Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0012/07/25

In the matter of applications under Sections 27A and 20C Landlord and Tenant Act 1985 relating to the service charges payable at Estrella House and Vistamar House, Cei Dafydd, Barry, Vale of Glamorgan, CF63 4BH.

APPLICANTS: Vistamar RTM Company Limited
Estrella RTM Company Limited
Leaseholders of the following flats:
Flat 58 – Marian James
Flat 59 – Charlie Bowen
Flat 60 – Lawrence & Maxine Williams
Flat 61 – Richard Harding, Louise Ashley, Tereza Ashley & Richard Brockway
Flat 62 – Yvonne Hurley
Flat 63 – Carole Ann Rees
Flat 64 – Terry Boyle & Jennifer Cambridge
Flat 65 – Eileen Darcy

RESPONDENT: Davids Wharf Site Management Company Limited

Tribunal: Judge M. Hunt
Mr H. Lewis (professional member)
Ms C. Thomas

Hearing date: 12 June 2026

Attendances: Ms J. Pike (for the Applicants)

Ms A. Howell-Price (for the Respondent)

Decision date: 7 July 2026

DECISION

1. All service charges in dispute are payable in full save as follows:

a. the service charges relating to the pump and pumphouse maintenance and pumphouse water rates are not payable with effect from service charge year 2016-2017.

2. Only 50% of the Respondent's costs incurred, or to be incurred, in connection with these proceedings may be regarded as relevant costs for the determination of the Applicants' service charges.

REASONS

Introduction

1. The Applicants are the leaseholders of premises at Estrella House and Vistamar House, Cei Dafydd, Barry, Vale of Glamorgan, CF63 4BH. Each House is an independent blocks of four flats, now managed by RTM Companies, within a wider development on Barry waterfront (the "Estate"). The Tribunal will refer to the two Houses collectively simply as the "Property". The application was originally brought by the RTM Companies, hence why they are listed as applicants. However, neither is a leaseholder so are not directly concerned by the application.

2. The Respondent is a company that manages the Estate. It does so in accordance with the terms of a tri-partite lease between itself, the freeholder and leaseholders on the Estate, including the Applicants (the "Lease"). The Lease provides that the Applicants must contribute to the Respondent's costs of managing the Estate by way of service charge.

3. The Applicants dispute various service charges referrable to service charge years 2015/2016 until 2024/2025. The particular charges under challenge relate, firstly, to the costs of running and maintaining a pump and pumphouse that provides water to the upper floors of separate blocks of flats on the Estate, not including the Property. Secondly, the Applicants have challenged charges related to legal advice sought in the context of the remediation of building defects on the Estate. Thirdly, the Applicants have challenged the cost of gardening and litter-picking on the Estate, particularly those incurred whilst the remediation works were taking place.

4. In determining the application, the Tribunal considered two files of documents extending to 584 and 207 pages respectively. It heard submissions and evidence from the parties. It is very grateful to all for their attendance, evidence and submissions.

Relevant Law

5. The Landlord and Tenant Act 1985 provides a statutory framework for the management of service charges imposed by a landlord on a tenant. Section 18 provides a broad definition of "*service charge*" and "*relevant costs*". Section 30 provides a broad definition of "*landlord*", including "*any person who has a right to enforce payment of a service charge*", such as the Respondent in this case.

6. Section 19 limits the amount of "*relevant costs*" that can be recovered through a service charge, as follows.

> "***19. Limitation of service charges: reasonableness***
>
> *(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*
>
> > *(a) only to the extent that they are reasonably incurred, and*
> >
> > *(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
>
> *and the amount payable shall be limited accordingly*".

7. In relation to "interim" service charges, section 19(2) provides as follows.

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

8. Section 20B provides that relevant costs that were incurred more than 18 months before any demand for payment are not payable by a tenant.

9. Section 27A explains how service charge disputes are to be resolved. It provides as follows, so far as is relevant.

> "***27A. Liability to pay services charges: jurisdiction***
>
> *(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—*
>
> > *(a) the person by whom it is payable,*
> >
> > *(b) the person to whom it is payable,*
> >
> > *(c) the amount which is payable,*
> >
> > *(d) the date at or by which it is payable, and*
> >
> > *(e) the manner in which it is payable.*
>
> *(2) Subsection (1) applies whether or not any payment has been made*

...

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment".

10. Section 20C of the Landlord and Tenant Act 1985 provides that a landlord's costs in connection with legal proceedings, such as the application before this Tribunal, can be excluded from a service charge.

"***20C. Limitation of service charges: costs of proceedings***

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

...

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

11. General contractual law principles apply to the payment of service charges. To the extent that a lease does not require a leaseholder to pay for services, they are not obliged to do so.

The Lease

12. Pursuant to clause 6 of the Lease, the Respondent has committed to performing the obligations included in the tenth schedule. Of most relevance, that schedule requires it to perform the activities listed in the sixth schedule. Those activities include "*[k]eeping the Communal Areas generally in a neat and tidy condition and tending and renewing any lawns flower beds shrubs and trees forming part thereof*".

The "Communal Areas" are defined as the common "*gardens and grounds*". Similarly, the Respondent must keep the accessways and car parks clean and tidy. It must also keep the external structure of the Property in good and substantial repair, order and condition. The sixth schedule also includes a "Part E", which permits the Respondent to incur various specific expenses in undertaking these activities. So far as relevant, paragraph 15 of "Part E" states the Respondent may incur expenses as follows:

> "*in and about the maintenance and proper and convenient management and running of the Estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Building or any other part of the Estate (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable therefor)*".

It also provides that the Respondent may incur reasonable and proper expenses in defending proceedings arising out of any lease dispute.

13. Pursuant to clause 4.2 and the eighth schedule, the Applicants have agreed to contribute to the Respondent's costs of performing these services by way of service charge, referred to as the "Lessee's Proportion". The Lessee's Proportion is detailed in schedule seven. It requires the Applicants to contribute both to the costs of providing the services and to the specific associated "Part E" expenses.

14. The service charge accounting period provided for in the Lease and applied in practice is 1 December to 30 November.

Issues

15. Matters in dispute were narrowed somewhat at the hearing. The Respondent accepted that it had incorrectly charged the Applicants for the maintenance and water consumption of the Estate's pump and pumproom, which served only certain upper-floor flats in the Estate, not including any part of the Property. Its case was simply that it was unjust to declare those costs as not payable over so many years and that the provisions of the Limitation Act 1980 should apply to prevent such a declaration. The Tribunal took this as an argument that it had no jurisdiction to determine the more historic element to the application, on the basis that the Applicants were too late in bringing it, either "in principle" or because they should be deemed to have agreed the service charges. This was the first issue.

16. The second issue was whether the Respondent could charge the Applicants its legal costs associated with securing the remediation of defects in the buildings on

the Estate from the developer. The Applicants submitted that, pursuant to paragraph 15 of “Part E” of the sixth schedule to the Lease, it could not as the sums should have been recoverable from a third party – the developer.

17. The third issue was whether costs had in fact been incurred on garden maintenance and litter picking around the Estate whilst those remediation works were undertaken. If they had been, whether they were performed to a reasonable standard. If the answer to either question was “no”, the Tribunal would need to determine whether any, and if so how much, cost could be charged to the Applicants by way of service charge.

18. A final issue is whether the Tribunal should make any orders on account of costs.

19. Although some of the disputed service charges are “final” and others only “interim”, having been demanded on account of anticipated costs to be incurred, the distinction is of no importance in this case.

20. The Applicants also raised issue about the correct transfer or allocation of reserve funds to the RTM Companies. The Tribunal explained it had no jurisdiction to decide that issue, which was accepted by the parties.

Facts and conclusions

21. There were few disputes of fact. When findings had to be made, the Tribunal made them on the balance of probabilities in light of all of the evidence presented.

<u>Issue 1 – Pumphouse costs</u>

22. The Respondent accepts that costs associated with the pumphouse and its water consumption (the “Pumphouse Costs”) are not payable by the Applicants under the terms of the Lease. Therefore, the Tribunal did not need to consider this issue. The Applicants are no longer being charged those costs. All the Tribunal needed to consider was whether it should make a determination under section 27A of the Landlord and Tenant Act 1985 that the Pumphouse Costs charged to the Applicants in every year since and including service charge year 2015/2016 were payable.

23. Clearly the starting point is that, if the Lease does not require the Applicants to contribute to the Pumphouse Costs, they are not required to do so. Accordingly, usually the Tribunal would make the declaration sought.

24. The Respondent submits that section 9 of the Limitation Act 1980 applies such that the maximum the Applicants could seek is a declaration that charges demanded and/or paid since July 2019 are not payable (six years prior to the date of the application). However, that provision of the Limitation Act 1980 does not apply as

the Applicants are not directly seeking recovery of any sum. The Tribunal's role is not to order repayment of any service charges paid, merely to assess whether they are payable.

25. Nevertheless, the Tribunal is mindful that it does not have jurisdiction to determine the Applicants' liability to pay any service charges that they have agreed are payable. Agreement is not to be inferred solely by payment of the service charges demanded. However, a Tribunal may infer that charges settled years ago, without dispute or reservation, have been agreed. There is no requirement in the Landlord and Tenant Act 1985 that the tenant must provide a positive declaration of acceptance before the Tribunal can consider those costs to have been agreed. In that regard, the Limitation Act 1980 provides a useful indication of a reasonable timeframe after which a Tribunal might determine that charges had been agreed. If charges have not been challenged for over six years, clearly it is a strong indication they are not disputed.

26. The Respondent also submitted that it would not be "just and equitable" to find the service charges in dispute not payable. That is not the test for the Tribunal to apply, but the matter is of some relevance to costs, as I will come on to.

27. In this case, the Tribunal was minded to infer from the passage of time that historic service charges dating back further than six years had been agreed. However, via their representative, the Applicants had written to the Respondent on 15 April 2018 to state their belief that the Pumphouse Costs had been incorrectly apportioned in accounting year 2016/2017. The letter was more specifically referring to "water rates", as follows.

> "*Please note water rates estate costs as per the draft and previous years accounting known as pumphouse costs are in fact attributed to 36 individual apartments. Therefore the concept and allocation of estate water rates is incorrect*".

28. The Tribunal accepted the reference to "pumphouse costs" could reasonably be interpreted as referring not only to water rates but also to pumphouse running and maintenance costs. However, the letter was not obviously challenging any costs from years preceding 2016/2017.

29. From this, the Tribunal concluded that the Applicants had not agreed that they should be contributing to Pumphouse Costs relating to service charge year 2016/2017 (and from then on). The Tribunal must stress that it had serious reservations about reaching that conclusion simply on the basis of an isolated letter from many years ago. If the Applicants had not in fact agreed those costs, why had they not acted upon their concerns for over seven years? They had clearly reviewed

the Lease and its terms. Presumably they were receiving summaries of their rights alongside every service charge demand and (irrespective of that) would have been reasonably capable of investigating how they could have brought the dispute to the Tribunal.

30. In relation to periods preceding 2016/2017, the Tribunal was not prepared to find that the Applicants had indicated any disagreement about their service charges (even if, on analysis, the same alleged errors had occurred). They had every opportunity of informing the Respondent of their specific concerns relating to those years. The letter reads as though prior years' accounts were accurate so does not assist the Applicants in that regard. On that basis, the Tribunal inferred that service charges from any earlier years had been agreed and that the Tribunal had no jurisdiction to determine whether they were payable.

31. Accordingly, none of the Pumphouse Costs charged to the Applicants from 2016/2017 onwards are payable. This finding only applies to those Applicants that were leaseholders contributing to Pumphouse Costs incurred in any given service charge year.

Issue 2 – Legal costs

32. At some point after the Grenfell Tower fire in 2017, the Respondent determined that the buildings on the Estate contained combustible cladding, which it considered a defect requiring remediation. It engaged lawyers to assist it in negotiating remediation works with the developer. It was successful and the works were paid for entirely by the developer. It reimbursed the Respondent a large part of its legal fees. The legal fees had been paid via service charge contribution and the leaseholders were credited with funds upon reimbursement by the developer.

33. The balance of the legal fees has therefore been paid by the leaseholders. The Respondent is actively pursuing recovery of the remainder of its legal fees from the developer via court proceedings.

34. The Applicants contended that the legal costs incurred in seeking (and agreeing) remediation works were payable by the developer of the Estate. Accordingly, pursuant to paragraph 15 of "Part E" of the sixth schedule to the Lease, they cannot be charged to the Applicants by way of service charge.

35. The Tribunal rejected that submission. The Lease provides that the Respondent can recover its "*reasonable and proper expenses*" in and about the proper management of the Estate. It is worded generally. The Applicants did not contend the costs incurred were improperly or unreasonably incurred or that the legal services were not provided to a reasonable standard. In any event, the Tribunal

would have had no reason to accept such a submission. It was plainly reasonable to instruct lawyers in relation to such a complex matter. With their assistance, the Respondent conducted a successful negotiation.

36. The only issues therefore were, firstly, whether those costs are recoverable from the developer and, secondly, who is responsible for payment prior to any such recovery. As to the first issue, it is not a matter for this Tribunal to determine. A large part of the costs have been agreed and settled. This part has in turn been reimbursed to the leaseholders. The remainder is subject to litigation. Regardless of any purported agreement between the Respondent and the developer, it is only at the conclusion of that litigation that it will be established whether those costs are recoverable.

37. This brings me to the second issue, which is a matter for this Tribunal. The starting point is that the Lease provides that all of the Respondent's expenses are payable by the leaseholders, in advance of being incurred. Nowhere does the Lease envisage the Respondent having or allocating any of its own funds to the Estate, save in the event that the interim service charges paid fall short of actual expenditure. Even then, the Lease requires the leaseholders to make a balancing payment within 21 days of demand.

38. From a practical perspective, until the remediation negotiations had been concluded, someone would be required to pay for the costs of investigation, surveys and legal services. Read in context, it is hard to see who else the Lease envisages as being responsible other than the leaseholders. Indeed, it envisages that they are solely responsible for remediation costs unless somebody else pays for them. This is a strong indication that any upfront costs are payable by the leaseholders. Nothing in the Lease provides to the contrary. If for any reason the sums prove not to be recoverable, they are for the leaseholders to bear (subject to them being found not to have been reasonably incurred).

39. Accordingly, correctly interpreted, the Lease permits the Respondent to proceed exactly as it has – requiring the leaseholders to pay legal fees upfront, with credit then being given if those fees are later recovered from a third party. On that basis, all of the Applicants' service charges relating to legal fees associated to the remediation works are payable in full.

<u>Issue 3 – Gardening and litter-picking</u>

40. It is convenient to address these matters together.

41. The Lease requires the Respondent to maintain and keep tidy the Estate's accessways, car parks and garden areas, including trees and shrubs. It engages

contractors to perform those tasks. The work includes using blowers where appropriate, principally to assist with clearing fallen vegetation.

42. The Applicants submit that these tasks were not performed during the remediation works and/or were not performed to a reasonable standard. They presented no good objective evidence of this. They said that areas of the Estate cordoned off for safety reasons when scaffolding had been erected were not tended to. That was accepted by the Respondent, who said that the areas were not tended to as it was unsafe and likely pointless as the workers would (and did) cause damage to the vegetation. The untended areas were reinstated to a good condition once the scaffolding was removed. The Applicants said that litter-picking had not been undertaken and/or that it amounted only to using blowers to move litter around, which was unsatisfactory. The Respondent said this service took place normally (not with blowers) and accepted that litter is often present regardless. That is inevitable as the Barry waterfront is a busy and windy area such that litter swiftly returns.

43. The Respondent said that it expected to (and did) pay for the services at all times, as recorded in its service charge demands (and subsequent accounts, where applicable). It said that it believes the services were performed satisfactorily. It accepts that cordoned-off areas were not tended when inaccessible, but that more work was undertaken elsewhere on the Estate instead during those periods. It says that litter-picking is not limited to blowing and believed (and had witnessed) people picking up litter properly, including if any was blown by blowers into the shrubs around the Estate.

44. In disputes of this sort, the Tribunal expects leaseholders to provide some good objective evidence to support their contentions; mere assertions are insufficient. The Applicants have not done so. The Tribunal had no reason not to accept the Respondent’s evidence and submissions. It therefore concluded that all service charges demanded on this account were therefore payable in full.

Costs

45. The Applicants have succeeded in part of their case. They have been unsuccessful in part of their case.

46. In relation to the successful part of their case, the Applicants have been aware of the issue in dispute since 2018 and raised it with the Respondent. However, apart from sending one letter in 2018, they have not raised any obvious or serious dispute about those service charges until these proceedings. That the service charges were not payable under the Lease was promptly and readily admitted by the Respondent. However, it was reasonable for it to resist the application due to the number of years

in dispute. Its defence was focussed solely on that issue and has succeeded in part, albeit only in relation to one service charge year. To that extent, both parties were justified in bringing the matter before the Tribunal.

47. The most work to which the Respondent was put in the proceedings was in responding to the issue concerning legal costs, on which it has succeeded entirely. The remainder of the evidence it provided related to the issue of gardening and litter-picking, on which the Applicants presented very little information. The Respondent was put to unnecessary cost responding to this part of the application.

48. The Lease provides that the Respondent's costs of defending proceedings are to be recovered via the service charge. Section 20C of the Landlord and Tenant Act 1985 amounts to a statutory override of that element of the parties' agreement. It must be just and equitable for the Tribunal to allow applications under that section. Taking all of the above into account, the Tribunal determined it would be just and equitable to make an order that the Respondent may only consider 50% of its costs related to these proceedings as relevant costs for the purposes of determining the Applicants' service charges.

Dated: 7 July 2026

Judge M. Hunt