5 years. There has been no good explanation of why other flats have not been disposed of; nor even offered for sale on the open market; especially in circumstances where Mr Lake had acquired them more or less for free.

151. In our view, having heard evidence, Mr Lake is deliberately holding onto these flats, and is refusing to engage with people who approach him offering to buy. On his own evidence, he is not seeking to sell. He is "open to offers" only in the very limited sense that, if someone approached him with an offer he could not refuse, he would sell. But that is not to say anything meaningful. We reject his oral evidence, as uncorroborated, of meeting a Saudi businessman in Marbella to try and sell a portfolio of flats.

152. His oral evidence, given in cross-examination, in response to a question as to whether he was 'actively marketing flats now', that he had been approached outside a nearby Greggs demonstrated the rather pastiche, improvisatory nature of his evidence, and his approach to sales. A person outside a shop who said that he knew of another person who might be interested is not the way to go about selling 40 flats.

152. For the sake of completeness, and given that the purported exercise of the Step-In Clause was invalid, then we do not need to decide whether the Respondent's obligation to pay the Void Proportion continued until there had been a reasonable transition period; or whether its obligation to pay the Void Proportion would have ceased instanter on expiry of the notice period.

## ORDER

**The Void Proportion**

1. The Respondent is liable to pay the Void Proportion for the service charge years in dispute (2021-2024) (credit being given for any payments for that period already made by the Respondent). The parties shall, within 7 days of the date of the release of this decision (excluding the date of the decision itself)., calculate the sum which is due, and that sum shall be paid, in cleared funds, by no later than 4pm on the 14th day following the date of the release of this decision (excluding the date of the decision itself).

2. In the event that the parties are unable to agree the sum, then each party shall, within 21 days of the date of this decision, set out its respective contentions and calculations, whereupon the Tribunal shall decide the issue or give such further directions as it sees fit.

3. In the event that the parties cannot agree the sum in dispute, the Respondent shall nonetheless pay the Management Company £364,112.32 (three hundred and sixty four thousand one hundred and twelve pounds and 32 pence) on account of its liability as set out in Clause 1, by the same time and date as in Clause 2.

4. Interest at the Judgment Acts rate of 8% shall run on the greater of £364,112.32 or any unpaid sum, from 14 days from the date of release of this decision until the date of payment.

5. Absent written agreement by the Applicant, no application by the Respondent for permission to appeal this decision or any appeal or other challenge shall operate as a stay on its obligation to pay either (i) the agreed sum; or (ii) the interim payment on account of £364,112.32, and shall not operate to pause the accrual of interest.

**The Step-In Clause**

6. The Respondent's purported exercise of the Step-In Clause (both initially, and including purported extensions of time) was invalid. The Notice given was void and of no effect.

**Costs, and section 20C**

7. Our provisional view is that the costs of and incidental to the claim (within which costs were sought and which was transferred to this Tribunal) and the costs of the proceedings so transferred before us shall follow the event; meaning that the Respondent shall pay (i) the Applicant Management Company's costs of and incidental to the claim and to the proceedings in this Tribunal, as well as (ii) any costs shown by the remaining Applicants to have been incurred in relation to these proceedings.

8. If agreement cannot be reached as to those costs then the Applicant Management Company and Respondent shall each, within 21 days of the date of this Decision, outline its position as to costs including (i) principle; (ii) basis of assessment; (iii) venue and mode of assessment; and (iv) any interim payment on account. If any interim payment on account is sought, that party shall provide the Tribunal with sufficient information to enable that sum to be determined.

9. Absent agreement on the section 20C application then each party shall, by that same time and date, file written submissions (which shall not exceed 10 sides of A4, 1.5 spaced, no less than 12 point type) as to their preferred outcome of the Section 20C application.