FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00MR/LSC/2023/0024
The Property	**:**	1-5 St Johns Mews, Victoria Grove, Southsea, Hampshire, PO5 1LL
Applicant	**:**	Andrew Wighton
Representative	**:**	
Respondent	**:**	Lisa Property Limited
Representative	**:**	Not represented at the hearing
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges section 27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Judge N Jutton, Mr M Ayres FRICS
Date and Venue of Hearing	**:**	28 November 2023 Havant Justice Centre, The Court House Elmleigh Road, Havant, PO9 2AL
Date of Decision	**:**	5 December 2023

DECISION

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1. Background

2. The Applicant is the lessee of a residential flat known as flat 5 St Johns Mews Victoria Grove Southsea Hampshire (the flat).

3. The flat forms part of a development comprising 4 lock up shops, 5 residential flats (of which the flat is one), 2 freehold houses and 2 maisonettes. The development together is at 1 and 1a Albert Rd, Southsea. The residential units (the 5 flats, the 2 freehold detached and the 2 maisonettes) are together known as St Johns Mews Victoria Grove Southsea.

4. The Applicant seeks a determination as to whether or not certain items of service charge payments for the periods 1 January - 31 December 2021 and 1 January – 16 September 2022 are payable and if so whether they are reasonable in amount. The Applicant also seeks orders that costs incurred by the Respondent in respect of these proceedings should not be recovered by it as part of the service charge or as administration charges.

5. There was before the Tribunal a paginated bundle of documents of some 330 pages which included the application, the lease, the leases of the maisonettes, both parties statements of case, a form of Scott Schedule, various invoices, service charge demands, service charge accounts, correspondence between the parties and other documents. References to page numbers in this decision are references to page numbers in that bundle. There was also before the Tribunal a second bundle produced by the Respondent headed '*Tribunal Relevant Accounts Bundle Submissions'*, which contained annual budgets, service charge demands, various invoices, reports et cetera. Where documents in that second bundle are referred to in this decision they designated by page number followed by the letter 'R' (e.g. 25R).

6. The Inspection

7. The Tribunal inspected the Property on the morning of the hearing. Present were the Applicant, the Applicant's father and the current managing agent. The Tribunal inspected the pathway that leads from Victoria Grove, the area adjacent to the freehold houses, the path leading to external metal stairs and landing that lead to the entrance to the flats, the internal entrance hall stairs and landings serving the flats, the car parking areas and the bin storage area beneath the maisonettes. The Tribunal shown the location of the maisonettes and of the freehold houses.

8. The Law

9. The relevant statutory provisions are to be found in sections 18, 19 and 27A of the Landlord and Tenant Act 1985 (the 1985 Act).
They provide as follows:

10. The 1985 Act

18 (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
(b) *the whole or part of which varies or may vary according to the relevant costs.*

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) *"costs" includes overheads, and*
(b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

19 (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.

(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

.....

27A (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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) *the person by whom it would be payable,*
(b) *the person to whom it would be payable,*
(c) *the amount which would be payable,*
(d) *the date at or by which it would be payable, and*
(e) *the manner in which it would be payable.*

(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.

11. The Lease

12. The Applicant's lease is dated the 8th of March 1985 and is for a term of 125 years from 1 January 1985 (the lease) (19-33). That part of 1 and 1a Albert Rd, Southsea which comprises the five residential flats is defined in the lease as '*the Building'*. The fourth schedule to the lease provides that the lessee covenants to pay 1/5 of all of the costs and expenses incurred by the lessor in carrying out its obligations under and giving effect to the provisions of the fifth schedule. Such payment being defined as the '*Service Charge*'.

13. Clause 1 of the fourth schedule provides that on the first day of January in every year the lessee will pay to the lessor in advance by way of an interim payment on account of the Service Charge the sum of £75. Clause 2 provides for the amount of the annual Service Charge to be ascertained and certified by a certificate signed by the lessors auditors or accountants. The service charge year runs from 1 January to 31 December each year. The said certificate is to contain a summary of the expenses and outgoings incurred by the lessor in relation to the building during the service charge year (defined in the lease as '*the Landlord's Financial Year'*). Such expenses to include the audit and accountancy fees of accountants in relation to the service charge accounts and the production of the said certificate. Clause 6 of the fourth schedule provides that the lessor will '*as soon as practicable*' after the said certificate has been signed by the lessors' auditors or accountants, furnish to the lessee an account of the Service Charge payable by the lessee for the service charge year giving credit for all interim payments made and showing any balance payable by the lessee to the lessor or as the case may be making an allowance in favour of the lessee where the interim payments made exceed the amount of the service charge payable by the lessee for that year.

14. The fifth schedule sets out the covenants on the part of the lessor. The cost of complying therewith (provided such costs are reasonably incurred) which can therefore be recovered in turn by the lessor from the lessee by way of the service charge. There are three clauses to the fifth schedule. Clause 1 provides for the lessor is to insure the flats '*comprised in the building*'. Clause 2 provides as follows:

15. '*The Landlord shall keep in good and substantial repair the main structure of the building including the roof foundations and external parts thereof (but not the glass of the windows of the demised premises nor the interior facing of the external walls as bound the demised premises) and all cisterns*

tanks sewers drains pipes wires ducts cables and conduits and other electrical television or wireless installations (if any) not used solely for the purposes of the demised premises and not falling within the description of the premises the subject of a demise by the Landlord together with all fixtures and fittings therein and additions thereto and including the renewal and replacement of all worn or damaged parts provided that nothing herein contained shall prejudice the right of the Landlord to recover from the Tenants or any other person the amount or value of any loss or damage suffered by or caused to the Landlord any negligence or other wrongful act or the fault of the Tenants or such other person'.

16. Clause 3 provides:

17. '*The Landlord shall keep the common halls stairs landing and passages in good order and repair and condition*'.

18. Further, clause 3 of the second schedule grants to the lessee:

19. '*Full right and liberty for the Tenants and all persons authorised by them (in common with all other persons entitled to the like right) at all times to go pass and repass on foot only over and along the pathway coloured brown on the plan Numbered 1 annexed hereto the external staircase and landing and the internal passage entrance hall and stairs for the purpose of gaining access to and egress from the demised premises'*

20. Included in the bundle are three other leases. Those are the leases of the two residential maisonettes (pages 34-63) and a lease dated 26 October 1999 of the entire property at 1 and 1a Albert Road (excluding the ground floor shops) (64-76) for a term of 999 years from 25 December 1998 which lease is described in a rider to it as a "*… concurrent lease of the Landlord's Estate to the intent that the Tenant shall assume full benefit of and the Landlord's obligations under Existing Leases*". The 'Existing Leases' being defined as the seven residential leases.

21. The maisonette leases provide for the payment of a form of service charge being 1/5 of the costs and expenses incurred by the lessor in carrying out its obligations and giving effect to the provisions of the fifth schedule. The fifth schedule in each case provides '*The Landlord shall keep the land coloured brown green and brown hatched blue in good order and repair and condition'*. The second schedule to the maisonette lease sets out the rights granted to the lessee including at clause 3 '*Full right and liberty for the Tenants and all persons authorised by them (in common with all other persons entitled to the like right) at all times to go pass and repass with or without motor vehicles over and along the land coloured brown on the plan number 2 annexed hereto*' and at clause 4 '*The right to park one private motor car on the land coloured brown hatched blue on the plan numbered 2 annexed hereto*'.

22. The Applicant raises issues in respect of specific items of expenditure which appear in the service charge accounts for the year 1 January – 31 December 2021 and also for part of the following year for the period 1 January to 16

September 2022. Final service charge accounts for the year ending 31 December 2022 were not before the Tribunal, just a budget for that year and a brief form of interim account for the period 1 January to 16 September 2022 (180 and 176R). The Applicant questions whether certain items of expenditure incurred by the Respondent can be recovered from him under the terms of the lease as part of the service charge payable by him and if so whether they have been reasonably incurred.

23. The Tribunal understands that the management of the property was taken over by a Right To Manage Company in September 2022. The RTM company has employed a new firm of managing agents who have taken over from Blue Property Management UK Ltd who are the managing agents referred to in this decision.

24. The Hearing

25. The hearing was attended by the Applicant accompanied by his father. Neither the Respondent nor a representative on behalf the Respondent attended. The Tribunal received an email from the Respondent's representative, Blue Property Management UK Ltd, dated 21st November 2023 stating that neither the Respondent nor Blue Property Management UK Ltd would be attending the hearing. There was no application made by the Respondent to adjourn the hearing. The Tribunal was satisfied that the Respondent had been given due notice of the hearing but had chosen not to attend. In the circumstances the Tribunal was content to proceed in the Respondent's absence.

26. <u>The service charge year 1 January 2021 - 31 December 2021</u>

27. Gardening and Grounds Maintenance £638.00

28. The Applicants case

29. The Applicant asks why the lessees have been charged anything for this item given that there are he says no gardens or grounds to maintain that relate to 'the building' as defined in the lease. There are gardens on the site which form part of the two -detached houses and other grounds such as car parking areas used exclusively by the lessees of the two maisonettes and the owners of the two semi-detached semi houses. The lease does not provide, the Applicant says, a right of access in favour of the lessee over these areas. There is no provision in his lease, the Applicant says, for these charges to be recovered as part of the service charge. He suggests that the Respondent's managing agents may not have visited the property and are therefore not familiar with the site layout. In any event he says that the external areas have been very badly maintained.

30. The Respondents case

31. The Respondent says that through its managing agents it manages the entire development including internal and external areas. The Respondent has produced a statement from Jason Popperwell the property area manager

employed by the managing agents Blue Property Management UK Ltd. Mr Popperwell says that the area managed by his company (which he describes as '*the managed area*') includes the areas shaded in grey and in brown on the plans to the lease. He goes on to say at paragraph 6 of his statement (97) '*It is common practice to keep the property in good repair, as per the lease, through regular caretaking of the managed areas, including cleaning and grounds maintenance, even if there is no explicit provision for the named items on the budget in the lease….*'. He says that he has visited the property on various occasions. The Respondent's managing agent says (99) '*…we (Blue Property) manage their development, including the internal and external areas, this includes the communal hallway, external entrance, stairs and pathway areas*'. The Respondent refers to a plan of development which is a reference to the plans to the lease. Further the Respondent's managing agents says; (100) '*as per our Service Charge Information Pack …. a managing agent is appointed to maintain any communal areas i.e., car parks or landscaped areas, by the Landlord. As per our Statement of Case, the Applicants lease will detail their requirement to contribute towards the maintenance of these areas; as part of the things that we do manage, we are liable for the maintenance of the relevant areas of the property, as detailed in the plans*'. The Respondent is, it says, required to keep the property in good order repair and maintained and refers to clauses 1 and 2 of the fifth schedule to the lease. The Respondent does not address the Applicants argument that there are no gardens relating to the building, that the car parking areas are used exclusively, the Applicant says, by the owners of the two freehold houses and the two leasehold maisonettes, that the lessees of flats 1 – 5 have no rights of access or use of these areas or that there is provision for maintenance of these areas written into the leases of the two maisonettes.

32. The Respondent goes on to say (100)that £638 was spent in respect of '*Gardening'* for the year and that '*In this case, the contractor did not invoice for the months of January and November 2021, therefore the property only paid for 10 months out of 12 for Gardening in 2021*'.

33. The Tribunal's Decision

34. The service charge accounts for 2021 (132 – 137) include a figure for gardening and grounds maintenance of £638. There are a number of invoices in the bundle (140 – 152), four from a company called A & M Property Services addressed to the Respondent which include an item for 'Gardening' in the sum of £58 (with no VAT), five from a company called EMS South Ltd addressed to the Respondent which also include an item for 'Gardening' in the sum of £58 (plus VAT) and one form a company called Addison Cleaning & Maintenance Services which is for £89.50 (no VAT) for 'internal & external cleaning/gardening'. Each of the A & M Property Services and the EMS South Ltd invoices also contain a separate item described as 'internal cleaning'. Assuming that the gardening element in the Addison Cleaning & Maintenance Services invoice is £58 the total of those invoices to the extent that they refer to gardening (plus VAT in respect of the EMS South Ltd invoices) is £638.

35. The Respondent can recover by way of service charges such items of expense reasonably incurred by it as the lease provides. In particular it can recover those items of expenditure which are set out in the fifth schedule to the lease.

36. Clause 1 of the fifth schedule is a covenant on the lessors part to insure the flats. Clause 2 is a covenant to keep in good and substantial repair the structure, the external parts and the communal conduits of the building. '*The building*' is defined in the lease as '*the 5 residential flats*'. Clause 3 provides for the lessor to keep '*the common halls stairs landing and passages*' in good order and repair and condition.

37. Nowhere in the fifth schedule is reference made to 'gardens', 'carpark', 'grounds', 'roadways' or 'pathways'. Clause 3 refers to 'passages'. The Tribunal has considered that word in the context of clause 3 and in the context of the lease as a whole. The only other place in which the word is used is in clause 3 of the second schedule (as set out above and which grants the lessee a right of way on foot over certain areas in order to gain access to and egress form the demised premises) where it is clearly used to refer to an internal part of the building ('*the internal passage entrance hall and stairs'*). Had the draftsman wished to refer to external areas such as grounds pathways gardens and car parking areas he could have said so and/or made reference to a plan as he did in clause 3 of the second schedule where reference is made to '*the pathway coloured brown on the plan Numbered 1*'. The suggestion by the Respondents managing agents that it is responsible for the cleaning and maintenance of the grounds even where there is no explicit provision to that effect in the lease does not stand up. The Respondents obligations to keep the property in good order repair and condition are as set out in the lease, no more and no less.

38. It is noteworthy that the lessees to the maisonette leases covenant to pay 1/5 in each case of the costs and expenses that the landlord incurs in keeping external areas (the land coloured brown green and brown hatched blue on the plan to the maisonette lease) in good order and repair and condition. The Tribunal does not have before it details of any covenants made by the owners of the two houses. That notwithstanding, if the Respondent were correct it would mean that it would be able to recover just by reference to the leases of the flats and of the two maisonettes 7/5ths or 140% of the costs that it incurs in maintaining and repairing the external areas. That, in the view of the Tribunal could not have been what the original parties to the lease or the draughtsman of it intended.

39. As such, in the view of the Tribunal the fifth schedule to the lease, does not oblige the landlord to keep in good order repair and condition communal or common areas that are external to the building. Such obligations as the Respondent may have to repair and maintain those areas are presumably addressed elsewhere outside of the terms of the lease (as in the maisonette leases). Such sums as the Respondent may expend in maintaining cleaning or repairing such external areas do not in the view of the Tribunal form part of the service charge payable under the terms of the lease by the lessee.

40. Accordingly the Tribunal determines that the Respondent cannot recover from the Applicant as part of the service charge payable by him a share (a 1/5 share) of the costs and expenses that it incurs in respect of 'Gardening and Grounds Maintenance' which for this year equates to the sum of £127.60.

41. Accountancy Fees £544.00

42. The figure for accountancy fees shown in the service charge accounts, is £544. There are two invoices in the bundle relating to accounts preparation. The first is from a company called Blue Accounting UK Ltd dated 18th of July 2022 which refers to '*Accounts preparation 28/10/2020-31/12/2021*'(153) in the sum of £400.00 and the second from a company called Beaumont Chapman dated 15 August 2022 for '*Work in connection with the certification for the period ended 31 December 2021 – 2.25 hours*' in the sum of £162.00 (154). The total of the two invoices is £562, £18 more than the figure shown in the accounts of £544. The Tribunal assumes that the figure in the accounts has been adjusted to reflect the fact that part of the Blue Accounting UK Ltd invoice is stated to refer to a period prior to this service charge year, a period from 28/10/2020 to 31/12/2020.

43. The Applicants case

44. The Applicant said that he had two issues with the accountancy fees. Firstly he was concerned that Blue Accounting UK Ltd appeared to be a subsidiary company of the Respondents managing agents Blue Property Management Limited. A relationship which he described as 'unethical'. Secondly he contended that the accountancy fees should form part of the management fees charged by the Respondent's managing agents. That preparation of service charge accounts formed part of the management function undertaken by the managing agents. He accepted that the service charge accounts required certification by a third party and as such did not dispute the sum of £162 in relation to the invoice from Beaumont Chapman in that connection dated 15 August 2022.

45. The Respondents case

46. The Respondent says that Blue Accounting UK Ltd is an external company who prepared the year end service charge accounts for certification. That accountants, Beaumont Chapman, then checked the accounts and certified the accounts. As the accounts are produced after the end of the service charge year and invoiced for after the end of the year those invoices fall into the next service charge year. That as such the figure for accountancy fees of £544 shown in the accounts relates to the cost of the production and certification of accounts for the previous service charge year. Blue Accounting UK Ltd, the Respondent says, is a separate company to the managing agents Blue Property Management UK Ltd and is not an associated company.

47. The Tribunal's Decision

48. It is not argued by the Applicant that the costs reasonably incurred by the Respondent in the production of and the certification of the service charge

accounts cannot be recovered as part of the service charge. The question therefor for the Tribunal is whether or not the sum of £544 is a reasonable sum for the Respondent to incur in the production of the service charge accounts and for the certification of those accounts for the year ending 31 December 2021. The Applicant does not dispute the sum of £162 for the certification of the accounts. The Respondent is obliged to produce annual service charge accounts. The fact that the company used to produce the accounts may be part of a group of companies that include the managing agents is not relevant. Blue Accounting Ltd is a separate legal entity to Blue Property Management Limited. The Applicant argued that the cost for the production of the accounts should be included within the managing agents fees. He adduced no evidence as to what a reasonable sum for the production of the accounts should be, indeed he did not contend that the sum of £400 (or an adjusted sum of £382) was unreasonable. The Tribunal notes that the document produced by the Respondent headed 'Management Duties' (325) states at paragraph 18 '*To maintain adequate bookkeeping procedures, prepare documentation and instruct the production of Service Charge accounts. The production of the Service Charge accounts will incur an additional accountancy fee'.*

49. In the view of the Tribunal a sum of £400 is not unreasonable for the production of annual service charge accounts. There was no evidence before the Tribunal to suggest otherwise. Accordingly the Tribunal determines that the sum of £544 for the production of the service charge accounts and the certification thereof has been reasonably incurred and forms part of the service charge payable by the Applicant of which his 1/5 share is £108.80.

50. Management Fees £1837.00

51. The Applicants case

52. The Applicant questions why the actual management fee charged of £1837 is £367.50 more than the budget figure of £1470. The Applicant says that a specialist business, namely property managing agents, should be able to correctly forecast its fees at the start of each year. That it shouldn't have to 'retrospectively' demand additional monies. The Applicant said that he accepted that there may be circumstances where management fees are increased during the year because extra unforeseen costs are incurred for example if emergency work is required to the property. However no evidence had been produced by the Respondent to that effect. The Applicant in his statement of case says that he understands from documents produced by the Respondent that the additional sum of £367.50 in fact relates to management fees for the previous service charge year for the months of October November and December 2020. That it is wrong, the Applicant says, for fees in relation to a previous year to be included in the service charge accounts for 2021. Management fees which in any event the Applicant says he had paid to the previous managing agents (it being understood that Blue Property Management Ltd took over the management of the property in October 2020). Further, the Applicant said that the fees had been increased over that charged for the previous service charge years by a figure that was substantially higher than the rate of inflation. At the hearing the Applicant

reiterated his argument that management fees should include the cost for the production of the annual service charge accounts and that such accordingly if accountancy fees were allowed as a separate item the management agents fees should be adjusted accordingly.

53. The Respondents case

54. The Respondent says that its management fees are reviewed annually to stay in line with rising costs. That during 2021 additional expenses were incurred to include 'fire door inspections' and 'secretary fees' and that because of the additional work incurred the management fee had to be increased to reflect that. That the figure in the budget is no more than an estimate of the anticipated fees. That it is not possible to estimate the actual cost that will be incurred at the time that the budget is drafted.

55. The current managing agents took over the management of the property in October 2020. That the previous managing agents would have invoiced the property management fees up to September 2020. The Respondent says that it began to invoice for its management fees from October 2020. Had it not done so then no management fees would have been paid for the period October to December 2020 inclusive.

56. The Tribunals Decision

57. The Applicant does not argue that managing agents fees, provided that they are reasonably incurred, cannot be recovered as part of the service charge.

58. The Applicant makes reference to fees charged by other managing agents but produces no comparable evidence. He produces in the bundle two invoices from a company called Citywide Investments (pages 257 – 258), one dated 9 March 2019 and the other 5 March 2020. The invoices show no addressee nor do they identify the property to which they relate. Both show figures for management fees payable yearly in advance of £230. One for the year 2019/20 and the other for the year 2020/21. It is understood that Citywide Investments were the company that managed the Property prior to Blue Property Management Ltd. The Citywide Investments invoices are evidence of the cost of managing the Property for previous years but are not comparable evidence in the view of the Tribunal of the costs of managing the Property for the year ending 31 December 2021.

59. In the view of the Tribunal a figure of £1470 per year to manage a property comprising five flats (equivalent to £294 per flat) is not unreasonable. (Even if that were inflated by say £400 so as to include the cost of producing annual service charge accounts to produce a figure of £1870 (£374 per flat) that would not in the view of the Tribunal be unreasonable). However, the figure produced by the Respondent of £1837 clearly appears to include a figure of £367.50 for management fees for the months of October November and December 2020. There are at pages 155-157 invoices from Blue Property Management Ltd addressed to the Respondent described as 'management fees', one for each month of October November and December 2020 each in the sum of £122.50 a total of £367.50. Those are fees not incurred during the

service charge year ending 31 December 2021 and in the view of the Tribunal cannot be recovered as part of the service charges for that year.

60. Accordingly the Tribunal determines that the amount of management fees that may be recovered by the Respondent as part of the service charge for the year ending 31 December 2021 are £1470 of which the Applicant's 1/5th share is £294.

61. Client Money Protection £24.00

62. The Applicants case

63. The Applicant questions why this has been charged. It should he says be included in the management fees charged by the managing agents. That it forms part of their overheads for running a property management business. The budget figure he says was £12 but the actual figure £24. That the invoices produced by the managing agents suggest that £12 relates to the previous year 2020. That service charges for 2020 had already been paid. There are two invoices in the bundle at pages 170 and 171. The invoice at 170 is dated 1 November 2020 and the invoice at 171 is dated 1 November 2021.

64. The Respondents case

65. The Respondent's managing agents say that they are required to join a client money protection scheme. That they are not required to include the cost of doing so as part of the management fees. That the previous managing agents had failed to make provision for this in 2020 so they had been obliged to charge for this twice (so as to include a figure for 2020 given that they took over the management of the property during that year) in the 2021 accounts.

66. The Tribunals Decision

67. The Tribunal Agrees with the Applicant. As part of the costs of running a business as property managers the Respondents managing agents put in place a client money protection policy. In the view of the Tribunal the cost of that policy forms part of the costs of running the managing agents business. The agents will take into account the costs of running its business when determining how much it charges in fees. Further, as regards the invoice at 170, the Respondent cannot recover charges or costs incurred in the previous service charge year as part of the service charge payable for the year ending 31 December 2021.

68. Accordingly the Tribunal determines that the Respondent cannot recover a Client Money Protection charge of £24 as part of the service charge payable by the Applicant.

69. Disbursements £13.00

70. The Applicants case

71. The Applicant says that this item should be included in the management fees charged by the managing agents. He says that the figure was not included within the budget for 2021. That invoices produced by the managing agents total £12.63 (pages 172 – 174). Of those invoices one for £8.88 relates to 2020 (174) and therefore should not in any event be included in the accounts for 2021. In any event the Applicant said the majority if not all of the communication had with the Respondent and its agents is electronically and not by post.

72. The Respondents case

73. The Respondent says that this is an expense paid by the managing agents to external companies such as the Royal Mail and does not form part of the management fee.

74. The Tribunal's Decision

75. In the calculation of its fees a managing agent will have regard to the costs and overheads that it incurs in running its business. In the view of the Tribunal those would include the cost of postage. That it is not reasonable for postage charges to be charged to the lessees as part of the service charge over and above the management fees. Further the invoice at page 174 for postage charges is dated for December 2020 and is stated to be for postage costs for November – December 2020. Even if this were recoverable as part of the service charge it should not be included in the service charge accounts for 2021. Accordingly the Tribunal determines that this item cannot be recovered by the Respondent from the Applicant as part of the service charge payable by the Applicant.

76. Building Condition Report £1170

77. The Applicant's case

78. There was, the Applicant says, no report produced. There is he says no evidence to support an expenditure of £1170. That indeed the managing agents have confirmed that the report was not produced. That money was paid to cover the anticipated cost of the report partway through the service charge year which monies have not refunded to the lessees.

79. The Respondents case

80. The Respondent confirms that the report was not carried out. In his statement Mr Popplewell says (98) that a supplementary invoice was raised during the year 2021 to fund a report from a surveyor on the buildings condition for the purposes of producing a maintenance programme of works. That the report did not go ahead due to lack of funds. That funds collected remained in the service charge account when the accounts were handed over to the new managing agents in September 2022.

81. The Tribunals Decision

82. It is not clear to the Tribunal as to why if this item of expenditure was not in the event incurred it appears as an expense in the service charge accounts. The issue for the Tribunal is whether or not this item can be recovered as part of the service charges for the year 2021. As the expense was not incurred it follows that it cannot. Any monies collected by the Respondent in respect of this item should form a credit to the service charge account to be taken into account at the end of the service charge year when determining pursuant to clause 6 of the fourth schedule to the lease whether there is any balance payable by the Applicant to be Respondent or conversely whether any sum should be allowed by the Respondent in the event that payments on account exceed actual expenditure.

83. It follows that the Tribunal determines that this item of expenditure cannot be recovered by the Respondent as part of the service charge for the service charge year ending 31 December 2021.

84. <u>The Period 1 January - 16 September 2022</u>

85. The Applicant seeks a determination as to whether certain items of expenditure incurred by the Respondent during this period are recoverable as part of the service charge payable by him and if so whether the sums incurred are reasonable and accordingly may form part of the annual service charge payable for the year ending 31 December 2022.

86. Cleaning/Caretaking £806.00 and Gardening & Grounds Maintenance

87. The Tribunal addresses these items together because although in the budget certificate (page 176) for the year ending 31 December 2022 they are shown as separate items, in the form of statement of income and expenditure for the period ending 16 September 2022 (page 180) the figure of actual expense for 'Cleaning/Caretaking to that date is £806 but no figure is given for 'Gardening & Grounds Maintenance' (despite a budget figure of £840). The Tribunal understands that the 'Garden and Grounds Maintenance' item was removed from the accounts as the contractor, as the Respondent puts it (page 112), '*combined the internal cleaning with gardening and effectively doubled the cost of the budget item*'.

88. The Applicant's case

89. The Applicant makes the same arguments as for the previous year, that items of expense in relation to external cleaning and gardening are not recoverable as part of the service charge. The Applicant said that he accepted that a figure could be recovered as part of the service charge for the cost of the internal cleaning of the common parts of the building. That a figure of £31.50 per month (as in the previous year) would be reasonable if the cleaning were properly carried out. It was however he said not carried out to a proper standard. He described the standard as 'pretty shocking'.

90. The Respondents case

91. The Respondent says that Although there were originally two budget figures (176) £453.60 for 'Cleaning /Caretaking' and £840 for 'Gardening & Grounds Maintenance' the contractor, Addison Cleaning & Maintenance Services, produced invoices with just one figure to cover both items. The invoices are at 181 – 189 each for £89.50 totalling £805.50.

92. As to whether the costs of gardening and grounds maintenance can be recovered as part of the service charge, the Respondent relies upon same arguments as raised for the year ending 31 December 2021.

93. The Tribunals Decision

94. For the reasons stated above the Tribunal determines that the Respondent cannot recover from the Applicant as part of the service charge payable by him expenses incurred in relation to gardening and grounds maintenance.

95. The Tribunal determines that the Respondent can recover expenses reasonably incurred in respect of the internal cleaning of the common parts of the building. The combined cost incurred by the Respondent in respect of gardening and grounds maintenance and the internal cleaning of the common parts of the building in 2021 was £89.50 (net of any VAT) per month apportioned as to £31.50 for internal cleaning and £58 for external gardening and grounds maintenance (see invoices that 140-152). The combined invoices for both items for 2022 from Addison Cleaning & Maintenance Services (181-189) also total £89.50 per month (there appears to be no VAT charged).

96. In the circumstances it seems reasonable to apply the same apportionment as in 2021 so that the cost of the internal cleaning of the common parts of the building is £31.50 per month. That is a figure which the Applicant said would be reasonable if the work was carried out to a reasonable standard. There was no evidence before the Tribunal that the cleaning had not been carried out to a reasonable standard during the period 1 January to 31 December 2022. Accordingly upon the basis of the evidence before it the Tribunal determines that for the period 1 January to 16 September 2022 the sum of £283.50 (£31.50 x 9) may be recovered by the Respondent as part of the service charge payable for the year ending 31 December 2022 in respect of the internal cleaning of the common parts of the building of which the applicant's 1/5 share is £56.70.

97. Accountancy fees £478

98. The Applicants case

99. The Applicant raises the same arguments as for the previous year. Further he says the only invoice produced by the Respondent is from Blue Accounting UK Limited in the sum of £460 (142R). That there is no explanation for or evidence of further expenditure of £18.

100. The Respondents case

101. The Respondent also relies upon the same arguments as for the previous year. At the time that the managing agents Blue Property Management UK Ltd ceased to act in September 2022 all that could be produced the Respondent says are what it describes as 'handover accounts'. That was because the financial year had not yet ended. That the handover accounts were not certified which is why there is no charge for certification as in the previous year. That it will be up to the new managing agents to produce certified accounts at the end of the year. The Respondent does not explain why the amount in the service charge accounts is £478 when the amount on the invoice from Blue Accounting UK Ltd is £460 (142R).

102. The Tribunal's Decision

103. As at 16 September 2022, for obvious reasons, the Respondent did not produce certified accounts for the service charge year ending 31 December 2022. The only document produced appears to be a one page document headed '*Income and Expenditure for the period ending 16 September 2022*' (180). That is a form of management accounts document which no doubt could be produced at any time from the managing agents accounts system. It is not a document in the view of the Tribunal which should require input from a third-party accountant (even from a company which is part of the same group of companies). The invoice from Blue Accounting UK Ltd dated 13 October 2022 (142R) describes the work carried out as 'A*ccounts Preparation*' with no further explanation.

104. The Tribunal is not satisfied that these charges have been reasonably incurred by the Respondent and determines that they constitute an expense which cannot be recovered as part of the service charge for the year ending 31 December 2022.

105. Client Money Protection £12

106. The Applicant's case

107. The Applicant makes the point that the statement of income and expenditure for the period ending 16 September 2022 (180) does not contain a figure for this item. He otherwise makes the same points as in the previous year that this item is no more than an overhead which the Respondents managing agents incur in the running of their business. That properly it should be incorporated into the managing agents fees.

108. The Respondents case

109. The Respondent also raises the same arguments as for the previous year. They contend as the Tribunal understands it, (point 4A at 116 – the word 'not' presumably is missing), that they did not receive an invoice for the client money protection policy and therefore the expense was not included in the accounts (or at least as at the date of the 'handover accounts' on 16 September 2022).

110. The Tribunals Decision

111. As for year the previous year in the view of the Tribunal this item properly forms part of the overheads incurred by the Respondent managing agents in running their business and is taken or should be taken into account in determining the amount of the fees that they charge. Accordingly the Tribunal determines that the Respondent cannot recover Client Money Protection charges of £12 as part of the service charge payable by the Applicant.

112. Fire Risk Assessment £240

113. The Applicant's case

114. The Applicant says that a fire risk assessment had been carried out in the previous year but that none of the works recommended to the property in light of that assessment had been carried out. That the assessment had been carried out by an associated company of Blue Property Management UK Ltd, a company called Blue Risk Management UK Ltd, and that accordingly the latter company must have known that no works been carried out. That in those circumstances it was unreasonable to carry out a further fire risk assessment, indeed the Applicant said there was no requirement for it to be carried out. As the Applicant put it at the hearing a second fire risk assessment in those circumstances was a 'waste of time'. The Applicant accepted, upon being questioned by the Tribunal, that the cost in the normal course of events of commissioning a fire risk assessment could be recovered as part of the service charge and that a fee of £240 would be reasonable. The Tribunal made the point to the Applicant that even if no work had been carried out to the property following a fire risk assessment that there may be a deterioration in the property subsequently or other events may occur such as a change in regulations that would change any recommendations made in a subsequent fire risk assessment. The Applicant said that nonetheless he did not accept that a further fire risk assessment was required in the event that work recommended by a previous assessment had not been carried out.

115. The Respondents case

116. The Respondent says (paragraph 9 of the witness statement of Jason Popplewell - page 98) that both fire risk assessments and health and safety risk assessments are instructed on an annual basis to ensure the safety and security of residents. That it is reasonable that such assessments are carried out annually otherwise a risk is posed to both the building and its occupants.

117. The Tribunal's Decision

118. The Tribunal agrees with the Respondent. It is good estate management to carry out a fire risk assessment on a regular basis even if no work has been carried out to the property since the previous assessment. The condition of buildings will change over time. The requirements/works that a fire risk assessment may identify may change year on year. It is in the best interests

of the building and in particular of the occupiers that regular assessments are carried out and works required by the assessment are completed without undue delay.

119. The Tribunal determines that the sum of £240 is an expense which has been reasonably incurred by the Respondent and may be recovered as part of the service charge payable for the year ending 31 December 2022 of which the Applicants 1/5th share is £48.00.

120. Health & Safety Risk Assessment £240

121. Both parties raise the same arguments in respect of this item as for the previous item (fire risk assessment). For the same reasons as set out above for the previous item the Tribunal determines that the sum of £240 in respect of health and safety risk assessment is an expense which has been reasonably incurred and may be recovered as part of the service charge payable for the year ending 31 December 2022 of which the Applicant's 1/5th share is £48.00.

122. Fire Alarm and Emergency Lighting £1500

123. This item does not appear in the statement of income and expenditure for the period ending 16 September 2022 (180) and the Respondent confirms that the expense has not been incurred.

124. Accordingly the Tribunal determines that this item does not form part of the service charge payable by the Applicant for the year ending 31 December 2022. Any monies collected in advance by the Respondent from the Applicant in respect of this item should form a credit to the service charge account to be taken into account at the end of the service charge year when determining pursuant to clause 6 of the fourth schedule to the lease whether there is any balance payable by the Applicant to be Respondent or conversely whether any sum should be allowed by the Respondent in the event that payments on account exceed actual expenditure.

125. Fire Door Inspection £240

126. Nothing is shown for this item in the statement of income and expenditure for the period ending 16 September 2022 (180). The Respondent states that no works were carried out and funds collected will remain in the service charge account.

127. Accordingly the Tribunal determines that this item does not form part of the service charge payable by the Applicant for the year ending 31 December 2022. As before any monies paid in advance by the Applicant shall form a credit to the service charge account.

128. Section 20C Landlord and Tenant Act 1985

129. The Applicant applies for an order that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as

relevant costs to be taken into account in determining the amount of any service charge payable by him or his fellow lessees of flats 1 - 5 St Johns Mews (page 7 of the application form). The Applicant says that he was obliged to bring these proceedings because of poor management of the Property, because of what he believed to be unreasonable service charges raised by the Respondent and because of a failure on the part of the Respondent and its managing agents to communicate properly with him or to produce documents that he had asked to see. He said that such responses as he did receive were dismissive and vague. That he didn't consider that his concerns were taken seriously. That had he been allowed the opportunity to speak with the Respondent or the managing agents it was possible in his view that the issues that he had raised in these proceedings could have been resolved and the proceedings avoided. The fact that the Respondents had elected not to attend the hearing of the proceedings demonstrated that they did not take the matters raised seriously. That in the circumstances it would be inequitable for the Respondent to recover such costs as it may have incurred in connection with these proceedings as part of any future service charge payments.

130. The Tribunals Decision

131. In the view of the Tribunal the Respondent has not properly engaged in these proceedings not least by its failure to attend the hearing. The Tribunal is satisfied that had the Respondents managing agents properly considered the Applicant's concerns and engaged with him there was a chance that the proceedings could have been avoided. The Applicant raised understandable concerns with the Respondent as regards the service charges demanded of him to which he did not receive a satisfactory response so that he felt obliged to make this application to the Tribunal. The Applicant was in the view of the Tribunal justified in making his application. He has to a degree been successful in his application.

132. In the circumstances the Tribunal Orders that all or any of the costs incurred by the Respondent in connection with these 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 lessees of flats 1 2 3 4 and 5 St Johns Mews Victoria Grove Southsea PO5 1LL.

133. Paragraph 5A Schedule 11

134. Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides that a lessee may apply to the Tribunal for an order reducing or extinguishing the lessees liability to pay a particular administration charge in respect of litigation costs. Those include costs incurred in relation to proceedings before this Tribunal. An administration charge includes a charge payable under the terms of a lease in connection with a breach or alleged breach of a covenant or condition in the lease. The Tribunal does not make a determination as to whether or not in this case under the terms of the Applicants lease the Respondent would be entitled to recover a form of administration charge from the Applicant in respect of costs incurred by the Respondent in respect of these proceedings.

135. The grounds of the application made by the Applicant mirror those above in respect of section 20C of the Landlord and Tenant Act 1985.

136. **The Tribunals Decision**

137. For the same reasons as stated in respect of the section 20C application above the Tribunal Orders that the Respondent may not recover from the Applicant any costs that it has incurred in respect of these proceedings as administration charges.

138. Fees

139. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provide that the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fees paid by the other party which have not been remitted by the Lord Chancellor. The Applicant made an application at the end of the hearing for an order that the Respondent reimburse to him fees that he has paid to the Tribunal of £300.

140. The Applicant said that he felt obliged to bring these proceedings because of a failure on the Respondent's part to address his concerns about the service charges raised. There had he said been a failure by the Respondent to produce documents that he had asked to see. That he had found the Respondent's management agent to be elusive. He felt that such responses as did receive were dismissive and vague. He didn't feel that his concerns were taken seriously and he was genuinely concerned that service charges were being levied which properly the Respondent was not entitled to recover. That in his view had the Respondents managing agents properly addressed his concerns then matters may have been resolved without recourse to these proceedings. In the event he felt that he had no choice but to make an application to the Tribunal.

141. The Tribunals Decision

142. The Applicant was in the view of the Tribunal justified in bringing these proceedings. He had genuine concerns as regards the service charges that were being levied against him and his fellow lessees. He felt that his concerns were not being properly addressed by the Respondents managing agents. In the view of the Tribunal he was right to have those concerns. For example when he questioned the ability of the Respondent to recover as part of the service charge costs allegedly incurred for 'gardening and grounds maintenance' and asked the Respondents managing agent to address the relevant provisions in the lease the response received from Mr Jason Popplewell was '*there are items of maintenance that the freeholder would be responsible for which is widely accepted and understood in block management, some leases do not cover every aspect of this, such areas would include accessible drives pathways etc which are shared in common with leaseholders*' (para 2 at 263). The contention that the Respondent was not governed by or restricted by the provisions of the lease was put forward

again by Mr Popplewell in paragraph 6 of his witness statement which is quoted above (97). It was entirely proper and understandable for the Applicant to question whether the provisions in the lease allowed for the recovery of a certain item of expense. It was not in the view of the Tribunal acceptable for the managing agent to effectively dismiss that query by seeking to rely upon an argument of 'common practice'.

143. The Applicant has succeeded at least in part and was justified in the view of the Tribunal in bringing these proceedings.

144. The Tribunal Orders that the Respondent reimburse to the Applicant fees paid to the Tribunal of £300 to be paid within 14 days of receipt of this Decision.

145. Summary of Decision

The Service Charge Year 1 January to 31 December 2021.

The following expenses are reasonably incurred by the Respondent and may form part of the Service Charges payable by the Applicant for this service charge year:

Gardening & Grounds Maintenance	Nil
Accountancy Fees	£544.00
Management Fees	£1470.00
Client Money Protection	Nil
Disbursements	Nil
Building Condition Report	Nil
Total	£2014.00

Of which the 1/5th share payable by the Applicant is £402.80.

The Period 1 January to 16 September 2022.

The following expenses incurred by the Respondent during this period are reasonably incurred and may form part of the service charge payable by the Applicant for the year ending 31 December 2022.

Cleaning/Caretaking	£283.50
Gardening & Grounds Maintenance	Nil
Accountancy Fees	Nil
Client Money Protection	Nil
Fire Risk Assessment	£240.00
Health & Safety Risk Assessment	£240.00
Fire Alarm and Emergency Lighting	Nil
Fire Door Inspection	Nil
Total	£763.50

Of which the 1/5th share payable by the Applicant is £152.70.

NB for the avoidance of doubt the Tribunal has only made determinations in respect of those items of expense which form part of the service charges claimed by the Respondent which the Applicant has challenged.

Section 20C Landlord and Tenant Act 1985

The Tribunal Orders that all or any of the costs incurred by the respondent in connection with these 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 lessees of flats 1 2 3 4 and 5 St Johns Mews Victoria Grove Southsea PO5 1LL.

Paragraph 5A Schedule 11 Commonhold and Leasehold Reform act 2002.

The Tribunal Orders that the Respondent may not recover from the Applicant all or any of the costs incurred by it in respect of these proceedings as administration charges.

Tribunal Fees

The Tribunal Orders that the Respondent reimburse to the Applicant fees paid to the Tribunal of £300 to be paid within 14 days of receipt of this Decision.

5 December 2023

Judge N Jutton

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. 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 the party making the application is seeking