**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | **:** | **CHI/23UC/LSC/2021/0007** |
| **Property** | **:** | **Lodge 77, Isis Lakes, Spine Road East, South Cerney, Glos, GL7 5TL** |
| **Applicant** | **:** | **Andrew Corden and Sharon Corden** |
| **Applicant's Representative** | **:** | **Andrew Corden** |
| **Respondent** | **:** | **PGIM Real Estate UK Ground Lease Fund (PUK GLF Nominee A Ltd & PUK GLF Nominee B Ltd)** |
| **Representative** | **:** | **James Fieldsend, Counsel, Instructed by Osborne Clarke LLP, Solicitors** |
| **Type of Application** | **:** | **Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal Members** | **:** | **Judge Professor David Clarke Johanne Coupe, FRICS** |
| **Dated** | **:** | **3 December 2021** |

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**DETERMINATION AND STATEMENT OF REASONS**

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## DETERMINATION

**On the issues of the liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985, the Tribunal determines that:**

**1. The Tribunal sets aside its determination on Issue One made on 8 July 2021 and now determines that the Applicants have failed to establish a legal basis for a sharing of costs incurred for facilities enjoyed by owners of lodges on both the Isis and Windrush Sites. In the absence of any application that those costs have not been unreasonably incurred, the full amount of those costs must be borne by the lodge owners on the Isis Site alone and the Applicants are therefore liable for a 1/100th share.**

**2. Considered as a whole, the management charges are too high. The Tribunal determines that a reasonable total sum for an overall management fee for the Landlord's Property would be 13% of the total costs of services provided, excluding management, in any accounting year.**

**3. In respect of the application to determine whether a service charge would be payable to cover the expense of culling Canada geese, the Tribunal determines that this would be justifiable as a form of pest control provided it was lawful under the general law and met the requirements of the paragraph 15 of Part 1, Schedule 3 of the Lease held by the Applicants.**

**4. In respect of the application under section 20C of the Landlord and Tenant Act 1985, the Tribunal makes an order under that section.**

**5. In respect of the application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, no order is made by the Tribunal.**

## STATEMENT OF REASONS

### The Application

1. This Application ("the Application") was made on 9 January 2021 and seeks a determination from the Tribunal in respect of three issues relating to the liability to pay, and reasonableness of, service charges made, or contemplated to be made, under section 27A of the Landlord and Tenant Act 1985 ("the Act") as they relate to the Applicant's property, namely Lodge 77, the Isis Lakes, Spine Road East, South Cerney, Gloucestershire, GL7 5TL ("the Property").

2. The Applicants are Andrew Corden and Sharon Corden who are the leaseholders of Lodge 77 under a lease ("the Lease") of the Property dated 25 November 1994 for a term of 999 years from 1 January 1994. The Applicants purchased the Property on 29 October 2015. Andrew Corden appeared for the Applicants at the hearing. The ground rent reserved is a not insignificant sum, namely £1,000 per annum plus VAT, and is annually reviewed from 1 July by reference to the Retail Prices Index (and the figure now payable, including VAT, is over £2,500 per annum). A service charge, referred to in the Lease as the maintenance charge but termed service charge in this determination, is also payable under the provisions in Schedule 3 of the Lease. Reference will be made to the detailed terms of the Lease, as relevant to the determination, as appropriate below.

3. The Respondent to the Lease is PGIM Real Estate UK Ground Lease Fund (PUK GLF Nominee A Ltd & PUK GLF Nominee B Ltd), consisting of two companies registered in Jersey. The Respondent was formerly known as UBS Trustees (Jersey) Ltd until the change of name in 2017. It purchased the freehold titles to the Isis Lakes and Spring Estates, and later that of the Landings, and a 999 head lease of Windrush. A copy of the registered title to the Isis Lakes was in the documentation.

4. Two associated applications were made, by the Applicants. The first is an application for an order under section 20C of the Act (not made with the main Application but requested later and confirmed by Amended Directions made on 9 April 2021); the second is an application on the same day, 9 January 2021 for an order under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002, both of which have been considered and determined with this Application.

5. Directions were issued on 18 March 2021. Those Directions provided for a determination on the papers without a hearing unless either party objected in writing. The Applicants did so object and the Amended Directions made provision for an oral hearing by video proceedings.

6. The Application was set down for an online hearing on 8 July 2021. There was no inspection of the Property, or of the Isis lakes estate, but photographs were included in the bundle of documents before the Tribunal.

7. Following the hearing on 8 July, a Determination was issued to the parties. The Respondent made an Application for Permission to Appeal on 18 August 2021. This

application was considered by the Tribunal on 2 September 2021. The permission request was limited to an appeal in respect of Issue One only (see paragraph 32 below)

8. The Tribunal, after due consideration of the application made, decided to review the Determination dated 8 July 2021. The review is made under Rule 53 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. By virtue of that Rule, a Tribunal must on an appeal consider whether to review the decision made. The Tribunal considers that the ground of appeal set out is likely to be successful within Rule 55 and that a review is likely to enable the Tribunal to meet the overriding consideration in Rule 3 to deal with the case fairly and justly.

9. The review was heard on 10 November 2021 by an on-line hearing, with submissions being made by both parties. This amended Determination incorporates the decisions of the Tribunal on Issues Two and Three below as determined on 8 July and the revised decision in respect of Issue one following the review hearing on 10 November.

**The Property**

10. The Property is one of 100 holiday lodges at a development known as Isis Lakes, described below. It is sited within the Cotswold Water Park, a large area of some 40 square miles across the three counties of Wiltshire, Gloucestershire and Oxfordshire. Part of the Water Park, known as the Watermark Estate ("the Estate"), has been developed over a period of years as holiday homes. There are now five major separate groups of properties within the Estate, referred to in this statement of reasons, as "Sites". These are known as Isis, surrounding Lakes 5a and 5b with 100 lodges; Windrush, (Lake 7 - 82 lodges; Summer, (Lake 11 – 46 lodges and more under construction); Spring (Lake 14 - 80 lodges); and the Landings alongside Lake 16. There is an additional small piece of land within the Estate known as the Peninsula, which is adjacent to the Landings.

11. The Tribunal has been supplied with a plan of the whole Watermark Estate which shows that Isis and Windrush are around adjoining lakes to the north-east of the South Cerney Outdoor Centre (that Centre is not part of the Watermark Estate), Summer is to the south-east of that Centre and the other side of a public highway (the B4696), while Spring and the Landings are to the south-west of the Centre. There is therefore a significant degree of separation of the various Sites of the Estate. However, in respect of Isis and Windrush, these two Sites are not only adjacent but there is no visible boundary between them. They are served by a joint access road and the facilities on each site are available to lodge owners and their visitors from both Sites.

12. It is a planning condition of the developments that the lodges are not to be used as a permanent residence or as a primary residence. There was once a further condition that there should be no occupation at all for a period during January and February, but that planning condition has been removed.

**Management of the Watermark Estate**

13. The Estate is managed as a single entity by Mainstay Residential Ltd ("Mainstay"), on behalf of the freehold or head leasehold owners. This is notwithstanding that there are some Sites vested in the Respondent (Isis, Windrush, Spring and the Landings) and some elements vested in another person. Until 2014, the Estate was managed by Savills; Mainstay have managed since then.

14. There is no management agreement in existence to set out the obligations and expectations of Mainstay as managing agents. There was a management agreement dated 28 September 2011 between USS Nominees and Savills Commercial Limited. In its Statement of Case, the Respondent says that the intention was for Mainstay to provide on behalf of the Respondent the services provided for in the Lease and essentially to continue the management as had been carried out by Savills.

15. There is an on-site estate manager and manager's office, located on the Isis Lakes site; and a security hut at the Isis/Windrush entrance which is manned 24 hours a day. The provision of some management services, such as security and landscape maintenance, are delivered on an Estate-wide basis but the costs apportioned between the various Sites. The division of the costs so incurred in delivering services to the Estate is calculated on a 'per lodge' basis and then charged to the separate areas of the estate. Other aspects of the service charge levied on a particular lodge will be an apportionment relating to the relevant Site only.

16. In the filed statement of service charge expenditure for the year ending June 2019 (the latest made available to the Tribunal), the charges made include a management fee. In addition, there are apportioned charges relating to Estate salaries, estate office costs and estate office telephone.

## The issues for determination

17. The Application set out three issues for determination by the Tribunal. The three issues are discrete and unrelated. At the hearing, they were argued separately and are considered in the same order in this statement of reasons. The three issues are:

(i) Whether the costs incurred in respect of leisure and other facilities situated on Isis, currently charged only to the 100 Isis lodges but shared and enjoyed equally by the 82 Windrush lodges, should be apportioned between all the 182 Isis and Windrush lodges.

(ii) Whether the fees and charges levied by Mainstay in respect of management and administration, estate office costs and salaries for the estate manager are, when taken together, reasonable.

(iii) Whether, if the culling of Canada geese on the Estate is undertaken on behalf of the Respondent (as has been tentatively proposed by Mainstay) it would be a cost chargeable to the service charge under the terms of the Lease and, if so, whether such charges would be reasonably incurred.

## Issue One – Apportionment of charges for use of Isis facilities

18. To understand the nature of the complaint of the Applicants in relation to Issue One, it is necessary for the relationship between the Isis Lakes Site and the Windrush Site to be set out in some detail. In legal terms, they are separate and held under distinct titles

at HM Land Registry. The Respondent is registered freeholder of Isis but holds a 999-year head lease of Windrush. The Isis lodge leases are in common form and although the Windrush leases are very similar in many ways, they are not the same. One difference is particularly relevant to this determination. In both leases there is reference to the term of the 'Landlord's Property' but the definition is not the same. Thus, the 'Landlord's Property' is a defined term within the Lease of the Property, namely Lodge 77 on the Isis Site. The Particulars state the Landlord's Property to be:

> The property comprising Lakes 4 and 5 Cotswold Water Park, South Cerney, Gloucestershire shown by way of identification only edged blue on Plan 2'.

In the copy lease supplied to the Tribunal of a lease of a lodge on the Windrush Site, the reference is to:

> The property comprising Windrush Lake, Cotswold Water Park, South Cerney, Gloucestershire being registered at HM Land Registry under Title Number GR218615 shown by way of identification only edged blue on Plan 2'.

The plans on the Isis leases are of the Isis site; the plan on the Windrush leases is of the Windrush site.

19. Though the two sites are clearly differentiated in legal terms, for all practical purposes they operate as one site. There is a single main access road (situated primarily on the Isis site with branch roads off to Windrush) and one security barrier for the two developments jointly. Though there is a boundary between the two sites in terms of legal title, there is no physical boundary at all. Owners and occupiers of the 182 lodges on the two Sites move freely between the two. The important point for this determination is that the facilities available on one of the sites is freely available to residents on the other. On the Isis Site are a variety of leisure facilities, listed by the Applicants as tennis courts, a games room, children's play area, badminton net, table tennis pavilion, and spaces for five-a-side soccer and golf practice but there are apparently none of these on Windrush. Both sites have provision for fishing in the lakes and visitors and residents of both Sites can launch boats on the Windrush lake. There is also no separation of services between the two sites, such as refuse bin areas or dog litter bins.

20. From the dates of the lodge leases, it is common ground that the Isis site was developed first, and the Tribunal supposes that many, if not all, of the leisure facilities were constructed at an early stage of that development. The main access road is on the Isis side of the boundary. When the Windrush development occurred, it appears that the new lodges on that Site were accessed from the Isis existing development as remains the case now.

21. The Applicants case is simply that it is not reasonable or fair for the owners of the 82 Windrush lodges to have free use of the Isis facilities and not contribute to the cost and maintenance of those facilities. They point out that the literature for Windrush lettings show photographs of the Isis facilities. For the Applicants, who do not challenge the amount spent or charged for these facilities, it is a question of apportionment. When they purchased in 2015, they assumed that the costs of the facilities shared by Isis and Windrush were also shared. When they discovered that this was not the case in 2019, they queried the position with the then estate manager and were assured that the Respondent was aware of the anomaly. When no action was forthcoming, they brought

the issue to the Tribunal. They contend that the terms of the Lease do not support the costs being borne only by the lodge owners on the site where they are situated and that the costs of facilities used by owners, residents and visitors to both sites should be apportioned between lodges on both Sites.

22. In the Respondent's Statement of Case, it was accepted that some costs are shared between two or more or all the Sites, as is appropriate. Indeed, the Tribunal had the benefit (in Appendix 13) of a spread sheet illustrating the services charged to the Isis leaseholders which included listing the sharing of services relating to estate salaries, security services, some costs relating to CCTV and refuse management. However, the justification put forward in the Statement of Case for only charging the Isis leaseholders for the cost of shared facilities was limited to noting that each Site benefited from the facilities on the other Site – while noting at the same time that the costs of facilities charged to Isis leaseholders as set out in Appendix 14 was more than three times as much as the charge to Windrush leaseholders.

23. At the hearing on 8 July, however, Mr. Fieldsend for the Respondent submitted that the charge for facilities had to be made to the Isis leaseholders alone because that is what the terms of the Lease required. Indeed, he contended that no other approach was permitted. His argument centered on the definition of 'Landlord's Property' in the Lease and that is a reference to the Isis Lakes Site alone (described in the Lease as Lakes 4 and 5). The Lease does contain (in clause 5.6) the power for the Respondent as landlord to designate other property to be included in the term 'Landlord's Property' but no such designation had been made. The structure of the Lease was then clear and the facilities on the Landlord's property as so defined were costs and expenses for which the Applicant as leaseholder is required to contribute by way of the service charge.

24. Mr. Fieldsend particularly relied on paragraph 13 of Schedule 3, part 1 of the Lease:

> 'The maintenance of those parts of the Landlord's property from time to time designated for the communal use of the tenants and other occupiers of, and visitors to, the Landlord's Property'.

In his submission, this meant that there were three classes of person entitled to use the facilities – namely the tenants and occupiers of the Isis lodges, and visitors. Tenants and occupiers of Windrush lodges could only come within the category of visitors. One had to look at the meaning of these terms at the time the Lease was agreed. It was therefore correct that the full cost was borne by the Applicants and the 99 other owners of Isis lodges.

25. He further submitted that fairness must have regard to the way the Lease was structured. It was fair because that is what the original leaseholder, and the Applicants as assignees, had signed up to; and it was also fair because there was a balancing exercise that enabled Isis lodge owners to use Windrush facilities. The Tribunal comments that the original holder of the lease signed up to the Lease of a planned site of 100 lodges where 'visitors' to the Site would be occasional visitors to one of those 100 lodges. It could not have been contemplated in 1994 that 'visitors' would be a future stream of owners and tenants of another 82 lodges next door.

26. It was the view of the Tribunal at the conclusion of submissions at the hearing of this matter on 8 July that the Applicants had made out a case. The basis of that conclusion was that it was unreasonable (in the wider sense of that word) for the Applicants to incur the cost of all the charges for the facilities on Isis Lakes when they are also used without restriction by and for the benefit of the leaseholders, occupiers, and visitors from the 82 Windrush lodges.

27. However, it was not enough to establish that wider unreasonableness alone; it must be unreasonable within section 19 (1) of the 1985 Act. The Applicants had not contended in their application that any of the charges had been unreasonably incurred; and, consequently, there was no evidence as to how the charges were divided up, let alone any extent to which they might have been increased because of use by 182 lodges rather than 100. Therefore, to establish their case, it was necessary to show that the Windrush leaseholders could (as well as should) be made liable to pay towards these facilities – and indeed, that the Isis leaseholders could be liable to contribute to the Windrush facilities. Only then would it be unreasonable for the Respondent not to apportion the facility charges (accepted by the Applicants to be reasonable in amount) across both Sites. For it is clear from paragraph 13 of Schedule 3, part 1, of the Lease that the Applicant must pay if the Windrush leaseholders cannot be required to contribute; and in the absence of a successful application establishing that part of the costs of these leisure facilities have been unreasonably incurred, the Respondent is able to recover the full cost of maintaining those leisure facilities.

28. To establish their case, the Applicants pointed to clause 5(6) of the Lease and the power to designate additional land as part of the Landlord's property as a method of ensuring that the facilities are paid for by all 182 lodges on Isis and Windrush combined. But that power has not been exercised and the Tribunal has no jurisdiction to require it to be done. In any event, there may be a good reason or reasons why the Respondent does not wish to make such designation. Consequently, it would be wrong to find that the full charge has been incurred unreasonably on the basis that a designation of Windrush Site as additional property has not been made.

29. There is, however, another relevant paragraph in Schedule 3, part 1 of the Lease. Paragraph 15 states:

> 'The provision of any other services which in the Landlord's reasonable opinion benefit the Tenant directly or indirectly (whether alone or together with others).'

Significantly, almost the same wording appears in the sample Windrush lease in the bundle of papers:

> 'The provision of any other services *or facilities* which in the Landlord's reasonable opinion benefit the Tenant directly or indirectly (whether alone or together with others).'

30. At the hearing on 8 July, it was put to Mr. Fieldsend that the presence of these clauses permitted the Respondent to charge the costs of leisure facilities on both Sites across all 182 lodges, thus ensuring fairness between all 182 lodge owners, because all owners, tenants and visitors use all the facilities notwithstanding where they are situated. His response was that clause 15 was a 'long-stop' catch all clause and should not be used in that way.

31. The Tribunal disagreed with that submission. In the original Determination, the Tribunal held that all the leases on the two Sites are for a term of 999 years and the nature of the services or facilities that might benefit the leaseholders are bound to change over time. In this case, it was clearly convenient for (and a significant financial benefit to) the developers and freeholders when Windrush was developed that Windrush was accessed by the Isis access road and that the facilities already existing on Isis were made available to the leaseholders on Windrush rather than duplicated at extra cost. It was the view of the Tribunal that the presence of Schedule 3, Part I, paragraph 15 in each set of leases permitted the costs of those facilities to be shared. The Tribunal therefore initially determined that the amount of the costs charged to the Applicant for the leisure facilities on Isis that were also available to Windrush should have been 1/182 rather than 1/100 and, to the extent that they were charged more than 1/182 the charge was unreasonably incurred.

32. The Respondent's Application for Permission to Appeal set out the single ground of appeal. After consideration, the Tribunal granted the review. The written and oral submissions at the review were based on the same ground. Though perhaps these submissions could have been put at the original hearing, it was clear to the Tribunal that it was better for a review to be granted.

33. The argument on which the application to appeal was made, and the argument put at the review, was that the interpretation by the Tribunal of paragraph 15 of Part 1 of Schedule 3 to the lease, and of the similar provision in the sample Windrush lease, was wrong. There were at least four strands to this submission. Firstly, applying the correct approach to the contractual interpretation of the Lease (as summarized by Asplin LJ in *Fishbourne Developments v Stephens* [2020] EWCA 1704) and taking relevant factual background available to the parties in 1994, the true interpretation of paragraph 15 was limited to services provided on or to the Landlord's property as defined in the Lease. Secondly, the wording of the sample Windrush lease cannot inform the interpretation of the Applicant's Lease. Thirdly, there was no evidence of the factual background available to the contracting parties in 1994 and the extent to which (if at all) it was known that there would be future developments of sites other than Isis, or that Windrush Site would be developed as a single integrated site. Finally, the Tribunal should not, and perhaps could not, interpret paragraph 15 of Part 1 of Schedule 3 of the Windrush sample lease in the absence of a direction allowing the leaseholders of lodges on the Windrush site to be joined to the application.

34. The Tribunal's original decision was based, as it had to be in the absence of a claim that the relevant charges had not been reasonably incurred, on a decision that there was, as the Applicants contended, a basis for mutuality of liability for the cost of the facilities enjoyed by all lodges across the two integrated sites. However, to come to that conclusion, it was necessary to consider the extent and meaning of paragraph 15 in both the Lease and the Windrush sample lease. The Tribunal accepts the Respondent's submission that it should not have ventured to interpret the meaning of the sample Windrush lease; and that there was in any event no evidence of the factual background available to contracting parties in 1994. That is sufficient to mean that the Applicants

cannot establish that the owners of the Windrush lodges can be made to contribute to the element of the service charges levied in respect of facilities on the Isis Site used by owners on the Windrush Site.

35. The Tribunal therefore sets aside its decision on Issue One made in its original Determination. The Tribunal now determines that the Applicants have failed to establish a legal basis for a sharing of costs incurred for facilities shared and enjoyed by owners of all lodges on both the Isis and Windrush Sites. In the absence of any application that those costs have not been unreasonably incurred, the full amount of those costs must be borne by the lodge owners on the Isis Site alone and the Applicants are therefore liable for a 1/100$^{th}$ share.

36. The Tribunal makes two concluding comments. Since mutuality of obligation cannot be established, it is no longer necessary for this Tribunal to come to a firm conclusion on the meaning and extent of paragraph 15 of Part 1 of Schedule 3 of the Lease. It is right that that question should be left to a situation where it needs to be decided. The Tribunal also ventures to suggest that it may be expedient for the future for the vexed issue of charges for facilities shared between the two sites to be addressed by the Respondent in conjunction with all leaseholders with a view to exploring whether there is a basis for the costs to be shared across all 182 lodges. If this is not done, the sense of unfairness will remain. In the event of a claim in the future that costs (say) of a major repair or refurbishment have been unreasonably incurred, the issues aired in this case may otherwise arise again.

**Issue Two: Reasonableness of management fees**

37. In their Statement of Case, the Applicants contend that the totality of management fees are unreasonably high. They contend that the amounts charged as the 'management fee' in the accounts for each year are already too high. Therefore, they contend that to charge an additional sum for the estate manager costs (salaries, office costs and telephone) is unreasonable. The core submission in their skeleton argument is that the cost of an estate manager should be incorporated into the management fees and not be charged as an additional sum.

38. The Applicants supported their contention with the following points:

(i) From Mr. Corden's professional experience, he claimed that the average fee per property for a full management service would be £12.50 plus VAT per unit per month. He offered no specific evidence to support that contention.

(ii) There is no formal agreement between mainstay and the Respondent recording the duties or setting out the processes of management of Isis Lakes or the wider Estate.

(iii) There is a lack of transparency in the awarding of contracts. It was pointed out that there has been no consultation process with the leaseholders and that Mainstay awarded contracts for less than a full year to avoid consultation.

(iv) Extra fees were payable under the terms of clause 3.8 of the Lease for consents for letting or on an assignment. The Applicant's skeleton argument drew attention to the landlord's consent guide (in the bundle of papers) and the various fees payable. An example would be £150 for an annual consent to sublet.

(v) Reliance was placed on the First-tier Tribunal case of *Tupper v PGIM Real UK Ground Lease Fund* (2020) CHI/23UC/LSC/2019/0075 (hereafter referred to as "the Landings Decision") where a determination of various issues relating to a property at the Landings Site within the Estate held that a reasonable sum for the overall management fee for the Landlord's Property at the Landings was 13% of the overall costs of the services provided, excluding management, in any accounting year.

39. The Applicants do not contend that there should be no estate manager employed on site. Rather, they acknowledge the widespread dissatisfaction with the reduction in hours worked by the current manager (from full-time to part time and only two days a week) but contend the costs should be part of the general management fee. In response to a question, Mr. Corden said he was of the view that it was arguable whether a full-time manager was required but perhaps more than the current two days a week. (It should be stressed that for the four accounting years for which accounts have been supplied there was a full-time manager in post).

40. At the hearing and in the skeleton argument submitted at the hearing, as well as submissions on the matters set out in their Statement of Case, the Applicants made the following further points in support of their contention:

(i) The management of the Watermark Estate generally, and of Isis Lakes in particular, was one that only focused on the maintenance and care of the land, lakes, and communal facilities. Mr. Corden submitted that this required much less work than managing a block of flats.

(ii) There was insufficient transparency about work that had been undertaken. While it was not part of his case, he contended that the failure to provide details about the use of a contractor who may have been associated with the Respondent or even charged excessive fees was an example of the lack of transparency.

(iii) With 100 properties contributing to the Isis service charge, and 182 when considered with Windrush, economies of scale should mean that costs are not excessive. As the key services (such as landscape management, security, CCTV, and waste disposal) are already 'set up' and separately charged, the basic management fee charged is more than adequate without charging more for an estate manager.

(iv) While he could cite examples of some poor maintenance, the main concern was that the estate manager spent most of his time assisting guests of leaseholders who holiday at the site. Mr. Corden contended that such work was not part of management duties. The Applicants did let their own property but provided their guests with all the information that they needed so that an estate manager did not have to do so.

(v) The Estate manager deals with a range of additional services going beyond general management, such as enquiries about consents for which the Respondent and Mainstay are paid separately.

41. In conclusion, in response to a question from the Tribunal, Mr. Corden submitted that an overall figure of 13% of the overall costs of the services provided, excluding management, in any accounting year would be a reasonable, if generous, fee for managing Isis Lakes.

42. The Respondent's position on the second issue, as set out in the Statement of Case, was straightforward, though substantially amplified by the witness statements of Neelam Samra, an Associate Director of Mainstay, and of Christopher Jennings, the current Estate Manager; and by oral evidence at the hearing. It is that the costs of management, consisting of a management fee and the contribution to the salary of the on-site estate manager and the estate office are reasonable in the context of a high-end development of holiday lodges with an array of services and facilities. It was further contended, though without specific evidence to that effect, that the presence of the on-site manager was supported by the leaseholders (Ms. Samra did provide recent evidence of dissatisfaction in service levels). The Landings Decision was contended to be a determination relating to a different lodge on a different site; and that subsequent experience and leaseholder demand has shown that there is a need for a full-time estate manager supported by an on-site estate office.

43. In her witness statement, Ms Samra sets out the services for which the management fee is charged and then the role and duties of an estate manager and submits that the nature of the Estate requires an on-site manager and, further, that recent experience demonstrates that a part-time position does not deliver the services required. The role of estate manager includes 'engaging with residents' and dealing with licences and consents, as well all aspects of management of the site. Significantly, she notes that 'lodge owners rely on the estate manager to provide information to renters' who are provided with a welcome pack. She contends that it is then possible to deal efficiently with day-to-day enquiries. She denied that there was any overlap of service, with the management fee covering back-office services. In response to a question from the Tribunal, she indicated that the management fee was a fixed sum and not related to the actual cost in any way of the services delivered. The paperwork revealed that the management fee over the four years in question had only increased by modest amounts calculated by reference to the annual increase in average weekly earnings.

44. Ms. Samra indicated that Mainstay had introduced for this site, as with other 'commercial' sites, an 'Integrated Management Model' but there was no detailed description in the bundle of documents to enable the Tribunal to fully understand how this approach differed from a standard model. She did contend that there was a clear demand for maintaining a high level of service and it had been a real challenge to try to deliver that in two days a week.

45. The Landings Decision had found that the lack of a management contract between the Respondent and Mainstay was a significant concern. In answer to a question, Ms. Samra confirmed there was still no contract, but Mainstay was working with the Respondent on this issue. She estimated that perhaps 10-20% of the estate manager's time was spent in dealing with visitors to the estate and that there was no separate holiday letting service.

46. In his witness statement, Mr. Jennings set out his duties as estate manager and noted that with the number of properties involved there were considerable expectations and pressures. This was because of the volume of enquiries from residents, visitors, and renters both in person and by emails. In his oral evidence, he noted that there had been

1,843 emails in May 2021 to deal with from all Sites. While he did not dissent from the estimate of 10-20% figure for requests from visitors, he did refer to the fact that about 70% of lodges are rented out; that he did get questions to deal with from various owners' letting agents; and that 'significant amounts of my time is spent dealing with requests that are often over and above the management services that are normally provided'.

47. In his skeleton argument, Mr. Fieldsend made the following points:

(i) The Landings Decision could be distinguished in that it related to a different site, with different lease terms and was based on the 'Landlord's Property' as defined in that lease. Isis Lakes was a larger development, over twice the size, and requires an increased level of management.

(ii) The reduction in time spent on site by an estate manager was reduced to two days following the Landings Decision. However, the negative re-action, and negative consequences of that change, and the evidence given, support the presence of a full-time manager.

(iii) The estate office is on the Isis site and therefore on the Landlord's Property as defined in the Lease.

(iv) No comparable costings have been produced by the Applicants and the suggestion that London management charges are comparable to a development like Isis Lakes and the Watermark Estate is unrealistic.

(v) Stepping back, the annual fees for all management services are reasonable.

48. In his oral submissions, Mr. Fieldsend accepted that there was no management agreement but contended that it does not follow that the Tribunal does not know what is provided given the evidence provided. If one looked at the disaggregated figures, a charge of £138 for the benefit of a full-time estate manager was not unreasonable. The nature of estate services was driven by demand and had been 'stress tested' by the recent period of the estate manager being part-time. The management fee covered the cost of the services in the back office, and these could not be reduced while the demand for the assistance of an on-site manager was leaseholder driven. Similarly, the relatively small sum charged to the Applicant to cover the cost of the estate office was reasonable.

49. In the end, Mr. Fieldsend submitted that aggregated costs of management fee, estate manager salary and estate office costs, set out in paragraph 90 of Neelam Samra's witness statement, were reasonable having regard to the nature of the development and at service provided.

50. In making its determination on this issue, the Tribunal wishes to stress that it is not its decision that there should be no on-site estate manager, nor that there should be one (whether full-time or part-time). That is a matter for Mainstay and its client, the Respondent, to decide, perhaps in consultation with the many leaseholders on the Sites on the Watermark Estate. It is also clear that the Landings Decision did not in any way require a reduction in the time on site of an estate manager.

51. The determination of the Tribunal is that, considered as a whole, and in the light of all the evidence given and submissions made in this case, the management charges (consisting of the management fee charged, the estate manager's salary and the estate

office costs) are too high. The Tribunal determines that a reasonable total sum for an overall management fee for the Landlord's Property is 13% of the total costs of services provided, excluding management, in any accounting year.

52. The reasons for this determination are as follows:

(i) The Tribunal considers that the continuing lack of any management agreement between the Respondent and Mainstay means that Mainstay can set its own parameters within which the services under the Lease are delivered. It is not possible for the Tribunal to just use the oral and written evidence of Neelam Samra given in this case on its own to determine whether the management fees are reasonable when, taken as a whole, and in the opinion of the Tribunal using its expertise, they exceed the range of charges for management services in the market.

(ii) The Tribunal accepts that the annual increase in the management fee, calculated by reference to the annual increase in average weekly earnings, is entirely reasonable. However, there is no evidence of how the base fee was set when Mainstay began as managing agents except that they were based on those previously charged by Savills. There is no suggestion that Mainstay was appointed after competitive tender. The Tribunal was told that the charges are a fixed fee so there is no suggestion that it reflects the cost of the work provided. In such circumstances, the Tribunal can only look to its experience of the market.

(iii) The Respondent's case was directed in significant ways to justify the provision of an on-site and full-time estate manager. The Tribunal accepts that such a provision may be appropriate for Isis Lakes – but that is not a matter for the Tribunal to decide. However, it is pertinent to point out that if an estate manager is on site carrying out the range of duties as set out by Neelam Samra in her witness statement (managing site staff, engaging and responding to leaseholder enquiries, overseeing planned work programmes and maintaining standards, surveying the site and monitoring conditions of lodges, dealing with leaseholder consents and improvements, helping to prepare budgets, producing a newsletter generally dealing with day-to-day management) then all those duties no longer need to be carried out from a central office. Thus, if there is a full-time manager, that should mean one less full-time employee in the central office. If Mr. Jennings deals with 1,843 emails in a month that is 1,843 fewer emails to be answered by head office. All the listed tasks will need to be done in one location or the other. For that reason, adding in a full-time estate manager's salary to the totality of management charges is not justified where the total sum is unreasonable in amount. (Ms. Samra's witness statement at paragraph 80 of her statement did acknowledge that some of the comments received from leaseholders on the reduction of the presence on site of the estate manager was to the effect that the management fee for back office should be reduced instead).

(iv) Some of the additional costs arising from there being an estate office may well be justified. However, the estate office costs are the least substantial element of the total and should be substantially covered by the extra 0.5% allowed over and above the industry standard of 12.5%.

(v) It does appear that the estate manager is having to do work over and beyond the management services that are normally provided under any lease. This is specifically recognized by Mr. Jennings in paragraph 11 of his witness statement. Ms. Samra estimated visitors' enquiries at 10-20% of the work; Mr. Jennings evidence appeared to

suggest a higher figure. But if, as was the evidence, about 30% of lodges are unlet second homes, it does not seem right to charge all lodges for services to assist visitors that are additional to those usually expected in a service charge. It may appropriate for Mainstay to consider offering their expertise at a fee to enable lodge owners to give their visitors guidance and assistance during their stay.

(vi) Mr. Fieldsend invited the Tribunal to stand back and consider the aggregated fee for each year in question and consider if that is reasonable. Another approach is to consider the overall management fees for Isis Lakes. If the aggregated fee is £450 for one lodge (a rough average over the years in question), then for Isis Lakes in total it is £45,000, or £81,500 for Isis and Windrush combined. Given the economies of scale, and the fact that all the actual services are separately charged in addition, such a management fee in total does not appear to the Tribunal to be reasonable.

(vi) Finally, the decision of this Tribunal is in accordance with that in the Landings Decision, where the Respondent accepted the determination there made and did not seek leave to appeal.

53. The Tribunal calculates that 13% of the total costs of services provided, excluding management, in the four relevant years ending on 30 June for which accounts are available would be:
2015-16: £25,311 being 13% of £194,697.
2016-17: £24,702 being 13% of £190,022.
2015-16: £22,049 being 13% of £200,377.
2015-16: £23,996 being 13% of £203,738.

54. The Tribunal recognizes that its calculation may need to be adjusted in the light of VAT issues or the Tribunal's determination on Issue 1. The Tribunal therefore invites Mainstay to check the calculations made, put any variance to the Appellants for approval and there is liberty to apply if agreement cannot be reached.

**Issue Three – Proposed culling of Canada geese**

55. This is a very particular matter raised by the Applicant. In a newsletter early in 2021, Mainstay indicated that they intended to undertake a culling of Canada Geese because of the mess that the birds created on grassy areas. This culling did not take place as intended. However, the Applicant seeks a determination under s27A of the 1985 Act that, if such a culling did take place, then the costs would not be payable under the service charge provisions. While the Applicant accepts that, contrary to the normal position, some species of birds (including Canada geese) can be culled after obtaining the appropriate licence, they contend that it is fundamentally wrong to use leaseholder's funds for such a purpose and other measures could be utilized without the necessity of culling.

56. The Respondent noted in the Statement of Case that there may have been some culling of geese in earlier years, but none had taken place in 2021 and all options were being reviewed. Since Isis Lakes has recently been designated as a Site of Special Scientific Interest (SSSI), culling would only take place with the approval from Natural England.

57. At the hearing, Mr. Fieldsend contended that, if it became necessary to cull any geese, such action could be justified under any one of three provisions in the Lease:

(i) Clause 4.2, which covers the keeping in good repair and condition of the site and keeping it clean, tidy, and maintained.
(ii) Schedule 3, Part 1, paragraph 13, set out above (paragraph 20), which again focuses on maintenance of areas for communal use.
(iii) Schedule 3, Part 1, paragraph 15, set out above (paragraph 24), which provides for the provision of other services that benefit the leaseholders directly.

58. At the hearing, the Tribunal indicated that it considered the particular issue to be one aspect of pest control – and the Respondent has undertaken some pest control in the past. While details were not supplied to the Tribunal, examples of problems that might require action could include of infestation by rats or rabbits, or wasp nests. Thus, while the culling of any wild bird without cause would be difficult to justify, let alone to be charged under a service charge, significant problems with Canada Geese might justify pest control measures if the circumstances indicated it was necessary.

59. The Tribunal doubts if pest control for culling of geese is covered by Clause 4.2 of the Lease or by paragraph 13. These clauses are directed to keeping the communal areas in good condition. But the cost of such measures could be justified as part of the service charge under paragraph 15 of Schedule 3, Part 1, provided that such action does, in the landlord's reasonable opinion benefit the leaseholder directly or indirectly; and, of course, that the action being taken is lawful under the general law after obtaining whatever permissions or approval that is required.

60. The Tribunal therefore determines that, in respect of the application to determine whether a service charge would be payable to cover the expense of culling Canada geese, this would be justifiable as a form of pest control provided it was lawful under the general law and met the requirements of the paragraph 15 of Part 1, Schedule 3 of the Lease held by the Applicants.

**Application under section 20C of the Act**

61. The Application included an application under section 20C of the Landlord and Tenant Act 1985 for an order that the costs incurred by the Respondent in connection with these proceedings are not to be included in the amount of any service charge payable by the Applicant being the persons on whose behalf the Application is made.

62. The Respondent opposed the making of such an order but did so while not knowing the outcome of this determination. Mr. Fielding recognised that such an order might be appropriate in the light of the determination.

63. The Applicant has succeeded on two out of the three issues that they raised and consequently the Tribunal considers that an order under section 20C of the Act is appropriate in respect the costs incurred by the Respondent in connection with these proceedings.

**Application under the 2002 Act, Schedule 11, paragraph 5A**

64. The Application included an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This is an application for an order by the Tribunal to reduce or extinguish a tenant's liability to pay an administration charge in respect of litigation costs. It was accepted by the parties that such an application was not relevant to this decision and no order is made.

**Closing remarks**

65. The Tribunal wishes to express its appreciation for the high quality of the bundles of documents produced by the parties.

**Right of Appeal**

66. A person wishing to appeal this revised decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The time for appeal on Issues Two and Three having expired, an appeal is now only possible on Issue One.

67. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

68. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

69. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.