



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

Case reference : **BIR/00CS/LSC/2022/0008**

Property : **196 Cape Hill, Birmingham, B66 4SJ**

Applicant : **Mrs Amina Stokes**

Representative : **None**

Respondent : **Victoria Gardens (Cape Hill)
Management Company Ltd**

Representative : **Miss Mattie Green (counsel) instructed
by JBLeitch, Solicitors**

Type of application : **1. Application for determination of
liability to pay and reasonableness of
service charges under sections 27A and
19 of the Landlord and Tenant Act 1985
2. Application for an order under section
20C of the Landlord and Tenant Act 1985
3. Application under paragraph 5A of
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 for an order
reducing or extinguishing a tenant's
liability to pay an administration charge
in respect of litigation costs**

Tribunal member : **Judge C Goodall
Mrs J Rossiter MRICS**

**Date and place of
hearing** : **12 April 2023 at Centre City Tower,
Birmingham**

Date of decision : **16 May 2023**

DECISION

© CROWN COPYRIGHT 2023

Background

1. Mrs Stokes has applied to this Tribunal for a determination of the payability of the Maintenance Charge on account for her flat at 196 Cape Hill, Birmingham (“the Property”) for the calendar year 2022. The sum demanded for that year, in a demand dated 13 January 2022 (“the Demand”), was £2,388.94, which Mrs Stokes says is too high.
2. The application was received by the Tribunal on 20 September 2022. Directions were made for the conduct of the case, requiring both parties to file Statements of Case, which both did. Mrs Stokes also filed a short reply with some additional documents attached. A face-to-face hearing was arranged for 12 April 2023, which was preceded by an inspection.
3. Mrs Stokes represented herself at the hearing, assisted by her son. The Respondent was represented by Miss Mattie Green of counsel. Mr Jason Maxwell, a property manager for the Respondent’s managing agent, Mainstay Residential Limited, attended the hearing and gave evidence to us.
4. This determination sets out our decision on the service charge payable in advance for 2022 and our reasons for that determination.

Law

5. Sections 18 to 30 of the Landlord & Tenant Act 1985 (“the Act”) contain statutory provisions relating to recovery of service charges (which the Maintenance Charge in this case is) in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.
6. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-
 - a. The person by whom it is or would be payable
 - b. The person to whom it is or would be payable
 - c. The amount, which is or would be payable
 - d. The date at or by which it is or would be payable; and
 - e. The manner in which it is or would be payable
7. Section 19(1) of the Act provides that:

“Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.”

8. Section 19(2) of the Act provides that:

“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.”

9. In this case, we are only considering section 19(2) as Mrs Stokes’s challenge is to the demand made at the beginning of 2022 for the anticipated costs for that year. If she wishes to do so, when the accounts for 2022 are produced, Mrs Stokes could pursue a further case under section 19(1) to ask the Tribunal to determine whether the actual costs were reasonably incurred, and were for works or services which were of a reasonable standard.

10. On the question of whether the Tribunal can take into account the Maintenance Charge payer’s financial position, in *Garside v RFYC Ltd and Maunder-Taylor* [2011] UKUT 367 (LC) the Upper Tribunal said, at paragraph 20:

“It is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship, even if extreme. If repair work is reasonably required at a particular time, carried out at a reasonable cost and to a reasonable standard and the cost of it is recoverable pursuant to the relevant lease then the lessee cannot escape liability to pay by pleading poverty. ... the [Tribunal] cannot alter a tenant’s contractual liability to pay.”

The Lease

- 11. Mrs Stokes is the lessee of the Property under a lease dated 8 October 2010. The original landlord was George Wimpey West Midlands Limited (though they are not the landlord now).
- 12. The lease has three parties, being the original landlord, Victoria Gardens (Cape Hill) Management Company Ltd (“the Respondent”), and an original tenant.
- 13. Mrs Stokes told us that she took an assignment of the interest of the tenant in the lease (i.e. bought the flat) in around April 2021. Official copies of

the legal interest in the flat registered her as the proprietor on 11 April 2022, and stated that the price paid on 21 May 2022 was £101,000. Mrs Stokes said there had been a delay in registering her purchase, which she blamed on the managing agents, though of course they are nothing to do with the Land Registry.

14. There was therefore some confusion over the date of purchase, but for the purposes of this application, we were satisfied that the purchase was in 2021, so that Mrs Stokes was the lessee before the commencement of the 2022 calendar year, and before service of the Demand.
15. The lease is for 125 years. A premium was paid. There is a rising ground rent of £250 per annum initially, doubling every ten years thereafter. A Maintenance Charge is payable to the Respondent, the definition of which is:

“(subject to the Agreement and Declaration in relation thereto contained in paragraph 8 of the Seventh Schedule) the proportion applicable to the Property (specified in Part III of the Sixth Schedule) of the sums spent or to be spent by the Management Company on the matters specified in the Fifth Schedule and so far as the same relate the matters specified in Part II of the Sixth Schedule as estimated or adjusted in accordance with Part I of the Sixth Schedule”
16. The proportion specified in Part III of the Sixth Schedule is 4.5147%. That Part also identified an Initial Maintenance Charge of £797.30.
17. In paragraph 1 of the Third Schedule, the tenant covenants to pay the Maintenance Charge. Clause 5 and the Fifth Schedule contain covenants on the part of the Respondent to provide services, including keeping the building in which the Property is located in good repair, cleaning, maintenance, insurance, and various other services in fairly standard form. Part II of the Sixth Schedule includes other heads of expenditure which may be incurred by the Respondent and charged to the Maintenance Charge payers, again in fairly standard form. The precise wording of these items is not of great significance in this determination and we have therefore not set out the services which must be provided by the Respondent in detail.
18. The service charge year is 1 January to 31 December in each year (see paragraph 1 of the Part I of the Sixth Schedule).
19. Paragraph 8 of the Third Schedule concerns restrictions upon the sale of the flat, in that no lessee may transfer the Property until the transferee has applied in writing contemporaneously with the transfer to become a member of the Respondent. This strongly suggests the Respondent is a lessee owned management company.
20. Paragraph 8 of the Seventh Schedule provides:

Maintenance Charge

(a) the proportion of the Maintenance Charge applicable to the Property in relation to the Buildings and the Common Parts shall apply only as from the date of construction by the Company of the final flat or dwelling within the Development

(b) prior to the date specified in paragraph 8(a) of this Schedule the proportion of the Maintenance Charge applicable to the Property in relation to the Buildings and the Common Parts shall be the amount of such Maintenance Charge as is attributed by the Company or the Management Company to the Block divided by the number of flats within the Block

(c) the Company may at any time prior to the construction of the final flat or dwelling within the Development vary the number of flats or dwellings to be constructed within the Development and/or vary the specification thereof and (if required as a result thereof) shall also vary by notice to the Buyer the proportion specified in Part III of the Sixth Schedule Provided that any such variation shall be reasonable in the context of the change to the Development and shall be calculated on the same basis as the original proportion.

Inspection

21. The Property is situated in a purpose built block of 20 flats over four storeys on the corner of Cape Hill and Crown Street in Smethwick, constructed in an “L” shape (“the Block”). There are three staircases within the Block, one serving 4 flats, and two serving 8 flats. The Block is of traditional brick and rendered block construction with a pitched tiled roof.
22. There are entrance doors at the rear and front of the Block enabling access to each staircase. The front entrance is a fire exit for two staircases, with the main access door being at the rear. The most easterly staircase has the main entrance door on the front of the Block as viewed from the road. One access door for each staircase has a door entry control system.
23. The staircases are carpeted and decorated, but not heated. They have light and power, emergency lighting, and smoke detectors. We were informed that the smoke detectors are connected by a hard-wired system, though the sophistication of the system was not easy to observe. There is no addressable fire alarm panel or connection to the fire authorities. There is no lift. There is a smoke vent system in the event of fire.
24. Externally, there is a paved car park with 23 parking spaces, two bin stores, a bike store, and a facility for housing a large pressured water tank with associated mechanical and electrical equipment, which we were informed is required to ensure adequate water pressure in the flats. There are areas of lawn laid to grass and flower beds between the Block and the car parking area, and along the back of the car park.

25. When we inspected, there were three large green refuse bins in and around the car park area. Only one was in a bin store. We were informed that refuse is placed in the bins by the occupants of the flats in plastic bags and then regularly collected by the local authority.
26. At the front of the Block is a grassed area with a few shrubs.
27. There is a separate building adjoining the Block, on Crown Street, in which two houses are situated. These houses appear likely to have been built at the same time as the Block. We were informed their owners do not contribute to any services provided to the flats, but they do contribute towards maintenance and upkeep of the car park and garden areas.

Budgeted and actual expenditure

28. The table below shows the information provided to the Tribunal on the budgeted and actual expenditure for the years for which documents were provided for the Block:

	2019	2020	2021	2022	2023
Budget (£)	28,990	31,425	32,130	45,260	44,678
Actual (£)	29,795	31,480	30,407	not available	not available

29. The table below then shows the detail of the budget for 2022, with actual expenditure in 2021 also shown for comparison purposes:

Expenditure item	2022 budget	2021 actual
Grounds maintenance	1,500	1,376
Cleaning	3,010	2,817
Carpet cleaning	400	-
Drain and gully cleaning	350	-
Gutter cleaning	400	-
Window cleaning	555	553
Day to day maintenance	2,500	3,022
Out of hours	290	280
Pest control	650	669
Door access system	400	-
Fire Risk Assessment	660	207
Function testing	780	780
Emergency Lighting Maintenance	500	193
Fire system Maintenance	500	474

Water pump maintenance	750	1,204
TV/Satellite Maintenance	200	-
Refuse Management	1,300	1,044
Communal electricity	2,000	1,892
Buildings and terrorism insurance	4,210	3,800
Directors and Officers insurance	120	154
Management fees	5,770	5,600
Accountancy fees	245	236
Audit fees	540	533
Company secretarial fees	840	810
Collection fees	0	-
Bank charges	40	13
Sinking fund – renewals	2,000	2,000
Sinking fund – cyclical	2,750	2,750
Sinking fund – External Wall Survey	12,000	-
Totals	45,260	30,407

The Applicant's case

30. The essence of Mrs Stokes's case is that a budgeted Maintenance Charge of £2,388.94 is too high, and unaffordable. She provided copies of estate agent's particulars for another flat in the Block which stated that the service charge was one of £1,400 or £1,500 per annum. Both figures were given. The particulars contained the statement that "All property information is provided as a guide only. You should check with your solicitor prior to the exchange of contracts."
31. Two other copies of estate agent's particulars for flats in the B66 area were also provided. One, in Herbert James Close, showed a service charge of £1,037.07 per annum. A second in an unspecified location showed the service charge as £1,474.42 per annum.
32. Mrs Stokes also claimed that the Tribunal should take into account the fact that the Initial Service Charge in the lease was just shy of £800.00.
33. At the hearing, the Tribunal asked Mrs Stokes to consider the budget for 2022 which was contained in the Respondent's Statement of Case. She said that she regarded some of the charges in the budget as being too high. In particular, she challenged the sums included for the items below on the grounds given:

- a. grounds maintenance. Too expensive;
 - b. cleaning. Too expensive;
 - c. drain, gully, and gutter cleaning. The challenge was that these items should not be in the budget because in practice they were not carried out;
 - d. window cleaning. Mrs Stokes considered this could be provided more cheaply;
 - e. day to day maintenance,
 - f. an out of hours service. Unnecessary;
 - g. door access system. The challenge was on the basis that the system did not work. Doors were able to be opened without any person authorising access;
 - h. TV/Satellite Maintenance. Mrs Stokes was unaware of any such equipment;
 - i. Refuse Management. Refuse collection was included in Council Tax and should not be to be additionally funded;
 - j. Electricity. Too expensive;
 - k. Management. Fees excessive;
 - l. Audit, and Company Secretarial fees; fees excessive;
 - m. the provision for an external wall survey. Unnecessary.
34. Mrs Stokes accepted in cross examination that maintenance, grounds maintenance, and cleaning were appropriate services to include in the Maintenance Charge; she just felt the budget sums were too high. She expressed the view that the Maintenance Charge should not be significantly different from service charges for similar flats in the B66 postcode area, the average being, according to her researches, between £1,037 and £1,500.

The Respondent's case

35. Miss Green called Mr Maxwell to give evidence. He is a Property Manager employed by Mainstay and for the last few months he has been managing the Block.
36. The Tribunal questioned Mr Maxwell on the reason for the inclusion of a fee for an external wall survey. He said this was a result of a change in building regulations. He did not know which regulations or why specifically a decision to include a provision for the survey in the 2022

budget had been made. He said the provision had not been spent and it would be released in the 2022 actual results as it was not in fact required.

37. Mr Maxwell confirmed that cleaning and maintenance contractors visited regularly but he did not know the exact frequency or the rates they charged. None of those issues had been raised in Mrs Stokes's application, but only at the hearing. He accepted that expenditure on a number of budgeted items had not been incurred in previous years, particularly drain, gully, and gutter maintenance. He did not know the door access system was not working. He agreed there was no TV/Satellite equipment at the block.
38. The Tribunal asked Mr Maxwell from whom he took his instructions. He said it was the Respondent but he was not able to say exactly who instructed him. The Tribunal identified that there were only two directors of the Respondent listed at Companies House, one of whom was a company clearly linked to Mainstay. The other was a person called Dane Samuels. Mr Maxwell said he had not heard of Mr Samuels and assumed he must be a lessee of one of the flats.
39. The Tribunal asked how the 2022 individual demand to Mrs Stokes was calculated, as mathematically it was not a figure derived from the application of the lease percentage in Part III of the Sixth Schedule, to the total 2022 budget figure.
40. Miss Green took instructions on this question and told us that the 2023 budget included figures that gave the percentage payable by Mrs Stokes as 5.2783% rather than the percentage shown in the lease. The schedule of percentages were indeed attached to the 2023 budget figures, but had not been attached to the Tribunals copies of budgets for any years prior to 2023.
41. The reason for changing the percentage figure, Miss Green told us, was that the application of paragraph 8 of the Seventh Schedule had resulted in a variation of the percentage.
42. In her final submissions, Miss Green said that the budget for 2022 should be determined by the Tribunal to be a reasonable budget. It had been properly prepared, with explanatory notes for the budgeted items, and variances against the previous year's budget identified. She submitted that if budgeted expenditure was not actually expended in any year, this did not mean that the budget was not reasonable. It was the potential liability for the expenditure that should determine whether a sum was reasonably included in a budget, not the fact that there had always or normally been expenditure on that item in previous years.
43. Miss Green also asked us to take into account that Mrs Stokes has not provided the Tribunal with any competitive quotes to support her assertions that the budgeted figures were too high.

Discussion

44. The Tribunal's task is to determine whether the budget set for 2022 by Mainstay on behalf of the Respondent was reasonable. Only payment of a reasonable sum can be demanded from Mrs Stokes.
45. We hope that it became evident to Mrs Stokes at the hearing that the assessment of a reasonable budget sum requires us to look at the prospective actual costs of maintaining the Common Parts of the flats in in the Block. Costs at any other block of flats in B66 are not relevant, and not known to the Tribunal.
46. Estate agent's particulars showing service charge costs at other blocks of flats can do no more than provide a very rough guideline of what other blocks of flats appear to cost to maintain. That may be of interest as a "sense check", but unless the Tribunal knows the specific details of the other blocks of flats, and what services have to be provided to them, (which we do not), service charge costs at other blocks are of no assistance to us in our consideration of what a reasonable budget is for the expenditure to be incurred under the lease.
47. We also need to explain to Mrs Stokes that affordability is not something we can take into account (see paragraph 10 above). We have no jurisdiction to determine that the Maintenance Charge should be less (on the grounds of any lessee's ability to pay) than the reasonable sum that is anticipated to be incurred in a Maintenance Charge year. A lessee's own financial circumstances are not relevant in our determination of the reasonable budget sum. Maintenance Charges are payable because there is a contractual obligation in the lease to pay them.
48. Finally, by way of preliminary comment, we do consider that Mrs Stokes has misunderstood Part III of the Sixth Schedule of the lease. There is nothing in the lease that suggests that the Maintenance Charge is limited to the sum stated in that Schedule as the Initial Maintenance Charge. On the contrary, the amount of the Maintenance Charge is clearly variable from year to year, because it depends on the expenditure actually required in each to provide the service which the Respondent is obliged to provide – see paragraphs 1 and 2 of Part I of the Sixth Schedule.
49. We therefore turn to consideration of what sum will constitute a reasonable budget for 2022. We will consider this in two stages: firstly, the overall budget figure, and then the proportion that Mrs Stokes has to pay.
50. In her application, Mrs Stokes had not identified specific items in the budget she objected to, no doubt because she did not realise the need to do so. We therefore accept that Mr Maxwell was answering questions about specific line by line charges without any pre-knowledge of the challenges he would have to answer.

51. Our view is that there were legitimate questions about how individual elements of the budget could be justified. An example is the inclusion of a budgeted sum for TV/Satellite equipment maintenance, as Mr Maxwell accepted there was no such equipment at the flats. But in our view, there is limited value in carrying out a line by line critique of the budget unless the outcome of such a process produces a significantly higher budget figure than the nearest actual expenditure figures available to the Tribunal, such that it looks as if it has been inflated in comparison with the previous year's actual expenditure. A budget covers anticipated expenditure, and whilst some elements will be predictable and stable, other elements will not. There is a need therefore to look at the overall outcome. Some elements will be over-budgeted, and some under budgeted, but the "swings and roundabouts" may balance out so that the overall figure looks about right. It is not unreasonable to increase an annual budget each year to reflect changing prices in the real world.
52. In our view, the process carried out by Mainstay adopts sensible practice in identifying whether the overall budget is about right. It measures the budget against the 2021 budget, which as it turned out was extremely close to the actual outcome for that year. It explained increases and variances in a reasonable way.
53. We do not propose to vary any of the line-by-line budgeted figures in the 2022 budget. If a little too much expenditure has been included, that might be a good outcome, for it must be desirable to fully cover actual costs in any budget in the knowledge that any surplus is credited to the Maintenance Charge payers in the following year.
54. There is one glaring exception to the approach we have taken, namely the inclusion in the budget of anticipated expenditure on an external wall survey of £12,000. That was a brand new item. It was not mentioned at all in the budget notes explaining the budget. It was not mentioned at all in the Respondent's Statement of Case. The amount of proposed expenditure on that single item increased the overall budgeted expenditure from £33,260 to £45,260. The first of these sums would have represented a modest 3.4% increase from 2021. It must be very doubtful that Mrs Stokes would have objected to that level of increase. In fact, the percentage increase resulting from the inclusion of the external wall survey budgeted sum was a fraction over a 29% rise. That level of increase should surely have raised eyebrows within Mainstay and the Respondent.
55. Furthermore, the Respondent was entirely unable to produce any justification for including the external wall survey cost in the budget, and its inclusion was not explained at all.
56. We would have expected Mainstay and/or the Respondent to have spotted the impact of including the external wall survey cost in the budget. In the light of Mrs Stokes's overall complaint that the Maintenance Charge for 2022 was "too high", they should have realised that it has increased very

substantially because of the inclusion of that single item, and they should have come to the Tribunal ready to justify that item in particular.

57. We noted that in the Respondent's Statement of Case, Mr Peter Humphreys, solicitor for the Respondent said:

“The Applicant's suggestion of a no more than £1600 service charge liability and that she be able to pay monthly, is not feasible and contrary to the Lease; it would not cover the cost of servicing each year ...”.

58. We do not accept this evidence. Without the unnecessary provision for the external wall survey cost, the 2022 budgeted service charge expenditure would have resulted in a service charge pretty close to £1,600 for that year. This would have then reflected a modest annual rise in the historical level of service charge in the years for which we have figures.

59. In our view, it was unreasonable to include the proposed cost for the external wall survey in the 2022 budget. If we are wrong, it was unreasonable for Mainstay to fail to identify that this was the cause of a very significant rise in the budgeted expenditure and to explain the rationale for the proposed expenditure.

60. As it turns out, the survey was not carried out in 2022, and in the 2023 budget, there is no further proposed expenditure on it. Instead there is a note that the survey is “not required as under 18m and no cladding”. We express surprise that the need for a survey had not been fully investigated by Mainstay in December 2021 or January 2022 when the 2022 budget was prepared, the Building Safety Act having been introduced to Parliament in the summer of 2021.

61. We therefore determine that the overall reasonable service charge budget for 2022 is the sum of £33,260, being all sums included within the budget proposal as set out above, with the exception of the proposed expenditure of £12,000 on an external wall survey.

62. We now consider the proportion that Mrs Stokes has to pay. On the face of the lease, her percentage proportion is 4.5147%. As Mrs Stokes put in issue the amount of the Demand, our view is that we would have expected the Respondent to explain how that sum was calculated in its Statement of Case. The only place in the documents we considered at the hearing where there is a reference to a different proportion is in the 2023 budget.

63. Yet it is clear that a rational explanation for the sum that Mrs Stokes was invoiced for 2022 is that the proportion is based on the percentage of 5.2783% as set out in the 2023 budget document, as that percentage applied to the Respondent's 2022 budget sum indeed totals £2,388.94.

64. Within the papers we were provided with, we do have a statement of account for Mrs Stokes's predecessor in title showing the demands on account for 2019 as £1,530.17, for 2020 as £1,658.69, and for 2021 as £1,695.91. As we know the budgeted expenditure for these years, it is

apparent that the Respondent has been applying the higher percentage figure for those years too.

65. Unfortunately, we do not have crucial evidence to allow us to know whether the increase in the percentage payable by Mrs Stokes of the overall budget (and indeed actual) overall service charge was properly changed under paragraph 8 of the Seventh Schedule of the lease.
66. We are therefore unable to calculate an exact amount that would be properly demanded for the 2022 Maintenance Charge in advance. All we can say is that the proportion payable is that proportion set by the lease. We do not know if the lease proportion is properly 5.2783% as amended by virtue of paragraph 8 of the Seventh Schedule, or 4.5147% as set out in Part III of the Sixth Schedule.
67. A further difficulty with apportionment is dealing with the two houses adjoining the block of flats. If they contribute towards the Maintenance Charge for the car park and gardens, as we were told, then the lessees of the flats will pay a proportionately smaller part of the Maintenance Charge for those areas than they will for the costs of providing services to the building. Yet the lease only appears to have one percentage figure (whether that is the Part III Sixth Schedule percentage or the Seventh Schedule paragraph 8 percentage). So it does not provide a mechanism for charging different percentages for the two cost centres.
68. The parties will need to attempt to come to an agreement on this issue. If they cannot, the point will need to come back to this Tribunal or a court in due course. It would be wise for the Respondent to provide the necessary documentary evidence to support the implementation of paragraph 8 to Mrs Stokes for her to consider.
69. Before concluding our discussion, we add a comment concerning the position of the Respondent. If it is, as we strongly suspect, a lessee owned management company, it is clear that its relationship with Mrs Stokes does not appear to be functional. Disputes about the Maintenance Charge are not always avoidable, and they require time and attention, and can be costly to some or all of the lessees. We hope that one outcome of this case may be the development of a channel of communication between the company members, who ultimately determine how their managing agent should approach the business of managing their flats, and the professional manager they have appointed, so that matters of common interest, such as whether to include discretionary, and more expensive, additional items within the Maintenance Charge, might be resolved earlier and in a way that avoids costs to all parties.

Decision

70. We determine that the overall reasonable budget for the 2022 Maintenance Charge Year is £33,260.00. Mrs Stokes's own liability is either £1,501.58, if the Part III Sixth Schedule percentage proportion

applies, or £1,755.56, if the percentage has been varied to 5.2783% under paragraph 8 of the Seventh Schedule of the lease. We are unable to determine which is correct.

Administration Charge

71. One of the issues brought up by Mrs Stokes in the appendices to her Statement of Case was that the Respondent had not recognised the payments she had actually made towards the 2022 budget demand. Her case was that she had made a number of payments.
72. The Tribunal identified that an administration charge had been levied upon Mrs Stokes resulting from alleged arrears accruing whilst these proceedings were under way. We enquired of Mrs Stokes whether she intended to challenge that charge, as it was wholly related to the payability of the disputed 2022 budget demand. We also asked Miss Green to take instructions on whether the Respondent would object to the Tribunal allowing Mrs Stokes to add a claim that the administration charge was not reasonable under the provisions of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
73. Miss Green’s instructions were that her client had agreed to refund the administration charge levied, so the matter was therefore resolved without the Tribunal having to consider it further.

Costs

74. Mrs Stokes has applied for costs protection orders under section 20C of the Act and under paragraph 5A of Schedule 11 to the 2002 Act.
75. We do not determine those applications within this determination. The parties will need some time to consider their positions on the applications once they have been informed of the decision we have taken.
76. We direct that the costs applications be adjourned. Within 14 days of the date of this decision, the parties may make written submissions stating what decisions they urge the Tribunal to take, and giving their reasons for so doing. The Tribunal will make a determination thereafter on the basis of the written representations and without a hearing. The parties must identify the costs they have incurred (if any) preferably on Form 260 which should be provided alongside the parties written representations.

Appeal

77. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that

party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)